

8. IRELAND - ACCESS TO THE COAST ¹

8.1 NATIONAL CONTEXT FOR COASTAL ACCESS

Figure 8.1 Ireland - Key Statistics

Population (2001)	3.9 million	
Population density	55 persons/km ²	
Coastline	5,800 km	
Land Area	70,280 km²	
Urban/developed areas	1,372 km ²	2%
Agricultural land	49,196 km ²	70%
Forests/woodlands	6,690 km ²	9.5%
Other land	13,022 km ²	18.5%
Land Ownership	not available	

Ireland's Coasts

Ireland's coastline is estimated as being 5,800 km in length. Half of its coastline comprises the indented Atlantic coast in the west - between Kerry and Donegal. 3,000 km is classified as 'soft' coast, of which 50% is considered to be at risk from erosion. The remainder is 'hard' (rocky) coast. There are some 2,382 km of sandy beaches - many of which are backed by sand dunes and machair. The rocky shoreline extends over 828 km and includes the highest sea cliffs in Europe - along the west coast at Slieve League, Achill Island and the Cliffs of Moher. Sea cliffs which are more susceptible to erosion extend for 250 km.

Definitions

Foreshore is defined in the **Foreshore Act 1933** (amended 1992) as ... *the bed and shore, below the line of high water of ordinary or medium tides, of the sea and of every tidal river and tidal estuary and of every channel, creek and bay of the sea or of any such river or estuary.* The Act defines the **seashore** as ... *the foreshore and every beach, bank and cliff contiguous thereto and includes all sands and rocks contiguous to the foreshore.*

Land Uses and Ownerships

Most coastal areas comprise farmland, including rough grazing, but there is extensive urban development in Greater Dublin and other cities, such as Cork and Waterford, and many coastal resorts and towns servicing rural hinterlands.

All land in Ireland above high water mark is privately owned, or in the ownership of the State or semi-state sectors (e.g. Coillte – State-owned management company for State forests). Very few coastal lands are owned by conservation or other voluntary bodies.

Coastal Conservation

Many sections of the coast are protected through conservation designations, including 7 Ramsar Sites, 9 Special Areas of Conservation (SACs), 61 Special Protection Areas (SPAs), 284 Natural Heritage Areas (NHAs – former Areas of Scientific Interest), 17 Nature Reserves, 17 Wildfowl Sanctuaries and 7 Refuges for Fauna (seabirds). Lough Swilly in Donegal has both SAC and SPA status, with shallow water and intertidal sand- and mud-flats as its most important habitats. Lambay Island, off the coast of County Dublin, has cliffs to 127 m and is internationally important as a breeding ground for seabirds. Habitats in Annex 1 of the Habitats Directive for coastal areas include coastal lagoons, coastal dunes and decalcified fixed dunes, and machair. Other habitats include sand-banks, estuaries, mudflats, reefs, vegetated sea cliffs and Atlantic salt meadows.

¹ Position Papers were prepared for Ireland, Northern Ireland and Portugal, rather than full Country Papers - as prepared for Denmark, France, Netherlands, Scotland and Sweden.

Coastal Recreation, Leisure and Tourism

The coastline is popular for walking - increasingly so, in recent years - and other recreational activities, including surfing, sailing, angling, bird and whale watching. It is also an important resource for tourism – largely due to the attractive scenery and coastal villages and sandy beaches. Mayo has over 800 km of sandy beaches followed by Cork, Kerry, Donegal and Wexford. In 2003, 0.5m Irish residents walked while on holiday in Ireland, and, in 2004, 0.26m foreign visitors walked/hiked while visiting Ireland.

Several important coastal walking routes are **Waymarked Ways**. This scheme is administered by the Irish Sports Council, under the aegis of the National Waymarked Ways Committee, and has involved the establishment of walking routes across private and publicly owned lands. Sections of these paths are not rights of way and may be revoked by the landowners at any time. Normally, an agreement is secured for a stipulated period of at least five years. The owners are indemnified against any injury occurring to recreational users, by an insurance policy administered by the local authority. Important walks, at least part of which are in the vicinity of the coast, include -

- Dingle Way, Kerry (168 km)
- Sheep's Head Way, Kerry (101 km)
- Beara Way, Kerry (160 km)
- Burren Way, Clare (37 km)
- Bealach Na Gaeltachta, Donegal (280 km).

None of Ireland's five **national parks** are at the coast.

8.2 COASTAL ACCESS RIGHTS, LEGISLATION AND OTHER ARRANGEMENTS

Historical Background

No specific access rules or legislation apply solely to the coast, apart from the public right of access to the foreshore – which results from the foreshore being in State ownership. Most other land is privately-owned, although some areas are owned by the State or semi-State sectors. The conditions applying to coastal access are similar to those applying to all types of land and locations. In effect, there is no right of access, although permission is normally given or implied. Coillte - the largest semi-State landowner - permits access to forests and other lands in its management – sometimes with restrictions.

Traditionally people have enjoyed access for beach and coastal walks on a *de facto* or permissive basis, established over a long period of years. For example, in Donegal, access to Slieve League (a mountain, partly comprising sea cliffs) and to the coast at Glencolumcille across commonage is taken for granted after many years of regular use. Less frequently, access is available through a **negotiated agreement** with landowners. The Waymarked Ways and several circular walks have been established through such negotiations.

With the increasing popularity of outdoor recreation, some coastal landowners have challenged or prevented access. A current example is a coastal walk in County Wexford, where a landowner is disputing a public right of way identified by the local authority. Also, although there is a public right of recreation along the foreshore, access to the shore is usually across private land - on a *de facto* or permissive basis - and may be challenged.

Public Rights of Way

The law on public rights of way is based on common law, which, prior to Ireland's Independence, would have been broadly similar to the common law on public rights of way in England. The **Roads Act 1993** (s. 73) states that it is ... *the function of a local authority to protect the right of the public to use public rights of way in its administrative area.*

Figure 8.2 Ireland – Summary of Key Access Rights, Mechanisms and Exclusions

Coastal land	Key access rights and arrangements	Main access restrictions or exclusions
Area-wide access		
foreshore (between low and high water marks)	Public right of access to foreshore, as foreshore is in State ownership.	Some sections of foreshore leased to private interests, without rights of access being secured. Potential restrictions under Foreshore Act
beaches, fore-dunes and similar areas	Traditions of <i>de facto</i> or permissive access to many beaches, but insecure.	Common law of trespass may be used to prevent access
uncultivated land and adjoining beaches (e.g. back dunes, cliffs)	<i>De facto</i> or permissive access. Some commonage, but infrequent.	<i>As above</i>
farmland adjoining the coast	<i>As above</i> Some commonage, but infrequent.	<i>As above</i>
wildlife reserves, etc.	<i>As above</i>	<i>As above</i>
development at coast (e.g. housing, industry, hotel, caravan site, private marina, power station, port)	<i>As above</i>	<i>As above</i>
paths, tracks, etc. along/to the coast		
	Public rights of way, but infrequent and few secured by local authorities. Some negotiated Waymarked Ways and other promoted routes (often on roads). <i>De facto</i> or permissive access on farm tracks, etc., but insecure.	Common law of trespass may be used to prevent access

The **Planning and Development Act 2000** gives planning authorities powers to create a public right of way, by agreement with the landowner or occupier (s. 206), or by an order (s. 207). In such cases, the planning authority is required to register the public right of way and to maintain it. No-one can damage or obstruct the public right of way or hinder or interfere with its use (s. 208). However, planning authorities have been reluctant to use these powers, as the procedures are protracted, cumbersome and time-consuming. Consequently, few public rights of way have been recorded and protected and some have been obstructed or 'lost' to public use.

Unlike in England, no statute clearly sets out the period over which a route needs to have been used by the public, with the express or implied approval of the landowner, before it acquires the legal status of a public right of way. Hence, the 20-year prescriptive period may not apply and many rights of way are difficult to prove at law and open to challenge by an owner. Consequently, public rights of way are infrequent and poorly documented.

Other Rights of Access and Legislation Relating to Access to the Coast

As indicated above, **access to the foreshore is usually freely available**, as it is in State ownership. However, in some locations, the State has leased the foreshore to a private interest, without securing access rights.

There are **no statutory provisions for access to 'open country'** and the **common law on trespass** gives landowners the right to exclude people from their land, except where a public right of way exists. An amendment in 2002 to the **Criminal Justice Act 1994** refers to the criminality of entering and substantially damaging privately owned land; however, this is more likely to refer to illegal occupation (e.g. by travelling people) than responsible access to the coast.

Other Mechanisms Providing Access to the Coast

The principal means whereby access is available on a footpath, or elsewhere, is through a **formal or informal agreement** with the landowner or occupier. Obviously, the former is more secure. Agreements frequently underpin the Waymarked Ways and other promoted paths in the vicinity of the coast; although, extensive sections of such routes are often on roads or footways.

The **Local Government (Planning and Development) Regulations 1977** (Part III, Art. 1) states that ... *the fencing and enclosure of any land habitually open to the public during the ten years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore or riverbank or other place of natural beauty or recreational utility* ... will not be exempted from the definition of development; i.e. be regarded as permitted development. Nor, is it permitted to obstruct any public right of way.

Public Liability

Occupiers' liability has been a matter of considerable concern to landowners in regard to recreational use of their lands. The degrees of liability are set out in the **Occupiers Liability Act of 1995** and have been interpreted in a Supreme Court judgement in 2005 following an accident on a coastal path in Co. Donegal and subsequent litigation.

The 1995 Act created a new type of user of land referred to as a *recreational user*. A landowner has a lower duty of care to a recreational user, than that owed to an invited visitor. The judgement established that a landowner would require to be behaving with *reckless disregard* to be found liable for an injury suffered by a recreational user. Nevertheless, landowners still cite issues of public liability in seeking to prevent access over their land.

Restrictions on Access

Local authorities can make **byelaws** restricting activities and access on beaches. For example, they may prohibit the use of beaches for horse riding or parking cars at certain times of the year. Meath County Council has created such byelaws to regulate the use of the popular bathing beach at Bettystown during the summer months.

Other legislation which may affect recreational uses of the coast includes –

- **Waste Management Act 2001** – which controls litter and dog fouling on beaches. Litter wardens have the authority to impose fines or to issue summons
- **Control of Dogs Act 1992** – which requires dogs to be on a leash in all public areas
- **Wildlife Act 1976** seeks to protect wildlife from harm
- **Foreshore Act 1933** empowers the Minister to make regulations relating to public use of the foreshore; for example, to restrict access to a nature reserve.

Additionally, the Blue Flag beaches scheme, which is managed by An Taisce (National Trust for Ireland), can apply non-statutory 'regulations' to assist the management of beaches

8.3 COASTAL ACCESS EFFECTIVENESS AND INFORMATION

Effectiveness of Access Provision

In the absence of relevant legislation, **access to Ireland's coasts is mostly insecure and relies on *de facto* access or the goodwill of the landowner to tolerate access on a permissive basis.** Walkers or other recreational users have no certainty that they are not trespassing and that a landowner may not obstruct their route or ask them to leave. Few public rights of way are signed or protected as such.

Waymarked Ways and some other paths, which are provided through formal negotiations and agreements, provide greater levels of certainty. However, such routes are seldom public rights of ways and a landowner may withdraw the entitlement of use. Indeed, agreements are usually for a stipulated period – for example, five years - and may be withdrawn at the end of this period, although there is no evidence of such access being withdrawn.

The Government is preparing a *National Countryside Recreation Strategy* and the Irish Sports Council is preparing a *National Trails Strategy*. These strategies are due for publication in 2006 and are likely to provide policies and programmes for enhancing recreational routes throughout Ireland's countryside. These may stimulate pressures for legislative change to secure more effective access provision

Key Issues

Other key issues affecting access to/on the coast include -

- **coastal development; especially tourism development** – there have been sustained pressures on many coastal areas for development, including for second homes and tourist facilities, such as marinas, golf courses and accommodation. Tax relief on property investment schemes aimed at generating economic activity in seaside resorts has resulted in increased development without significantly boosting tourism revenues. Some of these developments have reduced opportunities for coastal access and enjoyment
- **coastal industry, ports and harbours** - many chemical and pharmaceutical industries are located on the coast, with resultant loss of visual and other amenities, disturbance and dispersal of contaminated sediments, loss of habitats and conflicts between leisure users and commercial shipping in ports. In many cases, recreational users have to make long detours inland to bypass such development – especially around Dublin Bay.
- **coastal erosion and flooding** - climate studies forecast increased incidences of storms, which, combined with sea level rises, are likely to increase problems of flooding and erosion in vulnerable coastal areas. Coastal erosion causes the loss of 160 to 300 ha of coastline each year – especially on the south west Atlantic coast. For example, the soft cliffs adjoining a coastal path between Bray and Greystones have been severely eroded over recent years and have required Wicklow County Council to negotiate an access agreement to enable the relocation of the path. Also, the Roundstone Beaches Environmental Project has sought to arrest erosion of the beaches at Roundstone in County Galway and to protect a Special Area of Conservation which was threatened by erosion

Information for Coastal Users

The Waymarked Ways are waymarked, signposted and promoted on the Internet (www.walkireland.ie). Maps with full route descriptions, including local history, geology, etc. have been prepared - for example, the Burren Way map has been produced by a local agency, and the West Clare Way map with support from Shannon Development and Clare County Council. Similar arrangements apply in other locations.

The Geological Survey of Ireland is involved in an on-going project of preparing descriptions of the geology along walking routes, including those at coastal locations.

Other coastal paths are signed and some have leaflets.

SECTION 8 - APPENDIX

Reference

Public Rights of Way – The legal background, Winder F. in
www.mountaineering.ie/features/rightsway/RightsofWay.htm

9. NORTHERN IRELAND - ACCESS TO THE COAST²

9.1 NATIONAL CONTEXT FOR COASTAL ACCESS

Figure 9.1 Northern Ireland - Key Statistics

Population (2001)	1.68 million	
Population density	124 persons/km ²	
Coastline	650 km	
Land Area	13,480 km²	
Urban and other land	1,970 km ²	15 %
Agricultural land	10,680 km ²	79 %
Forests/woodlands	830 km ²	6 %
Land Ownership	not available	
(mostly private, but around 1/3 rd of coast is in National Trust ownership)		

Northern Ireland's Coasts

Northern Ireland has over 650 km of coastline, which is indented by 6 major loughs and estuaries. This coast comprises varied landscapes – for example, the dramatic cliffs of the Causeway Coast, major dune systems (e.g. Magilligan Strand, Portstewart, Murlough) and the gentle, rolling and fertile shores of Strangford Lough.

Definitions

The Limitation (Northern Ireland) Order 1989 defines the **foreshore** as ... *the bed and shore, below the line of high water of ordinary or medium tides, of the sea and of every tidal river and tidal estuary and of every channel, creek and bay of the sea or any such river or estuary.* No legal definition for the coast was found during this research.

Land Uses and Ownerships

With the exception of industrial uses around Belfast Lough, military ranges at Magilligan and Ballykinlar, and coastal recreation and tourism developments (e.g. golf courses, marinas, hotels), most coastal lands are either nature reserves, or in agricultural uses. Agricultural tenure patterns differ from the rest of the UK, as a result of Land Acts of the 1880s, which gave tenant farmers the right of purchase land. Consequently, most land is held in a mosaic of relatively small farms, rather than substantial estates. The average holding is 38 ha and 66% of farmland is owner-occupied.

Just under one-third of the coastline (200 km) is owned or protected by the National Trust and managed through its Northern Ireland regional office. The remainder is mainly in private ownership, although District Councils have significant land holdings – in particular, ownership of popular beaches. The Crown Estate owns and manages most of the foreshore.

Coastal Conservation

Much of the coast is of international or national significance for its wildlife habits and species, and/or its landscape values. The coast includes 52 Special Areas of Conservation, 10 Special Protection Areas and 17 Ramsar sites. Around a quarter of Northern Ireland's 47 National Nature Reserves are at the coast and Strangford Lough was designated as Northern Ireland's first Marine Nature Reserve in the mid-1990s.

17% of the coast lies within designated Areas of Outstanding Natural Beauty (AONBs) with coastal components (i.e. North Derry Coast, Causeway Coast, Antrim Coast and Glens, Lecale Coast, Strangford Lough and Mourne AONBs). The Giant's Causeway is a World Heritage Site.

² Position Papers were prepared for Ireland, Northern Ireland and Portugal, rather than full Country Papers.

Coastal Recreation, Leisure and Tourism

Northern Ireland's coast is extremely attractive and important for day and tourist visits. Coastal recreation activities include walking, cycling, riding and wind- and water-sports. Walking is the most popular recreational activity. While there are no recent Northern Ireland-wide data, surveys in 1990/91 show that there were over 15m day trips to the countryside and coast, of which 5.6m included a walk of 2 to 5 miles and 0.5m included a longer walk. Most walks were in forests, at the seaside, or in the hills and mountains.

The National Trust, District Councils and Environment and Heritage Service are the main providers of open access, paths, visitor centres and other amenities at the coast. The Waymarked Ways are the principal promoted routes and these include the Causeway Coast Way (52 km) and the Lecale Way (65 km). Several District Councils have provided other excellent and well used, shorter coastal paths - including the North Down Coastal Path (25 km) from Orlock to Hollywood (large sections of public ownership), the path between Ballyhornan and Ardglass (4.7 km; public right of way) and Killough Coastal Path (2.7 km; public right of way).

9.2 COASTAL ACCESS RIGHTS, LEGISLATION AND OTHER ARRANGEMENTS

Historical Background

Traditionally, and currently, Northern Ireland's countryside and coastal lands are 'private' and access is severely restricted in comparison with other parts of the UK. **Most recreational access to/at the coast is on a *de facto* or permissive basis – other than on the few public rights of way, Waymarked Ways or other promoted routes, or on parts of the coastline owned by the National Trust, or District Councils.** Farmers and other owners have traditionally been reluctant to provide, or have opposed public access, mainly due to concerns about public liability and desires to protect private property rights and privacy.

An early initiative to create countryside and coastal access - the Ulster Way project - began in the early 1970s. A development officer was employed by the Sports Council for Northern Ireland, who selected a 940 km circular route around Northern Ireland, based on existing access, assumed public rights of way and verbal agreements, and with links into County Donegal. The Sports Council for N. Ireland convened an Ulster Way Committee comprising the principal public bodies and negotiations with landowners over a 14-year period enabled the initial development of the Ulster Way. However, much of the route was on roads and it has since been reviewed. The current focus is on developing and promoting Waymarked Way sections of the Ulster Way.

Access Legislation

The **Access to the Countryside (Northern Ireland) Order 1983** –

- gave duties to the 26 District Councils ... *to assert, protect and keep open and free from obstruction or encroachment any **public right of way**, and compile and preserve maps and other records of public rights of way in their district*
- gave discretionary powers to the Councils to make orders to create, divert or extinguish **public paths**, to maintain and sign paths, and to propose **long distance routes**
- enabled District Councils to secure access to **open country** (including cliffs and foreshores) by an **access agreement, access order or land acquisition**
- conferred a quasi-judicial role on the Department of the Environment in relation to public path diversions and extinguishments, access orders and long distance route proposals
- enabled the Department to provide financial assistance to the District Councils and other bodies or persons for the purposes of the Order.

Progress by the District Councils on implementing these provisions has been very varied. Many have giving low priority to public access, but others have appointed Access Officers and made significant progress. In particular, the Councils are generally reluctant to progress public right of way assertions, as the process is often difficult, time-consuming and politically unpopular. Exceptions include work by Down District Council, where public rights of way have been asserted over significant sections of coast between Ballyhornan and Ardglass (4.7 km) and to create the Killough Coastal Path (2.7 km). This Council has leased extensive sections of beach to enable beach visits and walking and horse-riding, subject to byelaws. A further stretch of coastal access has been created through the purchase of an estate to create the Delamont Country Park on the shores of Strangford Lough.

The Department of the Environment's Environment and Heritage Service has commissioned major studies on access in Northern Ireland and undertaken national consultations to seek agreement on the best ways forward, but these have largely been frustrated by intransigence amongst farming interests and no positive changes to the legislation have been achieved.

The **Tourism (Northern Ireland) Order 1992** enables the District Councils to create footpaths, erect signs, etc., where these will provide an amenity for tourists.

Figure 9.2 Northern Ireland – Summary of Key Access Rights, Mechanisms and Exclusions

Coastal land	Key access rights and arrangements	Main access restrictions or exclusions
Area-wide access		
foreshore (between low and high water marks)	Permissive access through Crown Estate's ownership. Many Councils lease foreshore to provide facilities (e.g. car parking, toilets). National Trust leases sections of foreshore in Strangford Lough	Byelaws may impose time/spatial restrictions on riding, vehicular access, etc Foreshores often designated as SPAs or SACs Voluntary restrictions on wildfowling (e.g. Strangford Lough Management Scheme)
beaches, fore-dunes and similar areas	Mostly <i>de facto</i> or permissive access. Some open access (permissive) on District Council or National Trust lands. Paths by agreements and some rights of way	Byelaws – <i>as above</i>
uncultivated land and adjoining beaches (e.g. back dunes, cliffs)	<i>as above</i>	<i>as above</i>
farmland adjoining the coast	Little access to farmland, except on public rights of way (few) or agreed paths. National Trust has purchased some coastal farms to create access (may retain coastal strip and sell remaining land) Paths by agreements and a few public rights of way or public paths	Most access restricted to walking.
wildlife reserves, etc.	Permissive access on managed paths.	Most access restricted to walking. May be some restrictions for conservation
development at coast (e.g. housing, industry, hotel, caravan site, private marina, power station, port)	No general restriction on coastal development. Housing, industry and golf course development may reduce/restrict access. Access mainly on roads, footways, paths by agreement and few public rights of way	
Linear access		
paths, tracks, etc. along/to the coast	Paths and Waymarked Ways mostly on public rights of way, National Trust land or created by agreements. Few asserted PROW, most are claimed. Some public paths. <i>De facto</i> or permissive access on some farm tracks, etc.	Byelaws may restrict access on certain paths

Access on the North Coast – Examples of Access Provision

The coastline between Londonderry and Portballintrae illustrates most types of coastal access arrangements in Northern Ireland – including many sections of coast which are not publicly accessible, or where access is insecure and may be obstructed or prevent at any time.

From Londonderry to Benone there are several access points on pathways on/behind flood defences, which are owned and maintained by the Rivers Agency and are available for public access and accessible from public roads. Thereafter, farmland prevents access to several kilometres of coastline. Benone Beach (8 km) is in several ownerships, including the Environment and Heritage Service and Ministry of Defence and includes a section leased from the Crown Estate by Limavady Borough Council, which has access for recreation, including orienteering in the dunes. Part of the coast between Benone Beach and Castlerock is inaccessible due to cliffs, although some 'open area' cliff top access is available at the National Trust's Mussenden Temple property.

At Castlerock, there is access to the 1 km beach, but this is discontinuous due to the River Bann Estuary, which can only be accessed on its west side, on National Trust land which has a birdwatching site and is a nature reserve. East of the Bann, Portstewart Strand (2.5 km) is owned by the National Trust and provides walking, riding, orienteering access and vehicles. The Portstewart cliff path (1 km) leads walkers on to a section of road through the village to the harbour. The cliff path is considered by Coleraine Borough Council to be a public right of way, but this has not been asserted. Another short section of path around the Harbour Hill viewpoint is on land owned by the Council.

The Port Path (4 km), between Portstewart and Portrush, is mostly owned by the Council and a golf club. This is considered to be a public right of way, but has not been asserted. The West Strand, East Strand and White Rocks beaches, and Ramore Head, provide over 4 km of coastal walking through Portrush and along the seaward edge of the Royal Portrush Links Golf Course. At the White Rocks, the coast is inaccessible on foot, due to a friable cliff edge and adjacent road. Only a section at Dunluce Castle, which is in State care, provides cliff access.

Other Mechanisms Providing and/or Promoting Access to the Coast

Significant opportunities for access and recreation on/along the **foreshore** are provided by the Crown Estate. This access is on a permissive access basis and may not be available where the foreshore is leased to another party. Access along the foreshore may be frustrated by the lack of lawful access to the foreshore – for example, where there is no public right of way providing access to the shore.

The **Countryside Access and Activities Network** (www.countrysiderecreation.com) is a charitable company, which coordinates the activities of -

- voluntary representative bodies for 32 sports and activities that depend on the countryside for their activity resource
- Government departments that provide access facilities
- organisations with interests in outdoor learning.

A priority for CAAN is to develop networks of access routes for canoeing, walking, riding and mountain biking and it has convened an **Access Forum**, comprising representatives of the Access Officers of the 26 District Councils and representatives of recreational and sports activities and public bodies with major landholdings.

Waymarked Ways is one of CAAN's flagship projects and the Causeway Coast Way is one of eight Waymarked Ways established and promoted by CAAN (www.waymarkedways.com). It covers 53 km along the dramatic North Coast from Portstewart to Ballycastle - passing along sandy beaches, rocky bays and high cliffs, through seaside resorts and small fishing villages, and offering varied coastal scenery within the Causeway Coast and Glens AONB.

The Causeway Coast Way and most other Waymarked Ways aim to formalise and improve on sections of the former Ulster Way and, where possible, the District Councils have negotiated formal path agreements to secure the route. The Causeway Coast Way provides the only significant continuous section of coastal access in Northern Ireland and relies largely on extensive National Trust ownership of the coastline. All other coast paths are shorter and provide intermittent access to the coastline.

The **National Trust** owns and/or protects 200 km of the coastline. There is public access along this entire coastline, except for farmland and sites where the physical nature of the property does not allow this. Typically, the Trust has increased opportunities for coastal access through coastal land purchases, legacies and donations. For example, its acquisition of farmlands along the North Coast enabled extensions to the North Antrim Coast Path and secured its safety and long-term future through enabling the path to be re-routed to avoid the edge of the cliff.

The National Trust provides some open area access - for example, at Fair Head, Murlough Bay and Portstewart Sand Dunes on the North Coast and at Murlough Sand Dunes in County Down. The Trust's other coastal properties include Cushendun, Portmuck, Skernagh Point, Dundrum Coastal Path, Bloody Bridge (Mourne Coastal Path) and parts of Rathlin Island. Also, it provides coastal access for riding and orienteering (e.g. Portstewart, Castleward) and proposals are being considered for a sea-kayaking trail at Strangford Lough, where the Trust leases the foreshore from the Crown Estate.

Issues of Occupiers Liability

The legislation governing occupiers' liability - the Occupiers' Liability Act 1957 and Occupiers' Liability (NI) Order 1987 - is identical to that in England and Wales, prior to the Countryside and Rights of Way Act 2000. Under the 1957 Act, the occupier has a duty of care towards any visitors - to do what is reasonable to ensure that a visitor will be reasonably safe when using land for the purposes for which he/she is permitted to be there. This duty does not apply to anyone engaging in a hazardous activity (e.g. rock climbing) and who is regarded, in law, as having willingly accepted the risks involved. In most circumstances, the duty can be met by erecting a notice or giving a verbal warning of any danger. A court will have regard to any such warnings and to the extent to which the claimant's behaviour led to, or contributed to, his/her injury. The 1987 Order extended the duty of care to include trespassers, but only if it can be shown that the occupier –

- knew, or should have known, that a danger existed on the land
- knew or could have anticipated that a trespasser might go near the danger
- could reasonably have been expected to protect the trespasser against the danger.

While some liability claims have been made against public bodies following injuries sustained by visitors using country parks or other promoted recreational areas, there is no record of claims arising from the public's informal recreational use of private land, whether as visitors or trespassers. Nevertheless, issues of occupiers' liability are a concern throughout the farming community - the common belief being that in permitting the public onto land, the occupier exposes himself to the risk of a claim, if only on a speculative basis. The factors underlying these fears, and which have made it difficult/impossible to establish greater public access, include the strong cultural values attached to land ownership, small size of most farm holdings and many farmers not holding public liability insurance.

Additionally, there is wide perception of a strong claims culture in Northern Ireland, encouraged by the Courts' predisposition to make generous settlements. In the past, these fears have been driven, also, by reports in the agricultural press of high-profile liability cases in the Republic and a failure to appreciate that the law (as then existed) in the Republic was different and that such claims could not arise in Northern Ireland.

To address these concerns, the Countryside Access and Activities Network (CAAN) undertook consultations among farming and recreational interest in 2000. These led to strong consensus on the need to change in the legislation and broad agreement on how this should be done, based on America's recreational use statutes and the Republic's Occupiers' Liability Act 1995. The proposed changes would, in outline -

- establish a third category of entrant – a 'recreational user': i.e. a person who is on the occupier's land to engage in a recreational activity;
- provide that the occupier's duty towards a recreational user should be the same as that towards a trespasser
- limit that duty to not intentionally injuring the recreational user or trespasser, or damaging his or her property, or acting with reckless disregard towards them.

CAAN's recommendations (Hickey, 2001) included detailed definitions of the land to which the provisions should apply and the additional factors that a court should take into account in determining liability. It is understood that, as a result of these recommendations, amending legislation is currently under consideration by the Department of Finance and Personnel.

Restrictions on Access

Under the Countryside (Northern Ireland) Order 1983, District Councils can make **byelaws** in respect of public paths, long distance routes, public rights of way and access land, to prevent damage or nuisances. Also, they can make byelaws in respect of tourist amenities (e.g. paths, picnic areas) under the Tourism (Northern Ireland Order) 1992 and the Local Government Act (Northern Ireland) 1972 provides further byelaw-making powers. Typically, byelaws are used to restrict access to those on foot on some coastal paths, to restrict riding to specific times on some beaches (e.g. byelaws made by Coleraine Borough Council), or to restrict access by vehicles on beaches.

9.3 COASTAL ACCESS EFFECTIVENESS AND INFORMATION

Effectiveness of Access Provision

Access to the coast in Northern Ireland often takes the form of *de facto* or permissive access and is mostly insecure. The access legislation is cumbersome and most local authorities have not taken full advantage of it to safeguard public rights of way or create new paths or open access opportunities. **Coastal visitors seeking more secure access are often reliant on access at lands owned by the National Trust or District Councils, or paths which have largely been created through voluntary agreements.** Some areas of the coast - especially at high tides and in cliff-top situations - are not accessible, due to private farmland, development (e.g. homes, golf courses) or roads abutting the coastal edge.

Other Coastal Access Issues

Coastal access in Northern Ireland is hampered by relatively high rates of coastal erosion, particularly on the softer and lower cliffs of the east coast. The quality of access is also marred by coastal dumping and fly-tipping, which is endemic in some areas.

Councils and some other agencies can secure grants for the development of coastal and other access from the Environment and Heritage Service. The only grant aid in this respect in the past five years has been to assist the purchase of the National Trust's coastal estate at Ballyquintin Point, at the entrance to Strangford Lough.

Information for Coastal Users

A variety of information is available, including –

- **information on Ordnance Survey maps** - coastal walks are generally only shown, where these are Waymarked Ways. The OS has agreed to show asserted public rights of way, but these are rarely asserted or notified
- **Websites** - countryside recreation sites, routes, facilities and services are presented on www.landwaterair.co.uk, including specialist sites for canoeing, walking, horse riding and mountain biking and www.waymarkedways.com provides multi-language information on the Waymarked Ways
- **path leaflets, signing and mapboards, etc.** – many of the District Councils, the National Trust, the Environment and Heritage Service and other organisations provide leaflets, signposts and waymarks, mapboards and other information on popular paths and sites at the coast. Also, the Countryside Access and Activities Network has produced leaflets and other materials to promote responsible recreational use of Northern Ireland's countryside and coast.

SECTION 8 - APPENDIX

Key Contacts

North Down Borough Council	J. Ingram
Down District Council	H. Wilson
Coleraine Borough Council	M. Strong
Limavady Borough Council	R. Gillen
Newry and Mourne District Council	C. Maugy, C. King
National Trust	S. Peckins
Countryside Access & Activities Network	C. Wright
Crown Estate	Dr. C. Heeps
Environment and Heritage Service	T. Eakin

References

- Statistical Review of Northern Ireland Agriculture*, Department of Agriculture and Rural Development, Belfast, 2004
- Access to the Northern Ireland Countryside – Summary Report*, Peter Scott Planning Services, at al, for Environment Service, N. Ireland Tourist Board and Sports Council for N. Ireland, HMSO, 1994
- Whose Fault is it Anyway? – A Review of Occupiers' Liability Relating to the Recreational Use of the Countryside in Northern Ireland*, Consultant's Final Report and Recommendations to the N. Ireland Countryside Access and Activities Network, Hickey R., 2001 (unpublished)

10. PORTUGAL – ACCESS TO THE COAST³

10.1 NATIONAL CONTEXT FOR COASTAL ACCESS

Figure 10.1 Portugal - Key Statistics

Population (2004)	9.9 million	
Population density	111 persons/km ²	
Coastline (including estuaries and island coasts)	850 km	
Land Area (continental Portugal)	88,900 km²	
Urban/built-up areas (incl. roads, etc.)	2,490 km ²	3 %
Agricultural land	29,730 km ²	33 %
Forests/woodlands	33,490 km ²	38 %
Other land	23,290 km ²	26 %
Land Ownership (author's estimate)		
Private ownership		95 %
Publicly owned land (Government, local authorities, etc.)		5 %
Land in management of voluntary organisations		<1 %

Note: Data exclude the Azores and Madeira

Portugal's Coasts

The Portuguese people's relationship with the Atlantic Coast and the sea is very strong and ancient. Over half the population lives near the coast and the major cities (e.g. Lisboa, Porto, Faro) are on the coast. The coastline is 850 km long.

Typical coastal landforms are mainly dunes and cliffs, both with adjacent beaches. The coastline comprises around 350 km of cliffs, 250 km of dunes and the remaining 250 km includes estuaries, beaches and adjacent urban areas or farmland.



Cliffs – sometimes very high, and sand dunes - sometimes very extensive, are the main coastal landforms

Definitions

Decree-Law No. 302/90, 26.9.1990 defines the **coastline** as the area from the maximum high water mark to 2 km landward. The **Maritime Public Domain** is defined and illustrated below.

³ Position Papers were prepared for Ireland, Northern Ireland and Portugal, rather than full Country Papers.

Land Uses and Ownerships

In addition to urban areas, the coast primarily comprises farmland in the north (Viana do Castelo to Aveiro) and south (Lisboa to Faro) and forests in the centre (Aveiro to Lisboa). The farmland in the south is under pressure from tourism developments and some farms are being taken out of agricultural production. Coastal land is mainly in private ownership, with very little land at the coast owned by public bodies or voluntary conservation organisations.

Coastal Conservation

Around 55% of the Portuguese coast is subject to some form of landscape or nature conservation designation. At the international scale, some coastal areas are designated as **Special Areas of Conservation (SACs)**, **Special Protection Areas (SPAs)** or **Ramsar Sites**. The Nature Conservation Institute (ICN) is the official body which designates and manages protected areas at the national level. These include **national parks** (none at coast), **natural parks** (4 at coast), **nature reserves** (6 at coast) and **protected landscapes**.

Coastal Leisure, Recreation and Tourism

Most of Portugal's tourist provision is at the coast, including 85% of hotel capacity – especially at the tourist areas of Albufeira, Lisboa, Portimão, Loulé, Porto, Lagoa, Cascais, Vila Real de Santo António, Ourém, Lagos, Tavira, Coimbra, Figueira da Foz, Setúbal, Braga, Leiria, Silves, Vila Nova de Gaia and Póvoa de Varzim. These resort areas are more lively than those inland and the 800 km of beaches attract 'sun and sea' tourist and are also very popular with local people, especially in summer. The more popular beaches are around the metropolitan areas of Porto and Lisboa and on the Algarve Coast in the south.

Coastal walking is increasing in popularity amongst tourists and young people and the Portuguese are beginning to discover footpaths - although their preference still lies with pleasure driving. In accordance with European systems, long distance paths (30+ km) are designated as **GR - Grande Rota** and shorter paths as **PR - Pequena Rota**. European paths that continue into Portugal are also identified as **E-paths**. According to the national 'umbrella' NGO for walking clubs - *Federação Portuguesa de Campismo e Montanhismo* (FPCM) - there are 65 registered PRs and 14 GRs, with 60 more routes awaiting registration. Also, many public authorities and voluntary organisations are developing paths – mostly under 5 km in length and with their own signs and characteristics (see text box on *Litoral Norte*). Cycling is also becoming popular.

There are no consistent data for recreational use of the coast.

10.2 COASTAL ACCESS RIGHTS, LEGISLATION AND OTHER ARRANGEMENTS

Historical background

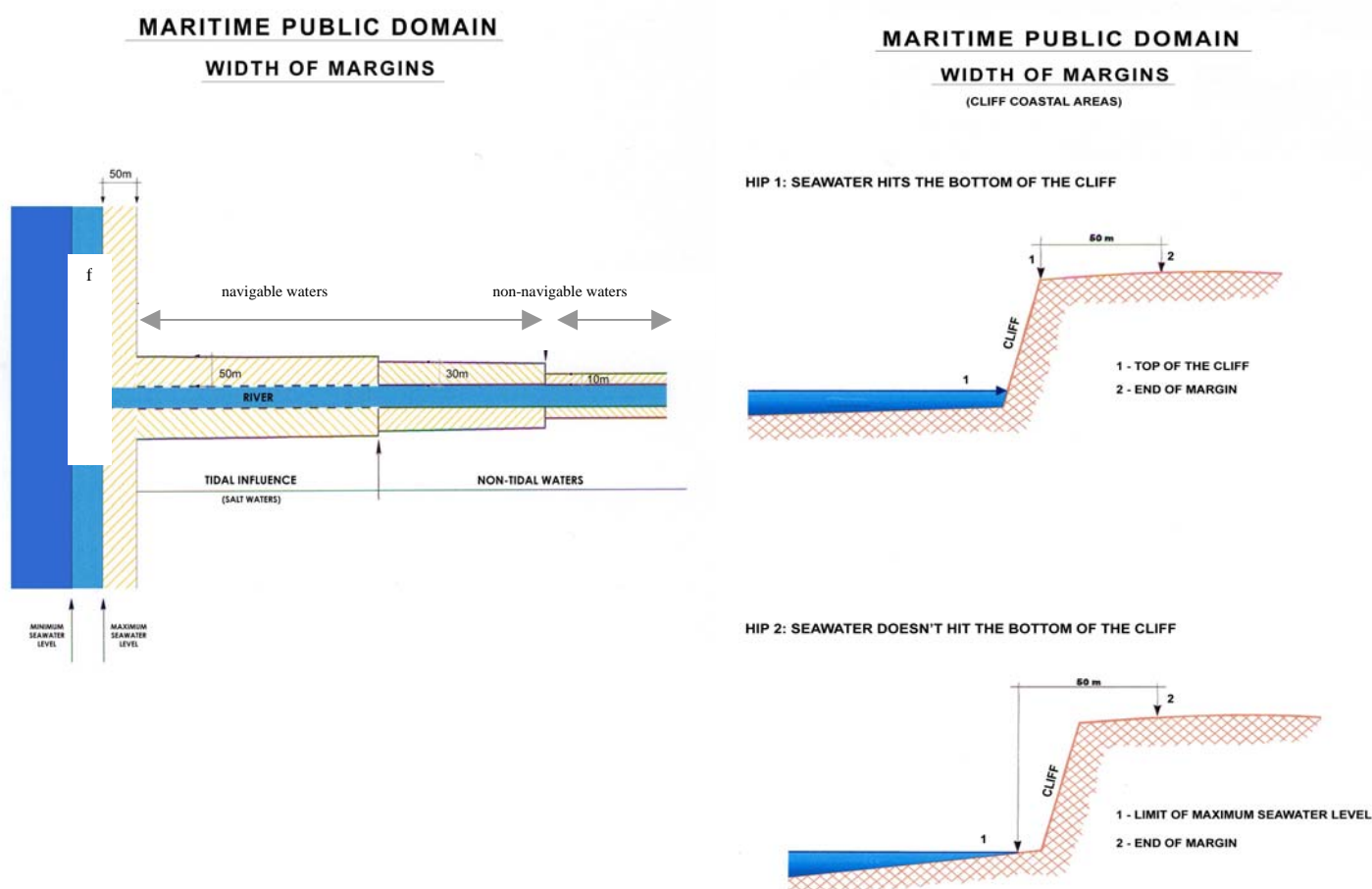
Over recent centuries, **public access has only been available on public paths**, as most properties are privately owned and not publicly accessible. However, following legal traditions dating from Roman times and strongly supported in Portugal from the 17th-18th Centuries, and due to French influences, the coastal area - comprising the maximum area affected by the highest tides and 'adjacent land' - is considered to comprise 'public land'. This was confirmed by the Decree of the 31st December 1864 and the first Portuguese Civil Code of 1867. From 1914 to 1971, this concept applied only to fishing and related uses and extended to 50 metres above high tide levels.

The **Decree-Law No. 468 of 1971** clarified public rights on public and private coastal properties. It states that **all coastal areas up to 50 metres landward of high tide level are public land** – i.e. **Maritime Public Domain (MPD)**. Exceptions are where an owner can prove that, prior to 1864, (or 1868 - in the case of cliffs), a specific property was already privately owned, but very few owners can prove such a claim.

The 1971 Law (Article 12) expresses the right of public access as - ... **all privately owned parts of the seabed or coastline are subject to a right established in law; namely, a public right to use, in the general interest, access to waters and pass along the waters edge, to fish, to sail, or to navigate ... and** (this right) **is to be protected and managed by the responsible authorities.** This legislation distinguishes between the seabed and coastline, as influenced by the Roman and French legal Codes, with the seabed extending to high water level (i.e. including foreshore) and the coastline extending 50 metres landward of this (Figure 10.2).

Hence, access on foot along the coastline was available before the creation of private beaches. This was a cause of conflict, when tourist facilities and resorts were established from the 1960s onwards. However, public officials have always upheld the law, there are no private beaches and most of the coastline is available for public access within a 50 metres 'corridor' above high tide, except for some defence lands, ports and harbours.

Figure 10.2 Portugal - How the Maritime Public Domain is defined.



Access rights and legislation

Currently, access rights are provided by **Law No. 54/2005** (Maritime Public Domain; Law of 15th November 2005), which has succeeded the previous Decree-Law 468/71. In essence, this new law confirms that **the coast – i.e. the shore, from the foreshore to 50 metres landward of maximum high tide level - comprises Maritime Public Domain**, except for areas recognised as private property or, subject to a judicial ruling before 1st January 2014, where there is proof that such property was privately owned in 1864 - or in 1868, in the case of cliffs. Figure 10.2 illustrates the extent of the Maritime Public Domain and how it is defined in the case of cliffs.

Also of relevance is case law on **public paths** – especially, STJ 19.4.1989, where the judge stated that ... **public paths are those, which, since time immemorial, have been in direct and immediate use by the public.** In this context, *time immemorial* means over the last 200-300 years (Acórdão do Tribunal da Relação de Évora No. 2527/03-2, 4.1.2004) and *immediate* is understood as ‘uncontested’. This definition applies to all public paths - coastal or inland. From a legal point of view, it is rarely used in relation to coastal access, as the Maritime Public Domain legislation is usually ensures rights of access on the coast. However, a public path may provide essential access to the Maritime Public Domain.

Figure 10.3 Portugal - Summary of Key Access Rights, Mechanisms and Exclusions

Coastal land	principal access rights and arrangements	principal access restrictions or exclusions
Area-wide access (excluding linear access – see below)		
foreshore (between low and high water marks)	Public property (MPD) – with public right of access and recreation (Law 54/2005) – includes rights for walking, swimming, fishing (subject to regulations) Public right of navigation (subject to regs.)	Ports and military areas
beaches, fore-dunes and similar areas	Public property (MPD) – with public right of access and recreation (Law 54/2005) – includes rights for walking	Ports and military areas Protected areas with management plan Very few private properties but must maintain public rights of access
uncultivated land adjoining beaches (e.g. back dunes, cliffs)	As above within MPD – elsewhere no access to private property Public paths	As above No rights of access to private property
farmland or woodland adjoining the coast	Public paths only. No rights of access to private property.	Ports and military areas Protected areas with management plan No rights of access to private property.
wildlife reserves, etc.	As above	In reserves with highest protection status, only the owner, scientists and security authorities can enter
development at coast (e.g. housing, industry, hotel, caravan site, private marina, power station, port)	Development cannot restrict access in MPD Coastal zone plans for coastal areas (up to 500m above high tide) Public paths	Ports and military areas No rights of access to private property
Linear access		
paths, tracks, etc. along to the coast	Access to all paths, etc. within MPD – Public paths	Ports and military areas No rights of access on private roads, paths, etc. outside MPD

Other legislation which affects access on the coast

The **Decree-Law No. 309/93, 2.9.1993** requires the preparation of **Coastal Zone Plans** (*Plano de Ordenamento da Orla Costeira*) for all coastal parts of Portugal. In this legislation, **coastal areas are those extending from 30 metres below sea level to 500 metres landward of maximum high tide level.** Coastal zone plans exclude harbour areas, as a result of the Decree-Law 201/92, 29.9.1992.

Each coastal zone plan is intended to cover a more or less uniform area, in terms of coastal or administrative authorities and the coastline was divided into 9 zones. The whole coast is now covered by approved coastal zone plans, which indicate the land uses for each area and identify the Maritime Public Domain, to ensure that no development conflicts with the public right of way. The coastal plans perform a valuable function in defining the Maritime Public Domain.

The planning system is based on the **Town and Country Planning Act 1998** (Law No. 48/98 of 11th August 1998), which sets out planning principles and regulations and provides guidelines for supplementary legislation. The **Decree-Law No. 380/99** (Law of 22nd September, 1999) and subsequent amendments have revised the planning legislation. The National Policy on Town and Country Planning provides the framework for spatial planning, including urban systems, infrastructure and areas of national importance for agriculture and the environment. It seeks to coordinate the various national-scale land use plans, including - Special Land Use Plans, Plans for Protected Areas, Plans for Public Reservoirs and Coastal Zone Plans. Regional Plans develop national policies at the regional level and include objectives for sustainable economic and social development.

At the municipal level, Joint-Municipal Plans (optional) and Municipal Plans (mandatory) are developed and must be consistent with the national and regional plans. Municipal plans include Municipal Master Plans, Urban Plans and Detailed Plans, which include planning policies and spatial plans for urban and residential development, infrastructure and protecting the quality of the environment. These plans are subject to specific laws, which define the use of certain types of land – e.g. National Agriculture Reserve and National Ecological Reserve - and include regulations on the use and development of coastal areas.

Other mechanisms providing and protecting access to the coast

A wide range of organisations have management and/or other responsibilities or interests in coastal areas, include the Water Institute (INAG) - responsible for the Portuguese water policy, the Nature Conservation Institute (ICN) - the national agency responsible for conserving nature, and the ports authorities (IPTM), regional authorities (CCDR), local authorities (town councils), and local walking clubs - under the umbrella *Federação Portuguesa de Campismo e Montanhismo*. All these organisations may create **regional or local footpaths** and provide information on these. Paths created by these organisations are not always inter-connected.

As the above organisations can propose and create footpaths within the Maritime Public Domain, it has seldom been necessary to create **formal agreements** with landowners to provide access to the coast. However, for a public path to be approved, it must be subject to **formal assessments** by the INAG, ICN or CCDR to ensure that it will not adversely affect the natural or cultural heritage, pose risks to users from coastal erosion or other hazards, or conflict with other permitted uses.

To gain access to a path in the Maritime Public Domain, there must be lawful access on a public path – for example, across farmland or other private land. Farmers or other owners seldom provide public access across their land, but, individually, they may tolerate access on private paths or roads (i.e. permissive access), but are not legally obliged to do so.

If an hotel or other private development, which is open to the public, fences or otherwise encloses property adjacent to a beach in a way which may impede public access, it is required to provide a gate to enable public access.

Restrictions on access

Dogs are prohibited on public beaches during summer months. Restrictions or prohibitions on access may apply in areas with potential hazards (e.g. cliffs at risk of collapse). These areas may be specially signed, but such signs are not always complied with.

10.3 COASTAL ACCESS EFFECTIVENESS AND INFORMATION

Effectiveness of access provision

The legislation is explicit and, as it is based on traditions and practice, it is fairly well known and accepted. It provides flexibility in respect of changes in the coastline; for example, as a result of dune erosion or crumbling cliffs. To date, it has proven effective and there are no demands to amend it, at least in the short term.

Urban development is largely concentrated in the metropolitan areas and on the Atlantic Coast, especially between Setúbal and Viana de Castelo, resulting in continual increases in land values and property speculation. Also, urbanisation is increasing on the Algarve Coast around the urban clusters of Faro-Loulé and Portimão-Lagos. The expansion of these areas has focussed on a coastal strip with an average width of a few kilometres. In the face of intensive pressures for development, the protection of the Maritime Public Domain through planning and other measures is vital and the value of this statutory approach to protecting the coastline is evident.

Other coastal access issues

In addition to major pressures for development, the main coastal access issues are -

- few paths have been established to/along the coast, other than at more popular beaches
- difficulties in gaining access to much of the coast, especially by wheelchair users
- access difficulties on eroding sections of coast, as approvals cannot be given for the provision of paths in potentially hazardous sections of the Maritime Public Domain
- lack of published information on paths and data on the use of paths
- vandalism of signs and other facilities and non-compliance with regulations restricting dogs on beaches
- golf course developments, which put those walking along adjacent beaches at risk.

Information for coastal users

A range of information is available to coastal walkers and others, including –

- information boards and the signing and waymarking of popular paths
- Website information
- path leaflets and guidebooks.

However, the development of walking tourism is in its infancy and information on coastal paths, etc. – especially for foreign visitors – is poorly developed. More attention has been given to developing walking tourism around some inland areas, such as the St. James Way (*El Camino de Santiago*) – the international pilgrims' route to Santiago de Compostella.

LITORAL NORTE - Public Paths Initiative

In the north of Portugal, the regional authority (*Direcção Regional do Ambiente e do Ordenamento do Território – Norte*) has planned and implemented a network of 8 linked footpaths and cycle paths; in total, extending to approximately 60 km. These paths are within the Maritime Public Domain and mostly use existing paths. Parking areas are provided and most access is from public roads.

The regional authority has made minor improvements to the paths and provided specific signs, interpreting the local heritage and outlining conditions for using the paths. Also, it provides maps and directions on the internet (http://www.dra-n.pt/Litoral%20Norte/Body_Litoral.htm).

These paths are popular with local people and are regularly used for recreation and environmental activities.

SECTION 10 - APPENDIX

Key Contacts

Water Institute	M. Almodovar
Nature Conservation Institute	T. Leonardo

References

Legislation:

- Decreto, 31 de Dezembro de 1864
- Código Civil, 1896
- Decreto-Lei 468/71, 5.11.1971
- Decreto-Lei 309/93, 2.9.1993
- Decreto-Lei 380/99, 22.9.1999
- Lei nº 54/2005, 15.11.2005