

## **District of Columbia Navigability Report**

### **Summary**

Since the District of Columbia is confined within an approximately ten-mile square area, its waters are readily identifiable: Rock Creek, the Potomac River, and the Anacostia River. The Potomac River and Anacostia River are considered “navigable waters” under the federal commerce test of navigability. Kayaking, canoeing, and fishing are permitted in the waters of the District of Columbia. Rock Creek is regulated by rules and regulations of the National Park Service.

### **State Test of Navigability**

The Federal test for navigability was used to determine that the Potomac River and Anacostia River are navigable. Under this test, the waterways are navigable-in-fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.<sup>1</sup> A river that is navigable-in-fact is navigable-in-law.<sup>2</sup> Revised Statutes relating to the District of Columbia describe the District as “including the river Potomac in its course through the District,” which imports an assertion by Congress that the title of the United States embraces the whole river bed, and the jurisdiction of the District over the river seems to have been exercised without dispute.<sup>3</sup>

### **Extent of Public Rights in Navigable and Non-Navigable Rivers**

District of Columbia fishing laws permit recreational fishing in the Potomac River and Anacostia River. Due to higher levels of pollution, including PCBs and other chemicals, in the Anacostia and Potomac Rivers, the D.C. Department of Energy and Environment advises the public to limit consumption of fish from all D.C. waters.<sup>4</sup> Catch and release is encouraged.<sup>5</sup> Commercial fishing is not allowed within D.C. waters or the park. District of Columbia fishing laws also apply throughout Rock Creek Park.<sup>6</sup> Fishing is not allowed on Rock Creek or its tributaries north of the Porter Street bridge on Rock Creek.<sup>7</sup>

Under D.C. law, no person under 18 years of age shall operate or navigate any vessel 16 feet or more in length of any kind in District of Columbia waters unless the person has successfully completed a boating safety course approved by the Harbor Master, or unless the person under 18

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<sup>1</sup> *E.g.*, *The Daniel Ball*, 77 U.S. 557 (1870).

<sup>2</sup> *Id.*

<sup>3</sup> *See Alexandria Canal Railroad & Bridge Co. v. District of Columbia*, 1 Mackey, 217, 225, 226 (1881); *Smoot v. District of Columbia*, 23 App. D.C. 266 (1904); *Evans v. United States*, 31 App. D.C. 544 (1908).

<sup>4</sup> D.C. Dep’t of Energy & Env’t, *Fishing in the District*, <https://doee.dc.gov/service/fishdc> (last accessed Feb. 10, 2021).

<sup>5</sup> *Id.*

<sup>6</sup> U.S. Nat’l Park Serv., *Rock Creek Rules & Regulations* (Jan. 10, 2021), <https://www.nps.gov/rocr/planyourvisit/rules-and-regulations.htm>.

<sup>7</sup> *Id.*

years of age is under the supervision of a person who has reached 18 years of age and who has successfully completed a boating safety course.<sup>8</sup> Furthermore, any person who is operating or navigating any vessel shall have in his or her possession satisfactory evidence of having completed an approved boating safety course, or the person shall make evidence of having completed a boating safety course available to the Harbor Master at the vessel's launching or berthing point on the shore adjacent to District of Columbia waters.<sup>9</sup>

### **Miscellaneous**

Launching boats (Hand launch only) is prohibited within Rock Creek Park unless water levels are at least two feet deep, which is very rare.<sup>10</sup> Boats are not allowed to go over Peirce Mill Dam under any conditions.<sup>11</sup> Canoes, kayaks or other similar human powered boats are allowed.<sup>12</sup> Vessels must be less than 20 feet in length and motors are not allowed.<sup>13</sup>

All Rock Creek Park areas are closed to swimming, bathing, and wading by people and pets.<sup>14</sup> Swimming is prohibited in the Potomac River and Anacostia River except for authorizing qualifying swimming events for limited amounts of time under limited conditions.<sup>15</sup>

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<sup>8</sup> D.C. Mun. Regs. tit 19, § 1026 (2020).

<sup>9</sup> *Id.*

<sup>10</sup> U.S. Nat'l Park Serv., Rock Creek Rules & Regulations (Jan. 10, 2021), <https://www.nps.gov/rocr/planyourvisit/rules-and-regulations.htm>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> D.C. Dep't of Energy & Env't, *Anacostia & Potomac River Monitoring Program*, <https://doee.dc.gov/service/anacostia-and-potomac-river-monitoring-program> (last accessed Feb. 10, 2021).