

Natural England informal guidance on canoeing and SSSI rivers with navigation rights (October 2011)



Canoeing on designated rivers which have navigation rights has led to concerns from the fishing sector, riparian owners and from canoe sport representatives. The fishing sector/riparian owners seeking to control activity on the back of perceived damage to the interest features of SSSIs and canoeists because they have been challenged by the above in the exercise of the public's common law rights over tidal waters and any specific statutory rights over non-tidal waters. This note is intended to guide staff in any discussions over this issue.

Whilst issues of sensitivity of the SSSI to canoeing activity will vary on a case by case basis, there are a number of points which are generally applicable.

Key points are:

1. Natural England has no influence over the issue of whether a right of access/navigation exists even on SSSIs/SACs/SPAs.

2. Natural England does not have responsibility or remit to regulate navigation except insofar as it relates to our statutory functions.

SSSI

3 Canoeing may be covered directly or indirectly as part of the list of Operations Likely to Damage (OLDs) notified to the owner or occupier of an SSSI such as:

- "use of vehicles away from existing roads and tracks
- "use of craft on the river except for 1) craft used on the river for fishing and fishery management..."

However, these relate to the consent needed from us in order for the owner or occupier to carry out an OLD or to permit an OLD to be carried out. Where there is a statutory right of navigation or a common law right, the owner / occupier is not obliged to notify us of people using this right because he is not responsible for or authorising the use in question.

4. Where there is no statutory right of access, third parties wishing to canoe along the river would still not need Natural England consent as they themselves are not covered by OLDs. However, if they were being permitted to do so by an owner or occupier, that owner or occupier should have our consent.

5. The fact that 3rd parties do not need our consent to use a canoe on a river does not confer to them a right of access nor permission to do so. If there is no right of navigation, the riparian owner may withhold permission for canoeists to use a river under the normal laws of trespass.

6. Natural England can prosecute 3rd parties who intentionally or recklessly destroy or damage an SSSI or one of its features of interest (we would need to prove intent or recklessness). But we reserve the deployment of this provision as very much the exception, for use in relation to the most serious types of impact.

7. In a case where the owner or occupier sought our consent for allowing canoeing on an SSSI, Natural England would not automatically refuse consent but would consider each application for consent in its own right in respect of impacts on the features of interest, also in combination with other activities that might damage the features.

European sites

8. Exercise by members of the public of a right of navigation is not a plan or project for the purposes of the legislation - so obligations in relation to appropriate assessment etc are not relevant.

9. There is a more general obligation for a public authority to take appropriate steps to avoid deterioration of the site or significant disturbance of the species for which it was designated. But:

- a) This only applies if there is a problem in the first place that needs to be addressed.
- b) No authority has any meaningful obligation under this heading if it has no relevant statutory powers. Natural England has no powers to regulate the exercise of public rights of navigation.

