

Canoeing and SSSI rivers: Natural England informal guidance

(October 2011, with minor clarification edits in October 2018)



Canoeing on designated rivers – even those which have public navigation rights - has led to concerns from the fishing sector, riparian owners and from canoe sport representatives. The fishing sector/riparian owners seek to control such activity because of perceived damage to the interest features of SSSIs. Canoeists have found themselves challenged by these interests even in the exercise of the public's common law rights over tidal waters or of any specific statutory access rights over non-tidal waters. This note is intended to guide staff in any discussions over this issue.

Whilst issues of sensitivity of an 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 public right of access/navigation exists on water, even where it is designated SSSI/SAC/SPA.
2. Natural England does not have any responsibility or remit to regulate navigation, except insofar as it relates to our statutory functions.

SSSI

3. Canoeing activity 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", or
- "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 or occupier is not obliged to notify us of people using this right, because he is not responsible for or authorising the public 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 expressly permitted to do so by an owner or occupier, that owner or occupier should have our consent.

5. The fact that third parties do not need our consent to use a canoe on a river does not confer on them a right of access/navigation, nor permission to do so. If there is no public right of navigation then the riparian owner(s) 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 reserve the deployment of this provision as very much the exception, for use in relation to the most serious types of impact. In every such case we would need to prove intent or recklessness, as well as the destruction or damage in question.

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. We would consider each application for consent in its own right in respect of potential 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 LSE screening, 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 direct powers to regulate the exercise of public rights of navigation.