



*The EA's Boston Barrier, built by BAM Nuttall with Mott MacDonald as lead designer, has been awarded Climate Resilience Project of the Year in the British Construction Industry Awards 2021. The various cost savings have included any way of passing the barrier when it is closed, surrounded by high sheet piling. In the event of any incident it cannot be seen from any point on public land except a distant view from the confluence of the South Forty Foot Drain with the Haven. We could find no sign of the MacMillan Way, which used to run along the south bank, and none of the local residents we asked knew where the barrier is located.*

# The River Access Acts 1350 to 1472

## Introduction

The River Access Acts 1350 to 1472 are important because they provided for some sections of rivers to be kept clear for boats. On these rivers there is a public right of navigation today. The Acts were needed because some landowners built mills and improved fisheries in such a way that the passage of boats was obstructed.

This paper discusses the question 'To which rivers did and do the Acts apply?' The conclusion reached is that they apply to the navigable sections of tidal and non-tidal rivers.

These Acts have been repealed but they never created rights. They confirmed common law rights which still exist today for the rights have not been extinguished.

Mr Hart, when advising the Angling Trust in 2016, wrote 'once you read all the Acts together, you realise that the intent, in terms of navigation, is to protect the passage of ships and boats in the great rivers (whatever that may mean)...' It is to be hoped that it is very unusual for a QC to give an opinion on a series of Acts of Parliament without understanding clearly the subject of the Acts.

Three sources of information about these Acts are considered:

1. Information independent of the Acts.
2. The effect of the Acts.
3. The wording of the Acts.

## Information independent of the Acts

1. There was a public right of navigation on the sections of river since they were to be kept clear for the passage of boats.

2. Some of them were narrow like the Fleet which had to be kept ten feet wide.

3. Some of them only carried boats laden with one ton since 'The Fleet Ditch ought of right to be ten feet wide... that boats laden with a tun of wine can float thereon'.

4. They were well defined since the commissions which were sent, eg, to Yorkshire, Sussex or Cornwall, needed to know which sections of river needed to be kept clear. As Mr Hart implies, the king would not send a commission to clear the 'great rivers' in a county unless the commission understood what was meant by 'great'.

5. There were many sections of river to be kept clear.

Prior to the passing of the Acts from about 1194 to 1348, groups of judges were sent to all the counties of England except Durham and Chester. There were about 18 visitations, called Eyres, to each county. There were about 35 counties. The counties had between 8 and 50 districts. Among their duties the judges were told to examine the verdicta presented by the jury from each district. This included a reply

to the question 'Have there been any purprestures or enroachments on the land or water of the king since the last Eyre?' The 'land of the king' included the highways. The 'water of the king' was the Royal Rivers. This question must have been asked over 10,000 times. This implies that there were a large number of Royal Rivers. Only a few of the records of the Eyres have been translated into modern English and printed. Three of these have been examined and they show that purprestures were reported on the River Fleet in London and the River Kennet near Marlborough.

## The effect of the Acts. The Commissions. 1265 to 1427

The Patent Rolls record that from 1265 the king periodically appointed commissions to correct purprestures which had narrowed or blocked a river so that ships and/or fish could not pass and/or where land was flooded. With regard to the right of navigation, the writs appointing the Commissions prior to the 1350 Act were based on the customary common law public right. The writs issued after 1350 were based on the River Access Acts.

The commissions were made responsible for a section of a river, a whole river, several named rivers, all the rivers in a county or several counties. The sections of rivers for which commissions were appointed included tidal, non-tidal and partly tidal lengths.

Since the Commissions were appointed by the king it is clear that they all referred to the Royal Rivers and possessed a public right of navigation. Again, the fact that more than 250 commissions were appointed indicates that there must have been a public right of navigation on many sections of rivers.

## Magna Carta

Magna Carta required that 'kiddles' be removed per totam Anglia [the whole of England]. The text does not make it clear whether this was so that boats or fish could pass along the rivers. However, it is possible to know how Magna Carta was understood in the medieval period. One section of the Act 1472 12 Edward IV c 7 states:

Whereas by the laudable Statute of Magna Carta, amongst other things it is contained, that all Weirs through Thames and the Medway, and through all the Realm of England, should be put down, except by the sea coasts; which statute was made for the great Wealth of all this Land, in avoiding the straitness of all Rivers, so that Ships and Boats might have in them their large and free Passage, and also in Safeguard of all the Fry of Fish spawned within the same.

Those who wrote and approved this Act clearly thought that this statement was true in 1472. It implies that the members of Parliament