



ENVIRONMENT  
AGENCY

# Guidance for Environment Agency Fisheries Bailiffs –Canoeing and Fisheries

<b>Document Number:</b>	EAS/3001/4/1		
<b>Version:</b>	3	<b>Issue Date:</b>	01. 12. 99
<b>Availability Reference:</b>	Intranet (Fisheries)		

**Document Owner:**

Andrea Buckley

**Post:**

Recreation and Navigation Officer (Acting)

**Document Approver:**

Andrew Graham

**Post:**

Head of Recreation and Navigation (Acting)

# **CANOEING AND FISHERIES : GUIDANCE FOR ENVIRONMENT AGENCY FISHERIES BAILIFFS**

## **1. Introduction**

Most Fisheries bailiffs will encounter canoeists in the course of their duties, and it is therefore important that they are aware of relevant legislation and Agency policies in respect of canoeing and its interface with fisheries management, fishing and other aspects of Fisheries bailiff duties. These are covered in this guidance note.

### **1.1 Terms and Definitions**

The Environment Agency is referred to as ‘the Agency’ throughout this document.

The term Fisheries Bailiff is used throughout this guidance note and is a collective term which applies to staff who carry out fisheries operational work. (This definition is given in the Fisheries Bailiff Management Procedural Manual).

‘Recreation Officers’ are referred to throughout this guidance note, this is a collective term and refers to staff who carry out recreation operational work e.g. this may be carried out, for example, by Conservation and Recreation Officers, Navigation staff or Fisheries Bailiffs.

## **2. Legal Background**

The Environment Act, 1995, and the Salmon and Freshwater Fisheries Act 1975 (SAFFA), charge the Agency with the various duties concerned with promotion of recreation, access to water and associated land and the protection of fisheries. The relevant Sections and their interpretation in respect of canoeing and fisheries are given in Appendix A.

## **3. Canoeing and Fisheries**

### **3.1 Disturbance to Spawning Fish**

Canoeing occurs throughout the year in England and Wales on all types of water. The spawning season for salmonids is generally October to March while for coarse fish it is usually March to June. SAFFA, national and local byelaws specify close seasons for salmonids and freshwater fish. There is a possibility that canoeing **may** be detrimental to fish spawning success at various stages:

### **3.1.1** Salmonids and Associated Alterations

- disturbance to fish preparing to spawn. Fish generally wait in deeper water, under cover, so significant disturbance or losses due to canoeing appears unlikely. There is little evidence to suggest such disturbance occurs;
- disturbance to fish on spawning beds. Interruption to spawning may lead to lower fertilisation rates, higher predation on eggs and increased mortality due to incomplete redds. This would appear to be the most susceptible stage; damage to unhatched ova and alevins before swim up due to trampling on redds and spawning gravels. There is little documentary evidence to demonstrate that damage does occur. Simple passage of canoes over redds is unlikely to have any impact.

### **3.1.2** Coarse Fish

- disturbance to spawning fish in shallow areas may result in reduced egg deposition and hence damage to stocks, while physical damage to plants may reduce egg survival rates;
- disturbance to coarse fish spawn either on gravels (eg dace, chub, pike) or on plants (eg roach, bream, carp). Spawning usually occurs at dawn or dusk, but can take place at any time of day.

## **3.2** **Obstruction to Fish**

In respect of disturbance or hindrance to fish near obstructions, there is little direct evidence that canoes will cause any problems, though their presence in a relatively confined channel through which fish must pass may act as a deterrent to their passage.

## **4.** **Guidelines**

In order to avoid confusion for canoeists on the difference between Agency Fisheries bailiffs and gillies or club bailiffs, Agency staff should always show their warrants or identity cards.

### **4.1** **Spawning Disturbance**

Only where there is a real risk of disturbing spawning fish or spawning beds should Fisheries bailiffs ask canoeists to leave the water. In all cases Fisheries bailiffs should explain the reason for their action.

Conditions when spawning is liable to disturbance are likely to vary from river to river, therefore it is recommended that local guidance is given to indicate water

levels below which the risk of disturbance increases. As susceptible stretches and flows are identified, local canoe access officers should be informed.

## **4.2 Other Wildlife**

Where other wildlife may be disturbed by canoeists (e.g. dipper/kingfisher nesting sites, nests on gravel beds, etc) Fisheries bailiffs should bring this to their attention, if the opportunity arises. Disturbance is only likely to result from sustained activity at a given location. Quiet, steady passage of a canoe is unlikely to cause a problem.

## **4.3 Access**

Agency Fisheries bailiffs should avoid becoming involved in landowner/canoeist disputes over access to rivers. If they do get involved, they should point out that relevant permissions should be obtained. Similarly, Agency Fisheries bailiffs should try and avoid becoming involved in disputes between anglers and canoeists about disturbance or interference with their recreational enjoyment. Fisheries bailiffs should, however, note such incidents and mention them in reports to their Line Manager or Fisheries, Ecology and Recreation (FER) Manager (or Conservation, Recreation and Navigation (CRN) Manager).

Further information regarding access can be found in the Agency guide “Agreeing Access to Water for Canoeing”, July 1999, produced on behalf of the Angling and Canoeing Liaison Group.

Where Agency Fisheries bailiffs (particularly honorary bailiffs) have a private interest in a stretch of water (e.g. as a club member or club bailiff) they should take particular care that when acting on behalf of the Agency (e.g. having produced an Agency warrant) they do not seek to enforce local club rules with respect to access etc.

## **4.4 Overall Guidelines**

To assist Fisheries bailiffs in implementing Agency policy in respect of encouraging canoeing and protecting fisheries, the following guidelines should be followed at all times. Local variations within these guidelines may be considered to meet local requirements but should not deviate from the overall framework of guidance.

- remember - the Agency encourages the responsible use of rivers by canoeists, providing access has been agreed;
- identify yourself as an Agency Fisheries bailiff when speaking to canoeists. Always show your warrant and record any interactions in your notebook;
- make sure you know where canoe access agreements exist and the extent of navigation rights;
- be aware of navigation authorities that exist;

- be aware of local guidelines issued by the Agency in respect of water height and ‘at risk’ areas in a catchment;
  - avoid getting involved in disputes about access to water or disturbance to canoeing by fishermen or vice versa although each party may be encouraged to respect the others interests;
- remember - canoes are only likely to disturb fish which are spawning when they are actually on the spawning beds, not when waiting in deeper water;
- disturbance to fish is not an offence unless it hinders their passage over an obstruction or fish pass, or fish which may be in the process of spawning are wilfully disturbed;
- disturbance to fish spawning beds and spawning areas is unlikely in high water.

Fisheries bailiffs should undertake a programme of identifying river stretches and flow conditions where canoeing may disturb spawning or hinder fish passage over obstructions or passes, and inform Recreation Officers. Local access officers should be made aware of this information.

Recreation Officers should maintain good working links with local canoe clubs and access officers. Consideration should be given to meeting such interests from time to time to discuss problems within the area.

#### **4.5 Maintenance of Records and Information on Canoeing**

Recreation Officers should request details of canoe access agreements from local canoe access officers and pass them on to appropriate Fisheries bailiffs. An inventory of such agreements should be maintained regionally to ensure Fisheries bailiffs are well informed.

Where possible, conveniently located water level gauges should be provided for reaches likely to be used by canoeists. Water levels at which disturbance is likely should be identified. If new gauges are necessary, appropriate provision should be made in the recreation capital programme.

#### **Appendix A - Additional information pertinent to canoeing and fisheries**

The main recreational duty is imposed on the Agency by section 6 of the Environment Act, 1995.

Subsection (1) of that section provides that, “**it shall be the duty of the Agency, to such extent as it considers desirable, generally to promote –**

- (a) the conservation and enhancement of the natural beauty and amenity of **inland and coastal waters and of land associated with such waters;**
- (b) the conservation of flora and fauna which are dependent on an aquatic

environment;

and

c) **the use of such waters and land for recreation purposes,**

**and it shall be the duty of the Agency, in determining what steps to take in performance of the duty imposed by virtue of paragraph c) above to take into account the needs of persons who are chronically sick or disabled.”**

This gives the Agency general duties to promote the recreational use and account for freedom of access to water and associated land. Canoeing comes within the scope of these duties, as does the sport of angling. In carrying out this duty the Agency must not unduly favour one legitimate user over another.

### **Other Duties**

There are other duties imposed by the 1995 Act which are not confined to water and land associated with water and which have a limited impact on recreation.

Thus it is the duty of the Agency, when formulating or considering any proposals relating to any functions of the Agency, to –

- (a) pay attention to the desirability of preserving any freedom of access for the public to areas of woodland, mountains, moor, heath, cliff or foreshore and other places of natural beauty;
- (b) take into account any effect which the proposals would have on such freedom of access.

It should be noted that this duty applies in respect of any existing freedom of access.

It is also the duty of the Agency, when formulating or considering any proposals relating to any function of the Agency, to –

- (a) take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects;
- (b) to pay attention to any effect which the proposals would have on the economic and social well-being of local communities in rural areas.

So far as (a) is concerned, the effect on recreation is indirect. By taking into account any effects on the beauty or the pleasant or agreeable qualities of such areas, they and a recreational use of such areas may be protected.

So far as (b) is concerned, the economic and social well-being of local communities in a rural area may in some cases and to some extent rely on recreational activity.

**The Salmon and Freshwater Fisheries Act 1975** (as amended by the Water Resources Act 1991) gives the NRA a general duty to maintain, improve and develop fisheries. The principal provisions relevant to canoeing are:

Section 2(4)

*“any person who, except in the exercise of a legal right to take materials from any waters, wilfully disturbs any spawn or spawning fish, or any bed, bank or shallow on which any spawn or spawning fish may be, shall be guilty of an offence.”*

Unless fish are actually spawning, their disturbance is not an offence. Physical disturbance to spawning beds (e.g. trampling) is an offence even if spawning fish are not present but only if there is a likelihood that spawn may be present (i.e. during spawning periods). Fisheries bailiffs do not have powers to **prevent** anyone doing anything that may disturb spawning fish or beds. However, after being warned by a Fisheries bailiff that their actions may result in such disturbance and disturbance occurs this may be considered wilful and that person will be liable to prosecution if disturbance could be proven. Exceptions to this are:

Section 2(5)

*“A person shall not be guilty of an offence under this section in respect of any act, if he does the act for the purpose of the artificial propagation of salmon, trout or freshwater fish or for some scientific purpose or for the purpose of the preservation or development of a private fishery and has obtained the previous permission in writing of the Agency.”*

Other legislation relevant to the interaction between canoeists and fisheries are:

Section 12(1)(b)

*“If any person does any act whereby salmon or trout are obstructed or liable to be obstructed in using a fish pass or whereby a fish pass is rendered less efficient he shall be guilty of an offence.”*

Section 12(1)(d)

*“If any person uses any contrivance or does any act whereby salmon or trout are in any way liable to be scared, hindered or prevented from passing through a fish pass, he shall be guilty of an offence ...”*

Section 17

*“Any person who ... scares or disturbs any salmon or trout - a) at any place above or below any dam or any obstruction, whether artificial or natural, which hinders or retards the passage of salmon or trout, being within 50 yards above or 100 yards below the dam or obstruction, or within such other distance from the*

*dam or obstruction as may be prescribed by byelaw; or ... c) in any artificial channel connected with any such dam or obstruction, shall be guilty of an offence.”*

In respect of disturbance or hindrance to fish near obstructions there is little direct evidence that canoes will cause any problems, though their presence in a relatively confined channel through which a fish must pass may act as a deterrent. However, this is only likely to be a problem if there is extended presence of canoes over several hours. It is by no means proven that the passage of a canoe would constitute scaring or hindering fish, and the evidential burden of proving that this had occurred is considerable. However, it should be noted that under Section 17 of the Act actual scaring or disturbance must occur for an offence to be made whereas Section 12(1)(d) states liability to scare or hinder is an offence. There are also problems in interpreting what constitutes a fish pass.

There have been successful cases where it has been proved that fish have been disturbed by canoeists. In the case of *Rawson v. Peters* (1972) 116 S.J. 884 ((1972)225 E.G. 89) it was found that canoeists passing up and down a non-navigable river frightened the fish there, which then took sometime to return to the plaintiff's fishery. This was held to be a disturbance of the fishery, even if no-one was actually fishing at the time the canoeists were passing.

The seven Agency Regions and the Environment Agency Wales may also have local byelaws which affect canoeing. The law regarding navigation on rivers above the tidal limits in England and Wales is complicated. Generally, there is no public right of navigation on rivers, and canoeists therefore have to negotiate with fishery owners for the right to pass along a river and riparian landowners for the right to launch and retrieve their canoes. Persons not acting with the relevant permission will be trespassing and may be liable to damages. Access agreements may be drawn up which permit canoeing under certain specified conditions. On other rivers there may be a so-called undisputed public right of navigation.

### **Useful References**

Environment Agency, July 1999, Agreeing Access to Water for Canoeing, produced on behalf of the Angling and Canoeing Liaison Group.

Environment Agency, R&D Impacts of Canoeing on Fish Stocks and Angling, 1999 in preparation.