Executive summary

1) * Clarification is needed on what the law says about use of rivers by small craft. Has any legislation removed the right of navigation from rivers in England? If the right has been removed, action needs to be taken to bring the right of navigation into line with that of other countries, including Scotland, to suit the needs of the 21st century. If not, this needs to be stated unequivocally.

2) * The needs of canal users for adequate water to undertake their activity should be recognized.

Contributor

3) Written evidence submitted by Stuart Fisher. This is presented in a personal capacity but in association with two bodies.

4) In the first part I write as the editor of the independent magazine Canoeist. I have headed Paddlers International since 2005, now a loose group addressing canoeing issues but founded in 1975 as the Long River Canoeist Club. I write for other recreational boating magazines and have several relevant books in print.

5) In the second part I write as a water resources member of the Engineering Team of the Wilts & Berks Canal Trust whose members are actively restoring the Wilts & Berks Canal. This will result in a major rural cruising ring with the Kennet & Avon Canal and the River Thames in southern England, within easy reach of the capital and providing a much needed focal point for Swindon and its new housing developments.

Access

6) Access to non tidal rivers in England and Wales for canoes and other small craft continues to be the most aggressively opposed in the world outside war zones, access to 98% of inland rivers being disputed. England and Wales are seen as the benchmark for how bad attitudes can be and it is widely accepted that canoeists should visit rivers in other countries instead of coming here. Canoeists resident in this country know not to linger, leave vehicles unguarded or use tourism facilities in the vicinity of many rivers but to use a hit and run approach.

7) There has been negligible action to resolve this issue since at least the Second World War. Ministers in Westminster and Cardiff repeatedly claim they do not know what their
law says about non tidal river access for small craft yet the public are required to obey the law and the police to enforce it.

8) There is no evidence that the law in this country is any more onerous than in other countries. Indeed, the Land Reform (Scotland) Act of 2003, one of the first pieces of legislation of the devolved Scottish Parliament, confirmed the right of navigation on all rivers in Scotland at all times, subject to common sense reasonable behaviour by all parties. Access to tidal sections of rivers and the sea in England and Wales is not disputed.

9) In England and Wales the Environment Agency and associated bodies claim there is no general right of navigation or that they do not know what the law says. They promote the line that there is no right of access. For example, the EA website at the time of writing states as fact the claim that there is no right of navigation on the River Wye above Hay and suggests the need to ask permission of the owner of each section of river bed before passing, which we believe, after extensive legal research, to be incorrect. This approach is known to be unworkable. When asked, the EA were unable to name any piece of legislation stopping navigation in general on the rivers of England and Wales, or repealing the 1695 Wye Navigation Act relating to 'the free and open Navigation upon the Rivers Wye and Lugg, and the Streams falling into them'.

10) It is not possible to prove that relevant legislation does not exist but the EA, who are opposed to navigation on most rivers, could easily prove the contrary by naming any legislation removing the right of navigation, were it to exist.

11) The basis of law in England and Wales is that an activity is permitted until legislation prevents it. Navigation on rivers generally has no legislation preventing it that anyone can name.

12) Confusion by EA staff or a wish by some EA staff to restrict navigation should not result in a Government website expressing opinions which have no legal basis.

13) I have spoken to Ministers from all the major political parties over a period of decades, never getting beyond supplying them with information as requested. In 2013 a Minister set up for me a meeting for representatives of various canoeing interests to talk to Waterways Minister Richard Benyon about river access. He refused to attend.

16) Fish passes are being installed across the country to open up thousands more kilometres of river for anglers yet these are designed to prevent the passage of canoes, which the EA claim would be condoning trespass. In Europe it is usual to have canoe chutes combined with fish passes.

17) I draw attention to the river access research of leading authority the Rev Dr Douglas Caffyn, presented at www.caffynonrivers.co.uk. The EA claim this is just one person’s
opinion but it has gained him higher law degrees from two universities.

18) Use of our inland rivers, particularly for quiet, green, clean, affordable boating such as canoeing, much enjoyed by young people, will not improve for visitors or residents until we have clarification of the law as it stands. Up to two million paddlers in this country are affected. If (and only if) the right of navigation has been removed, the law needs to be changed to meet the needs of the 21st century.

Defra role

19) Canal restoration work is being hampered by the lack of provision of water. Water is needed to operate canals and allow boats to be used. Boat activity is a focus of attention for visitors on the towpath, perhaps thirty times the number of people on the water. For example:-

20) The Wilts & Berks Canal will, when restored, provide part of one of the most popular cruising rings in the country. Yet we are offered derisory amounts of water by the EA, enough to quarter fill a lock per day, 20m3/day from a stream with an estimated average flow rate of 1,553m3/day. It has been calculated that the initial fill of a forthcoming section (even without use by boats) will take two and a half years while pumping from four different streams.

21) The EA have a conflict of interests between wildlife, flood protection and navigation, giving wildlife priority by a wide margin, this apparently having greater importance than recreation, construction, transport, shipping, fishing and energy industries.

22) EA legislation places the assumed preferences of wildlife ahead of all other interests. The ability to provide flood protection is brushed aside. What was the summit reservoir for this canal will not be allowed to fluctuate in level as it now includes a nature reserve, even though nature reserves have been declared on other canal reservoirs which have remained in use, such as at Tring and Calcutt on the Grand Union Canal. We are required to pump our water rather than have low carbon footprint gravity feeds in order to measure what we take although flows in the source streams are not measured by the EA. We are required to take only a set very low flow regardless of how much or how little is flowing in the source streams, rather than simply taking excess water during spate conditions only.

23) This is not a one-off issue. I am aware of other groups with comparable concerns. Those with implications for tourism in England include:-

i) The Basingstoke Canal, where the number of boat movements is severely restricted because of water limitations, despite large lakes adjoining the canal.

ii) The Montgomery Canal, where the volunteers of the Waterway Recovery Group were
required to undertake their largest ever project, a nature reserve, before they were permitted to start canal restoration and where the 3km Guilsfield arm of the canal is now designated a nature reserve, permanently closed to boats.

iii) The Pocklington Canal, where the locks have been restored but are separated by pounds of reeds, again with an arm from which boats are excluded.

iv) The adjacent River Derwent, where the EA, as navigation authority, has Sutton Lock no longer usable, trapping boats on the river between there and Stamford Bridge.

v) The Forty Foot Drain with sheet piling placed across the lock at Welches Dam by the navigation authority, the EA.

vi) The River Idle, with the EA as navigation authority, imposing a punitive charge for boats to pass the barrier at West Stockwith, a boat club's members sharing the cost, typically once a year.

vii) Great crested newts given priority over any work in their vicinity although Defra know of 53,720 ponds containing them.

viii) Delay in moving a badger set from the high Shelmore Embankment on the Shropshire Union Canal, settling at 15mm/year, added £60,000 to the repair costs and threatened an otter holt below, as well as adjacent human interests, had it collapsed.

ix) The Bath Quays Waterside project, flood relief and promenade work has 1,300 pages of environmental assessment, enough to stretch a significant proportion of the length of the river bank if laid out on the ground.

x) Carrick Roads with yacht racing marks to be banned in case their anchors are lowered onto marine life.

xi) Free marine anchorage to be replaced with prohibitively expensive eco moorings to prevent boats dropping anchors onto wildlife or eelgrass, including in safe sheltered anchorages which have been used for centuries.

xii) Management measures to be applied to Marine Conservation Zones in England and Wales have still not been revealed. Scotland had transparency, spelling out implications for users and consulting on these before planning teams were disbanded.

xiii) A steam railway embankment across river meadows in East Sussex is required to be replaced with a 1-2km long mini viaduct in case of flooding, making further restoration unaffordable. The small arches would quickly silt up even if constructed.

xiv) Banning an annual sandcastle building competition at Bracklesham to prevent
disturbance of beach creatures.

24) We note with concern the proposal of the EA, as a Government body, to charge this charity a consultation fee of £86 per person per day, even for talking to us about their requirements.

25) Following Brexit, we need to see Defra's terms of reference changed significantly from imposing what one MP called gold plated versions of EU directives, a change which would be supported by industries far beyond recreational boating. We need to see Defra working with boaters and others to produce the best solutions for all, not waiting ready to stop anything which differs from their plans. The resentment against the EA's attitude is producing a backlash against wildlife from those affected, people who are often wildlife enthusiasts themselves and may be better informed about wildlife numbers, distribution and what disturbs them than are EA staff.

26) To avoid the current EA conflicts of interest there would be advantages in having:
   i) All wildlife interests represented by Natural England.
   ii) All navigation interests (including on rivers only large enough for small unpowered craft) represented by the Canal & River Trust.
   iii) Water resources and flood control represented by local government, alongside with their existing interest in tourism promotion.

_August 2016_