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The Essential Guide to Elementary Freshwater Fishery Law & Enforcement in England

Introduction

Poaching and fish theft are of great concern to anglers in England. It is, however, important to understand the law concerned, how the enforcement system works, and how we can all help. This basic guide has been prepared as an introduction to the subject, with club 'keepers' and the police particularly in mind.

Rod Licences

All anglers aged of twelve and over are required to purchase a rod licence from the Environment Agency – even if they fish on their own private property. This applies to both coarse and game anglers. One licence permits the use of two rods for coarse fish (where allowed by the controller of fishing rights); two licences the use of three or four for coarse fish (again, where allowed). Four rods is the maximum allowed under Environment Agency byelaws for coarse fish. Annual licences for non-migratory trout, char, freshwater (coarse) fish and eels cost £27. An annual licence to additionally fish for salmon and migratory (sea) trout costs £72. Rod licences can be purchased online from: <http://www.environment-agency.gov.uk/homeandleisure/recreation/fishing/31497.aspx>. The maximum fine for not having a rod licence is £2,500.

Section 35 of the Salmon & Freshwater Fisheries Act 1975 empowered anglers in possession of a rod licence to check another's. This, however, was repealed by the Marine & Coastal Access Act 2009. Since then, only Environment Agency fishery enforcement officers and the police are empowered to demand and inspect rod licences. Fishing without a rod licence is an offence under Section 27(1) (a) (i) of the Salmon & Freshwater Fisheries Act 1975.

In an attempt to circumnavigate this loss of power, some angling clubs have written into their rules that a valid rod licence must be produced to a club bailiff upon demand. This, however, is potentially problematic in practice – because should an angler refuse to do so there are no offences committed in law, just an internal disciplinary matter. That an angler failed to produce a valid rod licence in these circumstances would still require reporting to the Environment Agency in the normal way – and it may well be that they do have a licence but simply object to producing it to a club official not empowered under law to demand same. There may also be negative Health & Safety implications. All of these things require careful consideration by any club considering adding this to their rules.

The Environment Agency's information poster and leaflets concerning rod licensing can be downloaded here: <http://www.anglingtrust.net/page.asp?section=709>.

Poaching

Poaching can essentially be defined as fishing, attempting to or having fished without permission of the owner or controller of fishing rights. Such permission is invariably gained via purchasing a day permit, club permit, or joining a syndicate, although there are certain waters fishable without charge by anglers in possession of a valid rod licence.

It is important to appreciate that poaching *per se* is not a matter for Environment Agency fishery enforcement teams. Poaching – whether or not fish are actually taken – is covered by the Theft Act 1968 and is, therefore, a matter for the police.

This is not, however, 'theft' as defined under Section 1 of the Theft Act 1968, but is perhaps better thought of as theft of the *rights* to fish. Fishing without a permit is known as 'Taking or destroying fish' under Schedule 1 of the Theft Act 1968: -

'... a person who unlawfully takes or destroys, or attempts to take or destroy, any fish in water which is private property or in which there is any private right of fishery, shall on summary conviction be liable to a fine not exceeding Level 5 on the standard scale (£5000)'.

It is important, however, to understand the meaning of 'take' in this legal context. In *Wells v Hardy* (1964), Lord Chief Justice Parker defined this: -

"'Taking" does not include an element of "asportation" (i.e. carrying the fish away from the water). It means to lay hands upon, to grasp, to seize or to capture'.

This means that an individual still commits the offence if fish are retained in a keep net. The offence is also committed if the angler is fishing but has yet to catch anything.

The evidence required is straightforward: the time, date and location; a description of the offender, tackle and bait, and whether a baited line was in the water.

If an authorised keeper discovers someone fishing without permission, they are advised to call the police and cite this offence. The courts have the power upon conviction to 'order the forfeiture of anything which, at the time of the offence, he had with him for the taking or destroying of fish'. Any person, therefore, also has the power to seize 'anything which on that person's conviction of the offence would be liable to forfeiture'.

A general power of arrest is no longer attached to all offences connected with theft and poaching, so this is best left to the professionals of the Environment Agency and police. Far better to call them in the event of discovering such an offence in progress, rather than put oneself in harm's way both physically and legally.

Fish Theft

Fish living in fully enclosed stillwaters under single ownership are considered in law to be 'property' and can therefore be stolen. Specimen carp, for example, are worth large sums of money and are important financial assets to fishery owners. Such fish can be targeted by thieves. Big fish, however, are often identifiable, so it is wise to keep a photographic record when stocking, or of fish caught over time. In a case of fish theft, the police would need to identify who the fish actually belong to – the riparian owner or leasing club.

Fish living in rivers or unenclosed stillwaters are free to roam and considered wild. As such they are not recognised in law as property and cannot, therefore, be stolen.

Because fish in fully enclosed stillwaters with single ownership are considered to be property, they can be stolen – the criminal offence under Section 1 of the Theft Act 1968 applies. The essential points to prove are that the fish concerned are 'property' in a legal context, and there must be an intention to 'permanently deprive' the owner of that property. This would not apply, therefore, to an angler fishing without permission who has fish in a keep net (and therefore commits the 'Theft of Fishing Rights' offence), but does to an angler caught removing fish from a stillwater without the owner's permission. This is straightforward to prove if the angler has killed the fish concerned, but not if the fish is alive. That being so, supporting evidence would be required of the necessary means to transport fish alive, such as a vehicle parked nearby with a water tank of some description, or a bucket and aerator pump. In any case, it is illegal to transfer live fish from one-water to another without the necessary permission of the owner and authorisation by the Environment Agency.

The Angling Trust's poster regarding fish theft can be downloaded here: <http://www.anglingtrust.net/page.asp?section=894%A7ionTitle=Membership+Posters>. The display of such posters is important evidentially – because offenders will find difficult to argue that they were unaware that fish removal is prohibited.

Legal Removal of Fish

On rivers, an angler may only remove on any given day: -

- One pike of up to 65 cm.
- Two grayling of 30 – 38 cm.
- Up to a total of fifteen small fish of up to 20 cm of the following native species: barbel, chub, common and silver bream, common carp, crucian carp, dace, perch, pike, roach, rudd, tench and smelt. This is to permit the use of live and dead fish as bait where allowed by local rules.

Please note: fish measurements are recorded from the fork of tail to tip of snout.

No written consent is required to remove fish from rivers but if more than this specified quota is removed an offence is committed. In any case, the controller of fishing rights may require that all fish be returned.

On stillwaters fish can only be removed with written permission of the owner or controller of fishing rights.

Please note: all eels, Allis and Twaite Shad must be returned if caught from any freshwater in England and Wales.

Statutory Close Season

On 13 March 1995, a new national byelaw in England and Wales retained the coarse fish close season on rivers, streams, drains, and some canals and stillwaters.

The annual statutory close season for coarse fish on those venues is 15 March – 15 June inclusive.

It is a criminal offence to fish for, take, kill or attempt to take or kill freshwater fish during the statutory close season.

Although eels are excluded from the definition of freshwater fish under Section 41 of the Salmon & Freshwater Fisheries Act 1975, it is also an offence to fish for them with rod and line during this period – unless permitted by local byelaws.

Out of season fishing is punishable by a fine of up to £50,000. Additionally the court has powers regarding the forfeiture of fishing tackle used in the offence's commission and licence disqualification.

Comprehensive information on the statutory close season can be found here:-

<http://www.environment-agency.gov.uk/homeandleisure/recreation/fishing/37951.aspx>

The owner or controller of fishing rights on most stillwaters and some canals are at liberty to dispense with the annual statutory close season in respect of coarse fish, and there is no longer a statutory close season for brown or rainbow (non-migratory) trout in fully enclosed stillwaters. Close season dates for trout in rivers vary from region to region and are covered by local byelaws; these can be downloaded at: <http://environment-agency.resultspace.com/search?p=UK&srid=S8-UKLD01&lbc=environment-agency&ts=ev2&pw=salmon%20close%20season&pu=112132&uid=243699054&isort=score&w=salmon%20fishing&rk=3>.

The dates for the annual close season on rivers for salmon and migratory (sea) trout are dictated by local byelaws and therefore vary from region to region. Typically, however, in the Midlands region, for example, the salmon close season runs from 8 October – 31 January inclusive, and for sea trout 8 October – 17 March inclusive. Moreover, under national byelaw,

it is only permissible to fish for salmon before 16 June annually using artificial fly or lure, and before that date all salmon must be returned alive. Significantly, it is now an offence to 'sell, exchange, barter or trade rod-caught salmon and sea trout in England at Wales'. Comprehensive details of the byelaws relating to salmon and sea trout can be downloaded here:-

<http://www.environment-agency.gov.uk/homeandleisure/recreation/fishing/37949.aspx>.

The Environment Agency's close season poster can be downloaded here:
<http://www.environment-agency.gov.uk/homeandleisure/recreation/fishing/38087.aspx>.

The Angling Trust's close season poster can be downloaded here:
<http://www.anglingtrust.net/page.asp?section=709>.

Migrant Anglers

That there are problems with certain migrant anglers from Eastern Europe cannot be ignored. This is due to a cultural difference in that in England catch and release is generally practised for coarse fish – which is an alien concept to these anglers who have historically fished for the pot. There is also a lack of understanding of British angling licensing law and rules. Migrant anglers, like anyone else, are subject to the law of this land and liable to prosecution. However, it is also necessary to generate a dialogue and encourage integration and education. To this end the Angling Trust has initiated the 'Building Bridges' project aimed at exactly that: <http://www.anglingtrust.net/news.asp?section=29&itemid=848>. Multi-lingual signs and leaflets can be downloaded here: <http://www.anglingtrust.net/page.asp?section=709>. Again, such signage assists with education and is evidentially helpful.

How Fishery Enforcement Works

Day-to-day fishery enforcement is largely the Environment Agency's remit. However, it is important to appreciate that it is not the Agency's responsibility to respond to incidents of poaching. Criminal offences such as those detailed in the Theft Act 1968 are the police's responsibility and should be reported as such – although the Environment Agency may act in cases where fish are permanently removed from the fishery and where offences against fisheries legislation have also been committed.

The Environment Agency in England is sub-divided into regions, each of which has a team of fishery enforcement officers reporting to a team leader. It must, however, be understood that the Agency is not resourced to make an immediate response to every incident reported.

The mantra of enforcement today is 'Prevention, Intelligence, Enforcement'. Indeed, 'intelligence gathering' is crucially important to this process and is one to which all anglers can positively contribute. Analysing reported incidents and information identifies particular offences in specific areas, in addition to the time, day and time of year involved. This permits the pre-planned allocation of resources to resolve these issues and is why all incidents

witnessed and any relevant information is reported to the Agency on **0800 80 70 60**, or if involving criminal offences to the local police.

When reporting incidents, particular attention should be given to the following: -

- Time, date and location.
- The number of and description of offenders.
- Vehicle registration numbers.
- Tackle and bait used.
- Evidence of fish removal.

Evidentially, reports are always stronger if supported by a statement from the complainant. However, the enforcement agencies recognise that there are some situations whereby callers may prefer to be anonymous. That being so, environmental crime can be reported anonymously to Crimestoppers on 0800 555 111, or online via an anonymous report form at: <https://secure.crimestoppers.org/ams.form.anonymous.asp>.



The police now have a National Wildlife Crime Unit (please see: <https://www.gov.uk/government/news/wildlife-crime-fight-continues>) and many forces have their own Wildlife Crime Officers. The England & Wales Poaching Priority Group brings the police together with many and varied organisations with an interest in preventing poaching and related criminal offences – anglers are represented on this board by the Angling Trust and Environment Agency. This has been an important initiative in educating police officers and the courts regarding the often serious criminal implications of poaching. The objective is to ensure that reports of poaching are efficiently dealt with and more appropriately prioritised, and to likewise achieve more appropriate sentences in court. To achieve this end, on 1 October 2013 the NWCU, supported by the Poaching Priority Group, launched Project TRESPASS, involving all police forces nationally: <http://www.nwcu.police.uk/news/nwcu-police-press-releases/putting-poachers-in-their-place-launch-of-project-trespas/>

Another organisation working against poaching is the Department for Environment, Food & Rural Affairs backed Partnership for Action Against Wildlife Crime (please see: <http://www.defra.gov.uk/paw/>), comprising representatives of the organisations involved in wildlife law enforcement in the UK – including the Environment Agency and Angling Trust. The Centre for Environment Fisheries & Aquaculture Research also has an enforcement department – working particularly hard to combat the illegal movement of fish, especially from the continent. The Angling Trust and Environment Agency works closely with all stakeholders, because a multi-agency approach is essential to effective enforcement delivery.

The Voluntary Bailiff Service

The Angling Trust and Environment Agency are also currently working on an important partnership providing an efficient and formally organised voluntary service supporting Agency fishery enforcement officers. The Voluntary Bailiff Service is currently a pilot project operational in South East England; a series of meetings is currently underway with a view to extending the Service into other regions. Details of the Voluntary Bailiff Service can be found here:

<http://www.anglingtrust.net/page.asp?section=930§ionTitle=Voluntary%20Bailiff%20Service>

It is important to understand that being a Volunteer Bailiff within the Voluntary Bailiff Service is different to being an angling club keeper, because Volunteer Bailiffs work closely with the Environment Agency fishery teams and are initially bound by the Angling Trust's Discipline & Grievance Procedure. To be covered by insurance, all of our Volunteer Bailiffs must also be members of the Angling Trust, which can be joined online here: <http://www.anglingtrust.net/landing.asp?section=23§ionTitle=Angling%20Trust%20Membership>

In Phase One, Volunteer Bailiffs are used as 'eyes and ears', gathering intelligence and reporting incidents, directed by their Area Coordinator and the Environment Agency's designated Fishery Enforcement Officer Lead. This emphasises the importance of the intelligence gathering process. All Volunteer Bailiffs entering Phase One are subject to a Criminal Records Bureau check and attend a mandatory training and induction day. A short video of such a session can be viewed here:-

<http://www.youtube.com/watch?v=OoQIPQyeyU&feature=youtu.be>.

The intention is that the project will progress to Phase Two, in which selected Volunteer Bailiffs will be provided further training and empowered to inspect rod licences and deal with certain byelaw offences. At that stage, Volunteer Bailiffs will be line managed by Environment Agency fishery team leaders and subject to the Agency's Codes of Conduct. It must be understood, therefore, that the Volunteer Bailiffs of the Voluntary Bailiff Service are effectively 'Volunteer Fishery Enforcement Officers' from Phase Two onwards. Consequently recruiting is a selective process and there is both a commitment and responsibility attached to joining the Voluntary Bailiff Service. Indeed, everyone involved in any kind of enforcement, whether voluntary or professionally, must present themselves – at all times – in an appropriate, exemplary, manner.

Expressions of interest in joining the Voluntary Bailiff Service should in the first instance be sent to bailiffs@anglingtrust.net. Please include your full name, date of birth, address and contact details, which will be added to our database so that you can be contacted when we recruit in your area.

Health & Safety

This in itself is a wide-ranging and complex subject. However, the essential points for water bailiffs are: -

- Note location name, time, date of patrol.
- Wear suitable outdoor clothing and footwear.
- Consider checking weather forecasts prior to patrolling.
- Beware of dangerous banks and outdoor conditions, such as mud and floods.
- Beware of non-native, dangerous, plants like giant hogweed.
- Beware of farm traffic in rural locations.
- Park appropriately and considerately – do not block access.
- Beware of animals.
- Close field gates.
- Do not walk on crops – keep to footpaths.
- Beware of contaminated rubbish and waste – report to the Agency if necessary.
- Beware of power cables.
- Always carry a mobile telephone and make someone aware of where you are going, what you are doing and your estimated return time.
- If ever in fear of violence – call 999.

An important Health & Safety consideration concerns photographing offenders. It is tempting to do so but in reality photographic evidence can complicate the evidential process – and put the photographer in harm's way. It is sometimes appropriate to photograph things such as litter, set lines in situ, abandoned tackle or evidence of, say, fish being cooked on the bank, but it is inadvisable to photograph offenders. Law enforcement agencies are governed by the Regulation of Investigative Powers Act 2000 (RIPA), which imposes strict rules regarding such photography. Although RIPA does not apply to civilian water bailiffs the admission of photographic evidence can still be problematic and is therefore best avoided.

Conflict Resolution

A water keeper should never put him or herself in harm's way if at all possible. Approaches to any person on the bank should be polite and courteous at all times. Club keepers encountering an angler fishing without permission really have two choices: simply ask the angler to quit or call the police to report the 'Theft of Fishing Rights' offence; should the errant angler not quit when asked to do so, the club keeper has no other choice but to call the police. However, the fact that the offender was simply asked to quit the water in the first instance but refused is important evidence – because the law is all about the so-called 'reasonable man'. By simply asking a (first time) offender to quit the water in the first instance shows that the club keeper only resorted to calling the police as the last resort and only other option available – and is thereby shown to be the 'reasonable man'. If the water keeper, however, is abused or threatened with violence at any time or at any stage of proceedings, a complaint should immediately be made to the police - do not hesitate to call 999 if in fear of immediate violence.

Enforcement agencies provide their staff with substantial training in 'Conflict Resolution' – which is a wide range of methods for addressing, alleviating and eliminating sources of conflict through the use of non-violent methods. Empathy, verbal reasoning and discretion, for example, are all things that the water bailiff can call upon in the event of encountering a verbally non-compliant individual. What the water bailiff absolutely must not do, taking into account Health & Safety, is inflame a situation – especially one which could escalate and culminate in violence. Conflict Resolution is a particular skill, one which perhaps comes with experience, not least of life and people generally.

In sum, Health & Safety and Conflict Resolution must be major considerations in any kind of enforcement work and at all levels.

Further Information

Books

Existing published information on angling law is dated because of recent changes to legislation. However, the following two publications still provide a useful overview and insight into the subject: -

Millichamp, R., *A Guide to Angling Law*, Shaw & Sons, Gillingham, 1990
Carty, P. & Payne, S., *Angling & The Law*, Merlin Unwin, Ludlow, 2003

Websites

Both the Environment Agency and Angling Trust websites include essential information, including leaflet and poster downloads: -

<http://www.environment-agency.gov.uk/>
<http://www.anglingtrust.net/>

Legislation can be checked for updates here: <http://www.legislation.gov.uk/>

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