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

### Introduction

Protecting fish and fisheries is of great concern to anglers. 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 'water keepers' and the police particularly in mind.

### Rod Licence Compliance

All anglers aged of twelve and over are required to possess a valid relevant rod licence from the Environment Agency – even if fishing on their own private property. This applies to both coarse and game anglers.

*Licences are now free for juniors aged 12-16 years.*

Exact details regarding the new rod licensing regulations can be found here:-

<https://www.gov.uk/fishing-licences>

A rod licence can be purchased online here: <https://get-fishing-licence.service.gov.uk/buy/name>, by calling the Environment Agency on 0344 800 5386, or at a Post Office.

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& Freshwater Fisheries Act 1975 empowered anglers in possession of a rod licence to check another's. This, however, was repealed by the Marine & Coastal Access Act 2009.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 enforcement officers and the police

are empowered to demand and inspect rod licences. Fishing without a rod licence is a criminal offence under Section 27(1) (a) (i) of the Salmon & Freshwater Fisheries Act 1975.

Angling clubs and fisheries, however, can empower their bailiffs to require a member or day ticket angler etc fishing their water to produce a valid rod licence to a club or fishery bailiff upon demand. Possessing a valid rod licence should be a requirement of club membership or being provided permission to fish. If an angler is found not to have a valid rod licence, this should be reported to the Environment Agency on **0800 80 70 60**. If any angler refuses to produce a rod licence, then he or she commits an internal club or fishery disciplinary offence, which should be referred to the committee or relevant person to be dealt with.

## 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 fisheries enforcement teams. Poaching – whether or not fish are actually taken – is covered by the Theft Act 1968 and is, therefore, a criminal offence and primarily a police matter.

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.

Please see our guide to reporting offences to the police here:-

<http://www.anglingtrust.net/page.asp?section=1467&sectionTitle=Fisheries+Enforcement+Workshops>

## **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 therefore 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 permitting by the Environment Agency.

The Angling Trust's poster regarding fish theft can be downloaded here: <http://www.anglingtrust.net/page.asp?section=894&sectionTitle=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.

The Angling Trust Fisheries Enforcement Support Service initiated and oversees Operations TRAVERSE and LEVIATHAN, ongoing, high-profile, multi-agency initiatives supported by the UK National Wildlife Crime Unit, National Police Chiefs' Council, Crown Prosecution Service and Magistrates' Association. For more information on these operations and the FESS, please see:

<http://anglingtrust.net/landing.asp?section=26&sectionTitle=Campaigns%2C+Enforcement>

All anglers can help fight fisheries crime by subscribing to Angling Alert, our web-based email and text alert system, here: <https://www.anglingtrustalert.co.uk/>

Again, please see our guide to reporting offences to the police here:-

<http://www.anglingtrust.net/page.asp?section=1467&sectionTitle=Fisheries+Enforcement+Workshops>

## 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. Anglers removing fish from rivers in contravention of the controller of fishing rights or owner's rules, commit an offence under Schedule 1 of the Theft Act 1968.

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:-

<https://www.gov.uk/government/collections/local-fishing-byelaws>

## 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. Multi-lingual signs and leaflets can be downloaded, or hard copies provided. Again, such signage assists with education and is evidentially helpful. For further information, please see:-

<https://www.anglingtrustalert.co.uk/pages/3814/1/BuildingBridges.html>

## How Fisheries Enforcement Works

The Environment Agency is the statutory lead on fisheries enforcement. However, it is important to appreciate that the Agency does not lead the response 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 fourteen areas, each of which has fisheries 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, Reassurance’. 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 Environment Agency on **0800 80 70 60**, or if involving criminal offences to the local police. This cannot be emphasised enough – so far as the authorities are concerned, if it was not reported, it did not happen!

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.uk.org/ams.form.anonymous.asp>.

The police has the UK 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 Delivery 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. The group coordinates Project Poacher, raising awareness of the wider criminality involved, and has a free reporting App available here: <http://projectpoacher.com/>

The Centre for Environment Fisheries & Aquaculture Science 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. Please see: <https://www.gov.uk/government/groups/fish-health-inspectorate>

### **Fisheries Enforcement Support Service**

The ‘FESS’ is a partnership between the Angling Trust and Environment Agency, and funded by English freshwater rod licence income. The FESS went ‘live’ on 1st November 2015, following the Angling Trust being awarded the National Angling Strategic Services contract by the Agency.

FESS managers are all retired police officers of immense experience – and, as anglers themselves, perfectly understand this issue and required response.

The FESS builds on the groundwork and vision firmly laid between 2012-2015 and exists to support the Agency, the statutory lead on fisheries enforcement, through:-

- Coordinating a multi-agency approach to fisheries crime and compliance, encouraging a partnership approach.
- Raising awareness throughout the police service, Crown Prosecution Service and Magistrates’ Association.
- Helping advise the police and Environment Agency, and helping put things right should the service fall short.
- Increasing incoming intelligence and sharing of that information.
- Upskilling the angling community through Fisheries Enforcement Workshops and the provision of expert advice to angling clubs and fisheries.
- Delivering the Voluntary Bailiff Service throughout England, empowering anglers to contribute to fisheries enforcement.
- Delivering the Building Bridges Project, aimed at the education and integration of migrant anglers.

Importantly, the FESS initiated the high-profile and ongoing multi-agency operations TRAVERSE and LEVIATHAN, targeting illegal fishing and fish theft. Further information can be found here:-

<https://www.anglingtrustalert.co.uk/pages/3815/1/OperationTraverse.html>

<https://linesonthewater.anglingtrust.net/2015/06/12/operation-leviathan-and-more-progress/>

Further information regarding the Voluntary Bailiff Service can be found here:-

<http://www.anglingtrust.net/page.asp?section=1466&sectionTitle=Voluntary+Bailiff+Service>

Please do not hesitate to contact your Regional Enforcement Manager for professional enforcement advice. Contact details can be found here:

<http://www.anglingtrust.net/page.asp?section=1475&sectionTitle=Meet+the+Fisheries+Enforcement+Support+Services+team>

## **Conclusion**

This Guide, together with the Best Practice Guide for Angling Club Bailiffs, provides the basis for efficiently and safely protecting fish and fisheries.

It is highly recommend that all angling club and fishery bailiffs attend a free Fisheries Enforcement Workshop, at which training is provided by policing professionals of the Angling Trust Fisheries Enforcement Support Service and UK National Wildlife Crime Unit, and Environment Agency fisheries enforcement officers. Further information can be found here:-

<http://www.anglingtrust.net/page.asp?section=1467&sectionTitle=Fisheries+Enforcement+Workshops>

For further advice or information, please contact your relevant Regional Enforcement Manager, whose contact details can be found here:-

<http://www.anglingtrust.net/page.asp?section=1475&sectionTitle=Meet+the+Fisheries+Enforcement+Support+Services+team>

Masses of fisheries enforcement related information can be found here: -

<http://anglingtrust.net/landing.asp?section=26&sectionTitle=Campaigns%2C+Enforcement>

<https://www.anglingtrustalert.co.uk/>

<https://linesonthewater.anglingtrust.net/>

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

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