



# Pikelines Archive



## PROTECTING your fisheries from POACHERS & THIEVES

Mark Leathwood



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My training hadn't really covered fisheries, or had much to do with the legislation affecting angling, so I got the law books out and studied it myself.

The custody officer at our Divisional HQ almost had palpitations when I turned up during the early hours one night with four prisoners arrested for 'attempting to take fish by night'. "I hope you know what you're doing here" he said, as he booked them in. I could see that he was pondering the likely repercussions of four unlawful arrests, but later, having checked the legislation for himself, he was much happier about the whole affair. The four prisoners admitted the offence when interviewed; were charged and bailed to the magistrates court, subsequently convicted and fined. Result!

Since I retired from the police service I have worked voluntarily as a civilian bailiff with my local angling club and have encountered the kind of difficulties often experienced by fishery owners and angling clubs in trying to get something positive done by the authorities in order to keep poachers and fish thieves off their waters. So, what can be done, and why are we so often told in the angling press that the authorities are unable to tackle these problems? This is quite a complex issue because some of the relevant legislation falls within the remit of the police, although many front line officers don't know it, and the rest is the responsibility of the Environment Agency. We need to know who can deal with what, and how we can get them to do it.

### Theft of Fish

This would be dealt with under the theft act 1968, which covers many 'dishonesty' offences such as theft, burglary, robbery and deception. Section 1 states that: A person is guilty of theft if he dishonestly appropriates the property of another with the intention of permanently depriving the other of it. The only real stumbling block to angling clubs or fishery owners seeking to prove this offence against someone who has removed fish from their waters hinges on the concept of 'ownership'.

### Rivers

Fish living in a river or in a system of unenclosed waterways such as drains, are deemed to 'wild'. A creature that is 'wild' doesn't belong to anyone and cannot therefore be stolen. The limitations of this legislation, until very recently, prevented the Environment Agency from tackling Eastern European migrants who were taking fish from rivers. Fortunately, there is now a new byelaw which has sought to address this. More on that in a moment.

### Stillwaters

Fish which are living in an enclosed still water such as a lake or pond, are deemed to be the property of whoever owns (or has a proprietary interest in) the water. These fish can therefore be 'stolen' and offenders charged under Sec.1 Theft Act 1968. Theft is a matter for the police and an aggrieved party should make a complaint to the police rather than the Environment Agency. If the police fail to take this seriously, you can point out that a 5lb. bream is worth around £50, a 5lb. tench nearer £70 and a 20lb carp about £500. A 30lb carp would be worth £3,000 to £4,000 and a 40lb carp would cost well in excess of £5,000. This puts the theft of fish into a quantifiable monetary context that the police will understand and should respond to.

### Criminal attempts

It is also against the law to 'attempt' to commit a criminal offence so a person who is attempting to steal fish could be dealt with by

the police under the Criminal Attempts Act 1981. The new byelaw: Fish removal by rod and line

It is probably worth including the full text here as there are a number of implications for predator anglers: On rivers: on any given day, you may only remove one pike of up to 65cm, two grayling of 30–38 cm, up to a total of 15 small fish of up to 20cm of the following native species: barbel, chub, common bream, common carp, crucian carp, dace, perch, pike, roach, rudd, silver bream, smelt and tench. Fish are measured from the tip of the snout to the fork of the tail. If you remove any more fish than this, you are committing an offence and risk a substantial fine. You can still take 'minor' or 'tiddler' species such as gudgeon, non-native species, ornamental varieties of native species such as ghost or koi carp. Please remember that you will still need the written permission of the owner or club to remove fish from privately owned waters. On stillwaters: you may only remove fish with the written permission of the owner or club. You will normally have a day ticket or permit, on which the fishery rules are often printed.

These rules normally state the numbers and types of fish you can remove. If in doubt, ask the owner. If there is no obvious owner to ask for permission, you are not allowed to remove any fish. If you take any fish without permission you are committing an offence and risk a substantial fine.

Eel and shad. You must return any eel (*Anguilla anguilla*\*) or allis/twaite shad you catch from any water in England and Wales. This includes estuaries and inshore waters, to a distance of six nautical miles.\* This does not include conger eel (*Conger conger*).

This is the byelaw which allegedly prompted Birmingham AA to introduce a ban on livebaiting earlier this year. Clearly this kind of action is most definitely not what the byelaw was intended to achieve. The new byelaw does provide eels with some much needed statutory protection but gives none whatsoever to zander or catfish, so fishery owners and angling clubs need to make it very clear in their rules that (hopefully) they require these fish to be returned unharmed to the water.

### **Theft of fishing rights**

There is a seemingly little-known, and extremely useful piece of legislation under Schedule 1 of the Theft Act 1968 which states that: '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 (commits an offence)'. In this particular context, the word 'takes' does not mean 'steal', as in 'permanently depriving the owner of an item of property'. Previous case law (*Wells v Hardy* 1964) has determined that: 'taking' does not include an element of 'asportation' (ie. taking the fish away from the river). It means to lay hands upon, to grasp, to seize or to capture.

What this means in layman's terms is that a person who is simply fishing is 'attempting to take fish' and, if he doesn't have a permit, or the fishery owner's permission to be fishing, he commits the offence. It doesn't matter whether he has actually caught any fish, nor does it matter whether or not he intends to return any fish he might catch. The offence is complete. Now, this is the legislation that angling clubs and fishery owners ought be using in order to deal with poachers and non-members, and I would suggest that this should include Eastern European immigrants who are trying to catch coarse fish for the table. There used to be a power of arrest when persons were found committing this offence at night (as I had done in the story I told at the beginning of this piece). However, this power was removed by the Serious Organized Crime and Police Act in 2005. Police officers may make an arrest if they cannot identify the offender at the scene.

### **Can't the EA deal with this?**

There is a common misconception that anything to do with fisheries enforcement is the sole responsibility of the Environment Agency and this simply isn't the case. 'Theft of fishing rights' is a dishonesty offence which falls fairly and squarely within the remit of the police. According to the Environment Agency's website, they will accept and prosecute theft act cases where the fishery owner is identified and is prepared to make a complaint. However, practical experience has shown that the Agency is less than enthusiastic about taking such complaints; even when they are prosecuting the offender for other fisheries offences. On the last occasion I came up against this, the Agency wriggled out of dealing with it by saying that 'theft of fishing rights' does not have any environmental impact!

### **How the police can help**

The best advice I can give to fishery owners and angling clubs is to make sure you display signs on your waters saying 'members only', then ask the police to take action against non members, particularly if they are a regular nuisance or they continue to fish after they have been asked to leave. About three years ago my local Chief Superintendent asked me to write a set of guidance notes for police officers after I expressed disappointment that two offenders had been released from custody without charge. There had been a mix-up at the police station and, with the best will in the world, I was asking officers to bring a prosecution using legislation they had never encountered. The guidance notes are quite specific to Northwich Anglers Association and to the waters which we own and lease, but I am happy to supply a copy of the text so that other fishery owners and angling clubs can adapt it for their own purposes.

As far as I am aware, there isn't an equivalent document available anywhere else, although all the legal material is freely available on the internet. In my area at least, EA enforcement personnel are few and far between, so, occasionally, I have asked the police to attend an incident in order to help to identify an offender and witness whatever was taking place.

This enables sufficient detail to be passed on to the Agency for them to be able to issue a summons later on. The police are usually amenable to helping in such circumstances, if they can, especially because we are not asking them to take on a prosecution for something they might regard as being of a minor nature, or do any of the paperwork that this might entail. The arrival of the police also helps to re-inforce the offender's perception that they really have done something wrong and that it isn't going to be tolerated. Take heart, word does get around!



### Practical considerations

As we all know, the police have their work cut out dealing with potentially more serious matters, so we do need to be careful that we don't become a nuisance by ringing up every single time we find someone without a permit. Quite often, genuine mistakes are made by novice anglers and by juniors who simply don't know any better and I would suggest that, providing the offender's name and address can be verified, they can be sent a letter pointing out the facts and warning that any repetition might result in prosecution. If they do re-offend this letter provides good evidence that they knew what they were doing was wrong, and they can't argue that they haven't been given a chance.

### Conclusions

The theft act and the new byelaw on fish removal do provide a certain amount of legal power for fishery owners and angling clubs to be able to deal with fish thieves and poachers without having to resort to the expense of taking out injunctions or private prosecutions. I would suggest that the key to effective enforcement would be to...

1. Have adequately trained bailiffs who understand their own powers as civilians, as well as the powers of the Environment Agency and the police.
2. Encourage bailiffs to maintain a regular presence at the waterside.
3. Have the ability to correctly identify non-members or other offenders.
4. Have good reporting procedures.
5. Develop a good working relationship with the local EA enforcement officers and with the police. Tell them what your problems are and explain how they can help.

All of this can be done, and can make a real difference to the waters you fish. Please do not hesitate to contact me if you require any further information, or you need a copy of any of the documents I have mentioned, my details are on page 68 (RA9 Cheshire RO).

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