



Angling Trust
Eastwood House
6 Rainbow Street
Leominster
Herefordshire HR6 8DQ
admin@anglingtrust.net www.anglingtrust.net 0844 7700616

Bait collection and the law

Introduction

For many sea anglers the collection of bait is an integral part of their angling experience. Ragworm, lugworm, crab, shellfish and other marine organisms are dug or foraged, mainly within the intertidal zone between high and low water.

Those anglers who do not collect their own bait rely on commercial diggers and tackle shops. It was estimated in 1999 that over 1,000 tonnes of bait worms are used every year in the UK and that 500 to 700 tonnes are dug for personal use while 300 to 500 tonnes come from commercial sources. In addition, that the commercial value of the bait market for worms (the main species used) was estimated between £25 - 30 million per annum¹ In current values that is approximately £39m - £47m.

Given the importance of bait digging it is necessary to understand the legal position, and also how to manage what can be difficult issues over conservation and access.

The Legal starting point

The public have a right to dig bait as an ancillary part of the public right of fishery. This arises from the common law presumption that the Crown's ownership of the sea and seashore is essentially for the public, although there are some rare exceptions where private rights override this legal presumption (and permission is required).

The public right to collect bait does not imply a right of access across private land. A private land owner has the right to refuse access across his/her land unless a public right of way can be used.

The right to collect bait is not unlimited.

In a key case on this subject the Court of Appeal² confirmed that:

1 Bait digging is ancillary to the public right to fish.

2 This right must be used only where it is directly related to the actual or intended exercise of the public right to fish, or as the judgement says: "bait-digging on the foreshore is justified by the public right to take fish, when the bait is taken by or on behalf of persons who require it for use in the exercise of that right".³

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¹ (Fowler 1999).

² Anderson v Alnwick DC (1993) 1 WLR 1156

³ Anderson v Alnwick DC (1993) 1 WLR 1156 at 1170

Inshore Fishery and Conservation Authorities (IFCAs) in England can create bye-laws to regulate exploitation of ‘sea fisheries resources’ (such as bait worms). Local authorities can also impose byelaws to prevent danger, obstruction or annoyance to other members of the public arising from bait collection.

Therefore, collecting bait must be reasonably done, and it must be directly related to actual or intended fishing by the person(s) collecting. Whether or not a bait- collector is permitted to dig bait on behalf of companions for use in fishing will depend on the individual facts of any given case⁴, but it is likely that digging for a small group of people (friends or family) will be more likely to be considered lawful than, perhaps, digging for a whole club. Critically, the public right to collect bait does not extend to the collection of bait for commercial purposes where any form of exchange, payment or reward is involved.

Conservation implications – Marine Protected Areas

Bait collection can occur in sensitive locations some of which are legally protected as conservation sites under EU and/or UK law. The table below lists some of these, and many sites have dual or multiple designation. Where this is the case the strictest rules will apply.

Conservation site designation	Relevant law	Primary responsible authorities
Special Scientific Interest (SSSI)	Wildlife and Countryside Act 1981 (UK)	Natural England / IFCA
Special Area of Conservation (SAC)	EU Habitats Directive (and UK implementing regulations)	Natural England / IFCA
Special Protection Areas (SPAs)	EU Birds Directive (incl. WCA 1981 and other implementing regulations)	Natural England / IFCA
Marine Conservation Zones	Marine and Coastal Access Act 2009 (UK)	Marine Management Organisation / IFCAS
RAMSAR sites (wetlands of international importance – auto designated SSSI and/or SPA)	RAMSAR convention	Natural England / IFCA

These sites are designated to protect or restore nationally and internationally important habitats or species listed. Bait collection can come into conflict with the conservation objectives of these sites for a variety of reasons, including:

- Disturbing overwintering bird populations or other species.
- Damaging specific protected species or habitats (such as at seagrass beds).

If you do not know if where you want to dig is a conservation site, the authorities listed above will be able to tell you and whether permission is required.

⁴ Anderson v Alnwick DC (1993) 1 WLR 1156 at 1169

Other potential issues

Whilst rare, bait collection if not done appropriately can also cause other issues. It is important to be aware of how your activity may affect others, for example:

- Are there any health & safety issues?
- Will you cause annoyance or obstruction to the public or put property at risk?
- Is the area 'over-used' for bait collection? Is commercial extraction a problem?

Commercial or Recreational?

It can be difficult to distinguish between bait collecting that is done on a commercial basis and that done on a recreational basis. Fundamentally this is down to whether or not the bait is collected by or on behalf of the angler (and their friends or family) directly intending to use the bait, or whether it is to be sold or exchanged for another's use. It is not always possible to determine from the collection technique or practice alone, but commercial operators will likely be more resource intensive, often working in gangs or using machinery.

The practical issues around distinguishing such practices, and because commercial collection is so much more intensive (and potentially a more damaging practice), means that some authorities have considered outright bans.

The Angling Trust's view is that it would be better to bring into force *proportionate management measures* in such cases, such as an enforced limit on the amount that can be extracted and with commercial operators having to carry ID. This would strike a balance between limiting any damaging commercial exploitation whilst facilitating recreational sea angling by the public.

Use of Non Native Species as bait

Under Section 9 of the Wildlife and Countryside Act 1981 it is an offence to release a listed non-native species into the wild. The list of these species is contained in Schedule 9 of the Act. It includes (since 2010) in particular the Slipper Limpet. It is the view of the UK MMO that the use of frozen or similarly treated Slipper Limpets will not pose any threat but using live specimens runs a real and significant risk that eggs or larvae would be released and thus an offence be committed. The Angling Trust therefore advocates that only frozen or treated Slipper Limpets should be considered for bait, particularly where there are no records of Slipper Limpets being present or established. The following link provides information on current distribution of slipper limpets around the UK at the time of compiling this fact sheet. <http://www.nonnativespecies.org/factsheet/factsheet.cfm?speciesId=1028>

DEFRA's approach to managing European Marine Sites (EMSs)

EMSs include Special Protected Areas (SPA) and Special Areas of Conservation (SAC) as designated under the EU Birds and Habitats Directives respectively.

In August 2012 DEFRA revised its approach to the management of EMSs to ensure compliance with Article 6 of the Habitats Directive.

Under Article 6 of the Habitats Directive, activity that impacts on an SAC/SPA and is not part of the site's conservation management cannot be permitted to significantly adversely affect the site. Thus, in activities that are not controlled by a formal procedure (e.g. marine licences etc.) such as bait digging by hand by the public, if assessed as a significant conservation threat will still need to be managed.

What are byelaws – how do they come about?

Byelaws are a form of delegated legislation that regulates certain local activities and sets a criminal sanction for non-compliance.

The fundamental purpose of such regulation is to address a local problem, such as to protect and conserve the ecology and environment at a particular location or where bait digging may unreasonably interfere with another public recreation or right.

However, byelaws and other regulatory measures should be a *last resort*, and with constructive engagement with angling groups such measures could in the main be avoided. If that is not possible, then the proposed byelaws must be subjected to careful scrutiny to ensure they are necessary, proportionate and lawful.

Making a byelaw is likely to involve the following steps:

1. Establishing the presence of an issue/need and cross check existing legislation
2. Identify power to make byelaw
3. Consultation locally
4. Draft byelaw
5. Submit to secretary of state for provisional approval
6. Adopt and advertise – receive representations from the public
7. Apply for confirmation and/or public inquiry if significant further issues exist
8. Confirmation or refusal by Secretary of State

If byelaws are proposed it is therefore vital that you take part in any consultations and make sure your views are heard. It may be that you can influence the process for the better.

Conclusions and Advice

- Do follow the Angling Trust's bait digging code of conduct available on their website at <http://www.anglingtrust.net/page.asp?section=814> unless local codes, voluntary agreements or byelaws take precedence.
- Collecting bait for recreational use is a recognised public right. However, it is not unrestricted and may be subject to control. A more modest collection exercise is less likely to be challenged than a larger one.
- Check local restrictions and agreements before collecting - contact your local Inshore Fisheries & Conservation Authority (IFCA).
- IFCAs may implement byelaws to manage bait digging as a sea fisheries resource (through the Marine & Coastal Access Act 2009). Local Authorities may also seek to regulate it.
- Some IFCAs have developed bait digging strategies and set up bait digging Working Groups bringing together interested parties to agree management plans. Check to see if your local IFCA has one and if not perhaps suggest volunteering to set one up.
- Ensure that you have secured the necessary permission before entering private land in the absence of a public right of way.
- Be aware of the law in respect of not releasing non-native species and use bait accordingly.
- Fish Legal can provide advice and assistance to sea angling organisations who are already members of FL and are concerned about issues covered in this factsheet.

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