



REGISTRATION REQUIREMENTS FOR CHARTER BOAT OPERATORS

BY HAYLEY CAMPBELL BSC, LLB, SOLICITOR

In the January/February Issue of *Professional Skipper*, we wrote about the introduction of new reporting requirements for amateur fishing boat charter operators.

New registration requirements were also introduced by way of an amendment to the Fisheries (Amateur Fishing) Regulations 1986 in October 2010. This new scheme requires amateur fishing boat charter operators to apply for registration to the chief executive, pay an application fee, and comply with the reporting obligations imposed on them under r26B of the same regulations.

In the event that an operator fails to comply with the reporting requirements, the chief executive may revoke that operator's registration. If an operator is not registered or their registration is revoked and they continue to provide amateur fishing charter services, that person commits an offence carrying a maximum penalty of \$10,000 per offence.

Since that article, we have more closely examined the legislative basis for this new scheme and it presents a bit of a puzzle. Inspection of the Fisheries Act 1996 reveals no clear authority to impose a registration requirement on charter boat operators.

Adding to the mystery is the difference between the minister's decision paper, which states an intention to require recreational charter vessel operators to register their vessel(s) annually, provide basic details of their vessel(s) and contact details for their business, and the actual provisions of r26A of the Fisheries (Amateur Fishing) Regulations 1986.

The act clearly provides authority for the new reporting requirements similarly imposed on amateur fishing charter vessel operators under r26B of the regulations.

Section 189 (g) of the act provides that persons who provide vessels for hire for the purpose of enabling persons to take fish, aquatic life or seaweed shall keep such accounts and records, and provide to the chief executive such returns and information as may be required by or under regulations made under this act.

This authority, however, only relates to the accounts/records/returns and information relating to the fishing activity. There is no power under section 189 (g) of the act to require registration of either charter vessels or operators.

The Fisheries Act provides for a register of commercial fishing vessels (s103) and the establishment of a fishing vessel register (s98). Because these requirements specifically apply where fish is taken for sale, it is not applicable to amateur charter operators.

In addition to the fishing vessel register there are a number of other registers specifically provided for in the act. These are:

- the fish farmer register, which requires all fish farmers to be registered (s186K)
- a permit register (s89), and
- an annual catch entitlement register (s124).

There is no provision for an amateur fishing charter boat

operators register, or an amateur fishing charter boat register. The act does, however, contain a general regulation-making power (s297 (1)).

This general regulation-making power is very broad. On its face, however, none of these regulation-making powers specifically authorise the registration requirements now imposed on amateur fishing charter operators.

Only one provision could possibly be construed to authorise this requirement. Section 297 (2) provides that any regulation made under s297 (1) may authorise the minister or chief executive to issue or impose "any authority, approval, requirement, prohibition, restriction, condition, direction, instruction, order, permit, notice or circular". Read literally, this provision would empower regulations for virtually any purpose.

The courts, however, rarely read such broad provisions literally. A similarly broad provision relating to the powers of a fishery officer to give directives for practically any purpose was read down by the courts and essentially regarding that provision as a "polyfilla power".


In other words, it is a provision that fills in the gaps between specifically authorised powers but it does not give rise to powers in its own right.

The courts in New Zealand approach provisions of this kind by way of applying a purposive rather than literal interpretation, and will generally have regard to the act as a whole.

While on its face, the power under s297 (2) appears literally broad enough to provide a requirement on amateur charter boat operators to register, it is questionable whether a court would in fact interpret that power as broadly as the ministry seems to have done. The act contains specific provisions relating to registration of vessels and registration of categories of participants in the fishing industry.

It sets out in the body of the act the various registers that parliament contemplated would be maintained, and the regulation making provisions contain a specific empowering provision relating to regulations governing those registers. Against this overall statutory background, the new regulatory requirement relating to not only the registration of individuals, but also the ancillary prohibition on them operating their business if not registered appears to be an extraordinarily major step not specifically contemplated by the act (or parliament itself).

The fact this new regime hangs on a very literal interpretation of a very general provision, strongly points to the possibility that these regulations are in fact ultra vires (without authority under the act).

A word of caution. Until such time as these regulations are challenged in court and a court rules on them, amateur fishing boat charter operators should comply with their requirements. 



OCEANLAW NEW ZEALAND

The only law firm in the South Pacific dedicated to the sea

14 New St, Nelson. PO Box 921, Nelson 7040. T +64 3 548 4136. F +64 3 548 4195. Freephone 0800 Oceanlaw. Email justine.inns@oceanlaw.co.nz www.oceanlaw.co.nz