



DON'T BREAK THE LIMIT

BY HAYLEY CAMPBELL BSC, LLB, SOLICITOR



Believe it or not, it is possible the last time you went fishing with some mates you committed an offence without even realising it.

It is also possible the offence was serious enough to result in forfeiture of your boat or car. Here are some things to be aware of so you don't end up in that situation.

The Fisheries (Amateur Fishing) Regulations 1986 and each of the regional Amateur Fishing Regulations define a number of offences that can result in the forfeiture of any illegal fishing gear, any fish or any property used in the commission of the offence.

Such offences involve taking or possessing, on any day, more than three times the daily limit of fish (including shellfish, eels, crayfish, etc.) The regulations provide what the daily catch limits or allowances are for each species.

For example, the regulations provide that the maximum number of scallops an individual can take or possess on any day is 20. However, it is not as straightforward as it appears. Regional regulations override the general regulations and limits can be different in each area. It is important to know what limits apply to the area you are fishing in.

Other pitfalls to be aware of relate to who has a daily catch allowance and who has possession of the fish. Generally, only someone who physically takes the fish is entitled to a daily catch limit.

"Taking" in the case of diving for crayfish is well documented. Taking is complete when the crayfish is seized on the seabed and placed in a dive bag.

Only those who are actually diving get a daily catch allowance, so safety persons and persons helping on board the boat in these situations are not entitled to an allowance. There are exceptions to this rule, specifically in relation to diving for scallops and dredge oysters. It is best to check the regulations for your area to ensure you are fishing legally.

In the case of using pots or a dredge to take fish it is less clear-cut as to who is a taker. For example, if there are four people on the boat and one pot or dredge, they will not all be entitled to a daily allowance simply because they have all pulled on the rope

to bring that pot or dredge in.

You must be careful in calculating daily catch allowances and ensure each person has had a significant physical role in taking the fish.

The Fisheries Act defines possession as, "possession of or control over either jointly or on one's own account any fish".

In prosecuting, the Ministry of Fisheries is not required to prove ownership or how the goods came to be in the persons' possession. Possession does not necessarily require actual physical control of the fish but will generally require knowledge that the fish exist.

Let's say a group go fishing with intentions to divvy up the catch later. If one person happens to carry the entire catch to another location where the catch is to be shared and the other fishers take alternative transport, the person transporting the fish is committing an offence under the act and MFish staff could prosecute them for possessing more than the daily limit.

In these instances, the District Court has said it does not matter whether or not possession was shared with other people; possession for the purposes of the regulations exists and therefore prosecution is possible.

It is best to be mindful of these situations. If your fishing buddies come out on the boat with you and leave via alternative transport, ensure you do not end up carrying more than your daily limit, as you could lose your boat or face some serious legal costs trying to keep it.

It is also important to remember if you do find yourself at the centre of a fishery officer's attention, try not to abuse or confront the officer if you can!

They are doing a job and the penalties for obstructing them can be severe. We advise you to take notes of what is said and done. Never rely on the fishery officer to get it right in his or her notebook and immediately contact a lawyer experienced in fisheries for advice.

Offences can be committed inadvertently and amateur fishers are not exempt from forfeiture of their vessels, cars or any other property used in the commission of an offence, whether it was intentional or not.



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