

Defences for the possession of fishing equipment in marine park sanctuary zones

There are practical reasons why fishers will be in the possession of fishing equipment in sanctuary zones and other places in a marine park, but will not be using that equipment for fishing.

The following information clarifies the grounds for a defence for possession of fishing equipment in sanctuary zones.

Transiting a sanctuary zone

Fishers may transit through any sanctuary zone (i.e. travelling from one place where the fishing gear can be legally used to another place the gear can be legally used) with:

- Fishing rod 'fully rigged', provided no part of the line is immersed in the water and no hook is baited;
- Spears provided they are stowed
- Nets provided no part of a net is in the water

Anchoring, mooring or a ground in a sanctuary zone

When anchored, moored or a ground in a sanctuary zone all tackle must be removed from a rod, leaving only a bare line on the reel. This is deemed to be in an "*unrigged state*" for the purposes of the Marine Parks Regulation.

While there is no specific defence for possession of other fishing equipment in a sanctuary zone, as a matter of policy all other equipment must be stowed, including nets and spearguns. In this circumstance the term 'stowed' means: contained, or covered and secured or packed away. (For example, a speargun strapped to the hull or covered or in a hold would be considered stowed. A speargun lying on the deck of vessel would not be considered stowed)

Drifting in a sanctuary zone

Currently the Marine Parks Regulation does not provide a defence for possession of equipment whilst drifting through a sanctuary zone; however, as a matter of policy, drifting in a sanctuary will require rods to be in an unrigged state (only a bare line on the reel), and any form of fishing equipment to be stowed, the same as if the vessel was at anchor (it will be a defence if the vessel is drifting because of motor failure).

Commercial fishers

In regard to gear restrictions applying to commercial fishers the above defences equally apply. Marine Parks has also adopted the DPI Fisheries policy, which allows commercial fishers to have reasonable access to conduct legitimate fishing operations. Commercial fishers operating in marine parks will be given permission to transit through sanctuary and habitat protection zones. However, commercial fishers will be individually shown what constitutes stowed fishing gear for the purpose of transiting such areas.

Cleaning fish and fishing gear in a sanctuary zone

Cleaning fish and or fishing gear is not permitted in a sanctuary zone except at designated fish cleaning facility, which are generally shore based (e.g. Halifax point at Port Stephens, Minnie Waters at Solitary Islands).

Given the unique circumstance in Port Stephens whereby trawlers enter and depart the estuary via sanctuary zones to their fishing grounds, the zoning plan allows for the cleaning of fishing nets in sanctuary zones of the marine park, but only while the net is being transported to or from any place where the net could lawfully be used for commercial fishing; and the cod-end of the net is open and otter boards are not submerged.

Relevant legislation - possession of equipment used to take animals or plants

Fisheries Management Act 1994

25 Possession of illegal fishing gear

(1) A person who is in possession of any fishing gear in, on or adjacent to any waters is guilty of an offence if:

- (a) the use by that person of that fishing gear for taking fish from those waters is, at that time, prohibited by or under this Act, or
- (b) the taking of fish from those waters is, at that time, prohibited by or under this Act.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units or imprisonment for 6 months, or both.

(2) A person who is on board a boat is taken to be in possession of any fishing gear found in the boat.

(3) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the fishing gear was being transported, in accordance with the written authority of a fisheries officer, to waters where the person could lawfully take fish with that gear.

(4) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the fishing gear was in his or her possession for a lawful purpose.

Marine Parks (Zoning Plans) Regulation 1999 (as of end of 31 August 2009)

1.25 Possession of animals or plants or of equipment used to take animals or plants

(2A) A person who, while in any part of a marine park, is in possession of any equipment (including fishing gear) that is used, or designed to be used, for the purpose of taking an animal or plant is guilty of an offence if the use by that person of that equipment for taking an animal or plant from that part of the park, at that time, is prohibited by law.

Maximum penalty: 100 penalty units.

(2B) For the purposes of this clause, a person who is on board a boat is taken to be in possession of any equipment (including fishing gear) found in the boat and any plant or animal found in the boat.

(3) It is a defence to a prosecution for an offence under subclause (2) or (2A) if the person charged satisfies the court:

- (a) if the equipment concerned was fishing gear—that the fishing gear was being transported to or from any place where the person could lawfully use the equipment to take fish and was in the authorised state, or
- (b) if the equipment concerned was not fishing gear—that the equipment was being transported to or from any place where the person could lawfully use the equipment to take animals or plants, and was in a state in which it could not have been used to take animals or plants, or
- (b1) if the equipment concerned was a fishing line—that the fishing line was on board a vessel within a sanctuary zone, the vessel was anchored, moored or aground and the fishing line was in the unrigged state, or
- (c) that the person could not reasonably have known that the equipment was on board the boat concerned, or
- (d) that the equipment was in the person's possession for a purpose that was lawful in the part of the marine park that the person was in.

(3A) A contravention of subclause (1)-(2A) is designated as a forfeiture offence.

Note. See section 36 of the Act and clause 29 of the Marine Parks Regulation 2009

(4) For the purposes of subclause (3) (a), the **authorised state** is:

- (a) in the case of a fishing line—no part of the line was immersed in the waters of the marine park and no hook was baited, or
 - (b) in the case of a fishing net—no part of the net was immersed in the waters of the marine park, or
 - (c) in the case of fishing gear not referred to in paragraph (a) or (b)—the gear was stowed away.
- (5) For the purposes of subclause (3) (b1), the ***unrigged state***, in relation to a fishing line, means no part of the fishing line is attached to any hook, artificial lure, artificial fly, swivel or other piece of fishing tackle (other than any reel the fishing line was spooled on).

6.5 Fish cleaning - Port Stephens-Great Lakes Marine Park Zoning Plan

Despite clauses 1.11 and 1.25 of this Regulation, a person may clean fish or fishing gear while in a sanctuary zone of the marine park at a fish cleaning facility (if any) designated by the relevant Ministers for that purpose.

- (2) Despite clauses 1.11 and 1.25 of this Regulation, a person may clean a fishing net in a sanctuary zone of the marine park while:
- (a) the net is being transported to or from any place where the net could lawfully be used for commercial fishing, and
 - (b) the cod-end of the net is open, and
 - (c) none of the otter boards of the net are in the water.