

Serial Number 1947/52



THE FISH-PASS REGULATIONS 1947

B. C. FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington, this 2nd day of
April, 1947

Present :

THE RIGHT HON. P. FRASER PRESIDING IN COUNCIL

PURSUANT to the Fisheries Act, 1908, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS

PART I.—PRELIMINARY

1. These regulations may be cited as the Fish-pass Regulations 1947.
2. These regulations shall come into force on the seventh day after notification in the *Gazette* of the making hereof, and shall have force and effect throughout New Zealand.
3. These regulations shall apply to every dam or weir in any river, stream, or waters in which salmon or trout exist or have been liberated or may hereafter be liberated.
4. In these regulations, if not inconsistent with the context,—
 - “The said Act” means the Fisheries Act, 1908, including its amendments :
 - “Fish-pass” includes a fish-ladder and any other means of ingress and egress for fish :
 - “Minister” means the Minister of Marine as defined by the Shipping and Seamen Act, 1908, and includes any officer, person, or authority acting by or under the direction of the Minister :
 - “Owner” in respect of a dam or weir includes any person or corporate body having control over the dam or weir.
5. For the purposes of these regulations the term “dam or weir” shall not include—
 - (a) Any net, trap, or structure erected and used solely for the purpose of taking indigenous or acclimatized fish in accordance with the provisions of the Fisheries Act, 1908, or of any regulations in force thereunder ;

- (b) Any dam or weir erected by or for any acclimatization society with the consent in writing of the Secretary of Marine or by or for an officer of the Marine Department or the Department of Internal Affairs acting in his official capacity for the purpose of capturing fish of any species or of preventing the ingress or egress of fish of any species in any river, stream, or waters.

PART II.—ERECTION OF DAMS

6. Every person desiring to construct any dam or weir shall apply in writing for the consent of the Minister thereto at least three months before the proposed time of commencement of such construction, and shall with his application submit plans in duplicate showing the location of the proposed dam or weir, and covering an area sufficient to include a fish-pass, with particulars of the character, height, and dimensions of the dam or weir, the estimated maximum and minimum flow of water through or over the dam or weir, the position and direction of the flow at different water-levels and under different conditions of manipulation of flood-gates, the character of the footing and natural conditions immediately below the dam or weir, and all other information proper and convenient to enable an opinion to be formed as to the effectiveness and best situation of any fish-pass that may be deemed necessary.

7. (1) If in the opinion of the Minister no fish-pass is required, the Minister shall notify the applicant to that effect, and it shall be lawful for the applicant to construct the dam or weir in all respects as he thinks fit.

(2) Where in the opinion of the Minister a fish-pass is required, the Minister shall specify in writing what is required to enable fish to pass, and the applicant shall then prepare detailed plans and specifications for a suitable fish-pass to allow fish to pass and return at all times.

(3) The applicant shall submit the plans and specifications in duplicate to the Minister for endorsement of the Minister's approval so far as they make provision for a fish-pass.

(4) The owner shall not cause or permit the dam or weir to be filled with water unless and until the constructional work on the fish-pass has been completed so as to comply with the plans and specifications approved by the Minister:

Provided that the Minister may exempt any person from the requirements of this clause of this regulation for such period as he may consider advisable so to do, and subject to such conditions as in the interests of fisheries he may see fit to impose.

8. The Minister may at any time require further or better or more detailed plans and specifications to be submitted to him, and may from time to time require alterations or amendments to be made in any such plans and specifications.

9. The Minister may in giving his approval to any plans and specifications impose such conditions in respect thereto as may appear to him to be necessary or advisable, and may permit the construction of the fish-pass therein provided for to be deferred for such period or on such conditions as he thinks fit.

10. Every person desiring to construct by way of alteration, extension, or rebuilding any dam or weir erected, whether before or after the coming into force of these regulations, shall apply in writing for the consent of the Minister to such alteration, extension, or

rebuilding, and the provisions of Regulations 6 to 9 hereof inclusive shall, *mutatis mutandis*, apply to such application and to the works therein referred to.

11. Every person constructing at the time when these regulations come into force any dam or weir shall forthwith apply in writing for the consent of the Minister to the continuation of such construction, and the provisions of Regulations 6 to 9 hereof inclusive shall, *mutatis mutandis*, apply to such application and to the works therein referred to.

12. No person shall construct any dam or weir without the prior consent in writing of the Minister given in pursuance of an application made as provided in these regulations, or in breach of any conditions imposed by the Minister pursuant to these regulations, or otherwise than in accordance with the plans and specifications approved in writing by the Minister for the purposes of these regulations :

Provided that the postponement of the construction of the fish-pass, so far as such postponement has been permitted by the Minister pursuant to Regulation 9 hereof, shall not be deemed to be a breach of this regulation.

13. No person shall commit a breach of any condition imposed by the Minister pursuant to these regulations.

PART III.—MAINTENANCE OF FISH-PASSES

14. The owner of every dam or weir in connection with which a fish-pass is provided shall at all times keep such fish-pass in good and satisfactory repair, order, and condition, and so that fish may freely pass and return at all times.

15. Any officer or honorary officer appointed under or for the purposes of Part II of the Fisheries Act, 1908, or any other person authorized in that behalf in writing by the Minister, may at all reasonable times enter upon any fish-pass and upon any dam or weir in connection with which a fish-pass is provided and view the state of repair thereof ; and if the Minister shall leave at or send by registered post to the last-known address of the owner of such structure a notice in writing of any defects or want of repair in such fish-pass requiring him within a reasonable time to be therein prescribed to remove such defects or repair the same, such owner shall with all convenient speed cause such defects to be removed or such repairs to be made, as the case may be :

Provided that nothing contained in this regulation shall affect the liability of an owner under Regulation 14 hereof.

16. The owner of every dam or weir in connection with which a fish-pass is provided shall at all times maintain a flow of water through the fish-pass sufficient in quantity to allow fish to pass and return :

Provided that no person shall be liable for a breach of this regulation due to drought, flood, or other sources beyond his control if the default is made good as soon as reasonably possible.

17. No person shall wilfully injure any fish-pass.

18. No person shall without the written consent of the Minister make a structural alteration in any fish-pass.

PART IV.—PROTECTION OF FISH

19. No person, other than an officer or an honorary officer appointed under or for the purposes of Part II of the Fisheries Act, 1908, or an officer of an acclimatization society acting with the consent in writing of the Secretary of Marine, or an officer of the Marine Department or

Department of Internal Affairs acting in his official capacity, shall take or attempt to take any fish on its passage through a fish-pass, or place any obstruction therein or within a radius of 100 ft. of the foot of a fish-pass, or shall within a radius of 100 ft. of the foot of a fish-pass use any contrivance whereby fish may be impeded in any way in freely entering or passing through a fish-pass.

PART V.—PENALTIES

20. If any person fails, refuses, or neglects to do, or in any manner obstructs, impedes, or interferes with the doing of, anything required by these regulations to be done, or wilfully does anything prohibited by these regulations, or in any other respect offends against the provisions of these regulations, he shall be liable to a fine not exceeding £50.

W. O. HARVEY,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.
Date of notification in *Gazette* : 17th day of April, 1947.
These regulations are administered in the Marine Department.