

1971/71



THE FISHERIES (GENERAL) REGULATIONS 1950,
AMENDMENT NO. 15

ARTHUR PORRITT, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 22nd day of March
1971

Present:

THE HON. N. L. SHELTON 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, hereby makes the following regulations.

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Fisheries (General) Regulations 1950, Amendment No. 15, and shall be read together with and deemed part of the Fisheries (General) Regulations 1950* (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the seventh day after the date of their notification in the *Gazette*.

2. Interpretation—(1) Regulation 4 of the principal regulations is hereby amended by inserting, before the definition of the term “otter board” in subclause (1), the following definition:

“‘Ordinary paua’ means the species of paua known as *Haliotis iris* or New Zealand abalone.”

(2) The said regulation 4 is hereby further amended by inserting, after the definition of the term “owner” in subclause (1), the following definition:

“‘Paua’ includes ordinary paua and yellow foot paua.”

(3) The said regulation 4 is hereby further amended by adding to subclause (1) the following definition:

“‘Yellow foot paua’ means the species of paua known as *Haliotis australis* or queen paua or karariwha.”

3. New Parts IX and IXA substituted—The principal regulations are hereby further amended by revoking Parts IX and IXA and substituting the following Parts:

- *S.R. 1950/147 (Reprinted with Amendments Nos. 1 to 8: S.R. 1966/20)
Amendment No. 9: S.R. 1967/112
Amendment No. 10: S.R. 1968/104
Amendment No. 11: S.R. 1968/218
Amendment No. 12: S.R. 1969/98
Amendment No. 13: S.R. 1970/62
Amendment No. 14: S.R. 1970/160

“PART IX—SHELLFISH**“Mussels**

“101. Restriction on taking mussels from Whangarei Harbour—
(1) Except as provided in subclause (3) of this regulation, no person shall take, or attempt to take, mussels from the area described in subclause (2) of this regulation.

“(2) The area referred to in subclause (1) of this regulation is the following:

“All that area of sea bed and shore of Whangarei Harbour bounded by a line commencing at the southern extremity of Busby Head and proceeding due west to the Marsden Point Beach; thence north-easterly and north-westerly along the line of high-water mark to the northern extremity of Marsden Point; thence by a direct line across the Whangarei Harbour to the southern extremity of Lort Point, Reotahi; thence generally easterly and southerly along the high-water mark of the Whangarei Harbour to the starting point at Busby Head.

“(3) It shall be lawful for any person to take from the area described in subclause (2) of this regulation for domestic consumption in his own household not exceeding 50 mussels in any one day.

“102. Persons not to light fires near mussel beds—No person shall light a fire on or in such proximity to any mussel bed or reef in such a manner as to be liable to cause injury to the mussels thereon.

“103. Restriction on taking mussels from Queen Charlotte Sound—
(1) No person shall take mussels for the purposes of sale in the waters of Queen Charlotte Sound inside a straight line drawn from Pihaka Point to Karaka Point.

“(2) No person shall take mussels for the purposes of sale from any other waters of Queen Charlotte Sound otherwise than by gathering them by hand.

“104. Close season for taking mussels from Tasman Bay and adjacent areas—(1) Without limiting the provisions of regulation 103 of these regulations, no person shall during the close season prescribed by subclause (2) of this regulation take for the purposes of sale or dredge (whether for the purposes of sale or not) mussels from those waters within all that area lying to the north of the South Island bounded by a line commencing at Kahurangi Point on the west coast of the South Island and proceeding westerly along the 40° 47' South parallel of latitude to its intersection with the 171° 50' East meridian of longitude; thence northerly along that meridian of longitude to its intersection with the 40° 15' South parallel of latitude; thence easterly along that parallel of latitude to its intersection with the 174° 30' East meridian of longitude; thence southerly along that meridian of longitude to its intersection with the 41° 44' South parallel of latitude; thence westerly along that parallel of latitude to Cape Campbell on the east coast of the South Island; thence generally north-westerly along the mean high-water mark of the sea to the point of commencement excluding therefrom all areas of land above the mean high-water mark of the sea.

“(2) For the purposes of this regulation the close season for taking mussels shall commence on the 1st day of November in each year and end with the last day of February of the following year.

“Scallops

“105. Restrictions on taking scallops from Manukau Harbour and Kaipara Harbour—No person shall take scallops for sale from the following waters:

“(a) The waters of Manukau Harbour lying inside a straight line drawn from the Signal Staff on the South Head to the easternmost extremity of Paratutai Island; or

“(b) The waters of Kaipara Harbour lying inside a straight line drawn from the south-westernmost extremity of North Sand Spit to Puki-tu.

“106. Size limit for the taking of scallops—(1) No person shall take any scallop the shell of which is less than 4 in. in greatest diameter.

“(2) No person shall have in his possession or sell, store, or process any scallop in the shell, or the shell of any scallop, which is less than 4 in. in greatest diameter.

“106A. Restrictions on opening scallops, etc.—(1) No person shall open any scallops below high-water mark, or land from any boat any scallop in such a state that the shell cannot be measured in accordance with the provisions of these regulations.

“(2) Every person who takes any scallops pursuant to a fishing permit shall ensure that the scallops remain unshelled until they are delivered to a shop, processing factory, or other premises for which the scallops are destined for sale or processing.

“106B. Restrictions on taking scallops—(1) No person shall, without lawful excuse (of which the proof shall lie on him), take more than 3 dozen scallops in any one day or be in possession of more than 3 dozen scallops on any one day.

“(2) No persons who are associated together shall on any one day, without lawful excuse (of which the proof shall lie on them), take more than 7½ dozen scallops or be in possession of more than 7½ dozen scallops:

“Provided that if only 2 persons are associated they shall not together on any one day take or be in possession of more than 6 dozen scallops.

“(3) Where the provisions of subclause (2) of this regulation are contravened in the case of association of persons, every one of the persons so associated together shall be deemed to have committed an offence against this regulation.

“(4) The provisions of this regulation shall not apply to—

“(a) The holder of a fishing permit who is engaged in taking scallops pursuant to the terms of the permit; or

“(b) Any scallops taken by any such person.

“(5) In any proceedings for an offence against this regulation, proof that this regulation does not apply because of the provisions of subclause (4) shall be deemed to be a lawful excuse.

“106c. Close season for scallops—(1) Except as provided in subclause (3) of this regulation, no person shall take, injure, or disturb any scallops during the close season for taking scallops.

“(2) For the purposes of this regulation the close season for scallops shall commence on the 1st day of March in each year and end with the 31st day of July in that year.

“(3) Notwithstanding anything to the contrary in this regulation, any person may take scallops washed ashore during the close season prescribed in subclause (2) of this regulation, or may be in possession of any scallops so taken, if the following conditions are complied with:

“(a) The scallops so taken or possessed are not sold:

“(b) The person taking or in possession of the scallops does not contravene subclause (1) or subclause (2) of regulation 106B of these regulations:

“(c) The person taking or in possession of scallops does not take them on board or land them from any vessel.

“(4) Where any person is charged with having committed the offence of taking or being in possession of scallops during the close season and pleads that the scallops were washed ashore, the onus of proving that they were washed ashore shall be on that person.

“Paua

“106D. Size limit for the taking of paua—(1) No person shall take—

“(a) Any ordinary paua the shell of which is less than 5 in. in greatest diameter; or

“(b) Any yellow-foot paua the shell of which is less than 3¼ in. in greatest diameter.

“(2) No person shall have in his possession or sell, store, or process—

“(a) Any ordinary paua in the shell, or the shell of any ordinary paua, which is less than 5 in. in greatest diameter; or

“(b) Any yellow-foot paua in the shell, or the shell of any yellow-foot paua, which is less than 3¼ in. in greatest diameter.

“106E. Restrictions on removing paua from shell—(1) No person shall remove any paua from its shell below high-water mark, or land from any boat any paua in such a state that the shell cannot be measured in accordance with the provisions of these regulations.

“(2) Every person who takes any paua pursuant to a fishing permit shall ensure that the paua remain unshelled until they are delivered to a shop, processing factory, or other premises for which the paua are destined for sale or processing.

“Pipis

“106F. Restrictions on taking pipis from the vicinity of Katikati Harbour—In all that area of tidal lands and tidal waters of Katikati Harbour that lie to the west of a straight line drawn from Te Ho Heads to Miners Head no person shall—

“(a) Take pipis otherwise than for domestic consumption in his own household; or

“(b) Use any metal instrument for the purpose of taking pipis; or

“(c) Drive a vehicle of any kind, including a plough, tractor, scarifier, or cultivator of any kind.

“Sea Eggs

“106G. Restrictions on taking sea eggs—(1) No person shall, without lawful excuse (of which the proof shall lie on him), take in any one day sea eggs exceeding in quantity one 4-gallon lot measured in their shells.

“(2) The provisions of this regulation shall not apply to—

“(a) The holder of a fishing permit who is engaged in taking sea eggs pursuant to the terms of the permit; or

“(b) The owner or any member of the crew of a registered fishing boat who is engaged in taking sea eggs from that boat pursuant to the terms of the boat-fishing permit for the time being in force in respect of that boat; or

“(c) Any sea eggs taken by any of the persons mentioned in paragraphs (a) and (b) of this subclause.

“(3) In any proceedings for an offence against this regulation, proof that this regulation does not apply because of the provisions of subclause (2) shall be deemed to be a lawful excuse.

“(4) In any proceedings for an offence against this regulation, subject to any lawful excuse proved by the accused, the court may infer that the accused committed the offence if the prosecution proves that the sea eggs were poured into a 4-gallon container, and that he was in possession of sea eggs in excess of the quantity necessary to fill the container.

“Miscellaneous Restrictions on Taking, etc., Shellfish

“106H. **Shellfish not to be taken from polluted waters**—No person shall take shellfish for the purposes of sale from any waters where, having regard to the proximity of a source of pollution, it is likely that shellfish in those waters are unfit for human consumption.

“106I. **Shellfish to be placed in labelled containers**—(1) It shall not be lawful for any person—

“(a) To transfer shellfish from one registered fishing boat to any other boat; or

“(b) To land from any registered fishing boat or any other boat any shellfish; or

“(c) After any such shellfish have been landed from a registered fishing boat or from any other boat, to convey the shellfish by any means whatsoever to any storing, processing, wholesaling, or retailing premises or to receive any such shellfish into any such premises—

unless the shellfish are contained in sacks or other types of containers, which are externally and visibly labelled to indicate clearly the registered distinguishing marks of the registered fishing boat from which the shellfish were taken, the name of the consignor and the consignee, the date on which the shellfish were taken and the signature of the master of the boat.

“(2) Both the owner and the master of a registered fishing boat engaged in taking shellfish shall ensure that no person transfers or lands shellfish in contravention of paragraphs (a) or (b) of subclause (1) of this regulation.

“(3) It shall not be lawful for any person to convey or cause to be conveyed by any means whatsoever any shellfish that have been taken pursuant to a shore-fishing permit to any storing, processing, wholesaling, or retailing premises or to receive any such shellfish into any such premises, unless the shellfish are contained in sacks or other types of containers, which are externally and visibly labelled to indicate clearly the surname and initials of the holder of the shore-fishing permit, the distinguishing letters of the port at which the permit was issued, the letters ‘SP’, the name of the consignor and consignee, the date on which the shellfish were taken and the signature of the permit holder.

“(4) The operator or person in charge of any conveyance for the time being used in the conveying of shellfish other than shellfish taken pursuant to regulation 106k of these regulations, shall ensure that no person conveys in the conveyance any shellfish in containers or otherwise which are not labelled in accordance with this regulation.

“(5) The owner and manager (if any) of any premises where the business of storing, processing, wholesaling, or retailing shellfish is carried on, or, where the premises are leased, the lessee of those premises, shall ensure that no person employed by him receives any shellfish in contravention of subclause (3) and paragraph (c) of subclause (1) of this regulation.

“(6) No person shall remove the label affixed to a container containing shellfish pursuant to subclause (1) or subclause (3) of this regulation, until the processing of the shellfish is commenced.

“(7) For the purposes of this regulation, the act of shelling or shucking alone shall not be deemed to be processing.

“106J. **Restrictions on shellfish dredging**—(1) No master of a registered fishing boat authorised by a boat-fishing permit to take shellfish by means of a dredge or dredges shall operate the boat if the boat carries either—

“(a) More than one dredge having a bar or bit exceeding 8 ft in length; or

“(b) More than 2 dredges either of which has a bar or bit exceeding 4 ft 6 in. in length:

“Provided that the master of any fishing boat registered at Nelson or Picton and in respect of which a boat-fishing permit is for the time being in force authorising the use of a shellfish dredge may, when taking shellfish, use not more than 2 such dredges if the bar or bit of each such dredge does not exceed 8 ft in length within those waters within all that area lying to the north of the South Island bounded by a line commencing at Kahurangi Point on the west coast of the South Island and proceeding westerly along the 40° 47' South parallel of latitude to its intersection with the 171° 50' East meridian of longitude; thence northerly along that meridian of longitude to its intersection with the 40° 15' South parallel of latitude; thence easterly along that parallel of latitude to its intersection with the 174° 30' East meridian of longitude; thence southerly along that meridian of longitude to its intersection with the 41° 44' South parallel of latitude; thence westerly along that parallel of latitude to Cape Campbell on the east coast of the South Island; thence generally north-westerly along the mean high-water mark of the sea to the point of commencement excluding therefrom all areas of land above the mean high-water mark of the sea.

“(2) Notwithstanding the provisions of subclause (1) of this regulation, a master of a registered fishing boat which is authorised by a boat-fishing permit to take shellfish by means of a dredge shall not operate the boat within the waters of the inner reaches of Pelorus Sound lying inside a straight line drawn from Tawero Point to Whakamawahi Point if the boat carries more than one dredge or, in the case of a boat carrying only one dredge, if the dredge has a bar or bit more than 4 ft in length.

“(3) Nothing in this regulation shall—

“(a) Apply to a boat carrying a shellfish dredge or shellfish dredges if the boat is registered at Bluff and is authorised by a boat-

fishing permit to be used in the taking of dredge oysters from the waters of Foveaux Strait; or

“(b) Be construed as authorising the taking of shellfish in contravention of any other regulation or in contravention of any condition lawfully attached to a fishing permit.

“106k. **Only limited quantities of shellfish may be taken or possessed on any one day**—(1) No person shall on any one day, without lawful excuse (of which the proof shall lie on him)—

“(a) Take shellfish (not being scallops or sea eggs) exceeding in quantity one 2-gallon lot measured in their shells; or

“(b) Be in possession of shellfish (not being scallops or sea eggs) exceeding in quantity one 2-gallon lot measured in their shells.

“(2) No persons who are associated together shall on any one day, without lawful excuse (of which the proof shall lie on them)—

“(a) Take by any means whatsoever shellfish (not being scallops or sea eggs) exceeding in quantity one 5-gallon lot measured in their shells; or

“(b) Be in possession of shellfish (not being scallops or sea eggs) exceeding in quantity one 5-gallon lot measured in their shells:

“Provided that if only 2 persons are associated they shall not together in any one day take or be in possession of more than one 4-gallon lot of shellfish (not being scallops or sea eggs) measured in their shells.

“(3) Where the provisions of subclause (2) of this regulation are contravened in the case of an association of persons, every one of the persons so associated shall be deemed to have committed an offence against this regulation.

“(4) The provisions of this regulation shall not apply to—

“(a) The holder of a fishing permit who is engaged in taking shellfish pursuant to the terms of the permit; or

“(b) The owner or any member of the crew of a registered fishing boat who is engaged in taking shellfish from that boat pursuant to the terms of the boat-fishing permit for the time being in force in respect of that boat; or

“(c) Any shellfish taken by any of the persons mentioned in paragraphs (a) and (b) of this subclause.

“(5) In any proceedings for an offence against this regulation, proof that this regulation does not apply because of the provisions of subclause (4) shall be deemed to be a lawful excuse.

“(6) In any proceedings for an offence against this regulation, subject to any lawful excuse proved by the accused, the court may infer that the accused committed the offence if the prosecution proves that the shellfish were poured into a 2-gallon, 4-gallon, or 5-gallon container, as the circumstances require, and that the accused was or were in possession of shellfish in excess of the quantity necessary to fill the container.

“106L. **Restrictions on taking shellfish from the vicinity of the Mahia Peninsula**—No person shall take for the purposes of sale any shellfish (molluscs or crustaceans) from any part of the coast lying between Pareto and the mouth of the Nuhaka River, including the coast of the Mahia Peninsula, or from the waters adjacent thereto, or from the coast of Portland Island or the waters adjacent thereto.

“106M. **Restrictions on taking shellfish from the vicinity of the Tongaporutu River**—No person shall in fishing from the shore along that part of the west coast of the North Island lying between the mouth of the Tongaporutu River and Tirua Point take any shellfish for the purposes of sale.

“106N. **Restrictions on taking shellfish from the vicinity of the Waitotara River**—No person shall, in fishing from the shore along that part of the west coast of the North Island lying between the mouth of the Okehu Stream and the mouth of the Waitotara River take any shellfish for the purposes of sale.

“PART IXA—FLATFISH

“106O. **Interpretation**—In this Part of these regulations, the term ‘flatfish’ means any flounder, sole, or other species of flatfish.

“106P. **Restrictions on the number of flatfish that may be taken on any one day**—(1) No person shall on any one day, without lawful excuse (of which the proof shall lie on him)—

“(a) Take by any means whatsoever more than 2 dozen flatfish; or

“(b) Be in possession of more than 2 dozen flatfish.

“(2) No persons who are associated together shall on any one day, without lawful excuse (of which the proof shall lie on them)—

“(a) Take by any means whatsoever more than 5 dozen flatfish; or

“(b) Be in possession of more than 5 dozen flatfish on any one day:

“Provided that if only 2 persons are associated together they shall not take on any one day more than 2 dozen flatfish for each such person.

“(3) Where the provisions of subclause (2) of this regulation are contravened in the case of an association of persons, every one of the persons so associated together shall be deemed to have committed an offence against this regulation.

“(4) No person shall on any one day, in any one vehicle or in any one boat, convey or have on board that vehicle or boat more than 5 dozen flatfish.

“(5) The provisions of this regulation shall not apply to—

“(a) The holder of a fishing permit who is engaged in taking flatfish pursuant to the terms of the permit; or

“(b) The owner or any member of the crew of a registered fishing boat who is engaged in taking flatfish from that boat pursuant to the terms of the boat-fishing permit for the time being in force in respect of that boat; or

“(c) Any flatfish taken by any of the persons mentioned in paragraphs (a) and (b) of this subclause.

“(6) In any proceedings for an offence against this regulation, proof that this regulation does not apply because of the provisions of subclause (5) shall be deemed to be a lawful excuse.”

4. Revocations—The following regulations are hereby consequentially revoked:

(a) The Fisheries (General) Regulations 1950, Amendment No. 2 (S.R. 1952/210): regulations 20 and 21.

(b) The Fisheries (General) Regulations 1950, Amendment No. 5 (S.R. 1959/186): regulations 16, 17, and 18:

- (c) The Fisheries (General) Regulations 1950, Amendment No. 7 (S.R. 1963/198): regulations 11 and 12, and so much of the Schedule to those regulations as relates to regulations 106, 106c, and 106E of the principal regulations:
- (d) The Fisheries (General) Regulations 1950, Amendment No. 9 (S.R. 1967/112): regulations 4, 5, and 6:
- (e) The Fisheries (General) Regulations 1950, Amendment No. 10 (S.R. 1968/104): regulations 11, 12, 13, and 14.
- (f) The Fisheries (General) Regulations 1950, Amendment No. 11 (S.R. 1968/218):
- (g) The Fisheries (General) Regulations 1950, Amendment No. 12 (S.R. 1969/98): regulations 7 and 8:
- (h) The Rock Lobster Regulations 1969 (S.R. 1969/250): subclauses (3) and (4) of regulation 27:
- (i) The Fisheries (General) Regulations 1950, Amendment No. 13 (S.R. 1970/62): regulation 5, and subclauses (1) and (3) of regulation 6.

P. J. BROOKS,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect

These regulations, with amendment, consolidate Parts IX and IXA of the Fisheries (General) Regulations 1950 relating to shellfish and flatfish. The main changes involve placing further restrictions on the taking and possessing of scallops and paua. A provision relating to the method of measuring quantities of shellfish in the shell is also included to remove difficulties that have arisen as a result of the decision of Wild C.J. in *Lee v. Marine Department* and *Warren v. Marine Department* (both cases unreported).

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 25 March 1971.

These regulations are administered in the Marine Department.