



Reprint under section 7 of the Regulations Act 1936 of the Oyster Fishing Regulations 1946 (S.R. 1946/108, reprinted 1966/177), as amended by the following enactments:

- Amendment No. 1, S.R. 1951/79
- Decimal Currency Act 1964, s. 7
- Amendment No. 2, S.R. 1969/12 (*Spent*)
- Amendment No. 3, S.R. 1969/84 (*Revoked by regulation 2 (2) of S.R. 1969/154*)
- Amendment No. 4, S.R. 1969/154 (*Revoked by regulation 1 (2) of S.R. 1969/154*)
- Amendment No. 5, S.R. 1970/4 (*Revoked by regulation 2 (3) of S.R. 1971/8*)
- Amendment No. 6, S.R. 1971/8
- Amendment No. 7, S.R. 1972/183 (*Revoked by regulation 1 (2) of S.R. 1972/183*)
- Ministry of Agriculture and Fisheries Amendment Act 1972, s. 6 (2)
- Amendment No. 8, S.R. 1975/191

THE OYSTER FISHING REGULATIONS 1946 (REPRINT)

B. C. FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 3rd day of July 1946

Present:

THE RIGHT HON. P. FRASER PRESIDING IN COUNCIL

PURSUANT to the Fisheries Act 1908, and section 47 of the Customs Act 1913, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

The Customs Act 1913 has been repealed and replaced by the Customs Act 1966.

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REGULATIONS

PART I—PRELIMINARY

1. Title—These regulations may be cited as the Oyster Fishing Regulations 1946.

See also the Rock Oyster Farming Regulations 1964 (S.R. 1964/207).
As to oysters and oyster beds on the continental shelf, see s. 6 of the Continental Shelf Act 1964.

2. Commencement—These regulations shall come into force on the seventh day after notification in the *Gazette* of the making hereof.

3. Interpretation—In these regulations, if not inconsistent with the context,—

“The said Act” means the Fisheries Act 1908, and any amendments thereof:

["Director-General" means the Director-General of Agriculture and Fisheries:]

“Fishery officer” means an officer appointed under section 4 of the said Act:

“Maori” means a person belonging to the aboriginal race of New Zealand, and includes a half-caste and a person intermediate in blood between half-castes and persons of pure descent from that race:

“Minister” means [the Minister of Agriculture and Fisheries] and includes any officer or other person acting by or under the direction of the Minister:

“Oysters” includes all kinds of oysters and oyster brood of every description:

“Rock oyster” includes the kinds of oyster known as *Ostrea purpurea*, *Saxostrea* or *Ostrea glomerata*, *Ostrea mordax*, rock oyster, shore oyster, drift oyster, and mangrove oyster, by whatever name they or any of them may locally be known:

“Northern Area” means the North Island and the islands adjacent thereto and the waters surrounding the same respectively:

“Southern Area” means the South Island and Stewart Island and the islands adjacent thereto respectively and the waters surrounding the same respectively.

“Director-General”: This definition has been substituted for the definitions of the terms “Secretary” and “Superintendent” pursuant to s. 6 (2) (c) and (d) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

“Maori”: See the definition of the term “Maori” in s. 7 of the Maori Purposes Act 1974.

“Minister”: The reference to the “Minister of Agriculture and Fisheries” was substituted for a reference to the “Minister of Marine” by s. 6 (2) (a) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

“Northern Area”, and “Southern Area”: See the note to regulation 6 of these regulations.

4. Revocations—The respective regulations referred to in the table subjoined to this regulation are revoked to the extent specified in the said table:

Table of Revoked Regulations

Short Title	Extent of Revocation	Published in Statutory Regulations	
		Serial Number	Page
The Sea-fisheries Regulations 1939	Parts XIV and XV and Seventh Schedule	1939/225	899
The Sea-fisheries Regulations 1939, Amendment No. 4	The whole enactment	1940/130	461
The Sea-fisheries Regulations 1939, Amendment No. 9	Regulation 5	1941/14	25
The Sea-fisheries Regulations 1939, Amendment No. 12	Regulation 4	1941/124	398

5. Savings—All certificates, appointments, registers, records, instruments, and generally all acts of authority, applications, and all other matters, acts, and things, and all periods of time, which originated under the regulations hereby revoked and are of continuing effect at the time

of the coming into force of these regulations shall enure for the purpose of these regulations as if they had originated under these regulations, and shall, where necessary, be deemed to have so originated.

6. Jurisdiction—These regulations shall, except as otherwise herein expressly provided, have force and effect throughout the Dominion of New Zealand and the territorial waters thereof, including all salt, fresh, or brackish waters in the Dominion and all shores of such waters or any part thereof or shores contiguous or adjacent to such waters:

Provided that nothing in this regulation shall affect any restriction of any of the regulations hereinafter contained to particular parts of the Dominion.

As to the territorial waters of New Zealand, see ss. 3 and 8 of the Territorial Sea and Fishing Zone Act 1965 and s. 4 of the Acts Interpretation Act 1924.

7. No conflict with Commercial Fishing Regulations 1963—Nothing contained in these regulations shall prejudice or affect the application to boats or vessels used or intended to be used for taking oysters for sale of the provisions of [the Commercial Fishing Regulations 1963] relating to the licensing, registration, and measurement of boats or vessels so used or intended to be used.

The Commercial Fishing Regulations 1963 (S.R. 1963/196, reprinted S.R. 1968/6), being the corresponding regulations in force at the date of this reprint, have been substituted for the revoked Sea Fisheries (Boats and Licences) Regulations 1945 (S.R. 1945/196).

8. Authority to revoke directions—Any direction given by [the Director-General] pursuant to regulation 17, regulation 29, or regulation 33 hereof may at any time be revoked by written notice from [the Director-General] given to the person to whom the direction was given.

The references to the Director-General were substituted for references to the Secretary by s. 6 (2) (c) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

PART II—SEIZURE OF PROPERTY

9. Seizure of oysters and gear—It shall be lawful for any fishery officer to seize and take possession of all oysters unlawfully taken or which he has reasonable grounds for believing to have been unlawfully taken, and also all baskets, nets, receptacles, gear, tackle, or other apparatus which are being used, or which in the opinion of such officer are intended to be used, in contravention of the provisions of the said Act or any regulations made thereunder.

10. Authority to seize—The production by such officer of his warrant of appointment shall be a sufficient authority for his acting in accordance with the provisions of the last preceding regulation.

11. Disposal of seized property—Any property seized under the authority of regulation 9 hereof may be retained by the officer who seized it or any other fishery officer for 3 months, and if during that period proceedings have been instituted against any person for unlawful taking of the oysters so seized or for unlawful fishing with any of the

other property so seized, then for a further period until judgment in such proceedings has been given, and if by reason of such judgment it appears that the oysters have been unlawfully taken or that the other property has been used in any unlawful fishing and accordingly forfeited by the said Act, then until the direction of the Minister as to disposal thereof is made known.

PART III—RETURNS OF CATCHES

12. Returns of catches—(1) The master of every fishing boat, the owner of which is the holder of a licence in force under the Fisheries Amendment Act 1945 and the said Act authorising the boat to be used in fishing for purposes of sale, shall forthwith after the close of every week during the open season for taking oysters—that is to say, any period not falling within the close season prescribed by regulation 15 hereof—fill in and forward to **【the Director-General】** a return in the form prescribed in the Schedule hereto of all oysters taken or dredged by such boat during that week.

(2) When no oysters have been taken or dredged during any one week of the open season for taking oysters, the master of the boat engaged in oyster fishing shall fill in and forward to **【the Director-General】** a “Nil” return in respect of that week.

(3) This regulation shall not apply to the master of a fishing boat that has at no time during the open season been engaged in the taking of oysters.

In subclause (1) the Fisheries Amendment Act 1945 was repealed by s. 22 (1) (c) of the Fisheries Amendment Act 1963. Part I of the latter Act provides for a system of boat-fishing permits instead of a system of licences.

In subclauses (1) and (2) the references to the Director-General were substituted for references to the Secretary by s. 6 (2) (c) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

PART IV—CLOSE SEASONS

13. Close season—Northern Area—The months of November, December, January, February, March, and April in each year are hereby prescribed as a close season for the taking of oysters in the Northern Area, and during any such close season it shall be unlawful for any person to take oysters in the Northern Area.

14. Unlawful possession of oysters taken during close season—Northern Area—Except as hereinafter provided, no person shall during any close season prescribed by regulation 13 hereof be in possession in any part of New Zealand of oysters taken in the Northern Area or of oysters of a kind peculiar in New Zealand waters to the Northern Area or some part thereof.

As to New Zealand waters, see the note to regulation 6 of these regulations.

15. Close season—Southern Area—The months of September, October, November, December, January, and February in each year are hereby prescribed as a close season for the taking of oysters in the Southern Area, and during any such close season it shall be unlawful to take oysters in that area.】

This regulation was substituted for the original regulation 15 (as amended by regulation 2 of S.R. 1969/12, regulation 2 of S.R. 1969/84, regulation 2 of S.R. 1969/154, and regulation 2 of S.R. 1970/4) by regulation 2 (1) of S.R. 1971/8. As to the period 1-14 September 1972, see S.R. 1972/183.

16. Unlawful possession of oysters taken during close season—Southern Area—Except as hereinafter provided, no person shall during any close season prescribed by regulation 15 hereof be in possession in any part of New Zealand of oysters taken in the Southern Area.

17. Authority to possess or take oysters for scientific purposes—Regulations 13 and 15 hereof shall not apply to any person taking oysters for the purpose of piscicultural research and under the express written direction of [the Director-General] and subject to any conditions imposed in such direction.

The reference to the Director-General was substituted for a reference to the Secretary by s. 6 (2) (c) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

18. Possession of oysters lawfully taken—Regulations 14 and 16 hereof shall respectively not apply—

- (a) To oysters lawfully taken in the respective area aforesaid at a time not falling within a close season hereinbefore prescribed for that area and shelled and canned or otherwise preserved:
- (b) During the first 15 days of any close season hereinbefore prescribed for a respective area to oysters lawfully taken in that area prior to the commencement of such close season:
- (c) To oysters deposited in any freezing works or freezing chamber which were lawfully taken in a respective area aforesaid and so deposited at respective times not falling within a close season hereinbefore prescribed for that area:
- (d) To oysters which having been taken and deposited as described in the last preceding paragraph hereof have thereafter been taken out for consumption during the close season under a written permit granted by a Collector of Customs or Inspector:
- (e) To oysters taken pursuant to a direction given under regulation 17 hereof.

PART V—GENERAL RESTRICTIONS

19. Restriction on converting shell into lime—No person shall take or burn alive oysters for the purpose of converting the shells into lime.

20. Authorised gear for taking rock oysters—No person shall use for taking rock oysters a spade or other apparatus of which the edge or blade exceeds [50 mm] in width.

The expression "50 mm" was substituted for the expression "2 in." by regulation 2 of S.R. 1975/191.

21. Restricted hours for taking oysters—No person, other than an owner on his own private oyster bed, shall take or dredge for oysters between sunset and sunrise.

22. Restrictions on opening rock oysters in Northern Area—No person shall in the Northern Area open any oyster while such oyster still adheres to the rock on which such oyster grew, or leave the empty shell of such oyster on or near the rock where such oyster grew.

23. No unauthorised export of rock oysters—Except with the written consent of the Minister, no person shall export from New Zealand any rock oyster taken or produced in New Zealand waters.

As to New Zealand waters, see the note to regulation 6 of these regulations.

PART VI—LOCAL RESTRICTIONS

24. No unauthorised destruction of rock oyster in Northern Area—Except as provided by the next succeeding regulation and regulation 31 hereof, no person shall at any time of the year take or destroy, or attempt to take or destroy, any rock oyster in the Northern Area.

25. Authority to destroy rock oysters—It shall be lawful for any person in the employ of [the Ministry of Agriculture and Fisheries] and acting under the direction of [the Director-General] or a fishery officer to take rock oysters for disposal in accordance with the requirements of [the Ministry of Agriculture and Fisheries].

The references to the Ministry of Agriculture and Fisheries were substituted for references to the Marine Department by s. 6 (2) (b) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

The reference to the Director-General was substituted for a reference to the Secretary or a Superintendent by s. 6 (2) (c) and (d) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

26. Minimum size to be taken in Southern Area—No person shall in any part of the Southern Area take or have in his possession any oyster that can be passed through a rigid circular metal ring having a clear inside diameter of [58 mm].

The expression “58 mm” was substituted for the expression “2¼ in.” (as amended by regulation 3 of S.R. 1969/12) by regulation 2 of S.R. 1975/191.

27. Return to water of undersize oyster—It shall be a defence to any person charged with taking or having in his possession any oyster in breach of the last preceding regulation if he proves that on taking the same he immediately returned it alive to the water whence it was taken.

28. Restriction on taking oysters in Marlborough Sounds, Admiralty, Tasman and Golden Bays and adjoining islands—(1) No person shall for any purpose dredge for, fish for, or in any way take or attempt to take oysters in or from the waters described in subclause (6) of this regulation during the period between the 1st day of November in any year and the 31st day of May in the next following year, both days inclusive.

(2) No person shall for purposes of sale dredge for, fish for, or in any way take or attempt to take oysters in or from the waters described in subclause (6) of this regulation at any time.

(3) No person shall sell or offer for sale or have in his possession for purposes of sale any oysters taken from the waters described in subclause (6) of this regulation.

(4) No person shall in any one day, computed from midnight to midnight, take in or from the waters described in subclause (6) hereof more than 12 dozen oysters.

(5) No person shall on any day computed from midnight to midnight use for the purpose of taking oysters in or from the waters described in subclause (6) hereof any boat by means of which during that day 12 dozen oysters have been taken.

(6) The waters referred to in the preceding subclauses of this regulation are the following, namely:

(a) All those waters lying within **[3 nautical miles]** of that part of the coast of the South Island which commences at Rununder Point and extends thence northward by way of Tory Channel, Queen Charlotte Sound, Pelorus Sound, Admiralty Bay, Tasman Bay, Golden Bay to the point of Farewell Spit:

(b) All those waters lying within **[3 nautical miles]** of the coast of any of the following islands—namely, Arapawa Island, Nukuaiata Island, Chetwode Island, Rangitoto Islets, and D'Urville Island—being islands lying off that part of the coast of the South Island which is described in paragraph (a) of this subclause.

In subclause (6) (a) and (b) the words "3 nautical miles" were substituted for the words "one marine league" by regulation 2 of S.R. 1975/191.

See regulation 15 of these regulations.

29. Authorised taking of oysters in Marlborough Sounds, Admiralty, Tasman and Golden Bays and adjoining islands—Regulation 26 and subclauses (1) and (2) of regulation 28 hereof shall not apply to any person taking oysters for the purpose of piscicultural research and under the express written direction of **[the Director-General]** and subject to any conditions imposed in such direction or to oysters taken pursuant to a direction so given.

The reference to the Director-General was substituted for a reference to the Secretary by s. 6 (2) (c) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

[29A. No possession of oyster dredge on boat during close season in Southern Area]—(1) No person shall during the close season in any part of the Southern Area be in possession of an oyster dredge aboard a vessel in that part except with the written permission of an Inspector and subject to conditions approved by him.

(2) For the purposes of this regulation the term "vessel" includes any ship or boat or any other description of vessel used or designed to be used in navigation.

(3) For the purposes of this regulation an oyster dredge on any vessel shall be deemed to be in the possession of the person for the time being in charge of the vessel. **]**

This regulation was inserted by regulation 2 of S.R. 1951/79.

PART VII—OYSTER FISHERIES FOR MAORIS

30. Maori oyster fisheries—The following areas shall be Maori oyster fisheries:

(a) (i) All that part of the foreshore surrounding the area of land known as Jones Peninsula in Whangaroa Harbour as shown

outlined in red on plan marked M.D. 8437, and deposited in the office of [the Ministry of Agriculture and Fisheries] at Wellington:

- (ii) All that part of the foreshore in Whangaroa Harbour commencing at a point approximately [0.8 km] from the easternmost point of Middle Head and thence following the coastline in a northerly and westerly direction for approximately [1.6 km], and then in an easterly direction for approximately [0.8 km] as is shown outlined in red on plan marked M.D. 8437, and deposited in the office of [the Ministry of Agriculture and Fisheries] at Wellington, the boundaries of which area are marked by posts painted white and marked "Maori Oyster Fishery":
- (b) That part of the foreshore of the Mongonui Inlet of the Bay of Islands fronting the Toatoa and Te Mamaku Blocks, as shown outlined in red on plan marked M.D. 4465, and deposited in the office of [the Ministry of Agriculture and Fisheries] at Wellington, the boundaries of such area being marked by posts painted red and marked "Maori Oyster Boundary":
- (c) That part of Whangaruru Harbour inside a straight line drawn from Kerikeri Point to Tokitoki Point:
- (d) The following areas of Kaipara Harbour—viz, (i) the Arapaoa River between Wakaiti and Tahupo Creek; (ii) the Arapaoa and Otamatea Rivers between Te Kopua Point and Waipako; (iii) the Otamatea River between Batley Wharf and Tanoa Point; (iv) Paparoa Point and Onoke Point; (v) the Orua-wharo River between Rackau Wharf and Waingopai Creek; (vi) the Northern Wairoa River between Pouto Wharf and Sail Point, as shown outlined in red on plan marked M.D. 7136, deposited in the office of [the Ministry of Agriculture and Fisheries] at Wellington, the boundaries of such areas having been marked by posts painted white and marked "Maori Oyster Reserve Boundary":
- (e) The portions of the tidal waters at the Needles, Waiuku, in Manukau Harbour which are coloured red on plan marked M.D. 2490, which is deposited in the office of [the Ministry of Agriculture and Fisheries] at Wellington, the boundaries of such area being marked by posts painted white and marked "Maori Oyster Reserve Boundary".

In paras (a) (i) and (ii), (b), (d) and (e) the reference to the Ministry of Agriculture and Fisheries was substituted for a reference to the Marine Department by s. 6 (2) (b) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

In para (a) (ii) the expression "0.8 km" was substituted in 2 places for the words "half a mile", and the expression "1.6 km" was substituted for the expression "1 mile", by regulation 2 of S.R. 1975/191.

31. Taking of oysters by Maori for his own food—Regulation 24 shall not apply to a Maori taking for his own food oysters from a Maori oyster fishery at a time not falling within a close season.

32. No trading in oysters from Maori oyster fishery—No Maori or other person shall sell, purchase, or barter any oysters taken from a Maori oyster fishery.

33. Taking oysters from Maori oyster fishery for scientific purposes—No person other than a Maori shall at any time take or attempt to take oysters from a Maori oyster fishery except for the purpose of piscicultural research and under the express written direction of the [Director-General], and subject to any conditions conferred in such direction.

The reference to the Director-General was substituted for a reference to the Secretary by s. 6 (2) (c) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

34. Only Maori to possess oysters from Maori oyster fishery—No person other than a Maori shall at any time have in his possession oysters taken from a Maori oyster fishery except oysters taken pursuant to a direction given under regulation 33 hereof.

PART VIII—PENALTY

35. Penalty for breach of regulations—Any person committing a breach of these regulations is liable to a fine not exceeding [\$100] in addition and without prejudice to any other liability by way of forfeiture of property, revocation or suspension of licence, or otherwise to which he may also be exposed.

The expression “\$100” was substituted for the expression “£50” by s. 7 of the Decimal Currency Act 1964.

SCHEDULE

Reg. 12

OYSTER RETURN

Day	Ground	Weather and Remarks	Hours Dredging*	Catch, Boxes
Sunday	_____	_____	_____	_____
Monday	_____	_____	_____	_____
Tuesday	_____	_____	_____	_____
Wednesday	_____	_____	_____	_____
Thursday	_____	_____	_____	_____
Friday	_____	_____	_____	_____
Saturday	_____	_____	_____	_____

*Time from first dredge down to last dredge up.

Boat :

Week ending : 19

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Signature of Master.

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

Certified for the purposes of section 7 of the Regulations Act 1936, this 25th day of May 1976.

P. I. WILKINSON, *Attorney-General.*

Issued under the authority of the Regulations Act 1936.

Date of notification of principal regulations in *Gazette*: 11 July 1946.

These regulations are administered in the Ministry of Agriculture and Fisheries.