

Serial Number 1946/108



THE OYSTER-FISHING REGULATIONS 1946

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.

REGULATIONS

PART I.—PRELIMINARY

1. These regulations may be cited as the Oyster-fishing Regulations 1946.
2. These regulations shall come into force on the seventh day after notification in the *Gazette* of the making hereof.
3. In these regulations, if not inconsistent with the context,—
 - “The said Act” means the Fisheries Act, 1908, and any amendments thereof :
 - “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 Marine 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 :

- “Secretary” means the Secretary to the Marine Department :
 “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 :
 “Superintendent” includes a Superintendent of Mercantile Marine appointed under the Shipping and Seamen Act, 1908, and any other officer discharging the duty of a Superintendent of Mercantile Marine.

4. 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. 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. 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.

7. 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 Sea-fisheries (Boats and Licenses) Regulations 1945* relating to the licensing, registration, and measurement of boats or vessels so used or intended to be used.

8. Any direction given by the Secretary pursuant to Regulation 17, Regulation 29, or Regulation 33 hereof may at any time be revoked by written notice from the Secretary given to the person to whom the direction was given.

* Statutory Regulations 1945, Serial number 1945/196, page 503.

PART II.—SEIZURE OF PROPERTY

9. 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. 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. 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 three 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. (1) The master of every fishing-boat, the owner of which is the holder of a license in force under the Fisheries Amendment Act, 1945, and the said Act authorizing 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 Secretary 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 Secretary 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.

PART IV.—CLOSE SEASONS

13. 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. 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.

15. The months of October, November, December, and January and the first fourteen days of 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 for any person to take oysters in the Southern Area.

16. 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. 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 Secretary and subject to any conditions imposed in such direction.

18. 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 fifteen 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. No person shall take or burn alive oysters for the purpose of converting the shells into lime.

20. No person shall use for taking rock-oysters a spade or other apparatus of which the edge or blade exceeds 2 in. in width.

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

22. 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. 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.

PART VI.—LOCAL RESTRICTIONS

24. 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. It shall be lawful for any person in the employ of the Marine Department and acting under the direction of the Secretary or a Superintendent or a fishery officer to take rock-oysters for disposal in accordance with the requirements of the Marine Department.

26. 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 $2\frac{1}{8}$ in.

27. 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. (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 clause (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 clause (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 clause (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 clause (6) hereof more than twelve 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 clause (6) hereof any boat by means of which during that day twelve dozen oysters have been taken.

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

(a) All those waters lying within one marine league 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 one marine league 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 clause.

29. Regulation 26 and clauses (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 Secretary and subject to any conditions imposed in such direction or to oysters taken pursuant to a direction so given.

PART VII.—OYSTER-FISHERIES FOR MAORIS

30. 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 Marine Department at Wellington;

- (ii) All that part of the foreshore in Whangaroa Harbour commencing at a point approximately half a mile from the easternmost point of Middle Head and thence following the coast-line in a northerly and westerly direction for approximately one mile, and then in an easterly direction for approximately half a mile as is shown outlined in red on plan marked M.D. 8437, and deposited in the office of the Marine Department 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 Marine Department 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 Oruawharo River between Raekau 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 Marine Department 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 Marine Department at Wellington, the boundaries of such area being marked by posts painted white and marked "Maori Oyster Reserve Boundary".

31. 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 Maori or other person shall sell, purchase, or barter any oysters taken from a Maori oyster-fishery.

33. 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 Secretary, and subject to any conditions conferred in such direction.

34. 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. Any person committing a breach of these regulations is liable to a fine not exceeding £50 in addition and without prejudice to any other liability by way of forfeiture of property, revocation or suspension of license, or otherwise to which he may also be exposed.

SCHEDULE
OYSTER RETURN

Day.	Ground.	Weather and Remarks.	Hours Dredging.*	Catch, in 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.

Issued under the authority of the Regulations Act, 1936.
Date of notification in *Gazette* : 11th day of July, 1946.
These regulations are administered in the Marine Department.