



## THE WHITEBAIT FISHING (WEST COAST) REGULATIONS 1994

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THOMAS EICHELBAUM, Administrator of the Government

### ORDER IN COUNCIL

At Wellington this 26th day of April 1994

Present:

HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL  
PURSUANT to sections 48 and 48A of the Conservation Act 1987, His Excellency the Administrator of the Government, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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## REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Whitebait Fishing (West Coast) Regulations 1994.

(2) These regulations shall come into force on the 28th day after the date of their notification in the *Gazette*.

**2. Interpretation**—In these regulations, unless the context otherwise requires,—

“The Act” means the Conservation Act 1987:

“Back-peg” means any yellow marker placed by the Director-General by any river specified in the Third Schedule to these regulations to indicate the upper limit for whitebait fishing:

“Confluence” means the place where any river, stream, estuary, channel, or other water meets any other river, stream, estuary, channel, or other water having a separate source and a permanent and visible flow:

“Fishing gear” includes any net, line, pot, trap, dredge, screen, apparatus, device, or thing that is used or is capable of being used for the purposes of taking whitebait; and includes any licensed structure:

“Licensed structure” means—

(a) A structure licensed under the Harbours Act 1950, or approved under section 178 of that Act, and used for the purpose of taking whitebait:

(b) A structure authorised to be used for the purpose of taking whitebait pursuant to the Resource Management Act 1991—

(i) By a regional plan or a regional coastal plan; or

(ii) By a resource consent:

“River”, “stream”, “estuary”, or “channel” means the waters of the river, stream, estuary, or channel, as the case may be; and includes all waters that are contained by natural or artificial banks:

“Screen” means a flat portable frame covered with a metallic or fabric gauze material that does not impede the flow of water:

“Tidal portion” includes all parts of a river, stream, estuary, channel, or other waters where the water level fluctuates with the tide:

“Vessel” means a ship, boat, hovercraft, raft, or vessel of any other description:

“Warranted officer” means a person who—

(a) For the time being is so appointed under section 59 of the Act; and

(b) Is acting on or in respect of any matter or thing arising, situated, or formerly situated, in the district, area, or areas, for which the person was appointed:

“Whitebait” means those fish commonly called whitebait, being—

(a) The young or fry of the following *Galaxias* species:

(i) *Galaxias maculatus* (inanga):

(ii) *Galaxias brevipinnis* (koaro):

(iii) *Galaxias argenteus* (giant kokopu):

(iv) *Galaxias postvectis* (short jawed kokopu):

(v) *Galaxias fasciatus* (banded kokopu):

(b) The young or fry of the fish (commonly known as smelt) of which the scientific name is *Retropinna retropinna*:

“Whitebait net” means any net or part of a net, contrivance, instrument, or device used or capable of being used to take the fish commonly known as whitebait.

**3. Application**—These regulations shall apply to all waters and places on the West Coast of the South Island from Heaphy Bluff (at 40° 59'S and 172° 06'E) to Puysegur Point (at 46° 09'S and 166° 36'E).

*General Restrictions*

**4. Closed season**—No person shall fish for whitebait in any waters or places to which these regulations apply during the period commencing on the 1st day of November in any year and ending with the close of the 14th day of August in the next year or be in possession of any whitebait taken from any of those waters or places during that period.

**5. Closed areas**—No person shall fish for whitebait in any of the areas specified in the First Schedule to these regulations or be in possession of any whitebait or fishing gear in any of those areas.

**6. Hours of fishing**—No person shall fish for whitebait between the hours of 8 p.m. on any day and 5 a.m. on the next day.

*Gear and Method Restrictions*

**7. Whitebait nets**—(1) No person shall use, set, or possess, in or adjacent to any river, stream, estuary, or channel, any whitebait net that—

- (a) Has a net mouth in excess of 4.5 m in circumference or perimeter measured around the inside of the net frame; or
  - (b) Has an overall length exceeding 3.5 m; or
  - (c) Has any framing material that exceeds 120 mm in width.
- (2) No person shall set or use more than one whitebait net at any time.

**8. Use of screens and diversions**—(1) No person shall—

- (a) Place on the side of the net furthest from the water's edge any screen or other item that may divert whitebait into any net; or
- (b) Place any net in such a manner that it may divert whitebait into any other net; or
- (c) Use a screen or screens in fishing for whitebait otherwise than from the water's edge at the site being fished.

(2) No person shall—

- (a) Fish for whitebait within 20 m of any tide gate, flood gate, confluence, or culvert; or
- (b) Use anywhere or have on or adjacent to any net in place in the water any device, contrivance, wing, or deflector that may be used to prevent or divert the movement of whitebait up or down stream, other than a screen that complies with and used in accordance with these regulations; or
- (c) Fish for whitebait within 20 m of any unlawful diversion constructed by any person from the bank or in the bed of a river, stream, estuary, or channel whereby whitebait may be diverted into a net.

**9. Fishing gear**—(1) Except as provided in subclause (2) of this regulation, no person shall set or use any fishing gear that exceeds more than one-third of the width of the river, stream, estuary, or channel at that place at that time.

(2) Nothing in subclause (1) of this regulation shall apply in respect of any licensed structure so long as the other fishing gear used on or from the structure complies with that subclause.

(3) No person shall set or use any fishing gear that, in conjunction with any fishing gear set or used by any other person, will exceed more than one-third of the width of any river, stream, estuary, or channel at that place at that time.

(4) No person shall set or use any fishing gear (other than a licensed structure or fishing gear used on a licensed structure) that exceeds 6 m in overall length.

(5) Every person fishing for whitebait shall remove all fishing gear (other than a licensed structure) from the water at the cessation of fishing on that day, or not later than 8 p.m., whichever is the earlier.

**10. Fishing from bridge prohibited**—No person shall fish for whitebait from any bridge.

**11. Persons to remain in vicinity of net or structure**—(1) Every person who sets or uses a whitebait net shall remain within 10 m of any such net.

(2) Every person who sets or uses a whitebait net from a licensed structure shall remain within 10 m of that licensed structure.

**12. Fishing for whitebait subject to special conditions**—No person fishing for whitebait from the rivers specified in the Second Schedule to these regulations shall—

(a) Fish for whitebait from any unlicensed structure; or

(b) Place or use any net on or from any licensed structure unless the net is placed or used in a straight line, either from the up stream or down stream edge of the licensed structure; or

(c) Set any screen beyond outer edges of any licensed structure; or

(d) Fish within 40 m of any licensed structure from which any other person is fishing, whether on the same or opposite bank as that structure.

**13. Fishing up stream from back-pegs or in non-tidal waters prohibited**—(1) No person shall fish for whitebait at any place up stream from any back-peg by the side of any river specified in the Third Schedule to these regulations.

(2) No person shall fish for whitebait outside the tidal portion of any river, stream, estuary, or channel not specified in the Third Schedule to these regulations.

**14. Fishing for whitebait from vessels prohibited**—No person shall use any vessel to fish for whitebait.

#### *General Provisions*

**15. Prohibition on possession of whitebait in conjunction with unlawful net**—No person shall be in possession of any whitebait together with any whitebait net that the person is not permitted to set or use by these regulations, whether or not that net is being used in fishing.

**16. Returning of unlawfully taken fish**—Any person engaged in fishing for whitebait shall, taking all reasonable care to ensure their survival, immediately return any fish that are unlawfully taken back into the waters from which the fish were taken.

**17. Dumping of other fish prohibited**—No person shall discard or dump on shore any fish taken when fishing for whitebait.

**18. Rivers, etc., not to be altered**—Nothing in these regulations shall be construed so as to permit any person fishing for whitebait to interfere with, alter, or modify the natural bed or banks of any river, stream, estuary, or channel.

**19. Offences**—Every person commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 who—

- (a) Contravenes, or fails to comply with, any of regulations 4 to 17 of these regulations; or
- (b) Removes any back-peg placed pursuant to these regulations; or
- (c) Takes whitebait otherwise than in accordance with any conditions imposed by the Director-General under regulation 20 (3) of these regulations; or
- (c) Takes whitebait for a hui or tangi—
  - (i) Without giving the notification required by regulation 21 (b) of these regulations; or
  - (ii) Otherwise than in accordance with any conditions imposed by the Director-General under regulation 21 (c) of these regulations.

**20. Exemptions**—(1) Notwithstanding regulations 13 and 14 of these regulations, any person may fish in any place where fishing would otherwise be prohibited by regulation 13 of these regulations or fish from a vessel, if he or she—

- (a) Is a disabled person within the meaning of the Disabled Persons Employment Promotion Act 1960, or suffers from an infirmity or chronic disability, and is unable to fish at another place or by any other means; and
- (b) Holds a current authorisation issued by the Director-General under subclause (3) of this regulation.

(2) Notwithstanding any other provision in these regulations, any person who wishes to take whitebait for the purposes of management, research, or scientific study or to take whitebait by any particular method for any such purpose, but is otherwise prevented from doing so by any provision of these regulations, may take whitebait for any such purpose or by any such method if he or she holds a current authorisation issued by the Director-General under subclause (3) of this regulation.

(3) If—

- (a) An application for an authorisation referred to in subclause (1) or subclause (2) of this regulation is in accordance with that subclause; and
- (b) The Director-General is satisfied that the grant of an authorisation in that case will not adversely affect the overall conservation and management of the fishery,—

the Director-General shall grant the authorisation; and he or she may make the authorisation subject to such conditions as he or she considers necessary for the overall conservation and management of the fishery.

(4) Every authorisation granted under subclause (3) of this regulation shall have effect according to its tenor and may be amended or revoked, as the case may require, to reflect changed circumstances.

**21. Whitebait taken for hui or tangi**—Nothing in these regulations imposing any restriction on the taking of whitebait shall apply where—

- (a) The whitebait are taken for the purposes of a hui or tangi; and
- (b) The intention to take the whitebait has been notified to a warranted officer by or on behalf of a council or committee representing any Maori community before the whitebait are taken; and
- (c) The whitebait are taken in accordance with any conditions relating to the quantity or methods of taking the whitebait, the areas where the whitebait may be taken, or the persons who may take the whitebait, being conditions that are imposed by the Director-General and considered by the Director-General to be necessary for the overall conservation and management of the fishery.

**22. Revocations**—The following regulations are hereby consequentially revoked:

- (a) The Fisheries (West Coast Whitebait Fishing) Regulations 1985 (S.R. 1985/211);
  - (b) The Fisheries (West Coast Whitebait Fishing) Regulations 1985, Amendment No. 1 (S.R. 1989/219);
  - (c) The Fisheries (West Coast Whitebait Fishing) Regulations 1985, Amendment No. 2 (S.R. 1991/149).
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## SCHEDULES

Reg. 5

## FIRST SCHEDULE

## AREAS WHERE WHITEBAIT FISHING PROHIBITED

- (a) The area of about 2.428 hectares known as Kongahu Swamp located north of Granite Creek to the east of the main road to Karamea township and approximately 6.5 km south of that township:
- (b) The Mahinapua Creek to the south side of the Hokitika River and any tributary of the Mahinapua Creek; including Lake Mahinapua and any stream running into that lake:
- (c) The south bank of the Hokitika River from a point 20 m up stream of the entrance of Mahinapua Creek to the sea:
- (d) Fisherman's Creek that enters the Hokitika River on the South Bank and any tributary of Fisherman's Creek:
- (e) The area known as the Hapuka River (including the south bank of the Turnbull River) from a point 20 m up stream from the Hapuka River to the sea:
- (f) Any tributary stream of the Waiatoto River and the waters of the Waiatoto River above the mean high-water mark:
- (g) The north bank of the Cascade River between a point 20 m upstream from Old Man Creek to the sea:
- (h) Old Man Creek:
- (i) Barn Creek that enters the Cascade River, and any tributary stream of Barn Creek:
- (j) The Awarua River above the Department of Conservation swing bridge:
- (k) All rivers, streams, and tributaries in Fiordland between Yates Point in the north and Puysegur Point in the south.

Reg. 12

## SECOND SCHEDULE

## RIVERS WHERE SPECIAL CONDITIONS APPLY

Orowaiti, Taramakau, Hokitika (proper), Waitaha, Wanganui, Poerua, Waitangi-Taona, Jacobs, Karangarua, Paringa, Moeraki (Blue), Okuru, Haast, Turnbull, Waiatoto, Arawhata, Cascade, Awarua, Ohinemaka, and Hollyford Rivers.

It should be noted that in parts of some of these rivers fishing for whitebait is totally prohibited. See the First Schedule to these regulations.

## THIRD SCHEDULE

Regs. 2, 13

## RIVERS ON WHICH BACK-PEGS ARE TO BE LOCATED

Awarua, Hollyford, Smoothwater, Cascade, Arawhata, Waiatoto, Okuru, Turnbull, Haast, Waita, Moeraki, Paringa, Mahitahi, Jacobs, Manakaiaua, Hunts, Karangarua, Omoeroa, Waitangitaona, Whataroa, Poerua, Wanganui, Waitaha, Mikonui, Totara, Hokitika, Arahura, Houhou, Waimea, Serpentine, Taramakau, New River, Grey, Punakaiki, Pororari, Fox, Okari, Nile, Buller, Orawaiti, Mokihinui, Little Wanganui, Granite Creek, Karamea, Oparara, Kohaihai, and Heaphy Rivers.

MARTIN BELL,

Acting for 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, which come into force 28 days after the date of their notification in the *Gazette*, revoke and replace the Fisheries (West Coast Whitebait Fishing) Regulations 1985.

The principal changes are—

- (a) The closed season for whitebaiting commences 1 November and ends with 14 August in the next year (*regulation 4*):
- (b) The number of whitebait nets permitted to be used from a licensed structure on any river specified in the Second Schedule is reduced from 2 to 1 (*regulation 7 (3)*):
- (c) Fishing gear used or set in conjunction with any fishing gear used or set by any other person must not exceed more than one-third of the width of the river, stream, estuary, or channel (*regulation 9 (3)*):
- (d) Fishing gear (other than a licensed structure or fishing gear used on a licensed structure) must not exceed 6 m in overall length (*regulation 9 (4)*):
- (e) No person may fish from any bridge (*regulation 10*):
- (f) Back-pegs are to be placed to indicate the upper limits of waters of rivers listed in the Third Schedule where whitebaiting is permitted (*regulation 13 (1)*):
- (g) Provision is made to grant limited exemptions to disabled persons and persons undertaking research (*regulation 20*).

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 28 April 1994.

These regulations are administered in the Department of Conservation.