

1974/194

Reprint under section 7 of the Regulations Act 1936 of the Whitebait Fishing Regulations 1964 (S.R. 1964/120), as amended by the following enactments:

Decimal Currency Act 1964, s. 7
 Amendment No. 1, S.R. 1965/143
 Amendment No. 2, S.R. 1967/125
 Amendment No. 3, S.R. 1968/160 (*Spent*)
 Amendment No. 4, S.R. 1968/225 (*Revoked by regulation 1 (2) of S.R. 1968/225*)
 Amendment No. 5, S.R. 1970/158
 Amendment No. 6, S.R. 1971/28
 Ministry of Agriculture and Fisheries Amendment Act 1972, ss. 4 (1), 6 (2)

NOTE: All references to money in decimal currency were substituted for references to money in the former currency by s. 7 of the Decimal Currency Act 1964.

THE WHITEBAIT FISHING REGULATIONS 1964 (REPRINT)

BERNARD FERGUSSON, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 12th day of August 1964

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL 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.

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REGULATIONS

PART I—PRELIMINARY

1. Title—(1) These regulations may be cited as the Whitebait Fishing Regulations 1964.

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

2. Interpretation—(1) In these regulations, unless the context otherwise requires,—

“The said Act” means the Fisheries Act 1908:

“Boat” means a boat or any other floating platform from which fishing for whitebait is conducted; and includes any punt, raft, pontoon, or other device used as a floating platform for this purpose:

“Fishery officer” means an officer appointed either under section 4 of the said Act or under subsection (1) of section 9 of the Fisheries Amendment Act 1959:

“Net” means any net, contrivance, instrument, or device used or suitable for use for taking whitebait:

“River” or “stream” means the waters of the river or stream, as the case may be:

“Take” and all references thereto include taking, catching, killing, or pursuing by any means or device; and includes attempting to take:

["Temporary stand" means a jetty or similar construction temporarily erected for the purpose of enabling the person in whose name the site of the jetty or construction is registered under Part VII of these regulations to fish for whitebait:]

"Tidal portion" includes all parts of a stream where the water level fluctuates with the tide:

"Whitebait" means the young of the [*Galaxias* species], usually known by the Maori name inanga (in the South Island frequently called inaka), and sometimes by the English name minnow.

[(2) These regulations shall not be construed so as to render unlawful the erection of any jetty or other structure or construction by the holder of a licence for that purpose under the Foreshore Licence Regulations 1960* or by any other person authorised by any other enactment.]

In subclause (1) the definition of the term "Temporary stand" was inserted by regulation 2 (1) of S.R. 1967/125.

In subclause (1), in the definition of the term "Whitebait", the words in square brackets were substituted for the words "species *Galaxias attenuatus*" by regulation 2 of S.R. 1965/143.

Subclause (2) was added by regulation 2 (2) of S.R. 1967/125.

3. Meaning of the terms "waters" and "river"—For the purposes of these regulations the waters of any district or place shall be deemed to include every mouth and outlet of every river or stream therein, and a reference, whether general or particular, to any river shall be deemed to include—

- (a) Every mouth and outlet thereof;
- (b) The seashore between those mouths or outlets; and
- (c) The waters of the sea or any harbour lying within a distance of 500 yards from any place where at low water of ordinary spring tides the waters of a river or stream meet the waters of the sea or any harbour.

PART II—CLOSE SEASON AND PROHIBITED HOURS

4. Close seasons—(1) The following periods are hereby prescribed as close seasons:

- (a) In all waters of the North Island and in all places in the North Island, from the 1st day of December in every year to the 31st day of July in the next following year (both days inclusive).
- (b) In all waters of the South Island and in all places in the South Island from the 1st day of December in every year to the 31st day of August in the next following year (both days inclusive).

(2) No person shall in any place or waters buy, sell, or have in his possession any whitebait during the closed season for the place or waters.

A proviso was added to subclause (1) (b) by regulation 2 of S.R. 1968/225, and it was revoked by regulation 1 (2) of S.R. 1968/225.

5. Defence to charge of buying, selling, or having whitebait in close season—It shall be a defence to any person charged with an offence of buying, selling, or having in possession any whitebait in a close season in any place or waters if he proves that the whitebait was not taken in the close season prescribed for the waters where it was taken.

6. Offence to take whitebait in close season—No person shall fish for or take whitebait or in any way injure or disturb whitebait in any waters during the close season for those waters.

7. Restrictions on taking whitebait at night-time—No person shall fish for or take whitebait during the period between [8 o'clock in the evening of any day and 5 o'clock on the following morning].

The words in square brackets were substituted for the words "sunset and sunrise as designated in the New Zealand Nautical Almanac and Tide Tables" by regulation 2 of S.R. 1970/158.

8. Penalty for committing offence—Any person who acts in contravention of regulation 6 hereof commits an offence and is liable to a fine not exceeding [\$200] for each such offence.

PART III—PROHIBITED PLACES

9. Fishing within 1 chain of any weir, etc., prohibited—No person shall fish for or take whitebait within 1 chain of any weir, floodgate, tidegate, bridge, bridge pier, artificial groyne, or structure otherwise than as permitted by these regulations:

【Provided that this regulation shall not be construed as prohibiting any person from fishing or taking whitebait within 1 chain of any structure in respect of which a valid licence is in force under the Foreshore Licence Regulations 1960* unless that structure causes or is likely to cause whitebait to shoal.】

The proviso was added by regulation 3 of S.R. 1967/125.

10. Fishing within 1 chain of the confluence of any river, etc., prohibited—No person shall fish within 1 chain of the confluence of any river, stream, or estuary with another river, stream, or estuary.

11. Fishing from wharf and protection work in the Buller, Grey, and Hokitika rivers—Notwithstanding the provisions of regulations 9 and 10 of these regulations it shall be lawful to fish from the main wharf and protection work in the Buller, Grey, and Hokitika Rivers on the West Coast of the South Island below the lowest bridge in each case, but no right of access is conferred by this regulation and local bylaws shall be observed.

PART IV—SIZE AND NUMBER OF NETS

12. Size of net—No person shall in fishing for whitebait use any net the mouth of which exceeds 15 ft in circumference.

13. Regulating the setting of nets—(1) No person or persons shall use a net suitable for whitebaiting in any place where the greatest

diameter of the net exceeds one-third of the width of the stream or channel at that place at that time.

【(2) Where any person has set a net on one side of the bank of any river, channel, or stream, no other person shall—

- (a) Except in the case of nets used from a site registered under regulation 32 of these regulations, use or set any net from a point at or near the point from which the first-mentioned net was set in such a manner as to cause it to lie in the water abreast or approximately abreast of that first mentioned net and as to cause one of the nets to be further from the bank than the other net:
- (b) Use or set from the opposite bank any net which is less than 10 yards from the net set from the first-mentioned bank.】

Subclause (2) was substituted for the original subclause (2) by regulation 4 (1) of S.R. 1967/125.

14. One net only to be used at any time—(1) No person shall use more than one net at any time.

(2) *Added by regulation 3 of S.R. 1965/143, and revoked by regulation 4 (2) of S.R. 1967/125.*

15. More than one net allowed at certain registered sites—Notwithstanding the provisions of regulation 14 hereof, any person fishing for whitebait in the rivers and streams set out in the First Schedule to these regulations may use more than one net if the nets are used from a registered site and in accordance with the provisions of these regulations.

PART V—USE OF BOATS

16. Conditions for fishing from boats—No person shall, in fishing for whitebait from a boat, place his net in the water or use a boat as a platform from which to fish, unless the boat is securely moored fore and aft so as to lie as close as possible along and parallel to the bank.

17. Restrictions on fishing from boats—No person shall in fishing for whitebait use or set his net from a boat or use any boat as a platform from which to fish, if the shortest distance measured from the outside margin of the net across the boat to the bank along which the boat is moored exceeds one-third of the width of the stream at that place at that time.

18. No fishing from boats where river less than 20 ft in width—No person shall fish for whitebait from a boat or use any boat as a platform from which to fish for whitebait in any place where and at any time when the waters of the river or stream are less than 20 ft in width.

19. No fishing from boat within 1 chain of weir, etc.—No person shall use a boat in fishing for whitebait within a distance of 1 chain from any weir, floodgate, tidegate, bridge, bridge pier, or jetty or from the confluence of one river or stream with another.

20. Use of artificial structure or deflector prohibited—No person shall use any artificial structure or deflector in fishing for whitebait from any boat, or use any boat as a deflector or otherwise in conjunction with any artificial structure for the purpose of fishing for whitebait.

PART VI—PROHIBITED METHODS

21. Fisherman to be within 10 yards of net—No person shall leave a net suitable for catching whitebait in water where whitebait may enter unless he himself is in attendance within 10 yards of the net.

22. Interference with natural bed or banks of river, etc., prohibited—No person shall in fishing for whitebait interfere with, or alter, or modify the natural bed or banks of any river, channel, or stream.

23. Restriction on use of certain devices for fishing—No person shall, for the purpose of catching whitebait, use any of the following devices, namely:

- (a) The device known as a jigger or stirrer, being a contrivance of metal or other substance placed in the water to turn fish into a net, or any similar device or any device having a similar effect:
- (b) A groyne, shingle bank, or wall constructed from the bank or in the bed of a river or stream whereby fish may be diverted into a net, except a screen that complies with regulation 26 hereof:
- (c) Any other device, contrivance, wing, deflector, or boat that tends to prevent or divert the movement of whitebait up or down stream.

24. Restriction of use of net in certain cases—No person shall fish for or take whitebait by means of, or use in fishing for whitebait, any net that is used or placed in conjunction with a device of a kind described in regulation 23 hereof.

25. Use of prohibited device lawful in certain cases—It shall be a defence to a person charged with a breach of any of the provisions of regulations 22, 23, and 24 hereof, if he proves that the use of the device to which the charge relates was lawful under the provisions of Part V or Part VII of these regulations.

PART VII—PERMITTED STRUCTURES

26. Use of flat portable screen in certain cases—(1) It shall be lawful to use in fishing for whitebait in the tidal portion only of any river, estuary, or stream, the waters of which exceed 20 ft in width, a flat portable screen subject to the following conditions:

- (a) It shall be used only at right angles to the direction of the flow of the river, stream, or estuary at that place at that time:
- (b) It shall be used only between the net and the water's edge at the site being fished:

[(c) The combined length of the screen plus the net shall not extend more than one-third of the way across any river, channel, or stream at that place at that time, and except [in the case of screens]] used from a site registered pursuant to regulation 32 of these regulations, no screen shall exceed 10 ft in length:]

(d) It shall be completely removed from the water each day on cessation of fishing and not later than [8 o'clock in the evening].

[(1A) Notwithstanding anything to the contrary in subclause (1) of this regulation, 2 or more screens may be used at a site registered under regulation 32 of these regulations so long as they are placed only in each of the spaces between the nets authorised to be used from the site and the water's edge.]

(2) It shall be lawful to use in conjunction with any temporary stand or jetty permitted to be erected by these regulations the portable screen [or screens] provided for in this regulation.

In subclause (1), para. (c) was substituted for the original para. (c) by regulation 4 of S.R. 1965/143.

In subclause (1) (c) the words in double square brackets were substituted for the words "in the case of a screen" by regulation 2 (2) (a) of S.R. 1971/28.

In subclause (1) (d) the words in square brackets were substituted for the word "sunset" by regulation 2 (2) (b) of S.R. 1971/28.

Subclause (1A) was inserted by regulation 2 (1) of S.R. 1971/28.

In subclause (2) the words "or screens" were inserted by regulation 2 (2) (c) of S. R. 1971/28.

27-30. Revoked by regulation 5 of S.R. 1967/125.

31. Fishing in certain West Coast rivers—It shall be lawful in fishing for whitebait in the tidal portion of rivers and streams set out in the First Schedule to these regulations to construct or use a temporary stand . . . on a registered fishing site which is marked with a peg or post bearing in distinct permanent characters the name of the person by whom the site is registered.

The words "or structure" were omitted by regulation 6 (1) of S.R. 1967/125.

32. Registration of temporary stand used on certain West Coast rivers—The site of every [temporary stand] for use in fishing for whitebait in the tidal portion of any of the rivers included in the First Schedule to these regulations shall be registered in accordance with the following provisions:

- (a) Every person seeking to register the site of a [temporary stand] shall make application in that behalf to the fishery officer in such form as may be required by [the Director-General of Agriculture and Fisheries]:
- (b) On receipt of an application in approved form to register a site, the fishery officer shall, subject to the provisions of these regulations, register the site in the name of the applicant therefor and shall issue to such person a certificate in which any conditions not inconsistent with these regulations and as may be determined by the fishery officer may be specified:

- (c) The fishery officer shall either, in the certificate of registration issued in pursuance of this regulation or otherwise as he may determine as best meeting the circumstances in any particular case or on any particular river or stream, specify or mark by reference to any map, sketch, mark, or otherwise as he may determine the location of a site registered in pursuance of this regulation:
- (d) No fishing shall be carried out from any registered site except in compliance with the provisions of these regulations and any special conditions specified in the certificate issued in pursuance of this regulation:
- (e) Subject to the provisions of this regulation sites shall be allocated in order of the date of receipt of applications:
 Provided that where more than one application is received in respect of the same site registration shall be determined by ballot held in the presence of a Justice of the Peace or a police constable not being a fishery officer:
- (f) **Every person** who had a site registered on the 14th day of November in the year immediately preceding that of his application shall have prior claim to register the site if he makes application to register the site not later than the 15th day of August in the year of his application:
 Provided that this paragraph shall not apply in the case of a person convicted for an offence against these regulations in respect of fishing from such site during the preceding 12 months:
- (g) If a site registered not later than the 1st day of September in any year is not used as an effective stand by the 14th day of September next following, the registration shall become void:
- (h) If during the open season the person in whose name a site is registered does not use it for whitebait fishing on at least 4 days each week during the open season, unless prevented by illness, floods, or other reason which the fishery officer considers sufficient, the registration shall become void and the fishery officer shall give notice in writing to the holder accordingly:
- (i) A site, the registration of which has become void, may thereupon be registered by any person to whom the same is allotted by the fishery officer:
- (j) No site may be registered by any person under school leaving age:
- (k) A site may be registered by a husband and wife jointly:
- (l) Except as provided by paragraph (k) of this regulation, a site may be registered only by a single individual, and no individual or husband and wife may register more than one site:
- (m) Unless registration becomes void as hereinbefore provided, it shall remain in force until the commencement of the next close season after registration:
- (n) No site shall be registered within 1 chain of the confluence of any river, stream, or estuary with another river or stream.

The words "temporary stand", wherever they appear in square brackets, were substituted for the words "stand or structure" by regulation 6 (3) of S.R. 1967/125.

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

In para. (f) the words in square brackets were substituted for the words "The person who last registered a site" by regulation 3 of S.R. 1970/158.

33. Fisherman to produce on request evidence of registration of certain sites—(1) Every person engaged in fishing for whitebait from a registered site on any of the rivers referred to in the First Schedule to these regulations shall, on demand by a fishery officer, produce evidence of the site having been registered in his name.

(2) Every person engaged in fishing for whitebait from a registered site on any rivers referred to in the First Schedule to these regulations shall, on demand by a fishery officer, give legibly and clearly a specimen signature.

34. Change of registered site—Any person wishing to change his registered site during the season shall make fresh application and shall not commence fishing on the new site until he receives notice in writing from the fishery officer that the new site has been registered in his name and the registration of the previous site has been cancelled.

35. Provisions as to temporary stand—No person shall in fishing for whitebait in the rivers and streams set out in the First Schedule to these regulations construct or use a [temporary stand] otherwise than in accordance with the following provisions:

- (a) No person shall construct or use a [temporary stand] unless it is on a site for the time being registered as hereinbefore provided:
- (b) No person shall use more than one [temporary stand] on any registered site:
- (c) Except as provided by paragraph (d) of this regulation, no person shall use a [temporary stand] except the person by whom the site is for the time being registered:
- (d) A site registered by a husband and wife jointly may be used by either or both of them:
- (e) No person shall at any registered site operate or place in a registered [temporary stand] more than 6 nets, excepting that a lesser number may be prescribed as a condition in respect of any river in the registration certificate, as the fishery officer may determine:
- (f) No person shall place outside the net or nets any wing, deflector, or other contrivance which tends to divert whitebait into his net or nets:
- (g) No person shall erect or use a [temporary stand] at any place where the width of the waters of the stream or channel at low water of ordinary spring tides is less than 10 ft, and in no case shall the fishing device, inclusive of nets, extend across more than one-third of the width of the waters of that stream at that place at that time:
- (h) No person shall erect or use any [temporary stand] that extends in any direction other than at right angles to the direction of the flow of the stream at high water:

- (i) No person shall erect or use any **【temporary stand】**, inclusive of net or nets, that extends more than one-third of the way across the waters of the river, channel, or stream, at any time, and measured from the edge of the water at that place at that time:
- (j) Unless otherwise specifically authorised in pursuance of regulation 32 hereof, no person shall erect or use any **【temporary stand】** within 2 chains of any other registered site on the same or opposite bank:
- (k) No person shall in the Orowaiti River erect or use any **【temporary stand】** longer than 20 ft:
- (l) No person holding a current certificate of registration of a site under the provisions of these regulations shall engage in fishing for whitebait elsewhere than from his registered site on the river or stream to which his registration applies:
- (m) The registered owner of any site registered under these regulations shall, within 14 days after the end of the open season remove any **【temporary stand】** on the registered site, unless the fishery officer otherwise grants permission in writing for the **【temporary stand】** to remain:
【Provided that, if he ceases fishing before the end of the open season, he shall remove the said stand within 14 days after the last occasion on which he fishes for whitebait during that season, unless the fishery officer otherwise grants permission in writing for the stand to remain:】
- (n) If any person fails to comply with the provisions of paragraph (m) of this regulation, the Minister may cause the **【temporary stand】** to be removed and the site restored to its original condition, and all costs incurred in the removal and restoration shall be paid by the person registering the site and may be recoverable as a debt due to the Crown:
- 【(o) The understructure of the 【temporary stand】 shall not consist of stakes other than those required to support a plank or platform on which the fisherman may stand:**
- (p) The **【temporary stand】** shall not be so constructed as to obstruct the flow of water or divert the movements of whitebait:
- (q) The **【temporary stand】** shall not cause or tend to cause erosion or accretion to the banks of the river:】
- 【(r) The person constructing the temporary stand shall at all times be the occupier for the purposes of the Occupiers Liability Act 1962.】**

The words "temporary stand", wherever they appear in square brackets, were substituted for the words "stand or structure" by regulation 6 (3) of S.R. 1967/125.

In para. (m) the proviso was added by regulation 4 of S.R. 1970/158.

Paras. (o)–(q) were added by regulation 5 of S.R. 1965/143.

Para. (r) was added by regulation 6 (4) of S.R. 1967/125.

36. Limitation of fishing rights in certain West Coast rivers—In the rivers and streams set out in the First Schedule to these regulations no person occupying a registered site may fish for whitebait elsewhere than from that site, and no other person shall fish for whitebait within 2 chains of a registered site.

37. Decision of fishery officer final on disputes as to site, etc.—In the case of dispute as to site, distance apart, or other circumstance relating to a registered site, the decision of the fishery officer shall be final and binding on all parties.

38. *Revoked by regulation 2 of S.R. 1968/160.*

39. Registration not to give right of access—No registration made under these regulations shall confer any right of access to or across private or Crown property or property under the control of a local body.

40. No transfer of registered site permitted—The registration of a site granted in pursuance of these regulations may not be transferred to any other person and any person who purports to transfer a registered site commits an offence against these regulations.

PART VIII—CONSERVATION AREAS

41. Fishing prohibited in certain areas—No person shall fish for, take, injure, or disturb whitebait or place a net suitable for whitebaiting in any stream or area set out in the Second Schedule to these regulations.

42. Penalty for fishing in prohibited areas—Any person who acts in contravention of regulation 41 hereof commits an offence and is liable on conviction to a fine not exceeding **£200**.

PART IX—MISCELLANEOUS

43. Taking whitebait in compliance with regulations shall be a defence to any charge—It shall be a defence to a person charged with an offence amounting to the use of a net contrary to any other regulations in force made under the said Act if he proves that he was using the net solely for the purpose of taking whitebait in compliance with these regulations.

44. Lawful for fishery officer to seize whitebait and fishing gear—
(1) It shall be lawful for any fishery officer to seize and take possession of all whitebait which he has reason to believe have been unlawfully taken, and also all nets, receptacles, gear, and other apparatus which are being used in contravention of these regulations, and whether or not the owner or user is present when the offence is detected.

(2) The production by any fishery officer of his warrant of appointment, if applicable, shall be sufficient authority for his acting in accordance with the provisions of regulation 44 hereof.

45. Offence to act in contravention of regulations—Every person commits an offence against these regulations who, without lawful excuse, acts in contravention of, or fails to comply with, any provision of these regulations.

46. Penalty for breach of regulations—Except as otherwise expressly stated in these regulations, every person who commits a breach of these regulations shall be liable on summary conviction to a fine not

exceeding [\\$100], in addition and without prejudice to any other liability by way of forfeiture of property to which he may also be exposed.

47. Revocation—The Whitebait Fishing Regulations 1951 are hereby revoked.

SCHEDULES

Regs. 31-33, 35, 36 FIRST SCHEDULE

WEST COAST (SOUTH ISLAND) RIVERS AND STREAMS, OR TRIBUTARIES OF THOSE RIVERS OR STREAMS, ON WHICH REGISTERED SITES ARE PERMITTED IN THE TIDAL PORTION ONLY IF THEY ARE IN ACCORDANCE WITH THE PROVISIONS OF PART VII OF THESE REGULATIONS

	River	District
Orowaiti River	Westport
Taramakau River	Greymouth
Arahura River	} Hokitika
Hokitika River (proper)	
Totara River	} Ross
Mikonui River	
Waitaha River	
Wanganui River	
Poerua River	
Whataroa River	} Whataroa
Waitangi-Taona River	
Salt Water Creek	
Karangarua River	
Manakai-Aua River	
Hunts Beach	} Haast
Jacobs River	
Mahitahi River	
Ohinamaka River (Black River)	
Paringa River	
Moeraki River (Blue)	
Waita River (Maori)	
Haast River	
Okuru River	
Turnbull River	
Waiatoto River	
Arawata River	
Cascade River	
Awarua River	
Hollyford River	
Kaipo River	

This schedule was substituted for the original First Schedule by regulation 7 of S.R. 1967/125.

SECOND SCHEDULE

Reg. 41

CLOSED AREAS FOR CONSERVATION PURPOSES ON THE WEST COAST
(SOUTH ISLAND)

1. The Mahinapua Creek on the south side of the Hokitika River, and any tributary thereof, including Lake Mahinapua and any stream running into that lake, and including the south bank of the Hokitika River from a point 1 chain upstream of the entrance of Mahinapua Creek to the sea.

2. Fisherman's Creek on the south bank of the Hokitika River and any tributary thereof.

3. The area known as Hapuka Creek on the south bank of the Turnbull River and including the south bank of the Turnbull River from a point 1 chain upstream from the Hapuka Creek to the sea.

4. Any tributary stream of the Waitototo River and the waters of the Waitototo River above high-water mark, ordinary spring tide.

5. The area known as Old Man Creek on the Cascade River and including the north bank of the Cascade River between a point 1 chain upstream from Old Man Creek to the sea.

6. The area known as Barn Creek on the Cascade River and any tributary stream thereof.

7. All rivers, streams, and tributaries thereof which flow to the sea in Fiordland between St. Anne Point in the north and Puysegur Point in the south.

T. J. SHERRARD,
Clerk of the Executive Council.

Certified for the purposes of section 7 of the Regulations Act 1936, this 22nd day of July 1974.

A. M. FINLAY, *Attorney-General.*

Issued under the authority of the Regulations Act 1936.

Date of notification of principal regulations in *Gazette*: 13 August 1964.

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