



## THE WHITEBAIT FISHING REGULATIONS 1981

DAVID BEATTIE, Governor-General

### ORDER IN COUNCIL

At the Government Buildings at Wellington this 21st day of April 1981

Present:

THE RIGHT HON. D. S. THOMSON 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.

#### ANALYSIS

1. Title and commencement
2. Interpretation
3. Meaning of the terms "waters" and "river"

#### PART I

##### CLOSE SEASON AND PROHIBITED HOURS

4. Close season
5. Defence to charge of buying, selling, or having whitebait in close season
6. Offence to take whitebait in close season
7. Restrictions on taking whitebait at night-time

#### PART II

##### PROHIBITED PLACES

8. Fishing from certain places prohibited
9. Fishing from wharf and protection work in the Buller, Grey, and Hokitika rivers

#### PART III

##### SIZE AND NUMBER OF NETS

10. Size of net
11. Regulating the setting of nets
12. One net only to be used at any time
13. More than one net allowed at certain registered sites

#### PART IV

##### PROHIBITED METHODS

14. Fisherman to be within 10 m of net
15. Interference with natural bed or banks of river
16. Restriction on use of certain devices for fishing
17. Restriction of use of net in certain cases
18. Use of prohibited method or device lawful in certain cases

#### PART V

##### PERMITTED DEVICES

19. Use of screen in certain cases

#### PART VI

##### PROVISIONS RELATING TO FISHING IN WEST COAST RIVERS

20. Meaning of "fishery officer"
21. Areas may be set aside for registered fishing sites
22. Applications for fishing sites
23. Persons ineligible to hold site
24. Registration of site
25. Fishing from registered sites
26. Areas may be set aside for fishing by persons other than registered site holders
27. Temporary stands
28. Registration not to give right of access

29. No transfer of registered site permitted

#### PART VII

##### MISCELLANEOUS PROVISIONS

30. Certain matters prohibited  
31. Fishery officer may seize whitebait and fishing gear

32. Offence to act in contravention of regulations

33. Penalty for breach of regulations

34. Taking whitebait in compliance with regulations shall be a defence to any charge

35. Settlement of disputes

36. Revocations  
Schedules

### REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Whitebait Fishing Regulations 1981.

(2) These regulations shall come into force on the 1st day of August 1981.

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

“Act” means the Fisheries Act 1908:

“Boat” includes a dinghy, launch, or other vessel; and includes any canoe, punt, raft, pontoon, or floating platform; and also includes any aircraft or hovercraft on the surface of the water:

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

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

“Open season” means that period in a year not prescribed under regulation 4 of these regulations as a close season:

“Registered site”, in relation to Part VI of these regulations, means the area (including any riverbank) identified under regulation 24 (2) of these regulations as being a registered site together with the area occupied by any temporary stand associated with the registered site:

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

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

“Temporary stand” means a jetty or similar construction erected and so constructed as to be easily dismantled, for the purpose of enabling the person in whose name the site of the jetty or construction is registered under Part VI 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 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); and

(b) The young fry of the fish of which the scientific name is *Retropinna retropinna*.

(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.

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

- (a) Every mouth and outlet of that river; and
- (b) The seashore between those mouths or outlets; and
- (c) The waters of the sea or any harbour lying within a distance of 500 m 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 I

### CLOSE SEASON AND PROHIBITED HOURS

**4. Close season**—The following periods are hereby prescribed as close seasons:

- (a) In all waters and places on 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 and places on the South Island (except the West Coast), from the 1st day of December in every year to the 31st day of August in the next following year (both days inclusive):
- (c) In all waters and places on the West Coast (South Island), from the 15th day of November in every year to the 31st day of August in the next following year (both days inclusive):
- (d) In all waters and places on the Chatham Islands, from the 1st day of March to the 31st day of November in every year (both days inclusive).

**5. Offence to take whitebait in close season**—(1) No person shall fish for or take whitebait in any waters during the close season for those waters.

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

**6. 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.

**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 on any day and 5 o'clock on the following morning.

## PART II

## PROHIBITED PLACES

**8. Fishing from certain places prohibited**—(1) No person shall fish for or take whitebait—

(a) From or within 20 m of any weir, floodgate, tidegate, bridge pier, or any structure otherwise than as permitted by these regulations:

(b) From or within 20 m of the confluence of any waters.

(2) Nothing in this regulation shall be construed as prohibiting any person from fishing or taking whitebait from or within 20 m 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.

**9. Fishing from wharf and protection work in the Buller, Grey, and Hokitika rivers**—Notwithstanding regulation 8 of these regulations, but subject to local bylaws, it shall be lawful to fish from the main wharf and protection work in the Buller, Grey, and Hokitika Rivers on the West Coast below the lowest bridge in each case, but no right of access is conferred by this regulation.

## PART III

## SIZE AND NUMBER OF NETS

**10. Size of net**—(1) No person shall in fishing for whitebait from a temporary stand use any net the mouth of which exceeds 4.5 m in circumference or perimeter measured around the inside of the net frame, and in no case shall the frame material exceed 12 cm in width.

(2) No person shall in fishing for whitebait from any place other than a temporary stand use any net the mouth of which exceeds 4.5 m in circumference or perimeter measured around the outside of the net frame.

**11. Regulating the setting of nets**—(1) No person or persons shall use a net suitable for whitebaiting in any place where the greatest diameter or width 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 22 of these regulations, use or set any net adjacent to the first-mentioned net and further from the bank than the other net:

(b) Use or set from the opposite bank any net which is less than 10 m from the net set from the first-mentioned bank.

(3) Where a net is used or set with a screen or screens, the net shall be placed at right angles to the flow of the river.

**12. One net only to be used at any time**—No person shall use or set more than one net at any time.

**13. More than one net allowed at certain registered sites**—Notwithstanding regulation 12 of these regulations, 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 IV

### PROHIBITED METHODS

**14. Fisherman to be within 10 m of net**—No person shall set or place a net suitable for catching whitebait in water where whitebait may enter unless he himself remains in attendance within 10 m of the net.

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

**16. Restriction on use of certain devices for fishing**—No person shall, for the purpose of taking whitebait, use any of the following devices:

- (a) The device known as a jigger or stirrer, being a contrivance of metal or other substance used to divert whitebait in to a net, or any similar device or any device having a similar effect:
- (b) A groyne, shingle bank, or stone wall constructed from the bank or in the bed of a river or stream whereby whitebait may be diverted in to a net:
- (c) Any other device, contrivance, wing, or deflector that tends to prevent or divert the movement of whitebait up or down stream except a screen that complies with regulation 19 of these regulations:
- (d) Any boat.

**17. 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 16 of these regulations.

**18. Use of prohibited method or device lawful in certain cases**—It shall be a defence to a person charged with a breach of any of the provisions of regulations 15, 16, or 17 of these regulations if he proves that the use of the method or device to which the charge relates was lawful under the provisions of Part V of these regulations.

## PART V

### PERMITTED DEVICES

**19. Use of screen in certain cases**—(1) It shall be lawful to use a screen or screens in fishing for whitebait in any waters which exceed 6 m in width, if—

- (a) Where the screens are not used on a temporary stand, the screens are used only at right angles to the direction of the flow of any waters at that place at that time:

- (b) The screens are used only from the net to the water's edge at the site being fished:
- (c) The combined length of the screens plus the net does not extend more than one-third of the way across any waters at that place at that time, and, except in the case of screens used from a site registered pursuant to regulation 24 of these regulations, the combined length of the screens does not exceed 3 m in length:
- (d) The screens are completely removed from the water each day on cessation of fishing and not later than 8 o'clock in the evening.

(2) Notwithstanding anything to the contrary in subclause (1) of this regulation, 2 or more screens may be used at a site registered under regulation 24 of these regulations if they are placed only in each of the spaces between the nets authorised to be used on the site and between the nearest net and the water's edge with a minimum of 3 m of screen in each space; but where screens are used in the space between the waters edge and the nearest net, the combined length of the screens in that space may be less than 3 m.

(3) 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.

## PART VI

### PROVISIONS RELATING TO FISHING IN WEST COAST RIVERS

**20. Meaning of "fishery officer"**—In this Part of these regulations, the term "fishery officer", in relation to the registration of any site, means the fishery officer specified in the First Schedule to these regulations to whom applications for registered sites on that river are addressed; and includes the delegate of that fishery officer if the delegate is a fishery officer within the meaning of section 2 (1) of the Act.

**21. Areas may be set aside for registered fishing sites**—(1) The fishery officer shall, from time to time, set aside in any river specified in the First Schedule to these regulations such area as he may designate for the purpose of having fishing sites available for registration within that area.

(2) Before the commencement of the open season in any year, the fishery officer shall determine the number of fishing sites available for registration in each of the areas he has set aside pursuant to subclause (1) of this regulation.

**22. Applications for fishing sites**—Every fishing site determined pursuant to regulation 21 of these regulations shall be disposed of in accordance with the following provisions:

- (a) Any person who has held the registration of any fishing site for any period during each of the 3 consecutive seasons immediately before the commencement of these regulations shall be classified as a preferential applicant in respect of a site:

- (b) Any person classified as a preferential applicant in respect of a specified fishing site may have such site allocated to him and registered in his name if an application form supplied by the Ministry for the purpose is received by the fishery officer by the first Monday in July before the commencement of each open season:
- (c) Applications for the allocation of fishing sites other than those allocated to preferential applicants shall be invited by way of an advertisement which the fishery officer shall cause to be inserted in a newspaper circulating in the district where the area of the fishing sites is located, such advertisement to be published on the first Wednesday in July before the commencement of each open season and to specify a date, being not later than 14 days after the date of publication, by which applications on a form supplied by the Ministry of Agriculture and Fisheries for the purpose shall be required to be received:
- (d) If the number of applications exceeds the number of available fishing sites, the fishery officer shall, as soon as practicable after the closing date for receipt of applications, hold a ballot of those applications, such ballot to be held in the presence of a Justice of the Peace or a police constable not being a fishery officer:
- (e) Where any ballot is required to be held under this regulation, the fishery officer shall draw as many names of applicants as correspond to the number of available fishing sites, and shall, as soon as practicable after holding the ballot, allocate a fishing site to each successful applicant and register the site in his name:
- (f) Where any ballot is held and a successful applicant surrenders his right to the allocation of a fishing site, another ballot shall be held, if necessary, of persons who had applied unsuccessfully for a site for that season on that river and who have not had any site allocated to them:
- (g) Any person who has had a specified site registered in his name for one season and who is successful in a ballot for a site in the next succeeding season shall be entitled to have the specified site registered in his name for that season.

**23. Persons ineligible to hold site**—(1) Notwithstanding regulation 22 of these regulations, no person shall be eligible for registration of a site in his name for any reason if, during any time during the 12 months preceding the commencement of that season, he had been convicted of an offence against these regulations.

(2) If any person classified as a preferential applicant under regulation 22 (a) of these regulations is convicted of an offence against these regulations, he shall cease to be so classified for the purpose of allocating sites in respect of all seasons commencing subsequent to the date of his conviction.

(3) No site may be registered by any person under the age of 15 years.

**24. Registration of site**—(1) 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 the applicant a certificate in which any conditions not inconsistent with these regulations and as may be determined by the fishery officer may be specified.

(2) 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 or waters—

(a) 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:

(b) If he thinks fit, require the applicant to mark the site either with a peg or post bearing the applicants' surname and initials and site number or other specified method.

(3) A site may be registered by a husband and wife jointly.

(4) Except as provided by subclause (3) of this regulation, a site may be registered only by an individual, and no individual, or husband and wife with joint registration, may register more than one site.

(5) Unless registration is sooner surrendered or cancelled, it shall remain in force until the commencement of the next close season after registration:

(6) If a registered fishing site has become through flood, change in course of the river, or any other reason, unable to be fished, the person in whose name the site is registered may surrender the registration and may apply for the allocation of another site.

(7) If the fishery officer is satisfied that because of the reasons referred to in subclause (6) of this regulation, the site is unable to be fished, and if another site is available for registration, he shall allocate such other site to the applicant and register it in his name.

(8) If more than one application pursuant to this subclause is received at any one time, and there are insufficient sites available for allocation to each applicant, the fishery officer shall hold a ballot of the applications, and the provisions of paragraphs (d) and (e) of regulation 22 of these regulations shall apply accordingly.

**25. Fishing from registered sites—**(1) No fishing for whitebait 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 pursuant to regulation 24 (1) of these regulations.

(2) Every person engaged in fishing 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 being registered in his name and shall also, if so required, give legibly and clearly, a specimen signature.

**26. Areas may be set aside for fishing by persons other than registered site holders—**(1) The fishery officer shall from time to time set aside in any river specified in the First Schedule to these regulations such area or areas as he may designate (not being any area or areas set aside under regulation 21 of these regulations for registered fishing sites).



(2) Any area set aside pursuant to subclause (1) of this regulation shall be available for whitebait fishing by persons other than those who are the holders of a fishing site registered under regulation 24 of these regulations.

(3) No fishing for whitebait shall be carried out in any of the rivers specified in the First Schedule to these regulations except in compliance with the provisions of these regulations.

**27. Temporary stands**—(1) No person shall construct a temporary stand in any river specified in the First Schedule to these regulations unless he is the holder of a fishing site registered under regulation 24 of these regulations or is acting under the direction of the holder of the site.

(2) No person shall use a temporary stand in any river specified in the First Schedule to these regulations unless he is the holder of a fishing site registered under regulation 24 of these regulations.

(3) In the construction or use of any temporary stand on any river specified in the First Schedule to these regulations the following provisions shall apply:

- (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 in whose name the site is for the time being registered:
- (d) A temporary stand on 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 temporary stand more than 4 nets, except that a lesser number may be prescribed in respect of any river as the fishery officer may determine, and such lesser number shall be stated in the registration certificate for the site:
- (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 may use a hand-held scoop net on any registered stand where any other net or nets are being set or used:
- (h) 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 3 m, 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:
- (i) 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:
- (j) 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:

- (k) No person shall erect or use any temporary stand within 40 m of any other temporary stand or registered site on the same or opposite bank:
- (l) No person shall in any river erect or use any temporary stand longer than the length specified for that river in the First Schedule to these regulations:
- (m) No person holding a current certificate of registration of a site under these regulations shall fish for whitebait elsewhere than from his registered site and no other person shall fish for whitebait within 40 m of any registered site:
- (n) The owner of any registered site shall, within 14 days after the end of the open season, remove any temporary stand from the registered site:  
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:
- (o) Any person who fails to comply with the provisions of paragraph (n) of this subclause commits an offence, and, upon conviction, the Minister shall cause the temporary stand to be removed and the site restored to its original condition, and any materials used in the construction of the stand may be confiscated and disposed of as the Minister directs, and all costs incurred in the removal of the stand and restoration of the site shall be payable by the person so convicted and recoverable in addition to any fine that may be imposed, as a debt due to the Crown:
- (p) The understructure of the temporary stand shall not consist of any stakes other than those required to support a plank or platform on which the fisherman may stand:
- (q) The temporary stand shall not be constructed so as to obstruct the flow of water or divert the movements of whitebait:
- (r) The temporary stand shall not cause or tend to cause erosion of or accretion to the banks of the river:
- (s) The holder of the registration of the site on which the temporary stand is constructed shall at all times be the occupier for the purposes of the Occupiers Liability Act 1962.

**28. 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.

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

## PART VII

### MISCELLANEOUS PROVISIONS

**30. Certain matters prohibited**—(1) No person shall fish for, take, injure, or disturb whitebait, or place a net suitable for whitebaiting, in any stream or area specified in the Second Schedule to these regulations.

(2) No person shall leave any whitebait or fish discarded from his fishing operations to lie about in the open.

(3) No person shall, without the permission of the owner, interfere with any temporary stand, fishing gear, or site marker.

**31. Fishery officer may 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 has been unlawfully taken, together with all nets, receptacles, gear, and other apparatus which he has reason to believe has been used in contravention of these regulations, 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 this regulation.

**32. 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.

**33. Penalty for breach of regulations—**Except as otherwise expressly stated in these regulations, every person who commits an offence against these regulations shall be liable on summary conviction to a fine not exceeding \$600, in addition to and without prejudice to any other liability by way of forfeiture of property to which he may also be exposed.

**34. 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 relating to the use of a net contrary to any other regulations in force made under the Act if he proves that he was using the net solely for the purpose of taking whitebait in compliance with these regulations.

**35. Settlement of disputes—**(1) In any case where a dispute or difference arises between persons fishing for whitebait, either as holders of fishing sites registered under regulation 24 of these regulations or otherwise as to any matter relating to the taking of whitebait, any party to the dispute or difference may refer it to a fishery officer.

(2) Where a dispute or difference has been referred to a fishery officer, he shall determine that dispute or difference, and his decision shall be final and binding on the parties to it.

**36. Revocations—**The regulations specified in the Third Schedule to these regulations are hereby revoked.

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## SCHEDULES

## FIRST SCHEDULE

Regs. 13, 20, 21, 25, 26, 27

West Coast (South Island) Rivers and Streams on which registered sites are permitted in the areas set aside if they are in accordance with the provisions of Part VII of these regulations.

River	Maximum permitted length of stands including nets and screens
Taramakau River	18 m
Hokitika River (proper)	30 m
Totara River	9 m
Mikonui River	9 m
Waitaha River	18 m
Wanganui River	30 m
Poerua River	9 m
Whataroa River	9 m
Waitangi-Taona River	9 m
Salt Water Creek	9 m

Applications for registered sites on the rivers and streams listed above should be made to the Fisheries Officer, Ministry of Agriculture and Fisheries, P.O. Box 162, Greymouth.

Karangarua River	18 m
Manakai-Aua River	6 m
Hunts Creek	4 m
Jacobs River	9 m
Mahitahi River	18 m
Ohinamaka River (Black River)	9 m
Paringa River	30 m
Moeraki River (Blue)	9 m
Haast River	18 m
Okuru River	18 m
Turnbull River	18 m
Waiatoto River	30 m
Arawata River	30 m
Cascade River	24 m
Awarua River	18 m
Hollyford River	24 m

Applicants for registered sites on the rivers and streams listed above should be made to the Fisheries Officer, Ministry of Agriculture and Fisheries, c/o Post Office, Haast.

## SECOND SCHEDULE

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 20 m 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 including the south bank of the Turnbull River from a point 20 m upstream from the Hapuka Creek to the sea.

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

5. The north bank of the Cascade River between a point 20 m 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 Yates Point in the north and Puysegur Point in the south.

## THIRD SCHEDULE

Reg. 36

## REGULATIONS REVOKED

Title	Statutory Regulation No.
The Whitebait Fishing Regulations 1964 .....	1964/120 (Reprinted with Amendments Nos. 1 to 6)
The Whitebait Fishing Regulations, 1964, Amendment No. 1	1974/194
The Whitebait Fishing Regulations, 1964, Amendment No. 2	1965/143
The Whitebait Fishing Regulations, 1964, Amendment No. 3	1967/125
The Whitebait Fishing Regulations, 1964, Amendment No. 5	1968/160
The Whitebait Fishing Regulations, 1964, Amendment No. 6	1970/158
The Whitebait Fishing Regulations, 1964, Amendment No. 7	1971/28
	1975/198

A. C. McLEOD,  
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 consolidate and amend the Whitebait Fishing Regulations 1964 and its amendments.

Amendments relate to the inclusion of the young or fry of *Retropinna* in the definition of whitebait, an increase in the amount of penalty payable for a breach of the regulations, and more stringent requirements in looking after set nets, the removal of set nets, and the determining of disputes by fishery officers.

Changes have also been made to the provisions relating to temporary stands, and to the registration of fishing sites on the West Coast rivers.

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 23 April 1981.

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