

**Reprint
as at 24 August 2000**



**Whitebait Fishing (West Coast) Regulations 1994
(SR 1994/66)**

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

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

These regulations are administered by the Department of Conservation.

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 Schedule 3 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 metallic or fabric gauze material that does not impede the flow of water and is capable of being used in such a way as to divert the movement of whitebait into a net, and includes any supporting frame

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

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.

Regulation 2 **screen**: substituted, on 24 August 2000, by regulation 3 of the Whitebait Fishing (West Coast) Amendment Regulations 2000 (SR 2000/132).

Regulation 2 **warranted officer**: revoked, on 15 August 1995, by regulation 2 of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).

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 15 November in any year and ending with the close of 31 August in the next year or be in possession of any whitebait taken from any of those waters or places during that period.

Regulation 4: amended, on 15 August 1995, by regulation 3(a) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).

Regulation 4: amended, on 15 August 1995, by regulation 3(b) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).

5 Closed areas

- No person shall fish for whitebait in any of the areas specified in Schedule 1 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,—
 - (a) if the fishing occurs during any period for the time being prescribed by Order in Council under section 4(1) of the Time Act 1974 when the time for general purposes in New Zealand is 1 hour in advance of New Zealand standard time, between the hours of 9 pm on any day and 6 am on the next day:
 - (b) in any other case, between the hours of 8 pm on any day and 5 am on the next day.

Regulation 6: substituted, on 15 August 1995, by regulation 4 of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).

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 use 2 or more whitebait nets at the same time.
- (3) No person shall use a whitebait net from any licensed structure while another whitebait net is being used (whether by that person or any other person) from that licensed structure.
- Regulation 7(2): substituted, on 15 August 1995, by regulation 5 of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Regulation 7(3): added, on 15 August 1995, by regulation 5 of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).

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
 - (ba) use a screen or screens whose total length exceeds 3 m in fishing for whitebait otherwise than from a licensed structure; 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 or screen 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.

Regulation 8(1)(ba): substituted, on 24 August 2000, by regulation 4 of the Whitebait Fishing (West Coast) Amendment Regulations 2000 (SR 2000/132).

Regulation 8(2)(b): amended, on 15 August 1995, by regulation 6(2)(a) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).

Regulation 8(2)(b): amended, on 15 August 1995, by regulation 6(2)(b) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).

9 Fishing gear

- (1) Except as provided in subclause (2), 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) 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) Every person fishing for whitebait on 1 or more occasions on any day shall remove all his or her fishing gear (other than a licensed structure) from the water—
 - (a) at the cessation of fishing on each occasion; or
 - (b) not later than 8 pm (or not later than 9 pm during any period referred to in regulation 6(a)) on the same day,—
 whichever is the earlier.

(5) [Revoked]

Regulation 9(4): substituted, on 15 August 1995, by regulation 7 of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).

Regulation 9(5): revoked, on 15 August 1995, by regulation 7 of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).

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 from or near structures

- (1) No person fishing for whitebait in any river 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 the outer edges of any licensed structure.
 - (2) No person fishing for whitebait in any river specified in Schedule 2 (other than the Mokihinui River) shall fish within 40 m of any licensed structure from which any other person is fishing, whether on the same or opposite bank as that licensed structure.
 - (3) No person fishing for whitebait in the Mokihinui River may fish within 40 m of any licensed structure from which any other person is fishing, whether on the same or opposite bank as the licensed structure, unless the person is fishing from another licensed structure.
- Regulation 12: substituted, on 15 August 1995, by regulation 8 of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Regulation 12(2): amended, on 24 August 2000, by regulation 5(1) of the Whitebait Fishing (West Coast) Amendment Regulations 2000 (SR 2000/132).
- Regulation 12(3): added, on 24 August 2000, by regulation 5(2) of the Whitebait Fishing (West Coast) Amendment Regulations 2000 (SR 2000/132).

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 Schedule 3.
- (2) No person shall fish for whitebait outside the tidal portion of any river, stream, estuary, or channel not specified in Schedule 3.

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; 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).

Regulation 19 (c): substituted, on 24 August 2000, by regulation 6 of the Whitebait Fishing (West Coast) Amendment Regulations 2000 (SR 2000/132).

20 Exemptions

- (1) Notwithstanding regulations 13 and 14, any person may fish in any place where fishing would otherwise be prohibited by regulation 13 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).
- (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).
- (3) If—
 - (a) an application for an authorisation referred to in subclause (1) or subclause (2) 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) 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

- [Revoked]
Regulation 21: revoked, on 15 August 1995, by regulation 10(1) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).

22 Revocations

- *Amendment(s) incorporated in the regulations.*

Schedule 1

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 500 m down stream from the State highway 6 bridge to the sea:
- (d) the area known as the Hapuka River (including any tributary stream of the Hapuka River) that extends to the sea on the south bank and to the Okuru lagoon on the north bank:
- (e) [Revoked]
- (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:
- (l) Baker Creek (a tributary of the Karamea River estuary):
- (m) Blackwater Creek (to within 200 m of the tide gate at Kongahu Swamp):
- (n) Bradshaws (Martins) Creek (a tributary of the Buller River):
- (o) Bullock Creek (a tributary of the Porarari River):
- (p) all tributaries of the Punakaiki River:
- (q) Ounatai Lagoon (a tributary of the Waitaha River):
- (r) Oneone Creek (a tributary of the Wanganui River):
- (s) Hikimutu Lagoon (a tributary of the Poerua River):
- (t) Crikey Creek (a tributary of the Haast River):
- (u) Nolans Creek (a tributary of the Okuru River):
- (v) Collier Creek (a tributary of the Turnbull River).
- Schedule 1 paragraph (c): substituted, on 15 August 1995, by regulation 9(1) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Schedule 1 paragraph (d): substituted, on 15 August 1995, by regulation 9(1) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Schedule 1 paragraph (e): revoked, on 15 August 1995, by regulation 9(1) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Schedule 1 paragraph (l): added, on 15 August 1995, by regulation 9(2) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Schedule 1 paragraph (m): added, on 15 August 1995, by regulation 9(2) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Schedule 1 paragraph (n): added, on 15 August 1995, by regulation 9(2) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Schedule 1 paragraph (o): added, on 15 August 1995, by regulation 9(2) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Schedule 1 paragraph (p): added, on 15 August 1995, by regulation 9(2) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Schedule 1 paragraph (q): added, on 15 August 1995, by regulation 9(2) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Schedule 1 paragraph (r): added, on 15 August 1995, by regulation 9(2) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Schedule 1 paragraph (s): added, on 15 August 1995, by regulation 9(2) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Schedule 1 paragraph (t): added, on 15 August 1995, by regulation 9(2) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Schedule 1 paragraph (u): added, on 15 August 1995, by regulation 9(2) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).
- Schedule 1 paragraph (v): added, on 15 August 1995, by regulation 9(2) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).

Schedule 2
Rivers where special conditions apply

Mokihinui, Orowaiti, Taramakau, Hokitika (proper), Waitaha, Wanganui, Poerua, Waitangi-Taona, Jacobs, Karangarua, Paringa, Moeraki (Blue), Okuru, Haast, Turnbull, Waitatoto, 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 Schedule 1.

- Schedule 2: amended, on 24 August 2000, by regulation 7 of the Whitebait Fishing (West Coast) Amendment Regulations 2000 (SR 2000/132).

Schedule 3

rr 2, 13

Rivers on which back-pegs are to be located

Awarua, Hollyford, Smoothwater, Cascade, Arawhata, Waitatoto, 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, Orowaiti, Mokihinui, Little Wanganui, Granite Creek, Karamea, Oparara, Kohaihai, and Heaphy Rivers.

- Schedule 3: amended, on 15 August 1995, by regulation 9(3) of the Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139).

Martin Bell,
Acting for Clerk of the Executive Council.

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

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

Contents

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Notes

1 General

- This is a reprint of the Whitebait Fishing (West Coast) Regulations 1994. The reprint incorporates all the amendments to the regulations as at 24 August 2000, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

2 Status of reprints

- Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

- A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see* <http://www.pco.parliament.govt.nz/legislation/reprints.shtml> or Part 8 of the *Tables of Acts and Ordinances and Statutory Regulations, and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

- Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- • omission of unnecessary referential words (such as “of this section” and “of this Act”)
- • typeface and type size (Times Roman, generally in 11.5 point)
- • layout of provisions, including:
 - • indentation
 - • position of section headings (eg, the number and heading now appear above the section)
- • format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- • format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)
- • position of the date of assent (it now appears on the front page of each Act)
- • punctuation (eg, colons are not used after definitions)
- • Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- • case and appearance of letters and words, including:
 - • format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - • small capital letters in section and subsection references are now capital letters
- • schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- • running heads (the information that appears at the top of each page)
- • format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 List of amendments incorporated in this reprint (most recent first)

- Whitebait Fishing (West Coast) Amendment Regulations 2000 (SR 2000/132)
Whitebait Fishing (West Coast) Regulations 1994, Amendment No 2 (SR 1995/139)

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).
