

**Reprint
as at 15 August 1995**



**Whitebait Fishing Regulations 1994
(SR 1994/65)**

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 Regulations 1994.
 - (2) These regulations shall come into force on the 28th day after the date of their notification in the *Gazette*.
- Regulation 1(1): amended, on 26 May 1994, by regulation 2 of the Whitebait Fishing Regulations 1994, Amendment No 1 (SR 1994/76).

2 Interpretation

- In these regulations, unless the context otherwise requires,—
 - the Act** means the Conservation Act 1987
 - 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
 - drag net** means any net or part of a net (including any warp, rope, chain, material, or device used in conjunction with, or attached to, the net) that—
 - (a) is weighted on the bottom edge; and
 - (b) is operated by surrounding any whitebait and being drawn over the bed of any waters or through any waters to the shore
 - 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
 - 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
 - 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.

Regulation 2 **screen**: revoked, on 15 August 1995, by regulation 2 of the Whitebait Fishing Regulations 1994, Amendment No 2 (SR 1995/140).

3 Application

- (1) Except as provided in subclause (2), these regulations shall apply to all waters and places throughout New Zealand.
- (2) Nothing in these regulations shall apply to the waters and places to which the Whitebait Fishing (West Coast) Regulations 1994 apply.

General restrictions

4 Closed season

- (1) No person shall fish for whitebait in any waters or places in the North Island or the South Island during the period commencing on 1 December in any year and ending with the close of 14 August in the next year, or be in possession of any whitebait taken from any of those waters or places during that period.
- (2) No person shall fish for whitebait in any waters or places in the Chatham Islands during the period commencing on 1 March in any year and ending with the close of 30 November in the same year, or be in possession of any whitebait taken from any of those waters or places during that period.

5 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 5: substituted, on 15 August 1995, by regulation 3 of the Whitebait Fishing Regulations 1994, Amendment No 2 (SR 1995/140).

Gear and method restrictions

6 Whitebait nets and fishing gear

- (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 any fishing gear that—
 - (a) exceeds more than one-third of the width of any river, stream, estuary, or channel at that place at that time; or
 - (b) in conjunction with any fishing gear set or used by any other person, will exceed more than one-third of the width of the river, stream, estuary, or channel at that place at that time; or
 - (c) exceeds 6 m in total length.
- (3) No person shall set or use more than 1 whitebait net at any time.
- (4) Every person who sets or uses a whitebait net shall remain within 10 m of any such net.

7 Drag nets

- (1) No person shall use, set, or possess in or adjacent to any river, stream, estuary, or channel any drag net having netting that—
 - (a) exceeds 3.5 m in length; or
 - (b) exceeds 1 m in height; or
 - (c) is not flat or contains pockets, bags, funnels, or traps when laid out on a flat surface.
- (2) No person shall use, set, or possess in or adjacent to any river, stream, estuary, or channel any drag net that has an overall length exceeding 6 m when laid out on a flat surface.

8 Net setting

- No person shall—
 - (a) fish for whitebait within 20 m of any tide gate, flood gate, confluence, or culvert; or
 - (b) fish for whitebait from any bridge.

9 Use of screens

- [Revoked]
Regulation 9: revoked, on 15 August 1995, by regulation 4 of the Whitebait Fishing Regulations 1994, Amendment No 2 (SR 1995/140).

10 Removal of fishing gear

- Every person fishing for whitebait on 1 or more occasions on any day shall remove all his or her fishing gear 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 5(a)) on the same day,—
 whichever is the earlier.
Regulation 10: substituted, on 15 August 1995, by regulation 5 of the Whitebait Fishing Regulations 1994, Amendment No 2 (SR 1995/140).

11 Fishing for whitebait from vessels prohibited

- No person shall use any vessel to fish for whitebait.

General provisions

12 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.

13 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.

14 Dumping of other fish prohibited

- No person shall discard or dump on shore any fish taken when fishing for whitebait.

15 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.

16 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 14; or
 - (b) takes whitebait otherwise than in accordance with conditions imposed under regulation 17(3); or
 - (c) takes whitebait for a hui or tangi—
 - (i) without giving the notification required by regulation 18(b); or
 - (ii) otherwise than in accordance with any conditions imposed by the Director-General under regulation 18(c).

17 Exemptions

- (1) Notwithstanding regulation 11, any person may 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 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.

18 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.

19 Revocation

- The Whitebait Fishing Regulations 1991 (SR 1991/171) are hereby consequentially revoked.

Martin Bell,
Acting for Clerk of the Executive Council.

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Notes

1 General

- This is a reprint of the Whitebait Fishing Regulations 1994. The reprint incorporates all the amendments to the regulations as at 15 August 1995, 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 Regulations 1994, Amendment No 2 (SR 1995/140)
- Whitebait Fishing Regulations 1994, Amendment No 1 (SR 1994/76)

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 Whitebait Fishing Regulations 1991.

The principal changes are---

- (a) Extension of closed season from 31 July to 14 August in each year (regulation 4):
- (b) New restrictions on size and structure of whitebait nets (regulation 6):
- (c) Restrictions on the use of drag nets (regulation 7):
- (d) Prohibition on whitebaiting in certain locations (regulation 8):
- (e) Prohibition on whitebaiting from vessels (regulation 11):
- (f) Prohibition on dumping of other fish taken while whitebaiting (regulation 14):
- (g) Provision is made to grant limited exemptions to disabled persons and persons undertaking research (regulation 17).