

Reprint
as at 3 February 2020



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

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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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Department of Conservation.

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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.

- (3) A person who contravenes this regulation commits an infringement offence and is liable to—
- (a) an infringement fee of \$400; or
 - (b) a fine imposed by a court not exceeding \$800.
- (4) Subclause (3) does not prevent the prosecution of, and conviction for, a contravention of this regulation.

Regulation 4(3): inserted, on 3 February 2020, by regulation 56 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

Regulation 4(4): inserted, on 3 February 2020, by regulation 56 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

5 Hours of fishing

- (1) 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.
- (2) A person who contravenes this regulation commits an infringement offence and is liable to—
- (a) an infringement fee of \$400; or
 - (b) a fine imposed by a court not exceeding \$800.
- (3) Subclause (2) does not prevent the prosecution of, and conviction for, a contravention of this regulation.

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

Regulation 5(2): inserted, on 3 February 2020, by regulation 57 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

Regulation 5(3): inserted, on 3 February 2020, by regulation 57 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

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.
- (5) A person who contravenes this regulation commits an infringement offence and is liable to—
 - (a) an infringement fee of \$400; or
 - (b) a fine imposed by a court not exceeding \$800.
- (6) Subclause (5) does not prevent the prosecution of, and conviction for, a contravention of this regulation.

Regulation 6(5): inserted, on 3 February 2020, by regulation 58 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

Regulation 6(6): inserted, on 3 February 2020, by regulation 58 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

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.
- (3) A person who contravenes this regulation commits an infringement offence and is liable to—
 - (a) an infringement fee of \$400; or
 - (b) a fine imposed by a court not exceeding \$800.
- (4) Subclause (3) does not prevent the prosecution of, and conviction for, a contravention of this regulation.

Regulation 7(3): inserted, on 3 February 2020, by regulation 59 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

Regulation 7(4): inserted, on 3 February 2020, by regulation 59 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

8 Net setting

- (1) 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.
- (2) A person who contravenes this regulation commits an infringement offence and is liable to—
 - (a) an infringement fee of \$400; or
 - (b) a fine imposed by a court not exceeding \$800.
- (3) Subclause (2) does not prevent the prosecution of, and conviction for, a contravention of this regulation.

Regulation 8(2): inserted, on 3 February 2020, by regulation 60 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

Regulation 8(3): inserted, on 3 February 2020, by regulation 60 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

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

- (1) 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.
- (2) A person who contravenes this regulation commits an infringement offence and is liable to—
 - (a) an infringement fee of \$400; or
 - (b) a fine imposed by a court not exceeding \$800.
- (3) Subclause (2) does not prevent the prosecution of, and conviction for, a contravention of this regulation.

Regulation 10: substituted, on 15 August 1995, by regulation 5 of the Whitebait Fishing Regulations 1994, Amendment No 2 (SR 1995/140).

Regulation 10(2): inserted, on 3 February 2020, by regulation 60 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

Regulation 10(3): inserted, on 3 February 2020, by regulation 60 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

11 Fishing for whitebait from vessels prohibited

- (1) No person shall use any vessel to fish for whitebait.
- (2) A person who contravenes this regulation commits an infringement offence and is liable to—
 - (a) an infringement fee of \$400; or
 - (b) a fine imposed by a court not exceeding \$800.
- (3) Subclause (2) does not prevent the prosecution of, and conviction for, a contravention of this regulation.

Regulation 11(2): inserted, on 3 February 2020, by regulation 60 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

Regulation 11(3): inserted, on 3 February 2020, by regulation 60 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

General provisions

12 Prohibition on possession of whitebait in conjunction with unlawful net

- (1) 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.
- (2) A person who contravenes this regulation commits an infringement offence and is liable to—
 - (a) an infringement fee of \$400; or
 - (b) a fine imposed by a court not exceeding \$800.
- (3) Subclause (2) does not prevent the prosecution of, and conviction for, a contravention of this regulation.

Regulation 12(2): inserted, on 3 February 2020, by regulation 60 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

Regulation 12(3): inserted, on 3 February 2020, by regulation 60 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

13 Returning of unlawfully taken fish

- (1) 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.
- (2) A person who contravenes this regulation commits an infringement offence and is liable to—

- (a) an infringement fee of \$400; or
 - (b) a fine imposed by a court not exceeding \$800.
- (3) Subclause (2) does not prevent the prosecution of, and conviction for, a contravention of this regulation.

Regulation 13(2): inserted, on 3 February 2020, by regulation 60 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

Regulation 13(3): inserted, on 3 February 2020, by regulation 60 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

14 Dumping of other fish prohibited

- (1) No person shall discard or dump on shore any fish taken when fishing for whitebait.
- (2) A person who contravenes this regulation commits an infringement offence and is liable to—
- (a) an infringement fee of \$400; or
 - (b) a fine imposed by a court not exceeding \$800.
- (3) Subclause (2) does not prevent the prosecution of, and conviction for, a contravention of this regulation.

Regulation 14(2): inserted, on 3 February 2020, by regulation 60 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

Regulation 14(3): inserted, on 3 February 2020, by regulation 60 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

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 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).

Regulation 16: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

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.
- (3A) A person who takes whitebait in contravention of any conditions imposed under subclause (3) commits an infringement offence and is liable to—
 - (a) an infringement fee of \$400; or
 - (b) a fine imposed by a court not exceeding \$800.
- (3B) Subclause (3A) does not prevent the prosecution of, and conviction for, a contravention of any conditions imposed under subclause (3).
- (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.

Regulation 17(3A): inserted, on 3 February 2020, by regulation 61 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

Regulation 17(3B): inserted, on 3 February 2020, by regulation 61 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

18 Whitebait taken for hui or tangi

- (1) 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.
- (2) A person who takes whitebait for a hui or tangi without giving notification as required by subclause (1)(b), or in contravention of any conditions imposed by the Director-General under subclause (1)(c), commits an infringement offence and is liable to—
- (a) an infringement fee of \$400; or
 - (b) a fine imposed by a court not exceeding \$800.
- (3) Subclause (2) does not prevent the prosecution of, and conviction for, a failure to give notification as required by subclause (1)(b), or a contravention of any conditions imposed by the Director-General under subclause (1)(c).

Regulation 18(2): inserted, on 3 February 2020, by regulation 62 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

Regulation 18(3): inserted, on 3 February 2020, by regulation 62 of the Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326).

19 Revocation

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

Martin Bell,
Acting for Clerk of the Executive Council.

Reprints notes

1 *General*

This is a reprint of the Whitebait Fishing Regulations 1994 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Conservation (Infringement Offences in Regulations) Amendment Regulations 2019 (LI 2019/326): Part 4

Criminal Procedure Act 2011 (2011 No 81): section 413

Whitebait Fishing Regulations 1994, Amendment No 2 (SR 1995/140)

Whitebait Fishing Regulations 1994, Amendment No 1 (SR 1994/76)