

Version
as at 23 December 2023



Whitebait Fishing Regulations 2021

(LI 2021/180)

Patsy Reddy, Governor-General

Order in Council

At Wellington this 5th day of July 2021

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 48 and 48A of the Conservation Act 1987 on the advice and with the consent of the Executive Council.

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

These regulations are administered by the Department of Conservation.

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Regulations

1 Title

These regulations are the Whitebait Fishing Regulations 2021.

2 Commencement

These regulations come into force as follows:

- (a) clause 2 of Schedule 1 comes into force on 1 December 2021:
- (b) clause 3 of Schedule 1 comes into force on 1 March 2023:
- (c) the rest of these regulations come into force on 15 August 2021.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Conservation Act 1987

back-peg means any marker placed by the Director-General under regulation 13(1) to indicate the upstream fishing limit for any river, stream, estuary, or channel

confluence means the place where any river, stream, estuary, channel, or other water (other than the sea) 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 thing that is used or is capable of being used for the purposes of fishing for whitebait, but does not include a licensed structure

fixed fishing gear means any fishing gear that is set to fish for whitebait, except when used from a licensed structure

licensed structure means a structure authorised to be used for the purpose of fishing for whitebait under the Resource Management Act 1991—

- (a) by a regional plan or a regional coastal plan; or
- (b) 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

vessel means a ship, boat, hovercraft, raft, or vessel of any other description

West Coast means 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)

whitebait means those fish commonly called whitebait, being—

- (a) the young or fry of the following *Galaxias* species:
 - (i) *Galaxias maculatus* (īnanga):
 - (ii) *Galaxias brevipinnis* (kōaro):
 - (iii) *Galaxias argenteus* (giant kōkopu):
 - (iv) *Galaxias postvectis* (shortjaw kōkopu):
 - (v) *Galaxias fasciatus* (banded kōkopu):
- (b) the young or fry of the fish commonly called 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 fish for whitebait, but does not include a drag net.

Regulation 3 **licensed structure**: replaced, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

4 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

5 Prohibition on fishing outside open season

- (1) A person must not fish for whitebait in any waters or places in New Zealand (other than the Chatham Islands) except in the period starting on 1 September in any year and ending with the close of 30 October in the same year, or be in possession of any whitebait taken from any of those waters or places outside of that period.
- (2) A person must not fish for whitebait in any waters or places in the Chatham Islands except in the period starting on 1 December in any year and ending with the close of the last day of February of the following year, or be in possession of any whitebait taken from any of those waters or places outside of 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.

Compare: SR 1994/65 r 4

Regulation 5: replaced, on 1 December 2021, by Schedule 1 clause 2.

6 Prohibition on fishing in closed areas

- (1) A person must not fish for whitebait in any of the areas specified in Schedule 2 or possess any whitebait or fishing gear in any of those areas.
- (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.

Compare: SR 1994/66 r 5

7 Hours of fishing

- (1) A person must not fish for whitebait,—
 - (a) if the fishing occurs during New Zealand daylight time (*see* section 4 of the Time Act 1974), 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.

Compare: SR 1994/65 r 5

Gear and method restrictions

8 Whitebait nets

- (1) A person must not 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) A person must not set or use more than 1 whitebait net at any time.
- (3) A person who sets or uses a whitebait net must remain within 10 m of any such net.
- (4) A person must not use a whitebait net from any licensed structure while another whitebait net is already in use (whether by that person or any other person) from that licensed structure.
- (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.

Compare: SR 1994/65 r 6; SR 1994/66 r 7

9 Drag nets

- (1) A person must not use, set, or possess a drag net in or adjacent to any river, stream, estuary, or channel on the West Coast.
- (2) In any other waters or places in New Zealand, a person must not use, set, or possess, in or adjacent to any river, stream, estuary, or channel, any drag net that has—
 - (a) netting that—
 - (i) exceeds 3.5 m in length; or
 - (ii) exceeds 1 m in height; or
 - (iii) is not flat or contains pockets, bags, funnels, or traps when laid out on a flat surface; or
 - (b) 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.

Compare: SR 1994/65 r 7

10 Fishing gear

- (1) A person must not set or use any fishing gear that—
 - (a) exceeds more than one-quarter of the width of any river, stream, estuary, or channel at that place at that time; or
 - (b) in conjunction with any fishing gear already set or in use by any other person, will exceed more than one-quarter of the width of the river, stream, estuary, or channel at that place at that time; or
 - (c) exceeds 6 m in total length.
- (2) A person must not set, in any river, stream, estuary, or channel, any fixed fishing gear that is located less than 20 m from any other fixed fishing gear that is already set in the river, stream, estuary, or channel.
- (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.

Compare: SR 1994/65 r 6; SR 1994/66 r 9

Regulation 10(1)(c): amended, on 1 March 2023, by Schedule 1 clause 3.

11 Use of screens and diversions

- (1) A person must not—
 - (a) use a screen or screens the total length of which exceeds 3 m in fishing for whitebait otherwise than from a licensed structure; or
 - (b) use anywhere, or have on or adjacent to any net or screen in place in the water, any device, contrivance, wing, deflector, or other thing that may be used to prevent or divert the movement of whitebait up or down-stream, other than a screen that complies with and is used in accordance with these regulations; or
 - (c) place any whitebait net in such a manner that it may divert whitebait into any other net; or
 - (d) fish for whitebait within 20 m of—
 - (i) any confluence, culvert, flood gate, groyne, outfall structure, tide gate, or weir; or
 - (ii) 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.
- (2) A person fishing for whitebait on the West Coast also must not—
 - (a) place on the side of the whitebait net furthest from the water's edge any screen or other thing that may divert whitebait into any net; or
 - (b) use a screen or screens in fishing for whitebait otherwise than from the water's edge at the site being fished.
- (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.

Compare: SR 1994/66 r 8

12 Removal of fishing gear

- (1) A person fishing for whitebait on 1 or more occasions on any day must remove all their fishing gear from the water at or before the earlier of the following:
 - (a) the end of fishing on each occasion;
 - (b) 8 pm (or not later than 9 pm during New Zealand daylight time) on the same 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.
- Compare: SR 1994/65 r 10

13 Fishing in non-tidal waters prohibited

- (1) The Director-General may place a back-peg to indicate the upstream fishing limit for any river, stream, estuary, or channel.
- (2) If a back-peg has been placed, a person must not fish for whitebait upstream of the back-peg.
- (3) If a back-peg has not been placed, a person must not fish for whitebait outside of the portion of a river, stream, estuary, or channel where the water level fluctuates with the tide.
- (4) 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.
- (5) Subclause (4) does not prevent the prosecution of, and conviction for, a contravention of this regulation.

Compare: SR 1994/66 r 13

14 Fishing for whitebait from vessels prohibited

- (1) A person must not 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.

Compare: SR 1994/65 r 11

15 Fishing for whitebait from bridge prohibited

- (1) A person must not fish for whitebait from a 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.

Compare: SR 1994/66 r 10

16 Fishing for whitebait from or near structures

- (1) This regulation applies only on the West Coast.
- (2) A person fishing for whitebait in any river must not—
 - (a) fish for whitebait from any unlicensed structure; or
 - (b) set or use any whitebait net on or from any licensed structure unless the net is placed or used in a straight line, from either the upstream or downstream edge of the licensed structure; or
 - (c) set any screen beyond the outer edges of any licensed structure.
- (3) A person fishing for whitebait in any river specified in Schedule 3 (other than the Mokihinui River) must not fish within 40 m of any licensed structure from which any other person is already fishing, whether on the same or opposite bank as that licensed structure.
- (4) A person fishing for whitebait in the Mokihinui River must not fish within 40 m of any licensed structure from which any other person is already fishing, whether on the same or opposite bank as the licensed structure, unless the person is fishing from another licensed structure.
- (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.

Compare: SR 1994/66 r 12

General provisions

17 Prohibition on possession of whitebait in conjunction with unlawful net

- (1) A person must not 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.

Compare: SR 1994/65 r 12

18 Returning of unlawfully taken fish species

- (1) Any person engaged in fishing for whitebait must, taking all reasonable care to ensure their survival, immediately return any fish species 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.

Compare: SR 1994/65 r 13

19 Dumping of other fish species prohibited

- (1) A person must not discard or dump on shore any other fish species 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.

Compare: SR 1994/65 r 14

20 Beds and banks not to be altered

Nothing in these regulations permits a person fishing for whitebait to interfere with, alter, or modify the natural bed or banks of any river, stream, estuary, or channel.

Compare: SR 1994/65 r 15

21 Offences

A person commits an offence and is liable on conviction to a fine not exceeding \$5,000 if the person—

- (a) contravenes, or fails to comply with, any of regulations 5 to 19; or
- (b) removes any back-peg authorised to be placed by these regulations; or
- (c) fishes for whitebait otherwise than in accordance with conditions imposed under regulation 22(5); or
- (d) fishes for whitebait for a hui or tangi—
 - (i) without giving the notification required by regulation 23(2)(b); or

- (ii) otherwise than in accordance with any conditions imposed by the Director-General under regulation 23(3).

Compare: SR 1994/65 r 16

22 Exemptions

- (1) Despite 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 the person—
 - (a) is a disabled person within the meaning of the Disabled Persons Community Welfare Act 1975, or has an infirmity or a 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) Despite any other provision in these regulations, a person may fish for whitebait, or use a particular method of fishing for whitebait, for the purposes of management, research, or scientific study, if they hold a current authorisation issued by the Director-General under subclause (3).
- (3) The Director-General may, on application, grant an authorisation to 1 or more named persons for the purposes of subclause (1) or (2).
- (4) The Director-General must not grant an authorisation unless satisfied that the grant of the authorisation will not adversely affect the overall conservation and management of the fishery.
- (5) An authorisation may be granted subject to such conditions as the Director-General considers necessary for the overall conservation and management of the fishery.
- (6) A person who fishes for whitebait in contravention of a condition imposed under subclause (5) 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.
- (7) Subclause (6) does not prevent the prosecution of, and conviction for, a contravention of a condition imposed under subclause (5).
- (8) An authorisation granted under subclause (3) has effect according to its terms and may be amended or revoked, as the case may require, to reflect changed circumstances.

Compare: SR 1994/65 r 17

23 Whitebait fishing for hui or tangi

- (1) This regulation does not apply to the West Coast.
- (2) A restriction on fishing for whitebait imposed by these regulations does not apply where—
 - (a) the fishing for whitebait is for the purposes of a hui or tangi; and

- (b) the intention to fish for whitebait has been notified to a warranted officer by or on behalf of a council or committee representing any Māori community before fishing takes place; and
 - (c) the fishing for whitebait is in accordance with any conditions imposed under subclause (3).
- (3) The Director-General may impose conditions on fishing for whitebait for the purposes of a hui or tangi that the Director-General considers are necessary for the overall conservation and management of the fishery, and that relate to—
 - (a) how much whitebait may be taken or the methods of fishing for whitebait; or
 - (b) the areas where whitebait may be fished; or
 - (c) the persons who may fish for whitebait.
- (4) A person who fishes for whitebait for a hui or tangi without giving notification as required by subclause (2)(b), or in contravention of any conditions imposed by the Director-General 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.
- (5) Subclause (4) does not prevent the prosecution of, and conviction for, a failure to give notification as required by subclause (2)(b), or a contravention of any conditions imposed by the Director-General under subclause (3).

Compare: SR 1994/65 r 18

24 Revocations

- (1) The Whitebait Fishing Regulations 1994 (SR 1994/65) are revoked.
- (2) The Whitebait Fishing (West Coast) Regulations 1994 (SR 1994/66) are revoked.

Schedule 1

Transitional, savings, and related provisions

r 4

Part 1

Provisions relating to these regulations as made

1 Back-pegs under Whitebait Fishing (West Coast) Regulations 1994 continued

A back-peg placed by the Director-General under the Whitebait Fishing (West Coast) Regulations 1994 that is in place immediately before the commencement of this clause must be treated as a back-peg for the purposes of these regulations.

2 Amendment coming into force on 1 December 2021

Replace regulation 5 of these regulations with:

5 Prohibition on fishing outside open season

- (1) A person must not fish for whitebait in any waters or places in New Zealand (other than the Chatham Islands) except in the period starting on 1 September in any year and ending with the close of 30 October in the same year, or be in possession of any whitebait taken from any of those waters or places outside of that period.
- (2) A person must not fish for whitebait in any waters or places in the Chatham Islands except in the period starting on 1 December in any year and ending with the close of the last day of February of the following year, or be in possession of any whitebait taken from any of those waters or places outside of 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.

Compare: SR 1994/65 r 4

3 Amendment coming into force on 1 March 2023

In regulation 10(1)(c) of these regulations, delete “in any waters or places in New Zealand except the West Coast,”.

Schedule 2

Areas where whitebait fishing prohibited

r 6

Whitebait fishing is prohibited in the following areas:

- (a) the area of about 2.428 ha known as Otumahana Reserve located on the north side of Granite Creek and to the east of the main road leading to Karamea 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 downstream 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) any tributary stream of the Waitatoto River and the waters of the Waitatoto River above the mean high-water mark:
- (f) the north bank of the Cascade River from a point 20 m upstream from Old Man Creek to the sea:
- (g) Old Man Creek:
- (h) Barn Creek that enters the Cascade River, and any tributary stream of Barn Creek:
- (i) the Awarua River above the Department of Conservation swing bridge:
- (j) all rivers, streams, and tributaries in Fiordland from Yates Point in the north to, and including, Waitutu River in the south:
- (k) all rivers, streams, and tributaries within and exiting the Abel Tasman National Park from Taupō Point in the west to, and including, Tinline Stream in the east:
- (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 Pororari 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 3

Rivers where special conditions apply

r 16

Mokihinui, Orowaiti, Taramakau, Hokitika (proper), Waitaha, Wanganui, Poerua, Waitangi-Taona, Jacobs, Karangarua, Paringa, Moeraki (Blue), Okuru, Haast, Turnbull, Waiatoto, 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 2.)

Michael Webster,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 8 July 2021.

Notes

1 *General*

This is a consolidation of the Whitebait Fishing Regulations 2021 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68): section 6

Whitebait Fishing Regulations 2021 (LI 2021/280): Schedule 1 clauses 2, 3