

1978/59



THE TITI (MUTTONBIRD) ISLANDS REGULATIONS 1978

KEITH HOLYOAKE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 13th day of March 1978

Present:

THE RIGHT HON. R. D. MULDOON PRESIDING IN COUNCIL

PURSUANT to sections 23 (2) and 184 of the Land Act 1948 and after consultation as required by the said section 23 (2), His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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REGULATIONS

1. Title, commencement, and application—(1) These regulations may be cited as the Titi (Muttonbird) Islands Regulations 1978.

(2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

(3) These regulations shall apply to the Titi Islands and other islands adjacent to Stewart Island mentioned in the deed of cession of Stewart Island dated the 29th day of June 1864.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“Beneficial island” means any one of the following Titi Islands, namely Herekopare or Te Marama, Horomamae or Owen, Huirapa, Kaihuka, Kaimohu, Mokoiti or Little Moggy, Mokonui or Big Moggy, Pikomamaku or Women, Pomata-

kiarehua (Te Pohomatakiarehua), Potuatua (Pohotuatua), Pohowaitai, Poutama, Rerewhakaupoko or Solomon, Taimaitemioka, Tia or Entrance, Timore or Chimneys, Wharepuitaha (Te Wharepuitaha), and Taukihepa or Big South Cape; and includes those parts of Taukihepa or Big South Cape known as Hapuatoto, Heretatua, Hinekuha, Horomanu Patu, Kai-kaiawara, Manuaroto, Paopoko, Parakiore, Pohinewaru, Puketakohe, Puwai, Rahui, Taketu, Te Awaohunu, Timaru, Tukoroua, Upokomatiha, Upokopotete, Waikatua, and Waitakua:

“Beneficiary” means a Rakiura Maori who holds a succession order from the Maori Land Court entitling him to any beneficial interest in any beneficial island:

“Birding season” means a period commencing on the 1st day of April in any year and ending with the 31st day of May in the same year:

“Commissioner” means the Commissioner of Crown Lands for the Southland Land District:

“Committee” means the Rakiura Titi Committee elected pursuant to regulation 7 (1) (c) of these regulations:

“Crown island” means any of the following islands, which are adjacent to Stewart Island and mentioned in the deed of cession of Stewart Island dated the 29th day of June 1864, namely Betsy, Big, Bunker, Edwards or Motonui, Ernest, Jacky Lee, Kaninihi, Kopeka, Kundy or North, Pihore, Pukeweka, Putauhinu, Rat, Rukawahakura, Takiwiwini, The Sisters, and Weka:

“European” means a person other than a Rakiura Maori:

“Muttonbird” means a bird of the muttonbird (*Puffinus griseus*) species known as the Titi or Sooty Shearwater:

“Rakiura Maori” means a person who is a member of the Ngaitahu Tribe or Ngatimamoe Tribe and is a descendant of the original Maori owners of Stewart Island:

“Supervisor” means a supervisor appointed under regulation 6 (1) of these regulations:

“Take”, and all references thereto, include taking, catching, killing, or pursuing, by any means or device; and include also an attempt to take:

“The said land” means the beneficial islands and Crown islands described in these regulations.

3. Persons who may enter islands and conditions of entry—(1) No European shall enter on the said land without first obtaining a written permit from the Commissioner, and in any case no European shall take muttonbirds or their eggs from the said land at any time or enter on the said land in the search or pursuit of muttonbirds or their eggs; but this provision shall not prohibit any European who is married to a Rakiura Maori or is the widow or widower of a Rakiura Maori from exercising any right or privilege conferred pursuant to these regulations.

(2) Notwithstanding any other provision of these regulations, no person shall enter the said land earlier than the 15th day of March in any year, or such earlier date as the Commissioner may approve in writing on the recommendation of the Committee.

(3) A beneficiary shall not require a permit to enter any beneficial island in which he has a beneficial interest, but no other Rakiura Maori shall enter any beneficial island in any year without the consent of the majority of beneficiaries entitled to a beneficial interest in that island:

Provided that—

- (a) A beneficiary may be accompanied on that island by his children or grandchildren:
- (b) A beneficiary not wishing to take muttonbirds on any such island in any birding season may authorise in writing one or more of his children or grandchildren or one or more of the children or grandchildren of any other such beneficiary to enter on that island to take muttonbirds on behalf of the beneficiary during that birding season:
- (c) The European spouse of a beneficiary may in company of that beneficiary enter on any such island and take muttonbirds, or, in the event of the beneficiary not entering on any such island for the purpose of taking muttonbirds during any birding season, his or her European spouse may, with the consent of that beneficiary, enter on any such island that the beneficiary has been in the habit of frequenting and take muttonbirds during the birding season in respect of which the consent is given. In the event of the death of the beneficiary before the commencement of the next ensuing birding season, the authority shall extend to that next ensuing season:
- (d) If a beneficiary dies leaving dependent children, a European to whom the beneficiary was married may, so long as that European remains unmarried, enter on any beneficial island that the deceased beneficiary was in the habit of frequenting and take muttonbirds for so long as the children of the marriage are dependent upon him or her, or until the youngest of those children attains the age of 18 years, whichever is the sooner.

(4) Any person desiring to enter upon a beneficial island under an authority given under subclause (3) of this regulation may be required to satisfy the Supervisor for the island of the validity of that authority:

Provided that an authority in writing certified by the Commissioner to be valid shall be accepted by the Supervisor for the purposes of this subclause.

(5) No Rakiura Maori shall enter any Crown island without first obtaining the written permission of the Commissioner. Applications for such permission must be made in writing to the Commissioner. The Commissioner may require an applicant for such permission to establish that the applicant is a Rakiura Maori. A Rakiura Maori who is married to a European may also make application for permission for his or her spouse to accompany him or her for the purpose of birding. The Commissioner may refuse to issue a permit to any Rakiura Maori who has at any time committed a breach of these regulations or any regulations revoked by these regulations, and any permit obtained by the applicant falsely representing that he or she is a Rakiura Maori shall be deemed to be invalid and in breach of these regulations.

(6) Where a Rakiura Maori who, pursuant to a permit granted under subclause (5) of this regulation, was accompanied on any Crown island by his or her spouse, dies leaving dependent children, the spouse may, so long as he or she remains unmarried, with the per-

mission of the Commissioner, enter on that island and take muttonbirds for so long as the children of the marriage are dependent upon him or her, or until the youngest of those children attains the age of 18 years, whichever is the sooner.

4. Provisions relating to birding and use of islands—(1) Birding shall not commence earlier than the 1st day of April and must cease with the 31st day of May in each year, and no person shall take muttonbirds at any other time.

(2) No person shall take any parent bird at any time, either on or off the said land.

(3) Every person making holes in burrows to take out the birds shall cause those holes to be refilled and stopped, where it is possible to do so, so that no water can enter the holes and thereby destroy the burrows.

(4) Every person taking any dog on to the said land shall keep it properly chained up to prevent it destroying the burrows. If dogs are used to catch the birds, they must be kept by the owner under his absolute control, and he shall be responsible for any damage done by them.

(5) No person shall take any cat, or cause any cat to be taken, on to the said land.

(6) No person shall light any fire on the said land except for domestic purposes or a signal fire in cases of emergency, and any fire originating from torches or otherwise accidentally must be immediately extinguished by the person causing it to be lit.

(7) All persons frequenting the said land shall take all necessary precautions to provide for the exclusion and destruction of vermin, such as rats, mice, stoats, and weasels.

(8) Every person taking muttonbirds must immediately dispose of all refuse and offal therefrom in a lawful manner and must not allow the same to accumulate and become a nuisance and menace to health.

(9) Manus (or bird-catching areas) on a beneficial island shall be allotted to persons by the majority of the beneficiaries present on their island in the year the manus are allotted or, if such a majority of beneficiaries cannot agree on allotment, by the Supervisor for the island.

(10) No person shall have any firearm in his possession while he is on the said land.

5. Buildings on islands—(1) No beneficiary or other person authorised to enter on any beneficial island shall erect any house, whare, or other building thereon other than on a site approved in writing by the majority of the beneficiaries present on their island in the year the site is selected or, if such a majority of beneficiaries cannot agree on a site, approved in writing by the Supervisor for the island.

(2) The Supervisor for the beneficial island shall forward to the Commissioner a copy of any written approval of a site given pursuant to subclause (1) of this regulation.

(3) In the event of the Commissioner being required to adjudicate upon any dispute over the allocation of a building site, he shall do so on the basis of one building site for each succession order relating to the land.

(4) A written approval of a site given pursuant to subclause (1) of this regulation shall lapse if the foundations of the proposed building have not been erected on the site within 12 months of the date the approval was given.

(5) A building erected on a site approved pursuant to subclause (1) of this regulation shall be the sole property of the person who required or directed its erection, and shall not be removed or destroyed unless—

(a) That person consents thereto; or

(b) A majority of the beneficiaries on the island at any time consider that the building has been abandoned or is in such a dilapidated state that it should be removed or destroyed, and the Supervisor for the island so informs the Commissioner and the Commissioner, after consultation with the Committee, directs that the building be removed or destroyed.

(6) A person may, by written notice to that effect to the Commissioner, transfer his property in a building erected on a beneficial island to any beneficiary or other person authorised to enter on the island.

(7) Pursuant to section 176 (10) of the Land Act 1948, any building erected on a Crown island without the authority in writing of the Commissioner shall be deemed to be forfeited to Her Majesty.

6. Supervisors—(1) The Rakiura Maoris frequenting any island forming part of the said land or any part of any such island may at the annual meeting held in accordance with regulation 7 (1) of these regulations nominate one of their number, who, after appointment by the Commissioner, shall be the Supervisor for the particular island or part of an island. The Supervisor shall be responsible for ensuring a fair and equitable distribution of the privileges, opportunities, and rights under the regulations of all persons authorised to enter the island or part of an island. In addition to any other powers prescribed in these regulations, the Supervisor shall have power to call meetings of all beneficiaries on their island at the time for the purpose of approving sites for buildings and allotting manus and generally supervise the conduct of birding operations on the area under his supervision. He shall be required to report to the Commissioner any infringement of these regulations. Failing the nomination of a Supervisor for any area, the Commissioner may make the appointment.

(2) If there is any dispute between Supervisors concerning the allotting of manus or any other dispute arising out of these regulations, the dispute shall be referred to the Commissioner who shall call a meeting of the Supervisors or other parties concerned to settle the dispute as soon as possible thereafter. Failing agreement being reached by the Supervisors or parties, or if they do not attend the meeting so called, the Commissioner shall make the decision, which shall be final and binding on all parties.

7. Meetings—(1) Not later than the 23rd day of February in each year, the Commissioner shall call an annual meeting of all interested Rakiura Maoris and their spouses. At each such meeting—

(a) The Commissioner may issue permits under regulation 3 (5) of these regulations:

(b) The Rakiura Maoris present may nominate Supervisors in accordance with regulation 6 (1) of these regulations:

- (c) Subject to paragraph (d) of this subclause, those persons present at the meeting who are Rakiura Maoris or spouses of Rakiura Maoris shall elect from among themselves and any Rakiura Maori or spouse of a Rakiura Maori who has indicated to the meeting in writing his or her willingness to be elected, a committee (to be known as the Rakiura Titi Committee) of not more than 10 persons:
 - (d) One of the 10 members of the Committee shall be a Rakiura Maori nominated by the Ngaitahu Maori Trust Board, and a majority of the Committee shall be Rakiura Maoris:
 - (e) Those persons present at the meeting who are Rakiura Maoris or spouses of Rakiura Maoris shall elect a chairman of the Committee from the members of the Committee elected pursuant to paragraph (c) of this subclause.
- (2) In addition to the annual meeting to be held pursuant to subclause (1) of this regulation, either the Commissioner or the Committee may at any time call a meeting of all interested Rakiura Maoris and their spouses.
- (3) Notice of the calling of a meeting specified in subclause (1) or subclause (2) of this regulation shall be given by the person calling it by notice advertised in leading daily newspapers published in the Southland, Otago, and Canterbury Land Districts not later than one month before the date set for the meeting.
- (4) The Commissioner may at any time call a meeting of all Supervisors.

8. Provisions relating to Committee—(1) The Committee shall inquire into and make recommendations to the Commissioner upon any matter relating to the said land that he may refer to it and upon such other matters as it thinks fit.

(2) The members of the Committee shall hold office from the expiry of the annual meeting at which they were elected to the expiry of the next annual meeting held in accordance with regulation 7 (1) of these regulations.

(3) Subject to these regulations, the Committee may meet together for the dispatch of business, adjourn, and otherwise regulate its meetings, as it thinks fit. Questions arising at any meeting of the Committee shall be decided by a majority of votes. In case of an equality of votes, the chairman of the Committee shall have a second or casting vote. Any member of the Committee may at any time summon a meeting of the Committee. It shall not be necessary to give notice of a meeting of the Committee to any member of the Committee for the time being absent from New Zealand.

(4) If the chairman of the Committee is absent from any meeting of the Committee, the members of the Committee present may choose one of their number to be chairman of the meeting.

(5) The quorum necessary for the transaction of the business of the Committee shall be 6.

(6) The Committee may delegate any of its powers to sub-committees consisting of such member or members of the Committee as it thinks fit; and any sub-committee so formed shall in the exercise of the powers so delegated conform to any rules that may be imposed on it by the Committee.

9. Reconsideration of decision by Commissioner—If any beneficiary or other person authorised to enter on the said land is not satisfied with a decision of the Commissioner, he may ask the Commissioner to reconsider the decision, and upon being so asked, the Commissioner shall, after consultation with the Committee, reconsider the decision.

10. Commissioner's powers not limited—Nothing in regulations 7 and 8 of these regulations shall in any way limit the exercise by the Commissioner of any powers he may have in respect of the said land.

11. Breach of regulations—(1) The Commissioner, any person appointed by him, any Supervisor, or any police constable may lay an information against any person who commits a breach of these regulations, and may seize all muttonbirds which he reasonably believes to have been illegally taken or to be illegally had in possession without lawful excuse. All muttonbirds found in the possession of any person on or in the vicinity of the said land shall be presumed to have been taken contrary to the provisions of these regulations until proof to the contrary is given.

(2) The Commissioner, any person appointed by him in writing, any Supervisor, or any police constable may enter any part of the said land at any time to ensure that no breaches of these regulations are being committed, and any person who hinders or obstructs the Commissioner, his appointee, the Supervisor, or the police constable commits a breach of these regulations.

(3) Any person who commits a breach of these regulations is liable on summary conviction to a fine not exceeding \$200.

12. Revocations—The following regulations are hereby consequentially revoked:

- (a) Regulation 18 of the Land Act Regulations 1949* (as substituted by regulation 2 of the Land Act Regulations 1949, Amendment No. 3 and amended by regulation 4 (1) (b) of the Land Act Regulations 1949, Amendment No. 6):
- (b) The Land Act Regulations 1949, Amendment No. 3:
- (c) Regulation 4 (1) (b) of the Land Act Regulations 1949, Amendment No. 6.

P. G. MILLEN,
Clerk of the Executive Council.

***S.R. 1949/37**

- Amendment No. 1: S.R. 1952/181
- Amendment No. 2: S.R. 1958/170
- Amendment No. 3: S.R. 1962/10
- Amendment No. 4: (Revoked by S.R. 1974/283)
- Amendment No. 5: (Revoked by s. 5 (3) (b) of the Land Amendment Act 1968)
- Amendment No. 6: S.R. 1974/283

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations replace regulation 18 of the Land Act Regulations 1949 (which prescribed the conditions under which muttonbirds could be taken on the Titi Islands and other islands adjacent to Stewart Island).

The principal changes are—

- (a) These regulations provide for the election each year of a committee of Rakiura Maoris and their spouses to make recommendations to the Commissioner of Crown Lands on matters concerning the islands:
- (b) These regulations contain new and more detailed provisions relating to the erection of buildings on the islands.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 16 March 1978.

These regulations are administered in the Department of Lands and Survey.