

Serial Number 1946/112



THE TOHEROA REGULATIONS 1946

B. C. FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington, this 10th day of
July, 1946

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Fisheries Act, 1908, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS

PART I.—PRELIMINARY

1. These regulations may be cited as the Toheroa Regulations 1946.
2. These regulations shall come into force on the seventh day after notification in the *Gazette* of the making hereof.

Interpretation

3. In these regulations, unless inconsistent with the context,—
 - “Area” means any area of toheroa-beds herein defined or described :
 - “Canning” includes all commercial methods of preserving toheroa for use as human food :
 - “Fisherman’s license” means a license not being a boat license or a crew license granted under the Fisheries Amendment Act, 1945, authorizing the person to whom it is granted to engage in fishing for purposes of sale :
 - “Lease” means a lease granted under Part IV of these regulations, and “lessee” has a corresponding meaning :
 - “License” means a license granted under Part III of these regulations, and “licensee” has a corresponding meaning :
 - “Licensing Authority” means the Sea-fisheries Licensing Authority Appointed under the Fisheries Amendment Act, 1945 :

“Maori” means a person belonging to the aboriginal race of New Zealand, and includes a half-caste and a person intermediate in blood between half-castes and persons of pure descent from that race :

“Minister” means the Minister of Marine, and includes any officer or other person acting by or under the direction of the Minister :

“Secretary” means the Secretary to the Marine Department :

“Toheroa license” means a fisherman’s license containing a provision expressly authorizing the person to whom it is granted to take toheroa for purposes of sale.

4. The respective regulations relating to toheroa referred to in the table subjoined to this regulation are revoked to the extent specified in the said table :—

Table of Revoked Regulations

Short Title.	Extent of Revocation.	Published in Statutory Regulations.	
		Serial Number.	Page.
The Sea-fisheries Regulations 1939	Part XVIII and Eighth and Ninth Schedules	1939/225	899
The Sea-fisheries Regulations 1939, Amendment No. 7	The whole enactment ..	1940/267	937
The Sea-fisheries Regulations 1939, Amendment No. 8	The whole enactment ..	1940/314	1082
The Sea-fisheries Regulations 1939, Amendment No. 12	Regulation 5	1941/124	398
The Sea-fisheries Regulations 1939, Amendment No. 14	The whole enactment ..	1942/234	585
The Sea-fisheries Regulations 1939, Amendment No. 17	Regulation 6	1945/45	114

5. All licenses, and generally all acts of authority and all other documents, matters, acts, and things, and all periods of time which originated or had effect under the regulations hereby revoked and are of continuing effect at the time of coming into force of these regulations, shall enure for the purposes of these regulations as if they had originated under these regulations, and shall, where necessary, be deemed to have so originated.

6. Notwithstanding the two last preceding regulations, in the case of a lease granted under Part XVIII of the Sea-fisheries Regulations 1939 the provisions of that Part shall, so far as applicable, continue to apply to such lease and to the lessee in respect thereof in lieu of the corresponding provisions set out in Part IV of these regulations.

PART II.—RESTRICTIONS ON TAKING TOHEROA

7. No person shall take or assist in taking or have in his possession any toheroa the shell of which is less than 3 in. in greatest length.

8. (1) Except as hereinafter provided, no person shall take more than thirty toheroa in any one day (computed from midnight to midnight).

(2) Clause (1) of this regulation shall not apply to—

(a) A Maori taking toheroa for consumption by Maoris :

(b) The holder of a toheroa-license acting within the scope of his license.

9. No person other than a Maori taking toheroa for consumption by Maoris shall take more than twenty toheroa in any one day (computed from midnight to midnight) from any beach or beaches in or adjacent to—

- (a) The Provincial District of Wellington :
- (b) The counties of Whakatane and Opotiki :
- (c) The counties of Southland and Wallace.

10. No person other than a Maori taking toheroa for consumption by Maoris shall in any part of the provincial district and counties named in the last preceding regulation in any one day and in any one vehicle convey more than fifty toheroa, not being canned toheroa.

11. Except as provided by the next succeeding regulation, no Maori taking toheroa for consumption by Maoris shall in any one day take more than eighty toheroa from beaches in any part of the Provincial District of Auckland or more than fifty toheroa from beaches in any other part of New Zealand.

12. Nevertheless, it shall be lawful, with the prior written permission of an Inspector of Sea-fishing, for a Maori resident in the coastal area of that part of the west coast of the North Island lying between the westernmost point of the southern side of the entrance to Whangape Harbour and the southernmost point on the northern side of the entrance to Hokianga Harbour to take in any one day named in such permission not more than two hundred toheroa from beaches in the coastal area aforesaid :

Provided that an Inspector shall not grant permission under this regulation unless he is satisfied that the toheroa taken will be used for consumption in a single Maori household which is situated in the said area and which has no other source of supply.

13. No person shall take toheroa from any part of the beach on that part of the west coast of the North Island lying between the westernmost point of the southern side of the entrance to Whangape Harbour and the southernmost point on the northern side of the entrance to Hokianga Harbour at any time during the months of January, February, and March in any year.

14. Except as provided by Regulation 23, no person shall take toheroa from any beach other than the beach referred to in the last preceding regulation at any time during the months of October and November in any year.

15. During the period from the coming into force of these regulations until and including the 31st day of March, 1947 (hereinafter referred to as the Ninety-mile Beach close season), no person shall, except as provided in Regulation 17 hereof, take or attempt to take toheroa from that part of the foreshore of the west coast of the North Island which is a portion of what is known as the Ninety-mile Beach and which extends from Scott Point in a southerly direction for approximately fifty-five miles to the point where the road from Ahipara enters the beach.

16. During the Ninety-mile Beach close season, except as provided in Regulation 17 hereof, no person shall whilst being in the part of the Ninety-mile Beach described in Regulation 15 hereof or in the vicinity of the said part be in possession of any toheroa.

17. Notwithstanding Regulations 15 and 16 hereof, it shall be lawful, subject to the other provisions of these regulations, for any person engaged on any day in the Ninety-mile Beach close season, not being a day in the months of October and November, in line

fishing from the part of the Ninety-mile Beach described in Regulation 15 hereof to take on that day and be in possession on that day of not more than six toheroa at any one time for use as bait.

18. Except as hereinafter provided, no person shall for the purpose of taking toheroa use a fork of any kind or use a spade, shovel, or any similar instrument having a blade of a width exceeding 4 in.

19. No person shall for the purpose of taking toheroa in the Provincial District of Wellington use any implement made of metal.

20. No person shall open toheroa in any place below high-water mark.

21. Regulations 7 to 10 inclusive, 13 to 16 inclusive, 18, and 19 shall not apply to officers of the Marine Department taking toheroa for scientific or piscicultural purposes, and shall not apply to toheroa taken by such persons for such purposes.

22. Regulation 8 and Regulation 18, in so far as the latter refers to the use of a fork of any kind, shall not apply to a licensee or lessee or to any person acting for the time being as the servant of a lessee when such licensee, lessee, or servant is taking toheroa for the purpose for which a license or lease was granted in a place where the taking of toheroa is authorized by such license or lease.

23. If the Minister is satisfied that a lessee has not taken toheroa for canning during a period or periods aggregating five months in any year and that conditions relating to the supply of toheroa and the taking of toheroa make an extension of the open season for that lessee desirable, the Minister may, by instrument in writing, authorize such lessee to take toheroa for canning purposes either in the area comprised in the lease or in some part of that area specified in the instrument during the months of October and November in that year or during such part thereof as may be specified in the instrument, but so that no such instrument shall continue to have any effect after the lessee has taken toheroa for canning purposes during a period or periods aggregating five months in that year.

PART III.—LICENSES TO TAKE TOHEROA FOR SALE

24. No person shall take toheroa for purposes of sale unless he is the holder of a toheroa license—that is to say, a fisherman's license which contains provision expressly authorizing the person to whom it is granted to take toheroa for purposes of sale.

25. Any such provision may be restricted so as to authorize the taking of toheroa only within an area specified or referred to in the license or may in any other way be restricted as the Licensing Authority thinks fit.

26. No fisherman's license shall be deemed to authorize the holder to take toheroa for purposes of sale unless the license contains express provision in that behalf.

27. The grant of a lease to any person shall not dispense with the necessity of the holding of a toheroa license by the lessee and by any servant of the lessee if such servant is actually engaged in taking toheroa pursuant to the authority of the lease.

28. No toheroa license shall authorize the holder thereof to take for purposes of sale, and no person shall take for purposes of sale, toheroa from any of the following areas:—

- (a) That part of the foreshore of the west coast of the North Island which is a portion of what is known as the Ninety-mile Beach, and which extends from Scott Point in a southerly direction for approximately fifty-five miles to the point where the road from Ahipara enters the beach:

- (b) That part of the foreshore of the west coast of the North Island which extends between a point one mile north of Chase's Gorge and a point one mile south of Mahuta Gorge, and is known as part of the North Kaipara Beach :
- (c) That part of the foreshore of the west coast of the North Island which extends between a point one mile north of Glinks Gap and a point one mile south of Glinks Gap, and is likewise known as part of the North Kaipara Beach :
- (d) That part of the foreshore of the west coast of the North Island which extends southward from the southern end of Muriwai Beach—*i.e.*, from the road entrance to Motutara Domain :
- (e) The east coast of the North Island :
- (f) The coasts of the South Island :
- (g) Any area in respect of which a lease has been granted and is in force authorizing the taking of toheroa for canning purposes.

29. No person holding a toheroa license shall in any one day (computed from midnight to midnight) take, whether for purposes of sale or otherwise, a quantity of toheroa greater than 3 bushels or six kerosene-tins, measured in the shell.

30. Every licensee shall, not later than seven days after the end of every calendar month, deliver to the Secretary a return in the form numbered 1 in the Schedule hereto showing the quantities of toheroa taken by him under the authority of his license during that month.

31. Every person engaged in the taking of toheroa shall on the demand of any fishery officer or member of the police force truly inform him whether he is the holder of a license, and if he is the holder of a license shall on the demand of any fishery officer or member of the police force immediately produce his license for inspection.

32. No person other than a lessee shall sell, give, or otherwise dispose of toheroa to any person for the purpose of canning, and no lessee shall sell, give, or otherwise dispose of toheroa for the purpose of canning to any person other than a lessee.

33. No person other than a lessee shall purchase, accept, or otherwise acquire toheroa for the purpose of canning.

PART IV.—LEASES FOR CANNING PURPOSES

34. No person shall take toheroa for canning purposes from any area except an area leased to such person for canning purposes by writing under the hand of the Minister.

35. No area shall be leased for canning purposes except an area from time to time set aside for such leases by the Minister or an area lying within one of the localities hereinafter described, namely :—

- (a) That part of the foreshore of the west coast of the North Island which commences seven miles north of North Kaipara Head and extends therefrom approximately six miles northward :
- (b) That part of the foreshore of the west coast of the North Island which extends between the northern limit of the area described in paragraph (a) of this regulation and a point one mile south of Glinks Gap :
- (c) That part of the foreshore of the west coast of the North Island which commences one mile north of Glinks Gap and extends therefrom four miles northward :

(d) That part of the foreshore known as the Ninety-mile Beach on the west coast of the North Island which commences at the mouth of the Karaka Stream and extends northward to a point ten miles north of Maunganui Bluff (the said limits being approximately three miles and forty miles respectively north of the point where the road from Waipapakauri enters the beach).

36. The Minister may from time to time by public notice invite tenders for the lease of any area, and may prescribe rents, royalties, terms, and conditions of leases and terms and conditions of tendering.

37. No lease shall be granted for a period exceeding ten years from the date thereof.

38. Every lease shall confer an exclusive right to take for canning purposes toheroa from the area comprised therein, but without prejudice to the right of any person to take from such area subject to Part II of these regulations toheroa for his own consumption.

39. No lessee shall assign, charge, or part with his interest in a lease without the prior written consent of the Minister, which it shall be in the Minister's absolute discretion to grant or withhold:

Provided that any assignment by the assignee of a bankrupt or by the Sheriff under an execution or by a mortgagee or any entry into possession by a mortgagee shall be deemed to be an assignment or parting with an interest within the meaning of this regulation.

40. Every lessee shall within one year from the date of the lease acquire or completely erect, and shall thereafter at all times during the lease maintain in full working-order, a properly-equipped factory for treating the toheroa taken from the area for which the lease is granted.

41. If it appears to the Minister that the beds comprised in any lease are being unduly depleted or injuriously affected, the Minister may from time to time, by notice in writing, restrict the quantity of toheroa that may be taken and the places from which and times at or during which toheroa may be taken or may not be taken, and any such notice shall take effect in the same manner as if a covenant on the part of the lessee to observe or perform the direction set out in the notice were contained in the lease.

42. Every lessee shall, not later than seven days after the end of every calendar month, deliver to the Secretary a return in the form numbered 2 in the Schedule hereto showing the quantities of toheroa taken by him pursuant to his lease during that month.

43. Every lessee shall at all times during the continuance of the lease duly and punctually pay all rents, royalties, and other moneys payable thereunder, and duly and punctually observe, perform, and comply with all the provisions of the lease.

44. In case a lessee shall—

(a) Commit or suffer a breach of these regulations whether or not convicted in respect of such breach;

(b) Fail without good and sufficient reason to use for the purpose for which the lease was granted the area therein contained;

(c) Take for canning purposes toheroa from any area not comprised in a lease vested in him; or

(d) Work the beds of the area in such a way that they become unduly depleted or injuriously affected—

then and in any such case the Minister, after giving three month's written notice to the lessee of his intention so to do, may by further written notice to the lessee forthwith determine the lease as from the date of receipt by the lessee of such last-mentioned notice.

PART V.—PENALTIES

45. Any person committing a breach of the regulations comprised in Part II hereof shall be liable to a fine not exceeding £50.

46. Any person committing a breach of the regulations comprised in Part III hereof shall be liable to a fine not exceeding £20.

47. Any person committing a breach of the regulations comprised in Part IV hereof shall be liable to a fine not exceeding £100.

SCHEDULE

[FORM No. 1.]

RETURN OF TOHEROA TAKEN DURING THE MONTH OF, 19..

Name and address of license-holder :

Number and date of license :

Name of beach and locality from which toheroa were taken :

Quantity taken each Day

Date.	Quantity (in Shell, in Bushels).	Value.	Place or Places to which Toheroas were consigned or where retailed.
		£ s. d.	
Total for month			

Signature :

Date :

[FORM No. 2.]

RETURN OF TOHEROA TAKEN FOR CANNING DURING THE MONTH OF, 19..

Name and address of lease-holder :

Locality of cannery :

Name of beach and locality of diggings :

Quantity of toheroa obtained during the month : bushels (measured in the shell), equivalent to lb. (weight of raw meat prepared for canning).

Number of beach workers employed to produce meat :

Signature :

Date :

W. O. HARVEY,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette* : 11th day of July, 1946.

These regulations are administered in the Marine Department.