

1974/259



*Reprint under section 7 of the Regulations Act 1936 of the Toheroa Regulations 1955 (S.R. 1955/206), as amended by the following enactments:*

- Decimal Currency Act 1964: s. 7  
 Amendment No. 1, S.R. 1962/131  
 Amendment No. 2, S.R. 1965/111  
 Amendment No. 3, S.R. 1967/187 (*Revoked by regulation 3 of S.R. 1968/133*)  
 Amendment No. 4, S.R. 1968/133 (*Revoked by regulation 5 of S.R. 1968/151*)  
 Amendment No. 5, S.R. 1968/151 (*Revoked by regulation 6 (a) of S.R. 1969/152*)  
 Amendment No. 6, S.R. 1968/165 (*Revoked by regulation 6 (b) of S.R. 1969/152*)  
 Amendment No. 7, S.R. 1969/152 (*Revoked by regulation 6 (b) of S.R. 1971/168*)  
 Amendment No. 8, S.R. 1970/163 (*Revoked by regulation 6 (c) of S.R. 1971/168*)  
 Amendment No. 9, S.R. 1971/168  
 Amendment No. 10, S.R. 1972/135  
 Amendment No. 11, S.R. 1972/178 (*Revoked by regulation 2 (2) of S.R. 1973/315*)  
 Ministry of Agriculture and Fisheries Amendment Act 1972: ss. 4 (1), 6 (2)  
 Amendment No. 12, S.R. 1973/315 (*Revoked by regulation 6 (b) of S.R. 1974/236*)  
 Amendment No. 13, S.R. 1974/236

## THE TOHEROA REGULATIONS 1955 (REPRINT)

C. W. M. NORRIE, Governor-General

### ORDER IN COUNCIL

At the Government House at Wellington this 7th day of December 1955

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, hereby makes the following regulations.

### ANALYSIS

#### PART I—PRELIMINARY

1. Title and commencement
2. Interpretation

#### PART II—RESTRICTIONS ON TAKING TOHEROA

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>3. Taking, injuring, or disturbing toheroa in close season prohibited</li> </ol> | <ol style="list-style-type: none"> <li>3A. Toheroa to be taken only between 7 a.m. and 6 p.m.</li> <li>3B. Taking for sale, selling, or buying toheroa is prohibited except pursuant to Part III</li> <li>4. Minimum size of toheroa</li> <li>4A. Toheroa of less than minimum size to be reburied</li> </ol> |
|---|---|

- |   |   |
|---|---|
| <p>4b. Toheroa with broken shells to be included in maximum number allowed</p> <p>5. Use of implements for locating or taking toheroa prohibited</p> <p>6. Opening of toheroa below high-water mark prohibited</p> <p>7. Restrictions on taking toheroa</p> <p>7A. Possession of toheroa</p> <p>8. Restrictions on conveying toheroa</p> <p>9. Taking toheroa for scientific or piscicultural purposes</p> <p>10. Regulations 5 and 7 not to apply to taking of toheroa under a lease</p> <p>11. Regulation 8 not to apply to taking of toheroa under a lease</p> <p>11A. Seizure of toheroa by a fishery officer</p> <p style="text-align: center;">PART III—LEASES FOR CANNING PURPOSES</p> <p>12. Taking toheroa for commercial-canning purposes</p> <p>13. Granting of lease for taking toheroa discretionary</p> | <p>14. Minister may invite tenders and prescribe conditions for leases</p> <p>15. Maximum period of 5 years for lease</p> <p>16. Leases confer exclusive right to take toheroa</p> <p>17. Lessee not to assign, charge or part with his interest in a lease without consent of Minister</p> <p>18. Lessee to acquire within 1 year a factory for treating toheroa</p> <p>19. Minister may restrict quantity of toheroa to be taken in an area</p> <p>20. Monthly returns of toheroa taken to be sent to Director-General</p> <p>21. Lessee to comply with provisions of lease</p> <p>22. Minister may determine lease</p> <p style="text-align: center;">PART IV—MISCELLANEOUS</p> <p>23. Offences</p> <p>24. Revocations and savings Schedules</p> |
|---|---|

## REGULATIONS

### PART I—PRELIMINARY

**1. Title and commencement**—(1) These regulations may be cited as the Toheroa Regulations 1955.

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

**2. Interpretation**—(1) In these regulations, unless the context otherwise requires,—

“Area” means any area of toheroa beds defined by or pursuant to regulation 13 hereof:

“Canning” includes all commercial methods (other than freezing) of preserving toheroa for use as human food; and “canned” has a corresponding meaning:

【“Close season” means the period commencing on the 1st day of December 1974 and ending with the 30th day of November 1977:】

“Day” means a day computed from midnight to midnight:

【“Director-General” means the Director-General of Agriculture and Fisheries:】

“Lease” means a lease granted under Part III of these regulations; and “lessee” has a corresponding meaning:

“Minister” means 【the Minister of Agriculture and Fisheries】; and includes any officer or other person acting by or under the direction of the Minister:

Expressions defined in the Fisheries Act 1908 have the meanings so defined.

[(2) For the purposes of these regulations, toheroa, or any parts thereof, shall be deemed to be in the possession of any person when that person has, alone or jointly with any other person, possession of or control over the toheroa, or the parts thereof, or possession of or control over any vessel, vehicle, container, package, thing, or place in or on which are the toheroa, or the parts thereof:

Provided that, in any proceedings for an offence against these regulations, being an offence relating to the possession of any toheroa, or any parts thereof, found in or on any vessel, vehicle, container, package, thing, or place in the possession or under the control of the defendant, alone or jointly with any other person, it shall be a good defence if the defendant satisfies the Court that he had no knowledge that they were in or on that vessel, vehicle, container, package, thing or place.]

In subclause (1):

“Close season”: The definition of this term was substituted for the former definition (as substituted by regulation 2 (1) of S.R. 1973/315) by regulation 2 (1) of S.R. 1974/236.

Regulation 2 (2) of S.R. 1974/236 provides as follows:

2. (2) Notwithstanding anything in the definition of the expression “close season” in regulation 2 (1) of the principal regulations (as substituted by regulation 2 (1) of the Toheroa Regulations 1955, Amendment No. 12), there shall be an open season for the taking of toheroa for the period commencing on the 27th day of September 1974 and ending with the 10th day of October 1974 on—

(a) That part of Dargaville Beach located between Glinkes Gully and Chases’ Gorge:

(b) Hokio South Beach located between Ohau Stream and Hokio Stream:

(c) Oreti Beach, excluding that portion of Oreti Beach lying between New River and a point one mile north of New River:

(d) Te Waewae Bay.

“Director-General”: The definition of this term has been inserted pursuant to s. 6 (2) (c) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

“Minister”: The reference to the Minister of Agriculture and Fisheries was substituted for a reference to the Minister of Marine by s. 6 (2) (a) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

“Secretary”: A definition of this term has been omitted pursuant to s. 6 (2) (c) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

Subclause (2) was added by regulation 2 of S.R. 1962/131.

## PART II—RESTRICTIONS ON TAKING TOHEROA

### 3. Taking, injuring, or disturbing toheroa in close season prohibited—

No person shall take, injure, or disturb any toheroa during the close season, or be in possession of any toheroa (not being canned toheroa) during the close season.

**[3A. Toheroa to be taken only between 7 a.m. and 6 p.m.—**No person shall take or disturb any toheroa on any day not falling within the close season, except during the hours between 7 a.m. and 6 p.m.

**[3B. Taking for sale, selling, or buying toheroa is prohibited except pursuant to Part III—**(1) No person shall—

- (a) Take any toheroa for the purposes of sale; or
- (b) Have in his possession for the purposes of sale or convey for the purposes of sale any toheroa or part of any toheroa (not being canned toheroa); or
- (c) Sell or expose for sale or offer for sale any toheroa or part of any toheroa (not being canned toheroa); or
- (d) Buy or attempt to buy or offer to buy any toheroa or part of any toheroa (not being canned toheroa):

Provided that it shall be a defence to any person charged with a breach of paragraph (a) or paragraph (b) or paragraph (c) of this subclause if he proves that he was the lessee or a servant of the lessee acting lawfully pursuant to a lease granted under Part III of these regulations.

(2) In this regulation the term "sell" includes barter and exchange for consideration; and includes attempting to sell; and also includes disposal by way of raffle, lottery, or other chance; and "sale" and "buy" have corresponding meanings.】

Regulations 3A and 3B were inserted by regulation 3 of S.R. 1965/111.

**4. Minimum size of toheroa**—No person shall take or assist in taking or have in his possession any toheroa the shell of which is less than 3 inches in greatest length.

**4A. Toheroa of less than minimum size to be reburied**—Every person who extracts from the beach any toheroa of less than the minimum size prescribed in regulation 4 hereof shall immediately rebury it, with as little injury as possible, below high-tide mark:

Provided that where the shell of any such toheroa is broken or damaged, it shall be buried above high-tide mark.

**4B. Toheroa with broken shells to be included in maximum number allowed**—Where the shell of any toheroa of a size permitted under these regulations to be taken is broken, the toheroa when extracted from the beach shall be counted as part of the maximum number permitted under these regulations to be in possession of the person taking the toheroa.】

Regulations 4A and 4B were inserted by regulation 4 of S.R. 1965/111.

**5. Use of implements for locating or taking toheroa prohibited**—No person shall use any implement or device of any kind for the location or taking of toheroa.】

This regulation was substituted for the former regulation 5 (as substituted by regulation 3 of S.R. 1962/131) by regulation 5 (1) of S.R. 1965/111.

**6. Opening of toheroa below high-water mark prohibited**—No person shall open toheroa in any place below high-water mark.

**7. Restrictions on taking toheroa**—No person shall take on any 1 day more than 10 toheroa.】

This regulation was substituted for the former regulation 7 (as substituted by regulation 3 of S.R. 1971/168) by regulation 3 of S.R. 1974/236.

**17A. Possession of toheroa—**[(1) No person shall—

- (a) Be in possession of any toheroa (other than canned toheroa) on that part of Dargaville Beach located north of Chases' Gorge or south of Glinkes Gully or on Ninety Mile Beach in Northland, or on any beach on the west coast of the North Island south of latitude 40°S (excluding Hokio South Beach), or within a radius of 1 mile of that part of Dargaville Beach or any of those other beaches on any road, track, or path that provides egress from that part of Dargaville Beach or any of those other beaches:
- (b) Be in possession anywhere of any toheroa taken from that part of Dargaville Beach, or any other beach, mentioned in paragraph (a) of this subclause.】

【(1A) Notwithstanding anything in subclause (1) of this regulation, it shall be a good defence to any charge with an offence against any provision of subclause (1) of this regulation if the person charged proves that the toheroa were taken in accordance with these regulations.】

(2) Where any child under the age of 5 years is in possession of any toheroa, the toheroa shall be deemed for the purposes of this regulation to be in possession of any person of that age or more with whom the child is associated, and shall form part of the number of toheroa permitted under these regulations to be in possession of the person with whom the child is associated.

(3) Every person, being a person associated with a child under the age of 5 years in the taking, possession, or conveying of toheroa, who permits the child to be in possession of toheroa in excess of the number specified in this regulation commits an offence against these regulations.】

This regulation was inserted by regulation 7 of S.R. 1965/111.

Subclause (1) was substituted for the former subclause (1) (as substituted by regulation 4 of S.R. 1971/168) by regulation 4 of S.R. 1974/236.

Subclause (1A) was substituted for the former subclause (1A) (as inserted by regulation 4 (2) of S.R. 1969/152) by regulation 4 of S.R. 1971/168.

**18. Restrictions on conveying toheroa—**[(1) No person shall keep in or convey by means of any conveyance whatsoever, or keep on, or convey by means of any animal—

- (a) Any toheroa (other than canned toheroa) on that part of Dargaville Beach located north of Chases' Gorge or south of Glinkes Gully, or on Ninety Mile Beach in Northland, or on any beach on the west coast of the North Island south of latitude 40°S (excluding Hokio South Beach), or within a radius of 1 mile of that part of Dargaville Beach or any of those other beaches on any road, track, or path that provides egress from that part of Dargaville Beach or any other beach specified in this paragraph:
- (b) More than 50 toheroa (other than canned toheroa) on any part of any other beach for which there is an open season for the time being in force, or within a radius of 1 mile of any such part of a beach on any road, track, or path that provides egress from it, or, if fewer than 5 persons are in

or on board the conveyance or on the animal, more than 10 toheroa (other than canned toheroa) for each of those persons.<sup>11</sup>

(2) For the purpose of this regulation all toheroa in or on board any conveyance or on any animal shall be deemed to be kept or conveyed by—

- (a) In the case of any hired conveyance or animal, the hirer or hirers for the time being of the conveyance or animal; and
- (b) In the case of every other conveyance or animal, the person for the time being in control of the conveyance or animal.

(3) Notwithstanding anything in subclauses (1) or (2) of this regulation, it shall be a good defence to any charge with an offence against any provision of paragraph (a) or paragraph (b) of subclause (1) of this regulation if the person charged proves that the toheroa were taken in accordance with these regulations.

(4) For the purpose of subclause (1) of this regulation the term "person" does not include any child under the age of 5 years.<sup>1</sup>

This regulation was substituted for the former regulation 8 (as substituted by regulation 8 (1) of S.R. 1965/111, and amended by regulation 5 of S.R. 1969/152) by regulation 5 of S.R. 1971/168.

Subclause (1) was substituted for the former subclause (1) (as so substituted) by regulation 5 of S.R. 1974/236.

**9. Taking toheroa for scientific or piscicultural purposes—**Regulations 3 to 8 hereof shall not apply to officers of [the Ministry of Agriculture and Fisheries] taking toheroa for scientific or piscicultural purposes, and shall not apply to toheroa taken by such persons for such purposes.

The reference to the Ministry of Agriculture and Fisheries was substituted for a reference to the Marine Department by s. 6 (2) (b) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

**10. Regulations 5 and 7 not to apply to taking of toheroa under a lease—**Regulations 5 and 7 hereof shall not apply to a lessee, or to any person acting for the time being as the servant of a lessee, when the lessee or servant is taking toheroa for the purpose for which a lease was granted in a place where the taking of toheroa is authorised by the lease.

**11. Regulation 8 not to apply to taking of toheroa under a lease—**Regulation 8 hereof shall not apply to a lessee, or to any person acting for the time being as the servant of a lessee, when the lessee or servant is taking toheroa for the purpose for which a lease was granted in a place where the taking of toheroa is authorised by the lease.

**11A. Seizure of toheroa by a fishery officer—**(1) It shall be lawful for any fishery officer to seize and take possession of all toheroa which he has reason to believe have been unlawfully taken or unlawfully possessed, sold, bought, or conveyed, and also all baskets, receptacles, implements, or other apparatus which are being used or which in his opinion have been used or are intended to be used in contravention of the provisions of these regulations.

(2) Toheroa seized pursuant to this regulation shall be disposed of as the Minister may determine, either generally or specifically in any particular case.

(3) In the case of all other property so seized, the property shall be retained by **[[the Director-General]]** pending the trial of any person for the offence in respect of which the property was seized, and shall be disposed of as follows:

(a) On the conviction of any person for any such offence, the property shall be disposed of in such manner as the Minister directs in order to give effect to the provisions as to forfeiture in section 53 of the Fisheries Act 1908:

(b) If in any such proceedings the charge is dismissed, or if no such proceedings are commenced within 12 months after the seizure, the property shall be returned to the person last in possession thereof.】

This regulation was inserted by regulation 9 of S.R. 1965/111.

In subclause (3) the reference to the Director-General was substituted for a reference to the Secretary by s. 6 (2) (c) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

### PART III—LEASES FOR CANNING PURPOSES

**12. Taking toheroa for commercial-canning purposes**—No person shall take toheroa for commercial-canning purposes from any area except an area leased to him for commercial-canning purposes by writing under the hand of the Minister.

**【13. Granting of lease for taking toheroa discretionary**—It shall be in the absolute discretion of the Minister to grant or to refuse to grant a lease of any area for the taking of toheroa for commercial-canning purposes.】

This regulation was substituted for the original regulation 13 by regulation 10 of S.R. 1965/111.

**【14. Minister may invite tenders and prescribe conditions for leases**—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 of conditions of tendering.】

This regulation was substituted for the former regulation 14 (as substituted by regulation 11 of S.R. 1965/111) by regulation 2 (1) of S.R. 1972/135.

**15. Maximum period of 5 years for lease**—No lease shall be granted for a period exceeding **【5 years】** from the date thereof.

The expression “5 years” was substituted for “10 years” by regulation 12 of S.R. 1965/111.

**16. Leases confer exclusive right to take toheroa**—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 that area, subject to Part II of these regulations, toheroa for his own consumption.

**17. Lessee not to assign, charge, or part with his interest in a lease without consent of Minister—**(1) 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.

(2) 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.

**18. Lessee to acquire within 1 year a factory for treating toheroa—**Every lessee shall within 1 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.

**19. Minister may restrict quantity of toheroa to be taken in an area—**If it appears to the Minister that the beds in the area comprised in any lease are being unduly depleted or injuriously affected [or are likely to be unduly depleted or to be injuriously affected], the Minister may from time to time, by notice in writing to the lessee, 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.

The words in square brackets were inserted by regulation 13 of S.R. 1965/111.

**20. Monthly returns of toheroa taken to be sent to Director-General—**Every lessee shall, not later than 7 days after the end of every calendar month, deliver to [the Director-General] a return in the form in the First Schedule hereto showing the quantities of toheroa taken by him pursuant to his lease during that month.

The reference to the Director-General was substituted for a reference to the Secretary by s. 6 (2) (c) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

**21. Lessee to comply with provisions of lease—**Every lessee shall at all times during the continuance of the lease duly and punctually pay all rents, royalties, and other money payable thereunder, and duly and punctually observe, perform, and comply with all the provisions of the lease.

**22. Minister may determine lease—**Where a lessee—

- (a) Commits or suffers a breach [of the Fisheries Act 1908 or] of these regulations, whether or not he is convicted in respect of the breach; or
- (b) Fails without good and sufficient reason to use for the purpose for which the lease was granted the area therein contained; or
- (c) Takes for canning purposes toheroa from any area not comprised in a lease vested in him; or



[(cc) Fails to utilise fully in the products canned the whole of the flesh of toheroa taken pursuant to his lease; or]

(d) Works the beds of the area in such a way that they become unduly depleted or injuriously affected—  
the Minister, after giving 3 months' 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 the last-mentioned notice.

In para. (a) the words in square brackets were inserted by regulation 14 (1) of S.R. 1965/111.

Para. (cc) was inserted by regulation 14 (2) of S.R. 1965/111.

#### PART IV—MISCELLANEOUS

**23. Offences**—(1) Every person commits an offence against these regulations who does any act in contravention of or fails to comply with any provision of these regulations.

(2) Every person who commits an offence against these regulations is liable on summary conviction to a fine not exceeding [[\$500]], in addition and without prejudice to any other liability by way of forfeiture of property, revocation or suspension of lease, or otherwise to which he may be exposed.】

This regulation was substituted for the original regulation 23 by regulation 15 of S.R. 1965/111.

In subclause (2) the sum of \$500 was substituted for £250 by s. 7 of the Decimal Currency Act 1964.

**24. Revocations and savings**—(1) The regulations specified in the Second Schedule hereto are hereby revoked.

(2) All leases, 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 commencement 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.

(3) Notwithstanding anything in subclauses (1) and (2) of this regulation, in the case of a lease granted under Part XVIII of the Sea Fisheries Regulations 1939\* the provisions of that Part shall, as far as they are applicable, continue to apply to the lease and to the lessee thereunder instead of the corresponding provisions set out in Part III of these regulations.

\*S.R. 1939/225

## SCHEDULES

Reg. 20

## FIRST SCHEDULE

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

Name and address of leaseholder:.....

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:.....

Reg. 24 (1)

SECOND SCHEDULE  
REGULATIONS REVOKED

Title	Published in Statutory Regulations	
	Serial No.	Page
The Toheroa Regulations 1946 .....	1946/112	268
The Toheroa Regulations 1946, Amendment No. 2	1950/196	891
The Toheroa Regulations 1946, Amendment No. 3	1952/3	3
The Toheroa Regulations 1946, Amendment No. 4	1954/212	1372

T. J. SHERRARD,

Clerk of the Executive Council.

*Certified for the purposes of section 7 of the Regulations Act 1936,  
this 22nd day of October 1974.*

A. M. FINLAY, Attorney-General.

Issued under the authority of the Regulations Act 1936.

Date of notification of principal regulations in *Gazette*: 8 December 1955.

These regulations are administered in the Ministry of Agriculture and Fisheries.