

1955/206



THE TOHEROA REGULATIONS 1955

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.

REGULATIONS

PART I—PRELIMINARY

1. (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*.

Interpretation

2. 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 from the 1st day of September in any year until the 30th day of June in the next succeeding year, both days inclusive:

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

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

“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 for Marine:

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

PART II—RESTRICTIONS ON TAKING TOHEROA

3. 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.

4. 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.

5. No person shall for the purpose of taking toheroa use any implement made of metal.

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

7. No person shall in any one day take from any beach or beaches or have in possession more than twenty toheroa.

8. (1) No person shall in any one day convey by any means whatsoever or have on or on board any conveyance of any kind or on any animal more than fifty toheroa (not being canned toheroa) or, if fewer than three persons are in, on, or on board the conveyance or on the animal, more than twenty toheroa (not being canned toheroa) for each such person.

(2) No person shall during the close season convey by any means whatsoever or have on board any conveyance of any kind or on any animal any toheroa (not being canned toheroa).

(3) For the purposes of this regulation the toheroa in, on, or on board any conveyance or on any animal shall, in the absence of sufficient evidence that he was unaware of their presence, be deemed to be in the possession of the person for the time being in charge of that conveyance or animal.

9. Regulations 3 to 8 hereof 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.

10. 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 authorized by the lease.

11. 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 authorized by the lease.

PART III—LEASES FOR CANNING PURPOSES

12. 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. No area shall be leased for commercial 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 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 Monganui Rocks (the said limits being approximately three miles and thirty miles respectively north of the point where the road from Waipapakauri enters the beach).

14. 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.

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

16. 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. (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. 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.

19. If it appears to the Minister that the beds in the area comprised in any lease are being unduly depleted or 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.

20. Every lessee shall, not later than seven days after the end of every calendar month, deliver to the Secretary 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.

21. 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. Where a lessee—

(a) Commits or suffers a breach 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

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

the Minister, after giving three 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.

PART IV—MISCELLANEOUS

23. Every person who commits a breach of these regulations commits an offence and is liable on summary conviction to a fine not exceeding £100.

24. (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

FIRST SCHEDULE

Reg. 20

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:.....

SECOND SCHEDULE

Reg. 24(1)

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.

EXPLANATORY NOTE

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

These regulations consolidate and amend the Toheroa Regulations 1946 and their amendments.

The principal changes are—

- (a) The provisions of Part III of the Toheroa Regulations 1946, which permitted digging toheroa under licence for sale, have not been re-enacted.
- (b) The closed season for all beaches will in future extend through all months of the year except July and August.
- (c) Regulation 8, relating to the conveying of toheroa in vehicles, now extends to all means of conveyance, including the use of pack animals.

Issued under the authority of the Regulations Act 1936.

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

These regulations are administered in the Marine Department.