

Reprint
as at 20 September 2007

**Cook Islands Pearl-Shell Fisheries
Regulations 1950**

(SR 1950/50)

Cook Islands Pearl-Shell Fisheries Regulations 1950: revoked, on 20 September 2007, by section 7(2) of the Cook Islands Amendment Act 2007 (2007 No 49).

PURSUANT to the Cook Islands Act 1915, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

These regulations are administered in the Department of Island Territories.

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Part 1
Preliminary

1

These regulations may be cited as the Cook Islands Pearl-Shell Fisheries Regulations 1950.

2

Regulations 3, 9, 10, 14A and 39 hereof shall be in force in the Island of Niue, but the other provisions of these regulations shall not be in force in that island.

Regulation 2 was amended, as from 4 September 1957, by regulation 2 Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1957/182) by substituting the words “Regulations 3, 9, 10, 14A and 39” for the words “Regulations 9 and 10 hereof and the definition of the terms **fishing reserve** and **reserve** in Regulation 3”.

3

In these regulations, unless the context otherwise requires,—

Diving machine includes an aqua lung and any other mechanical device designed to aid breathing under water

Diving machine, Pipi pearl: these definitions were inserted, as from 4 September 1957, by regulation 3(1) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1957/182).

Fishing reserve and **reserve** mean one of the fishing reserves constituted by these regulations

Pipi pearl means the pearl known in the Cook Islands as pipi pearl

Diving machine, Pipi pearl: these definitions were inserted, as from 4 September 1957, by regulation 3(1) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1957/182).

Season means a period of time commencing on the 1st day of January and expiring on the 31st day of December in each year

Resident Agent*[Revoked]*

Resident Agent: this definition was revoked, as from 4 September 1957, by regulation 6(2) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1957/182).

[Revoked]

Resident Commissioner means the Resident Commissioner of Rarotonga or, in relation to Niue, the Resident Commissioner of Niue

Resident Commissioner: this definition was amended, as from 4 September 1957, by regulation 3(2) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1957/182) by inserting the words “or, in relation to Niue, the Resident Commissioner of Niue”.

To trim, in relation to pearl shell, means to cut off or remove the outer margin or edge of brittle immature shell growth which does not consist of nacre or mother of pearl and which is of such frailty that it could be broken off by hand by an adult person, and **trimmed** has a corresponding meaning.

To trim: this definition was inserted, as from 4 September 1957, by regulation 3(1) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1957/182).

4

The regulations mentioned in Schedule 1 to these regulations are hereby revoked.

5

All acts of authority and other acts and all documents, matters and things and all periods of time which originated or had effect under the regulations hereby revoked and are subsisting or in force or continuing when these regulations come in to force 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

Any power conferred by these regulations upon an Island Council may be exercised by the Resident Commissioner.

7

The following areas are constituted fishing reserves for the purposes of these regulations and shall be known by the names hereby assigned to them:—

- (a) The lagoon at the Island of Manihiki, to be known as the Manihiki Reserve:
- (b) That part of the lagoon at the Island of Penrhyn which lies to the north of a straight line drawn east and west so as to divide the lagoon into halves, to be known as the Penrhyn Northern Reserve:
- (c) That part of the lagoon at the Island of Penrhyn which lies to the south of the line aforesaid, to be known as the Penrhyn Southern Reserve.

Part 2

General restrictions

8

- (1) No person shall take from a fishing reserve any pearl-shell which when trimmed would have a diameter of less than 5 in measured along its greatest axis.
- (2) Every person who takes any pearl shell which when trimmed would have a diameter of less than 5 so measured shall return the same to the water at the site from which it was taken.

Regulations 8 to 10 were substituted, as from 4 September 1957, by regulation 4(1) Cook Islands Pearl-Shell Fisheries Regulations 1950, Amendment No 2 (SR 1957/182).

9

No person shall have in his possession or sell or purchase in or export from any part of the Cook Islands any pearl-shell which is taken from a fishing reserve and has a diameter, when trimmed, of less than 5 in measured along its greatest axis.

Regulations 8 to 10 were substituted, as from 4 September 1957, by regulation 4(1) Cook Islands Pearl-Shell Fisheries Regulations 1950, Amendment No 2 (SR 1957/182).

10

Where any person in the Cook Islands has in his possession, or sells, purchases, or exports any pearl-shell having a diameter when trimmed, of less than 5 in measured along its greatest axis, that pearl-shell shall, in the absence of proof to the contrary, be deemed to have been taken from a fishing reserve.

Regulations 8 to 10 were substituted, as from 4 September 1957, by regulation 4(1) Cook Islands Pearl-Shell Fisheries Regulations 1950, Amendment No 2 (SR 1957/182).

11

Every person taking any pearl-shell shall forthwith open the same on the lagoon from which it was taken and shall forthwith return to the water any spawn contained in the shell.

12

No person shall fish for pearl-shell or pipi-pearls in any fishing reserve, whether by naked diving or by using a diving-machine, unless he is the holder of a current licence issued under these regulations authorizing him to fish and dive for pearl-shell or pipi-pearls, as the case may be, in that fishing reserve.

13

No person shall use a diving-machine in any fishing reserve unless he is the holder of a current licence issued under these regulations authorizing him so to do.

14

No person shall use a diving-machine in any fishing reserve unless he is the holder of a current licence authorizing him to use that diving-machine in that reserve.

14A

- (1) The Resident Commissioner may, by writing under his hand, authorize such persons as he thinks fit to act as Inspectors for the purposes of these regulations.
- (2) Any such Inspector may at any time enter any building or vehicle or upon any land or premises or go aboard any canoe, boat, or ship for the purpose of searching for and inspecting pearl shell.
- (3) Any such Inspector may confiscate any trimmed pearl shell having a diameter of less than 5 in. measured along its great-

est axis or any pearl shell which when trimmed would have a diameter of less than 5 in. so measured.

- (4) Any pearl shell so confiscated (whether before or after the commencement of this subclause) shall be deemed to be forfeited to Her Majesty, and shall be disposed of by the Resident Commissioner through Her Majesty's officers, servants, agents, and contractors, as the Minister directs.

Regulation 14A was inserted, as from 24 March 1952, by regulation 2 Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 1 (SR 1952/54).

Subclause (3) was substituted, as from 4 September 1957, by regulation 3(2) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1957/182).

Subclause (4) was inserted, as from 9 July 1958, by regulation 2 Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 3 (SR 1958/103).

Part 3 Licences

15

Every licence to fish and dive for pearl-shell or pipi-pearls shall be in force from the date on which it is issued or the 1st day of January in the year in respect of which it is issued (whichever is the later) until and including the 31st day of December in the year in respect of which it is issued.

16

Every licence to fish and dive for pearl-shell or pipi-pearls in a reserve in any island shall be issued by the Resident Commissioner and shall be in the form numbered 1 in Schedule 2 hereto.

Regulation 16 was amended, as from 4 September 1957, by regulation 6(1)(a) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1957/182) by substituting the words "the Resident Commissioner" for the words "the Resident Agent for that Island".

17

No licence to fish and dive for pipi-pearls in a Penrhyn reserve shall be issued to any person except—

- (a) A person who is a Native of the Island of Penrhyn; or
- (b) A person who is a British subject by birth or naturalization; or;
- (c) A person who is a Native within the meaning of the Cook Islands Act 1915, and is married to a Native of

the Island of Penrhyn and to whom the issue of a licence has been approved by resolution of the Island Council of Penrhyn.

18

Any person desiring to use a diving-machine in a fishing reserve shall make written application in that behalf to the Resident Commissioner.

Regulation 18 was amended, as from 4 September 1957, by regulation 6(1)(b) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1967/182) by substituting the words “the Resident Commissioner” for the words “the Resident Agent”.

19

Every licence to use a diving-machine in a reserve in any island shall be issued by the Resident Commissioner and shall specify the diving-machine in respect of which it was issued and shall be in the form numbered 2 in Schedule 2 hereto.

Regulation 19 was amended, as from 4 September 1957, by regulation 6(1)(a) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1967/182) by substituting the words “the Resident Commissioner” for the words “the Resident Agent for that Island”.

20

The Resident Commissioner may, in his discretion, refuse to grant a licence to use a diving-machine to any individual who is not a British subject by birth, or to any corporate body the members of which are not all British subjects by birth or which has a domicile outside His Majesty’s dominions.

Regulation 20 was amended, as from 4 September 1957, by regulation 6(1)(b) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1967/182) by substituting the words “the Resident Commissioner” for the words “the Resident Agent”.

21

Not more than one licence shall be granted to one person or firm for the use of diving-machines in any particular reserve.

22

If at any time six licences for the use of a diving-machine in any reserve are in force, no further licence shall be granted for the use therein of a diving-machine.

23

Any person desiring a licence for the use of a diving-machine who is unable to obtain a licence by reason of the fact that six

licences are in force for the use of diving-machines in the reserve for which he seeks a licence may by information apply to the High Court for an order revoking any licence then in force on the ground that the holder thereof is not making reasonably full use of the rights thereby conferred, and the High Court may by order declare that such licence is revoked.

24

If upon information laid by any person it is proved to the satisfaction of the High Court that the holder of any licence issued under these regulations has obtained the same by fraud, misrepresentation, or mistake, or has acted in an improper manner in exercising the rights thereby conferred, the High Court may by order declare that such licence is revoked.

25

Upon conviction of the holder of a licence for any offence against these regulations the High Court may by order declare that his licence is revoked.

26

Upon the making by the High Court of an order declaring that any licence is revoked, such licence shall forthwith be void and cease to have any effect for the purposes of these regulations, and the holder thereof shall forthwith, unless prevented by circumstances outside his control, surrender the same to the Resident Commissioner to be cancelled, but failure so to surrender the licence shall not affect the revocation thereof.

Regulation 26 was amended, as from 4 September 1957, by regulation 6(1)(b) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1967/182) by substituting the words "the Resident Commissioner" for the words "the Resident Agent".

27

Every licence granted to fish and dive for pearl-shell or pipi-pearls shall be available only for the personal use of the individual to whom it is granted, and no licence shall be transferable or pass by operation of law to any other person.

28

Every licence to use a diving-machine shall be available for the person to whom it is granted and for his servants and agents being holders of a current licence to fish and dive for pearl-

shell or pipi-pearls, but not further or otherwise, and shall not be transferable, but may pass by operation of law to any other person.

Part 4

Open and close seasons

29

Subject as hereinafter appears, it shall be lawful to use a diving-machine in the following reserves at the following times, but at no other times:—

- (a) In the Penrhyn Southern Reserve during the season of 1950;
- (b) In the Penrhyn Northern Reserve during the season of 1951;
- (c) In the Manihiki Reserve during the season of 1952,— and thereafter in the same rotation.

30

The Resident Commissioner may, by public notice, declare that it shall be lawful to use a diving-machine in any particular reserve at any time other than the times specified in Regulation 29 hereof, and may specify in such notice the period during which it shall be lawful to use a diving-machine in any such reserve.

31

The Island Council of any island in which a fishing reserve is situated may from time to time, by resolution publicly notified, fix a close season or seasons for pearl-shell fishing for the whole or any part of such reserve:

Provided that no such resolution shall make unlawful the use of a diving-machine pursuant to a notice given under Regulation 30 hereof.

32

The Island Council of Penrhyn may from time to time by resolution publicly notified fix a close season or seasons for pipi-pearl fishing in the Penrhyn Northern Reserve and the

Penrhyn Southern Reserve or either of them or any defined portion of both or either of them:

Provided, first, that no such close season or seasons shall, in respect of any part of the Penrhyn Lagoon, exceed in the aggregate six month in any one calendar year:

Provided, secondly, that no such resolution shall make unlawful the use of a diving-machine pursuant to a notice given under Regulation 30 hereof.

33

Every resolution of an Island Council made in terms of Regulation 31 or Regulation 32 hereof shall be submitted to the Resident Commissioner, and the Resident Commissioner may disapprove the same, and thereupon from the time when such disapproval is publicly notified by the Resident Commissioner such resolution shall cease to have any effect for the purposes of these regulations.

Regulation 33 was amended, as from 4 September 1957, by regulation 6(1)(b) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1967/182) by substituting the words "the Resident Commissioner" for the words "the Resident Agent".

34

Notwithstanding anything to the contrary in any licence, but subject to Regulation 30 hereof, during a close season for pearl-shell fishing or pipi-pearl fishing fixed by resolution of an Island Council no person shall fish for pearl-shell or pipi-pearls (as the case may be) in any fishing reserve or (as the case may be) any portion of a fishing reserve to which the resolution relates whether by naked diving or by using a diving-machine or otherwise.

35

In order that the shallower parts of reserves may be reserved for naked diving, the Resident Commissioner may from time to time direct the holder of a licence to use a diving-machine that he shall not use the machine in water of less than a specified depth, and may from time to time review any such direction and withdraw the same and issue a fresh direction.

Regulation 35 was amended, as from 4 September 1957, by regulation 6(1)(b) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1967/182) by substituting the words "the Resident Commissioner" for the words "the Resident Agent".

36

No licensee and no servant or agent of a licensee shall use a diving-machine in breach of a direction given to the licensee under the last preceding regulation.

**Part 5
Licence fees**

37

- (1) There shall be paid for licences issued under these regulations the appropriate fees specified in Schedule 3 to these regulations.
- (2) The appropriate fee shall be paid to the Resident Commissioner before the issue of a licence, and shall form part of the Public Revenues of the Cook Islands.

The original regulation 37 was amended, as from 4 September 1957, by regulation 6(1)(b) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1967/182) by substituting the words “the Resident Commissioner” for the words “the Resident Agent”.

Regulation 37 was substituted, as from 9 July 1958, by regulation 3(1) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 3 (SR 1958/103).

38

The Resident Commissioner shall have power to decide whether any person is for the purposes of these regulations a Native of any island or a Native within the meaning of the Cook Islands Act 1915, and his decision shall be final.

Regulation 38 was amended, as from 4 September 1957, by regulation 6(1)(b) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1967/182) by substituting the words “the Resident Commissioner” for the words “the Resident Agent”.

**Part 6
Penalties**

39

Any person who fails to comply with or acts in contravention of any of these regulations commits an offence, and shall be liable upon conviction to a fine not exceeding \$100.

Regulation 39 was substituted, as from 4 September 1957, by regulation 6(1)(b) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 2 (SR 1967/182).

Part 7

40

Jurisdiction of the High Court

A Commissioner of the High Court may exercise any of the powers conferred on the High Court by these regulations.

Schedule 1
Regulations revoked

| Short Title | Published in <i>Gazette</i> | |
|---|-------------------------------------|-------|
| | Year. | Page. |
| The Cook Islands Pearl-shell Fisheries Regulations 1921 | 1921 | 496 |
| The Cook Islands Pearl-shell Fisheries Regulations Amendment 1928 | 1928 | 2275 |
| The Cook Islands Pearl-shell Fisheries Regulations Amendment 1930 | 1930 | 660 |
| The Cook Islands Pearl-shell Fisheries Regulations Amendment 1936 | 1936 | 1158 |
| | Published in Statutory Regulations. | |
| | Serial Number. | Page. |
| The Cook Islands Pearl-shell Fisheries Regulations Amendment 1941 | 1941/20 | 37 |

Schedule 2

(Form No 1)

Licence to fish and dive for pearl-shell or pipi-pearls

..... *Fishing Reserve*

....., of [having paid the prescribed fee] (*In the case of a licence for which no fee is payable these words will be deleted*), is hereby licensed to fish and dive for pearl-shell [and pipi-pearls] within the Fishing Reserve during the year 19....., subject to the regulations for the time being in force relating to pearl-shell fisheries in the Cook Islands.

Dated this day of, 19.....

.....
Resident Agent.

Fee paid: \$.....

(Form No 2)

Licence for a diving-machine

..... *Fishing Reserve*

....., of, having paid the prescribed fee, is hereby licensed to use diving-machine No [*identifying it*] within the Fishing Reserve during the year, subject to the regulations for the time being in force relating to pearl-shell fisheries in the Cook Islands.

Dated this day of, 19.....

.....
Resident Agent.

Fee paid: \$40.

Schedule 3

Schedule 3 was inserted, as from 9 July 1958, by regulation 3(2) Cook Islands Pearl Shell Fisheries Regulations 1950, Amendment No 3 (SR 1958/103).

LICENCE FEES

1. For a licence to fish and dive for pearl shell or pipi pearl granted to a Native of the island in which the fishing reserve is situated..... No fee

LICENCE FEES

| | | |
|----|--|------|
| 2. | For a licence to fish and dive for pearl shell or pipi pearl in the Manihiki Reserve granted to a person other than a Native of Manihiki..... | \$6 |
| 3. | For a licence to fish and dive for pipi pearl in a Penrhyn Reserve granted to a person other than a Native of Penrhyn..... | \$6 |
| 4. | For a licence to fish and dive for pearl shell granted to any person other than a person mentioned in the foregoing provisions of this Schedule..... | \$2 |
| 5. | For a licence to use a diving machine | \$40 |

T J SHERRARD,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 5th day of April, 1950.

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Notes

1 *General*

This is an eprint of the Cook Islands Pearl-Shell Fisheries Regulations 1950. It incorporates all the amendments to the Cook Islands Pearl-Shell Fisheries Regulations 1950 as at 20 September 2007. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 *About this eprint*

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 *List of amendments incorporated in this eprint (most recent first)*

Cook Islands Amendment Act 2007 (2007 No 49): section7(2)
