



MANIHIKI (NATURAL RESOURCES) BY-LAWS 2003

F. Goodwin

Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga this 3rd day of June 2003

Present:

**HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE
IN EXECUTIVE COUNCIL**

PURSUANT to Sections 15 and 16 of the Outer Islands Local Government Act 1987, His Excellency the Queen's Representative, acting by and with the advice and consent of the Executive Council, hereby makes the following By-laws.

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Price \$3.00

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BY-LAWS

By-laws to provide for the management of natural resources on the island of Manihiki and in its lagoon and surrounding waters

1. Title and Commencement - These By-laws may be cited as the Manihiki (Natural Resources) By-laws 2003.
2. Application of these By-laws - These By-laws shall apply to the Island of Manihiki, to its lagoon and reef and to its surrounding waters.
3. Interpretation - In these By-laws unless the context otherwise requires -
 - "Council" means the Island Council of Manihiki established under the Outer Islands Local Government Act 1987;
 - "Fish" means any aquatic animal or plant, whether piscine or not; and includes any oyster or other mollusc, crustacean, coral, sponge, holothurian (beche-de-mer), or other echinoderm, turtle and marine mammal and includes their eggs, spawn, spat and juvenile stages;
 - "Lagoon" means the Manihiki lagoon;
 - "Pearl shell diving permit" means a permit issued under section 5 of these By-laws, and includes any such permit included within any other permit;
 - "Raii-protected species" means any species of fish, plant, animal or other species of flora or fauna (whether living or dead), which is the subject of a raii or restriction on sale, export or commercial exploitation, declared by the Council under these By-laws;

2003/05



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| | 15. Taking of raii protected species from raii area prohibited |

Price \$3.00

8. Council may grant pearl farming permit - (1) Subject to these By-laws and to the provisions of any Act, the Council may grant a pearl farming permit to an applicant subject to such conditions and for such period as the Council thinks fit. Subject to those terms and conditions, that permit shall entitle that person, in the lagoon, to farm pearl shell and to seed, pearl shell and to cultivate or otherwise cause to be grown artificially, or otherwise, any pearl.

(2) Where the area comprised in any pearl farming permit includes any kaoa, the holder of that permit shall enjoy only those rights to use that kaoa which are specifically conferred in the permit or in any management plan for the lagoon from time to time in force and that person shall at all times comply with the terms and conditions for the use of that kaoa or kaoa generally, set out in that permit or in that Management plan.

PART 3 **TECHNICIANS**

9. Technicians must have approval of Council - No technician shall seed pearl shell (whether by the implanting of nuclei or otherwise) or undertake any other work in connection with pearl farming in Manihiki without the prior approval of the Council. Nothing in this Part of this Act shall, however, be interpreted as requiring the grant of a permit in respect of the implantation of beads or nuclei for the production of blister or half pearl mabe.

10. Technicians must be competent - (1) No approval for any technician to seed pearl shell or to undertake any other work in connection with pearl farming shall be given by the Council until the Council is satisfied as to the qualifications, experience and competence of that technician.

(2) In assessing the qualifications, experience and competence of any technician, the Council may require the technician to satisfy the Council that in the seeding of black-lipped pearl shell the previous work of the technician is such that unless other factors prevent it, product quality, pearl shell mortality and rejection rates in respect of the work of that technician in Manihiki are likely to be within the range considered commercially acceptable in Manihiki.

(3) Without limiting the powers of the Council under these By-laws, the Council may make the grant of a Technician's Permit subject to revocation if the work of that technician shall be found, at any time, to be below the standard considered commercially acceptable in Manihiki.

11. Work history to be supplied to the Council - Any application to the Council on behalf of any technician must be accompanied with a written record of the technician's work history and qualifications if any, together with at least two referees as to the standard of the work of that technician in respect of black-lipped pearl shell.

“Technician” means any person who seeds, cultivates or otherwise causes to be grown artificially any pearl, whether or not for hire or reward, but does not include a person who, being the holder of a pearl farming permit under these By-laws, carries out those activities by way of trial or feasibility study on a limited number of pearl shell (not exceeding 1000 in any calendar year) belonging to him;

“Underwater breathing apparatus” means any apparatus capable of being used for providing breathable gases underwater, and includes self contained underwater breathing apparatus (commonly known as “scuba”) and hookah, but does not include any snorkel.

PART 1 **FREE DIVING**

4. Naturally occurring pearl shell not to be taken without a permit - No person shall take, by any means, naturally occurring pearl shell, other than -

- (a) from a spat collector belonging to that person and set by that person in accordance with a pearl farming permit; or
- (b) in accordance with the provisions of a pearl shell diving permit.

5. Council may grant pearl shell diving permits - (1) Subject to these By-laws and to the provisions of any Act, the Council may grant to an applicant a pearl shell diving permit. The permit shall allow that person to take any naturally occurring pearl shell, subject to such conditions and for such period as the Council specifies in that permit.

(2) Without affecting the general terms of the preceding subsection, the Council may grant a pearl shell diving permit as part of the terms and conditions of a pearl farming permit.

6. Free diving only permitted - No person shall use underwater breathing apparatus to dive for naturally occurring pearl shell except for the purpose of collecting naturally occurring pearl shell from a spat collector belonging to that person and set by that person in accordance with a pearl farming permit.

PART 2 **PEARL FARMING**

7. No pearl farming without a permit - (1) Any person farming pearl shell (including the collection of spat and of naturally occurring pearl shell on spat collectors) must first obtain a pearl shell farming permit from the Council.

(2) Subsection (1) shall apply to a person whether or not that person wishes to seed pearl shell or to cultivate or otherwise cause to be grown, artificially or otherwise, any pearl.

17. Manihiki Lagoon Management Plan - (1) The Council, may, from time to time, in consultation with the Ministry of Marine Resources and with other interested parties on Manihiki prepare, (itself or by any other person) a draft management plan for the protection, conservation, management and control of the Manihiki lagoon, taking into account the following matters -

- (a) the lagoon is a resource to be used and enjoyed by those of Manihikian descent who choose to live and work on the Islands of Manihiki and Rakahanga;
- (b) the lagoon is a community resource and the grant of any permit is not the right of any individual. Rather it is a privilege granted to those who choose to work with and as part of, that community respecting the culture, tradition and values of that community;
- (c) the lagoon is a fragile resource which must be protected by all who use and enjoy it, to ensure the long term future of pearl farming both for those who live on the island of Manihiki and for future generations;
- (d) the needs, both of the lagoon and of the community may change over the period of this permit.

(2) When the Council has prepared a draft management plan, the Council shall give public notice on Manihiki that the plan has been prepared, specifying the place or places where the draft plan may be inspected, inviting interested persons to make representations by a specified date (being not less than one calendar month after publication of the notice) and specifying the place to which those representations should be forwarded.

(3) Any person may, not later than the date specified in the notice, make representations to the Council in connection with the proposed management plan and the Council shall give due consideration to any representations made and may alter amend or vary the proposed management plan. The Council shall then arrange for a public meeting to be held in the village of Tauhunu and a public meeting to be held in the village of Tukao for the making of further and final public submissions.

(4) The Council may, after taking into account matters raised at those public meetings further amend that management plan which shall then come into force on a date specified by the Council and the management plan shall be published by notice in each of the villages of Tauhunu and Tukao, and copies shall be made available to any person at a reasonable cost from the Clerk of the Council.

(5) The Council may, from time to time, amend, in whole or in part, any management plan. The provisions of this section shall apply with respect to any such amendment.

18. Power to revoke or amend permits - (1) The Council may revoke or vary the terms of any permit issued under the provisions of these By-laws by notice if it considers that revocation or variation is reasonably necessary or appropriate having regard to the interests of the lagoon, the pearl farming industry, or the interests of the public in Manihiki, in each case as identified by the then current Management Plan.

12. Technician's Permit - Subject to these By-laws and to the provisions of any Act, the Council may grant a Technician's Permit to an applicant subject to such conditions and for such period as the Council thinks fit. Subject to those terms and conditions, that permit shall entitle that person to perform, for the person or persons specified in the permit, services of the sort normally performed by a pearl farm technician.

PART 4 NATURAL RESOURCE MANAGEMENT

13. Use of underwater breathing apparatus prohibited while fishing - No person shall use in the lagoon any underwater breathing apparatus while -

- (a) spearfishing;
- (b) gathering any species of fish;
- (c) setting or gathering any set net or collecting fish from any such net.

14. Declaration of raii or commercial restrictions - (1) Where the Council resolves that conservation of the natural resources require it, the Council may from time to time -

- (a) declare a raii; or
- (b) place restrictions upon sale, export, or commercial exploitation, in respect of the taking of any fish, other creature or any plant or substance from any area or areas of the island of Manihiki or its surrounding waters.

(2) Every such declaration shall be effective on and from the date upon which notice of that declaration, together with a description and plan of the area affected and (if the raii or restriction is limited to a particular species or number or species) of the raii protected species shall be notified to the public in accordance with these By-laws.

(3) It shall not be necessary that the notice use the scientific term for any raii protected species nor shall it be necessary that the description and plan be of any particular form or degree of accuracy provided that the nature and degree of notice is such as to be reasonably understandable and intelligible by the public.

15. Taking of raii protected species from raii area prohibited - No person shall take or attempt to take any raii protected species by any means from an area over which a raii has been declared and where the Council has placed restrictions on the sale, export or commercial exploitation of a raii protected species, no person shall deal with that species in any way which is inconsistent with those restrictions.

16. Traditional raii lands - Where any land the subject of a raii declared under these By-laws has been traditionally regarded as being the subject of raii restrictions (including but not limited to the lands described in the Schedule to these By-laws), no person shall keep or permit to be or to roam on that land any pig, goat, chicken or other animal or bird, whether domesticated or not without the written consent of the Council, which consent may be given or withheld on such terms and conditions as the Council thinks fit.

- (b) to open and search whenever necessary any package, box, baggage and any other container or whatever kind to determine whether or not any breach of these By-laws has been committed;
- (c) to confiscate all the pearl shell found in the possession of a person contrary to the provisions of these By-laws and to dispose of such pearl shell in the manner directed by resolution of the Island Council;
- (d) to institute or cause to be instituted any legal action against any person who has committed a breach of any of the provisions of these By-laws;
- (e) to demand the production of any permit for inspection.

PART 7
PENALTIES AND GENERAL

24. Penalty - (1) Every person commits an offence who acts in contravention of these By-laws or in contravention of any permit issued hereunder and shall on conviction be liable to a fine of \$200 or of such larger amount as is at that time provided for under the provisions of the Outer Islands Government Act 1987 or any successor legislation and to such term of imprisonment as may be imposed having regard to the provisions of that Act or of its successor in force at that time.

(2) For the purposes of these By-laws, where any offence of a continuing nature is committed by any person, then that person shall be deemed for all purposes to have committed a series of separate offences on each day of the period during which that person acts in contravention of these By-laws or of any permit as the case may be.

(3) The Court may, in addition to any other penalty order the forfeiture to the Council of any boat, underwater breathing apparatus, farming equipment, seeding equipment or any other property of whatever nature used by the offender in the commission of any offence under these By-laws.

(4) Nothing in this section shall be interpreted or construed as limiting the powers of the Council to suspend or terminate any permit issued under these By-laws for breach of these By-laws or for any breach of a permit issued under these By-laws, where the terms of the permit allow that.

25. Savings - Notwithstanding these By-laws any permit related to the diving, cultivation and seeding of pearl shell and any approval for any technician granted before the coming into force of these By-laws shall remain in force as if it were granted pursuant to these By-laws.

26. Notices - Where any section of these By-laws requires or authorises the giving of notice or notification to any person or persons or to the public generally such notice may be given by any one or more of the following means -

- (a) by written notice personally served on the person or persons concerned;
- (b) by publishing a written notice on any notice board of the Council in each village provided that the notice board shall be situated in a place to which the public has reasonable access during normal

PART 5
QUALITY CONTROL AND INDUSTRY STANDARDS

19. Council's role in quality control matters - (1) The Council, in granting any permit, may impose terms and conditions on any person holding any permit issued under these By-laws for the purpose of promoting quality control and product enhancement

(2) Without limiting the powers of the Council under subsection (1) in any way, the Council may impose terms and conditions on any person holding any permit issued under these By-laws as to the length of time between the seeding of any pearl shell and the harvesting and re-seeding of that pearl shell, and may require the keeping and production of records and the inspection of any pearl farm in order to ensure compliance by all persons with those terms and conditions.

20. Authentication of pearls - (1) In any case where the Council is satisfied, having regard to all records, and to such assurances and proof as it may require from the relevant pearl farmer, technician and any other person, that any pearl has met the requirements of the Council as to the length of time between the implantation of its nuclei and subsequent harvest, the Council may (but in no case shall be obliged to) issue a certificate of authenticity describing that pearl with reference to the pearl farmer and the technician producing that pearl, and the age of that pearl at harvest.

(2) Where a certificate of authenticity is issued by the Council in respect of any pearl it shall be an offence under these By-laws for any person to use that certificate for any purpose other than to authenticate the age and provenance of the pearl for which that certificate was issued.

21. Labour standards - The Council, in granting any permit under these By-laws, may impose terms and conditions as to the accommodation, upkeep and general living and working conditions provided by the holder of a permit on Manihiki to any person not ordinarily resident on Manihiki who is employed by that permit holder.

PART 6
ENFORCEMENT

22. Enforcement by Police of these By-laws - Every member of the Police shall enforce the provisions of these By-laws and shall have and may exercise the powers conferred upon the Police by Section 19 of the Outer Islands Local Government Act 1987.

23. Powers of Police - A Police Officer, if he has reasonable cause to suspect that a person has committed an offence against these By-laws, may, without warrant -

- (a) enter upon any premises, boat or pearl farm and conduct searches and whenever necessary, enforce the provisions of these By-laws;

SCHEDULE

The lands and motus known as:

MURIHITI
VAITUPA
KAPATE
OTIKI
FAONGA-I-TE-MATA
MOTUAKAMARU
POREA E NA MOTU