



PENRHYN PEARL AND PEARL SHELL BY-LAWS 1993

A.P. Short

Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga, this 12th day of October 1993

Present:

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

PURSUANT to Sections 15 and 16 of the Outer Islands Local Government Act 1987 and Section 5 of the Marine Resources Act 1989 the Queen's Representative acting by and with the advice and consent of the Executive Council, hereby makes the following By-laws.

ANALYSIS

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|----|---|-----|---|
| 1. | Title | | <u>PART II</u> |
| 2. | Application of these By-laws | | <u>PEARL SHELL FARMING</u> |
| 3. | Interpretation | 9. | No Pearl Shell Farming without a permit |
| | <u>PART I</u> | 10. | Council may grant Pearl Shell Farming Permit |
| | <u>FREE DIVING</u> | | <u>PART III</u> |
| 4. | Application to be made in writing | | <u>CULTURED PEARL SHELL FARMING PERMIT</u> |
| 5. | No Free Diving without a Permit | 11. | Cultured Pearl Shell Farming Permit |
| 6. | Council may grant Pearl Shell Diving Permit | | |
| 7. | Free Diving only permitted | | |
| 8. | Power to revoke Pearl Shell Diving Permit | | |

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| <p>12. Pearl Shell Farming Permit a prerequisite for Cultured Pearl Shell Farming Permit</p> <p>13. No Pearl Shell Seeding without a permit or licence</p> <p><u>PART IV</u>
<u>TECHNICIANS</u></p> <p>14. Technicians must have approval of Island Council</p> <p>15. Technicians must be competent</p> <p>16. Work history to be supplied to the Island Council</p> <p>17. Conditions on Technicians</p> <p><u>PART V</u>
<u>MISCELLANEOUS</u></p> | <p>18. Map of lagoon to be kept and updated</p> <p>19. Register to be kept and updated</p> <p>20. Fisheries Plan</p> <p><u>PART VI</u>
<u>ENFORCEMENT</u></p> <p>21. Enforcement by Police of these By-laws</p> <p>22. Powers of Police</p> <p><u>PART VII</u>
<u>PENALTIES</u></p> <p>23. Penalty</p> <p>24. Savings Schedules</p> |
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BY-LAWS

By-laws to provide for the management of pearl and pearl resource in the Penrhyn lagoon

1. Title - These By-laws may be cited as the Penrhyn Pearl and Pearl Shell By-laws 1993.
2. Application of these By-laws - These By-laws shall apply to the Island of Penrhyn.
3. Interpretation - In these By-laws unless the context otherwise requires;
 - "Fisheries Officer" means a representative of the Ministry of Marine Resources;
 - "Island Council" means the Island Council of Penrhyn;
 - "Lagoon" means the Penrhyn Lagoon;
 - "Technician" means any person who seeds, cultivates or otherwise cause to be grown artificially any pearl;
 - "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") but does not include any snorkel;
 - "Pearl Shell" means any black lip mother of pearl shell (*Pinctada margaritifera*).

PART I **FREE DIVING**

4. Application to be made in writing - (1) Every application for a permit and licence to dive, seed, cultivate, or otherwise cause to be grown artificially any pearl shell in the lagoon shall be made in writing to the Office of the Island Council in the prescribed form as set out in Schedule IA of these By-laws.

(2) Every application for a permit to scuba dive in the lagoon shall be made in writing to the office of the Island Council in the prescribed form as set out in Schedule IB of these By-laws.

5. No Free Diving without a Permit - No person shall dive for naturally occurring pearl shell, without first obtaining a pearl shell diving permit from the Island Council in the prescribed form as set out in Schedule II of these By-laws.

6. Council may grant Pearl Shell Diving Permit - Subject to these By-laws and to the provisions of any Act, the Council may grant to an applicant a permit subject to such conditions and for such period as the Council thinks fit, to take any naturally occurring pearl shell.

7. Free Diving only permitted - No person shall use underwater breathing apparatus in the lagoon without first obtaining a Scuba Diving Permit from the Island Council in the prescribed form as set in Schedule III of these By-laws.

8. Power to revoke Pearl Shell Diving Permit - (1) The Island Council may revoke all or any Pearl Shell Diving Permit by public notice if it considers that naturally occurring pearl shell stocks in the lagoon are over exploited or are likely to be over exploited.

(2) Such public notice shall be in writing and posted on the public notice board of the Post Office in both villages of Penrhyn, being the village of Omoka and the village of Tetautua.

PART II PEARL SHELL FARMING

9. No Pearl Shell Farming without a permit - No person shall farm pearl shell, or collect spat on spat collectors without first obtaining a Pearl Shell Farming Permit from the Island Council in the prescribed form as set out in Schedule IV of these By-laws.

10. Council may grant Pearl Shell Farming Permit - Subject to these By-laws and to the provisions of any Act, the Council may grant a Pearl Shell Farming Permit to an applicant subject to such conditions and for such period as the Council thinks fit.

PART III CULTURED PEARL SHELL FARMING PERMIT

11. Cultured Pearl Shell Farming Permit - No person shall cultivate or otherwise cause to be grown artificially any pearl without first obtaining a Cultured Pearl Farming Permit from the Island Council in the prescribed form as set out in Schedule V of these By-laws.

12. Pearl Shell Farming Permit a prerequisite for Cultured Pearl Shell Farming Permit - No Cultured Pearl Shell Farming Permit shall be issued to any person unless that person holds a current Pearl Shell Farming Permit.

13. No Pearl Shell Seeding without a permit or licence - No person shall seed, cultivate or otherwise cause to be grown artificially any pearl without first obtaining a Cultured Pearl Shell, Seeding Permit or Cultured Pearl Shell Seeding Licence respectively from the Island Council in the prescribed forms as set out in Schedules VI and VII respectively of these By-laws.

PART IV
TECHNICIANS

14. Technicians must have approval of Island Council - No Technician shall seed pearl shell in Penrhyn by the implanting of nuclei or otherwise without first obtaining a Seeding Licence from the Island Council in the prescribed form as set out in Schedule VII of these By-laws.

15. Technicians must be competent - No approval for any Technician shall be given by the Island Council until the Island Council is satisfied that such Technician is competent.

16. Work history to be supplied to the Island Council - Each application to the Island Council on behalf of any Technician shall be accompanied with a written record of the Technician's work history and qualifications, if any.

17. Conditions on Technicians - Upon granting approval for any Technician to work in Penrhyn, the Island Council may impose conditions to regulate or control the work of the Technician.

PART V
MISCELLANEOUS

18. Map of Lagoon to be kept and updated - The Island Council shall keep or cause to be kept in its office a map of the lagoon to be updated from time to time, showing the names of owners of farms; including the location of farms in designated areas allocated by the Island Council and the approximate size of each farm.

19. Register to be kept and updated - The Island Council shall keep or cause to be kept in its office a register to be updated from time to time showing the following details:

- (a) names of owners of farms;
- (b) location of farms in designated areas allocated by the Island Council;
- (c) number of shells seeded for each farmer;
- (d) seeding dates; and
- (e) harvesting dates.

20. Fisheries Plan - In the exercise of its functions under these By-laws, the Island Council shall conform to the provisions of any fisheries plan approved by Cabinet pursuant to section 3(5) of the Marine Resources Act 1989 which applies to Penrhyn.

PART VI
ENFORCEMENT

21. 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.

22. 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;
- (b) 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) 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) 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) demand the production of any permit for inspection.

PART VII PENALTIES

23. 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 -

- (a) in respect of an offence under Parts I, II and III of these By-laws, to a fine not exceeding \$200.00 or to 3 months imprisonment or to both such fine and imprisonment;
- (b) in respect of an offence under Part IV of these By-laws to a fine not exceeding \$200.00 and, if the offence is a continuing one, to a further fine not exceeding \$200.00 for every day that the offence has continued or to a term of one year imprisonment, or to both such fine and imprisonment.

(2) The Court may, in addition to any other penalty order the forfeiture to the Island 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.

24. Savings - Notwithstanding these By-laws, any permit validly issued by the Island Council 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.

T. Bishop
Clerk of the Executive Council

These By-laws are administered by the Penrhyn Island Council

SCHEDULE IA

PENRHYN ISLAND COUNCIL

S.4

APPLICATION FORM

A.

Type of PERMIT required

Tick One

- 1. PEARL SHELL FREE DIVING PERMIT
- 2. PEARL SHELL FARMING PERMIT
- 3. CULTURED PEARL SHELL FARMING PERMIT
- 4. CULTURED PEARL SHELL SEEDING PERMIT
- 5. CULTURED PEARL SHELL SEEDING LICENCE

REQUEST

I..... of
do hereby apply for the above permit/licence.

DECLARATION

I hereby declare that I shall abide with all the conditions imposed upon me under the permit/licence. I am fully aware of the penalties imposed under the provisions, terms and conditions of the licence and permit.

Signature of Applicant

DATED thisday of1993

B. OTHER DETAILS REQUIRED BY THE COUNCIL

1. Applicant's date of birth:

2. Island/Country of origin:.....

3. Outline in brief how you propose to carry out you farming operation (With others or whether it is to be a family operation).

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4. Indicate the area of your choice and its approximate size.

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5. Indicate the names of your employees or members of the family who will be authorised to dive and work on your farm.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

6. Indicate the number of diving apparatus you have for use on your farm.

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7. Indicate the number of shells you wish to farm and to seed.

C. FOR TECHNICIANS ONLY

8. Indicate your qualifications and experience.

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(Submit documentary evidence to support above if technician is not already screened by Ministry of Marine Resources)

9. Indicate the number of years you have worked as a technician.

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10. Indicate the person or persons hiring your service under which this licence is being applied for.

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.....

D. MISCELLANEOUS

11. (a) A fee of \$50.00 shall accompany this application form in respect of the issuance of a permit or licence (other than a free diving permit) and shall not be refundable.

(b) An annual fee of \$25.00 in respect of a permit or licence (other than a free diving permit) shall be payable upon the expiration of the twelve months from the date of issue of the licence or permit and that fee shall not be refundable.

SCHEDULE 1B

4B

PENRHYN ISLAND COUNCIL

S.4(2)

APPLICATION FORM

FOR PEARL SHELL SCUBA DIVING PERMIT

REQUEST

I..... of
do hereby apply for the above permit.

DECLARATION

I hereby declare that I shall abide with all the conditions imposed upon me under this permit. I am fully aware of the penalties imposed under the provisions, terms and conditions of this permit.

Signature of Applicant

DATED thisday of1993

SCHEDULE II

Sec. 5

PENRHYN ISLAND COUNCILPEARL SHELL FREE DIVING PERMIT

_____ (name), of Penrhyn
 _____ (occupation) ("the Holder") is hereby granted
 a Free Diving permit for the purposes and conditions set out below:

CONDITIONS:

1. THIS Permit shall be valid for four years commencing from the date shown below.
2. THIS Permit is applicable to the Holder only and shall not be transferred to any other person. No other person can dive or take shells under this permit.
3. THE Holder shall be of Penrhyn decent. If there is any any doubt as to the validity of a person's claim to Penrhyn decent, written verification may be required.

In the absence of written verification the applicant may prove to the satisfaction of the Island Council.

4. THE Holder shall take shell only from within the areas delineated in the schedule hereto.
5. THE Holder shall not use any other mechanical device designed to aid breathing under water.

Every Holder who takes Pearl Shell contrary to this condition shall be liable to have confiscated -

- (a) The aqualung, hookah, or mechanical device used; and
- (b) Any shell obtained as a result of such use.

6. THE Holder is not permitted to dive or harvest pearl shells on Sunday, Christmas Day, ANZAC Day, Good Friday, Gospel Day, or when there is a death on the island unless authorised by the Island Council.

Every Holder who contravenes this condition shall be liable to -

- (a) Suspension of this permit for such period of time as the Council may determine; or
- (b) Cancellation of this permit by the Council.

7. THE Holder is not permitted to dive or harvest pearl or pearl shells within 25 metres of public reserves or trust farms or private farm boundaries specified by the Island Council.

Every Holder who contravenes this condition shall be liable to -

- (a) Confiscation of any shell obtained; and
- (b) A fine not exceeding \$200.

The Holder shall abide and obey all other regulations and restrictions the Council may have given in writing in respect of this Permit and if he fails to comply with any of these regulations, or restrictions then this Permit shall be revoked.

SIGNED BY

(Chairman of the Island Council)

DATED this

day of

1993

SCHEDULE III
PENRHYN ISLAND COUNCIL

Sec. 5

PEARL SHELL SCUBA DIVING PERMIT

_____ (name), of Penrhyn
_____ (occupation) ("the Holder") is hereby granted
a Pearl Shell Scuba Diving permit for the purposes and conditions set out below:

- 1. **THIS** Permit shall be valid for twelve months commencing from the date shown below.
- 2. **THIS** Permit is valid to the Holder and shall not be transferred to any other person.
- 3. **THE** Holder shall be a certified diver with a current certificate to dive.
- 4. **THE** Holder is not permitted to dive or harvest pearl shells on Sunday, Christmas Day, ANZAC Day, Good Friday, Gospel Day, or when there is a death on the island unless authorised by the Island Council.

Every Holder who contravenes this condition shall be liable to -

- (a) Suspension of this permit for such period of time as the Council may determine; or
- (b) Cancellation of this permit by the Council.

- 5. **THE** Holder is not permitted to dive or harvest pearl or pearl shells within 25 metres of public reserves or trust farms or private farm boundaries specified by the Island Council.

Every Holder who contravenes this condition shall be liable to -

- (a) Confiscation of any shell obtained; and
- (b) A fine not exceeding \$200.

The Holder shall abide and obey all other regulations and restrictions the Council may have given in writing in respect of this Permit and if he fails to comply with any of these regulations, or restrictions then this Permit shall be revoked.

- 6. **THE** Holder who fails to comply with any of the above conditions, or violates any rules, regulations or restrictions the Island Council may have given in writing in respect of this Permit then this Permit shall be revoked.

SIGNED BY

(Chairman of the Island Council)

DATED this

day of

1993

SCHEDULE IV

Sec. 9

PENRHYN ISLAND COUNCIL

PEARL SHELL FARMING PERMIT

Mr/Mrs of Penrhyn

..... (Occupation) ("Holder") is hereby granted a Pearl Shell Farming Permit for the purposes and conditions set out below.

CONDITIONS

- 1. THIS Permit is valid for a period of four years commencing from the date shown below.
- 2. THIS Permit allows the holder to set up a Pearl Shell Farm in the Penrhyn lagoon within a designated area.
- 3. THIS Permit is valid to the holder only and shall not be transferred to any other person.
- 4. THE Holder shall be of Penrhyn decent. If there is any doubt as to the validity of a person's claim to Penrhyn decent, written verification may be required.

In the absence of written verification the applicant may prove to the satisfaction of the Island Council.

- 5. THIS Permit further allows the holder to farm for spat collection within the same designated area or another area approved by the Island Council.
- 6. THIS Permit also allows the holder to employ workers on his farm or members of his family who shall work within the boundary of his farm.

In the absence of written verification the applicant may prove to the satisfaction of the Island Council.

- 7. THE Holder is not permitted to dive or harvest pearl shells on Sunday, Christmas Day, ANZAC Day, Good Friday, Gospel Day, or when there is a death on the island unless authorised by the Island Council.

Every Holder who contravenes this condition shall be liable to -

- (a) Suspension of this permit for such period of time as the Council may determine; or
- (b) Cancellation of this permit by the Council.

- 8. THE Holder is not permitted to dive or harvest pearl or pearl shells within 25 metres of public reserves or trust farms or private farm boundaries specified by the Island Council.

Every Holder who contravenes this condition shall be liable to -

- (a) Confiscation of any shell obtained; and
- (b) A fine not exceeding \$200.

The Holder shall abide and obey all other regulations and restrictions the Council may have given in writing in respect of this Permit and if he fails to comply with any of these regulations, or restrictions then this Permit shall be revoked.

9. THIS Permit is a prerequisite to a Culture Pearl Farming Permit.

10. THE Holder who fails to comply with any of the above conditions shall be liable to having his Permit revoked.

SIGNED BY
(Chairman of the Island Council)

DATED thisday of1993

SCHEDULE V

PENRHYN ISLAND COUNCIL

Sec. 11 CULTURE PEARL SHELL FARMING PERMIT

Mr/Mrs of Penrhyn

..... (Occupation) ("Holder") is hereby granted a
Culture Pearl Shell Farming Permit for the purposes and conditions set out below.

CONDITIONS

- 1. **THIS** Permit is valid for a period of four years commencing from the date shown below.
- 2. **THIS** Permit is valid to the holder only and shall not be transferred to any other person.
- 3. **THE** Holder shall be of Penrhyn decent. If there is any any doubt as to the validity of a person's claim to Penrhyn decent, written verification may be required.

In the absence of written verification the applicant may prove to the satisfaction of the Island Council.

- 4. **THIS** Permit allows the holder to set up a Pearl Shell Farm for the purpose of culturing artificially made pearls. This Permit is a prerequisite to granting a Seeding Licence to any technician with whom the holder wishes to employ on his farm, and approved by the Island Council.
- 5. **THIS** Permit allows the holder to have his prepared shells transferred for seeding to the designated seeding station as approved by the Council and be returned thereafter.
- 6. **THIS** Permit is only valid for and within the designated area requested by the holder as approved by the Council.

In the absence of written verification the applicant may prove to the satisfaction of the Island Council.

- 7. **THE** Holder is not permitted to dive or harvest pearl shells on Sunday, Christmas Day, ANZAC Day, Good Friday, Gospel Day, or when there is a death on the island unless authorised by the Island Council.

Every Holder who contravenes this condition shall be liable to -

- (a) Suspension of this permit for such period of time as the Council may determine; or
- (b) Cancellation of this permit by the Council.

8. THE Holder is not permitted to dive or harvest pearl or pearl shells within 25 metres of public reserves or trust farms or private farm boundaries specified by the Island Council.

Every Holder who contravenes this condition shall be liable to -

- (a) Confiscation of any shell obtained; and
- (b) A fine not exceeding \$200.

9. ANY Holder who fails to comply with any of the above conditions shall be liable to the penalties provided under the provisions of the Penrhyn Pearl and Pearl Shell By-laws 1953.

SIGNED BY:
(Chairman of the Island Council)

DATED THIS:day of1993

SCHEDULE VI

PENRHYN ISLAND COUNCIL

Sec. 13 CULTURE PEARL SHELL SEEDING PERMIT

C.

Mr/Mrs of Penrhyn

..... (Occupation) ("Holder") is hereby granted a
Culture Pearl Shell Seeding Permit for the purposes and conditions set out below.

CONDITIONS

- 1. THIS Permit is valid for months commencing from the date shown below.
- 2. THIS Permit is valid to the holder only and shall not be transferred to any other person.
- 3. THE Holder shall be of Penrhyn decent. If there is any doubt as to the validity of a person's claim to Penrhyn decent, written verification may be required.

In the absence of written verification the applicant may prove to the satisfaction of the Island Council.
- 4. THIS Permit allows the holder to artificially seed any of his prepared pearl shell in the Penrhyn lagoon.
- 5. THE Holder shall declare the number of shells seeded for him and submit in writing a record of all other shells seeded under the same licence.
- 6. THE Holder is not permitted to dive or harvest pearl shells on Sunday, Christmas Day, ANZAC Day, Good Friday, Gospel Day, or when there is a death on the island unless authorised by the Island Council.

Every Holder who contravenes this condition shall be liable to -

- (a) Suspension of this permit for such period of time as the Council may determine; or
- (b) Cancellation of this permit by the Council.

- 7. THE Holder is not permitted to dive or harvest pearl or pearl shells within 25 metres of public reserves or trust farms or private farm boundaries specified by the Island Council.

Every Holder who contravenes this condition shall be liable to -

- (a) Confiscation of any shell obtained; and
- (b) A fine not exceeding \$200.

8. THE Holder shall abide and obey all other regulations and restrictions the Council may have given in writing in respect of this PERMIT and if he fails to comply with any of these regulations, or restrictions then this Permit shall be revoked.

SIGNED BY
(Chairman of the Island Council)

DATED THIS:day of1993

SCHEDULE VII

Sec. 13

PENRHYN ISLAND COUNCIL

CULTURE PEARL SHELL SEEDING LICENCE

Mr/Mrs of (Island/Country of origin) (the "Holder") is hereby granted a Culture Pearl Shell Seeding Licence (the "Licence") as approved and recommended by the Island Council on the basis of his qualifications and experiences submitted in writing to the Island Council upon which the Minister of Marine Resources has consented under the purposes and conditions set out below.

CONDITIONS

- 1. THIS Licence is valid for a period of months commencing from the date shown below.
- 2. THIS Licence is valid to the Holder only and shall not be transferred to any other person.
- 3. THIS Licence allows the holder to be hired by any farmer for the purpose of having the farmer's shells seeded.
- 4. THIS Licence allows the holder to be hired by any farmer for the purpose of unseeding the pearls on harvest.
- 5. THIS Licence also allows the farmer(s) to be present with the holder of this licence while his shells are under seeding and unseeding operations.
- 6. THE Holder of this licence shall submit in writing a record of all the shells he has seeded and the number of pearls unseeded under this licence.
- 7. THIS Licence is subject to other regulations and restrictions the Council may have given to the Holder in respect of this licence and if the Holder fails to comply with any of the above then this Permit shall be revoked.

SIGNED BY:
(Chairman of the Island Council)

DATED THIS:day of1993