

1990/13



AITUTAKI FISHERIES PROTECTION BY-LAWS 1990

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T. Tangaroa.

Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga, the 16th day of November 1990

Present:

HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE  
IN EXECUTIVE COUNCIL

PURSUANT to Sections 15 and 16 of the Outer Islands Local Government Act 1987, 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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### BY-LAWS

1. Title and commencement - These By-laws may be cited as the Aitutaki Fisheries Protection By-Laws 1990 and shall come into force on the 1st day of December 1990.

2. Application of these By-Laws - These By-laws shall apply to the islands of Aitutaki, Manuae and Te-Au-O-Tonga and shall extend to the waters surrounding each island to a line measured seaward from the outer limits of the reef, every point of which is 200 metres (218 yqds) distant from the nearest point of the outer limit of the reef.

3. Interpretation - In these By-laws unless the context otherwise requires:

"Council" means the Island Council of Aitutaki elected in accordance with the Outer Islands Local Government Act 1987.

"Drag net" means any net or part thereof (including any warp rope chain material or device used in conjunction with or attached to the net) which has a buoyancy system on the top edge and is weighted on the bottom edge and is operated by surrounding any fish and being drawn over the bed of any waters or through any waters to the shore.

"Enforcement Officer" means the person appointed as an Enforcement Officer pursuant to these By-laws.

"Fish" means any aquatic plant or animal, whether piscine or not; and includes any oyster or other mollusc, crustacean, coral, sponge, holothurian (bech-de-mer), or other echinoderm, turtle and marine mammal and includes their eggs, spawn, spat and juvenile stages referred to in the Schedule to these By-laws.

"Net" means any net or part thereof used or capable of being used to take fish and includes any drag net and any set net.

"Set net" includes a gill net, drift net, trammel net or any other sort of net which acts by encircling, entrapping or entangling any fish.

"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.

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PART I - SHELLFISH

4. Taking of fish prohibited - No person shall -

- (a) permanently take or attempt to take to any place beyond the areas to which these By-laws apply, any fish named in the Schedule to these By-laws; or
- (b) sell any fish named in the Schedule to these By-laws,

except pursuant to and in accordance with the provisions of a permit issued pursuant to these By-laws.

5. Council may grant permits - (1) Subject to these By-laws and to the provisions of any Act, the Council may grant to any person a permit, subject to such conditions and for such period as the Council thinks fit, to take any fish named in the Schedule to these By-laws for the purpose of -

- (a) sale within the areas to which these By-laws apply:
- (b) consumption at any wedding, funeral, birthday, family re-union, investiture, kava eva, opening of a community or public building, or any other similar function where large numbers of the public are likely to attend.
- (c) export for sale provided the proceeds of such sale are utilised in a project in Aitutaki or for the benefit of the residents of Aitutaki (whether such project shall be situated on Aitutaki or on any other island in the Cook Islands).

(2) Without limiting the conditions that the Council may impose pursuant to sub-clause (1), a permit issued by the Council may contain conditions prescribing -

- (a) the number of fish which may be taken;
- (b) the type and size of fish;
- (c) the part of the lagoon from which such fish may be taken.
- (d) the names of the person authorised to take shellfish.
- (e) the expiry date of any permit.

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(3) Where either the Mayor, Deputy Mayor or Clerk of the Council is of the opinion that for reasons of urgency it would be impracticable for the Council to consider an application for a permit, for any of the purposes referred to in By-law 5(1)(b) herein then either the Mayor, Deputy Mayor or Clerk may consider the application and if satisfied upon its merits grant a permit in accordance with these By-laws.

PART VI - SPEARFISHING

6. Use of underwater breathing apparatus while fishing prohibited - No person shall use 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.

PART III - NETFISHING

7. Hauling of nets - No person shall set, pull, haul or retrieve any net or pull or haul any rope warp or chain attached to or used with any such net, other than by hand.

8. Restrictions on nets in channels - (1) No person shall use or set any net in or within 100 metres (109 yards) of any harbour or channel customarily used by boat.

(2) No person shall use or set any net in a channel between two motu so that the net either by itself or together with or in conjunction with any other net, extends more than one third of the distance that is the width of the channel between the two motu, measured at right angles to the bank of that channel at the place that the net was set.

9. Set nets - No person shall -

- (a) use or be in possession of a set net having a length exceeding 100 metres (109 yards);
- (b) use or be in possession of a set net having a depth exceeding 4 metres (13 feet);
- (c) use or be in possession of a set net with a mesh of less than 60 millimetres (2½ inches) in diameter;
- (d) set a net within 100 metres (109 yards) of any other set net.

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- (c) set or use more than one set at any one time.
- (f) use a set net unless at least one person shall be and remain in the immediate vicinity of the net during the whole of the time it remains set.

10. Drag nets - (1) No person shall -

- (a) Use or be in possession of a drag net having a length exceeding 75 metres (82 yards);
- (b) Use or be in possession of a drag net with a mesh of less than 60 millimetres (2½ inches) in diameter;
- (c) Use more than one drag net at any one time.

(2) Notwithstanding subclause (1) of this By-law, it shall not be an offence to use or be in possession of a drag net with a mesh of less than 60 millimetres (2½ inches) provided such net -

- (a) does not exceed 25 metres (27 yards) in length; and
- (b) is used solely for the purpose of catching bait fish.

PART IV - MISCELLANEOUS

11. Appointment of Enforcement Officers - (1) The Council may by resolution from time to time, subject to such terms and conditions as the Council may consider necessary to impose, appoint able and suitable persons to be Enforcement Officers for the purposes of these By-laws.

(2) Every appointment made by the Council under these By-laws may be terminated at any time by a resolution of the Council.

12. Functions and powers of Enforcement Officers - Every Enforcement Officer appointed under these By-laws shall be responsible for enforcing the provisions of these By-laws and in the performance of those functions shall have and may exercise the following powers only namely:

- (a) To carry out such inquiries and investigations as may be necessary to determine whether or not any breach of these By-laws has been committed.
- (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.

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- (c) To impose immediate fines not exceeding \$200 upon any person found to have committed a breach of these By-laws or any condition imposed by the Council in the permit issued to such person, and issue an official receipt to that person for the amount of the fine paid.
- (d) To confiscate all the fish found in the possession of a person contrary to the provisions of these By-laws and to dispose of such fish in the manner directed by resolution of the Council.
- (e) 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.
- (f) To demand the production of any permit for inspection.

13. Protection of Enforcement Officers - Any Enforcement Officer appointed by the Council pursuant to these By-laws shall not be liable to any civil or criminal action in any Court for any act or thing lawfully done and performed by such Enforcement Officer in the performance of the functions and in the exercise of any of the powers conferred upon him by these By-laws.

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14. Enforcement by Police of these By-laws - Every member of the Police shall have and may exercise the powers conferred upon the Police by section 19 of the Outer Islands Local Government Act 1987 and shall enforce the provisions of these By-laws and exercise the powers conferred upon Enforcement Officers by By-law 12 of these By-laws.

15. Power of entry and search - A Police Officer, if he has reasonable cause to suspect that a person has committed an offence against these By-laws, may, without warrant, enter upon any premises and conduct searches and whenever necessary, enforce the provisions of these By-laws.

16. Destructive Fishing Methods - (1) No person shall use any explosive, or any poisonous substance to capture fish.  
(2) No person shall, whether with or without the assistance of any instrument, remove shell fish from coral if the methods in which the shell fish are removed would, having regard to the continued application of such methods, endanger coral or coral reefs.

**Cook Islands Laws****PART V - PENALTIES**

17. 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 in respect of a first offence to a fine not exceeding \$200.00 and on a second or subsequent offence to a fine not exceeding \$300.00 or to 3 months imprisonment or to both such fine and imprisonment.

(2) The Court may, in addition to any other penalty order the forfeiture to the Crown of any underwater breathing apparatus or net, used by an offender in the commission of any offence under these By-laws.

(3) Where any fish has been confiscated pursuant to these By-laws such fish shall be disposed of by the Police under the instructions of the Island Council.

18. Repeal - The Outer Islands (Aitutaki Puaa) By-laws 1988 are hereby repealed.

M. Taruia.

Clerk of the Executive Council

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SCHEDULE

(Sections 4 and 5)

Size limits and maximum daily number of fish

Species	Size Limits	Maximum Daily Number
Paua	75 millimetres (3 inches)	20
Kai	50 millimetres (2 inches)	20
Ariri	So that the Ariri in its complete shell cannot pass through a metal ring the inner diameter of which is 1 1/2 inches (38mm)	20