



## ANALYSIS

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|---|--|
| Title                                     |  |
| 1. Short Title                            | 13. Naked diving licence not transferrable |
| 2. Interpretation                         | 14. Use of diving-machine licence          |
| 3. Fishing reserves                       | 15. Taking undersize shell                 |
| 4. Licence to fish                        | 16. Possessing or selling undersize shell  |
| 5. Application for naked diving licence   | 17. Inspectors                             |
| 6. Issue of naked diving licence          | 18. Grading                                |
| 7. Diving machines                        | 19. Inspection of diving-machines          |
| 8. Application for diving-machine licence | 20. Open and closed season                 |
| 9. Issue of diving machine licence        | 21. All licences void during closed season |
| 10. Licence issued under fraud            | 22. Limit of harvest                       |
| 11. Revocation of licence upon conviction | 23. Depth for use of diving-machine        |
| 12. Effect of revocation of licence       | 24. Time for diving                        |
|   | 25. Offences                               |
|   | 26. Regulations                            |

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1975, No. 4

An Act to establish Trochus Fishing Reserves

(5 March 1975)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Trochus Act 1975.

2. Interpretation - In this Act unless the context otherwise requires -

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

"Fishing reserve" and "reserve" mean one of the fishing reserves constituted by this Act:

"Island Council" in relation to any fishing reserve, means the Island Council for the island where the fishing reserve is situated except in the case of the fishing reserve for the island of Manuae where the Island Council shall be the Aitutaki Island Council:  
"Minister" means the Minister in charge of Marine Resources.

3. Fishing reserves - (1) The following areas are hereby constituted fishing reserves for the purposes of this Act and shall be known by the names hereby assigned to them:-

- (a) The lagoon, reef and inshore areas at the Island of Aitutaki, to be known as the Aitutaki Reserve.
- (b) The lagoon, reef and inshore areas at the Island of Palmerston to be known as the Palmerston Reserve.
- (c) The lagoon, reef and inshore areas at the Island of Manuae, to be known as the Manuae Reserve.

(2) Notwithstanding any of the provisions of subsection (1) of this section the Minister may at any time declare the lagoon, reef and inshore areas of any other island to be a trochus reserve.

4. Licence to fish - No person shall fish and dive for trochus shells in any fishing reserve, whether by naked diving or using a diving machine, unless he is the holder of a current licence issued under this Act authorising him to fish and dive for trochus shells in that fishing reserve.

5. Application for naked diving licence - Any person desiring to fish and dive for trochus shells in a reserve in any island shall make written application in that behalf to the Clerk of the Island Council in respect of that island, who upon recommendation from the Council, shall forward the application to the Minister.

6. Issue of naked diving licence - (1) Every licence to fish and dive for trochus shells in a reserve in any island shall be issued by the Minister upon advice of the Director of Marine Resources and upon recommendation of the Island Council of the Island concerned.

(2) Any recommendation by the Island Council for the issue of such a licence shall be by majority vote at a duly called meeting of the island council.

(3) In issuing a licence the Minister shall take into account the island of origin of the applicant and the island of ordinary residence of the applicant.

(4) Every licence shall be issued for the period that the reserve is open.

(5) A fee of \$1.00 shall be paid on the issue of every such licence to the office of the Chief Administration Officer or Senior Clerk and shall form part of the Cook Islands Government Account.

7. Diving Machines - No person shall use a diving-machine in any fishing reserve unless he is the holder of a current licence issued under this Act authorising him to do so.

8. Application for diving machine licence - Any person desiring to use a diving machine in any fishing reserve shall make written application in that behalf to the Minister.

9. Issue of diving machine licence - (1) Every licence to use a diving-machine in a reserve in any island shall be issued by the Minister upon advice of the Director of Marine Resources and by further consultation with the Island Council in respect of that island and shall give specification of the diving machine for which it was issued.

(2) Not more than one licence shall be granted to any person for the use of a diving machine in any particular reserve.

(3) In issuing licences, the Minister, may, in his discretion, take into account the island of origin and the place of ordinary residence of the applicant.

(4) Every licence shall be issued for the period that the reserve is open.

(5) A fee of \$20.00 shall be paid on the issue of every such licence to the office of the Chief Administration Officer or Senior Clerk and shall form part of the Cook Islands Government Account.

10. Licence issued under fraud - 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 this Act has obtained the same by fraud, misrepresentation or mistake, or has acted in any improper manner in exercising the rights thereby conferred, the High Court may by order declare that such licence is revoked.

11. Revocation of licence upon conviction - Upon conviction of the holder of a licence for any offence against this Act the High Court may by order declare that his licence is revoked.

12. Effect of revocation of licence - 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 this Act and the holder thereof shall forthwith, unless prevented by circumstances outside his control, surrender the same to the Minister to be cancelled, but failure so to surrender the licence shall not affect the revocation thereof.

13. Naked diving licence not transferable - Every licence granted to fish and dive for trochus shells 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.

14. Use of diving machine licence - 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 trochus shells, but not further or otherwise, and shall not be transferable but may pass by operation of law to any other person.

15. Taking undersize shell - (1) No person shall take from a fishing reserve any trochus shell measuring less than 2½ inches across the widest points of the shell base.

(2) No person shall attempt to extract the flesh from a trochus shell in the reserve but shall bring the shell ashore for inspection by an Inspector duly authorised under Section 17 of this Act.

(3) If any Inspector is of the opinion that any trochus shell measured less than 2½ inches across the widest point of the shell base, the Inspector may order the person having possession of the trochus shell to return the shell alive to the fishing reserve and any person so ordered shall as soon as practicable comply with such order.

16. Possessing or selling undersize shell - (1) No person shall sell or purchase in or export from any part of the Cook Islands any trochus shell which is taken from a fishing reserve and has a diameter of less than 2½ inches measured across the widest points of the shell base.

(2) Where any person in the Cook Islands has in his possession, or sells, purchases, or exports any trochus shell having a diameter of less than 2½ inches measured across the widest points of the shell base, that trochus shell shall, in the absence of proof to the contrary, be deemed to have been taken from a fishing reserve.

17. Inspectors - (1) The Minister may from time to time by writing under his hand authorise such persons as he thinks fit to act as Inspectors for the purposes of this act.

(2) Any such Inspector may at any reasonable time enter any building or vehicle or upon any land or premises or go aboard a canoe, boat or ship for the purpose of searching for and inspecting trochus shells.

(3) Any such Inspector may confiscate any trochus shell which measures less than 2½ inches across the widest points of the shell base.

(4) Any trochus shell so confiscated shall be deemed to be forfeited to Her Majesty, and shall be disposed of at the direction of the Minister.

18. Grading - (1) Any person intending to export any trochus shell out of the Cook Islands shall, prior to such exportation submit the shell for inspection and grading by an Inspector duly authorised under subsection (1) of Section 17 of this Act.

(2) Such Inspectors shall grade all such shell according to the following classifications:-

(a) Grade 1 - shell that is reasonably free from worm and other foreign matter and unbroken.

(b) Grade 2 - shell that is not reasonably free from worm and other foreign matter, or is broken.

19. Inspection of diving machines - (1) Any Inspector duly authorised under subsection (1) of Section 17 of this Act may at any reasonable time enter any building or vehicle or upon any land or premises or go aboard any canoe, boat or ship for the purpose of inspecting any diving-machine in respect of which a current licence under this Act has been issued.

(2) If any Inspector is of the opinion that any diving-machine is in such condition as to be not fit or safe for use he shall issue a notice in writing to the person or firm to whom the licence to use the diving-machine was issued requiring that person to repair, replace or otherwise deal with the diving-machine to make it fit and safe for use by a definite date.

(3) In the event of the diving-machine not being made fit or safe by the definite date as required by the Inspector then, notwithstanding any other provision contained in this Act, the licence to use the diving-machine shall forthwith terminate and cease to be of any effect.

20. Open and closed season - The Minister may from time to time by notice under his hand published in the Gazette declare that all or any of the reserves shall be open for such period or periods as he thinks fit and at all times other than the period or periods declared to be so open the season shall be deemed to be a closed season.

21. All licences void during closed season - Notwithstanding any other provision of this Act no licence granted under this Act shall be of any force or effect or shall have any operation during any closed season of any fishing reserve.

22. Limit of harvest - Limit of the harvest in respect of each reserve will be published in the Cook Islands Gazette following consultation between the Minister and the Director of Marine Resources.

23. Depth for use of diving-machine - (1) In order that the shallower parts of the fishing reserves may be reserved for naked diving, the Minister 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 in the fishing reserves and may from time to time review any such direction and withdraw the same and issue a fresh direction.

(2) No licensee and no servant or agent of a licensee shall use a diving-machine in breach of a direction given under subsection (1) of this section.

24. Time for diving - Notwithstanding any other provision contained in this Act no person shall fish and dive for trochus shells whether by naked diving or using a diving machine in any fishing reserves before 6 a.m. or after 10 p.m., on any day.

25. Offences - Any person who fails to comply with or acts in contravention of any of the provisions of this Act commits an offence and shall be liable upon conviction to a fine not exceeding fifty dollars.

26. Regulations - (1) The High Commissioner may from time to time by order in Executive Council make such regulations as may be deemed necessary or expedient for the purpose of giving full effect to the provisions of this Act and for the due administration thereof.

(2) All regulations made under this section shall be laid before the Legislative Assembly within twenty-eight days after the date of the making thereof if the Legislative Assembly is then in session and if not in session shall be laid before the Legislative Assembly within twenty-eight days after the date of the next ensuing session.