

Environment (Atiu and Takutea) Regulations 2008

COOK ISLANDS

ENVIRONMENT (ATIU AND TAKUTEA) REGULATIONS 2008.

Sir F. Goodwin, KBE

Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga, this 8th day of July 2008

Present:

HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE
IN EXECUTIVE COUNCIL

PURSUANT to Section 70 of the Environment Act 2003 the Queen's Representative, acting by and with the advice and consent of the Executive Council, makes the following regulations.

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REGULATIONS

1. Title - These regulations are the Environment (Atiu and Takutea) Regulations 2008.

2. Commencement - These regulations come into force on the 15th day after the date that the Queen's Representative signs the Order in Executive Council making these regulations.

3. Interpretation - In these Regulations, unless the context otherwise requires-

"Act" means the Environment Act 2003;

"Animal" has the same meaning as provided in section 2 of the Act;

"Area" means the area declared under a Ra'ui in Part III hereof;

"Aronga Mana" has the same meaning as provided in section 2 of the Act;

"Atiu" means the main island of Atiu and includes the waters within 12 nautical miles of Atiu;

"Community Conserved Area" means any natural and modified ecosystem, with significant biodiversity, ecological and related cultural values, voluntarily conserved by indigenous and local communities, through customary laws or other effective means;

"Disposal and treatment site" means a place authorised by way of permit under these Regulations for the purpose of disposal and treatment for disposal of waste or litter;

"Enforcement Officer" means any person appointed pursuant to Regulation 45;

"Environment" has the same meaning as provided in section 2 of the Act;

"Environment Officer" means an Island Environment Officer for Atiu appointed under section 24 of the Act;

"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;

"Foreshore" means all that area between the mean high water mark and measured at right angles to a distance of 5 meters landward or to the cliff edge or to the edge of vegetation whichever shall be the greater distance.

"Hazardous waste" means a waste substance likely to cause injury to a person or cause great risk to the environment;

"Health Officer" means any Public Health Inspector or any health professional appointed pursuant to the Ministry of Health Act 1991;

"Island Council" means the Island Council of Atiu;

"Island Environment Authority" means the Island Environment Authority for Atiu established pursuant to section 11 of the Act;

"Litter" has the same meaning as provided in section 2 of the Act;

"Lagoon" means the area of water between the beach and reef

"Mataiapo" means those invested with the Mataiapo title as recognised by their tribe, Land Court or the Aronga Mana of Atiu

"Mataiapo Tutara" mean the leading Mataiapo who represents the others when dealing with the Aronga Mana of Atiu

"National Environment Service has the same meaning as provided in section 2 of the Act;

"Net" means a panel of mesh netting with varying lengths and widths with some form of weighted line or floating line attached for the purpose of catching fish;

"Officer" means any person appointed pursuant to the Act;

"Ora Papua" means the plant commonly known as Derris (*Derris malaccensis*);

"Owner" includes any person in actual occupation of any land under any lawful right to title granted or derived from the real owner thereof,

"Paua" means any shellfish of the genus *Tridacna*;

"Plant" has the same meaning as provided in section 2 of the Act;

"Pig" shall be any animal of the genus *Sus*;

"Poisonous substance" means any substance, whether natural or otherwise, used to stun or kill fish including ora Papua and utu;

"Pollution" has the same meaning as provided in section 2 of the Act;

"Ra'ui" means the traditional custom of imposing restrictions on the use of the land, reef and lagoon with regards to their resources;

"Reef" means the strip of sand, rocks or coral laying at or near the surface of the sea

"SCUBA" means self contained under water breathing apparatus;

"Sewage" means any drainage and other wastes from any form of toilets, urinals, and W.C scuppers; drainage from medicinal premises, including dispensaries and sick bays, by way of wash basins, was tubs and scuppers located in such premises; and drainage from spaces containing living animals;

"Species" means any group of related animals or plants capable of interbreeding;

"Takutea" means the island of Takutea and includes the waters within 12 nautical miles of Takutea;

"Takutea Trustees" means the Trustees and their successors in whom the Island of Takutea was vested pursuant to Freehold Order of the High Court made on the 13th of February 1950 (M.B. 1/382);

"Turtles" means the animal commonly known as the Green Turtle (*Chelonia mydas*), the Hawksbill Turtle (*Eretmochelys imbricata*), and the Loggerhead Turtle (*Caretta caretta*)

"Ui Ariki" means the paramount chiefs of the Island of Atiu, Rongomatane Ariki, Ngamaru Ariki and Parua Ariki.

"Unga Kaveu" means the animal commonly known as the Coconut Crab, (*Birgus latro*)

"Unit" means the Biodiversity Unit of the National Environment Service;

"Utu" means the plant commonly known as Barringtonia (*Barringtonia asiatica*);

"Utunga" means the monetary penalty or fine applied pursuant to customary law within the realms of these regulations;

"Vai roto" means brackish or fresh water take situated in the middle of the island

"Vessel" means any sea vessel or marine craft of any type, including any yacht, where such vessel is not registered in Atiu by the Island Council which shall not include the canoes of local fishermen of Atiu.

PART I **MANAGEMENT OF THE ISLAND OF TAKUTEA**

4. Designation of Takutea as Community Conserved Area - (1) The island of Takutea is hereby declared a community conserved area under the management and control of the Trustees of Takutea.

(2) No person shall, within the community conserved area designated under subclause (1) -

(a) possess, disturb, remove, export, destroy or harm any plant, fish, bird or animal, or the eggs or the young of any bird, or the young of any animal;

(b) litter or deposit any waste;

(c) set a fire;

(d) fish in the lagoon, reef and within 5 nautical miles of the reef.

(3) Within the community conserved area designated under subclause (1) no person shall, without written permission from the Takutea Trustees and the Island Council -

(a) undertake any construction or building ;

(b) undertake any commercial tour operation;

(c) enter into or remain overnight on Takutea or in the lagoon of Takutea;

(d) harvest or take any paua;

(e) remove plants or clear any area on Takutea.

(4) There is hereby established a Management Committee of Takutea comprising persons known

as the "Takutea Trustees" listed in Schedule 7 and their successors in whom the Island of Takutea was vested pursuant to Freehold Order of the High Court made on the 13th of February 1950 (M.B. 1/382).

(5) The Management Committee of Takutea established pursuant to sub-section (4) shall manage the island of Takutea pursuant to the rules set out for the Trustees' Committee of Management in Schedule 6.

5. Management Plan - (1) The Takutea Trustees, in consultation with the native landowners of Atiu, shall from time to time, and in any event no later than 12 months after the coming into force of these Regulations, prepare a draft management plan for the community conserved area designated pursuant to Regulation 4 (1), for the protection, conservation, management, and control of -

(a) wildlife including species in the opinion of the Takutea Trustees that are at risk and the habitat of such species;

(b) water resources or any watershed area;

(c) the reef, lagoon and waters within 5 nautical miles of the reef; and

(d) any other matter relating to the environment which in the opinion of the Takutea Trustees will benefit from a management plan.

(2) A draft management plan prepared pursuant to the provisions of subclause (1) -

(a) must take into account the environmental policies of the Island Council and Government; and

(b) must receive the approval of the Aronga Mana and any Landowners affected prior to approval by the Island Council.

(3) Upon receipt of any written request from the Takutea Trustees, the National Environment Service shall provide technical assistance and resources to assist in the preparation of any management plan pursuant to the clauses of subclause (1).

PART II **SPECIES & HABITAT PROTECTION**

6. Importation, of animals prohibited - (1) It shall be unlawful for any person to import into or keep on Atiu any animal not known to be native to or currently found on Atiu except with prior written approval of the Island Council and provided that all Quarantine measures have been taken pursuant to the Animals Act 1975 together with all the amendments and regulations made there under.

(2) Any animal imported into Atiu without written approval pursuant to subclause (1) shall be seized by any Officer and forthwith destroyed by humane means, and the carcass destroyed by burning.

(3) Any member of the Island Council or Island Environment Authority who receives information or witnesses anyone importing into Atiu any animal in violation of the provisions of

subclause (1) shall seize the animal and hand it over to an Officer who shall forthwith cause such animal to be destroyed.

7. Importation of coconuts and plants prohibited - (1) It shall be unlawful for any person to import into or keep on Atiu any coconut or plant not known to be native to or currently found on Atiu except with prior written approval of the Island Council and provided that all quarantine measures have been taken pursuant to the Plant Act 1978 together with amendments and regulations made thereunder.

(2) Any coconut or other plant imported into Atiu without written approval pursuant to subclause (1) shall be seized by any Officer and forthwith destroyed by burning.

(3) Any member of the Island Council or Island Environment Authority who receives information or witnesses anyone importing into Atiu any coconut or other plant in violation of the provisions of subclause (1) shall seize the plant and hand them over to an Officer who shall forthwith cause such plant to be destroyed by burning.

(4) All other live plant material is to be inspected and approved by a Quarantine Officer.

8. Taking of Unga Kaveu - (1) It is an offence for any person to kill, harm or possess any Unga Kaveu.

(2) Where any person intends to kill, harm or possess an Unga Kaveu in accordance with traditional practice such person shall apply in advance to the Island Environment Authority in a form prescribed by regulation.

(3) Subject to the provisions of regulation 8(2), no person shall take any Unga Kaveu, which is less than fifty (50) millimetres or two (2) inches in length when measured at the thorax as indicated in Schedule 1.

(4) Subject to the provisions of regulation 8(2), no person shall take any female Unga Kaveu which still has its eggs attached.

(5) It is an offence to cause damage to any Unga Kaveu in the action of determining its length and sex.

(6) The Island Environment Authority shall, within 12 months of these Regulations coming into force, initiate the undertaking of an assessment and inventory of the population of Unga Kaveu and thereafter develop a management plan for the conservation of such species.

9. Protection of crayfish - (1) No person shall fish or remove from the lagoon, reef or waters within 12 nautical miles of Atiu, any crayfish where the length of the tail of such crayfish is less than twelve centimetres or five inches in length as indicated in Schedule 2.

(2) No person shall fish or remove from the lagoon, reef or waters within 12 miles of Atiu, any female crayfish that still has its eggs attached.

(3) No person shall hunt for crayfish with a spear or speargun.

(4) It is an offence to cause damage to a crayfish in the action of determining its length and sex.

(5) The Island Environment Authority shall, within 12 months of these Regulations coming into force, initiate the undertaking of an assessment and inventory of the population of crayfish and thereafter develop a management plan for the conservation of such species.

10. Protection of flying fish - (1) No person shall use or operate a machine operated vessel in any waters where flying fish are spawning (Tu te maroro).

(2) The Island Environment Authority shall, within 12 months of these Regulations coming into force, initiate the development of a management plan for the conservation of such species during spawning season.

11. Protection of birds - (1) It shall be unlawful for any person to possess, disturb, catch, trap or kill any bird listed in Schedule 3 be it adult, juvenile, young or eggs.

(2) No person shall remove any young or eggs from the nests of the birds referred to in subclause (1).

(3) Where any person intends to possess, disturb, catch, trap or kill any bird referred to in subclause (1) for conservation and protection management purposes which shall not be detrimental to the survival of that species, such person shall apply in advance to the Islands Environment Authority in a form prescribed by regulation.

(4) The Island Council may, from time to time, in consultation with the Island Environment Authority, establish measures necessary for the control or eradication of invasive animal or bird species that threaten or harm any birds present on Atiu which are native to Atiu.

(5) The Island Environment Authority shall, within 12 months of these Regulations coming into force, initiate the undertaking of an assessment and inventory of the population of the birds referred to in subclause (1) and thereafter develop a management plan for the conservation of such species.

(6) In order to protect bird species in Atiu, the measures regarding the control of rodents contained in Schedule 8 are adopted.

(7) No person shall maintain an artificial bird feeder without prior written consent of the Environment Officer.

12. Protection of Marine Turtles - (1) No person shall -

(a) Possess, disturb, kill, harm, remove or damage any living wild turtle or eggs;

(b) Disturb any nesting areas, nest or remove any eggs from nest;

- (c) Disturb any living wild turtle in any reef area or on land;
- (d) Export from Atiu any turtle, eggs or parts thereof whether living or dead.

(2) Where any person intends to possess, kill, harm, remove or damage a turtle in accordance with traditional practice such person shall apply in advance to the Island Environment Authority in a form prescribed by regulation.

(3) Where any person intends to conduct an activity referred to in subclause (1) (a) - (d) under the auspices of marine turtle conservation and protection management, it shall be the onus of such person to prove that those activities are for conservation and protection management purposes and shall not be detrimental to the survival of that species, such person shall apply in advance to the Islands Environment Authority in a form prescribed by regulation.

13. Invasive Plants and Animals - (1) The Island Council may, from time to time, in consultation with the Island Environment Authority, establish measures necessary for the control or eradication of invasive plant and animal species.

14. Protection of Trees - (1) No person shall set or cause to be set a fire to any bush or rubbish which results in the widespread burning of iron wood trees, coconut trees or other native trees or shrubs.

(2) No person may cut or remove any native or historically significant trees without written permission from the Island Environment Authority with conditions as the Island Environment Authority considers relevant.

(3) The Island Council shall in consultation with the Island Environment Authority, within 12 months of these Regulations coming into force, shall establish a register of culturally and historically significant trees and thereafter develop a management plan for the conservation of such trees.

(4) Upon receipt of any written request from the Island Council, the National Environment Service shall provide technical assistance and resources to assist in the preparation of such register and management plan in subclause (3)

15. Designation of Protected Areas - (1) The areas listed in Schedule 3 are hereby declared protected areas.

(2) No person shall, within a protected area designated under subclause (1), without the permission of the Island Environment Authority, remove, destroy or harm any plant, fish, bird or animal.

(3) No person shall litter or deposit any waste, chemicals, soaps, shampoos, detergents in a protected area designated under subclause (1).

(4) No person shall set a fire in a protected area designated under subclause (1).

(5) No person may introduce any plant, fish, bird or animal into a protected areas designated under subclause (1) without written permission from the Landowners, Island Environment Authority and the Island Council.

(6) No person shall undertake any construction or building within a protected area designated under subclause (1) without written permission from the Landowners, Island Environment Authority and the Island Council.

(7) No person shall undertake any commercial tour operation within a protected area designated under subclause (1) without written permission from the Landowners and the Island Council

(8) The Island Environment Authority may, following consultation, with the Landowners concerned, declare other protected areas on the island.

16. Management Plan - (1) The Island Environmental Authority may from time to time, in consultation with the Island Council and landowners, prepare a draft management plan for any protected area designated pursuant to Regulation 15 (1) and (8), for the protection, conservation, management, and control of -

(a) wildlife including species in the opinion of the Island Environment Authority are at risk and the habitat of such species;

(b) water resources or any watershed area;

(c) Atiu waters; and

(d) any other matter relating to the environment which in the opinion of the Island Council will benefit from a management plan.

(2) A draft management plan prepared pursuant to the provisions of subclause (1) must -

(a) take into account the environmental policies of the Island Council and Government;

(b) receive the approval of any landowners affected prior to adoption by the Island Council.

17. Removal of artefacts and archaeological material - (1) It shall be unlawful for any person to remove any artefact or archaeological material from Atiu without a written permission from the Landowners, Ui Ariki, Ui Mataiapo, the Island Council and the Island Environment Authority.

(2) Any person who unlawfully removes any artefact or archaeological material shall, upon conviction, be ordered to return the material to the care of the Island Council.

(3) In the case any artefact or archaeological material returned is damaged or disfigured from its original state, the person shall be ordered to restore the material or pay for damages or disfigurement, to the island Council which shall be distributed to the parties affected by such damage and disfigurement.

(4) It shall be unlawful for any person to undertake any archaeological excavations in Atiu without a written permission from the Landowners affected, Island Council and the Island Environment Authority.

(5) A permit issued pursuant to subclause (1) may be granted on such terms and conditions as the Landowners, Ui Ariki, Aronga Mana, the Island Council and the Island Environment Authority who may determine, including the payment of any fees.

PART III **RA'UI**

18. Ra'ui - (1) A Ra'ui may be declared and under the control of the Ui Ariki, Mataiapo Tutara and Mataiapo and they may, in consultation with the Island Council, the Island Environment Authority and Landowners concerned, impose such restrictions in accordance with traditional custom.

(2) No person shall enter onto any land; lagoon, reef, or vai roto which is under Ra'ui until the Ra'ui is declared open by the Ui Ariki, Mataiapo Tutara, and Mataiapo and notified to the public by the Island Council and the Island Environment Authority.

(3) Notwithstanding the provisions of subclause (2), during the term of the Ra'ui -

(a) the owner of any land may enter upon such land, for the purpose of passing through to another place or the collecting of dried coconuts and other fruits that may be in season unless those coconuts or fruits are subject to the Ra'ui;

(b) the owner of any land may enter upon such land, for the purpose of collecting any stray animals or may order the owner of such animals to collect them; and

(c) in the case of an area of the lagoon that is declared a Ra'ui, a person may enter such areas, for the purpose of passing through to another area.

(4) Where a person enters onto any land, lagoon or reef under a Ra'ui as a result of an emergency, that person must advise a member of the Ui Ariki, Ui Mataiapo Tutara, Mataiapo, the Island Council or the Island Environment Authority as soon as practicable.

19. Declaration - (1) Every area under Ra'ui shall be declared by the Ui Ariki and notified to the public by the Island Council and the Island Environment Authority.

(2) Every such declaration shall be effective on and from the date upon which the Ui Ariki, may determine by notice of declaration and notified to the public by the Island Council and the Island Environment Authority.

(3) Every such notice, together with a description and plan of the area affected shall be posted on the notice board at the meeting house and public buildings of each village on Atiu and shall be

advertised on the television and radio system on Atiu.

20. Ra'ui Management Plan - (1) The Ui Ariki, Mataiapo Tutara and Mataiapo may from time to time, in consultation with the Island Council, Island Environment Authority and landowners, prepare a draft management plan for any Ra'ui designated pursuant to Regulation 18 (1).

21. Tiaki Ra'ui - (1) The Ui Ariki, Mataiapo Tutara and Mataiapo shall be entitled to appoint and dismiss certain persons to be called "Tiaki Ra'ui", who shall act as guardians or caretakers of the Area and carrying out the activities in the Management Plan.

(2) The names of the Tiaki Ra'ui shall be publicised throughout public places in Atiu as well as in the radio and television.

(3) In the event that a Tiaki Ra'ui resigns, retires, passes away or moves to another village or island, the Ui Ariki, Mataiapo Tutara and Mataiapo shall appoint another person to be his or her replacement.

22. Role and Duties of the Tiaki Ra'ui - (1) A Tiaki-Ra'ui may use all of his or her powers stated in Part III of these Regulations for the purpose of carrying out of activities necessary to give effect to the Ra'ui Management Plan in consultation with the Ui Ariki, Mataiapo Tutara and Mataiapo.

(2) Where any person is found to have committed an offence against the Ra'ui Management Plan, the Tiaki Ra'ui shall -

(a) be empowered to request the name, address and identification from the person;

(b) seize any plant or animal found in their possession and seize any article used for the commission of the offence; and

(c) apply an on-the-spot utunga of \$100.00; or

(d) refer the matter to the National Environment Service for prosecution under the provisions of the Act or any regulations thereunder.

(3) Each Tiaki Ra'ui shall, where necessary, be given an identification card by the Ui Ariki, Mataiapo Tutara and Mataiapo for the purpose of identifying themselves to any person for the purpose of the enforcement of the Ra'ui Management Plan.

(4) The National Environment Service shall issue to the Ui Ariki, Mataiapo Tutara and Mataiapo consecutively numbered on-the-spot, utunga books for the Tiaki Ra'ui to record any violations of the Ra'ui Management Plan.

(5) All on-the-spot utunga issued pursuant to Regulation 22 (2) (c) shall be recorded in triplicate with the offender being given the original Notice of Utunga and the Ui Ariki, Mataiapo Tutara and Mataiapo being given a duplicate copy of the Notice of Utunga and the Tiaki Ra'ui shall retain the third duplicate copy of the Notice of Utunga.

(6) The Tiaki Ra'ui shall forward any utunga collected pursuant to subclause (5) to the Ui Ariki, Mataiapo Tutara and Mataiapo within seven (7) days of the date the amount was received.

(7) The Tiaki Ra'ui shall on a regular basis file a report to the Ui Ariki, Mataiapo Tutara and Mataiapo and the National Environment Service of any violations of the Ra'ui Management Plan Regulations.

(8) The Ui Ariki, Mataiapo Tutara and Mataiapo shall maintain a central registry of all utunga issued pursuant to subclause (5).

(9) Every person who is required to pay an utunga issued pursuant to Regulation 22 (2) (c)

(a) may elect to pay the utunga in which case the Ui Ariki, Mataiapo Tutara and Mataiapo shall upon payment acknowledge in writing the receipt of such sum and that person shall not be liable to prosecution; or

(b) where the offender cannot afford to pay the utunga as imposed, such person must carry out community service activities as identified by the Ui Ariki, Mataiapo Tutara and Mataiapo for no more than 30 working days;

(c) may elect to have the matter referred to Alternative Dispute Resolution as provided in these Regulations;

(d) may elect not to pay the utunga in which case the matter shall be referred to Court and that person shall be liable upon conviction to a fine not less than \$150 plus Court costs.

(10) Where a person receives an on-the-spot utunga and has no money in his possession he must pay the amount within seven (7) days of the date the offence was committed as specified in a written Notice of Fine to be given to the offender.

(11) The Tiaki Ra'ui shall also be responsible for ensuring nothing of archaeological significance is removed from the Area or is moved or vandalized in the Area.

(12) Should any person remove any animal or plant from a stream or waterway such animal or plant shall be seized and forfeited by the Tiaki Ra'ui which shall be returned to its habitat if it is still alive and if it is dead it shall be disposed of by the Tiaki Ra'ui as he deems fit.

(13) It shall be an offence to interfere with the work of a Tiaki Ra'ui or refuse to provide information or provide false information to a Tiaki Ra'ui when requested.

23. Other Tiaki Ra'ui Officers - Any Police Constable appointed under section 25 (6)(b) of the Act, any Officer of the National Environment Service; any Officer of the Ministry of Agriculture; any Officer of the Ministry of Marine Resources and the Island Secretary, may exercise the powers and be considered as a Tiaki Ra'ui under these Ra'ui Regulations

PART IV
ENVIRONMENTAL HEALTH

24. Drinking water supply - (1) It shall be unlawful to dispose of any waste, litter or otherwise pollute any drinking water supply, or source.

(2) Any water tank or reservoir erected or provided by the Government for the collection and storage of water shall be under the control and managed by the Island Council and Public Health who may impose such rules as they deem necessary for -

- (a) the purpose of controlling the equitable distribution of water;
- (b) the protection of water quality.

(3) The areas listed in Schedule 5 are designated as water reserves.

(4) No person shall, within the water reserve designated under subclause (3) -

- (a) litter or deposit any waste;
- (b) slaughter, keep or tender any animals;
- (c) plant or remove any crops or plants within 10 meters of any river or stream.

(5) No person may within the water reserve designated under subclause (3), without written permission from the Island Council and Island Environment Authority -

- (a) undertake any construction or building;
- (b) undertake any commercial operation;
- (c) clear any land.

(6) The Island Council may, from time to time, and after consultation with the Island Environment Authority and landowners, designate other areas as water reserves that may be added to the list provided in Schedule 5.

(7) The Island Council may from time to time, in consultation with the Island Environment Authority and landowners, prepare a draft management plan for any water reserve designated pursuant to subclause (3) and (6), for the protection, conservation, management, and control of water supply and water quality.

(8) A draft management plan prepared pursuant to the provisions of subclause (7) must -

- (a) take into account the environmental policies of the Island Council and Government; and

(b) receive the approval of the Island Environment Authority and any landowners affected prior to adoption by the Island Council.

25. Restrictions on water supply - (1) The Island Council and Public Health may in relation to any water tank or reservoir referred to in regulation 24(2), as they deem necessary from time to time, and in any instances of drought or other necessary cause, impose any rules or conditions that may be appropriate for the conservation of water supplies for Atiu.

(2) Every rule or condition imposed by the Island Council and Public Health pursuant to subclause (1) shall be posted on the notice board at the meeting house and public buildings of each village on Atiu, and shall be advertised on the television and radio system of Atiu

26. Cleanliness of remises - (1) Every owner or person in lawful occupation of any house shall at all times keep their premises, and the grounds around the same in a clean and tidy condition and free of litter.

(2) Where litter is generated on or attributable to any particular land or premises is likely to be carried or to otherwise escape from that land or those premises onto a public place, an Officer shall require the occupier of the land or premises to make all reasonable steps to prevent such litter being carried or escape onto the public place.

(3) Where it can be shown that excessive litter is attributable to or emanates from any particular land or premises, an Officer may require the occupier of the land or premises to provide and maintain such number of litter receptacles of suitable construction and design in any public place adjacent to or within the vicinity of the land or premises for the temporary deposit of litter as may reasonably be necessary to ensure that the public place may be kept free of that litter.

(4) Where the Island Environment Authority is satisfied that any person has failed to comply with the requirements of subclause (1) within a reasonable period, the Island Environment Authority may undertake the clean up of the site, and the costs for the restoration of the site shall be levied against the owner of the property.

27. Controlled litter - It shall be unlawful for any person to bring onto the Island any non-biodegradable plastic shopping bags or glass beer containers whether for personal or business purposes.

28. Disposal of litter at home - All litter that can be burned at the homes, with the exclusion of disposable nappies, glass and glass containers, plastic bags, hazardous waste, and motor parts, shall be disposed of in a safe and proper manner, either by burning or burying in the ground, or by disposal at the designated public waste disposal and treatment site.

29. Recyclable materials - The Island Council, in consultation with the Island Environment Authority, shall be responsible for the environmentally sound collection, storage, and export of all cans, bottles, batteries and other recyclable materials.

30. Hazardous materials and waste - (1) It shall be unlawful for any person without a written permit from the Island Environment Authority to bring onto Atiu any product that will produce hazardous waste or will become a hazardous waste once its use has expired.

(2) A permit issued pursuant to subclause (1) may be granted on such terms and conditions as the Island Environment Authority may determine as necessary for the environmentally sound storage, transport, collection or disposal of such hazardous waste.

(3) It shall be unlawful for any person to -

(a) uses any chemical, pesticide or poison for the purpose other than that for which it was manufactured;

(b) use any chemical, pesticide or poison other than in compliance with any conditions established by the island Environment Authority pursuant to subclause (2); and

(c) clean in the sea or any stream any equipment that has been used for the handling of any chemical, pesticide or poison.

31. Designation of a public waste disposal and treatment site - (1) The Island Council in consultation with the Island Environment Authority and Landowners shall be responsible for the designation of any site for the purpose of public waste disposal and for the storage of recyclable materials.

(2) It shall be unlawful for any person to use any land for the purpose of a public waste disposal and treatment site without a written permit from the Island Council, Island Environment Authority and Landowners.

(3) A permit issued pursuant to subclause (2) may be granted on such terms and conditions as the Island Environment Authority and Landowners may determine.

32. Household sewage - (1) It shall be unlawful for any person or household owner to construct any structure for the containment and treatment of household human waste -

(a) other than in accordance with the provisions of the Public Health (Sewage) Regulations; and

(b) without prior written permit from the Public Health Department.

(2) Any permit issued pursuant to subclause (1) (b) may be granted on such terms and conditions as the Island Environment Authority may prescribe.

33. Sewage from businesses - (1) It shall be unlawful for any person or business owner to construct any structure for the containment and treatment of any sewage waste derived from the business -

(a) other than in accordance with the provisions of the Public Health (Sewage) Regulations; and

(b) without prior written permit from the Island Council and Public Health Department.

(2) Any permit issued pursuant to subclause (1)(b) may be granted on such terms and conditions as the Island Council and Public Health in consultation with the Island Environment Authority may prescribe.

34. Wandering animals - (1) It shall be unlawful for the owner of an animal to fail to provide adequate means to prevent the animal from wandering onto any other persons property or into any public place.

(2) The owner of any animal that has caused damage to any other persons property or any public property shall be liable for any such damage.

(3) All Officers shall exercise the powers conferred on Animal Inspectors pursuant to Section 8 of the Wandering Animals Act 1976 and Regulations thereunder.

35. Keeping of pigs - (1) It shall be unlawful for any person to have or keep any pig within at least fifty metres from:-

(a) any occupied dwelling; or

(b) the boundary of any neighbouring land.

(3) Every owner of a pig shall keep such a pig within a suitable enclosure, or tethered in such manner as will not cause a risk to human health or suffering to the pig.

PART V **MARINE RESOURCES**

36. Pollution by vessels - (1) No vessel may -

(a) discharge, dump or release any oil, sewage, garbage or other form of pollution within the coast or in the sea within 12 nautical miles of Atiu;

(b) damage any reef on the coast of Atiu.

(2) The master or owner of any vessel that commits any offence under subclause (1) shall be liable for prosecution under these Regulations.

37. Registration of vessels used for tours - (1) It shall be unlawful for any person to operate or offer for hire any vessel to carry any person classified as a visitor or a tourist, without a written permit issued by the Island Council for that purpose.

(2) Any permit issued pursuant to subclause (1) may be granted on such terms and conditions as

the Island Council may determine.

(3) A permit issued pursuant to subclause (1) shall not be issued if in the opinion of the Island Council such vessel is unsafe or unsuitable for the purpose which it is intended to be used or does not have a competent crew.

38. Fishing - (1) - The use of a net for fishing Kōperu in the harbour is prohibited.

(2) No person shall use a net to fish with a mesh of less than 2 inches.

(3) No person who is not a native of Atiu may fish within 12 miles of Atiu except on a vessel registered pursuant to regulation 37.

39. SCUBA Fishing - it shall be unlawful to carry out SCUBA fishing in the lagoon, or on the reef, or within twelve nautical miles of Atiu or Takutea.

40. Destructive Fishing Methods - No person shall use any explosive or any poisonous substance to capture fish.

41. Vessel Permits - (1) Subject to the provisions of subclause (3) hereunder, no vessel may anchor and remain within the lagoon, harbour or on the reef, or within twelve nautical miles of Atiu without a prior written permit from the Island Council.

(2) Any permit issued pursuant to subclause (1) may be granted on such terms and conditions as the Island Council may prescribe including the imposition of any fee that the Island Council shall consider appropriate.

(3) Vessels operated by the Government of the Cook Islands for maritime surveillance or licensed for the purposes of inter-island trade or vessels visiting Atiu in emergency conditions shall be exempted from the requirements of subclause (1).

PART VI **FORESHORE**

42. Removal of silt, sand, gravel, cobble and boulders - (1) It shall be unlawful for any person to remove more than 5 cubic metres or two one-half ton truck loads of silt, sand, gravel, cobble or boulders within a one month period from the foreshore without the prior written agreement of the Landowners, Island Council and the Island Environment Authority.

(2) Any permit issued pursuant to subclause (1) may be granted on such terms and conditions as the Island Council in consultation with the Landowners, Island Environment Authority may prescribe.

(3) No person may use or authorize the use of public transport to convey any silt, sand, gravel, cobble or boulders without a permit issued pursuant to subclause (1).

43. Fill - (1) It shall be unlawful for any person to place any fill or material, or to fill any part of the foreshore without the prior written agreement of the Landowners, Island Council and the Island Environment Authority.

(2) Any permit issued pursuant to subclause (1) may be granted on such terms and conditions as the Island Environment Authority in consultation with the Island Council may prescribe.

PART VII **ENFORCEMENT**

44. Inspection - An Officer, when directed by the Island Council in consultation with the Island Secretary, may make regular inspection of any land affected by the provisions of these Regulations at reasonable times, and shall report to the Island Council on the results of such inspections and may also report to the Island Council on the performance of any Officer of his responsibilities under these Regulations.

45. Enforcement Officers - (1) The Members of the Island Council and any Officer of the National Environment Service, Police Department, Agriculture Department, Public Health and Marine Resources as appointed by the Island Council shall act as Enforcement Officers to assist in enforcing these Regulations.

(2) Any Officer, if he or she has reasonable cause to suspect that a person has committed an offence against these Regulations, may without warrant and accompanied by a member of the Island Council or constable:

(a) enter upon any premises, land, and conduct searches and whenever necessary, enforce the provisions of these Regulations; and

(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 Regulations has been committed.

(3) Notwithstanding the provisions of subclause (2), entry into any occupied private residence shall only be permitted under a warrant issued by a Justice of the Peace under the powers conferred by section 96 of the Criminal Procedure Act 1980-1981.

(4) An Officer may, without a court order or a search warrant, seize any thing that is produced to the Officer, or that is in plain view during an inspection under these Regulations if the Officer has reasonable grounds to believe that there has been an offence committed under these Regulations and that the thing to be seized will afford evidence as to the commission of the offence.

(5) The Officer acting pursuant to the provisions of subclause (4) shall:

(a) inform the owner or person in custody of the reason for the seizure;

- (b) give the owner or person in custody a receipt for the article that has been seized; and
- (c) remove the seized article to a place of safekeeping and deal with the seized article in the same manner as if it were seized pursuant to the authority of a search warrant.

46. On-the-Spot Fines - (1) For any minor offence under these Regulations, an Officer may require the payment within seven days by the offender of a fine of not more than \$100.

(2) The Officer shall be issued with a book to keep a record of all on-the-spot fines issued pursuant to subclause (1).

(3) All on-the-spot fines issued pursuant to subclause (1) shall be recorded in triplicate with the offender being given the original Notice of Fine, the Island Council being given a duplicate copy of the Notice of Fine, and the Officer shall retain the third duplicate copy of the Notice of Fine.

(4) Every person who is required to pay a fine pursuant to subclause (1) -

(a) may elect to pay the sum given in which case the Officer shall upon payment acknowledge in writing the receipt of such sum and that person shall not be liable to prosecution; or

(b) may elect not to pay the sum in which case that person shall be liable upon conviction to a fine not more than \$150 plus court costs; or

(c) who defaults in payment of the sum given shall upon such default be liable upon conviction to a fine not more than \$200 plus court costs.

(5) Should any person fail to pay an on-the-spot fine issued pursuant to subclause (1) within the time indicated and does not elect to have the matter determined by the Court or pursuant to regulation 49, the Island Council may seize any moveable property from such person in satisfaction of the unpaid fine.

47. Proof of offence - (1) In any prosecution of an offence under these Regulations it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or prosecuted for the offence.

(2) A certificate of an Officer stating that the Officer has analysed or examined a site, substance or product and stating the result of the analysis or examination is admissible in evidence in any prosecution for an offence under these Regulations and, in the absence of evidence to the contrary, is proof of the statements contained in the certificate.

(3) Notwithstanding the provisions of subclause (2) above, the party against whom a certificate of an inspector is produced may, with the leave of the court, require the attendance of the Officer for the purposes of cross-examination.

(4) No certificate of an Officer shall be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of

that intention together with a copy of the certificate.

48 Council and Authority member protection - No member of the Island Council or Island Environment Authority shall in any way be liable to be prosecuted, or be liable in damages, for the exercise or performance in good faith of the functions, duties, or powers vested in the Island Council or Island Environment Authority under these Regulations.

PART VIII **PENALTIES**

49. Penalties - (1) Any person or Corporate body who:

- (a) Undertakes any activity other than in compliance with the requirements of these Regulations;
or
- (b) fails to comply with any condition of a permit issued under these Regulations;

commits an offence and may be liable to a maximum fine of \$50,000 or to imprisonment for a period of one year, or to both.

(2) Where an offence under subclause (1) is committed or continues on more than one day, the person who committed the offence is liable to an additional fine of \$1,000 for each day the offence continues.

(3) For any minor offence where a fine does not exceed \$500 and where the offender cannot afford to pay the fine as imposed, such person must carry out community service as identified by the Island Council for no more than 30 working days.

(4) The Court may, in addition to any other penalty order the forfeiture to the Island Council of any boat, under water breathing apparatus, farming equipment, fishing equipment or any other property of whatever nature used by the offender in commission of any offence under these Regulations.

(5) Where an offender has pleaded guilty to or been convicted of an offence, the Court, having regard to the nature of the offence and the circumstances surrounding its commission, in addition to any other punishment that may be imposed under these Regulations, may make an order having any or all of the following effects:

- (a) prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (b) directing the offender to take such action as the court considers appropriate to remedy or avoid any harm to the environment that results or may result from the act or commission that constituted the offence;

- (c) directing the offender to post such bond or pay such amount of money into the Island Council as will ensure compliance with any order made pursuant to these Regulations;
- (d) directing the offender to compensate any affected party, in whole or in part, for any environmental damage or the cost of any remedial or preventative action taken or caused to be taken as a result of the act or omission that constituted the offence;
- (e) requiring the offender to comply with such other reasonable conditions as the court considers appropriate and just in the circumstances.

(6) Where an offence exceeds subclause (1) such will be dealt with according to Section 59 of the Act.

50. Application of fines imposed - All fines, levies and fees that may be collected under these Regulations shall become part of the Fund of the Island Council to be used for environmental management activities.

51. Alternative Dispute Resolution - (1) The Island Council may establish an alternative dispute resolution process to:-

- (a) resolve any dispute concerning these Regulations that may arise;
- (b) as a forum for dealing with any violation of these Regulations.

(2) Any alternative dispute resolution process established pursuant to sub-clause (1) may include:-

- (a) arbitration;
- (b) mediation;
- (c) facilitation; or
- (d) a combination of these processes.

(3) Should any person refuse to participate in any alternative dispute resolution process established pursuant to sub-clause (1), the matter shall be referred to a Justice of the Peace or to the High Court.

(4) Any alternative dispute resolution process established pursuant to sub-clause (1) shall -

- (a) be undertaken in such a manner so as to ensure that all parties to the dispute have an opportunity to be heard;
- (b) shall be recorded in writing; and
- (c) result in an award of compensation, restitution, clean-up, and remediation but not result in the imposition of a fine or a term of imprisonment.

(5) Any award of compensation or restitution pursuant to subclause (4) will be paid to the Environment Fund established pursuant to subclause (49) by the Island Council for this purpose.

52. Repeal - The Atiu (Peace, Order and Good Government) By-laws 1937, are repealed.

Grover L. Harmon
Clerk of the Executive Council

SCHEDULE 1

Regulation 8

TAKING OF UNGA KAVEU

SCHEDULE 2

Regulation 9

TAKING OF GRAYFISH

SCHEDULE 3

Regulation 11(1)

PROTECTED BIRDS

Kākāia, Kakerori, Kena, Kopeka, Kota'a, Kukupa, Kura, Kuriri, Mo'o, Mokora vai, Ngotare, Pirake, Rupe, Tavake, Teue, Titi, Tōrea or Toroa

SCHEDULE 4

Regulation 15

PROTECTED AREAS

ANA

Pou Atea

Rima Rau

PATUPAEPAE

Patupaepae o Aketairi

Patupaepae o Taratoa

Marau

Umurau

Anatakitaki

Raka

Vaiari

ANA E VAI TO ROTO

Vai Tupuranga

Vai Tapoto

Vai Akaruru

Vai Momoiri

Vai Te Miro

MARAE

Arangirea

Orongo I Uta

Tarapita

Tukianga Upoko

Te Pori

Orongo I Tai

Vairara

Are Tamanu

Katara

Rau Kukara

Vairakaia

Manono

Teara Taua

ANCIENT BURIAL SITE

Orovaine

Tumai

"Terangi Kato Ariki"

Te Akatauirā burial site

Nurau

SCHEDULE 5

Regulation 24 (3)

WATER RESERVES

Teponui

Maromou

Vaitapoto

SCHEDULE 6

Regulation 4 (5)

RULES OF THE MANAGEMENT COMMITTEE OF TAKUTEA

1. The Chairperson of the Management Committee shall be a person selected by the Management Committee from amongst their members.

2. The Management Committee shall elect its own Secretary and Treasurer from members appointed to the Management Committee.

3. Functions and responsibilities of the Management Committee - The Management Committee shall have the following responsibilities and functions:

(a) to fulfil the requirements and duties of any Management Plan;

(b) to establish procedures to ensure the effective implementation and enforcement of any Management Plan; and

(c) to act also in the best interests the Landowners of Atiu to ensure that the Landowners' rights in regard to Takutea and the Management Plan are maintained and protected.

4. Meetings of the Management Committee - (1) Every meeting of the Management Committee shall be presided over by the Chairperson, and in the absence of the Chairperson or his nominee the members present shall appoint one of the members of the Management Committee to be the Chairperson for that meeting.

(2) Meetings shall be held on such dates as the Management Committee shall decide, but in any event at a frequency of not less than one meeting every three months.

(3) At least three days' notice of every meeting of the Management Committee shall be given to its members and the Chairperson, except -

(a) where the Chairperson certifies in writing that he or she is of the opinion that there is good reason to hold an urgent meeting; or

(b) in the case of a special meeting as agreed by the Management Committee.

(4) Every question before a meeting of the Management Committee shall be decided by consensus, failing which it shall be determined by a majority of valid votes of the members present, and in the case of equality of votes, the Chairperson at the meeting concerned shall have a casting vote.

(5) Any member of the Management Committee shall excuse themselves from considering any matter before the Management Committee in which they have or may have a vested interest.

5. Minutes of meetings - (1) The Management Committee shall cause minutes to be kept in a book maintained for the purpose of recording all resolutions and proceedings at its meetings.

(2) The minutes shall be approved by the Management Committee at the next Management

Committee meeting and signed by the Chairperson.

(3) A copy of the minutes of each meeting shall on request be furnished to every person who is a member of the Management Committee.

(4) All minutes and information relating to any meeting of the Management Committee pursuant to the requirements of these Regulations shall be available to the Landowners.

6. Secretarial and Administrative needs - The Management Committee shall be responsible for its secretarial and administrative needs.

7. Complaints to the Management Committee - (1) Any person may make a complaint to the Management Committee relating to an alleged breach of any Management Plan.

(2) Where a complaint has been made pursuant to subclause (1), the Management Committee with the assistance of the Island Environment Authority:-

(a) shall investigate the circumstances relating to the complaint.

(b) shall as soon as practicable make a decision on whether there has been a breach or not; or

(c) may then apply the remedies and penalties prescribed under these Regulations.

8. Finance and Administration of the Management Committee - (1) The Management Committee shall open and maintain a bank account at one of the commercial banks registered in the Cook Islands for the purpose of keeping its funds in a safe place.

(2) Pursuant to the requirements of subclause (1), the bank book and financial records shall be held by the Treasurer of the Management Committee.

(3) There will be 3 signatories required for withdrawal from the bank accounts of the Management Committee established pursuant to subclause (1).

(4) The nominated signatories for the bank account established pursuant to subclause (1) will be the Treasurer and two other persons selected by the Management Committee as the co-signatory for the bank account of the Management Committee.

(5) The Management Committee shall manage its funds honestly, prudently and in accordance with proper accounting procedures.

(6) All funds held by the Management Committee may be disbursed as determined by the Management Committee considering the purposes and needs of the Management Plan and may include a distribution to Landowners where the Management Committee considers appropriate.

(7) No funds may be expended without a valid resolution passed by a meeting of the Management Committee.

(8) The Management Committee shall issue a receipt for all monies received pursuant to their functions under these regulations.

(9) The Management Committee shall appoint an Accountant registered to practice in the Cook Islands to undertake an Audit of its financial affairs each year.

(10) The Management Committee shall call a public meeting of all native Atiuan people to report on the affairs of Takutea in the preceding year including providing a financial report of its activities.

(11) All fees or payments received by any member of the Management Committee in relation to use or visits to Takutea shall be banked into the bank account of the Management Committee.

SCHEDULE 7

Regulation 4 (4)

List of Takutea Trustee

1. Ngamaru Ariki
2. Rongomatane Ariki
3. Parua Ariki
4. Te Ipo Mataiapo
5. Paerangi Mataiapo
6. Tinikura Mataiapo
7. Aumai Mataiapo

SCHEDULE 8

Regulation 11 (6)

MEASURES RELATING TO CONTROL OR RODENTS

Interpretation

"Cargo" means any items arriving on Atiu by ship, boat or plane or by any other means;

"Rodent" means a member of the rodent family;

"bait station" means a structure designed to dispense a toxin, such as a rodenticide.

- (1) Every ship or boat (longer than five metres at the waterline) is required to set rat bait stations and/or rat traps in its cargo hold at least 12 hours before unloading cargo at Atiu, and the stations shall be checked by the Quarantine Officer for Atiu before unloading of cargo commences at Atiu.
- (2) All cargo shall be inspected on the wharf by the Quarantine Officer for rodents and rodent damage.
- (3) Every person collecting cargo shall inspect their cargo for rodents and rodent damage.
- (4) Every person who identifies cargo damaged by rodents shall make a verbal report to the Quarantine Officer as soon as possible
- (5) Every person who sees a rodent in or escaping from cargo shall make every effort to kill the rodent and shall report the incident to the Quarantine Officer as soon as possible
- (6) Upon receiving a report, the Quarantine Officer shall make every effort to kill the rodent and shall arrange with those concerned to place appropriate rat bait stations around the area of concern.
- (7) Any rodent associated with cargo that is killed should be collected, identified and destroyed by the Quarantine Officer.
- (8) The Quarantine Officer shall keep records on the inspection of rat control measures on ships and boats, and on any incident involving rodents associated with cargo.
- (9) In the case of a ship wreck on Atiu the Quarantine Officer shall take all actions necessary to ensure that rodents do not come ashore and, if appropriate, shall establish a defensive line of rat bait stations around the area.