

Environment (Mitiaro) Regulations 2008

COOK ISLANDS

**ENVIRONMENT (MITIARO) REGULATIONS 2008
2008/5**

Sir F. Goodwin, KBE

Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga, this 7th day of **October** 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 (Mitiaro) 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;

"Ange" means the plant known as the Makatea Geniostoma (*Geniostoma sykesii*);

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

"Area" means the area declared to be under a rau'i pursuant to Section 16;

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

"Ature" means the fish variety known as Big-eye scad (*Selar crumenophthalmus*);

"Coconut crab" means the animal, *Birgus latro* whether male or female;

"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 40;

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

"Environment Officer" means an Island Environment Officer for Mitiaro 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 (bêche-de-mer), or other echinoderm, turtle and marine mammal and includes their eggs, spawn, spat and juvenile stages;

"Foreshore" means all that area from 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 and shall include all that area of land extending away from the lake and measured at right angles to a distance of 5 metres from the bank of that lake;

"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;

"Iniao" means the tree known as Mitiaro fan palm (*Pritchardia mitiaroana*);

"Island" means the island of Mitiaro;

"Island Council" means the Island Council of Mitiaro;

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

"Kakaia" means the bird commonly known as white tern (*Gygis alba*);

"Kaoko" means the bird commonly known as the Cook Islands Warbler (*Acrocephalus kerearako*);

"Kota'a" means the bird commonly known as the Frigate Bird (*Frigata minor* and *Frigata ariel*);

"Nakura" means the bird commonly known as the Rimatara lorikeet or the Kura in Atiu (*Vini kuhlii*);

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

"Mitiaro" means the island of Mitiaro and the waters within twelve nautical miles of the coast of Mitiaro;

"Mokora vai" means the birds commonly known as the Grey Duck (*Anas superciliosa*) and the Muscovy Duck (*Cairina moschata*);

"Mo'o" means the bird commonly known as the Spotless crane (*Porzana tabuensis*);

"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 floating line attached for the purpose of catching fish;

"Enforcement Officer" means any person appointed pursuant to Regulation 40;

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

"Ora papua" means the plant known as the species *Derris trifoliata*;

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

"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 and includes ora papua and utu;

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

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

"Rupe" means the bird commonly known as pigeon (*Ducula pacifica*);

"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, wash 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;

"Tavake" means the bird commonly known as the red-tailed tropicbird (*phaethon rubricauda*);

"Ungakave'u" means the animal, *Birgus latro* whether male or female;

"Ui Ariki" means the three Ariki of Mitiaro being Temaue Teikamata Ariki, Po Tetava Ariki and Tou Ariki.

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

"Utu" is the plant known as *Barringtonia asiatica*;

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

PART 1 **SPECIES & HABITAT PROTECTION**

4. Importation of animals prohibited - (1) It shall be unlawful for any person to import into or keep on the island any animal not known to be native to or currently found on Mitiaro except with prior written approval of the Ui Ariki and 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 thereunder.

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

(3) Any Ui Ariki or member of the Island Council or Island Environment Authority who receives information or witnesses anyone importing into Mitiaro any animal in violation of the provisions of subclause (1) shall seize the animal and hand it over to an Enforcement Officer who shall forthwith cause such animal to be destroyed

5. Protection of coconuts, Iniao, 'Ange and plants - (1) It shall be unlawful for any person to

import into or keep on the island any coconut, Iniao, 'Ange or plant not known to be native or currently found on the island except with prior written approval of the Ui Ariki and the Island Council and provided that all quarantine measures have been taken pursuant to the Plant Act 1978 together with all the amendments and regulations made thereunder.

(2) No person shall cut, damage, harm, remove, dig up, burn, disturb or mark in any way the tree known as an Iniao.

(3) There shall be no export of any part of the 'Ange or Iniao from Mitiaro without the prior written consent of the Island Environment Authority of Mitiaro except for the purpose of preservation of the Iniao seed at a recognized Seed or Gene Bank

(4) The Island Environment Authority of Mitiaro may seek the assistance of the National Environment Service and Ministry of Agriculture to protect the Iniao.

(5) Any plant imported into the Island without written approval pursuant to subclause (1) shall be seized by any Enforcement Officer and forthwith destroyed by burning.

(6) Any Ui Ariki or Council member who receives information or witnesses anyone importing into the island any plant in violation of the provisions of this subclause shall seize the plant and hand them over to an Enforcement Officer who shall forthwith cause such plant to be destroyed by burning.

6. Taking of Ungakave'u - (1) It is an offence for any person to kill, harm or possess any ungakaveu.

(2) Where any person intends to kill, harm or possess a ūngākaveu in accordance with traditional practice such person shall obtain the prior consent in writing from the Island Environment Authority.

(3) Subject to the provisions of regulation 6(2), no person shall take any ūngākaveu, which is less than forty five (45) millimetres in length when measured at the thorax as indicated in Schedule 1.

(4) Subject to the provisions of regulation 6(2), no person shall take any female ūngākaveu which still have its eggs attached.

(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 ūngākaveu and thereafter develop a management plan for the conservation of such species.

7. Protection of crayfish, - (1) No person shall fish or remove from the lagoon, reef or waters within 12 nautical miles of the island, 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 nautical miles of Mitiaro, any female crayfish that still has its eggs attached.

(3) No person shall use or possess a spear or spear gun while hunting for crayfish.

(4) 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.

8. 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) No person shall break any rules established by the Ui Ariki and the Island Council for the protection of flying fish during the spawning season.

(3) No person shall sell any flying fish obtained during the spawning season.

9. Protection of eels and fish - (1) No person shall fish for or catch eels, milkfish, goatfish, ature or any other fish species that maybe identified and endorsed by the Island Environment Authority during any raii declared pursuant to Regulation 17

(2) No person shall fish for or catch any eel after a raii has been lifted by the Ui Ariki and the Island Council except by means of traps, hooks, and bushknives.

(3) No person shall fish or catch any eel after a raii has been lifted by the Ui Ariki and the Island Council using a spear gun.

(4) No person shall fish for or catch any milkfish after a raii has been lifted by the Ui Ariki and the Island Council except by means of hooks and nets which shall be of such a size as authorized by the Ui Ariki and the Island Council.

(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 eels and milkfish and thereafter develop a management plan for the conservation of such species.

(6) No person shall fish for any ature except with the bait method or the feather/lure method as authorized by the Island Environment Authority.

10. Protection of birds - (1) It shall be unlawful for any person to posses, disturb, catch, trap or kill any ka'oko, kakai'a, kotaa, mokora vai, moo, nakura or rupe or any bird as maybe authorized by the Island Environment Authority, be it adult, juvenile, young or eggs.

(2) No person shall remove any young or eggs from their nests of the birds referred in sub-clause (1).

(3) 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.

11. Protection of turtles - (1) No person shall:-

- (a) possess, disturb, kill, harm, remove or damage any living wild turtle or eggs;
- (b) disturb any nest or remove any eggs from nest;
- (c) disturb any living wild turtle in any reef area or on land; and
- (d) export from Mitiaro any turtle, eggs or parts thereof whether living or dead.

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

12. Invasive species - (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 animals, plants or bird species that threaten or harm any animal, plant or bird present on Mitiaro which are native to Mitiaro.

13. Prevention of bush fires - (1) No person shall set or cause to be set a fire, whether intentionally or unintentionally, 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 within any 12 month period cut or remove 5 or more mature ironwood trees without written permission from the Island Environment Authority.

(3) No person shall export any tree, shrub, or part of any tree or shrub without written permission from the Island Environment Authority.

14. 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 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 Ui Ariki 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 Ui Ariki 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 Ui Ariki and the Island Council.

(8) No person shall possess or use any soaps, shampoo, conditioner or detergent in any Caves that has been declared a protected area, with the exception of Vai Marere.

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

15. Management Plan - (1) The Island Environmental Authority may from time to time and shall when directed by the Island Council, prepare a draft management plan for any protected area designated pursuant to Regulation 14 ,for the protection, conservation, management, and control of -

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

(b) Water resources or any watershed area;

(c) Mitiaro 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 take into account the environmental policies of the Island Council and Government.

(3) A draft management plan prepared by the Island Environment Authority must seek and obtain the approval of the Aronga Mana and any Landowners affected prior to approval by the Ui Ariki and the Island Council.

16. Removal of artefacts and archaeological material - (1) It shall be unlawful for any person to remove any artifact or archaeological material from the island without a written permit from the Ui Ariki and the Island Council.

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

(3) In the case any artefact or archaeological material is damaged, disfigured or removed from its original site, the person shall be ordered to restore the material or pay for damages or disfigurements, to the Island Council an amount equivalent to the market value of such an object or material which shall be distributed to the parties affected by such removal, damage and disfigurement.

(4) It shall be unlawful for any person to undertake any archaeological excavations in the island without a written permit from the Ui Ariki and the Island Council.

(5) A permit issued pursuant to subclause (4) may be granted on such terms and conditions as the Island Council may determine, including the payment of any fees.

PART 2
RAUI

17. Raui - (1) A raui shall be declared and under the control of the Ui Ariki and they may, in consultation with the Island Council and Landowners concerned, impose such restrictions in accordance with traditional custom.

(2) No person shall enter onto any land, lagoon, reef, or roto which is under raui until the raui is declared open by the Ui Ariki and notified by the Island Council and the Island Environment Authority.

(3) Notwithstanding the provisions of subclause (2), during the term of the Raui -

(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) in the case of an area of the lagoon that is declared a raui, a person may enter such areas, for the purpose of passing through to another area or to a motu.

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

18. Declaration - (1) Every area under raui shall be declared by the Ui Ariki and notified to the public by the Island Council.

(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 main Post Office and public buildings of each village on Mitiaro and shall be advertised on the television system on Mitiaro.

19. Ra'ui Management Plan - (1) The Ui Ariki 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 17.

PART 3
TIAKI RA'UI

20. Tiaki Ra'ui - (1) The Island Council 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 assist in enforcing these Regulations and carrying out the activities in the Management Plan.

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

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

21. Role and Duties of the Tiaki Ra'ui - (1) A Tiaki-Ra'ui may use all of his powers stated in part 2 of these Regulations for the purpose of carrying out of activities necessary to give effect to the Ra'ui Management Plan and these Regulations in consultation with the Island Council.

(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 Island Council 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 Island Council consecutively numbered on-the-spot utunga books for the Ti'aki Ra'ui to record any violations of the Ra'ui Management Plan.

(5) All on-the spot utunga issued pursuant to Regulation 21(2)(c) shall be recorded in triplicate with the offender being given the original Notice of Utunga and the Island Council being given a duplicate copy of the Notice of Utunga and the Ti'aki Ra'ui shall retain the third duplicate copy of the Notice of Utunga.

(6) The Ti'aki Ra'ui shall forward any utunga collected pursuant to subclause 21 (2) (c) to the Island Council of the Ra'ui within seven (7) days of the date the amount was received.

(7) The Ti'aki Ra'ui shall on a regular basis file a report to the Island Council and the National Environment Service of any violations of the Ra'ui Management Plan.

(8) The Island Council shall maintain a central registry of all utunga issued pursuant to subclause 21(2)(c).

(9) Every person who is required to pay an utunga issued pursuant to these Regulations -

(a) may elect to pay the utunga in which case the Island Council 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 Island Council for no more than 30 working days;

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

(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, and

(e) any person who defaults in payment of the sum imposed by the Court pursuant to clause (d) upon such default shall be liable to a further fine not less than \$200 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 Ti'aki 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 area or waterway, such animal or plant shall be seized and forfeited by the Ti'aki 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 Ti'aki Ra'ui as he deems fit.

(13) Any person who commits an offence under these Regulations may have his name and offence published on a public notice in the Village or in the public newspaper.

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

22 Other Ti'aki 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 Public Health Department, any officer of the Ministry of Marine Resources; any officer of the Ministry of Agriculture and the Island Council may exercise the powers and be considered as a Ti'aki Ra'ui under these Regulations.

PART 4 **ENVIRONMENTAL HEALTH**

23. 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 Ui Ariki, 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; and
- (b) the protection of water quality.

24. Restrictions on water supply - (1) The Island Council may in relation to any water tank or reservoir referred to in regulation 23 (2), as it deems 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 the island.

(2) Every rule or condition imposed by the Island Council pursuant to subclause (1) shall be posted on the notice board at the Post Office, Takaue, and shall be advertised on the island television system.

25. Cleanliness of premises - (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 Enforcement 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 Enforcement 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.

26. 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.

27. Disposal of litter at home - All litter 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.

28. 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, batteries and other recyclable materials.

29. Hazardous materials and waste - (1) It shall be unlawful for any person without a written permit from the Island Council to bring onto the island 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 in consultation with the Island Environment Authority on such terms and conditions as the Island Council 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 Council 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.

30. 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 Council may determine.

31. 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 Island Council.

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

32. 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 waste derived from the business

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- (a) other than in accordance with the provisions of the Public Health (Sewage) Regulations; and
- (b) without prior written permit from the Island Council.

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

33. 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 the animal that has caused damage to any other person's property or public property shall be liable for any such damage.

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

34. Keeping of pigs - (1) It shall be unlawful for any person to have or keep any pig within the boundaries of any residential area.

(2) All pigs shall be kept outside any residential area or at least fifty metres from -

- (a) any occupied dwelling; or
- (b) boundary of any neighbouring land.

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

PART 5 **MARINE RESOURCES**

35. 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 Mitiaro; or
- (b) damage any reef on the coast of Mitiaro.

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

36. Registration of boats used for tours - (1) It shall be unlawful for any person to offer for hire or operate 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.

37. Protection of mackerel scads - The use of a net for fishing mackerel scads is prohibited.

38. Protection of Ariri-(1) Any person wishing to remove any Ariri from the lagoon or reef shall ensure that -

(a) the Ariri are more than 15 millimetres across the operculum opening (diameter) of the Ariri;

(b) if they take Ariri from the lagoon or on the reef they are required to crack the Ariri in the lagoon or on the reef before returning to land so that the eggs of the Ariri are released back into the lagoon.

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 Mitiaro.

40. Gillnet Fishing - It shall be unlawful to use gillnets with mesh size less than 2 inches in the lagoon, or on the reefs of Mitiaro.

41. Destructive Fishing Methods - (1) No person shall use any explosive or a poisonous substance to capture fish.

(2) No person shall use Utu (baringtonia) seeds to poison fish.

(3) It shall be an offence for any person to have in their possession anywhere on the Island or waters of Mitiaro any part of the plant known as ora papua (Derris malaccensis)

42. Vessel Permits - (1) No vessel may anchor and remain within the lagoon, harbour or on the reef, or within twelve nautical miles of Mitiaro without a written permit from the Island Environment Authority.

(2) Any permit issued pursuant to subclause (1) may be granted on such terms and conditions as the Ui Ariki and 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 purpose to inter-island trade or vessels visiting Mitiaro in emergency conditions shall be exempted from the requirements of subclause (1).

PART 6 **FORESHORE**

43. Removal and filling - (1) It shall be unlawful for any person to remove more than two one-half ton truck loads of silt, sand, gravel, cobble or boulders from the foreshore without the prior written consent of the Island Environment Authority.

(2) 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 consent of the landowner, Island Council and the Island Environment Authority.

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

PART 7 **ENFORCEMENT**

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

45. Enforcement Officers - (1) The Island Council shall be entitled to appoint and dismiss certain persons to act as Enforcement Officers to assist in enforcing these Regulations who may, when required, also be deemed to include any Officer of the National Environment Service, Police Department, Agriculture Department, Public Health and Marine Resources.

(2) Any Enforcement Officer, if he 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 Enforcement Officer may, without a court order or a search warrant, seize anything that is produced to the Enforcement Officer, or that is in plain view during an inspection under these Regulations if the Enforcement 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 Enforcement 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 Enforcement Officer may require the payment within seven days by the offender of a fine of not more than \$100.

(2) The Enforcement 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 Enforcement 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 Enforcement 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 the

provisions of Regulation 51, 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 Enforcement Officer stating that the Enforcement 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 Enforcement Officer for the purposes of cross-examination.

(4) No certificate of an Enforcement 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 8 **PENALTIES**

40. Penalties - (1) Any person 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 is guilty of an offence and liable to a fine of \$50,000 or to imprisonment for a period of one year, or to both.

(2) Where an offence under subclause (2) 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 activities 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 funds of the Island Council to be used for environmental management activities.

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

(a) resolve any dispute concerning these Regulations that may arise;

(b) be as a forum for dealing with any violation of these Regulations.

(2) Any alternative dispute resolution process established pursuant to subclause (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) or should the Island Council decide that the matter should not be dealt with by the alternative dispute resolution process, then the matter shall be referred for determination by a Justice of the Peace or to the High Court.

(4) Any alternative dispute resolution process established pursuant to subclause (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; and

(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 an account established by the Island Council for this purpose.

Grover L. Harmon
Clerk of the Executive Council

These regulations are administered by the National Environment Service

SCHEDULE 3

Regulation 13

PROTECTED AREAS

Burial Sites at:

Okarava

Kakenga-onu

Vaikoua

Te'aunua

Akapa

Tamoemoe

The Maraes:

Karangarua
Takero
Matori
Te Pare
Te Rongo

Kakenga-Onu
Okarava
Palm Tree Iniao
Raro Akapa
Tamoemoe
Te Au Nua
Te Pare Historic Site
Te Pito o Kare
Te Rongo Marae
Te Vai tuki
Te Vai o Pei
Te Vai Te I'ka o to Uki
Teroto-Nui
Teroto-Iti Te Pito O Kare
Vai Ange
Vai-Tamaroa Vai'ai
Vaikoua
Vai Kopuo Karo
Vaimarere
Vainauri
Vai-Uti
