

[Subsidiary]

PEARL CULTURE (CONTROL) REGULATIONS

ARRANGEMENT OF REGULATIONS

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PEARL CULTURE (CONTROL) REGULATIONS

(Cap. 307, section 15)

[15 May 1959.]

- Citation. **1.** These regulations may be cited as the Pearl Culture (Control) Regulations.
- Interpretation. **2.** In these regulations, unless the context otherwise requires—
 “embedding” means the insertion of a foreign body into an oyster for the purpose of producing a cultured pearl;
 “harvest” means the removal of pearl oysters from cultivation areas for the purpose of extracting pearls therefrom.
- Application for licence. **3.** Every application for the grant of a licence under section 6 of the Ordinance shall be made in writing addressed to the Director; and the Director may upon receipt of such application request from the applicant such further information relating thereto as may appear to him necessary for the purpose of determining the suitability of the applicant for grant of a licence.
- Fees. **4.** The grant or renewal of every licence shall be subject to payment in advance of the following fees—
 (a) in the case of a temporary licence, \$1,000; and
 (b) in the case of a licence, \$5,000.
- Payment of royalties to be condition of licence. **5.** The payment of the royalties prescribed under these regulations shall be a condition of every licence granted under section 6 of the Ordinance.
- Royalty. **6.** (1) The licensee shall pay to the Government for each twelve-monthly period of his licence a royalty calculated on his net profit for that period derived from the cultivation of pearl oysters and the culture of pearls under his licence and from the sale of such pearl oysters and pearls.
 (2) Such royalty shall be—
 (a) for each of the first 3 twelve-monthly periods, 15 *per cent* of such net profit; and
 (b) for the fourth and each subsequent twelve-monthly period, 25 *per cent* of such net profit.
 (3) For the purposes of this section, the period during which a licensee is operating under a temporary licence granted under subsection (1)(a) of section 6 of the Ordinance shall, where such licence is not followed by a licence under subsection (1)(b) of that section, be deemed to be a twelve-monthly period.

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7. (1) The net profit referred to in regulation 6 shall be ascertained in accordance with Part IV of the Inland Revenue Ordinance:

Ascertainment of net profit.
(Cap. 112.)

Provided that—

- (a) in making the deduction set forth in section 16 of the said Ordinance due regard shall be had to the current level of prices and costs, so that any such deduction shall be limited to a sum which in the opinion of the Financial Secretary is reasonable, and so that allowance of any sum by way of depreciation of a capital asset shall be limited to an amount which represents the allowance approved under Part VI of the said Ordinance on what in the opinion of the Financial Secretary is a reasonable price for such asset;
- (b) in ascertaining the net profit as aforesaid, no deduction shall be made in respect of any sum which may be payable as royalty by the licensee to the Government;
- (c) for the purpose of ascertaining the net profit as aforesaid, all sales of pearl oysters and pearls shall be deemed to have taken place in the Colony.

(2) The Financial Secretary and any person authorized by him in writing shall for the purpose of ascertaining the net profit be an authorized representative of the licensee for the purposes of section 4 of the Inland Revenue Ordinance to the intent that the Commissioner of Inland Revenue and any assessor or person appointed to carry out duties under the said Ordinance shall, on demand by the Financial Secretary, disclose all such matters relating to the affairs of the licensee as the Financial Secretary or such authorized person may require, and such disclosure shall not be a breach of the duties imposed by the said section upon the person making it.

(3) In the event of the licensee failing to agree with the ascertainment of net profit made by the Financial Secretary, an appeal, by way of petition, shall lie to the Governor in Council whose decision shall be final.

8. (1) It shall be lawful for the Financial Secretary for the purpose of ascertaining the net profit of the licensee during any period in respect of which royalty is payable under the provisions of regulation 6 or of ascertaining whether any deduction which the licensee has made or may be seeking to make from profits is reasonable, by writing under his hand to call upon the licensee and any person (other than a bank) who has entered into any agreement with the licensee to produce to such person and at such time and place as may by any general or particular description be specified in such writing such books and statements of account (including bank statements) as he may by such writing require.

Power of the Financial Secretary to call upon the licensee and certain persons dealing with the licensee to produce books and statements of account.

(2) The licensee or any person aggrieved by any exercise of the discretion conferred upon the Financial Secretary may appeal, by way of petition, to the Governor in Council whose decision shall be final.

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(3) Subject to the right of appeal conferred by paragraph (2), it shall be an offence to fail to comply with any requirement lawfully made under paragraph (1) or any requirement which may have been confirmed or substituted therefor on appeal under paragraph (2): Penalty: a fine of \$100 in respect of each day during which such failure continues.

Payment of
royalty.

9. The royalty referred to in regulation 6 shall be paid within 14 days of the dispatch to the licensee of the notice of ascertainment of the net profits:

Provided that if the net profits have not been ascertained within 6 months of the end of the twelve-monthly period for which the royalty is due a provisional royalty equal to 5 *per cent* of the licensee's gross sales shall be payable forthwith. As soon as the net profit has been ascertained a final adjustment shall be made and the Government shall refund any sum paid by way of provisional royalty in excess of the royalty due for that twelve-monthly period, or if the amounts paid by way of provisional royalty by the licensee are less than the royalty due, the licensee shall pay to the Government the balance thereof.

Record and
accounts.

10. Every licensee shall keep in relation to the culture of pearls carried on by him—

- (a) accurate and regular accounts of all sales by or on his behalf of cultured pearls; and
- (b) an accurate record of—
 - (i) the total number of live pearl oysters collected, purchased or acquired, otherwise than by cultivation;
 - (ii) the total number of pearl oysters under cultivation from time to time;
 - (iii) the total number of pearl oysters embedded from time to time and the dates upon which embedding was effected;
 - (iv) the total number of pearl oysters harvested from time to time and the dates upon which harvesting was effected; and
 - (v) the total number of pearls extracted from pearl oysters so harvested.

Half-yearly
returns.

11. It shall be the duty of every licensee to render to the Director not later than 31 January and 31 July in each year a half-yearly situation report showing-

- (a) a statement of account of sales of cultured pearls during the preceding half year, that is to say, the half year ending on 31 December or 30 June, as the case may be;
- (b) the total number of live pearl oysters collected, purchased, or acquired, otherwise than by cultivation during the preceding half year;

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- (c) the total number of pearl oysters under cultivation by him as at the preceding 31 December or 30 June, as the case may be;
- (d) the total number of oysters embedded as at the preceding 31 December or 30 June, as the case may be;
- (e) the total number of pearl oysters harvested during the preceding half year; and
- (f) the total number of pearls extracted during the preceding half year.

12. The licensee of every cultivation area shall mark such area by means of buoys of such type and in such number and sited in such manner as the Director shall approve and the licensee shall cause to be exhibited from each such buoy between the hours of sunset and sunrise a fixed white light visible all round for a distance of not less than 3 kilometres.

Marking of cultivation areas.

L.N. 60/81.

13. No licensee shall use or cause or permit to be used any raft which is so constructed as to exceed 150 metres in length or 20 metres in breadth.

Size of rafts.
L.N. 60/81.

14. Every licensee shall cause each raft used by him to be at all times anchored to the satisfaction of the Director.

Mooring of rafts.

15. (1) Every licensee shall cause his name to be marked in conspicuous lettering in English upon each and every raft used by him and between sunset and sunrise shall cause to be exhibited the following lights—

Marking of rafts.
L.N. 60/81.

- (a) in the case of a raft exceeding 50 metres in length, a fixed white light visible all round for a distance of not less than 1 500 metres situated at each end of the raft at a height of not less than 2 metres above water level; and
- (b) in the case of any raft not exceeding 50 metres in length, a fixed white light visible all round for a distance of not less than 1 500 metres situated midway along the length of the raft at a height of not less than 2 metres above water level.

(2) Where by reason of any emergency any raft is temporarily moved out of a cultivation area to any other place, the licensee of the area from which it is removed shall cause such raft to be marked for the purpose of identification at all times during which it is outside the cultivation area, in addition to the marks specified in paragraph (1), by a rectangular flag flown from the raft and of a size not less than 900 millimetres by 600 millimetres bearing the name of such licensee in conspicuous lettering in English.

16. If any raft is moved from a cultivation area the licensee of that area shall give prior notice of his intention to move the raft to the Director; and, in any case in which it is not reasonably possible in the circumstances to give such notice prior to moving the raft, such notice shall be given so soon as reasonably practicable after removal is effected.

Notice of removal of rafts.

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Inspection of
rafts.

17. (1) The Director and any person authorized in that behalf by him may at any time by day or by night inspect any raft including all moorings, marks, cages and other equipment whatsoever ancillary thereto.

(2) If any person resists or obstructs any inspection authorized by paragraph (1), he shall be guilty of an offence against this regulation.

Protection of
Pteria oysters.
G.N.A. 85/60.

18. (1) No person shall wilfully kill, or cause to be killed, any oyster of the genus *Pteria* which measures less than 57 millimetres when measured through a plane drawn at right angles to the hinge.

(2) Any person who contravenes any of the provisions of this regulation shall be guilty of an offence and liable to a fine of \$10,000 and 6 months imprisonment.

Conservation of
pearl oysters.

19. For the purpose of conserving the natural stocks of pearl oysters in the waters of the Colony, the Director may from time to time by notification in the *Gazette* prohibit the collection of pearl oysters, or restrict the number of pearl oysters which may be collected, in any particular area or areas specified by him in such notification during such periods or during such seasons as may be specified in such notification.

Penalties.

20. Any person who contravenes any of the provisions of regulations 10 to 17 inclusive shall be guilty of an offence and liable to a fine of \$500 and in the case of a continuing offence to a further daily penalty of \$10; and in the case of any contravention of any notification made under regulation 19 to a fine of \$1,000 and imprisonment for 6 months and in the case of a continuing offence to a further daily penalty of \$50 a day.