



LAWS OF HONG KONG

PEARL CULTURE (CONTROL) ORDINANCE

CHAPTER 307

REVISED EDITION 1984

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ARRANGEMENT OF SECTIONS

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CHAPTER 307

PEARL CULTURE (CONTROL)

Originally
26 of 1958.
14 of 1959.
32 of 1960.
41 of 1980.

To conserve the resources of pearl oysters in the Colony and to regulate the culture of pearls.

G.N.A. 30/59.

[15 May 1959.]

Short title. 1. This Ordinance may be cited as the Pearl Culture (Control) Ordinance.

Interpretation. 2. In this Ordinance, unless the context otherwise requires—
“cultivation area” means any area declared under section 5 to be an area within which live pearl oysters may be kept for the culture of pearls therein;

“cultivate” in relation to pearl oysters includes any operation for the purpose of promoting the propagation or growth of such oysters; (*Amended, 32 of 1960, s. 2*)

“culture” in relation to pearl oysters includes any operation directed to the propagation of pearls in pearl oysters by the process of inserting foreign bodies into such oysters in order to promote therein the formation of pearls;

“Director” means the Director of Agriculture and Fisheries;

“licensee” means the holder of a licence issued for the purposes of this Ordinance by the Director under the hand of a public officer appointed by him so to do;

Schedule.

“pearl oyster” means any genus or species of oyster specified in the Schedule; (*Replaced, 32 of 1960, s. 2*)

“process” means the extraction of pearls from pearl oysters and any subsequent operation, including polishing, leading to the preparation of the extracted pearl for marketing;

“raft” includes any device or structure used or intended to be used for the cultivation of pearl oysters;

“vessel” means any ship, junk, sampan, boat or other description of craft within the waters of the Colony, but does not include registered ocean going ships nor any ships or vessels belonging to Her Majesty or the Government of any foreign power or the Government of any Commonwealth Country or the Government of the Republic of Ireland.

Production in evidence of type specimens of pearl oysters.

3. (1) The Director may keep in his custody in sealed bottles type specimens of pearl oysters which when produced by the Director or on his behalf in any court shall be presumed, without further proof, to be type specimens of such oysters.

(2) Any member of the public shall on application to the Director be entitled during office hours to examine such type specimens free of charge.

4. (1) The Governor may appoint in writing any number of public officer to be—

Appointment of officers.

- (a) fisheries inspectors (漁業督察); and
- (b) assistant fisheries inspectors (漁業副督察).

(2) Appointments made under this section may be made to give effect to the purposes of this Ordinance generally or may be limited to such purposes as may be specified in the appointment.

5. The Director may, from time to time by notification in the *Gazette*, declare any area within the waters of the Colony to be an area within which live pearl oysters may be cultivated for the culture of pearls.

Prescription of cultivation areas.

6. (1) Upon payment of such fees as may be prescribed by regulations made under section 15, the Director may grant to any person applying therefor—

Licensing.

(a) a temporary licence for a period of 6 months renewable at the discretion of the Commissioner, for further periods of 6 months each but not exceeding an aggregate period of 2 years; or (*Replaced, 32 of 1960, s. 3*)

(b) a licence for a period of 5 years renewable for further periods of 5 years each. (*Amended, 32 of 1960, s. 3*)

(2) Every licence granted under this section shall—

(a) specify the cultivation area in respect of which it is granted; and

(b) be granted subject to any regulations made under section 15; and

(c) be granted subject to any conditions which may be specified in such licence by the Director.

(3) Any licence granted under this section shall be liable to cancellation by the Director—

(a) upon the breach of any condition thereof;

(b) if the Director is satisfied that the licensee is for any reason unable or incompetent to carry out any of the purposes for which the licence was granted or has failed to discharge any of his duties under this Ordinance or any regulations made thereunder; or (*Amended, 32 of 1960, s. 3*)

(c) if the licensee is convicted of any offence against any of the provisions of this Ordinance. (*Added, 32 of 1960, s. 3*)

(4) No licence granted under this section shall be construed as granting any right to occupy or to use, except for the purpose of mooring rafts, any land, whether the same be covered by water or not, or as granting any right to the exclusive use of any waters except in so far as the purpose aforesaid requires.

(5) Notwithstanding anything contained in this section, the Director may in his discretion, and subject to such conditions or restrictions as he may think fit, in lieu of granting a licence, grant free of charge to any person or organization permission in writing to engage solely in scientific research work relating to the culture of pearls or the cultivation of pearl oysters; and such permission shall, for the purposes of this Ordinance, be deemed to be a sufficient licence for the carrying on of such work and matters necessarily incidental thereto. (*Added, 32 of 1960, s. 3*)

Director empowered to issue instructions as to cultivation of pearl oysters.

7. (1) The Director may, from time to time, issue to all or any licensees instructions in writing as to any matter concerning the cultivation of pearl oysters or the culture of pearls therein.

(2) In addition to any condition which may under section 6(2)(c) be specified in any licence granted under that section, it shall be a condition of every such licence that the licensee shall carry out, or cause to be carried out, to the satisfaction of the Director, within the cultivation area in respect of which he is licensed, any instructions issued to him under this section.

Pearl oysters not to be cultivated except under licence.

8. (1) Except under and in accordance with a licence granted under this Ordinance, no person shall, within the waters of the Colony—

- (a) cultivate any pearl oyster; or
- (b) culture any pearl.

(2) Any person who acts in contravention of any of the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine of \$20,000 and to imprisonment for 12 months. (*Replaced, 32 of 1960, s. 4*)

(3) Nothing in this section shall be construed to prevent the temporary removal, for such period as may be necessary in the circumstances, of any raft from a cultivation area to a place of safety owing to stress of weather or to the presence within such area of the phenomenon commonly known as "red tide" or to the imminence of either.

Protection of oyster beds and rafts.

9. (1) Any person who—

- (a) without the consent of the owner thereof, wilfully moves, damages or otherwise interferes with any raft; or
- (b) having reasonable grounds to believe that damage may result, wilfully deposits, or causes or suffers to be deposited, either on land or in the sea, any chemical or other

substance or thing in such a place or in such a manner as to injure or to be likely to injure any pearl oyster in any cultivation area or to pollute or to be likely to pollute the waters in any such area.

shall be guilty of an offence, and shall be liable to a fine of \$20,000 and to imprisonment for 12 months. (*Amended, 32 of 1960, s. 6 and 41 of 1980, s. 50*)

(2) No offence under subsection (1) is committed by a person who makes a discharge or deposit under and in accordance with—

- (a) a licence granted under section 20 of the Water Pollution Control Ordinance; or
- (b) an exemption which arises under section 15 of that Ordinance. (*Added, 41 of 1980, s. 50*)

(Cap. 358.)

10. All pearl oysters which are within the boundaries of any cultivation area, whether collected or not, shall be the absolute property of the licensee, if any, of such area.

Property in pearl oysters.

11. Any fisheries inspector or assistant fisheries inspector may without warrant—

Power of search and seizure.

- (a) board any vessel and search the same and every part thereof; and
- (b) seize, remove and retain any pearl oysters or pearls in respect of which he finds or has reasonable cause to suspect that an offence against this Ordinance has been committed, and, in the case of any such pearl oysters which are alive, may return them to their natural habitat.

12. (1) It shall be lawful for any fisheries inspector or any assistant fisheries inspector to apprehend without warrant any person whom he may reasonably suspect of having contravened any of the provisions of section 8(1) or of section 9.

Power of arrest.

(2) If any person forcibly resists an endeavour to arrest him under this section or attempts to evade such arrest, the person effecting the arrest may use all reasonable means necessary to effect the arrest.

(3) Every person apprehended under this section shall, as soon as circumstances permit, be delivered into the custody of a police officer.

13. (1) It shall be lawful for a magistrate to order to be forfeited to the Crown any pearl oysters or pearls with respect to which an offence against this Ordinance or any regulations made thereunder has been committed, whether any person has been convicted of such offence or not, and upon the making of such order for forfeiture all such pearl oysters or pearls, as the case may be, shall become the property of the Crown free from all rights of any other person.

Forfeiture.

(2) Before making any such order, the magistrate shall give to any person claiming or appearing to the magistrate to be the owner of such pearl oysters or pearls an opportunity of being heard, and if such person satisfies the magistrate that—

- (a) he is the owner of the pearl oysters or pearls; and
- (b) he was not implicated in the commission of such offence.

the magistrate shall order that such pearl oysters or pearls be delivered to such person.

(3) It shall be lawful for the Governor in his absolute discretion to give effect to any claim for relief from such forfeiture where such claim is established to his satisfaction on equitable, moral or other grounds.

Contiguous areas.

14. Where 2 or more cultivation areas held by different licensees are contiguous to each other, and any proceeding is taken against any person for stealing pearl oysters from any such area, it shall be sufficient in alleging and proving the property and lawful possession, in such oysters, and the place from which they were stolen, to allege and prove that they were the property of and in the lawful possession of one or other of such licensees and were stolen from one or other of such contiguous areas.

Regulations.

15. (1) The Governor in Council may by regulation prescribe or provide for—

- (a) all matters which by this Ordinance are required or permitted to be prescribed;
- (b) the manner in which application for licences shall be made, and the forms to be used in connexion therewith;
- (c) the fees to be paid for licences;
- (d) the payment of royalties to the Government, the method of calculation of the amount of such royalties and the manner and time of payment;
- (e) the manner in which the boundaries of cultivation areas shall be marked;
- (f) the duties of licensees;
- (g) the making, construction and marking of rafts and the manner of anchoring them;
- (h) inspection of rafts and cultivation area and any kind of oysters found there;
- (i) the conservation of pearl oysters or the spawn thereof in the waters of the Colony and the promotion of economical methods of collection and cultivation of such oysters and the culture of pearls; (*Amended, 32 of 1960, s. 7*)

- (j) the size, types or numbers of pearl oysters which may be collected or harvested or in which pearls may be cultured; (*Amended, 32 of 1960, s. 7*)
- (k) returns and reports to be rendered and accounts, registers, books, records and plans to be kept by licensees, and the manner of rendering or keeping them;
- (l) the disposal of any noxious or waste matter resulting from the collecting or harvesting of pearl oysters or the processing of pearls; and
- (m) the safety, welfare, health and working conditions of divers.

(2) Regulations made under this section may provide that any contravention of any such regulations shall be an offence and may prescribe penalties therefor not exceeding a fine of \$10,000 and to imprisonment for 6 months and in the case of a continuing offence a further daily penalty of a fine not exceeding \$50 (*Amended, 32 of 1960, s. 7*)

16. The Governor in Council may by order published in the *Gazette* amend or cancel the Schedule.

Amendment
of Schedule.

(*Added, 32 of 1960, s. 8*)

17. Except as provided in the proviso to regulation 7 of the Merchant Shipping (Minor Fisheries) Regulations, nothing in this Ordinance shall be construed to the prejudice of any of the provisions of the Merchant Shipping Ordinance.

Saving.
(G.N.A. 112/53.)

(Cap. 281.)

SCHEDULE

[s. 2.]

PEARL OYSTERS

All species of the genus *Pteria*.

All species of the genus *Pinctada*.

(*Added, 32 of 1960, s. 9*)