

TONGA GOVERNMENT GAZETTE SUPPLEMENT EXTRAORDINARY

No. 4

SEPTEMBER 22

1994

KINGDOM OF TONGA

FISHERIES ACT 1989

(Section 59)

THE FISHERIES (CONSERVATION AND MANAGEMENT) REGULATIONS 1994

IN EXERCISE of the powers contained in section 59 of the Fisheries Act 1989, the Minister of Fisheries makes the following Regulations:

PART I - PRELIMINARY

Citation

1. These regulations may be cited as the Fisheries (Conservation and Management) Regulations 1994.

Interpretation

2. (1) In these regulations -

- (a) "the Act" means the Fisheries Act 1989;
- (b) the terms and phrases defined in the Fisheries Act 1989 shall be given the same meaning in these regulations, unless the context requires otherwise.

(2) A reference in these Regulations to -

- (a) a form is a reference to a form of that number in Schedule 1; and
- (b) a Schedule is a reference to a Schedule to these Regulations.

Forms and fees

3. (1) The forms set out in Schedule 1, with such modifications as the circumstances require, are hereby prescribed for the purposes of the Act and these Regulations.

(2) The fees set out in Schedule 2 are hereby prescribed for the purposes of the Act and these Regulations.

PART II - GENERAL CONSERVATION AND MANAGEMENT MEASURES

General

4. (1) The Minister may establish annual production and export quotas by species and area for any commercial fishery for the purposes of fisheries conservation and management.

(2) No person shall exceed the annual production and export quotas set by the Minister in accordance with this regulation.

Export of live fish

5. (1) No person shall export any live fish, except with the written authorisation of the Secretary and in accordance with such conditions as he may specify.

(2) For the purposes of this regulation, "export" means to take or cause to be taken out of the Kingdom of Tonga for commercial or potentially commercial purposes, and includes providing commercial samples but does not include the export of quantities of less than 20 kilograms in weight for the purpose of domestic consumption.

(3) There shall be payable in respect of the written authorisation of the Secretary described in sub-regulation (1) the fee specified in Schedule 2.

Inspectors

6. (1) The Minister may appoint in writing any authorised officer as inspectors to promote the conservation and management of fisheries and monitor compliance with the Act or these Regulations on behalf of the Registrar.

(2) The inspector may request any information as authorised under these Regulations or by the Registrar, consistent with the Act.

(3) Each person shall promptly furnish such information to an inspector appointed under this regulation as he is authorised to request.

(4) Information requested from fishermen, fish merchants, fish transporters and fish exporters may include the following particulars,

- (a) name of the seller;
- (b) origin of the fish;
- (c) name of the village the seller is from;
- (d) number of fish being sold;
- (e) destination of the shipment;
- (f) name of the buyer;
- (g) date of sale;
- (h) date of shipment;

- (i) total weight of species being sold;
- (j) price;
- (k) total price of shipment;
- (l) name of ship/plane;
- (m) number of flight/voyage.

Returns

7. (1) For purposes of fishery conservation and management, the Registrar may require returns from the sellers or purchasers of such species as he may designate during such time period as he may specify.

- (2) Such returns may include information relating to the following -
 - (a) quantity sold or purchased;
 - (b) name of the buyer or seller; and
 - (c) island of origin of species.

(4) Each person shall promptly furnish such information as may be required under this regulation.

Offences

8. Any person who contravenes any provision in this Part commits an offence and shall be liable on conviction to a fine not exceeding \$10,000 and forfeiture in accordance with section 42(1) of the Act.

PART III - PROHIBITED FISHING

Marine mammals

9. (1) In this regulations "marine mammals" means any member, at any stage of its life cycle, of any species of the class Mammalia including whales and dolphins.

(2) Subject to sub-regulation (4), no person shall fish for marine mammals in the fisheries waters.

(3) Any marine mammal caught shall be released immediately and returned to the waters from which it was taken with the least possible injury.

(4) The Secretary may give written authorisation to fish for marine mammals in a limited manner and only in exceptional circumstances involving international scientific research which is intended to result in significant benefit for marine mammals, and will not cause harm or injury to the species.

(5) Any person who contravenes the provisions of this regulation commits an offence and shall be liable on conviction to a fine not exceeding \$10,000 and forfeiture in accordance with section 42(1) of the Act.

Diving equipment

10. (1) No person shall use self-contained underwater breathing apparatus, or any diving equipment that utilizes compressed gas or surface supplied air, for the purpose of fishing except with the written authorisation of the Registrar

and in accordance with such conditions as he may specify.

(2) Any person who contravenes the provisions of sub-regulations (1) commits an offence and shall be liable on conviction to a fine not exceeding \$10,000 and forfeiture in accordance with section 42(1) of the Act.

Nets

11. (1) The mesh when fully stretched of any dragnet or beach seine net used for fishing shall not be less than 38 millimetres.

(2) The mesh when fully stretched of a cast net used for fishing shall not be less than 12 millimetres and the radius of such a net shall not exceed 2 metres.

12. (1) No person shall use any drag net or beach seine net for fishing within 200 metres of a fish fence except with the permission of the Registrar and in accordance with such conditions as he may specify.

(2) Any person who contravenes the provisions of sub-regulation (1) commits an offence and shall be liable on conviction to a fine not exceeding \$10,000 and forfeiture in accordance with section 42(1) of the Act.

PART IV - SPECIES CONSERVATION AND MANAGEMENT

Lobster ('uo)

13. (1) In this regulation "lobster" or "'uo" means a crustacean of the genus *Panulirus*.

(2) No person shall harm, take, have in his possession, sell or purchase -

(a) any lobster carrying eggs;

(b) any lobster the carapace of which is less than 7.5 centimetres when measured along the mid line from immediately behind the rostral horns to the rear edge as illustrated in Schedule 3 to these Regulations;

(c) any lobster the tail of which is less than 4.5 centimetres in width when measured between the lateral notches of the first tail segment with vernier calipers from the ventral side of the tail, as illustrated in Schedule 3 to these Regulations.

(3) No person shall use destructive techniques to dig lobsters from their burrows.

(4) No person shall remove the eggs from a lobster or take, have in his possession, sell or purchase a lobster from which the eggs have been removed.

Slipper lobster (tapatapa)

14. (1) In this regulation "slipper lobster" or "tapatapa" means a crustacean of the genus *Parribacus*.

(2) No person shall harm, take, have in his possession, sell or purchase -

(a) any slipper lobster carrying eggs; or

- (b) any slipper lobster which is less than 15 centimetres in length when laid flat and measured from the front edge of the carapace to the rear edge of the telson as illustrated in Schedule 4 to these regulations.

(3) No person shall use destructive techniques to dig slipper lobsters from their burrows.

(4) No person shall remove the eggs from a slipper lobster or have in his possession, sell or purchase a slipper lobster from which the eggs have been removed.

Winged pearl oyster (tofe)

15. (1) In this regulations "winged pearls oyster" or "tofe" means any mollusc of the species *Pteria penquin*.

(2) No person shall harm, take, have in his possession, sell or purchase any winged pearl oyster which is less than 20 centimetres in antero-ventral length as illustrated in Schedule 5.

Triton shell (kele'a)

16. (1) In this regulations "triton shell" or "kele'a" means a mollusc of the species *Charonia tritonis*.

(2) No person shall harm, take, have in his possession, sell or purchase any triton shell which is less than 20 centimetres in length when measured along the outside of the shell from one end to the other.

Coral (feo)

17. (1) No person shall remove or take any coral from within the fisheries waters except with the written permission of the Secretary.

(2) The Secretary may impose conditions, including, but not limited to, conditions relating to:

- (a) the quantities that may be removed or taken;
- (b) the location or locations from which it may be removed or taken;
- (c) the duration of any permission granted;
- (d) the method of removal or taking;
- (e) measures necessary or desirable to conserve and protect the marine environment;
- (f) the fees, royalties or compensation to be paid in respect of the permitted operations.

Aquarium fish

18. (1) No person shall engage in fishing for any marine aquarium fish except with the written permission of the Secretary and in accordance with such conditions as he may specify.

(2) No person shall use destructive techniques to fish for aquarium fish.

Turtles (fonu)

19. No person shall -

- (a) disturb, take, have in his possession, sell or purchase any turtle

- (b) interfere with or disturb in any way any turtle nest;
- (c) use a spear or spear gun for the purpose of capturing, destroying or taking any species of turtle;
- (d) at any time harm, capture, destroy, or take any turtle the shell length of which is less than 15 centimetres.
- (e) harm, capture, destroy or take any turtle specified in Schedule 6 during the closed season specified in Schedule 6, or
- (f) at any time harm, capture, destroy, or take any Leatherback turtle of the species *Dermochelys coriacea*.

Mullet (kanahe or fua)

20. (1) In this regulation "mullet" or "kanahe" or "fua" means any species of fish of the family Mugilidae.

(2) No person shall engage in fishing for mullet during the closed season specified in Schedule 6.

Giant clams (vasuva)

21. (1) In this regulation "giant clam" or "vasuva" means any mollusc of the family Tridacnidae.

(2) No person shall harm, take, have in his possession, sell or purchase any giant clam the shell length of which is less than the length specified for the particular species indicated in Schedule 7.

(3) No person shall remove the mantle or adductor muscle from any giant clam the shell length of which is less than the length specified for the particular species indicated in Schedule 7.

Beche de mer (mokokunu)

22. (1) In this regulation "beche de mer" or "mokokunu" means any animals of the class Holothuroidea.

(2) No person shall harm, take, have in his possession, sell or purchase any beche de mer, the length of which is less than the length specified for the particular species indicated in Schedule 8.

Offences

23. Any person who contravenes any provision of this Part commits an offence and shall be liable on conviction to a fine not exceeding \$10,000 and forfeiture in accordance with section 42(1) of the Act.

PART V - FISH FENCES

Fish fences

24. (1) No person shall erect or use a fish fences without a licence issued by the Registrar under this Part.

(2) In these regulations, a "fish fence" means any fence, stake or other fixed construction used for entrapping fish.

Licence application

25. An application for a licence to erect or use a fish fence shall be in Form 1 shall be accompanied by the fee specified in Schedule 2.

Form

26. A licence to erect or use a fish fence shall be in Form 2 and, unless sooner cancelled or suspended, shall be valid for a period of 12 months from the date of issue.

Fees

27. The fee payable for the issuance or renewal of a licence to erect or use a fish fence is specified in Schedule 2.

Grounds for licence refusal

28. The Registrar shall not issue a licence to erect a fish fence -

- (a) within 200 metres of another fish fence;
- (b) within one kilometre of any Government wharf;
- (c) in any place where it may be a hazard or obstruction to navigation; or
- (d) where to do so would be inconsistent with the objectives set out in any fisheries plan prepared under section 3(1) of the Act.

Provided further that the Registrar may refuse to issue a licence to any person who has been convicted of any offence against the Act or any Regulations made thereunder.

Offences and prohibitions

29. No person shall erect or use a fish fence -

- (a) the mesh of which when fully stretched is less than 38 millimetres;
- (b) the width of which at its widest point exceeds 140 metres;
- (c) the total installed perimeter of which exceeds 140 metres; or at an distance seawards from the beach exceeding that specified in the annex to the licence.

30. Any person who fails to comply with regulation 29 or the conditions of any licence issued under this Part commits an offence and shall be liable to a fine not exceeding \$10,000.

PART VI - FISH AGGREGATING DEVICES (FAD)**Placing of devices (private)**

31. Any person who places a fish aggregating device shall;

- (a) ensure that the device does not constitute a hazard to navigation;
- (b) inform the Registrar of the location and nature of the FAD.

Designated fish aggregating device (public)

32. (1) The Registrar may, by notice published in the Gazette, declare any fish aggregating device placed by the Ministry of Fisheries to be a designated fish aggregating device for the purpose of this regulation.

(2) Subject to sub-regulation (3), no person shall fish within a radius of one nautical mile from a designated fish aggregating device except with the permission of the Registrar and in accordance with such conditions as he may specify.

(3) The Registrar may, by notice published in the Gazette, declare that any person may fish within a radius of one nautical mile from a designated fish aggregating device.

Markings and equipment

33. Any fish aggregating device which utilises a surface float shall;

- (a) be clearly marked with the name of the owner and of the vessel from which the device was placed;
- (b) be equipped with a radar reflector; and
- (c) be equipped with white lights to be visible at night from a distance of one nautical mile.

Use

34. Unless specifically authorized by the Registrar in writing, no person shall attach a vessel to a fish aggregating device. This regulation does not apply to an individual who has placed the fish aggregating device to which attachment is made.

Compliance

35. Permission to use a fish aggregating device does not affect any obligation to observe applicable conservation or management measures for fisheries except where the Registrar specifies in writing that a particular measure does not apply to fish caught within one nautical mile of that device.

Disposal of unauthorised devices

36. Any fish aggregating device placed in the fisheries waters otherwise than in accordance with regulation 31 or found in Tonga waters without marking or equipment required by regulation 33 may be used or disposed of in such manner as the Registrar may decide.

Offences

37. Any person who contravenes any provision in this Part commits an offence and shall be liable on conviction to a fine not exceeding \$10,000.

PART VII - MISCELLANEOUS PROVISIONS**Renewal of licence**

38. Where any licence issued under these regulations is renewed within 30 days of its expiry it shall not be necessary to make a fresh application in the prescribed form or pay another application fee.

Information to be true, complete and correct

39. (1) Any information required to be recorded, notified, communicated or reported pursuant to any requirement of these regulations shall be true, complete and correct.

(2) Any change in circumstances which has the effect of rendering any such information false, incomplete or misleading shall be notified immediately to the appropriate person, authority or body.

(3) Any person who contravenes sub-regulations (1) or (2) commits an offence and shall be liable to a fine not exceeding \$5,000.

Made this day of 1994

Minister of Fisheries

**SCHEDULE 1
FORM 1**



**KINGDOM OF TONGA
Fisheries Act 1980**

APPLICATION TO ERECT OR USE A FISH FENCE

(The Fisheries (Conservation and Management) Regulations 1994 - Regulation 25)

I/We, (insert full name of applicant(s)):
of _____ apply for a licence to erect a fish fence
the full particulars of which are described below:

Address of Applicant(s):

DESCRIPTION OF FISH FENCE

Attach a separate numbered sheet of paper if necessary

1. Design of the proposed fish fence: (attach diagram on a separate sheet of paper)
2. Size : (Specify overall capture area)
3. Materials to be used:
Specify mesh size:
5. Specify if there will be any lead or guide fence(s), if so, how many.

PROPOSED SITE OF THE FISH FENCE

6. Specify:

NOTE : *No fish fence may be erected within two hundred (200) metres of another fish fence or within one (1) kilometre of any Government wharf.*

INTENDED USE OF CATCH**7. Specify**

I/We declare that the foregoing particulars are true, complete and correct

.....
Signature of Applicants(s)

DATE:.....

This application is to be forwarded to the Registrar, MINISTRY of FISHERIES and is to be accompanied by the prescribed fee.

Warning : It is an offence punishable by a fine of \$5000 to make a false incomplete or misleading statement.

FORM 2



KINGDOM OF TONGA

Fisheries Act 1989

LICENCE TO ERECT AND USE A FISH FENCE

(The Fisheries (Conservation and Manage) Regulations 1994 - Regulation 25)

LICENCE TO ERECT OR USE A FISH FENCE

LICENCE NO. _____

1. This licence is issued pursuant to regulation 26 of the Fisheries (Conservation and Management) Regulations 1994 of the Fisheries Act 1989.
2. The holder of this licence is permitted to erect or use a fish fence in the area specified in paragraph 4 of this licence, for the period specified in paragraph 5 of this licence, and in accordance with the particular conditions set out in the Annex to this licence and subject to the general conditions set out in the Fisheries (Conservation and Management) Regulations 1994 and such general conditions as may be prescribed under the Fisheries Act 1989.
3. Issued to: _____
Address: _____
4. A fish fence may be erected in the following area(s):
5. Subject to the Fisheries Act 1989 and Regulations made thereunder, this licence is valid from the
_____ day of _____ 19 ____ to the
_____ day of _____ 19 ____ (inclusive)
6. This licence is not transferable

Registrar

DATE: _____

FAILURE TO COMPLY WITH THESE AND ALL OTHER TERMS AND CONDITIONS OF THE LICENCE. THE FISHERIES ACT 1989 AND REGULATIONS MADE THEREUNDER, MAY, IN ADDITION TO ANY JUDICIAL PENALTIES THAT MAY BE INCURRED, RESULT IN THE SUSPENSION OR LOSS OF THIS LICENCE, EITHER TEMPORARILY OR PERMANENTLY.

SCHEDULE 2**FEEES**

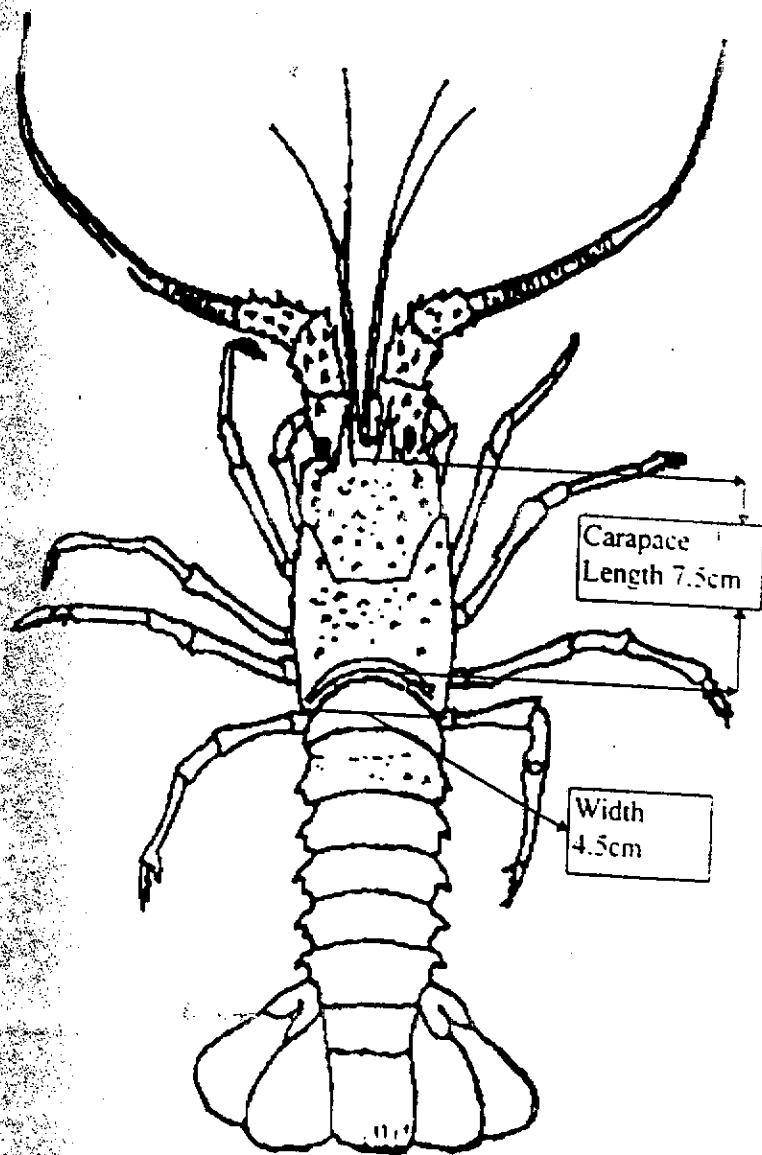
1. Written authorisation to export fish or fish products
 - 0.5% of the local value of the product being exported
 - where applicable an inspection fee of \$8 per hour per inspector or authorised officer shall be paid by every commercial exporter.

(the fees charged under this part are in addition to any licence fee charged by any other authority)

2. Application for a licence to erect or use a fish fence - \$20.00
3. Issuance or renewal of a licence to erect or use a fish fence - \$30.00

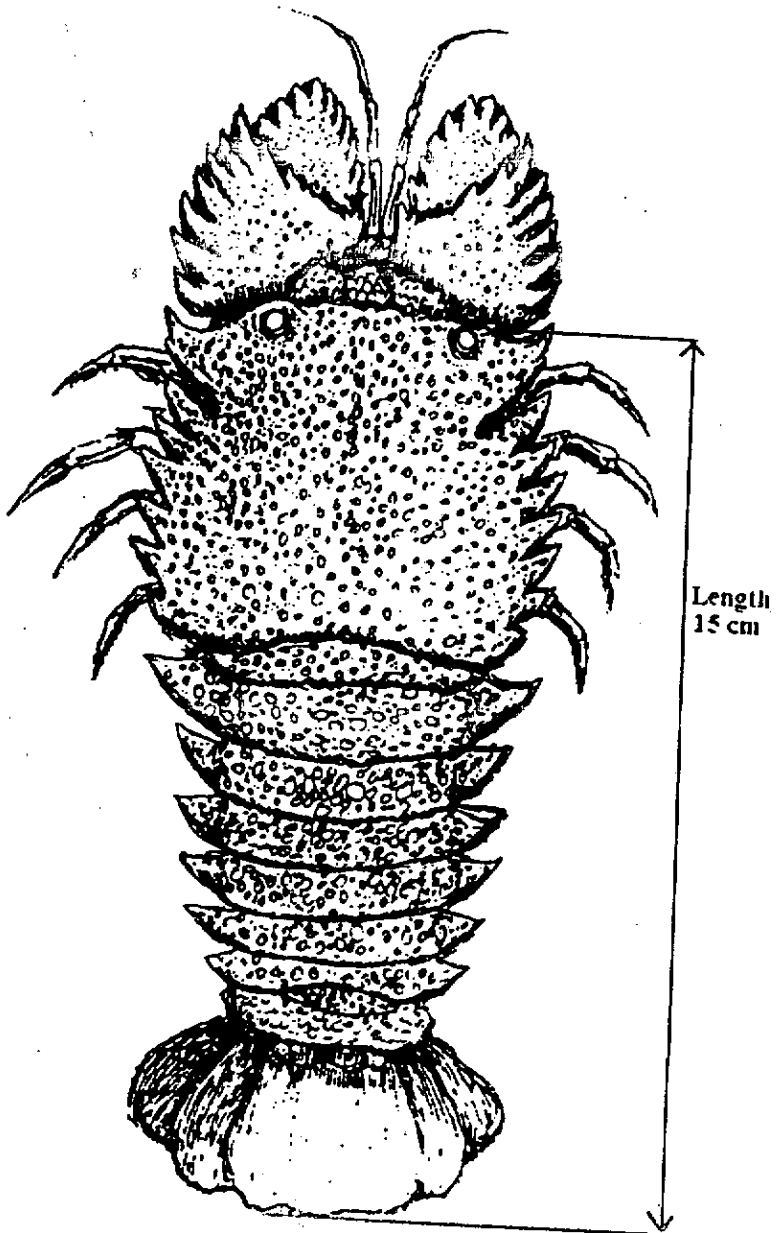
SCHEDULE 3
(Regulation 13)

Illustration of a lobster (*Panulirus*) for the purpose of determining whether it is undersize.



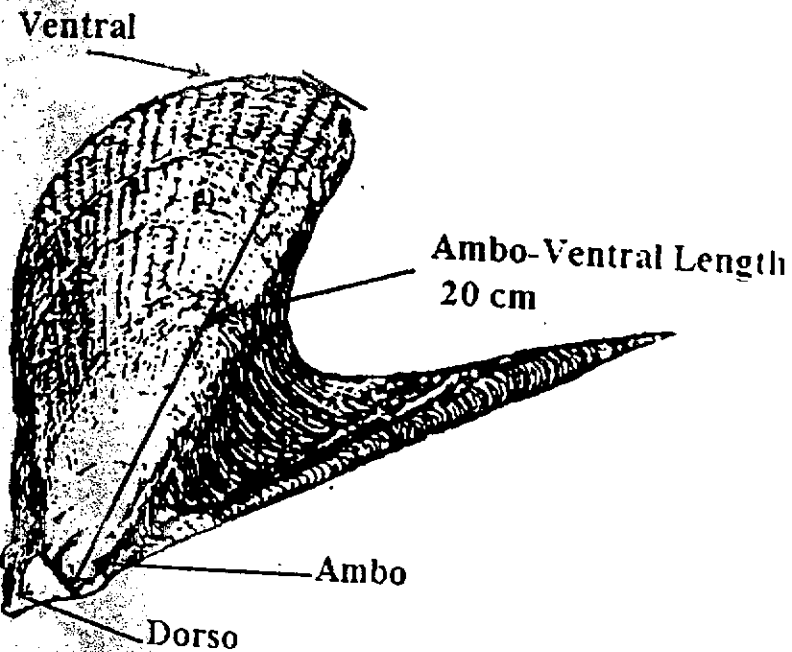
SCHEDULE 4
(Regulation 14)

Illustration of a slipper lobster (*Parribacus*) for the purpose of determining whether it is undersize.



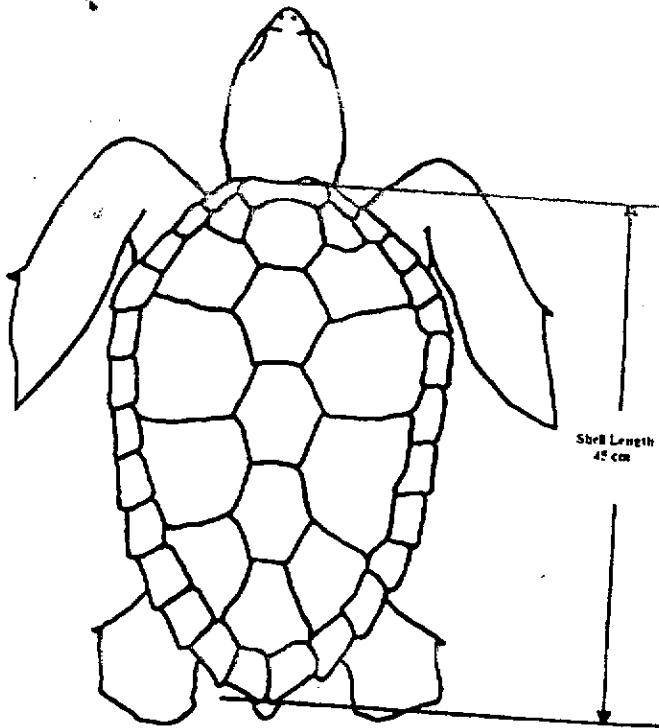
SCHEDULE 5
(Regulation 15)

Illustration of a winged pearl oyster (*Pteria penquin*) for the purpose of determining whether it is undersize.



SCHEDULE 6
(Regulation 19 & 20)

Illustration of a turtle for the purpose of determining whether it is undersize.

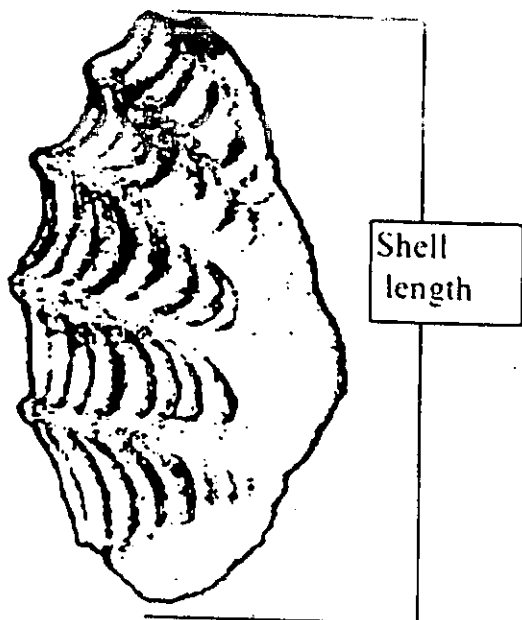


Closed Seasons

Local Name	English Name	Scientific Name	Closed Season
Fonu (all species except Leatherback turtle)	Turtle	-	August, September, October, November, December, January, February
Fonu-leta	Leatherback	<u>Dermochelys coriacea</u>	All year
Kanahe or Fua	Mullet	Mugilidae	1 June to 31 July (in Fanga'uta Lagoon only)

SCHEDULE 7
(Regulation 21)

Illustration of a giant clam



Minimum Shell lengths For Giant Clams

<u>Local Name</u>	<u>Scientific Name</u>	<u>Minimum Size</u>
Tokanoa molemole	<i>Tridacna dcrasa</i>	260 mm
Matahele	<i>Tridacna squamosa</i>	180 mm
Kukukuku	<i>Tridacna maxima</i>	155 mm

SCHEDULE 8
(Regulation 22)

Minimum Lengths for Beche-De-Mer

LOCAL NAME	SCIENTIFIC NAME	COMMON NAME	MINIMUM LENGTH (WET)	MINIMUM LENGTH (DRY)
Mokohutu	<i>Holothuria nobilis</i>	Black teatfish	260 mm	100 mm
Huhuvalu	<i>Holothuria fuscogilva</i>	White teatfish	320 mm	160 mm
Mula	<i>Holothuria fuscopunctata</i>	Elephant's trunk fish	350 mm	150 mm
Nga'ito	<i>Holothuria scabra</i>	Sand fish	160 mm	70 mm
Holomumu	<i>Thelenota ananas</i>	Prickly redfish	300 mm	120 mm
Loli	<i>Halodeima atra</i>	Lolly fish	165 mm	80 mm
Telehea	<i>Actinopyga echinites</i>	Redfish	120 mm	60 mm