



**AITUTAKI (CONTROLLED ZONES) BY-LAWS 2006**

**Sir F. Goodwin, KBE**

**Queen's Representative**

**ORDER IN EXECUTIVE COUNCIL**

At Avarua, Rarotonga, this 13<sup>th</sup> day of **June** 2006

**Present:**

**HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE  
IN EXECUTIVE COUNCIL**

**PURSUANT** to Section 15 and 16 of the Outer Islands Local Government Act 1987, the Queen's Representative acting by and with the advice and consent of the Executive Council, hereby makes the following By-Laws:

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**BY-LAWS**

1. Title and commencement - These By-laws may be cited as the Aitutaki (Controlled Zones) By-laws 2006, and shall come into force on the date on which these By-laws are assented to by the Queen's Representative by Order in Executive Council.

2. Application of these By-laws - (1) These By-laws shall apply to the island of Aitutaki including –

- (a) all the motu of that island within a controlled zone; and
- (b) all surrounding waters; and
- (c) in respect of access restrictions extend to the ocean waters surrounding the island and those motu to a line measured seaward from the outer limits of the reef, every point of which is 500 metres distant from the nearest point of the outer limit of the reef; and
- (d) in the case of the establishment of any controlled zone such further waters within the Aitutaki lagoon as may be notified by the Council.

(2) For the purposes of these By-laws, the Council may declare controlled zones within 180 days from the commencement of these By-laws.

(3) Every controlled zone so declared shall cease to be a controlled zone –

- (a) from the 31<sup>st</sup> day of October 2006; or
- (b) if sooner than the 31<sup>st</sup> day of October 2006, by resolution of the Council.

3. Interpretation - (1) In these By-laws unless the context otherwise requires -

“Controlled zone” means those identified zones of the lagoon that are designated to have limited access to the general public;

“Council” means the Island Council of Aitutaki elected in accordance with the Outer Islands Local Government Act 1987;

“Enforcement Officer” means a person appointed as an Enforcement Officer pursuant to these By-laws;

“Filming” means making audio, digital and video recordings (including, but not limited to, photographs) on film, tape or any other medium of any and all land and waters, the exterior and interior of any buildings, signs or other improvements on land and all names, signs, displays, artwork, props, artifacts, sculptures, drawings, paintings, designations, products, logos, packaging, advertising materials, products, tradenames, trademarks, trade dress, service marks and other intellectual property on or about any land or waters;

“High-water mark” means the line of medium high tide between the spring and neap tides;

“Recording Equipment” means all manner of equipment and devices which may be used (whether by way of primary function or by way of featured capability) to capture, record and store in any form visual images (whether still or moving) and audible sound and includes -

- (a) any equipment or device which may be or is capable of being used for Filming;

- (b) all manner of storage media whether celluloid, film, magnetic, electronic, optical or otherwise;

“Minister” means the Minister responsible for Outer Islands Administration;

“Motu” means a naturally formed area of land which is surrounded by water and which is above water at high tide;

“Secretary” means the Secretary to the Council.

## PART 1 CONTROLLED ZONES

4. Designation of controlled zones - (1) The areas identified in the First Schedule to these By-laws are designated as controlled zones.

(2) The period in which the designated Controlled zones will remain designated is specified under the First Schedule in respect of each controlled zone.

(3) All designated controlled zones shall –

- (a) be effective on and from the date upon which notice of that designation is made; and
- (b) have the description and plan of the area affected; and
- (c) be posted on the noticeboard at the Post Office, Arutanga;
- (d) be publicised by way of public notice in one or more Cook Islands newspapers.

(4) A controlled zone shall not extend or be deemed to have extended to any land above the line of high-water mark.

(5) The Council may mark the boundary of any controlled zone.

(6) No person shall move, remove, damage, deface, interfere with, moor or tie up to any marker, buoy pole, beacon or other device which is used for the purposes of marking any controlled zone.

5. Persons excluded from controlled zones - (1) No person shall enter or remain within a controlled zone, whether on foot, by swimming or diving, by any aircraft or vessel, by buoyancy aid or in any other manner and on, over or under the waters of the controlled zone or on any reef, sandbank, coralhead and any other land within the controlled zone.

(2) When designating a controlled zone, the Council may prescribe the terms and conditions upon which any person may enter or remain in the controlled zone.

(3) Notwithstanding sub-clause (1), the Council may give a written consent to a person to enter or remain in a controlled zone on such terms and conditions as the Council may specify.

(4) The Council may give or withhold its consent to any person who seeks to enter or remain within a controlled zone and may impose terms and conditions on any such consent in each case at its absolute discretion.

- (5) A person commits an offence when such person -
- (a) enters or remains in a controlled zone without the consent of the Council; or
  - (b) contravenes a condition or term of a consent granted under these By-laws.

6. Council consent for controlled zones - (1) Any person wishing to obtain the consent of the Council to enter or remain within a controlled zone shall make a written request to the Council and such request shall be personally served on the Secretary, setting out brief particulars of the access sought and reasons for requiring that access.

(2) When the Council exercises its consent pursuant to section 5, it shall consider whether the person has real or personal assets or improvements excluding -

- (a) unimproved native land; and
- (b) uncultivated native land; and
- (c) naturally occurring flora and fauna of every description found upon such land; or
- (d) any intangible asset or chose in action,

to which that person has access only through the controlled zone.

(3) Such person shall be afforded reasonable access at such times and subject to such terms and conditions as the Council may deem necessary having regard to the need for the privacy, security and filming requirements of any other person who may have been given consent to enter or remain within that zone or to undertake filming in or in the vicinity of that zone.

(4) The Council may require any person who seeks access through a controlled zone to enter into a form of non-disclosure in favour of any third person who may at that time be undertaking filming in or in the vicinity of the controlled zone.

(5) The non-disclosure form shall be in terms either substantially identical to or imposing obligations less onerous than those forms in general use by such third person in its dealings with others on the island of Aitutaki.

7. Council consent that is withheld - (1) Any person that is dissatisfied with the decision of the Council in respect of access or application for access to a controlled zone, may appeal to the Minister in writing and copy such appeal to the Secretary no later than seven days from the initial decision of the Council.

(2) Both the Council and the appellant may make written submissions to the Minister regarding any appeal.

(3) The Minister shall serve upon both the appellant and the Council, notice of his decision within seven days of the appeal application.

(4) The decision of the Minister under this section shall be final.

## PART 2 ENFORCEMENT OFFICERS

8. Appointment of Enforcement Officers - (1) The Council may by resolution from time to time, subject to such terms and conditions as the Council may consider necessary, appoint suitable persons to be Enforcement Officers for the purposes of these By-laws.

(2) Every appointment made by the Council under these By-laws may be terminated at any time by a resolution of the Council and in every other event shall cease on 31<sup>st</sup> day of October 2006.

9. Functions and powers of Enforcement Officers – (1) Every Enforcement Officer appointed under these By-laws shall be responsible for enforcing the provisions of these By-laws and in the performance of those functions shall have and may exercise the following powers –

- (a) with the assistance of a police officer, to carry out such inquiries and investigations as may be necessary to determine whether or not these By-laws have been breached;
- (b) to intercept and stop any person, boat, vessel or aircraft which may from time to time be found within a controlled zone and to take possession of any recording equipment found on or about that person, boat, vessel or aircraft;
- (c) to recommend to the Council any legal action to be taken against any person who has breached any of the provisions of these By-laws;
- (d) to confiscate any underwater breathing apparatus, buoyancy aid, aircraft or vessel, used or owned by any person found in the controlled zone or where consent was issued by the Council, such person is in breach of any of the conditions of the consent;
- (e) to seize and confiscate immediately any recording equipment found on or about any person, boat, vessel or other aircraft at the time that person is found in a controlled zone or where consent was issued by the Council, such person is in breach of any of the conditions of the consent;
- (f) to seize at any time any recording equipment of any person who, he or she believes, on reasonable grounds, has previously breached these by-laws by –
  - (i) entering or remaining in a controlled zone without consent; or
  - (ii) where consent was issued by the Council, such person was in breach of any of the conditions of the consent.

(2) Every enforcement officer has the power to impose an on-the-spot fine of \$200 for any contravention under these by-laws.

(3) The on-the-spot fine that is issued pursuant to this clause shall be in the form provided under the Second Schedule to these By-laws.

10. Confiscated assets – Any asset so confiscated pursuant to these By-laws shall be disposed of -

- (a) in accordance with directions from time to time given by resolution of the Council; or
- (b) in accordance with a court order.

11. Protection of Enforcement Officers - Any Enforcement Officer appointed by the Council pursuant to these By-laws shall not be liable to any civil or criminal action in any Court for any act or matter lawfully done and performed by such Enforcement Officer in the performance of the functions and in the exercise of any of the powers conferred upon him by these By-laws.

**PART 3**  
**PENALTIES**

12. Penalty - (1) Every person commits an offence who acts in contravention of these By-laws or in contravention of any consent given hereunder and shall, on conviction be liable in respect of a first offence to a fine not exceeding \$200.00 and on a second or subsequent offence to a fine not exceeding \$200.00 or to three months imprisonment or both.

(2) The Court may, in addition to any other penalty order the forfeiture to the Crown of any underwater breathing apparatus, buoyancy aid, aircraft, vessel or filming equipment used by an offender in the commission of any offence under these By-laws.

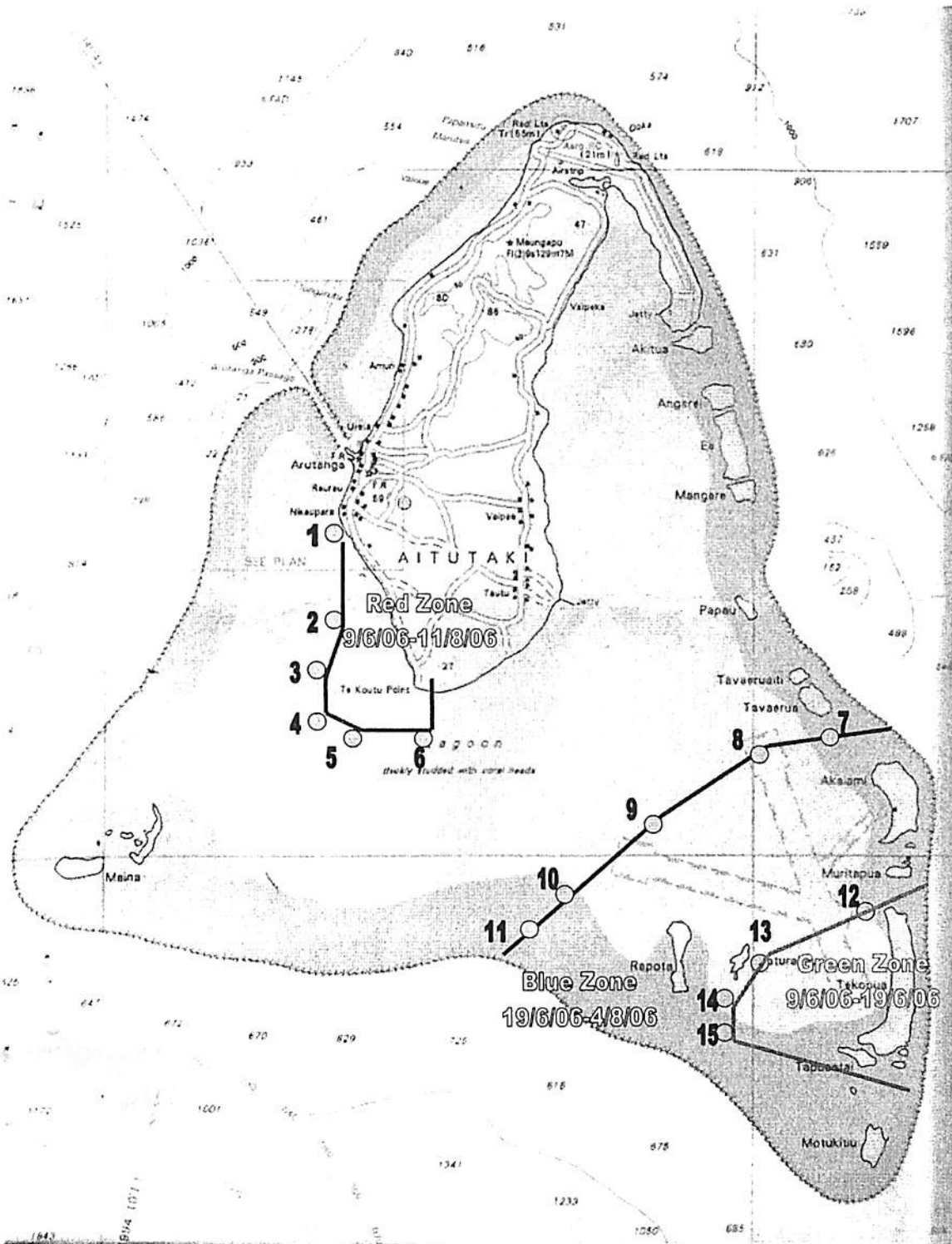
(3) Where a person is issued with an on-the spot infringement notice and such person disputes the imposition of such fine, the person shall have the right to require that an information be laid in the High Court and the alleged breach or offence be heard and determined by the High Court, in which case that person shall give notice of that intention to the Clerk of the Council within 7 days of the imposition of the on-the-spot fine.

Grover Lee Harmon  
**Clerk of the Executive Council**

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**BY AUTHORITY:**  
Cook Islands Government - 2006

**FIRST SCHEDULE**



1. A Red Zone  $\equiv$  being that part of the Aitutaki Lagoon more particularly delineated and described as such on the annexed map, and bounded by the following:

A line running due south from the mean high water mark of the island of Aitutaki to buoy number 1 and thence to buoys 2 to 6 (both inclusive), and from buoy 6, in a line running due north and ending at the mean high water mark of the main island of Aitutaki. Buoy positions are as follows:

01	S18 52.611	W159 48.225
02	S18 52.980	W159 48.069
03	S18 53.292	W159 48.050
04	S18 53.657	W159 48.006
05	S18 53.935	W159 47.750
06	S18 54.220	W159 47.247

- A Blue Zone  $\equiv$  being that part of the Aitutaki Lagoon more particularly delineated and described as such on the annexed map, and bounded by the following:

A line running from the outer edge of the outer reef of Aitutaki in a straight line, intersecting both buoy 7 and buoy 8 and thence to buoys 9 and 10 and thence in a straight line intersecting buoy 11 and running in a straight line to the outer edge of the outer reef of Aitutaki. Buoy positions are as follows:

07	S18 55.348	W159 46.524
08	S18 55.195	W159 46.388
09	S18 54.670	W159 46.030
10	S18 54.151	W159 45.131
11	S18 54.021	W159 44.440

- A Green Zone  $\equiv$  being that part of the Aitutaki Lagoon more particularly delineated and described as such on the annexed map, and bounded by the following:

A line running from the outer edge of the outer reef of Aitutaki in a straight line, intersecting both buoy 12 and buoy 13 and thence to buoys 14 and 15 and thence in a straight line from buoy 15 to the outer edge of the outer reef of Aitutaki. fringing reef, that straight line being equidistant between the mean high water marks of each of motu Tapuaetai and the sand bank to the south of Tapuaetai. Buoy positions are as follows:

12	S18 56.107	W159 45.018
13	S18 55.800	W159 44.930
14	S18 55.440	W159 44.634
15	S18 55.190	W159 44.106

The period during which each exclusion zone shall have effect shall be:

The Red Zone 9 June 2006 to 11 August 2006;



The Blue Zone 19 June 2006 to 4 August 2006;

The Green Zone 9 June 2006 to 19 June 2006

provided always, however, that should these bylaws not come into force by 9 June 2006, the zones shall take effect under and pursuant to these bylaws, on and from the commencement of these bylaws.

In the event of any inconsistency between the controlled zone coordinates above and the map annexed, the controlled zone coordinates given above shall prevail over the map

**Aitutaki Island Council**  
**Controlled Zone Marker Positions**  
 As at \_\_\_\_\_ day of \_\_\_\_\_, 2006

01	S18 52.611	W159 48.225
02	S18 52.980	W159 48.069
03	S18 53.292	W159 48.050
04	S18 53.657	W159 48.006
05	S18 53.935	W159 47.750
06	S18 54.220	W159 47.247

07	S18 55.348	W159 46.524
08	S18 55.195	W159 46.388
09	S18 54.670	W159 46.030
10	S18 54.151	W159 45.131
11	S18 54.021	W159 44.440

12	S18 56.107	W159 45.018
13	S18 55.800	W159 44.930
14	S18 55.440	W159 44.634
15	S18 55.190	W159 44.106

**SECOND SCHEDULE**

**INFRINGEMENT NOTICE**

**PURSUANT TO** Section 9 of the Aitutaki (Controlled Zones) By-laws 2006

TO: \_\_\_\_\_ of

**YOU ARE HEREBY CHARGED** as follows:

Statement of Offence: \_\_\_\_\_  
\_\_\_\_\_

Contrary to \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fixed penalty: \_\_\_\_\_

Particulars of Offence : \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TAKE NOTICE** that, if not later than 14 days from the date hereof, payment of the fixed penalty of \$ \_\_\_\_\_ is received as specified below at the office of the Aitutaki Island Council in Aitutaki, all liability in respect of the offence will be discharged and no further action will be taken. **HOWEVER**, if that fixed penalty is not so paid, you are hereby required to attend the High Court in the Criminal Division On \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_, to answer the charge set out above, **UNLESS** –

- (a) you admit the offence and plead guilty in writing as specified below; OR
- (b) an appearance is made on your behalf by a barrister and solicitor, in which case your personal attendance will be excused and the case will be disposed off in your absence.

Signed: \_\_\_\_\_

Designation \_\_\_\_\_

Date : \_\_\_\_\_ 2006

\_\_\_\_\_

**AFFIDAVIT OF SERVICE**  
**(To be completed in all cases)**

I, \_\_\_\_\_ the Authorised Person whose signature appears at the foot of the Infringement Notice above, make oath and say that, on the \_\_ day of \_\_\_\_\_ 20\_\_ at \_\_\_\_\_ did serve upon the accused person specified therein.

OR

Affix in a conspicuous position, of the last known location address a true copy of that Infringement Notice.

Sworn by the above named Authorised Person at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2006

Before –

\_\_\_\_\_  
Justice of the Peace

\_\_\_\_\_  
Authorised person

**WRITTEN PLEA OF GUILTY**

I \_\_\_\_\_ being the person named above hereby enter a plea of guilty to the charge specified

(Signed) \_\_\_\_\_ Date \_\_\_\_\_

**TO THE RECIPIENT OF THE NOTICE:**

**YOU HAVE 14 DAYS IN WHICH TO DO ONE OF THE FOLLOWING**

- 1. **PAY THE PRESCRIBED PENALTY** - stated on this infringement notice. No further action will then be taken.  
  
**Payment in Person** : May be made at the Aitutaki Island Council Office in Aitutaki. Bring the notice with you
- 2. **DISPUTE LIABILITY** – You may elect to have the matter heard by a court.  
**NB:** If the court finds against you, you may be liable for a higher penalty plus all court costs.

3. **REQUEST AN EXTENSION OF TIME TO PAY** – In the event that you have difficulty in paying the prescribed penalty you may, within 28 days, make application to the Aitutaki Island Council Office in Aitutaki for an extension of the time, which shall not exceed 28 days, to pay the prescribed penalty stated on this infringement notice.
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