

STATE OF SABAH

PEARL OYSTER SHELL FISHERY ORDINANCE (Sabah Cap. 95)

LIST OF AMENDMENTS

<i>Ordinance/ Enactment No.</i>	<i>Sections amended</i>	<i>Effective date of amendment</i>
11/1962	13(1), (2), (3)	22-9-1962
G.N.S. 87/1965	3, 4, 5(1), 6(1), 11(1), 13(2), 14, 15(1), (2), (3), 16(2), 18	16-9-1963
11/1967	3rd Sch. ("Kota Kinabalu" substituted for "Jeselton")	30-12-1967
Act 160	8, 9(2), 13(2), 17(1)	29-8-1975

To regulate and control pearl oyster shell fishery.

[1st February, 1961.]

Short title.

1. This Ordinance may be cited as the Pearl Oyster Shell Fishery Ordinance.

Natives exempt.

2. Nothing contained in this Ordinance shall be deemed to affect the working of pearl

oyster shell by natives:

Provided that they shall do such working on a small scale only and for their own personal benefit in manner hitherto permitted by custom.

Interpretation.

3. "Pearl oyster shell" shall include pearls, but not seed-pearls;

"pearl oyster shell fishery" shall mean the business of diving for, collecting, cultivating, storing or carrying pearl oyster shell from any one place to any other place within Sabah.

Vessels deemed engaged in pearl oyster shell fishery.

4. Every vessel used for persons to dive from, collect or store pearl oyster shells therein or for conveying pearl oyster shells from one place to any other place within Sabah shall be deemed to be engaged in pearl oyster shell fishery.

Vessels to be licensed.

5. (1) No person shall use or employ any vessel in pearl oyster shell fishery within the waters of Sabah unless such vessel is duly licensed as hereinafter provided.

(2) Any vessel actually engaged in, or used for quarters or for the storing of provisions for those engaged in pearl oyster shell fishery shall be deemed to be used or employed as aforesaid.

Licences.

6. (1) The Chief Customs Officer at any port within Sabah or, where there is no such officer, the District Officer, may grant a licence in the form prescribed in the First Schedule to any vessel to be used or employed in pearl oyster shell fishery. Such licence may be for six months or one year, provided that all licences shall be in force from the date of issue thereof to either the 30th June or the 31st December in each year respectively.

Fee.

- (2) The fee for such licence shall be that set out in the Second Schedule.

Tonnage.

7. The tonnage of every vessel shall, if she be registered, be deemed to be the tonnage specified in her register, and if she be not registered, such tonnage shall be ascertained by the Chief Customs Officer or District Officer in accordance with the rules prescribed by law for ascertaining the tonnage of vessels.

Unlicensed vessels.

8. The owner, master or person in charge of any vessel found to be employed in pearl oyster shell fishery without having first obtained a licence as required by this Ordinance shall be liable to a fine of five hundred ringgit and to imprisonment for six months and to confiscation by the Government of all shells or pearls found in such vessel.

Seizure of unlicensed vessels.

9. (1) Any Government officer may seize any vessel found engaged in pearl oyster shell fishery without a licence, and convey such vessel to the nearest Government station to be dealt with according to law.

Penalty for non-production of licence.

(2) Any master, owner or person in charge of any such vessel failing to produce his licence forthwith when called upon by any Government officer to do so shall be liable to a fine of fifty ringgit and such vessel shall be liable to detention or seizure pending enquiry.

Interference with persons fishing.

10. No person shall interfere with, or exact or attempt to exact any payment or tribute from any person engaged in pearl oyster shell fishery under this Ordinance, or prevent or attempt to prevent any person or vessel from lawfully engaging in such industry.

Declaration of sea produce taken.

11. (1) No vessel engaged in pearl oyster shell fishery shall discharge any portion of the pearl oyster shell or other sea produce taken by it, or shall leave the waters of Sabah, except by reason of stress of weather, without first proceeding to one of the ports defined in the Third Schedule and making due declaration of the same.

(2) All pearl oyster shell shall be exported from one of the ports defined in such Schedule.

Form of declaration.

12. (1) Every master or person in charge of a vessel engaged in pearl oyster shell fishery shall accurately enter in a log or record-book the date of every operation and the number and weight of the shells of the pearl oyster taken each day and the number of pearls found and the weight thereof.

(2) Upon entering a port as defined in the Third Schedule and before landing any cargo, such master shall verify on oath before the Chief Customs Officer, or the District Officer, such log or record-book as containing a true statement of such operations of such vessel.

Size of pearl oyster shell restricted.

13. (1) Any person taking, removing, selling, exporting or attempting to export, dealing in, purchasing or found in possession of pearl oyster shell known scientifically as *Pinctada Maxima* and of either of the varieties known as "Golden Lip" or "Silver Lip" of which the nacre or mother of pearl measures less than four-and-a-half inches from butt or hinge to opposite edge or lip or which measures less than six inches exteriorly over all, shall be liable to a penalty of fifty ringgit for every such shell found in his possession and all such shell shall be confiscated.

(2) Any person in whose possession any such shell shall be found shall disclose to any Government officer on demand the name and address of the person from whom he acquired the same. Refusal or neglect to give full information shall render such person liable to a penalty of one thousand ringgit and to imprisonment for twelve months:

Provided that if it be proved to the satisfaction of the Director of Agriculture that the ordinary size of any such pearl oyster shell when full grown is when found in the waters of Sabah of smaller dimensions he may direct that other dimensions be substituted for those prescribed by this section.

(3) The Director of Agriculture may, subject to such conditions as he may think fit, grant to any person a permit to engage in the industry of pearl culture and the provisions of this section relating to taking, removing or being in possession of pearl oysters shall not apply to the holder of any such licence.

Places of collection.

14. No pearl oyster shell shall be collected or obtained from places other than those approved by the Yang di-Pertua Negeri*.

Leases.

15. (1) The Yang di-Pertua Negeri may grant a lease of any lands lying under tidal waters within the limits of the jurisdiction of Sabah for pearl oyster shell fishery, cultivation or propagation.

Application for lease.

(2) Any person desiring to lease such land shall apply to the Yang di-Pertua Negeri in the form prescribed in the Fourth Schedule and shall at the same time furnish particulars of the area required, the situation thereof, the capital and plant to be employed and the operations proposed to be pursued in connection with such lease.

Bond.

(3) Before any such lease is granted the applicant shall enter into a bond with two approved sureties for such amount as the Yang di-Pertua Negeri may decide, conditional upon the due observance by the lessee of the terms of his lease and the provisions of this

* Throughout the Ordinance "Yang di-Pertua Negeri" substituted for "Yang di-Pertua Negara" by virtue of Enactment No. 17 of 1976. Powers delegated to Minister of Agriculture and Fisheries - See G.N.S. 171/1963.

Ordinance.

Conditions of lease.

(4) It shall be a condition of such lease that the lessee shall commence to work the leased area for the purpose for which the same was leased within six months from the date of the granting thereof and shall continuously and *bona fide* work the same during the term thereof.

Right under lease.

16. (1) A lease granted under the provisions of section 15 shall confer on the lessee –
- (a) the exclusive right to take, collect and gather within the leased area pearls and pearl shells;
 - (b) authority to exclude persons from the leased area, and such authority shall be absolute unless qualified by the terms of the lease.

Lease voidable on certain events.

(2) Upon the non-payment of any rent reserved by such lease or upon the breach or non-observance by the lessee of any of the conditions thereof the Yang di-Pertua Negeri may cancel the same and upon publication of notice of such cancellation in the *Gazette*, such lease shall be absolutely void.

Penalties.

17. (1) (a) Any person other than the lessee taking, gathering, collecting or removing pearls and pearl shells in or from any demised area, or using or employing or permitting or causing to be used or employed a vessel whether licensed or unlicensed for any such purpose; and
- (b) any person committing a breach of any of the provisions of this Ordinance for the breach whereof no penalty is specially provided,

shall be liable to a fine of five hundred ringgit and to imprisonment for six months.

(2) All offences under this Ordinance may be tried in summary manner before the Court of any Magistrate.

Power to make rules.

18. The Yang di-Pertua Negeri may make rules for more effectually carrying out the purposes of this Ordinance.

FIRST SCHEDULE

PEARL OYSTER SHELL FISHERY ORDINANCE

LICENCE

(Section 6)

The Vessel owned by is hereby licensed to be employed in the pearl oyster shell fishery from the day of 19..... to the day of 19

DESCRIPTION OF VESSEL

Name

Rig

Tonnage

Master

Dated this day of 19, at

Fee paid

Chief Customs

District

Officer

SECOND SCHEDULE

PEARL OYSTER SHELL FISHERY ORDINANCE

(Section 6)

The fee payable on issue of a licence shall be as follows-

For every vessel not exceeding ten tons burden RM25 per annum.

For every vessel exceeding ten tons burden RM5 extra per annum for every ton or part thereof over ten tons up to thirty tons.

For every vessel exceeding thirty tons burden RM150 per annum.

THIRD SCHEDULE

PEARL OYSTER SHELL FISHERY ORDINANCE

(Section 11)

Kota Kinabalu	Mempakul	Sipitang
Kudat	Sandakan	Tawau
Lahad Datu	Semporna	Weston

FOURTH SCHEDULE

PEARL OYSTER SHELL FISHERY ORDINANCE

APPLICATION FOR LEASE

(Section 15(2))

I, of do hereby apply for a lease of
for the purpose of
and submit the names of the undermentioned as sureties to the bond required under section
15 (3) of the above mentioned Ordinance.

..... Applicant

Names and address of sureties

..... of

..... of

.....

