

Fisheries (Amendment) Act 2017

REPUBLIC OF KIRIBATI

(No.5 of 2017)

I assent,

**Beretitenti
2017**

**AN ACT
entitled**

AN ACT TO AMEND THE [FISHERIES ACT 2010](#) AS AMENDED

**Commencement:
2017**

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

Short title

1. This Act may be cited as the [Fisheries \(Amendment\) Act 2017](#).

Amendment of section 3

Section 3 of the [Fisheries Act 2010](#) as amended (the “Principal Act”) is amended by inserting the following definitions:

“Director of Fisheries” means or refers to the Director of Coastal Fisheries, Director of Licensing and Compliance, and Director of Seafood Verification.

“Illegal fishing” means activities:

- (a) conducted by national or foreign vessels in waters under the jurisdiction of Kiribati, without the permission of Kiribati, or in contravention of its laws and regulations;
- (b) conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or
- (c) conducted by vessels in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

“Unreported fishing” means fishing activities:

- (a) which have not been reported, or have been misreported, to the relevant national authority, in contravention of Kiribati laws and regulations; or
- (b) undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

“Unregulated fishing” means fishing activities:

- (a) conducted in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the

flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or

(b) conducted in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

“International conservation and management measures” means:

measures to conserve or manage fish that are adopted and applied in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention on the Law of the Sea, the FAO Compliance Agreement and the United Nations Fish Stocks Agreement either by global, regional or sub-regional organisations, or by treaties or arrangements to which Kiribati is a Party, or is a cooperating noncontracting party, or is otherwise bound by their provisions.

“Serious fishing violation” means:

- (a) fishing without a valid licence, authorisation or permit issued by Kiribati,
- (b) fishing without a valid licence, authorization or permit issued by the flag State;
- (c) fishing conducted by vessels without nationality or by those flying the flag of a State not part to the relevant organisation, or operated under the flag of two States;
- (d) failing to maintain accurate records of catch and catch-related data as required by Kiribati,
- (e) failing to provide vessel monitoring system reporting;
- (f) serious misreporting of catch contrary to the catch reporting requirements of such organization or arrangement;
- (g) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of a quota established by Kiribati;
- (h) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;
- (i) using prohibited fishing gear;
- (j) falsifying or concealing the markings, identity or registration of a fishing vessel;

- (k) concealing, tampering with or disposing of evidence relating to an investigation;
- (l) multiple violations which together constitute a serious disregard of conservation and management measures; or
- (m) violations against an authorised officer or observer
- (n) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement;

Amendment of section 4

3. Section 4 of the Principal Act is amended by repealing it and substituting the following:

“4 Management of fisheries

- (1) The fundamental objective of this Act is to promote long-term conservation, management and sustainable use of the marine living resources of Kiribati for the people of Kiribati.
- (2) The Minister is responsible for the management, conservation and development of all fisheries within the jurisdiction of Kiribati to ensure that the fisheries resources of Kiribati are managed for the benefit of I-Kiribati.
- (3) The Minister, may declare, from time to time, either a total allowable catch or total allowable effort, or both, for fisheries in Kiribati waters, and in doing so, may declare total allowable catches or efforts with respect to particular fisheries or particular areas.
- (4) The Minister, as appropriate, when performing functions or exercising powers under this Act, shall:
 - (a) adopt measures to ensure the long-term sustainability of fisheries resources and promote the objective of their optimum utilisation; and
 - (b) ensure fishing shall be commensurate with the sustainable use of fishery resources taking into account the impacts on non-targeted and associated or dependent species and the general obligation to protect and preserve the marine environment; and
 - (c) based on the best scientific information available and designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, or any other approved reference points, as qualified by relevant environmental, social and economic factors, and taking into account fishing patterns, the interdependence of stocks and species interaction; and

- (d) prevent or eliminate overfishing and excess fishing capacity; and
- (e) ensure that data on fisheries, including information relating to the ecosystems, social and economic systems in which fisheries occur, shall be collected, verified, reported and shared in a timely and appropriate manner; and
- (f) ensure that effective enforcement of, and compliance with, conservation and management measures shall be pursued to protect biodiversity; and
- (g) ensure that pollution and waste originating from fisheries operations, discards, by-catch, lost or abandoned gear and impacts on other species and marine ecosystems shall be minimised or eliminated where possible; and
- (h) to improve the welfare and livelihood of fishers and the fishing community; and
- (i) apply the precautionary approach and an ecosystem approach in accordance with subsection (5).

(5) (a) Despite the provisions of any other Act, any person or agency having responsibilities under this Act, or whose functions or powers may relate to any matter or thing involving the utilisation of fisheries resources, is to apply the precautionary principle when discharging his or her responsibilities and functions, or exercising his or her powers.

(b) A lack of full scientific certainty regarding the extent of adverse effects of a threat or damage to fisheries resources existing in Kiribati is not to be used to prevent or avoid a decision being made to minimise the potential adverse effects or risks of that threat or damage.

(6) Subject to section 99 of the Constitution, the Minister may appoint a Director of Fisheries and any other fisheries officers and licensing officers the Minister considers necessary for this Act.”

Amendment of Section 7

5. Section 7 of the Principal Act is amended by inserting a new section 7A and 7B.

“7A Giving effect to scheduled treaty

Each scheduled treaty listed in the Schedule shall have the force of law in Kiribati and on all fishing vessels registered or licensed in Kiribati.

7B Giving effect to international conservation and management measures

(1) The Minister shall publish in the Gazette a list of the global, regional or sub-regional organizations or arrangements to which Kiribati is a party or a cooperating noncontracting party.

(2) The provisions of this Act concerning the application of conservation and management measures adopted by a regional fisheries management organisation or arrangement to which Kiribati is a member do not apply to the internal waters, archipelagic waters and territorial sea of Kiribati as defined pursuant to the Marine Zones Declaration Act 2011, without the express consent of the Minister after consultation with Cabinet.

(3) The Minister shall publish in the Gazette the international conservation and management measures which shall have the force of law in Kiribati and on all fishing vessels registered or licensed in Kiribati and in doing so the Notice may specify that only a certain part or parts of an international conservation and management measure shall have such effect.

(4) The Minister may for the purpose of giving effect to any treaty entered into by Kiribati or any international conservation and management measure or arrangement to which Kiribati is a party or is a cooperating non contracting party, by notice published in the Gazette attach such conditions to a licence as the Minister may consider necessary or expedient for this purpose.

(5) Where any vessel is used in contravention of this Act, any regulations under this Act, a fisheries management plan approved by the Minister, or the provisions of an international conservation and management measure notified in the Gazette under this section, the fishing master, master, owner and charterer shall each commit an offence and shall each be liable on conviction to a penalty not exceeding \$3,000,000.

(6) The Minister shall publish in the Gazette no less than every six months a list of all licence conditions and the vessels to which they apply including any conditions that have been imposed on individual licences pursuant to this section.”

Amendment of section 8

6. Section 8 of the Principal Act is amended by repealing section 8(6) and substituting the following:

“8(6) If the vessel is used in contravention of this section:

(a) the fishing master and the master of the vessel are each liable on conviction:

- (i) for a contravention of subsection (2) to a fine not exceeding \$3,000,000 and in default to imprisonment for 10 years; or
- (ii) for a contravention of subsection (3) or (4) to a fine not exceeding \$750,000 and in default to imprisonment for 3 years;
- (iii) for a contravention of subsection (5) to a fine not exceeding \$500,000 and in default to imprisonment for 3 years;

(b) the owner and charterer of the vessel are each liable on conviction:

- (i) for a contravention of subsection (2) to a fine not exceeding \$3,000,000 and in default to imprisonment for 10 years;
- (ii) for a contravention of subsection (3) or (4) to a fine not exceeding \$1,500,000 and in default to imprisonment for 5 years.
- (iii) for a contravention of subsection (5) to a fine not exceeding \$1,000,000 and in default to imprisonment for 3 years.”

Amendment of section 11

7. Section 11 of the Principal Act is amended by repealing section 11(4) and substituting the following:

“11(4) A person who operates or causes or allows to be operated a local fishing vessel in Kiribati waters without a licence under this section, or not in accordance with the conditions of a licence, is liable on conviction to a fine not exceeding \$1,500,000 and to imprisonment for 5 years.”

Amendment of section 12

8. Section 12 of the Principal Act is amended by repealing section 12(5) and substituting the following:

“12(5) If the foreign fishing vessel is used in contravention of a condition of the licence:

(a) the fishing master and the master of the vessel are each liable on conviction to a fine not exceeding \$750,000; or

(b) the owner and any charterer of the vessel are each liable on conviction to a fine not exceeding \$3,000,000.”

Amendment of section 14A

9. Section 14A of the Principal Act is amended by repealing section 14A (3) and substituting the following:

“14A(3) A person who contravenes subsection (1)(b) or (1)(c) commits an offence and shall be liable to a fine not exceeding \$3,000,000 or to imprisonment for 10 years, or to both such fine and imprisonment.”

Amendment of section 14C

10. Section 14C of the Principal Act is amended by repealing subsection (3) and substituting the following:

“The regulations may prescribe for anything that needs to be prescribed under subsections (1) and (2)”.

Amendment of section 15

11. Section 15 of the Principal Act is amended by repealing section 15(4) and substituting the following:

“15(4) A person who operates or causes or allows to be operated a vessel registered in Kiribati outside Kiribati waters without an authorisation under this section, or not in accordance with the conditions of an authorisation, is liable on conviction to a fine of \$1,500,000 and to imprisonment for 5 years.”

Amendment of section 15A

12. Section 15A of the Principal Act is amended by repealing section 15A(6) and substituting the following:

“15A(6) The owner or operator of any Kiribati fishing vessel who provides false, inaccurate or misleading information under this section is liable on conviction to a fine of \$50,000.”

Amendment of section 16

13. Section 16 of the Principal Act is amended by repealing section 16(5) and substituting the following:

“16(5) If the fishing vessel is used in contravention of a condition of the authorisation:

(a) the fishing master and the master of the vessel are each liable on conviction to a fine of \$1,500,000 and imprisonment for 5 years; or

(b) the owner and any charterer of the vessel are each liable on conviction to a fine of \$3,000,000 and to imprisonment for 10 years.”

Amendment of section 19

14. Section 19 of the Principal Act is amended by repealing section 19(5) and 19(6) substituting the following:

“19(5) If any fishing vessel is used in contravention of this section, the master, owner and charterer are each guilty of an offence punishable on conviction to a fine not exceeding \$3,000,000.

19(6) A person who contravenes subsection (2) or subsection (4) is guilty of an offence punishable on conviction to a fine not exceeding \$300,000.”

Amendment of section 20

15. Section 20 of the Principal Act is amended by repealing section 20(2) and substituting the following:

“20(2) If a vessel mentioned in subsection (1) enters a Kiribati port, the master, owner and charterer are each guilty of an offence punishable on conviction to a fine not exceeding \$300,000.”

Amendment of section 21

16. Section 21 of the Principal Act is amended by inserting a new section 21(A) as follows;

“21(A) Port Entry

(1) The Minister may prohibit entry to a port of Kiribati to a vessel which has been identified as being engaged in or supporting fishing in contravention of any international conservation and management measure or in contravention of the laws of Kiribati or of another State unless it can be established that the catch on board has been taken in a manner consistent with the relevant conservation and management measures or of the laws of another State.

(2) The Minister may grant conditional entry to a fishing vessel for the purpose of inspecting it where he has reasonable grounds for believing that the vessel has been engaged in or supporting fishing in contravention of any international conservation

and management measures or in contravention of the laws of Kiribati or of another State.

(3) A prohibition under subsections (1) and (2) may apply to an individual vessel or to a fleet of vessels.

(4) The Minister may refuse entry or permit only conditional entry to a port of Kiribati to a fishing vessel which he has reasonable grounds to believe is without nationality, or has operated under the flags of two States and has used them according to convenience.

(5) The Minister may revoke authority to enter or remain in port or may require a vessel to be detained in port under such conditions as are approved where he later has reasonable grounds to believe that the vessel has been fishing in contravention of international conservation and management measures or in contravention of the laws of Kiribati or of another State or is without nationality, or has operated under the flags of two States and has used them according to convenience.

(6) Where the Minister has refused entry or conditional entry and later is satisfied that the basis on which refusal to enter a port should be reversed, he may do so on such conditions as he thinks fit.

(7) References to ports in this section include offshore terminals and other installations for transshipping, refuelling or resupplying vessels.

(8) A person who fails to comply with a decision or order of the Minister made in accordance with this Part commits an offence and is liable to a fine not exceeding \$3,000,000.

(9) Where a vessel has been denied entry to a port in Kiribati under this Part, the Minister shall communicate that information to the flag State of the vessel and to any regional fisheries management organization of which the flag State is a member, or otherwise in accordance with an applicable conservation and management measure.

(10) Nothing in this Act affects the entry of vessels to port in accordance with international law for reasons of force majeure or distress, or prevents a port State from permitting entry into port to a vessel exclusively for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.”

Amendment of section 27

17. Section 27 of the Principal Act is amended as follows:

“(1) by repealing section 27(4) and substituting the following:

Section 27(4) Notwithstanding subsection (3A) and (3B), a person who contravenes this section is guilty of an offence punishable on conviction to a fine not exceeding \$1,500,000 and imprisonment for 5 years.

(2) by inserting a new section 27(A) as follows;

27(A) In determining the level of penalty in a particular case in respect of an offence under this Act, consideration may be given to the need to ensure that any penalty imposed should be adequate in severity to discourage further offences, and where possible should deprive the offenders of the benefits accruing from their unlawful activity.”

Amendment of section 28

18. Section 28 of the Principal Act is amended by repealing it and substituting the following:

Section 28 Destroying or disposing of evidence

“A person who, being on board any vessel being pursued or about to be boarded by an authorised officer, throws overboard or destroys any fish, fishing gear, explosive, poison, noxious substance or any other thing whatsoever, with intent to avoid the seizure of the fish, fishing gear, explosive, poison, noxious substance or thing, or the detection of an offence against this Act, is liable on conviction to a fine not exceeding \$300,000 and to imprisonment for 1 year.”

Amendment of section 28A

19. Section 28A of the Principal Act is amended by repealing section 28A(3) and substituting the following:

“28A (3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$1,500,000.”

Amendment of section 36(11)

20. Section 36(11) of the Principal Act is amended by repealing it and substituting the following:

“36(11) A person who contravenes subsection (10) is guilty of an offence punishable on conviction by a fine not exceeding \$750,000.”

Amendment of section 40

21. Section 40 is amended at subsection (1) by deleting the word “foreign” after the word “a” and before the word “fishing”.

Amendment of section 40A

22. Section 40A is amended at subsection (1) by deleting the word “foreign” after the word “a” and before the word “fishing”.

Amendment of Section 45

23. Section 45 is amended at subsection (2) (y) by repealing it and substituting the following:

“45(2) (y) provision of penalties for contraventions of the regulations of terms of imprisonment of 5 years and fines of \$1,500,000”.

FISHERIES (AMENDMENT) ACT 2017

EXPLANATORY MEMORANDUM

This Act amends the [Fisheries Act 2010](#) as amended by the Fisheries Amendment Act 2015, (hereinafter, the Principal Act). The amendments seek to address issues raised by the European Commission in considering the possibility of identifying Kiribati as a possible non-cooperating third country in the fight against Illegal, Unreported and Unregulated fishing.

The principal objective of this Act is to ensure that Kiribati addresses these issues by defining Illegal, Unreported and Unregulated fishing (IUU), serious fishing violations and raise the penalty provisions threefold for serious offences to deter future offenders. In addition, the Act seeks to incorporate Kiribati’s responsibilities pursuant to international law.

Section 3 of the Principal Act is amended to include the definition of Illegal, Unreported and Unregulated (IUU) fishing and serious fishing violation. This is to ensure that Kiribati has proper sanctions to deter IUU. The Director of Fisheries is also defined under this section to reflect the current changes to the office structure.

Section 4 of the Principal Act is amended to comply with international and regional rules applying to the conservation and management of fishing resources, in accordance with Article 62 of the United Nations Convention on Law of the Sea (UNCLOS), Article 5 of the United Nations Fish Stocks Agreement (UNFSA) and Article 5 of the Western Central Pacific Fisheries Convention (WCPFC).

Section 7 of the Principal Act is amended to address the EU's concern that Kiribati implements Article 31(6) of the IUU regulations by being transparent and sharing information regarding vessels operating in its EEZ. At the same time, Kiribati raises sovereignty of its territorial sea, internal waters and archipelagic waters and takes the view that conservation obligations apply in these waters only if Kiribati chooses.

Section 8 of the Principal Act is amended to raise the penalty level threefold for any violation by unlicensed foreign fishing vessels. This would act as a deterrence to future offenders.

Section 11 of the Principal Act is amended to raise the penalty level threefold for any violation by local fishing vessels to act as a deterrence to future offenders.

Section 12 of the Principal Act is amended to raise the penalty level threefold for any violation by foreign fishing vessels to act as a deterrence to future offenders.

Section 14A of the Principal Act is amended to raise the penalty level threefold for fishing in a marine protected area or reserve or in an area designated as a prohibited area to deter future offenders.

Section 14C of the Principal Act is amended to be consistent with the power of the Beretitenti to make regulations.

Section 15 of the Principal Act is amended to raise the penalty level threefold for any violation by a Kiribati flagged vessel outside Kiribati waters.

Section 15A of the Principal Act is amended to raise the penalty level for owners or operators of any Kiribati fishing vessel who provide false, inaccurate or misleading information to the Director.

Section 16 of the Principal Act is amended to raise the penalty level threefold for any violations by a fishing vessel holding an authorisation to operate a fishing vessel for scientific investigations.

Section 19 of the Principal Act is amended to raise the penalty level threefold for any violations relating to driftnet fishing.

Section 20 of the Principal Act is amended to raise the penalty level threefold should any driftnet vessel enter port.

Section 21 of the Principal Act raises the penalty level threefold for any person using destructive fishing methods.

Section 27 of the Principal Act raises the penalty level threefold for any violations relating to an authorised officer and observer.

Section 28 of the Principal Act raises the penalty level threefold for any violations involving the destruction or disposing of evidence.

Section 36 of the Principal Act raises the penalty level threefold for any violations involving damaging, destroying or rendering inoperative an observer device or intentionally inputting information into an observer device that is not officially required.

Section 40 of the Principal Act empowers the Minister and the Attorney-General to impose administrative penalty as an alternative to criminal proceedings on all fishing vessels, not only foreign fishing.

Section 40A of the Principal Act allows the Fisheries Administrative Penalty Committee (FAPCOM) to recommend administrative penalty to the Minister and Attorney-General on the contravention of the Act by any fishing vessel.

Section 45(1)(y) of the Principal Act increases the fine on a breach of any regulations to a fine of \$1,500,000 and 5 years imprisonment.

**TETABO NAKARA
HONOURABLE MINISTER**

LEGAL REPORT

I hereby certify my opinion that none of the provisions of the above Act conflict with the Constitution and that the Beretitenti may properly assent to the Act.

**MRS TETIRO MAATE SEMILOTA
ATTORNEY-GENERAL
6 March 2017**

CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU

This printed impression of the [Fisheries \(Amendment\) Act 2017](#) has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 14th August 2017 and is found by me to be a true and correctly printed copy of the said Bill.

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Eni Tekanene
Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this day of
2017.

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Eni Tekanene
Clerk of the Maneaba ni Maungatabu