

REPUBLIC OF KIRIBATI
(No. 8 of 1997)

I assent,

Beretitenti
Assented: 7th July 1997

ACT TO AMEND THE FISHERIES ORDINANCE (CAP. 33)

Commencement:
1997

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 1997.

Amendment of section 2

2. Section 2 of the Fisheries Ordinance (hereinafter referred to as the “principal Ordinance”) is hereby amended by inserting immediately after the definition of “fishery limits” the following definition –

“fishing master” means a person who is or appears to be controlling, directing or determining all fishing operations and activities of a fishing vessel;”

Amendment of section 5

3. Section 5 of the principal Ordinance is hereby amended as follows –

- (a) by inserting a new subsection (5A) as follows –

“(5A) Where a foreign fishing vessel enters the fishery limits for a purpose recognised by international law, the Master of such fishing vessel shall maintain on board the vessel, a ship’s log book in which he shall enter daily in that log book a record of the date, time and nature of every activity of such vessel while inside the fishery limits.”

- (b) in subsection (7) by deleting the whole subsection and substituting the following –

“(7) When any foreign fishing vessel is used in contravention of any of the provisions of this section –

- (a) the fishing master and master of such vessel shall each be liable on conviction;
 - (i) in the case of a contravention of subsection (1), to a fine of not less than \$20,000 but not more than \$100,000 and in default to a term of imprisonment of one (1) year; or
 - (ii) in the case of a contravention of subsection (2), subsection (5A) or subsection (6) to a fine of \$50,000 and in default to a term of imprisonment of six (6) months;
- (b) the owner and charterer of such vessel shall each be liable on conviction;
 - (i) in the case of a contravention of subsection (1), to a fine of not less than \$100,000 but not more than \$500,000 and in default to a term of imprisonment of two (2) years;
 - (ii) in the case of a contravention of subsection (2) or subsection (6), to a fine of \$100,000 and in default to a term of imprisonment of one (1) year.”
- (c) in subsection (8) by deleting the whole of the subsection and substituting the following –

“(8) Where any foreign fishing vessel is used in contravention of any of the conditions of a permit granted under this section –

 - (a) the fishing master and master of such vessel shall each be liable on conviction to a fine of \$50,000; or
 - (b) the owner and charterer of such vessel shall each be liable on conviction to a fine of \$100,000.

Amendment of section 5A

4. Section 5A of the principal Ordinance is amended by deleting the whole section and substituting the following –

“Fishing Master, Master, owner or charterer not to leave Kiribati unless fine is paid

5A. (1) Where the fishing master, master, owner or charterer of a foreign fishing vessel used in contravention of the provisions of section 5, is convicted of an offence under this Ordinance, the Court so convicting may in addition to any fine as it deems fit to impose, order that the Principal Immigration Officer shall have power to prevent –

- (a) such fishing master;
- (b) master;
- (c) owner; or
- (d) charterer,

from leaving Kiribati until they pay the full amount of the fine so imposed.

(2) A copy of the Court order made under subsection (1) and sent by the Court to, the Principal Immigration Officer shall be sufficient, authority for the Principal Immigration Officer to act in pursuance of subsection (1).

Fishing Master, Master to be deemed owner and charterer

5B. Where –

- (a) a foreign fishing vessel is arrested under this Ordinance; and
- (b) the owner or charterer of such foreign fishing vessel is neither resident nor physically present in Kiribati at the time when that foreign fishing vessel was first arrested or at any time after such arrest –

the fishing master, master of such vessel:

- (i) shall be deemed to be the owner and charterer for the purposes of this Ordinance;
- (ii) may be charged, prosecuted, convicted, fined and prevented from leaving Kiribati as appropriate under this Ordinance,

as if such fishing master, master were the owner and charterer of such vessel.

Employee or agent, etc. of owner or charterer to be deemed owner and charterer

5C. Where –

- (a) a foreign fishing vessel is arrested under this Ordinance; and
- (b) the owner or charterer of such foreign fishing vessel is neither resident nor physically present in Kiribati at the time when that foreign fishing vessel was first arrested or at any time after such arrest,

any employee, agent, or representative of such owner or charterer who may be resident or physically present in Kiribati –

- (i) shall be deemed to be the owner and charterer of such foreign fishing vessel for the purposes of this Ordinance; and
- (ii) may be charged, prosecuted, convicted fined, and prevented from leaving Kiribati as appropriate under this Ordinance,

as if such employee, agent or representative were the owner and charterer of such vessel.

Cost of arrest of foreign fishing vessel to be borne by owner or charterer

5D. Any cost or expenditure incurred by the Republic in connection with –

- (a) the arrest of a foreign fishing vessel illegally fishing in the fishery limits; and
- (b) the prosecution of the master, owner or charterer of such foreign fishing vessel,

shall be borne by the owner or charterer as the Court may determine.

Cost of preventing fishing master, master, owner or charterer from leaving Kiribati be borne by owner or charterer

5E. Any cost or expenditure incurred in the prevention of the fishing master, master, owner or charterer of a foreign fishing vessel from leaving Kiribati under sections 6, 7 and 8 or in the case of the owner or charterer not residing or physically present in Kiribati an employee; agent or representative of such owner or charterer, shall be borne by such fishing master, master, owner or charterer or an employee, agent or representative of such owner or charterer as the case may be.”

THE FISHERIES (AMENDMENT) ACT 1997

EXPLANATORY MEMORANDUM

This Act seeks to amend the provisions of the Fisheries Ordinance (Cap. 33), and to cure the defects that exist in section 5A as amended by the Fisheries (Amendment) Act 1995 (No. 11 of 1995).

The first amendment is to define the fishing master to catch him under the provisions of the Ordinance. This is achieved under the amendment to section 2 of the principal Ordinance. Experience shows that fishing masters are people of great influence on any fishing vessel. They control, direct or determine the fishing operations of a fishing vessel. As such, they are capable of being convicted under the provisions of Cap. 33 in the absence of a Master.

The second amendment relate to section 5, subsection (7) creating two sets of convictions, one for either the fishing master or master, and the other is for either the owner or charterer and setting limits for conviction under subsection (1) each attracting heavier fines. The present maximum of \$250,000 is now increased to \$500,000 which under this amendment is applicable to the owner or charterer. The fine for a fishing master and master is created at a much lower rate. The amendment to subsection (8) reflect the pattern set in subsection 7.

The new sections 5A, 5B, 5C, SD and 5E separates into various parts the former section 5A, as amended by the amending Act (No 11 of 1995). In particular section SB and 5C are further amended to cure the defects existing under the current sections 5A(2) and (3) where the offence is not created. The present amendment at section 5B to deeming the fishing master or master to be the owner or charterer, as the case may be and can be charged, prosecuted, convicted, fined and prevented from leaving Kiribati as appropriate under the principal Ordinance. Likewise the present amendment at section 5C deems an employee, agent, or representative of such owner or charterer to be an owner or charterer as the case may be and can be charged, prosecuted, convicted, fined and prevented from leaving Kiribati as appropriate under the principal Ordinance.

The purpose of subsection (5A) of section 5 is to impose on all foreign fishing vessels entering our fishery limits a requirement to maintain a log book recording every activity the vessel is engaged in. Recent experience shows that some foreign fishing vessels are entering our fishery limits for the purpose of innocent passage recognised under international law. In doing so, they are seen having their fishing gears not stowed away properly and raising suspicion of illegal fishing. On boarding these vessels, our authorized officers discovered that they do not have on board log books indicating what activities were they engaged in while inside our fishery limits. One of the means to find out whether they fish in our waters or not is to impose on them a requirement that while in our fishery limits they must maintain a log book stating what activities they engage in.

Michael N. Takabwe
Attorney General
6 May 1997