

REPUBLIC OF KIRIBATI

(No 4 of 2008)

I assent,

Ando Teng

Beretitenti

29 May, 2008

AN ACT TO AMEND THE *FISHERIES ORDINANCE* TO: EXTEND THE FISHERY LIMITS TO INCORPORATE ALL KIRIBATI WATERS; INCREASE PENALTIES FOR CERTAIN OFFENCES; PROVIDE FOR ADMINISTRATIVE PENALTIES; CLARIFY THE FORFEITURE PROVISIONS; UPDATE CERTAIN PROVISIONS; AND FOR CONNECTED PURPOSES

Commencement:

2008

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

1. Short title

This Act may be cited as the *Fisheries (Amendment) Act 2008*.

2. Meaning of 'principal Act'

In this Act 'the principal Act' means the *Fisheries Ordinance* (Cap.33).

3. Amendment of section 2

Section 2 of the principal Act is amended—

- (a) in the definition of 'authorised officer', by repealing "Kiribati Shipping Corporation" and substituting "Kiribati Shipping Services Limited";
- (b) by repealing the definition of 'fishery limits' (as substituted by section 3 of the *Fisheries (Amendment) Act 1983*) and substituting the following definition—

“fishery limits’ means all of the area comprising the internal waters, archipelagic waters, territorial seas and exclusive economic zone of Kiribati (as those expressions are defined under Part II of the *Marine Zones (Declaration) Act 1983*), or such part of that area as may be declared by the Minister for the purpose by notice published in the *Gazette*,”; and
- (c) by repealing the definitions of 'low-tide elevation', 'nautical mile' and 'territorial sea'.

4. Amendment of section 4

Section 4 of the principal Act is amended—

- (a) in subsection (1), by—
 - (i) repealing “section 15(1) of the Shipping Ordinance” and substituting “section 11(1) of the *Shipping Act 1990*”; and
 - (ii) repealing “section 13 of that Ordinance” and substituting “section 10 of that Act”; and
- (b) in subsection (4) (as amended by section 3 of the *Fisheries (Amendment) Act 1984*), by—
 - (i) repealing “or in the lagoon or inland waters of Kiribati”; and
 - (ii) repealing “a fine of \$1000” and substituting “a fine of \$50,000”.

5. Amendment of section 6(2)

Section 6(2) of the principal Act is amended by repealing “a fine of \$200 and to imprisonment for 6 months” and substituting “a fine of \$50,000 and to imprisonment for three years”.

6. Amendment of section 9(1)(b)(ii)

Section 9(1)(b)(ii) of the principal Act is amended by repealing “section 5(1)” and substituting “section 5”.

7. Amendment of section 13

Section 13 of the principal Act (as amended by section 6 of the *Fisheries (Amendment) Act 1984*) is further amended by repealing “a fine of \$1000” and substituting “a fine of \$50,000”.

8. Amendment of section 14

Section 14 of the principal Act is amended—

- (a) in subsection (1), by repealing “a fine of \$200 and to imprisonment for 6 months” and substituting “a fine of \$10,000 and to imprisonment for two years”;
- (b) in paragraph (a) of subsection (2), by repealing “a fine of \$200 and to imprisonment for 6 months” and substituting “a fine of \$10,000 and to imprisonment for two years”; and
- (c) in paragraph (b) of subsection (2), by repealing “a fine of \$50 and to imprisonment for 2 months” and substituting “a fine of \$500 and to imprisonment for one year”.

9. Repeal and replacement of section 15

Section 15 of the principal Act is repealed and the following section is substituted—

"15. Forfeiture

- (1) Where any person is convicted of an offence against this Ordinance the court may, in addition to any other penalty imposed in respect of that offence, order that—
 - (a) any fish caught or fish product produced in the commission of the offence; and
 - (b) any fishing gear, instruments or appliances used in the commission of the offence; and
 - (c) in the case of any offence under section 5(1), section 13 or section 14(1) – any vessel, together with its equipment, stores, cargo and fuel, used in the commission of the offence, or in respect of which the offence was committed,shall be forfeited to the Republic.
- (2) Where any fish, fish product or other article of a perishable nature has been sold under section 18(1), the proceeds of such sale are liable to forfeiture under subsection (1) in the same manner as the item sold.
- (3) Where any vessel, fishing gear, instrument or appliance has been released by order of the court upon receipt of a bond or other security under section 18(3), the bond or security is liable to forfeiture under subsection (1) in lieu of the vessel, fishing gear, instrument or appliance to which it relates.
- (4) Where any property or sum of money has been forfeited under this section, such property or money shall be disposed of in such manner as the Minister responsible for finance may direct.
- (5) Where a person is convicted of an offence relating to any item seized under this Act and the court imposes a fine or other monetary penalty (such as under section 5D or section 5E) but does not order forfeiture of the item—
 - (a) the item may be detained until the fine or penalty is paid;
 - (b) it may be sold under execution in satisfaction of the fine or penalty; or
 - (c) any proceeds realised from its disposition may be applied in payment of the fine or penalty.

10. New section 18A

After section 18 the following section is inserted in Part IV—

"18A. Administrative penalty

- (1) Where the Minister has grounds to believe that a foreign fishing vessel has been used in contravention of the provisions of section 5, the Minister may, with the consent of the Attorney-General and as an alternative to criminal proceedings, accept payment of an agreed sum (in this section referred to as an 'administrative penalty') from the fishing master, master, owner or charterer of the vessel.
- (2) Where the Minister has accepted payment of an administrative penalty under subsection (1), the fishing master, master, owner or charterer of the vessel are not liable to prosecution for an offence in relation to the contravention in respect of which the administrative penalty has been paid.
- (3) For the avoidance of doubt, an administrative penalty paid under subsection (1) shall be paid into the Consolidated Fund.

11. Substitution of 'Director of Fisheries' for 'Chief Fisheries Officer'

The principal Act is amended by repealing 'Chief Fisheries Officer' wherever it appears and substituting 'Director of Fisheries'.

FISHERIES (AMENDMENT) ACT 2008
EXPLANATORY MEMORANDUM

This Act has as its primary goal the clarification of the expression 'fishery limits' in the *Fisheries Ordinance* (Cap.33). At present the fishery limits are confined to the exclusive economic zone. That means that neither the territorial seas (the '12-mile zone') nor internal waters (the lagoons) are part of the fishery limits. This poses a significant impediment to our efforts to prevent illegal, unregulated and unreported fishing in Kiribati waters. Section 3(b) of the Act replaces the 'fishery limits' definition.


The Act also deals with the following additional matters:

- section 3(a) updates a reference to the Kiribati Shipping Corporation in the definition of 'authorised officer';
- section 3(c) repeals various definitions of expressions that are no longer used;
- section 4(a) corrects a reference to the now-repealed Shipping Ordinance in section 4(1) of the Ordinance;
- section 4(b) makes a change to section 4(4), to reflect the expanded definition of 'fishery limits', and increases the penalty for local fishing vessels caught fishing without a licence;
- section 5 increases the penalty for operating a fish processing establishment without a licence;
- section 6 corrects a mistaken cross-reference;
- section 7 increases the penalty for throwing overboard or destroying incriminating evidence;
- section 8 increases the penalties for fishing with explosives, poison and other noxious substances;
- section 9 clarifies the forfeiture provisions;
- section 10 makes provision for administrative penalties - a concept whereby the Minister (with the Attorney-General's consent) can quickly negotiate payment of a penalty for a breach of the Ordinance by a foreign fishing vessel, instead of the lengthy process of taking the matter to Court. It is intended that this procedure will be used to deal with minor contraventions of the Ordinance, such as breaches of licence conditions;
- finally, section 11 updates references to the Chief Fisheries Officer to refer instead to the Director of Fisheries.

Titabu Tabane
Attorney General
13 March 2008


**CERTIFICATE OF THE CLERK OF THE MANEABA NI
MAUNGATABU**

This printed impression of the Fisheries (Amendment) Act 2008 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 1st May 2008 and is found by me to be a true and correctly printed copy of the said Bill.

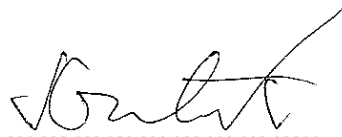

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Ioataake Timeon
Clerk of the Maneaba ni Maungatabu

**CERTIFICATE OF THE SPEAKER OF THE MANEABA NI
MAUNGATABU**

I certify that the above Act was on the 1st May 2008 passed by the Maneaba ni Maungatabu on a Certificate of Urgency under section 68(3)(a) of the Constitution.


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Hon. Taomati Iuta
Speaker

Published by exhibition at the Maneaba ni Maungatabu this day
of *May* 2008. *29th*


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/s/ Clerk of the Maneaba ni Maungatabu