

REPUBLIC OF KIRIBATI
(No. 6 of 2010)

I assent,

Beretitenti
Assented: 3rd September 2010

AN ACT FOR THE CONSERVATION, MANAGEMENT AND DEVELOPMENT OF KIRIBATI
FISHERIES AND CONTROL OF FOREIGN FISHING AND FOR
CONNECTED PURPOSES

Commencement:
2010

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

Part 1 Preliminary

1 Short title and commencement

(1) This Act is the Fisheries Act 2010.

(2) This Act commences on a date appointed by notice by the Minister.

2 Purpose of the Act

The purpose of this Act is:

(a) to promote the sustainable management of the fisheries of Kiribati and the development and use of fisheries resources for the benefit of Kiribati, including the recovery of fees that reflect the value of the resource; and

(b) to protect fish stocks and the marine environment of Kiribati.

3 Definitions

In this Act:

“authorised officer” means a fisheries officer, licensing officer, police officer or officer as defined in the Customs Act, the master of a Government vessel or vessel owned by a state owned enterprise and any person appointed by the Minister as an authorised officer for this Act.

'designated fishery' means a fishery designated under section 5.

"driftnet" means a gillnet or other net or a combination of nets that is more than 2.5 kilometres in length, the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water.

"driftnet fishing activities" means:

- (a) catching, taking or harvesting fish with the use of a driftnet; or
- (b) attempting to catch, take or harvest fish with the use of a driftnet; or
- (c) engaging in an activity that can reasonably be expected to result in the catching, taking or harvesting of fish with the use of a driftnet, including searching for and locating fish to be taken by that method; or
- (d) operations at sea in support of driftnet fishing, or in preparation for an activity described in this definition, including operations of placing, searching for or recovering fish aggregating devices or associated electronics such as radio beacons; or
- (e) aircraft use relating to driftnet fishing activities, except for flights in emergency situations involving the health or safety of crew members or the safety of a vessel; or
- (f) transporting, transshipping, landing or processing any driftnet catch, and cooperation in the provision of food, fuel and other supplies to vessels equipped for or engaged in driftnet fishing.

"explosive" means powder, gelignite, plastic or other substance used or manufactured with a view to producing a practical effect by explosion.

"fish" means an aquatic animal, whether piscine or not, including a mollusc, crustacean, coral, sponge, seaweed, holothurium (beche-de-mer), sea urchin or turtle, and its young and eggs.

"fishery" means a stock of fish or fishery operations that can be treated as a unit for purposes of sustainable development and management, taking into account cultural, geographical, scientific, technical, recreational, economic and other relevant characteristics.

"fishing" means the actual or attempted fishing, catching, taking, killing or harvesting of fish, including any other activity that may reasonably be expected to result in the fishing or attempted fishing or catching, taking, killing or harvesting of fish, or any operations in support of or in preparation for any of these activities.

"fish marketing establishment" means land, vessel or other place in which fish or fish products are marketed.

"fish processing establishment" means land, vessel or other place in which fish are processed for sale in or outside Kiribati.

"fish product" means a product of fish processing.

"fishing master" means a person who is or appears to be controlling, directing or determining fishing operations and activities of a fishing vessel.

"fishing vessel" means a vessel used or adapted for use for fishing commercially, including a vessel or craft used in support of commercial fishing and a helicopter or light aircraft used in fishing operations, but does not include:

- (a) a sailing boat or paddling canoe of native design; or
- (b) a boat, punt or barge having an overall length of less than 7 metres, whether powered by an engine or not.

"foreign fishing vessel" means a fishing vessel that is not a local fishing vessel.

"international authorisation" means an authorisation issued under section 15.

"Kiribati waters" means all of the area comprising the internal waters, archipelagic waters, territorial seas and exclusive economic zone of Kiribati (as those expressions defined in Part II of the Marine Zones (Declaration) Act 1983) and any other waters over which Kiribati claims jurisdiction under international law and are declared by the Minister by notice in the Gazette.

"licensing officer" means a licensing officer appointed under section 4(2) or the Director of Fisheries.

"local fishing vessel" means a fishing vessel wholly owned and controlled by:

- (a) the Government of Kiribati; or
- (b) a company, society or other association of persons incorporated or established under the laws of Kiribati, at least 60% of which is beneficially owned by citizens or the Government of Kiribati; or
- (c) citizens of Kiribati; or
- (d) a joint venture, consortium or partnership arrangement or agreement in which at least 49% of the beneficial ownership and control of the joint venture, consortium or partnership is vested in or held by citizens or the Government of Kiribati.

"low-tide elevation" means a naturally formed area of land that is surrounded by and above water at mean low-water spring tides but is submerged at mean high-water spring tides.

"nautical mile" means the international nautical mile of 1 852 metres.

"observer" means a person designated under section 22.

"operate" :

- (a) for a vessel means to be the master, owner or charterer of the vessel; and
- (b) for a fish processing establishment means to own or to be in charge of the fish processing establishment; and
- (c) if the fish processing establishment is a vessel means to be the master, owner or charterer of the vessel.

"operator" means any person who is in charge of, or who directs or controls, a vessel, including the master, owner and any charterer of the vessel.

"processing", for fish, includes preserving or preparing fish or producing any substance or article from fish by any method.

"scheduled treaty" means any international treaty or convention (including any regional agreement, code of practice or agreement made by a multilateral organisation of which Kiribati is a member), or part of an international treaty or convention, listed in the Schedule.

"territorial sea" has the meaning given by the Marine Zones (Declaration) Act 1983.

Part 2 Fisheries management

4 Management of fisheries

(1) 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.

(2) 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.

5 Designated fisheries

(1) The Minister may, on the recommendation of the Director of Fisheries, by notice published in the Gazette, determine that a fishery is a designated fishery if, having regard to cultural, scientific, economic, environmental and other relevant considerations, the Minister considers that the fishery:

- (a) is important to the national interest; and
- (b) requires management and development measures for its effective conservation and optimum utilisation.

(2) To assess and recommend appropriate management, development and conservation measures for a fishery, the Director of Fisheries may require any person engaged in fishing or any other related activity regulated by this Act to provide relevant data and information, including fishing time and effort, landing, processing, sales and other related transactions.

(3) The Director of Fisheries must prepare, and review as necessary, a plan for the management and development of each designated fishery.

(4) The regulations may provide for the determination of designated fisheries and the management, development and conservation of those fisheries and the enforcement of any matter identified in a plan relating to a designated fishery.

6 Fishery management plans

(1) This section applies to:

- (a) plans prepared under section 5 (3); and
- (b) plans prepared by the Director of Fisheries relating to the management and development of other fisheries.

(2) A plan must:

- (a) identify the fishery and its characteristics, including the present state of its exploitation; and
- (b) specify the objectives to be achieved in the management of the fishery; and
- (c) specify the management and development strategies to be adopted for the fishery; and

- (d) provide for a scheme of licensing, if necessary, or other appropriate management measure; and
- (e) specify, if applicable, the licensing regime to be applied, including the limitations, if any, to be applied to local fishing operations and the amount of fishing, if any, to be allocated to foreign fishing vessels; and
- (f) specify the information and other data required to be provided by persons licensed to fish for that fishery; and
- (g) take into account any relevant traditional fishing methods and practices.

(3) When preparing a fishery management plan, the Director must consult with:

- (a) appropriate government ministries and departments; and
- (b) fishermen, local authorities and other persons likely to be affected by the plan.

(4) The Director of Fisheries may consult if practicable with the appropriate fisheries management authorities of other States in the region, and in particular with those sharing the same or interrelated stocks, with a view to achieving harmonisation of their respective fishery management and development plans.

(5) A fishery management plan is to be submitted to the Minister and comes into operation on approval by the Minister in writing.

(6) The regulations may provide for the enforcement of fishery management plans.

(7) Without limiting subsection (6), the regulations may provide for the following:

- (a) further definitions of the fishing practices and any other matter intended to be regulated by the fishery management plan;
- (b) additional fees to be paid for the right to fish for a fishery;
- (c) restrictions on the right to fish for a fishery as to the type of fishing activity and the areas in which the fishing activities may or may not take place;
- (d) requirements that certain conditions be complied with, such as the use of location devices and the provision of information and data.

Part 3 Fishing vessels generally

7 International obligations

(1) The operator of a fishing vessel registered in Kiribati must comply with the requirements, relating to the activities and practices of fishing vessels, of each scheduled treaty, whether operating inside or outside Kiribati waters.

(2) The regulations may:

- (a) prescribe other international treaties or conventions to be scheduled treaties; and
- (b) identify parts of an international treaty or convention, or specific obligations and requirements mentioned in a scheduled treaty, with which the operator must comply.

(3) If a part of a treaty or convention is not identified under paragraph (2) (b), the operator must comply with all of the requirements of the scheduled treaty that apply to the vessel's fishing and related activities.

8 Unlicensed foreign fishing vessels

(1) This section applies to a foreign fishing vessel for which there is no current licence under section 12.

(2) The vessel:

- (a) may enter in Kiribati waters only for a purpose recognised by the United Nations Convention on the Law of the Sea; and
- (b) must not fish or attempt to fish in Kiribati waters; and
- (c) must not load, unload or tranship any fish in Kiribati waters; and
- (d) must not load or unload any fuel or supplies in Kiribati waters.

(3) The master of the vessel must:

- (a) maintain in the English language on board the vessel a ship's log book in which the master must enter daily a record of the date, time and nature of every activity of the vessel while inside Kiribati waters; and
- (b) return the vessel outside Kiribati waters as soon as the purpose has been fulfilled.

(4) While the vessel is in Kiribati waters, its fishing gear must be stowed in a way that ensures it is not readily accessible for fishing.

(5) 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 of not less than \$50 000 but not more than \$1 000 000 and in default to imprisonment for 10 years; or
 - (ii) for a contravention of subsection (3) or (4) to a fine of \$250 000 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 of not less than \$100 000 but not more than \$1 000 000 and in default to imprisonment for 10 years;
 - (ii) for a contravention of subsection (3) (b) or (4) to a fine of \$500 000 and in default to imprisonment for 5 years.

Part 4 Licences and authorisations generally

9 Conditions of licences and authorisations

A licence or authorisation issued under this Act:

- (a) is subject to:
 - (i) the conditions imposed by this Act; and
 - (ii) any other conditions prescribed by the regulations; and
 - (iii) any general conditions determined by the Director of Fisheries and published in the Gazette; and
 - (iv) any special conditions determined for it by the Director of Fisheries; and
- (b) is not transferable; and
- (c) does not give the licensee an exclusive right to fish, unless the Minister gives prior written approval endorsed on it.

10 Refusal, suspension and cancellation

(1) If a condition of a licence or authorisation is contravened, the Director of Fisheries may:

- (a) cancel the licence or authorisation; or
- (b) suspend it for a period he or she thinks appropriate.

(2) A person may appeal to the Minister against:

- (a) the refusal of a licensing officer to grant a licence; or
- (b) the suspension or cancellation of a licence or authorisation.

(3) A licence or authorisation that has been suspended or cancelled remains suspended or cancelled unless the Minister determines otherwise.

Part 5 Licences

11 Local fishing vessels

(1) A person may apply in the prescribed form to a licensing officer for a licence for a local fishing vessel.

(2) The licensing officer may grant the licence in the prescribed form:

- (a) subject to any direction by the Minister; and
- (b) for a fishing vessel to which section 11(1) of the Shipping Act 1990 applies, only if there is a valid current certificate of seaworthiness for the vessel under section 10 of that Act.

(3) The licence:

- (a) is valid for the period endorsed on it, which is to be no more than 1 year, unless the Minister gives prior written approval endorsed on the licence; and
- (b) is personal to the holder; and
- (c) is subject to:
 - (i) payment of the prescribed fee; and
 - (ii) the conditions mentioned in section 9; and

- (iii) the condition that letters and numbers of identification assigned by the licensing officer must be marked on the fishing vessel in the manner specified by the licensing officer or as prescribed; and
- (iv) any further conditions endorsed on it by the licensing officer.

(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 of \$500 000 and to imprisonment for 5 years.

12 Foreign fishing vessels

(1) A person may apply to the Director of Fisheries in the prescribed form for a licence for a foreign fishing vessel.

(2) The Director of Fisheries may, with the approval of the Minister, grant a licence in the prescribed form, authorising the vessel to do any of the following:

- (a) fish in Kiribati waters; or
- (b) load, unload or tranship fish in Kiribati waters; or
- (c) load or unload fuel or supplies in Kiribati waters.

(3) The licence is subject to:

- (a) payment of fees and royalties determined by the Director of Fisheries with the approval of the Minister; and
- (b) the conditions mentioned in section 9.

(4) A licence cannot authorise fishing in any areas declared as a protected area under the Environment Act.

(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 of \$250 000; or
- (b) the owner and any charterer of the vessel are each liable on conviction to a fine of \$1 000 000.

13 Fish processing establishment

(1) A person may apply to the Director of Fisheries in the prescribed form for a licence for the person to operate a fish processing establishment.

(2) The Director of Fisheries may, with the approval of the Minister, grant a licence in the prescribed form for the person to operate the establishment.

(3) The licence is subject to:

- (a) payment of the prescribed fee; and
- (b) the conditions mentioned in section 9.

(4) A person who operates or causes or allows to be operated a fish processing establishment without a licence under this section, or not in accordance with the conditions of a licence, is liable on conviction to a fine of \$500 000 and to imprisonment for 5 years.

14 Aquaculture

(1) A person may apply to the Director of Fisheries in the prescribed form for a licence for the person to conduct an aquaculture operation.

(2) The Director of Fisheries may, with the approval of the Minister, grant a licence in the prescribed form for the person to conduct the operation.

(3) The licence is subject to:

- (a) payment of the prescribed fee; and
- (b) the conditions mentioned in section 9.

(4) A person who conducts or causes or allows to be conducted an aquaculture operation without a licence under this section, or not in accordance with the conditions of a licence, is liable on conviction to a fine of \$500 000 and to imprisonment for 3 years.

Part 6 Authorisations and agreements

15 International authorisations

(1) The operator of a vessel registered in Kiribati may apply to the Director of Fisheries in the prescribed form for an international authorisation.

2) The Director of Fisheries may, with the approval of the Minister, grant an authorisation in the prescribed form, authorising the vessel to fish outside Kiribati waters in accordance with a scheduled treaty which grants Kiribati extra territorial jurisdiction or in accordance with international law.

(3) The authorisation:

- (a) is valid for the period endorsed on it, which is to be no more than 1 year, unless the Minister gives prior written approval endorsed on the licence; and
- (b) is subject to the conditions mentioned in section 9.

(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 \$500 000 and to imprisonment for 5 years.

16 Fishing for scientific purposes

(1) A person may apply to the Director of Fisheries in the prescribed form for an authorisation to operate a fishing vessel in Kiribati waters for the purpose of scientific investigations.

(2) The Director of Fisheries may, with the approval of the Minister, grant an authorisation in the prescribed form, authorising operation of the vessel for the purpose of scientific investigation.

(3) The authorisation is subject to:

- (a) payment of fees determined by the Director of Fisheries with the approval of the Minister; and
- (b) the conditions mentioned in section 9.

(4) The authorisation may exempt the vessel from any requirements of this Act.

(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 \$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 \$1 000 000 and to imprisonment for 10 years.

17 Minister may enter agreements

(1) The Minister may, on behalf of the Republic, enter into an agreement with a person, a government or agency of a government or an international agency:

- (a) for the purpose of enabling the Government to perform any of its functions under this Act; or
- (b) for the purpose of facilitating the performance of those functions; or

- (c) generally to advance the purposes of this Act.
- (2) To give effect to an agreement, the Minister may authorise:
- (a) a person, government, agency of a government or an international agency to issue licences under section 12 subject to any conditions determined by the Minister; and
 - (b) any other matter that may be required to be done under the agreement.

Part 7 Prohibited activities

18 Protection of customary rights

(1) A person who is not a member of a kainga, utu or other division of the people may take fish in a sea or lagoon area or on a reef forming part of the ancient customary fishing ground of the kainga, utu or other division only if the person has a licence under this section.

(2) The person may apply to the Director of Fisheries in the prescribed form for a licence to take fish.

(3) The Director of Fisheries may, with the approval of the Minister, grant a licence in the prescribed form, authorising the person to take fish.

(4) The licence:

- (a) is valid for the period endorsed on it, which is to be no more than 1 year, unless the Minister gives prior written approval endorsed on the licence; and
- (b) is personal to the holder; and
- (c) is subject to the conditions mentioned in section 9.

(5) A person who contravenes subsection (1) or a condition of a licence under this section is liable on conviction to a fine of \$2 000 and to imprisonment for 6 months.

(6) A person who relies on subsection (1) to take fish without a licence:

- (a) must comply with the bylaws of a local government council relating to fishing in the area where the person takes the fish; and
- (b) is subject to any penalties imposed by the council for not complying with the bylaws.

19 Driftnet fishing

(1) A vessel in Kiribati waters must not:

- (a) be used for driftnet fishing activities; or
- (b) be used to assist driftnet fishing activities; or
- (c) have on board a driftnet.

(2) A person must not engage in or assist in driftnet fishing in Kiribati waters.

(3) A vessel registered in Kiribati must not:

- (a) be used for, or assist in driftnet fishing activities in the area covered by the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific (the "Wellington Convention"); or
- (b) possess or have on board a driftnet while in the area covered by the Wellington Convention.

(4) A Kiribati citizen or resident must not engage in or assist in any driftnet fishing activities in the area covered by the Wellington Convention.

(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 \$1 000 000.

(6) A person who contravenes subsection (2) or subsection (4) is guilty of an offence punishable on conviction to a fine not exceeding \$100 000.

20 Driftnet vessels not to enter Kiribati ports

(1) The following vessels must not enter any Kiribati port:

- (a) a vessel engaged in driftnet fishing activities; or
- (b) a vessel equipped to engage in driftnet fishing activities; or
- (c) a vessel that possesses or has on board a driftnet.

(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 \$100 000.

21 Other destructive fishing methods

(1) A person must not:

- (a) permit to be used, use or attempt to use any explosive, or any poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish or in any way rendering fish more easily caught; or
- (b) carry or have in his or her possession or control any explosive, poison or other noxious substance in circumstances indicating an intention to use the substance for a purpose mentioned in paragraph (a); or (c) take, or attempt to take, fish by a prescribed method.

(2) For subsection (1) (c), the regulations may prescribe methods that cause unnecessary damage to the marine environment or to stocks of fish.

(3) A person who contravenes subsection (1) is liable on conviction to a fine of \$100 000 and to imprisonment for 2 years.

(4) A person must not receive or possess fish taken by means that contravene subsection (1) if the person knows or ought reasonably to know that the fish have been taken by those means.

(5) A person who contravenes subsection (4) is liable on conviction:

- (a) if the circumstances of the receipt or possession raise a reasonable presumption that there is an intention that the fish be sold in the course of business to a fine of \$100 000 and to imprisonment for 2 years; or
- (b) if no such presumption arises to a fine of \$10 000 and to imprisonment for 1 year.

Part 8 Authorised officers and observers

22 Observers

(1) The Director of Fisheries may designate in writing persons to act as observers on any vessel that is subject to a licence or authorisation under this Act.

(2) An observer may be designated in accordance with an agreement under section 17.

(3) An observer appointed under subsection (2) who is not a citizen of Kiribati, while in Kiribati waters, is subject to this Act for carrying out his or her duties and enforcing his or her rights.

(4) Any person on board a vessel that is licensed or authorised under this Act must allow an observer to board and remain on the vessel for the purpose of carrying out his or her duties.

(5) The operator and each member of the crew of a vessel must allow and assist any observer:

- (a) to board the vessel for scientific, compliance monitoring and other functions at any time and place the Director requires; and
- (b) to have full access to and the use of facilities and equipment on board the vessel that the observer may determine is necessary to carry out his or her duties, including:
 - (i) access to the bridge, navigation charts, fish onboard and to areas that may be used to hold, process, weigh and store fish; and
 - (ii) access to the vessel's records, including its logbooks and documentation, for the purpose of records inspection and copying; and
 - (iii) access to fishing gear on board; and
 - (iv) reasonable access to navigation equipment and radios; and
- (c) take and remove from the vessel samples and relevant information; and
- (d) take photographs of the fishing operations, including of charts, records, fish, fishing gear and equipment and remove from the vessel the photographs or film; and
- (e) carry out all duties safely; and
- (f) disembark at the time and place determined by the Director, or in accordance with an access agreement.

(6) The operator must provide the observer with food, accommodation and medical facilities accorded to an officer of the vessel for the time that the observer is on board and at no cost.

(7) The operator must also pay in full the following costs of the observer:

- a) full travel costs to and from the vessel, in accordance with the Kiribati National Conditions of Service;
- (b) insurance cover as required by the Director of Fisheries;

(c) any fee determined by the Director of Fisheries.

(8) An operator of a foreign fishing vessel or of a vessel for which there is an international authorisation must:

- (a) allow and assist an observer to have full access to any place where fish are unloaded or transhipped; and
- (b) allow the observer to remove samples and to gather information relating to the fishing and related activities of the vessel.

23 Powers of authorised officers

(1) In enforcing this Act, an authorised officer may, without a warrant or other process:

- (a) stop, board and search a vessel in Kiribati waters that he or she reasonably believes is a fishing vessel, and stop and search a vehicle or aircraft; and
- (b) stay on board a vessel; and
- (c) require the master or crew or other person on board to tell him or her the name, call sign and country of registration of the vessel, and the name of the master, owner, charterer or any member of the crew; and
- (d) examine the master or any crew member or other person on board about the cargo, contents of the holds and storage spaces or the voyage and activities of the vessel; and
- (e) make any examinations or inquiry he or she thinks necessary about the vessel, vehicle, aircraft or fish processing establishment and take samples of any fish or fish product found on or in the vessel, vehicle, aircraft or fish processing establishment; and
- (f) require to be produced, examine and take copies of any licence, logbook, record or other document required under this Act to be kept, or that is otherwise kept to record the operations of a vessel or aircraft; and
- (g) make an entry dated and signed by him or her in the logbook of a vessel or aircraft; and
- (h) require to be produced and examine any fish, fishing gear or explosive, poison or other noxious substance; and
- (i) give directions to the master and any crew member of any vessel, vehicle or aircraft stopped, boarded or searched as may be necessary

for any purpose specified in this Act, or to provide for the compliance of the vessel, vehicle or aircraft, or the master or any crew member with the conditions of any licence or authorisation; and

- (j) endorse any licence or authorisation; and
- (k) at all reasonable hours enter a fish processing establishment and any premises other than premises used exclusively as a dwelling house.

(2) If an authorised officer has reasonable grounds to believe an offence against this Act is being or has been committed, he or she may without a warrant do any of the following:

- (a) enter, inspect and search any premises, other than premises used exclusively as a dwelling-house, in which he or she has reasonable grounds to believe that an offence has been or is being committed, or fish taken illegally have been stored;
- (b) stop, enter and search and stay in or on any vehicle or aircraft which he or she reasonably suspects of transporting fish or fish products;
- (c) follow in hot pursuit in accordance with international law and commenced in Kiribati waters, stop, board and search outside Kiribati waters any foreign vessel which he or she has reasonable grounds to believe has been used in the commission of an offence, and bring such vessel and all persons on board into Kiribati waters;
- (d) seize:
 - (i) any vessel (together with its fishing gear, equipment, stores and cargo), vehicle or aircraft which he or she has reasonable grounds to believe has been or is being used in the commission of an offence, or which he or she knows or has reasonable grounds to believe has been seized or forfeited in accordance with this Act; and
 - (ii) any fish or fish products which he or she has reasonable grounds to believe have been caught in the commission of an offence, or are possessed in contravention of this Act; and
 - (iii) any logs, charts or other documents required to be maintained by the Act or under any terms of the licence or authorisation, or which he or she has reasonable grounds to believe show, or tend to show, with or without evidence, the commission of an offence against this Act; and
 - (iv) anything which he or she has reasonable grounds to believe might be used as evidence in any proceedings under this Act;

- (e) arrest any person whom he or she has reasonable grounds to believe has committed an offence under this Act.

(3) An authorised officer may:

- (a) execute any warrant or other process issued by any court of competent jurisdiction; and
- (b) exercise any other lawful authority.

24 Extended powers of authorised officers

(1) If, when following in hot pursuit in accordance with paragraph 23 (2) (c), a fishing vessel is pursued beyond the limits of Kiribati waters, the powers conferred on authorised officers by this Act are exercisable beyond the limits of Kiribati waters in accordance with international law.

(2) An authorised officer may exercise the powers conferred by this Act in relation to a vessel to which section 15 applies if he or she reasonably believes that the vessel has committed a breach of a provision or obligation or requirement of that Part, whether the vessel is in or outside Kiribati waters.

25 Authorised officers to declare office, etc

An authorised officer acting in the exercise of his or her powers under this Act must, on demand, produce any document of identification or other evidence that may be reasonably sufficient to show that he or she is an authorised officer.

26 Protection of authorised officers and observers

An authorised officer is not personally liable for any act done or omitted to be done by the authorised officer in good faith in the execution or purported execution of powers and duties under this Act.

Part 9 Offences

27 Offences relating to authorised officers and observers

(1) The master and each crew member of a foreign fishing vessel, the driver of a vehicle and the pilot and crew of an aircraft must immediately comply with every instruction or direction given by an authorised officer or observer, and must facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft, and the inspection of any fishing gear, equipment, records, fish and fish products.

(2) The master and each crew member of a vessel, the driver of a vehicle and the pilot and crew of an aircraft must take all reasonable measures to ensure the safety of an authorised officer or observer in the performance of his duties.

(3) A person must not:

- (a) assault, obstruct, resist, delay or refuse boarding to, intimidate or otherwise interfere with an authorised officer or observer in the performance of his or her duty; or
- (b) fail to take all reasonable steps to ensure the safety of an authorised officer or observer in the performance of his or her duty; or
- (c) incite or encourage any other person a person to breach paragraph (a) or (b); or
- (d) use threatening language or behave in a threatening manner to an authorised officer or observer; or
- (e) fail to comply with the lawful instructions or requirements of an authorised officer or observer; or
- (f) give to an authorised officer or observer any information that is false or misleading; or
- (g) impersonate or falsely represent himself or herself to be an authorised officer or observer, or to be acting under an authorised officer's orders, or in his or her aid.

(4) A person who contravenes this section is guilty of an offence punishable on conviction to a fine of \$500 000 and imprisonment for 5 years.

(5) A person is guilty of an offence under this section if he or she contravenes the section in relation to a person acting under the orders of an authorized officer or a person acting in aid of an authorised officer.

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 of \$50 000 and to imprisonment for 1 year.

Part 10 Seized property and forfeiture

29 Forfeiture

(1) If a person is convicted of an offence under sections 8, 19, 21 or 28, any vessel, together with its equipment, catch, stores, cargo and fuel, used in the commission of the offence or in relation to which the offence was committed must be forfeited to the Republic.

(2) (a) Subject to subsection (1), if a person is convicted of an offence against this Act the court may forfeit;

- (i) any fish caught or fish product produced in the commission of the offence;
- (ii) any fishing gear, instruments or appliances used in the commission of the offence;

(b) If any fish, fish product or other article of a perishable nature has been sold under subsection (2)(a), the proceeds of the sale are liable to forfeiture in the same manner as the item sold.

(3) If any vessel, fishing gear, instrument or appliance has been released by order of the court on receipt of a bond or other security under section 30(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) If any property or sum of money has been forfeited under this section, it is to be disposed of in a manner the Minister responsible for finance directs.

(5) If 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 but does not order forfeiture of the item:

- (a) the item may be detained until the fine or penalty is paid; or
- (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.

30 Disposal of seized goods

(1) Any fish, fish product or other article of a perishable nature seized or taken under this Act may on the direction of the Director of Fisheries be sold and the net proceeds of the sale held pending the outcome of any prosecution brought under

this Act, and if no prosecution is brought the proceeds are to be paid to the owner of the fish, fish product or other article sold.

(2) Any vessel, fishing gear, instrument or appliance seized under section 23 that is not ordered to be forfeited under section 29 is to be returned to its owner.

(3) If any vessel, fishing gear, instrument or appliance, fish or fish product has been seized under section 23, the court may order its release on receipt of a satisfactory bond or other security from any person claiming the property, subject to the condition that the person:

- (a) deliver the property to the court on the order of the court, without any impairment of its value, and paying in full any fine imposed by the court under this Act; or
- (b) pay the monetary value of the property in accordance with an order or judgment of the court together with any fine imposed.

Part 11 Jurisdiction and evidence

31 Jurisdiction

An offence against this Act committed in Kiribati waters may be dealt with, and judicial proceedings taken, as if the offence had been committed in any place in Kiribati.

32 Certificate evidence

(1) The Director of Fisheries, or a person designated in writing by the Director of Fisheries, may give a certificate stating any of the following:

- (a) a specified vessel was or was not on a specified date or dates a local vessel or locally based foreign fishing vessel;
- (b) a specified vessel or person was or was not on a specified date or dates the holder of any licence, authorisation or certificate of registration;
- (c) an appended document is a true copy of a licence, authorisation or certificate of registration for a specified vessel or person, and that specified conditions were attached to the document;
- (d) a particular location or area of water was on a specified date or dates in or outside Kiribati waters, or within a closed, limited, restricted or in any other way controlled area of Kiribati waters, or an area of Kiribati waters subject to specified conditions;

- (e) an appended chart showing the boundaries on a specified date or dates of Kiribati waters, territorial sea, closed or limited areas or other zones delineated for any purpose;
- (f) a particular item or piece of equipment is fishing gear;
- (g) the manner of death of or the cause of injury to any fish;
- (h) an appended document is a true copy of an access or related agreement;
- (i) a call sign, name or number is that of or allotted to a particular vessel under any system of naming or numbering of vessels;
- (j) a particular position or catch report, a copy of which is appended, was given in relation to a specified vessel.

(2) Unless the contrary is proved, a document purporting to be a certificate under subsection (1) is taken to be such a certificate and to have been duly given.

(3) If the certificate is served on a defendant at least 7 days before its production in court in proceedings under this Act, the certificate, unless the contrary is proved, is sufficient evidence of all the facts stated in it.

(4) If the certificate is served on a defendant at least 14 days before its production in court and the defendant does not, within 7 days before its production in court, serve notice of objection in writing on the prosecutor, the certificate, unless the Court finds that the defendant is unduly prejudiced by any failure to object, is conclusive proof of all the facts stated in it.

(5) If an objection is notified under subsection (4), the certificate, unless the contrary is proved, is sufficient evidence of all the facts stated in it.

(6) The certificate is to be titled 'Certificate made under section 32, Fisheries Act and it must not be used as conclusive proof unless it is served together with a copy of this section.

(7) An omission or mistake in the certificate does not render it invalid unless the Court considers the omission or mistake is material to an issue in the proceedings to which it relates, or the defendant is unduly prejudiced by it.

(8) If in any proceedings the certificate is produced to the Court, the prosecution is not obliged to call the maker of the certificate and the Court, if material, is to rely on the facts stated in the certificate unless the contrary is proved.

33 Certificate as to location of vessel

(1) If, in any proceedings under this Act, the place or area where a fishing vessel is alleged to have been at a particular date and time, or during a particular period of time, is material to an offence charged, the place or area stated in a certificate given by an authorised officer or observer is evidence, unless the contrary is proved, of the place or area in which the vessel was at the stated date and time, or during the stated period of time.

(2) In the certificate, the authorised officer or observer must state:

- (a) his or her name, address, official position, country of appointment and provision under which he or she is appointed ; and
- (b) the name and, if known, call sign of the vessel; and
- (c) the date and time, or period of time, that the vessel was in the place or area; and
- (d) the place or area where it is alleged the vessel was located; and
- (e) the position fixing instruments used to fix the place or area stated in the certificate and their accuracy within specified limits; and
- (f) that he or she checked the position fixing instruments a reasonable time before and after they were used to fix the position, and that they appeared to be working correctly; and
- (g) if a position fixing instrument that is not judicially recognised as accurate or a designated machine is used, that he or she checked the instrument as soon as possible after the time concerned, against such an instrument.

(3) Section 32 applies to a certificate given under this section as if it had been a certificate given under section 32.

(4) For this section:

"authorised officer" includes a surveillance officer or a person charged in another country with responsibilities similar to those of an authorised officer or surveillance officer.

34 Designated machines

(1) The Director of Fisheries may by notice in the Gazette designate a machine or class of machine for this section.

(2) The readings of a designated machine are admissible as evidence of the facts it states, if:

- (a) the readings were made by a competent operator; and
- (b) the machine was checked for correct operation a reasonable time before and after the readings that are sought to be adduced as evidence were made, and if the machine appeared to be functioning properly.

(3) A designated machine, when checked for correct working and read by a competent operator, unless the contrary is proved, is presumed to give accurate readings within the manufacturer's specified limits.

(4) A reading of designated machines may be made from a printout or as observed from a visual display unit.

(5) A designated machine must be capable, either wholly or partially, in itself of producing the readings relied on and must not be merely the receiver of information or data.

35 Photographic evidence

(1) If a photograph is taken of a fishing or related activity, and simultaneously the date, time or position from which the photograph was taken are superimposed on the photograph, or are otherwise automatically recorded, then it is presumed, unless the contrary is proven, that the photograph was taken on that date, at that time and from that position.

(2) The presumption applied by subsection (1) may arise only if:

- (a) the camera used is connected directly to the instruments providing the date, time and position; and
- (b) the instruments providing the date, time and position are designated machines or are machines capable of recording that information and were checked for their proper operation as soon as possible after the photograph was taken.

(3) An authorised officer or observer who takes a photograph mentioned in subsection (1) may give a certificate appending the photograph and stating:

- (a) his or her name, address, official position, country of appointment and the provision of the law under which he or she is appointed; and
- (b) the name and call sign, if known, of any vessel appearing in the photograph; and

- (c) the make and description of the camera and recording instruments, and a declaration as to the inspection of the equipment a reasonable time before and after taking the photograph, and as to their correct operation; and
- (d) the accuracy of the recording instruments used within specified limits; and
- (e) the estimated distance and direction of the subject of the photograph from the camera at the time the photograph was taken.

(4) Section 32 applies to a certificate given under this section as if it had been a certificate given under section 32.

(5) For this section:

"authorised officer" includes a surveillance officer or a person charged in another country with responsibilities similar to those of an authorised officer or surveillance officer.

36 Observer devices

(1) The Director of Fisheries may by notice in the Gazette designate a device or machine, or class of device or machine, as an observer device for this section.

(2) For this section:

"observer device" means a device or machine that:

- (a) is placed on a fishing vessel in accordance with this Act as a condition of a licence or agreement; and
- (b) transmits (whether in conjunction with other machines or not) information or data about the position and fishing activities of the vessel.

(3) The information or data may be fed or input manually into the observer device, or automatically from machines on board the vessel, or ascertained by the use of the observer device transmissions in conjunction with other machines.

(4) A machine:

- (a) on board a vessel automatically feeding or inputting position fixing information or data into an observer device is to be judicially recognized as accurate or as a designated machine; and

- (b) used in conjunction with an observer device for the purpose of ascertaining or obtaining information or data, need not be judicially recognised as accurate or as a designated machine.

(5) All information or data obtained or ascertained by the use of an observer device is presumed, unless the contrary is proved:

- (a) to come from the vessel so identified; and
- (b) to be accurately relayed or transferred; and
- (c) to be given by the master, owner and charterer of the vessel.

(6) Evidence may be given of the information and data obtained or ascertained from a printout or visual display unit.

(7) The presumption in subsection (5) applies whether or not the information was stored before or after any transmission or transfer.

(8) A person may give a certificate stating:

- (a) his or her name, address and official position; and
- (b) that he or she is competent to read the printout or visual display unit of a machine capable of obtaining or ascertaining information from an observer device; and
- (c) the date and time the information was obtained or ascertained from the observer device, and the details of the observer device; and
- (d) the name and call sign of the vessel on which the observer device is or was located, as known to him or her or ascertained from an official register, record or other document; and
- (e) that there appeared to be no malfunction in the observer device, its transmissions or other machines used in obtaining or ascertaining the information.

(9) Section 32 applies to a certificate given under this section as if it had been a certificate given under section 32.

(10) A person must not:

- (a) damage, destroy, render inoperative or otherwise interfere with an observer device; or
- (b) intentionally feed or input information or data into an observer device that is not officially required or that is meaningless.

(11) A person who contravenes subsection (9) is guilty of an offence punishable on conviction by a fine of \$250 000.

(12) For subsection (9):

"observer device" includes a device or machine that automatically feeds or inputs information or data into an observer device.

37 Presumption

(1) All fish found on board a vessel used in the commission of an offence against this Act, or in relation to which the offence has been committed, is, unless the contrary is proved, presumed to have been caught in the commission of the offence.

(2) If, in any legal proceedings under this Act, the place where an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place at which the event took place, is presumed to be the place at which the event took place, unless the contrary is proved.

(3) Prima facie evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft may be given by the production of a written copy or extract certified by an authorised officer or observer as a true copy or accurate extract.

(4) For any proceedings under this Act, the act or omission of a member of the crew of a fishing vessel while on board that vessel or engaged in fishing activity related to that vessel, is taken to be also that of the master, owner and charterer of the vessel.

(5) An entry in writing or other mark in or on any logbook, chart or other document required to be maintained under this Act, or used to record the activities of a foreign fishing vessel, is taken to be that of the master, owner and charterer of the vessel.

(6) If any information is given about a fishing vessel under this Act or an access or related agreement in relation to any fishing activity of a foreign fishing vessel, it is presumed to have been given by the master, owner and charterer of the vessel, unless it is proved it was not given by any of them.

(7) If in any legal proceedings for an offence under this Act:

- (a) an authorised officer or observer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken by the use of driftnets; and
- (b) the court considers that, having regard to the evidence, the grounds are reasonable;

the fish are presumed to have been so taken, unless the contrary is proved.

(8) If in any legal proceedings relating to an offence under this Act:

- (a) an authorised officer or observer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of Kiribati waters; and
- (b) the court considers that, having regard to the evidence, the grounds are reasonable;

the fish are presumed to have been so taken, unless the contrary is proved.

38 Operator taken to be owner

(1) Subsection (2) applies if:

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

(2) The fishing master of the vessel:

- (a) is taken to be the owner and charterer of the vessel; and
- (b) may be charged, prosecuted, convicted, fined and prevented from leaving Kiribati under this Act as if he or she were the owner and charterer of the vessel.

39 Employee or agent taken to be operator

(1) Subsection (2) applies if:

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

(2) Any employee, agent, or representative of the owner or charterer who is resident or physically present in Kiribati may be:

- (a) taken to be the owner and charterer of the vessel; and

- (b) may be charged, prosecuted, convicted, fined, and prevented from leaving Kiribati as if he or she were the owner and charterer of the vessel.

Part 12 Penalties and penalty notices

40 Administrative penalty

(1) If the Minister has grounds to believe that a foreign fishing vessel has been used in contravention of this Act, the Minister may, with the consent of the Attorney-General and as an alternative to criminal proceedings, accept payment of an agreed sum (an "administrative penalty") from the fishing master, master, owner or charterer of the vessel.

(2) If the Minister accepts payment of an administrative penalty, the fishing master, master, owner and any charterer of the vessel are not liable to prosecution for a contravention for which the administrative penalty has been paid.

(3) An administrative penalty is to be paid into the Consolidated Fund.

41 Penalty notices

(1) An authorised officer may, with the approval of Minister and the Attorney-General, serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the regulations and the offence is one that is stated by the regulations to be an offence to which this section applies.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay within a time and to a person specified in the notice the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice may be served personally or by post.

(4) If the amount of penalty prescribed for this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.

(6) The regulations may:

- (a) prescribe an offence for the purposes of this section by specifying the

offence or by referring to the provision creating the offence; and

- (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
- (c) prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty that could be imposed for the offence by a court.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken for offences.

42 Operator not to leave until fine paid

(1) If the fishing master, master, owner or charterer of a foreign fishing vessel used in contravention of this Act is convicted of an offence, the Court may in addition to any fine it imposes, order that the Principal Immigration Officer may prevent any of those persons from leaving Kiribati until they pay the full amount of the fine.

(2) A copy of the Court order sent by the Court to the Principal Immigration Officer is sufficient authority for the Principal Immigration Officer to act under subsection (1).

43 Costs of arrest

The Court may order that the owner or charterer of a foreign fishing vessel pay the cost or expenditure incurred by the Republic in connection with:

- (a) the arrest of the vessel illegally fishing in Kiribati waters; and
- (b) the prosecution of the master, owner or charterer of the vessel.

44 Costs of preventing persons from leaving Kiribati

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 the provisions of this Act or for the owner or charterer not residing or physically present in Kiribati an employee, agent or representative of the owner or charterer, is to be paid by the fishing master, master, owner or charterer or an employee, agent or representative of such owner or charterer as the case may be.

Part 13 Regulations

45 Regulations

(1) The Beretitenti, acting in accordance with the advice of the Cabinet, may make regulations for carrying into effect any of the purposes or provisions of this Act.

(2) Without limiting the generality of subsection (1), the regulations may prescribe or provide for all or any of the following purposes:

- (a) training of fishermen;
- (b) regulating the procedure relating to the issue of licences and permits and prescribing forms and forms of application;
- (c) conditions and procedure to be observed by foreign fishing vessels while in Kiribati waters;
- (d) conservation and protection of all species of fish;
- (e) establishment of closed seasons for any area of Kiribati or any species of fish;
- (f) placing a limit on the amount, size or weight of fish, or any species of fish, that may be caught or traded;
- (g) designation of prohibited fishing areas for all fish or certain species of fish or certain methods of fishing;
- (h) prohibition of certain types of fishing gear or methods of fishing;
- (i) minimum mesh sizes for fish nets;
- (j) organisation of sport fishing;
- (k) licensing of fish farms and regulation of importation of live fish;
- (l) regulating the importation of fish or fish products;
- (m) organisation and regulation of marketing distribution and export from Kiribati of fish or fish products;
- (n) controlling the handling, landing and transportation of fish or fish products;
- (o) methods and procedures to be adopted for fish storage and processing;

- (p) substances and materials to be used in fish processing;
- (q) inspection of fish processing establishments and fish products;
- (r) minimum standards for the quality of fish or fish products;
- (s) methods of analysis of fish and fish products;
- (t) granting exemptions to any vessel or class of vessel or fish processing establishment from all or any of the provisions of this Act;
- (u) prohibition of any practices or methods, or employment of equipment or apparatus or materials, that are likely to be injurious to the maintenance and development of a stock of fish;
- (v) implementation of any agreement or arrangement entered into under section 17;
- (w) regulating the taking of coral and seaweed;
- (x) anything required to be prescribed by this Act;
- (y) provision of penalties for contraventions of the regulations of terms of imprisonment of 6 months and fines of \$10000.

Part 14 Repeal and savings

46 Repeal of Fisheries Act 1979

The Fisheries Act 1979 is repealed.

47 Savings

(1) In this section:

"repealed Act" means the Fisheries Act 1979 as in force immediately before its repeal by this Act.

(2) Unless inconsistent with this Act, all regulations, orders and notices made or given under the repealed Act remain in force as if they were made or given under this Act.

(3) Subject to subsection (4), all licences, authorisations and permits issued under the repealed Act:

- (a) remain in force for the remainder of their term as if they were issued

under this Act; and

(b) may be varied, suspended or cancelled in accordance with this Act.

(4) Despite subsection (3), if the Director of Fisheries thinks that any licence, authorization or permit issued under the repealed Act is inconsistent with this Act or should be made subject to amended or additional conditions, the Director may:

(a) notify the holder of the licence, authorisation or permit of any amended or additional conditions and those conditions apply from the date of notification; or

(b) notify the holder of a licence, authorisation or permit of his or her intention to cancel the licence, authorisation or permit and to require the holder to apply for the appropriate licence authorisation under this Act.

(5) If the Director of Fisheries gives notification under paragraph (4) (b) the licence, authorisation or permit issued under the repealed Act to which it relates ceases to be valid:

(a) if no application is made under paragraph (4) (b) - at the end of 30 days after the date of notification; or

(b) if an application is made under paragraph (4) (b):

(i) if the application is rejected in accordance with this Act - on notification of the rejection; or

(ii) if a licence or authorisation is issued under this Act - at the time of the issue.

(6) All agreements applying under the repealed Act apply under this Act until they terminate in accordance with their terms.

(7) All declarations of marine reserves, and other declarations and determinations made under the repealed Act continue in force as if they were made under this Act.

48 Amendment of Schedule

The Beretitenti, acting in accordance with the advice of the Cabinet, may by order amend any or all of the provisions of the Schedule.

Schedule

Scheduled treaties (section 3)

Agreement for the Establishment of the Indian Ocean Tuna Commission

Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean

Convention on the Conservation of Antarctic Marine Living Resources

Convention for the Establishment of an Inter-American Tropical Tuna Commission

International Convention for the Conservation of Atlantic Tunas

Multi-lateral Treaty on Fisheries between the Government of United States of America and certain Pacific Island States

Nauru Agreement

Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region

South Pacific Forum Fisheries Agency Convention

United Nations Convention on the Law of the Sea

Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks

FISHERIES ACT 2010

EXPLANATORY MEMORANDUM

The Act repeals the existing Fisheries Ordinance 1979, Cap 33. It incorporates all amendments to Cap 33 enacted over the past years. It provides for the implementation of regional and international obligations from treaties in which Kiribati is party to. It also accommodates the flaws evident under Cap 33 by updating and improving certain provisions.

The principal object of the Act is:

- (a) To promote the sustainable management of the fisheries of Kiribati and the development and use of fisheries resources for the benefit of Kiribati, including the recovery of fees that reflect the value of the resource; and
- (b) To protect fish stocks and the marine environment of Kiribati.

Part 2 incorporates section 4 to 6 which provides for the management of fisheries through the consideration of designated fisheries, and the preparation of fishery management plans.

Part 3 regulates fishing vessels generally including international obligations and unlicensed foreign fishing vessels.

Part 4 and 5 contain provisions on licences and authorisations generally and licences specifically, updating and improving the sections particularly the penalties.

Part 7 introduces a section under Prohibited activities in relation to the driftnet fishing vessels in addition to the other destructive fishing methods previously covered under Cap 33.

Part 8 elaborates further on authorised officers, the powers of authorised officers and the extended powers of authorised officers. This part incorporates and implements the need for observers to board and remain on Kiribati licensed vessels for the purpose of carrying out his or her duties.

Part 9 and 10 provides for offences relating to authorised officers and observers and the destruction or disposing of evidence. Part 10 deals with seized property and forfeiture where a conviction resulted from a committal of an offence or offences under this Act.

Part 11 incorporates section 30 to 38 on jurisdiction and evidential proof. It provides for certificate evidence, designated machines, photographic evidence, and designated observer devices.

Part 12 incorporates old provisions on penalty, however introduces a section on penalty notices.

The regulations which forms Part 13 updates the fine of \$1 000 to \$10 000 at section 44(2)(y).

Part 14 provides for the repeal of Cap 33, and the savings on regulations, orders and notices made or given under the repealed Ordinance to remain in force unless inconsistency with this Act occurred.

Titabu Tabane
The Attorney-General

LEGAL REPORT

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

Titabu Tabane
The Attorney-General