

REPUBLIC OF KIRIBATI




Fisheries (Amendment) Act 2021

(No.22 of 2021)



I assent,


Beretitenti
21/12/2021

An Act

entitled

AN ACT TO AMEND THE FISHERIES ACT 2010

Commencement:

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

1. Short title and commencement

This Act may be cited as the *Fisheries (Amendment) Act 2021* and shall commence on such date as the Minister may by notice appoint.

2. Meaning of 'principal Act'

In this Act principal Act means the Fisheries Act 2010 as amended.

3. Amendment of the long title

The long title of the *Fisheries Act 2010* (hereinafter "Act") is amended by repealing and substituting it with the following:

“AN ACT TO MAKE PROVISIONS FOR THE CONSERVATION, MANAGEMENT, DEVELOPMENT AND SUSTAINABLE USE OF FISHERIES AND MARINE RESOURCES, TO CONTROL AND MONITOR FISHING AND RELATED ACTIVITIES WITHIN AND BEYOND KIRIBATI WATERS, AND FOR CONNECTED PURPOSES.”

4. Amendment of section 2

Section 2 is amended as follows:

(1) by repealing section 2(1) of the principal Act and substituting it with the following:

“1 Purpose and application of the Act

(1) The purpose of this Act is:

- (a) to ensure through effective management, the long-term conservation, development and sustainable use of Kiribati fisheries and other marine resources, including the recovery of fees that reflect the value of the resources.
- (b) to maximise the economic returns from fisheries and other marine resources for the benefits of present and future generations of I-Kiribati; and
- (c) to implement measures to protect and preserve the marine biological diversity, rare or fragile ecosystems as well as habitat of depleted, threatened or endangered species and other forms of marine life; and
- (d) to introduce integrated approaches or systems to fisheries and other marine resources development and management and to address human activities in marine areas through marine spatial planning and/or ocean zoning; and
- (e) to promote and establish an ecosystem approach to fisheries and other marine resources development and management; and
- (f) to protect and preserve the marine resources and the marine environment of Kiribati.

(2) by adding a new subsection 5 to read as follows:

“(5) This Act acknowledges and compliments other existing legal instruments that support, the protection, management and sustainability of the marine resources.”

5. Amendment of section 3

Section 3 of the Act is amended as follows:

- (a) by inserting new definitions before the definition of 'authorized officer' as follows:

"animal" means any mammal (other than a human), insect, amphibian, reptile, fish, mollusk or other member of animal kingdom, whether alive or dead, and includes the egg, embryo, ova or semen and any organic animal tissue from which another animal could be produced, and the hide, skin, hair, feathers, shell, horns, hoof, viscera or any other part or portion of the body of an animal;

"area based management tool" (ABMT) means a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed and with the aim of achieving particular conservation and sustainable use objectives and affording higher protection than that provided in the surrounding of areas;

- (b) by inserting a new definition of "conservation of marine resources" before the definition of 'designated fishery';

"conservation of the marine resources" means the aggregate of the measures rendering possible the optimum sustainable yield from those resources, qualified by scientific or biological, economic, political and social elements, so as to secure a maximum supply of food and other marine products;

- (c) by repealing the definition of 'Director of Fisheries' and substituting with the following:

"Director of Fisheries" means all directors responsible for conservation, management, development and sustainable utilization of fisheries and marine resources;

- (d) by inserting new definitions before the definition of 'explosive' as follows:

"ecosystem approach" means the comprehensive integrated management of human activities based on the best available scientific knowledge about the ecosystems and its dynamics, in order to identify and take action on influences which are critical to the health of marine ecosystems, thereby achieving sustainable use of ecosystem goods and services and maintenance of ecosystem integrity;

"ecosystem approach to fisheries management" (EAFM) means a broader concept and also considers the impact of the environment on fishing, the impact of fishing on the environment and the socio-economic benefits that can be gained from fishing and post-harvest activities;

“endangered” means under threat of extinction or with reference to any fish species or stock, under threat of collapse;

(e) by inserting new definitions before the definition of ‘nautical mile’ as follows:

“Marine genetic material” means any material of marine plant, animal, microbial or other origin containing functional units of heredity;

“Marine genetic resources” means any material of marine plant, animal, microbial or other origin originating from Kiribati waters and containing functional units of heredity with actual or potential value of their genetic and biochemical properties;

“Marine Protected Area” (MPA) means an area within the Kiribati waters for which protective, conservation, restorative or precautionary measures, consistent with the international law have been instituted for the purpose of protecting and conserving species, habitats, ecosystems or ecological processes of the marine environment;

“Marine Resources” means living and non-living resources that include materials and attributes found in the ocean and are considered to have value;

“Marine Scientific Research” (MSR) means any scientific study or investigation or related experimental work having the marine environment as its object which is designed to increase knowledge of the oceans. It is to be distinguished from the exploration of marine natural resources, as MSR seeks to obtain data for scientific purposes, and exploration aims to collect data for the purpose of locating areas where natural resources of possible importance occur;

“Marine Spatial Planning” (MSP) means an ocean integrated approach management that involves the public process of analyzing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic and social goals and objectives that are usually specified through political process;

(f) by inserting a new definition “ocean zoning” after the definition of ‘observer’:

“ocean zoning” means the process of delineation of marine space use zone and the evaluation of tradeoffs utilized to enhance ocean management and for specific purposes such as effective marine resource management and explore compatibility amongst uses to avoid competition and conflict between ocean spaces users;

(g) by inserting a new definition of “research vessel” before the definition of ‘recreational fishing’:

“Research vessel” means any vessel that used to carry out any marine research, collection, extraction of living and non living organisms or samples for scientific analyses and other connecting purposes;

(h) by inserting new definitions after the definition of ‘scheduled treaty’ as follows:

“small scale fishing vessel” means a vessel of less than 7 meters that are operated by motorized engines and are built purposely for fishing, supporting bigger fishing vessels or fish carriers;”

“sustainable development” means a process for finding a balance between development, ecological well-being and human well-being that is based on maximum sustainable yield and the carrying capacity of any marine ecosystem, that avoids overprotection of the resources that will lead to an inefficient resource turnover, prevent rational development and promote optimum utilization of the marine resources;

“sustainable use” means –

- (i) maintaining the potential of marine or fisheries resources to meet the reasonably foreseeable needs of the current and future generation;
- (ii) avoiding, remedying or mitigating any adverse effect of fishing and harvesting of other marine resources; or
- (iii) conserving, using, enhancing and developing marine and fisheries resources to provide for I-Kiribati people, social, economic and cultural wellbeing.

(i) by inserting a new definition of “utilization of marine genetic resources” after the definition of ‘unregulated fishing’:

“utilization of marine genetic resources” means to conduct research and development on the genetic and/or biochemical composition of marine genetic resources, as well as the exploitation thereof;

6. Amendment of Part 2

The title of Part 2 of the Act is amended by repealing the existing title and substituting it with the following:

“Fisheries and Marine Resources Management”

7. Amendment of section 4

Section 4 of the principal Act is amended as follows:

(1) by repealing the heading of Section 4 of the Act to read as, "Management of fisheries and marine resources"; and

(2) by repealing the whole section and substituting the following:

"4(1) The Minister is responsible for the management, conservation and development of all marine resources within the jurisdiction of Kiribati to ensure that the marine resources of Kiribati are developed and managed for the benefit of I-Kiribati.

4(2) The Minister, as appropriate, when performing functions or exercising powers under this Act, shall –

- (a) adopt measures to ensure the long-term sustainability of marine living resources and promote the objective of their optimum utilisation;
- (b) implement sustainable development to maximize social and economic returns from fisheries and marine resources for the benefit of the I-Kiribati;
- (c) ensure that measures do not transfer directly or indirectly a disproportionate burden upon Kiribati;
- (d) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore, where appropriate, target stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards;
- (e) for specific target stocks to which the application of subsection (b) would not otherwise apply, ensure that measures applied to such stocks are considered appropriate to achieve the purpose of this Act;
- (f) apply the precautionary approach and ecosystem approach in accordance with subsection 3;
- (g) assess the impacts of fishing, other human activities and environmental factors on target stocks, non-target species, and species belonging to the same ecosystem or dependent upon or associated with the target stocks;
- (h) adopt measures to minimize waste, discards, catch by lost or abandoned gear, pollution originating from fishing vessels, catch of non-target species, and impacts on associated or dependent species, in particular

endangered species and promote the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;

- (i) protect marine biological diversity especially habitats of particular significance for fisheries resources;
 - (j) take measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;
 - (k) take into account the interests of artisanal, subsistence fishers and local communities including ensuring their participation in the management of fisheries;
 - (l) maintain traditional forms of sustainable fisheries management;
 - (m) ensure broad participation by I-Kiribati nationals or communities in activities related to the sustainable use of fisheries resources;
 - (n) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as well as information from national and international research programmes;
 - (o) implement and enforce conservation and management measures through effective monitoring, control and surveillance;
 - (p) undertake any consultations with appropriate government ministries where there may be an overlap of powers; and
 - (q) collaborate with relevant public authorities in assisting in the conservation and management of marine resources and marine protected areas of national and international significance.
- 4(3) (a) Recognizing 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 utilization of fisheries and marine 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 or a threat or damage to fisheries and marine resources existing in Kiribati is not to be used to prevent or avoid a decision being made to minimize the potential adverse effects or risks of that threat or damage.

4(4) 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.”

8. Insertion of a new Part 2A

Part 2 of the Act is amended by inserting a new Part 2A as follows:

“Part 2A Conservation and sustainable use of marine biological diversity

1. Management of marine biological diversity

- (1) The Minister is responsible for the conservation, development, management and sustainable use of the marine biological diversity and the resources therein in Kiribati waters for the benefit of the I-Kiribati.
- (2) The Minister, as appropriate, when performing functions or exercising powers under this Act, shall:
 - (a) undertake measures to maintain, restore and rehab biological diversity and productivity of marine species and habitats in Kiribati waters;
 - (b) implement measures to identify marine ecosystems exhibiting high levels of biodiversity and productivity and other critical habitat areas and provide necessary limitations on use in these areas, through *inter alia*, designation of protected areas or area based management tools and establishing ecosystem based management, marine spatial planning and ocean zoning;
 - (c) adopt measures necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life;
 - (d) adopt measures to reduce and control adverse impacts on marine biological diversity by human activities including over exploitation of biodiversity, impacts of harvesting methods such as bottom trawling; sedimentation arising from activities on adjacent land; physical changes to the marine environment, marine pollution; the impact of tourists and divers; climate change; alien species invasions; and other activities;
 - (e) undertake measures to manage the utilization of marine genetic resources; and

- (f) apply the precautionary principle in accordance with section 4(5) of the Act.

2. Designation of Marine Protected Area

- (1) The Minister may, on the recommendations of the Director of Fisheries, by notice published in the Gazette, determine that a marine area is a marine protected area if, having regard to scientific, cultural, economic, environmental, ecological and other relevant considerations the Minister considers that the marine area:
 - (a) is important to the national interest; and
 - (b) requires management and development measures for its effective conservation and ecological preservation and protection of its health and integrity.
- (2) A marine protected area designated under subsection 1 may also be established from a fisheries management plan or community-based management plan or prescribed by regulations.
- (3) The Director of Fisheries must prepare, and review as necessary, a plan for the conservation and management of each designated marine protected area.
- (4) The regulations may provide for the designation of marine protected areas and the management, and conservation of the MPAs and the enforcement of any matter identified in a plan relating to a designated MPA.
- (5) Notwithstanding the provisions of this Act and other laws which established and prescribed a marine protected area, the Minister may on the recommendation of the Director of Fisheries, and in accordance with the advice of the Cabinet review, suspend and revoke any marine protected area and its management plan entirely or partially if, having regard to cultural, social, economic, environmental, ecological, and other relevant considerations, the Minister considers after proper consultation that suspension or revocation of the marine protected area is important to the national interest.

3. Designated marine species

- (1) The Minister may, on the recommendation of the Director of Fisheries determine that certain marine resource specie is a designated or protected specie if, having regard to cultural, scientific, economic, environmental, ecological and other relevant considerations, the Minister considers that the marine specie:

- (a) is important to the national interest; and
 - (b) requires management and development measures for its effective conservation and sustainable use.
- (2) The Director of Fisheries must prepare, and review as necessary, a plan for the conservation and management of each designated marine species.
 - (3) The regulations may provide for the determination of designated marine specie and the management, development and conservation of those marine species and the enforcement of any matter identified in a plan relating to the designated marine specie.
4. Integrated approaches to ocean management and marine resources
- (1) The Minister may, on the recommendation of the Director of Fisheries and in accordance with the advice from the Cabinet prescribe and establish integrated management approaches and/or plans for ocean and marine resources.
 - (2) In establishing ocean and marine resources integrated management approaches and/or plans, the Minister must, as appropriate, integrate existing and future ocean management paradigms to become an integrated management approach or plan.
 - (3) The integrated management approaches to ocean and marine resources provided in subsections 1 and 2 include, area based management tools, ecosystem based management of fisheries and marine resources, ocean zoning, marine spatial planning and other management approaches.

9. Amendment of section 6

Section 6 of the Act is amended as follows:

- (1) by inserting a new subsection (1)(c) as follows:

“1(c) plans prepared by the Island Councils or local communities relating to the management and development of other fisheries.” and

- (2) by adding a new subsection 8 as follows:

“8. The regulations may provide for the preparation, operative, approval process, and the enforcement of the community-based fishery management plan”.

10. Insertion of a new section 11A

A new section 11A is inserted as follows:

“Section 11A Requirements for small scale fishing vessel engaged in fishing

- (1) The owner or operator of a small scale fishing vessel engaged in fishing shall register every such vessel with the Director of Fisheries and shall renew the registration annually in the manner prescribed.
- (2) The owner or operator of a small scale fishing vessel shall comply with conditions for registration.
- (3) A vessel registered under this section shall bear approved markings under the Maritime Act 2017 and regulations.
- (4) The owner or operator of a small scale fishing vessel shall ensure that such vessel contain sea safety equipment on board at all times.
- (5) The owner or operator of 2 or more small scale fishing vessels shall comply with the requirements prescribed in the regulations.
- (6) The owner or operator of a small scale fishing vessel engaged in fishing who fails to comply with any of the provisions of this section commits an offence and shall be liable on conviction to a fine not exceeding \$10,000”.

11. Insertion of a new section 12A

Section 12A is inserted as follows;

“12A. Marine Genetic Resource

- (1) A person may apply to the Director of Fisheries in the prescribed form and in compliance with the prescribed application process for a licence for the person to access and utilize the marine genetic resources.
- (2) The Director of Fisheries may, with the approval of the Minister, grant a licence or authorization in the prescribed form, authorizing the person to do any of the following:
 - (a) conduct scientific research on genetic and/or biochemical composition of marine genetic resources in Kiribati waters; and
 - (b) conduct development on the genetic and/or biochemical composition of marine genetic resources in Kiribati waters; and
 - (c) access to harvest of marine genetic resources.

(3) The licence or authorization is subject to:

- (a) payment of fees determined by the Director of Fisheries with the approval of the Minister;
- (b) the conditions mentioned in section 9 of the Act; and
- (c) a prescribed contract agreement containing benefit sharing arrangement and other obligations as determined by the director of fisheries with the approval of the Minister.

(4) A person who conducts, access to harvest or causes or allows conducts and access to harvest on the following:

- (a) research on genetic and/or biochemical composition of marine genetic resources in Kiribati waters;
- (b) development on the genetic and/or biochemical composition of marine genetic resources in Kiribati waters; and
- (c) access to harvest of marine genetic resources.

Without a licence under this section, or not in accordance with the conditions of a licence or authorization, is liable on conviction to a fine not exceeding \$30,000,000 and to imprisonment for 10 years.

FISHERIES (AMENDMENT) ACT 2021

EXPLANATORY MEMORANDUM

This Act amends the Fisheries Act 2010 as amended subsequently by the Fisheries (Amendment) Act 2015 and 2017. The amendments intend to implement government mandates conveyed to the Ministry of Fisheries and Marine Resources Development (MFMRD) a concept to maximize social and economic returns from the fisheries and other marine resources for the benefit of the increasing populace. It is an implementation of the outcome of the three working groups from MFMRD engaged to assess and analyze the potential application of the concept and the gaps identified that require work inclusive this Amendment. This Amendment is a pre-requisite prior to effective implementation of the tasks mandated.

The long title of the Act is amended to expand the context to include other development and management of other marine resources beyond fisheries so that the concept of maximizing revenue is met.

Section 2 of the Act is amended by incorporating additional purposes of the Act so that it is broad to cover other marine resources and updated to reflect current development and management approaches that is ecosystem approaches to develop and manage all marine resources.

Section 3 of the Act is amended by inserting new definitions of terms used in the amended provisions of the Act.

Section 4 of Part 2 of the Act is amended substantially to include other marine resources, on the heading and repeal section 4 in its entirety and replaced with a more detailed list of guiding principles recognized under international, regional and sub-regional and domestically instruments and to be applied as appropriate by the Minister responsible when executing responsibilities under the Act. Another major amendment is the insertion of Part 2A. Part 2A covers Conservation, management and sustainable use of marine biological diversity. This part extensively cover, Marine Protected Area, Marine Protected Species, and integrated ocean management approaches.

Section 6 of the Act is amended to include recognition of community based fishery management plan developed by Island Councils or coastal local communities.

Section 11 of the Act is amended by inserting section 11A to address concerns to register and regulate small craft engaged in fishing.

Section 12 of the Act is amended by inserting a new section 12A that deals with the access or utilization of the marine genetic resources through proper application and grant of licence or authorization from research to development and exploitation of the resource.

RIBANATAAKE TIWAU
HONOURABLE MINISTER

LEGAL REPORT

I hereby certify that in 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
22 October 2021

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

This printed impression of the Fisheries (Amendment) Act 2021 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 2nd December 2021 and is found by me to be a true and correctly printed copy of the said Bill.



Eni Tekanene
Clerk of the Maneaba ni Maungatabu

CERTIFICATE OF THE SPEAKER OF THE MANEABA NI MAUNGATABU

I certify that the above Act was on the 2nd December 2021 passed by the Maneaba ni Maungatabu on a Certificate of Urgency under section 68(3)(a) of the Constitution.



Hon. Tangariki Reete
Speaker of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this 21 day of
December 2021.



Eni Tekanene
Clerk of the Maneaba ni Maungatabu