

Fisheries Ordinance 1978

LAWS OF THE REPUBLIC OF KIRIBATI REVISED EDITION 1979

CHAPTER 33

FISHERIES

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An Ordinance to make provision for the promotion and regulation of fishing and fisheries industries in Kiribati and its fishery limits

22 of 1977
9 of 1978

Commencement: 3rd March 1978
L.N. 27/78

PART I GENERAL

Short title

1. This Ordinance may be cited as the Fisheries Ordinance.

Interpretation

2. In this Ordinance, unless the context otherwise requires-

"authorised officer" means any fisheries officer, licensing officer, police officer or officer as defined in the Customs Ordinance, the master of any Government vessel or vessel owned by the Kiribati Shipping Corporation and any other person appointed by the Minister to be an authorised officer for the purposes of this Ordinance;

(*Cap. 22*)

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

"fish" means any aquatic animal, whether piscine or not, and includes shell fish, crustaceans, sponges, holothurians (bêche-de-mer), sea urchins, and turtles and their eggs;

"fishing" means fishing for, or catching or taking, or killing, fish by any method;

"fish processing establishment" means any land, vessel or other place in which fish are processed for sale outside Kiribati, but does not include any vessel on which fish caught off such vessel are gutted, salted, iced, chilled or frozen for the sole purpose of preserving such fish;

"fish product" means any product of fish processing;

"fishery limits" means such fishing limits of Kiribati as may be defined from time to time by the Beretitenti acting in accordance with the advice of the Cabinet, by proclamation and, if fishing limits are not so defined, shall be deemed to be the outer limits of the territorial sea;

"fishing vessel" means any vessel used or adapted for use for fishing commercially, but does not include a sailing boat or paddling canoe of native design or 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 any fishing vessel that is not a local fishing vessel;

"licensing officer" means a licensing officer appointed under section 3(2) and includes the Chief Fisheries Officer;

"local fishing vessel" means any fishing vessel-

(a) owned by 1 or more persons resident and domiciled in Kiribati; or

(b) owned by any company or fisheries cooperative society registered or incorporated under the laws of Kiribati and having its principal place of business in 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;

"operate", in relation to a vessel, means to be the master or owner or charterer of the vessel and, in relation to a fish processing establishment, means to own or to be in charge of the fish processing establishment and, where the fish processing establishment is a vessel, means to be the master or owner or charterer thereof;

"processing" in relation to fish, includes preserving or preparing fish or producing any substance or article from fish by any method;

"territorial sea" means that part of the sea adjacent to the coast of any island of Kiribati which is within 3 geographical miles measured from the low water mark of the seaward side of the reef fronting such coast, or, when a reef is not present, from the low water mark of the coast itself:

Provided that a low tide elevation that lies wholly or partly within that part of the sea that would be territorial sea if all low-tide elevations were disregarded for the purpose of the measurement of the breadth of the territorial sea shall be treated as an island.

Promotion of fisheries

3. (1) The Minister may take such measures as he shall see fit to promote the development of fishing and fisheries in Kiribati to ensure that the fisheries resources of

Kiribati are exploited to the full for the benefit of Kiribati.

(2) Subject to section 99 of the Constitution, the Minister may appoint a Chief Fisheries Officer and such other fisheries officers and licensing officers as he may consider necessary for carrying out the purposes and provisions of this Ordinance.

PART II LICENSING

Licensing of local fishing vessels

4. (1) Subject to any direction given by the Minister a licensing officer may, upon written application in the prescribed form and upon payment of the prescribed fee, grant a licence in the prescribed form in respect of any local fishing vessel:

Provided that no licence shall be granted to any local fishing vessel which is a vessel to which section 15(1) of the Shipping Ordinance applies unless there is subsisting a valid and unexpired certificate of seaworthiness issued in respect of that fishing vessel under section 13 of that Ordinance.

(Cap. 93)

(2) Every licence granted under subsection (1)-

- (a)* shall not, except with the prior written approval of the Minister endorsed on the licence, extend beyond 1 year from the date of issue thereof; and
- (b)* shall be personal to the holder; and
- (c)* shall not be transferable; and
- (d)* shall be subject to such conditions as may be prescribed and to such further conditions as the licensing officer shall think fit to endorse thereon; and
- (e)* shall not, except with the prior written approval of the Minister endorsed on the licence, confer on the licensee any exclusive right to fish.

(3) It shall be a condition of every licence granted under subsection (1) that there shall be marked and kept marked on the vessel in respect of which the licence is granted such letters and numbers of identification as may be assigned to that vessel by the licensing officer, in such manner as he may specify or as may be prescribed.

(4) Any person who operates or causes or allows to be operated any local fishing vessel within the fishery limits or in the lagoon or inland waters of Kiribati except under a valid licence granted under this section in respect of that vessel and in accordance with the conditions of such licence shall be liable on conviction to a fine of \$200 and to imprisonment for 6 months.

Entry and fishing by foreign vessels within the fishery limits

5. (1) No foreign fishing vessel shall-

- (a) enter within the fishery limits except for a purpose recognised by international law; or
 - (b) fish or attempt to fish within the fishery limits; or
 - (c) load, unload or tranship any fish within the fishery limits;
- or
- (d) load or unload any fuel or supplies within the fishery limits,

unless authorised to do so under a permit granted under this Ordinance.

(2) A foreign fishing vessel entering the fishery limits for a purpose recognised by international law without a permit granted under this Ordinance shall return outside those limits as soon as that purpose for which it entered them has been fulfilled.

(3) The Chief Fisheries Officer may, with the approval of the Minister, grant a permit in the prescribed form in respect of any foreign fishing vessel, authorising such vessel to do such of the things described in subsection (1) as may be provided for in the permit.

(4) A permit under subsection (3) may be granted to a registered or incorporated association of shipowners if-

- (a) the Minister is satisfied at the time when the permit is sought that there exists between the Republic and that association an agreement that is valid and enforceable under the law of the country in which the association is domiciled for the benefit of the Republic in the implementation of the provisions of this Ordinance (hereinafter referred to as a "multiple permit agreement"); and
- (b) the multiple permit agreement specifies, in terms acceptable to the Minister, the circumstances under which a member of the association of shipowners may be authorised pursuant to this Ordinance in respect of any foreign fishing vessel to do such of the things described in subsection (1) as if that member had been granted a permit under subsection (3); and
- (c) there is a term of the multiple permit agreement under which the maximum number of members of the association is stipulated who may enjoy the rights and benefits conferred by this section and who shall be subject to the provisions of this Ordinance; and
- (d) the association of shipowners covenants with the Minister to provide the master of any foreign fishing vessel authorised pursuant to paragraph (b) with a translation in Japanese of the conditions of a permit granted under subsection (3).

(5) A permit granted under subsection (4) shall be severable at the election of the Minister and if thus severed any breach by any member of an association of shipowners to which such a permit has been granted under subsection (3) shall be subject to cancellation or suspension pursuant to section 7(1) in respect of that member as if the permit has been granted to that member.

(6) Unless the Minister is satisfied that the management or managing body of the association has not contributed in any way, either before or after the contravention of the permit by the member of the association, to the default of the member leading to the right to cancel or suspend the licence, the licence shall not be severed in respect of the member in default but shall be treated as a single and indivisible licence subject to suspension or cancellation as against the association of shipowners and in respect of each member of that association.

(7) A member of an association to which a permit has been granted under subsection (4) shall be subject to the same penalties, obligations, duties and powers prescribed and exercisable under this Ordinance as if that member had been granted a permit under subsection (3).

(8) An association with which a multiple permit agreement has been made and to which a permit has been granted under subsection (4) shall not be deemed to be a licensing officer.

(9) The payment of fees and royalties due under subsection (11)(b) shall be due and payable by an association to which a permit is granted under subsection (4).

(10) The amount payable under subsection (9) of this section shall be calculated by reference to the number of members stipulated in the multiple permit agreement.

(11) A permit granted by the Chief Fisheries Officer under this section shall be subject to-

- (a) such conditions as may be prescribed, and to such further conditions as may be endorsed upon the permit by the Chief Fisheries Office; and
- (b) to the payment of such fees and royalties as may be determined by the Chief Fisheries Officer with the approval of the Minister.

(12) A permit granted by the Chief Fisheries Officer under this section shall not confer any exclusive right to fish unless the permit expressly so provides.

(13) The fishing gear of any foreign fishing vessel which is prohibited by this section from fishing within the fishing limits shall, while the vessel is within those limits be stowed in such manner as may be prescribed.

(14) Where any foreign fishing vessel contravenes any of the provisions of this section, the master, owner and charterer, if any, of such vessel shall each be liable on conviction-

- (a) in the case of a contravention of subsection (1), to a fine of \$100,000; and
- (b) in the case of a contravention of subsection (2) or subsection (13), to a fine of \$25,000.

(15) Where any foreign fishing vessel contravenes any of the conditions of a permit granted under this section, the master, owner and charterer, if any, of such vessel shall each be liable on conviction to a fine of \$25,000.

Fish processing establishment

6. (1) The Chief Fisheries Officer may, with the approval of the Minister and on payment of the prescribed fee, grant to any person a licence in the prescribed form to operate a fish processing establishment, subject to such conditions as may from time to time be prescribed and to such further conditions as may be endorsed upon the licence by the Chief Fisheries Officer.

(2) Any person who operates, or causes or allows to be operated, any fish processing establishment except under a valid licence granted under this section in respect of that fish processing establishment and in accordance with the conditions of such licence shall be liable on conviction to a fine of \$200 and to imprisonment for 6 months.

Cancellation and suspension of licences and permits

7. (1) Where any of the conditions of any licence or permit is contravened the Chief Fisheries Officer may cancel the licence or permit, or suspend such licence or permit for such period as he may think fit.

(2) Any person aggrieved by the refusal of any licensing officer to issue any licence granted under this Ordinance, or by the cancellation or suspension of any licence or permit granted under this Ordinance, may appeal against such refusal, cancellation or suspension to the Minister, whose decision shall be final.

PART III

POWERS OF AUTHORISED OFFICERS

Power to stop, board, search vessels, etc.

8. For purposes of ascertaining whether there is, or has been, any contravention of the provisions of this Ordinance any authorised officer may-

(a) at all reasonable hours enter any fish processing establishment and any premises other than premises used exclusively as a dwelling-house; and

(b) stop, board and search-

(i) any foreign or local fishing vessel within the fishery limits; or

(ii) any local fishing vessel, outside the fishery limits; and

(c) stop and search any vehicle transporting, or reasonably suspected of transporting, fish or fish products; and

(d) make such examination and inquiry as may appear necessary to him concerning any premises, fish processing establishment, vessel or vehicle in relation to which any of the powers conferred by this section have been, or may be, exercised and take samples of any fish, or fish products, found therein; and

(e) require any person to produce his licence or his authority if it appears to the authorised officer that such person is doing any act for which a licence or other authority is required under this Ordinance.

Powers of an authorised officer where he reasonably believes an offence committed

9. (1) Where he has reasonable grounds for believing that an offence against the provisions of this Ordinance has been committed, any authorised officer, without a warrant, may-

(a) following hot pursuit as recognised by international law and commenced within the fishery limits, stop, board and search outside the fishery limits any foreign fishing vessel which he believes has been used in the commission of that offence within the fishery limits, or in relation to which he believes such offence has been committed, and bring such vessel and all persons and things on board it within the fishery limits; and

(b) within the fishery limits-

(i) arrest any person whom he believes has committed such offence and, if the authorised officer making such arrest is not a police officer, he shall without necessary delay make over such person to a police officer, or in the absence of a police officer shall take such person to the nearest police station; and

(ii) in the case of an offence against section 5(1), section 13 or section 14(1), seize any vessel (together with its equipment, stores and cargo) which he believes has been used in the commission of such offence or in respect of which he believes such offence has been committed; and

(iii) seize any fishing gear, instruments or appliances which he believes have been used in the commission of such offence; and

(iv) seize any fish which he believes have been taken or fish products produced in the commission of such offence; and

(v) seize any explosive, poison or other noxious substance which he believes has been used, carried, possessed or controlled in contravention of section 14.

(2) After any vessel has been stopped under the provision of this section any authorised officer may exercise concerning it, or in relation to any fish or fish products therein, any of the powers conferred by section 8(d).

(3) A written receipt shall be given for any thing seized under subsection (1) by the authorised officer concerned to the person from whom the seizure is made.

Obstruction, etc. of authorised officers

10. Any person who-

(a) wilfully obstructs any authorised officer in the exercise of any of his powers under this Ordinance; or

(b) fails to comply with any lawful requirements imposed or to answer any lawful enquiry made by any authorised officer under this Ordinance, including enquiries as to the source of supply of fish,

shall be liable on conviction to a fine of \$200 and to imprisonment for 6 months, and if the obstruction or non-compliance takes place on board or alongside a vessel the master of the vessel shall be liable on conviction to a like penalty.

Authorised officers to declare office, etc.

11. Any authorised officer acting in the exercise of his powers under this Ordinance shall, on demand, produce such document of identification or other evidence as may be reasonably sufficient to show that he is an authorised officer for the purpose of this Ordinance.

Non-liability of authorised officers

12. No authorised officer shall be personally liable in respect of any act done or omitted to be done by him in good faith in the execution or purported execution of his powers and duties under this Ordinance.

**PART IV
ADDITIONAL OFFENCES AND LEGAL PROCEEDINGS**

Throwing overboard or destroying incriminating evidence

13. Any person who, being on board any vessel being pursued or about to be boarded by any 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 such fish, fishing gear, explosive, poison, noxious substance or thing, or the detection of any offence against this Ordinance, shall be liable on conviction to a fine of \$400 and to imprisonment for 1 year.

Fishing with explosives, poison and other noxious substances

14. (1) Any person who-

(a) permits to be used, uses or attempts 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) carries or has in his possession or control any explosive, poison or other noxious substance in circumstances which raise a reasonable presumption that such an explosive, poison or other noxious substance is intended to be used for any of the aforesaid purposes,

shall be liable on conviction to a fine of \$200 and to imprisonment for 6 months.

(2) Any person who, knowing or having reasonable cause to believe that any fish has been taken in contravention of the provisions of this section, without lawful excuse, receives or is found in possession of such fish shall be liable on conviction-

(a) where the circumstances of such receipt or possession raise a reasonable presumption that the fish is intended to be sold in the course of business, to a fine of \$200 and to imprisonment for 6 months; or

(b) where no such presumption arises, to a fine of \$50 and to imprisonment for 2 months.

Forfeiture of gear, fish and vessels

15. Where any person is convicted of an offence against this Ordinance the court may, in addition to any other penalty it may impose, order that any fish caught or fish product produced in the commission of such offence or the proceeds of sale of such fish product, and any fishing gear, instruments or appliances and, in the case of any offence under section 5(1), section 13 or section 14(1) any vessel (together with its equipment, stores and cargo) used in the commission of such offence or in respect of which such offence has been committed, shall be forfeited to the Republic, and if so forfeited such property shall be disposed of in such manner as the Minister of Finance may direct.

Presumption

16. All fish found on board any vessel used in the commission of an offence against the provisions of this Ordinance, or in respect of which any such offence has been committed, shall, unless the contrary is proved, be presumed to have been caught in the commission of such offence.

Jurisdiction of the courts

17. Any offence against any of the provisions of this Ordinance committed within the fishery limits may be dealt with, and judicial proceedings taken, as if the offence had been committed in any place in Kiribati.

Disposal of seized goods

18. (1) Any fish, fish product or other article of a perishable nature seized or taken under the provisions of this Ordinance may on the direction of the Chief Fisheries Officer be sold and the net proceeds of the sale held pending the outcome of any prosecution brought under this Ordinance, and if no such prosecution is brought such proceeds shall 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 9 which is not ordered to be forfeited under section 15 shall be returned to its owner.

(3) where any vessel, fishing gear, instrument or appliance, fish or fish product has been seized under section 9 the court may order its release on receipt of a satisfactory bond or other security from any person claiming such property, conditioned on such person-

(a) delivering such property to the court upon the order of the court, without any impairment of its value, and paying in full any fine imposed by the court in pursuance of this Ordinance; or

(b) paying the monetary value of such property in accordance with an order or judgment of the court together with any fine imposed.

PART V MISCELLANEOUS

Fishing for scientific purposes

19. The Minister may, in writing, authorise any fishing vessel to fish within the fishery limits for the purpose of scientific investigations, and may for this purpose exempt such fishing vessel from all or any of the provisions of this Ordinance and, in making such exemption, may impose such conditions as he may think fit.

Power of the Minister to enter into agreements

20. (1) The Minister may enter, on behalf of the Republic, into an agreement with any person or any government, or agency of any government or international agency for the purpose of enabling the Government to perform any of the functions conferred by or under this Ordinance, or for the purpose of facilitating the performance of those functions, or generally to advance the purposes for which this Ordinance was enacted.

(2) The Minister may from time to time by order limit any provision of this Ordinance relating to the fishery limits so far as it is necessary to do so to give full effect to any convention, including any convention that is adopted by the Third United Nations Conference on the Law of the Sea, and to any international agreement or arrangement by which the Republic may become bound concerning fishing off the coast of Kiribati.

Protection of native customary rights

21. (1) No person shall take fish in any sea or lagoon area or on any reef forming part of the ancient customary fishing ground of any kainga, utu or other division or subdivision of the people unless he shall be a member thereof or shall first have obtained a licence so to do under the hand of the Minister who may grant or refuse any such licence at his discretion.

(2) A person who contravenes subsection (1) shall be liable on conviction to a fine of \$200 and to imprisonment for 6 months.

Regulations

22. 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 Ordinance, and, without prejudice to the generality of the foregoing, such regulations may prescribe or provide for all or any of the following purposes-

- (a) the training of fishermen; and
- (b) regulating the procedure relating to the issue of licences and permits and prescribing the forms thereof and forms of application therefor; and
- (c) the conditions and procedure to be observed by foreign fishing vessels while within the fishery limits; and
- (d) the conservation and protection of all species of fish; and
- (e) the establishment of closed seasons for any area of Kiribati or any species of fish therein specified; and
- (f) the placing of a limit on the amount, size or weight of fish, or any species of fish, which may be caught or traded; and
- (g) the designation of prohibited fishing areas for all fish or certain species of fish or certain methods of fishing; and
- (h) the prohibition of certain types of fishing gear or methods of fishing; and
- (i) in relation to fish nets, minimum mesh sizes, and
- (j) the organisation of sport fishing; and
- (k) the licensing of fish farms and the regulation of importation of live fish; and
- (l) the organisation and regulation of marketing distribution and export from Kiribati of fish or fish products; and
- (m) controlling the handling, landing and transportation of fish or fish products; and
- (n) methods and procedures to be adopted in relation to fish storage and processing; and
- (o) substances and materials to be used in fish processing; and
- (p) the inspection of fish processing establishments and fish products; and
- (q) minimum standards in relation to the quality of fish or fish products; and
- (r) methods of analysis of fish and fish products; and
- (s) the grant of exemption to any vessel or class of vessel or fish processing establishment from all or any of the provisions of this Ordinance; and
- (t) the prohibition of any practices or methods, or employment of equipment or apparatus or materials, which are likely to be injurious to the maintenance and development of a stock of fish; and

(u) anything required to be prescribed by this Ordinance; and
(v) the provision of penalties for contraventions thereof of terms of imprisonment of 6 months and fines of \$1,000.

[Subsidiary]

SUBSIDIARY LEGISLATION

Proclamation of fishery limits under section 2

L.N. 31/79

The following limits have been defined and declared by a proclamation dated 18 April 1979.

- 1.** As from the 19th April 1979 the fishery limits of Kiribati shall extend to 200 miles from the baseline of Kiribati.
- 2.** Notwithstanding paragraph 1, where any part of the median line is less than 200 miles from the nearest part of the baseline referred to in paragraph 1, that part of the median line shall be the fisheries limit of Kiribati.
- 3.** The Republic will exercise the same exclusive rights in respect of fishery within the said fishery limits outside the territorial waters of Kiribati as it has in respect of fishery in the territorial waters of Kiribati subject to such provisions as may be made by law for the control and regulation of fishing within the said limits.

4. In this Proclamation-

"baseline of Kiribati" means the low water mark of the seaward side of the reef fronting the coast of any part of Kiribati or bounding any lagoon waters adjacent to such coast or, where a reef is not present the low water mark of the coast itself of any part of Kiribati;
"median line" means a line every point of which is equidistant from the nearest points of, on the one hand, the baseline of Kiribati and, on the other hand, the corresponding baseline of any other country;
"mile" means the international nautical mile.

Regulations under section 22

PROHIBITED FISHING AREAS (DESIGNATION) REGULATIONS

L.N. 61/78

L.N. 77/78

Commencement: 31st July 1978

Citation

1. These Regulations may be cited as the Prohibited Fishing Areas (Designation) Regulations.

Prohibition of fishing

2. Fishing is prohibited in the areas specified in the Schedule to these Regulations (referred to as "prohibited fishing areas").

Penalty

3. Any person who fishes in a prohibited fishing area commits an offence and shall be liable to imprisonment for 6 months and to a fine of \$1,000.

SCHEDULE

Azur Lagoon
Pelican Lagoon
Isles Lagoon
The Tonga Channel and the adjoining Artemia Ponds.

FISHERIES CONSERVATION AND PROTECTION (ROCK LOBSTERS-PANULIRUS SPECIES) REGULATIONS

K.L.N. 3/79

Commencement: 11th June 1979

Citation

1. These Regulations may be cited as the Fisheries Conservation and Protection (Rock Lobsters-Panulirus Species) Regulations.

Interpretation

2. In these Regulations-

- (a) "rock lobster" (sometimes known as crayfish) means the species of crustacean known by the scientific name of *Panulirus*; and
- (b) a rock lobster shall be deemed to be immature if the length of its carapace is less than 85 millimetres measured from its eyes; and
- (c) "carapace" means the inflexible shell covering the forepart of a rock lobster.

Protection of certain rock lobsters

3. Any person who catches, takes, kills, has in his possession, sells, exposes for sale, buys for sale or consigns to any person for the purpose of sale-

- (a) any immature rock lobster; or
- (b) any female rock lobster bearing its eggs,

shall be guilty of an offence and liable to a fine of \$100 or imprisonment for 3 months.
