

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for Regional Development, Local Government and Territories

*Cocos (Keeling) Islands Applied Laws Amendment (Fish Resources Management) Ordinance 2022*

### Authority

The *Cocos (Keeling) Islands Act 1955* (the CKI Act) deals with the governance of the Cocos (Keeling) Islands (CKI). CKI is a Commonwealth administered territory with no state legislature. Subsection 8A(1) of the CKI Act provides that the laws of Western Australia are in force in the Territory from time to time as applied laws. Applied laws may be amended or repealed by Ordinance, under section 8(3) of the CKI Act. Ordinances are generally made to account for unique legal and administrative arrangements, or to address matters not dealt with by Western Australian laws applied in CKI. Subsection 12(1) of the CKI Act provides that the Governor-General may make Ordinances for the peace, order and good government of the Territory.

*Cocos (Keeling) Islands Applied Laws Amendment (Fish Resources Management) Ordinance 2022* (the Ordinance) is made under section 12(1) of the CKI Act.

The CKI Act specifies no conditions that need to be satisfied before the power to make the Ordinance may be exercised.

### Purpose and operation

The Ordinance amends CKI-applied WA legislation, namely the *Fish Resources Management Act 1994* (WA) (CKI) (the Act) and the *Fish Resources Management Regulations 1995* (WA) (CKI) (the Regulations), to introduce a recreational fishing management framework for CKI that takes into account the unique marine ecosystem and the cultural history and customs of the Cocos Malay community.

The amendments ensure that the Act and Regulations, as applied on CKI, are relevant and appropriate to the region. The focus of the arrangement is the sustainable management of the fish resources on CKI for the benefit of the community.

The Ordinance implements the following key measures:

- introduction of CKI-specific daily bag and minimum size limits for finfish and invertebrates;
- introduction of a fish possession limit in the area of the CKI Airport to manage the amount of fish that may be exported off island, including specified requirements pertaining to the type and amount of fish;
- restrictions or prohibition of fishing in specified areas;
- allowance for fish, in excess of the daily bag limit, to be taken for specified religious and cultural celebrations in recognition of Cocos Malay culture;
- provide the Minister with the power to amend the Schedule containing the fishing regulations to facilitate adaptive fisheries management; and
- establishment of a CKI Fisheries Management Advisory Committee to provide the Minister with advice regarding CKI fisheries matters.

- provision for the Minister to exempt up to seven individuals from regulations preventing the sale of recreationally caught fish, to allow for the continuation of established practice.

### Consultation

Fishing practices on CKI have been the subject of extensive community consultation, occurring since 2005, with stakeholders including the Administrator of the Territory of Cocos (Keeling) Islands, the Shire of Cocos (Keeling) Islands, local businesses, community groups, other government agencies, port operators, fishers and other interested individuals.

The WA Department of Primary Industries and Regional Development (Fisheries WA) has undertaken numerous research projects and scientific studies into CKI fish stocks and the associated marine environment. This research, along with community feedback has informed the Ordinance.

Consultation specific to the Ordinance has been occurring since 2018. Broadly, the feedback supported the introduction of a sustainable fishery management framework with local rules, and resulted in the specific sustainability measures the Ordinance introduces. The Ordinance has undergone various iterations and the final product takes account of the feedback received through all consultation periods.

### Regulatory Impact Statement

The Office of Best Practice Regulation considers the proposal is likely to have no more than minor regulatory impacts on business, community organisations or individuals. A Regulatory Impact Statement is not required.

### Other

The Ordinance is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Ordinance commences on the day after the instrument is registered.

Details of the Ordinance are set out in the Attachment.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Cocos (Keeling) Islands Applied Laws Amendment (Fish Resources Management) Ordinance 2022**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The purpose of the *Cocos (Keeling) Islands Applied Laws Amendment (Fish Resources Management) Ordinance 2022* is to amend the *Cocos (Keeling) Islands Applied Laws Ordinance 1992* to include ‘Part 15 – *Fish Resources Management Act 1994* (WA) (CKI)’, and to include and amend the *Fish Resources Management Regulations 1995* (WA) (CKI) (new Part 15A), making them appropriate for the Cocos (Keeling) Islands (CKI) context.

While it is the aim of the Australian Government to apply laws in a similar fashion to a comparable mainland location wherever possible, the unique CKI marine ecosystem and the cultural history and customs of the Cocos-Malay community requires the introduction of an amending Ordinance to introduce a tailored recreational fishing management framework for this Territory.

The amendments ensure the rules applied on CKI are relevant and appropriate to the region. The focus of the arrangements is the sustainable management of the fish resources within the Territory for the benefit of the island communities today and into the future.

The Ordinance implements the following key measures:

- introduction of daily bag and minimum size limits for finfish and invertebrates which are more generous than those contained in the *Fish Resources Management Regulations 1995* (WA) (CKI);
- introduction of a fish possession limit in the area of the CKI Airport to manage the amount of fish that may be exported off island, including specified requirements pertaining to the type and amount of fish;
- restrictions or prohibition of fishing in specified areas;
- allowance for fish, in excess of the daily bag limit, to be taken for specified religious and cultural celebrations in recognition of Cocos Malay culture;
- provide the Minister with the power to amend the Schedule containing the fishing regulations to facilitate adaptive fisheries management; and
- establishment of a CKI Fisheries Management Advisory Committee to provide the Minister with advice regarding CKI fisheries matters.
- provision for the Minister to exempt up to seven individuals from regulations preventing the sale of recreationally caught fish, to allow for the continuation of established practice.

#### ***Human rights implications***

This Legislative Instrument engages the following rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR):

- The right to self-determination (Article 1 ICESCR).
- The right to non-discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2 ICESCR).
- The right to work (Articles 6(1), 7 and 8(1)(a) ICESCR).
- The right to an adequate standard of living, including food, water and housing (Article 11(1) ICESCR).
- The right to enjoy and benefit from culture (Article 27 ICCPR).

### ***The right to self-determination***

The right to self-determination, Article 1 of the ICESCR has been considered and the principles are upheld in the Ordinance.

The Australian Government conducted a referendum on 6 April 1984 where Islanders supported integration with Australia, giving local people a vote in federal elections and access to Australian services.

Under the *Cocos (Keeling) Islands Act 1955*, Western Australian laws are enforced in the Territory, unless repealed or amended by Ordinance.

The Ordinance does not diminish any rights to self-determination.

A local fisheries management committee, Cocos Marine Care has been established. This committee represents the CKI community on local fisheries matters and will inform the initial base membership of a formal CKI Fisheries Advisory Committee established by the Minister under the proposed Ordinance.

The right to self-determination is supported by this Ordinance, and the residents of CKI are free to pursue their economic, social and cultural development without outside interference.

### ***The right to non-discrimination, and the right to enjoy and benefit from culture***

The right to non-discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2 of the ICESCR) and the right to enjoy and benefit from culture (Article 27 of the ICCPR) were taken into consideration during the compilation of the Ordinance.

The Ordinance recognises religious and cultural events, and permits fish to be caught in excess of daily bag limits for specified religious and cultural occasions including: the Ceremony of Death Month, Ramadan, Hari Maulad Nabi (Prophet Mohammad's Birthday), Islamic New Year, a Cocos Malay wedding, Cocos Malay community member circumcision, and the celebration of the birth of a Cocos Malay child.

These provisions allow sufficient access to fish for the observance of religious practices and support the maintenance of existing cultural traditions. The right to non-discrimination and the right to enjoy and benefit from culture is not limited by the Ordinance.

### ***The right to work***

The right to work in Articles 6(1), 7 and 8(1)(a) of the ICESCR includes the right of everyone to gain his or her living by work which he or she freely chooses or accepts.

The Ordinance allows the Minister to exempt up to seven individuals from any regulations that would prevent them selling recreationally caught fish to purchasers within the Territory. This provision recognises traditional practices and supports local employment in a remote location where there are limited employment opportunities. Accordingly, the Ordinance and exemption promotes the human right to gain a living by work.

### ***The right to an adequate standard of living***

The right to an adequate standard of living in Article 11(1) of the ICESCR requires that Australia ensures the availability, adequacy and accessibility of food, water and housing for all people in Australia.

Considering that fish is a valuable source of protein for CKI households, a daily per-person bag limit has been introduced. The introduced bag limits exceed the current limits in the *Fish Resources Management Regulations 1995* (WA) (CKI) to recognise the challenges of accessing food in a remote location.

Nominated individuals, who have an exemption from the Minister, are authorised under the Ordinance, to sell recreationally caught fish to local residents. This provision further supports food security for the local community.

### **Conclusion**

The Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Minister for Regional Development, Local Government and Territories**

**The Hon Kristy McBain MP**

## **ATTACHMENT – NOTES ON CLAUSES**

### ***Cocos (Keeling) Islands Applied Laws Amendment (Fish Resources Management) Ordinance 2022***

This attachment explains the operation of individual provisions in the *Cocos (Keeling) Islands Applied Laws Amendment (Fish Resources Management) Ordinance 2022* (the Ordinance).

#### **Section 1 – Name of Ordinance**

This section provides that the name of the Ordinance is the *Cocos (Keeling) Islands Applied Laws Amendment (Fish Resources Management) Ordinance 2022* (the Ordinance).

#### **Section 2 – Commencement**

This section provides for the Ordinance to commence on the day after the Ordinance is registered.

#### **Section 3 – Authority**

This section provides that the Ordinance is made under the *Cocos (Keeling) Islands Act 1955*.

#### **Section 4 – Schedules**

This section provides that each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.

### **Schedule 1 – Amendments**

#### ***Cocos (Keeling) Islands Applied Laws Ordinance 1992***

##### **Item [1] – After section 3**

**Item 1** inserts, after section 3 of the *Cocos (Keeling) Islands Applied Laws Ordinance 1992*, new section 4 with the heading Rules—fish resources management.

New subsection 4(1) provides that the Minister may, by legislative instrument, make rules:

- (a) so as to amend Part 15A of Schedule 1 to this Ordinance; or
- (b) to make application, saving or transitional provisions in relation to such amendments.

New subsection 4(2) provides that to avoid doubt, the rules may not do the following:

- (a) create an offence or civil penalty;
- (b) provide powers of:
  - (i) arrest or detention; or
  - (ii) entry, search or seizure;
- (c) impose a tax.

New subsection 4(3) provides that that the Minister may, by legislative instrument, make rules amending the Ordinance after consultation with an advisory committee established under section 42 of the *Fish Resources Management Act 1994 (WA)* as it applies in the Territory.

This amendment provides the Minister with the power to amend the fishing rules in the Ordinance when required. This will facilitate an adaptive fisheries management approach, enabling timely changes to fishing rules in response to potential future issues such as: changed environmental conditions; new research findings; and other issues impacting the sustainability of Cocos (Keeling) Islands fisheries.

#### **Item [2] – After Part 14 of Schedule 1**

**Item 2** inserts, after Part 14 of Schedule 1 to the *Cocos (Keeling) Islands Applied Laws Ordinance 1992*, new Part 15—*Fish Resources Management Act 1994 (WA)* (CKI).

Item 1 of Part 15 inserts, at the end of section 42 of the *Fish Resources Management Act 1994 (WA)* (CKI), new subsection 42(4), containing paragraph 42(4)(a) and paragraph 42(4)(b), that requires the Commonwealth Minister administering this Act to establish an advisory committee as soon as practicable after the commencement of this Ordinance, and to ensure that at least one committee is established at any time.

This amendment ensures the establishment and ongoing existence of a formal advisory committee. The purpose of the advisory committee will be to provide advice on fisheries matters to the Minister.

#### **Part 15A—Fish Resources Management Regulations 1995 (WA) (CKI)**

**Item 2** also inserts, after new Part 15 of Schedule 1 to the *Cocos (Keeling) Islands Applied Laws Ordinance 1992*, new Part 15A—*Fish Resources Management Regulations 1995 (WA)* (CKI).

Part 15A amends the *Fish Resources Management Regulations 1995 (WA)* (CKI) as it applies in the Territory, which tailors fisheries management to the unique marine environment of Cocos (Keeling) Islands.

#### **Item 1 of Part 15A—Subregulation 31(1) (definition of day trip)**

**Item 1** of Part 15A repeals subregulation 3(1) (definition of *day trip*) and substitutes it with a new definition for a day trip that is appropriate to apply at Cocos (Keeling) Islands, which is defined as a voyage undertaken by a person on a boat, except a voyage which has taken place over more than one day.

#### **Item 2 of Part 15A— Subregulation 31(1) (definition of one day)**

**Item 2** of Part 15A repeals subregulation 3(1) (definition of *one day*) and substitutes it with a new definition of one day, meaning a period of 24 hours commencing at midnight.

#### **Item 3 of Part 15A —Regulations 14**

**Item 3** of Part 15A repeals regulation 14 and substitutes it with a new regulation 14:

#### **14 Finfish to be landed as whole fish, or as fish trunks or fillets**

- (1) A person must not be in possession of a finfish on a boat or bring a finfish onto land unless it is:
  - (a) a whole fish; or
  - (b) a fish trunk that has the skin and scales attached; or
  - (c) a fillet that:
    - (i) has the skin and scales attached; and
    - (ii) is packaged flat; and
    - (iii) is packaged so that it is easily accessible for identification; and
    - (iv) if the fish is frozen—can be measured and identified without being thawed.

Penalty: a fine of \$3,000 and the penalty provided in section 222 of the Act.

- (2) Subregulation (1) does not apply to:
  - (a) finfish taken for a commercial purpose in accordance with an authorisation; or
  - (b) finfish on a boat if the finfish is:
    - (i) being consumed; or
    - (ii) prepared, or being prepared, for immediate consumption by persons on the boat.

#### **Item 4 of Part 15A —Regulations 16D, 16DB, 16E, 16GA, 22 and 22AA**

**Item 4** of Part 15A repeals regulations 16D, 16DB, 16E, 16GA, 22 and 22AA which removes the mainland state-wide finfish and rock lobster possession limits and labelling requirements that apply on land and at sea, and replaces them with an island-specific possession limit to apply in the area of the Cocos (Keeling) Islands Airport. The repeal of regulation 16DB also removes the mainland limit on tuna and mackerel species as they apply to commercial fishing boats.

#### **Item 5 of Part 15A —Subregulation 31(1)**

**Item 5** of Part 15A repeals subregulation 31(1) as this is not required for recreational fishers, and there is no commercial rock lobster fishing on Cocos (Keeling) Islands.

#### **Item 6 of Part 15A —Subregulation 31(2) (penalty)**

**Item 6** of Part 15A omits “\$5 000” from subregulation 31(2)(penalty) and substitutes it with “\$3,000” which makes the fine consistent with other penalties contained in the Ordinance.

#### **Item 7 of Part 15A —Subregulation 31(3)**

**Item 7** of Part 15A repeals subregulation 31(3) as there is no commercial rock lobster fishing on Cocos (Keeling) Islands.

#### **Item 8 of Part 15A —Subregulation 31(4)**

**Item 8** of Part 15A omit “or (3)” from subregulation 31(4) which removes the application of an allowed time for the tail clipping and tail punching of rock lobster.

#### **Item 9 of Part 15A —Paragraphs 32(1)(b) and (c)**



**Item 9** of Part 15A repeals paragraphs 32(1)(b) and 32(1)(c) and substitutes them with a new paragraph 32(1)(b) which removes recreational fishing licence requirements relating to rock lobster pot marking and retrieval.

**Item 10 of Part 15A —Paragraph 36(1)(b)**

**Item 10** of Part 15A repeals paragraph 36(1)(b) as recreational rock lobster fishing does not require a recreational licence.

**Item 11 of Part 15A —Subregulation 36(2B)**

**Item 11** of Part 15A repeals subregulation 36(2B) meaning that subregulation 36(2B) does not apply in respect of a person who is on board a boat that is specified on a fishing tour operator's licence, or a restricted fishing tour operator's licence, granted under regulation 128J.

**Item 12 of Part 15A —Regulation 37**

**Item 12** of Part 15A repeals regulation 37 and substitutes it with a new regulation 37 which allow for a defence for proceedings against an offence against regulation 36(1)(c).

**Item 13 of Part 15A —Regulation 42**

**Item 13** of Part 15A repeals regulation 42 as molluscs may have been shucked at sea or within 200m of the high water mark.

**Item 14 of Part 15A —At the end of Division 6 of Part 4**

**Item 14** of Part 15A inserts new regulation 46 at the end of Division 6 of Part 4.

**46 Areas of Cocos (Keeling) Islands closed to fishing for certain species**

- (1) A person must not fish for Humphead Maori Wrasse (Ikan Hijau) in the waters in the area described in clause 1 of Schedule 2A.

Penalty: a fine of \$3,000 and the penalty provided in section 222 of the Act.

- (2) A person must not fish for gong gong in:
- (a) the waters in the northern closure area described in clause 2 of Schedule 2A; or
  - (b) the waters in the central closure area described in clause 3 of Schedule 2A; or
  - (c) the waters in the southern closure area described in clause 4 of Schedule 2A.

Penalty: a fine of \$3,000 and the penalty provided in section 222 of the Act.

**Item 15 of Part 15A —Regulation 64AA**

**Item 15** of Part 15A repeals regulation 64AA which prevents fish taken for a recreational purpose being on certain premises, including restaurants at Cocos (Keeling) Islands.

**Item 16 of Part 15A —At the end of Division 8 of Part 4**

**Item 16** of Part 15A insert new regulation 64AB at the end of Division 8 of Part 4:

## **64AB Fish at Cocos (Keeling) Islands Airport**

- (1) The following requirements apply to the possession of fish by a person in the area of Cocos (Keeling) Islands Airport:
  - (a) the maximum quantity of fish that a person may possess is:
    - (i) for fish other than gong or kima clam—5 kg; and
    - (ii) for gong gong—2 kg; and
    - (iii) for kima clam—2 kg;
  - (b) if the fish is finfish, it must:
    - (i) have the skin attached; and
    - (ii) be packaged flat;
  - (c) the fish must be packaged so that it is easily accessible for identification;
  - (d) if the fish is frozen, it must be able to be identified without being thawed.
- (2) A person in the area of Cocos (Keeling) Islands Airport must not have any fish in the person's possession that does not meet the requirements of subregulation (1).  
Penalty: a fine of \$3,000 and the penalty provided in section 222 of the Act.
- (3) It is a defence in proceedings for an offence against subregulation (2) for the person charged to prove that:
  - (a) the fish were taken for a commercial purpose in accordance with an authorisation; or
  - (b) the fish were kept, bred, hatched, cultured or harvested in accordance with an aquaculture licence; or
  - (c) the fish were taken under an authority to fish for scientific purposes issued under regulation 178.
- (4) In this regulation:  
*area of Cocos (Keeling) Islands Airport* means lots 341 and 348 on Deposited Plan 42274

### **Item 17 of Part 15A —Subregulation 64E(3)**

**Item 17** of Part 15A repeals subregulation 64E(3) so that the traditional practice of using more than 3 baits or lures is allowed. However the penalty of \$2,000 is maintained for subregulations 64E(1) and 64E(2).

### **Item 18 of Part 15A —Subparagraph 64F(1)(b)(i)**

**Item 18** of Part 15A omit “60” from paragraph 64F(1)(b)(i) and substitutes it with “100”, which allows a fishing net length of up to 100 meters.

### **Item 19 of Part 15A —Subparagraph 64F(1)(b)(iv)**

**Item 19** of Part 15A repeals paragraph 64F(1)(b)(iv) which removes the requirement for the use of end floats on fishing nets.

### **Item 20 of Part 15A —Subregulation 64F(2)**

**Item 20** of Part 15A repeals subregulation 64F(2) and substitutes it with new subregulation 64F(2) which provides that the mesh of a fishing net referred to in subregulation (1)(b)(v) must be not less than 50 mm or more than 114 mm.

**Item 21 of Part 15A —After regulation 64G**

**Item 21** of Part 15A inserts new regulation 64GA after regulation 64G.

**64GA Use of set or haul fishing net**

- (1) A person who fishes using a set or haul fishing net must:
- (a) attend that net; and
  - (b) clear it of fish at intervals of not more than one hour.

Penalty: \$2,000.

- (2) In this section:

*attend*, in respect of a net, means to be within 100 m of the net.

**Item 22 of Part 15A —At the end of Division 2 of Part 4A**

**Item 22** of Part 15A inserts new regulation 64LA at the end of Division 2 of Part 4A which prohibits spearfishing with breathing apparatus. A fine of \$3,000 would be provided and a penalty under section 222 of the *Fish Resources Management Act 1994* (WA) (CKI).

**64LA Spearfishing using breathing apparatus prohibited**

A person must not fish with a spear or spear gun while using compressed air breathing apparatus.

Penalty: a fine of \$3,000 and the penalty provided in section 222 of the Act.

**Item 23 of Part 15A —At the end of Division 4 of Part 4A**

**Item 23** of Part 15A inserts new regulation 64U at the end of Division 4 of Part 4A.

**64U Set and haul net fishing prohibited in Northern Lagoon, West Island**

A person must not set a net or use a haul net in the Northern Lagoon of West Island, inside of a line drawn between 12°10.723'S, 096°49.790'E and 12°10.446'S, 096°49.922'E.

Penalty: a fine of \$3,000 and the penalty provided in section 222 of the Act.

**Item 24 of Part 15A — Subparagraph 64W(1)(b)(i)**

**Item 24** of Part 15A omits subparagraph 64W(1)(b)(i) “in accordance with regulation 16D(1) Table items 1, 2 and 4” as regulation 16D is repealed in its entirety.

**Item 25 of Part 15A —Paragraph 64W(1)(c)**

**Item 25** of Part 15A repeals paragraph 64W(1)(c) which removes the mainland state-wide finfish and rock lobster possession limits that apply on boats at sea, to be replaced with an island-specific possession limit to apply in the area of the Cocos (Keeling) Islands Airport.

**Item 26 of Part 15A —Regulation 64X**

**Item 26** of Part 15A repeals regulation 64X and substitutes it with a new regulation 64X:

### **64X Counting pieces of fish for bag limits**

For the purpose of determining the number of fish in relation to a bag limit:

- (a) 2 pieces of finfish are taken to be equivalent to one whole finfish; and
- (b) a piece of clam meat is taken to be equivalent to a whole clam; and
- (c) a piece of gong gong meat is taken to be equivalent to a whole gong gong.

### **Item 27 of Part 15A —Division 2 of Part 4B**

**Item 27** of Part 15A repeals Division 2 of Part 4B and substitutes it with a new Division 2—  
Bag limits for Territory:

### **64Y Territory bag limits**

- (1) For the purposes of section 50 of the Act, the quantity of fish appearing under the heading “Species, or group of species, bag limit” in a Part of Schedule 3 is the bag limit in respect of fish of that species or group of species in the Territory.
- (2) The bag limits set out in Schedule 3 do not apply in relation to a person if the person takes fish:
  - (a) from waters within 3 nautical miles of land; and
  - (b) during a period the person has notified in accordance with subregulations (3) and (4) to an advisory committee established under section 42 of the Act.
- (3) The person must give notice of the period during which the person intends to fish (the *fishing period*) at least 1 month before the day the period starts.
- (4) The fishing period must be wholly within one of the following periods:
  - (a) the Ceremony of Death month (Bulan Arwah) (but the maximum duration of the fishing period is 2 weeks) ;
  - (b) the period of 2 weeks immediately before the day that Ramadan starts;
  - (c) the period of 1 week immediately before Hari Maulad Nabi (Prophet Mohammad’s Birthday);
  - (d) the period of 1 week immediately before the day of Islamic New Year;
  - (e) the period of 1 month immediately before the day of the wedding of a member of the Cocos Malay community that is to take place in the Territory;
  - (f) the period of 1 month immediately before the day the circumcision of a member of the Cocos Malay community in the Territory is to be celebrated.

### **64Z Report on fishing period**

- (1) A person who gave notice to an advisory committee under regulation 64Y of a period that the person intended to fish must give the advisory committee a report on the fishing that the person undertook during the period.
- (2) The report must include, for each day during the period, the species of fish taken by the person and the number of fish of each species.
- (3) The report must be given to the advisory committee no later than 2 weeks after the last day of the fishing period.

### **Item 28 of Part 15A —Subregulation 117(1)**

**Item 28** of Part 15A inserts in subregulation 117(1) ‘granted under regulation 118 as it applies in the Territory’ after ‘current fishing boat licence’, meaning the applied Western Australian legislation applies to commercial fishing boat licences in the waters of Cocos (Keeling) Islands.

**Item 29 of Part 15A —At the end of subregulation 121(1)**

**Item 29** of Part 15A inserts at the end of subregulation 121(1) ‘granted under regulation 122 as it applies in the Territory’, meaning that Western Australian legislation applies to commercial fishing boat licences in the waters of Cocos (Keeling) Islands.

**Item 30 of Part 15A —At the end of regulation 121**

**Item 30** of Part 15A insert subregulations 121(3), 121(4), 121(5), at the end of regulation 121:

- (3) The Minister may exempt an individual from subregulation (2), and any other provision of these regulations that would prevent the sale of fish taken by recreational fishing.
- (4) The Minister may not exempt more than 7 individuals at any time.
- (5) An exemption given by the Minister under subregulation (3) only applies:
  - (a) in relation to fish taken from waters within 3 nautical miles of land; and
  - (b) in relation to the sale of those fish to a purchaser within the Territory.

The Minister may exempt an individual from the requirement that a person engaging in commercial fishing must hold a commercial fishing licence (subregulation (2)), and any other provision in the regulations that would otherwise prevent the sale of fish taken by recreational fishing.

Consistent with the community-based fisheries management approach, exemptions will be recommended to the Minister by an advisory committee established under section 42 of the *Fish Resources Management Act 1994* (WA). The inaugural Fisheries Advisory Committee for Cocos (Keeling) Island (FAC) will be comprised of members of the Cocos Marine Care (CMC) committee, which consists of local representatives well-placed to advise on local needs and community practices. The FAC will require exempt fishers to keep a log of the catch sold and submit these records to the FAC annually (and upon request).

The Minister may not exempt more than seven individuals at any time. Any exemption given will only apply to fish that are taken by recreational fishing from waters within three nautical miles of land and the caught fish can only be sold to purchasers, such as consumers, restaurants and retailers in CKI. All other recreational fishing rules continue to apply.

The exemption provides for the continuation of a longstanding practice by CKI residents.

**Originated Item 31 of Part 15A —Division 2 of Part 11**

**Item 31** of Part 15A repeals Division 2 of Part 11 removing the requirement for recreational fishing licences in Cocos (Keeling) Islands.

**Item 32 of Part 15A —Regulation 156 (table)**

**Item 32** of Part 15A inserts “46(1) and 46(2)” after “45(2)” in regulation 156 (table) so that the new penalties created by this Ordinance apply under subsection 222(1) of the *Fish Resources Management Act 1994* (WA) (CKI).

### Item 33 of Part 15A —Regulation 156 (table)

Item 33 of Part 15A inserts “64AB, 64LA and 64U” after “64AA(2B)” in regulation 156 (table) so that the new penalties created by this Ordinance apply under subsection 222(1) of the *Fish Resources Management Act 1994* (WA) (CKI).

### Item 34 of Part 15A —Part 1 of Schedule 2

Item 34 of Part 15A omits Billfish (marlins, sailfish and spearfish) from Part 1 of Schedule 2 to allow these fish to be commercially caught.

### Item 35 of Part 15A —Part 1 of Schedule 2

Item 35 of Part 15A omits “and Rays, other than sharks or rays that are totally protected fish” from Part 1 of Schedule 2.

### Item 36 of Part 15A —Part 2 of Schedule 2

Item 36 of Part 15A repeals Part 2 of Schedule 2 and substitutes it with a new: Part 2—Totally protected fish, that provides a new list of Totally Protected Fish species found in Cocos (Keeling) Islands:

#### Part 2—Totally protected fish

##### Division 1— Protected by reference to characteristics

###### Totally protected fish— Protected by reference to characteristics

Item	Description of totally protected fish
1	Female crab with eggs or spawn attached beneath its body
2	Female rock lobster with eggs or spawn attached beneath its body
3	Gong gong that do not have fully formed and closed spines

##### Division 2— Protected by reference to characteristics

###### Totally protected fish— protected by reference to length

Item	A fish of the following class...	...is a totally protected fish if its length is less than...
1	Bonefish	40 centimetres
2	Coronation Trout	35 centimetres
3	Coral Trout	35 centimetres
4	<u>Emperor, Yellowlip</u>	<u>40 centimetres</u>
5	<u>Humphead Maori Wrasse (Ikan Hijau)</u>	<u>65 centimetres</u>
6	<u>Parrotfish, Humphead</u>	<u>65 centimetres</u>
7	Rock Lobster	<u>10 centimetres</u>
8	Silveries	<u>20 centimetres</u>

##### Division 3—Other protected species

###### Totally protected fish— other protected species

Item	Description of totally protected fish
1	Clam, Giant
2	Cod, Potato
3	Cod, White Banded
4	Cod, White Banded
5	<u>Groper, Queensland</u>
6	Rays

### Item 37 of Part 15A —Part 3 of Schedule 2

Item 37 of Part 15A repeals Part 3 of Schedule 2 and substitutes it with a new Part 3—Recreationally protected fish, to allow for the provision of recreationally protected fish in the future.

### Item 38 of Part 15A —After Schedule 2

Item 38 of Part 15A inserts schedule 2A Cocos (Keeling) Islands areas after Schedule 2 to detail the areas of Cocos (Keeling) Islands closed to fishing for certain species under new regulation 46:

#### Schedule 2A—Cocos (Keeling) Islands areas

Note: See regulation 46.

#### 1 Humphead Maori Wrasse closure area

The area of waters closed to fishing for Humphead Maori Wrasse (Ikan Hijau) is the area bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

Area closed to fishing for Humphead Maori Wrasse (Ikan Hijau)	
Item	Description
1	The point 12°05.778'S, 096°48.959'E
2	East along the parallel of latitude 12°05.778'S to its intersection by the meridian of longitude 096°50.508'E
3	Southerly along the geodesic to the point 12°07.498'S, 096°50.516'E
4	Westerly along the geodesic to the point 12°07.494'S, 096°48.963'E
5	Northerly along the geodesic to the starting point

#### 2 Northern gong gong closure area

The area of waters closed to fishing for gong gong is the area bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

Area closed to fishing for gong gong—northern area	
Item	Description
1	The point 12°07.314'S, 096°53.032'E
2	East along the parallel of latitude 12°07.314'S to its intersection by the meridian of longitude 096°53.638'E

<b>Area closed to fishing for gong gong—northern area</b>	
<b>Item</b>	<b>Description</b>
3	Southerly along the geodesic to the point 12°07.860'S, 096°53.635'E
4	Westerly along the geodesic to the point 12°07.858'S, 096°53.037'E
5	Northerly along the geodesic to the starting point

### 3 Central gong gong closure area

The area of waters closed to fishing for gong gong is the area bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

<b>Area closed to fishing for gong gong—central area</b>	
<b>Item</b>	<b>Description</b>
1	The point 12°08.739'S, 096°53.559'E
2	East along the parallel of latitude 12°08.739'S to its intersection by the meridian of longitude 096°54.160'E
3	Southerly along the geodesic to the point 12°09.285'S, 096°54.151'E
4	West along the parallel of latitude 12°09.285'S to its intersection by the meridian of longitude 096°53.556'E
5	Northerly along the geodesic to the starting point

### 4 Southern gong gong closure area

The area of waters closed to fishing for gong gong is the area bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

<b>Area closed to fishing for gong gong—southern area</b>	
<b>Item</b>	<b>Description</b>
1	The point 12°10.454'S, 96°53.405'E
2	Easterly along the geodesic to the point 12°10.449'S, 96°53.990'E
3	Southerly along the geodesic to the point 12°11.003'S, 96°53.987'E
4	Westerly along the geodesic to the point 12°11.000'S, 96°53.402'E
5	Northerly along the geodesic to the starting point

## Item 39 of Part 15A —Schedule 3

Item 39 of Part 15A repeals Schedule 3 and substitutes it with new Schedule 3—Bag limits, to provide bag limits for fish species found in Cocos (Keeling) Islands:

### Schedule 3—Bag limits

Note: See regulation 64Y.

#### Part 1—Pelagic species

<b>Bag limits for pelagic species</b>		
<b>Item</b>	<b>Fish</b>	<b>Species, or group of species, bag limit</b>
1	Barracuda	4
2	Billfish and Swordfish	4
3	Dolphinfish (Mahi Mahi)	4



<b>Bag limits for pelagic species</b>		
<b>Item</b>	<b>Fish</b>	<b>Species, or group of species, bag limit</b>
4	Tuna (all species except Dogtooth Tuna)	4
5	Tuna, Dogtooth	1
6	Wahoo	4
7	All species in items 1 to 6, combined	4

### **Part 2—Demersal species**

<b>Bag limits for demersal species</b>		
<b>Item</b>	<b>Fish</b>	<b>Species, or group of species, bag limit</b>
1	Bonefish	4
2	Cod (Groupers) (except totally protected species)	16
3	Coral Trout	4
4	Coronation Trout	4
5	Humphead Maori Wrasse (Ikan Hijau)	1
6	Parrotfish (except Humphead Parrotfish)	16
7	Parrotfish, Humphead	1
8	Sepat, Red and Black	16
9	Snappers and Emperors	16
10	Trevally	16
11	All species in items 1 to 10, combined	16

### **Part 3—Lagoon species**

<b>Bag limits for lagoon species</b>		
<b>Item</b>	<b>Fish</b>	<b>Species, or group of species, bag limit</b>
1	All of the following: (a) Milkfish; (b) Mullet, Diamond Scale; (c) Mullet, Sea	40
2	Silveries	30

### **Part 4—Crustaceans and molluscs**

<b>Bag limits for crustaceans and molluscs</b>		
<b>Item</b>	<b>Fish</b>	<b>Species, or group of species, bag limit</b>
1	Clams (except Giant Clam)	80
2	Crab, Mud	2
3	Gong Gong	100
4	Rock Lobster	10

#### **Item 40 of Part 15A —Schedule 4**

**Item 40** of Part 15A repeals Schedule 4 and substitutes it with a new ‘Schedule 4—Categories of Fish.’

## Schedule 4—Categories of Fish

Note: See regulation 180.

### Part 1—Category 1 fish

Category 1 fish	
Item	Type of fish
1	Billfish
2	Bonefish
3	Clams
4	Cod, Potato
5	Cod, White Banded
6	Coral
7	Coral Trout
8	Coronation Trout
9	Crab, Mud
10	Dolphinfish (Mahi Mahi)
11	Gong Gong
12	Groper, Queensland
13	Humphead Maori Wrasse (Ikan Hijau)
14	Live Rock
15	Parrotfish, Humphead
16	Rays
17	Rock Lobster
18	Sharks
19	Swordfish
20	Tuna (all species)
21	Wahoo

### Part 2—Category 2 fish

Category 2 fish	
Item	Type of fish
1	Cod (Groupers) (except species listed as category 1 fish)
2	Emperors
3	Parrotfish (except Humphead Parrotfish)
4	Sepat, Red and Black
5	Snappers
6	Trevally

### Part 3—Category 3 fish

<b>Category 3 fish</b>	
<b>Item</b>	<b>Type of fish</b>
1	Milkfish
2	Mullet, Diamond Scale
3	Mullet, Sea
4	Silveries

#### **Part 4—Category 4 fish**

<b>Category 4 fish</b>	
<b>Item</b>	<b>Type of fish</b>
1	Any species of fish not specified in this Schedule to be category 1 fish, category 2 fish or category 3 fish

#### **Item 41 of Part 15A —Schedule 7**

**Item 41** of Part 15A repeals Schedule 7 and substitutes it with a new Schedule 7— List of common and scientific names, so that there is a list of common and scientific names for the purpose of accurately identifying fish species in Cocos (Keeling) Islands.

#### **Schedule 7—List of common and scientific names**

Note: See subregulation 3(2).

<b>Common and scientific names of fish</b>		
<b>Item</b>	<b>Common name</b>	<b>Scientific name</b>
1	Barracuda	<i>Sphyraena</i> spp.
2	Billfish	Family Istiophoridae
3	Bonfish	<i>Albula</i> spp.
4	Clam, Giant	<i>Tridacna gigas</i>
5	Clam, Kima	<i>Tridacna maxima</i>
6	Clams	<i>Tridacna</i> spp.
7	Cod (Groupers)	Family Epinephelidae
8	Cod, Potato	<i>Epinephelus tukula</i>
9	Cod, White Banded	<i>Anyperodon leucogrammicus</i>
10	Coral	Class Anthozoa and Class Hydrozoa
11	Coral Trout	<i>Plectropomus</i> spp.
12	Coronation Trout	<i>Variola</i> spp.
13	Crab, Mud	<i>Scylla</i> spp.
14	Dolphinfish (Mahi Mahi)	<i>Coryphaena</i> spp.
15	Emperor, Yellowlip	<i>Lethrinus xanthochilus</i>
16	Emperors	Family Lethrinidae
17	Gong Gong	<i>Lambis</i> spp. and <i>Harpago chiragra</i>
18	Groper, Queensland	<i>Epinephelus lanceolatus</i>

<b>Common and scientific names of fish</b>		
<b>Item</b>	<b>Common name</b>	<b>Scientific name</b>
19	Humphead Maori Wrasse (Ikan Hijau)	<i>Cheilinus undulatus</i>
20	Live Rock	Family Corallinaceae, Class Polychaeta, Class Crinoidea, Class Ascidiacea, Class Ophiuroidea, Phylum Bryozoa and Phylum Porifera and dead fish of Class Anthozoa and Class Hydrozoa
21	Milkfish	<i>Chanos chanos</i>
22	Mullet, Diamond Scale	<i>Liza vaigiensis</i>
23	Mullet, Sea	<i>Mugil cephalus</i>
24	Parrotfish	Subfamily Scarinae
25	Parrotfish, Humphead	<i>Bolbometopon muricatum</i>
26	Rays	Superorder Batoidea
27	Rock Lobster	<i>Panulirus</i> spp.
28	Sepat, Red and Black	Families Berycidae and Bramidae
29	Sharks	Orders Squatiniformes, Pristiophoriformes, Squaliformes, Hexanchiformes, Carcharhiniformes, Lamniformes, Orectolobiformes and Heterodontiformes
30	Shark, Whale	<i>Rhincodon typus</i>
31	Silveries	<i>Gerres</i> spp.
32	Snappers	Family Lutjanidae
33	Swordfish	Family Xiphiidae
34	Trevally	Family Carangidae
35	Tuna, Albacore	<i>Thunnus alalunga</i>
36	Tuna, Bigeye	<i>Thunnus obesus</i>
37	Tuna, Dogtooth	<i>Gymnosarda unicolor</i>
38	Tuna, Longtail	<i>Thunnus tonggol</i>
39	Tuna, Skipjack	<i>Katsuwonus pelamis</i>
40	Tuna, Southern Bluefin	<i>Thunnus maccoyii</i>
41	Tuna, Yellowfin	<i>Thunnus albacares</i>
42	Wahoo	<i>Acanthocybium solandri</i>

#### **Item 42 of Part 15A —Schedule 9**

**Item 42** of Part 15A repeals Schedule 9 and substitutes it with new Schedule 9—Determining the value of fish, which provide the applicable additional penalty by weight or number for each species of fish for the purposes of section 222 of the *Fish Resources Management Act 1994* (WA) (CKI).

#### **Schedule 9—Determining the value of fish**

Note: See regulation 157.

<b>Value of fish species</b>			
<b>Item</b>	<b>Species of fish</b>	<b>Value per unit of weight (\$/kg)</b>	<b>Value per fish (\$)</b>
1	Barracuda	2.00	10.00
2	Billfish	2.00	100.00
3	Bonefish	8.00	24.00
4	Clam, Giant	10.00	100.00
5	Clams (except Giant Clam) (shucked)	60.00	5.00
6	Clams (except Giant Clam) (whole)	25.00	5.00
7	Cod (Groupers) (except species listed separately)	9.50	38.00
8	Cod, Potato	10.00	100.00
9	Cod, White Banded	10.00	100.00
10	Coral and Live Rock	80.00	-
11	Coral Trout	10.00	100.00
12	Coronation Trout	8.00	24.00
13	Crab, Mud	25.00	14.00
14	Dolphinfish (Mahi Mahi)	2.00	4.00
15	Emperors	8.00	24.00
16	Gong Gong (shucked)	60.00	3.00
17	Gong Gong (whole)	25.00	3.00
18	Groper, Queensland	10.00	100.00
19	Humphead Maori Wrasse (Ikan Hijau)	25.00	100.00
20	Milkfish	4.50	3.00
21	Mullet, Diamond Scale	4.50	3.00
22	Mullet, Sea	4.50	3.00
23	Parrotfish (except Humphead Parrotfish)	6.00	12.00
24	Parrotfish, Humphead	25.00	100.00
25	Rock Lobster	30.00	15.00
26	Sepat, Red and Black	8.00	24.00
27	Sharks and Rays (except Whale Shark)	6.00	90.00
28	Shark, Whale	10.00	500.00
29	Silveries	4.50	3.00
30	Snappers	8.00	24.00
31	Swordfish	2.00	100.00
32	Trevally	3.50	8.00
33	Tuna, Dogtooth	5.00	25.00
34	Tuna (except Dogtooth Tuna)	2.00	20.00
35	Wahoo	7.00	28.00

<b>Value of fish species</b>			
<b>Item</b>	<b>Species of fish</b>	<b>Value per unit of weight (\$/kg)</b>	<b>Value per fish (\$)</b>
36	All fish not otherwise listed in this Schedule	1.00	1.00

**Item 43 of Part 15A —Schedule 12 (table headed “Part 2—Regulations”, item 4)**

**Item 43** of Part 15A inserts “46” after “41” in Schedule 12 (table headed “Part 2 – Regulations”, item 4) providing modified penalties for Infringement Notices for the new regulation.

**Item 44 of Part 15A —Schedule 12 (table headed “Part 2—Regulations”, item 4)**

**Item 44** of Part 15A inserts “64GA” and “64LA” after “64E” in Schedule 12 (table headed “Part 2 – Regulations”, item 4) providing modified penalties for Infringement Notices for the new regulations.

**Item 45 of Part 15A —Schedule 12 (table headed “Part 2—Regulations”, item 4)**

**Item 45** of Part 15A inserts “64U” after “64QA” in Schedule 12 (table headed “Part 2— Regulations”, item 4) providing modified penalties for Infringement Notices for the new regulations.

**Item 46 of Part 15A —At the end of Schedule 15**

**Item 46** of Part 15A inserts ‘Zone 5: Cocos (Keeling) Islands The Territory’ at the end of Schedule 15, providing for a Tour Management Zone for the purpose of fishing tour operators’ licences.

**Item [3] – Schedule 4**

**Item 3** omits “*Fisheries Act 1905 (WA) (CKI)*” from Schedule 4 of the *Cocos (Keeling) Islands Applied Laws Ordinance 1992* because this Act is no longer in force in Western Australia.