

EXPOSURE DRAFT



EXPOSURE DRAFT (09/09/2020)

Christmas Island Applied Laws Amendment (Fish Resources Management) Ordinance 2020

Ordinance No. , 2020

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Ordinance.

Dated 2020

David Hurley
Governor-General

By His Excellency's Command

Nola Marino [**DRAFT ONLY—NOT FOR SIGNATURE**]
Assistant Minister for Regional Development and Territories
Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure,
Transport and Regional Development

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1 Name

This Ordinance is the *Christmas Island Applied Laws Amendment (Fish Resources Management) Ordinance 2020*.

2 Commencement

- (1) Each provision of this Ordinance specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Ordinance	1 July 2021.	1 July 2021

Note: This table relates only to the provisions of this Ordinance as originally made. It will not be amended to deal with any later amendments of this Ordinance.

- (2) Any information in column 3 of the table is not part of this Ordinance. Information may be inserted in this column, or information in it may be edited, in any published version of this Ordinance.

3 Authority

This Ordinance is made under the *Christmas Island Act 1958*.

4 Schedules

Each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.

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Schedule 1 Amendments

Schedule 1—Amendments

Christmas Island Applied Laws Ordinance 1992

1 After Part 14 of Schedule 1

Insert:

Part 15—Fish Resources Management Regulations 1995 (WA) (CI)

1 Subregulation 3(1) (definition of *one day*)

Repeal the definition, substitute:

one day means a period of 24 hours commencing at midnight;

2 Regulations 14A and 14

Repeal the regulations, substitute:

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.

3 Subregulation 16D(1)

Omit “in circumstances other than those to which regulation 16E(2) or (3) applies”.

4 Regulations 16E, 16GA and 16GE

Repeal the regulations.

5 Subregulation 22(5) (definition of *day trip*)

Repeal the definition, substitute:

day trip means a voyage undertaken by a person on a boat, except a voyage which has taken place over more than one day;

6 Subregulations 31(1) and (3)

Repeal the subregulations.

7 Subregulation 31(4)

Omit “or (3)”.

8 Paragraphs 32(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) in the case of a pot set or pulled from a licensed fishing boat—is marked by branding or stamping with legible characters not less than 60 mm high and not less than 10 mm wide showing the licensed fishing boat number of the boat.

9 Paragraph 36(1)(b)

Repeal the paragraph.

10 Regulation 37

Repeal the regulation, substitute:

37 Offences against r.36, defences for

In any proceedings for an offence against regulation 36(1)(c), it is a defence for the person charged to prove that the person did not know and could not reasonably have known that 6 rock lobster pots had already been pulled by persons on board the boat in the relevant period.

11 Regulation 42

Repeal the regulation.

12 Regulation 64AA

Repeal the regulation.

13 At the end of Division 8 of Part 4

Add:

64AB Fish at Christmas Island Airport

- (1) The following requirements apply to the possession of fish by a person in the area of Christmas Island Airport:
 - (a) the maximum quantity of fish that a person may possess is 5 kg;
 - (b) the fish must be wahoo or tuna (all species);
 - (c) the fish must:
 - (i) have the skin attached; and

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Schedule 1 Amendments

- (ii) be packaged flat; and
 - (iii) 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 Christmas Island Airport must not have any fish in his or her 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 Christmas Island Airport means lot 598 on Deposited Plan 37939.

14 Subregulation 64E(3)

Repeal the subregulation (not including the penalty).

15 Subregulations 64F(1) and (2)

Repeal the subregulations, substitute:

- (1) A person must not fish by means of using a fishing net, unless the person uses only one net at any one time and the net is:
- (a) a throw net that:
 - (i) has a length not exceeding 3 m measured from the centre retrieval line to the lead line; and
 - (ii) has a mesh of not more than 25 mm; or
 - (b) a hand-held landing net with a hoop or ring not exceeding 1 m in diameter.

16 At the end of Division 2 of Part 4A

Add:

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.

17 At the end of Division 4 of Part 4A

Add:

64U Spearfishing prohibited in area of Flying Fish Cove

- (1) A person must not fish with a spear gun, harpoon, Hawaiian sling or other pointed instrument in the waters of the area described in subregulation (2).
Penalty: a fine of \$3,000 and the penalty provided in section 222 of the Act.
- (2) The area is 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 where spearfishing prohibited—Flying Fish Cove

Item	Description
1	The northernmost point of the Port of Christmas Island jetty
2	Westerly along the geodesic towards the point 10°25.690'S, 105°39.895'E to its intersection by the high water line
3	Generally easterly along that high water line to its intersection by the eastern side of the jetty
4	Generally northerly along the eastern side of the jetty to the starting point

18 Subparagraph 64W(b)(ii)

Omit “land;”, substitute “land.”.

19 Paragraph 64W(b)

Omit “or” (last occurring).

20 Paragraph 64W(c)

Repeal the paragraph.

21 Regulation 64X

Repeal the regulation, substitute:

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.

22 Division 2 of Part 4B

Repeal the Division, substitute:

Division 2—Bag limits for Territory

64Y Territory bag limits

For 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.

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Schedule 1 Amendments

23 Subregulation 117(1)

After “current fishing boat licence”, insert “granted under regulation 118 as it applies in the Territory”.

24 At the end of subregulation 121(1)

Add “granted under regulation 122 as it applies in the Territory”.

25 Division 2 of Part 11

Repeal the Division.

26 Regulation 156 (table)

After “64AA(2),”, insert “64AB, 64LA, 64U,”.

27 Part 1 of Schedule 2

Omit:

Billfish (marlins, sailfish and spearfish).

28 Part 1 of Schedule 2

Omit “and Rays, other than sharks or rays that are totally protected fish”.

29 Part 2 of Schedule 2

Repeal the Part, substitute:

Part 2—Totally protected fish

Division 1—Certain reproducing crustaceans

Totally protected fish—reproducing crustaceans

Item	Description of totally protected fish
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1	Female crab with eggs or spawn attached beneath its body
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2	Female rock lobster with eggs or spawn attached beneath its body
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Division 2—Miscellaneous

Totally protected fish—miscellaneous

Item	Description of totally protected fish
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1	Clams
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2	Cod, Potato
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3	Cod, White Banded
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4	Coral and Live Rock
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5	Coral Trout
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6	Groper, Queensland
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7	Parrotfish, Humphead
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8	Rays
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Totally protected fish—miscellaneous

Item Description of totally protected fish

9 Wrasse, Humphead Maori

30 Part 3 of Schedule 2

Repeal the Part, substitute:

Part 3—Recreationally protected fish

Note: This Part is reserved for future use.

31 Schedule 3

Repeal the Schedule, substitute:

Schedule 3—Bag limits

Note: See regulation 64Y.

Part 1—Pelagic species

Bag limits for pelagic species

Item	Fish	Species, or group of species, bag limit
1	Barracuda	4
2	Billfish and Swordfish	4
3	Dolphinfish (Mahi Mahi)	4
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

Bag limits for demersal species

Item	Fish	Species, or group of species, bag limit
1	All of the following: (a) Cod (except totally protected species); (b) Emperors; (c) Sepat, Red and Black; (d) Snappers; (e) Trevally	16

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Schedule 1 Amendments

Part 3—Crustaceans and molluscs

Bag limits for crustaceans and molluscs

Item	Fish	Species, or group of species, bag limit
1	Rock Lobster	4

32 Schedule 4

Repeal the Schedule, substitute:

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	Live Rock
14	Parrotfish, Humphead
15	Rays
16	Rock Lobster
17	Sharks
18	Swordfish
19	Tuna (all species)
20	Wahoo
21	Wrasse, Humphead Maori

Part 2—Category 2 fish

Category 2 fish

Item	Type of fish
1	Cod (except species listed as category 1 fish)

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Amendments **Schedule 1**

Category 2 fish

Item	Type of fish
2	Emperors
3	Parrotfish (except Humphead Parrotfish)
4	Sepat, Red and Black
5	Snappers
6	Trevally

Part 3—Category 3 fish

Category 3 fish

Item	Type of fish
1	Milkfish
2	Mullet, Diamond Scale
3	Mullet, Sea
4	Silveries

Part 4—Category 4 fish

Category 4 fish

Item	Type of fish
1	Any species of fish not specified in this Schedule to be category 1 fish, category 2 fish or category 3 fish

33 Schedule 7

Repeal the Schedule, substitute:

Schedule 7—List of common and scientific names

Note: See subregulation 3(2).

Common and scientific names of fish

Item	Common name	Scientific name
1	Barracuda	<i>Sphyraena</i> spp.
2	Billfish	Family Istiophoridae
3	Bonfish	<i>Albula</i> spp.
4	Clam, Giant	<i>Tridacna gigas</i>
5	Clams	<i>Tridacna</i> spp.
6	Cod	Family Epinephelidae
7	Cod, Potato	<i>Epinephelus tukula</i>
8	Cod, White Banded	<i>Anyperodon leucogrammicus</i>
9	Coral	Class Anthozoa and Class Hydrozoa
10	Coral Trout	<i>Plectropomus</i> spp.
11	Coronation Trout	<i>Variola</i> spp.

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Schedule 1 Amendments

Common and scientific names of fish		
Item	Common name	Scientific name
12	Crab, Mud	<i>Scylla</i> spp.
13	Dolphinfish (Mahi Mahi)	<i>Coryphaena</i> spp.
14	Emperors	Family Lethrinidae
15	Gong Gong	<i>Lambis</i> spp. and <i>Harpago chiragra</i>
16	Groper, Queensland	<i>Epinephelus lanceolatus</i>
17	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
18	Milkfish	<i>Chanos chanos</i>
19	Mullet, Diamond Scale	<i>Liza vaigiensis</i>
20	Mullet, Sea	<i>Mugil cephalus</i>
21	Parrotfish	Subfamily Scarinae
22	Parrotfish, Humphead	<i>Bolbometopon muricatum</i>
23	Rays	Superorder Batoidea
24	Rock Lobster	<i>Panulirus</i> spp.
25	Sepat, Red and Black	Families Berycidae and Bramidae
26	Sharks	Orders Squatiniformes, Pristiophoriformes, Squaliformes, Hexanchiformes, Carcharhiniformes, Lamniformes, Orectolobiformes and Heterodontiformes
27	Shark, Whale	<i>Rhincodon typus</i>
28	Silveries	<i>Gerres</i> spp.
29	Snappers	Family Lutjanidae
30	Swordfish	Family Xiphiidae
31	Trevally	Family Carangidae
32	Tuna, Albacore	<i>Thunnus alalunga</i>
33	Tuna, Bigeye	<i>Thunnus obesus</i>
34	Tuna, Dogtooth	<i>Gymnosarda unicolor</i>
35	Tuna, Longtail	<i>Thunnus tonggol</i>
36	Tuna, Skipjack	<i>Katsuwonus pelamis</i>
37	Tuna, Southern Bluefin	<i>Thunnus maccoyii</i>
38	Tuna, Yellowfin	<i>Thunnus albacares</i>
39	Wahoo	<i>Acanthocybium solandri</i>
40	Wrasse, Humphead Maori	<i>Cheilinus undulatus</i>

34 Schedule 9

Repeal the Schedule, substitute:

Schedule 9—Determining the value of fish

Note: See regulation 157.

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Amendments **Schedule 1**

Value of fish species			
Item	Species of fish	Value per unit of weight (\$/kg)	Value per fish (\$)
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 (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	Milkfish	4.50	3.00
20	Mullet, Diamond Scale	4.50	3.00
21	Mullet, Sea	4.50	3.00
22	Parrotfish (except Humphead Parrotfish)	6.00	12.00
23	Parrotfish, Humphead	25.00	100.00
24	Rock Lobster	30.00	15.00
25	Sepat, Red and Black	8.00	24.00
26	Sharks and rays (except Whale Shark)	6.00	90.00
27	Shark, Whale	10.00	500.00
28	Silveries	4.50	3.00
29	Snappers	8.00	24.00
30	Swordfish	2.00	100.00
31	Trevally	3.50	8.00
32	Tuna, Dogtooth	5.00	25.00
33	Tuna (except Dogtooth Tuna)	2.00	20.00
34	Wahoo	7.00	28.00

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Schedule 1 Amendments

Value of fish species			
Item	Species of fish	Value per unit of weight (\$/kg)	Value per fish (\$)
35	Wrasse, Humphead Maori	25.00	100.00
36	All fish not otherwise listed in this Schedule	1.00	1.00

35 Schedule 12 (table headed “Part 2—Regulations”, item 4)

After “64E,”, insert “64LA,”.

36 Schedule 12 (table headed “Part 2—Regulations”, item 4)

After “64P,”, insert “64U,”.

37 At the end of Schedule 15

Add:

5 Zone 5: Christmas Island

The Territory