

Fisheries Prohibition and Declaration 2016 (No 1)

Disallowable instrument DI2016–282

Fisheries Act 2000, section 13 (Fishing closures), section 15 (Declaration of fish of prohibited size or weight), section 16 (Declaration of fish quantity) and section 17 (Declaration of fishing gear)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Fisheries Prohibition and Declaration 2016 (No 1)* (the instrument). It has been prepared to assist the reader of the instrument and to help inform debate on it. It does not form part of the instrument and has not been endorsed by the Assembly.

The Statement should be read in conjunction with the instrument. It is not and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Background

The *Fisheries Act 2000* (the Act) provides for the protection and conservation of native fish species and their habitats, and for the sustainable management of the fisheries to ensure high quality and viable recreational fishing.

In addition, the Act enables management of commercial fish production and fishing enterprises, fish dealing and live fish transport to ensure that the sustainable management of the fisheries is consistent with other Australian jurisdictions.

Part 3 of the Act enables the Minister to set restrictions on recreational fishing in public waters in several ways. Section 13 of the Act permits the Minister, by way of a disallowable instrument, to prohibit the taking of fish absolutely or conditionally from public waters through fishing closures.

Section 15 of the Act permits the Minister, by way of a disallowable instrument, to declare the taking of fish of certain length or weight from public waters to be prohibited.

Section 16 of the Act permits the Minister, by way of a disallowable instrument, to declare the quantity of a species of fish that may be taken by a person in any one day.

Section 17 of the Act permits the Minister, by way of a disallowable instrument, to declare fishing gear that may be used for taking fish.

Overview

This instrument establishes the designations of public waters, fishing closures for public waters, prohibits taking of certain sizes and species of fish either entirely or for closed seasons, prescribes the quantity of fish for certain species that may be taken, and prescribes use of fishing gear.

This instrument revokes the *Fisheries Prohibition Declaration 2013 (No 2)* DI2013-272.

This instrument makes six substantive legal changes from the former instrument DI2013-272.

- 1) The definition of ‘hoop net’ has been amended to indicate that hoop nets must have a minimum mesh size of 13 millimetres, and are to be used only for taking Yabbies (*Cherax destructor*) and freshwater shrimp and prawns (Families Atyidae and Palaemonidae).
- 2) The definition of ‘landing net’ has been amended to remove former maximum hoop or ring size requirements and minimum netting mesh size requirements, and to specify that landing nets are only to be used for landing fish that are already hooked. These amendments follow industry best practice and will allow for faster landing of hooked fish with less damage to the fish and will minimise bycatch of non-target fish species. The amended definition will benefit threatened and other native fish species caught accidentally or with the intention of being released.
- 3) The definition of ‘open waters’ has been amended to include the Murrumbidgee River upstream of Angle Crossing. This section of the river has been inadvertently designated as ‘trout waters’ in previous instruments.
- 4) Two native crayfish species, Alpine Spiny Crayfish (*Euastacus crassus*) and Rieks Crayfish (*Euastacus rieki*), have been prohibited from taking because they are potentially vulnerable to fishing pressure.
- 5) The prohibited size for Murray Cod (*Maccullochella peelii peelii*) has been amended in line with changes to New South Wales and Victorian recreational fishing rules to improve the sustainability of Murray Cod populations and recreational fishing opportunities in the ACT.
- 6) The take of Murray Cod in the Murrumbidgee River has been reduced from two to one fish per person in any one day to reduce fishing pressure on this ‘Important Population’, as identified in the *National Recovery Plan for the Murray Cod*.

No other substantive legal changes have been made to the fishing restrictions or requirements in the ACT. Minor changes have been made including corrections to errors in the definition of ‘hoop net’ and in the notes to sections 1.6, 1.7 (1) (*Note 1*) and 1.7 (3) of the schedule attached to this instrument (the schedule). Minor changes have also been made to wording to clarify provisions. The fish species named in this instrument and in the explanatory statement have been identified by their scientific name in addition to their common name to remove any ambiguity associated with common name usage.

Outline of provisions

Clause 1 – Name of instrument

This clause names the instrument as the *Fisheries Prohibition and Declaration 2016 (No 1)*.

Clause 2 – Commencement

This clause provides that the instrument commences on the day after notification.

Clause 3 – Dictionary

This clause defines a number of terms used in the instrument, including ‘baited line’, ‘hoop net’, ‘landing net’, ‘nature reserves in the Murrumbidgee River corridor’, ‘open waters’, ‘prohibited waters’ and ‘trout waters’.

‘Hoop net’ definition

The definition of ‘hoop net’ has been amended in this instrument to prescribe a minimum mesh size of 13 millimetres and that hoop nets can only be used for catching Yabbies and freshwater shrimp and prawns. The minimum mesh size of 13 millimetres prevents taking of smaller Yabbies and freshwater shrimp and prawns. The specification of a mesh size is consistent with the table in s 28 of the NSW Fisheries Management (General) Regulation 2010.

‘Landing net’ definition

The definition of ‘landing net’ has been amended in this instrument to remove the requirement for the diameter of the hoop or ring not to exceed 0.6 metres and for the attached netting to have a mesh size not less than 25 millimetres. The definition has also been amended to specify that soft material or small mesh netting may be attached to the hoop or ring and that the landing net is to be used only for the purpose of landing a fish that is already hooked.

The landing net definition has been amended because fish are more likely to be landed quickly using larger diameter small mesh landing nets, with less damage to threatened native fish taken accidentally or to fish being caught with the intention of being released. NSW removed the maximum size limit of 0.6 metres for landing net frames and the requirement for a netting mesh size not less than 25 millimetres from its fisheries management regulations in 2010, recognising the importance of large, fine-mesh landing nets for catch and release fishing. Section 33(1)(b) of the NSW Fisheries Management (General) Regulation 2010 provides that *‘the net is used only as an ancillary aid to a rod and line or handline’* and is described as *‘consisting of a hoop or a ring that is attached to netting or other soft material’*. The landing net definition in this instrument is consistent with the NSW regulation. Restricting the use of landing nets to landing fish that are already hooked will reduce the unintended bycatch of non-target fish species.

‘Open waters’ definition

The definition of ‘open waters’ has been amended in this instrument to include the section of the Murrumbidgee River upstream of Angle Crossing to the ACT border (less than one kilometre of the river in length). All other sections of the Murrumbidgee River within the ACT are designated as ‘open waters’ or ‘prohibited waters’.

The omission of an ‘open’ or ‘prohibited’ designation for this section of the river in previous instruments meant that it became ‘trout waters’ by default. ‘Trout waters’ are managed differently from ‘open waters’ by being closed from the taking of any fish for a specified period each year (section 1.1) and having fishing gear restrictions (section 1.7 (3)) to protect fish during breeding and minimise take. As the Murrumbidgee River immediately upstream of the border in NSW is not designated or managed as trout waters (general NSW fishing rules apply), managing less than one kilometre of the river as trout waters within the ACT is unlikely to benefit the conservation of fish species or recreational fishing.

The section of the Murrumbidgee River downstream of Angle Crossing to the junction with the Gudgenby River remains designated as ‘prohibited waters’. This designation has not been extended upstream of Angle Crossing because there is no physical landmark at the ACT/NSW border to indicate where ‘prohibited waters’ end for compliance purposes. Angle Crossing was chosen as the upper limit of ‘prohibited waters’ in the Murrumbidgee River because it provides a distinct landmark that is readily recognised by anglers and compliance officers.

Clause 4 – Fishing closures – Act, s 13

This clause provides that the Minister prohibits the following for the purposes of section 13 of the Act: the taking of fish from prohibited waters at all times; the taking of fish from trout waters for the period stated in section 1.1 of the schedule; the taking of Murray Cod from public waters for the period stated in section 1.2 of the schedule; the taking of Rainbow Trout (*Onchorhynchus mykiss*) and Brown Trout (*Salmo trutta*) from public waters for the period stated in section 1.3 of the schedule; and the taking of certain fish species as described in section 1.4 of the schedule from public waters at all times.

Clause 5 – Fish of prohibited size or weight – Act, s 15

In this clause, the Minister declares the fish described in section 1.5 of the schedule to be of a prohibited size for the purposes of section 15 of the Act.

Clause 6 – Fish quantity – Act, s 16

This clause provides that the Minister declares the quantity of a species of fish as described in section 1.6 of the schedule to be the amount of fish permitted to be taken in any one day for the purposes of section 16 of the Act.

Clause 7 – Fishing gear – Act, s 17

In this clause, the Minister declares the fishing gear that may be used as that described in section 1.7 of the schedule for the purposes of section 17 of the Act.

Clause 8 – Revocation

This clause provides that the previous instrument, the *Fisheries Prohibition and Declaration 2013 (No 2)* (DI2013-272), is revoked

Schedule

Section 1.1 – No fishing in trout waters at certain times – Act, s 13

This section provides that the taking of any fish from trout waters is prohibited from midnight Monday of the Queen’s Birthday long weekend in June to midnight Friday before the Labour Day long weekend in October in any year. The purpose of this section is to protect all species of fish occurring in trout waters during the trout spawning season. This section should be read in conjunction with the Minister’s prohibition in clause 4 of the instrument.

Section 1.2 – No taking of Murray Cod at certain times – Act, s 13

This section provides that taking of Murray Cod from public waters is prohibited from midnight 31 August to midnight 30 November in any year. The purpose of this section is to protect Murray Cod over the main spawning season, during which mature breeding fish are more aggressive and are more likely to be caught or disturbed from nest sites. This section should be read in conjunction with the Minister’s prohibition in clause 4 of the instrument.

Section 1.3 – No taking of Rainbow Trout or Brown Trout at certain times – Act, s 13

This section provides that the taking of Rainbow Trout or Brown Trout from public waters is prohibited from midnight Monday of the Queen’s Birthday long weekend in June to midnight Friday before the Labour Day long weekend in October in any year. The purpose of this section is to protect Rainbow Trout and Brown Trout over the spawning season. This section should be read in conjunction with the Minister’s prohibition in clause 4 of the instrument.

Section 1.4 – No taking of certain species of fish at any time – Act, s 13

This section provides that the taking from public waters of Macquarie Perch (*Macquaria australasica*), Murray River Crayfish (*Euastacus armatus*), Silver Perch (*Bidyanus bidyanus*), Trout Cod (*Maccullochella macquariensis*), Two-spined Blackfish (*Gadopsis bispinosis*), Alpine Spiny Crayfish (*Euastacus crassus*) and Rieks Crayfish (*Euastacus rieki*) is prohibited at any time. This section should be read in conjunction with the Minister’s prohibition in clause 4 of the instrument.

The prohibition on taking Alpine Spiny Crayfish and Rieks Crayfish is introduced in this instrument. Alpine Spiny Crayfish and Rieks Crayfish are upland native crustaceans that are prone to fishing pressure as they are edible, reaching sizes similar to Yabbies, and are likely to have low fecundity. They are classified as endangered under the IUCN Red List of Threatened Species. The Alpine Spiny Crayfish is also listed as a threatened species under the Victorian *Flora and Fauna Guarantee Act 1988*. Neither of these crayfish species is prohibited from taking under NSW and Victorian recreational fishing rules. However, they are partly protected from fishing pressure by a minimum legal carapace size of 9 centimetres for spiny crayfish in both jurisdictions.

Both crayfish species are on the protected species list under the *Nature Conservation Act 2014* and are being considered for nomination as threatened species pending the collection of further population data in the ACT. Both species have been declared as prohibited from taking in public waters at all times in this instrument to provide them with explicit and full protection from fishing pressure. These species have a restricted and fragmented distribution in the ACT, have less capacity for population recovery than other unlisted native fish and crustaceans, and are not protected by minimum legal size limits as specified in NSW and Victorian recreational fishing rules.

Section 1.5 – Fish of prohibited size – Act, s 15

This section provides a list of fish of prohibited size. This section should be read in conjunction with the Minister’s declaration in clause 5 of the instrument. The section provides that it is prohibited to catch Brown Trout less than 25 centimetres in length, Golden Perch (*Macquaria ambigua*) less than 30 centimetres in length, Murray Cod less than 55 centimetres in length or more than 75 centimetres in length and Rainbow Trout less than 25 centimetres in length. The length of a fish is measured from the point of its snout to the tip of its tail.

The purpose of prohibiting the taking of fish less than a minimum size is to allow fish to breed before they are subjected to recreational fishing pressure. The prohibition on catching Murray Cod less than 55 centimetres in length and more than 75 centimetres in length is aimed at reducing the number of years they are subject to being taken and at protecting the larger breeding fish that contribute proportionately more to recruitment in subsequent generations than smaller fish.

Section 1.6 – Fish quantity – Act, s 16

This section lists the number of fish a person may take in any one day. This section should be read in conjunction with the Minister’s declaration in clause 6 of the instrument. The section provides that a person may take no more than five Golden Perch in any one day. A person may take no more than two Murray Cod in any one day, except in the Murrumbidgee River where a different limit applies. A person may take no more than one Murray Cod in any one day from open waters in the Murrumbidgee River. A person may take no more than a combined total of five Rainbow Trout and Brown Trout in any one day.

Limiting the take of Murray Cod in the Murrumbidgee River to one fish in any one day is aimed at improving the survival of fish 55-75 centimetres in length that are, at least initially, potentially at risk of greater fishing pressure under changes to the prohibited size for this species. The Murrumbidgee River Murray Cod population is identified as an ‘Important Population’ in the *National Recovery Plan for the Murray Cod*. The national recovery plan has been developed because Murray Cod is listed as a vulnerable threatened species under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. Changes in the Murrumbidgee River Murray Cod population are being monitored as part of a biennial fish survey of the river. The need for including this provision may be reconsidered in future if evidence of the recovery of the Murrumbidgee River Murray Cod population is obtained.

Section 1.7 – Fishing gear – Act, s 17

This section describes the fishing gear that may be used. This section should be read in conjunction with the Minister’s declaration in clause 7.

This section provides that the following fishing gear may be used by a person in open waters: no more than ten baited lines for taking Yabbies, no more than two rods or handlines with no more than two hooks per rod or handline for any other fish, and no more than five hoop nets for taking Yabbies and freshwater shrimp and prawns. A landing net may also be used.

This section provides that hoop nets are not permitted in the nature reserves in the Murrumbidgee River corridor.

This section provides that the following fishing gear may be used by a person in trout waters: one rod with no more than two hooks for use with artificial flies or lures and a landing net in conjunction with a rod.

The purpose of this section is to limit excessive take of permitted fish species during recreational fishing activities and to protect non-target species, including threatened species declared under the *Nature Conservation Act 2014* and those prohibited from being taken under this instrument.