

Fisheries (Fishing Closures) Declaration 2022

Disallowable instrument DI2022- 222

made under the

Fisheries Act 2000, s 13 (Fishing closures)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Fisheries (Fishing Closures) Declaration 2022* (the **Instrument**). It has been prepared to assist the reader of the Instrument and to help inform relevant debate. 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 Instrument. 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 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 fisheries is consistent with other Australian jurisdictions.

The Act was reviewed in 2018 to ensure its ongoing effectiveness and to enable it to address modern fisheries management issues. Along with the broader review of the Act, restrictions on recreational fishing, such as allowable gear and take limits, are assessed from time to time to review effectiveness and to ensure that they reflect current knowledge and practice.

Part 3 of the Act permits the Minister and the Conservator of Flora and Fauna (the **Conservator**) to set several restrictions on recreational fishing in public waters. Section 13 of the Act permits the Conservator, by way of a disallowable instrument, to prohibit the taking of fish absolutely or conditionally from public waters through fishing closures. Recent amendments to this section made by the *Fisheries Legislation Amendment Act 2019* allow the Conservator to also prohibit the introduction of certain species of fish into prescribed public waters, and to implement a fishing closure.

Overview

This Instrument establishes the designation of public waters and provides for fishing closures for public waters.

This Instrument makes three substantive changes from the former instrument *Fisheries Prohibition and Declaration 2016 (No 1)* (DI2016-282), which has been revoked by the *Fisheries (Recreational Fishing) Declaration 2022*. These changes are:

- 1) The definition of ‘prohibited waters’ has been amended.
- 2) The definition of ‘trout waters’ has been amended.
- 3) The prohibition on taking fish from all public waters during trout season has been amended to apply only in designated trout waters.

No other substantive legal changes have been made to the fishing restrictions or requirements in the ACT. Minor changes have been made including the addition of a map in schedule 2 detailing the location of designated waters. The fish species named in the Instrument and this 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

Section 1 Name of instrument

This section names the Instrument as the *Fisheries (Fishing Closures) Declaration 2022*.

Section 2 Commencement

This section provides that the Instrument commences on the day after its notification day.

Section 3 Fishing closures

This section provides that the Conservator declares the following fishing closures 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 clause 1.1 of schedule 1;
- the taking of Murray Cod (*Maccullochella peelii*) from public waters for the period stated in clause 1.2 of schedule 1;
- the taking of Rainbow Trout (*Onchorhynchus mykiss*) and Brown Trout (*Salmo trutta*) from trout waters for the period stated in clause 1.3 of schedule 1; and
- the taking of certain fish species as described in section 1.4 of the schedule from public waters at all times.

Clause 4 Dictionary

This clause defines the following terms *prohibited waters* and *trout waters* used in the Instrument.

Definition of prohibited waters

The definition of *prohibited waters* has been amended to add parts of the Jerrabomberra Wetlands Nature Reserve, including areas where fishing is not allowed under the reserve's plan of management. The definition has also been amended to remove mention of the Orroral River as this waterway has been redefined as trout waters.

This definition has also been amended to add all waters within Canberra Nature Park (CNP) nature reserves where fishing is prohibited, as described in the CNP Management Plan (*Nature Conservation (Canberra Nature Park) Reserve Management Plan 2021 (DI2021-268)*) as in force from time to time. Fishing is not permitted within CNP, except in Molonglo River Gorge Reserve, which is declared as trout waters under the *Fisheries Act 2000*. This is to ensure consistency across legislation. The Canberra Nature Park Plan of Management 1999 sets precedence, stating (p. 49):

The small dams around CNP provide habitat and watering points for many species. These dams and the species within them are protected from human interference and yabbing and collection of fishing bait is not permitted.

Definition of trout waters

The definition of *trout waters* includes the Gudgenby River and its catchment and tributaries; the Naas River and its catchment and tributaries; Paddys River and its catchment and tributaries; Condor Creek and its catchment and tributaries; Cotter River and its catchment and tributaries downstream of Bendora Dam to the junction with Condor Creek; the Molonglo River above its junction with the Queanbeyan River to the ACT border; and the Orroral River and its tributaries. The Orroral River was previously declared as prohibited waters.

Trout waters are managed differently from other public waters by being closed to the taking of any fish for a specified period each year (schedule 1, clause 1.1), and having fishing gear restrictions to protect fish during their breeding season and to minimise take.

Schedule 1

Clause 1.1 No fishing in trout waters at certain times

This clause provides that the taking of any fish from trout waters is prohibited from the Tuesday after the Queen's Birthday long weekend in June to the last Friday prior to the start of 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.

Clause 1.2 No taking of Murray Cod at certain times

This clause provides that taking of Murray Cod from public waters is prohibited from 12:00 midnight on 1 September to 11:59 pm on 30 November in any year. The purpose of this clause is to protect Murray Cod over their main spawning season, during which mature breeding fish are more aggressive and are more likely to be caught or disturbed from nest sites.

Clause 1.3 No taking of Rainbow Trout or Brown Trout at certain times

This section provides that the taking of Rainbow Trout or Brown Trout from trout waters is prohibited from 12:00 midnight on the Tuesday after the Queen’s Birthday long weekend in June to 11:59 pm on the Thursday before Labour Day in October in any year. The purpose of this section is to protect Rainbow Trout and Brown Trout over their spawning season.

Previously, taking of trout was prohibited from all public waters during this time period. Amending this provision to apply to trout waters only still provides protection to most wild trout populations during the trout spawning season and aligns with trout fishing rules in New South Wales, where take of trout is allowed all year round in waters other than declared trout waters.

Clause 1.4 No taking of certain species of fish at any time

This clause provides that the taking from public waters of the following species of fish is prohibited at all times:

- Alpine Spiny Crayfish (*Euastacus crassus*);
- Macquarie Perch (*Macquaria australasica*);
- Murray River Crayfish (*Euastacus armatus*);
- Rieks Crayfish (*Euastacus rieki*);
- Silver Perch (*Bidyanus bidyanus*);
- Trout Cod (*Maccullochella macquariensis*);
- Two-spined Blackfish (*Gadopsis bispinosis*).

The prohibition on taking these species of fish at any time is because they should be afforded greater protection based on their conservation status.

Schedule 2

This schedule provides a map of the defined Prohibited Waters, Murray Cod No Take Zone, Open Waters and Trout Waters.

Human Rights

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among other matters. In this case, no human rights are impacted.

Regulatory Impact Statement

A regulatory impact statement has been prepared for the instrument, in accordance with Part 5.2 of the *Legislation Act 2001*.