

Regulatory Impact Statement

Fisheries Prohibition and Declaration 2016 (No 1) ***DI2016-282***

Prepared in accordance with the *Legislation Act 2001*, section 34

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Executive Summary

This regulatory impact statement relates to the *Fisheries Prohibition and Declaration 2016 (No 1)*, made under various sections of the *Fisheries Act 2000* (Fisheries Act).

The Fisheries Act is the primary legislation in the ACT for the management of the recreational fishery and the commercial trade of fish. The primary objectives of the Fisheries Act are to:

- conserve native fish species and their habitats
- manage fisheries sustainably to provide high quality and viable recreational fishing
- co-operate with other Australian jurisdictions in sustaining fisheries and protecting native fish species.

The *Fisheries Prohibition and Declaration 2016 (No 1)* (the 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.

The instrument addresses the following issues identified in the existing fisheries instrument:

- The existing instrument does not reflect the latest knowledge on aspects of fisheries management. For example, the current size limit for Murray Cod does not reflect current knowledge on sustainable fishing practices for the species and does not align with NSW and Victorian size limits for Murray Cod.
- The current take limit for Murray Cod does not provide any added protection to the important population in the Murrumbidgee River; currently the same take limit applies for this species in all open water bodies.
- The inadvertent declaration of a section of the Murrumbidgee River as 'trout waters' may impact compliance and enforcement and does not provide a conservation benefit.
- The current definitions of hoop and landing nets need to be updated in line with current practice and to clarify and provide adequate information on their allowable uses.

The instrument is within the parameters of the authorising law and is not inconsistent with the policy objectives of another territory law. The proposed declaration is appropriately placed in subordinate legislation to the Fisheries Act. The proposed declaration does not unduly trespass on existing rights, or make rights unduly dependent upon non-reviewable decisions.

This regulatory impact statement complies with the requirements for a subordinate law as set out in Part 5.2 of the Legislation Act. An Explanatory Statement for the proposed law has been prepared for tabling.

Purpose

This regulatory impact statement (RIS) establishes whether new and amended provisions are required for the declaration and prohibition under sections 13, 15, 16 and 17 of the Fisheries Act and assesses the impacts of the proposed provisions. The RIS provides:

- a) background on policy objectives for fisheries management in the ACT;
- b) problems with existing management;
- c) policy objectives;
- d) options to achieve the policy objectives, including costs and benefits and a preferred policy option;
- e) background on consultation;
- f) mutual recognition issues; and
- a) a conclusion.

The *Legislation Act 2001* defines benefits as including advantages and direct and indirect economic, environmental and social benefits and costs as including burdens and disadvantages, and direct and indirect economic, environmental and social costs.

The purpose of this RIS is to assess the regulatory impacts to the community of new restrictions imposed on recreational fishing in the ACT through this instrument. The instrument may impose a social and economic cost on the community through restrictions on gear, the size and number of fish that may be caught, prohibiting fishing at certain times and in certain locations and the fishing of certain species all together.

While the instrument may impose a cost of the community, the environmental cost of the status quo, especially on the Murray Cod population in the ACT, must also be considered.

Despite the perceived costs on the community, these restrictions are appropriate and justified in order to achieve the environmental protection and sustainability goals of the Fisheries Act.

Policy objectives for fisheries management

The Fisheries Act is the primary ACT legislation for the management of the recreational fishery and the commercial trade of fish in the ACT.

The primary objectives of the Fisheries Act are to:

- conserve native fish species and their habitats
- manage fisheries sustainably to provide high quality and viable recreational fishing
- co-operate with other Australian jurisdictions in sustaining fisheries and protecting native fish species.

Part 3 of the Fisheries Act enables the Minister to set restrictions on recreational fishing in public waters by way of a disallowable instrument. Within Part 3, section 13 permits the Minister to prohibit the taking of fish absolutely or conditionally from public waters through fishing closures. Section 15 permits the Minister to declare the taking of fish of certain length or weight from public waters to be prohibited. Section 16 permits the Minister to declare the quantity of a species of fish that may be taken by a person in any one day and section 17 permits the Minister to declare fishing gear that may be used for taking fish.

Policy Problems

Unregulated recreational fishing can lead to significant environmental and social costs. Fishing pressure can lead to adverse environmental impacts, particularly on threatened native species such as the Murray Cod, leading to a reduced fish population. As a consequence, recreational fishing is impacted as fish populations may not recover to a sustainable level, resulting in less fishing opportunities.

Fishing regulation is necessary to ensure the ongoing sustainability of the river system and the environment, and to ensure that recreational fishing can continue into the future.

This is achieved by the fishing closure, and species, size and gear restrictions set out in the instrument. These restrictions are proportionate to the risk of overfishing and justified in achieving sustainability goals.

The existing instrument addresses some of these problems; however, new knowledge in sustainable fisheries management should be incorporated through updating the existing instrument.

This instrument seeks to find an appropriate balance between the protection of the environment and ensuring a viable recreational fishery.

Changes to the instrument

Definitions

Hoop net

The current definition of hoop net does not include a minimum mesh size or specify how hoop nets are to be used. Nets without a minimum mesh size allow very small animals to be caught.

Landing Net

The current definition of landing net includes a maximum hoop or ring size and a minimum mesh size and does not specify what a landing net may be used for. Fish are more likely to be landed quickly using larger diameter (hoop or ring) small mesh landing nets, with such nets resulting in 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.

Open waters

A section of the Murrumbidgee River adjacent to Angle Crossing and up to the NSW border has been inadvertently managed as trout waters. It is managed as such because it has not been declared otherwise (i.e. if not declared public, prohibited or private waters, waters are trout waters by default). Trout waters have different open seasons and other restrictions, including on fishing gear, compared to public waters. There are no obvious landmarks on the boundary of the ACT and NSW on the Murrumbidgee River and this makes compliance difficult for both fishers and fishery managers as it is hard to identify where trout waters in the ACT end and regular fishing conditions in NSW begin.

Fishing closures (section 13)

The current instrument prohibits taking five threatened fish species. The new instrument introduces a prohibition on taking two additional crayfish species: the Alpine Spiny Crayfish (*Euastacus crassus*) and Rieks Crayfish (*Euastacus rieki*). These crayfish species are thought to be vulnerable to fishing pressure as they are edible and a similar size to yabbies. They are not currently listed as threatened in the ACT; however they are classified as endangered under the IUCN Red List of Threatened Species.

Fish of prohibited size (section 15)

Recent changes to legislation in NSW and Victoria mean that the ACT regulations around the recreational take of Murray Cod no longer align with these jurisdictions. New knowledge and research has informed the change to slot limits in NSW and Victoria and should be applied to the ACT fishery to ensure a more sustainable Murray Cod fishery and to promote alignment across jurisdictions.

Fish quantity (section 16)

The Murray Cod is a nationally listed threatened species under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Murray Cod population in the Murrumbidgee River is identified as an important population in the *National Recovery Plan for the Murray Cod*. Current fisheries regulations do not give any extra protection to this population. The new instrument introduces a quota of a person taking one Murray Cod from the Murrumbidgee River per day.

Fishing gear (section 17)

The current instrument does not specify that hoop nets are to be used for catching yabbies and freshwater prawns only.

Objectives of government intervention

- To protect larger breeding fish in Murray Cod populations to ensure sustainability into the future.
- To better align fishing regulations across jurisdictions (ACT, NSW and Victoria) in order to make compliance and enforcement less complicated (i.e. same rules apply on both sides of the border) and encourage consistency in fisheries management.
- To offer increased protection to the population of Murray Cod in the Murrumbidgee River, which is identified as a nationally important population.
- To clarify existing definitions.

Options for achieving objectives

This declaration has been prepared in the context of the existing provisions. The options considered in relation to each identified problem were:

- retain the provisions in the existing declaration; or
- introduce new or amended provisions to this declaration.

Cost benefit analysis

The table below outlines the costs and benefits associated with each of the provisions introduced in this instrument. The cost benefit analysis shows that, while there are potential direct and indirect social impacts for members of the community associated with the restrictions on the size and number of Murray Cod able to be caught, these are outweighed by the direct environmental benefits to the sustainability of this species, which should also result in greater sustainability of recreational fishing in the long term.

Alternative options	Benefits and constraints
<p><u>Definitions</u></p> <p>1. Hoop Net</p> <p>1a. Retain current definition of hoop net.</p> <p>1b. Amend the definition of hoop net to include a minimum mesh size and to specify what hoop nets may be used to catch.</p> <p>2. Landing Net</p> <p>2a. Retain current definition of landing net.</p>	<p>Benefits</p> <p>The use of hoop nets as defined in the current instrument can continue.</p> <p>Constraints</p> <p>The current definition does not include limitations on the type of species that may be caught with hoop nets and the lack of a minimum size allows small off target animals to be caught.</p> <p>Benefits</p> <p>The minimum mesh size of 13 millimetres for hoop nets 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.</p> <p>Constraints</p> <p>Existing hoop nets may not be able to be used at the expense of the fisher.</p> <p>Benefits</p> <p>The use of landing nets as defined in the current instrument can continue.</p> <p>Constraints</p> <p>The current definition contains a hoop size limit and a minimum limit for mesh size. Using a landing net with a smaller diameter hoop and a larger mesh size on the net can cause injury to fish as they are netted/make it more difficult for fishers to net the fish.</p>

2b. Amend the definition of landing net to remove the maximum diameter requirement for the hoop or ring and for the minimum mesh size requirement for the attached netting and, 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.

3. Open Waters

3a. Retain the existing definition of open waters

3b. Amend the definition of open waters to include the section of the Murrumbidgee River upstream of Angle Crossing to the ACT border. All other sections of the Murrumbidgee River within the ACT are designated as 'open waters' or 'prohibited waters'.

Benefits

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. Restricting the use of landing nets to landing fish that are already hooked will reduce the unintended bycatch of non-target fish species.

Constraints

As the amended definition removes size and netting constraints, there is unlikely to be any cost to the community from this provision.

Benefits

If the existing definition is retained the section of the Murrumbidgee River upstream of Angle Crossing to the ACT border will have greater protection for fish due to the continued classification as trout waters. 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.

Constraints

Leaving this section of the Murrumbidgee River as trout water poses a problem in terms of compliance (ability to comply with) and enforcement of regulations relating to trout waters as there is no easily recognisable boundary between the section of the river in the ACT and the river in NSW with general fishing regulations in place.

Benefits

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

	<p>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. As the Murrumbidgee River immediately upstream of the border in NSW is not designated or managed as trout waters (general NSW fishing rules apply).</p> <p>Constraints Amending the definition of open waters to include this section of the river removes added protection fish receive under trout waters classification, however, the risks are not significant given that the section of river is less than one kilometre long and compliance in this area is very difficult to enforce.</p>
<p><u>Fishing closures (s13)</u></p> <p>Option A: Limit fishing closures to those already declared.</p> <p>Option B: Amend the declaration to include a prohibition on taking Alpine Spiny Crayfish (<i>Euastacus crassus</i>) and Rieks Crayfish (<i>Euastacus rieki</i>).</p>	<p>Benefits There may be a social benefit in allowing the take of these species.</p> <p>Constraints Alpine Spiny Crayfish and Rieks Crayfish will continue to potentially be subject to fishing pressure.</p> <p>Benefits The species are protected from fishing pressure.</p> <p>Constraints Neither of these crayfish species is expressly prohibited from taking under NSW and Victorian recreational fishing rules. However, they are indirectly protected from fishing pressure by a minimum legal carapace size of 9 centimetres for spiny crayfish in both jurisdictions.</p>
<p>3. <u>Fish of prohibited size (s15)</u></p> <p>Option A: Retain current size limits for Murray Cod (not able to take fish smaller than 60cm).</p>	<p>Benefits Fishers will still be able to take larger "trophy" fish which may be important to some fishers for cultural reasons.</p> <p>Constraints Current size limits allow larger breeding fish to be taken out of the population which may impact the sustainability of the population in the future. Current research shows that a slot limit</p>

<p>Option B: Amend size limits for Murray Cod so that fishers may not take Murray Cod less than 55 centimetres in length or more than 75 centimetres in length.</p>	<p>(defining a minimum and maximum size) is a more sustainable way to manage fisheries.</p> <p>Benefits Prohibiting the taking of Murray Cod less than 55cm will allow fish to breed before they are subjected to recreational fishing pressure and prohibiting the take of Murray Cod more than 75cm in length will reduce the number of years fish are subject to take and protect the larger breeding fish. Amending the size limits for Murray Cod will also bring ACT regulations into line with NSW and Victoria.</p> <p>Constraints Larger “trophy” fish, typically over 100cm in length, will no longer be able to be taken and this may impact the fishing experience of some fishers.</p>
<p>4. <u>Fish quantity (s16)</u></p> <p>Option A: Retain recreational take limit of two Murray Cod in any one day in all waters where fishing is permitted.</p> <p>Option B: Lower the recreational take limit to one Murray Cod in any one day for the Murrumbidgee River. Take limit of two Murray Cod in any one day will remain in place for all other waters where fishing is permitted.</p>	<p>Benefits Having the same take limit across all waters in the ACT where fishing is permitted simplifies compliance and enforcement.</p> <p>Constraints The Murrumbidgee River population of Murray Cod is identified as an important population in the National Murray Cod Recovery Plan. Currently this population is subject to the same fishing pressure as stocked populations in urban lakes and ponds and other wild populations.</p> <p>Benefits Lowering the take limit to one per day in the Murrumbidgee River will offer increased protection from fishing pressure to this nationally significant population.</p> <p>Constraints Fishers who are not aware of the amended take limit in the Murrumbidgee River are at risk of non-compliance. This risk can be addressed through education activities including information pamphlets and signage at the river.</p>
<p>5. <u>Fishing gear (s17)</u></p> <p>Option A: Limit fishing gear to that already</p>	<p>Benefits</p>

<p>declared.</p> <p>Option B: Amend the declaration to specify that Hoop nets are to be used only for taking Yabbies and freshwater shrimp and prawns (Families Atyidae and Palaemonidae).</p>	<p>Fishers may currently use hoop nets for catching species other than prawns and yabbies and may continue to do so under current rules.</p> <p>Constraints The current instrument does not specify what species a hoop net may be used to take.</p> <p>Benefits Changing the provision for hoop nets will provide clarity on what they are to be used for and will protect non target species from being caught using hoop nets.</p> <p>Constraints The proposed amendment will exclude the use of hoop nets for other purposes which may pose a social impact, however the change will result in an environmental benefit.</p>
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Consultation

Public consultation is not required on Declaration and Prohibition instruments under the Fisheries Act. Broad public consultation on the proposed provisions relating to Murray Cod was undertaken through the *ACT and Region Social Expectations of Waterways Survey* (through the ACT Healthy Waterways Basin Project). This survey included questions on the use of waterways for recreational fishing, including on support for potential protection measures for Murray Cod such as the changes to a slot size limit and take limit of one fish per day in the Murrumbidgee River as proposed in this instrument. Survey results showed a high (over 80%) level of community support for these proposed changes. The Canberra Region Fishing Alliance was consulted on the proposed changes and indicated its support. The Conservator of Flora and Fauna will write to key stakeholders to inform them of the provisions under the new instrument.

Mutual recognition

A range of legislation operates at local, State/Territory and National levels throughout Australia to regulate both recreational and commercial fishing and to protect native and threatened fish species. This instrument seeks to bring ACT regulations in line with those in NSW in order to promote better compliance across jurisdictions and to promote consistent regulation across jurisdictions for Murray Cod, a nationally threatened species. Mutual recognition is not a critical issue for fisheries management, noting that regulations in the Fisheries Act are now more consistent with New South Wales and Victoria.

Consistency of the proposed law with Scrutiny of Bills Committee principles

The Committee's terms of reference require it to consider whether (among other things):

- (a) any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):
 - i. is in accord with the general objects of the Act under which it is made;

- ii. unduly trespasses on rights previously established by law;
- iii. makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions; or
- iv. contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly.

The regulations are in accord with the objects of the Fisheries Act at section 3, in particular sustaining a recreational fishery while conserving native species and doing so in cooperation with other jurisdictions. The regulations also protect native fish species and result in more sustainable fisheries management to provide high quality and viable recreational fishing.

The proposed law does not unduly trespass on rights previously established by law.

It is acknowledged that this instrument imposes further restrictions on the previously established right to engage in recreational fishing.

However, the additional restrictions found in this instrument are necessary for the ongoing sustainable management of the recreational fishery. As discussed above, the additional restrictions contained in this instrument have been implemented as a response to updated scientific information, to ensure consistency with surrounding jurisdictions and to ensure that ACT fishing regulations continue to reflect best-practice fisheries management.

The proposed law does not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

The additional restrictions in this instrument relate back to the offences in Part 8 of the Act. A number of these offences are strict liability offences. However, the Act provides for defences to offences to ensure a fair and reasonable approach to enforcement and noting the unpredictable nature of fishing.

The additional restrictions are consistent with the current operation of the instrument and the offence provisions of the Act.

The proposed law includes a number of administrative and other limited, specific measures appropriately contained in subordinate legislation to the Fisheries Act.

Conclusion and recommended option

This regulatory impact statement complies with the requirements for a subordinate law as set out in Part 5.2 of the Legislation Act. An Explanatory Statement for the proposed law has been prepared for tabling.

The introduction of the new and amended provisions proposed for the fisheries prohibition and declaration is the preferred policy option. The benefits of the new and amended provisions to the environment and to the sustainability of the recreational fishery outweigh the potential social costs of restrictions to recreational fishing activity.