

Regulatory Impact Statement

Fisheries (Fishing Closures) Declaration 2022 **DI2022-222**

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

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Executive Summary

This Regulatory Impact Statement relates to the *Fisheries (Fishing Closures) Declaration 2022* (the **Instrument**), made under section 13 of the *Fisheries Act 2000* (**Fisheries Act**).

The Fisheries Act is the primary legislation in the ACT for the management of 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; and
- co-operate with other Australian jurisdictions in sustaining fisheries and protecting native fish species.

The Instrument establishes the designations and fishing closures for public waters. It addresses issues identified in the existing instrument during the review of the Fisheries Act and brings into effect amendments to the Fisheries Act made through the *Fisheries Legislation Amendment Act 2019* notably:

- the potential inadvertent declaration of waters as ‘trout waters’ may impact compliance and enforcement and does not provide a conservation benefit; and
- amendments to the Fisheries Act allow the Conservator to declare Fishing Closures, where previously fishing closures were declared by the Minister.

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 2001*. 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 under section 13 of the Fisheries Act and assesses the impacts of the proposed provisions. It includes background on policy objectives for fisheries management in the ACT and within the broader national mutual recognition context, identifies current issues and problems, considers policy options underpinned by a cost benefit analysis, outlines consultation with stakeholders, and recommends a policy position.

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 the Instrument. The Instrument may impose a social and economic cost on the community by prohibiting fishing at certain times and in certain locations, and by prohibiting fishing of certain species altogether.

Despite the perceived costs to the community, these restrictions are appropriate and justified 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 recreational fishery and 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 by applying principles of ecologically sustainable development;
- provide high quality and viable recreational fishing; and
- co-operate with other Australian jurisdictions in sustaining fisheries and protecting native fish species.

Part 3 of the Fisheries Act enables the Minister and the Conservator of Flora and Fauna (**the Conservator**) to set restrictions on recreational fishing in public waters by way of disallowable instruments. Specifically, section 13 permits the Conservator to prohibit the taking of fish absolutely or conditionally from public waters through fishing closures.

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 size of the fish population. As a consequence, long-term recreational fishing is impacted because fish populations may not recover to a sustainable level, resulting in fewer 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 partially achieved by fishing closures as set out in the instrument. These restrictions are proportionate to the risk of overfishing and justified in achieving sustainability goals.

The previous instrument addressed some of these problems. However, amendments to the Fisheries Act in 2019 and new knowledge in sustainable fisheries management are being incorporated through updating the instrument.

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

Changes to the *Fisheries Prohibition and Declaration 2016 (No 1)*

Definitions

Open waters

The definition of ‘open waters’ has been amended so that any public waters not declared otherwise are open waters.

Prohibited waters

The definition of ‘prohibited waters’ has been amended to include parts of the Jerrabomberra Wetlands Nature Reserve, including areas where fishing is not allowed under the reserve plan of management. The definition has also been amended to remove mention of the Orroral River; this waterway has been redefined as trout waters. This definition has also been amended to add all waters within Canberra Nature Park nature reserves where fishing is prohibited, as described in the Canberra Nature Park Reserve 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 Canberra Nature Park, except in Molonglo River Gorge Reserve, which is declared as trout waters under the *Fisheries Act 2000*. This approach ensures consistency across legislation.

Trout waters

In the current definition, all public waters are declared ‘trout waters’ by default; that is, if they are not declared open or prohibited waters, they are managed as trout waters. Trout waters are now defined as specific waterways to remove the likelihood of waters inadvertently being declared and managed as trout waters.

Fishing closures

The previous instrument prohibited the take of Rainbow Trout and Brown Trout from all public waters during the trout spawning season (the Queen’s Birthday long weekend in June to the Labour Day long weekend in October of any year). Under the new Instrument, the closed season will only apply in trout waters and fishing for trout will be allowed year-round in public waters.

Objectives of government intervention

- To clarify and simplify management of open and closed waters and management for specific matters, such as trout waters.
- To better align fishing regulations across jurisdictions (ACT, New South Wales, and Victoria) to make compliance and enforcement less complicated (i.e., same rules apply on both sides of the border) and to encourage consistency in fisheries management.

Options for achieving objectives

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

- retain the provisions in the *Fisheries Prohibition and Declaration 2016 (No 1)*; or
- introduce new or amended provisions through this Instrument.

Cost benefit analysis

The table below outlines the costs and benefits associated with each of the provisions introduced in this Instrument. The analysis shows that the changes to classifications of waterways will simplify management of recreational fishing across the ACT and benefit enforcement staff and recreational anglers.

Options for Definitions		
1. <u>Open Waters</u>	Benefits	Constraints
Option 1: Retain the existing definition of 'open waters' (waterways currently have to be declared as open waters in an instrument)	Retaining the existing definition of open waters provides clarity about which waters are managed as open waters, as they are declared through an instrument.	Amending the definition of open waters to include any water not declared as trout or prohibited removes the extra protection that fish populations receive in undeclared waters in the current system, where these waters are managed as trout waters.
Option 2: Amend the definition of open waters to include all public waters not designated as prohibited waters or trout waters.	If the definition of open waters is amended as described, any public waterway not declared as either trout or prohibited waters will be managed as open water by default. This change will ensure that waters are not inadvertently prescribed as trout waters as was previously the case and eliminates the need to manage waters as trout waters unnecessarily. This change will benefit recreational anglers because they will know that general fishing rules apply to waters that are not declared through an instrument.	Amending the definition of open waters to include any public waters not declared as prohibited waters or trout waters removes added protection that fish receive under the trout waters classification. However, at present the risks are not significant. On-going monitoring and management of fish habitat and fish stocks will inform future policy needs.

2. <u>Trout waters</u>	Benefits	Constraints
Option 1: Retain the existing definition of 'trout waters'	'Trout waters' are managed differently from 'open waters' by being closed for the taking of any fish for a specified period each year (part 1.1) and having fishing gear restrictions (part 1.7 (3)) to protect fish during breeding and minimise take. Retaining the current definition of trout waters, as any public waters not declared as prohibited waters or open waters, maintains these protections for waterways that may inadvertently not be declared.	The added protection offered by a designation as a trout water may not be necessary and is not likely to provide an improved environmental outcome in cases where the declaration is inadvertent. There is a risk that anglers may be unaware that non-declared waters carry added restrictions on gear and fishing access, increasing risk of accidental non-compliance.
Option 2: Amend the definition of 'trout waters' to include only waters designated in an instrument.	Amending the definition of trout waters to only include public waters declared in an instrument provides clarity around which waters are trout waters and carry additional fishing access and gear restrictions.	Retaining the current definition of trout waters, as any public waters not declared otherwise, provides a level of protection for waterways that may inadvertently not be declared.
3. <u>Fishing closures</u>	Benefits	Constraints
Option 1: Keep the prohibition on taking trout in place for all public waters during trout spawning season.	Prohibiting the take of trout from all public waters during their spawning season may provide some benefit to trout populations.	Trout water rules apply to waters where trout may not occur, making it difficult for enforcement and compliance.
Option 2: Amend the declaration to remove the prohibition on taking trout from public waters other than declared trout waters during the trout spawning season.	Most wild populations of trout are located within designated trout waters so will be protected by trout water rules.	Populations of trout in urban lakes in particular will not be subject to a closed fishing season for trout. This may impact these populations, but wild breeding populations will still be protected by trout seasons.

Consultation

Public consultation was undertaken on the amendments to the Fisheries Act during the review of the Act.

Extensive public consultation was undertaken on the drafting on the Canberra Nature Park Reserve Management Plan 2021. The 2019 Draft Reserve Management Plan, which was open for public consultation for 12 weeks, included the prohibition on fishing in Canberra Nature Park reserves.

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 New South Wales and Victoria to promote better compliance across jurisdictions and to promote consistent regulation across jurisdictions.

Consistency of the proposed law with the principles of the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

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 Instrument aims to achieve the objects of the Fisheries Act, in particular sustaining a recreational fishery while conserving native species and doing so in co-operation with other jurisdictions. The Instrument also protects native fish and other native species impacted by fishing activity 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 regulation continues 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 Fisheries Act. A number of these offences are strict liability offences. However, the Fisheries Act provides for defences to ensure a fair and reasonable approach to enforcement and noting the often-unpredictable nature of fishing.

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

Conclusion and recommended option

This RIS complies with the requirements for a subordinate law as set out in part 5.2 of the *Legislation Act 2001*. 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 2016 (No 1)* 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.