

Regulatory Impact Statement

Fisheries (Recreational Fishing) Declaration 2022 DI2022-221

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

**Circulated by authority of
Shane Rattenbury
Minister for Water, Energy, and Emissions Reduction**

Executive Summary

This Regulatory Impact Statement relates to the *Fisheries (Recreational Fishing) Declaration 2022*, 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 (Recreational Fishing) Declaration 2022* (the **Instrument**) prohibits taking of certain sizes and species of fish either entirely or for closed seasons and prescribes the quantity of fish for certain species that may be taken.

The Instrument includes changes to address issues identified in the *Fisheries Prohibition and Declaration 2016 (No 1)* (DI2016–282) and brings into effect amendments to the Fisheries Act made through the *Fisheries Legislation Amendment Bill 2019*:

- The *Fisheries Prohibition and Declaration 2016 (No 1)* does not reflect recent changes to the Fisheries Act including the ability to introduce a possession limit for recreational species and the ability to declare prohibited gear.
- The current take limit for Golden Perch does not provide any added protection to the wild population in the Murrumbidgee River. Recent monitoring results have shown a decline in numbers for this population. Currently, the same take limit applies for this species in all open water bodies.
- The current take limits for Murray Cod do not provide extra protection for the population in the Murrumbidgee River from Uriarra Crossing to the New South Wales border. This area has been identified as likely to be subject to increased fishing pressure due to development, including Ginninderry, increasing access and visitation to the area.

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 (**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.

Purpose

This RIS establishes whether new and amended provisions are required for the declaration and prohibition under sections 15 and 16 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) identification of 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 the size or weight of fish that may be caught at any one time and prohibiting fishing of certain species altogether.

Despite the perceived costs on 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 legislation in the Territory 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, 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/or the Conservator of Flora and Fauna to set restrictions on recreational fishing in public waters by way of a disallowable instrument. Within Part 3, 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.

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 reduction of the fish population. Consequently, recreational fishing is impacted as 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 the long-term sustainability of recreational fishing.

This is achieved by species and size 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, amendments to the Fisheries Act following a review in 2018 and new knowledge in sustainable fisheries management should be incorporated by updating the *Fisheries Prohibition and Declaration 2016 (No 1)*.

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

Fish quantity (section 16)

The Instrument amends the take limit for Golden Perch. The Instrument introduces a quota of a person taking two Golden Perch from the Murrumbidgee River per day, reduced from five per day. The quota of five per day remains in lakes and ponds, where Golden Perch are stocked. The *Fisheries Prohibition and Declaration 2016 (No 1)* does not provide any additional protection to the wild population in the Murrumbidgee River, which has been shown to be in decline.

The Instrument also introduces a “no take” area for Murray Cod. This will offer greater protection to Murray Cod in the section of the Murrumbidgee River from Uriarra Crossing to the ACT–New South Wales border. The wild populations are likely to come under increased pressure from recreational fishing activity due to nearby residential developments such as Ginninderry increasing access and volume of fishing activity, placing this population at greater risk of decline due to fishing pressure.

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 *Fisheries Prohibition and Declaration 2016 (No 1)*; 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 number of Golden Perch and Murray Cod able to be caught, these are outweighed by the direct environmental benefits to the sustainability of these species, which should also result in greater sustainability of recreational fishing in the long term.

Alternative options	Benefits and constraints
<p>6. Fish quantity (s 16) Golden Perch</p> <p>Option A: Retain recreational take limit of five Golden Perch in any one day in all waters where fishing is permitted.</p>	<p>Benefits</p> <p>Having the same take limit across all waters in the ACT where fishing is permitted simplifies compliance and enforcement.</p> <p>Constraints</p> <p>The Murrumbidgee River population of Golden Perch has shown decline in numbers in recent survey efforts. Currently, this population is subject to the same fishing pressure as stocked populations in urban lakes and ponds and other</p>

Option B: Lower the recreational take limit to two Golden Perch in any one day for the Murrumbidgee River. Take limit of five Golden Perch in any one day will remain in place for all other waters where fishing is permitted.

6A. Fish quantity (s 16) – Murray Cod

Option A: Retain recreational take limit of one Murray Cod in any one day in all open waters of the Murrumbidgee River.

Option B: Lower the recreational take limit to nil Murray Cod in any one day for the section of the Murrumbidgee River from Uriarra Crossing to the ACT–New South Wales border.

wild populations.

Benefits

The Golden Perch population in the Murrumbidgee River has been shown to be in decline in recent surveys. Lowering the take limit to two per day in the Murrumbidgee River will offer increased protection from fishing pressure to this population.

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.

Benefits

Having the same take limit across all open waters of the Murrumbidgee River simplifies compliance and enforcement.

Constraints

Murray Cod in the section of the Murrumbidgee River from Uriarra Crossing to the ACT–New South Wales border are currently subject to the same fishing pressure as other wild populations. However, the Murray Cod population in this section of the Murrumbidgee River is likely to be under increased pressure from recreational fishing activity due to nearby residential developments such as Ginninderry, increasing access and volume of fishing activity.

Benefits

Nearby residential developments, such as Ginninderry, are likely to increase access to and the volume of fishing activity in this section of the Murrumbidgee River. This will place the population of Murray Cod at greater risk of decline due to fishing pressure. Lowering the take limit to nil per day in the Murrumbidgee River will offer increased protection from fishing pressure. As anglers are still able to take Murray Cod from other waters where fishing is allowed, the impact to anglers will be minimal.

Constraints

Fishers who are not aware of the amended take limit in the Murrumbidgee River are at risk of

	<p>non-compliance. This risk can be addressed through education activities including information pamphlets and signage at the river. Having two different take limits within the one waterway may make it more difficult for enforcement activities.</p>
--	--

Consultation

Public consultation was undertaken on the amendments to the Fisheries Act during the review of the Act. Additional consultation has been undertaken with recreational fishing groups and with retailers who sell fishing gear.

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 in order to promote better compliance across jurisdictions and to promote consistent regulation across jurisdictions. The prohibition on use of Opera house nets is consistent with recent rule changes in Victoria and with a recent outcome from the Meeting of Environment Ministers that jurisdictions will work together to address the impacts of these nets, including discussing a national approach to their use and sale.

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 at section 3, 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 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 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 unpredictable nature of fishing.

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