



ACT
Government

FISHERIES ACT 2000

REVIEW DISCUSSION PAPER



This consultation document aims to encourage input from stakeholders, including the general public, on the review of the *Fisheries Act 2000*.

See an electronic copy at: <http://www.environment.act.gov.au>

You are invited to make a written submission by Monday 5 February 2018 by:

- post Natural Environment
 Environment, Planning and Sustainable Development Directorate
 GPO Box 158
 Canberra City ACT 2601
- email at epsddcomms@act.gov.au

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Image on cover is of a juvenile Murray Cod (*Maccullochella peelii*)

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BACKGROUND ON THE *FISHERIES ACT 2000*



Image: Fishing at Vanitys Crossing on the Cotter River.

The *Fisheries Act 2000* (the Act) provides for the sustainable management of fishing in the ACT, including the protection and conservation of native fish species and their habitats to ensure high quality and viable recreational fishing. The Act also enables management of commercial fish production and fishing enterprises, fish dealing and live fish transport to facilitate consistency in fisheries management between the ACT and other Australian jurisdictions.

The Act allows the Minister to make declarations and prohibitions on various aspects of fishing activity. This includes declaring where and when fish may be caught and the type of gear that may be used to catch them, and prohibiting the catch of certain species of fish or fish of a certain size. The Act provides for the protection of aquatic habitat by protecting spawning areas.

The Act also provides the Conservator of Flora and Fauna (the Conservator) with the ability to licence certain activities such as commercial fishing and the import and export of fish. It sets out enforcement matters and actions that may be taken to enforce fishing laws by Conservation Officers.

Regulations may be made under the Act and can include provisions relating to: the sale, transport, storage, processing and handling of fish; record keeping; and the prevention of damage to a place where fish spawn or are likely to spawn. Regulations may also prescribe offences and penalties for contravention of the regulations. The current regulations prescribe the number and quantity of fish, the commercial quantity of priority species and the way a hoop net may be used.

THE REVIEW

The purpose of this review is to evaluate whether the Act:

- provides for the appropriate protection and sustainable management of native aquatic species and their habitats to ensure high quality and sustainable recreational fishing
- provides for the sustainable management of recreational, cultural and commercial fishing of both wild and stocked populations of fish
- includes appropriate provisions for the management of commercial trade in fish species, within and outside of the ACT
- adequately provides an appropriate balance between the environmental and conservation values of aquatic species, their habitats, and their recreational and commercial use
- addresses the risks of aquatic pests and diseases associated with fishing and fisheries activities and
- contains appropriate offences and penalties that are in line with those in other jurisdictions.

Specific clauses within the Act may need to be amended from a technical perspective as they may need modernising or updating or are no longer relevant.

This discussion paper aims to identify areas of the Fisheries Act that require improvement, such as cultural fishing, and emerging fisheries management issues, including management of aquaculture and aquaponics.

This paper considers whether current offences and penalties are appropriate and whether legislative provisions for compliance and enforcement need to be modernised or improved, including improving consistency with other jurisdictions where appropriate.

The views of the community are sought on the issues identified in this discussion paper and other legislative issues relating to fisheries management within the ACT so that these can be considered in revisions to the Act.

FISHERIES MANAGEMENT

The Act defines 'fish' as:

Fish means marine, estuarine or freshwater fish or other aquatic animal life, or any of their parts, at any stage of their history (whether alive or dead), and includes— (a) abalone, oysters and other aquatic molluscs; and (b) crustaceans; and (c) echinoderms; and (d) beachworms and other aquatic polychaetes; but does not include— (e) reptiles; and (f) birds; and (g) amphibians.

However, the Act does not define 'fishery' or 'fisheries'. In fisheries legislation in other jurisdictions, a fishery is defined as the fishing of a certain species of fish, fishing in a certain area or for a certain purpose. Defining fishery or the types of fisheries in the Act may be useful in clarifying its purpose.

Objects of the Act

The objects of an Act outline the overall purpose of the legislation. The objects of the Fisheries Act are to:

- (a) conserve native fish species and their habitats and
- (b) manage sustainably the fisheries of the ACT by applying the principles of ecologically sustainable development mentioned in the *Environment Protection Act 1997*, section 2 (2)
- (c) provide high quality and viable recreational fishing; and

- (d) cooperate with other Australian jurisdictions in sustaining fisheries and protecting native fish species.

The objects need to be updated because of changes to other Acts. The *Environment Protection Act 1997* (EP Act) no longer contains a definition of ecologically sustainable development (ESD). Given the *Nature Conservation Act 2014* (NC Act) refers to the principles of ESD at s. 6(4), it is proposed to use this definition of ESD within the Fisheries Act.

Fisheries Management Plan

Currently, part two of the Fisheries Act requires the preparation of a Fisheries Management Plan. The plan must include:

- (a) a description of fish species and their habitats in the ACT
- (b) a description of current and potential threats to fish species and their habitats
- (c) measures to be taken to achieve the objects of this Act, including performance indicators and monitoring methods
- (d) guidelines to which the conservator must have regard in exercising functions under this Act.

An overarching plan, as outlined above, can drive strategic management, including broad management objectives that may not be captured otherwise. However, a strategic plan in line with the requirements of the Act has never been developed.

The review will consider the current requirement for an overarching plan or whether a more flexible and responsive approach allowing the Conservator to make specific plans and guidelines to target particular fisheries management needs would be a more effective fisheries management tool.

The review will also consider any repetition between a fisheries management plan as currently required and plans required under other Acts, such as the Aquatic and Riparian Conservation Strategy under the NC Act.

Several aspects of fisheries management may benefit from a specific plan or guideline. For example, a non-statutory fish stocking plan is currently produced to guide fish stocking in the ACT and manage stocking of fish in the urban lakes and ponds.

The production of the following types of plans could assist fisheries management:

- a habitat management plan for fish habitat that is not already covered in plans under the NC Act
- guidelines for specific matters such as cultural fishing, aquaponics/aquaculture or 'fish friendly' construction (promoting provision/maintenance of fish passage).

Have your say

Planning documents assist land managers and ecologists implement fisheries management.

Questions for discussion

- a) Should the Act refer to plans and guidelines?
- b) If so, what plans or guidelines need to be given priority to assist fisheries management?
- c) Would you like to say anything else about fishing and fisheries related plans and guidelines?

Management of recreational fishing

The objects of the Act include the provision of high quality and viable recreational fishing while ensuring the sustainable management of the fishery. The Act achieves this through a range of provisions, including through the:

- implementation of fishing seasons for trout and Murray Cod
- regulation of size and quantity of fish allowed to be caught for certain species
- limiting where fishing may occur and
- restrictions on permitted fishing gear.

Sustainable recreational fishing is also maintained through stocking of recreational angling species into urban lakes and ponds to maintain populations.

Fishing gear restrictions are declared through a disallowable instrument under s. 17 of the Act. The declaration states that *“the use of fishing gear not referred to in this section, or the use of fishing gear in a manner not referred to in this section, is prohibited.”*

It is an offence to use or possess fishing gear in or beside public waters if the fishing gear is not permitted by a declaration. The maximum penalty for using gear that is not permitted is \$4500 and the maximum penalty for possession is \$750. Penalties are higher for corporations than for individuals. Offences against this section are strict liability. These penalties are significantly lower than in other jurisdictions; for example, in NSW the possession of illegal fishing gear carries a maximum penalty of \$22,000 or six months imprisonment. A comparison of offences and penalties in the ACT and NSW is provided at [Appendix 1](#).

It is proposed to amend the Act to allow a new declaration with associated offences of prohibited gear. Higher penalty provisions would apply to the use of prohibited gear. This would more clearly enforce the fact that particular fishing gear is prohibited from use and possession. For example, opera house traps are not permitted in public waters in the ACT. They are known to be detrimental to non-target species, including causing the death of platypus, water rats and turtles. It may be appropriate to declare these traps as prohibited as an increased deterrent for use. It may also be appropriate to look at restricting the sale of prohibited gear within the ACT.

The default provisions relating to use of gear that is not permitted would be retained. This is needed to cover situations of new gear being developed or brought in from other jurisdictions that have not been assessed.

Have your say

Some fishing gear such as opera house traps can adversely affect native aquatic species.

Questions for discussion

- a) What specific types of fishing gear should be prohibited?
- b) Is there anything else you would like to say about fishing gear and penalties?

The Act uses water classifications to identify what type of fishing can occur in which waters. The Act defines private waters and public waters. Public waters are divided into different classifications in a disallowable instrument.

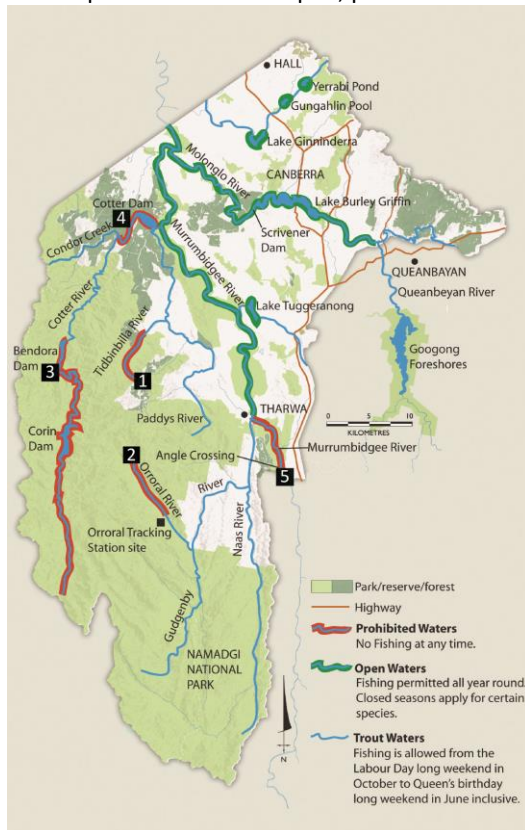
The current definition of 'private waters' is problematic. **Private waters** means (a) waters of a dam, water storage or other water control structure that is not situated on a waterway; and (b) waters used for aquaculture. **Public waters** means all waters other than private waters. This means that the provisions of the Act do not apply to dams and impoundments that occur on public land (under the definition used in the *Planning and Development Act 2007*) or unleased public land. It is proposed to amend the definition to ensure fishing action can be managed on any waters occurring on public land in the same way that occurs in public waters as defined currently.

The following additional definitions applying to public waters are provided in the Fisheries Prohibition and Declaration 2016 (No 1):¹

- 1 open waters** means the following public waters –
 - a. all of the urban lakes and ponds
 - b. the Molonglo River downstream of its junction with the Queanbeyan River
 - c. the Murrumbidgee River downstream of its junction with the Gudgenby River and upstream of Angle Crossing.
- 2 prohibited waters** means the following public waters –
 - a. Cotter River upstream of new Cotter dam wall, to the junction of Condor Creek, including the Cotter reservoir
 - b. Cotter River and catchment upstream of Bendora dam wall, including Bendora and Corin reservoirs
 - c. Murrumbidgee River downstream of Angle Crossing to the junction with the Gudgenby River
 - d. Orroral River upstream of the bridge located west of the site of the former Orroral space tracking station
 - e. Tidbinbilla River and catchment within the Tidbinbilla Nature Reserve.
- 3 trout waters** means any public waters that are not open waters or prohibited waters.

¹ At <http://www.legislation.act.gov.au/di/2016-282/current/pdf/2016-282.pdf>

The map below indicates open, prohibited and trout water areas in the ACT.



At present, if an area is not declared as open or prohibited waters it is considered trout waters by default. This is counter-intuitive as there are greater restrictions on fishing in trout waters than in open waters. Fishing in trout waters is only allowed using artificial flies or lures and is prohibited during the trout spawning season from Monday of the Queen’s Birthday long weekend in June to Friday before the Labour Day long weekend in October each year. Fishing is not allowed in prohibited waters at any time.

It is proposed to amend the Act so public waters can be declared as trout or prohibited waters and all public waters not declared otherwise will be considered open waters. It is also proposed to include definitions of prohibited, trout and open waters in the Act itself or in a regulation.

Recreational possession limits, designed to control the stockpiling of fish, are in place in most jurisdictions, but not in the ACT. Under NSW fishing legislation (s. 17a), possession limits may be imposed, with a possession limit being the maximum quantity of fish that a person may have in their possession in any specified circumstances. These may differ from the ‘take limit’ for certain species.

Have your say

Limits on recreational fishing are important to ensure balance between conservation and recreation.

Questions for discussion

- a) Should limits on recreational fishing be more aligned with other jurisdictions?
- b) Do you think any changes are needed to current limits on fishing in the ACT? For example, would you make any changes to size limits, bag limits or fishing seasons?

As the ACT's population grows, recreational fishing, particularly in rivers and streams, has the potential to increasingly impact on native fish species. In particular, developments near river corridors may provide improved access to rivers, leading to an increase in recreational fishing. The number of fish available for recreational fishing in urban areas is supplemented through stocking into urban lakes and ponds. Murray Cod and Golden Perch are stocked into these water bodies in line with the ACT Fish Stocking Plan in order to provide a sustainable recreational fishery for anglers. Fish are not stocked into rivers and creeks in the ACT for recreational purposes, although stocking into these water bodies may occur as part of conservation efforts.



Image: Golden Perch being released from a bucket into Gungahlin Lake (ACT Government)

One of the major challenges in managing recreational fishing is obtaining adequate information on its actual impacts at an ecosystem and species level. This information is important to be able maintain a sustainable recreational fishery that does not have an adverse impact on native fish species. The review will look at options for improving knowledge, including regular surveys of recreational fishers. In other jurisdictions, licences are required; this provides some information about the level of recreation fishing in those jurisdictions. In those jurisdictions, funds gained from the sale of licences are used for administration of the licensing scheme and to fund fisheries management projects.

Recreational fishing licences are not currently required in the ACT and are not proposed, as the costs of administration are likely to outweigh the funds raised through a licence scheme. The absence of information gained from licensing makes it difficult to understand how much recreational fishing is occurring and what species are being fished. However, in the absence of information gained from licensing, recent surveys targeting recreational fishing provide an insight into fishing activity in the ACT and region. Information is also available through the NSW licence system for fishers licensed in NSW who live in the ACT.

The NSW Department of Primary Industries carried out a NSW and ACT Recreational Fishing Survey between June 2013 and May 2014 that included 798 respondents from the ACT. Among these respondents, the survey showed an 11.6% fishing participation rate.

The 2016 Water Quality and the Community survey (Schirmer and Mylek) asked participants whether they fished, where and what fish species they target, and their satisfaction levels with fishing. The survey showed that just over half of the respondents fished at some time, the majority fished in both ACT waters and in freshwater or coastal/ estuarine areas outside of the ACT.

The most commonly fished areas within the ACT were Lake Burley Griffin, the Murrumbidgee River and the Cotter River. Trout and Redfin were reported as the most commonly caught and eaten fish; Murray Cod and Golden Perch were the most commonly caught and released species; and Carp were commonly caught but were not eaten or released.

Regular surveys of local anglers may assist in providing valuable information about recreational fishing activity within the ACT, including how many people are fishing, where they are fishing and what they are catching.

Have your say

Up to date information about where and how people fish will help manage fisheries in the ACT and region.

Questions for discussion

- a) How do we gain better knowledge on the benefits of recreational fishing, including the amount of fishing activity and the value people place on fishing?
- b) How could we increase benefits from recreational fishing while ensuring adequate protection of native fish?

Commercial fishing and commercial dealing

The Act allows for the issue of commercial fishing licences. The Act also requires the registration of fish dealers.

A fish dealer is defined as “a person who receives fish, for resale or other commercial use, from a person whom he or she knows or suspects or ought to know or suspect to be a commercial fisher, but does not include a person who receives fish only for the purpose of transporting them on behalf of the owner of the fish.” The provisions for fish dealers (s. 37) only apply to wholesale activities and do not apply for retail sale or for purposes other than sale. This means that businesses, such as pet shops selling fish for the pet trade and restaurants/fish shops, are not required to register as fish dealers.

Licences are required for the import and export of fish into and out of the ACT. Under s. 22 of the Act, an import and/or export licence authorises the import or export of live fish into or out of the ACT. It is an offence under the Act (s. 76) to import or export fish without a licence, or the written approval of the Conservator. Penalties for this offence can be up to 100 penalty units or one year imprisonment or both. This provision is useful in deterring the illegal import and export of priority, protected or pest species into and out of the ACT. There are some cases, such as the movement of a pet fish across the ACT border, where it may not be appropriate to require a licence. It would be useful to allow an instrument under the Act that lists aquatic species and circumstances that are exempt from requiring an import/export licence, or that lists species that do require a licence to be imported, as is the case under NSW legislation.

The Act contains offence provisions for trafficking, taking or possessing a commercial quantity of a priority species. At present, the Act defines priority species as abalone and rock lobster, and anything else prescribed by regulations. These two species are listed as priority (or indictable in NSW) across ACT, NSW and Victoria. However, fisheries legislation in NSW and Victoria also list Murray Cod as a priority species. It may be appropriate to include Murray Cod as a priority species in the ACT in order to manage any illegal activity related to this species.

Minor changes are required to bring the offences and penalties into line with other jurisdictions. Some more substantial changes will be required to manage commercial trade, particularly relating to wholesale/retail trade and trade in protected species to bring this area into parallel with NSW laws. Improved compliance and enforcement capacity together with education and awareness activities are

needed to ensure commercial trade is managed within the requirements of the Act and trade outside those requirements is discouraged.

Improved knowledge of illegal activity and better compliance and enforcement, particularly related to trade, could be facilitated through regional partnerships with NSW Fisheries and Commonwealth fisheries officers. A memorandum of understanding (MoU) currently exists between the ACT Government and the Australian Fisheries Management Authority (AFMA) regarding the supply of fisheries compliance services. The MoU establishes arrangements for cooperation and collaboration between the parties in relation to compliance and enforcement activities. A similar MoU with NSW Fisheries managers may be useful to assist in management of illegal activity taking place from NSW into the ACT.

Have your say

Other jurisdictions currently have stronger provisions to address illegal trade in fish.

Questions for discussion

- a) How important is regional cooperation to address illegal trade in fisheries?
- b) Should penalties for illegal trade be the same across jurisdictions?
- c) Are there any other issues regarding trade in fish that also need to be addressed?

Trade in protected species



Image: Murray River Crayfish on the river bank at Pine Island (ACT Government)

The NC Act protects threatened native fish species in the ACT. The local fish species currently protected under the NC ACT are Trout Cod, Silver Perch, Macquarie Perch, Two-spined Blackfish and Murray River Crayfish. Murray Cod also has special protection status under the NC Act because it is listed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Protected species such as Murray Cod and Silver Perch are regularly used in the aquarium trade, restaurants and fish shops where they are legally supplied from commercial aquaculture. Under the NC Act, protected species are not legally allowed to be kept, killed, harmed or sold without a licence; however, a licence is not required for these activities under the Fisheries Act. This means that the keeping and/or sale of these species without a licence may be illegal under the NC Act and legal under the Fisheries Act.

Native species conservation plans can be produced for species protected under the NC Act. These plans can specify management arrangements, including sustainable fishing, and an offence is not committed for certain offences if the conduct is consistent with the plan. At present, the NC Act does not allow these plans to address offences relating to the keeping and/or selling of protected species. It is proposed to extend these provisions under the NC Act for species subject to native species conservation plans to cover trade issues for fish species as well as provisions relating to killing and taking. Specifically, it would not be an offence for a licensed trader to trade in, including to take or kill, protected or threatened species as long as the conditions outlined in the plan were met.

Have your say

Some native fish species, such as Murray Cod and Silver Perch, may be used in aquariums, restaurants and fish shops where they are legally supplied, for example from hatcheries.

Questions for discussion

- a) How can we improve trade in native fish species, while ensuring adequate protection for them?

Compliance and enforcement

The Australian Fisheries National Compliance Strategy (the compliance strategy) concludes that the growing complexity of management arrangements, the risk of over fishing and constraints on compliance resources are amongst the most significance challenges in fisheries compliance.

There are a range of offences and penalties included and proposed to be included in the Act, as outlined in the sections above. It is proposed to align the offences and penalties within the Act with those in NSW, where appropriate, to provide an effective deterrence system. A comparison of the current offences and penalties in ACT legislation against similar offences in NSW legislation is at [Appendix 1](#).

The compliance strategy indicates that successful fisheries management depends heavily on achieving optimal compliance. Responsibility and stewardship among stakeholder groups and the wider community is important in being able to achieve this.

The effectiveness of fisheries rules and regulations rely on a high level of community acceptance and compliance. The approach to compliance outlined in the National Strategy aims to:

- maximise voluntary compliance (through engagement and education)
- provide effective deterrence mechanisms through appropriate levels of offences and penalties and
- provide appropriate levels of capacity and capability to respond and adapt to changing circumstances.

Compliance with fishing rules is encouraged among ACT fishers through the provision of materials such as the [Recreational Fishing in the ACT](#) brochure, signage at lakes and rivers identifying fishing rules and through information available on the Environment, Planning and Sustainable Development Directorate's web site (http://www.environment.act.gov.au/cpr/fish/recreational_fishing_in_the_act).

There are currently no dedicated fisheries officers in the ACT. Compliance activities under the Act are undertaken by Conservation Officers, which include Parks and Conservation Service and Environment Protection Authority staff. Conservation Officers are also responsible for enforcement of other legislation, such as the NC Act, the *Pest Plants and Animals Act 2005* and the EP Act.

Have your say

Compliance and enforcement of fishing laws is important for successful fisheries management.

Questions for discussion

- a) How do we improve enforcement of fishing laws?
- b) What areas need to be given priority?
- c) What opportunities for enforcement are offered by emerging technologies?

Aquaculture and aquaponics

The Act defines aquaculture as:

- (a) cultivating fish or marine vegetation for harvesting the fish or vegetation or their progeny for sale or
- (b) keeping fish or marine vegetation in a confined area for a commercial purpose; but does not include—
- (c) keeping anything in a pet shop for sale or in an aquarium for exhibition (including an aquarium operated commercially) or
- (d) anything done in maintaining a collection of fish or marine vegetation that is not used for a commercial purpose or
- (e) an activity prescribed by the regulations.

Aquaponics is a similar activity including a combination of aquaculture and hydroponics to raise both fish and plant life. Aquaponics for personal use, rather than rearing fish or aquatic organisms for sale, may fall under part d of the above definition. The Act does not contain any provisions relating to aquaculture or aquaponics.

Aquaculture and aquaponics are not defined as allowable uses in the Territory Plan. This means that any commercial proposal would automatically require an EIS before it can be allowed. Guidance under the Act on appropriate aquaculture operations may aid in this assessment process.

Aquaculture is an activity requiring authorisation under Schedule 1 of the EP Act. Schedule 1 (16) states that “*commercial aquaculture, being the propagation or rearing of fish or other aquatic organisms in the course of which supplementary feeding is used*” requires an environmental authorisation.

While risks to the broader environment would be considered under the EP Act, it may also be appropriate to determine under the Fisheries Act which species are appropriate to farm and in what quantities and to consider risks to wild fisheries through wild capture, disposal and accidental escape, and welfare issues.

A licence for aquaculture may be appropriate under the Act in certain circumstances, including for facilities greater than a certain size (e.g. more than 10,000 litres) and for particular species of concern (e.g. species that are aquatic pests). It may also be appropriate to produce a guideline for people wishing to undertake personal (non-commercial) aquaponics projects, to help them determine the appropriate species, how to dispose of fish and vegetation and what to do in the case of disease.

Have your say

Aquaculture and aquaponics may be a future issue in the ACT.

Questions for discussion

- a) How should small-scale aquaculture and aquaponics be regulated?
- b) What are your views about licensing of aquaculture and aquaponics?

Cultural fishing practices

Aboriginal cultural fishing

The current Act does not have any provisions relating to traditional fishing by Aboriginal people, however, the ACT *Human Rights Act 2004* (s. 27) provides for the cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities in the ACT as follows:

(2) Aboriginal and Torres Strait Islander peoples hold distinct cultural rights and must not be denied the right—

(a) to maintain, control, protect and develop their—

(i) cultural heritage and distinctive spiritual practices, observances, beliefs and teachings and

(ii) languages and knowledge and

(iii) kinship ties and

(b) to have their material and economic relationships with the land and waters and other resources with which they have a connection under traditional laws and customs recognised and valued.

This review seeks to understand whether the current Act adheres to the above principles, particularly in relation to s. 137 (2) (b) regarding Aboriginal people's relationships to the waters, particularly rivers and creeks, of the ACT and the fish resources within these. Are traditional customs and laws able to be continued and, if not, how can the Act best serve this purpose?

Most other jurisdictions in Australia ensure indigenous fishing rights to some extent under their state or territory fisheries legislation. Most define Aboriginal cultural fishing as precluding commercial fishing; that is, recreational fishing for community and/or cultural purposes only.

Provisions for cultural fishing in other jurisdictions include not requiring a fishing licence, allowing increased take limits, the development of fishing agreements and cultural fishing policies.

The following questions will help guide the review on this matter:

- how do we define Aboriginal cultural fishing?
- how do we encourage the inclusion of Aboriginal people in the management of the fisheries, including waterways?
 - the ACT Water Strategy 2014–44 seeks to “*Ensure that indigenous and other cultural values are recognised in managing water planning and use*” and the ACT and Region Catchment Strategy recognises indigenous cultural values related to water and aims to “*include Indigenous water and other cultural values in managing water*”.
- what are the important areas for cultural fishing in the ACT?
- are certain fish or aquatic species culturally important?
- do current fishing regulations restrict cultural fishing activity? For example, is cultural fishing restricted by current rules about when or where you can fish, the fishing gear able to be used or the number of fish able to be taken?
- how do we ensure sustainable fishing and conservation of native fish while recognising the rights of Aboriginal people to maintain their cultural practices and ties to Country?

Have your say

Aboriginal cultural fishing is not currently covered in the Fisheries Act.

Questions for discussion

- a) How do we better understand the cultural values Aboriginal people have in relation to fish and fishing practices, such as the importance of native fish or places, fishing methods, and purpose (connection to country, ceremonial)?
- b) How do we best take into account Aboriginal cultural values in fisheries management?

Karma release of fish

The Human Rights Act states that:

- (1) Anyone who belongs to an ethnic, religious or linguistic minority must not be denied the right, with other members of the minority, to enjoy his or her culture, to declare and practise his or her religion, or to use his or her language.

Karma release is a traditional Buddhist practice of saving the lives of animals that are destined to be killed. The animals are often released into the wild. The practice has become more common in the ACT in recent years, particularly through the release of live fish obtained from fish markets. Karma releases have the potential to have serious impacts on native aquatic species from the spread of introduced species and pathogens. Release of fish into public waters is an offence under the Act except with the written approval of the Conservator.

The ACT has developed draft guidelines on karma release ([Appendix 2](#)) to help people undertake the practice in an environmentally responsible way.

Education is very important in order to combat the risk of environmental harm associated with this practice. The release of guidelines will assist with this but further community engagement may be required.

Have your say

Karma release of live fish is acknowledged as an important cultural practice for some groups in the ACT. We would like to ensure this practice be undertaken in an environmentally responsible manner.

Questions for discussion

- a) How can fisheries legislation best facilitate and manage the practice of the Karma release so it can occur in an environmentally responsible way?
- b) What are your views on the draft Karma release guidelines at [Appendix 2](#)?

Conservation of native aquatic species and habitat

Management of aquatic habitats



Image: Aquatic habitat in the Cotter River (ACT Government)

The NC Act is the primary legislation for the conservation of native species in the ACT; however, it may be appropriate to provide protection to non-threatened aquatic species and habitats to improve the sustainability of the recreational fishery.

The conservation of native fish is provided for in the Fisheries Act through fishing closures and declarations, including through prohibiting the catch of certain species at certain times or altogether, and through the implementation of size and bag limits for certain species. These measures can contribute to the conservation of native fish by ensuring they receive appropriate protection and are fished in a sustainable way. Fish and other aquatic species that are listed as threatened under the NC Act are protected under that Act and are not allowed to be taken.

Division 8.4 of the Fisheries Act provides protection only for aquatic fish spawning habitats. Under s. 88 it is an offence to do something that disturbs spawn or spawning fish in public waters. Regulations may also be made under the Act about the prevention of damage to a place where fish spawn or are likely to spawn.

Other ACT legislation also plays a role in the protection of aquatic habitat by protecting water quality EP Act and by regulating environmental flows in rivers (*Water Resources Act 2007 – Environmental Flow Guidelines*).

The maintenance and/or provision of fish passage are not provided for in ACT legislation, although new structures regulated by Water Works licences under the Water Resources Act may take consideration of fish passage. In NSW, the *Fisheries Management Act 1994* enables the Minister to require the provision or maintenance of fishways when works are carried out on dams or weirs. It is also an offence under the NSW Act to obstruct the passage of fish.

Weirs, road crossings and other structures built across rivers or creeks can obstruct fish passage. Fish passage refers to the ability of fish to pass along a waterway. This can be important to allow access to different habitat along a waterway and for breeding activity etc. Sometimes it is preferable to restrict fish passage, for example, if a structure were to restrict the passage of a pest species.



Image: A weir and fishway at Casuarina Sands (ACT Government)

The inclusion of emergency provisions allowing the temporary closure of certain areas or fisheries may also be appropriate. Such provisions would allow for the protection of fish species in an emergency situation such as:

- short-term protection of fish aggregations such as those that can develop below dams or weirs or when draining a waterbody²
- management of outbreaks of disease or pest fish
- unusual environmental conditions that are significantly impacting particular species in certain locations.

Have your say

Protection is provided to native fish and aquatic ecosystems under the NC Act, Fisheries Act and other legislation; however, there are gaps.

Questions for discussion

- a) Do you think the following areas should be covered under the Fisheries Act?
 - Guidelines for maintenance of fish passage (could inform waterway works licences under the Water Resources Act).
 - Declaration of areas of important habitat within public waters.
 - Temporary closure of areas otherwise open to fishing to protect fish species in emergency situations.
- b) What other gaps, if any, need to be addressed?

Management of aquatic species other than fish

² When fish aggregations occur the mass of fish can lead to unsustainable take of the species; fish are easier to catch and are subject to increased pressure from natural pressures.

The Fisheries Act provides for the management of fish and aquatic animal life including molluscs, crustaceans, echinoderms and aquatic polychaete (worms). The Act allows the Minister to prohibit the taking of fish (and any species under this definition) from public waters, but this does not allow for protection of terrestrial invertebrates that may be an important component of a functioning aquatic ecosystem and may be subject to collection pressure or other impacts.

Species of invertebrates (crustaceans, insects etc.) are not considered animals for the purposes of the NC Act unless they are listed as threatened or protected species. At present protected species can include 'trade restricted' species, rare species and data deficient species.

Have your say

Aquatic invertebrates such as crustaceans and insects may have a significant ecological role in aquatic ecosystems, or be rare or uncommon.



Questions for discussion

- a) When should a licence be required for collection of aquatic invertebrates?
- b) Are there any other measures needed to protect aquatic invertebrates?

Management of aquatic pests

Aquatic pest fish compete with native species for food and habitat, they can prey on native fish, degrade habitat and can introduce diseases and parasites into the environment. The illegal release of fish into our waterways is the most common form of introduction.

Carp, Gambusia and Redfin are the most established pest fish species in the ACT. They have become established over the past 25 years in ACT lakes and streams.

Carp	Redfin
	
Carp are now the most abundant angling species in the ACT.	As well as competing for food and habitat, Redfin pose an added risk as carriers of the EHN virus, which is known to kill Macquarie Perch.

The *Pest Plants and Animals Act 2005* (PP&A Act) is the primary legislation for dealing with pest species and any provisions in the Fisheries Act should support this Act and/or other biosecurity legislation.

There are inconsistencies between the Fisheries and PP&A Acts that require attention. For example, under s. 24 of the PP&A Act "reckless disposal" of a prohibited pest animal is an offence whereas, under s. 79 of the Fisheries Act, a person can release any fish into public waters from which it was taken. These

contradict each other and potentially, provide for the release of pest species back into important aquatic habitat.

Further to this, s. 78 of the Fisheries Act states that it is an offence to possess a noxious fish without the Conservator's written approval; whereas the PP&A Act (s. 22) states that it is an offence to keep a prohibited pest animal. There is no provision under the PP&A Act for keeping a prohibited pest animal under licence and strict conditions. This limits the opportunities, for example, for undertaking research on aquatic pest species, once they have been declared a prohibited pest species.

Section 14 of the Fisheries Act allows the Minister to declare a species of fish to be noxious; however, noxious fish are routinely declared as pest animals under the PP&A Act³, rather than the Fisheries Act.

Have your say

Aquatic pest species are a threat to the environment, recreational fishing and other values.

Questions for discussion

- a) Do you think the following would improve our ability to manage the threat of aquatic pests?
 - Ensuring caught fish that are identified as pests under legislation are not released back into the water. Penalties would apply.
 - Ensuring pest species can only be kept under licence, which could provide for research, education and zoological collections.
- b) What other issues relating to aquatic pest species need to be addressed through legislation?

Next steps

We are keen to hear your views on fisheries management in the ACT. You may comment on any of the questions above, or any other matter related to the Fisheries Act.

Submissions can be made until Monday, 5 February 2018 by:

- post Natural Environment
 Environment, Planning and Sustainable Development Directorate
 GPO Box 158
 Canberra City ACT 2601
- email to epsddcomms@act.gov.au

If you would like to attend an information session or workshop, visit www.yoursay.act.gov.au.

You can also register your interest to receive more information about the review or other matters relating to fishing and fishery management in the ACT at www.yoursay.act.gov.au

All submissions and information received during consultation on the review will be considered in drafting amendments to the *Fisheries Act 2000*. Further consultation may occur on changes to the legislation in 2018.

Please note that all or part of your submission may be published on the Directorate's website or included in a consultation report. While names of organisations may be included, all individuals will be de-identified unless prior approval is gained. For more information, please see the Directorate's privacy policy and annex at www.environment.act.gov.au/about/privacy

³ Several pest fish, including carp and redfin, are listed as pest species under the PP&A Act. Carp have been declared as pest animals since 2005 and their status has not changed (i.e., they are not prohibited).

APPENDIX 1 - OFFENCES AND PENALTIES COMPARISON SUMMARY TABLE

Offences and Penalties Comparison summary table: ACT Fisheries Act 2000 and NSW Fisheries Management Act 1994

<i>ACT Fisheries Act 2000</i>			<i>NSW Fisheries Management Act 1994</i>		
Section	Provision	Maximum Penalty*	Section	Provision	Maximum Penalty
s74	Taking fish for sale without licence etc	50 penalty units, imprisonment for 6 months, or both.	s102	Commercial fishers required to be licensed	Individual: 1,000 penalty units for a first offence, or 2,000 penalty units for a second/ subsequent offence. Corporation: 2,000 penalty units for a first offence, 4,000 penalty units for a second or subsequent offence.
s75	Taking fish contrary to a scientific licence	10 penalty units.		no similar provision	
s76	Importing or exporting live fish without authority	100 penalty units, imprisonment for 1 year or both.	217	Importation of live exotic fish	Corporation: 100 penalty units In any other case: 50 penalty units.

s76A	Trafficking in commercial quantity of fish of priority species	1000 penalty units, imprisonment for 10 years or both.	s21B	Trafficking in fish	Imprisonment for 10 years, an additional monetary penalty may be imposed
s76B	Taking commercial quantity of fish of priority species	1000 penalty units, imprisonment for 10 years or both.	s21B	Trafficking in Fish applies to taking, selling, receiving or possessing an indictable species	Imprisonment for 10 years, an additional monetary penalty may be imposed
s76C	Possessing commercial quantity of fish of a priority species	500 penalty units, imprisonment for 5 years or both.	s21B	Trafficking in Fish applies to taking, selling, receiving or possessing an indictable species	Imprisonment for 10 years, an additional monetary penalty may be imposed
s77	Possessing fish obtained illegally	100 penalty units, imprisonment for 1 year or both.	35	Possessing fish illegally taken	Individual: 200 penalty units or imprisonment for 6 months (or both) for a first offence, or 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or Corporation: 1,000 penalty units for a first offence, or 2,000 penalty units for a second or subsequent offence
s78	Noxious fish (possession)	50 penalty units, imprisonment for 6 months or both.	s209D s210	Release of noxious fish or noxious marine vegetation prohibited Sale of noxious fish or noxious marine vegetation prohibited	s209D : In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units s210 : In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units.

			s211	Possession of noxious fish or noxious marine vegetation prohibited	s211: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.
s79	Release of fish	10 penalty units	s216	Releasing live fish into waters prohibited	In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.
s80	Fishing closures offences (1) Takes in contravention of closures (3) Possesses in contravention of closures	(1) 50 penalty units (3) 50 penalty units	s14	Offences relating to closures (1) Takes in contravention of closures (2) Possesses in contravention of closures	1) individual: 200 penalty units or imprisonment for 6 months (or both) for a first offence, or 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or Corporation: 1,000 penalty units for a first offence, or (ii) 2,000 penalty units for a second or subsequent offence. (2) penalties as above
s81	Prohibited size and weight offences	(1) 50 penalty units, imprisonment for 6 months or both.	s16	Prohibited size fish (possession)	Individual: 200 penalty units or imprisonment for 6 months (or both) for a first offence, or 400 penalty units or

	(1) Takes (3) Possesses	(3) 30 penalty units.			imprisonment for 12 months (or both) for a second or subsequent offence, or Corporation: 1,000 penalty units for a first offence, or 2,000 penalty units for a second or subsequent offence.
s82	Quantity of fish offences	30 penalty units.	s17	Bag limits—taking of fish	Individual: 200 penalty units or imprisonment for 6 months (or both) for a first offence, or 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or Corporation: 1,000 penalty units for a first offence, or 2,000 penalty units for a second or subsequent offence.
	The ACT Fisheries Act does not have possession limits		s18	Offence of contravening possession limit	Individual: 200 penalty units or imprisonment for 6 months (or both) for a first offence, or 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or Corporation: 1,000 penalty units for a first offence, or 2,000 penalty units for a second or subsequent offence.
s83	Beheading or filleting fish	10 penalty units.		NSW does not have a similar provision	

s84	Use of live fin fish as bait etc	30 penalty units.		NSW does not have a similar provision	
s85	Use of fishing gear generally	10 penalty units.	s22 s23	Registration of fishing gear Regulations relating to fishing gear	In the case of a corporation, 50 penalty units or, in any other case, 25 penalty units.
s86	Non-permitted fishing gear (1) Use of gear (2) Possession of gear	(1) 50 penalty units. (2) 30 penalty units.	s24 s25	Lawful use of nets or traps Possession of illegal fishing gear	s24 Individual: 200 penalty units or imprisonment for 6 months (or both) for a first offence, or 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or Corporation: 1,000 penalty units for a first offence, or 2,000 penalty units for a second or subsequent offence. s25 Individual: 200 penalty units or imprisonment for 6 months (or both) for a first offence, or 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or Corporation: 1,000 penalty units for a first offence, or 2,000 penalty units for a second or subsequent offence.

s87	Use and possession of commercial fishing gear (1) Use (2) Possession	(1) 50 penalty units. (2) 30 penalty units.	s24 and s25	s 24 and s25 above apply to use of commercial gear	
s88	Protection of aquatic habitats Spawning areas (offence to damage or disturb)	30 penalty units.	s206	Protection of spawning areas of salmon, trout and certain other fish	1,000 penalty units.
s37	Fish dealers to be registered	50 penalty units.	s117	Fish receiver to be registered	In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units or imprisonment for 3 months, or both.

APPENDIX 2 – DRAFT KARMA RELEASE GUIDELINES

Live fish release in Canberra waters

The ACT Government recognises the importance of the Buddhist tradition of saving the lives of animals that are destined to be killed (life release, karma release or *fang sheng*). We can help you release live native fish that will survive and not become a threat to other fish and animals. These fish are bred in captivity and would otherwise be sold to restaurants or fish markets for consumption. You can organise your own live fish release, or be part of an ACT Government release.

Arrange your own fish release

If you want to make a live release please talk to us first. We can help you. You can apply for a free permit to release live fish if:

- they are suitable species, and
- are from accredited suppliers that produce healthy, disease-free fish that can have a long life in ACT lakes and help keep the lakes healthy, and
- are released in approved places.

Your permit will tell you where you can release the fish in the ACT. All fish releases in the ACT are made into the lakes to protect the existing fish and ecosystems within our rivers.

You will need to get additional approval from the National Capital Authority to release fish in Lake Burley Griffin and NSW Department of Primary Industries permits are required to release fish in Googong Reservoir and the Queanbeyan River.

If you would like to publicise your fish release, the ACT Government can help you do this.

Join an ACT Government fish release

The ACT Government releases thousands of young fish into Canberra lakes every year. You can be part of the release by contributing to the purchase of fish for the release and attending the release on the day. Contact Access Canberra for further information on how to get involved.

For more information on fish release, including applying for a permit, please contact Access Canberra on 13 22 81 to:

- request an ACT Government ecologist to speak to your group about releasing fish
- apply for a permit to release fish
- get a list of accredited fish suppliers

You can get more information about fish release by the ACT Government in the ACT Government Fish Stocking Plan: http://www.environment.act.gov.au/cpr/fish/fisheries_management/fish-stock-plan-for-the-australian-capital-territory-2015-2020

Unapproved release can be bad for the environment and the fish you release

Not all fish are suitable for release in the ACT. For example, Golden perch and Murray cod are both native to the ACT and are likely to survive and breed. They grow well in lakes and become an important part of the lake ecosystem. A Murray cod released at 5 cm long in 1983 in Lake Ginninderra died naturally in 2011 at 1.2 m long and 28 years old. Young fish (less than 15 cm long) are also more likely to survive because they have not lost their skills to live in the wild. Older fish rarely survive because they are unable to feed themselves in the wild, or are eaten by predators.

If you release the wrong fish, they will either die quickly or become a pest, harming other wild fish and animals. Many fish sold in Canberra fish markets and restaurants are not native. If released, they usually die very quickly because Canberra waters are not their natural ecosystem. Saltwater fish will die very quickly in Canberra's fresh water. Freshwater fish may die if the water is too cold, too warm, wrong water quality or if it does not have their food.

Some fish markets do sell fish that are native to Canberra but these fish are also unlikely to survive because they have been raised in captivity and don't know how to find food or escape predators. They can starve to death or be eaten.

Fish that do survive can harm wild native fish and animals, including species that are threatened with extinction.

- They can have diseases that can spread to wild native fish.
- They can become pests that the ACT Government then try and control.
- They may eat the native fish or take their breeding spots.
- Native fish from markets are genetically different from the local population, putting the wild population at risk.

Penalties apply for the illegal release of fish

A permit is required to release live fish to ensure the wellbeing of those fish and the safety of native fish and ecosystems. Releasing fish without a permit is illegal. Fines of up to \$5000 or six months imprisonment or both can be issued for the illegal release of fish.