



Department of  
Primary Industries

# Regulatory Impact Statement

## Fisheries Management (General) Regulation 2019

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Regulatory Impact Statement – Fisheries Management (General) Regulation 2019

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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (May 2019). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Primary Industries or the user's independent adviser.

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## Executive Summary

The Fisheries Management (General) Regulation 2010 (the FM General Regulation) is due for a staged repeal on 1 September 2019. Remaking this regulation requires the preparation of a Regulatory Impact Statement (RIS) and a period of public consultation.

The FM General Regulation is one of the main pieces of legislation that support the Fisheries Management Act 1994 (the Act). The Act is the primary legislation that sets the foundation for strategic and coordinated management of the NSW fisheries resources. Apart from the FM General Regulation, the Act is supported by nine other regulations.

The FM General Regulation contains provisions to effectively and sustainably manage the fisheries resource of NSW into the future. The NSW fisheries resources include fisheries conservation, recreational fishing (including charter boats), commercial fisheries, Aboriginal cultural fishing and aquaculture. However, the provisions for some sectors are limited as there are separate dedicated regulations for major commercial fisheries and aquaculture. Nevertheless, all sectors fall within the scope of the proposed FM General Regulation and this RIS to some degree.

The State's fisheries resource provides a range of benefits to the various fisheries stakeholders sectors and the community. There is an intrinsic value to the general community in preserving fish stocks and fish habitat and a preference for consuming fresh, locally produced seafood. Recreational fishers are able to use the resource for sport or leisure. Recreational fishing also has an economic value in supporting associated businesses and tourism (\$3.4 billion per year and equivalent of 14,000 full-time jobs) (DPI 2019a). Over 1,000 commercial fishers gain a direct benefit from harvesting the resource for sale (more than \$90 million) (DPI 2019b) and Aboriginal communities' connection with fisheries resources extends to activities and practices for educational, ceremonial or other cultural purposes.

The RIS assesses two options against a 'base case' (i.e. to remake the existing regulation) referred to as Option 1. The two options are:

- Option 2: Make the proposed FM General Regulation
- Option 3: Allow the FM General Regulation to lapse

Under the base case, the FM General Regulation would be remade with no amendments on 1 September 2019. Making the proposed FM General Regulation (Option 2) under the Act is the preferred option, as it generates benefits to the community, environment, businesses and government. The proposed FM General Regulation:

- updates the references to relevant legislation,
- updates common and scientific fish names to make them consistent with latest Australian Fish Names Standards,
- removes unnecessary clauses,
- consolidates definitions of fish species, and
- restructures the provisions to improve the logical flow of the legislation.

Option 2 provides increased protection to the NSW fisheries resources relative to the base case (Option 1). The lapse of the FM General Regulation (Option 3) would reduce powers that protect the NSW fisheries resources, which are provided for by options 1 and 2.

# 1. About this Regulatory Impact Statement

## 1.1. Why is the Fisheries Management (General) Regulation 2010 being remade?

The Fisheries Management (General) Regulation 2010 (the FM General Regulation) is due for staged repeal on 1 September 2019. A regulation that is due for staged repeal may be:

- allowed to lapse
- maintained and the staged repeal process postponed
- remade with or without amendments.

The staged repeal of the FM General Regulation has been postponed on four occasions to allow implementation of the Government's Commercial Fisheries Reforms and minimise further disruption for stakeholders. Now that these reforms are largely in place, the Government has decided to remake the FM General Regulation.

The remake of this regulation requires the preparation of a Regulatory Impact Statement (RIS) and public consultation.

## 1.2. Why has this RIS been prepared?

Section 5 of the Subordinate Legislation Act 1989 (the SL Act) provides that before a principal statutory rule is made, a RIS must be prepared in connection with the substantive matters to be dealt with by the regulation.

## 1.3. What will this RIS consider?

Schedule 2 of the SL Act prescribes that a RIS must contain:

- a statement of the **objectives sought** to be achieved and the reasons for them
- an identification of the **alternative options** by which those objectives can be achieved (whether wholly or substantially)
- an assessment of the **costs and benefits of the proposed statutory rule**, including the costs and benefits relating to resource allocation, administration and compliance
- an assessment of the **costs and benefits of each alternative option** to the making of the statutory rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance
- an assessment as to which of the alternative options involves **the greatest net benefit or the least net cost** to the community
- a statement of the **consultation program** to be undertaken.

It is also a matter of practice that the NSW Treasury's seven principles of Better Regulation are applied when designing and developing a regulatory proposal. A description of these principles and their application may be found in the NSW Government Guide to Better Regulation (see TPP19-01 <https://www.treasury.nsw.gov.au/sites/default/files/2019-01/TPP19-01%20-%20Guide%20to%20Better%20Regulation.pdf>).

## 1.4. Will the public have a say on the proposed FM General Regulation and RIS?

Yes. The proposed FM General Regulation and RIS will be publicly exhibited for a period of 4 weeks [28 days] from 12 June 2019 until 9 July 2019.

**The proposed FM General Regulation and RIS are accessible at: [www.nsw.gov.au/improving-nsw/have-your-say/](http://www.nsw.gov.au/improving-nsw/have-your-say/)**

If you would like to have your say on the proposed changes to the regulation and/or the RIS, please submit your feedback via the link below:

<https://www.dpi.nsw.gov.au/about-us/legislation/list/staged-repeal-of-fisheries-management-general-regulation-2010>

Alternatively, submissions can be emailed to:

[fisheries.submissions@dpi.nsw.gov.au](mailto:fisheries.submissions@dpi.nsw.gov.au)

Submissions can also be posted to:

Fisheries Management (General) Regulation Submission  
NSW Department of Primary Industries, Fisheries  
PO Box 7526  
Silverwater, NSW 1811

**The closing date for submissions is 9 July 2019 at 11:59pm.**

## 1.5. What will the government do with your submission?

The Minister for Agriculture and Western New South Wales is required to consider submissions and actions arising from the submissions. The Department of Primary Industries (DPI) will assist in this process by reviewing all submissions that are received.

A copy of all submissions will be provided to the Legislation Review Committee of the NSW Parliament with the final version of the Regulation. The Committee will also be provided with a report on the outcomes of consultation detailing the issues raised in submissions and how these have been addressed.

The proposed FM General Regulation may be amended following consideration of any issues or comments made in the submissions.

## 1.6. Will it be possible to make a confidential submission?

DPI generally places submissions, or summaries of submissions received, on its website. Please advise us if you do not want your submission published or if you want part of it to be kept confidential (e.g. your name). The Department of Industry will respect your request, unless required by law to disclose this information, for example under the provisions of the *NSW Government Information (Public Access) Act 2009*.

## 1.7. Who else will be consulted on the proposed FM General Regulation and RIS?

DPI is seeking input from the community, stakeholder groups and government agencies, including conservation groups, recreational and commercial peak bodies, local councils and Aboriginal groups.

The below list of key stakeholders may be notified via direct letter (or other digital communication method) with supporting information to publicise the submission period via their own distribution channels.

### Key Stakeholders

- Ministerial Fisheries Advisory Council
- **Recreational Fishers**
  - Recreational Fishing NSW Advisory Council
  - Recreational Fishers
- **Commercial Fishers**
  - Commercial Fishing NSW Advisory Council
  - Professional Fishermen's Association (PFA)
  - NSW Abalone Association
  - Sydney Fish Market
  - Commercial fishermen's co-operatives
- **Charter Fishers**
  - Charter Fishing NSW Working Group
- **Aboriginal Cultural Fishing**
  - Aboriginal Fishing Advisory Council
  - NSW Aboriginal Land Council
  - NTSCORP
- **Government Agencies/Groups**
  - Marine Estate Agency Steering Committee

## 1.8. How has the proposed FM General Regulation and RIS been advertised?

A notice of the proposed FM General Regulation and RIS has been published in the [NSW Government Gazette](#) and in the following NSW newspapers:

- *The Sydney Morning Herald*
- *The Daily Telegraph*
- *The Land*

A notice has also been placed on the following websites:

- Have Your Say
- DPI Website
- NSW DPI Fishing Facebook page

Where appropriate the following communication methods may be used:

- General stakeholder letters or email notification
- Notices in appropriate stakeholder publications
- Signage or posters



- DPI FishSmart App
- SMS

## 2.Key terms and definitions

Unless otherwise specified, words and expressions used in this RIS have the same meaning as they have in the *Fisheries Management Act 1994* and the Fisheries Management (General) Regulation 2010.

Term	Definition
<b>DPI</b>	the NSW Department of Primary Industries
<b>RIS</b>	Regulatory Impact Statement
<b>the Act</b>	the <i>Fisheries Management Act 1994</i>
<b>the AFNS</b>	the Australian Fish Names Standard AS 5300-2015
<b>the FM General Regulation</b>	the Fisheries Management (General) Regulation 2010
<b>the proposed FM General Regulation</b>	the proposed Fisheries Management (General) Regulation 2019
<b>the MEM Act</b>	the <i>Marine Estate Management Act 2014</i>
<b>the MP Act</b>	the <i>Marine Parks Act 1997</i>
<b>the SL Act</b>	the <i>Subordinate Legislation Act 1989</i>

## 3. The need for government intervention

### 3.1. About the NSW Fisheries

The management of fisheries resources of NSW can be categorised into five sectors:

- fisheries conservation;
- recreational fishing (including charter boats);
- commercial fisheries;
- Aboriginal cultural fishing; and
- aquaculture.

All sectors fall within the scope of the proposed FM General Regulation and this RIS to some degree. However separate dedicated regulations for major commercial fisheries and aquaculture means FM General Regulation provisions specific to these areas are limited and the majority of provisions in the FM General Regulation relate to the first three sectors.

A brief description of each sector is provided below. Further details on all the sectors of NSW fisheries resources are provided in Appendix 1.

#### **Fisheries conservation**

Fisheries conservation includes aquatic habitat protection and restoration, threatened species recovery, and managing actions that impact water quality and fish passage. Conservation of the resource is achieved through effective fisheries management. The FM General Regulation, together with the Act contains provisions that deal with the protection of aquatic habitats, protected fish and threatened species conservation.

#### **Recreational fishing**

Recreational fishing is a popular activity throughout NSW, in inland, estuarine and ocean waters. It is enjoyed by about 850,000 anglers each year and is very valuable to coastal and inland communities; generating about \$3.4 billion of economic activity each year and creating the equivalent of about 14,000 full-time jobs (DPI 2019a).

The FM General Regulation together with the Act deals with the majority of rules applying to recreational fishers including charter boat fishing operators. This includes size and bag limits, fish and waters protected from recreational fishing, threatened species, permitted fishing gear, and charter boat fishing management provisions.

#### **Commercial fisheries**

The NSW wild harvest commercial fishing industry is a dynamic network of business operators. Commercial fishers, wholesalers, processors and retailers work together with the restaurant and catering industry to supply fresh seafood to communities across the State, as well as to interstate and overseas markets. At the first point of sale, NSW commercial fishing is worth more than \$90 million each year and the resource is shared amongst over 1,000 commercial fishers who catch fish for the whole community to enjoy (DPI 2019b).

The FM General Regulation together with the Act deals with commercial fishing licences, fishing boat licences, fish and waters protected from commercial fishing, making fish records

and restricted commercial fisheries. The regulation also includes common rules such as size limits, and protected and threatened species which generally apply to all fishers including commercial fishers.

### **Aboriginal cultural fishing**

Aboriginal cultural fishing refers to the fishing activities and practices carried out by Aboriginal persons to satisfy personal, domestic or communal needs, or for educational, ceremonial or other traditional purposes (excluding commercial purposes).

Aboriginal people have a strong cultural association with the fisheries resource. It is important that they are able to continue this association and maintain and pass on their knowledge to future generations. The fisheries resource gives Indigenous Australians opportunities to embrace their culture through working with natural resources on their Country and brings benefit to health, employment, education and overall wellbeing (Barclay et al. 2016).

In the absence of cultural fishing provisions, the FM General Regulation applies to cultural fishing activity as prescribed, or in amended form as extended by other arrangements pursuant to the Act, policy directive or other legislation such as that related to native title rights. Common rules such as size limits, and protected and threatened species apply as prescribed. The main Aboriginal fishing specific provisions dealt with in the FM General Regulation relate to the operation of the Aboriginal Fishing Advisory Council.

### **Aquaculture**

Aquaculture is the cultivation of fish or marine vegetation for commercial purposes. NSW aquaculture produces a diverse range of seafood including oysters, prawns, marine and freshwater fish, yabbies and mussels. Preliminary data for the 2017/18 year shows NSW aquaculture production was worth more than \$78 million (DPI 2019c). Like commercial fishing, aquaculture also provides valuable employment in regional areas.

Aquaculture is managed by a permit system, established under the Act, to promote industry developing in an environmentally and economically sustainable manner. The Act also provides for the lease of public water land for aquaculture of oysters, marine fish and pearls.

The FM General Regulation contains a small number of penalty notices applicable to aquaculture related offences. Otherwise, the Act and a separate aquaculture regulation deal with the administration of aquaculture.

## **3.2. Identification of the problem**

The fisheries resources of NSW are diverse, and fish species are highly regarded by recreational fishers for sport and food, Aboriginal communities in a cultural context, the commercial sector for their monetary value, and consumers for fresh seafood. The importance of sustainability of the fisheries resource is reflected in the primary objects of the Act, which include conserving the resource.

DPI, on behalf of the NSW Government, is responsible for conserving aquatic biodiversity; fish stock sustainability; managing the State's commercial fishing; recreational fishing and

aquaculture industries; ensuring compliance with fisheries legislation; and Aboriginal cultural fishing.

The NSW fisheries resources must be effectively managed to ensure that stocks are harvested at sustainable levels and the habitats upon which they rely are conserved. Without the Government managing the fisheries resource, it is likely that fish stocks, fish habitats and the broader ecosystem would be significantly and negatively impacted. Fishing industries would be less viable and there would be consequential negative economic and social impacts.

### **3.3. Objective of government action**

The objective of Government action is to conserve biological diversity including fish stocks and fish habitat and to effectively and sustainably manage the fisheries resource of NSW into the future. To achieve this, the Government has worked with stakeholders to design and implement comprehensive laws to ensure that fishing activities remain sustainable and that biological diversity is protected.

## 4. Legislative framework

This chapter outlines the role of the FM General Regulation within the existing legislative framework. A summary of the proposed FM General Regulation is provided in Chapter 5.

The *Fisheries Management Act 1994* (the Act) is the primary legislation that sets the foundation for strategic and coordinated management of the fisheries resources of NSW. The Act is supported by ten regulations, namely the:

- Fisheries Management (General) Regulation 2010
- Fisheries Management (Aquaculture) Regulation 2017
- Fisheries Management (Abalone Share Management Plan) Regulation 2000
- Fisheries Management (Lobster Share Management Plan) Regulation 2000
- Fisheries Management (Estuary General Share Management Plan) Regulation 2006
- Fisheries Management (Estuary Prawn Trawl Share Management Plan) Regulation 2006
- Fisheries Management (Ocean Trawl Share Management Plan) Regulation 2006
- Fisheries Management (Ocean Hauling Share Management Plan) Regulation 2006
- Fisheries Management (Ocean Trap and Line Share Management Plan) Regulation 2006
- Fisheries Management (Supporting Plan) Regulation 2006

Other NSW legislation relevant to the fisheries resources of NSW includes, but is not limited to:

- *Biosecurity Act 2015*
- *Coastal Management Act 2016*
- *Crown Land Management Act 2016*
- *Environmental Planning and Assessment Act 1979*
- *Local Government Act 1993*
- *Marine Estate Management Act 2014*
- *National Parks and Wildlife Act 1974*
- *Water Management Act 2000*

Relevant Commonwealth legislation includes the *Fisheries Management Act 1991*.

### 4.1. Fisheries Management Act 1994

The Act commenced on 16 January 1995 and provides the legal foundation for the NSW Government to conserve, develop and share the fishery resources of the State for the benefit of present and future generations.

The Act objectives include:

- conserving fish stocks and key fish habitats,
- conserving threatened species, populations and ecological communities of fish and marine vegetation,
- promoting ecologically sustainable development, including the conservation of biological diversity,
- promoting viable commercial fishing and aquaculture industries,
- promoting quality recreational fishing opportunities,

- appropriately sharing fisheries resources between the users of those resources,
- providing social and economic benefits for the wider community, and
- recognising the spiritual, social and customary significance to Aboriginal persons of fisheries resources and protecting, and promoting the continuation of, Aboriginal cultural fishing.

## 4.2. Fisheries Management Act 1991 (Commonwealth)

The *Fisheries Management Act 1991* was assented on 10 November 1991 and provides the legal foundation for the Commonwealth Government of Australia to implement efficient and cost-effective fisheries management on behalf of the Commonwealth and to ensure that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development. Its jurisdiction is 3 nautical miles from the Australian coast out to 200 nautical miles.

## 4.3. Marine Estate Management Act 2014

The *Marine Estate Management Act 2014* (the MEM Act) commenced on 19 December 2014 and provides the legal foundation for the NSW Government to deliver a healthy coast and sea in NSW for the greatest well-being of the community, today and in the future.

The MEM Act objectives include:

- providing for the management of the marine estate consistent with the principles of ecologically sustainable development
- establishing two advisory bodies, the Marine Estate Management Authority and the Marine Estate Expert Knowledge Panel
- requiring the development of a Marine Estate Management Strategy to address priority threats identified through threat and risk assessment
- facilitating the maintenance of ecological integrity, and economic, social, cultural and scientific opportunities
- promoting the coordination of government programs
- providing for a comprehensive system of marine parks and aquatic reserves.

## 4.4. Fisheries Management (General) Regulation 2010

The FM General Regulation assists with implementation of the Act and contains provisions relevant to the NSW fisheries sectors below:

- fisheries conservation
- recreational fishing (including charter boats)
- commercial fisheries (mainly in relation to commercial fishing licences, fishing boat licences and the three restricted fisheries)

A summary of key provisions in the FM General Regulation is provided below:

1. Protection of certain species of fish, bag and size limits
2. Lawful use of fishing gear
3. Miscellaneous fisheries management
4. Licences for commercial fishing and fishing boats
5. Commercial restricted fisheries
6. Charter fishing management

7. Protection of aquatic habitats
8. Threatened species conservation
9. Administration and enforcement
10. Fish and waters protected from commercial fishing
11. Fish and waters protected from recreational fishing
12. Waters where spearfishing is prohibited
13. Penalty notice offences and fees



## 5.The proposed Fisheries Management (General) Regulation

The proposed Fisheries Management (General) Regulation 2019 (the proposed FM General Regulation) has been drafted by Parliamentary Counsel's Office, informed by an internal DPI review of the FM General Regulation. This review found that most of the existing regulatory provisions would be required for the continued management of NSW fisheries resources. The review also identified improvements that could be made by amending a number of existing provisions.

A summary of the proposed amendments which are expected to have economic, social and environmental impacts is provided in Table 1. The table also states whether a regulatory provision represents the:

- transition of an existing regulatory arrangement, or
- transition of an existing regulatory arrangement with amendments, or
- the deletion of an existing regulatory arrangement, or
- creation of new regulatory arrangement, and
- new clause numbers of the proposed FM General Regulation.

**Table 1 Overview of regulatory provisions of the proposed FM General Regulation 2019**

Notes:

1. The proposed FM General Regulation 2019 has been prepared by the Parliamentary Counsel's Office, with the relocation of various provisions and changes to the numbering of certain parts, divisions, clauses and schedules. New part and clause numbers are provided in the right hand column of Table 1 below.
2. Minor amendments that update references to repealed legislation and correct minor spelling errors etc. are not included in this table. They are detailed in Chapter 6.2 of this Regulatory Impact Statement.

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
<b>Preliminary</b>	<b>Part 1</b> This part contains machinery clauses including definitions for terms used in the FM General Regulation.	✓ <b>All clauses except</b> certain common fish names in cl.3(1) and the inclusion of a new clause for fish names.					<b>Part 1</b> <b>Clauses 1-5</b>
	<b>Part 1 cl.3(1)</b> This clause contains definitions, including certain fish names, to aid interpretation of the regulation.		✓ Update certain common and scientific fish names as per the <b>Australian Fish Names Standard AS 5300-2015 (AFNS)</b>			✓ <b>cl.4</b> A new dedicated clause for definitions of fish species has been created in the proposed FM General Regulation.	<b>Clauses 3 &amp; 4</b>
<b>Protected fish, protected waters, prohibited size fish</b>	<b>Part 2</b> This part contains provisions that deal with protected fish and waters, prohibited size fish and bag limits.	✓ <b>All clauses except</b> <b>cls11, 17(2), Division 4 Table Bag Limits and cl.19(2)(f)</b>					<b>Part 2</b> <b>Clauses 6-20</b>

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
<b>and bag limits</b>	<b>Part 2 cl.11 including Tables</b> This clause and the tables deal with prohibited size fish.		✓ Update certain common and scientific fish names as per the <b>AFNS</b>				<b>Clause 6</b>
	<b>Part 2 cl.17(2)</b> This clause deals with the application of bag limits to charter fishing boat operations.		✓ Update certain common and scientific fish names as per the <b>AFNS</b>				<b>Clause 12</b>
	<b>Part 2 Division 4 Table Bag Limits</b> This table deals with bag limits.		✓ Update certain common and scientific fish names as per the <b>AFNS</b>				<b>Schedule 1</b>
	<b>Part 2 cl.19(2)(f)</b> This sub-clause refers to outdated provisions - being aquatic reserves made under the Act [Aquatic reserve provisions are now made under the MEM Act].				✓ <b>cl.19(2)(f)</b> - The matters dealt with in this sub-clause will be covered by <b>cl.19(2)(g)</b> when the reference to the MP Act is replaced with the MEM Act		<b>Clause 20</b>
	<b>Part 3</b>	✓	.				<b>Part 3</b>
<b>Fishing</b>							

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
<b>Gear</b>	This part contains general provisions on the lawful use of fishing gear, including provisions on recreational nets and certain commercial nets, other lawful nets and traps, and restrictions on the use of fishing gear.	All clauses except <b>Cls20(2)(g), 22(1), 28, 28(4)(b), 34, 46, 51 and 58</b> and <b>adding a new clause.</b>					<b>Clauses 21-61</b>
	<b>Part 3 cl.20(2)(g)</b> This sub-clause refers to outdated provisions - being aquatic reserves made under the Act [Aquatic reserve provisions are now made under the MEM Act].				✓ <b>cl.20(2)(g)</b> - The matters dealt with in this sub-clause will be covered by <b>cl.20(2)(h)</b> when the reference to the Marine Parks Act is replaced with the MEM Act		<b>Clause 21</b>
	<b>Part 3 cl.22(1)</b> This sub-clause contains common and scientific names of fish that can be taken by spear gun near Fish Rock.		✓ Update certain common and scientific fish names as per the <b>AFNS</b>				<b>Clause 23</b>
	<b>Part 3, cl.28 Hoop or lift net</b> This clause contains rules applying to the use of a hoop or lift net.		✓ Remove a redundant reference to 'in tidal waters' from sub- <b>cl.28(1)</b> which prohibits hoop or lift nets from being used		✓ Deleting <b>cl.28(1)(b)(iii)</b> which limits the number of hoop or lift nets a person may use to 4, if		<b>Clause 30</b>

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
			to take rock lobster in tidal waters.		using the nets in inland and estuarine waters at the same time.		
	<b>Part 3 cl.28(4)(b)</b>  This sub-clause contains common and scientific names of fish that can be taken with a hoop or lift net.		✓  Update certain common and scientific fish names as per the <b>AFNS</b>				<b>Clause 30</b>
	<b>Part 3, cl.34 Beach safety meshing nets</b>  This clause sets out the dimensions and identification requirements for beach safety meshing nets, as used in the shark meshing bather protection program.		✓  Update certification requirements for steel rules, used to determine the mesh size of these nets, as the <i>Trade Measurement Act 1989</i> is now repealed.  Also amend existing wording to make it clear nets must be marked at each end, and net floats must be spaced at intervals of 5m or less.				<b>Clause 24</b>
	<b>Part 3, cl.46</b>  This clause contains rules applying to the use of hand held				✓  Definition of trout to be removed	✓  Provide definition for trout in cl.4 of	<b>Clause 43</b>

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
	lines. It includes a definition for trout; being Brook Trout ( <i>Salvelinus fontinalis</i> ), Brown Trout ( <i>Salmo trutta</i> ) or Rainbow Trout ( <i>Oncorhynchus mykiss</i> ).				from <b>cls46, 51 and 90</b>	the proposed FM General Regulation - Definitions of fish species.	
	<b>Part 3, cl.51</b>  This clause contains rules applying to the taking of trout and includes a definition for trout; being Brook Trout ( <i>Salvelinus fontinalis</i> ), Brown Trout ( <i>Salmo trutta</i> ) or Rainbow Trout ( <i>Oncorhynchus mykiss</i> ).				✓  Definition of trout to be removed from <b>cls46, 51 and 90</b>	✓  Provide definition for trout in <b>cl.4</b> of the proposed FM General Regulation - Definitions of fish species.	<b>Clause 48</b>
	<b>Part 3 Division 3 - A new clause</b>  New clause to provide for the use of Open Pyramid Lift Nets in Inland waters.					✓  The new clause will enable a person to use up to 5 Open Pyramid Lift Nets to take spiny crayfish and yabbies in inland waters	<b>Clause 31</b>
	<b>Part 3, cl.58</b>  This clause sets out the measurement of a net codend.				✓  Remove this clause from the regulation. It is no longer needed as there are no nets in the regulation requiring the		<b>Deleted</b>

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
Priorities in using fishing gear					codend to be measured in this manner.		
	<p><b>Part 4</b></p> <p>This part sets out the rights of priority between commercial fishers and recreational fishers on recognised fishing grounds and the rights of priority between commercial fishers in inland waters.</p>	✓					<p><b>Part 4</b></p> <p><b>Clauses 62-65</b></p>
	<p><b>Part 5</b></p> <p>This part contains miscellaneous fisheries management provisions including interference with fishing activities, use of explosives and electrical devices, labelling of abalone for sale, recreational fishing fees and other miscellaneous provisions.</p>	<p>✓</p> <p>All clauses except <b>Cls 76, 77, 90, 93, 97</b> and <b>99A(2)</b></p>					<p><b>Parts 5 &amp; 6</b></p> <p><b>Clauses 66-98 &amp; Part 16</b></p> <p><b>Clause 252</b></p>
Miscellaneous provisions relating to fisheries management	<p><b>Part 5 cl.76</b></p> <p>This clause sets out labelling requirements that must be met before abalone can be sold.</p>		<p>✓</p> <p>Provide an option to label abalone with a unique identifying number used in records of sale and possession of fish under <b>cl.219</b> of the regulation.</p>		<p>✓</p> <p>Remove an option to label abalone with a number issued by the Australian Quarantine Inspection Service as this service no</p>		<p><b>Clause 93</b></p> <p>(clauses 76 &amp; 77 have been merged in the proposed FM General Regulation)</p>

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
					longer exists.		
	<p><b>Part 5 cl.77</b></p> <p>This clause prohibits removing or damaging abalone packaging including the label from <b>cl.76</b> above. An exception applies when the abalone is about to be cooked or eaten.</p>		<p>✓</p> <p>Extend the existing exception so that packaging (including the label) may also be removed, damaged or destroyed so that abalone can be dried.</p>				<p><b>Clause 93</b></p> <p>(clauses 76 &amp; 77 have been merged in the proposed FM General Regulation)</p>
	<p><b>Part 5 cl.90</b></p> <p>This clause sets out prohibited lures and baits. It also includes definitions for trout and shrimp.</p>				<p>✓</p> <p>Definition of trout to be removed from <b>cls46, 51 and 90</b></p> <p>Definition for shrimp also to be removed from <b>cl.90.</b></p>	<p>✓</p> <p>Provide definitions for trout and shrimp in <b>cl.4</b> of the proposed FM General Regulation - Definitions of fish species.</p>	<p><b>Clause 84</b></p>
	<p><b>Part 5 cl.93</b></p> <p>This clause sets out rules relating to shucking intertidal invertebrates. It also refers to certain common fish names</p>		<p>✓</p> <p>Update certain common fish names as per the <b>AFNS</b></p>				<p><b>Clause 87</b></p>
	<p><b>Part 5 cl.97</b></p> <p>This clause makes it an offence for a person to assist a commercial</p>		<p>✓</p> <p>Amend the provision so it aligns with</p>				<p><b>Clause 95</b></p>



Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
Fishing business transfer rules	fisher to take fish in contravention of a commercial fishing share management plan regulation.		recent changes to assistance (fishing crew) arrangements in the Estuary General commercial fishing share management plan regulation.				
	<b>Part 5 cl.99A(2)</b> This clause prohibits the transfer of fish between boats. It refers to certain common and scientific fish names.		✓ Update certain common and scientific fish names as per the <b>AFNS</b>				<b>Clause 96</b>
	<b>Part 6</b> This part contains provisions relating to the transfer of commercial restricted fishery endorsements and shares.	✓					<b>Part 10</b> <b>Clauses 174-186</b>
	<b>Part 7</b> This part contains provisions mostly related to commercial fishery shares, including persons prohibited from holding shares, special endorsements to take fish in a share management fishery and fees for registration of dealings in shares.	✓					<b>Part 7</b> <b>Clauses 99-106</b>
Licensing	<b>Part 8</b>	✓					<b>Part 8</b>

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
<b>and other commercial fisheries management</b>	This part contains provisions related to issuing commercial fishing licences and fishing boat licences, application fees and other commercial fisheries management issues.						<b>Clauses 107-125 &amp; Part 9 Clause 173</b>
	<b>Part 9</b> This part contains provisions related to commercial restricted fisheries, namely the Sea Urchin and Turban Shell, Southern Fish Trawl, and Inland restricted fisheries, including relevant miscellaneous provisions.	✓ All clauses except <b>Cls157, 170, 176A, 177 &amp; 180</b>					<b>Part 9 Clauses 126-173</b>
<b>Restricted fisheries</b>	<b>Part 9, cl.157</b> This clause sets out eligibility requirements for an endorsement in the Sea Urchin and Turban Shell restricted fishery.		✓ Amend <b>cl.157(1)</b> so a person who was eligible for an endorsement before 1 September 2019 (previously 1 September 2010) remains eligible.				<b>Clause 129</b>
	<b>Part 9, cl.170</b> This clause sets out eligibility requirements for an endorsement in the Southern Fish Trawl restricted fishery.		✓ Amend <b>cl.170(1)</b> so a person who was eligible for an endorsement before 1 September 2019				<b>Clause 146</b>

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
			(previously 1 September 2010) remains eligible.				
	<b>Part 9 cl.176A</b> This clause sets out bag limits for certain species in the Southern Fish Trawl restricted fishery. It also refers to certain common and scientific fish names.		✓ Update certain common and scientific fish names as per the <b>AFNS</b>				<b>Clause 153</b>
	<b>Part 9 cl.177</b> This clause contains definitions relevant to the Inland Restricted Fishery, including a definition for carp.				✓ Definition of carp to be removed.	✓ Provide definition for carp in <b>cl.4</b> of the proposed FM General Regulation - Definitions of fish species.	<b>Clause 154</b>
	<b>Part 9, cl.180</b> This clause sets out eligibility requirements for various classes of endorsement in the Inland restricted fishery.		✓ Amend <b>cls180(1),(3) &amp; (4)</b> so the date relevant to endorsement eligibility becomes 1 September 2019 (previously 1 September 2010).				<b>Clause 157</b>
<b>Fishing business cards</b>	<b>Part 11</b> This part contains provisions related to commercial fishing	✓					<b>Part 11</b> <b>Clauses 201-204</b>

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
Fish receivers and fish records	business cards.						
	<b>Part 12</b> This part contains provisions related to the registration of fish receivers, and fish records.	✓					<b>Part 11</b> <b>Clauses 187-200</b>
	<b>Part 13</b> This part contains provisions related to charter fishing boat licensing and requirements for recording catch.	✓ All clauses except <b>Cls236, 237(3) and 257</b>					<b>Part 12</b> <b>Clauses 205-223</b>
Charter fishing management	<b>Part 13 cl.236</b> This clause sets out authorised activities that may be endorsed on a charter fishing licence. It also refers to certain common and scientific fish names.		✓ Update certain common fish names as per the <b>AFNS</b> .				<b>Clause 221</b>
	<b>Part 13 cl.237(3)</b> This clause sets out various charter fishing licence conditions. It also refers to certain common and scientific fish names.		✓ Update certain common and scientific fish names as per the <b>AFNS</b> .				<b>Clause 222</b>
	<b>Part 13 cl.257</b> This clause makes it an offence to provide false or misleading information in a charter licence				✓ Remove this clause from the regulation. It is no		<b>Deleted</b>

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
	application; or, a record of fish taken as required under Charter fishing management arrangements.				longer needed due to a general 'False and misleading information' offence provision in the Act - s288D.		
<b>Protection of aquatic habitats</b>	<b>Part 14</b> This part contains provisions to support the protection of aquatic habitats.	✓					<b>Part 13</b> <b>Clauses 224-230</b>
<b>Threatened species conservation</b>	<b>Part 15</b> This part contains provisions that clarify the application of certain defences to threatened species offences.	✓					<b>Part 14</b> <b>Clauses 245-246</b>
<b>Listing Criteria</b>	<b>Part 16</b> This part contains provisions setting out the criteria for listing of species, endangered populations, and ecological communities.	✓					<b>Part 14</b> <b>Clauses 231-244</b>
<b>Administration</b>	<b>Part 17</b> This part contains provisions dealing with establishment, composition and functions of ministerial advisory councils, and provisions relating to members and procedure of advisory	✓ All clauses except <b>Cls284, 287, 288 and 290</b>					<b>Part 15</b> <b>Clauses 247-251, Part 16</b> <b>Clause 254, and Schedule 7</b>

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
	councils.						
	<b>Part 17 cl.284</b> This clause requires the Secretary to have a seal for official purposes including certifying the issue of documents				✓ Remove this clause from the regulation as it is no longer needed.		<b>Deleted</b>
<b>Enforcement</b>	<b>Part 17 cls287, 288 and 290</b> These clauses deal with membership of the Ministerial Fisheries Advisory Council, the Recreational Fishing NSW Advisory Council and the Commercial Fishing NSW Advisory Council.		✓ Amend these clauses to provide more flexibility in the way expressions of interest for Council membership is advertised.			✓ <b>cl.247</b> These amendments have been consolidated into <b>cl.247</b> of the proposed FM General Regulation.	<b>Clause 247</b>
	<b>Part 17, Division 3</b> This division deals with membership and procedure of advisory councils					✓ Provision relocated to <b>Schedule 8</b> of the proposed FM General Regulation.	<b>Schedule 7</b>
	<b>Part 18</b> This part contains provisions relating to enforcement, including persons that may be appointed as fisheries officers, prescribed forfeiture offences and paying fees by instalments.	✓ All clauses except <b>cls347(q)</b> and <b>347(w)</b>					<b>Part 16</b> <b>Clauses 253, 255 &amp; 256</b>

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
	<p><b>Part 18 cl.347</b></p> <p>This clause lists declared fisheries forfeiture offences which are relevant to the seizure of boats and motor vehicles under section 265 of the Act.</p>		<p>✓</p> <p>Amend <b>cl.347(q)</b> which lists an offence against section 108 of the Act (licensing of boats) as a declared forfeiture offence. This change is being made to reflect new fishing boat licence arrangements.</p>		<p>✓</p> <p>Remove <b>cl.347(w)</b> which lists 'an offence against the Fisheries Management (Aquatic Reserves) Regulation 2002' as a declared forfeiture offence.</p> <p>This change removes an obsolete provision with the relevant offence now established by MEM legislation.</p>		<b>Clause 255</b>
<b>Savings and transitional provisions</b>	<p><b>Part 19</b></p> <p>This part contains savings and transitional provisions.</p>		<p>✓</p> <p><b>Cls350, 352, 353 &amp; 356</b> merged into new <b>cl.258</b>.</p>		<p>✓</p> <p>Remove <b>cls354, 355 &amp; 357</b> as they are no longer needed.</p>		<p><b>Part 16</b></p> <p><b>Clauses 257-258</b></p>
	<p><b>Part 19, cls350, 352, 353 &amp; 356</b></p> <p>These clauses provide a definition for repealed regulation, for the continuation of existing restricted fisheries, the continuation of existing Advisory Councils including members, and a general</p>					<p>✓</p> <p>Minor amendments with relevant provisions consolidated into cl.258 of the proposed FM</p>	<b>Clause 258</b>

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
	savings provision.					General Regulation	
	<b>Part 19, cl.354</b> This clause clarifies the maximum penalty a Local Court could impose from 1 April 2010.				✓ Remove this clause from the regulation as it is no longer needed.		<b>Deleted</b>
	<b>Part 19 cl.355</b> This clause contains provisions relating to records for the sale and possession of fish in 2010 when relevant legislation changed.				✓ Remove this clause from the regulation as it is no longer needed.		<b>Deleted</b>
	<b>Part 19 cl.357</b> This clause provided for permits issued under section 37 of the Act to continue, even though they were issued before amendments to this section of the Act.				✓ Remove this clause from the regulation as it is no longer needed		<b>Deleted</b>
	<b>Schedule 1</b> This schedule describes ocean waters and the natural coast line, which is relevant to where certain fishing activities can take place.	✓					<b>Clause 3</b>
<b>Fish and waters protected</b>	<b>Schedule 3</b> This schedule lists fish and waters protected from commercial	✓					<b>Schedule 2</b>



Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
<b>from commercial fishing</b>	fishing.						
<b>Fish and waters protected from recreational fishing</b>	<p><b>Schedule 4</b></p> <p>This schedule lists fish and waters protected from recreational fishing. It also refers to certain common and scientific fish names.</p>		<p>✓</p> <p>Update certain common and scientific fish names as per the <b>AFNS</b></p>				<b>Schedule 3</b>
<b>Importation of live fish – prohibited species</b>	<p><b>Schedule 5</b></p> <p>This schedule lists species of fish that cannot be imported live into NSW. The schedule contains certain common and scientific fish names.</p>		<p>✓</p> <p>Update certain common and scientific fish names as per the <b>AFNS</b></p>		<p>✓</p> <p>A number of species are being removed from this list. This is because they are now covered by specific Biosecurity legislation, or are not otherwise considered a significant risk.</p>		<b>Schedule 5</b>
<b>Water in which spearfishing is prohibited</b>	<p><b>Schedule 6</b></p> <p>This schedule describes waters in which spearfishing is prohibited.</p>	✓					<b>Schedule 4</b>
<b>Penalty notice</b>	<b>Schedule 7</b>		✓				<b>Schedule 8</b>

Provision group	Regulatory provisions of the Fisheries Management General Regulation 2010	Transition of existing regulatory provisions to the proposed FM General Regulation 2019					
		As is	With minor amendments	With major amendments	Deleted	New arrangements	New clause numbers
<b>offences</b>	This schedule lists offences for which a penalty notice may be issued. It also includes the penalty amount for each offence.		Add a new penalty notice for an offence under section 20B(1) of the Act (shark finning). The penalty notice amount is \$1,000.				
<b>Fees</b>	<b>Schedule 8</b> This schedule lists matters for which fees are payable under the regulation, and the fee amounts.	✓					<b>Schedule 6</b>
<b>Maximum contributions by participants in restricted fisheries</b>	<b>Schedule 9</b> This schedule lists the maximum contribution amounts payable by commercial fishing business owners with restricted fishery endorsements.	✓				✓ Provision relocated to <b>Part 9, cl.173</b> of the proposed FM General Regulation.	<b>Part 9 Clause 173</b>

## 6. Identification of options

The economic assessment for this RIS is comprised of two components, the:

1. identification of impacts for the base case and each option relative to the base case
2. qualitative assessment of the costs and benefits of each option relative to the base case.

In accordance with the SL Act and the NSW Government Guide to Better Regulation, this assessment:

- considers a range of feasible options
- identifies and assesses the impacts of government action for each option relative to the base case
- considers the costs and benefits of each option relative to the base case
- identifies a preferred option that provides the greatest benefit to stakeholders, the community and the environment.

### 6.1. Summary of shortlisted options

The FM General Regulation 2010 contains the current regulatory provisions and under the Base Case (Option 1) these regulatory provisions would be remade with no change.

Two other options are assessed against the base case are:

- Option 2: Make the proposed FM General Regulation
- Option 3: Allow the FM General Regulation to lapse

These options are considered the only feasible options for this staged repeal review.

The details of the proposed FM General Regulation (Option 2) are provided in Chapter 5 (Table 1). This regulation would replace existing measures on 1 September 2019.

Option 3, 'Allow the FM General Regulation 2010 to lapse' means that this regulation would lapse on 1 September 2019 and no new regulation would be made in its place.

Assessment of the impacts of the Base Case compared with the other options is presented in Chapter 7 of this RIS.

### 6.2. Machinery clauses

The proposed FM General Regulation would make a number of regulatory provisions of a machinery nature. Generally speaking, machinery clauses are those which could broadly be described as relating to 'process' rather than substantive policy matters.

Examples of machinery clauses in the FM General Regulation 2010 include:

- Clause 1 - name of the Regulation;
- Clause 2 - commencement of the Regulation;
- Clause 3 - interpretation of certain terms used throughout the Regulation;
- Clause 356 - saving

Matters of a machinery nature do not require a RIS. In addition regulatory proposals which correct drafting errors and make consequential amendments are exempt from a RIS.

The proposed amendments to correct errors are:

- Clause 352(3) – to correct an error by removing the first reference to ‘fishery’ in the text “inland fishery restricted fishery”
- Schedule 1 Clause 4(g) – to correct errors by changing references from “Wogonga River” and “Wogonga Head” to “Wagonga River” and “Wagonga Head”
- Schedule 6 – to correct an error by changing a reference from “Glashier Point” to “Glaisher Point”

The proposed amendments that are consequential due to changes to legislation referred to in the FM General Regulation and amendments to the Australian Fish Names Standard are:

- Clauses 19, 20, 128, 130, 131, 159, 161, 171, 173, 184 & 188 – to change references from the Marine Parks Act 1997 to the Marine Estate Management Act 2014
- ‘Note’ to clause 3(2) and clause 215 – to change reference from the Australian Fish Names Standard - AS SSA 5300-2009 to the current Australian Fish Names Standard - AS 5300-2015
- Schedule 4 clause 110 - to change reference from the Food Regulation 2010 to the Food Regulation 2015

This RIS does not consider these provisions in detail, however comment on these provisions may be included in submissions and will be considered.

## 7. Assessment of impacts

In this assessment of impacts, benefits and costs of propositions under Options 2 and 3, are compared with those from the base case (Option 1). The direct and indirect impacts of each option have also been considered. Direct impacts are the immediate impacts on stakeholders, whereas indirect or flow-on impacts are those affecting a third party.

### 7.1. Base Case (Option 1): Remake the FM General Regulation without amendments

Under Option 1, the existing provisions of the FM General Regulation would continue to support the management of NSW fisheries resources. A list of the expected protections and the impacted party — i.e. community, the environment, businesses or the government — is provided in Table 2.

**Table 2 Impact of the FM General Regulation under the base case (Option 1)**

Provision group	Impact: Under the base case (Option 1)	Type of impact			
		Community	Environment	Businesses	Government
<b>Protected fish, protected waters, prohibited size fish and bag limits</b> (Part 2)	<ul style="list-style-type: none"> <li>Commercial and recreational fishers would be fully aware of the fish and waters that are protected, prohibited fish sizes and application of bag limits to commercial fishing and charter fishing boat operations</li> </ul>	✓	✓	✓	
<b>Fishing gear</b> (Part 3)	<ul style="list-style-type: none"> <li>Commercial and recreational fishers would be fully aware of lawful use fishing gear including commercial nets, recreational nets, traps, hand held lines and drift lines, and restrictions on using fishing gear in the case of some specific fish.</li> </ul>	✓	✓	✓	
<b>Priorities in using fishing gear</b> (Part 4)	<ul style="list-style-type: none"> <li>Penalties may be imposed for fishing contrary to the rights of priority and using fishing gear.</li> </ul>	✓		✓	✓
<b>Miscellaneous provisions relating to fisheries management</b> (Part 5)	<ul style="list-style-type: none"> <li>Minister has the power to alter or replace a recognised fishing ground map after consultation, unless the alteration is of a minor nature</li> </ul>		✓	✓	✓
	<ul style="list-style-type: none"> <li>Minister has the power to amend, cancel and determine the duration of a fishing fee exemption certificate</li> </ul>			✓	✓
	<ul style="list-style-type: none"> <li>Penalties may be imposed for interference with fishing activities and set fishing gear.</li> </ul>	✓		✓	✓
	<ul style="list-style-type: none"> <li>Penalties may be imposed for use of explosives, electrical devices and other dangerous substances</li> </ul>	✓	✓	✓	✓
	<ul style="list-style-type: none"> <li>Authorised officers have the power to impose penalties</li> </ul>	✓		✓	✓

Provision group	Impact: Under the base case (Option 1)	Type of impact			
		Community	Environment	Businesses	Government
	for selling untagged eastern rock lobster and unlabelled abalone				
	<ul style="list-style-type: none"> <li>Individuals not otherwise exempt have to pay the prescribed fee amount</li> </ul>	✓		✓	✓
	<ul style="list-style-type: none"> <li>Authorised officers have the power to impose penalties for a number of miscellaneous non-compliance of fisheries management provisions</li> </ul>	✓	✓	✓	✓
<b>Fishing business transfer rules (Part 6)</b>	<ul style="list-style-type: none"> <li>Commercial fishers would be fully aware of the transfer of restricted fishery endorsement provisions and transfer of shares provisions</li> </ul>	✓		✓	
	<ul style="list-style-type: none"> <li>Secretary has the power to approve endorsement and transfer of shares</li> </ul>			✓	✓
<b>Commercial share management fisheries (Part 7)</b>	<ul style="list-style-type: none"> <li>Minister has the power to prohibit certain persons and bodies from holding shares in a commercial share management fishery and cancel any shares held by a person prohibited from holding shares.</li> <li>Minister may order forfeiture of shares for failure to pay certain contributions</li> </ul>	✓	✓	✓	✓
	<ul style="list-style-type: none"> <li>Commercial Fishers would be aware of the provisions on determination of catch history, special endorsement, transfers and other dealings in shares, and fees for registration of dealings in shares and inspection of Share Register and registered documents</li> </ul>	✓		✓	✓
<b>Licensing and other commercial fisheries management (Part 8)</b>	<ul style="list-style-type: none"> <li>Commercial fishers would be aware of the provisions on commercial fishing licences, fishing boat licences and their renewal, suspension and cancellation.</li> </ul>	✓	✓	✓	
	<ul style="list-style-type: none"> <li>Minister has the authority to issue or cancel commercial fishing licences, fishing boat licences</li> </ul>	✓		✓	✓

Provision group	Impact: Under the base case (Option 1)	Type of impact			
		Community	Environment	Businesses	Government
<b>Restricted fisheries</b> (Part 9)	<ul style="list-style-type: none"> <li>Commercial fishers would be aware of the provisions on restricted fisheries, types, eligibility, duration, cancellation and suspension of endorsements, allocation and transfer of restricted fisheries.</li> </ul>	✓	✓	✓	
<b>Fishing business cards</b> (Part 11)	<ul style="list-style-type: none"> <li>Penalties may be imposed for violations of provisions on possession of fishing business cards, return of fishing business card to the Minister or to the fishing business owner.</li> </ul>	✓		✓	✓
<b>Fish receivers and fish records</b> (Part 12)	<ul style="list-style-type: none"> <li>Minister has the authority to refuse application for registration as fish receiver, renewal of registration, cancellation and suspension of registration</li> </ul>			✓	✓
	<ul style="list-style-type: none"> <li>Commercial fishers, fishing employers and registered fish receivers would be aware of the provisions in relation to fish records to be made, and records for sale and possession of fish, including commercial quantity and information to be included in the records</li> </ul>	✓		✓	✓
<b>Charter fishing management</b> (Part 13)	<ul style="list-style-type: none"> <li>Minister has the authority to renew, cancel, suspend or refuse to issue charter fishing licences, approve boat replacements and authorise activities by endorsement on licences</li> </ul>	✓		✓	✓
	<ul style="list-style-type: none"> <li>Individuals, businesses and charter fishing boat operators would be aware of the provisions in relation to charter fishing management</li> </ul>	✓		✓	
<b>Protection of aquatic habitats</b> (Part 14)	<ul style="list-style-type: none"> <li>Secretary has the authority to determine the classes of assessment and related fee for permit applications under Part 7 of the Act</li> </ul>	✓	✓		
	<ul style="list-style-type: none"> <li>Individuals and businesses would be aware of the</li> </ul>	✓	✓	✓	



Provision group	Impact: Under the base case (Option 1)	Type of impact			
		Community	Environment	Businesses	Government
	provisions in relation to activities harmful to aquatic habitats including dredging work.				
<b>Threatened species conservation (Part 15)</b>	<ul style="list-style-type: none"> <li>Individuals and businesses would be aware of the provisions in relation to activities that are not routine activities in connection with the lawful taking of fish or marine vegetation and limitations on routine farming practice activities.</li> </ul>	✓	✓	✓	
<b>Listing Criteria (Part 16)</b>	<ul style="list-style-type: none"> <li>Individuals and businesses would be aware of the provisions in relation to criteria for listing species, listing of endangered populations, for listing of ecological communities.</li> </ul>	✓	✓	✓	
<b>Administration (Part 17)</b>	<ul style="list-style-type: none"> <li>Community, individuals and businesses would be aware of provisions in relation to the establishment, composition and functions of the following advisory councils               <ul style="list-style-type: none"> <li>○ a Ministerial Fisheries Advisory Council,</li> <li>○ a Recreational Fishing NSW Advisory Council,</li> <li>○ an Aboriginal Fishing Advisory Council,</li> <li>○ a Commercial Fishing NSW Advisory Council.</li> </ul> </li> </ul>	✓		✓	✓
<b>Enforcement (Part 18)</b>	<ul style="list-style-type: none"> <li>Individuals would be aware of the provision that enables persons appointed to enforce commercial fishing laws in the Commonwealth, another State or a Territory, to be appointed as a fisheries officer in NSW.</li> </ul>	✓		✓	
	<ul style="list-style-type: none"> <li>Individuals and businesses would be aware of the provision listing fisheries forfeiture offences.</li> </ul>	✓		✓	
	<ul style="list-style-type: none"> <li>Minister has the authority to approve the payment by instalments of any fee, charge or other sum of money payable under the Act or this Regulation.</li> </ul>	✓		✓	✓

Provision group	Impact: Under the base case (Option 1)	Type of impact			
		Community	Environment	Businesses	Government
<b>Savings and transitional provisions (Part 19)</b>	<ul style="list-style-type: none"> <li>Individuals and businesses would be aware of the provisions in relation to savings and other transitional provisions.</li> </ul>	✓		✓	

## 7.2. Option 2: Make the proposed FM General Regulation

Under Option 2, the proposed FM General Regulation would be made under the Act. The proposed FM General Regulation seeks to support implementation of the Act along with the other supporting legislation as defined in Chapter 4: Legislative framework, which prescribes management rules for the NSW fisheries resources.

DPI reviewed the FM General Regulation and identified a range of provisions to be amended to improve the management of NSW fisheries resources. A summary of the proposed amendments is provided in Table 1 of Chapter 5.

Under the proposed FM General Regulation, all regulatory provisions of the FM General Regulation would continue with the exception of the clauses listed in Table 3 below.

Table 4 shows that Option 2 provides increased protections, and safe and shared access to the NSW fisheries resources relative to the Base Case (Option 1). There may be increases in costs to the government, businesses and the community from implementing and complying with these proposed measures, but these are considered to be minor. Further details of the impacts, benefits and costs of these changes are provided in Table 4.

For these reasons, Option 2, the proposed FM General Regulation, is preferred to the FM General Regulation 2010 (the Base Case).

**Table 3 Summary of the amendments and new provisions of the proposed FM General Regulation**

2010 clause no.	Title of the amended or new provisions	Proposed 2019 clause no.	Type of change
<b>Part 1, cl.3</b>	<b>Interpretation</b>	Part 1, cl.3	Amended
<b>Part 1</b>	<b>New Clause – Definitions of fish species</b>	Part 1, cl.4	New
<b>Part 2, cl.11</b>	<b>Prohibited size fish</b>	Part 2, cl.6	Amended
<b>Part 2, cl.17</b>	<b>Application of bag limits to charter fishing boat operations</b>	Part 2, cl.12	Amended
<b>Part 2 No clause number</b>	<b>Table Bag limits</b>	Schedule 1	Amended
<b>Part 2, cl.19(2)(f)</b>	<b>Part does not authorise action contrary to prohibitions or other controls</b>	Part 2, cl.20	Deleted
<b>Part 3, cl.20(2)(g)</b>	<b>Fishing gear cannot be used in contravention of other restrictions</b>	Part 3, cl.21	Deleted
<b>Part 3, cl.22</b>	<b>Use of certain fishing gear prohibited in vicinity of Fish Rock</b>	Part3, cl.23	Amended
<b>Part 3, cl.28</b>	<b>Hoop or lift net</b>	Part 3, cl.30	Amended cls28(1) & (4)(b) Deleted cl.28(1)(b)(iii)
<b>Part 3</b>	<b>Open pyramid lift net</b>	Part 3, cl.31	New
<b>Part 3, cl.34</b>	<b>Beach safety meshing nets</b>	Part 3, cl.24	Amended
<b>Part 3, cl.46</b>	<b>Hand held lines</b>	Part 3, cl.43	Amended
<b>Part 3, cl.51</b>	<b>Taking of Atlantic salmon or trout</b>	Part 3, cl.48	Amended
<b>Part 3, cl.58</b>	<b>Measuring length and circumference of codend</b>		Deleted

2010 clause no.	Title of the amended or new provisions	Proposed 2019 clause no.	Type of change
<b>Part 5, cl.76</b>	<b>Abalone not to be sold unless labelled</b>	Part 6, cl.93	Amended
<b>Part 5, cl.77</b>	<b>Abalone packaging not to be removed or damaged</b>	Part 6, cl.93	Amended
<b>Part 5, cl.90</b>	<b>Prohibited lures and baits</b>	Part 6, cl.84	Amended
<b>Part 5, cl.93</b>	<b>Shucking of intertidal invertebrates</b>	Part 6, cl.87	Amended
<b>Part 5, cl.97</b>	<b>Person must not assist a commercial fisher</b>	Part 6, cl.95	Amended
<b>Part 5, cl.99A</b>	<b>Prohibition on transfer of fish from one boat to another</b>	Part 6, cl.96	Amended
<b>Part 9, cl.157</b>	<b>Eligibility for endorsements</b>	Part 9, cl.129	Amended
<b>Part 9, cl.170</b>	<b>Eligibility for endorsements</b>	Part 9, cl.146	Amended
<b>Part 9, cl.176A</b>	<b>Bag limits for certain species</b>	Part9, cl.153	Amended
<b>Part 9, cl.177</b>	<b>Definitions</b>	Part 9, cl.154	Amended
<b>Part 9, cl.180</b>	<b>Eligibility for endorsements</b>	Part 9, cl.157	Amended
<b>Part 13, cl.236</b>	<b>Conditions of licence—authorised activities</b>	Part 12, cl.221	Amended
<b>Part 13, cl.237</b>	<b>Other conditions of licences</b>	Part 12, cl.222	Amended
<b>Part 13, cl.257</b>	<b>False or misleading information</b>		Deleted
<b>Part 17, cl.284</b>	<b>Seal of the Secretary</b>		Deleted
<b>Part 17, cl.287</b>	<b>Ministerial Fisheries Advisory Council</b>	Part 15, cl.247	Amended

2010 clause no.	Title of the amended or new provisions	Proposed 2019 clause no.	Type of change
<b>Part 17, cl.288</b>	<b>Recreational Fishing NSW Advisory Council</b>	Part 15, cl.247	Amended
<b>Part 17, cl.290</b>	<b>Commercial Fishing NSW Advisory Council</b>	Part 15, cl.247	Amended
<b>Part 17, Division 3</b>	<b>Members and procedure of advisory councils</b>	Schedule 7	Relocated
<b>Part 18, cl.347</b>	<b>Forfeiture offences</b>	Part 16, cl.255	Amended cl.347(q) & Deleted cl.247(w)
<b>Part 19, cl.350</b>	<b>Definition</b> (savings & transitional)	Part 16, cl.258	Amended
<b>Part 19, cl.352</b>	<b>Continuation of restricted fisheries</b> (savings & transitional)	Part 16, cl.258	Amended
<b>Part 19, cl.353</b>	<b>Committees, Councils and Panels</b> (savings & transitional)	Part 16, cl.258	Amended
<b>Part 19, cl.354</b>	<b>Penalties imposed by Local Court</b> (savings & transitional)		Deleted
<b>Part 19, cl.355</b>	<b>Records of sale and possession of fish</b> (savings & transitional)		Deleted
<b>Part 19, cl.356</b>	<b>Savings</b> (savings & transitional)	Part 16, cl.258	Amended
<b>Part 19, cl.357</b>	<b>Section 37 permits</b> (savings & transitional)		Deleted
<b>Schedule 4</b>	<b>Fish and waters protected from recreational fishing</b>	Schedule 3	Amended
<b>Schedule 5</b>	<b>Importation of live fish—prohibited species</b>	Schedule 5	Amended
<b>Schedule 7</b>	<b>Penalty notice offences</b>	Schedule 8	Amended
<b>Schedule 9</b>	<b>Maximum contributions - restricted fisheries</b>	Part 9, cl.173	Relocated

**Table 4 Impact, benefits and costs of the provisions under Option 2 (the proposed FM General Regulation) relative to the base case**

Provisions of FM General Regulation 2010	Proposed amendment	Impacts	Benefits	Costs
<b>Part 1, cl.3 Interpretation</b> <b>Part 2, cl.11 Prohibited size fish</b> <b>Part 2, cl.17 Application of bag limits to charter fishing boat operations</b> <b>Part 2 Table Bag limits</b> <b>Part 3, cl.22 Use of certain fishing gear prohibited in vicinity of Fish Rock</b>	<p>Certain common fish names and scientific names would be updated as per the <b>AFNS</b></p>	<p>Persons or businesses may need to update affected fish names in any electronic systems that record and/or generate fish records and labels.</p> <p>The impact to Government is in the amendment of regulations and updating of advisory signs, literature, websites, commercial fishers catch reporting logbooks and electronic systems etc.</p>	<p>There are consumer, market, fisheries management and food safety benefits from using the national naming Standard.</p>	<p>The cost is expected to be minor and will be outweighed by the broad benefits of complying with the national Standard for fish names.</p>

Provisions of FM General Regulation 2010	Proposed amendment	Impacts	Benefits	Costs
<b>Part 3, cl.28(4)(b)</b> <b>Hoop or lift net</b>				
<b>Part 5, cl.93</b> <b>Shucking of intertidal invertebrates</b>				
<b>Part 5, cl.99A</b> <b>Prohibition on transfer of fish from one boat to another</b>				
<b>Part 9, cl.176A</b> <b>Bag limits for certain species</b>				
<b>Part 13, cl.236</b> <b>Conditions of licence—authorised activities</b>				
<b>Part 13, cl.237</b> <b>Other conditions of licences</b>				



Provisions of FM General Regulation 2010	Proposed amendment	Impacts	Benefits	Costs
<b>Schedule 4</b> <b>Fish and waters protected from recreational fishing</b>				
<b>Schedule 5</b> <b>Importation of live fish—prohibited species</b>				
<b>Part 1</b> <b>Definitions of fish species</b>	Consolidate definitions for fish species in a dedicated clause.	Defined species would be easier to locate within the proposed regulation.	Nil	Nil
<b>Part 2, cl.19(2)(f)</b> <b>Part does not authorise action contrary to prohibitions or other controls</b>	Remove cls19(2)(f) and 20(2)(g) which relate to the taking of fish in contravention of aquatic reserve provisions made under the Act.	The proposed amendments would remove provisions that are no longer current.  The matters previously dealt with in those subclauses would be covered by the amendments to cls19(2)(g) and 20(2)(h) when references to the MP Act are replaced with the MEM Act.	Deletion of references to outdated legislation would ensure the relevant provisions are current and operate as intended and support the achievement of Act objectives.	Nil
<b>Part 3, cl.20(2)(g)</b> <b>Fishing gear cannot be used in contravention of other restrictions</b>				

Provisions of FM General Regulation 2010	Proposed amendment	Impacts	Benefits	Costs
<b>Part 3, cl.28(1) Hoop or lift net</b>	Update a reference to 'in tidal waters' from cl.28(1) which prohibits hoop or lift nets from being used to take rock lobster in tidal waters.	This amendment would not change existing arrangements, it is just a simplification of the regulation.	This proposal would simplify the clause, as there is no need to refer to rock lobster 'in tidal waters' because rock lobster only occur in tidal waters	Nil
<b>Part 3, cl.28(1)(b)(iii) Hoop or lift net</b>	Cl.28(1)(b)(iii) which limits the number of hoop or lift nets a person may use to 4 (if using in inland and estuarine waters at the same time), would be deleted.	This change would remove a restriction that is considered unnecessary.	This will simplify the rules for this gear and improve consistency with comparable fishing gear rules.	There may be rare instances of increased fishing effort, however existing daily bag and possession limits would continue to restrict recreational catch.
<b>Part 3 Open pyramid lift net</b>	A new clause would be added to enable a person to use up to 5 Open Pyramid Lift Nets to take yabbies and spiny crayfish in inland waters.	The proposal would ensure this gear type is lawful for taking yabbies and spiny crayfish in NSW inland waters.	<p>This is expected to benefit inland fishers who target yabbies and spiny crayfish, as this represents an additional type of fishing gear that may legally be used for taking these species.</p> <p>In addition, this gear type offers environmental benefits over some other methods of taking yabbies, with much lower risks of incidentally capturing air breathing wildlife.</p>	There may be rare instances of increased fishing effort (by using this gear and yabby traps at the same time), however existing daily bag and possession limits would continue to restrict recreational catch of these species. In addition, the use of yabby traps will remain prohibited in many inland waters.
<b>Part 3, cl.34 Beach safety meshing nets</b>	Minor amendments will clarify existing net marking requirements and spacing of net floats. The	These amendments would not change existing arrangements, their purpose is to clarify and update.	This proposal will aid interpretation of the clause and update a provision that is no longer current.	Nil.

Provisions of FM General Regulation 2010	Proposed amendment	Impacts	Benefits	Costs
	certification requirements for steel rules used to determine the mesh size of these nets will also be updated, as the <i>Trade Measurement Act 1989</i> has been repealed.			
<b>Part 3, cl.58</b> <b>Measuring length and circumference of codend</b>	This provision would be deleted as it is no longer needed.	The proposal would remove provisions for determining certain codend dimensions, as there are no nets prescribed in the regulation that require codends to be measured in this manner.	Nil	Nil
<b>Part 5, cl.76</b> <b>Abalone not to be sold unless labelled</b>	A requirement to label abalone with a number issued by the Australian Quarantine Inspection Service would be removed, and replaced with an option to label abalone with a unique identifying number used in records of sale and possession of fish under clause 219 of the regulation.	This proposal would remove a labelling option that is no longer relevant.	The replaced labelling option would provide more consistent arrangements and improve traceability and efficiency of some operations via potential synergies from using the same unique identifying number from clause 219.	Nil
<b>Part 5, cl.77</b> <b>Abalone packaging not to</b>	Enable abalone packaging (including attached labels) to be	This proposal would ensure abalone packaging and labelling can lawfully be removed or	This amendment would benefit stakeholders involved in the practice of drying abalone.	Nil

Provisions of FM General Regulation 2010	Proposed amendment	Impacts	Benefits	Costs
<b>be removed or damaged</b>	removed, or damaged, so that abalone can be dried.	damaged, to facilitate the common process of drying abalone.		
<b>Part 5, cl.97 Person must not assist a commercial fisher</b>	The provision would be amended so it aligns with recent changes to assistance (fishing crew) arrangements in the Estuary General Commercial Fishing Share Management Plan regulation.	The amended provision would ensure compliance action can be taken as intended, against persons assisting a commercial fisher in contravention of a share management plan regulation.	The benefit derives from the deterrent an effective offence provision offers against illegal fishing. It would help ensure compliance action can be taken against persons assisting a commercial fisher in contravention of a plan. This serves to discourage illegal fishing, which helps maintain resource sustainability.	Nil
<b>Part 9, cls157, 170 &amp; 180 Eligibility for restricted fishery endorsements</b>	These provisions would amend the relevant endorsement eligibility date from 1 Sep 2010 to 1 Sep 2019.	The amendment of these clauses would ease Government administration by removing the need to check records from 2010 in relation to endorsement eligibility.	Small benefit to Government administration and reduced processing time for stakeholders by avoiding the need to check records dating back nine years (and more as time goes on) in relation to endorsement eligibility.	Nil
<b>Part 13, cl.257 False or misleading information</b>	This provision would be deleted as it is no longer needed.	This amendment removes a provision that is no longer needed as the Act now provides a 'false and misleading information' offence - s288D.	Nil	Nil.

Provisions of FM General Regulation 2010	Proposed amendment	Impacts	Benefits	Costs
<b>Part 17, cl.284</b> <b>Seal of the Secretary</b>	This provision would be deleted as it is unnecessary.	The proposed change would help simplify the proposed regulation by removing a requirement for the Secretary to have a seal that may be used for official purposes, such as certifying the issue of a document.	Nil	Nil
<b>Part 17, cl.287</b> <b>Ministerial Fisheries Advisory Council</b>	The provisions relating to advertising expressions of interest for membership of these Advisory Councils would be amended	The proposed change would bring the advertisement to the attention of members of the public generally and make it clear to use a range of advertising channels, including online and social media.	This change would improve flexibility and offer increased efficiency and effectiveness for bringing expressions of interest for Advisory Council membership to the notice of the public and stakeholders.	Nil
<b>Part 17, cl.288</b> <b>Recreational Fishing NSW Advisory Council</b>				
<b>Part 17, cl.290</b> <b>Commercial Fishing NSW Advisory Council</b>				
<b>Part 18, cl.347</b> <b>Forfeiture offences</b>	Cl.347(q) which lists an offence against section 108 of the Act (licensing of boats) as a declared forfeiture offence would be amended.	The proposal would remove the reference to the former 'licensing of boats' arrangements as per recent amendments to section 108 of the Act .	This change would remove a reference that describes a provision, because that description is no longer accurate following other amendments.	Nil

Provisions of FM General Regulation 2010	Proposed amendment	Impacts	Benefits	Costs
	Cl.347(w) which lists 'an offence against the Fisheries Management (Aquatic Reserves) Regulation 2002' as a declared forfeiture offence would be deleted	This proposal would remove a provision that is no longer current.	References to an outdated provision are removed, ensuring the relevant provisions remain current.	Nil
<b>Part 19, cl.350 Definition</b>	This clause would be updated to refer to the current 2010 regulation.	This proposal relates to cl.356 below and would help ensure any matter or thing in place under the current 2010 regulation would continue to have effect if the regulation is remade.	Nil	Nil
<b>Part 19, cl.352 Continuation of existing restricted fisheries</b>	This clause would be updated to provide for the continuation of restricted fisheries.	This proposal would ensure restricted fisheries continue if the regulation is remade.	Nil	Nil
<b>Part 19, cl.353 Committees, Councils and Panels</b>	This clause would be updated to provide for the continuation of councils.	This proposal would ensure advisory councils and current council membership continue if the regulation is remade.	Nil	Nil
<b>Part 19, cl.354 Penalties imposed by Local Court</b>	This clause would be deleted.	This proposal would remove a provision that is no longer needed.	Nil	Nil

Provisions of FM General Regulation 2010	Proposed amendment	Impacts	Benefits	Costs
<b>Part 19, cl.355</b> <b>Records of sale and possession of fish</b>	The clause would be deleted.	This proposal would remove a provision that is no longer current.	Nil	Nil
<b>Part 19, cl.356</b> <b>Savings</b>	This clause would be updated to refer to the current 2010 regulation as the repealed regulation..	This proposal would help ensure any matter or thing in place under the current 2010 regulation, would continue to have effect if the regulation is remade.	Nil	Nil
<b>Part 19, cl.357</b> <b>Section 37 permits</b>	This clause would be deleted.	This proposal would remove a provision that is no longer needed.	Nil	Nil
<b>Schedule 7</b> <b>Penalty notice offences</b>	A new penalty notice to Schedule 7, for an offence under section 20B(1) of the Act would be added. The penalty notice amount is \$1,000.	This proposal would enable a penalty notice to be issued to a person who contravenes section 20B. A new shark finning offence that commenced in 2018.	This penalty notice would facilitate a proportional approach to compliance, with penalty notices often suitable for dealing with contraventions that are not considered serious enough to warrant prosecution action in the first instance.	No negative stakeholder impacts, except for persons who contravene s.20B(1) and receive a penalty notice. This could be avoided by complying with the rules.

### 7.3. Option 3: Allow the FM General Regulation to lapse

Under Option 3, the FM General Regulation would lapse on 1 September 2019 and the regulatory provisions detailed in the Base Case (section 7.1) would cease to exist and no new regulation would be made in its place.

The FM General Regulation contains provisions relevant to fisheries conservation, recreational fisheries (including charter boats), commercial fisheries and Aboriginal cultural fishing. The regulatory provisions provide the necessary framework to ensure benefits to various fisheries stakeholders and the community, while maintaining sustainable access and providing a strong economic contribution to the State. The stakeholders; individual recreational fishers (including charter fishing boat operators), Aboriginal cultural fishers, commercial fishers and those with an interest in protecting aquatic habitats and threatened species, would have to negotiate to develop and agree on many rules and codes of conduct for operating and managing NSW fisheries resources in the absence of the regulation.

These stakeholders would be responsible for implementing, monitoring and policing rules previously provided via FM General Regulation and administered by DPI .

A number of pieces of legislation would remain in place under this option and could be used to manage the risks of activities conducted by various stakeholders in the NSW fisheries resources. The Act is the key legislation that is still in place, and other legislation that could potentially be used to deal with some of the lapsed provisions of the FM General Regulation are listed in



Table 5 below.

Table 5 shows that not all of the existing management powers under the FM General Regulation could be maintained using other legislation. If other legislation was relied on, it would first need amending. Under this option, it would be more difficult to administer these powers for the NSW fisheries resources.

**Table 5 List of potential alternative legislation that may regulate matters currently regulated under provisions of the FM General Regulation**

Provisions of the FM General Regulation 2010	Other legislation that may regulate matters currently regulated under provisions of FM General Regulation
<b>Protected fish, protected waters, prohibited size fish and bag limits</b>	<p>The commercial fishery share management plan regulations could apply some of these provisions to commercial fishers operating in share management fisheries, but they would not apply to other fishers.</p> <p>Instruments (such as fishing closures and possession limit orders) could be made under the Act to temporarily apply some of these provisions to all fishers.</p>
<b>Fishing gear and priorities in the use of fishing gear</b>	<p>The commercial fishery share management plan regulations could apply some of these provisions to commercial fishers operating in share management fisheries, but they would not apply to other fishers.</p> <p>Approvals made under section 37 of the Act could apply fishing gear related provisions on a temporary basis.</p>
<b>Miscellaneous provisions relating to fisheries management</b>	<p>The Fisheries Management (Supporting Plan) Regulation could apply certain provisions to commercial share management fisheries, but the provisions would not apply to other fishers.</p> <p>Instruments (such as fishing closures) could be made under the Act to temporarily apply some of these provisions.</p>
<b>Fishing business transfer rules</b>	<p>The Fisheries Management (Supporting Plan) Regulation could apply these provisions to commercial share management fisheries, but not commercial restricted fisheries.</p>
<b>Commercial share management fisheries</b>	<p>The Fisheries Management (Supporting Plan) Regulation could apply these provisions.</p>
<b>Licensing and other commercial fisheries management</b>	<p>The Fisheries Management (Supporting Plan) Regulation could apply these provisions to commercial share management fisheries, but not commercial restricted fisheries.</p>
<b>Restricted fisheries</b>	<p>No alternative regulations could be used to apply these provisions.</p>
<b>Fishing business cards</b>	<p>The Fisheries Management (Supporting Plan) Regulation could apply these provisions to commercial share management fisheries, but not commercial restricted fisheries.</p>

Provisions of the FM General Regulation 2010	Other legislation that may regulate matters currently regulated under provisions of FM General Regulation
<b>Fish receivers and fish records</b>	No alternative regulations could be used to apply these provisions.
<b>Charter fishing management</b>	No alternative regulations could be used to apply these provisions.
<b>Protection of aquatic habitats</b>	No alternative regulations could be used to apply these provisions.
<b>Threatened species conservation</b>	No alternative regulations could be used to apply these provisions.
<b>Listing criteria</b>	No alternative regulations could be used to apply these provisions.
<b>Administration</b>	No alternative regulations could be used to apply these provisions.
<b>Enforcement</b>	No alternative regulations could be used to apply these provisions.
<b>Savings and transitional provisions</b>	No alternative regulations could be used to apply these provisions.

### Impacts, benefits and costs under Option 3

Lapse of the FM General Regulation would have a range of impacts, costs and benefits for the NSW fisheries businesses, consumers, government, community, and the environment. The following section provides a qualitative assessment of the impacts, benefits and costs of Option 3 — the FM General Regulation is allowed to lapse — relative to the base case.

Table 6 shows that Option 3 would impose significant risks and costs to the community, environment, businesses and government relative to the base case. The option would present serious risks to the health of the NSW fisheries resources as well as the conservation of the aquatic environment. In summary, the key negative impacts and costs are identified below:

#### Community:

- Increased risk of physical and psychological harm to users from conflicts of use and competition for a share of the same resource
- Weakened community incentives to protect the fisheries resources and aquatic environment
- Reduced recreational fishing opportunities and associated loss of intrinsic/non-use values
- Degradation of Aboriginal cultural fishing heritage
- Increase in food safety risks.

#### Environment:

- Increased environmental costs from damaged and/or destroyed aquatic habitat and threatened fish stocks.

#### Businesses:

- Reduced revenues of commercial fishing businesses and other related businesses.

#### Government:

- Increased risks and difficulty in managing NSW fisheries resources
- Loss of fees and charges payable by commercial fishing businesses, fish receivers, chartered boat operators, recreational fishers and other persons. These fees are used for fisheries management and research, administration and compliance, while recreational fishing fees are spent on improving recreational fishing.
- Increase administration and enforcement costs to offenders and to government.

Due to these costs and/or loss of revenues, Option 3 — lapse of the FM General Regulation — is not preferred to remaking the FM General Regulation (the Base Case).

Table 6 Impacts, benefits and costs of the provisions under Option 3 (lapse of the FM General Regulation) to the Base Case

Provision	Impacts	Benefits	Costs
<b>Protected fish, protected waters, prohibited size fish and bag limits (Part 2)</b>	<ul style="list-style-type: none"> <li>Certain fish species and certain waters will no longer be protected which would lead to a depletion of fish stocks.</li> <li>Having no size limits and no bag limits would also lead to a depletion of fish stocks.</li> </ul>	<ul style="list-style-type: none"> <li>Businesses and individuals would not have to adhere to regulatory provisions.</li> <li>Businesses and individuals would benefit in the short term from increased catch.</li> </ul>	<ul style="list-style-type: none"> <li>In the long term businesses and individuals would be negatively impacted as fish stocks would be depleted in the absence of these key regulatory provisions.</li> </ul>
<b>Fishing gear and priorities in the use of fishing gear (Part 3 &amp; 4)</b>	<ul style="list-style-type: none"> <li>All lawful nets and traps for recreational fishers and commercial fishers operating in (two of the three) restricted fisheries would be removed from regulation, meaning the use of these nets or traps, or any other nets or traps would be illegal under the Act.</li> <li>Provisions that can help share resource access between the same and different sectors would not be available.</li> </ul>	<ul style="list-style-type: none"> <li>No benefit to fishers if the use of all nets and traps is prohibited.</li> <li>The absence of provisions that can help share resource access may benefit some fishers at the expense of others.</li> </ul>	<ul style="list-style-type: none"> <li>Being unable to use nets or traps would negatively impact fishers who routinely use this gear.</li> </ul>
<b>Miscellaneous provisions relating to fisheries management (Part 5)</b>	<ul style="list-style-type: none"> <li>Provisions that prohibit the use of electrical devices, explosives or chemicals to take fish would be removed. Provisions that prohibit taking female crabs or lobsters with ova (eggs) would be removed.</li> <li>Provisions making it an offence to interfere with another person's set fishing gear (such as a crab trap) would be removed.</li> </ul>	<ul style="list-style-type: none"> <li>Businesses and individuals would not have to adhere to regulatory provisions.</li> <li>Businesses and individuals may benefit in the short term from increased catch.</li> </ul>	<ul style="list-style-type: none"> <li>Unrestricted use of electrical devices, explosives or chemicals will damage fish stocks and the aquatic environment.</li> <li>Taking female crabs or lobsters with ova would likely deplete stocks of these species.</li> <li>In the absence of an offence to act as a deterrent against interfering with another person's set fishing gear, greater damage to, or loss of fishing</li> </ul>

Provision	Impacts	Benefits	Costs
			gear (and catch) is likely.
<b>Fishing business transfer rules (Part 6)</b>	<ul style="list-style-type: none"> <li>Commercial fishing business transfer rules would be removed, impacting the transfer of commercial fishery shares and restricted fishery endorsements.</li> </ul>	<ul style="list-style-type: none"> <li>Nil</li> </ul>	<ul style="list-style-type: none"> <li>Difficult or impossible to enter or exit the commercial fishing industry.</li> <li>Difficult or impossible for existing commercial fishers to adjust their business by acquiring or disposing of shares or restricted fishery endorsements.</li> </ul>
<b>Commercial share management fisheries (Part 7)</b>	<ul style="list-style-type: none"> <li>Foreign persons or foreign-owned bodies could own commercial fishery shares.</li> <li>Shares could not be forfeited for failing to pay related management charges and community contributions.</li> </ul>	<ul style="list-style-type: none"> <li>Foreign persons wishing to invest in commercial fishery shares could do so.</li> <li>Risk of share forfeiture for failing to pay share related fees removed for commercial fishery shareholders.</li> </ul>	<ul style="list-style-type: none"> <li>Foreign investment / entry to the NSW commercial fishing sector not widely supported by existing industry participants.</li> <li>Reduced incentive for shareholders to pay fees which go towards management of the resource and a community contribution (in return for commercial access to the resource).</li> </ul>
<b>Licensing and other commercial fisheries management (Part 8)</b>	<ul style="list-style-type: none"> <li>Provisions supporting administration of commercial fishing licences and commercial fishing boat licences would be removed, impacting the issuing, renewing, suspending and cancelling of these licences.</li> </ul>	<ul style="list-style-type: none"> <li>Commercial fishers could avoid licence related fees.</li> <li>Commercial fishers would not have to adhere to licence conditions prescribed in the regulation.</li> </ul>	<ul style="list-style-type: none"> <li>Difficult or impossible to suspend, cancel or refuse to renew licences; such as where a licence holder has been convicted of fisheries related offences. Being unable to exclude unsuitable persons from the commercial fishing industry risks resource sustainability and social licence.</li> </ul>

Provision	Impacts	Benefits	Costs
<b>Restricted fisheries (Part 9)</b>	<ul style="list-style-type: none"> <li>The three restricted commercial fisheries (Sea Urchin &amp; Turban Shell, Southern Fish Trawl, and Inland) would no longer be restricted fisheries.</li> <li>Provisions relevant to the management of these commercial fisheries such as; species that can be taken, quotas, bag limits and permitted areas of operation, would be removed.</li> </ul>	<ul style="list-style-type: none"> <li>Commercial fishers would not have to adhere to regulatory provisions for these fisheries.</li> <li>Commercial fishers would benefit in the short term from increased catch.</li> </ul>	<ul style="list-style-type: none"> <li>In the long term commercial fishers, related businesses and other fishers would be negatively impacted as fish stocks would be depleted in the absence of these key regulatory provisions.</li> </ul>
<b>Fishing business cards (Part 11)</b>	<ul style="list-style-type: none"> <li>Provisions relating to the possession and return of fishing business cards (a physical card showing the commercial fishery endorsements associated with a commercial fishing business) would no longer apply.</li> </ul>	<ul style="list-style-type: none"> <li>No requirement to return a fishing business card to its owner, or for the card to be returned to the Department of Primary Industries if required.</li> </ul>	<ul style="list-style-type: none"> <li>The risks of fraudulent illegal commercial fishing, which can negatively impact fish stocks and legitimate fishers, is increased without mandatory requirements dealing with the possession and return of fishing business cards.</li> </ul>
<b>Fish receivers and fish records (Part 12)</b>	<ul style="list-style-type: none"> <li>There would be no provisions to support the administration of fish receiver registrations (relates to receiving fish for resale or other commercial use). Applying for, renewing, suspending and cancelling registrations would be impacted.</li> <li>There would be no provisions to support the making, retaining and submission of fish records relating to commercial catch, sale and possession of fish and registered fish receiver operations.</li> </ul>	<ul style="list-style-type: none"> <li>Nil in relation to fish receiver registrations.</li> <li>Reduced regulatory burden for business in relation to fish record requirements.</li> </ul>	<ul style="list-style-type: none"> <li>Difficult or impossible to suspend, cancel or refuse to renew registrations; such as where the registration holder has been convicted of fisheries related offences. Being unable to exclude unsuitable persons from being registered risks resource sustainability.</li> <li>Fish stocks could be negatively impacted without timely commercial catch records to help inform resource management decisions.</li> <li>The absence of detailed sale and</li> </ul>

Provision	Impacts	Benefits	Costs
			possession records makes it easier to engage in black market seafood trade. Illegal trade negatively impacts fish stocks and legitimate businesses.
<b>Charter fishing management (Part 13)</b>	<ul style="list-style-type: none"> <li>There would be no provisions to support the administration of the Charter fishing boat licensing scheme. Applying for, renewing, suspending and cancelling licences would be impacted.</li> </ul>	<ul style="list-style-type: none"> <li>Charter fishing boat licence holders could avoid licence related fees.</li> <li>Charter fishing licence holders would not have to adhere to licence conditions prescribed in the regulation.</li> </ul>	<ul style="list-style-type: none"> <li>Difficult or impossible to suspend, cancel or refuse to renew licences; such as where a licence holder has been convicted of fisheries related offences. Being unable to exclude unsuitable persons from the Charter fishing industry risks resource sustainability and social licence.</li> </ul>
<b>Protection of aquatic habitats (Part 14)</b>	<ul style="list-style-type: none"> <li>Provisions that support and clarify aquatic habitat protection measures in the Act would no longer apply.</li> </ul>	<ul style="list-style-type: none"> <li>Businesses and individuals seeking permits to carry out works which may impact aquatic habitat could avoid permit assessment fees.</li> </ul>	<ul style="list-style-type: none"> <li>Greater damage to aquatic habitats, which in turn negatively impacts fish stocks, is likely without these provisions that describe activities harmful to marine vegetation and other harmful activities related to dredging work.</li> <li>Additional red tape for public authorities who would require permits for routine minor works, rather than being able to carry out minor works under a code of practice.</li> </ul>
<b>Threatened species conservation and</b>	<ul style="list-style-type: none"> <li>Criteria to ensure the Fisheries Scientific Committee follows a thorough, transparent and consistent approach in</li> </ul>	<ul style="list-style-type: none"> <li>Nil.</li> </ul>	<ul style="list-style-type: none"> <li>A less robust process for threatened species listings may negatively impact efforts to conserve biological</li> </ul>



Provision	Impacts	Benefits	Costs
<b>listing criteria (Parts 15 &amp; 16)</b>	assessing potential threatened species conservation listings would no longer be legislated.		diversity.
<b>Administration (Part 17)</b>	<ul style="list-style-type: none"> <li>Provisions to support the establishment and operation of Ministerial Advisory Councils would no longer apply.</li> </ul>	<ul style="list-style-type: none"> <li>Costs of establishing and operating these Councils would be avoided.</li> </ul>	<ul style="list-style-type: none"> <li>The absence of expert advice to the Minister from the various fisheries advisory councils could mean suboptimal decision making with negative impacts to fisheries resources and/or resource users.</li> </ul>
<b>Enforcement (Part 18)</b>	<ul style="list-style-type: none"> <li>A list of serious fisheries offences that relate to the seizure of boats and motor vehicles would no longer apply, meaning these items could not be seized.</li> </ul>	<ul style="list-style-type: none"> <li>Nil.</li> </ul>	<ul style="list-style-type: none"> <li>The inability to seize boats and motor vehicles for serious fisheries offences removes a substantial deterrent against illegal fishing. This could mean increased illegal fishing with negative impacts to fish stocks and legitimate fishers.</li> </ul>
<b>Savings and transitional provisions (Part 19)</b>	<ul style="list-style-type: none"> <li>Certain provisions established under former / replaced legislation would not be carried over to current legislation, and therefore would no longer apply.</li> </ul>	<ul style="list-style-type: none"> <li>Nil.</li> </ul>	<ul style="list-style-type: none"> <li>Advisory Councils and commercial restricted fisheries established under former legislation may no longer exist, requiring the establishment of new councils and new declarations for restricted fisheries etc.</li> </ul>

## **7.4. Summary Case for the preferred Option - Remake the proposed FM General Regulation 2019**

In conclusion, making the proposed FM General Regulation (Option 2) under the Act is the preferred option. It generates the greatest net benefit to businesses, consumers, the government, communities and the environment. Option 2 provides increased protection of the NSW fisheries resources relative to the Base Case. Option 3 is not preferred to either the Base Case or the proposed FM General Regulation as the lapse of the FM General Regulation would cost more in terms of managing and protecting the NSW fisheries resources and aquatic environment.

## 8. References

Barclay, K., McIlgormm, A., Mazur, N., Voyer, M., Schnierer, S., Payne, A.M., (2016), Social and Economic Evaluation of NSW Coastal Aquaculture, Fisheries Research and Development Corporation FRDC 2015/302 and University of Technology Sydney, December.

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## 9. Appendix 1

### About the NSW Fisheries

The fisheries resource of NSW can be categorised into five sectors:

- fisheries conservation;
- recreational fishing (including charter boats);
- commercial fisheries;
- Aboriginal cultural fishing; and
- aquaculture.

All sectors fall within the scope of the proposed FM General Regulation and this RIS to some degree. However separate dedicated regulations for major commercial fisheries and aquaculture means FM General Regulation provisions specific to these areas are limited.

A brief description of each sector is provided below.

#### Fisheries conservation

Fisheries conservation includes aquatic habitat protection and restoration, threatened species recovery, and managing actions that impact water quality and fish passage. Conservation of the resource is achieved through effective fisheries management, which is assisted by a number of legislative processes including:

- The preparation of fishery management strategies, species impact statements, environmental impact statements and habitat protection plans;
- Undertaking environmental assessments;
- The listing of threatened species, populations and ecological communities and key threatening processes;
- Notification of fishing closures; and
- The declaration of protected fish and critical habitat.

The FM General Regulation, together with the Act contains provisions that deal with the protection of aquatic habitats, protected fish and threatened species conservation.

#### Recreational fishing

Recreational fishing is a popular activity throughout NSW, in inland, estuarine and ocean waters. It is enjoyed by about 850,000 anglers each year and is very valuable to coastal and inland communities; generating about \$3.4 billion of economic activity each year and creates the equivalent of about 14,000 full-time jobs (DPI 2019a).

Recreational fishing incorporates various activities such as game fishing, sport fishing, spear fishing, general line, trap and net fishing. It also includes shore and boat based fishing, as well as hand gathering.

Recreational fishing includes charter fishing, with charter boat operators providing guided fishing trips to the public. Charter fishing boat operators require a licence to operate their business.

Unless exempt, the NSW recreational fishing fee must be paid when fishing in NSW waters; both freshwater and saltwater. Monies raised are placed into Recreational Fishing Trusts and spent on a broad range of salt and freshwater projects that benefit the State's recreational fishing sector.

The FM General Regulation together with the Act deals with the majority of rules applying to recreational fishers including charter boat fishing operators. This includes size and bag limits, fish and waters protected from recreational fishing, threatened species, permitted fishing gear, and charter boat fishing management provisions.

### Commercial fisheries

The NSW wild harvest commercial fishing industry is a dynamic network of business operators. Commercial fishers, wholesalers, processors and retailers work together with the restaurant and catering industry to supply fresh seafood to communities across the State, as well as to interstate and overseas markets. At the first point of sale, NSW commercial fishing is worth more than \$90 million each year and the resource is shared amongst over 1,000 commercial fishers who catch fish for the whole community to enjoy (DPI 2019b).

The NSW Government's Commercial Fisheries Business Adjustment Program has introduced linkages between commercial fishery shares and catch or effort, to provide greater certainty and ensure the long-term viability and sustainability of the NSW commercial fishing industry. Fishers may want to purchase additional shares (from other fishers) to increase their level of business activity, while others may sell shares to reduce activity or exit the industry.

The commercial fishing industry is comprised of ten fisheries, managed under two different regimes. There are seven major fisheries under the share management regime (abalone, lobster, estuary general, estuary prawn trawl, ocean trap and line, ocean trawl and ocean haul) and three minor fisheries under the restricted fisheries regime (sea urchin and turban shell, southern fish trawl and inland). To take fish for sale, fishers require a commercial fishing licence and endorsements to authorise the activities being undertaken. Depending on the fishery, it may also be necessary to hold species or effort quota and a commercial fishing boat licence.

The FM General Regulation together with the Act deals with commercial fishing licences, fishing boat licences, fish and waters protected from commercial fishing, making fish records and the three restricted fisheries. The regulation also includes common rules such as size limits, and protected and threatened species which generally apply to all fishers including commercial fishers. Provisions dealing with the seven share management fisheries are however dealt with separately by the Act and a number of share management plan regulations.

### Aboriginal cultural fishing

Aboriginal cultural fishing refers to the fishing activities and practices carried out by Aboriginal persons to satisfy personal, domestic or communal needs, or for educational, ceremonial or other traditional purposes (excluding commercial purposes).

Aboriginal people have a strong cultural association with the fisheries resource. It is important that they are able to continue this association and maintain and pass on their knowledge to future generations. The fisheries resource gives Indigenous Australians opportunities to embrace their culture through working with natural resources on their Country and brings benefit to health, employment, education and overall wellbeing (Barclay et al. 2016).

Daily cultural fishing needs are currently provided for by an Aboriginal Cultural Fishing Interim Access Arrangement that allows for extended bag and possession limits, as well as other special arrangements for cultural fishing activities. Section 37 of the Act can be used to

extend cultural access further, including to areas normally not open to fishing activity and use of equipment that is not normally available due to restrictions.

The trialling of a local management approach for cultural fishing access is also being undertaken. Under the trial Aboriginal communities in an area are identifying their aspirations for resource access, which is informing development of local management plans that address resource access for the relevant communities.

An Aboriginal Fishing Advisory Council is established under the Act, with the Council comprised of Aboriginal persons who provide advice to the Minister on issues relevant to Aboriginal fishing. An Aboriginal Fishing Trust Fund has also been established under the Act to provide grants and loans to enhance, maintain and protect Aboriginal cultural fishing, as well as assist Aboriginal communities to develop fisheries resource related businesses.

The FM General Regulation applies alongside current cultural fishing rules, particularly common rules such as size limits, and protected and threatened species. The main Aboriginal fishing specific provisions dealt with in the FM General Regulation relate to the operation of the Aboriginal Fishing Advisory Council. It is also important to note that where Native Title is recognised over marine waters, rivers, lakes and estuaries, native title holders can exercise their rights to fish in line with the provisions of the *Native Title Act 1993* (Commonwealth). Native title legislation is not affected by NSW fisheries management legislation in respect to native title rights and interests.

### Aquaculture

Aquaculture is the cultivation of fish or marine vegetation for commercial purposes. NSW aquaculture produces a diverse range of seafood including oysters, prawns, marine and freshwater fish, yabbies and mussels. Preliminary data for the 2017/18 year shows NSW aquaculture production was worth more than \$78 million (DPI 2019c). Like commercial fishing, aquaculture also provides valuable employment in regional areas.

By economic value oyster production is the main aquaculture activity in NSW, with the iconic Sydney Rock Oyster being the main species grown in many estuaries along the coast. The location of other aquaculture farms often depends on the environmental constraints of the species being grown. For example, Silver Perch and yabbies are grown widely across the state, while prawns are farmed on the far north coast and mussels near Eden. Trout are produced on the southern and northern slopes, with Yellowtail Kingfish off the coast of Port Stephens. Hatcheries that produce fingerlings for aquaculture farms, stocking of farm dams and aquarium fish are also located throughout NSW.

Aquaculture is managed by a permit system, established under the Act, to promote industry developing in an environmentally and economically sustainable manner. The Act also provides for the lease of public water land for aquaculture of oysters, marine fish and pearls.

The FM General Regulation contains a small number of penalty notices applicable to aquaculture related offences. Otherwise, the Act and a separate aquaculture regulation deal with the administration of aquaculture.