EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Amendment to the list of Exempt Native Specimens
in accordance with paragraph 303DC(1)(a)

(Issued under Authority of the Minister for the Environment, Heritage and the Arts)

Under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), the List of Exempt Native Specimens (LENS) is a list of native species that are exempt from export regulations. The list includes only specimens that are, or are derived from, Australian native animals and plants.

The list was established in accordance with section 303DB of the EPBC Act. The LENS does not include specimens that are eligible listed threatened species as defined in section 303BC or specimens listed on an Appendix to CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora), unless specifically listed at a genus or species level, or noted in the Notation column.

The effect of this instrument is to amend the LENS by including on the LENS:

- those specimens that are or are derived from fish, aquatic invertebrates or aquatic plants that are produced lawfully in an aquaculture facility that has been licensed by the relevant State or Territory government agency, other than specimens that are or belong to species listed on CITES or under Part 13 of the EPBC Act 1999; and
- the operation does not involve the introduction of wild caught or collected specimens, including parental stock, and is limited to specimens bred within the operation; and
- the operation is conducted in a manner such that specimens of the species in production cannot enter from the wild or escape into the wild from the operation.

The intent of this amendment is to facilitate the export process for aquaculture operations that meet the specified criteria for closed system aquaculture operations. Current LENS listings are at the species level and many limit the exemption to operations licensed in a particular State or Territory. This means the LENS needs to be revised every time someone is approved to export a new species or a listed species from a state or territory not previously included on the list. The current amendment incorporates many of these situations negating the requirement to regularly revise the LENS.

Under section 303DC the Minister may amend the LENS. Amendments to the LENS can be made on either the initiative of the Minister or by application. In this case the amendment was initiated by the Department of the Environment, Water, Heritage and the Arts as a delegate of the Minister as a result of a request from members of the aquaculture industry.

In accordance with subsection 303DC(3) other appropriate State, Territory and Australian Government ministers were consulted as the Minister considered appropriate. In this case the Department of the Environment, Water, Heritage and the Arts consulted with all relevant State and Territory ministers for the environment, conservation and fisheries. In response, seven replies providing comment were received, all supported the intent of the proposed amendment, although two respondents suggested changes to the amendment notation. Two of the three suggested changes were noted but no action taken (inconsistent with intent of the amendment), the third was incorporated into the amendment.

This instrument is a legislative instrument for the purposes of the Legislative Instruments Act 2003 and comes into effect on the day after it is registered on the Federal Register of Legislative Instruments.

Unique identifying number
EPBC/s.303DC/WTA/2008/001