

# EXPLANATORY STATEMENT

(Issued under the Authority of the Minister for the Environment)

*Environment Protection and Biodiversity Conservation Act 1999*

List of Threatened Species Amendment  
(*Megaptera novaeangliae* (279)) Instrument 2022

## Background

The *Environment Protection and Biodiversity Conservation Act 1999* (**Act**) provides for the protection of the environment and conservation of biodiversity, including the protection and conservation of threatened species.

Subsection 178(1) of the Act provides that the Minister must, by legislative instrument, establish a list of threatened species (**List**) separated into the following categories: Extinct, Extinct in the wild, Critically Endangered, Endangered, Vulnerable and Conservation Dependent.

Paragraph 184(b) of the Act relevantly provides that the Minister may, by legislative instrument, amend the List referred to in section 178 by deleting items within the List in accordance with Subdivision AA.

The species being deleted in the List did not meet the criteria for listing in any category under the *Environment Protection and Biodiversity Regulations 2000* (**Regulations**) (see below).

## Purpose of Instrument

The purpose of this instrument is to amend the List by:

- Deleting *Megaptera novaeangliae* (Humpback Whale) from the Vulnerable category from the List.

This species population is currently stable and no adverse effects to its survival are expected by delisting the species.

Subsection 186(1) of the Act provides that the Minister must not include (whether as a result of a transfer or otherwise) a native species on the List in a particular category unless satisfied that the native species is eligible to be included in that category.

Subsection 186(2B) of the Act provides that in deciding whether to delete a native species from a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to whether the native species is eligible to be included in that category or the effect that the inclusion of the native species in that category is having, or could have, on the survival of the species.

Regulation 7.01 of the Regulations relevantly provides that for section 179 of the Act, a native species is in the critically endangered, endangered or vulnerable category if it meets any of the five criteria for the category mentioned in the table to that provision.

The Minister was not satisfied that the requisite criteria was met for including *Megaptera novaeangliae* in any category in the List

## Consultation

The process for making amendments to the List to include or transfer an item is set out in Part 13, Division 1, Subdivision AA of the Act. Consultation was undertaken before the Instrument was made, in accordance with the processes outlined in Part 13, Division 1, Subdivision AA of the Act.

Notice of the proposed amendment and a consultation document was made available for public comment for a minimum of 30 business days as required by subsection 194M(3). Any public comments received that were relevant to the survival of the species were considered by the Threatened Species Scientific Committee (**Committee**) as part of the assessment process.

The Committee prepared a written assessment of whether the nominated species was eligible for deletion from the List. The Committee assessed the *Megaptera novaeangliae* as ineligible for inclusion in any category in the List.

In making this Instrument, the Minister considered the Committee's written assessment and the comments received during the consultation period in accordance with Part 13, Division 1, Subdivision AA of the Act.

This Instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and commences the day after registration.

Authority: sections 178 and 184(b) of the *Environment Protection and Biodiversity Conservation Act 1999*.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the  
Human Rights (Parliamentary Scrutiny) Act 2011*

### **List of Threatened Species Amendment (*Megaptera novaeangliae* (279)) Instrument 2022**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The purpose of this Instrument is to amend the *Environment Protection and Biodiversity Conservation Act 1999* list of threatened species to:

- Delete *Megaptera novaeangliae* from the Vulnerable category from the List

The species being removed from the list did not meet the criteria for listing in any of the relevant categories under the Regulations.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Sussan Ley MP  
Minister for the Environment**