EXPLANATORY STATEMENT

*Environment Protection and Biodiversity Conservation Act 1999*

Amendment of the List of Exempt Native Specimens in accordance with Section 303DC(1)(a)

Section 303DB of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides for the establishment of a list of exempt native specimens. Specimens included in the list are exempt from the trade control provisions that apply to regulated native specimens.

This instrument varies conditions to which inclusion of specimens in the list of exempt native specimens are subject, to allow continued export approval of the specimens until the specified dates. The relevant specimens are those taken in seven fisheries and multiple approved aquaculture programs managed respectively by the Australian Fisheries Management Authority; New South Wales Department of Primary Industries; Northern Territory Department of Primary Industry and Fisheries; Queensland Department of Agriculture and Fisheries; South Australian Department of Primary Industries and Regions; Tasmanian Department of Primary Industries, Parks, Water and Environment; Victorian Department of Economic Development, Jobs, Transport and Resources; and Western Australian Department of Fisheries. The seven fisheries and multiple approved aquaculture programs and the specified dates for inclusion are listed below:

* Commonwealth Southern Bluefin Tuna Fishery – 16 December 2016
* Commonwealth Western Trawl Fisheries – 30 June 2017
* Torres Strait Finfish Fishery – 4 August 2017
* Torres Strait Prawn Fishery – 4 August 2017
* South Australian Scallop and Turbo Fisheries – 30 June 2017
* South Australian Specimen Shell Fishery – 30 June 2017
* South Australian Sea Urchin Fishery – 30 June 2017
* Aquaculture (all jurisdictions except ACT) – 30 June 2017.

References to definitions in instruments made under or in force under legislation are to be read as references to provisions in those instruments and legislation as in force from time to time.

In determining to include the specimens in the list of exempt native specimens regard was had to the Australian Government’s ‘Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition’. Those guidelines establish the criteria for assessment of the ecological sustainability of the relevant fishery’s management arrangements.

Subsection 303DC(3) of the EPBC Act provides that before amending the list, the Minister for the Environment and Energy must consult such other Commonwealth minister or ministers and such other minister or ministers of each state and self-governing territory, as the minister considers appropriate. The minister may also consult with such other persons and organisations as the minister considers appropriate. In this instance, the Delegate of the Minister for the Environment and Energy consulted with the Australian Fisheries Management Authority; New South Wales Department of Primary Industries; Northern Territory Department of Primary Industry and Fisheries; Queensland Department of Agriculture and Fisheries; South Australian Department of Primary Industries and Regions; Tasmanian Department of Primary Industries, Parks, Water and Environment; Victorian Department of Economic Development, Jobs, Transport and Resources; and Western Australian Department of Fisheries as these agencies have management responsibilities for the seven fisheries and multiple approved aquaculture programs concerned.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The instrument commenced on the day after it was registered on the Federal Register of Legislation.

**SCHEDULE 1**

Under the heading Freshwater and Marine Animals vary the list to include the following items and any associated notations:

|  |  |  |
| --- | --- | --- |
| *Taxon/Item* | *Common Name* | *Notation* |
| Specimens that are or are derived from fish or invertebrates, other than specimens that belong to species listed under Part 13 of the EPBC Act, taken in the Southern Bluefin Tuna Fishery, as defined in the Southern Bluefin Tuna Fishery Management Plan 1995 (as amended), in force under the Commonwealth *Fisheries Management Act 1991*. | Southern Bluefin Tuna Fishery (Cth) | The specimen, or the fish or invertebrate from which it is derived, was taken lawfully; and,The specimens are included in the list until 16 December 2016. |
| Specimens that are or are derived from fish or invertebrates, other than specimens that belong to species listed under Part 13 of the Act, taken in the Western Deepwater Trawl Fishery and North West Slope Trawl Fishery. | Western Trawl Fisheries (Cth) | The specimen, or the fish or invertebrate from which it is derived, was taken lawfully; and,The specimens are included in the list until 30 June 2017. |
| Specimens that are or are derived from fish or invertebrates, other than specimens that belong to species listed under Part 13 of the EPBC Act, taken in the Torres Strait Finfish Fishery, as defined in the *Torres Strait Finfish Fishery Management Plan 2013* in force under the *Torres Strait Fisheries Act 1984*. | Torres Strait Finfish Fishery (Cth) | The specimen, or the fish or invertebrate from which it is derived, was taken lawfully; and,The specimens are included in the list until 4 August 2017. |
| Specimens that are or are derived from fish or invertebrates, other than specimens that belong to species listed under Part 13 of the EPBC Act, taken in the Torres Strait Prawn Fishery, as defined in the *Torres Strait Prawn Fishery Management Plan 2009* in force under the *Torres Strait Fisheries Act 1984*. | Torres Strait Prawn Fishery (Cth) | The specimen, or the fish or invertebrate from which it is derived, was taken lawfully; and,The specimens are included in the list until 4 August 2017. |
| Specimens that are or are derived from fish or invertebrates, other than specimens that belong to species listed under Part 13 of the EPBC Act, taken in the South Australian Scallop and Turbo Fisheries, as defined in the South Australian *Fisheries Management Act 2007*, the Fisheries Management (Miscellaneous Fishery) Regulations 2000 and the Fisheries Management (General) Regulations 2007. | Scallop and Turbo Fishery (SA) | The specimen, or the fish or invertebrate from which it is derived, was taken lawfully; and,The specimens are included in the list until 30 June 2017. |
| Specimens that are or are derived from fish or invertebrates, other than specimens that belong to species listed under Part 13 of the Act, taken in the South Australian Specimen Shell Fishery, as defined in the *Fisheries Management (Miscellaneous Fishery) Regulations 2000* and the *Fisheries Management (General) Regulations 2007* in force under the *Fisheries Management Act 2007* (South Australia). | Specimen Shell Fishery (SA) | The specimen, or the fish or invertebrate from which it is derived, was taken lawfully; and,The specimens are included in the list until 30 June 2017. |
| Specimens that are or are derived from fish or invertebrates, other than specimens that belong to species listed under Part 13 of the Act, taken in the South Australian Sea Urchin Fishery. | Sea Urchin Fishery (SA) | The specimen, or the fish or invertebrate from which it is derived, was taken lawfully; and,The specimens are included in the list until 30 June 2017. |
| Specimens that are derived from fish or aquatic invertebrates or aquatic plants, other than specimens that belong to species listed under Part 13 of the EPBC Act and specimens that belong to taxa listed under section 303CA of the EPBC Act (Australia’s CITES list), produced in aquaculture facilities operating in accordance with the New South Wales *Fisheries Management Act 1994* and subordinate legislation. | Approved aquaculture programs in New South Wales  | The specimen, or the fish or invertebrate from which it was derived, was produced lawfully in an aquaculture facility; and,The specimens are included in the list until 30 June 2017. |
| Specimens that are derived from fish or aquatic invertebrates or aquatic plants, other than specimens that belong to species listed under Part 13 of the EPBC Act and specimens that belong to taxa listed under section 303CA of the EPBC Act (Australia’s CITES list), produced in aquaculture facilities operating in accordance with the Northern Territory *Fisheries Act 1988* and subordinate legislation. | Approved aquaculture programs in Northern Territory | The specimen, or the fish or invertebrate from which it was derived, was produced lawfully in an aquaculture facility; and,The specimens are included in the list until 30 June 2017. |
| Specimens that are derived from fish or aquatic invertebrates or aquatic plants, other than specimens that belong to species listed under Part 13 of the EPBC Act and specimens that belong to taxa listed under section 303CA of the EPBC Act (Australia’s CITES list), produced in aquaculture facilities operating in accordance with the Queensland *Fisheries Act 1994* and subordinate legislation. | Approved aquaculture programs in Queensland | The specimen, or the fish or invertebrate from which it was derived, was produced lawfully in an aquaculture facility; and,The specimens are included in the list until 30 June 2017. |
| Specimens that are derived from fish or aquatic invertebrates or aquatic plants, other than specimens that belong to species listed under Part 13 of the EPBC Act and specimens that belong to taxa listed under section 303CA of the EPBC Act (Australia’s CITES list), produced in aquaculture facilities operating in accordance with the South Australian *Aquaculture Act 2001* and *Fisheries Management Act 2007* and subordinate legislation. | Approved aquaculture programs in South Australia | The specimen, or the fish or invertebrate from which it was derived, was produced lawfully in an aquaculture facility; and,The specimens are included in the list until 30 June 2017. |
| Specimens that are derived from fish or aquatic invertebrates or aquatic plants, other than specimens that belong to species listed under Part 13 of the EPBC Act and specimens that belong to taxa listed under section 303CA of the EPBC Act (Australia’s CITES list), produced in aquaculture facilities operating in accordance with the Tasmanian *Living Resources Management Act 1995* and subordinate legislation. | Approved aquaculture programs in Tasmania | The specimen, or the fish or invertebrate from which it was derived, was produced lawfully in an aquaculture facility; and,The specimens are included in the list until 30 June 2017. |
| Specimens that are derived from fish or aquatic invertebrates or aquatic plants, other than specimens that belong to species listed under Part 13 of the EPBC Act and specimens that belong to taxa listed under section 303CA of the EPBC Act (Australia’s CITES list), produced in aquaculture facilities operating in accordance with the Victorian *Fisheries Act 1995* and subordinate legislation. | Approved aquaculture programs in Victoria  | The specimen, or the fish or invertebrate from which it was derived, was produced lawfully in an aquaculture facility; and,The specimens are included in the list until 30 June 2017. |
| Specimens that are derived from fish or aquatic invertebrates or aquatic plants, other than specimens that belong to species listed under Part 13 of the EPBC Act and specimens that belong to taxa listed under section 303CA of the EPBC Act (Australia’s CITES list), produced in aquaculture facilities operating in accordance with the Western Australian *Fish Resources Management Act 1994* and subordinate legislation. | Approved aquaculture programs in Western Australia | The specimen, or the fish or invertebrate from which it was derived, was produced lawfully in an aquaculture facility; and,The specimens are included in the list until 30 June 2017. |

# **STATEMENT OF COMPATIBILITY FOR A BILL OR LEGISLATIVE INSTRUMENT THAT DOES NOT RAISE ANY HUMAN RIGHTS ISSUES**

**Statement of Compatibility with Human Rights**

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

**Amendment of List of Exempt Native Specimens**

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**

This instrument varies conditions to which inclusion of specimens in the list of exempt native specimens are subject, to allow continued export approval of the specimens until the specified dates. The relevant specimens are those taken in seven fisheries and multiple approved aquaculture programs managed respectively by the Australian Fisheries Management Authority; New South Wales Department of Primary Industries; Northern Territory Department of Primary Industry and Fisheries; Queensland Department of Agriculture and Fisheries; South Australian Department of Primary Industries and Regions; Tasmanian Department of Primary Industries, Parks, Water and Environment; Victorian Department of Economic Development, Jobs, Transport and Resources; and Western Australian Department of Fisheries. The seven fisheries and multiple approved aquaculture programs and the specified dates for inclusion are listed below.

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**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.

**Nathan Hanna, Acting Assistant Secretary, Wildlife Trade and Biosecurity Branch**

**(Delegate of the Minister for the Environment and Energy)**