

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens – Take of Scallops, Sea Urchin, Turban Shell and Specimen Shells in the South Australian Miscellaneous Fishery, May 2018

Amendment of the List of Exempt Native Specimens in accordance with Section 303DC

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.

The instrument **deletes** specimens from the list of exempt native specimens that are taken in three South Australian fisheries specified in **Schedule 1**. The instrument also **includes** specimens that are or are derived from scallops, sea urchins, specimen shells and turban shell taken in the South Australian Miscellaneous Fishery in the list of exempt native specimens, with notations that inclusion of the specimens in the list are subject to restrictions or conditions that the specimen, or the fish or invertebrate from which it is derived, was taken lawfully, and that the specimens are included in the list until the dates specified in **Schedule 2**.

The relevant fisheries are as follows:

- South Australian Scallop and Turbo Fishery
- South Australian Sea Urchin Fishery
- South Australian Specimen Shell Fishery

All state and territory legislation referred to in Schedule 2 to the instrument is incorporated as in force at the time this instrument commences. All state and territory legislation incorporated by reference in the instrument can be freely accessed on the South Australian legislation website at www.legislation.sa.gov.au (as of May 2018).

Section 10 of the *Acts Interpretation Act 1901* (and, for legislative instruments, as applied by section 13(1)(a) of the *Legislation Act 2003*) has the effect that references to Commonwealth legislation can be taken to be references to versions of that legislation as in force from time to time. All Commonwealth legislation can be freely accessed at the Federal Register of Legislation – <https://www.legislation.gov.au>.

The effect of this instrument is to simplify the description of the specimens in the list of exempt native specimens, to reflect changes in the management regime including amalgamating the three South Australian fisheries identified above, amending the name under which these fisheries operate, and to continue the export approval for the specimens taken in the South Australian Miscellaneous Fishery until the dates specified in **Schedule 2**.

The list of exempt native specimens established under section 303DB(1) of the EPBC Act **must not include** a specimen that belongs to an eligible listed threatened species unless the conditions in subsection 303DB(6) are satisfied. Under the EPBC Act, **eligible listed threatened species** are those species listed in the extinct, extinct in the wild, critically endangered, endangered, or vulnerable categories established under section 178 of the EPBC Act (see sections 303BC and 528 of the EPBC Act).

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Those specimens that belong to species listed in the conservation dependent category of the EPBC Act are not eligible listed threatened species and **may** therefore **be included** in the list of exempt native specimens, subject to the conditions provided in the notation.

In accordance with section 303CA of the EPBC Act, specimens that are derived from taxa that are listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) are not included in the list of exempt native specimens.

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. The South Australian Department of Primary Industries and Regions has been consulted and supports amending the list of exempt native specimens to include product derived from the South Australian Miscellaneous Fishery. In addition, the proposal to amend the list of exempt native specimens was advertised on the Department of the Environment and Energy's website and comment was invited from interested people for a period of 23 business days. No comments were received.

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

The instrument commences the day after it is registered.

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**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 (Cth).*

**Amendment of List of Exempt Native Specimens – Take of Scallops, Sea Urchin,
Specimen Shells and Turban Shell in the South Australian Miscellaneous Fishery,
May 2018**

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 (Cth)*

Overview of the Legislative Instrument

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The effect of this instrument is to simplify the description of the specimens in the list of exempt native specimens, to reflect changes in the management regime including amalgamating the three South Australian fisheries identified above, amending the name under which these fisheries operate, and to continue the export approval for the specimens taken in the South Australian Miscellaneous Fishery until the dates specified in **Schedule 2**.

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.

**Paul Murphy, Assistant Secretary, Wildlife Trade and Biosecurity Branch (Delegate of
the Minister for the Environment and Energy)**

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