

EXPLANATORY STATEMENT

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

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens – New South Wales Ocean Trap and Line Fishery, New South Wales Ocean Trawl Fishery and New South Wales Estuary Prawn Trawl Fishery, June 2018

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 effect of this instrument is to **delete** from the list of exempt native specimens, specimens taken in three NSW fisheries and any associated restrictions or conditions as specified in **Schedule 1**. The instrument also **includes** specimens from the same three fisheries 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:

- New South Wales Ocean Trap and Line Fishery
- New South Wales Ocean Trawl Fishery
- New South Wales Estuary Prawn Trawl 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 New South Wales legislation website at www.legislation.nsw.gov.au (as of June 2018)

Commonwealth Acts and disallowable instruments (or instruments which were disallowable under Commonwealth legislation at any time before 1 January 2005) referred to in this instrument are incorporated as in force from time to time (section 14 of the *Legislation Act 2003*). However, references to Commonwealth instruments which are exempt from disallowance are incorporated as in force at the time this instrument commences (section 14 of the *Legislation Act 2003*).

All Commonwealth legislation can be freely accessed at the Federal Register of Legislation – <https://www.legislation.gov.au/>.

Listing of the specimens described above in the list of exempt native specimens will allow export of these specimens until the dates specified in **Schedule 2**. The only effect of this amendment is to extend the specified dates for the NSW Ocean Trap and Line Fishery and the NSW Ocean Trawl Fishery, and amend the previous entry on the list of exempt native specimens to include the legislation under which the NSW Ocean Trawl Fishery and the NSW Estuary Prawn Trawl Fishery are defined.

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 New South Wales Department of Primary Industries has been consulted and supports amending the list of exempt native specimens to include product derived from the NSW Ocean Trap and Line Fishery, the NSW Ocean Trawl Fishery, and the NSW Estuary Prawn Trawl 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 at least 20 business days. All comments received were taken into account in the decision to include specimens derived from the fisheries in the list of exempt native specimens.

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

**Amendment of List of Exempt Native Specimens – New South Wales Ocean Trap and
Line Fishery, New South Wales Ocean Trawl Fishery and New South Wales Estuary
Prawn Trawl Fishery, June 2018**

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

Overview of the Legislative Instrument

The effect of this instrument is to **delete** from the list of exempt native specimens, specimens taken in three NSW fisheries and any associated restrictions or conditions as specified in **Schedule 1**. The instrument also **includes** specimens from the same three NSW fisheries 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 only effect of this instrument is to extend the export approval 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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