

# EXPLANATORY STATEMENT

*Environment Protection and Biodiversity Conservation Act 1999*

## ***Amendment of List of Exempt Native Specimens – South Australian Marine Scalefish Fishery, September 2019***

(Issued by the authority of the delegate of the Minister for the Environment specified in the enabling legislation)

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) places certain obligations on the Commonwealth to protect and conserve Australia's native wildlife by regulating international trade in order to protect targeted species against over exploitation and to protect Australian and international ecosystems.

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

### ***Purpose and operation***

The purpose of this instrument is to **remove** from the list specimens that are or are derived from fish and invertebrates taken in the South Australian Marine Scalefish Fishery, and any associated restrictions or conditions specified in **Schedule 1** to the instrument.

**Schedule 2** to the instrument also **includes** in the list specimens that are or are derived from fish or invertebrates taken from the South Australian Marine Scalefish Fishery (the fishery), 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 while a declaration as an approved wildlife trade operation is in place for the fishery as specified in **Schedule 2**.

Listing these specimens in the list will allow the export of these specimens without the need for export permits, while an approved wildlife trade operation declaration for the fishery is in force. A link to the declaration is accessible via the Department's website at <https://www.environment.gov.au/marine/fisheries/sa/marine-scalefish>.

### ***Incorporation***

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 at <https://www.legislation.sa.gov.au/index.aspx> (as of August 2019).

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*).

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

### ***Strategic assessment not required***

Subsection 303DC(1A) of the EPBC Act requires the Minister, in deciding whether to amend the list, to rely primarily on the outcomes of any assessment carried out for the purposes of Divisions 1 or 2 of Part 10 of the EPBC Act.

A strategic assessment is only required for fisheries managed under the *Fisheries Management Act 1991* (Cth) or the *Torres Strait Fisheries Act 1984* (Cth). A strategic assessment may be made for commercial fisheries under Division 1; however, there are no current strategic assessments in respect of the fishery from which the specimens listed in Schedule 2 are taken or derived.

The fishery listed in **Schedule 2** to the instrument is not managed by the Commonwealth under the aforementioned Acts. Therefore, the EPBC Act does not require there to be a strategic assessment for the purposes of Part 10 of the Act in relation to the fishery named in **Schedule 2**.

The Australian Government and State/Northern Territory governments have negotiated Offshore Constitutional Settlement (OCS) arrangements that mandate each jurisdiction's responsibilities for managing the different fisheries resources in inshore and offshore areas. Under the OCS arrangements commercial fisheries managed by the States/NT may operate in Commonwealth waters, but operators are subject to federal laws in relation to interactions with protected species and ecological communities, and for impacts on the Commonwealth marine area.

### ***Specimens that may be included in the list***

The list 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).

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, 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.

### ***Assessment of specimens***

In determining to include the specimens in the list, the Minister's delegate had regard to the Australian Government's 'Guidelines for the Ecologically Sustainable Management of Fisheries – 2<sup>nd</sup> Edition'. These guidelines establish the criteria for assessment of the ecological sustainability of the relevant fishery's management arrangements.

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## *Consultation*

Subsection 303DC(3) of the EPBC Act provides that before amending the list, the Minister for the Environment 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 Department of Primary Industries and Regions South Australia has been consulted and supports amending the list to include product derived from the fishery.

In addition, the proposal to amend the list was advertised on the Department's website and comment was invited from interested persons for 24 business days from 12 March 2019 to 12 April 2019. All comments received were taken into account in the decision to include specimens derived from the fishery in the list.

The proposal to amend the list to include specimens from the fishery was advertised on the Department's website and comment was invited from interested people for a minimum of 20 business days from 12 March 2019 to 12 April 2019. One public comment was received.

The comments received (from the West Coast Professional Fishers Association) were taken into account in the decision to include specimens derived from the fishery, in the list. Public comments highlighted issues requiring management attention, including:

- the need for improved certainty for all stakeholders and fishers
- the need for updated recreational fishing data (last survey was 2013/2014)
- the lack of reliable ecological data re. exploitation of fish resources
- the increasing pressure on fish stocks, by interstate fishers (need for recreational licencing)
- the risk of losing local and multiple-generation fishers (re. zone management)
- the risk of losing local stewardship, due to government preference for quota management system.

PIRSA chose not to provide a response to the public comment received. However, PIRSA advised the Department that the comments have been raised through the Marine Scalefish Reform process for consideration, as appropriate.

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 with Human Rights

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

## *Amendment of List of Exempt Native Specimens – South Australian Marine Scalefish Fishery, September 2019*

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 purpose of this instrument is to **remove** from the list specimens that are or are derived from fish and invertebrates taken in the South Australian Marine Scalefish Fishery, and any associated restrictions or conditions specified in **Schedule 1** to the instrument.

**Schedule 2** to the instrument also **includes** in the list specimens that are or are derived from fish or invertebrates taken from the South Australian Marine Scalefish Fishery, 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 while a declaration as an approved wildlife trade operation is in place for the Fishery as specified in **Schedule 2**.

Listing these specimens in the list will allow the export of these specimens without the need for export permits, while an approved wildlife trade operation declaration for the Fishery is in force. A link to the declaration is accessible via the Department's website at <https://www.environment.gov.au/marine/fisheries/sa/marine-scalefish>.

The only effect of this instrument is to extend the export approval while a declaration as an approved wildlife trade operation is in place for the fishery as specified in **Schedule 2**. A link to the declaration is accessible via the Department's website at <https://www.environment.gov.au/marine/fisheries/sa/marine-scalefish>.

### ***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.

**John Gibbs, Assistant Secretary, Wildlife Trade**

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