

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens – Queensland East Coast Otter Trawl Fishery, August 2021

(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 **delete** from the list specimens that are or are derived from fish or invertebrates taken in the Queensland East Coast Otter Trawl Fishery and any and notations 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 same Queensland East Coast Otter Trawl Fishery identified above, 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 date specified in **Schedule 2**.

Revoking the conditions and imposing the above conditions will allow continued export of these specimens without the need for export permits until 20 November 2021. A link to the instrument is accessible via the Department of Agriculture, Water and the Environment's (the Department's) website at: <http://www.environment.gov.au/marine/fisheries/qld/east-coast-otter-trawl>.

Incorporation

All state legislation referred to in **Schedule 2** is incorporated as in force at the time this instrument commences. All state legislation incorporated by reference in the instrument can be freely accessed on the following state legislation website (as of August 2021): <https://www.legislation.qld.gov.au> (as of August 2021)

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

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 are 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.

The list established under section 303DB(1) of the EPBC Act **must not include** a specimen that belongs to species listed on **Australia's List of Migratory Species** established under section 209 of the EPBC Act. The List of Migratory Species includes all migratory species that are native species, and species that are included in the appendices to the Bonn Convention, and all migratory bird species included in annexes established under international agreements with Japan (JAMBA) and China (CAMBA), and all native species identified in any other list or agreement approved by the minister.

The list established under section 303DB(1) of the EPBC Act **must not include** a specimen that belongs to a species listed on the **List of Marine Species** established under section 248 of the EPBC Act. When first established, the List of Marine Species contained all marine species identified at section 248 of the EPBC Act. The List of Marine Species also contains additional species approved by the Minister in consultation with the Threatened Species Scientific Committee.

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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 – 2nd Edition.' These Guidelines establish the criteria for assessment of the ecological sustainability of the relevant fishery's management arrangements.

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 Queensland Department of Agriculture and Fisheries has been consulted and supports amending the list to include product derived from the Queensland East Coast Otter Trawl Fishery.

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

The instrument commences the day after it is registered.

Statement of Compatibility with Human Rights

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

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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 **revoke** the conditions to which the inclusion of the following item in the list on 14 July 2021 is subject:

Specimens that are, or are derived from, fish or invertebrates taken in the Queensland East Coast Otter Trawl Fishery as defined in the management regime for fisheries symbols T1, T2, M1 and M2 in force under the Queensland *Fisheries Act 1994*, Fisheries (General) Regulation 2019, Fisheries (Commercial Fisheries) Regulation 2019, Fisheries Declaration 2019, Fisheries Quota Declaration 2019 and Fisheries Legislation Amendment Regulation 2020, but not including:

- i. specimens that belong to taxa listed under section 209 of the EPBC Act (Australia's list of Migratory Species), or
- ii. specimens that belong to taxa listed under section 248 of the EPBC Act (Australia's list of Marine Species), or
- iii. specimens that belong to eligible listed threatened species, as defined under section 303BC of the EPBC Act, or
- iv. specimens that belong to taxa listed under section 303CA of the EPBC Act (Australia's CITES List).

and impose the following conditions to which the inclusion of the specimens in the list is subject:

- the specimen, or the fish or invertebrate from which it is derived, was taken lawfully, and
- the specimens are included in the list until 20 November 2021.

Revoking the conditions and imposing the above conditions will allow continued export of these specimens without the need for export permits until 20 November 2021. A link to the instrument is accessible via the Department of Agriculture, Water and the Environment's (the Department's) website at: <http://www.environment.gov.au/marine/fisheries/qld/east-coast-otter-trawl>.

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.

Laura Timmins, Senior Director, Wildlife Trade Office

(Delegate of the Minister for the Environment)