

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens – Commonwealth Coral Sea Fishery, February 2024

(Issued by the authority of the Delegate of the Minister for the Environment and Water as 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 Commonwealth Coral Sea Fishery (the fishery), and any associated 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 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 of Climate Change, Energy, the Environment and Water's website at:

<https://www.dcceew.gov.au/environment/marine/fisheries/commonwealth/coral-sea>

The only effect of this instrument is to allow continued export for these specimens subject to the conditions provided in the notation as specified in **Schedule 2**.

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EPBC303DC/SFS/2024/05

Incorporation

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/>.

Strategic assessment

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.

The fishery was assessed under Part 10 of the EPBC Act in October 2004. That assessment concluded that actions approved or taken in accordance with the *Fisheries Management Act 1991* (Cth), would not have an unacceptable or unsustainable impact on the environment in a Commonwealth marine area. Consequently, the management regime was accredited under section 33 of the EPBC Act.

In making a decision to accredit the management regime, the minister's delegate relied primarily on the outcomes of the 2004 assessment carried out for the purposes of Divisions 1 and 2 of Part 10 of the EPBC Act.

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.

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 species.

Assessment of specimens

In determining to include the specimens in the list, the minister's delegate had regard to the *Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition*. These guidelines establish the criteria for assessment of the ecological sustainability of the fisheries' management arrangements.

The guidelines are accessible via the Department of Climate Change, Energy, the Environment and Water's website at:

www.dcceew.gov.au/environment/marine/publications/guidelines-ecologically-sustainable-management-fisheries.

Consultation

Subsection 303DC(3) of the EPBC Act provides that before amending the list, the minister 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 Australian Fisheries Management Authority has been consulted and supports amending the list to include product derived from the fisheries.

In addition, the proposal to amend the list was advertised on the Department of Climate Change, Energy, the Environment and Water's website and comment was invited from interested people for 23 business days from 18 September 2023 to 20 October 2023 (excludes first day and public holidays).

Three public comment were received. They expressed concerns about a need to consider climate change in the management of the fishery, Total allowable catches needing to be reduced and evidence based, and additional science being needed. These comments were considered by the minister's delegate in making their decision.

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

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This instrument commences the day after registration.

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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 **delete** from the list specimens that are or are derived from fish or invertebrates taken in the Commonwealth Coral Sea Fishery (the fishery), and any associated notations, 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 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, subject to the conditions specified in the notations of **Schedule 2**, while an approved wildlife trade operation declaration for the fishery is in force. A link to the declaration is accessible via the Department of Climate Change, Energy, the Environment and Water's website at:

<https://www.dcceew.gov.au/environment/marine/fisheries/commonwealth/coral-sea>

The only effect of this instrument is to allow continued export for these specimens subject to the conditions provided in the notation as 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.

Belinda Jago, Delegate of the Minister for the Environment and Water

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