

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Environment and Water

*Environment Protection and Biodiversity Conservation Act 1999*

List of Exempt Native Specimens Amendment (Commonwealth Southern and Eastern Scalefish and Shark Fishery) Instrument, June 2025

### Legislative Authority

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 to protect targeted species against over exploitation and to protect Australian and international ecosystems.

Subsection 303DB(1) of the EPBC Act provides that the minister must by legislative instrument establish a list of exempt native specimens. This list referred to in subsection 303DB(1) of the EPBC Act is contained in the *List of Exempt Native Specimens Instrument 2001* (**the List**). Specimens included in the List are exempt from the trade control provisions that apply to regulated native specimens.

Subsection 303DC(1) of the EPBC Act relevantly provides that the minister may, by legislative instrument, amend the List referred to in section 303DB by including items, deleting items, imposing a condition or restriction to which the inclusion of a specimen in the list is subject, varying or revoking a condition or restriction to which the inclusion of a specimen in the List is subject, or correcting an inaccuracy of updating the name of a species.

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 and 2 of the Part 10 of the EPBC Act.

The Commonwealth Southern and Eastern Scalefish and Shark Fishery's management regime, made in accordance with the *Fisheries Management Act 1991* (Cth), was strategically assessed under Part 10 of the EPBC Act in 2007. Subsequently, a declaration was made in accordance with the provisions of section 33 of the EPBC Act on 30 May 2007 so that actions taken in accordance with the Commonwealth Southern and Eastern Scalefish and Shark Fishery's management regime do not require further approval under Part 9 of the EPBC Act.

AFMA has kept the department informed of any amendments to the fishery's management arrangements since the 2007 accreditation.

### 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) of the EPBC Act 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 subsection 303DB(1) of the EPBC Act must not include a specimen that belongs to a species listed on Australia's List of Migratory Species established under section 209 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, and must not include specimens that are derived from taxa that are listed under the listed established under section 303CA of the EPBC Act in relation to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

The Minister was satisfied that the species listed in Schedule 1 are not listed in any of the lists established under sections 178, 209, 248, and 303CA of the EPBC Act.

Subsection 303DC(1C) provides that the Minister is not limited in the matters that may be taken into account when deciding whether to amend the List to include a specimen derived from a commercial fishery. In determining to include the specimens in the List, the Minister had regard to the Australian Government's *Guidelines for the Ecologically Sustainable Management of Fisheries – 2<sup>nd</sup> Edition*.

## **Purpose and operation**

The purpose of this instrument is to amend the List by:

- omitting in the List specimens that are or are derived from fish or invertebrates taken in the Commonwealth Southern and Eastern Scalefish and Shark Fishery, and any associated notations specified in **Schedule 1** to the instrument.
- inserting in the List specimens that are or are derived from fish or invertebrates taken in the Commonwealth Southern and Eastern Scalefish and Shark 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
  - The specimens are included in the list until 30 June 2028.

Listing these specimens in the list will allow the export of these specimens without the need for export permits until 30 June 2028.

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/scalefish>.

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

## **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 (subsections 14(1)(a) and 14(3) of the *Legislation Act 2003*) (Legislation Act). However, references to Commonwealth instruments which are exempt from disallowance are incorporated as in force at the time this instrument commences (paragraph 14(1)(b) of the Legislation Act).

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

The Australian Government's *Guidelines for the Ecologically Sustainable Management of Fisheries – 2<sup>nd</sup> Edition* establish the criteria for assessment of the ecological sustainability of the relevant fishery's management arrangements. The guidelines are incorporated as in force on 1 August 2007. The guidelines are freely accessible to all persons via the Department's website at: <https://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 Commonwealth Southern and Eastern Scalefish and Shark Fishery.

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 from 26 September 2024 to 30 October 2024.

Three public comments were received. The first comment raised concerns over the Australian Fisheries Management Authority's progress in implementing previous Wildlife Trade Operation conditions, the management of depleted species in the fishery, data validation and monitoring arrangements, the management of elasmobranch species, and the fishery's

interaction with a range of threatened, endangered, and protected species. The second submission expressed concerns over the fishery's impact on the Tasmanian Giant Crab and Striped Trumpeter fisheries. The third submission raised concerns over the fishery's impact on seabirds.

All comments received were taken into account in the decision to include specimens derived from the Commonwealth Southern and Eastern Scalefish and Shark Fishery in the List.

Given the consultation on the proposed decision, it was not necessary to consult on the text of the instrument itself.

### **Details/Operation**

Details of the Instrument are set out in Attachment A.

### **Sunsetting and disallowance requirements**

The Instrument is subject to the disallowance process under section 42 of the Legislation Act and the sunseting regime set out in Part 4 of Chapter 3 of the Legislation Act. However, section 48A of the Legislation Act has the effect that, because the Instrument only amends another instrument, if it is not disallowed it will be automatically repealed at the end of the disallowance period. Once repealed, the sunseting regime has no practical effect on the Instrument.

The List amended by the Instrument is exempt from sunseting in accordance with table item 24 in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, which specifies that sunseting requirements do not apply to instruments made under section 303DB of the EPBC Act. This sunseting exemption has applied to the List since the sunseting regime was established by the Legislation Act on 1 January 2005. This means that the amendments given effect by the Instrument will be enduring.

The List is not appropriate for sunseting. The List is a list of native specimens that are exempt from export regulations. Specimens included on the list (in the exact form listed and subject to stated conditions) may be allowed to be exported without a permit. The List includes only specimens that are, or are derived from, Australian native animals and plants.

Listing these specimens in the list will allow the export of these specimens without the need for export permits until 30 June 2028.

Amendments are made to the list following a stringent statutory review process set out in the EPBC Act, which provides an appropriate review mechanism to ensure the currency and accuracy of the List.

### **Other**

The Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

This instrument is legislative instrument for the purposes of the Legislation Act.

Authority: section 303DC(1) of the *Environment Protection and Biodiversity Conservation Act 1999*

**Details of the *List of Exempt Native Specimens Amendment (Commonwealth Southern and Eastern Scalefish and Shark Fishery) Instrument, June 2025***

**Section 1 – Name**

This section provides that the title of the instrument is the *List of Exempt Native Specimens Amendment (Commonwealth Southern and Eastern Scalefish and Shark Fishery) Instrument, June 2025* (the Instrument).

**Section 2 – Commencement**

This section provides that the Instrument commences on the day after it is registered.

**Section 3 – Authority**

This section provides that the Instrument is made under paragraph 303DC(1)(a) of the *Environment Protection and Biodiversity Conservation Act 1999*.

**Section 4 – Definitions**

This section sets out definitions of terms used in the instrument.

**Section 5 – Schedules**

This section is a machinery clause which provides that the *List of Exempt Native Specimens Instrument 2001* (Principal Instrument) is amended as set out in the applicable items in Schedule 1, and any other item in Schedule 1 to the Instrument has effect according to its terms.

**Item 1 – Freshwater and Marine Animals**

Item 1 amends the List under the heading “Freshwater and Marine Animals” to omit specimens in the table that are or are derived from fish or invertebrates taken in the Commonwealth Southern and Eastern Scalefish and Shark Fishery, and associated notations in the Schedule to the Instrument.

**Item 2 – Freshwater and Marine Animals**

Item 1 amends the List under the heading “Freshwater and Marine Animals” to insert into the List; in the place of the omitted row/s, specimens that are or are derived from fish or invertebrates taken in the Commonwealth Southern and Eastern Scalefish and Shark 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 the specimens are included in the List until 30 June 2028.

## **Statement of Compatibility with Human Rights**

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

### **List of Exempt Native Specimens Amendment (Commonwealth Southern and Eastern Scalefish and Shark Fishery) Instrument, June 2025**

This Disallowable 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 Disallowable Legislative Instrument**

The purpose of this instrument is to amend the *Environment Protection and Biodiversity Conservation Act 1999* List of Exempt Native Specimens (the List) to:

- omit from the List specimens that are or are derived from fish or invertebrates taken in the Commonwealth Southern and Eastern Scalefish and Shark Fishery, and any associated notations specified in the Schedule to the Instrument.
- insert in the List specimens that are or are derived from fish or invertebrates taken in the Commonwealth Southern and Eastern Scalefish and Shark 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 was derived, was taken lawfully;
  - the specimens are included in the list until 30 June 2028.

Listing these specimens in the List will allow the export of these specimens without the need for export permits until 30 June 2028.

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/scalefish>.

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

#### **Human rights implications**

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Murray Watt, Minister for the Environment and Water**