

EXPLANATORY STATEMENT

(Issued by the Minister for the Environment and Energy)

Environment Protection and Biodiversity Conservation Act 1999

List of CITES Species

Declaration of a stricter domestic measure in accordance with section 303CB

The *Environment Protection and Biodiversity Conservation Act 1999* (the Act) provides for the protection of the environment, including wildlife that may be adversely affected by trade, and the implementation of Australia's international environmental responsibilities.

Section 303CA of the Act provides for the establishment of a list of Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) species. Under CITES (Article XIV, paragraph 1), Parties maintain the right to adopt stricter domestic measures regarding the conditions of trade, taking, possession or transport of specimens included in Appendices I, II and III of the Convention, or the complete prohibition thereof. Section 303CB of the Act enables the Minister to declare stricter domestic measures.

All species within the order *Cetacea* (which includes all whales, porpoises and dolphins) are listed on Appendix II to CITES, except those species (e.g. the great whales) that are listed on Appendix I.

The purpose of this instrument is to make a declaration, consistent with section 303CB(2)(a) of the Act, to introduce a stricter domestic measure to treat all cetacean species currently included in Appendix II as if they were included in Appendix I to CITES.

Under sections 303CD(6)(b) of the Act, Appendix I listed non-live specimens may only be imported or exported if a certificate has been issued to the effect that the specimen was acquired before the provisions of CITES applied to the specimen. International movement of non-live specimens may also occur as part of a non-commercial exchange of scientific specimens between registered scientific institutions, or for research, educational or exhibition purposes (sections 303CC(3), 303CD(5) and 303FB(a), (b), (c) and (g) of the Act). Appendix I listed live specimens may only be moved internationally for research and education purposes, or as part of an approved cooperative conservation breeding program (sections 303FB (a), (b) and (d) of the Act). As cetaceans are not on the *List of species taken to be suitable for live import*, the import provisions do not apply to the species.

Australia is a world leader in cetacean protection and conservation. A stricter domestic measure to treat all cetaceans as though they are listed on Appendix I to CITES was first introduced in 2007. Before that time, the international movement of cetaceans was regulated under both Part 13 and Part 13A of the Act.

This instrument remakes the stricter domestic measure made under the Act, to ensure cetaceans continue to be given the highest level of protection. In particular, by treating all cetaceans as though they are listed on Appendix I to CITES. The instrument will maintain the prohibition on the import of personally-owned or commercially-harvested specimens taken from any cetacean following the date that species was listed under CITES.

The instrument aligns with the Australian Government's longstanding commitment to the protection of whales and other cetaceans. Australia is the leader of the pro-conservation bloc within the International Whaling Commission. Our strong, principled approach in the

Commission and our credibility is based in part on cetaceans being afforded the highest level of protection in Australian waters.

This instrument is considered to be minor and machinery in nature and does not alter existing arrangements. As such, public consultation on the remaking of this instrument was not undertaken.

The Office of Best Practice Regulation, Department of Prime Minister and Cabinet, have advised that the regulatory impact of the measure is likely to be minor and that a Regulatory Impact Statement is therefore not required for the remaking of this instrument.

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

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

The instrument will commence on 1 April 2017.

Authority: sections 303CB(1) of the *Environment Protection and Biodiversity Conservation Act 1999*.

Statement of Compatibility with Human Rights

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

Amendment to List of CITES Species

Declaration of a stricter domestic measure

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

Overview of the Legislative Instrument

The purpose of this Legislative Instrument is to declare a stricter domestic measure pursuant to subsection 303CB(1) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to treat all species in the order *Cetacea* (all whales, porpoises and dolphins) currently included in Appendix II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), as if they were included in Appendix I to CITES. The introduction of this stricter domestic measure is required to support Australia's strong commitment to providing cetaceans with the highest level of protection.

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.

Josh Frydenberg, Minister for the Environment and Energy