

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens – South Australian Marine Scalefish Fishery, March 2019

(Issued by the authority of the delegate of the Minister for the Environment)

in accordance with Section 303DC

Section 303DB of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides for the establishment of a list of exempt native specimens. Specimens included in the list are exempt from the trade control provisions that apply to regulated native specimens.

The effect of this instrument is to **delete** specimens from the list of exempt native specimens taken in the South Australian Marine Scalefish Fishery specified in **Schedule 1**. The instrument also **includes** specimens from the same South Australian Marine Scalefish Fishery in the list of exempt native specimens, 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 dates specified in **Schedule 2**.

All state 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 on the South Australian legislation website at www.legislation.sa.gov.au (as of March 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*).

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

The only effect of this instrument is to continue the export approval for the specimens taken in this fishery until the dates specified in **Schedule 2**.

A strategic assessment under the provisions of Part 10 of the EPBC Act is only required for fisheries managed under the *Fisheries Management Act 1991* (Cth) or the *Torres Strait Fisheries Act 1984* (Cth). 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.

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The list of exempt native specimens 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 of exempt native specimens, 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 of exempt native specimens.

In determining to include the specimens in the list of exempt native specimens regard was had to the Australian Government's 'Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition.' Those Guidelines establish the criteria for assessment of the ecological sustainability of the relevant fishery's management arrangements.

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 South Australian Department of Primary Industries and Regions has been consulted and supports amending the list of exempt native specimens to include product derived from the South Australian Marine Scalefish Fishery. In addition, the proposal to amend the list of exempt native specimens is currently advertised on the Department of the Environment and Energy's website and comment was invited from interested people for a period of 24 business days.

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

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 effect of this instrument is to **delete** specimens from the list of exempt native specimens taken in the South Australian Marine Scalefish Fishery specified in **Schedule 1**. The instrument also **includes** specimens from the same South Australian Marine Scalefish Fishery in the list of exempt native specimens, 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 dates specified in Schedule 2.

The only effect of this instrument is to extend the export approval until the dates 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.

Paul Murphy, Assistant Secretary, Wildlife Trade and Biosecurity Branch (Delegate of the Minister for the Environment)

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