

# EXPLANATORY STATEMENT

*Environment Protection and Biodiversity Conservation Act 1999*

## ***Amendment of List of Exempt Native Specimens – Queensland Commercial Trawl (Fin Fish) Fishery, August 2020***

(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***

On 19 December 2019 the Queensland Department of Agriculture and Fisheries (QDAF) applied for assessment of the Queensland Commercial Trawl (Fin Fish) Fishery under wildlife trade and protected species provisions of the EPBC Act. In assessing this application, the Department of Agriculture, Water and the Environment (the Department) sought public comments on the application and information from QDAF to assess the management arrangements for the fishery.

The purpose of this instrument is to **revise** the conditions to which the inclusion of the following item in the list on 29 May 2020 is subject:

Specimen that are, or are derived from, fish or invertebrates taken in the Queensland Commercial Trawl (Fin Fish) Fishery as defined in the management regime in force under the *Fisheries Act 1994* (Queensland) and *Fisheries (General) Regulation 2019*, *Fisheries (Commercial Fisheries) Regulation 2019*, *Fisheries Declaration 2019* and *Fisheries Quota Declaration 2019* (Queensland), 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).

The instrument revises the conditions by revoking the words:

- The specimen, or the fish or invertebrate from which it is derived, was taken lawfully and the specimens are included in the list until 31 August 2020.

And replacing these words with:

Unique Identifying Number:

EPBC303DC/SFS/2020/05

- the specimen, or the fish or invertebrate from which it is derived, was taken lawfully; and
- the specimens are covered by the declaration of an approved wildlife trade operation under section 303FN of the EPBC Act in relation to the fishery.

Revoking the conditions and imposing the above conditions will allow continued export of these specimens without the need for export permits until 31 August 2023. A link to the instrument is accessible via the Department of the Environment and Energy's (the Department's) website at <http://www.environment.gov.au/marine/fisheries/qld/commercial-trawl>.

### ***Incorporation***

All Queensland legislation referred to in the instrument is incorporated as in force at the time this instrument commences. All Queensland legislation incorporated by reference in the instrument can be freely accessed on the Queensland Legislation website: <https://www.legislation.qld.gov.au/> (as of July 2020).

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 not required***

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.

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 the Schedule are taken or derived.

The fishery listed in the **Schedule** 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 fishery named in the **Schedule**.

### ***Precautionary principle***

Under section 391(1) of the EPBC Act, the Minister must take account of the precautionary principle when deciding whether to amend the list and when deciding whether to declare an operation to be an approved wildlife trade operation.

Section 391(2) of the EPBC Act provides that the precautionary principle is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent

Unique Identifying Number:

EPBC303DC/SFS/2020/05

degradation of the environment where there are threats of serious or irreversible environmental damage.

Assessment of the fishery identified a range of issues that require attention by QDAF. The conditions proposed for inclusion on Part 13 and 13A approvals are designed to address these issues and represent a precautionary approach to the management of environmental uncertainty and risk. The management regime, when supported by these conditions is expected to be enough to prevent serious or irreversible environmental damage being caused by this fishery.

### ***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 taxa listed under section 209 of the EPBC Act (Australia's List of Migratory Species), or specimens that belong to taxa listed under section 248 of the EPBC Act (Australia's List of Marine Species).

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.

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 – 2<sup>nd</sup> 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 Commercial Trawl (Fin Fish) Fishery.

In addition, the proposal to amend the list was advertised on the Department's website and comment was invited from interested persons 20 December 2019 to 31 January 2020 (a total of 24 business days excluding all state, territory and national public holidays).

Unique Identifying Number:

EPBC303DC/SFS/2020/05

Two public submissions were received which raised concerns regarding:

- Potential impacts of the fishery on the adjacent Coral Sea Marine Park, its habitats, species and ecology.
- The extent that ecological risks had been assessed given the limited bycatch data available, the extent of bycatch reporting and measures to minimise the potential impacts of the fishery on migratory and transitory species in the Coral Sea Marine Park.
- Potential risks to larger-bodied protected species, associated with fishing with Danish Seine gear, given there is no requirement for Turtle Excluder Devices to be used with that gear.
- Potential conflicts and cumulative impacts associated with commercial and non-commercial fishing sectors, particularly as the fishery extends into shallower, inshore waters under trial arrangements.

These matters were considered throughout the assessment of the fishery and have either been addressed by QDAF or are being addressed via conditions on protected species (Part 13) and wildlife trade (Part 13A) approvals granted in association with this amendment of the List of Exempt Native Specimens.

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

The instrument commences the day after it is registered.

Unique Identifying Number:

EPBC303DC/SFS/2020/05

## Statement of Compatibility with Human Rights

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

### ***Amendment of List of Exempt Native Specimens – Queensland Commercial Trawl (Fin Fish) Fishery, August 2020***

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*.

#### ***Purpose and operation***

On 19 December 2019 the Queensland Department of Agriculture and Fisheries (QDAF) applied for assessment of the Queensland Commercial Trawl (Fin Fish) Fishery under wildlife trade and protected species provisions of the EPBC Act. In assessing this application, the Department of Agriculture, Water and the Environment (the Department) sought public comments on the application and information from QDAF to assess the management arrangements for the fishery.

The purpose of this instrument is to **revise** the conditions to which the inclusion of the following item in the list on 29 May 2020 is subject:

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- v. specimens that belong to taxa listed under section 209 of the EPBC Act (Australia's list of Migratory Species), or
- vi. specimens that belong to taxa listed under section 248 of the EPBC Act (Australia's list of Marine Species), or
- vii. specimens that belong to eligible listed threatened species, as defined under section 303BC of the EPBC Act, or
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<http://www.environment.gov.au/marine/fisheries/qld/commercial-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.

**Stephen Oxley**

**First Assistant Secretary**

**Heritage, Reef and Wildlife Trade Division**