

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens – Commonwealth Southern and Eastern Scalefish and Shark Fishery, February 2022

(Issued by the authority of the delegate of the Minister for the Environment 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 Southern and Eastern Scalefish and Shark 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 Agriculture, Water and the Environment's (the department) website at:

<http://www.environment.gov.au/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 as specified in **Schedule 2**.

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

Unique Identifying Number:

EPBC303DC/SFS/2022/01

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 May 2007. That assessment concluded that actions approved or taken in accordance with the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003*, as amended by the *Southern and Eastern Scalefish and Shark Fishery Management Plan Amendment 2006 (No. 2)*, would not have an unacceptable or unsustainable impact on the environment in a Commonwealth marine area. Consequently, the management plan was accredited under section 33 of the EPBC Act.

In making a decision to accredit the management plan, the Minister relied primarily on the outcomes of the 2007 assessment carried out for the purposes of Divisions 1 and 2 of the 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 of exempt native specimens, 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 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.

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 – 2nd Edition*.' These Guidelines establish the criteria for assessment of the ecological sustainability of the fishery's management arrangements.

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

<https://www.awe.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 (AFMA) has been consulted and supports amending the list to include product derived from the fishery.

In addition, the proposal to amend the list was advertised on the department's website and comment was invited from interested people for 24 business days from 10 September 2021 to 15 October 2021.

One public comment was received on the submission. The public comment raised concerns about target stock management, management to address risks to threatened, protected species and habitats, failure to recover conservation dependent listed species and endemic chondrichthyans at high risk from fishing.

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/2022/01

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 – Southern and Eastern Scalefish and Shark Fishery, February 2022

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 Southern and Eastern Scalefish and Shark 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, 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 Agriculture, Water and the Environment's website at: <http://www.environment.gov.au/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 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.

Adam Sincock, Delegate of the Minister for the Environment

Unique Identifying Number:
EPBC303DC/SFS/2022/01