

EXPLANATORY STATEMENT

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

Environment Protection and Biodiversity Conservation Act 1999

List of CITES Species Amendment (2022/014019) Instrument 2022

Legislative Authority

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.

Subsection 303CA(1) provides that the Minister must, by legislative instrument, establish a list of species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (the Convention) for the purposes of the Act. Under subsection 303CA(3) of the Act, the list must include all species from time to time included in any of Appendices I, II and III to the Convention. Subsections 303CA(9)(b) and (c) of the Act together provide that the Minister may amend the list, as necessary, so that it includes all species required to be included in the list under subsection 303CA(3) and so that the notations in the list are consistent with the Convention.

Under Article XVI, paragraph 1 of the Convention, Parties may at any time, submit to the Secretariat, a list of species which has been identified as being subject to regulation within its jurisdiction for the purposes of Article II, paragraph 3 of the Convention. Each list submitted under Article XVI, paragraph 1 of the Convention shall be communicated to the Parties as soon as possible after receiving it and the list shall take effect as part of the Appendix III 90 days after the date of communication.

Purpose of the instrument

The purpose of this legislative instrument is to update the list of CITES species for the purposes of the Act to include the below amendments.

The Convention's Notification to the Parties 2022/014 (dated 15 March 2022) advised that France requested the Secretariat to amend and include a new species for listing under Appendix III to the Convention. Additionally, the Convention's Notification to the Parties 2022/019 (dated 24 March 2022) advised that Australia requested the Secretariat to amend and include new species for listing under Appendix III to the Convention.

France has requested the inclusion of Clipperton angelfish (*Holacanthus lambaughii*) in Appendix III to the Convention. This amendment is considered to have no practical impact for Australia. Australia did not undertake any stakeholder consultation as Australia is not a range state for the species covered by the listing request (that is, it does not occur naturally in Australia). Further, the species cannot be legally imported to Australia under the Act.

Australia has requested the inclusion of 127 Australian endemic reptiles (skinks, dragons and geckos) in Appendix III to the Convention. There has been extensive consultation with Australian state and territory governments (February 2021-January 2022), a public consultation (November 2021) and consultation with the CITES Secretariat (July 2021-September 2021), CITES nomenclature specialist (July 2021) and CITES Animal Committee (July 2021-September 2021) on these species. The Act currently regulates the export of native reptiles and reptile product.

Live native reptiles are not permitted to be exported for commercial purposes, including for the pet industry. Any export of live native reptiles currently requires an export permit, and, for live specimens, these are only available in very limited non-commercial export circumstances. Commercial products produced from reptiles must be derived from a program approved under the Act. Listing these reptiles in Appendix III to the Convention imposes no additional regulatory burden domestically but imposes requirements on international movement once outside of Australia. There are currently no known Australian businesses trading in products made or derived from these reptiles.

Consultation

Australia does not propose to enter a reservation to either amendment. The actions are consistent with Australia's strong commitment to the Convention and international cooperation for the protection and conservation of wildlife more generally. The Office of Best Practice Regulation have advised that these amendments will have minor regulatory impacts.

The Joint Standing Committee on Treaties (JSCOT) has considered the inclusion of 127 Australian endemic reptiles in Appendix III to the Convention and endorsed the amendment as a minor treaty action. This amendment comes into force internationally on 22 June 2022. The Clipperton angelfish amendment comes into force internationally on 13 June 2022. The legislative instrument was made prior to the JSCOT reporting on the amendment.

The Department of Foreign Affairs and Trade have been consulted on both amendments.

These updates to the list of CITES species are in accordance with Australia's international commitment to implement the Convention. The amendments put into effect by this legislative instrument are considered to have little impact on Australia.

This update to the CITES list is a legislative instrument for the purposes of the *Legislation Act 2003*.

Section 42 of the *Legislation Act 2003* (disallowance of legislative instruments) does not apply (see *Legislation (Exemptions and Other Matters) Regulation 2015*, section 10, item 15). Amendments to the CITES list are required in order to comply with Australia's international obligations under the Convention. Furthermore, the assessment of whether to include species on the CITES list are decisions of a technical and scientific nature.

The legislative instrument commences the day after registration. Schedule 1 of the legislative instrument commences on 13 June 2022, with the effect of including the Clipperton angelfish on the list, and Schedule 2 commences on 22 June 2022 for the inclusion of the 127 Australian endemic reptiles. This aligns with the commencement of the amendments advised in the Convention's Notification to the Parties 2022/014 and 2022/019.