**EXPLANATORY STATEMENT**

*Environment Protection and Biodiversity Conservation Act 1999*

**List of Specimens taken to be Suitable for Live Import Amendment**

**(*Stomphastis thraustica*) Instrument 2022**

Instrument under subparagraphs 303EC(1)(a)(i) and 303EC(1)(a)(iii)

Issued under authority of the Minister for the Environment and Water

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), a live specimen is taken to be suitable for import if it is included on the *List of Specimens Taken to be Suitable for Live Import (29/11/2001)* (Live Import List).

**Legislative Background**

The Live Import List (the list) was established under section 303EB of the EPBC Act and has two parts. Part 1 comprises a list of unregulated specimens exempt from the requirement for an import permit under the EPBC Act. Part 1 must not contain a CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) specimen. Part 2 comprises a list of allowable regulated specimens that can be imported with a permit issued by the Minister, along with notation of any restrictions or conditions.

Subsection 303EC(1) of the EPBC Act relevantly provides that the Minister may, by legislative instrument, amend the Live Import List by:

* including items in a particular part of the list;
* deleting items from a particular part of the list;
* imposing a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject;
* varying or revoking a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject; or
* correcting an inaccuracy or updating the name of a species.

Amendments to include an item can be made either on the initiative of the Minister, under section 303ED of the EPBC Act, or by application from a person made under section 303EE of the EPBC Act.

Subsection 303EC(3) of the EPBC Act provides that before amending the list referred to in section 303EB as mentioned in paragraph 303EC(1)(a), the Minister:

* must consult such other Minister or Ministers as the Minister considers appropriate; and
* must consult such other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and
* may consult such other persons and organisations as the Minister considers appropriate.

Further, subsection 303EC(5) of the EPBC Act provides that the Minister must not amend the list referred to in section 303EB by including an item in the list, unless:

* the amendment is made following consideration of a relevant report under section 303ED or 303EE; or
* the amendment is made following consideration of a relevant review under section 303EJ.

**Purpose**

The purpose of this instrument is to amend Part 2 of the *List of Specimens taken to be Suitable for Live Import (29/11/2001)* to include *Stomphastis thraustica* (a leaf mining moth) in accordance with section 303EC of the EPBC Act.

The *List of Specimens taken to be Suitable for Live Import Amendment (Stomphastis thraustica) Instrument 2022* amends the Live Import List to include *Stomphastis thraustica* (commonly known as a leaf mining moth) in Part 2 with the condition: Peru sourced specimens only.

This amendment to the list to add *Stomphastis thraustica* was initiated by an application made to the Minister under section 303EE of the EPBC Act. An assessment of the potential impacts on the environment of the proposed amendments was reported to the Minister, in accordance with subsection 303EE(4).

**Consultation**

In accordance with paragraph 303EF(2)(b) of the EPBC Act, the draft assessment report was published on the former Department of Agriculture, Water and the Environment’s (department) website and public comments were sought in August 2021. Comments were received and minor changes were made to the application and draft report.

Consultation concerning the amendment to Part 2 of the list was also carried out, in accordance with subsection 303EC(3) of the EPBC Act. In this case, the department consulted with relevant Commonwealth, state and territory agencies for the environment, conservation and agriculture. One state agency submission was received supporting the release of *Stomphastis thraustica* and another from a private individual raising concerns that were addressed by an expert in taxonomy and did not impact the final risk assessment.

This instrument was drafted following detailed consultation with the above stakeholders on the proposed inclusion of *Stomphastis thraustica* to the Live Import List. Due to the extensive nature of this consultation process, it was considered unnecessary to undertake additional consultation in relation to the specific instrument.

The final assessment report was provided to the Minister. In accordance with paragraph 303EC(5)(a) of the EPBC Act, the Minister considered the report before deciding to amend the list to include *Stomphastis thraustica* in Part 2 of the list.

**Impact and Effect**

*S.thraustica* has been recorded from Africa (Benin, Botswana, Central African Republic of Congo, Ghana, Kenya, Madagascar, Mozambique, Namibia, Nigeria, Reunion Island, Senegal, South Africa, Uganda and Zimbabwe), and Asia (China, India, Indonesia and Malaysia) (De Prins and De Prins 2021b). The *S. thraustica* colony from Peru with which host specificity testing was conducted is genetically distinct from *S. thraustica* populations found in Africa. Release in Australia has only been sought for *S. thraustica* from Peru given there may be differences in host specificity of *S. thraustica* between African/Asian and Peruvian populations. On this basis, *Stomphastis thraustica* will be listed in Part 2 of the list, with the condition of ‘Peru sourced specimens only’.

The final risk assessment report was provided to the Minister. In accordance with paragraph 303EC(5)(a) of the EPBC Act, the Minister considered the report before deciding to amend the list to include *Stomphastis thraustica* in Part 2 of the Live Import List.

The Minister has considered the risk assessment report made under s 303EE(4) of the EPBC Act and on that basis has made the instrument.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. It commences the day after registration.

**Statement of Compatibility with Human Rights**

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

***Environment Protection and Biodiversity Conservation Act 1999***

**List of Specimens taken to be Suitable for Live Import Amendment**

**(*Stomphastis thraustica*) Instrument 2022**

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 instrument is to amend Part 2 of the *List of Specimens taken to be Suitable for Live Import (29/11/2001)* to include *Stomphastis thraustica* (a leaf mining moth) in accordance with section 303EC of the *Environment Protection and Biodiversity Conservation Act 1999*.

**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.

**The Hon Tanya Plibersek**

**Minister for the Environment and Water**