

EXPLANATORY STATEMENT

(Issued under the Authority of the Minister for the Environment and Water)

Environment Protection and Biodiversity Conservation Act 1999

List of Threatened Species Amendment (397) Instrument 2023

Background

The *Environment Protection and Biodiversity Conservation Act 1999* (**Act**) provides for the protection of the environment and conservation of biodiversity, including the protection and conservation of threatened species.

Subsection 178(1) of the Act provides that the Minister must, by legislative instrument, establish a list of threatened species separated into the following categories: Extinct, Extinct in the wild, Critically Endangered, Endangered, Vulnerable and Conservation Dependent. This list referred to in subsection 178(1) of the Act is contained in the *Declaration under s178, s181, and s183 of the Environment Protection and Biodiversity Conservation Act 1999* (**List**).

Paragraph 184(a) of the Act relevantly provides that the Minister may, by legislative instrument, amend the List referred to in section 178 by including items within the List in accordance with Subdivision AA.

Paragraph 184(c) of the Act relevantly provides that the Minister may, by legislative instrument, amend the List referred to in section 178 by transferring items from one category in the list to another category in the list in accordance with Subdivision AA.

The species being included and/or transferred in the List met the criteria for listing in the Vulnerable and Endangered category under the *Environment Protection and Biodiversity Conservation Regulations 2000* (**Regulations**).

Purpose of Instrument

The purpose of this Instrument is to amend the List by:

- Including the following species:
 - *Limosa limosa* in the Endangered category.
 - *Tringa nebularia* in the Endangered category.
 - *Arenaria interpres* in the Vulnerable category.
 - *Calidris acuminata* in the Vulnerable category.
 - *Gallinago hardwickii* in the Vulnerable category.
 - *Limnodromus semipalmatus* in the Vulnerable category.
 - *Pluvialis squatarola* in the Vulnerable category.
 - *Xenus cinereus* in the Vulnerable category.

- Transferring the following species by deleting the species from the Vulnerable category in the List and including it in the Endangered category in the List:
 - *Limosa lapponica baueri*
- Transferring the following species by deleting the species from the Critically Endangered category in the List and including it in the Endangered category in the List:
 - *Limosa lapponica menzbieri*
- Transferring the following species by deleting the species from the Critically Endangered category in the List and including it in the Vulnerable category in the List:
 - *Calidris tenuirostris*
- Transferring the following species by deleting the species from the Endangered category in the List and including it in the Vulnerable category in the List:
 - *Calidris canutus*

The species considered in this Instrument are all threatened due to habitat loss and disturbance at roosting and feeding sites within Australia and across the East-Asian – Australasian Flyway.

Subsection 186(1) of the Act provides that the Minister must not include (whether as a result of a transfer or otherwise) a native species on the List in a particular category unless satisfied that the native species is eligible to be included in that category.

Subsection 186(2B) of the Act provides that in deciding whether to delete a native species from a particular category (whether as a result of a transfer or otherwise), the only matters the Minister may consider are matters relating to whether the native species is eligible to be included in that category or the effect that the inclusion of the native species in that category is having, or could have, on the survival of the species.

Subsection 179(4) of the Act provides that a native species is eligible to be included in the Endangered category at a particular time if, at that time, it is not critically endangered and it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.

Subsection 179(5) of the Act provides that a native species is eligible to be included in the Vulnerable category at a particular time if, at that time, it is not critically endangered and it is facing a high risk of extinction in the wild in the near future, as determined in accordance with the prescribed criteria.

Regulation 7.01 of the Regulations provides that for section 179 of the Act, a native species is in the Critically Endangered, Endangered or Vulnerable category if it meets any of the five criteria for the category mentioned in the table to that provision.

The Minister was satisfied that the requisite criteria was met for including *Limosa limosa* and *Tringa nebularia* in the Endangered category in the List. The Minister was satisfied that the

requisite criteria was met for including *Arenaria interpres*, *Calidris acuminata*, *Gallinago hardwickii*, *Limnodromus semipalmatus*, *Pluvialis squatarola* and *Xenus cinereus* in the Vulnerable category in the List. The Minister was satisfied that the requisite criteria was met for transferring *Limosa lapponica baueri* from the Vulnerable to the Endangered category within the List. The Minister was satisfied that the requisite criteria was met for transferring *Limosa lapponica menzbieri* from the Critically Endangered category to the Endangered category within the List. The Minister was satisfied that the requisite criteria was met for transferring *Calidris tenuirostris* from the Critically Endangered category to the Vulnerable category within the List. The Minister was satisfied that the requisite criteria was met for transferring *Calidris canutus* from the Endangered category to the Vulnerable category within the List.

Consultation

The process for making amendments to the List to include or transfer an item is set out in Part 13, Division 1, Subdivision AA of the Act. Consultation was undertaken before the Instrument was made, in accordance with the processes outlined in Part 13, Division 1, Subdivision AA of the Act.

Notice of the proposed amendment and a consultation document was made available for public comment for a minimum of 30 business days as required by subsection 194M(3) of the Act. Any public comments received that were relevant to the survival of the species were considered by the Threatened Species Scientific Committee (**Committee**) as part of the assessment process.

The Committee prepared a written assessment of whether the nominated species was eligible for inclusion in the List. The Committee assessed *Limosa limosa* and *Tringa nebularia* as eligible for inclusion in the Endangered category in the List. The Committee assessed *Arenaria interpres*, *Calidris acuminata*, *Gallinago hardwickii*, *Limnodromus semipalmatus*, *Pluvialis squatarola* and *Xenus cinereus* as eligible for inclusion in the Vulnerable category in the List. The Committee assessed *Limosa lapponica baueri* as eligible for transfer from the Vulnerable category to the Endangered category within the List. The Committee assessed *Limosa lapponica menzbieri* as eligible for transfer from the Critically Endangered category to the Endangered category within the List. The Committee assessed *Calidris tenuirostris* as eligible for transfer from the Critically Endangered category to the Vulnerable category within the List. The Committee assessed *Calidris canutus* as eligible for transfer from the Endangered category to the Vulnerable category within the List.

In making this Instrument, the Minister considered the Committee's written assessment and any comments received during the consultation period in accordance with Part 13, Division 1, Subdivision AA of the Act.

Given the extensive consultation undertaken on the proposed listing contained in the legislative instrument, it was not necessary to consult on the text of the instrument itself.

Details/ Operation

Details of the Instrument are set out in [Attachment A](#).

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

The Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A statement of compatibility is set out in Attachment B.

Authority: sections 178 and 184(a) and 184(c) of the *Environment Protection and Biodiversity Conservation Act 1999*.

Details of the *List of Threatened Species Amendment (397) Instrument 2023*

Section 1 – Name

This section provides that the name of this instrument is the *List of Threatened Species Amendment (397) Instrument 2023*.

Section 2 – Commencement

This section provides that this instrument commences on the day after it is registered.

Section 3 – Authority

This section provides that this instrument is made under section 184 of the *Environment Protection and Biodiversity Conservation Act 1999*.

Section 4 – Schedules

This section specifies that the *Declaration under s178, s181, and s183 of the Environment Protection and Biodiversity Conservation Act 1999* (principal instrument) is amended as outlined in Schedule 1 of the instrument.

Schedule 1- Amendments

Declaration under s178, s181, and s183 of the Environment Protection and Biodiversity Conservation Act 1999

Item 1 – SPECIES THAT ARE ENDANGERED

Item 1 amends the list under the heading “SPECIES THAT ARE ENDANGERED” to include in the appropriate position each of the following species:

- (a) *Limosa lapponica baueri*
- (b) *Limosa lapponica menzbieri*
- (c) *Limosa limosa*
- (d) *Tringa nebularia*

Item 2 – SPECIES THAT ARE VULNERABLE

Item 2 amends the list under the heading “SPECIES THAT ARE VULNERABLE” to include in the appropriate position the following species:

- (a) *Arenaria interpres*
- (b) *Calidris acuminata*
- (c) *Calidris canutus*
- (d) *Calidris tenuirostris*
- (e) *Gallinago hardwickii*
- (f) *Limnodromus semipalmatus*
- (g) *Pluvialis squatarola*
- (h) *Xenus cinereus*

Item 3 – SPECIES THAT ARE CRITICALLY ENDANGERED

Item 3 amends the list under the heading “SPECIES THAT ARE CRITICALLY ENDANGERED” to omit in the appropriate position each of the following species:

- (a) *Calidris tenuirostris*
- (b) *Limosa lapponica menzbieri*

Item 4 – SPECIES THAT ARE ENDANGERED

Item 4 amends the list under the heading “SPECIES THAT ARE ENDANGERED” to omit in the appropriate position the following species:

- (a) *Calidris canutus*

Item 5 – SPECIES THAT ARE VULNERABLE

Item 5 amends the list under the heading “SPECIES THAT ARE VULNERABLE” to omit in the appropriate position the following species:

- (a) *Limosa lapponica baueri*

Statement of Compatibility with Human Rights

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

List of Threatened Species Amendment (397) Instrument 2023

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 the *Environment Protection and Biodiversity Conservation Act 1999* list of threatened species to:

- Include *Limosa limosa* in the Endangered category.
- Include *Tringa nebularia* in the Endangered category.
- Include *Arenaria interpres* in the Vulnerable category.
- Include *Calidris acuminata* in the Vulnerable category.
- Include *Gallinago hardwickii* in the Vulnerable category.
- Include *Limnodromus semipalmatus* in the Vulnerable category.
- Include *Pluvialis squatarola* in the Vulnerable category.
- Include *Xenus cinereus* in the Vulnerable category.
- Transfer *Limosa lapponica baueri* from the Vulnerable to the Endangered category.
- Transfer *Limosa lapponica menzbieri* from the Critically Endangered to the Endangered category.
- Transfer *Calidris tenuirostris* from the Critically Endangered to the Vulnerable category.
- Transfer *Calidris canutus* from the Endangered to the Vulnerable category.

The species being included and/or transferred in the List met the criteria for listing in the relevant category under the *Environment Protection and Biodiversity Conservation Regulations 2000*.

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 MP
Minister for the Environment and Water