

# EXPLANATORY STATEMENT

*Environment Protection and Biodiversity Conservation Act 1999*

## **List of Specimens taken to be Suitable for Live Import Amendment (seven species of rainbowfish) Instrument 2023**

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 in the *List of Specimens taken to be Suitable for Live Import (29/11/2001)* (Live Import List).

### **Legislative background**

The Live Import 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 of the list must not contain a CITES 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 attached to the inclusion of a specimen.

Subsection 303EC(1) of the 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 section 303EE; or
- the amendment is made following consideration of a relevant review under section 303EJ.

### **Purpose**

The *List of Specimens taken to be Suitable for Live Import Amendment (seven species of rainbowfish) Instrument 2023* (the Amendment Instrument) amends the Live Import List to include *Kiunga ballochi*, *Kiunga bleheri*, *Pseudomugil connieae*, *Pseudomugil furcatus*, *Pseudomugil ivantsoffi*, *Pseudomugil luminatus* and *Pseudomugil reticulatus* in Part 2 with the condition: *Captive-bred specimens only, of minimum length 2 cm standard length (SL)*.

This amendment to the list to include *Kiunga ballochi*, *Kiunga bleheri*, *Pseudomugil connieae*, *Pseudomugil furcatus*, *Pseudomugil ivantsoffi*, *Pseudomugil luminatus* and *Pseudomugil reticulatus* 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(3).

### **Consultation**

In accordance with paragraph 303EF(2)(b) of the EPBC Act, the draft assessment report was published on the Department of Climate Change, Energy, the Environment and Water (the department) website and public comments sought between 14 October and 24 November 2022. Three responses were received in total, and included the New South Wales Government with no objection to the amendment provided conditions were imposed; and the Western Australian Government and a de-identified party both of which voiced concern over the listing of all species based on their IUCN conservation status.

Consultation concerning the amendment to Part 2 of the Live Import List was also carried out in accordance with paragraph 303EC(3)(c) of the EPBC Act. In this case, the department consulted with relevant Commonwealth, state and territory agencies for the environment, conservation and agriculture from 10 May to 17 June 2023. Comments were received from the Northern Territory, South Australian and Western Australian governments, which endorsed the listing of the 7 species.

The department concluded that the risk of the 7 species establishing feral populations and impacting on the Australian environment was low, and that the risk of misidentification with other species at the border would be mitigated by limiting import of this species with the description: *of minimum length 2 cm SL* (Standard Length – being the measurement from the snout to the end of the caudal peduncle).

Six species are listed by the International Union for Conservation of Nature (IUCN) as Critically Endangered, Endangered or Vulnerable in the wild. *Pseudomugil furcatus* has a very limited distribution, consequently it is likely to be vulnerable to overfishing, however, the IUCN lists it as data-deficient and does not make an assessment of its status in the wild.

Australia has responsibility under the Convention on Biological Diversity to ensure that activities within its jurisdiction do not cause damage to the environment of other states or areas. Noting this, the department recommends including 7 of these species in Part 2 of the Live Import List with the condition ‘Captive-bred specimens only, of minimum length 2 cm SL’.

In accordance with section 391 of the EPBC Act, the Minister considered the precautionary principle in making a decision to include an item on the Live Import List. The precautionary principle provides that a lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage. The assessment report considered the potential threat of serious or irreversible damage to the environment if *Kiunga ballochi*, *Kiunga bleheri*, *Pseudomugil connieae*, *Pseudomugil furcatus*, *Pseudomugil ivantsoffi*, *Pseudomugil luminatus* and *Pseudomugil reticulatus* were to be introduced and determined from the available scientific literature that these 7 species do not pose a threat of serious or irreversible damage.

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

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 *Kiunga ballochi*, *Kiunga bleheri*, *Pseudomugil connieae*, *Pseudomugil furcatus*, *Pseudomugil ivantsoffi*, *Pseudomugil luminatus* and *Pseudomugil reticulatus* on the Live Import List.

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***

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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 *Kiunga ballochi*, *Kiunga bleheri*, *Pseudomugil connieae*, *Pseudomugil furcatus*, *Pseudomugil ivantsoffi*, *Pseudomugil luminatus*, and *Pseudomugil reticulatus* 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 MP**  
**Minister for the Environment and Water**