

## EXPLANATORY STATEMENT

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

#### **Amendment of List of Exempt Native Specimens – Victorian Eel Fishery, June 2024**

(Issued by the authority of the Delegate of the Minister for the Environment and Water 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 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 Victorian Eel 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 Climate Change, Energy, the Environment and Water's (the department's) website at <https://www.dccew.gov.au/environment/marine/fisheries/vic/eel>.

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**.

#### **Incorporation**

All state and territory legislation referred to in **Schedule 2** to the instrument is incorporated as in force at the time this instrument commences. All state and territory legislation incorporated by reference in the instrument can be freely accessed at Victorian Legislation - <https://www.legislation.vic.gov.au/> (as of June 2024).

Commonwealth Acts and disallowable instruments (or instruments which were disallowable under Commonwealth legislation at any time before 1 January 2005) referred to in this 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 not required**

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.

A strategic assessment is only required for fisheries managed under the *Fisheries Management Act 1991* (Cth) or the *Torres Strait Fisheries Act 1984* (Cth). A strategic assessment may be made for commercial fisheries under Division 1. However, there are no current strategic assessments in respect of the fishery from which the specimens listed in Schedule 2 are taken or derived.

The fishery listed in **Schedule 2** to the instrument is not managed by the Commonwealth under the aforementioned Acts. Therefore, the EPBC Act does not require there to be a strategic assessment for the purposes of Part 10 of the Act in relation to the fishery named in **Schedule 2**.

The Australian Government and state and Northern Territory governments have negotiated Offshore Constitutional Settlement (OCS) arrangements that mandate each jurisdiction's responsibilities for managing the different fisheries resources in inshore and offshore areas. Under the OCS arrangements commercial fisheries managed by the states or the Northern Territory may operate in Commonwealth waters, but operators are subject to federal laws in relation to interactions with protected species and ecological communities, and for impacts on the Commonwealth marine area.

### **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, 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 that are 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 species.

### **Assessment of specimens**

In determining to include the specimens in the list, the minister's delegate had regard to the *Guidelines for the Ecologically Sustainable Management of Fisheries – 2<sup>nd</sup> 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 Climate Change, Energy, the Environment and Water's website at:

[www.dcceew.gov.au/environment/marine/publications/guidelines-ecologically-sustainable-management-fisheries](http://www.dcceew.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 Victorian Fisheries Authority 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 23 business days from 20 October 2023 to 21 November 2023 (excludes first day and public holidays). One comment was received. The public comment raised concerns with the harvest of glass eels, the stock status process used by VFA for eels and the absence of a harvest strategy in the fishery. The comment was considered by the minister's delegate in making their decision.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The instrument commences the day after it is registered.

# 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 – Victorian Eel Fishery, June 2024**

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 Victorian Eel Fishery (the fishery), and any associated notations, restrictions or conditions specified in **Schedule 1** to the instrument.

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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 Climate Change, Energy, the Environment and Water's website at <https://www.dcceew.gov.au/environment/marine/fisheries/vic/eel>.

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### **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.

**Belinda Jago, Delegate of the Minister for the Environment and Water**