

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Environment Protection and Biodiversity Conservation (National Recovery Plan for the Southern Right Whale (*Eubalaena australis*)) Instrument 2024

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

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 and ecological communities.

Legislative Authority

Part 13, Division 5, Subdivision A of the Act provides for the making or adoption, of recovery plans for listed threatened species or listed threatened ecological communities, which bind the Commonwealth and Commonwealth agencies.

Subsection 269A(3) of the Act provides that the Minister may make a written recovery plan for the purposes of the protection, conservation and management of a listed threatened species or listed threatened ecological community jointly with one or more of the States and self-governing Territories in which the species or community occurs.

Purpose of the Instrument

The purpose of this instrument is to make the National Recovery Plan for the Southern Right Whale (*Eubalaena australis*) jointly with Queensland, South Australia, Tasmania and Western Australia (**National Recovery Plan**).

The Southern right whale is listed in the endangered category in the list of threatened species under section 178 of the Act. The National Recovery Plan provides for the research and management actions necessary to stop the decline of, and support the recovery of, the Southern right whale in order to maximise its chances of long-term survival in nature. The species occurs in New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia, and the National Recovery Plan covers the full range of the species.

Exploitation of the Southern right whale by historic commercial whaling resulted in their dramatic population reduction, a reduction of their range, and there have been varying levels of recovery across the eastern Australian and western Australian populations. The key threats to the Southern right whale include anthropogenic climate change and climate variability, entanglement in fishing or aquaculture equipment, habitat degradation from coastal and offshore development, anthropogenic underwater noise, vessel collision, prey depletion from overfishing and whaling (if resumed at any time).

This is the third National Recovery Plan under the Act for the Southern right whale, which displaces the previous plan adopted under the Act in 2013, entitled: *Conservation Management Plan for the Southern Right Whale*

Exemption from sunseting

This instrument is exempt from sunseting in accordance with item 1 of the table under section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

This is because the National Recovery Plan has a primary purpose of giving effect to Australia's obligations under the *Convention on Biological Diversity* [1993] ATS 32 (Biodiversity Convention). Specifically, the National Recovery Plan will support the recovery of the Southern right whale through the development and implementation of a plan within the meaning of Art 8(f) of the Biodiversity Convention.

Consultation

In the development of the National Recovery Plan, a wide range of stakeholders were consulted including Queensland, South Australian, Tasmanian, New South Wales, Western Australian and Victorian government agencies, species experts, and not-for-profit and community conservation organisations.

In accordance with Section 275 of the Act, public comment was invited on the draft recovery plan for minimum of three months, from 20 January 2023 to 21 April 2023. A notice inviting comments on the draft recovery plan was advertised in the *Gazette*, *The Australian* newspaper and on the website of the Australian Government Department of Climate Change, Energy, the Environment and Water. Ten submissions were received on the draft recovery plan and, as required by Section 276 of the Act, all these comments were considered by the Minister in making the National Recovery Plan.

The Minister consulted with the Minister of each State and self-governing Territory in which the species occurs, as required by paragraph 269A(5)(a) of the Act. The Queensland, South Australian, Tasmanian, Western Australian and Victorian Ministers agreed to jointly make the plan. The New South Wales Minister declined the invitation to jointly make the plan.

In accordance with section 274 of the Act, the advice of the Threatened Species Scientific Committee was also obtained on the content of the National Recovery Plan, and considered by the Minister before making the plan.

Meeting the requirements of section 270 of the Act

Section 270 of the Act and Regulation 7.11 of the *Environment Protection and Biodiversity Conservation Regulations 2000 (Regulations)* require that recovery plans include certain content, such as stating the objectives of the plan and specifying the actions needed to achieve the objectives. The National Recovery Plan contains the content prescribed under the Act and the Regulations.

The Department of Climate Change, Energy, the Environment and Water, and the Threatened Species Scientific Committee assessed the plan and both concluded that it complies with the requirements of section 270 of the Act.

Subsection 270(1) of the Act provides that a recovery plan must provide for the research and management actions necessary to stop the decline of, and support the recovery of, the listed threatened subspecies concerned so that their long-term chances of survival in nature are

maximised. The jointly made plan was assessed as compliant in this respect. The jointly made plan provides an appropriate balance between identified research actions necessary to better understand the ecological requirements of the species, and management actions necessary to deal with the known threats and improve the species' prospects of survival.

Subsection 270(2) of the Act provides that a recovery plan must particularly include the material specified in that subsection. The jointly made plan states the:

- (a) objectives to be achieved;
- (b) criteria against which achievement of the objectives are to be measured;
- (c) actions needed to achieve the objectives; and
- (ca) the threats to the species.

The jointly made plan was assessed as compliant in respect of paragraphs (a), (b) and (c) and (ca) of subsection 270(2) of the Act.

Subsection 270(2A) of the Act provides that a recovery plan is only required to address certain matters identified in subsection 270(2) to the extent it is practicable to do so. This includes:

- (d) identifying habitats critical to survival of the species;
- (e) identifying populations under particular pressure of survival and the actions needed to protect those habitats;
- (f) stating the estimated duration and cost of the recovery process;
- (g) identifying interests that will be affected by the plan's implementation, and organisations or persons who will be involved in evaluating the performance of the recovery plan; and
- (h) specifying major benefits to other native species or ecological communities that will be affected by implementation of the plan.

These items are addressed in the plan to the extent practicable and where information is readily available. Where information is not available, additional actions have been incorporated into the plan for it to be obtained.

Details

Section 1 provides that the name of the instrument is the *Environment Protection and Biodiversity Conservation (National Recovery Plan for the Southern Right Whale (*Eubalaena australis*)) Instrument 2024*.

Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 provides that the instrument is made under subsection 269A(3) of the *Environment Protection and Biodiversity Conservation Act 1999*.

Section 4 provides that the National Recovery Plan for the Southern Right Whale (*Eubalaena australis*) in the instrument is jointly made with Queensland, South Australia, Tasmania, Western Australia and Victoria, as agreed by the relevant State Ministers.

Commencement

The National Recovery Plan for the Southern Right Whale (*Eubalaena australis*) commences on the day after this instrument is registered on the Federal Register of Legislation.

This instrument is made under subsection 269A(3) of the Act and it is a legislative instrument for the purposes of the *Legislation Act 2003*.

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

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 (National Recovery Plan for the Southern right whale (*Eubalaena australis*)) Instrument 2024

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 jointly make the National Recovery Plan for the Southern Right Whale (**National Recovery Plan**), with Queensland, South Australia, Tasmania, Victoria and Western Australia. The jointly made recovery plan provides for the research and management actions necessary to stop the decline of, and support the recovery of the Southern right whale (*Eubalaena australis*), listed as threatened under the *Environment Protection and Biodiversity Conservation Act 1999*, in order to maximise its chances of long-term survival in nature.

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