

## EXPLANATORY STATEMENT

(Issued by the authority of the Minister for the Environment and Water)

*Environment Protection and Biodiversity Conservation Act 1999*

List of Threatened Species Amendment (410) Instrument 2024

### 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 of threatened species, List of threatened ecological communities and List of threatening processes* (**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.

The species being included in the List met the criteria for listing in the 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:
  - *Aipysurus fuscus* in the Endangered category.

*Aipysurus fuscus* is considered threatened due to climate change and severe weather, fossil fuel exploration and extraction, marine vessels, and a small, fragmented population.

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 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.

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 *Aipysurus fuscus* in the Endangered category in 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 *Aipysurus fuscus* as eligible for inclusion in the Endangered category in 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.

## **Other**

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 full statement of compatibility is set out in Attachment B.

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

The Instrument commences the day after registration.

Authority: section 184 of the *Environment Protection and Biodiversity Conservation Act 1999*.

**Details of the *List of Threatened Species Amendment (410) Instrument 2024***

**Section 1 – Name**

This section provides that the title of the instrument is the *List of Threatened Species Amendment (410) Instrument 2024*. (the Instrument).

**Section 2 – Commencement**

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

**Section 3 – Authority**

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

**Section 4 – Schedules**

This section is a machinery clause which provides that the *Declaration under s178, s181, and s183 of the Environment Protection and Biodiversity Conservation Act 1999 - List of threatened species, List of threatened ecological communities and List of threatening processes* (Principal Instrument) is amended as set out in the applicable items in Schedule 1, and any other item in Schedule 1 to the Instrument has effect according to its terms.

**Schedule 1- Amendments**

**Item 1 – SPECIES THAT ARE ENDANGERED**

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

- (a) *Aipysurus fuscus*

**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 (410) 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 amend the *Environment Protection and Biodiversity Conservation Act 1999* list of threatened species to:

- Include *Aipysurus fuscus* in the Endangered category.

The species being included 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**