

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens – Western Australian Pearl Oyster Fishery, September 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 Western Australian Pearl Oyster 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 Western Australian Pearl Oyster 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;
- the Western Australian Department of Primary Industries and Regional Development must inform the Department of Climate Change, Energy, the Environment and Water of any intended material changes to the Western Australian Pearl Oyster Fishery management arrangements that may affect this approval;
- the Western Australian Department of Primary Industries and Regional Development must inform the Department of Climate Change, Energy, the Environment and Water of any intended changes to fisheries legislation that may affect the legislative instruments relevant to this approval;
- the Western Australian Department of Primary Industries and Regional Development must provide the Department of Climate Change, Energy, the Environment and Water with an annual report by 20 December each year detailing any changes in the fishery; and
- the specimens are included in the list until 20 September 2034.

Listing these specimens in the list will allow the export of these specimens without the need for export permits until the date specified in **Schedule 2**.

A link to the instrument is accessible via the Department of Climate Change, Energy, the Environment and Water's (the department) website at
<https://www.dcceew.gov.au/environment/marine/fisheries/wa/pearl>

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 Western Australian Legislation – <https://www.legislation.wa.gov.au/> (as of September 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 fisheries listed in **Schedule 2** to the instrument are 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 fisheries 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.

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 – 2nd Edition*. These guidelines establish the criteria for assessment of the ecological sustainability of the fisheries 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.

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 Western Australian Department of Primary Industries and Regional Development 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 persons from 3 June 2024 to 5 July 2024. One public comment was received. The public comment raised concerns over the spatial overlap of pearling sites and marine protected areas.

The Western Australian Department of Primary Industries and Regional Development provided a response to the Department of Climate Change, Energy, the Environment and Water. All comments were 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 on 20 September 2024.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

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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 Western Australian Pearl Oyster Fishery (the fishery), and any associated notations, associated restrictions or conditions 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;
- the Western Australian Department of Primary Industries and Regional Development must inform the Department of Climate Change, Energy, the Environment and Water of any intended material changes to the Western Australian Pearl Oyster Fishery management arrangements that may affect this approval;
- the Western Australian Department of Primary Industries and Regional Development must inform the Department of Climate Change, Energy, the Environment and Water of any intended changes to fisheries legislation that may affect the legislative instruments relevant to this approval;
- the Western Australian Department of Primary Industries and Regional Development must provide the Department of Climate Change, Energy, the Environment and Water with an annual report by 20 December each year detailing any changes in the fishery; and
- the specimens are included in the list until 20 September 2034.

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**.

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/wa/pearl>

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**.

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.

Jessica Hoey, Delegate of the Minister for the Environment and Water