

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens – Oceanreef Aquaculture, September 2024

(Issued by the authority of the delegate of the Minister for the Environment and Water 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 in order 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 **include** in the list specimens that are or are derived from weedy sea dragons (*Phyllopteryx taeniolatus*) and leafy sea dragons (*Phycodurus eques*) taken under permits issued to Oceanreef Aquaculture by the Victorian Fisheries Authority and the Western Australian Department of Primary Industries and Regional Development respectively, and the offspring of those specimens, with notations that inclusion of the specimens in the list are subject to restrictions or conditions that the specimen, or the fish from which it is derived, was taken lawfully, and that the specimens are included in the list until the date specified in **Schedule 1**.

Listing these specimens in the list will allow export of these specimens without the need for export permits, until the dates specified in **Schedule 1**. A link to the instrument is accessible via the Department of Climate Change, Energy, the Environment and Water (the Department) website at Oceanreef Aquaculture - DCCEEW.

The only effect of this instrument is to allow export for these specimens' subject to the conditions provided in the notation as specified in **Schedule 1**.

Incorporation

All state and territory legislation referred to in **Schedule 1** 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 at www.legislation.vic.gov.au and Western Australian legislation at 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 – 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 to the permits under which the specimens listed in **Schedule 1** are taken or derived.

The permits listed in **Schedule 1** 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 permits named in **Schedule 1**.

The Australian Government and State/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/NT 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.

Generally, 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. Sea dragons are listed Marine Species, and therefore should generally not be included on the list established under section 303DB(1). However, dead specimens of pipefish and sea dragons exported as personal baggage (limited to 2 specimens per person) are included on the list established under section 303DB(1). While this instrument does include 2 species of sea dragons, it is for a limited time (until 31 March 2025), during which time a maximum of 2 specimens per species are permitted to be collected by the Victorian and Western Australian permits included in the instrument.

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 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.

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 and Western Australian Department of Primary Industries and Regional Development have been consulted and supports amending the list to include sea dragons from Oceanreef Aquaculture.

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

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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 **include** in the list specimens that are or are derived from weedy sea dragons (*Phyllopteryx taeniolatus*) and leafy sea dragons (*Phycodurus eques*) taken under permits issued to Oceanreef Aquaculture by the Victorian Fisheries Authority and the Western Australian Department of Primary Industries and Regional Development respectively, with notations that inclusion of the specimens in the list are subject to restrictions or conditions that the specimen, or the fish from which it is derived, was taken lawfully, and that the specimens are included in the list until the date specified in **Schedule 1**.

Listing these specimens in the list will allow export of these specimens without the need for export permits, until the date specified in **Schedule 1**. A link to the instrument is accessible via the Department of Climate Change, Energy, the Environment, and Water's (the Department's) website at: Oceanreef Aquaculture - DCCEEW. 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 1**.

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, Director, Sustainable Fisheries Section
(Delegate of the Minister for the Environment and Water)**