

EXPLANATORY STATEMENT

Environment Protection and Biodiversity Conservation Act 1999

List of Specimens taken to be Suitable for Live Import Amendment (torpedo barb and featherfin catfish) Instrument 2024

Instrument made under subparagraphs 303EC(1)(a)(i) and 303EC(1)(a)(iii) of the *Environment Protection and Biodiversity Conservation Act 1999*

Issued under authority of the Minister for the Environment and Water

Under Part 13A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), a specimen is taken to be suitable for live import if it is included in the *List of Specimens taken to be Suitable for Live Import (29/11/2001)* (Live Import List).

Legislative background

The Live Import List was established under section 303EB of the EPBC Act and has two parts. Part 1 comprises a list of unregulated specimens exempt from the requirement for an import permit under the EPBC Act. Part 1 of the list must not contain a CITES specimen. Part 2 comprises a list of allowable regulated specimens that can be imported with a permit issued by the Minister, along with notation of any restrictions or conditions attached to the inclusion of a specimen.

Paragraph 303EC(1)(a) of the EPBC Act relevantly provides that the Minister may, by legislative instrument, amend the Live Import List by doing any of the following:

- including items in a particular part of the list;
- deleting items from a particular part of the list;
- imposing a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject;
- varying or revoking a restriction or condition to which the inclusion of a specimen in Part 2 of the list is subject.

Amendments to include an item can be made either on the initiative of the Minister, under section 303ED of the EPBC Act, or by application from a person made under section 303EE of the EPBC Act.

Subsection 303EC(3) of the EPBC Act provides that before amending the list referred to in section 303EB as mentioned in paragraph 303EC(1)(a), the Minister:

- must consult such other Minister or Ministers as the Minister considers appropriate; and

- must consult such other Minister or Ministers of each state and self-governing territory as the Minister considers appropriate; and
- may consult such other persons and organisations as the Minister considers appropriate.

Further, subsection 303EC(5) of the EPBC Act provides that the Minister must not amend the list referred to in section 303EB by including an item in the list unless:

- the amendment is made following consideration of a relevant report under section 303ED or section 303EE; or
- the amendment is made following consideration of a relevant review under section 303EJ.

Purpose

The purpose of this instrument is to amend the Live Import List to include:

- *Dawkinsia denisonii* in Part 2 with the following import conditions:
 - For identification purposes only;
 - High security facilities only;
 - Bred in captivity specimens only.
- *Synodontis eupterus* in Part 2 with the following import conditions:
 - For identification purposes only;
 - High security facilities only.

The amendments to the Live Import List to include *Dawkinsia denisonii* and *Synodontis eupterus* were initiated by applications made to the Minister under section 303EE of the EPBC Act. Assessments of the potential impacts on the environment of the proposed amendments were reported to the Minister, in accordance with subsection 303EE(3) of the EPBC Act.

Consultation

In accordance with paragraph 303EF(2)(b) of the EPBC Act, the draft assessment report for *Dawkinsia denisonii* was published on the department's website and comments were sought from the public and relevant Commonwealth, state and territory agencies between 16 February and 7 April 2021. Fourteen email responses supporting the amendment were received from members of the pet and aquarium industry. Four responses containing comments to be addressed were received from the Western Australian (WA), New South Wales (NSW), Victorian and Northern Territory governments.

The draft assessment report for *Synodontis eupterus* was published on the department's website and comments were sought from the public and relevant Commonwealth, state and territory agencies between 26 October and 25 November 2021. Thirteen email responses supporting the

amendment were received from members of the pet and aquarium industry. Four responses containing comments to be addressed were received from the WA, NSW, Victorian and South Australian governments and RSPCA Australia.

A second consultation round was undertaken for *Dawkinsia denisonii* and *Synodontis eupterus* between 31 May and 28 June 2023 with state and territory governments. Two responses were received from WA and SA, both supporting the department's findings and recommendations.

In accordance with section 391 of the EPBC Act, the Minister must consider the precautionary principle in making a decision to include an item on the Live Import List.

The final assessment reports were provided to the Minister. In accordance with paragraph 303EC(5)(a) of the EPBC Act, the Minister considered the reports before deciding to amend the list to include of the Live Import List.

Details

Details of this instrument are set out in Attachment A.

Commencement

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. It commences on the day after it is registered on the Federal Register of Legislation.

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 in Attachment B.

ATTACHMENT A

Details of the *List of Specimens taken to be Suitable for Live Import Amendment (torpedo barb and featherfin catfish) Instrument 2024*

Section 1 – Name

This section provides that the name of the instrument is the *List of Specimens taken to be Suitable for Live Import Amendment (torpedo barb and featherfin catfish) Instrument 2024* (the amendment instrument).

Section 2 – Commencement

This section provides that the amendment instrument commences on the day after it is registered on the Federal Register of Legislation (FRL).

Section 3 – Authority

This section provides that the amendment instrument is made under subparagraphs 303EC(1)(a)(i) and (iii) of the of the EPBC Act.

Section 4 – Schedules

This section provides for the amendment or repeal of instruments as set out in a Schedule to the amendment instrument.

Schedule 1—Amendments

Items 1 and 2 of Schedule 1 to the amendment instrument amend Part 2 of the Live Import List, by including *Dawkinsia denisonii* and *Synodontis eupterus* with import conditions in the table of Bony fishes (Osteichthyes) under the heading of Vertebrate Animals.

Statement of Compatibility with Human Rights

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

List of Specimens taken to be Suitable for Live Import Amendment (torpedo barb and featherfin catfish) Instrument 2024

This Disallowable 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 Part 2 of the *List of Specimens taken to be Suitable for Live Import (29/11/2001)* to include *Dawkinsia denisonii* (torpedo barb) and *Synodontis eupterus* (featherfin catfish) in accordance with section 303EC of the *Environment Protection and Biodiversity Conservation Act 1999*.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable 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