

EXPLANATORY STATEMENT

Issued by the authority of the delegate of the Minister for the Environment and Water
specified in the enabling legislation

Environment Protection and Biodiversity Conservation Act 1999

List of Exempt Native Specimens Amendment (South Australian Abalone Fishery) Instrument 2024

Background

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.

Subsection 303DB(1) of the EPBC Act provides that the minister must, by legislative instrument establish a list of exempt native specimens. This list referred to in subsection 303DB(1) of the EPBC Act is contained in the *List of Exempt Native Specimens Instrument 2001 (the List)*. Specimens included in the List are exempt from the trade control provisions that apply to regulated native specimens.

Subsection 303DC(1) of the EPBC Act relevantly provides that the minister may, by legislative instrument, amend the List referred to in section 303DB by including items, deleting items, imposing a condition or restriction to which the inclusion of a specimen in the list is subject, varying or revoking a condition or restriction to which the inclusion of a specimen in the list is subject, or correcting an inaccuracy of updating the name of a species.

Purpose and operation

The purpose of this instrument is to amend the list by:

- omitting in the list specimens that are or are derived from fish or invertebrates taken in the South Australian Abalone Fishery, and any associated notations specified in **Schedule 1** to the instrument.
- inserting in the list specimens that are or are derived from fish or invertebrates taken in the South Australian Abalone 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 was derived, was taken lawfully;
 - the Department of Primary Industries and Regions South Australia must inform the Department of Climate Change, Energy, the Environment and Water of any intended material changes to the management arrangements that may affect this approval;

- the Department of Primary Industries and Regions South Australia 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 Department of Primary Industries and Regions South Australia must produce and provide reports on the South Australia Abalone Fishery to the Department of Climate Change, Energy, the Environment and Water by November annually, as per Appendix B of the *Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition*.
- the specimens are included in the list until 15 February 2035.

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 Item 2. A link to the instrument is accessible via the Department of Climate Change, Energy, the Environment and Water's website at: <https://www.dcceew.gov.au/environment/marine/fisheries/sa/abalone>

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

Incorporation

All state and territory legislation referred to in the Schedule 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 on the following state and territory legislation website:

South Australian legislation at www.legislation.sa.gov.au (as of November 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*) (Legislation Act). 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).

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 South Australian Abalone Fishery from which the specimens listed in Schedule are taken or derived.

The South Australian Abalone Fishery listed in the Schedule to the instrument is 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 South Australian Abalone Fishery named in the Schedule.

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 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) of the EPBC Act 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 subsection 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 subsection 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 Australian Government's *Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition*. These Guidelines establish the criteria for assessment of the ecological sustainability of the relevant fishery's management arrangements.

The guidelines are accessible via the department'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 Department of Primary Industries and Regions South Australia has been consulted and supports amending the list to include product derived from the South Australian Abalone Fishery.

In addition, the proposal to amend the list was advertised on the Department of Climate Change, Energy, the Environment and Water's website and comment was invited from interested people from 4 October 2024 to 8 November 2024.

One public comment was received, which expressed support for the fishery to be included on the List of Exempt Native Species approval. All comments received were taken into account in the decision to include specimens derived from the South Australian Abalone Fishery in the List.

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 an amendment instrument made under paragraph 303DC(1)(a) of the EPBC Act. It is a legislative instrument for the purposes of the Legislation Act.

The Instrument commences the day after registration.

Sunsetting and disallowance requirements

The Instrument is subject to the disallowance process under section 42 of the Legislation Act and the sunseting regime set out in Part 4 of Chapter 3 of the Legislation Act. However, section 48A of the Legislation Act has the effect that, because the Instrument only amends another instrument, if it is not disallowed it will be automatically repealed at the end of the disallowance period. Once repealed, the sunseting regime has no practical effect on the Instrument.

The List amended by the Instrument is exempt from sunseting in accordance with table item 24 in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, which specifies that sunseting requirements do not apply to instruments made under section 303DB of the EPBC Act. This sunseting exemption has applied to the List since the sunseting regime was established by the Legislation Act on 1 January 2005. This means that the amendments given effect by the Instrument will be enduring.

The List is not appropriate for sunseting. The List is a list of native specimens that are exempt from export regulations. Specimens included on the list (in the exact form listed and subject to stated conditions) may be allowed to be exported without a permit. The List includes only specimens that are, or are derived from, Australian native animals and plants.

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 1 Item 2. Amendments are made to the list following a stringent statutory review process set out in the EPBC Act, which provides an appropriate review mechanism to ensure the currency and accuracy of the List.

ATTACHMENT A

Details of the *List of Exempt Native Specimens Amendment (South Australian Abalone Fishery) Instrument 2024*

Section 1 – Name

This section provides that the title of the instrument is the *List of Exempt Native Specimens Amendment (South Australian Abalone Fishery) Instrument 2024* (the Instrument).

Section 2 – Commencement

This section provides that the Instrument commences on 15 February 2025.

Section 3 – Authority

This section provides that the Instrument is made under paragraph 303DC(1)(a) of the *Environment Protection and Biodiversity Conservation Act 1999*.

Section 4 – Schedules

This section is a machinery clause which provides that the *List of Exempt Native Specimens Instrument 2001* (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 – Freshwater and Marine Animals

Item 1 amends the list under the heading “Freshwater and Marine Animals” to omit specimens in the table that are or are derived from fish or invertebrates taken in the South Australian Abalone Fishery, and associated notations in the Schedule to the Instrument.

Item 2 – Freshwater and Marine Animals

Item 2 amends the list under the heading “Freshwater and Marine Animals” to insert into the List; in the place of the omitted row/s, specimens that are or are derived from fish or invertebrates taken in the South Australian Abalone 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, and that the specimens are included in the list until the date specified in Schedule 1 Item 2 to the Instrument.

Statement of Compatibility with Human Rights

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

List of Exempt Native Specimens Amendment (South Australian Abalone Fishery) Instrument 2024

This Disallowable 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 Disallowable Legislative Instrument

The purpose of this instrument is to amend the *Environment Protection and Biodiversity Conservation Act 1999* List of Exempt Native Specimens (the List) to:

- omit from the List specimens that are or are derived from fish or invertebrates taken in the South Australian Abalone Fishery, and any associated notations specified in the Schedule to the Instrument.
- insert specimens that are or are derived from fish or invertebrates taken in the South Australian Abalone 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 was derived, was taken lawfully;
 - the Department of Primary Industries and Regions South Australia must inform the Department of Climate Change, Energy, the Environment and Water of any intended material changes to the management arrangements that may affect the assessment against which *Environment Protection and Biodiversity Conservation Act 1999* decisions are made;
 - the Department of Primary Industries and Regions South Australia 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 Department of Primary Industries and Regions South Australia must produce and provide reports on the South Australian Abalone Fishery to the Department of Climate Change, Energy, the Environment and Water by November annually, as per Appendix B of the *Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition*.
 - the specimens are included in the list until 15 February 2035.

Listing these specimens in the List will allow export of these specimens without the need for export permits until the date specified in the Schedule to the Instrument. A link to the declaration 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/sa/abalone>

The only effect of this instrument is to allow continued export for these specimens subject to the conditions provided in the notations of the Schedule.

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.

Belinda Jago, Branch Head, Ocean and Wildlife Branch, (Delegate of the Minister for the Environment and Water)