Southern Bluefin Tuna Fishery Management Plan 1995

made under section 17 of the

*Fisheries Management Act 1991*

Compilation No. 8

Compilation date: 04/05/2016

Includes amendments up to: *Fisheries Management Plans Amendment 2016*

Prepared by the Australian Fisheries Management Authority
About this compilation

This compilation
This is a compilation of the Southern Bluefin Tuna Fishery Management Plan 1995 that shows the text of the law as amended and in force on 04/05/2016 (the compilation date).

The notes at the end of this compilation (the endnotes) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments
The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw (www.comlaw.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

Application, saving and transitional provisions for provisions and amendments
If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications
If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

Self-repealing provisions
If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.
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as amended

made under subsection 17(1) of the

Fisheries Management Act 1991
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Part 1—Introduction

Division 1.1—General

1 Name of Plan

This Plan is the Southern Bluefin Tuna Fishery Management Plan 1995.

2 Commencement

This plan commences when notice of the fact that the plan has been determined is published in the Gazette under subsection 19(1) of the Act.

3 Interpretation

3.1 In this Plan, unless the contrary intention appears:

*Act* means the *Fisheries Management Act 1991*.

*acting for*, in relation to a person, means acting with the consent of, and on behalf of, the person.

*agent*, in relation to a person who is the holder or owner of a statutory fishing right, means:

(a) a person responsible for the affairs and property of that person under a law in force in the Commonwealth, a State or a Territory, including a receiver, liquidator, trustee or guardian of that person and an executor or administrator of the estate of that person; or

(b) a person appointed as an agent, and notified to AFMA, under subclause 34.1.

*ancillary fishing activity* means any of the following activities carried out for a purpose other than scientific research about Southern Bluefin Tuna:

(a) processing;

(b) carrying;

(c) transhipping;

(d) towing;

of fish that have been taken.

*automatic location communicator* means, for a fishing boat, a device on the boat that transmits information about the location of the boat and, in conjunction with one or more other devices, transmits additional information about fishing activities being undertaken by the boat.

*by-catch* means marine life that is:
(a) taken in the SBT fishery and returned to the sea for any reason; or  
(b) affected by fishing equipment used in the SBT fishery but not taken.

certificate, in relation to a statutory fishing right, means a certificate under subsection 22(2) of the Act evidencing the grant of the statutory fishing right.

Commission means the Commission for the Conservation of Southern Bluefin Tuna established under the Convention.

Convention means the Convention for the Conservation of Southern Bluefin Tuna done at Canberra on 10 May 1993.

ecologically related species means:  
(a) any species of fish, marine mammal or marine reptile that is prey of, or preys on, Southern Bluefin Tuna; and  
(b) any species of animal that is, or may be, incidentally affected by methods used to fish for Southern Bluefin Tuna.

ecological risk management plan means the plan required under clause 6.

eligible person means a person who is registered as an eligible person under section 26 of the Act.


farm means a facility in the water to receive and retain southern bluefin tuna before harvest.

farm representative means, in relation to a farm, the holder, or a person acting for the holder, of the fish receiver permit for the farm.

fishery observer means a person who is authorised by AFMA to carry out the functions of a fishery observer under this Management Plan.

former plan means the Southern Bluefin Tuna Fishery Management Plan as amended and in force immediately before the end of 2 February 1995.

high seas fishing zone means the area of water (other than coastal waters and the Australian fishing zone), the boundary of which:  
(a) commences on the equator at the point at which the equator is intersected by the meridian of longitude 50° west; and  
(b) runs thence east along the equator, to its intersection by the meridian of longitude 140° west; and  
(c) runs thence south along that meridian to its intersection by the parallel of latitude 60° south; and
(d) runs thence west along that parallel to its intersection by the meridian of
longitude 50° west; and
(e) runs thence north along that meridian to the point of commencement.

**live weight value**, in relation to a statutory fishing right, means the weight of
whole Southern Bluefin Tuna:
(a) measured in kilograms; and
(b) determined in accordance with the actual, interim or provisional live
weight value of a statutory fishing right in effect under this plan;
that may be taken under the conditions applicable to the statutory fishing right.

**national catch allocation** means the total amount (by weight) of Southern
Bluefin Tuna that may be taken in a season in the SBT Fishery.

**nominated boat**, for a statutory fishing right, means a boat the details of which
are entered in the Register, under section 45 of the Act, as the nominated boat for
the statutory fishing right.

**overcatch**, in relation to the holder of a statutory fishing right and a season,
means the amount of Southern Bluefin Tuna taken by the holder in the SBT
Fishery in the season that exceeds the holder’s quota for the season.

**parental biomass** means the quantity of adult fish in a species population capable
of reproduction.

**purse seine method** means a method of fishing by which a net set at the surface
of water is pursed at the base to enclose from beneath a volume of water.

**quota** means, for a holder, in a season, the total live weight value of all statutory
fishing rights in the SBT Fishery of the holder for the season.

**reference point** has the meaning given in Annex II of the Fish Stocks
Agreement.

**SBT Fishery** means any of the following activities:
(a) fishing for Southern Bluefin Tuna in the Australian fishing zone using an
Australian or foreign boat;
(b) fishing for Southern Bluefin Tuna in the high seas fishing zone using an
Australian boat;
but does not include the fishing referred to in clause 7.

**SBT Fishery area** means the area made up of:
(a) the Australian fishing zone; and
(b) the high seas fishing zone.

**season** means the period determined as the fishing season by AFMA.
**secondary fishing activity** means any of the following activities and operations carried out for a purpose other than scientific research about Southern Bluefin Tuna:

(a) searching for fish;
(b) attempting to search for, or take, fish;
(c) engaging in any other activities that can reasonably be expected to result in the locating, or taking, of fish;
(d) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
(e) any operations at sea directly in support of, or in preparation for, any activities described in this definition;
(f) aircraft use relating to any activity described in this definition except flights in emergencies involving the health or safety of crew members or the safety of a boat.

**signed** means signed by a person on behalf of AFMA.

**Southern Bluefin Tuna** means fish of the species *Thunnus maccocyii* (Castelnau).

**statutory fishing right** means a right of the kind described in clause 8.

**transferee** means a person to whom a holder proposes to transfer a statutory fishing right.

**transfer weight** means, in relation to a quantity of Southern Bluefin Tuna:

(a) for the purse seine method of fishing—the weight ascertained by the transfer weighing procedure determined by AFMA under clause 22B; and
(b) for any other method of fishing—the weight of fish noted in the return sent to AFMA signed by the person having a fish receiver permit who received the fish.

**trip** means a voyage by a boat:

(a) commencing at a place on the coastline of a country; and
(b) if the boat is an Australian boat—proceeding to and from, or through, the SBT Fishery area for the purposes of fishing; and
(c) if the boat is a foreign boat—proceeding to and from, or through, the Australian fishing zone for the purposes of fishing; and
(d) ending at a place on the coastline of a country where fish taken using the boat are unloaded.

3.2 For the purposes of this plan:

(a) a person is regarded as fishing for Southern Bluefin Tuna if in fact the person is taking Southern Bluefin Tuna; and
(b) the Australian fishing zone means:
(i) the Australian fishing zone as defined in subsection 4(1) of the Act; and
(ii) the coastal waters that are taken, under section 76 of the Act, to be in the AFZ;
but does not include any part of the area that:
(iii) is described in subregulation 4(3) of the Fisheries Management Regulations 1992; and
(iv) is outside the area described in subparagraphs (i) and (ii).

3.3 Notes in square brackets in this plan are included for information only and are not part of the plan.

Note: Terms defined in the Fisheries Management Act 1991, unless redefined in this plan, have the same meanings in this plan. Some of those terms and their meanings are:

*AFMA* means the Australian Fisheries Management Authority.

*approved* means approved by AFMA or, in relation to a Joint Authority fishery, by the Joint Authority.

*Australian boat* means:
(a) a boat:
   (i) the operations of which are based on a place in Australia or an external Territory; and
   (ii) that is wholly-owned by a natural person who is a resident of, or by a company incorporated in, Australia or an external Territory; and
   (iii) that was built in Australia or an external Territory; or
(b) a boat, not being a boat mentioned in paragraph (a) or a boat owned by a foreign resident that is under a demise charter, that is registered under the Shipping Registration Act 1981; or
(c) a boat the subject of a declaration under subsection (2);

*Australian fishing zone* means:
(a) the waters adjacent to Australia within the outer limits of the exclusive economic zone; and
(b) the waters adjacent to each external Territory within the outer limits of the exclusive economic zone;
but does not include:
(c) coastal waters of, or waters within the limits of, a State or internal territory; or
(d) waters that are excepted waters.

*charter boat* means a boat that is being used exclusively for recreational fishing in the course of an arrangement under which money or some other consideration is, or is required to be, paid or given by or on behalf of a person or persons for the right to fish from the boat.

*coastal waters* has the same meaning given by section 5.

*exclusive economic zone* means the exclusive economic zone, within the meaning of the Seas and Submerged Lands Act 1973.

*fish* includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.
fishing means:
(a) searching for, or taking, fish; or
(b) attempting to search for, or take, fish; or
(c) engaging in any other activities that can reasonably be expected to result in the locating, or taking, of fish; or
(d) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons; or
(e) any operations at sea directly in support of, or in preparation for, any activities described in this definition; or
(f) aircraft use relating to any activity described in this definition except flights in emergencies involving the health or safety of crew members or the safety of a boat; or
(g) the processing, carrying or transhipping of fish that have been taken.

fishing concession means:
(a) a statutory fishing right; or
(b) a fishing permit; or
(c) a foreign fishing licence.

fishing permit means a fishing permit granted under section 32 of the Act.

fish receiver permit means a fish receiver permit granted under section 91 of the Act.


foreign boat means a boat other than an Australian boat.

foreign fishing licence means a foreign fishing licence granted under section 34 of the Act.

officer means:
(a) a person appointed under section 83 of the Act to be an officer for the purposes of the Act; or
(b) a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; or
(c) a member of the Defence Force.

precautionary principle has the same meaning as in clause 3.5.1 of the Intergovernmental Agreement on the Environment, a copy of which is set out in the Schedule to the National Environment Protection Council Act 1994.

Register means the Register of Statutory Fishing Rights kept by AFMA under section 44 of the Act.

scientific permit means a scientific permit granted under section 33 of the Act.

statutory fishing right has the meaning given by section 21 of the Act.

take, in relation to fish, means catch, take or harvest.]
Division 1.2—Objectives, measures and performance criteria

4 Objective 1—Efficiency and cost-effectiveness

4.1 In managing the SBT Fishery under this Plan, AFMA will pursue the objective of implementing efficient and cost-effective fisheries management on behalf of the Commonwealth.

4.2 The measures by which this objective is to be attained include that AFMA:

(a) undertake an annual evaluation of the services required to manage the SBT Fishery (including, for example, management, enforcement, compliance, register maintenance, data collection, research and consultation services); and

(b) as necessary, revise the range, extent and cost of those services.

4.3 The performance criteria against which the measures taken will be assessed include the following:

(a) that AFMA prepares a written report each year giving details of the evaluation and revision of the range and cost of services provided by AFMA in that year, and makes the report publicly available;

(b) that AFMA’s management of the SBT Fishery meets best practice in terms of cost-effectiveness;

(c) that AFMA’s management of the SBT Fishery is acknowledged by government and key stakeholders to be pursuing a cost-effective service.

4A Objective 2—Ecologically sustainable development and the precautionary principle

4A.1 In managing the SBT Fishery under this Plan, AFMA will pursue the objective of ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle, in particular, the need to have regard to the impact of fishing activities on non-target species and the long-term sustainability of the marine environment.

4A.2 The measures by which this objective is to be attained include that AFMA:

(a) implement a strategy to meet stock recovery targets agreed by the Commission; and

(b) collect and analyse information to enable:

(i) evaluation of the effectiveness of the strategy to meet stock recovery targets of Southern Bluefin Tuna in accordance with Commission objectives; and

(ii) any necessary modification of the strategy; and
(c) develop and implement, within 12 months after the commencement of this clause, a research program to support assessment and management of the SBT Fishery, and review the program annually; and

(d) develop and implement, within 6 months after the commencement of this clause, a risk-based compliance program for the SBT Fishery, and review the program annually; and

(e) develop and implement, within 12 months after the commencement of this clause, and review every 2 years, a data strategy to:

(i) collect, verify, analyse and manage data relevant to the management of the SBT Fishery, including data about catch and effort, and biological, ecological, economic and technical data; and

(ii) obtain data from ‘at sea’ research activities, fishery observer programs, by-catch monitoring programs, ecologically related species monitoring, ecosystem related monitoring, size monitoring, landing and farm monitoring and a catch certification scheme; and

(g) grant statutory fishing rights for the SBT Fishery to eligible persons; and

(h) implement, review and revise procedures to ensure that Australia’s national catch allocation for a season is not exceeded; and

(i) develop and implement an ecological risk management plan to minimise the impact of fishing on non-target species and the marine environment, and review the plan every 2 years; and

(j) develop and implement a strategy to assess and address risk to the ecologically sustainable development of the SBT Fishery, and review the strategy annually; and

(k) incorporate into this Plan any relevant requirements and reference points determined by the Commission in progressive refinement of the Commission Management Strategy; and

(l) as necessary to meet ecological objectives, give directions that fishing is not to be engaged in in the fishery, or a particular part of the fishery, during a particular period or periods, informing the holders of fishing concessions about those directions, and requiring the holders to comply with the directions.

4A.2A The measures also include that AFMA:

(a) once every 5 years; or

(b) more frequently than every 5 years if:

(i) AFMA finds evidence of quota misreporting; or

(ii) AFMA agrees with the recommendations of the Southern Bluefin Tuna Management Advisory Committee that there is a need for an evaluation; or

(iii) the Minister recommends that there is a need for an evaluation;
evaluates the mechanisms that have been put in place to monitor fishing catch against granted statutory fishing rights and Australia’s national catch allocation for Southern Bluefin Tuna, and implement any required changes to commence at the beginning of the season following that evaluation.

4A.3 The performance criteria against which the measures taken will be assessed include the following:

(a) that a research program sufficient to support assessment and management of the SBT Fishery for each year has been developed, documented and implemented;

(b) that a risk-based compliance program for the SBT Fishery for each year has been developed, documented and implemented;

(c) that a data strategy, meeting the requirements of paragraph 4A.2(e), has been developed, documented and implemented within the required time and is publicly available;

(d) that the mechanisms for monitoring fishing catch against granted statutory fishing rights and Australia’s national catch allocation for Southern Bluefin Tuna for each season have been evaluated (including whether the most appropriate technology has been used) and the results, including any recommendations for change, are publicly available;

(e) that statutory fishing rights for the SBT Fishery have been granted to eligible persons;

(f) that Australia’s national catch allocation for Southern Bluefin Tuna for a season has not been exceeded in that season;

(g) that actions are being taken in accordance with an ecological risk management plan (that is current and publicly available) to minimise the impact of fishing on non-target species and the marine environment;

(h) that Australia’s obligations and responsibilities under the Convention are implemented within timeframes agreed with the Commission;

(i) that Australia collects and provides to the Commission the data required under the Convention;

(j) that key risks, including those arising from any major changes in fishing practices, to the ecologically sustainable development of the SBT Fishery have been identified and actions have been undertaken to manage those risks;

(k) that management actions in relation to the SBT Fishery are based, as a minimum, on any relevant requirements and reference points determined by the Commission in progressive refinement of the Commission Management Strategy.
4B Objective 3—Maximising net economic returns

4B.1 In managing the SBT Fishery under this Plan, AFMA will pursue the objective of maximising the net economic returns to the Australian community from the management of the SBT Fishery.

4B.2 The measures by which this objective is to be attained include that, in developing management arrangements for the SBT Fishery, AFMA has regard to the need to pursue the objective of maximising net economic returns to the Australian community in the exploitation of the SBT Fishery resources.

4B.3 The performance criteria against which the measures taken will be assessed include the following:

(a) that AFMA has developed and implemented, before 1 October 2008, a framework and criteria for the assessment of management arrangements to determine the extent to which they promote the objective of maximising net economic returns, and has procedures in place for review of achievement of this objective every 2 years after inception;

(b) that the framework and criteria mentioned in paragraph (a) allow holders of statutory fishing rights for the SBT Fishery to pursue practices consistent with maximising net economic returns to the Australian community.

4C Objective 4—Accountability

4C.1 In managing the SBT Fishery under this Plan, AFMA will pursue the objective of ensuring accountability to the fishing industry and to the Australian community for management of fisheries resources.

4C.2 The measures by which this objective is to be attained include that AFMA develop and implement, within 18 months after the commencement of this clause, a communication strategy for informing statutory fishing right holders, the fishing industry and the Australian community about the status of Southern Bluefin Tuna stocks and the management of the SBT Fishery (including preparing and disseminating regular reports about those matters).

4C.3 The performance criteria against which the measures taken will be assessed include the following:

(a) that AFMA has developed, implemented and documented the communication strategy mentioned in subclause 4C.2 within the time required and has procedures in place for the strategy to be reviewed annually;

(b) that data obtained by AFMA is able to indicate the level of stakeholder satisfaction with accountability and communication of information by AFMA about the management of the SBT Fishery.
5 Objective 5—Cost recovery

5.1 In managing the SBT Fishery under this Plan, AFMA will pursue the objective of achieving Government targets in relation to the recovery of the costs of AFMA.

5.2 The measures by which this objective is to be attained include that AFMA prepare annual budgets and recommend levies to recover attributable and recoverable costs of management and research in the SBT Fishery in accordance with Government cost recovery policy.

5.3 The performance criteria against which the measures taken will be assessed include the following:
   (a) that AFMA has prepared annual budgets, and recommendations for levies have been agreed to by the AFMA Board;
   (b) that Government targets for cost recovery have been achieved through AFMA’s cost recovery policy.

5A Objective 6—Implementation of Australia’s obligations under international agreements

5A.1 In managing the SBT Fishery under this Plan, AFMA will have regard to the objective of ensuring that conservation and management measures adopted by AFMA implement Australia’s obligations under international agreements, including, specifically, obligations in regard to the following matters:
   (a) fish stocks;
   (b) fishing activities by Australian-flagged boats on the high seas.

5A.2 The measures by which this objective is to be attained include that AFMA:
   (a) manage the SBT Fishery in a way that takes account of relevant international obligations, including decisions of the Commission; and
   (b) implement obligations imposed on Australia under international agreements dealing with fish stocks to control the activities of Australian-flagged fishing vessels operating outside the AFZ; and
   (c) provide for effective input to Australia’s negotiating position and participation in Commission meetings; and
   (d) as necessary to meet international obligations, give directions that fishing is not to be engaged in in the fishery, or a particular part of the fishery, during a particular period or periods, inform the holders of fishing concessions about those directions, and require the holders to comply with the directions.

5A.3 The performance criteria against which the measures taken will be assessed include that the management measures adopted by AFMA are consistent with decisions of the Commission and other international obligations.
Division 1.3—Specific ecosystem requirements and other matters

6 Ecological risk management plan

6.1 AFMA must establish an ecological risk management plan for the SBT Fishery.

6.2 The plan must require action to ensure that:
   (a) information is gathered about the impact of the fishery on by-catch species; and
   (b) all reasonable steps are taken to minimise interaction with sea birds, marine reptiles, marine mammals and fish of a kind mentioned in sections 15 and 15A of the Act; and
   (c) the ecological impacts of fishing operations on habitats in the SBT Fishery area are minimised and kept at an acceptable level; and
   (d) by-catch is reduced, or kept at, a minimum and below a level that might threaten by-catch species.

6A Reference point

For subsection 17(5C) of the Act, the reference point for Southern Bluefin Tuna is that, by the year 2035, the spawning stock biomass is to be 20% of the original spawning stock biomass.

Note: The reference point may be amended to accord with decisions of the Commission or other relevant fishing organisations.

7 Persons to whom this plan does not apply

This plan does not apply to a person who:
   (a) is carrying on recreational fishing in the SBT Fishery area; or
   (b) is fishing in the SBT Fishery area using a charter boat that is not a nominated boat; or
   (c) during a trip, is fishing in the SBT Fishery area using a charter boat that is a nominated boat, if:
       (i) before the boat leaves port, the person notifies AFMA in writing that the boat will be used during the trip only as a charter boat; and
       (ii) during the trip the person uses the boat only as a charter boat; or
   (d) is fishing in the Australian fishing zone in accordance with an agreement between the Commonwealth and the government of a foreign country; or
   (e) is fishing in the high seas fishing zone using a foreign boat.
Part 2—Statutory fishing rights

8 What is a statutory fishing right?

8.1 A statutory fishing right:
   (a) is a right granted under section 31 of the Act; and
   (b) is, subject to this plan, a right, in each season while the fishing right continues, to one of a number of equal portions of the national catch allocation determined for that season under this plan; and
   (c) continues until:
       (i) this plan ceases to have effect; or
       (ii) the fishing right ceases to have effect, as set out in clause 29; whichever occurs first.

8.2 While an interim live weight value of a statutory fishing right is in effect under this plan the fishing right is taken to be a right to a portion, equal to the portion referred to in subclause 8.1, in relation to so much of a national catch allocation as is determined under paragraph 18.3(b).

9 Who is entitled to fish SBT in the SBT Fishery area using an Australian boat?

9.1 A person is entitled to use an Australian boat in the SBT Fishery area during a season to:
   (a) take Southern Bluefin Tuna (other than for the purpose of scientific research about Southern Bluefin Tuna); and
   (b) conduct secondary fishing activities in relation to Southern Bluefin Tuna; and
   (c) conduct ancillary fishing activities in relation to the Southern Bluefin Tuna that has been taken using the boat; if, and only if:
       (e) subject to subclause 9A.2 and clause 9B, at any time when the person takes southern bluefin tuna using the boat, the person is, or is acting for, a holder with quota that is equal to, or greater than, the total weight of:
           (i) southern bluefin tuna in that take; and
           (ii) southern bluefin tuna taken and counted against the holder’s quota in the same season as, but before, that take; and
       (f) subject to subclause 9A.3, at any time when the person takes southern bluefin tuna using the boat, the boat has nominated against it an amount of the holder’s quota that is equal to, or greater than, the total weight of:
           (i) southern bluefin tuna in that take; and
(ii) southern bluefin tuna taken and counted against the boat in the same season as, but before, that take; and

(g) the person uses only the following fishing gear in the SBT Fishery area:

(i) pelagic longline fishing gear;
(ii) minor line fishing gear (that is, rod and reel, hand line or pole);
(iii) gear to undertake the purse seine method of fishing;
(iv) any other gear allowed by AFMA in a condition specified in the certificate evidencing the grant of the statutory fishing rights.

9.2 A person is entitled to use an Australian boat (in this subclause called the Australian boat) in the SBT Fishery area to conduct ancillary fishing activities in relation to Southern Bluefin Tuna that has been taken in accordance with this plan using another boat if, and only if, the person is, or is acting for, the holder of a fishing permit that authorises use of the Australian boat for the activities.

9.3 A person who is entitled to use an Australian boat in the SBT Fishery area under subclause 9.1 or 9.2 is entitled to use the boat in the exclusive economic zone of another country in the SBT Fishery area during a season to take Southern Bluefin Tuna if, and only if:

(a) there is an arrangement or agreement in relation to that fishing activity between the Commonwealth and the other country; and

(b) the fishing activity is in accordance with that arrangement or agreement.

9A Quota reconciliation

9A.1 This clause applies if:

(a) an amount of Southern Bluefin Tuna taken by a holder, using the purse seine method, is:

(i) in excess of the holder’s quota (whether the holder’s quota or quota nominated against the boat used to take the Southern Bluefin Tuna); and

(ii) subsequently towed, within a tow pontoon, to a farm (a tow operation); or

(b) an amount of Southern Bluefin Tuna taken by a holder, using the pelagic longline or minor line method, is in excess of the holder’s quota (whether the holder’s quota or quota nominated against the boat used to take the Southern Bluefin Tuna).

9A.2 The holder, or a person acting for the holder, does not contravene paragraph 9.1(e) or 10.1(f) in relation to a take that causes the holder’s quota to be exceeded, if the holder obtains sufficient statutory fishing rights to cover the take within the period:

(a) if the Southern Bluefin Tuna are taken using the purse seine method—specified in subclause 9A.4; or
(b) if the Southern Bluefin Tuna are taken using the pelagic longline or minor line method—ending 14 days after the Southern Bluefin Tuna are taken.

9A.3 The holder, or a person acting for the holder, does not contravene paragraph 9.1(f) or 10.1(g) in relation to a take that causes the quota nominated against the boat to be exceeded, if the holder nominates sufficient quota against the boat within the period:

(a) if the Southern Bluefin Tuna are taken using the purse seine method—specified in subclause 9A.4; or

(b) if the Southern Bluefin Tuna are taken using the pelagic longline or minor line method—ending 14 days after the Southern Bluefin Tuna are taken.

9A.4 For paragraphs 9A.2(a) and 9A.3(a), the period specified is the period:

(a) if a transfer weighing has been undertaken—ending 14 days after the time that the weight for the take (including a decision by AFMA under subclause 22D.2 to count the estimate) is entered against the holder’s quota or the nominated boat, as the case may be; or

(b) if no transfer weighing is undertaken within 30 days of the commencement of the tow operation—ending 58 days after the tow operation commenced; or

(c) if no transfer weighing is undertaken within 30 days of the take being transferred to a tow pontoon and AFMA was not told of the commencement of the tow operation—ending 58 days after the date the take was transferred to the tow pontoon under subclause 22A.1.

9B Overcatch

9B.1 AFMA may determine for a season:

(a) the determined percentage; and

(b) the determined amount; and

(c) the determined additional weight.

Note: The determined percentage and determined amount are used to work out the calculated excess for a holder of a statutory fishing right (subclause 9B.6).

Overcatch less than calculated excess

9B.2 Subclause 9B.3 applies if:

(a) in a season (the first season), the holder of a statutory fishing right takes (or is deemed, by a previous application of this section, to have taken) an overcatch that is less than the calculated excess for the holder; and

(b) 1 month after the commencement of the following season (the second season), the holder holds statutory fishing rights that would (in the absence of this section) entitle the holder to take the first season’s overcatch.
9B.3 The holder is deemed to have taken:
   (a) during the first season—an amount of Southern Bluefin Tuna equal to the
       holder’s quota in the first season; and
   (b) during the second season—the holder’s first season overcatch in addition to
       the weight of Southern Bluefin Tuna actually taken by the holder in the
       second season.

_Overcatch at least calculated excess_

9B.4 Subclause 9B.5 applies if:
   (a) in a season (the _first season_), the holder of a statutory fishing right takes
       (or is deemed, by a previous application of this section, to have taken) an
       overcatch that is:
           (i) at least the calculated excess for the holder; and
           (ii) no more than the calculated excess for the holder plus the determined
                additional weight; and
   (b) 1 month after the commencement of the following season (the _second
       season_), the holder holds statutory fishing rights that would (in the absence
       of this section) entitle the holder to take a weight of Southern Bluefin Tuna
       equal to the sum of:
           (i) the calculated excess for the holder in the first season; and
           (ii) twice the amount by which the holder’s overcatch in the first
                season exceeded the calculated excess.

9B.5 The holder is deemed to have taken:
   (a) during the first season—an amount of Southern Bluefin Tuna equal to the
       holder’s quota in the first season; and
   (b) during the second season—in addition to the weight of Southern Bluefin
       Tuna actually taken by the holder in the second season, the weight worked
       out under paragraph 9B.4(b).

9B.6 In this clause:

   _calculated excess_, for a season in relation to a holder of a statutory fishing right,
   means the lesser of:
   (a) the determined percentage of the holder’s quota for the season; and
   (b) the determined amount for the season.

   _overcatch_, in relation to a season and a holder of a statutory fishing right, is the
   weight of Southern Bluefin Tuna taken by the holder that exceeds the holder’s
   quota for the season.
9C Undercatch

9C.1 AFMA may determine the determined percentage of undercatch for a season.

9C.2 AFMA may determine a percentage of zero.

9C.3 Subclause 9C.4 applies if:
   (a) in a season (the first season), the holder of a statutory fishing right takes:
       (i) an amount of Southern Bluefin Tuna that is less than the holder’s quota; or
       (ii) no Southern Bluefin Tuna; and
   (b) in the following season (the second season), the holder holds a statutory fishing right.

9C.4 The holder may, during the second season, take an amount of Southern Bluefin Tuna that is the sum of:
   (a) the holder’s quota in the second season; and
   (b) an amount equal to the lesser of:
       (i) the difference between the holder’s quota in the first season and the amount of Southern Bluefin Tuna taken by the holder in the first season; and
       (ii) the holder’s quota in the first season multiplied by the determined percentage of undercatch for the first season.

10 Who is entitled to fish SBT in the Australian fishing zone using a foreign boat?

10.1 A person is entitled to use a foreign boat in the Australian fishing zone during a season to:
   (a) take Southern Bluefin Tuna (other than for the purpose of scientific research about Southern Bluefin Tuna); and
   (b) conduct secondary fishing activities in relation to Southern Bluefin Tuna; and
   (c) conduct ancillary fishing activities in relation to Southern Bluefin Tuna that has been taken using the boat (other than transhipment of the Southern Bluefin Tuna from the boat); if, and only if:
   (d) the boat is a nominated boat and the person is, or is acting for, the holder of statutory fishing rights for which that boat has been nominated; and
   (e) the person is, or is acting for, the holder of a foreign fishing licence:
       (i) granted pursuant to an agreement referred to in section 35 of the Act; and
(ii) that authorises the use of the boat for the activities referred to in paragraphs (a), (b) and (c); and

(f) subject to subclause 9A.2, at any time when the person takes southern bluefin tuna using the boat, the person is, or is acting for, a holder with quota that is equal to, or greater than, the total weight of:

(i) southern bluefin tuna in that take; and

(ii) southern bluefin tuna taken and counted against the holder’s quota in the same season as, but before, that take; and

(g) subject to subclause 9A.3, at any time when the person takes southern bluefin tuna using the boat, the boat has nominated against it an amount of the holder’s quota that is equal to, or greater than, the total weight of:

(i) southern bluefin tuna in that take; and

(ii) southern bluefin tuna taken and counted against the boat in the same season as, but before, that take; and

(h) the person uses only the following fishing gear in the AFZ:

(i) pelagic longline fishing gear;

(ii) minor line fishing gear (that is, rod and reel, hand line or pole);

(iii) gear to undertake the purse seine method of fishing;

(iv) any other gear allowed by AFMA in a condition specified in the certificate evidencing the grant of the statutory fishing rights.

10.2 A person is entitled to use a foreign boat (in this subclause called the foreign boat) in the Australian fishing zone to conduct ancillary fishing activities in relation to Southern Bluefin Tuna that has been taken in accordance with this plan using another boat if, and only if, the person is, or is acting for, the holder of a foreign fishing licence that authorises use of the foreign boat for the activities.

11 Who is entitled to use a boat in the SBT Fishery area for scientific research about SBT?

11.1 A person is entitled to use an Australian boat in an area (in this subclause called the area), that is in the SBT Fishery area, for the purpose of scientific research about Southern Bluefin Tuna, or fishing gear used to take Southern Bluefin Tuna, if, and only if, the person is, or is acting for, the holder of a scientific permit that authorises the use of the boat in the area for that purpose.

11.2 A person is entitled to use a foreign boat in an area (in this subclause called the area), that is in the Australian fishing zone, for the purpose of scientific research about Southern Bluefin Tuna if, and only if, the person is, or is acting for, the holder of a scientific permit that authorises the use of the boat in the area for that purpose.
12 Who is entitled to fish for fish other than SBT in the SBT Fishery area?

12.1 A person who is entitled to use an Australian boat in the SBT Fishery area to fish for Southern Bluefin Tuna may, as part of that fishing, use the boat to fish for other fish if, and only if:

(a) the fishing for the other fish is permitted by, and in accordance with:
   (i) a fishing permit in force under the Act; or
   (ii) another plan of management in force under the Act; or
   (iii) a law of a State or Territory that is in force in relation to the SBT Fishery area; and

(b) the permission (however described) authorising the use of the boat to fish for other fish:
   (i) is held by the person who is the holder of the statutory fishing right for which the boat is the nominated boat; and
   (ii) was granted to the person before the commencement of the fishing.

12.2 A person who is entitled to use a foreign boat in the Australian fishing zone to fish for Southern Bluefin Tuna may, as part of that fishing, use the boat to fish for other fish if, and only if:

(a) the fishing for the other fish is permitted by, and in accordance with:
   (i) a foreign fishing licence in force under the Act; or
   (ii) another plan of management in force under the Act; and

(b) the permission (however described) authorising the use of the boat to fish for other fish:
   (i) is held by the person who is the holder of the statutory fishing right for which the boat is the nominated boat; and
   (ii) was granted to the person before the commencement of the fishing.

13 Maximum number of statutory fishing rights

The number of statutory fishing rights must not exceed 5,324,437.

14 Conditions for registration of eligibility for statutory fishing rights—section 26 of the Act

14.1 The conditions for registration of a person as an eligible person are:

(a) that the person’s application for registration is made to AFMA in the form approved by AFMA within the period specified in the notice in relation to the SBT Fishery published under section 24 of the Act; and

(b) that the person was, immediately before the end of 2 February 1995, a unit holder (other than by way of lease) under the former plan.

14.2 In spite of subclause 14.1, if a person:
(a) was, immediately before the end of 2 February 1995, a unit holder (other than by way of lease) under the former plan; and
(b) applies to AFMA for registration in the form approved by AFMA after the period referred to in paragraph 14.1(a); and
(c) demonstrates to the satisfaction of AFMA that the application was made after that period because of exceptional extenuating circumstances; AFMA may regard the person as satisfying paragraph 14.1(a).

15 Grant of a statutory fishing right

15.1 The grant of a number of statutory fishing rights calculated in accordance with clause 16 is available to an eligible person if the person:
(a) requests AFMA to grant the statutory fishing right; and
(b) makes the request within 30 days after being notified of the decision to register the person as an eligible person.

15.2 If the person does not make the request within 30 days, AFMA must:
(a) send a reminder to the person at his or her last known address; and
(b) allow the person a further 30 days in which to make the request.

15.3 If the person does not make the request within the further period referred to in paragraph 15.2(b), AFMA must send the person notice that the person’s registration as an eligible person will be cancelled if the person does not, within 14 days after the date of the notice:
(a) make the request; and
(b) demonstrate to the satisfaction of AFMA that there are extenuating circumstances that caused the person to fail to make the request before the end of the period referred to in paragraph 15.2(b).

15.4 A notice under subclause 15.3 must be sent to the last known address of the person to whom it is sent.

15.5 If the person:
(a) fails to make a request before the end of the period specified in a notice under subclause 15.3; or
(b) makes a request;
   (i) after the end of the period referred to in paragraph 15.2(b); and
   (ii) before the end of the period specified in a notice under subclause 15.3;
and does not demonstrate to the satisfaction of AFMA that there are the extenuating circumstances referred to in paragraph 15.3(b);
AFMA must cancel the registration of the person as an eligible person by making a suitable annotation on the Register.
15.6 AFMA must note on the certificate evidencing the fishing right the following information that is entered on the Register in relation to the grant of the fishing right:

(a) the name of the person to whom the fishing right is granted;
(b) a description of the fishing right;
(c) the period (if any) for which the fishing right is granted;
(d) that the fishing right is granted in relation to the SBT Fishery.

15.7 Nothing in this clause prevents AFMA from evidencing the grant of 2 or more statutory fishing rights on the same certificate.

Note 1: For the grant of a fishing right to an eligible person, see section 31 of the Act.

Note 2: For the issue of a certificate evidencing the grant of a fishing right, see subsection 22(2) of the Act.

Note 3: A statutory fishing right may be suspended, cancelled or surrendered—see sections 38 and 39 and subsection 22(6) of the Act, respectively.

Note 4: A statutory fishing right granted for the SBT fishery ceases to have effect if AFMA revokes the plan of management—see subsections 20(4) and 22(3) of the Act.

Note 5: AFMA must register each fishing right that it, or a Joint Authority managing a fishery in accordance with the law of the Commonwealth, grants by entering in the Register the particulars set out in paragraphs 45(1)(a), (b), (c), (d) and (e) of the Act and such other particulars (if any) that are prescribed in the Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995.

16 How many statutory fishing rights must AFMA grant to an eligible person?

For the purposes of section 31 of the Act, the grant available to an eligible person is the number of statutory fishing rights calculated in accordance with the formula:

\[1000 \times \text{UFC}\]

where:

\(\text{UFC}\) is the number of units of fishing capacity held (other than by way of lease), immediately before the end of 2 February 1995, by the person as a unit holder under the former plan.

17 Australia’s national catch allocation and provisional national catch allocation

17.1 This clause applies to seasons that commence after the commencement of this plan.

17.2 AFMA must determine the amount of Australia’s national catch allocation for each season to be an amount that does not exceed the allocation to Australia under any decision, made under paragraph 3 of article 8 of the Convention, by the Commission, that applies to the season.
17.2A AFMA may determine the amount of Australia’s national catch allocation for one or more seasons if the Commission has made a decision, under paragraph 3 of article 8 of the Convention, about the allocation to Australia for those seasons.

17.2B Before the commencement of a season for which AFMA has determined the national catch allocation, AFMA may, by determination, vary the national catch allocation for that season if any of the following circumstances apply:
   (a) AFMA receives evidence of stock deterioration in the SBT Fishery area;
   (b) AFMA receives new scientific evidence relevant to the SBT Fishery area;
   (c) the Southern Bluefin Tuna Management Advisory Committee recommends that AFMA vary the national catch allocation;
   (d) the Minister gives a direction to AFMA under section 91 of the Fisheries Administration Act 1991 that affects the SBT Fishery area;
   (e) the national catch allocation for the season immediately before the current season was exceeded.

17.4 If, 1 month after the commencement of a season, the Commission has not made a decision that applies to the season, AFMA may either:
   (a) proceed to determine Australia’s national catch allocation for the season without a decision from the Commission; or
   (b) determine a provisional national catch allocation for the season.

17.5 An allocation determined for a season under subclause 17.4 must not exceed Australia’s national catch allocation determined by AFMA for the previous season.

17.6 If, 7 months after the commencement of a season:
   (a) the Commission has not made a decision that applies to the season; and
   (b) AFMA has not already determined the national catch allocation for the season under paragraph 17.4(a);
AFMA must determine the amount of the national catch allocation for the season to be an amount that does not exceed the national catch allocation determined for the previous season.

17.7 If the Commission makes a decision that applies to a season after AFMA has determined Australia’s national catch allocation for the season under subclause 17.4 or 17.6:
   (a) if, under the Commission’s decision, Australia’s allowable catch is an amount less than the amount of the national catch allocation determined by AFMA for the season—AFMA must make a further determination so that the national catch allocation does not exceed the allowable catch under the Commission’s decision; and
(b) in any other case—AFMA may make a further determination of the amount of the national catch allocation that does not exceed the amount of the allowable catch under the Commission’s decision.

Note: A determination mentioned in clause 17 is a disallowable instrument: see subsection 17(6B) of the Act.

18 Actual live weight value and interim live weight value of a statutory fishing right

18.1 This clause applies to seasons that commence after the commencement of this plan.

18.2 The actual live weight value of a statutory fishing right for a season is calculated in accordance with the formula:

\[
\text{AusCatch} \div \text{No. of SFRs}
\]

where:

- \text{AusCatch} is Australia’s national catch allocation in whole Southern Bluefin Tuna, measured in kilograms, for the season; and
- \text{No. of SFRs} is the number of statutory fishing rights:
  (a) granted under subclause 15.1; and
  (b) that have not ceased to have effect, as set out in clause 29; immediately before the actual live weight value is calculated.

18.3 Before the commencement of the season:
  (a) if AFMA has determined AusCatch for the season—AFMA must determine the actual live weight value of a statutory fishing right for the season; or
  (b) if AFMA has not determined AusCatch—AFMA must determine the interim live weight value of a statutory fishing right for the season.

18.4 The interim live weight value determined under paragraph 18.3(b) must not exceed 50% of the actual live weight value of a statutory fishing right for the previous season.

18.5 If, for a season, AFMA determines AusCatch during the period that:
  (a) begins at the commencement of the season; and
  (b) concludes 7 months after the commencement of the season; AFMA must, without delay, determine the actual live weight value of a statutory fishing right for the season.
18.6 If AFMA makes a determination of the AusCatch for a season under subclause 17.4, 17.6 or 17.7, AFMA must, without delay, determine the actual live weight value of a statutory fishing right for the season.

18.8 AFMA must not determine more than 1 actual live weight value of a statutory fishing right for a season unless, because of the operation of subclause 17.7, the AusCatch determined for the season is varied.

19 Provisional live weight value of a statutory fishing right

19.1 This clause applies to seasons that commence after the commencement of this plan.

19.2 The provisional live weight value of a statutory fishing right for a season is calculated for the season in accordance with the formula:

\[
\text{ProvCatch} = \frac{\text{ProvCatch}}{\text{No. of SFRs}}
\]

where:

- \( \text{ProvCatch} \) is the provisional national catch allocation in whole Southern Bluefin Tuna, measured in kilograms, for the season; and
- \( \text{No. of SFRs} \) is the number of statutory fishing rights:
  - (a) granted under subclause 15.1; and
  - (b) that have not ceased to have effect, as set out in clause 29, immediately before the provisional live weight value is calculated.

19.3 If AFMA determines a provisional national catch allocation for a season under subclause 17.4, AFMA must determine the provisional live weight value of a statutory fishing right for the season.

19.4 AFMA must not determine more than 1 provisional live weight value of a statutory fishing right for a season.

20 Actual, interim and provisional live weight values—period of effect

20.1 If, at any time, AFMA determines under paragraph 18(3)(a) or subclause 18.5 or 18.6 the actual live weight value of a statutory fishing right for a season, that value is taken to have effect from the commencement of the season.

20.2 An interim live weight value of a statutory fishing right for a season determined under paragraph 18.3(b):
  - (a) has effect from the commencement of the season; and
  - (b) ceases to have effect when a determination made by AFMA in relation to the season under subclause 18.5, 18.6 or 19.3 commences.
20.3 A provisional live weight value of a statutory fishing right for a season determined under subclause 19.3:

(a) has effect from the commencement of the season; and

(b) ceases to have effect when a determination made by AFMA in relation to the season under subclause 18.5 or 18.6 commences.

22 Circumstances in which overcatching does not breach this plan

22.1 The fact that, in a season, an amount of Southern Bluefin Tuna has been taken that exceeds the actual live weight value for the season of the statutory fishing rights under which the Southern Bluefin Tuna has been taken, does not constitute a breach of this plan if:

(a) the Southern Bluefin Tuna was taken while an interim live weight value was in effect in relation to the season; and

(b) the amount taken does not exceed the interim live weight value for the season of the statutory fishing rights under which the Southern Bluefin Tuna has been taken.

22.2 The fact that, in a season, an amount of Southern Bluefin Tuna has been taken that exceeds the actual live weight value for the season of the statutory fishing rights under which the Southern Bluefin Tuna has been taken, does not constitute a breach of this plan if:

(a) the Southern Bluefin Tuna was taken while a provisional live weight value was in effect in relation to the season; and

(b) the amount taken does not exceed the provisional live weight value for the season of the statutory fishing rights under which the Southern Bluefin Tuna has been taken.

22.3 The fact that, in a season, an amount of Southern Bluefin Tuna has been taken that exceeds the actual live weight value for the season of the statutory fishing rights under which the Southern Bluefin Tuna has been taken, does not constitute a breach of this plan if:

(a) the Southern Bluefin Tuna was taken while an earlier actual live weight value was in effect in relation to the season; and

(b) the amount taken does not exceed the earlier actual live weight value for the season of the statutory fishing rights under which the Southern Bluefin Tuna has been taken.

22.4 The fact that, in a season, an amount of Southern Bluefin Tuna has been taken that exceeds the provisional live weight value for the season of the statutory fishing rights under which the Southern Bluefin Tuna has been taken, does not constitute a breach of this plan if:

(a) the Southern Bluefin Tuna was taken while an interim live weight value was in effect in relation to the season; and
(b) the amount taken does not exceed the interim live weight value for the season of the statutory fishing rights under which the Southern Bluefin Tuna has been taken.

22A Details of southern bluefin tuna taken to be sent to AFMA

22A.1 If a quantity of southern bluefin tuna is taken in the SBT Fishery area by a boat using the purse seine method and transferred to a tow pontoon, the holder or person acting for the holder of the statutory fishing rights under which the holder or person is entitled to take that quantity of southern bluefin tuna must record the following details:

(a) the name of the holder;
(b) the name of the boat from which the southern bluefin tuna were taken;
(c) if there is a series of such transfers, the number of the transfer in that series;
(d) the name of the boat towing the tow pontoon;
(e) the identification number of the tow pontoon;
(f) the date of transfer;
(g) an estimate of the weight of:
   (i) southern bluefin tuna transferred; and
   (ii) southern bluefin tuna killed (including any fish injured and unlikely to survive) by the transfer and purse seine operations.

22A.2 The holder or person acting for the holder must tell AFMA, at the time the tow commences, of the commencement of the operation to tow the tow pontoon to a farm.

22A.3 Within 24 hours of the commencement of the operation to tow the tow pontoon to a farm, the holder or person entitled to take that quantity of southern bluefin tuna must send to AFMA, in the approved form:

(a) the details mentioned in subclause 22A.1 for each transfer of southern bluefin tuna now present in the tow pontoon being towed; and
(b) the printed name of the holder, or person acting for the holder, who is sending the information and the holder’s or person acting’s signature affixed above the printed name.

22B Transfer weighing of fish—purse seine method of fishing

22B.1 Southern bluefin tuna must not be transferred from a tow pontoon to a farm without a transfer weighing of the fish, carried out as determined by AFMA.

22B.2 AFMA must determine the manner in which the transfer weighing is to be carried out.
22B.2A Before making a determination, AFMA must consult SBTMAC.

22B.2B The determination must set out requirements for ascertaining:

(a) the number of fish transferred; and

(b) the average weight of fish transferred.

22B.3 The holder of the statutory fishing rights under which the southern bluefin tuna in the tow pontoon were taken must ensure that sufficient equipment and personnel are provided to complete the transfer weighing.

22B.4 Subject to subclause 22D.1, the estimate provided under paragraph 22A.1(g):

(a) counts against the holder’s quota in the season for all purposes, including any entitlement of the holder to continue to fish for southern bluefin tuna in the season; and

(b) counts against the nominated boat reported to AFMA as the boat from which the fish were taken.

22B.5 For subclause 22B.4, AFMA may substitute another weight for the estimate if there is evidence that the substituted weight (including an amount to account for fish deaths) is more accurate.

22C Release of fish—immediately after capture

A quantity of southern bluefin tuna, released immediately after capture alive and vigorous where they were taken and before any transfer of fish to a tow pontoon or to another place, does not count against a holder’s quota if the following details of the release are noted in the AFMA logbook for the boat:

(a) the weight of fish released;

(b) the location at which the fish were released;

(c) the reason the fish were released.

22CA Release approved by AFMA

22CA.2 This clause applies to the holder of a statutory fishing right who:

(a) takes an amount of overcatch of Southern Bluefin Tuna, using the purse seine method; and

(b) transfers the fish to a tow pontoon.

22CA.3 A holder of a statutory fishing right may, not more than once each season, apply to AFMA in the approved form for permission to release a quantity of Southern Bluefin Tuna.

22CA.4 When considering an application under subclause 22CA.3, AFMA must:

(a) take into account the objectives of the plan; and

(b) make a decision as soon as practicable after receiving the application.
22CA.5 If AFMA approves an application under subclause 22CA.3, AFMA must:
   (a) give the holder a copy of the approval; and
   (b) tell the holder about any conditions to which the approval is subject.

22CA.6 When releasing a quantity of Southern Bluefin Tuna, the holder must comply
      with any conditions to which the approval is subject.

22CA.7 If:
   (a) the holder releases a quantity of Southern Bluefin Tuna; and
   (b) the fish are alive and vigorous; and
   (c) the release is in accordance with the approval mentioned in
      subclause 22CA.5;
      the weight of the fish released does not count against the holder’s quota.

22CA.8 AFMA must, as soon as practicable after the release:
   (a) estimate the weight of Southern Bluefin Tuna that are likely to have died
      before or during the release; and
   (b) count the weight of the fish mentioned in paragraph (a) against the quota
      (whether the holder’s quota or quota nominated against the boat used to
      take the Southern Bluefin Tuna) for the season in which the fish were
      taken.

22CA.10 Each of the following decisions of AFMA is reviewable as if the decision were a
      relevant decision within the meaning of section 165 of the Act:
      (a) a decision to refuse an application made under subclause 22CA.3;
      (b) a decision in relation to an estimate made under subclause 22CA.8.

22D Transfer weight to be substituted

22D.1A In this clause:

   relevant weight, in relation to a tow operation, means the total of the following:
   (a) the weight of Southern Bluefin Tuna determined by a transfer weighing
       conducted for the tow operation;
   (b) the weight of any Southern Bluefin Tuna likely to have died during the take
       and tow operation;
   (c) the weight of any Southern Bluefin Tuna likely to have died during any
       subsequent release operation.

22D.1 Subject to subclause 22D.2, the relevant weight:
   (a) is to be used in place of the estimate provided under paragraph 22A.1(g); and

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Authorised Version F2016C00642 registered 22/06/2016
(b) counts against the holder’s quota in the season for all purposes, including any entitlement of the holder to continue to fish for southern bluefin tuna in the season; and
(c) counts against the nominated boat reported to AFMA as the boat from which the fish were taken:
   (i) in the case of a take by the purse seine method—as reported to AFMA under paragraph 22A.1(b); or
   (ii) in any other case—as reported to AFMA in the return by the person having a fish receiver permit who received the fish.

22D.2 If the relevant weight is less than the estimate given to AFMA under paragraph 22A.1(g), AFMA must count the estimate against the holder’s quota and against the nominated boat from which the fish were taken.

22D.3 For subclause 22D.2, AFMA may substitute another weight for the estimate if there is evidence that the substituted weight (including an amount to account for fish deaths) is more accurate.

22D.4 A holder affected by subclause 22B.5, 22D.2 or 22D.3 may request that AFMA, as relevant to the request:
   (a) not substitute another weight for the estimate; or
   (b) not count the estimate in place of the transfer weight.

22D.5 When considering a request made under subclause 22D.4, AFMA is to take into account the objectives of this Plan.

22D.6 A decision of AFMA to refuse a request made under subclause 22D.4 is reviewable as if it were a relevant decision within the meaning of section 165 of the Act.

23 Signed extracts of the Register

23.1 If AFMA alters the Register to indicate:
   (a) that a fishing right has been transferred or leased; or
   (b) that a boat is, or is no longer, a nominated boat in relation to a fishing right; or
   (c) that the conditions of a fishing right have changed;
AFMA must, within 14 days after the Register is so altered, provide the holder of the fishing right with a signed extract of the Register that includes the details described in subclause 23.2.

23.2 For the purposes of subclause 23.1, the details are:
   (a) the conditions of the fishing right; and
   (b) the identity of any boat that is a nominated boat in respect of the fishing right; and
(c) the number of fishing rights in respect of which a boat referred to in paragraph (b) is a nominated boat.

23.3 On application to AFMA, a person may obtain a signed extract of an entry in the Register that includes the details described in subclause 23.2.

24 Obligations of the holder of a statutory fishing right—section 22 of the Act

24.1 If the holder of a statutory fishing right is fishing for Southern Bluefin Tuna in an area, or by a fishing method, that is included in another plan of management determined under section 17 of the Act, the holder must comply with that plan.

24.3 If, during a trip, the holder of a statutory fishing right intends to use a nominated boat for the statutory fishing right as a charter boat:
   (a) the holder must give written notice of that intention to AFMA before commencing the trip; and
   (b) the holder must not, during the trip, engage in fishing under this Plan using the boat, if the holder has notified AFMA under subparagraph 7(c)(i) that the boat will be used during the trip only as a charter boat.

24.4 If, during a trip, Southern Bluefin Tuna is taken under a fishing right by the holder of the fishing right, the holder must not use a boat (being a boat that was used to take the Southern Bluefin Tuna) as a charter boat during the trip.

24.5 If the holder of a statutory fishing right is required by AFMA to provide to AFMA:
   (a) biological, economic and technical data available to the holder; or
   (b) a biological sample available to the holder;
   the holder must provide that data or that sample.

24.6 If the holder of a statutory fishing right takes Southern Bluefin Tuna using a boat and intends to unload the Southern Bluefin Tuna from the boat outside Australia (otherwise than by transhipment), the holder must:
   (a) give notice to AFMA in the approved form of the holder’s intention to unload the Southern Bluefin Tuna from the boat outside Australia; and
   (b) receive from AFMA written notice of:
       (i) further conditions to which the fishing right is subject as a consequence of the holder’s intention referred to in paragraph (a); or
       (ii) the fact that there are no further conditions to which the fishing right is subject as a consequence of the holder’s intention.

24.7 If the holder of a statutory fishing right:
   (a) takes Southern Bluefin Tuna using a boat; and
   (b) unloads the Southern Bluefin Tuna from the boat outside Australia (otherwise than by transhipment);
the holder must:

(c) obtain a written statement in accordance with the approved form from the first person who receives the Southern Bluefin Tuna after it has been unloaded that indicates:

(i) the weight of the Southern Bluefin Tuna; and
(ii) whether the Southern Bluefin Tuna was whole or processed; and
(iii) if the Southern Bluefin Tuna was processed—the processed form of the Tuna; and

(d) provide the statement to AFMA on the same day on which the unloading of the Southern Bluefin Tuna is completed.

24.9 Before the holder of a statutory fishing right takes an Australian boat that is a nominated boat in respect of the fishing right into the high seas fishing zone to fish for Southern Bluefin Tuna during a season, the holder must:

(a) give notice to AFMA in the form approved by AFMA of the holder’s intention to take the boat into the high seas fishing zone to fish for Southern Bluefin Tuna; and

(b) receive from AFMA written notice of:

(i) further conditions to which the fishing right is subject as a consequence of the intention referred to in paragraph (a); or
(ii) the fact that there are no further conditions to which the fishing right is subject as a consequence of the holder’s intention referred to in paragraph (a).

24.10 The holder of a statutory fishing right:

(c) must not tranship Southern Bluefin Tuna that is not alive to a boat unless the transhipment occurs under the supervision of an officer who is:

(i) appointed under subsection 83(1) of the Act; and
(ii) directed by AFMA to carry out the supervision; and

(d) must not tranship Southern Bluefin Tuna to a boat unless the boat is being used by a person who is, or is acting for, the holder of a fishing permit or foreign fishing licence for the SBT Fishery that authorises receipt of the transhipped Tuna on that boat.

24.11 The holder of a statutory fishing right must comply with:

(a) the Fisheries Management Regulations 1992 and the Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995; and
(b) all conditions to which the statutory fishing right is subject; and
(c) this plan; and
(d) the Regulations under the Fishing Levy Act 1991 about the payment of levies; and
(e) any relevant direction.
24.12 The holder of a statutory fishing right must take all reasonable measures to ensure that by-catch taken by the holder, and the impact of the holder’s fishing operations on the marine environment, are kept to a minimum.

24.13 The holder of a statutory fishing right must ensure that any person acting for the holder using the nominated boat for the statutory fishing right in the SBT Fishery complies with subclause 9.1 or 10.1, as appropriate.

Note 1: For other conditions to which a statutory fishing right is subject, see subsections 22(4) and (5) of the Act.

Note 2: Other conditions attaching to a statutory fishing right are set out on the certificate issued by AFMA including reporting requirements and conditions regarding the AFMA vessel monitoring system.

Note 3: The holder of a statutory fishing right should also be aware of the requirements of Part III C of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983.

25 Obligations of the holder of a fishing permit—section 32 of the Act

25.1 If the holder of a fishing permit granted in respect of the SBT Fishery is required by AFMA to provide to AFMA:

(a) biological, economic and technical data available to the holder; or
(b) a biological sample available to the holder;
the holder must provide that data or that sample.

25.2 If the holder of a fishing permit granted in respect of the SBT Fishery takes Southern Bluefin Tuna using a boat and intends to unload the Southern Bluefin Tuna from the boat outside Australia (otherwise than by transhipment), the holder must:

(a) give notice to AFMA in the approved form of the holder’s intention to unload the Southern Bluefin Tuna from the boat outside Australia; and
(b) receive from AFMA written notice of:
   (i) further conditions to which the fishing right is subject as a consequence of the holder’s intention referred to in paragraph (a); or
   (ii) the fact that there are no further conditions to which the fishing right is subject as a consequence of the holder’s intention.

25.3 If the holder of a fishing permit granted in respect of the SBT Fishery:

(a) takes Southern Bluefin Tuna using a boat; and
(b) unloads the Southern Bluefin Tuna from the boat outside Australia (otherwise than by transhipment);
the holder must:

(c) obtain a written statement from the first person who receives the Southern Bluefin Tuna after it has been unloaded that indicates:
   (i) the weight of the Southern Bluefin Tuna; and
(ii) whether the Southern Bluefin Tuna was whole or processed; and
(iii) if the Southern Bluefin Tuna was processed—the processed form of the Tuna; and
(d) provide the statement to AFMA on the same day on which the unloading of the Southern Bluefin Tuna is completed.

25.4 The holder of a fishing permit granted in respect of the SBT Fishery:
(b) must not receive by transhipment Southern Bluefin Tuna that is not alive unless the transhipment occurs under the supervision of an officer who is:
   (i) appointed under subsection 83(1) of the Act; and
   (ii) directed by AFMA to carry out the supervision; and
(c) must not receive Southern Bluefin Tuna by way of transhipment from a boat unless the boat:
   (i) is an Australian boat; and
   (ii) is a nominated boat; and
   (iii) is being used by a person who is, or is acting for, the holder of a statutory fishing right in relation to which the boat is a nominated boat.

25.5 The holder of a fishing permit granted in respect of the SBT Fishery must comply with:
   (a) the Fisheries Management Regulations 1992; and
   (b) the Regulations under the Fishing Levy Act 1991 about the payment of levies; and
   (c) this plan; and
   (d) any conditions to which the fishing permit is subject.

25.6 The holder of a fishing permit must take all reasonable measures to ensure that by-catch taken by the holder, and the impact of the holder’s fishing operations on the marine environment, are kept to a minimum.

Note: The holder of a fishing permit should also be aware of the requirements of Part IIIC of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983.

26 **Obligations of the holder of a foreign fishing licence—section 34 of the Act**

26.1 If the holder of a foreign fishing licence granted in respect of the SBT Fishery is required by AFMA to provide to AFMA:
   (a) biological, economic and technical data available to the holder; or
   (b) a biological sample available to the holder;
the holder must provide that data or that sample.

26.3 The holder of a foreign fishing licence granted in respect of the SBT Fishery:
(a) must not receive by transhipment Southern Bluefin Tuna unless the transhipment occurs under the supervision of an officer who is:
   (i) appointed under subsection 83(1) of the Act; and
   (ii) directed by AFMA to carry out the supervision; and
(b) must not receive Southern Bluefin Tuna by way of transhipment from a boat unless the boat:
   (i) is an Australian boat; and
   (ii) is a nominated boat; and
   (iii) is being used by a person who is, or is acting for, the holder of a statutory fishing right in relation to which the boat is a nominated boat.

26.4 The holder of a foreign fishing licence granted in respect of the SBT Fishery must comply with:
   (a) the *Fisheries Management Regulations 1992*; and
   (b) this plan; and
   (c) any conditions to which the foreign fishing licence is subject; and
   (d) any relevant directions; and
   (e) if the foreign fishing licence is granted pursuant to an agreement referred to in section 35 of the Act—that agreement.

26.5 The holder of a foreign fishing licence must take all reasonable measures to ensure that by-catch taken by the holder, and the impact of the holder’s fishing operations on the marine environment, are kept to a minimum.

Note: The holder of a foreign fishing licence should also be aware of the requirements of Part IIIC of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

29 Expiry of a statutory fishing right

A statutory fishing right expires if it is:
   (a) surrendered under subsection 22(6) of the Act; or
   (b) cancelled by AFMA under section 39 of the Act.
Part 3—Miscellaneous

31 Delegation

AFMA may, by writing under its common seal, delegate any of its powers and functions under this plan to an officer of AFMA.

32 Reconsideration of decisions by AFMA and Administrative Appeals Tribunal

The provisions of section 165 of the Act apply to a decision:

(a) under subclause 14.2 that a person has not demonstrated to the satisfaction of AFMA that there are exceptional extenuating circumstances that caused an application to be made after the period referred to in paragraph 14.1(a); and

(b) under subclause 15.5 that a person has not demonstrated to the satisfaction of AFMA that there are extenuating circumstances that caused an application to be made after the period referred to in paragraph 15.3(b); as if the decision were a relevant decision within the meaning of that section.

34 Agents

34.1 A person who is the holder or owner of a statutory fishing right may give AFMA notice in writing of the appointment of an agent of the person for the purpose of the exercise of powers specified in the notification.

34.2 Notice given under this clause must be accompanied by the instrument, or a certified copy of the instrument, by which the person appointed the agent.

34.3 AFMA is entitled to rely on a notice given under this clause for the purposes of making a decision about an application made or lodged by an agent and is under no duty to verify by other means the authority of the agent to make the application.

35 Notice in writing

35.1 A notice required or permitted by this plan to be given in writing to a holder of a statutory fishing right:

(a) must be delivered to the residential or office address, or posted to the postal address, shown for the holder in the Register; and

(b) is taken to be received by the holder on delivery at that address, or at 5.00 p.m. on the fifth working day after the day of posting, whichever first occurs.
35.2 A notice required or permitted by this plan to be given in writing to a holder of a fishing permit or foreign fishing licence:
   (a) must be delivered to the residential or office address, or posted to the postal address, shown for the holder in the last written notice of address received by AFMA from the holder; and
   (b) is taken to be received by the holder on delivery at that address, or at 5.00 p.m. on the fifth working day after the day of posting, whichever first occurs.

35.3 A notice required or permitted by this Plan to be given in writing to AFMA must be delivered, posted or sent electronically to the Manager of Licensing and Quota Management, Australian Fisheries Management Authority.

Note: The contact details of AFMA’s Manager of Licensing and Quota Management are available on AFMA’s website: http://www.afma.gov.au.

36 Notification by fax

36.1 In spite of subclause 35.1, if the Register includes a fax number for a holder of a statutory fishing right, a notice required or permitted by this plan to be given in writing to the holder may be faxed to the number.

36.2 In spite of subclause 35.2, if the last written notice of address received by AFMA from the holder of a fishing permit or foreign fishing licence includes a fax number for the holder, a notice required or permitted by this plan to be given in writing to the holder may be faxed to the number.

36.4 A fax is taken to have been received:
   (a) if it was transmitted between 9.00 a.m. and 4.00 p.m. on any working day—1 hour after the time of transmission; and
   (b) if it was transmitted after 4.00 p.m. on any working day but before 9.00 a.m. on the next working day—at 9.00 a.m. on the next working day.

37 Review of Plan

37.1 The Authority must review this Plan whenever the Authority considers it necessary and at least every 5 years after the commencement of this clause.

37.2 The review must include a consideration of the effectiveness of the measures taken to achieve the objectives of this Plan by reference to the relevant performance criteria set out in Division 1.2 of this Plan.

Southern Bluefin Tuna Fishery Management Plan 1995
Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the amendment is set out in the endnotes.
Endnote 2—Abbreviation key

A = Act
ad = added or inserted
am = amended
amdt = amendment
c = clause(s)
C[x] = Compilation No. x
Ch = Chapter(s)
def = definition(s)
Dict = Dictionary
disallowed = disallowed by Parliament
Div = Division(s)
exp = expires/expired or ceases/ceased to have effect
F = Federal Register of Legislative Instruments
gaz = gazette
LI = Legislative Instrument
LIA = Legislative Instruments Act 2003
(md) = misdescribed amendment
mod = modified/modification
No. = Number(s)
o = order(s)
Ord = Ordinance
org = original
par = paragraph(s)/subparagraph(s)
pres = present
prev = previous
(prev…) = previously
Pt = Part(s)
r = regulation(s)/rule(s)
Reg = Regulation/Regulations
reloc = relocated
renum = renumbered
rep = repealed
rs = repealed and substituted
s = section(s)/subsection(s)
Sch = Schedule(s)
Sdiv = Subdivision(s)
SLI = Select Legislative Instrument
SR = Statutory Rules
Sub-Ch = Sub-Chapter(s)
SubPt = Subpart(s)
underlining = whole or part not commenced or to be commenced
## Endnote 3—Legislation history

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### Endnote 4—Amendment history

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