



Southern Bluefin Tuna Fishery Management Plan 1995

as amended

made under subsection 17 (1) of the

Fisheries Management Act 1991

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Plan Amendment 2008 (No. 1)*

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Part 1 Introduction

Division 1.1 General

1 Name of Plan [see Note 1]

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

2 Commencement [see Note 1]

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) transshipping;
- (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.

by-catch action plan means the plan required under clause 6.

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.

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

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999*.

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.

holder of a fishing concession means, at any particular time:

- (a) in relation to a statutory fishing right — a person whose name appears on the Register in relation to that statutory fishing right if the person is entitled, whether by original grant, transfer, lease or other dealing, to exercise rights mentioned in clause 21 of the Act in relation to that statutory fishing right at that time; or
- (b) in any other case — the person to whom the fishing concession is granted or transferred under the Act.

live weight value, in relation to a statutory fishing right, means the weight of whole Southern Bluefin Tuna:

- (a) measured in kilograms; and

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- (b) determined in accordance with the actual, interim or provisional live weight value 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.

owner, in relation to a statutory fishing right, means a person who has ownership (within the meaning of subsection 49 (1) of the Act) of the fishing right.

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

public notice means a notice published in a newspaper circulating throughout Australia.

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 has the same meaning as in the *Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995*.

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 maccoyii* (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, under clause 28, a statutory fishing right.

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.

unused quota means, for a holder, at a time in a season, the balance of the holder's quota that remains after deducting the weight of southern bluefin tuna taken by the holder up to that time.

verified count means, in relation to a quantity of southern bluefin tuna:

- (a) for the purse seine method of fishing — the weight determined by the procedure set out in 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.

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).

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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 transshipping 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.

Fish Stocks Agreement means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, a copy of the English text of which is set out in Schedule 2 [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;

Clause 4A

- (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 (see subclauses 24.6, 25.2 and 26.2), 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 a by-catch action 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 a by-catch action plan (that is current and publicly available) to minimise the impact of fishing on non-target species and the marine environment;

Clause 4B

- (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

Clause 6

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 By-catch action plan (Act s 17 (6D))

- 6.1 AFMA must prepare and implement a by-catch action plan, or by-catch action plans, for the fishery.
- 6.2 AFMA must review each by-catch action plan at least once every second year, while it is in force.
- 6.3 A by-catch action 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 interactions with seabirds, 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 to, or kept at, a minimum and below a level that might threaten by-catch species.
- 6.4 In developing a by-catch action plan, AFMA must take into account:
- (a) the protection given to whales and other cetaceans under Division 3 of Part 13 of the EPBC Act; and
 - (b) the requirements under the EPBC Act for the protection of:
 - (i) listed threatened species; and
 - (ii) listed migratory species; and
 - (iii) listed marine species.
- 6.5 If information gathered under a by-catch action plan shows it is necessary to do so, AFMA must consider making appropriate amendments to this Plan or changes to the conditions imposed on the holders of fishing concessions.

Note 1 Further ecosystem safeguards are contained in requirements under clause 26A (obligations relating to interactions with certain species and marine communities) and clause 27 (directions not to engage in fishing).

Note 2 Obligations have been placed on the holders of fishing concessions under subclauses 24.12, 25.6 and 26.5 to ensure that by-catch is kept to a minimum.

6A Reference points (Act s 17 (5C))

In accordance with the objective of the Commission to rebuild parental biomass of Southern Bluefin Tuna in the long term, the reference point for Southern Bluefin Tuna is that, by the year 2020, parental biomass of Southern Bluefin Tuna is to be at the level it was in 1980.

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.

Clause 8

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:
- (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 under clause 12A; and
 - (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:

Clause 9A

- (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 Take in excess of quota

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 cage, to a farm (a *tow operation*); or
- (b) an amount of Southern Bluefin Tuna taken by a holder, using the pelagic longline 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

Clause 9B

- (b) if the Southern Bluefin Tuna are taken using the pelagic longline 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 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 verified count 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 verified count is undertaken within 30 days of the commencement of the tow operation — ending 58 days after the tow operation commenced; or
 - (c) if no verified count is undertaken within 30 days of the take being transferred to a tow cage 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 cage under subclause 22A.1.

9B Overcatch

9B.1 In this clause:

holder includes a person acting for the holder.

SFR means statutory fishing right.

Overcatch — 500 kilograms or less

9B.2 This subclause applies to the holder of an SFR if:

- (a) in a season (the **first season**), the holder takes an overcatch of Southern Bluefin Tuna of 500 kilograms or less; and
- (b) at the beginning of the following season (the **second season**) and in the absence of this clause, the holder's SFR would allow the holder to take an amount of Southern Bluefin Tuna at least equal to the overcatch taken by the holder in the first season; and
- (c) clause 22CA does not apply to the holder.

9B.3 If subclause 9B.2 applies to a holder, the holder is considered to have taken:

- (a) during the first season, an amount of Southern Bluefin Tuna equal to the quota allocated to the holder's SFR in the first season; and
- (b) immediately after the beginning of the second season, the overcatch taken by the holder in the first season.

Clause 10

More than 500 kilograms — pelagic longline method

9B.4 This subclause applies to a holder if:

- (a) in a season (the *first season*), the holder, using the pelagic longline method, takes an overcatch of Southern Bluefin Tuna of more than 500 kilograms; and
- (b) at the beginning of the following season (the *second season*) and in the absence of this clause, the holder's SFR would allow the holder to take an amount of Southern Bluefin Tuna, expressed in kilograms, at least equal to the amount of Southern Bluefin Tuna calculated using the formula:

$$3 \times (1\text{st season take} - 500 - 1\text{st season quota}) + 500$$

where:

1st season take is the amount of Southern Bluefin Tuna, in kilograms, taken by the holder in the first season.

1st season quota is the quota, in kilograms, allocated to the holder's SFR in the first season.

9B.5. If subclause 9B.4 applies to a holder, the holder is considered to have taken:

- (a) during the first season, an amount of Southern Bluefin Tuna equal to the quota allocated to the holder's SFR in the first season; and
- (b) immediately after the beginning of the second season, the amount of Southern Bluefin Tuna, expressed in kilograms, calculated using the formula in paragraph 9B.4 (b).

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 under clause 12A; 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

Clause 11

- (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:

Clause 12A

- (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.

12A Nomination of boat

12A.1 The holder of a statutory fishing right may apply to AFMA, in the approved form, for a boat to be entered in the Register as the nominated boat for the statutory fishing right.

12A.2 The holder of the statutory fishing right for which a boat is the nominated boat:

- (a) must be the only holder for the nominated boat; and
- (b) may be the holder of a statutory fishing right nominated to another boat; and
- (c) must nominate at least 1 statutory fishing right for each boat; and
- (d) may apply to AFMA to nominate a further part of the holder's unused quota (if there is any) to a nominated boat.

Note Paragraph 9.1 (f) precludes fishing from a nominated boat in the SBT Fishery without sufficient quota nominated to that boat.

12A.3 An application under subclause 12A.1 must be accompanied by:

- (a) both:
 - (i) a statement, in an approved form, by the holder that the boat may safely and lawfully carry a fishery observer and fishery observer's safety and monitoring equipment; and

Clause 12B

- (ii) a written undertaking by the holder to carry a fishery observer and fishery observer's safety and monitoring equipment if AFMA asks the holder to do so; or
- (b) a written statement by the holder explaining why it is not safe to carry a fishery observer and fishery observer's safety and monitoring equipment on the boat.

12A.4 AFMA may refuse an application by a holder if:

- (a) both of the following apply to the holder:
 - (i) in the season immediately before the season in which the application is made, the holder took an overcatch of Southern Bluefin Tuna;
 - (ii) subclause 9B.2 or 9B.4 does not apply to the holder; or
- (b) the boat is incapable of carrying a fishery observer and the fishery observer's safety and monitoring equipment.

12A.4A AFMA may also refuse an application by a holder if:

- (a) in the season immediately before the season in which the application is made (the *first season*), the nominated boat was used by the holder to take an amount of Southern Bluefin Tuna that exceeded the quota nominated against the nominated boat for that season; and
- (b) immediately after the beginning of the season in which the application is made, the quota nominated against the nominated boat is less than the amount by which the quota nominated against the boat in the first season was exceeded.

12A.5 If AFMA approves an application made under subclause 12A.1, AFMA must:

- (a) enter in the Register, in relation to the nominated boat, the details required by the *Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995* to be entered in the Register; and
- (b) give the holder an extract of the Register that:
 - (i) states the conditions to which the statutory fishing right is subject; and
 - (ii) states the name of the nominated boat; and
 - (iii) is signed for AFMA by a person having authority to sign it.

12A.6 The applicant may seek a review of a decision not to enter the boat in the Register as the nominated boat for the statutory fishing right, as if the decision were a reviewable decision under section 165 of the Act.

12B Requirements in relation to certain nominated boats

12B.1 If, before the commencement of this clause, a boat is entered in the Register as the nominated boat for a statutory fishing right, the holder of the right must, within 28 days, or any extension of that period granted by AFMA, after the commencement of this clause, give to AFMA:

- (a) both:

Clause 12D

- (i) a statement, in an approved form, by the holder that the boat may safely and lawfully carry a fishery observer and fishery observer's safety and monitoring equipment; and
 - (ii) a written undertaking by the holder to carry a fishery observer and fishery observer's safety and monitoring equipment if AFMA asks the holder to do so; or
- (b) a written statement by the holder explaining why it is not safe to carry a fishery observer and fishery observer's safety and monitoring equipment on the boat.

12B.2 AFMA may cancel the entry in the Register of the nominated boat if the boat is incapable of carrying a fishery observer and fishery observer's safety and monitoring equipment or the holder does not comply with subclause 12B.1 within the required time.

12B.3 The holder of the statutory fishing right for which the boat is nominated may seek a review of a decision to cancel an entry in the Register of that boat, as if the decision were a reviewable decision under section 165 of the Act.

12C Cancellation of nomination of a boat

12C.1 This clause applies in relation to a nominated boat unless a written statement of the kind mentioned in paragraph 12A.3 (b) or 12B.1 (b) applies to the boat.

12C.2 AFMA may cancel an entry in the Register of the boat if:

- (a) AFMA asks for a fishery observer to be carried, either with or without equipment, on the boat during a fishing trip; and
- (b) without reasonable excuse, the request is refused by the master of the boat or the holder of the statutory fishing right for which the boat is nominated.

12C.3 The holder of the statutory fishing right for which the boat is nominated may seek a review of a decision to cancel the entry in the Register of that boat, as if the decision were a reviewable decision under section 165 of the Act.

12D Application for cancellation of nomination of a boat

12D.1 The holder of a statutory fishing right granted for the SBT Fishery may apply in writing to AFMA, in the approved form, for AFMA to cancel an entry in the Register of a nominated boat for the fishing right.

12D.2 AFMA may refuse an application to cancel an entry in the Register of a nominated boat if:

- (a) the holder has sent details to AFMA of a take of southern bluefin tuna in accordance with subclause 22A.1 but that take has not been subject to a verified count or otherwise accounted for; or
- (b) the holder is recorded by AFMA as having taken southern bluefin tuna in excess of his or her quota.

Clause 13

12D.3 Unless subclause 12D.2 applies, AFMA must cancel the entry.

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.

Clause 16
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.*[Notes*

1. For the grant of a fishing right to an eligible person, see section 31 of the Act.
2. For the issue of a certificate evidencing the grant of a fishing right, see subsection 22 (2) of the Act.
3. A statutory fishing right may be suspended, cancelled or surrendered — see sections 38 and 39 and subsection 22 (6) of the Act, respectively.
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.
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:

$$1000 \times UFC$$

where:

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.

Clause 17

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.
- 17.3 AFMA must not determine Australia's national catch allocation for a season before the end of 7 months after the commencement of the season unless the Commission has made a decision that applies to the season.
- 17.4 If, at the end of 1 month after the commencement of a season the Commission has not made a decision that applies to the season, AFMA may determine a provisional national catch allocation for the season.
- 17.5 A provisional national catch allocation for a season must not exceed Australia's national catch allocation determined by AFMA for the previous season.
- 17.6 If, at the end of 7 months after the commencement of a season, the Commission has not made a decision that applies to the season, AFMA must determine the amount of Australia's national catch allocation for the season to be an amount that does not exceed Australia's national catch allocation determined by AFMA for the previous season.
- 17.7 If, later than 7 months after the commencement of a season, the Commission makes a decision that applies to the season:
- (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

Clause 18

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:

$$\frac{\text{AusCatch}}{\text{No. of SFRs}}$$

where:

AusCatch is Australia's national catch allocation in whole Southern Bluefin Tuna, measured in kilograms, for the season; and

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 Not later than 30 days before the commencement of the season:
 - (a) if AFMA has determined AusCatch for the season — AFMA must calculate the actual live weight value for the season and specify in a public notice the details described in subclause 18.7; or
 - (b) in any other case — AFMA must calculate the interim live weight value of a statutory fishing right for the season and specify that value in a public notice.
 - 18.4 The interim live weight value calculated 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 30 days before the commencement of the season; and
 - (b) concludes at the end of 7 months after the commencement of the season;
 AFMA must, without delay, calculate the actual live weight value for the season and specify in a public notice the details described in subclause 18.7.
 - 18.6 If AFMA makes a determination of the AusCatch for a season under subclause 17.6 or 17.7, AFMA must, without delay, calculate the actual live weight value for the season and specify in a public notice the details described in subclause 18.7.

Clause 19

- 18.7 The details required for the purposes of paragraph 18.3 (a) and subclauses 18.5 and 18.6 are:
- (a) the factors 'AusCatch' and 'No. of SFRs' under subclause 18.2, in relation to the season; and
 - (b) the actual live weight value of a statutory fishing right for the season.
- 18.8 AFMA must not calculate and publish 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:

$$\frac{\text{ProvCatch}}{\text{No. of SFRs}}$$

where:

ProvCatch is the provisional national catch allocation in whole Southern Bluefin Tuna, measured in kilograms, for the season; and

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:
- (a) calculate the provisional live weight value for the season; and
 - (b) specify in a public notice:
 - (i) the factors 'ProvCatch' and 'No. of SFRs' under subclause 19.2, in relation to the season; and
 - (ii) the provisional live weight value of a statutory fishing right for the season.
- 19.4 AFMA must not calculate and publish 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 specifies 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 specified under paragraph 18.3 (b):

Clause 22

- (a) has effect from the commencement of the season; and
 - (b) ceases to have effect on the day AFMA publishes a notice under subclause 18.5 or 18.6 or paragraph 19.3 (b) in relation to the season.
- 20.3 A provisional live weight value of a statutory fishing right for a season specified under paragraph 19.3 (b):
- (a) has effect from the commencement of the season; and
 - (b) ceases to have effect on the day AFMA publishes a notice under subclause 18.5 or 18.6 in relation to the season.

21 Actual, interim and provisional live weight values — notification to holders

- 21.1 When, in a notice published under paragraph 18.3 (a) or subclause 18.5 or 18.6, AFMA specifies the actual live weight value of a statutory fishing right for a season, all holders of statutory fishing rights are taken to have been notified of that value on the day the notice is published.
- 21.2 When, in a notice published under paragraph 18.3 (b), AFMA specifies the interim live weight value of a statutory fishing right for a season, all holders of statutory fishing rights are taken to have been notified of that value on the day the notice is published.
- 21.3 When, in a notice published under paragraph 19.3 (b), AFMA specifies a provisional live weight value of a statutory fishing right for a season, all holders of statutory fishing rights are taken to have been notified of that value on the day that notice is published.
- 21.4 In addition to the notices referred to in subclauses 21.1, 21.2 and 21.3, AFMA may send further notices to all holders of statutory fishing rights that specify:
- (a) the actual, interim or provisional live weight value of a statutory fishing right for the season; and
 - (b) the number of fishing rights held by the holder being notified.

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:

Clause 22A

- (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 cage, 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 cage;
 - (e) the identification number of the tow cage;
 - (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 cage to a farm.

Clause 22B

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

- (a) the details mentioned in subclause 22A.1 for each transfer of southern bluefin tuna now present in the tow cage 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.

22A.4 If AFMA has agreed in writing to another means, the information mentioned in subclause 22A.3 may be sent to AFMA by that means rather than by facsimile.

22B Requirement for a verified count — purse seine method of fishing

22B.1 Southern bluefin tuna must not be transferred from a tow cage to a farm without a verified count of the fish, conducted by AFMA or an agent of AFMA, using the procedure set out in subclause 22B.2.

22B.2 A verified count is to be undertaken in the following manner:

- (a) at least 40 live fish of 10 kilograms or greater are to be taken from the tow cage and the average weight of those fish determined to 2 decimal places;
- (b) a video recording is to be made of the transfer of the fish from the tow cage to the farm;
- (c) the video is to depict a side view covering the opening between the tow cage and the farm in order that all southern bluefin tuna transferred will appear on the video recording;
- (d) once the transfer is complete, a farm representative and AFMA or an agent of AFMA are to view the recording and tally the number of fish transferred;
- (e) the weight of fish in the verified count is the weight obtained by multiplying the average weight determined under paragraph (a) by the number of fish determined under paragraph (d).

Note A count is a verified count only if it meets the requirements of subclause 22B.2.

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

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.

Clause 22C

- 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 cage 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 Restricted overcatch — approved by AFMA

22CA.1 In this clause:

2008 season means the period from 1 December 2007 to 30 November 2008 (inclusive).

2009 season means the period from 1 December 2008 to 30 November 2009 (inclusive).

2010 season means the period from 1 December 2009 to 30 November 2010 (inclusive).

holder includes a person acting for the holder.

22CA.2 This clause applies to the holder of a statutory fishing right who, in the 2008 season, 2009 season or 2010 season:

- (a) takes an amount of overcatch of Southern Bluefin Tuna, using the purse seine method; and
- (b) transfers the fish to a tow cage.

22CA.3 The holder may, not more than once each season, apply to AFMA, in the approved form:

- (a) for permission to release a quantity of Southern Bluefin Tuna; and
- (b) to:
 - (i) retain an amount of overcatch of Southern Bluefin Tuna of less than 25 tonnes; and
 - (ii) reduce the holder's quota in the season following the season in which the overcatch was taken, by an amount equal to the overcatch mentioned in subparagraph (i).

22CA.4 When considering an application under paragraph 22CA.3 (a) or (b), 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 paragraph 22CA.3 (a) or (b), AFMA must:

- (a) give the holder a copy of the approval; and

Clause 22D

(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.9 If the amount of overcatch of Southern Bluefin Tuna retained by the holder is 25 tonnes or more, the holder has contravened a condition of the holder's statutory fishing right.

22CA.10 Each of the following decisions of AFMA is reviewable as if the decision were a reviewable decision under 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 Verified count 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 verified count 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.

22.D1 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
- (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:

Clause 23

- (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 verified count.
- 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 decision of AFMA to which section 165 of the Act applied.

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.
- 24.2 If the holder of a statutory fishing right is using a boat in the SBT Fishery, the holder must carry on board the boat a signed extract from the Register that includes:
- (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.
- 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 is using a boat (the *nominated boat*) in the SBT Fishery, unless the holder has a reasonable excuse, at the request of AFMA the holder must allow a fishery observer nominated by AFMA and fishery observer's safety and monitoring equipment to be carried:
- (a) on board the nominated boat; and
 - (b) if the purse seine method of fishing is being used, on board the ancillary carrier and tow boats being used with the nominated boat.
- 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 transshipment);
- the holder must:

Clause 24

- (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:
 - (a) must have an integrated computer vessel monitoring system, of a kind approved by AFMA, fitted to the holder's nominated boat unless AFMA has given written approval under subclause 26B.2 to the contrary; and
 - (b) must not:
 - (i) sell (otherwise than by transshipment); or
 - (ii) otherwise dispose of (otherwise than by transshipment);Southern Bluefin Tuna taken by the holder and retained for purposes of trade or business to a person in Australia unless the person is a holder of a fish receiver permit in relation to the SBT Fishery; and
 - (c) must not tranship Southern Bluefin Tuna that is not alive to a boat unless the transshipment 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

Clause 25

- (c) this plan; and
- (d) the Regulations under the *Fishing Levy Act 1991* about the payment of levies; and
- (e) any relevant direction under clause 27.

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 IIIC 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 is using a boat (the ***nominated boat***) in the SBT Fishery, unless the holder has a reasonable excuse, at the request of AFMA the holder must allow a fishery observer nominated by AFMA and fishery observer's safety and monitoring equipment to be carried:

- (a) on board the nominated boat; and
- (b) if the purse seine method of fishing is being used, on board the ancillary carrier and tow boats being used with the nominated boat.

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 transshipment);
- 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

Clause 26

- (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:

- (a) must not, in relation to Southern Bluefin Tuna transhipped to the holder and retained for purposes of trade or business:
 - (i) sell (otherwise than by transshipment); or
 - (ii) otherwise dispose of (otherwise than by transshipment);the Southern Bluefin Tuna to a person in Australia unless the person is a holder of a fish receiver permit in relation to the SBT Fishery; and
- (b) must not receive by transshipment Southern Bluefin Tuna that is not alive unless the transshipment 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 transshipment 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; and.
- (d) must have, unless AFMA has given written approval under subclause 26B.2 to the contrary, an integrated computer vessel monitoring system, of a kind approved by AFMA, fitted to the boat specified on the fishing permit.

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; and
- (e) any relevant directions under clause 27.

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

Clause 26A

- (b) a biological sample available to the holder;
the holder must provide that data or that sample.
- 26.2 If the holder of a foreign fishing licence is using a boat (the *nominated boat*) in the SBT Fishery, unless the holder has a reasonable excuse, at the request of AFMA the holder must allow a fishery observer nominated by AFMA and fishery observer's safety and monitoring equipment to be carried:
- (a) on board the nominated boat; and
 - (b) if the purse seine method of fishing is being used, on board the ancillary carrier and tow boats being used with the nominated boat.
- 26.3 The holder of a foreign fishing licence granted in respect of the SBT Fishery:
- (a) must not receive by transshipment Southern Bluefin Tuna unless the transshipment 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 transshipment 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 under clause 27; 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*.

26A Obligations of holders of fishing concessions relating to interactions with certain species and marine communities

- 26A.1 The holder of a fishing concession must take all reasonable steps to avoid interactions with:
- (a) cetaceans; and

Clause 26B

- (b) listed threatened species, listed migratory species and listed marine species; and
- (c) listed threatened ecological communities.

26A.2 The holder of a fishing concession must, if the activities of the boat being used to take fish under the concession result in an interaction with a species or community mentioned in subclause 26A.1:

- (a) record details of the interaction in a logbook kept for that purpose; and
- (b) if there is a fishery observer on the boat:
 - (i) immediately tell the fishery observer about the interaction, and allow the observer to observe its consequences; and
 - (ii) give whatever assistance is necessary for the fishery observer to collect any data, or make any observations, requested by AFMA; and
- (c) if the interaction results in an injury to a member of the species or community — do everything that can practicably be done to give aid to it; and
- (d) if the interaction results in the death of a member of the species or community and if it is necessary to discharge a carcass from the boat — discharge the carcass from the boat in a way that does not attract birds or mammals to the boat; and
- (e) if the interaction results in the death of, or an injury to, a member of the species or community — report the interaction in accordance with regulations made for the purposes of this clause.

26A.3 In this clause:

cetacean means a member of the sub-order Mysticeti or Odontoceti of the Order Cetacea.

listed marine species means a species that is included in a list published under section 248 of the EPBC Act.

listed migratory species means a species that is included in a list published under section 209 of the EPBC Act.

listed threatened ecological community means a community that is included in a list published under section 181 of the EPBC Act.

listed threatened species means a species that is included in a list published under section 178 of the EPBC Act.

26B Integrated computer vessel monitoring system

26B.1 An integrated computer vessel monitoring system, when fitted to a boat operating in the SBT Fishery, must:

- (a) have an automatic location communicator, of a kind approved by AFMA, as part of the system; and
- (b) have a personal computer capable of receiving e-mail as part of the system; and
- (c) be operated continuously unless otherwise agreed by AFMA; and

Clause 28

- (d) be operated in accordance with the manufacturer's specifications and operating instructions.

Note For a list of automatic location communicators already approved, see AFMA's website, www.afma.gov.au.

- 26B.2 AFMA may, on application by a holder, provide written approval for the holder not to carry an integrated computer vessel monitoring system on board the holder's nominated boat.
- 26B.3 In considering an application under subclause 26B.2, AFMA must take into account whether the applicant has regularly complied, or (if a new holder for the fishery) is likely to regularly comply, with the conditions attaching to the statutory fishing right that require regular reporting, by facsimile or phone, of matters concerning the boat.
- 26B.4 A refusal by AFMA to approve an application under subclause 26B.2 is reviewable as if it were a decision of AFMA to which section 165 of the Act applied.

27 Directions by AFMA — subsection 17 (5A) of the Act and paragraph 5 (e)

- 27.1 AFMA may direct that fishing is not to be engaged in the SBT Fishery, or a particular part of the SBT Fishery, during a particular period or periods.

[Note Subsection 17 (5B) of the Act provides that a direction under paragraph 17 (5A) (a) of the Act "in relation to a part of the fishery may identify the part concerned in any way or ways, including by reference to a particular area, a particular species or type of fish, a particular kind or quantity of fishing equipment, a particular method of fishing, or any combination of the above.]

- 27.2 Before AFMA issues a direction, it must consult the Southern Bluefin Tuna Management Advisory Committee about the content of the direction unless the direction is issued in circumstances of emergency.

- 27.3 AFMA must notify each holder of a fishing concession for the SBT Fishery of the content of a direction at least 7 days before the direction takes effect unless the direction is issued in circumstances of emergency.

- 27.4 The holder of a fishing concession for the SBT Fishery is obliged to comply with a direction issued under this clause.

[Note The holder of a statutory fishing right or a fishing permit must comply with obligations imposed under paragraph 17 (6) (g) of the Act: see sections 22 and 95 of the Act.]

28 Transfer of a statutory fishing right

- 28.1 The owner of a statutory fishing right may apply to AFMA to transfer the fishing right to another person.
- 28.2 An application must be in the form approved by AFMA and be accompanied by the certificate.
- 28.3 AFMA must not approve a transfer of a statutory fishing right:

Clause 29

- (a) if AFMA has not determined each application for registration of an interest in the fishing right received by AFMA before the application for transfer; or
- (b) if AFMA has not obtained the written consent to the transfer of each person registered as having an interest in the fishing right; or
- (c) if AFMA:
 - (i) may suspend the operation of the fishing right on a ground set out in subsection 38 (1) or (3) of the Act; and
 - (ii) has not decided not to do so; or
- (d) if under subsection 38 (1) or (3) of the Act AFMA has suspended the operation of the fishing right; or
- (e) if AFMA:
 - (i) may cancel the fishing right on a ground set out in section 39 of the Act AFMA; and
 - (ii) has not decided not to do so; or
- (f) within the period beginning 14 days before the issue of a levy invoice for the statutory fishing right and ending when the levy is paid; or
- (g) if transfer of the statutory fishing right would reduce the holder's quota below the weight of take presently counted against the holder's quota.

28.4 If AFMA approves the transfer of a statutory fishing right, AFMA must:

- (a) if the owner does not transfer all the rights shown on the certificate showing the grant of the right — cancel the certificate and issue to the owner a new certificate showing the rights owned by the owner after the transfer; and
- (b) either:
 - (i) if the transferee has lodged with AFMA a certificate showing the grant of a statutory fishing right — cancel the certificate and issue to the transferee a new certificate showing each right owned by the transferee after the transfer; or
 - (ii) in any other case — issue to the transferee a certificate showing that the transferee is the owner of the transferred right.

28.5 In this clause:

transfer does not include lease.

[Notes

1. A statutory fishing right may be suspended, cancelled or surrendered — see sections 38 and 39 and subsection 22 (6) of the Act, respectively.
2. Paragraph 22 (4) (a) of the Act provides that transferability of a statutory fishing right is subject to conditions specified in the original certificate.]

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

30 Certificates

Before a certificate evidencing the grant of a statutory fishing right is amended or a replacement certificate is issued:

- (a) the superseded certificate must be surrendered to AFMA; or
- (b) if the certificate has been given to AFMA under subclause 28.2 — a statement to that effect must be made to AFMA; or
- (c) if the certificate is not available — the holder of the fishing right must give AFMA a written reason why the certificate is unavailable and an undertaking, signed by the holder, to the effect that the holder will surrender the certificate to AFMA if it becomes available.

31 Delegation

AFMA may, by writing under its common seal, delegate any of its powers and functions under this plan (except its powers under clause 27) to an officer of AFMA.

[*Note* for delegation of powers under clause 27, see subsection 17 (11) of the Act.]

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); and
- (c) under subclause 28.4 that an applicant has not complied with this plan, the Act and any conditions to which the grant of a fishing right is subject;

as if the decision were a relevant decision within the meaning of that section.

33 Leases

33.1 The holder of a statutory fishing right must not lease the right, in a season, to another person unless the holder has given AFMA written notice about the proposed lease, in the approved form.

33.2 A lease of a statutory fishing right has effect, for this Plan, only if:

- (a) all levy payable for the right has been paid; and

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- (b) lease of the statutory fishing right would not reduce the holder's quota below the weight of take presently counted against the holder's quota.

- 33.3 The lease has effect, for this Plan, only for the season in which the lease is granted.

Note See section 46 of the Act about the requirement to register a dealing with a statutory fishing right.

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.

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- 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.

Table of Instruments**Notes to the *Southern Bluefin Tuna Fishery Management Plan 1995*****Note 1**

The *Southern Bluefin Tuna Fishery Management Plan 1995* (in force under subsection 17 (1) of the *Fisheries Management Act 1991*) as shown in this compilation is amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments.

Table of Instruments

Title	Date of notification in Gazette	Date of commencement	Application, saving or transitional provisions
<i>Southern Bluefin Tuna Fishery Management Plan 1995</i> (No. SBT 01)	3 Feb 1995 (see Gazette 1995, No. S34)	3 Feb 1995	
<i>Southern Bluefin Tuna Fishery Management Plan 1995</i> (Amendment No. 1 of 1995) (No. SBT 02)	7 Dec 1995 (see Gazette 1995, No. S471)	7 Dec 1995	—
<i>Southern Bluefin Tuna Fishery Management Plan 1995</i> (Amendment No. 1 of 1996) (No. SBT 03)	13 Dec 1996 (see Gazette 1996, No. S485)	13 Dec 1996	—
<i>Southern Bluefin Tuna Fishery Management Plan Amendment 2002</i> (No. SBT 04)	13 Mar 2002 (see Gazette 2002, No. GN10)	13 Mar 2002	—
<i>Southern Bluefin Tuna Fishery Management Plan Amendment 2004</i> (No. SBT 05)	24 Nov 2004 (see Gazette 2004, No. GN47)	1 Dec 2004	—
<i>Southern Bluefin Tuna Fishery Management Plan Amendment 2008</i> (No. 1)	26 Feb 2008 (see F2008L00617)	27 Feb 2008	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
Heading to Part 1	rs. No. SBT 05
Division 1.1	
Heading to Div 1.1	ad. No. SBT 05
C. 1	rs. No. SBT 04
C. 3	am. No. SBT 04; No. SBT 05; 2008 No. 1
Notes to c. 3.3.....	am. No. SBT 05
Division 1.2	
Division 1.2	ad. No. SBT 05
C. 4	rs. No. SBT 05
C. 4A.....	ad. No. SBT 05 am. 2008 No. 1
C. 4B.....	ad. No. SBT 05 rs. 2008 No. 1
C. 4C.....	ad. No. SBT 05
C. 5	rs. No. SBT 05
C. 5A.....	ad. No. SBT 05
Division 1.3	
Division 1.3	ad. No. SBT 05
C. 6	rs. No. SBT 05
C. 6A.....	ad. No. SBT 05
C. 7	am. No. SBT 05
Part 2	
C. 8	am. 2008 No. 1
C. 9	am. No. SBT 04; No. SBT 05; 2008 No. 1
C. 9A.....	ad. No. SBT 05 rs. 2008 No. 1
C. 9B.....	ad. 2008 No. 1
C. 10	am. No. SBT 04; No. SBT 05
C. 11	am. No. SBT 05
C. 12	rs. No. SBT 05
C. 12A.....	ad. No. SBT 05 am. 2008 No. 1
C. 12B.....	ad. No. SBT 05
C. 12C.....	ad. No. SBT 05
C. 12D.....	ad. No. SBT 05
Note 5 to c. 15.7	am. No. SBT 05
C. 17	am. 2008 No. 1
Note to c. 17	ad. 2008 No. 1
C. 18.4	am. No. SBT 02
C. 22A.....	ad. No. SBT 05
C. 22B.....	ad. No. SBT 05
Note to c. 22B.2	ad. 2008 No. 1
Heading to c. 22C	rs. 2008 No. 1
C. 22C.....	ad. No. SBT 05

Table of Amendments

 ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
C. 22CA	ad. 2008 No. 1
C. 22D.....	ad. No. SBT 05 am. 2008 No. 1
C. 23	am. No. SBT 05
C. 24	am. No. SBT 05
Notes to c. 24.11	rs. No. SBT 05
C. 25	am. No. SBT 05
Note to c. 25.5	rs. No. SBT 05
C. 26	am. No. SBT 05
Note to c. 26.4	rs. No. SBT 05
C. 26A.....	ad. No. SBT 05
C. 26B.....	ad. No. SBT 05
C. 28	am. No. SBT 05
Part 3	
C. 33	rs. No. SBT 05
C. 35	am. No. SBT 05, 2008 No. 1
C. 36	am. No. SBT 05, 2008 No. 1
C. 37	ad. No. SBT 05
