



Southern Bluefin Tuna Fishery Management Plan Amendment 2004 (No. SBT 05)

I, RICHARD MCLOUGHLIN, Managing Director of the Australian Fisheries Management Authority, make this Management Plan Amendment to the *Southern Bluefin Tuna Fishery Management Plan 1995* under sections 17 and 20 of the *Fisheries Management Act 1991*.

Dated 12 November 2004

RICHARD MCLOUGHLIN
Managing Director of the Australian Fisheries Management Authority

Accepted on 15 November 2004

IAN MACDONALD
Minister for Fisheries, Forestry and Conservation

1 Name of Management Plan Amendment

This Management Plan Amendment is the *Southern Bluefin Tuna Fishery Management Plan Amendment 2004 (No. SBT 05)*.

2 Commencement

This Management Plan Amendment commences on 1 December 2004.

3 Amendment of *Southern Bluefin Tuna Fishery Management Plan 1995*

Schedule 1 amends the *Southern Bluefin Tuna Fishery Management Plan 1995*.

Schedule 1 Amendments

(section 3)

[1] Part 1, heading

substitute

Part 1 Introduction

Division 1.1 General

[2] Subclause 3.1, after definition of Act

insert

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

[3] Subclause 3.1, definition of *ancillary fishing activity*, after paragraph (c)

insert

(d) towing;

[4] **Subclause 3.1, after definition of *ancillary fishing activity***

insert

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.

[5] **Subclause 3.1, definition of *driftnet***

omit

[6] **Subclause 3.1, after definition of *eligible person***

insert

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.

[7] **Subclause 3.1, after definition of *high seas fishing zone***

insert

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.

[8] Subclause 3.1, definition of *nominated boat*

substitute

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.

[9] Subclause 3.1, after definition of *owner*

insert

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

[10] Subclause 3.1, after definition of *purse seine method*

insert

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.

[11] Subclause 3.1, definition of *season*

omit

Fisheries Management (Southern Bluefin Tuna Fishery) Regulations.

insert

Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995.

[12] Subclause 3.1, after definition of *trip*

insert

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.

[13] **Subparagraph 3.2 (b) (iii)**

omit

Fisheries Management Regulations;

insert

Fisheries Management Regulations 1992;

[14] **Subclause 3.3, note, after definition of AFMA**

insert

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

[15] **Subclause 3.3, note, after definition of coastal waters**

insert

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.

[16] **Subclause 3.3, note, after definition of fishing**

insert

fishing concession means:

- (a) a statutory fishing right; or
- (b) a fishing permit; or
- (c) a foreign fishing licence.

[17] **Subclause 3.3, note, after definition of fish receiver permit**

insert

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.

[18] **Subclause 3.3, note, after definition of officer**

insert

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*.

[19] Clauses 4, 5 and 6

substitute

Division 1.2 Objectives, measures and performance criteria

4 Objective 1 — Efficiency and cost-effectiveness

- 4.1 In managing the SBT Fishery under this Plan, AFMA will pursue the objective of implementing efficient and cost-effective fisheries management on behalf of the Commonwealth.
- 4.2 The measures by which this objective is to be attained include that AFMA:
 - (a) undertake an annual evaluation of the services required to manage the SBT Fishery (including, for example, management, enforcement, compliance, register maintenance, data collection, research and consultation services); and
 - (b) as necessary, revise the range, extent and cost of those services.
- 4.3 The performance criteria against which the measures taken will be assessed include the following:
 - (a) that AFMA prepares a written report each year giving details of the evaluation and revision of the range and cost of services provided by AFMA in that year, and makes the report publicly available;
 - (b) that AFMA's management of the SBT Fishery meets best practice in terms of cost-effectiveness;
 - (c) that AFMA's management of the SBT Fishery is acknowledged by government and key stakeholders to be pursuing a cost-effective service.

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

- 4A.1 In managing the SBT Fishery under this Plan, AFMA will pursue the objective of ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle, in particular, the need to have regard to the impact of fishing activities on non-target species and the long-term sustainability of the marine environment.
- 4A.2 The measures by which this objective is to be attained include that AFMA:
 - (a) implement a strategy to meet stock recovery targets agreed by the Commission; and

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- (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
 - (f) evaluate, for each season, 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 for that season, and implement any required changes for the following season; 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.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;
- (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 — Economic efficiency

4B.1 In managing the SBT Fishery under this Plan, AFMA will pursue the objective of maximising economic efficiency in the exploitation of fisheries resources.

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

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- 4B.3 The performance criteria against which the measures taken will be assessed include the following:
- (a) that AFMA has developed and implemented, within 12 months after the commencement of this clause, a framework and criteria for the assessment of management arrangements to determine the extent to which they promote economic efficiency, 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 economic efficiency in the SBT Fishery.

4C Objective 4 — Accountability

- 4C.1 In managing the SBT Fishery under this Plan, AFMA will pursue the objective of ensuring accountability to the fishing industry and to the Australian community for management of fisheries resources.
- 4C.2 The measures by which this objective is to be attained include that AFMA develop and implement, within 18 months after the commencement of this clause, a communication strategy for informing statutory fishing right holders, the fishing industry and the Australian community about the status of Southern Bluefin Tuna stocks and the management of the SBT Fishery (including preparing and disseminating regular reports about those matters).
- 4C.3 The performance criteria against which the measures taken will be assessed include the following:
- (a) that AFMA has developed, implemented and documented the communication strategy mentioned in subclause 4C.2 within the time required and has procedures in place for the strategy to be reviewed annually;
 - (b) that data obtained by AFMA is able to indicate the level of stakeholder satisfaction with accountability and communication of information by AFMA about the management of the SBT Fishery.

5 Objective 5 — Cost recovery

- 5.1 In managing the SBT Fishery under this Plan, AFMA will pursue the objective of achieving Government targets in relation to the recovery of the costs of AFMA.
- 5.2 The measures by which this objective is to be attained include that AFMA prepare annual budgets and recommend levies to recover attributable and recoverable costs of management and research in the SBT Fishery in accordance with Government cost recovery policy.

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

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

5A.1 In managing the SBT Fishery under this Plan, AFMA will have regard to the objective of ensuring that conservation and management measures adopted by AFMA implement Australia's obligations under international agreements, including, specifically, obligations in regard to the following matters:

- (a) fish stocks;
- (b) fishing activities by Australian-flagged boats on the high seas.

5A.2 The measures by which this objective is to be attained include that AFMA:

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

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

Division 1.3 Specific ecosystem requirements and other matters

6 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.

[20] Subparagraph 7 (c) (i)

substitute

- (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

[21] Paragraph 7 (e)

substitute

- (e) is fishing in the high seas fishing zone using a foreign boat.

[22] Paragraphs 9.1 (d), (e) and (f)

substitute

- (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, at any time when the person takes southern bluefin tuna using the boat, the person is, or is acting for, a holder with quota that is equal to, or greater than, the total weight of:
 - (i) southern bluefin tuna in that take; and
 - (ii) southern bluefin tuna taken and counted against the holder's quota in the same season as, but before, that take; and
- (f) subject to subclause 9A.3, at any time when the person takes southern bluefin tuna using the boat, the boat has nominated against it an amount of the holder's quota that is equal to, or greater than, the total weight of:
 - (i) southern bluefin tuna in that take; and
 - (ii) southern bluefin tuna taken and counted against the boat in the same season as, but before, that take; and
- (g) the person uses only the following fishing gear in the SBT Fishery area:
 - (i) pelagic longline fishing gear;
 - (ii) minor line fishing gear (that is, rod and reel, hand line or pole);
 - (iii) gear to undertake the purse seine method of fishing;
 - (iv) any other gear allowed by AFMA in a condition specified in the certificate evidencing the grant of the statutory fishing rights.

[23] After subclause 9.2

insert

- 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.

[24] After clause 9

insert

9A Take in excess of quota

- 9A.1 This clause applies to a take of southern bluefin tuna in excess of quota (whether the holder's quota or quota nominated against the boat from which the southern bluefin tuna were caught) where the southern bluefin tuna taken may subsequently be towed, within a tow cage, to a farm (a *tow operation*).
- 9A.2 A holder, or a person acting for a 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 that take within the period specified in subclause 9A.4.
- 9A.3 A holder, or a person acting for a 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 specified in subclause 9A.4.
- 9A.4 For subclauses 9A.2 and 9A.3, the period specified is the period:
- (a) if the verified count has been undertaken — ending 28 days after the time that the weight for that 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.

[25] Paragraph 10.1 (d)

substitute

- (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

[26] Paragraphs 10.1 (f) and (g)

substitute

- (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.

[27] Subclause 11.1

substitute

- 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.

[28] Clause 12

substitute

12 Who is entitled to fish for fish other than SBT in the SBT Fishery area?

- 12.1 A person who is entitled to use an Australian boat in the SBT Fishery area to fish for Southern Bluefin Tuna may, as part of that fishing, use the boat to fish for other fish if, and only if:
- (a) the fishing for the other fish is permitted by, and in accordance with:
 - (i) a fishing permit in force under the Act; or
 - (ii) another plan of management in force under the Act; or
 - (iii) a law of a State or Territory that is in force in relation to the SBT Fishery area; and
 - (b) the permission (however described) authorising the use of the boat to fish for other fish:
 - (i) is held by the person who is the holder of the statutory fishing right for which the boat is the nominated boat; and

- (ii) was granted to the person before the commencement of the fishing.

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

- (a) the fishing for the other fish is permitted by, and in accordance with:
 - (i) a foreign fishing licence in force under the Act; or
 - (ii) another plan of management in force under the Act; and
- (b) the permission (however described) authorising the use of the boat to fish for other fish:
 - (i) is held by the person who is the holder of the statutory fishing right for which the boat is the nominated boat; and
 - (ii) was granted to the person before the commencement of the fishing.

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
 - (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 if the boat is incapable of carrying a fishery observer and fishery observer's safety and monitoring equipment.

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

[29] Subclause 15.7, notes, note 5

omit

Fisheries Management (Southern Bluefin Tuna Fishery) Regulations.]

insert

Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995.]

[30] After clause 22

insert

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.

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).

-
- 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.
- 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

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.

22D Verified count to be substituted

- 22D.1 Subject to subclause 22D.2, the weight of southern bluefin tuna determined by the verified count, and the weight of any fish likely to have died in that take and the tow operation:
- (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:
 - (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 total weight of southern bluefin tuna determined by the verified count and the weight of fish likely to have died in that take and the tow operation is significantly less than the estimate given to AFMA under paragraph 22A.1 (g), AFMA will 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.

[31] After subclause 23.2

insert

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.

[32] Subclause 24.3

substitute

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.

[33] Subclause 24.6

substitute

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.

[34] Paragraph 24.7 (c)

omit

a written statement

insert

a written statement in accordance with the approved form

[35] Subclause 24.8

omit

[36] Paragraph 24.10 (a)

substitute

- (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

[37] Paragraph 24.10 (d)

omit

boat; and

insert

boat.

[38] Paragraph 24.10 (e)

omit

[39] Paragraph 24.11 (a)

substitute

- (a) the *Fisheries Management Regulations 1992* and the *Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995*; and

[40] After subclause 24.11

before the notes, insert

- 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.

[41] Subclause 24.11, notes

substitute

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*.

[42] Subclause 25.2

substitute

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.

[43] Subparagraph 25.4 (c) (iii)

omit

boat.

insert

boat; and

[44] After paragraph 25.4 (c)

insert

- (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.

[45] Paragraph 25.5 (a)

substitute

- (a) the *Fisheries Management Regulations 1992*; and

[46] After subclause 25.5

before the note, insert

- 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.

[47] Subclause 25.5, note

substitute

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*.

[48] Subclause 26.2

substitute

- 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.

[49] Paragraph 26.4 (a)

substitute

- (a) the *Fisheries Management Regulations 1992*; and

[50] After subclause 26.4

before the note, insert

- 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.

[51] Subclause 26.4, note

substitute

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*.

[52] After clause 26

insert

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
- (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
 - (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.

[53] Subparagraph 28.3 (e) (ii)*omit*

so.

insert

so; or

[54] After paragraph 28.3 (e)*insert*

- (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.

[55] Subclause 28.4, except the notes

substitute

- 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.

[56] Clause 33

substitute

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
 - (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.

[57] Subclause 35.3

substitute

35.3 A notice required or permitted by this Plan to be given in writing to AFMA must be addressed to the Manager of Licensing and Quota Management, and:

(a) delivered to the reception desk at:

John Curtin House
3rd Floor
22 Brisbane Avenue
BARTON
Australian Capital Territory; or

(b) posted to:

Australian Fisheries Management Authority
Box 7051
Canberra Business Centre
ACT 2610; or

(c) sent by e-mail to generalmanager.fisheries@afma.gov.au; or

(d) delivered, posted, or sent electronically to any other office or address notified by the Managing Director of AFMA, by notice published in a newspaper circulating in the State or Territory in which the office or address is located.

[58] Subclause 36.3

omit

(06) 272 4614

insert

(02) 6272 5426

[59] After clause 36

insert in Part 3

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.

[60] Part 4

omit

[61] Further amendments — acting for

The following provisions are amended by omitting ‘acting on behalf of,’ and inserting ‘acting for,’:

- paragraph 9.1 (e)
- subclause 9.2
- paragraphs 10.1 (e) and (f)
- subclause 10.2
- subclause 11.2
- paragraph 24.10 (d)
- subparagraph 25.4 (c) (iii)
- subparagraph 26.3 (b) (iii).