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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1936/2001

of 27 September 2001

laying down control measures applicable to fishing for certain stocks of highly migratory fish

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) The Community has since 14 November 1997 been a Contracting Party to the International Convention for the Conservation of Atlantic Tunas ⁽³⁾ (hereinafter referred to as the ICCAT Convention).
- (2) The ICCAT Convention provides a framework for regional cooperation on the conservation and management of resources of tuna and tuna-like fish in the Atlantic ocean and adjacent seas through an International Commission for the Conservation of Atlantic Tunas (hereinafter referred to as ICCAT), and the adoption of recommendations on conservation and management in the Convention area that become obligatory for Contracting Parties.
- (3) ICCAT has adopted a number of recommendations creating control and surveillance obligations, notably on the establishment and transmission of statistics, inspection in port, vessel surveillance by satellite, vessel observations and transshipments, and checks on non-contracting parties and on stateless vessels. These recommendations have become obligatory for the Community and should therefore be implemented.
- (4) Certain obligations have been transposed by Council Regulation (EC) No 1351/1999 of 21 June 1999 laying down certain control measures to ensure compliance with the measures adopted by ICCAT ⁽⁴⁾ and into Article 22(1) of Council Regulation (EC) No 2742/1999 of 17 December 1999 fixing for 2000 the fishing opportuni-

ties and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and, for Community vessels, in waters where limitations in catch are required and amending Regulation (EC) No 66/98 ⁽⁵⁾. For reasons of clarity these measures should be incorporated in a single Regulation, repealing and replacing former Regulations.

- (5) For scientific research purposes masters of Community fishing vessels should be required to comply with the instructions of the 'Operational manual for statistics and sampling of tuna and tuna-like fish in the Atlantic Ocean' published by ICCAT.
- (6) The Community has approved the Agreement for the establishment of the Indian Ocean Tuna Commission ⁽⁶⁾, (hereinafter referred to as IOTC). The Agreement provides a useful framework for strengthening international cooperation for the purpose of conserving and rationally utilising Indian Ocean tuna and related species, through creation of the IOTC and the adoption of recommendations on conservation and management in its area of competence that become binding on Contracting Parties. The Community should apply the control measures adopted by the IOTC.
- (7) The IOTC has adopted a recommendation on the recording and exchange of information on tropical tuna. This is binding on the Community, which should therefore implement it.
- (8) The Community has fishing interests in the Eastern Pacific and has initiated the procedure for accession to the Inter-American Tropical Tuna Commission, (hereinafter referred to as IATTC). Pending accession and in line with its cooperation requirement arising under the United Nations Convention on the Law of the Sea, it should apply the control measures adopted by the IATTC.

⁽¹⁾ OJ C 62 E, 27.2.2001, p. 79.

⁽²⁾ Opinion delivered on 28 February 2001 (not yet published in the Official Journal).

⁽³⁾ OJ L 162, 18.6.1986, p. 34.

⁽⁴⁾ OJ L 162, 26.6.1999, p. 6.

⁽⁵⁾ OJ L 341, 31.12.1999, p. 1. Regulation as last amended by Regulation (EC) No 2765/2000 (OJ L 321, 19.12.2000, p. 5).

⁽⁶⁾ OJ L 236, 5.10.1995, p. 24.

- (9) The Community, which has signed the Agreement on the International Dolphin Conservation Programme (⁽¹⁾), has decided by Decision 1999/386/EC (⁽²⁾) to apply it provisionally pending its approval, and should therefore apply its control measures.
- (10) In order to ensure the respect of the applicable control measures of the IOTC, IATTC and of the Agreement on the International Dolphin Conservation Programme, Member States should take the necessary action.
- (11) Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (⁽³⁾) applies to all fishing activities and all associated activities carried out on the territory and in the maritime waters subject to the sovereignty or jurisdiction of Member States, including those of Community fishing vessels operating in the waters of third countries or on the high seas, without prejudice to fishery agreements concluded between the Community and third countries or international conventions to which the Community is a Party.
- (12) The measures necessary for implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for exercise of implementing powers conferred on the Commission (⁽⁴⁾).

HAS ADOPTED THIS REGULATION:

Article 1

Purpose

This Regulation lays down control and inspection measures relating to fishing for stocks of the highly migratory fish species listed in Annex I to this Regulation and shall apply to vessels flying the flag of Member States and registered in the Community, (hereinafter referred to as Community fishing vessels), operating in one of the zones specified in Article 2.

Article 2

Zones

For the purposes of this Regulation the following marine zones are specified:

- (a) Zone 1:
All waters of the Atlantic Ocean and adjacent seas included in the ICCAT Convention area specified in Article I of that Convention.
- (b) Zone 2:
All Indian Ocean waters included in the area of competence specified in Article II of the Agreement for the establishment of the IOTC.

⁽¹⁾ OJ L 132, 27.5.1999, p. 1.

⁽²⁾ OJ L 147, 12.6.1999, p. 23.

⁽³⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2846/98 (OJ L 358, 31.12.1998, p. 5).

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23.

- (c) Zone 3:

All Eastern Pacific Ocean waters included in the area specified in Article III of the Agreement on the International Dolphin Conservation Programme.

Article 3

Definitions

For the purposes of this Regulation the following definitions shall apply:

- (a) 'boarding': the boarding of a fishing vessel within an organisation's area of competence by one or more authorised inspectors in order to make an inspection;
- (b) 'transhipment': unloading of any quantity of highly migratory fish and/or products from such fish from on board a fishing vessel to another vessel either at sea or in port, without the products having been recorded by a port State as landed;
- (c) 'landing': unloading of any quantity of highly migratory fish and/or products from such fish from on board a fishing vessel to port or to land;
- (d) 'infringement': any presumed act committed or omitted by a fishing vessel that is recorded in an inspection report and gives serious reason for suspecting a breach of the provisions of this Regulation or any other Regulation transposing a recommendation adopted by a regional organisation for one of the zones indicated in Article 2;
- (e) 'vessel of a non-Contracting Party': vessel observed and identified as engaged in fishing activities in one of the zones specified in Article 2 that is flying the flag of a country that is not a Contracting Party to the relevant regional organisation;
- (f) 'stateless vessel': vessel for which there are reasonable grounds for suspecting it to be without nationality.

CHAPTER I

CONTROL AND INSPECTION MEASURES APPLICABLE IN ZONE 1

Section 1

Control measures

Article 4

Catch sampling

1. Sampling of catches shall be carried out in accordance with the provisions laid down in Council Regulation (EC) No 1543/2000 of 29 June 2000 establishing a Community framework for the collection and management of the data needed to conduct the common fisheries policy (⁽⁵⁾) and the requirements of the 'Field manual for statistics and sampling Atlantic tunas and tuna-like fishes' (Third edition, ICCAT, 1990).

⁽⁵⁾ OJ L 176, 15.7.2000, p. 1.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 24(2).

Article 5

Catch notification

1. Member States shall transmit to the Commission, which in turn will transmit to the ICCAT Executive Secretariat, the annual nominal catch data (task I as defined by ICCAT), for those species that are indicated in Annex II. In order to fulfil the requirements of ICCAT, the data transmission from the Member States to the Commission shall be not later than:

1 March of following year: preliminary estimates for entire year;

15 April of following year: definitive estimates.

2. Member States shall transmit the following data (task II as defined by ICCAT) annually before 31 July to the ICCAT Executive Secretariat with electronic access for the Commission:

- (a) catch and fishing effort data for the previous year, giving a detailed spatio-temporal breakdown;
- (b) any data they have on sport fishing catches of fish of the species listed in Annex I.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 24(2).

Article 6

Information on shark catches

1. Member States shall transmit any available data on catches of and trade in sharks to the ICCAT Executive Secretariat with electronic access for the Commission.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 24(2).

Article 7

Undeclared catches

For imports of frozen bluefin tuna and bigeye tuna products fished by long liners greater than 24 metres overall in length, at the Commission's request Member States shall collect and examine as much import data as possible and all related information such as vessel names, their registration and owner, species fished and weight, fishing zone and place of export.

Article 8

Observation of vessels

1. For the purposes of this Article 'observation' means any observation, by a Member State's vessel, aircraft or competent authority responsible for inspection at sea, of:

- a stateless vessel likely to be fishing for species listed in Annex I,
- or a vessel flying the flag of another Contracting Party and likely to be fishing in breach of ICCAT conservation measures,
- or a vessel flying the flag of a non-Contracting Party, entity or fishing entity and likely to be fishing in breach of ICCAT conservation measures.

2. The observation shall be transcribed onto a standard observation form and shall if possible give all the information for which that form provides. It may be accompanied by photographs of the vessel.

3. Observation forms shall be sent without delay to the competent authority of the observer's Member State, which shall immediately transmit them to the Commission, which shall inform the flag country of the vessel observed. The Commission shall immediately transmit observation forms to the ICCAT Executive Secretariat.

4. A Member State receiving observations on the activity of a vessel flying its flag from the competent authority of a Contracting Party shall immediately notify these and all relevant information to the Commission, which shall notify this information in due time to the Executive Secretariat for examination by the Compliance Committee.

5. Masters of Community fishing vessels shall transmit to their authority any information on vessels assumed to be fishing for bigeye tuna in the Convention area that are not on the list drawn up by the ICCAT Executive Secretariat. Member States shall notify these observations as soon as possible to the Commission, which shall inform the ICCAT Executive Secretariat.

6. Detailed rules for the application of this Article on the layout and the requirements of the observation form referred to in paragraph 2 shall be adopted in accordance with the procedure referred to in Article 24(2).

Article 9

Annual report

1. Before 15 June each year Member States shall send the Commission a national report, using the layout adopted by ICCAT and including (a) information on implementation of the satellite surveillance system and (b) an 'ICCAT declaration table' for each fishery accompanied by comments, *inter alia* on breaches of the tolerance margins set by ICCAT for the minimum sizes of certain species and the action taken or to be taken. Member States shall also say how sport fishing for fish of the species listed in Annex I is regulated and give details of any transshipment operations involving their vessels during the previous year.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 24(2).

Section 2

Port inspection procedures

Article 10

General

1. Member States shall assign to inspection duties at their ports inspectors responsible for the surveillance and inspection of transshipment and landing of the species listed in Annex I.
2. Member States shall ensure that inspection is non-discriminatory and in line with ICCAT port inspection arrangements.
3. The port State may, *inter alia*, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.

Article 11

Inspectors

1. Member States shall issue a special identification document to each ICCAT inspector which he must carry and present before making an inspection. The particulars of the card shall be determined in accordance with the procedure referred to in Article 24(2). Member States shall notify a list of their inspectors to the Commission for transmission to the ICCAT Executive Secretariat.
2. Member States shall ensure that ICCAT inspectors discharge their tasks in conformity with the rules laid down in the ICCAT port inspection arrangements. Inspectors shall remain under the operational control of their competent authority and be responsible to it for their acts.

Article 12

Inspection procedures

1. Member States shall ensure that their ICCAT inspectors:
 - in making their inspections cause minimum disturbance to the vessel's activities and cause no deterioration in fish quality,
 - draw up an inspection report in line with rules laid down in accordance with the procedure referred to in Article 24(2) and transmit it to their authority.
2. Inspectors have the ability to examine all zones, decks and chambers of the vessel, catches (processed or not), gear, equipment and any documentation thought to be needed to check compliance with the conservation measures adopted by ICCAT, including the log book and the loading papers in the case of mother ships and carriers.
3. Inspectors shall sign their report in the presence of the master, who shall have the right to add or cause to be added any information that he considers relevant and sign it. The

inspector shall indicate in the log book that an inspection has been made.

Article 13

Master's obligations during inspection

Masters of Community vessels shall:

- (a) raise no objection to inspections in national or foreign ports by authorised inspectors, not try to intimidate them or incommode them in the course of their work and ensure their safety;
- (b) cooperate in inspection of the vessel performed in accordance with the procedures laid down in this Regulation and lend their assistance thereto;
- (c) afford inspectors the means of examining the zones, decks and chambers of the vessel, catches (processed or not), gear, equipment and all documents, including fishing logs and loading papers.

Article 14

Procedure in event of infringement

1. If an ICCAT inspector has serious reason to believe that a fishing vessel has engaged in an activity breaching the conservation measures adopted by ICCAT, he shall:
 - (a) note the infringement in the inspection report;
 - (b) take all necessary action to ensure safekeeping of the evidence for it;
 - (c) immediately send the inspection report to his authority.
2. The inspecting Member State shall immediately send the original inspection report to the Commission, which shall immediately transmit it, with a copy to the ICCAT Executive Secretariat, to the competent authority of the flag country of the inspected vessel.

Article 15

Follow-up of infringements

1. If a Member State is notified by an ICCAT Contracting Party or another Member State of an infringement by a vessel flying its flag, it shall take speedy action in line with its national legislation to obtain and examine the evidence, carry out any necessary investigation and if possible inspect the vessel.
2. Each Member State shall name the authority mandated to receive evidence of infringements and notify its name, address and other contact particulars to the Commission.
3. The flag Member State shall notify the Commission, which shall in turn notify the ICCAT Executive Secretariat, of the penalties imposed and measures taken with regard to the vessel concerned.

*Article 16***Treatment of inspection reports**

1. Each Member State shall attach the same value to reports made by ICCAT inspectors of other Member States and other Contracting Parties as to those made by its own inspectors.
2. Each Member State shall cooperate with the Contracting Parties concerned by facilitating, in line with its national legislation, legal or other proceedings arising from a report submitted by an ICCAT inspector under the ICCAT port inspection arrangements.

Section 3

Stateless and non-contracting parties' vessels*Article 17***Transshipment**

1. Community fishing vessels may not receive transshipments of fish of the species listed in Annex I from stateless vessels or those flying the flag of a non-Contracting Party that does not have the status of a cooperating party, entity or fishing entity.
2. The list of cooperating parties, entities and fishing entities adopted by ICCAT is published by the Commission in the *Official Journal of the European Communities C series*).
3. Before 15 September each year Member States shall send the Commission particulars of transshipments of fish of the species listed in Annex I made during the previous year between vessels flying their flag and vessels flying the flag of a non-Contracting Party enjoying the status of cooperating party, entity or fishing entity. The Commission shall forward this information to the ICCAT Executive Secretariat.

*Article 18***Control measures for fishing activities**

1. The competent authority of a Member State that has boarded and/or inspected a stateless vessel shall immediately inform the Commission of the inspection findings and of any action it has taken under international law. The Commission shall send this information as soon as possible to the ICCAT Executive Secretariat.
2. Member States shall ensure that every stateless or non-Contracting Party vessel that enters a designated port within the meaning of Article 28(e)(2) of Regulation (EEC) No 2847/93 is inspected by their competent authority. Until inspection is completed the vessel's catches may not be landed or transhipped.
3. If inspection reveals that the vessel has on board resources covered by an ICCAT recommendation in force the Member State shall prohibit their landing or transhipment.
4. The prohibition referred to in paragraph 3 shall not be issued if the master of the inspected vessel or his representative demonstrates to the competent authority's satisfaction that:

- (a) the catches on board were taken outside the zone; or
- (b) the catches on board were taken without infringing the conservation measures in force.

*Article 19***Member States' nationals**

Each Member State shall try, as its national legislation permits, to deter its nationals from participating in activities of non-Contracting Parties that conflict with implementation of the ICCAT conservation and management measures.

CHAPTER II

CONTROL AND SURVEILLANCE MEASURES APPLICABLE IN ZONE 2*Article 20***General**

Each Member State shall take the action necessary in order that vessels flying its flag respect the measures applicable in the zone.

*Article 21***Observations**

1. Masters of Community vessels authorised to fish in the zone shall transmit to their national authority their observations of non-Contracting Parties' vessels presumed or known to be fishing for bigeye, yellowfin or skipjack tuna in the zone.
2. Member States shall send this information as soon as possible to the Commission, which shall forward it to the IOCT.

CHAPTER III

CONTROL AND SURVEILLANCE MEASURES APPLICABLE IN ZONE 3*Article 22***General**

Each Member State shall take the action necessary in order that vessels flying its flag respect the IATTC measures transposed into Community law and the International Dolphin Conservation Programme Agreement measures applicable.

CHAPTER IV

FINAL PROVISIONS*Article 23*

The measures necessary for the implementation of Article 4(2), Article 5(3), Article 6(2), Article 8(6) and Article 9(2) shall be adopted in accordance with the management procedure referred to in Article 24(2).

Article 24

1. The Commission shall be assisted by the Committee established by Article 17 of Council Regulation (EEC) No 3760/92.
2. Where reference is made to this paragraph Articles 4 and 7 of Decision 1999/468/EC shall apply. The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.
3. The Committee shall adopt its rules of procedure.

Article 25

1. Regulation (EC) No 1351/1999 is hereby repealed.
2. Article 22(1) of Regulation (EC) No 2742/1999 is hereby repealed.
3. References made to the repealed Regulation (EC) No 1351/1999 shall be construed as being made to this Regulation, and should be read in accordance with the correlation table in Annex III.

Article 26

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 September 2001.

For the Council
The President
R. LANDUYT

ANNEX I

LIST OF SPECIES REFERRED TO IN THIS REGULATION

- Albacore: *Thunnus alalunga*
 - Bluefin tuna: *Thunnus thynnus*
 - Bigeye tuna: *Thunnus obesus*
 - Skipjack: *Katsuwonus pelamis*
 - Atlantic bonito: *Sarda sarda*
 - Yellowfin tuna: *Thunnus albacares*
 - Blackfin tuna: *Thunnus atlanticus*
 - Little tuna: *Euthynnus* spp.
 - Southern bluefin tuna: *Thunnus maccoyii*
 - Frigate tuna: *Auxis* spp.
 - Oceanic sea bream: *Bramidae*
 - Marlin: *Tetrapturus* spp.; *Makaira* spp.
 - Sailfish: *Istiophorus* spp.
 - Swordfish: *Xiphias gladius*
 - Sauries: *Scomberesox* spp.; *Cololabis* spp
 - Dolphinfish; common dolphinfish: *Coryphaena hippurus*; *Coryphaena equiselis*.
 - Shark: *Hexanchus griseus*; *Cetorhinus maximus*; *Alopiidae*; *Rhincodon typus*; *Carcharhinidae*; *Sphymidae*; *Isuridae*; *Lamnidae*
 - Cetaceans (whales and porpoises): *Physeteridae*; *Belaenopteridae*; *Balenidae*; *Eschrichtiidae*; *Monodontidae*; *Ziphiidae*; *Delphinidae*.
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ANNEX II

LIST OF SPECIES SUBJECT TO COMMUNICATION TO ICCAT

Latin name	English name
<i>Thunnus thynnus</i>	Bluefin tuna
<i>Thunnus maccoyii</i>	Southern bluefin tuna
<i>Thunnus albacares</i>	Yellowfin tuna
<i>Thunnus alalunga</i>	Albacore
<i>Thunnus obesus</i>	Bigeye tuna
<i>Thunnus atlanticus</i>	Blackfin tuna
<i>Euthynnus alletteratus</i>	Atlantic black skipjack
<i>Katsuwonus pelamis</i>	Skipjack
<i>Sarda sarda</i>	Atlantic bonito
<i>Auxis thazard</i>	Frigate tuna
<i>Orcynopsis unicolor</i>	Plain bonito
<i>Acanthocybium solandri</i>	Wahoo
<i>Scomberomorus maculatus</i>	Spotted Spanish mackerel
<i>Scomberomorus cavalla</i>	King mackerel
<i>Istiophorus albicans</i>	Atlantic sailfish
<i>Makaira indica</i>	Black marlin
<i>Makaira nigricans</i>	Atlantic blue marlin
<i>Tetrapturus albidus</i>	Atlantic white marlin
<i>Xiphias gladius</i>	Swordfish
<i>Tetrapturus pfluegeri</i>	Spearfish
<i>Scomberomorus tritor</i>	West African Spanish mackerel
<i>Scomberomorus regalis</i>	Cero
<i>Auxis rochei</i>	Bullet tuna
<i>Scomberomorus brasiliensis</i>	Serra Spanish mackerel

ANNEX III

CORRELATION TABLE

Regulation (EC) No 1351/1999	This Regulation
Articles 1, 2, 3	Article 8
Article 4	Article 18
Article 5	Article 17