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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 973/2001

of 14 May 2001

laying down certain technical measures for the conservation of certain stocks of highly migratory species

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 by Decision 98/392/EC ⁽³⁾ approved the United Nations Convention on the Law of the Sea, which contains principles and rules relating to the conservation and management of the living resources of the sea. In the framework of its wider international obligations, the Community participates in efforts arising in international waters to conserve fish stocks.
- (2) Pursuant to Decision 86/237/EEC ⁽⁴⁾, the Community has been a Contracting Party to the International Commission for the Conservation of Atlantic Tunas, hereinafter called 'the ICCAT Convention', since 14 November 1997.
- (3) The ICCAT Convention provides a framework for regional cooperation on the conservation and management of tunas and tuna-like species in the Atlantic Ocean and adjoining seas by setting up an International Commission for the Conservation of Atlantic Tunas, hereinafter called the 'ICCAT', and adopting recommendations on conservation and management in the Convention area which become binding on the Contracting Parties.
- (4) The ICCAT has recommended a number of technical measures for certain stocks of highly migratory species in the Atlantic and the Mediterranean, specifying *inter alia* authorised sizes and weights of fish, and restrictions

on fishing within certain areas and time-periods, with certain gears, and on capacity. These recommendations are binding on the Community and should therefore be implemented.

- (5) Certain technical measures adopted by the ICCAT were incorporated into Council Regulation (EC) No 1626/94 of 27 June 1994 laying down certain technical measures for the conservation of fishery resources in the Mediterranean ⁽⁵⁾ and Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms ⁽⁶⁾. In the interests of clarity, these measures should be brought together in this Regulation and the relevant Articles of the above Regulations should be repealed.
- (6) To take into account traditional fishing practice in certain areas, specific provisions on the capture and retention on board of certain tuna species should be adopted.
- (7) The Community has by Decision 95/399/EC ⁽⁷⁾ approved the Agreement for the establishment of the Indian Ocean Tuna Commission. This agreement provides a useful framework for closer international cooperation and rational use of tunas and related species in the Indian Ocean by setting up the Indian Ocean Tuna Commission, hereinafter called the 'IOTC', and adopting recommendations on conservation and management in the IOTC area which become binding on the Contracting Parties.
- (8) The IOTC has adopted a recommendation laying down technical measures for certain stocks of highly migratory species in the Indian Ocean. This recommendation is binding on the Community and should therefore be implemented.

⁽¹⁾ OJ C 337 E, 28.11.2000, p. 78.

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

⁽³⁾ OJ L 179, 23.6.1998, p. 1.

⁽⁴⁾ OJ L 162, 18.6.1986, p. 33.

⁽⁵⁾ OJ L 171, 6.7.1994, p. 1.

⁽⁶⁾ OJ L 125, 27.4.1998, p. 1. Regulation as last amended by Regulation (EC) No 812/2000 (OJ L 100, 20.4.2000, p. 3).

⁽⁷⁾ OJ L 236, 5.10.1995, p. 24.

- (9) The European Community has by Decision 1999/337/EC ⁽¹⁾ signed the Agreement on the International Dolphin Conservation Program and by Decision 1999/386/EC ⁽²⁾ decided to apply it on a provisional basis pending its approval. The Community should therefore apply the provisions laid down in this Agreement.
- (10) The objectives of the Agreement include the progressive reduction of incidental dolphin mortalities in the tuna purse-seine fishery in the Eastern Pacific Ocean to levels approaching zero, by setting annual limits, and the long term sustainability of the tuna stocks in the Agreement Area.
- (11) Some provisions of this Agreement were incorporated into Regulation (EC) No 850/98. These provisions should be incorporated into this Regulation.
- (12) The Community has fishing interests in the Eastern Pacific Ocean and has applied to accede to the Inter-American Tropical Tuna Commission, hereinafter 'IATTC'. Pending accession, and in accordance with its obligation to cooperate with the other Parties involved in the management and conservation of resources in this region under the United Nations Convention on the Law of the Sea, the technical measures adopted by the IATTC should be applied by the Community. These measures should therefore be incorporated into Community law.
- (13) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down technical conservation measures applicable to vessels flying the flag of Member States and registered in the Community, hereinafter referred to as 'Community fishing vessels', with regard to the capture and landing of certain stocks of highly migratory species referred to in Annex I.

TITLE I

DEFINITIONS

Article 2

For the purposes of this Regulation, the following definitions of maritime waters shall apply:

(a) Area 1:

all waters of the Atlantic Ocean and adjacent seas covered by the ICCAT Convention as defined in Article 1 thereof;

(b) Area 2:

all waters of the Indian Ocean covered by the Agreement for the establishment of the IOTC as defined in Article 2 thereof;

(c) Area 3:

all waters of the Eastern Pacific Ocean as defined in Article 3 of the Agreement on the International Dolphin Conservation Program.

TITLE II

TECHNICAL MEASURES APPLICABLE IN AREA 1

Chapter 1

Restrictions on the use of certain types of vessels and gears

Article 3

1. During the period 1 November to 31 January in the area specified in paragraph 2, it shall be prohibited for Community fishing vessels to:

- anchor floating objects,
- fish under artificial objects,
- fish under natural objects,
- fish using ancillary vessels,
- throw into the sea artificial floating objects with or without buoys,
- install buoys on floating objects found at sea,
- remove floating objects and wait for the fish attracted by these objects to gather underneath the vessel,
- tow floating objects outside the area.

2. The area referred to in paragraph 1 shall be bounded as follows:

- southern boundary at latitude 4° S,
- northern boundary at latitude 5° N,
- western boundary at longitude 20° W,
- eastern boundary at the coast of Africa.

3. Vessels shall be prohibited from commencing or continuing fishing in the area and during the period specified in paragraphs 1 and 2 without an observer on board.

4. Until 31 December 2002, Member States shall take the necessary steps to appoint observers and ensure that they are placed on board all vessels flying their flag or registered in their territory which are about to undertake fishing activities in the area referred to in paragraph 2.

5. Without prejudice to paragraph 4, Member States shall take the necessary steps to ensure that properly appointed observers remain on board the fishing vessels to which they have been assigned until they are replaced by other observers.

⁽¹⁾ OJ L 132, 27.5.1999, p. 1.

⁽²⁾ OJ L 147, 12.6.1999, p. 23.

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

6. The master of a Community vessel operating in the area and during the period specified in paragraphs 1 and 2 shall receive the observer and cooperate with him in the performance of his duties during his stay on board.

The master of a vessel designated to receive an observer on board shall make every reasonable effort to facilitate his arrival and departure. During the observer's stay on board he shall be provided with appropriate accommodation and working facilities.

7. The practical arrangements for paragraphs 4, 5 and 6 shall be as defined in Annex II.

8. Member States shall send the Commission by 1 May each year at the latest a comprehensive report assessing the content and conclusions of the reports of the observers assigned to vessels flying their flag.

9. The period referred to in paragraph 1, the area referred to in paragraph 2 and the arrangements for the assignment of observers set out in Annex II may be amended by the Commission pursuant to ICCAT recommendations which are binding upon the Community and in accordance with the procedure laid down in Article 19(2).

Article 4

1. It shall be prohibited to retain on board any quantity of skipjack, bigeye or yellowfin tuna which are caught using purse seines in waters under the sovereignty or jurisdiction of Portugal in ICES subarea X north of 36°30' N or in CECAF areas north of 31° N and east of 17°30' W, or to fish for the said species in the said areas with the said gears.

2. It shall be prohibited to retain on board tuna caught using drift-nets in waters under the sovereignty or jurisdiction of Spain or Portugal in ICES subareas VIII, IX and X, or in CECAF areas around the Canary Islands and Madeira, or to fish for the said species in the said areas with the said gears.

Article 5

1. Fishing for bluefin tuna with encircling nets shall be prohibited:

- from 1 to 31 May in the Mediterranean Sea as a whole and from 16 July to 15 August in the Mediterranean Sea excluding the Adriatic for vessels operating exclusively or predominantly in the Adriatic;
- from 16 July to 15 August in the Mediterranean Sea as a whole and from 1 to 31 May in the Adriatic for vessels operating exclusively or predominantly in the Mediterranean Sea excluding the Adriatic.

Member States shall ensure that all vessels flying their flag or registered in their territory are subject to the above rules.

For the purposes of this Regulation, the southern limit of the Adriatic Sea shall be a line drawn between the Albanian-Greek border and Cape Santa Maria di Leuca.

2. The use of aeroplanes or helicopters in support of fishing operations for bluefin tuna in the Mediterranean shall be prohibited during the period from 1 to 30 June.

3. Fishing for bluefin tuna in the Mediterranean using surface-set longlines from vessels greater than 24 metres in length shall be prohibited during the period from 1 June to 31 July each year. The applicable length shall be that defined by the ICCAT and given in Annex III.

4. The definition of the periods and areas referred to in this Article and the length of vessels given in Annex III may be modified by the Commission pursuant to ICCAT recommendations which are binding upon the Community and in accordance with the procedure laid down in Article 19(2).

Chapter 2

Minimum size

Article 6

1. A highly migratory species shall be undersized if its dimensions are smaller than the minimum dimensions specified in Annex IV for the relevant species.

2. The dimensions set out in Annex IV may be modified by the Commission pursuant to ICCAT recommendations which are binding upon the Community and in accordance with the procedure laid down in Article 19(2).

Article 7

1. Undersized fish of highly migratory species shall not be retained on board or be transhipped, landed, transported, stored, displayed or offered for sale, sold or marketed. These species shall be returned immediately to the sea.

However, the preceding subparagraph shall not apply to the species referred to in Annex IV caught by accident and which total no more than 15 %, expressed in numbers of individuals, of the quantities landed. In the case of bluefin tuna, that tolerance shall not apply to fish weighing less than 3,2 kg.

2. The release for free circulation or marketing in the Community of undersized fish of highly migratory species originating in third countries shall be prohibited.

Article 8

The measurement of the size of fish of highly migratory species shall be carried out in accordance with Article 18 of Regulation (EC) No 850/98.

Chapter 3

Restrictions on the number of vessels*Article 9*

1. The Council, acting in accordance with the procedure laid down in Article 8(4)(i) of Regulation (EEC) No 3760/92⁽¹⁾, shall determine the number and total capacity in gross registered tonnage (GRT) of Community fishing vessels greater than 24 metres in length fishing for bigeye tuna as a target species. These shall be fixed as the average number and the capacity in GRT of Community fishing vessels fishing for bigeye tuna as a target species in Area 1 during the period 1991 to 1992.

2. By 31 January each year at the latest Member States shall forward to the Commission a list of all vessels flying their flag and registered in their territory which intend to fish for bigeye tuna in Area 1 during that year.

3. The lists shall give the internal number allocated to each vessel in the fishing vessel register in accordance with Article 5 of Commission Regulation (EC) No 2090/98⁽²⁾.

4. On the basis of the information provided by the Member States in accordance with paragraphs 2 and 3 the Council acting in accordance with the procedure laid down in Article 8(4)(ii) of Regulation (EEC) No 3760/92, may distribute among the Member States the number and capacity in GRT determined in accordance with paragraph 1.

5. Before 15 August each year Member States shall send the Commission the list of fishing vessels greater than 24 metres in length fishing for bigeye tuna as a target species. The Commission shall send this information to the ICCAT secretariat before 31 August each year.

6. The list referred to in paragraph 5 shall contain the following information;

- vessel name, registration number,
- previous flag, where applicable,
- international call sign, where applicable,
- vessel type, length and GRT,
- name and address of the vessel owner(s).

Article 10

1. The Council, acting in accordance with the procedure laid down in Article 8(4)(i) of Regulation (EEC) No 3760/92, shall determine the number of Community fishing vessels fishing for North Atlantic albacore tuna as a target species. The number of vessels shall be fixed as the average number of Community

fishing vessels fishing for North Atlantic albacore tuna as a target species during the period 1993 to 1995.

2. By 31 January each year at the latest Member States shall forward to the Commission a list of all vessels flying their flag and registered in their territory which intend to fish for North Atlantic albacore tuna as a target species in Area 1 during that year.

3. The lists shall give the internal number allocated to each vessel in the fishing vessel register in accordance with Article 5 of Regulation (EC) No 2090/98.

4. On the basis of the information sent by the Member States in accordance with paragraphs 2 and 3 the Council, acting in accordance with the procedure laid down in Article 8(4)(ii) of Regulation (EEC) No 3760/92, may distribute among the Member States the number of vessels determined in accordance with paragraph 1.

5. Before 15 May each year Member States shall send the Commission the list of vessels flying their flag which carry out directed fishing for North Atlantic albacore tuna. Until 31 December 2001 that list shall not include those fishing vessels carrying out experimental fishing other than by means of drift-nets. The Commission shall send this information to the ICCAT Secretariat before 30 May each year.

Chapter 4

Other measures*Article 11*

Member States may encourage the use of monofilament streamer lines on swivels so that live blue marlins and white marlins may be easily released.

Article 12

Notwithstanding Article 31 of Regulation (EC) No 850/98, electric current or harpoon guns may be used to catch tuna and skipjack tuna (*Cetorhinus maximus*) in the Skagerrak and Kattegat.

TITLE III

TECHNICAL MEASURES APPLICABLE IN AREA 2*Article 13*

1. Before 15 June each year Member States shall send the Commission the list of vessels greater than 24 metres in length flying their flag which fished for bigeye tuna, yellowfin tuna and skipjack tuna during the previous year in Area 2. The Commission shall send this information to the IOTC Secretariat before 30 June each year.

⁽¹⁾ OJ L 389, 31.12.1992, p. 1. Regulation as last amended by Regulation (EC) No 1181/91 (OJ L 164, 9.6.1998, p. 1).

⁽²⁾ OJ L 266, 1.10.1998, p. 27.

2. The list referred to in paragraph 1 shall contain the following information:

- vessel name, registration number,
- previous flag, where applicable,
- international call sign, where applicable,
- vessel type, length and GRT,
- name and address of the vessel owner, operator or charterer.

TITLE IV

TECHNICAL MEASURES APPLICABLE IN AREA 3

Article 14

1. Only Community fishing vessels operating under the conditions laid down in the Agreement on the International Dolphin Conservation Program which have been allocated a DML shall be authorised to encircle schools or groups of dolphins with purse seines when fishing for yellowfin tuna in Area 3.

2. 'DML' shall mean the dolphin mortality limit laid down in Article 5 of the Agreement on the International Dolphin Conservation Program.

Article 15

1. Before 15 September each year Member States shall send the Commission:

- a list of vessels flying their flag with a load capacity greater than 363 metric tonnes (400 net tonnes) which have applied for a DML for the whole of the following year;
- a list of vessels flying their flag which are likely to operate in the area in the course of the following year;
- a list of vessels flying their flag which have requested a DML for the first or second half of the following year;
- for each vessel requesting a DML, a certificate stating that the vessel had all the proper gears and equipment to protect dolphins and that its captain had completed an approved training course on rescuing and releasing dolphins.

2. Member States shall ensure that the applications for DMLs comply with the conditions laid down in the Agreement on the International Dolphin Conservation Program and the conservation measures adopted by the IATTC.

3. The Commission shall examine the lists and ensure that they comply with the provisions of the Agreement on the International Dolphin Conservation Program and the conservation measures adopted by the IATTC and shall send them to the Director of the IATTC.

Where this examination reveals that the application does not meet the conditions referred to in this paragraph, the Commission shall immediately inform the Member State concerned that it cannot send all or part of an application to the Director of the IATTC, stating its reasons.

4. The Commission shall send each Member State the overall DML to be distributed among the vessels flying their flag.

5. Each Member State shall send the Commission the breakdown of the DMLs among the vessels flying the flag of that Member State by 15 January each year.

6. The Commission shall send the Director of the IATTC the list and breakdown of the DMLs between Community fishing vessels by 1 February each year.

Article 16

1. The use of ancillary vessels to support vessels fishing with the aid of fish aggregating devices shall be prohibited.

2. Transshipments at sea shall be prohibited.

TITLE V

GENERALLY APPLICABLE PROVISION

Article 17

1. The encircling of schools or groups of marine mammals with purse seines shall be prohibited, except in the case of the vessels referred to in Article 14.

2. Paragraph 1 shall apply to every vessel flying the flag of a Member State or registered in a Member State, in whatever waters.

TITLE VI

FINAL PROVISIONS

Article 18

The measures necessary for the implementation of Article 3(9), Article 5(4) and Article 6(2), shall be adopted in accordance with the regulatory procedure referred to in Article 19(2).

Article 19

1. The Commission shall be assisted by the Committee established by Article 17 of Regulation (EEC) No 3760/92.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

Article 20

1. Articles 24, 33 and 41 of Regulation (EC) No 850/98 and the entries in Annex XII thereto relating to bluefin tuna and swordfish shall be repealed.
2. Articles 3a and 5a of Regulation (EC) No 1626/94, the entries in Annex IV thereto relating to bluefin tuna and swordfish and Annex V thereto shall be repealed.
3. References to the above Regulations, Articles and Annexes shall be construed as references to this Regulation and shall be read in accordance with the table of equivalence in Annex V.

Article 21

This Regulation shall enter into force on the seventh 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, 14 May 2001.

For the Council

The President

L. REKKE

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 breams: *Bramidae*
 - Marlins: *Tetrapturus* spp.; *Makaira* spp.
 - Sailfish: *Istiophorus* spp.
 - Swordfish: *Xiphias gladius*
 - Sauries: *Scomberesox* spp.; *Cololabis* spp.
 - Dolphinfish; common dolphinfish: *Coryphaena hippurus*; *Coryphaena equiselis*
 - Sharks: *Hexanchus griseus*; *Cetorhinus maximus*; *Alopiidae* *Rhincodon* typus; *Carcharhinidae*; *Sphyrnidae*; *Isuridae*; *Lamnidae*
 - Cetaceans (whales and porpoises): *Physeteridae*; *Belaenopteridae*; *Balenidae*; *Eschrichtiidae*; *Monodontidae*; *Ziphiidae*; *Delphinidae*.
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ANNEX II

Practical arrangements referred to in Article 3(7)

1. ASSIGNMENT OF OBSERVERS

- (a) In order to discharge their obligation to provide observers, Member States shall, without prejudice to Article 3(4), appoint properly qualified and experienced personnel. In order to carry out their tasks the personnel selected must have the following qualifications:
- sufficient experience to identify fish species and fishing gear;
 - maritime navigation skills;
 - a satisfactory knowledge of ICCAT conservation measures;
 - the capacity to accomplish elementary scientific tasks, for example taking of samples where necessary and making accurate observations and records in that connection;
 - a satisfactory knowledge of the language of the flag Member State of the vessel being observed.
- (b) Member States must take appropriate measures to ensure that observers are received on board fishing vessels at the agreed time and place and to facilitate their departure on completion of the observation period.

2. TASKS OF OBSERVERS

The main task of observers is to monitor compliance with the ban referred to in Article 1. In particular, designated observers will:

- (a) monitor the fishing operations of the vessels concerned and record them in a report;
- (b) send a report containing a summary of the observer's main findings, including the biological data collected, to the competent authorities in the Member States concerned within 20 days following the observation period.

3. RELATIONS WITH THE MASTERS OF FISHING VESSELS

- (a) The master must be given sufficient notice of the date and place at which the observer is to be received and of the likely duration of the observation period.
- (b) The master of the vessel may request a copy of the observer's report.

ANNEX III

Length of vessels (Article 5(4))

ICCAT definition of length of vessels:

- for any fishing vessel built after 18 July 1982, 96 % of the total length on a waterline at 85 % of the least moulded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In ships designed with a rake of keel, the waterline on which this length is measured shall be parallel to the designed waterline;
- for any fishing vessel built before 18 July 1982, registered length as entered on the national registers or other record of vessels.

ANNEX IV

MINIMUM SIZES

(Article 6(1))

Species	Minimum size
Swordfish (<i>Xiphias gladius</i>) ⁽¹⁾	25 kg or 125 cm (lower mandible)
Bluefin tuna (<i>Thunnus thynnus</i>)	6,4 kg or 70 cm
Yellow tuna (<i>Thunnus albacares</i>)	3,2 kg
Bigeye tuna (<i>Thunnus obesus</i>)	3,2 kg

(¹) This minimum size applies only to the Atlantic Ocean.

ANNEX V

TABLE OF EQUIVALENCE

(Article 20(3))

Regulation (EC) No 850/98	This Regulation
Article 24	Article 4
Article 33(1)	Article 17
Article 33(2)	Article 2
Article 33(3)	Article 14(1)
Article 41	Article 12
Annex XII relating to bluefin tuna and swordfish	Annex IV
Regulation (EC) No 1626/94	This Regulation
Article 3a	Article 5
Article 5a	Article 5
Annex IV relating to bluefin tuna	Annex IV
Annex V	Annex III