

**COUNCIL REGULATION (EC) No 869/2004
of 26 April 2004**

amending Regulation (EC) No 1936/2001 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,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) The International Commission for the Conservation of Atlantic Tunas (hereinafter referred to as ICCAT) has adopted a number of recommendations and the Indian Ocean Tuna Commission (hereinafter referred to as IOTC) has adopted a number of resolutions creating control and surveillance obligations, which have been transposed in Regulation (EC) No 1936/2001 ⁽²⁾.
- (2) ICCAT at its 17th meeting in 2001 and its 13th special meeting in 2002 and IOTC at its 6th and 7th regular meetings in 2001 and 2002 recommended new control measures for certain stocks of highly migratory species. These recommendations and resolutions are binding on the Community and should therefore be implemented.
- (3) Regulation (EC) No 1936/2001 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1936/2001 is hereby amended as follows:

1. in Article 3 the following points shall be added:

- (g) "fattening": raising of individuals in cages to increase their weight or fat content with a view to marketing;
- (h) "caging": placing of wild individuals of any size in closed structures (cages) for fattening;
- (i) "fattening farm": enterprise which raises wild individuals in cages for fattening;
- (j) "transport vessel": vessel receiving wild individuals and transporting them live to fattening farms.'

2. the following Articles shall be inserted:

'Article 4a

Activities of vessels participating in operations relating to bluefin tuna fattening

1. Each master of a Community vessel that transfers bluefin tuna for fattening to a transport vessel shall enter in his logbook:
 - quantity of bluefin tuna transferred and the number of fish,
 - catch zone,
 - date and position of transfer of bluefin tuna,
 - name of transport vessel, its flag, registration number and international radio call sign,
 - name(s) of fattening farm(s) of destination of the quantity of bluefin tuna transferred.
2. Each master of a transport vessel to which bluefin tuna have been transferred shall enter:
 - (a) quantity of bluefin tuna transferred per fishing vessel and the number of fish;
 - (b) the name of the vessel that caught the quantities referred to in a), together with its flag, registration number and international radio call sign;
 - (c) date and position of transfer of bluefin tuna;
 - (d) name(s) of fattening farm(s) of destination of bluefin tuna.

3. The master shall be exempt from the obligation laid down in paragraph 2 if the entry is replaced with a copy of the transshipment declaration provided for in Article 11 of Regulation (EEC) No 2847/93 or a copy of document T2M referred to in Article 13 of Regulation (EEC) No 2847/93 indicating the information referred to in paragraph 2(c) of this Article.

4. Member States shall ensure that all bluefin tuna put into cages by vessels flying their flag are registered by their competent authority. They shall notify to the Commission, in line with Article 5, the quantities of bluefin tuna caught and caged by vessels flying their flag (task I as defined by ICCAT).

⁽¹⁾ Opinion delivered on 13 January 2004 (not yet published in the Official Journal).

⁽²⁾ OJ L 263, 3.10.2001, p. 1.

For exports and imports of bluefin tuna intended for fattening Member States shall send the Commission the numbers and dates of the statistical documents indicated in Council Regulation (EC) No 1984/2003 of 8 April 2003 introducing a system for the statistical monitoring of trade in bluefin tuna, swordfish and bigeye tuna within the Community (*) validated by them and state the third country of destination declared.

5. Member States shall electronically send the Commission a list of all vessels flying their flag and registered in the Community that catch bluefin tuna for fattening. Notification shall be made by 30 April each year, the following information being given:

- (a) the vessel's internal number as defined in Annex I to Commission Regulation (EC) No 2090/98 (**);
- (b) the name and address of its owner, operator or charterer.

6. Member States shall electronically send the Commission a list of all vessels authorised by them to provide or transfer bluefin tuna for fattening. Notification shall be made by 30 April each year, the following information being given:

- (a) name of vessel, its flag and its registration number;
- (b) any previous flags;
- (c) type (fish tanker, towed etc.) length and GT;
- (d) international radio call sign;
- (e) name and address of owner, operator or charterer.

Article 4b

Activities of bluefin tuna fattening farms

1. Member States shall act to ensure that bluefin tuna fattening farms under their jurisdiction submit a caging declaration as referred to in Annex 1a to their competent authority 72 hours after the end of each caging operation by a fishing or transport vessel. Submission of such declarations, containing all the information required under this Article, shall be the responsibility of fattening farms approved by Member States.

2. Member States shall act to ensure that fattening farms as indicated in paragraph 1 submit to them by 1 July each year a marketing declaration for the bluefin tuna fattened.

3. The marketing declaration for bluefin tuna fattened indicated in paragraph 2 must give the following information:

- name of farm,
- address,
- owner,
- quantity of bluefin tuna (in tonnes) marketed in previous year,

- destination of tuna (name of purchaser, country, date of sale),
- for exports and imports, numbers and dates of validation of statistical documents indicated in Regulation (EC) No 1984/2003,
- duration of fattening of tuna marketed (in months), where possible,
- average size of tuna marketed.

4. On the basis of the declaration submitted under paragraphs 1 and 3 Member States shall electronically notify to the Commission by 1 August each year:

- the quantities of bluefin tuna caged during the previous year,
- the quantities of bluefin tuna marketed during the previous year.

Article 4c

Register of bluefin tuna fattening farms

1. Before 30 April 2004 each Member State shall send the Commission electronically a list of the fattening farms under its jurisdiction which it authorises to conduct fattening operations on bluefin tuna caught in the Convention area.

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

- name of farm, its national registration number,
- location of farm,
- capacity of farm (in tonnes).

3. The Commission shall forward this information to the ICCAT Executive Secretariat before 31 August 2004 so that the fattening farms concerned are entered in the ICCAT register of farms authorised to conduct fattening operations on bluefin tuna caught in the ICCAT Convention area.

4. Any change to be made to the list indicated in paragraph 1 shall be notified to the Commission for transmission to the ICCAT Executive Secretariat, the same provisions applying, at least 10 working days before the farms begin fattening activities on bluefin tuna in the ICCAT Convention area.

5. Fattening farms under the jurisdiction of a Member State that are not entered on the list indicated in paragraph 1 may not conduct fattening activities on bluefin tuna caught in the ICCAT Convention area.

(*) OJ L 295, 13.11.2003, p. 1.

(**) OJ L 266, 1.10.1998, p. 27. Regulation as last amended by Regulation (EC) No 26/2004 (OJ L 5, 9.1.2004, p. 25).

3. Article 5 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. Member States shall send electronically to the Commission, which shall pass the information to the ICCAT Executive Secretariat, the annual nominal catch data (task I as defined by ICCAT) for the species listed in Annex II. No later than 30 June of the following year the Member States shall transmit to the Commission, for scientific purposes, the definite estimates for the entire year or, where this is not possible, preliminary estimates.'

(b) In paragraph 2, the introductory sentence shall be replaced by the following:

'2. Not later than 31 July each year, the Member States shall transmit the following data (task II as defined by ICCAT) in electronic form, to the ICCAT Executive Secretariat with electronic access for the Commission.'

4. the following paragraph shall be inserted in Article 6:

'1a) Member States shall transmit to the ICCAT Executive Secretariat in electronic form, with electronic access for the Commission, for scientific purposes, data on catches and effort as defined by ICCAT, in particular estimates of discards of dead porbeagle, shortfin mako and blue sharks.'

5. The following Article shall be inserted:

'Article 6a

Information on catches of white and blue marlin

1. Masters of Community vessels shall record each day in their logbook information on the release of white marlin and blue marlin, alive or dead, by sector not exceeding 5° of longitude by 5° of latitude, and shall indicate in their landing statements the number or weight of white marlin and blue marlin landed.

2. By 30 June each year Member States shall transmit in electronic form to the Commission, for scientific purposes, final estimates for the entire previous year, or if these cannot be sent, preliminary estimates, of the data on catches, including releases, and landings of white marlin and blue marlin.'

6. the following Articles shall be inserted:

'Article 8a

Register of vessels authorised to fish in the Convention area

1. Before 1 June 2003 each Member State shall send the Commission electronically a list of the vessels of more than 24 metres overall length flying its flag and registered

in its territory that it authorises to fish for tunas and tuna-like fish in the ICCAT Convention area by issue of a special fishing licence.

2. The list indicated in paragraph 1 shall give the following information:

(a) vessel's internal number as defined in Annex I to Regulation (EC) No 2090/98;

(b) any previous flags;

(c) any information on removal from other registers;

(d) name and address of owner(s) and operator(s);

(e) gear used;

(f) period authorised for fishing and/or transshipment.

3. The Commission shall send this information to the ICCAT Executive Secretariat before 1 July 2003 so that these vessels can be entered on the ICCAT register of vessels more than 24 metres in overall length authorised to fish in the ICCAT Convention area (hereinafter referred to as the ICCAT register).

4. Any change to be made to the list indicated in paragraph 1 shall be notified to the Commission for transmission to the ICCAT Executive Secretariat, the same procedure applying, at least 10 working days before the vessel begins fishing activity in the Convention area.

5. Community fishing vessels more than 24 metres in overall length that are not entered on the list indicated in paragraph 1 may not fish, retain on board, tranship or land tunas or tuna-like fish within the ICCAT Convention area.

6. Member States shall take the necessary measures to ensure that:

(a) only vessels flying their flag that are included in the list indicated in paragraph 1 and hold on board a special fishing licence issued by them are authorised, on the terms of the licence, to carry out fishing activities referred to Article 1 in the ICCAT Convention area;

(b) no special fishing licence is issued to vessels that have carried out illegal, unregulated and unreported fishing in the ICCAT Convention area (IUU fishing), as indicated in Article 19b, unless the new owners provide adequate documentary evidence that the previous owners and operators neither any longer have any legal, beneficial or financial interest in them nor exercise any control over them, or that their vessels neither take part in nor are associated with IUU fishing;

(c) where possible, their national legislation prohibits owners and operators of vessels flying their flag that are included in the list indicated in paragraph 1 from taking part in or being associated with tuna-fishing activities in the ICCAT Convention area by vessels not on the ICCAT register;

(d) where possible, their national legislation requires owners of vessels flying their flag that are included in the list indicated in paragraph 1 to be nationals of a Member State.

7. Member States shall take the necessary measures to prohibit fishing, retention on board, transshipment and landing of tunas and tuna-like fish caught in the ICCAT Convention area by vessels more than 24 metres in overall length that are not on the ICCAT register.

8. Member States shall without delay pass on to the Commission any information showing that there are strong reasons for suspecting that vessels more than 24 metres in overall length that are not on the ICCAT register are fishing for or transshipping tunas or tuna-like fish in the ICCAT Convention area.

Article 8b

Chartering of Community fishing vessels

1. Before 30 April each year Member States shall send the Commission a list of the vessels flying their flag chartered by contracting parties to the ICCAT Convention for the current year, together with any changes made at any time to this list.

2. Lists as indicated in paragraph 1 shall give the following information:

- (a) internal number of vessel as defined in Annex I to Regulation (EC) No 2090/98;
- (b) name and address of vessel owners;
- (c) species covered by the charter and quota allocated by the charter contract;
- (d) length of the charter agreement;
- (e) charterer's name;
- (f) Member State's assent to the charter agreement;
- (g) country where the vessel was chartered.

3. On the date of conclusion of a charter agreement, the flag Member State shall send the following information to the ICCAT Executive Secretariat and inform the Commission of:

- (a) its assent to the charter agreement;

(b) the action it has taken to ensure that chartered vessels flying its flag comply with ICCAT conservation and management provisions.

4. When the charter agreement ends, the flag Member State shall inform the ICCAT Executive Secretariat of the date of termination and inform the Commission.

5. The flag Member State shall act to ensure that:

- (a) the vessel is not authorised to fish during the charter period against the quota or fishing possibilities allocated to itself;
- (b) it is not authorised to fish under more than one charter agreement during the same period;
- (c) its catches are separately registered from those of other vessels flying its flag;
- (d) it complies with the conservation and management measures adopted by ICCAT.

Article 8c

Transshipment

Vessels flying the flag of a Member State that measure more than 24 metres in overall length, fish by longlining and appear on the ICCAT list indicated in Article 8a(1) may not tranship in the ICCAT Convention area except by prior authorisation of the flag Member State's competent authority.'

7. in Article 9(1) '15 June' shall be replaced by '15 August';

8. the following Article shall be inserted:

'Article 9a

Annual statement on the application of the ICCAT management standards by large longliners

Before 1 September each year, Member States with longliners of a length overall of more than 24 metres authorised to fish in the Convention zone shall transmit to the Commission the Annual statement on the application of the ICCAT management standards by large longliners, using the specimen set out as in Annex IV.;

9. the following Articles shall be added.

'Article 19a

Action to combat IUU fishing

Each Member State shall endeavour in line with its national legislation to ensure that its importers, transporters and other operators refrain from dealing in or transshipping tunas and tuna-like fish caught by vessels carrying out IUU fishing, in particular any fishing conflicting with ICCAT conservation and management measures.

*Article 19b***Information on vessels presumed to have carried out IUU fishing**

1. For the purposes of this Article a vessel flying the flag of a non-contracting party is presumed to have carried out IUU fishing if it is shown by the competent authority of a Member State that it:

- (a) catches tunas or tuna-like fish in the ICCAT Convention area but is not on the ICCAT register;
- (b) catches tunas or tuna-like fish in the ICCAT Convention area for which the flag Member State has no quota, catch limit or effort allocation under the ICCAT conservation and management measures;
- (c) neither registers nor declares its catches in the ICCAT Convention area or makes false statements;
- (d) takes or lands undersized fish in contravention of ICCAT conservation and management measures;
- (e) fishes during close seasons or in closed zones in contravention of ICCAT conservation and management measures;
- (f) uses prohibited fishing gear in contravention of ICCAT conservation and management measures;
- (g) tranships with vessels on the list indicated in paragraph 5;
- (h) makes unauthorised catches of tunas or tuna-like fish in waters under the national jurisdiction of ICCAT Convention area coastal countries or contravenes their laws and regulations;
- (i) is stateless and catches tunas or tuna-like fish in the ICCAT Convention area;
- (j) engages in fishing activity conflicting with any other ICCAT conservation and management measure.

2. On the basis of information obtained by their competent authorities, Member States shall before 15 June notify to the Commission a list of the vessels flying the flag of a non-contracting party that are presumed to have been carrying out IUU fishing during the current and previous years. It shall be accompanied by the supporting documentation.

By 15 July the Commission shall forward the information obtained from the Member States to the ICCAT Executive Secretariat.

3. On receiving from the ICCAT Executive Secretariat the draft list of vessels of non-contracting parties presumed to be carrying out IUU fishing that it has drawn up, the

Commission shall forward it to the Member States. They shall immediately scrutinise it to ascertain the activities of these vessels and any changes of name, flag or ownership.

4. By 30 September, Member States shall send the Commission any further information likely to be relevant to the establishment of the list indicated in paragraph 5.

5. The Commission shall each year, on receiving from ICCAT the list of vessels identified as carrying out IUU fishing (hereinafter referred to as the "IUU list"), send it to the Member States.

*Article 19c***Action on vessels presumed to have carried out IUU fishing**

1. Member States shall take the necessary measures, in line with their national legislation and Community law, to ensure that:

- (a) vessels entered on the IUU list that voluntarily enter a port are not authorised to land or tranship there;
- (b) their flag is not granted to vessels on the IUU list unless the vessel has changed ownership and a new owner can convincingly show that the previous owner or operator neither has any continuing legal, financial or other real interest in the vessel nor exercises any control over it, or unless, having taken all relevant facts into account, the flag State considers that granting the flag to a vessel will not lead to IUU fishing;
- (c) importers, transporters and other operators are encouraged not to deal in or tranship tunas and tuna-like fish taken by vessels on the IUU list;
- (d) all relevant information is obtained and exchanged with other contracting parties and cooperating non-contracting parties, entities and fishing entities for the purpose of detecting and preventing the use of false import/export licences for tunas and tuna-like fish from vessels on the IUU list.

2. The following shall be prohibited:

- (a) transshipment between fishing vessels, mother vessels or transport vessels flying the flag of a Member State and registered in the Community and vessels on the IUU list;
- (b) chartering of a vessel on the IUU list;
- (c) importing, landing or transshipping tunas or tuna-like fish from vessels on the IUU list;

10. Chapter II shall be replaced by the following:

‘CHAPTER II

**CONTROL AND SURVEILLANCE MEASURES APPLICABLE
IN ZONE 2**

SECTION 1

Control measures

Article 20

General principles

Member States shall act to ensure that vessels flying their flag respect the provisions applicable in the zone.

Article 20a

Register of vessels authorised to fish in the IOTC area

Article 8a shall apply *mutatis mutandis*.

Article 20b

Transshipment

Article 8c shall apply *mutatis mutandis*.

Article 20c

Marking of fishing gear

1. Gear used by Community vessels authorised to fish in the zone shall be marked as follows: the ends of nets, lines and other gear in the sea shall be fitted with flag or radar reflector buoys and by night with light buoys indicating their position and extent.

2. Marker buoys and similar floating objects indicating the position of fixed fishing gear shall at all times clearly indicate the letter(s) and/or number(s) of the vessel(s) to which they belong.

3. Fish aggregating devices shall be clearly marked at all times with the letter(s) and/or number(s) of the vessel(s) to which they belong.

Article 20 d

Statistical notification for scientific purposes

1. Member States shall transmit the following statistical data in electronic form, with electronic access for the Commission, to the IOTC Secretariat, in accordance with the procedures for submission of statistics referred to in Annex V:

(a) fishing effort and catches of species referred to in Article 1 for the previous year;

(b) the sizes of the species referred to in Article 1 for the previous year;

(c) tuna fishing using floating objects, including fish aggregating devices.

2. Member States shall set up a computerised database containing the statistical data provided for in paragraph 1, with electronic access for the Commission.

SECTION 2

Port inspection procedures

Article 20e

Articles 10, 12, 13, 14 and 15 shall apply *mutatis mutandis*.

SECTION 3

Stateless vessels and vessels of non-contracting parties

Article 21

Observation

1. Masters of Community vessels authorised to fish in the zone shall send their national authorities their observations on non-contracting parties' vessels presumed or known to be fishing for bigeye or yellowfin tuna or skipjack.

2. Member States shall without delay send this information to the Commission, which shall send it to IOTC.

Article 21a

Control of fishing activities

Article 18 shall apply *mutatis mutandis*.

Article 21b

IUU vessels

Article 19b shall apply *mutatis mutandis*.

Article 21c

Measures concerning vessels presumed to have carried out IUU fishing

Article 19c shall apply *mutatis mutandis*.

11. the text set out in Annex I to this Regulation shall be inserted as Annex Ia;
12. the text set out in Annex II to this Regulation shall be inserted as Annexes IV and V.

Article 2

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

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

Done at Luxembourg, 26 April 2004.

For the Council
The President
J. WALSH

ANNEX I

ICCAT caging declaration

Name of vessel	Flag	Registration number	Date of catch	Place of catch	Date of caging	Quantity caged (kg)	Number of fish caged	Fattening farm*

* Fattening farm authorised to operate for the purposes of fattening bluefin tuna caught in the ICCAT Convention area.

ANNEX II

Attachment II

ANNEX IV

SPECIMEN FORM FOR

ANNUAL DECLARATION OF APPLICATION OF ICCAT MANAGEMENT STANDARDS BY LARGE LONGLINERS

a. Management at fishing grounds

	Boarding of scientific observers	Vessel satellite monitoring system	Daily or periodic reporting of catches	Meldung Einfahrt/Ausfahrt
YES/NO				
Note:	%	% or number of vessels	method	method

b. Management of transshipments (from fishing ground to port of landing)

	Transshipment reports	Port inspection	Statistical document programme
YES/NO			
Note:	Method	method	

c. Management in ports of landing

	Landing inspection	Landing report	Cooperation with other parties
YES/NO			
Note:	Method	method	

ANNEX V

Catch and effort data

Surface fisheries: catch data in nominal catch weight and effort data in fishing days (purse seine, baitboat, troll, drift nets) should be provided to IOTC by 1° grid area and month strata. Purse seine fishery data should be stratified by type of school. Those data should preferably be extrapolated to the national monthly catches of each gear. The raising factors used, corresponding to the logbook coverage, should be given routinely to IOTC.

Longline fisheries: catch and effort data of the longline fisheries should be provided to the IOTC by 5° grid area and month strata, preferably in numbers and in weight. Fishing effort should be given in numbers of hooks. Those data should preferably be extrapolated to the national monthly catches. The raising factors used, corresponding to the logbook coverage, should be given routinely to IOTC.

The catches, efforts and sizes of the artisanal, small scale and sport fisheries should also be submitted on a monthly basis, but using the best geographical areas used to collect and process those data.

Size data

Considering that size data are of key importance for most tuna stock assessment, length data, including the total number of fish measured, should be routinely submitted to the IOTC on a 5° grid area and month basis, by gear and fishing mode (e.g. free/log schools for the purse seiners). Size data should be provided for all gears and for all species covered by IOTC. Size data sampling should preferably be run under strict and well described random sampling schemes which are necessary to provide unbiased figures for the sizes taken. The exact recommended level of sampling could vary between species (as a function of various parameters), but the specific level of recommended sampling needs to be established by the working party on statistics. More detailed size data, for instance size by individual samples, should also be made available to IOTC when requested by specific working groups, but under strict rules of confidentiality.

Fishing for tunas using floating objects, including fish aggregating devices (FADs)

For a better understanding by IOTC of changing patterns in effective fishing effort by fleets operating in its area of competence, more information has to be obtained. Since the activities of supply vessels and the use of fish aggregating devices (FAD) are an integral part of the fishing effort of the purse seine fleet, the following information should be routinely submitted to IOTC:

Number and characteristics of supply vessels: (i) operating under their flag, (ii) assisting purse seine vessels operating under their flag, or (iii) licensed to operate in their exclusive economic zones, and that have been present in the IOTC area of competence.

Levels of activity of supply vessels: including number of days at sea, on 1° grid area and month basis.

In addition, contracting parties and cooperating non-contracting parties shall do their best to provide data on the total number and type of fish aggregating devices (FADs) operated by the fleet, on a 5° grid area and month basis.

Timeliness of data submission to IOTC

It is essential that all fishery data be available to the IOTC Secretariat in due time to allow monitoring of stocks and analysis of the data. Thus it is recommended that the following rules be applied as standard obligations:

Surface fleets and other fleets operating in coastal zones (including supply vessels) must provide their fishery data at the earliest possible date but no later than 30 June each year (previous year's data).

Longline fleets operating on the high seas must provide the provisional fishery data at the earliest date, but no later than 30 June (previous year's data). They must provide the final estimate of their fishery data before 30 December each year (previous year's data).

The time limits presently allowed for submitting statistics could be reduced in the future as communication and data processing technologies become ever more rapid, which should reduce the present data processing delays.
