

Transposing international measures for Atlantic tuna fisheries into EU law

OVERVIEW

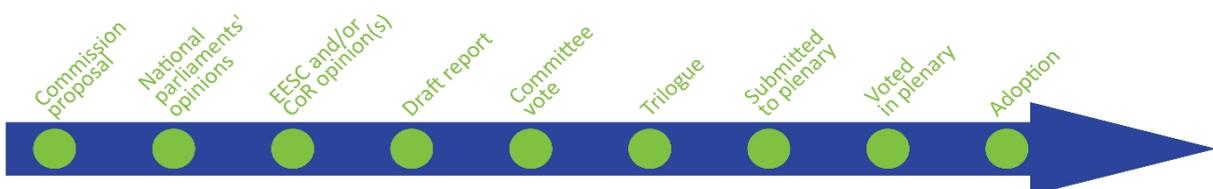
The European Parliament and Council have adopted a regulation concerning the conservation of tuna and tuna-like species, and the management of fisheries targeting these stocks in the Atlantic Ocean (including adjacent seas such as the Mediterranean).

The new regulation, which entered into force on 3 December 2017, transposes into EU law a number of binding recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT), a regional fisheries management organisation to which the EU is a contracting party. These measures needed to be enacted in EU law to become applicable, notably to operators such as the masters of fishing vessels.

When adopting its legislative resolution, the EP also voted on a statement to express its concern at the Commission's delay in proposing to implement ICCAT recommendations (some dating back to 2008), and urged it to send future proposals for transposition of RFMOs' recommendations within six months of the date of their adoption.

Proposal for a regulation of the European Parliament and of the Council laying down management, conservation and control measures applicable in the Convention Area of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and amending Council Regulations (EC) No 1936/2001, (EC) No 1984/2003 and (EC) No 520/2007

<i>Committee responsible:</i>	Fisheries (PECH)	COM(2016) 401
<i>Rapporteur:</i>	Gabriel Mato Adrover (EPP, Spain)	17.6.2016
<i>Shadow rapporteurs:</i>	Isabelle Thomas (S&D, France) Ruža Tomašić (ECR, Croatia) Izaskun Bilbao Barandica (ALDE, Spain) João Ferreira (GUE/NGL, Portugal) Linnéa Engström (Greens/EFA, Sweden)	2016/0187(COD) Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Procedure completed.</i>	Regulation (EU) 2017/2107 OJ L 315, 30.11.2017, p. 1	



Introduction

The European Union exercises exclusive competence for 'the conservation of marine biological resources under the common fisheries policy'. As part of its [external policy on fisheries](#), it participates in the international fora in charge of the conservation of marine living resources and the management of fisheries. The EU is therefore a contracting party to numerous regional fisheries management organisations ([RFMOs](#)) established at international level to decide on common management of shared resources in given seas or maritime areas. Decisions adopted by these RFMOs (habitually under the form of 'recommendations' or 'resolutions') are binding on the parties. Generally, however, the agreed measures are not directly applicable as such, and in line with their international commitments, the parties must transpose these measures into domestic law for them to become applicable to the vessels flying their flag and to their national operators.

On 17 June 2016, the European Commission tabled a proposal for a regulation to establish measures for the management and control of fisheries for tuna and tuna-like species in the Atlantic Ocean. This draft regulation is aimed at transposing a number of measures agreed to, some as far back as 2008, under the auspices of the competent organisation, namely the International Commission for the Conservation of Atlantic Tunas (ICCAT).

The International Commission for the Conservation of Atlantic Tunas

The International [Convention](#) for the Conservation of Atlantic Tunas was finalised 50 years ago and entered into force in 1969. This convention established the International Commission for the Conservation of Atlantic Tunas ([ICCAT](#)) as the regional fisheries management organisation responsible for the conservation of tuna and tuna-like species in the Atlantic Ocean and its adjacent seas.

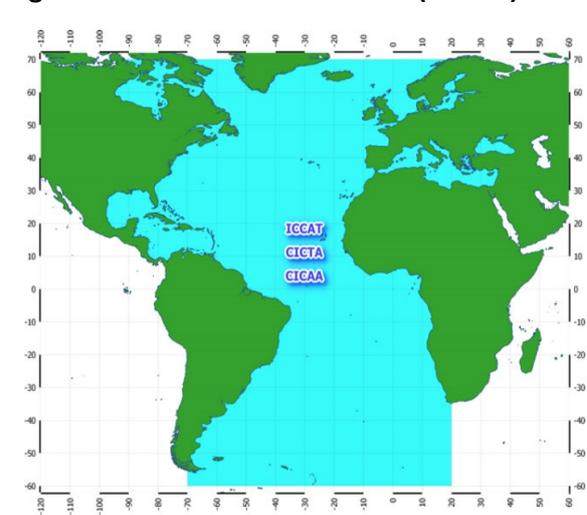
The geographical scope of ICCAT covers the whole Atlantic Ocean, in the northern and southern hemispheres, and in both international waters and the waters falling under the sovereignty or jurisdictions of coastal states (see Figure 1).

ICCAT deals with stock conservation and fisheries management for about 30 tuna and tuna-like species. These include large oceanic tuna, some with preferential distribution in temperate latitudes (e.g. [Bluefin tuna](#), [albacore](#)), others found mainly in warmer waters around and in between the tropics (e.g. [skipjack](#), [yellowfin](#), and bigeye tuna). It also covers smaller tuna species, such as [Atlantic bonito](#) and [frigate tuna](#), usually distributed closer to coasts. Tuna-like species include large oceanic fish, for instance [swordfish](#), [white marlin](#), [blue marlin](#) and [sailfish](#), as well as smaller ones such as mackerel species (e.g. [king mackerel](#) and spotted [Atlantic Spanish mackerel](#)).

ICCAT also carries out work on some other species that are caught in association with tuna fishing activities ('by-catch') in the convention area, notably sharks, but also seabirds and turtles.

The European Union has been a contracting party to ICCAT since 1997.

Figure 1 – ICCAT convention area (in blue)



Source: [ICCAT](#).

Given the Union's exclusive competence for the conservation of marine biological resources under the common fisheries policy, no Member State is a party in its own right. However, France and the United Kingdom retained ICCAT membership after the EU (formerly as the European Community) joined this RFMO, on behalf of the parts of their national territories not covered by the Treaties (i.e. St-Pierre et Miquelon, and British overseas territories). Today, ICCAT numbers about 50 [contracting parties](#), Atlantic coastal states as well as other fishing nations.

ICCAT is composed of representatives of its contracting parties who meet annually to develop and [decide](#) on common conservation and fisheries management measures, aimed at maintaining the populations of species under the ICCAT remit at levels that permit maximum sustainable catch. ICCAT also decides on administrative and financial matters, as well as on the numerous other tasks and [meetings](#) to be performed by the [organisation](#), notably to develop scientific-based management advice, to coordinate research (including stock assessment), to gather data and statistics on fishing activities and to supervise compliance. The EU is represented by the European Commission, which takes into consideration preparatory consultations, in particular with stakeholders and Member States' representatives. The latest special meeting of the ICCAT commission took place from 14 to 22 November 2016.

Existing situation: EU measures concerning Atlantic tuna fisheries

General fisheries management rules

The conservation of Atlantic tunas and the management of fisheries targeting these stocks under ICCAT responsibility are subject primarily to the overarching **principles** and means established under the **common fisheries policy** (CFP). The CFP builds notably on the requirement to apply the precautionary approach and to achieve the maximum sustainable yield (MSY) exploitation rate by 2020 for all stocks. The reform of the CFP in 2013 also led to a paradigm shift in EU fisheries management, by introducing an obligation to land all catches of specimens of species subject to catch limitations and, in the Mediterranean, also catches of species that are subject to minimum sizes. The Basic Regulation on the Common Fisheries Policy, as well as numerous general regulations that address given dimensions of this policy (e.g. technical measures, control of fishing activities), can apply also to vessels without being sea or species/fisheries specific. But these 'general' regulations can also sometimes contain some provisions applicable specifically to tuna fishing activities and/or to fisheries in (parts of) the Atlantic.

By way of illustration, the [CFP Basic Regulation](#) provides that the **landing obligation** must apply to pelagic fisheries as of 1 January 2015. Under this obligation, it expressly identifies, among the fisheries concerned, pelagic fisheries targeting species that fall within the remit of ICCAT, notably pelagic fisheries for bluefin tuna, swordfish, albacore tuna, big eye tuna and blue and white marlins. However, the CFP Basic Regulation also provides that that this landing obligation must be without prejudice to the Union's international obligations.

Similarly, some measures developed within the different tools for [stock conservation and fisheries management under the CFP](#), can be applicable, either across the board or more specifically to the fishing of some Atlantic tunas, independently from developments under ICCAT. One illustration of this, within the large and complex legislative set of fisheries **technical measures** (currently [under review](#)), [Regulation No 894/97](#) prohibits any EU vessel, all across the world's oceans, from keeping on board or using for fishing one or more drift nets whose individual or total length is more than 2.5 kilometres.

Moreover, this regulation bans this type of gear when intended for the capture of a number of species, notably tuna species. As another illustration, the regulation which sets out a general framework in order to manage fisheries in the Mediterranean Sea ([Regulation 1967/2006](#)) also establishes some specific prohibitions or restrictions on gear in relation to fishing for bluefin tuna, albacore tuna and swordfish.¹

As far as **control** is concerned, all fishing activities fall under the EU regime for fisheries control, framed in [Regulation 1224/2009](#), which establishes, among other things, requirements that captains of fishing vessels document, record and report on their fishing activities (such as location, catches or landings) and obligations for vessels over a given size to be equipped with a vessel monitoring system (VMS) or an automatic identification systems (AIS). These requirements apply wherever vessels operate, including the whole Atlantic Ocean, in and outside EU waters. The EU system for control, inspection and enforcement, also includes the fight against illegal, unreported and unregulated ([IUU](#)) fishing.

The management of EU fishing activities outside EU waters, be it in international waters or in waters under the sovereignty or jurisdiction of third countries, also falls under the general principles of the [external dimension of the EU common fisheries policy](#). In this regard in particular, fishing vessels that wish to operate outside EU waters are subject to a specific fishing authorisation regime (see [Regulation 1006/2008](#)). This [authorisation regime](#), currently under review, also contributes to the control of fishing activities.

One of the main measures for managing fish stocks consists of setting maximum catch limits. The fixing of fishing opportunities remains within the competence of the Council alone. Thus, EU fisheries ministers regularly set total allowable catches (TACs) for over 230 different stocks, usually on an annual basis. These TACs are shared among Members States in the form of quotas. The largest set of currently applicable TACs and quotas is established within [Council Regulation \(EU\) 2016/72](#), fixing for 2016 the fishing opportunities for certain fish stocks and groups of fish stocks. Applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, the TACs and Quotas Regulation includes the latest catch limits, agreed by ICCAT in 2015. It also includes some other provisions relating to certain ICCAT decisions, such as limits on the number of vessels of different types that can engage in fishing related activities for given tuna species and some other associated species.²

ICCAT related regulations

Beyond fisheries management instruments of a general scope, which can also contain some Atlantic specific or tuna specific measures directly derived from an ICCAT decision or not, a number of specific legislative acts have been adopted solely or mainly to transpose into EU law commitments taken under international agreements, and particularly in those RFMOs in charge of highly migratory stocks in different world oceans, such as ICCAT and the Indian Ocean Tuna Commission ([IOTC](#)).

Like the 'horizontal' regulations illustrated above, regulations developed for highly migratory species fisheries, and derived from ICCAT – and other RFMO – decisions, address specific management domains such as technical rules and control of fishing and trade activities. This legislative set includes:

- [Regulation 1936/2001](#) laying down **control** measures applicable to fishing for certain stocks of highly migratory fish,
- [Regulation 1984/2003](#) introducing a system for the **statistical monitoring of trade** in bluefin tuna swordfish and bigeye tuna within the Community, and
- [Regulation 520/2007](#) laying down **technical measures** for the conservation of certain stocks of highly migratory species.

The most recent amendments to these regulations took place between 2007 and 2010.

In addition, the European Parliament (EP) and the Council adopted, on 14 September 2016, [Regulation 2016/1627](#) on a **multiannual recovery plan for bluefin tuna** in the eastern Atlantic and the Mediterranean. This regulation replaces a previous set of management measures enacted into EU law, notably to [include](#) the ICCAT recommendations made between 2012 and 2014 on this specific subject (where not already covered in EU law). ICCAT had indeed decided in 2006 to establish a 15-year recovery plan for this stock. It has been reviewing these measures regularly since then, and has adopted new recommendations on bluefin tuna over the years, notably to reinforce the control of these fisheries.

Preparation of the proposal

In view of the fact that this legislative proposal relates to transposing internationally agreed measures, it is not accompanied by any impact assessment. Nor did the European Commission consider the need for a stakeholder consultation, expert input or evaluations of existing measures, considering notably that such phases take place within the preparation process for ICCAT recommendations.

The changes the proposal would bring

This proposal for a specific regulation to cover management, conservation and control measures for the ICCAT Convention area ([COM\(2016\) 401](#)) is presented as transposing into EU law a number of measures adopted by ICCAT since 2008 (and until 2015).

According to the Commission, the transposition concerns 28 recommendations (either new or amending previous recommendations - see full [ICCAT compendium](#)) to the extent that they were not yet covered by existing EU rules.³

However, this proposal does not include those ICCAT recommendations that refer to the Bluefin Tuna recovery plan, as this issue has been dealt with by the newly adopted Regulation 2016/1627 (see above). Neither does this proposal cover the fixing of fishing possibilities for Atlantic tuna species as adopted under ICCAT, as their enactment into EU law falls within the remit of the Council (as part of the TAC- and quota-setting procedure).

Moreover, it is important to note that, for reasons of clarity, the provisions applicable in the ICCAT convention area already contained within the regulation setting control measures for stocks of highly migratory species ([Regulation 1936/2001](#)), as well as those defined for the ICCAT area within the regulation on technical measures for stocks of highly migratory species ([Regulation 520/2007](#)) would be deleted, to be replaced by provisions defined within this new ICCAT-specific regulation.

The proposed regulation would cover **management, conservation and control** measures adopted by ICCAT, while also taking into account the changes brought to EU fisheries law in the meantime, in particular with regard to the control of fisheries (see Regulation [1224/2009](#)), the fight against IUU (see Regulation [1005/2008](#)), and the reformed CFP, notably the landing obligation.

After establishing some general provisions, the proposed regulation would set out various **specific provisions applicable to given species or groups of species** managed by ICCAT. As an overview, this would cover:

- tropical tunas (i.e. bigeye, yellow fin and skipjack tuna), for which ICCAT management and conservation measures include limits on the number of large vessels targeting the stock, specific management plans and technical measures for the use of fishing

- aggregating devices (FADs) – floating objects that are known to attract and concentrate pelagic species – along with a prohibition on keeping those species when caught in certain fisheries (by derogation to the landing obligation). Control measures include the need for specific authorisations as well as recording and reporting obligations, including on possible IUU activities by a fishing vessel flying the flag of a Member State;
- swordfish, with the need for management plans and minimum sizes in the Atlantic, and additional conservation measures in the Mediterranean (including special authorisations, limits on by-catch, closed fishing seasons, gear specifications and reporting obligations);
 - blue and white marlins, the management measures for which include minimum sizes, measures on recreational fisheries and for which quota management is aligned with the CFP reform (requirement to release specimens caught alive when approaching the quota, and a prohibition on selling those marlins brought dead alongside vessels after the quota has been exhausted);
 - sharks, for which management measures include a strict prohibition on the fishing and keeping of some species (e.g. porbeagle, hammerhead sharks and thresher sharks) and a requirement for the release of live sharks caught incidentally in fisheries not targeting these species. Member States must also endeavour to reduce fishing mortality of shortfin mako. In addition, they must carry out scientific research to support improved conservation and management of sharks caught in the ICCAT area;
 - seabirds and turtles; some defined fisheries are subject to specific technical measures to mitigate accidental catches of birds (e.g. bird scaring devices, weighting and setting of lines at night) and sea turtles (prohibition on encircling turtles when fishing, safe handling practices, need for specific equipment such as de-hooking devices). Data on incidental catches of these species must be collected and are subject to specific reporting obligations.

In addition to these species-specific measures, the proposed regulation would establish a number of **common control measures**, notably on authorisations and recording of large scale fishing vessels, on chartering and transshipment activities, on scientific observers, on control of catches and of compliance (including on third country vessels in EU ports), and on the enforcement of ICCAT rules. For some of these requirements, the Commission would also be empowered to adopt **implementing acts** to establish further detailed requirements and uniform implementation conditions. These common measures also include obligations on reporting and notification to the ICCAT secretariat.

Given the fact that ICCAT may regularly decide on new measures and review its recommendations for conservation, management and control of fisheries, the Commission also proposes to be given **delegated powers** in order to swiftly incorporate such ICCAT decisions into EU law. Delegated powers would be given for an indeterminate period of time and cover a number of measures established in the proposed regulation and its annexes, on issues such as fisheries technical rules (e.g. minimum sizes and levels of tolerance, by-catch mitigation measures, closed area/periods), observer programmes, reporting requirements including times limits, FAD management plans and transshipment monitoring procedures.

Finally, the Commission also proposes to amend [Regulation 1984/2003](#) concerning the **statistical monitoring of trade** in bluefin tuna, swordfish and bigeye tuna, in order to transpose a number of ICCAT measures on the documentation of products transhipped from large pelagic long liners and their import.

Advisory committees

The European Economic and Social Committee adopted its [opinion](#) on this proposal in its plenary session on 19 October 2016. Welcoming the transposition into EU law of the measures adopted since 2008 by ICCAT, it also makes a few comments on some detailed drafting proposals in consideration of the recommendations as agreed by ICCAT.

National parliaments

The [scrutiny](#) of this proposal at national level did not lead to any concerns on subsidiarity (and hence no reasoned opinion) from EU national parliaments.

Legislative process

The EP Committee on Fisheries (PECH), responsible for considering the proposal, adopted its first-reading report on 25 April 2017 (rapporteur Gabriel Mato Adrover, EPP, Spain), taking into account the opinion of the Committee on the Environment, Public Health and Food Safety (ENVI) of 22 March 2017 (rapporteur Renata Briano, S&D, Italy) (see procedure file [2016/0187\(COD\)](#)). Concerns were expressed during the preparatory debate on the lack of speed of the Commission in proposing to transpose international commitments into EU law (some of the ICCAT recommendations concerned date back to 2008).

The PECH committee considered that the scope of the regulation should be enlarged in order to apply, not only to EU vessels, but also to third-country vessels when fishing in Union waters, for professional or for recreational purposes. The committee was also of the view that the list of fishing vessels which are considered to be engaged in illegal, unreported and unregulated (IUU) fishing activities should include all IUU vessels (i.e. not only those flying the flag of non-contracting parties to ICCAT, but also those flying the flag of ICCAT member countries).

As has already been the subject of debate in relation to other proposals to transpose internationally agreed measures into EU law,⁴ the PECH committee favours a general policy approach according to which the ICCAT recommendations should be transposed without changing the wording of the measures as adopted in this international forum – notably to ensure a level playing field between EU fishing vessels and third-country vessels also subject to ICCAT recommendations. While proposing, therefore, to review several provisions along this line, PECH members were also of the view that the EU should promote, at the international level, the current prohibition on the transshipment of fish at sea by EU vessels, in order to prevent this practice being possible outside Union waters.

Given that ICCAT manages bluefin tuna stocks, and recently also swordfish stocks, based on maximum fishing opportunities (i.e. total allowable catches, shared as quotas between the different countries), the PECH committee considers that the regulation should include a provision concerning the distribution of these quotas by Member States to their own fishermen. In line with the principle established under the new CFP (see notably Article 17 of [Regulation 1380/2013](#)), Member States must allocate fishing opportunities to vessel-owners in accordance with transparent and objective criteria, while giving special consideration to traditional and artisanal fisheries and incentivising fishing practices which are selective and have a reduced environmental impact.

The PECH committee also considered that the delegation of powers should be limited to certain specific cases. In particular, the Commission may adopt delegated acts when it comes to the implementation of ICCAT recommendations which become binding on the Union, but only in so far as such amendments to EU law do not go beyond the ICCAT

recommendations. Delegation of powers should not be unlimited in time but would be valid for a five-year tacitly renewable period, and subject to reporting requirements.⁵

After adopting its report, the PECH committee voted to enter into negotiations with the Council, which had also [prepared for negotiations](#) on its side. Trilogue negotiations concluded positively on 31 May 2017 with a compromise text largely in line with the PECH committee views. The PECH committee approved the [compromise text](#) on 21 June. The plenary voted on the text as agreed in trilogue on 3 October. When adopting its legislative resolution, the EP also voted on a statement to express its deepest concern about the delays of the Commission in proposing to implement ICCAT recommendations (some dating back to 2008). It notably urged the Commission to send any future proposal for transposition of recommendations from RFMOs within a maximum of six months from the date of their adoption.

On 23 October 2017, the Council voted to adopt the new regulation, which subsequently entered into force on 3 December, following its publication in the [Official Journal](#).

Sources

[International Commission for the Conservation of Atlantic Tunas \(ICCAT\): management, conservation and control measures applicable in the Convention Area](#), European Parliament, Legislative Observatory (OEIL).

Endnotes

- * This is an updated version of a briefing originally drafted by Jean Weissenberger.
- ¹ [Regulation 1967/2006](#): see notably Recital No 24 and Article 8, which ban the use of bottom-set nets to catch these three species, as well as Annex II Point 6, which sets maximum limits on the number of hooks per vessel.
 - ² [Regulation 2016/72](#): see notably Recital No 25, Articles 22-24 and Annexes ID and IV.
 - ³ See the presentation made by the Commission to the PECH committee on 11 October 2016 ([video](#): item starting at about 17h05).
 - ⁴ Particularly when the EP was considering a comparable proposal from the Commission to transpose a number of ICCAT recommendations concerning the blue fin tuna recovery plan in the Eastern Atlantic and the Mediterranean – see the section on ICCAT-related regulations, as well as the procedure file [2015/0096\(COD\)](#).
 - ⁵ When [adopting](#) Regulation 2016/1627 concerning the bluefin tuna recovery plan in the eastern Atlantic and the Mediterranean (and transposing ICCAT recommendations of 2012 to 2014 therein), the European Parliament and the Council did not delegate powers to the European Commission to adopt amendments to this plan on the basis of further ICCAT decisions. This led the Commission to issue a [statement](#) in which it expressed concerns regarding the limited powers delegated to it and the possible resulting delays related to the ordinary legislative procedure that might jeopardise the EU's ability to comply with its international obligations.

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