

CENTRAL EUROPEAN UNIVERSITY

# **Management of Fish Resources in the Common Fisheries Policy: Where the EU Meets the International Institutions**

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## **Abstract**

This study moves away from a state-centric model of analyzing the policy-making in the EU and includes, next to the governments, EU institutions and interest groups, another important actor; international institutions. The involvement of the international actors in the EU policies have been particularly discernible in the formulation and adoption of the fishery conservation policies in the EU waters, which constitute an essential part of the Common Fisheries Policy. The international scientific institution on the marine resources such as the International Council for the Exploration of the Sea exercises considerable influence on setting the levels of fish catches in the EU waters. The Regional Fisheries Organizations (RFOs) have a tremendous impact on the legislative power arrangements between the Council, the Commission and the European Parliament. The Commission has successfully changed the legislative path to incorporate a great number of recommendations enacted by the RFOs and by doing it, has significantly limited the power of scrutiny of the European Parliament and the Fisheries Council of Ministers.

The findings of this research lead to the conclusion that the outcomes of the policy-making on the common management of fish resources in the EU cannot be merely account for by the intergovernmental analysis of the member states' preferences. Next to the state and non-state actors that operate in the EU framework, the international fisheries institutions have emerged as important players, which can have a profound impact on the EU fishery policies.

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## 1. Introduction

The policy-making in the European Union (EU) is generally perceived as being insular and solely determined within the EU structure. The studies of the EU policy-making either completely neglect the outside forces or just hint to the possibility of the international environment playing somewhat more significant role in the EU policy-making than it is usually assumed<sup>1</sup>. However, these analyses do not view the international institutions as the autonomous and independent entities that have specific preferences and policy-goals and can exercise a significant influence on the policies within the EU. Moreover, the studies on the EU have not recognized the importance of the international institutions in terms of their possible impact on the political power struggle between the Commission and the Council or the European Parliament.

In general, this paper will assess the influence of the international institutions on the EU policies by studying the EU fisheries affairs. The fisheries policy in the EU has been managed commonly since 1983 and the elements of the Common Fisheries Policy (CFP) are devised at the EU level with the participation of various actors. Nevertheless,

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<sup>1</sup> Andrews argues that the international system played an important role in the agreement on the EU monetary union. However, his analysis is restricted to a general notion of the international environment (rather than to its specific elements such as international institutions). The economic-financial (integration of the capital markets) and political changes (the collapse of the Soviet Union and a subsequent unification of Germany), which took place in the international system, “opened the widow of opportunity” for the EMU agreement. David M. Andrews, *The Global Origins of the Maastricht Treaty on EMU: Closing the Window of Opportunity*, in Alan W. Cafruny and Glenda G. Rosenthal, *The State of the European Community. The Maastricht Debates and Beyond*, (Boulder Col.: Lynne Rienner Publishers, 1993): 107-123. Andrews’ evaluation of EMU is similar to Peterson’s remarks about the increasing trade competition in the international system, which compelled European governments to agree on the Single European Act. However, Peterson does not elaborate further on his idea of the “global environment and the EU decision-making” and provides only a general overview of the influence of the international system on the “history-making decisions” in the EU. John Peterson, “Decision-Making in the European Union: Towards a Framework for Analysis,” *Journal of European Public Policy* 2, no.1 (March 1995): 84-85. In turn, Patterson introduced a three-level game study, which analyzed the affects of the negotiations taking place within the framework of General Agreement on Trade and Tariffs (GATT) on the decision of the EU to conclude an international agreement on agriculture. Nevertheless, Patterson’s analysis was limited and did not lead to the conclusion that the international trade regime such as GATT was an autonomous actor that influenced the EU policy-making. On the contrary, domestic situation in the USA and the pressure to reform Common Agriculture Policy may have actually determined the EU decision to conclude the agreement on agriculture. See Lee Ann Patterson, “Agricultural Policy Reform in the European Community: a Three-Level Game Analysis,” *International Organization* 51, no.1 (Winter 1997): 135-165, particularly 152-154.

the EU as such has a limited competence in the implementation of the CFP and particular member-states retain a majority of responsibilities for the execution of the fisheries policies that are agreed earlier at the EU level. In this way, there is a more or less clear-cut division of power between the EU level, where the CFP is commonly agreed upon and the national/local levels, where the CFP is carried out and monitored.

This work will look at the EU level where the CFP is designed and accepted, leaving aside the debate on the effective implementation of the CFP. This approach will allow us to focus fully on the decision-making aspects of the CFP within the EU structure. This study will examine the formulation and adoption of the cornerstone policies of the CFP connected with the common management of fish resources in the EU waters. Two case-studies will be considered. They include:

- 1) involvement of the International Council for the Exploration of the Seas in setting Total Allowable Catches (TACs) in the EU waters and
- 2) impact of the legislation on technical conservation measures<sup>2</sup> that are adopted by the Regional Fisheries Organizations on the EU institutional balance of power.

1) While conducting analysis of the limits on fish catches I will argue that the annual decisions on TACs although agreed upon on the EU level, involve also the international actor; the International Council for the Exploration of the Sea (ICES), which operates outside the EU institutional and legal framework. Although being an advisory international institution on fisheries, ICES exercises a great deal of influence on the EU fisheries policy and its recommendations, based solely on biological objectives, are

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<sup>2</sup> Technical conservation measures include: restrictions on the fishing nets, fishing techniques and fishing areas. See also chapter III.

nonetheless largely accepted by the Commission. The Council of Ministers, which meets each year, in the middle of December to decide about TACs, tends to increase the ICES and the Commission figures on catching quotas. However, the Council's adjustments in quotas are not so significant and frequently do not match the expectations of the fisheries industries. Changing the fisheries agenda on fishing quotas determined by ICES and approved by the Commission proves to be extremely difficult for the member states. Consequently, setting TACs in the EU cannot be understood without recognizing specific preferences of the international actor such as ICES and its "advisory" power, which constrains states' behavior and weakens the states' dominance in the EU policy-making. Therefore, the adoption of the measures on TACs cannot be accounted by liberal intergovernmentalism according to which the states are able to exercise effective control over the EU policies<sup>3</sup>.

2) A growing number of legislation on technical conservation measures in the EU waters comes from the Regional Fisheries Organizations (RFOs). In turn, the RFOs and their work on technical conservation measures have had a serious impact on the legislative power of particular EU institutions and on changing the framework in which certain provisions of the CFP are determined. The Commission, arguing that the RFOs work needs to be timely adopted into the EU fishery *acquis*, have managed to acquire the right to incorporate legislation on technical conservation measures that are accepted by the RFOs, effectively undermining the control of the Council and the European Parliament over these measures. Thus, it will be highlighted that the work of the RFOs that operates outside the EU framework of decision-making has a considerable influence

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<sup>3</sup> More on the concept of liberal intergovernmentalism see Andrew Moravcsik, "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach," *Journal of Common Market Studies*, 31, no.4 (1993): 473-524.

over the EU fisheries policies and over the manner the decisions are agreed upon in the EU institutional structure.

This study intends to raise important questions about the permeability of the EU policy-making system and about the role of international institutions in shaping the EU policies rather than making any generalizations since it is only a single case-study moreover, restricted to a given time.

This paper is divided into three main chapters. In the first chapter I will present the International Council for Exploration of the Sea, assess its formal and informal influence and evaluate the extent of the ICES involvement in determining the Total Allowable Catches (TACs) in the EU waters. In the second part of the study I will focus on the way the TACs are adopted within the EU framework for the year 1999, 2000 and 2001 and determine the extent to which the Council follows the Commission proposals and indirectly the ICES advice. Finally, in the third chapter, the Regional Fisheries Organizations will be introduced. I will evaluate the work and the impact of the Regional Fisheries Organizations on the way the technical conservation measures are adopted by the EU institutions.

## **Chapter I**

### **2. Cooperation of the International Council for the Exploration of the Sea with the European Union**

The International Council for the Exploration of the Seas has a direct connection with the EU through its advice, which is given after the European Commission makes a formal request to ICES. The scientific institution in Copenhagen has also an indirect



influence on how certain aspects of the CFP are designed. It is done via the various Regional Fisheries Organizations (RFOs) for whom ICES is the main scientific advisory body. In this chapter I would like to focus on the creation of the CFP and on how the issue of management of fish resources fits into the CFP “picture”. Then, I will proceed with the assessment of the position of influence held by ICES and finally I will evaluate direct interactions between ICES and the EU that take place within the framework of the CFP and determine to what extent the Commission accepts the ICES recommendations.

### **2.1. The Common Fisheries Policy and the policy of fish management in the EU**

In this section I will briefly analyze the establishment of the CFP and present the legal framework according to which the conservation measures are introduced in the EU waters. I will also refer to particular legal provisions on the management of fish resources in order to determine the competence of particular EU institutions in designing the fisheries conservation policies.

The CFP is composed of various elements and the conservation of fish resources in the Community waters constitutes one of them. The CFP is a highly complex and multifaceted policy that has tried to reconcile the interests of the fishermen with the need to introduce sustainable exploitation of the fisheries resources. Thus, the management of the fish resources that the study deals with constitutes one of the most important parts of the CFP, but not the only one. Next to the conservation policies, based on the total allowable quotas and technical conservation measures, the CFP also includes structural and market policies. Structural policies are designed to reduce the fleet capacities of the member states through the financial-incentive schemes based on the multi-annual guidance programmes, so called Multi-Annual Guidance Programmes (MAGPs), adopted

by the Community every four years since 1983<sup>4</sup>. Market policies in the CFP are based on fixing the price-levels for fish products so as to promote a desirable supply/demand levels and thus, preserve a stability of the fishing industries in the member-states.

The EU governments were very much interested in the establishment of the common structural and market policies for the fishing sector since their fishing industries could financially contribute from these schemes. However, they were much more reluctant to design the EU conservation policies, which meant that sensitive policy on limiting the fishing opportunities would be decided on the EU rather than on the national level. It explains why only in 1983 the CFP was formally brought to life through the adoption of 12 Regulations<sup>5</sup>. The most important regulation enacted by the Council was the Regulation 170/83, which introduced the common system for conservation and management of fisheries resources in the Community waters. The 1983 Management and Conservation Regulation (170/83) established the power sharing between the Commission and the Council in connection with the issues such as setting TACs. According to Regulation 170/83 the Council adopts the provisions fixing TACs for certain fish stocks based on the Commission proposal that takes into account the advice given by the scientists. The Council adopts TACs based on the qualified majority (QMV)<sup>6</sup>. The 1983 Management and Conservation Regulation also provides for the mechanism according to which the Commission proposes and the Council confirms the allocation of particular fish catches among the member-states based on the “relative stability” principle<sup>7</sup>. In 1992, the Council reviewed the CFP and introduced an amending

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<sup>4</sup> MAGP I, 1983-1986, MAGP II, 1987-1991, MAGP III 1992-1996, MAGP IV 1997-2001, and MAGP V, 2001-2005.

<sup>5</sup> Holden, *The Common Fisheries Policy. Origin, Evaluation and Future*, 55.

<sup>6</sup> Council Regulation No. 170/83, article 10 and article 11.

<sup>7</sup> Relative stability principle of total allowable catches of fish stocks for a particular EU country (apart from Austria, Luxembourg and Mediterranean countries) is a fixed sum that is calculated according to a) the traditional fishing

Regulation 3760/92 (further amended in 1998<sup>8</sup>), which established a Community system for fisheries and aquaculture. The provisions for setting TACs were generally maintained with the important exception that the European Parliament was to be now consulted in the situation when the Commission proposal for a Council regulation on fisheries is based on art. 37 (43) of the EC Treaty<sup>9</sup> that refers to agricultural matters, which the fisheries policy is part of. The improvements were introduced in the system of control and enforcement of the Community measures related to fisheries. The Commission was given power to introduce emergency measures if there is a serious disruption of the fish stocks<sup>10</sup> and an advisory committee on fisheries (Scientific, Technical and Economic Committee for Fisheries- STECF) was set up in the Commission<sup>11</sup>.

Apart from the regulations that deal with TACs, there are also several Council regulations that address the issue of technical conservation measures such as minimum mesh size for fishing nets, types of fishing gear, maximum by-catches or closed seasons. These regulations were introduced for the specific geographical areas: the Atlantic and the North Sea<sup>12</sup>, the Baltic Sea, the Belts and the Sound<sup>13</sup> and the Mediterranean Sea<sup>14</sup>, or deal with the technical conservation issues more generally<sup>15</sup>.

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activities of a given national fleet, applying the period of 1973-1978 for which data were published by ICES and could not be disputed, b) the special needs of the Community regions which are enumerated in Annex VII of the 1976 Hague Resolution (so called „Hague preference” that mentions the Irish coastal communities and northern parts of Britain as areas particularly dependent on fishing) and finally c) the level of losses of fishing opportunities of the Community states due to the extension of the third states’ jurisdiction to 200 nautical miles.

<sup>8</sup> Council Regulation No. 1181/98.

<sup>9</sup> Ronán J. Long, Peter A. Curran, *Enforcing the Common Fisheries Policy*, (Blackwell Science: London 2000):14.

<sup>10</sup> Council Regulation No. 3760/92, article 15.

<sup>11</sup> Council Regulation No. 3760/92, article 16.

<sup>12</sup> Council Regulation No.171/83, Council Regulation No.3094/86.

<sup>13</sup> Council Regulation No. 88/98 laying down certain technical measures for the conservation of fishery resources in the waters of the Baltic Sea, the Belts and the Sound.

<sup>14</sup> Council Regulation No. 1626/94 laying down certain technical measures for the conservation of certain fishery resources in the Mediterranean and its four amendments.

<sup>15</sup> Council Regulations No. 685/95 on the management of fishing effort relating to certain Community fishing areas and resources. Council Regulation (EC) No 894/97 lays down certain technical measures for the conservation of fishery resources. Council Regulation No. 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms and its five additional amendments.

## **2.2. The International Council for the Exploration of the Sea and its position of influence**

This section will present the International Council for the Exploration of the Sea, assess its unique position in terms of providing data for its contracting parties and underline a lack of consultations between ICES and fisheries interest groups. Finally, I will analyze the introduction of the precautionary approach to calculate TACs in the ICES recommendations. These examples will help to evaluate the power of ICES and its informal influence.

The International Council for the Exploration of the Sea was established in 1902, by the polar explorers and scientists who received political and financial support from the King of Sweden and Norway Oscar II<sup>16</sup>. During its almost one hundred years of work and recommendation to governments, ICES has earned a great deal of respect for its advice and is considered in the eyes of the political representatives as a highly esteemed and regarded body in fisheries matters<sup>17</sup>. Although the ICES membership extends from the North America to Kamtchatka, the ICES geographical area of scientific research concentrates on the European waters and various fishery policies in that region. ICES is particularly responsible for conducting studies on fish stocks in the North-East Atlantic and adjacent seas such as the Irish Sea, the North Sea and the Baltic Sea (refer to **Appendix 1** on the ICES research zones).

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<sup>16</sup> David de G. Griffith, „The Evolution of ICES”, *Marine Institute Ireland* (1999):1.

<sup>17</sup> This opinion was confirmed during my interviews in the International Baltic Sea Fishery Commission, in the Directorate General for Fisheries of the European Commission and in the written responses from the Helsinki Commission (Helcom) that deals with the marine pollution and the Secretariat of the North Atlantic Salmon Conservation Organization.

ICES, formally, is an intergovernmental organization<sup>18</sup>. However, in reality, ICES should be viewed as an international research institution specializing in marine science, being composed of scientists obliged to act independently from their states or governments. Thus, ICES is an organization that consists of technicians, academics and scientists rather than government officials. It is true that the governments are members of ICES, nevertheless, by and large, they are its clients and shareholders not its representatives or participants. In this way, ICES is an independent organization whose work is based on scientifically rigorous research and whose preferences are often contradictory to the ones shared by the contracting parties (states). ICES is concerned about a strict policy of conservation measures that would protect the fish stocks from overexploitation, whereas the states are much more worried about the economic and social implications of the fishing conservation policies. This is the potential area for the conflict of interests that was supposed to be solved by a proper division of responsibilities. Thus, ICES does not manage the fisheries' issues, which is left for the political (governmental or intergovernmental) organizations supervised by the elected officials. What ICES does, (at least in principle) is a purely advisory work that may or may not be considered by the governments. ICES sets specific frameworks for the limits on the fish catches (TACs), provide advice on the status of more than 100 fish and shellfish stocks and issue recommendations on other conservation measures such as the closed fishing areas and techniques of fishing.

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<sup>18</sup> There are 19 contracting parties (states) to ICES: Belgium, Canada, Denmark, Estonia, Finland, France, Germany, Iceland, Ireland, Latvia, Netherlands, Norway, Poland, Portugal, Russia, Spain, Sweden, United Kingdom, United States. [www.ices.dk](http://www.ices.dk).

The ICES formal influence connected with the fishing management stems from the Convention of 1964 where, for the first time, the main functions of ICES were enumerated and identified<sup>19</sup>. However, the ICES influence cannot be evaluated based merely on a legal letter (convention), where the ICES responsibilities are limited to very general provisions<sup>20</sup>. Its unique position among the European marine scientific institutions extends significantly the ICES authority and reliance on its data. This marine international institution has signed “agreements of cooperation” or “memorandums of understandings” with various Regional Fisheries Organizations (RFOs), governments of its member-countries or with a polity such as the EU (the Commission). Under these agreements or memorandums “ICES accepts to respond to questions on fisheries management [from its clients who are, in this way], entirely in the hands of ICES regarding the timescale and the way in which it responds”<sup>21</sup>. The ICES position is further strengthened by none existence of another marine scientific institution that would have a European dimension and would either verify statistics given by ICES or provide alternative methods of data calculation. Thus, ICES has virtually a monopolistic position vis-à-vis its governmental and other international governmental clients in providing its data and estimation on the maritime world. The EU did not develop its own scientific unit and the RFOs covering the area of North-East Atlantic and adjacent seas do not have their own separate marine research bodies. At the same time the national fisheries laboratories in the EU Member States have limited geographical scope for carrying out

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<sup>19</sup> Article 1 states that ICES has a duty a) “to promote and encourage research and investigations for the study of the sea... b) to draw up programmes .... and to organise, in agreement with the Contracting Parties, such research and investigations as may appear necessary, c) to publish or .... disseminate the results of research and investigations.... Convention for the International Council for the Exploration of the Sea, 12 September 1964.

<sup>20</sup> Ibid.

<sup>21</sup> Mike Holden, *The Common Fisheries Policy. Origin, Evaluation and Future*, (Fishing News Books: London 1994):216.

their own research schemes and thus, are not able to produce comprehensive reports on the development of certain fishery policies in the region. The fish are migratory species that require a high level of international scientific coordination, provided only by ICES.

Another issue that increases the ICES position of influence is related to the fact that ICES relies entirely on the outcomes of its own research without taking into consideration the opinions of other groups. ICES is characterized by the lack of openness for non-governmental organizations and fishery interest groups<sup>22</sup>. These groups, being excluded from the deliberations of Advisory Committee on Fisheries Management (ACFM) and the meetings of ICES, have no say on the way the scientific advice is formulated and delivered to the policy-makers<sup>23</sup>. Brian O’Riordan, the secretary of the International Collective in Support of Fisherworkers (ICSF)<sup>24</sup> compares ICES to the “Ivory Tower” that is occupied by a closed society of marine scientists, having no direct contact with the people living from the seas<sup>25</sup>.

The specific procedures and the mechanisms according to which the ICES recommendations are worked out further enhance the ICES scientists’ isolations and thus their formal independence and resistance to the pressure from outside (refer to **Appendix 2** that presents the diagram on how exactly the ICES recommendations are made).

The scientists in the national marine laboratories are collecting data on the fish stocks in their national waters and the Exclusive Economic Zones (EEZs) that belong to the ICES fishery areas. Then, the ICES working groups, composed of various scientists

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<sup>22</sup> It is justified by the desire to maintain the independence and apolitical nature of the institution and its advice.

<sup>23</sup> Hans Lassen has confirmed that there is no consultations going on between ICES and fisheries interest groups. Hans Lassen, Fisheries Adviser at ICES, interview in the ICES Secretariat in Copenhagen, Denmark, 23<sup>rd</sup> of April 2001.

<sup>24</sup> One of the Brussels’ based fisheries lobby organization that belongs to a larger network: the Coalition for Fair Fisheries Arrangements.

<sup>25</sup> Brian O’Riordan, interview, Brussels, 27<sup>th</sup> of April 2001.

of the ICES member-states assess these data and produce the reports. It needs to be highlighted that the reports of the working groups do not represent the official stance of ICES and are considered confidential<sup>26</sup>. Later, based on these reports, ACFM issues the final ICES recommendations. Since, “national data are held at ICES... on confidential files to which access is strictly limited”<sup>27</sup>, there is no room left for any consultations with outside, non-scientific organizations. The interest groups and other fishery NGOs, due to the confidentiality (actually secrecy) of the process in ICES, cannot have an access to the ICES working documents and are informed only *post-factum* about the recommended measures. Thus, the ICES advice, which is worked out only in the framework of the international scientific institution, has usually a strong biological orientation.

There is no doubt that the influence and position enjoyed by ICES is also determined to some extent by the states, which do accept the ICES recommendations that are regarded as the best in the given circumstances. However, as the example below will show, some ICES decisions can be very controversial and the contracting parties (states) can express strong disagreement with them. Despite this fact, the ICES decisions, nevertheless, prevail.

The importance of the ICES deliberations is connected with a general influence the ICES recommendations, although not being binding, have on fisheries policies of the member-states. These recommendations set the agenda of discussions in the states and between them on the conservation and limitation measures for fish stocks in the ICES

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<sup>26</sup> The reports of the working groups were once used by the states as a justification for a certain, particularistic action (or its lack), although the official ICES recommendations presented by ACFM proposed something different. Thus, the reports were used almost as a weapon against the official ICES recommendations. Therefore, the reports are confidential in order to avoid such situations. Hans Lassen, Fisheries Adviser at ICES, interview in the ICES Secretariat in Copenhagen, Denmark, 23<sup>rd</sup> of April 2001.

<sup>27</sup> Holden, *The Common Fisheries Policy. Origin, Evaluation and Future*, 215.



fishing areas. The implementation of the precautionary approach by ICES to calculate TACs can serve as a good example for the assessment of power of the “Ivory Tower” in determining the way the research on fisheries are conducted and the extent the fisheries interests are taken (or not) under consideration by ICES<sup>28</sup>.

The precautionary approach in setting the TACs implies that the level of allowable catches will be in general lower for most of the stocks and also for the ones for which the fisheries’ scientists do not have enough evidence to prove a threat of over-fishing. For some fish stocks, the application of the precautionary approach meant that the TACs could be lower by as much as 20% for some of the fish stocks in comparison with the figures of the stocks for which precautionary approach was not applied<sup>29</sup>. In 1998 the Advisory Committee on Fisheries Management (ACFM), for the first time in the assessment of the limits for fishing of stocks, used a precautionary approach for setting TACs for the year 1999. However, the adoption of this principle took by surprise the European fishing industry as well as other fisheries scientists<sup>30</sup>. The ACFM was accused of introducing the precautionary approach without discussion or notice and embodied "a very extreme, arbitrary, capricious approach to the precautionary principle by suggesting an immediate change and more drastic reductions than the industry had expected"<sup>31</sup>. The European Commission also officially admitted that the precautionary „...diagnoses appeared suddenly, at least in 1998, with no time for discussions with industry before the

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<sup>28</sup> The application of precautionary approach in recommending TACs by ICES, seen by the governments as too excessive, became one of the arguments for the Council to change the TACs’ levels for 2000 and accept higher fishing quotas. This issue will be explored in chapter II that analyzes fixing TACs for the years 1999, 2000 and 2001.

<sup>29</sup> Hans Lassen, Fisheries Adviser at ICES, interview in the ICES Secretariat in Copenhagen, 23<sup>rd</sup> of April 2001.

<sup>30</sup> The National Federation of Fishermen's Organisations in UK noticed that "scientists themselves were surprised by that turn of events". During the hearings in the Select Committee on Agriculture in the House of Commons, Dr Horwood, the scientist who is in charge of the assessments of the fish stocks in England and Wales also confirmed this remark. Select Committee on Agriculture, House of Commons, Eighth Report on Sea Fishing, 5 August 1999, Volume I - Report and Proceedings.

<sup>31</sup> Ibid.

resulting decisions (TACs) had to be taken”<sup>32</sup>. The roots of the problems connected with the application of the precautionary approach are traced back to the fact of poor communication between the ICES scientists and the fisheries interest groups<sup>33</sup> and to the questionable coordination between the ICES scientists’ decisions taken in the ACFM and the actual work of the national scientists.

This example not only indicates a degree of the ICES isolation from the policy-makers, fishermen and other local/national fisheries scientists. It also shows the extent of independence of the ICES initiatives that once set in motion (like the precautionary approach in the calculation of TACs) cannot be easily (if at all) reversed by the managers (policy-makers). This was the case of a sudden change in the calculations of TACs based on the precautionary principle. The managers, who were faced with the irreversible decision made by the ICES scientists, were at the same time, held politically accountable for the consequences of this step. In this way, ICES not only fulfills advisory functions but manages the fisheries’ issues thus, superseding to a great extent the power and the competence of the member-states’ governments in fisheries matters.

### **2.3. Matching the ICES zones with the CFP boundaries**

This section as well as the others (2.4. and 2.5) will look at direct interactions between ICES and the EU. I will first study the ICES conventional zones and the fishing areas that belong to the Common Fisheries Policy. This will help to determine a geographical competence of ICES, which at the same time matches the CFP areas. Thus, I will establish a formal link between the EU and ICES.

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<sup>32</sup> Communication from the Commission to the Council and the European Parliament. Application of the Precautionary Principle and Multiannual Arrangements for Setting TACs, Commission of the European Communities, Brussels, COM(2000) 803 final, 01.12.2000: 8.

<sup>33</sup> It was also acknowledged by Hans Lassen, interview, ICES Secretariat, Copenhagen, 23<sup>rd</sup> of April 2001.

The CFP waters that are governed by the principle of equal access, extend to 200 nautical miles (known as Exclusive Economic Zones: EEZs). However, 12 nautical miles (sometimes 6 nautical miles) that are calculated from the baseline of the coastal states are under full states' jurisdiction<sup>34</sup> and the access to these waters is restricted to the national fishermen. As seen from **Appendix 3**, the CFP (gray) area does not stretch to the Mediterranean Sea. The continental shelf in the Mediterranean is short and majority of fishing takes place within the short range from the coasts. Moreover, the introduction of the EEZs in the Mediterranean could have created a lot of tensions and led to complex political problems. Therefore it should not be a surprise that “most of states do not claim jurisdiction beyond 12-mile territorial sea”<sup>35</sup> and that France, Italy and Greece did not decide to extend the exclusive fisheries areas in the Mediterranean as the European states did in the Atlantic or the North Sea. Although Spain followed the others it has recently started claiming its jurisdiction in the Mediterranean beyond 12 nautical miles and extending it further by 15 nautical miles<sup>36</sup>.

The decision not to extend the EEZs into the Mediterranean Sea at the end of the 1970s was the main reason behind the exclusion of the Mediterranean region from the applicability of the provisions of the Council Regulation No.170/83 that created the CFP in 1983. Thus, the “conservation and management measures have only been partially

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<sup>34</sup> Council Regulation No. 3760/92, article 6 retains the regime of 12 and 6 nautical miles till 2002 when the Council is expected to decide upon its further existence or for that matter its expansion.

<sup>35</sup> Green Paper on the Future of the Common Fisheries Policy, COM(2001) 135 final, Commission of the European Union, Brussels 20.03.2001: 19.

<sup>36</sup> Spain undertook such a radical step to protect the fishing areas from the Korean and Japanese vessels. This move, however, can easily lead to the fishing war between the EU and other countries that are interested in the marine resources in the Mediterranean region. Christophe Le Villain, Fishery Expert in the Fisheries Directorate-General, European Commission, interview, Brussels 26<sup>th</sup> of April 2001.

applied”<sup>37</sup> and TACs, which are set annually by the EU, have not been applied to the Mediterranean waters at all.

The ICES convention area, covering the North-East Atlantic and the adjacent seas, overlaps in most parts, with the fishing areas of the CFP<sup>38</sup>. Thus, the ICES jurisdiction as far as its recommendations on stock fishes are concerned, covers also the Community waters that includes 200 nautical miles and also extends beyond the CFP area further in the direction of the North and West Atlantic, including international waters<sup>39</sup>. Looking at the waters belonging to the CFP, one can notice that there is not much of the CFP areas that lies beyond the ICES zones. Only the EEZs of the Madeira and Canary Islands and a small part of the EEZs of the Azores and that of a “continental” Spain do not belong to the ICES research zones<sup>40</sup>.

Having clarified the fishing areas of the CFP and research areas of the ICES, it is evident that the international science institution has a legal capacity to play an important role in the regulating the fishing policy in the Community waters. We will right now look at the sources of the informal influence enjoyed by ICES in its relations with the EU.

#### **2.4. Lack of specific objectives in the management of the EU fisheries resources and its consequences**

In this section I will show how the ICES position of influence has increased considerably due to the fact that the Commission is not provided with any specific guidelines according to which it would set its requests for the ICES recommendations.

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<sup>37</sup> Green Paper on the Future of the Common Fisheries Policy, 2001: 19.

<sup>38</sup> See Appendix 3. The CFP waters are covered partially or fully by the ICES research zones: IIIb, IIIc, IIId, IVa, IVb, IVc, Vb1, Vb2, VIa, VIb, VIIa, VIIb, VIIc, VIId, VIIe, VIIf, VIIg, VIIh, VIIj, VIIk, VIIla, VIIlb, VIIlc, VIIId, VIIle, IXa, IXb, X.

<sup>39</sup> Ibid. The ICES fishing (research) zones that lie largely outside the CFP waters are: I, IIb, IIa, XIVa, Va, XIVb, XII and parts of X.

<sup>40</sup> Ibid. The gray areas that lay below the ICES zones of X, IXb, IXa.

The EU in general and the Commission or the Council in particular did not specify the detailed management objectives of the EU conservation measures for fisheries policy that would constitute a guide for the representatives of the Fisheries Directorate-General in formulating their requests and questions to the ICES scientists. “CFP does not have clear objectives, social or scientific, which would give any indication in what way the Community wants TACs to be set”<sup>41</sup>. Thus, “the Commission is unable to request specific advice from ICES, except very occasionally, and has... been able only to present very generalized requests concerning the state of the stocks and short term catch predictions”<sup>42</sup>.

ICES faces a lack of specific objectives and strategies for the fisheries advice, which are not provided by the managers. Therefore ICES determines its own policy, which is the most competent to design; the policy solely based upon biological considerations<sup>43</sup>. Thus, ICES and precisely ACFM sets the agenda of the discussion on the EU fisheries policy, which is more or less “biased” in the direction of strict limits on the fish catches and tough technical conservation measures. Moreover, ICES sets its recommendations on TACs and other conservation measures according to the level of fishing mortality and the level of breeding stocks (so called a spawning stock biomass)<sup>44</sup>. The catches of fish increase the level of mortality and in turn, effect the fertility rate, meaning the number of eggs that would have been laid if the fish were not caught. What is important here, is that the scientists and not the managers (policy-makers) decide what

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<sup>41</sup> Ernesto Penas Lado, Deputy Head of Unit Eastern Central Atlantic, Mediterranean, Antarctic, Fisheries Directorate-General, European Commission, interview, Brussels, 26<sup>th</sup> of April 2001.

<sup>42</sup> Holden, *The Common Fisheries Policy. Origin, Evaluation and Future*, 88.

<sup>43</sup> Ibid.

<sup>44</sup> Communication from the Commission to the Council and the European Parliament. Application of the Precautionary Principle and Multiannual Arrangements for Setting TACs, Commission of the European Communities, Brussels, COM(2000) 803 final, 01.12.2000: 6.

levels are permissible, meaning how high or low the maximum levels of mortality and minimum levels of breeding should be set for the fish stocks in order to avoid over-fishing. Thus, the scientists working in ICES have a considerable influence on the fishery policy of the EU and the EU policy-makers face with the choices on fishing that have already been partly made outside the EU framework and “the reasons for these choices are not always very clear”<sup>45</sup>. Combined that with the remarks about the isolation of ICES and a lack of consultations with the fisheries interest groups, the ICES advice tends to be even more scientific and biological in its nature, meaning quite unfavorable for the EU fishing industries.

## **2.5. Procedures for adopting the ICES recommendations and the inclusion of the ICES advice into the Commission proposals on setting TACs**

This section will refer to the procedures, according to which the ICES recommendations are adopted in the EU with the participation of various institutions. A distinction will be made between the procedures applied in enacting TACs and adopting technical conservation measures. In this context a short assessment of the power of the European Parliament over fisheries matters will be also provided. Finally, I will evaluate the extent to which the Commission incorporates the ICES recommendations into its proposals for the Council on fixing total allowable catches. I will show that the Commission largely follows the ICES’s advice, thus setting TACs on biological objectives that are less favorable for the fishermen and fishing industries.

The ICES recommendations are issued in November and they are related to the fishing activities for the following year. The ICES recommendations are given in

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<sup>45</sup> Ibid.

connection with setting TACs and other technical conservation measures. This advice goes to the Commission that is bounded to draw up its proposal for the Council based on the biological, socio-economic and technical analysis<sup>46</sup>. In the Commission, two advisory bodies are, to a lesser or greater extent involved in adjusting the ICES advice from the recommendations set purely on the biological consideration, into the proposals that would be more acceptable for the policy-makers sitting in the Council.

It needs to be noted that there are different procedures in the EU for agreeing on TACs and for accepting other technical conservation measures. TACs and technical conservation measures go through different procedures of acceptance in the EU and respectively involve or not the European Parliament (compare **Appendix 4** and **Appendix 6**)<sup>47</sup>. Regulation No. 3760 enacted in 1992 overrode the 1983 Management and Conservation Regulation provisions connected with the European Parliament (EP), where the Parliament was explicitly excluded from consultations<sup>48</sup>. From 1992 the EP got formally involved in the process of designing technical conservation measures. Regulation No. 3760/92, article 4 states that the Council establishes the measures for the fisheries resources management (e.g. decides “which fishing activities are prohibited or restricted” or lays down “technical measures regarding fishing gears and its method of use”<sup>49</sup>) using the procedures provided by article 37 (former 43) of the Treaty establishing European Communities (TEC). In turn, article 37 of the TEC obliges the Council to consult the EP.

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<sup>46</sup> Council Regulation No. 3760/92, Preamble.

<sup>47</sup> Appendix 4 and Appendix 6 also include the Regional Fisheries Organizations (RFOs). The RFOs' influence on setting the TACs and other conservation policies will be assessed in chapter III.

<sup>48</sup> David Steel, *The Role of the European Parliament in the Development of the Common Fisheries Policy*, in Tim S. Gray, *The Politics of Fishing*, (Macmillan Press: London 1998): 38.

<sup>49</sup> Council Regulation No. 3760/92, article 4 (2 a, f).

However, the EP's right for consultation does not extend to TACs that are exclusively decided between the Commission and the Council (refer to **Appendix 4**)<sup>50</sup>. Thus, the provisions of the Council Regulations on fixing for certain fish stocks and groups of fish stocks, the total allowable catches that are agreed upon annually in the December Fisheries Council, are not done in consultation with the EP. The EP does demand its participation in the process of setting quotas, however its attempts were met with the reluctance of the Commission and the Council to give way to a greater involvement of the Parliament. What the EP has managed to gain was an agreement by the Commission to brief the members of the Fisheries Committee in the EP over the 2001 TACs. However, the fact that this briefing took place after the Council had already decided on TACs, indicates how little power in real life the EP has over this policy<sup>51</sup>.

Therefore, setting TACs in the EU is based on procedure, which is more confined in its form, where there are no consultations taking place with the EP, whereas the process of enacting the technical conservation measures on fisheries is much more opened and involves more actors.

ICES issues its advice on over 120 fish stocks<sup>52</sup>. The TACs in the Community waters are set for over 110 fish stocks and consist of analytical and precautionary TACs. The analytical TACs indicate that the stocks are estimated according to sufficient scientific data that "is of such a quality as to predict future (next years) stock size and

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<sup>50</sup> Council Regulation No. 3760/92, article 8 (4) only says that the Council, acting by qualified majority on a proposal from the Commission determines TACs. Also, Michael Earle, the fisheries advisor for the Green Group in the European Parliament, confirmed that the European Parliament is not consulted on TACs at all, in contrast to the technical conservation measures, where such consultations take place. Interview, European Parliament, Brussels, 26<sup>th</sup> of April 2001.

<sup>51</sup> Michael Earle, Fisheries Adviser for the Green Group in the European Parliament, Interview, European Parliament, Brussels, 26<sup>th</sup> of April 2001 and Guy Vernaëve, the Secretary General of EUROPECHE, Interview, EUROPECHE Secretariat, Brussels, 25<sup>th</sup> of April, 2001.

<sup>52</sup> Hans Lassen, Fisheries Adviser at ICES, interview in the ICES Secretariat in Copenhagen, 23<sup>rd</sup> of April 2001.



development”<sup>53</sup>. The precautionary TACs, on the contrary, are set under the process of intelligent guesswork that is made as a result of poor research data available on particular stocks. Although, the ICES areas are one of the better researched fishing zones in the world, the ICES recommendations often indicate that the proposed TACs are precautionary not analytical. However, the numbers of analytical TACs increase, which shows that the fisheries data for setting TACs evolves and becomes more precise. In 1995 out of 103 fish stocks for which TACs were set, only 39 were analytical and 64 precautionary TACs<sup>54</sup>. For 1999, when TACs were set in the EU for 116 fish stocks, the analytical TACs raised to 63 with 53 set on precautionary basis, in 2000 and 2001 there were 65 analytical TACs and 50 precautionary TACs<sup>55</sup>.

Here, one should bear in mind that the precautionary approach used in setting TACs is a completely different notion from the “precautionary” TACs. The former is a research method used to set TACs, whereas the latter only indicates that a specific level of TACs was set with little scientific data available at that particular moment.

Upon the recommendations from ICES the Commission prepares its proposal for TACs. The advisory body in the Commission, namely the Scientific, Technical and Economic Committee for Fisheries (STECF)<sup>56</sup> is asked to prepare its opinion for the Fisheries Directorate-General on the data received from ICES. The STEFC consists of no more than 28 members that are highly qualified scientists<sup>57</sup>. Their advice, based on the

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<sup>53</sup> Assessment Report on Fisheries and Fisheries related Species and Habitats Issues. Fifth International Conference on the Protection of the North Sea, 1997. <http://odin.dep.no/md/html/conf/meeting1997/report/>

<sup>54</sup> A. Karagiannakos, "Total Allowable Catch (TAC) and Quota Management System in the European Union", *Marine Policy* 20, (1996): 235.

<sup>55</sup> Data compiled from Council Regulation No. 48/1999, Council Regulation No. 2742/1999 and Council Regulation No. 2848/2000.

<sup>56</sup> As it was mentioned before the STECF establishment was envisaged in the 1992 Council Regulation 3760/92 but it was formally set up by the Commission Decision No. 93/619 issued on the 19<sup>th</sup> of November 1993 relating to the institution of a Scientific, Technical and Economic Committee for Fisheries.

<sup>57</sup> Commission Decision No 93/619, Preamble, article 3.

ICES recommendations, is supposed to include the elements that are missing from the ACFM work, meaning the “reference [not only to] biological [but also to] technical and economic factors”<sup>58</sup>. However, as Hans Lassen<sup>59</sup> and Ernesto Penas Lado<sup>60</sup> underlined; the STECF and subsequently the Commission follow the majority of the recommendations presented by ICES. Tim Gray, an expert on British fisheries policy, admits also that the “European Commission *invariably* incorporates ACFM’s scientific advice in its recommendations to the Council of Fisheries Ministers”<sup>61</sup>. Taking into consideration the fish stocks that are the most popular on the EU markets (such as hake, cod, or herring), the Commission still followed rigidly the advice of international scientific institution in setting the 2001 TACs for these stocks. With the ICES advice to set the TACs at the lowest possible levels for cod and hake in certain fishing zones<sup>62</sup>, the Commission proposed severe reductions in the 2001 TACs, which amounted to 40-75% cuts for cod and hake in comparison with the TACs set by the Council for 2000<sup>63</sup>. There were even voices that criticize the Commission for going frequently beyond scientific advice for a number of species. Elliot Morley, the UK Minister of Agriculture, Fisheries and Food the Commission addressing the House of Commons said that the European Commission:

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<sup>58</sup> Ibid., article 2 (2).

<sup>59</sup> Fisheries Adviser at ICES, Interview, ICES Secretariat, Copenhagen, 23<sup>rd</sup> of April 2001.

<sup>60</sup> Deputy Head of Unit Eastern Central Atlantic, Mediterranean, Antarctic, Fisheries Directorate-General, European Commission, interview, Brussels, 26<sup>th</sup> of April 2001.

<sup>61</sup> Tim S. Gray, “The Common Fisheries Policy of the European Union”, *Environmental Politics* 6, no.4 (Winter 1997): 151.

<sup>62</sup> For cod, the fishing zones included the North Sea and Skagerrak.

<http://www.ices.dk/committe/acfm/comwork/report/2000/Oct/cod-347d.pdf>

For hake the fishing areas covered IV, VI, VII and VIIIab zones.

<http://www.ices.dk/committe/acfm/comwork/report/2000/Oct/hke-nrtn.pdf>

Please refer to Appendix 1 to see the ICES research zones.

<sup>63</sup> Commission Proposal for a Council Regulation fixing for 2001 the fishing opportunities 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 catches are required. Commission of the European Communities, COM(2000) 773 final, Brussels, 01.12.2000 and Council Regulation No. 2848/2000 fixing for 2001 the fishing opportunities and associated conditions

went beyond the scientific advice, proposing even more stringent cuts than those recommended by ICES for stocks that are caught with cod and hake. For nephrops and flatfish, it recommended a 20 per cent cut in fishing. Such a cut was not recommended by ICES<sup>64</sup>.

In general, it is true that the ICES advice remains largely unchanged and is accepted as such by the Commission in its proposal for a Council regulation on TACs. At the same time, it seems that the STECF does not have proper financial and human resources to study the ICES advice thoroughly. The STEFC is the only scientific advisory body on fishery matters in the Commission and is ill equipped to handle the evaluation of the ICES recommendations on an annual basis. “With 120 fish stocks being considered each year by the EU’s Ministers the advisory system is under sever strain”<sup>65</sup>. Only in 1998 the STEFC produced an evaluation of the economic consequences of the state of the EU fish stocks<sup>66</sup>. It happened 5 years after the establishment of this body, whose main aim is to look at the economic and social consequences of the fisheries advice.

The Commission prepares the proposal on TACs based on the combined advice from the ACFM and the STECF and then the Commission submits the proposal to the Advisory Committee on Fisheries and Aquaculture (ACFA). The ACFA that is composed of 20 various fisheries and, just recently admitted, consumer and environmental interests groups<sup>67</sup>, among them an influential private and cooperative vessel owners associations EUROPE’CHE<sup>68</sup> and COGECA<sup>69</sup> or fishing producers’ organization AEOP<sup>70</sup>.

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for certain fish stocks and groups of fish stocks, applicable in community waters and, for Community vessels, in waters where limitations in catches are required.

<sup>64</sup> House of Commons Hansard Debates, Thursday 25 Jan 2001.

[http://www.parliament.the-stationery-office.co.uk/pa/cm200001/cmhansrd/cm010125/debtext/10125-11.htm#10125-11\\_head0](http://www.parliament.the-stationery-office.co.uk/pa/cm200001/cmhansrd/cm010125/debtext/10125-11.htm#10125-11_head0). Also in the press he was quoted as saying that “the Commission [had] gone beyond scientific advice for a number of ... species using an across the board kind of approach. I am not trying to argue up the quotas simply to get more fish but some of these cuts are not scientifically justified”, Andrew Osborn, “Cod Quotas Reduced To an All-Time Low,” *The Guardian*, 15 December 2000.

<sup>65</sup> John Ramster, Fisheries Research and the Common Fisheries Policy, ICES Information, Issue no. 35, May 2000: 19.

<sup>66</sup> Report from the Commission to the Council and the European Parliament on the Application of the Community System for Fisheries and Aquaculture in 1996-1998, Commission of the European Communities, COM(2000) 15 final, Brussels, 24.01.2000: 11.

<sup>67</sup> A Breath of Fresh Air for Dialogue, *Fishing in Europe*, No 5, December 2000: 8-12.

<sup>68</sup> Associations of National Organisations of Fishing Enterprises in the EC.

Since the ACFA is only a consultative body, the Commission is not obliged to incorporate the ACFA advice to its proposal. Moreover, the proposal framework is already set before it is submitted to the ACFA and the ACFA participants are faced with already worked-out document that is given for their opinion. Guy Vernaève, the Secretary General of EUROPECHE highlighted that the ACFA is not consulted during the work on the proposal (“upstream consultations”), but only when the proposal is already prepared<sup>71</sup>. In general, the ACFA role in influencing the process of setting the TACs and other conservation measures is very much limited if at all<sup>72</sup>.

After the Commission finalizes its work, the proposal on TACs is submitted to the COREPER working groups. This is frequently done not sooner than at the beginning of December. The Commission proposals on setting the total allowable catches taken from the last three years (1998, 1999, 2000) were formally submitted only in December. In this way, the timing of the process leaves little room for the managers (policy-makers) to have extended consultations with the groups directly interested in EU fisheries. Thus, the fisheries interest groups are further marginalized in the process of deciding upon the most important elements of the CFP: its conservation policy. The final say is left for the Fisheries Council of Ministers that meets usually on the 15<sup>th</sup> of December and after a night of a hard- bargaining agrees on the regulation that fixes the total allowable catches for certain fish stocks for the following year.

Most of the actors engaged in the process of setting the TACs and other conservation measures agree that the Council does not follow exactly the ICES

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<sup>69</sup> General Committee for Agricultural Co-operation in the European Union.

<sup>70</sup> European Association of Fish Producers Organizations.

<sup>71</sup> Interview, EUROPECHE Secretariat, Brussels, 25<sup>th</sup> of April, 2001.

recommendations and the Commission proposal, modifying it to some extent. Fixing TACs on the higher levels than it is indicated in the scientific advice was also depicted in the Commission Green Paper on the CFP as the main problem in stabilizing the fishing activities<sup>73</sup>. Actually, a high degree of acceptance of the ICES advice by the Commission plays an important role in the Council's justification to increase the level of TACs. The Council frequently uses the letter of the Council Regulation No. 170/83 to defend the changes in the Commission proposals. The Commission proposals are seen as being based solely on the biological objectives provided in the ICES advice, which fails to recognize that the conservation fisheries policy should be set on the "balanced exploitation of biological resources ... as well as [should also take under consideration] appropriate economic and social conditions"<sup>74</sup>.

## **2.6. Summary**

The chapter on ICES and its interactions with the EU aimed at showing the ICES position in the European fisheries business based on the formal procedures according to which ICES publishes its recommendations and maintains independence and impartiality in providing the advice. However, the ICES informal influence is also important and relates to its power of agenda-setting and a considerable degree of isolation from pressure groups and sometimes even from the national marine scientists as the case of the precautionary principle showed. These factors enhance the ICES independence vis-à-vis the states as well as its influence over the conservation policies in the European waters. I

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<sup>72</sup> This view was confirmed in the interviews with the representatives of the Commission and the fisheries interests groups; Guy Vernaëve from EUROPECHE and Pascal Gruselle, the Permanent Delegate to Brussels of the Conference of Peripheral Maritime Regions of Europe, Interviews, 25<sup>th</sup> and 26<sup>th</sup> of April 2001.

<sup>73</sup> Green Paper on the Future of the Common Fisheries Policy, COM(2001) 135 final, Commission of the European Union, Brussels 20.03.2001: 8.

<sup>74</sup> Holden, *The Common Fisheries Policy. Origin, Evaluation and Future*, 90-91.

have also tried to show a considerable involvement of this international scientific institution in determining the fisheries policies of the EU. This involvement extends far beyond the framework of “non-binding” recommendations. A weakness of the EU own scientific units that could deal with the fisheries issues and a lack of clear objectives according to which the Commission would design the questions for the ICES advice, further increase the reliance of the Commission on ICES. The Commission, which largely accepts the ICES recommendations, tends to support conservation policies that are mainly based on biological considerations.

The empirical findings on the role of ICES in the EU fisheries policies proves that certain international institutions cannot be viewed merely as forums for intergovernmental bargaining. ICES is the example of the international institution that can effectively exercise its autonomous power and not only influence the fisheries policies of the entity such as the Commission but also determined these policies according to its own preferences, namely the objectives, which are set on biological considerations.

In the next chapter I will try to show to what extent the ICES and the Commission decisions determine the final outcomes of the debate on the total allowable catches.

## **Chapter II**

### **3. The study of fixing TACs for the years 1999, 2000 and 2001**

The final decision on the total allowable catches is left to the Council thus, “not only the scientific advice .... effects what decision are taken but also the balance of interest within the Council”<sup>75</sup>. This chapter intends to show the degree of changes made by the Fisheries Councils to the proposals of the Commission (and indirectly also of ICES) and will account for the extent of these alterations. As the case study of the Commission proposals and the final Council Regulations on TACs will indicate, the Council decisions, although changing the proposals in some parts, are not fully reflecting the interests of the national fishing industries. In this context, I will also analyze certain procedural methods used by the Commission to limit lobbying by the interest groups and to increase the possibility that the fishery and agriculture ministers will not introduce significant changes to the Commission proposals on TACs.

The Commission largely follows the ICES recommendations on TACs that are seen by the fisheries interest groups as being too severe, where other non-biological factors are totally neglected. In this way, the Council is the last instance where biologically-based decisions on TACs can be reversed to include more lenient economic and social approaches, thus meeting the demands of the interest groups. This comparative analysis, which combines the Commission proposals and the Council regulations on setting TACs intends to show to what extent the Council is an advocate of the fisheries interest groups while adjusting the levels of TACs put forward by in the Commission proposals. Indirectly this study wants to estimate the ICES agenda-setting power that refers to issuing recommendations based on specific biological objectives. The Commission incorporates the ICES recommendations into its proposals and the Council

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<sup>75</sup> Ibid., 98.

is asked to approve them, facing on one hand alarming scientific data and on the other, even more determined fishermen and their lobbyists. Determining the levels of the acceptance or the rejection of the Commission proposals by the Council will help to estimate the extent of the approval or disapproval by the governments of the ICES recommendations set on the biological rather than economic or social objectives.

### **3.1. General explanation of the content of the tables**

The tables below were compiled based on three final Commission proposals for the 1999, 2000 and 2001 TACs for certain fish stocks and based on the Council Regulations that set the TACs for 1999, 2000 and 2001 each time in December the previous year<sup>76</sup>. The tables present the fish stocks that are fished only in the Communities waters. Therefore the fish stocks that are caught by the EU vessels but in the EEZs and territorial waters of other non-EU states<sup>77</sup> are not considered in these tables. Additionally, the data in the tables does not include the fish stocks taken by the EU vessels from the international waters (e.g. Redfish) or taken in the EU waters where TACs are not applied

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<sup>76</sup> Commission Proposal for a Council Regulation fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1999 and certain conditions under which they may be fished. Commission of the European Communities, COM(1998) 680 final, Brussels, 04.12.1998.

Commission Proposal for a Council Regulation fixing for 2000 the fishing opportunities 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 66/98. Commission of the European Communities, COM(1999) 700 final, Brussels, 15.12. 1999.

Commission Proposal for a Council Regulation fixing for 2001 the fishing opportunities 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. Commission of the European Communities, COM(2000) 773 final, Brussels, 01.12.2000.

Council Regulation No. 48/1999 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1999 and certain conditions under which they may be fished. 18<sup>th</sup> of December 1998.

Council Regulation No. 2742/1999 fixing for 2000 the fishing opportunities 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 No 66/98. 17<sup>th</sup> of December 1999.

Council Regulation No. 2848/2000 fixing for 2001 the fishing opportunities 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. 15<sup>th</sup> of December 2000.

<sup>77</sup> Such fishing is done under the fisheries bilateral agreements that the EU concludes with third countries. Until September 2000 the EU had signed the fisheries agreements with 23 countries. For more see European Distant Water Fishing Fleet. Some Principles and Some Data, Directorate General for Fisheries, European Commission, April 2001.



(e.g. for Capelin, Flatfish, Blue Ling) or taken in the waters of the non-continental and overseas territories of the member states (e.g. Panaeus shrimps from French Guyana). Thus, the research included only so called autonomous fish stocks in the Community's own waters. The EU shared stocks with other countries were excluded.

In order to calculate the percentage of changes introduced by the Council to the original proposal submitted by the Commission, it is necessary to know the number of fish species that are subject to Council deliberation. For 1999 there were 25 and for 2000 and 2001 26 fish species under the regime of TACs that were caught in the zones of the EU fishing areas by the vessels of the EU member states. These zones match the ICES research zones. Thus, in 1999 there were altogether **116 fish** stocks for which separate TACs were established. As a result of combining the zones for Pollack (VIIIab, VIId and VIIE were merged into one TAC zone VIIIabde) and for Blue Whiting (VIIIabd and VIIE were brought together to have one TAC zone VIIIabde) and due to a creation of a new TAC for Spurdog (IIa, North Sea) and for Northern Prawn (Skagerrak and later Kattegat), there were **115 fish** stocks, for which distinct TACs were calculated in the years 2000 and 2001.

Tables: Commission proposals and Council regulation on the total allowable catches for the EU fish stocks for 1999, 2000 and 2001.

#### Northern prawn

ZONE	Commission proposal for the	Council regulation for	Commission proposal for the	Council regulation for	Commission proposal for the	Council regulation for
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	1999 TACs	the 1999 TACs	2000 TACs	the 2000 TACs	2001 TACs	the 2001 TACs
Ila, North Sea	7 030	7 030	7 016	7 016	<b>5 612</b>	<b>6 404</b>
Ska/Kat <sup>78</sup>	----	----	4 860 (Ska)	4 860 (Ska)	pm <sup>79</sup>	10 150 (Ska/Kat)

### Hake

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ska/Kat IIIbcd	<b>1 510</b>	<b>1 660</b>	<b>1000</b>	<b>1 270</b>	<b>330</b>	<b>750</b>
Ila, North Sea	<b>1 760</b>	<b>1 930</b>	<b>1 160</b>	<b>1 480</b>	<b>390</b>	<b>870</b>
Vb, VI, VII, XII, XIV	<b>28 100</b>	<b>30 910</b>	<b>18 550</b>	<b>23 600</b>	<b>6 180</b>	<b>13 920</b>
VIIIabde	<b>18 740</b>	<b>20 620</b>	<b>12 370</b>	<b>15 740</b>	<b>4 120</b>	<b>7 083</b>
VIIIc, IX, X	<b>8 200</b>	<b>9 000</b>	<b>7 700</b>	<b>8 500</b>	8 900	8 900

### Norway lobster

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ska/Kat, IIIbcd	4 830	4 830	<b>4 830</b>	<b>5000</b>	<b>4 000</b>	<b>4 500</b>
Ila, North Sea	15 200	15 200	17 200	17 200	<b>13 760</b>	<b>15 480</b>
Vb, VI	12 600	12 600	<b>11 300</b>	<b>12 600</b>	<b>10 080</b>	<b>11 340</b>
VII	23 000	23 000	<b>17 200</b>	<b>21 000</b>	<b>14 720</b>	<b>18 900</b>
VIIIabde	5 550	5 550	<b>4 200</b>	<b>4 440</b>	<b>3 550</b>	<b>4 000</b>
VIIIc	1 000	1000	<b>600</b>	<b>800</b>	<b>640</b>	<b>720</b>
IX, X	<b>1 500</b>	<b>2000</b>	<b>1 200</b>	<b>1 500</b>	1 200	1 200

### Plaice

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Kattegat	2 800	2 800	2 800	2 800	<b>2 000</b>	<b>2 350</b>
Skagerrak	10 980	10 980	10 980	10 980	pm	9 210
Ila, North Sea	98 625	98 625	94 210	94 210	pm	76 540
Vb, VI, XII, XIV	2 400	2 400	2 400	2 400	1 920	1 920
VIIa	2 400	2 400	<b>2 300</b>	<b>2 400</b>	<b>1 500</b>	<b>2 000</b>
VIIbc	300	300	300	300	240	240
VIIde	<b>5 700</b>	<b>7 400</b>	<b>5 980</b>	<b>6 500</b>	<b>5 930</b>	<b>6 000</b>
VIIfg	900	900	<b>700</b>	<b>800</b>	<b>600</b>	<b>760</b>
VIIhjk	1 350	1 350	1 350	1 350	<b>1 080</b>	<b>1 215</b>
IIIbcd	3 200	3 200	3 200	3 200	3 200	3 200
VIII, IX, X	700	700	700	700	560	560

### Megrims

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ila, North Sea	3000	3000	3 000	3 000	<b>2 400</b>	<b>2 700</b>
Vb, VI, XII, XIV	4 840	4 840	4 840	4 840	<b>3 870</b>	<b>4 360</b>
VII	22 400	22 400	<b>13 440</b>	<b>17 920</b>	<b>11 150</b>	<b>15 000</b>
VIIIabde	2 600	2 600	<b>1 560</b>	<b>2 080</b>	<b>1 240</b>	<b>1 800</b>

<sup>78</sup> Skagerrak and Kattegat

<sup>79</sup> “*pre-memoria*”. The explanation for the usage of *pm* is given later in chapter II.

VIIIc, IX, X	<b>5000</b>	<b>6000</b>	<b>3 600</b>	<b>5000</b>	<b>4 000</b>	<b>5 000</b>
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### Herring

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ska/Kat	68 830	68 830	68 830	68 830	pm	68 830
Vb, VIaN, VIb	<b>58 940</b>	<b>64 940</b>	<b>40 140</b>	<b>41 340</b>	<b>30 000</b>	<b>35 700</b>
VIIa	4 900	6 600	<b>3 960</b>	<b>5 350</b>	<b>5 350</b>	<b>6 900</b>
VIIg,h,j,k	19 000	21 000	<b>20 000</b>	<b>21 000</b>	<b>17 900</b>	<b>20 000</b>
I, II	113 000	113 000	108 600	108 600	73 840	73 840
III bcd	254 560	254 560	218 550	218 550	pm	157 850
IVa	163 150	163 150	164 000	164 000	pm	164 000
IVc, VIId	25 000	25 000	25 000	25 000	pm	25 000
VIaS VIIbc	19 000	21 000	13 900	13 900	13 900	13 900
VIa Clyde	1000	1000	1 000	1 000	1 000	1 000
VIIe,f	1000	1000	1 000	1 000	1 000	1 000

### Sole

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ska/Kat, IIIbcd	1 350	1 350	<b>850</b>	<b>950</b>	<b>650</b>	<b>700</b>
II, North Sea	<b>20 300</b>	<b>22 000</b>	<b>19 800</b>	<b>22 000</b>	<b>17 700</b>	<b>19 000</b>
VIIIab	5 400	5 400	5 800	5 800	5 800	5 800
Vb, VI, XII, XIV	155	155	155	155	<b>125</b>	<b>140</b>
VIIa	900	900	1080	1080	<b>1 050</b>	<b>1 100</b>
VIIbc	100	100	100	100	80	80
VIIId	<b>4 200</b>	<b>4 700</b>	<b>3 900</b>	<b>4 100</b>	<b>4 000</b>	<b>4 200</b>
VIIe	700	700	<b>640</b>	<b>660</b>	600	600
VIIIfg	<b>810</b>	<b>960</b>	1 160	1 160	<b>810</b>	<b>1 020</b>
VIIhjk	720	720	720	720	<b>580</b>	<b>650</b>
VIIIcde, IX, X	2 000	2 000	2 000	2 000	2 000	2 000

### Pollack

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Vb, VI, XII, XIV	1 100	1 100	1 100	1 100	1 100	1 100
VII	17 000	17 000	17 000	17 000	17 000	17 000
VIIIab	2 600	2 600	2 600 for VIIIabde	2 600 for VIIIabde	2 600 for VIIIabde	2 600 for VIIIabde
VIIId	100	100				
VIIIe	50	50				
VIIIc	800	800	800	800	800	800
IX, X	450	450	450	450	450	450

### Blue whiting

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
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Ila, North Sea	50 000	50 000	50 000	50 000	50 000	50 000
Vb, VI, VII	133 000	133 000	163 000	163 000	163 000	163 000
VIIIabd	26 500	26 500	26 500 for	26 500 for	26 500 for	26 500 for
VIIIe	1000	1000	VIIIabde	VIIIabde	VIIIabde	VIIIabde
VIIIc, IX, X	<b>64 350</b>	<b>55 000 !</b>	55 000	55 000	55 000	55 000

### Whiting

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ska/Kat	2 855	2 855	1 430	1 430	pm	1 470
Ila, North Sea	38 100	38 100	25 690	25 690	pm	21 775
VIIa	4 400	4 400	2 640	2 640	1 390	1 390
Vb, VI, VII, XII, XIV	6 300	6 300	4 300	4 300	<b>2 800</b>	<b>4 000</b>
VIIb-k	<b>20 100</b>	<b>25 000</b>	<b>17 400</b>	<b>22 500</b>	<b>14 800</b>	<b>21 000</b>
VIII	7 000	7 000	7 000	7 000	5 600	5 600
IX, X	2 640	2 640	2 640	2 640	2 100	2 100

### Cod

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
I, II b	16 608	16 608	13 494	13 494	pm	13 667
Skagerrak	18 380	18 380	11 220	11 220	pm	6 770
Kattegat	6 300	6 300	<b>6 400</b>	<b>7000</b>	6 200	6 200
IIIbcd	77 434	77 434	64 262	64 262	pm	66 045
Ila, North Sea	119 890	119 890	73 610	73 610	pm	40 720
Vb, VI, XII, XIV	<b>10 700</b>	<b>11 000</b>	7 480	7 480	<b>3 700</b>	<b>3 300</b>
VIIa	5 500	5 500	<b>1 700</b>	<b>2 100</b>	2 100	2 100
VIIb-k, VIII, IX, X	<b>15 600</b>	<b>19 000</b>	<b>11 400</b>	<b>16 000</b>	<b>6 100</b>	<b>10 500</b>

### Turbot

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ila, North Sea	9 000	9 000	9 000	9 000	7 200	7 200

### Saithe

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ila, Ska/Kat, IIIbcd, North Sea	52 800	52 800	41 680	41 680	pm	42 640
Vb, VI, XII, XIV	<b>6 540</b>	<b>7 500</b>	<b>6 000</b>	<b>7 000</b>	pm	9 000
VII, VIII, IX, X	8 800	8 800	<b>6 000</b>	<b>6 500</b>	<b>5 200</b>	<b>5 600</b>

### Anchovy

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
VIII	33 000	33 000	<b>5000</b>	<b>16 000</b>	33 000	33 000
IX, X	12 000	12 000	<b>4 600</b>	<b>10 000</b>	<b>5 000</b>	<b>10 000</b>

### Mackerel

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ila, Ska/Kat, IIIbcd, North Sea	22 055	22 055	<b>22 860</b>	<b>24 725</b>	pm	25 295
Ila, Vb, VI, VII, VIII, XII, XIV	282 090	282 090	329 410	329 410	pm	337 639
VIIIc, IX, X	35 000	35 000	39 200	39 200	pm	40 180

### Haddock

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Vb, VI, XII, XIV Ska/Kat IIIbcd Ila, North Sea VII, VIII, IX, X	<b>18 100</b> 3 675 69 680 20 000	<b>19 000</b> 3 675 69 680 20 000	<b>18 400</b> 2 760 60 620 13 200	<b>19 000</b> 2 760 60 620 13 200	<b>11 500</b> pm pm <b>4 500</b>	<b>13 900</b> 1 920 47 895 <b>12 000</b>

### Horse mackerel

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ila, North Sea	58 000	58 000	<b>43 400</b>	<b>49 400</b>	49 400	49 400
Vb, VI, VII, VIIabde, XII, XIV	<b>243 000</b>	<b>258 000</b>	<b>193 000</b>	<b>233 000</b>	233 000	233 000
VIIIc, IX X CECAF <sup>80</sup> CECAF <sup>81</sup>	73 000 5 000 2 000 2 000	73 000 5 000 2 000 2 000	<b>64 000</b> 5 000 2 000 2 000	<b>68 000</b> 5 000 2 000 2 000	68 000 5 000 2 000 2 000	68 000 5 000 2 000 2 000

### Lemon sole and witch

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ila, North Sea	12 000	12 000	12 000	12 000	<b>9 600</b>	<b>10 800</b>

### Sprat

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ska/Kat III bcd Ila, North Sea VII de	46 250 178 790 156 000 12 000	46 250 178 790 156 000 12 000	46 250 158 120 220 000 12 000	46 250 158 120 220 000 12 000	pm pm 220 000 12 000	46 250 140 790 220 000 12 000

<sup>80</sup> Azores Islands: Portugal

<sup>81</sup> Madeira and Canary Islands: Spain

### Norway pout

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ila, Ska/Kat, North Sea	180 000	180 000	180 000	180 000	<b>144 000</b>	<b>199 200</b>

### (Atlantic) Salmon

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
IIIbcd	309 210	309 210	339 377	339 377	pm	339 377
Sub-division 32 of IBSFC <sup>82</sup>	81 400	81 400	73 260	73 260	56 980	56 980

### Sandeel

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ila, North Sea	970 000	970 000	970 000	970 000	970 000	970 000

### Anglerfish

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ila, North Sea	22 070	22 070	<b>13 240</b>	<b>17 660</b>	<b>13 245</b>	<b>14 130</b>
Vb, VI, XII, XIV	8 600	8 600	<b>5 160</b>	<b>8 000</b>	<b>6 000</b>	<b>6 400</b>
VII	26 670	26 670	<b>17 340</b>	<b>23 000</b>	<b>17 650</b>	<b>21 700</b>
VIIIabde	7 630	7 630	<b>4 960</b>	<b>6 570</b>	<b>5 040</b>	<b>5 900</b>
VIIIc, IX, X	<b>7000</b>	<b>8 500</b>	<b>5 100</b>	<b>6 800</b>	<b>4 000</b>	<b>6 000</b>

### Dab and flounder

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ila, North Sea	30 070	30 070	30 070	30 070	<b>24 060</b>	<b>27 060</b>

### Skates and rays

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs
Ila, North Sea	6 060	6 060	6 060	6 060	4 848	4 848

### Spurdog

ZONE	Commission proposal for the 1999 TACs	Council regulation for the 1999 TACs	Commission proposal for the 2000 TACs	Council regulation for the 2000 TACs	Commission proposal for the 2001 TACs	Council regulation for the 2001 TACs

<sup>82</sup> This EU zone is based on the conventional area of the International Baltic Sea Fisheries Commission.

Ila, North Sea	-----	-----	8 870	8 870	8 870	8 870
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### **3.2. Dominance of the states' and interest groups' preferences in changing the Commission proposals**

The agriculture and fisheries ministers sitting in the Council can be viewed as a body, which takes into account the interest of the fisheries industries in the member-states. This is not a surprise since the parliamentary pressure on the ministers in the countries where the fishing industries have been traditionally influential (e.g. France, Spain, Great Britain, Italy, Denmark) is very strong and the scrutiny of the governments' fisheries policies very detailed. The sensitivity of the fisheries matters in some of the EU states can be compared to the concern expressed by the same countries over the EU agricultural policies. The question, however, remains to what extent the interest of fisheries industries is taken into the Council's consideration in designing fishing quotas in the framework of the Common Fisheries Policy. A rough indication of the extent to which the Council bows down to the pressure from the fisheries interest groups is the numbers and the level of changes introduced by the Council to the Commission proposal on TACs.

Changes in the level of TACs that were made by the Fisheries Council to the final Commission proposals for 1999, 2000 and 20001 are presented in the tables in bold fonts. Looking only at the number of "bolded" fish stocks one notices that most of the changes in TACs done by the Council between 1999-2001 have increased the level of allowable catches for fishermen. Only in one case the Council decided to go further than the Commission proposal and lowered TAC for blue whiting in zones VIIIc, IX, X for 1999 from the initial Commission proposition of 64 350 tones to 55 000 tones (see the table on

blue whiting on page 32). The rest of the changes made by the Council have increased the level of allowable catches.

As far as the numbers of changes that were made by the Council to the final Commission proposals are concerned the figures are as follows. For the 1999 TACs set on 114 fish stocks, there were 20 corrections of the Commission proposal made by the Council including one above the level set by the Commission. Overall, the Council's corrections of TACs that were in favor of the fisheries industries changed the final Commission proposal in **16%** of TACs for the year 1999. For the year 2000 and 2001 these figures have increased. There were respectively 42 and 47 changes made to the TACs levels proposed by the Commission. All of them decreased the levels of TACs. Thus, the Commission proposal for the 2000 TACs was changed in **37%** and for 2001 in **41%** of all cases.

A growth in the number of changes introduced to the Commission proposals by the Council for the years 2000 and 2001 can be explained by the consequences that the application of precautionary approach had on setting TACs and large fishing cuts introduced for these years. The consequences of applying a precautionary approach were related to fixing the level of TACs lower than before. This was the main reason for the fisheries and agriculture ministers to justify the changes made to the Commission proposal for the 2000 TACs. The ministers stated that the applications of the precautionary principle by the scientists were “excessively cautious”<sup>83</sup>. It is true that the 1999 TACs were already based on the precautionary approach, however, the cuts for the 2000 and 2001 TACs proposed by the Commission which closely followed the

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<sup>83</sup> European Cod, Anchovy Catch Quotas Chopped, Environment News Service, Brussels, 20 December 1999. <http://ens.lycos.com/ens/dec99/1999L-12-20-01.html>.



recommendations issued by ICES, were particularly severe. They went in many cases well above the levels of 50% cutbacks in comparison with the last year's quotas. Therefore the Council responded with the introduction of a large number of amendments to the initial Commission proposals for the years 2000 and 2001.

The tables show that the Council have always changed the Commission proposals for 1999, 2000, 2001 in connection with 13 fish stocks, which included species such as: hake, Norway lobster, plaice, megrims, herring, sole, whiting, cod, haddock and anglerfish. It means that around 11-12% of the fish stocks is considered to be vitally important for the member-states. This is determined by the degree of dependence of the national fishing fleets on the particular fish species and a popularity of these species on the markets of the member states<sup>84</sup>. In these cases, it is likely that the member-states will oppose the scientists and the Commission advice on the TACs cuts and thus, the socio-economic factors tend to prevail in the Council decisions in connection with these fish stocks. Therefore, there is a certain limit for the "cuts" concessions that the Council is ready to accept.

### **3.3. Importance of the scientific advice: the Council fails to meet the demands of the fishing interest groups**

The TACs analysis based on the tables above shows a more positive picture related to the acceptance of the Commission proposals and indirectly the ICES recommendations than one could expect. The Council, although changing the

Commission proposals, was, on the other hand, supportive in more than 60% of the TACs' cases that were set by the Commission for each analyzed year. These 60% of cases refer to TACs, which were left unchanged by the Council. Thus, the Council accepted in its entirety the initial Commission proposals on certain fish stocks. In general the member states tend to agree with the Commission proposals on the fish stocks, which are less important for the states' fishing industries or the consumer markets (e.g. skates, rays, sprat or turbot). However, the Council also introduces radical cuts in the fishing quotas even though the cutbacks concern important fish stocks. In this way, in places where the Council disagreed with the Commission, the member states, nevertheless, agreed on the substantial cuts in comparison with the Council's decisions from the previous years for the fish stocks considered to be important for the EU fishing businesses.

In 1999, the Commission had proposed a cut of 69% for cod stocks in the Irish Sea. The Council eventually agreed "only" upon 62%. For Bay of Biscay anchovy catches that are important for Spain and France, the Council softened the Commission proposal from 85% to 51% of proposed cuts.

The Council adopted the agreement on the fishing quotas for 2000 with the French delegation voting against despite a compromise of 51% cuts for anchovy<sup>85</sup>. The French delegation voted against claiming that they had different scientific figures on anchovy and such large cuts proposed by ICES and the Commission were not justified. However, France was voting against not so much to oppose the enactment of the fishing

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<sup>84</sup> For example, for UK it is cod, haddock and Norway lobster, for France whiting, anglerfish and megrims for Italy blue tuna, for Spain anchovy, hake and megrims. The Fishing TACs and Quotas 2001, Fishing Map K1-34-00-326-4J-P, Fisheries Directorate General, European Commission.

<sup>85</sup> TACs and Quotas for 2000, Press Release, 14071/99 (Presse 416) 2237th Council meeting, Fisheries, Brussels, 16/17 December 1999. <http://ue.eu.int/newsroom/main.cfm?LANG=1>

quotas for 2000 but to show her fishermen that the French government did take under considerations their grievance and was only unsuccessful because it was outvoted by other states<sup>86</sup>.

In 2001 the Commission, based on the alarming reports coming from ICES, proposed sharp cuts for some of the most important species for the EU member states. The Commission asked, for example, for 75% cuts for hake and 56% cutbacks in cod in some of the fishing areas for 2001. Ministers, nevertheless, agreed on 41% cuts for hake in the North Sea and 55% for hake in the Bay of Biscay, additionally 45% cuts were set for cod in the fishing zones of North Sea, Skagerrak, IIa, Vb, VI, XII, XIV, in comparison with TACs from the previous year<sup>87</sup>. In all presented cases, in the Commission proposals as well as in the Council regulations, an unwritten rule that “no EU TAC would be cut by more than 40%”<sup>88</sup> compared with the previous year, was abandoned. The decision made in 2001 by the Council to agree upon such large cutbacks brought strong criticism particularly from the British fisheries industry that is heavily dependent on cod and hake. The representative of the National Federation of Fishermen’s Organisations in UK, Barry Deas generally saw the Council’s decision on the 2001 TACs as “a terrible outcome”. Moreover, this outcome was already determined by the Commission’s proposal that envisaged such huge cutbacks. In this context Barry Deas notices “We may have reduced the cuts in some areas but we came from an appalling starting point”<sup>89</sup>. The chief executive of the Cornish Fish Produces Organisation openly says that “it is a political game. The Commission asks for more so ministers can then

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<sup>86</sup> Christophe Le Villain, Fishery Expert in the Fisheries Directorate-General, European Commission, interview, Brussels 26<sup>th</sup> of April 2001.

<sup>87</sup> Refer to the tables

<sup>88</sup> European Report, Fisheries: Ministers Clinch Deal on 1999 Catches. 19 December 1998.

<sup>89</sup> Paul Brown, “Fears for Jobs as Fish Quotas Cut to Bone”, *The Guardian*, 16 December 2000.

return home saying they secured a better deal”<sup>90</sup> and concludes “I am bitterly disappointed with the outcome and I told the minister so”<sup>91</sup>.

### **3.4. Accounting for the outcomes of the Council decisions on TACs**

The reasons why the Council does not go far enough in changing the Commission proposals, which would meet the demands of the fishing groups, can be accounted for in two ways. The EU relies on scientific data that is provided by a highly respected international scientific organization and it is difficult to challenge their findings. Moreover, the cuts in fishing opportunities are needed simply because of a collapse (or its likelihood) of many European fish stocks. Faced with the alternative of no fish at seas, even the fisheries industries agree in principle on the necessity of the cuts in fishing opportunities. However, a degree of the cuts is a disputable matter and certain political maneuvers applied by the Commission help the latter to ensure that the outcomes of the Council deliberations on TACs would not differ greatly from the Commission initial proposals. Thus, the Commission uses a specific tactic to have its proposal on TACs accepted or at least to limit the chances for the Council to increase the quotas.

In the year 2001, the Commission came back to the method it had applied earlier, which further limited the chance for the fisheries interest groups to voice their objections. When the Commission submitted its proposal for the 2001 TACs at the beginning of December, it left blank spaces for several fish stocks. In the tables, these blank spaces are marked as *p.m.* (*pre-memoria*). When “*pms*” are used, the Commission is supposed to complement its proposal at the later stage or ultimately at the Council meeting in the

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<sup>90</sup> BBC, Jobs Fear Over Fish Cuts, Friday, 15 December 2000. <http://news.bbc.co.uk/1/hi/english/world/default.stm>

<sup>91</sup> Nathan de Rozarieux in Brown, “Fears for Jobs as Fish Quotas Cut to Bone”. *The Guardian*, 16 December 2000.

middle of December<sup>92</sup>. Thus, the states' representatives in COREPER can be virtually left without anything to argue about till the figures are submitted to the Council, but then it is too late and the decision is left entirely to the ministers. Thus, the fisheries interest groups frequently do not know anything about the Commission proposal on the quotas for certain fish stocks even till the December Fisheries Council, when it is too late to lobby the ministers<sup>93</sup>. In 2001, in the Commission proposal there were 21 *p.m.* for important species such as cod, herring, mackerel. Around 75% of "*pms*" were related to the fish stocks for which the Commission could easily expect the debate on, judging the previous years' Council decisions on these stocks. The Commission, using "*pms*", was successful in securing a decrease in TACs in comparison with the year 2000 for at least 7 fish stocks<sup>94</sup>.

The Commission used also the method of merging the zones to reduce TACs. In 2000, the Commission has combined the zones for pollack and blue whiting, however it has not done the same with the level of catches attached to the combined the zones. Thus, for pollack, the zones VIIIab, VIId and VIIE were merged into one TACs zone VIIIabde, however, TAC remained the same on the level of 2600 tones (although, having separate zones would give 2750 tones of allowable catches. Refer to the table on pollack on page 31). The same technique of reducing TAC was applied to blue whiting where VIIIabd and VIIE were brought together to have one TACs zone VIIIabde for catches of

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<sup>92</sup> Commission Proposal for a Council Regulation fixing for 2001 the fishing opportunities 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. Commission of the European Communities, COM(2000) 773 final, Brussels, 01.12.2000:1.

<sup>93</sup> Mike Holden aptly explained the application of the blank spaces by the Commission in setting TACs for haddock in the North Sea in 1988. see Holden, *The Common Fisheries Policy. Origin, Evaluation and Future*, 63-64 and 66.

<sup>94</sup> Refer to the tables.

26 500 tones of blue whiting instead of previous 27 500 (see the table on blue whiting on page 32).

Additionally, the system of qualified majority voting in the Council leaves for the Commission some room in deciding about TACs. The Commission can set TACs a little bit lower without the fear that one or two major fishing states would block that proposal. Although during the interviews, the Commission officials acknowledged this fact but they also underlined that the Commission does not want to alienate the states simply because next time these countries could not back the Commission over other matters not even connected with the fisheries policies<sup>95</sup>.

### **3.5. Summary**

This chapter showed that the Council eventually retains the power to control fixing the level of TACs for particular important stocks. If the Commission based on the ICES advice proposes too radical cuts and for the fish that are indispensable to the existence of the fishing industries in some member states, the Council tends to decrease total allowable catches. However, one needs to see these changes in a broader perspective. The changes made by the Council are frequently not very far-reaching and they are much too small in the eyes of the fisheries interest groups as the examples of cod, hake or anchovy prove. The Council has the difficulty in changing certain decisions that are proposed by the Commission backed up by scientific data and recommendations coming from the international institution that enjoys a high level of authority. Moreover, the Commission uses specific techniques to weaken the impact of lobbying by the fisheries groups and introduces certain procedural tricks such as using the blank spaces

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<sup>95</sup> Christophe Le Villain and Ernesto Penas Lado, Interviews in Fisheries Directorate-General, European Commission, Brussels, 26<sup>th</sup> of April 2001.

(“*pms*”) or merging the ICES research zones in order to lower TACs. Due to these policies, the final outcomes of the Council bargaining does not match the preferences of the fishing communities although the Council decisions are much closer to the expectations of the fishing industries than the initial propositions of the Commission and ICES.

Considering the actors’ preferences and the final outcomes of the policy decisions on fixing TACs in the Community waters, it is evident that neither powerful fisheries interest groups nor the states’ representatives are able to secure the TACs levels that they would be satisfied with. The agenda-setting power of ICES, combined with the support of the European Commission in connection with setting the fishing quotas, weakens significantly the involvement of the fishing interest groups, limiting their opportunities for lobbying. Additionally the control of the member states is also undermined since it is extremely difficult to change TACs that were previously set according to biological rather than social and economic objectives.

In the next chapter I will look at the Regional Fisheries Organizations and analyze their interactions with the EU. The study will focus on the technical conservation measures that are designed on the forums of the RFOs and partially in the ICES recommendations.

### **Chapter III**

#### **4. The Importance of the Regional Fisheries Organizations and their impact on the adoption of Technical Conservation Measures in the EU**

In this chapter I will claim that the growth of legislation on technical conservation measures coming from the Regional Fisheries Organizations (RFOs) had a tremendous impact on the way the policies on the conservation and protection of the European fish stocks are enacted in the EU. Thus, it will be argued that the RFOs and their work have changed the legislative balance of power and weakened the EP and the Council involvement in the matters of the fisheries management in the EU waters. At the same time the legislative output of the RFOs was actually used by the Commission to increase considerably its role in the important aspect of the Common Fisheries Policy that is connected with the technical conservation measures.

I will proceed with the introduction about a growing importance of the RFOs and their formal interactions with the EU. Then I will present a brief explanation of the technical conservation measures and the impact of the RFOs on the conservation policies in the EU. Finally I will analyze the influence of a growing body of legislation connected with the technical conservation measures that comes from the RFOs on the institutional balance of power in the EU.

#### **4.1. Development of the functions of the Regional Fisheries Organizations**

The tasks of the Regional Fisheries Organizations (RFOs) have developed gradually. First, the RFOs were only dealing with gathering and studying the data on fish stocks. RFOs were passing these data to national scientists and decision-makers, who then were taking appropriate steps to address the fishing problems. With a subsequent development of databases and further detailed research, the RFOs have finally come out



with more sophisticated management of the fisheries resources such as closed areas, mesh size and total allowable quotas<sup>96</sup>.

Based on the areas of competence, there are two kinds of the RFOs. One type of RFOs deal with the particular species of fishes, for example tuna or salmon whereas the other RFOs have specific geographical areas under their responsibilities (e.g. the Baltic Sea or the North-West Atlantic) that include all the species present in these regions. There are thirty five regional fisheries organizations<sup>97</sup> in the world and the EU is currently a member to ten of them<sup>98</sup> and holds observer status in two organizations<sup>99</sup>. Among the ten RFOs that the EU is a member of, the conventional areas of five of them extend over the fishing areas of the CFP (see **Appendix 5**)<sup>100</sup>. Thus, the binding recommendations issued by these organizations affect not only the Community vessels themselves that can fish in every part of the world but their binding-force also extends onto the Community waters.

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<sup>96</sup> Bob Applebaum and Amos Donohue, *The Role of Regional Fisheries Management Organizations*, in Ellen Hey, *Developments in International Fisheries Law*, (Kulwer Law International: London 1999):223.

<sup>97</sup> Communication from the Commission to the Council and the European Parliament. Community Participation in Regional Fisheries Organizations, Commission of the European Communities, COM(1999) 613 final, Brussels, 08.12.1999:7.

<sup>98</sup> The European Community is a member of the “European” fisheries organizations such as the International Baltic Sea Fisheries Commission (IBSFC), the Northeast Atlantic Fisheries Commission (NEAFC), the North Atlantic Salmon Conservation Organization (NASCO), the General Fisheries Commission for the Mediterranean (GFCM) as well as the “international” fisheries organizations such as the International Commission for the Conservation of Atlantic Tunas (ICCAT), the North Atlantic Fisheries Organization (NAFO), the Fishery Committee for the Eastern and Central Atlantic (CECAF), the Western Central Atlantic Fishery Commission (WECAFC), the Indian Ocean Tuna Commission (IOTC), the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). Based on: *Some Principles and Some Data*, European Distant Water Fishing Fleet, Fisheries Directorate General, European Commission, April 2000:18-22.

<sup>99</sup> Inter-American Tropical Tuna Commission (IATTC) and International Whaling Convention (IWC). Communication from the Commission to the Council and the European Parliament. Community Participation in Regional Fisheries Organizations, Commission of the European Communities, COM(1999) 613 final, Brussels, 08.12.1999: 9.

<sup>100</sup> The RFOs, whose fishing areas according to their conventions merge with the areas of the CFP are: the International Baltic Sea Fisheries Commission (IBSFC), the Northeast Atlantic Fisheries Commission (NEAFC), the North Atlantic Salmon Conservation Organization (NASCO), the International Commission for the Conservation of Atlantic Tunas (ICCAT), General Fisheries Commission for the Mediterranean (GFCM). <http://www.fao.org/fi/body/rfb/index.htm>.

Some of the regional fisheries organizations that the EU is a member of have to rely fully on the ICES advice in connection with the level of fish quotas as well as with the introduction of the conservation measures in certain fishing areas<sup>101</sup>. These RFOs are: IBSFC, NASCO and NEAFC (see **Appendix 5**). The cooperation between three RFOs and ICES is based on the understandings that were signed in the late 1990s<sup>102</sup>. The extent of the involvement of ICES, which is the main scientific institution for the important European fisheries organizations is considerable<sup>103</sup>.

#### 4.2. Technical conservation measures in the EU

Technical conservation measures are designed to prevent the catches of undersized and juvenile fishes or unwanted and “bycatch” species. In order to address the problem of catching large numbers of “unnecessary” fish, specific technical regulations

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<sup>101</sup> Other RFOs, for example, ICCAT, NAFO, CCAMLR or to some extent GFCM have their own independent scientific advice provided by the internal scientific bodies of these organizations. GFCM works under the umbrella of Food and Agriculture Organization and only recently established its own separate scientific fisheries committee. Report from the Commission to the Council and the European Parliament on the Application of the Community System for Fisheries and Aquaculture in 1996-1998. Commission of the European Communities, COM(2000) 15 final, Brussels, 24.1.2000:17.

<sup>102</sup> Memorandum of Understanding between the International Baltic Sea Fisheries Commission and the International Council for the Exploration of the Sea from September 1998. Memorandum of Understanding between the North-East Atlantic Fisheries Commission and the International Council of the Exploration of the Sea from December 1998. And Memorandum of Understanding between the North Atlantic Salmon Conservation Organization and the International Council of the Exploration of the Sea from June 1998.

The cooperation between ICES and these three regional fisheries organizations existed for many years, thus, “the memoranda were the formalization of already existing praxis”. Michala Ovens, ICES Secretariat, Copenhagen, May 16, 2001.

<sup>103</sup> Walter Ranke, Secretary of the International Baltic Sea Fishery Commission. Interview, Warsaw, April 12, 2001.

ICES also provides direct advice to the Commission on the technical conservation measures. The recommendations on conservation measures that come from ICES are usually general in their forms. The ICES recommendations on conservation measures give broad guidelines and leave for the policy-makers to decide how to design specific measures and what kind of conservation policies are needed. Thus, the recent advice on cod in the areas of the North Sea, Eastern Channel and Skagerrak given by ICES mentioned generally, the need to “deter direct fishing” and “reduce bycatches of cod in fisheries for other species”. The Commission faced with the collapse of the stocks of cod in these areas and the ICES recommendation on “detering direct fishing”, has introduced an emergency measure: a ban on cod for certain areas in the North Sea from the 7<sup>th</sup> of February till 30<sup>th</sup> of April 2001. Article 15 of the Council Regulation No. 3760/92 allows the Commission to introduce emergency measures if unexpected events can lead to jeopardizing conservation resources. In this case, the Commission is left with the power to decide upon the proper response to address the problems.

See ACFM Report 2000: 96. <http://www.ices.dk/committe/acfm/comwork/report/2000/contents.html> and the Commission adopts emergency measures to help the recovery of North Sea cod stocks, DN: IP/01/177, 02-07, 2000. [http://europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.gettxt=gt&doc=IP/01/177/0|RAPID&lg=EN](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/01/177/0|RAPID&lg=EN)

were introduced. These regulations established the rules for minimum mesh sizes of the fishing nets, minimum landing sizes for certain species of fishes to reduce discards, for closed areas to protect spawning grounds and juvenile fishes and introduced restrictions on the use of certain types of fishing gears (nets). The EU technical conservation measures are mainly included in two Council Regulations No. 894/97 and No. 850/98<sup>104</sup>.

#### **4.3. Impact of the Regional Fisheries Organizations on technical conservation measures and on setting TACs in the EU**

The general importance of the RFOs in terms of their potential effects has been already highlighted by the studies of the enforcement mechanisms<sup>105</sup>. This study, however, has different aim and wants to examine the impact of the legislative work of the RFOs on the processes of the decision-making within the EU and on the relations between various EU institutions. This chapter focuses mainly on the political consequences of the processes of incorporation to the EU *acquis*, the provisions on technical conservation of fish resources that are agreed upon by the RFOs. Additionally, the study will briefly look at the impact of the RFOs on setting TACs in the EU.

The design and the introduction of the technical conservation measures to protect the fishes in the Community waters have been mainly worked out in the EU framework. However, since the early 1990s, there was a rapid growth of the legislation on technical conservation measures coming from the various RFOs<sup>106</sup>. Closer international cooperation was greatly needed as a result of the fish migration and the increase in

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<sup>104</sup> Technical measures are generally included in two Council Regulations No. 894/97 laying down certain technical measures for the conservation of fishery resources and Council Regulation No. 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms.

<sup>105</sup> Peter M. Hass, Protecting the Baltic and North Sea and M.J. Peterson, International Fisheries Management in: Peter M. Haas, Robert O. Keohane and Marc A. Levy, *Institutions for Earth. Sources of Effective International Environmental Protection*, (The MIT Press: London 1994): 133-181 and 249-305.

depletion of the fishing resources. Thus, the RFOs became an important source of fisheries legislation for the EU.

The importance of the RFOs varies and it is connected with their organizational strength in terms of developed procedures, enforcement measures and financial capacities. In general, the Secretariats of the RFOs are small, employing between 3 (e.g. IBSFC) to almost 20 permanent staff-member (e.g. ICCAT). However, it does not tell us much about the influence the RFOs exercise. It is not so much the institutional capabilities of the RFOs that matter but rather their legal power and authority in providing reliable data on the fish stocks and the acceptance of that authority by the EU. In 1997, the ICCAT and GFCM issued binding recommendations in 1997 based on the scientific advice provided by their internal scientific panels, where they proposed quotas for the blue-tuna fish in the Mediterranean<sup>107</sup>; the region that is the least regulated area in the Community waters. The Commission included these recommendations into its proposal for the fish catches for 1998 and 1999, which became part of the Council Regulations for these years. It happened despite the fact that the ICCAT recommendation for tuna catches was questioned by the Italian delegations facing the penalization of their fishermen who caught more tunas in 1998 than the quotas envisaged. Italian representatives argued that they could not be penalized for something they did not have influence over, adding that their country (as well as the European Communities as an institution<sup>108</sup>) was not a party to ICCAT in 1996 when decisions on blue-tuna quotas were

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<sup>106</sup> Report from the Commission to the Council and the European Parliament on the Application of the Community System for Fisheries and Aquaculture in 1996-1998. Commission of the European Communities, COM(2000) 15 final, Brussels, 24.1.2000:16.

<sup>107</sup> Ibid.,18. See also Christian Lequesne, The Common Fisheries Policy. Letting the Little Ones Go? in: Helen Wallace and William Wallace, Policy-Making in the European Union, 357.

<sup>108</sup> Italy became the member of ICCAT on the 6<sup>th</sup> of August 1997 and it ceded its membership to the European Community when it joined ICCAT on the 14<sup>th</sup> of September 1997. <http://www.iccat.es/>

actually made<sup>109</sup>. Nevertheless, the provisions on TAC for tuna in the EU waters in the Mediterranean remained.

#### **4.4. The Regional Fisheries Organizations in the center of a ‘tug of war’ among the EU institutions.**

The technical conservation policies that come from the RFOs are controversial but not so much in the sense of the content of the measures but rather because of their impact on the relations between particular EU institutions. The growth of legislation produced by the RFOs has increased the tensions between the EU organs and contributed to the power struggle for the institutional control and competence inside the EU over enacting the technical conservation measures. That is why it is important to look at the RFOs’ technical conservation measures as well as the RFOs more generally and consider their overall impact on the policy-making in the EU from the perspective of the power-relation between different EU institutions.

Sluggish incorporation into the EU fisheries *acquis* various legal acts on technical measures, which are adopted by the RFOs, has increased the uncertainty of the fisheries rules for the EU fishermen. The EU legislative path to integrate the RFO’s rules into the EU law is a long one and procrastination is a usual thing. The technical conservation measures have different legislative path from the one according to which TACs are set (compare **Appendix 4** and **Appendix 6**). The adoption of the technical conservation measures is governed by article 37 (43) of the TEC, which requires the Council and the Commission to consult with the EP over this policy. Thus, the RFOs’ legislation on the conservation of fish resources has to go from the Commission through the consultations

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<sup>109</sup> European Report, Fisheries: Ministers Clinch Deal On 1999 Catches, 19 December 1998.

with the EP and finally to the Fisheries Council of Ministers (see **Appendix 6**). Constant delays and problems to deal with the growing numbers of RFOs' legislation were the reasons behind the 1996 Commission proposal for the "fast track procedure"<sup>110</sup>. According to this proposal the Council would delegate to the Commission the right to incorporate into the Community legal order the binding decisions of the RFOs on the technical measures; fishing gear and method of using them. The Council, however, rejected that proposal<sup>111</sup>. In 1999 the Commission issued a Communication<sup>112</sup>, where it again proposed "to confer on the Commission the power to adopt regulations implementing final instruments adopted by RFOs to which the Community belongs"<sup>113</sup>. The discussion over the Commission Communication paved the way for another litmus test of the member states' willingness to transfer their power to the Commission, which was done in the form of three Commission proposals. In 2000 the Commission presented the proposals, one on toothfish<sup>114</sup> and two others on highly migratory species<sup>115</sup>. In general, the proposals addressed the problem of certain fish species and the incorporation of the technical measures issued by the RFOs to the EU legal system. The work on these proposals is almost finalized and their most important provisions were accepted by the COREPER working groups<sup>116</sup>. Looking at the proposals that will soon become a EU law

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<sup>110</sup> Commission Proposal for a Council Regulation amending Regulation No. 3760/92, final COM96/0350, 8.09.1996.

<sup>111</sup> Ibid., 16.

<sup>112</sup> Communication from the Commission to the Council and the European Parliament. Community Participation in Regional Fisheries Organizations, Commission of the European Communities, COM(1999) 613 final, Brussels, 08.12.1999.

<sup>113</sup> Ibid., 13.

<sup>114</sup> Commission Proposal for a Council regulation establishing a catch documentation scheme for *Dissostichus* Species, Commission of the European Communities, COM (2000) 383 final, Brussels, 10.07.2000.

<sup>115</sup> Commission Proposal for a Council regulation laying down certain technical measures for the conservation of certain stocks of highly migratory species, COM (2000) 353 final, Commission of the European Communities, Brussels, 08.06.2000. And Commission Proposal for a Council regulation laying down control measures applicable to fishing for certain stocks of highly migratory fish, COM (2000) 619 final, Commission of the European Communities, Brussels, 06.10.2000.

<sup>116</sup> Christophe Le Villain and Ernesto Penas Lado, Interviews in Fisheries Directorate-General, European Commission, Brussels, 26<sup>th</sup> of April 2001.

one will not be far from the truth by saying that the Commission achieved its goal. The proposals, which explicitly referred to ICCAT, CCAMLR and IOTC, envisaged in their articles 23 that the Commission “will be assisted by the Management Committee for Fisheries and Agriculture” in the implementation of certain technical measures adopted by the above-mentioned RFOs. Thus, the enactment of these proposals will constitute important precedents for the further extension of power of the Commission to incorporate recommendations from other RFOs. In this way, the Commission will manage to supersede the Fisheries Council as well as the European Parliament (compare **Appendix 6** and **Appendix 7**). The application of the comitology procedures based on the Management Committee to implement the technical conservation measures adopted by the RFOs increases the Commission autonomy of the decision-making and undermines the power of scrutiny by the EP. The Management Committee, next to the Advisory Committee has “permissive” procedures in contrast to the “restrictive” comitology based on the Regulatory and Safeguard Committees<sup>117</sup>. Thus, the Council involvement in the transposition of the RFOs legislation into the Community law will be considerably weakened. Additionally, the EP by agreeing on the comitology procedures is giving up its right to be consulted over the technical conservation measures<sup>118</sup>. The EP has noticed a growth of the influence of the RFOs on the Community regulations and undertook certain steps to supervise the process of enacting laws on the technical conservation measures. Facing strong opposition mainly from the Commission, which saw the EP initiative as

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<sup>117</sup> More on the comitology procedures see: Dogan, Rhys, “Comitology: Little Procedures with Big Implications”, *West European Politics* 20, no.3, (1997):31-60.

<sup>118</sup> “Even if the EP is not happy with such procedures [it did not have much choice since] it is the only solution to speed up the transposition process”. Christophe Le Villain, Fisheries Directorate-General, European Commission, 16 May 2001.

encroaching on its competence<sup>119</sup>, the Parliamentary Committee on Fisheries managed, nevertheless, to establish a direct contact between the EP and RFOs. However, the role of the EP is very limited since its representative (the chairman of the Parliamentary Committee on Fisheries) participated till now only in the meetings of two RFOs (ICCAT and NAFO) and his status was of an observer rather than of a full participant<sup>120</sup>.

#### **4.6. Summary**

The technical conservation measures are adopted on the EU and on the international levels, in the regional fisheries organizations. In both cases ICES plays an important role as an advisory body that sets general recommendations on the technical conservation measures. A controversy over the measures adopted by the RFOs, often based on the ICES advice or on the advice of the internal scientific units in the RFOs, is not about the legal provisions or specific content of these measures but more about their quantity and their smooth incorporation into the EU legal system. With the EU accessions to various Regional Fisheries Organizations the latter became increasingly important in the designing various policies on technical conservation measures in the EU. In the above chapter I showed that a bulk of the EU legislation on technical conservation policies that is currently coming from the RFOs, has a significant impact on the constitutional power-struggle between the Commission, Council and European Parliament. The Commission used the problem of timing transposition of the RFOs legislation as the way to supersede the Fisheries Council and weaken the EP' power of scrutiny by the implementation of the comitology procedures. This, in turn, limited the opportunities for the outside pressure groups willing to question the Commission policies over the fishing conservation

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<sup>119</sup> Ibid., Interview, Brussels 26<sup>th</sup> of April 2001.

<sup>120</sup> Michael Earle, Interview, European Parliament, Brussels, 26<sup>th</sup> of April 2001.



measures. The EP's answer to the increasing importance of the RFOs and to the Commission's attempts to restrict the role of the EP was the placement of the EP's representatives in the decision-making bodies of some RFOs to control the legislation coming from these organizations. The adoption of the technical conservation measures in the EU is based to a large extent on the international cooperation that enhanced the role of the Commission vis-à-vis the member-states. The Commission utilizes a participation of the European Communities in the RFOs and a growing legislation from the RFOs to win more discretionary power in carrying out the technical conservation policies without a highly politicized involvement of the Fisheries Council as well as a long and a lobby-driven consultation process with the EP. Thus, the Commission preferences depicted in the support for greater scientifically and biologically-oriented conservation policies have better chances to prevail over more lenient, economical and social, approaches present in the work of the Council and the EP.

## **5. Conclusion**

The policy-making in the EU is generally perceived as being somehow insular and determined solely within the EU structure. Thus, the policy-making is confined to the EU internal bargaining processes that involve the member states, EU institutions such as the EP and the Commission and the interest groups operating simultaneously on the national and the EU levels. However, such an approach to the study of the EU policy-making does not take under consideration the actors, which exist and function in the international system. These international actors, having specific preferences, can play important formal and informal roles in the political processes taking place in the EU.

This paper analyzed the policy-making in the EU related to the important aspect of the Common Fisheries Policy, namely the issues of the management of fish resources in the Community waters, in order to discover the extent of the influence of the international institutions. I have claimed that the provisions of the Common Fisheries Policy on the management of fisheries resources in the EU are determined in the process that involve the EU member-states, the Commission and the international actors, which function outside the institutional and constitutional boundaries of the European Communities. These international actors include the International Council for the Exploration of the Sea and various Regional Fisheries Organizations.

The studies on fixing total allowable catches in the EU waters and on the incorporation of technical conservation measures revealed that in order to understand the EU fishing management and the outcomes of the policy-making in this area, it is necessary to include the analysis that would explain the impact of the international fisheries institutions.

This study highlighted that the outcomes of the Fisheries Councils' meetings on fixing TACs cannot be accounted for by looking merely at the negotiations that take place during a one and a half-day encounter between the EU ministers sometime in December. The process is much more complex and next to the Council and the Commission, the international institution such as the International Council for the Exploration of the Seas influences the decisions on fixing the level of TACs in the Community waters.

As far as the technical conservation measures are concerned a growing number of legislation that comes from the RFOs has a profound impact on the way the provisions on

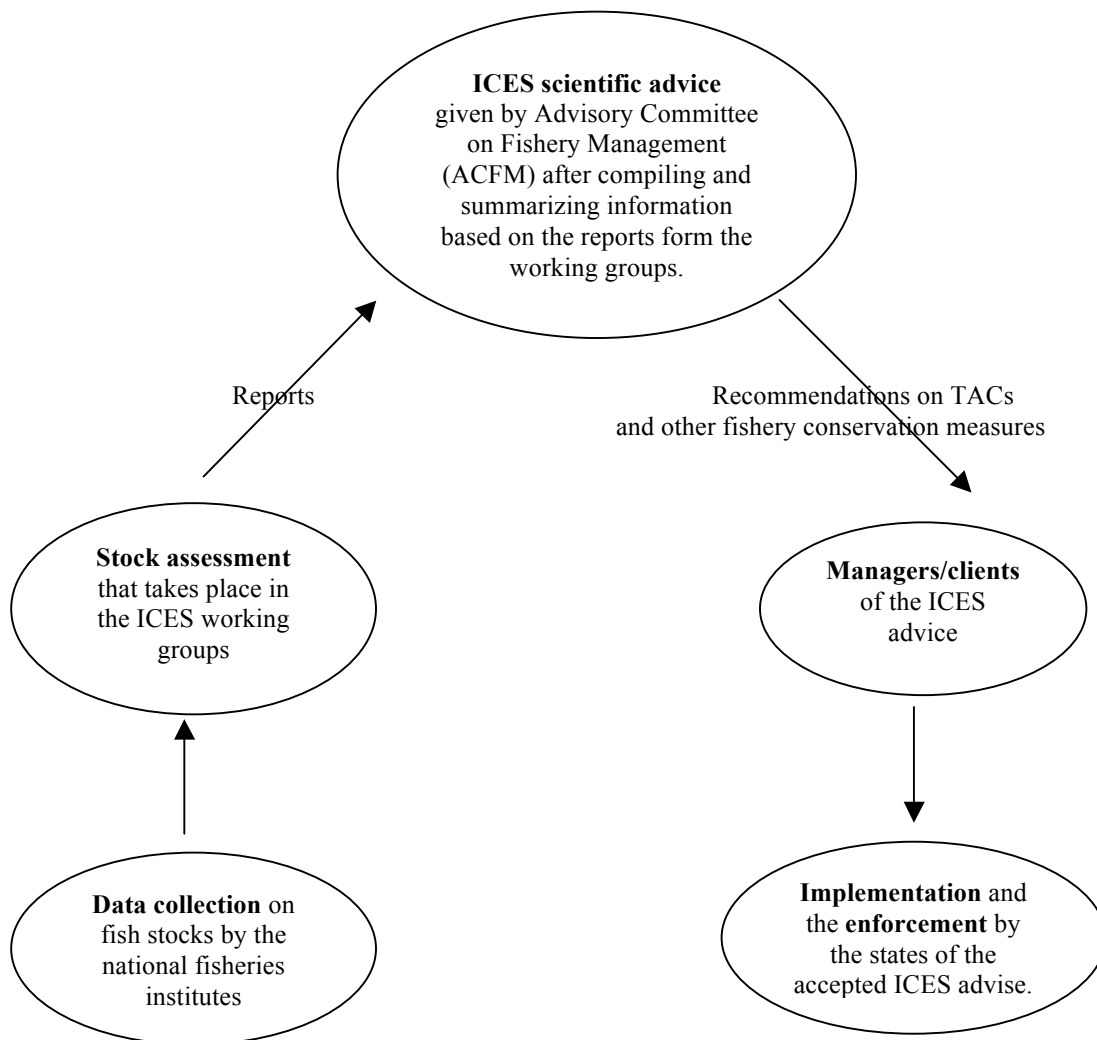
conservation of fish resources in the EU waters are debated on and finally enacted in the EU institutional framework. With increasing pressure for timing incorporation of the RFOs recommendations into the EU fisheries *acquis*, the Commission has used the opportunity to claim the power to adopt the RFOs legislation via the comitology procedures. The Commission proposals on toothfish and highly migratory species enable the latter to adopt the RFOs measures without embarking on lengthy procedures that involve the EP and the Council. Thus, not only the EP will be left without a formal right to participate in the legislative process on the incorporation of the RFOs measures but also the control of the states' representatives will be significantly weakened. The technical conservation policies will not be left to agree upon on the ministerial level (in the Council) but on the level of the Management Committee that is characterized by "lenient" procedures thus, giving the Commission more leverage in determining technical conservation aspects of the CFP. Also it will further limit the chance for the interest groups to lobby on the fisheries conservation policies.

Having proven the importance of the international institutions in shaping certain elements of the EU policies, a fair challenge was provided to the intergovernmental understanding of the processes taking place within the EU. Liberal intergovernmentalism, that claims that the states have a preponderant influence over the formulation and adoption of certain policies in the EU, fails to provide a plausible explanation for the outcomes of the EU policy-making related to setting certain levels of TACs and the way the RFOs technical conservation measures are adopted in the EU. Analyzing the actors' preferences and the final outcomes of the policy decisions on the management of fish resources in the Community waters, it became clear the governments are not able to

secure the interests of the powerful fisheries interest groups. The authority and the agenda-setting power held by the international fisheries institutions and the European Commission ultimately undermine the control of the states and diminishes their influence over fixing TACs and incorporating technical conservation measures into the CFP.

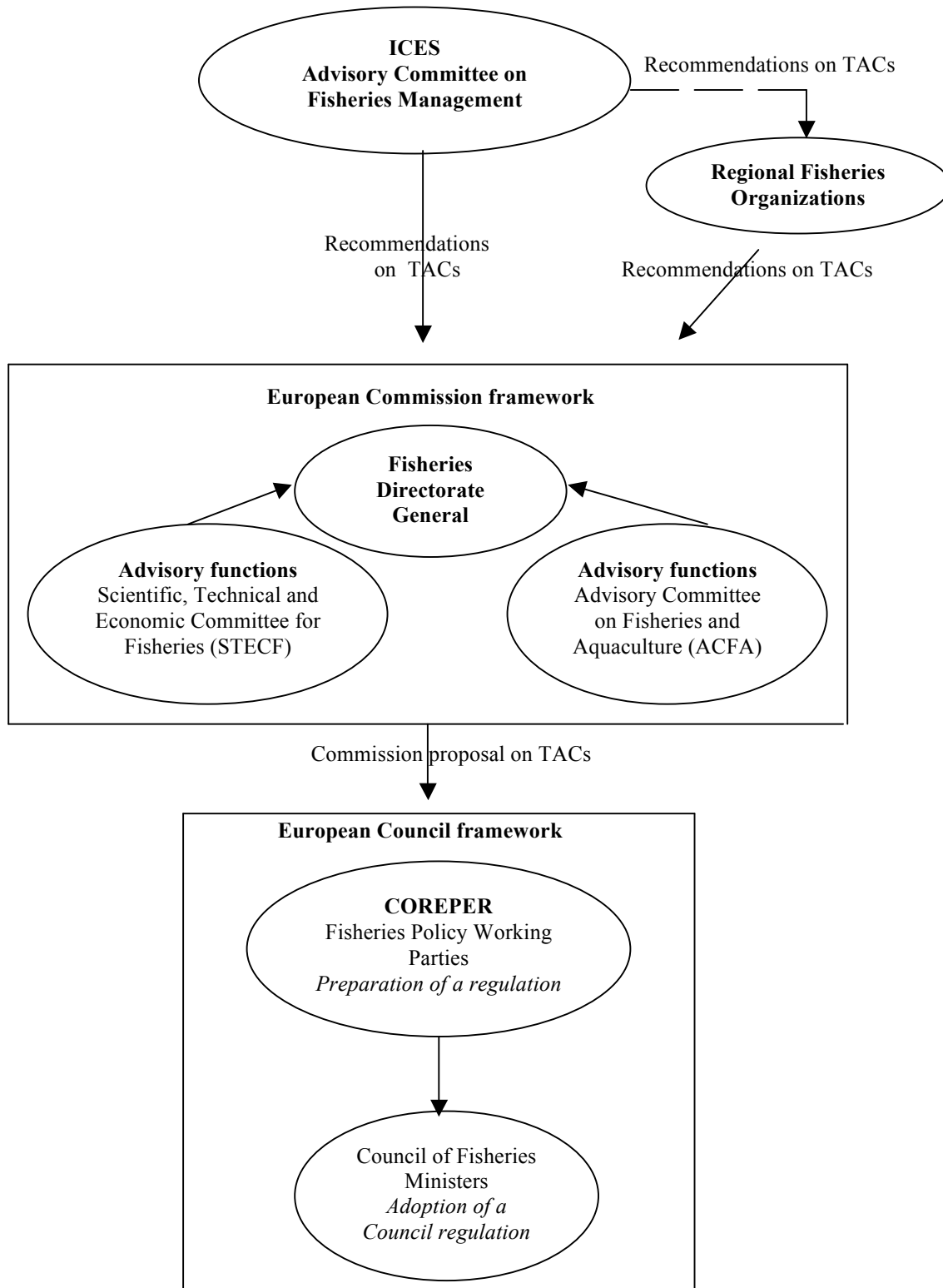
This study showed that the impact of the international institutions cannot be disregarded. The International Council for the Exploration of the Sea has certain preferences and exercises significant influence over the EU fisheries policies connected with TACs. Moreover, the work of other international fisheries institutions, namely the RFOs, may even effect institutional power arrangements inside the polity such as the EU. Therefore, comprehending the management of the common fisheries resources in the EU will only be possible if one recognizes the importance of the international institutions in the EU policy-making.

## Appendix 2. ICES at work<sup>1</sup>

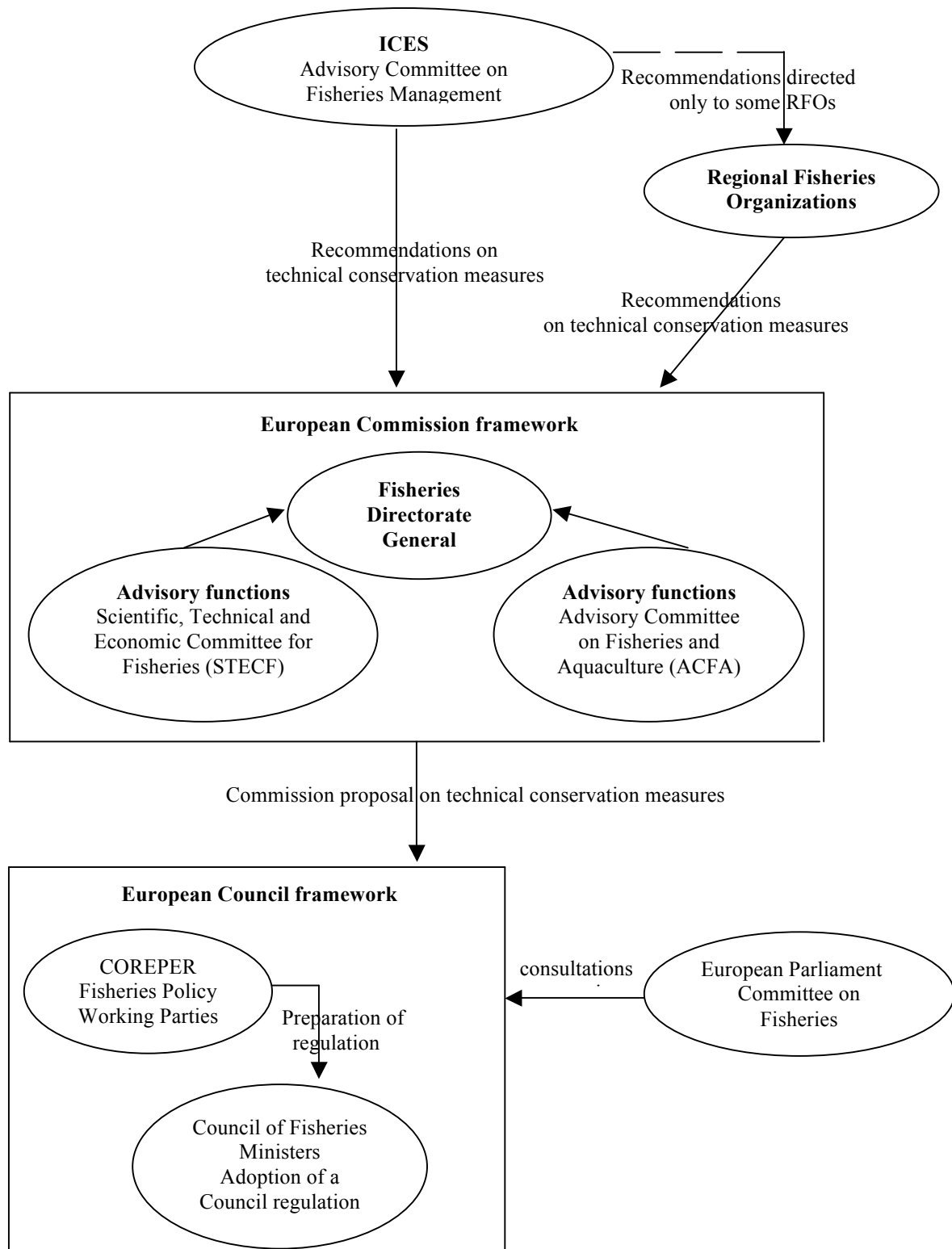


<sup>1</sup> The diagram is partly based on the TAC & Quota Allocation presented in Figure 2 in: Sustainable Fishing Through Regional Management: Regionalising the Common Fisheries Policy, National Strategy Review Group on the Common Fisheries Policy, (May 2000):7.

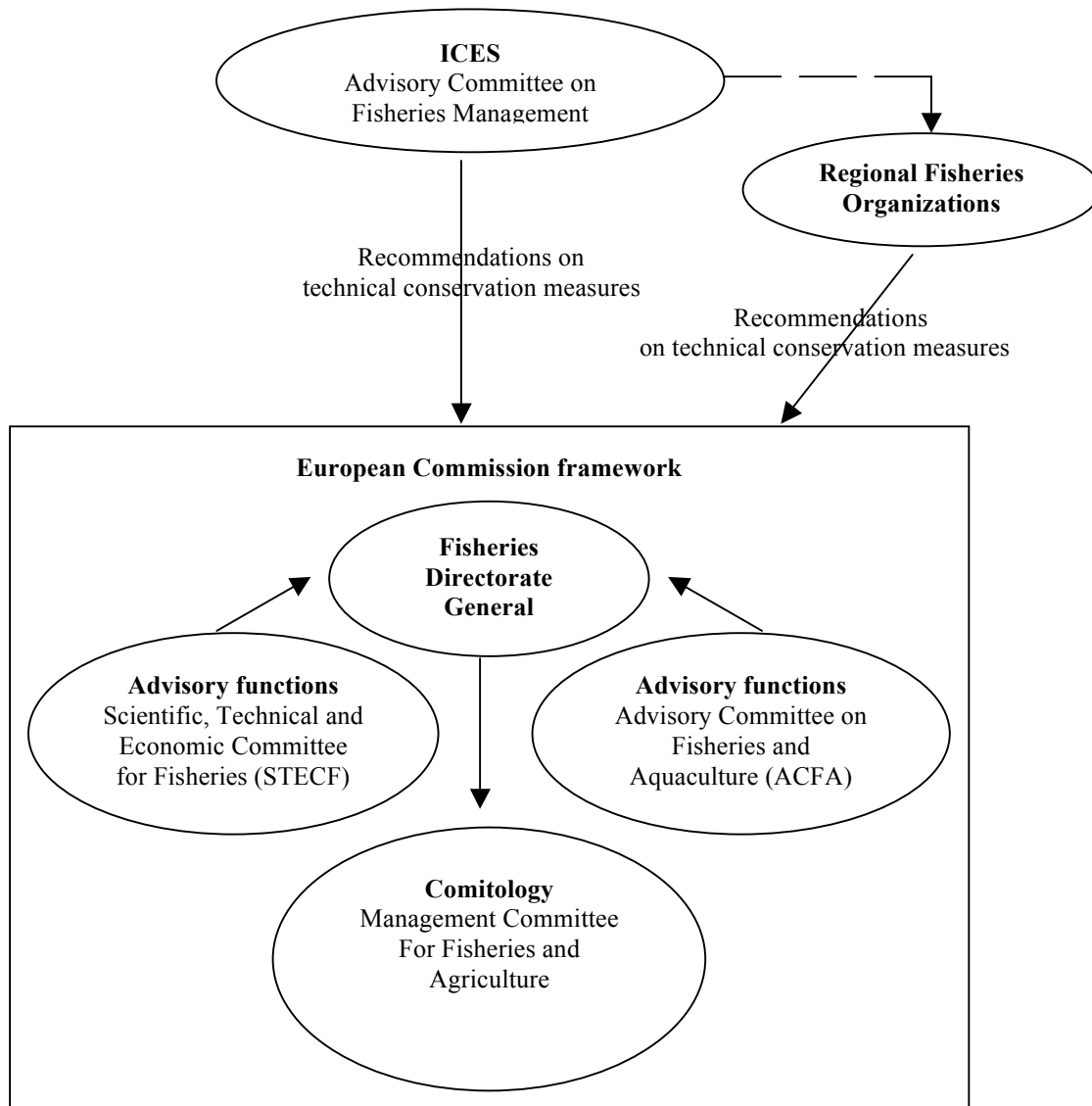
#### Appendix 4. Setting TACs in the EU



**Appendix 6.** Designing the technical conservation measures in the EU under the current regime



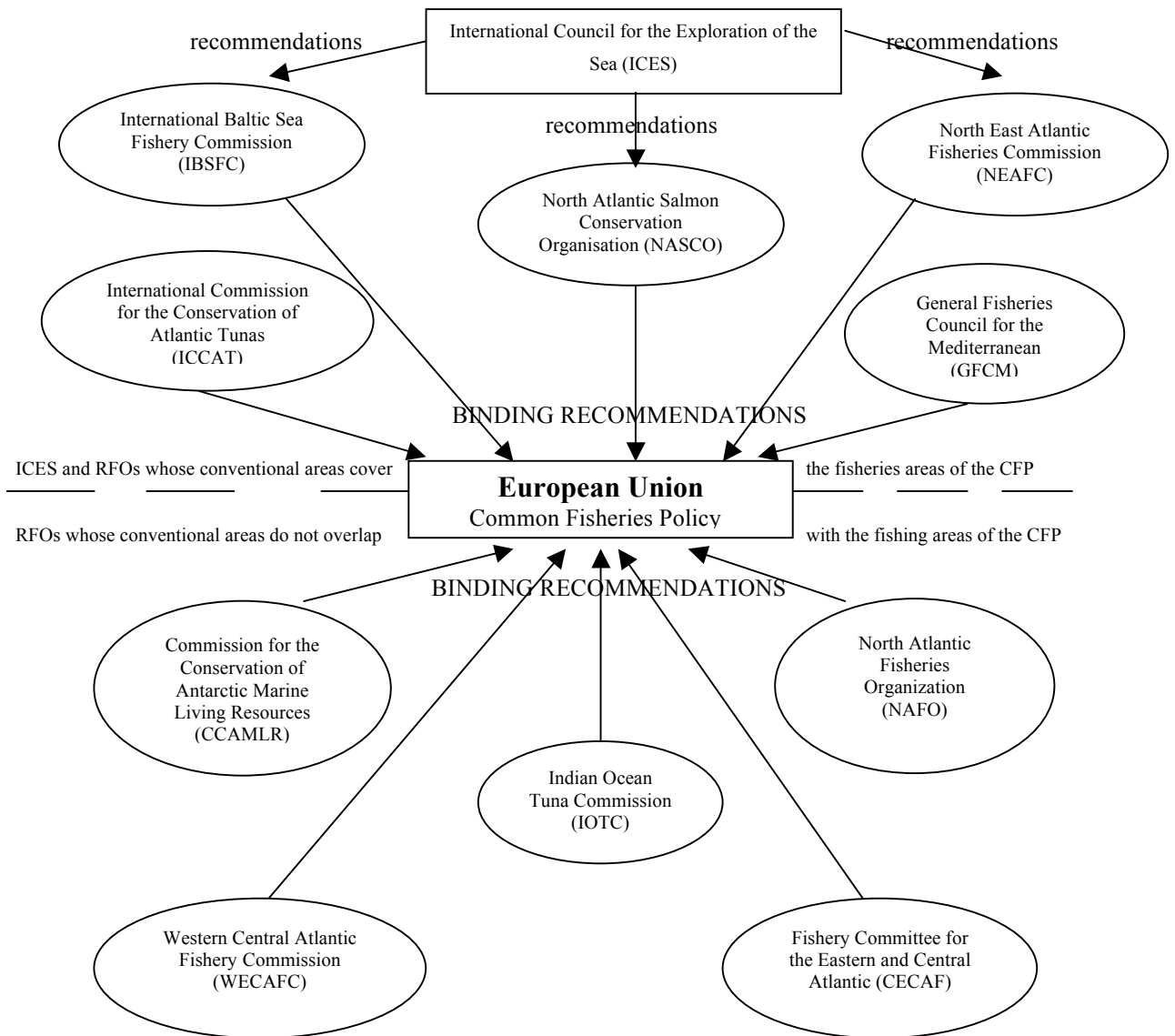
**Appendix 7.** Designing the technical conservation measures in the EU under the forthcoming regime introduced in the new Proposals for the Council regulations<sup>2</sup>



<sup>2</sup> Commission Proposal for a Council regulation establishing a catch documentation scheme for *Dissostichus* Species, Commission of the European Communities, COM (2000) 383 final, Brussels, 10.07.2000. Commission Proposal for a Council regulation laying down certain technical measures for the conservation of certain stocks of highly migratory species, COM (2000) 353 final, Commission of the European Communities, Brussels, 08.06.2000. Commission Proposal for a Council regulation laying down control measures applicable to fishing for certain stocks of highly migratory fish, COM (2000) 619 final, Commission of the European Communities, Brussels, 06.10.2000.



## Appendix 5. Interactions between EU, ICES and the Regional Fisheries Organizations which the EU is a member of



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