

**Proposal for a Council Regulation on the conclusion of a Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar for the period from 21 May 2001 to 20 May 2004**

(2001/C 270 E/30)

(Text with EEA relevance)

COM(2001) 409 final — 2001/0161(CNS)

(Submitted by the Commission on 18 July 2001)

THE COUNCIL OF THE EUROPEAN UNION,

*Article 2*

Having regard to the Treaty establishing the European Community, and in particular Article 37 in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) Under the Agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar <sup>(1)</sup>, the two Parties conducted negotiations to determine the amendments or additions to be made to the Agreement at the end of the period of application of the Protocol to the Agreement.
- (2) As a result of these negotiations, a new Protocol setting out the fishing opportunities and financial contribution provided for in the said Agreement for the period from 21 May 2001 to 20 May 2004 was initialled on 12 March 2001.
- (3) It is in the Community's interest to approve the said Protocol.
- (4) The method of allocating the fishing opportunities among the Member States should be defined on the basis of the traditional allocation of fishing opportunities under the Fisheries Agreement,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar for the period from 21 May 2001 to 20 May 2004 is hereby approved on behalf of the Community.

The text of the Protocol is attached to this Regulation.

The fishing opportunities set out in the Protocol shall be allocated among the Member States as follows:

(a) Tuna seiners:

Spain: 18 vessels

France 20 vessels

Italy: 2 vessels

(b) Surface longliners:

Spain: 23 vessels

France: 10 vessels

Portugal: 7 vessels

If licence applications from these Member States do not cover all the fishing opportunities fixed by the Protocol, the Commission may take into consideration licence applications from any other Member State.

*Article 3*

The Member States whose vessels are fishing under this Protocol are obliged to notify the Commission of the quantities of each stock taken in the Malagasy fishing zone in accordance with the arrangements laid down in Commission Regulation (EC) No 500/2001 of 14 March 2001 <sup>(2)</sup>.

*Article 4*

The President of the Council is hereby authorised to designate the persons empowered to sign the Protocol in order to bind the Community.

*Article 5*

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

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

<sup>(1)</sup> OJ L 73, 18.3.1986, p. 26.

<sup>(2)</sup> OJ L 73, 15.3.2001, p. 8.

## PROTOCOL

**setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar for the period from 21 May 2001 to 20 May 2004***Article 1*

Under Article 2 of the Agreement, licences authorising fishing in Madagascar's fishing zone shall be granted to 40 freezer tuna seiners and 40 surface longliners for a period of three years beginning on 21 May 2001.

In addition, at the request of the Community, authorisation may be granted for other categories of fishing vessel under conditions to be laid down in the Joint Committee referred to in Article 9 of the Agreement.

*Article 2*

1. The financial contribution referred to in Article 7 of the Agreement shall be fixed at EUR 825 000 per year (comprising EUR 308 000 financial compensation, to be paid not later than 30 November each year, and EUR 517 000 for the measures referred to in Article 3 of this Protocol).

2. The financial contribution is to cover an annual catch of 11 000 tonnes of tuna in Malagasy waters; if the tuna caught by Community vessels in Madagascar's fishing zone exceeds this weight, the amount referred to above shall be proportionately increased.

3. The financial compensation shall be paid into an account to be indicated by the Malagasy authorities, in the name of the Public Treasury.

*Article 3*

1. The measures set out below shall be financed from the financial contribution provided for in Article 2(1), to the amount of EUR 517 000 per year, broken down as follows:

- (a) EUR 80 000 for Malagasy scientific programmes to improve knowledge of fisheries resources and ensure sustainable management thereof.
- (b) At the request of the Government of Madagascar, this contribution may take the form of assistance with the costs of international meetings to improve knowledge of those species and the management of fishery resources.
- (c) EUR 267 000 towards a system of fisheries monitoring, checks and surveillance.
- (d) EUR 100 000 for the financing of study grants and training courses and for the training of sailors.
- (e) EUR 70 000 for assistance in the development of traditional fisheries.

2. The amounts referred to at (a), (b) and (d) shall be made available to the Ministry responsible for fisheries no later than

30 November each year and paid into the bank accounts of the competent Malagasy authorities.

3. The amount referred to at (c) shall be made available to the Ministry responsible for fisheries and paid as it is used into the bank accounts indicated by it.

4. The competent Malagasy authorities shall send the Commission of the European Communities an annual report on the use of the funds allocated to the measures provided for in paragraph 1 and on the implementation of these measures and the results achieved not later than three months after the anniversary date of the Protocol. The Commission of the European Communities reserves the right to request additional information from the Ministry responsible for fisheries. In the light of the actual implementation of these measures and after consulting the competent Malagasy authorities in the Joint Committee, the Commission of the European Communities may review the payments concerned.

*Article 4*

Should the Community not make the payments referred to in Articles 2 and 3 of this Protocol, the Fisheries Agreement may be suspended.

*Article 5*

Where severe circumstances not attributable to natural phenomena prevent fishing activities in Madagascar's fishing zone, the European Community may suspend payment of the financial contribution following prior consultations, where possible, between the two Parties.

Payment of the financial contribution shall recommence once the situation returns to normal and following consultation between the two Parties confirming that the situation is likely to allow a return to normal fishing activities.

*Article 6*

The Annex to the Agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar is hereby repealed and replaced by the Annex to this Protocol.

*Article 7*

This Protocol shall enter into force on the date on which it is signed.

It shall apply from 21 May 2001.

## ANNEX

**CONDITIONS GOVERNING FISHING ACTIVITIES BY COMMUNITY VESSELS IN MADAGASCAR'S FISHING ZONE****1. Application for and issue of licences**

The procedure for applying for and issuing licences authorising Community vessels to fish in Malagasy waters shall be as follows.

(a) Through its representative in Madagascar, the Commission of the European Communities shall present to the Malagasy authorities:

- at least 20 days before the beginning of the desired period of validity, a licence application completed by the shipowner for each vessel for which authorisation to fish under the Agreement is requested;
- an annual application for prior authorisation to enter Madagascar's territorial waters; such authorisation shall be valid for the duration of the licence.

Licence applications must be made on the form provided by Madagascar for this purpose, in accordance with the specimen given in Appendix 1; they shall be accompanied by proof of payment of the advance due from the shipowner.

(b) Licences shall be issued for a specific vessel and shall not be transferable.

However, in the event of *force majeure*, a licence for one vessel may be replaced by a new licence for another vessel of similar characteristics should the Commission of the European Communities so request. The owner of the vessel being replaced shall return the cancelled licence to the Malagasy Ministry with responsibility for sea fisheries via the Delegation of the Commission of the European Communities in Madagascar.

The new licence shall indicate:

- the date of issue,
- the fact that it cancels and replaces the licence of the previous vessel.

The fee provided for in Article 5 of the Agreement shall not be due for the remaining period of validity.

(c) The Malagasy authorities shall send licences to the representative of the Commission of the European Communities in Madagascar.

(d) Licences must be kept on board at all times; however, on receipt of notification of payment of the advance sent to the Malagasy authorities by the Commission of the European Communities, vessels shall be entered on a list of vessels authorised to fish, which shall be sent to the Malagasy authorities responsible for fisheries inspection. A copy of the said licence may be obtained by fax pending arrival of the licence itself; that copy shall be kept on board.

(e) Owners of tuna boats must be represented by an agent in Madagascar.

(f) The Malagasy authorities shall give notice, before the Agreement enters into force, of the arrangements for payment of fees and advances, including information on bank accounts.

**2. Validity of licences and payment of fees**

(a) Notwithstanding Article 4(4) of the Agreement, licences shall be valid for one year. They shall be renewable.

(b) The fee shall be EUR 25 per tonne caught in waters under Malagasy jurisdiction. Licences shall be issued on advance payment to the Malagasy Treasury of an annual sum of EUR 2 500 per tuna seiner, EUR 1 500 per surface longliner of more than 150 GRT and EUR 1 100 per surface longliner of 150 GRT or less. These amounts correspond to the duty due for annual catches of 100 tonnes, 60 tonnes and 44 tonnes, respectively, in Madagascar's fishing zone.

**3. Statement of catch and statement of fees**

(a) Vessels authorised to fish in Madagascar's fishing zone under the Agreement shall notify their catch statistics to Madagascar's Fisheries Monitoring Centre through the Delegation of the Commission of the European Communities in Madagascar, in accordance with the following procedure.

Tuna seiners and surface longliners shall complete a fishing form corresponding to the specimen given in Appendix 2 for each period spent fishing in Madagascar's fishing zone. The forms shall be sent to the competent authorities referred to above not later than 30 September each year.

The forms must be filled in legibly and signed by the captain of the ship. In addition, they must be completed by all vessels which have obtained a licence, even if they have not fished.

- (b) In the event of failure to comply with these provisions, the Malagasy authorities reserve the right to suspend the licence of the offending vessel until the formalities have been completed. In such cases, the Delegation of the Commission of the European Communities in Madagascar shall be informed without delay.
- (c) At the end of each calendar year, the Commission of the European Communities shall draw up a final statement of the fees due in respect of the fishing year, taking into account the advances and fees indicated at 2(b) above. This statement shall be drawn up using the catch statement based on the declarations of catch drawn up by each shipowner. The statement of catch must be confirmed by the scientific institutes competent for verifying catch statistics such as the IRD (Office of Research and Development), IEO (Spanish Oceanographical Institute) or USTA (Antsiranana Tuna Statistical Unit).

The final statement of fees drawn up by the Commission of the European Communities shall be forwarded to Madagascar's Fisheries Monitoring Centre for confirmation. The Monitoring Centre shall have 30 days in which to notify any reaction.

After that time, the statement of fees shall be forwarded to the shipowners.

In the event of a dispute, the Parties shall hold consultations to establish the final statement, which shall then be notified to the shipowners.

Shipowners shall make any additional payments to the Malagasy fisheries authorities within 30 days of notification of the final statement.

However, where the statement of fees is less than the advance referred to at 2(b) above, the balance shall not be recoverable by the shipowner.

#### 4. Communications

Captains shall notify the Malagasy Fisheries Monitoring Centre, at least 24 hours in advance, by radio (dual frequency 8755 Tx 8231 Rx USB) or fax (261-20-22 49014), of their intention to bring their vessel into or take it out of Madagascar's fishing zone.

When notifying their intention to leave, they shall also notify the estimated catches taken during the time their vessel has spent in Madagascar's fishing zone.

Radio transmissions must be made during the working hours and days applicable in Madagascar.

#### 5. Observers

At the request of the Ministry responsible for fisheries, tuna seiners and surface longliners shall take an observer on board, who shall be treated as an officer. The time spent on board by observers shall be fixed by the Ministry responsible for fisheries, but, as a general rule, it should not exceed the time required to carry out their duties. The observers' specific activities are set out in Appendix 3.

The conditions governing their embarkation shall be determined by the Ministry responsible for fisheries, represented by the Fisheries Monitoring Centre.

Shipowners or their agents shall inform the Fisheries Monitoring Centre at least two days before their vessel arrives in a Malagasy port.

Shipowners shall, via their agents, make a payment of EUR 17 to the Malagasy Government (Fisheries Monitoring Centre) for each day spent by an observer on board a tuna seiner or surface longliner.

The cost of approaching the Malagasy port of embarkation shall be borne by the Malagasy Government. The cost of taking observers aboard and putting them ashore outside Madagascar shall be borne by the shipowner.

Observers may be taken on board up to 30 % of Community vessels operating in Madagascar's fishing zone. The time spent by observers on board shall depend on the length of the trip in Madagascar's fishing zone.

If the observer is not present at the time and place agreed and during the twelve hours following the time agreed, the shipowner shall be automatically absolved of the obligation to take the observer on board. If the vessel is delayed in getting underway, the shipowner shall bear the subsistence costs of the observer until the time of actual embarkation.

#### 6. Employment of seamen

At least 40 Malagasy seamen shall be employed by the fleet of tuna seiners and surface longliners for the duration of the fishing season in Madagascar's fishing zone. The wages of the seamen employed shall be agreed by the shipowners' agents and the seamen concerned. The wages must cover social security.

The employment contracts for the seamen shall be concluded by the agents and the seamen concerned.

If the fleet of tuna seiners and surface longliners is unable to employ 40 seamen, the shipowners shall be obliged to pay compensation for the seamen not employed of an amount to be set by the Joint Committee provided for in Article 9 of the Agreement for the duration of the fishing season. That sum is to be used to train Malagasy fishermen and shall be paid into an account whose number shall be notified to the agents.

#### **7. Fishing zones**

Community vessels shall have access to all waters under Madagascar's jurisdiction outside the coastal zone of twelve nautical miles.

Should the Ministry responsible for fisheries decide to install experimental fish concentration devices (FCDs), they shall inform the Commission of the European Communities and the agents of the shipowners concerned, indicating the geographical position of the devices.

From the 30th day after such notification, it shall be forbidden to approach within 1.5 nautical miles of the FCDs. The dismantling of any FCD must be immediately notified to the same parties.

#### **8. Use of port facilities**

The Malagasy authorities and the beneficiaries of the Agreement shall lay down the conditions for using port facilities.

#### **9. Inspection and monitoring of fishing activities**

Vessels holding a licence shall permit and assist any officials duly authorised by the Republic of Madagascar responsible for inspecting and monitoring fishing activities to board the ship and carry out their duties.

Community vessels fishing under to the Agreement shall be monitored by satellite under conditions agreed by the Parties.

#### **10. Transshipment**

When fish are transhipped, freezer tuna seiners shall hand over the fish which they do not intend to keep to a company or body nominated by the Malagasy authorities in charge of fisheries.

#### **11. Provision of services**

Community vessel owners operating in the Malagasy fishing zone shall practise positive discrimination in favour of Malagasy services (careening, handling, fuel-oil bunkering, consignment, etc.).

#### **12. Procedure in case of boarding**

##### **(a) Transmission of information**

The Malagasy Ministry responsible for fisheries shall inform the Delegation and the flag State, within 48 hours, of the boarding of any fishing vessel flying the flag of a Member State of the Community fishing under the Fisheries Agreement in Madagascar's fishing zone and shall transmit a brief report of the circumstances and reasons leading to such boarding. The Delegation and the flag State shall be kept informed of any proceedings initiated and penalties imposed.

##### **(b) Settlement of boarding**

In accordance with the law on fisheries and the relevant regulations, infringements may be settled:

- either by composition, in which case the amount of the fine shall be determined in accordance with Malagasy legislation laying down minimum and maximum figures;
- or by legal proceedings, if no composition is possible, in accordance with Malagasy law.

##### **(c) The vessel shall be released and its crew authorised to leave the port:**

- either as soon as the obligations imposed by the composition procedure have been completed on presentation of the receipt for the settlement, or
  - on presentation of proof that a bank security has been lodged, pending completion of the legal proceedings.
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Appendix 1

APPLICATION FORM FOR A FISHING LICENCE

- 1. New application or renewal:
- 2. Name of vessel and flag: .....
- 3. Period of validity: from ..... to .....
- 4. Name of shipowner: .....
- 5. Address of shipowner: .....  
.....
- 6. Name and address of charterer (if different from 4 and 5): .....  
.....
- 7. Name and address of official representative in Madagascar: .....  
.....
- 8. Name of the captain of the vessel: .....
- 9. Type of vessel: .....
- 10. Registration number: .....
- 11. Vessel's external identification: .....
- 12. Port and country of registration: .....
- 13. Overall length and breadth of vessel: .....
- 14. Gross and net tonnage: .....
- 15. Make and power of main engine: .....
- 16. Freezer capacity (t/d): .....
- 17. Hold capacity (m³): .....
- 18. Radio call sign and frequency: .....
- 19. Other communications equipment (telex, fax): .....
- 20. Fishing appliances: .....  
.....
- 21. Number of crew broken down by nationality: .....  
.....
- 22. Number of fishing licence (in the case of a renewal, attach licence): .....  
.....

I, the undersigned, ....., certify that the above information is correct and undertake to comply therewith.

.....  
(Stamp and signature of shipowner)

.....  
(Date)





*Appendix 3***EMBARKATION OF OBSERVERS**

Tuna vessels and surface longliners authorised to fish shall take on board an observer of the Fisheries Monitoring Centre holding a professional identity card and a seaman's licence. The time spent on board by observers shall be fixed by the Fisheries Monitoring Centre, but, as a general rule, it should not exceed the time required to carry out their duties.

While on board, observers shall:

1. observe the fishing activities of the vessels;
2. verify the position of vessels engaged in fishing operations;
3. perform biological sampling in the context of scientific programmes;
4. note the fishing gear used;
5. collect the catch data for the fishing zone during their time on board;
6. take all appropriate steps to ensure that the conditions under which they are taken on board and their presence on board do not interrupt or hamper fishing activities;
7. respect the material and equipment on board and the confidentiality of all documents belonging to the vessel;
8. draw up a report on the trip and send it to Madagascar's Fisheries Monitoring Centre, with a copy to the Delegation of the Commission of the European Communities.

To that end, the shipowners and captains of fishing vessels must:

1. allow observers to board the vessel to carry out their tasks and remain on board the vessel during the period specified in the request;
  2. provide a suitable working environment, including a desk with adequate lighting;
  3. supply the information they possess on fishing activities in Madagascar's fishing zone;
  4. give the vessel's position (longitude and latitude);
  5. send or receive messages, or allow messages to be sent and received, using the means of communication on board the vessel;
  6. provide access to all parts of the vessel where fishing, processing and storage take place;
  7. allow sampling;
  8. provide suitable storage facilities for samples, without prejudice to the vessel's storage capacity;
  9. provide assistance in examining and measuring the fishing gear on board the vessel;
  10. allow the observer to remove the samples and documents obtained during their stay on board;
  11. where the observer remains on board the vessel for more than four hours at a time, provide food and accommodation on the same terms as the vessels' officers.
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