

Protocol setting out the fishing opportunities and financial compensation provided for in the Agreement between the European Economic Community and the Republic of Madagascar on fishing off Madagascar for the period from 21 May 1998 to 20 May 2001

*Official Journal L 295, 04/11/1998 p. 0034 - 0039*

Article 1

Pursuant to Article 2 of the Agreement, licences authorising fishing in Madagascar's fishing zone shall be granted to 45 freezer tuna seiners and 30 surface longliners for a period of three years beginning on 21 May 1998.

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

The amount of the contribution referred to in Article 7 of the Agreement shall be fixed at ECU 304 000 for each of the three years of the Protocol, the first instalment to be paid not later than 30 October 1998 and the two remaining instalments before 20 May 1999 and 20 May 2000. This amount is to cover an annual catch of 9 500 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 increased by ECU 50 per additional tonne.

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. During the period referred to in Article 1, the Community shall contribute an additional ECU 1 368 000 to financing the measures described below, allocated as follows:

(1) ECU 168 000 for Malagasy scientific programmes to improve knowledge of fisheries resources and ensure sustainable management thereof.

At the request of the Government of Madagascar, this contribution may take the form of a contribution to the cost of international meetings to improve knowledge and the management of fishery resources;

(2) ECU 600 000 towards a system of fisheries monitoring, checks and surveillance;

(3) ECU 300 000 for the financing of study grants and training courses;

(4) ECU 125 000 for assistance in the development of traditional fisheries;

(5) ECU 175 000 for the Ecole Nationale de l'Enseignement Maritime de Majunga (ENEM).

2. The competent Malagasy authorities shall send the Commission a detailed 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 and to review the payments concerned in the light of the actual implementation of the measures.

3. The amounts allocated to the measures referred to in paragraph 1 shall be made available to the Ministry responsible for fisheries and paid as they are used into the bank accounts indicated by it.

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

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

## Article 6

This Protocol shall enter into force on the date of its signature.  
It shall apply from 21 May 1998.

## ANNEX

### CONDITIONS GOVERNING FISHING ACTIVITIES BY COMMUNITY VESSELS IN MADAGASCAR'S FISHING ZONE

#### 1. Application for and issue of licences

The procedure for applications for, and the issue of, licenses authorising Community vessels to fish in Malagasy water shall be as follows:

(a) through its representative in Madagascar, the European Commission 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 in respect of each vessel for which authority 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) Licences shall be valid for one year. They shall be renewable.

(b) The fee shall be ECU 20 per tonne caught in waters under Malagasy jurisdiction. Licences shall be issued on advance payment to the Malagasy Treasury of an annual sum of ECU 2 000 per tuna seiner, ECU 1 100 per surface longliner of more than 150 GRT and ECU 800 per surface longliner of 150 GRT or less.

(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 on the basis of catch declarations completed by each shipowner and confirmed by the scientific institutes competent for verifying catch statistics such as Orstom (Office of Overseas Scientific and Technical Research), IEO (Spanish Oceanographic Institute) or USTA (Antsiranana Tuna Statistical Unit) and transmitted by the Member States of the European Community. The statement shall simultaneously be notified to the Malagasy sea fisheries authorities and 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 final statement is less than the advance referred to at (b), the balance shall not be recoverable by the shipowner.

## 3. Declaration of catches

(a) Vessels authorised to fish in Madagascar's fishing zone under the Agreement shall notify their catch statistics to the sea fisheries authorities, with a copy for 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 in the first paragraph not later than 30 September each year.

Forms must be completed legibly and be signed by the master of the vessel. 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.

## 4. Communication of information

The captain shall give notification, at least 24 hours in advance, by radio, telex or fax to the coastal radio station at Antsiranana, and by fax (No (261-20) 224 16 55) to the Ministry responsible for fisheries, of his intention to bring his vessel into or take it out of Madagascar's fishing zone. When notifying his intention to leave, he shall also notify the estimated catches taken during the time his vessel has spent in Madagascar's fishing zone.

The radio frequency and the telex and fax numbers to be used will be indicated on the licence.

## 5. Observers

At the request of the Malagasy authorities, tuna seiners and surface longliners shall take an observer on board who shall be treated as an officer. The time spent on board by the observer shall be fixed by the Malagasy authorities, but, as a general rule, it should not exceed the time required to carry out his duties. Once on board, the observer will:

- observe the fishing activities of the vessels,
- verify the position of vessels engaged in fishing operations,
- perform biological sampling in the context of scientific programmes,
- note the fishing gear used,

- verify the catch data for Madagascar's zone recorded in the logbook.

While on board, the observer:

- must take all appropriate steps to ensure that the conditions under which he is taken on board and his presence on board do not interrupt or hamper fishing activities,
- must respect the material and equipment on board and the confidentiality of all documents belonging to the said vessel.

The conditions governing his embarkation shall be agreed between the shipowner or his agent and the Malagasy authorities.

The shipowner shall, via his agent, make a payment of ECU 10 to the Malagasy Government for each day spent by an observer on board a tuna seiner or surface longliner. If the shipowner is unable to take the observer aboard and put him off at a Malagasy port agreed by common accord with the Malagasy authorities, the shipowner shall bear the cost of taking the observer aboard and putting him ashore.

If the observer is not present at the time and place agreed and during the 12 hours following the time agreed, the shipowner shall be automatically absolved of his obligation to take the observer on board.

#### 6. Employment of seamen

At least six Malagasy seamen shall be employed by the fleet of tuna seiners and surface longliners for the duration of the fishing season.

In the event that these seamen are not so employed, the shipowners shall pay the full amount of the wages of the seamen or seaman not employed; this sum is to be used for the training of Malagasy fishermen and shall be paid into an account whose number shall be notified to the agents.

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

#### 7. Fishing zones

Community vessels shall have access to all waters under Madagascar's jurisdiction outside the coastal zone of 10 nautical miles.

Should the Malagasy authorities 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 authorities of Madagascar 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 Malagasy official responsible for the inspection and monitoring of fishing activities to board the ship and carry out his duties.

#### 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. 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.

## Appendix 1

### APPLICATION FORM FOR A FISHING LICENCE

#### START OF GRAPHIC

1. New application or renewal: .....
2. Name and flag of vessel: .....
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 captain: .....
9. Type of vessel: .....
10. Registration number: .....
11. External identification of vessel: .....
12. Port and country of registration: .....
13. Overall length and breadth of vessel: .....
14. Gross and net tonnage of vessel: .....
15. Make and power of main engine: .....
16. Freezer capacity (t/d): .....
17. Hold capacity (m<sup>3</sup>): .....
18. Radio call sign: .....
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 2

GRAPHIC missing