

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS

concerning the provisional application of the Protocol setting out, for the period from 1 June 2002 to 31 May 2005, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Democratic Republic of São Tomé and Príncipe on fishing off the coast of São Tomé and Príncipe

A. Letter from the Government of the Democratic Republic of São Tomé and Príncipe

Sir,

With reference to the Protocol initialled on 14 February 2002 at São Tomé setting out the fishing opportunities and financial contribution for the period from 1 June 2002 to 31 May 2005, I have the honour to inform you that the Government of the Democratic Republic of São Tomé and Príncipe is prepared to apply the Protocol on a provisional basis with effect from 1 June 2002, pending its entry into force in accordance with Article 9 of the said Protocol, provided the European Community is disposed to do the same.

This is on the understanding that the first instalment of the financial compensation specified in Article 2 of the Protocol is paid by 31 December 2002.

I should be obliged if you would confirm the European Community's agreement to such provisional application.

Please accept, Sir, the assurance of my highest consideration,

*For the Government of the Democratic Republic of São
Tomé and Príncipe*

B. Letter from the European Community

Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

'With reference to the Protocol initialled on 14 February 2002 at São Tomé setting out the fishing opportunities and financial contribution for the period from 1 June 2002 to 31 May 2005, I have the honour to inform you that the Government of the Democratic Republic of São Tomé and Príncipe is prepared to apply the Protocol on a provisional basis with effect from 1 June 2002, pending its entry into force in accordance with Article 9 of the said Protocol, provided the European Community is disposed to do the same.

This is on the understanding that the first instalment of the financial compensation specified in Article 2 of the Protocol is paid by 31 December 2002.

I should be obliged if you would confirm the European Community's agreement to such provisional application.'

I have the honour to confirm the Community's agreement to such provisional application of the Protocol.

Please accept, Sir, the assurance of my highest consideration,

On behalf of the Council of the European Union

PROTOCOL

setting out, for the period from 1 June 2002 to 31 May 2005, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Government of the Democratic Republic of São Tomé and Príncipe on fishing off the coast of São Tomé and Príncipe

Article 1

From 1 June 2002 and for a period of three years, fishing opportunities pursuant to Article 2 of the Agreement shall be as follows:

— freezer tuna seiners:	36 vessels
— pole-and-line tuna vessels:	2 vessels
— surface longliners:	25 vessels

For deep-water fishing vessels targeting crab, provision shall be made for a 12-month period of experimental fishing starting from the provisional date of application of this Protocol (1 June 2002 — 31 May 2003). During this 12-month period, three vessels under 250 GRT may fish simultaneously in São Tomé and Príncipe's exclusive economic zone (EEZ).

Article 2

The financial contribution referred to in Article 6 of the Agreement shall be fixed at:

EUR 925 000 in the first year, comprising EUR 555 000 financial compensation and EUR 370 000 for the measures referred to in Article 4 of this Protocol. The Community shall also provide financing of EUR 50 000, in the first year, for an evaluation study on deep-water crab;

EUR 637 500 in the second year, comprising EUR 382 500 financial compensation and EUR 255 000 for the measures referred to in Article 4 of this Protocol;

EUR 637 500 in the third year, comprising EUR 382 500 financial compensation and EUR 255 000 for the measures referred to in Article 4 of this Protocol.

For tuna fishing the financial contribution shall cover an annual catch of 8 500 tonnes in São Tomé and Príncipe waters. If the tuna caught each year by Community vessels in São Tomé and Príncipe's exclusive economic zone exceeds this weight, the amount referred to above shall be proportionately increased at the rate of EUR 75 per additional tonne.

The annual financial compensation shall be payable not later than 31 December 2002, and not later than 31 May 2003 and 2004. Its use shall be the sole responsibility of the Government of the Democratic Republic of São Tomé and Príncipe. It shall be paid to the Public Treasury of São Tomé and Príncipe.

Article 3

The two parties, meeting within the framework of the Joint Committee provided for in Article 8 of the Agreement, shall consult on the basis of the results of the experimental fishing mentioned above and in the light of the best available scientific

advice to include, where appropriate, sustainable levels of fishing opportunities for deep-water fishing vessels targeting crab and the financial contribution applicable from the second year of application of the Protocol. These consultations should take place before the end of the first year.

Article 4

1. The measures set out below shall be financed from the financial contribution for the first year, to the amount of EUR 370 000 per year, broken down as follows:

- (a) financing of scientific and technical programmes to promote better understanding of fisheries and living resources in the São Tomé and Príncipe fishing zone: EUR 50 000,
- (b) stepping up surveillance, inspection and checks in the fishing zones: EUR 50 000,
- (c) institutional support to the administrative department responsible for fisheries: EUR 50 000,
- (d) study grants and practical training courses in the various scientific, technical and economic fields linked to fishing: EUR 40 000,
- (e) São Tomé and Príncipe's contributions to international fisheries organisations and expenses of São Tomé and Príncipe delegates participating in international meetings concerning fisheries: EUR 35 000,
- (f) aid for small-scale fishing: EUR 145 000.

2. The measures set out below shall be financed from the financial contribution for the second and third years, to the amount of EUR 255 000 per year, broken down as follows:

- (a) financing of scientific and technical programmes to promote better understanding of fisheries and living resources in the São Tomé and Príncipe fishing zone: EUR 40 000,
- (b) stepping up surveillance, inspection and checks in the fishing zones: EUR 40 000,
- (c) institutional support to the administrative department responsible for fisheries: EUR 40 000,
- (d) study grants and practical training courses in the various scientific, technical and economic fields linked to fishing: EUR 30 000,
- (e) São Tomé and Príncipe's contributions to international fisheries organisations and expenses of São Tomé and Príncipe delegates participating in international meetings concerning fisheries: EUR 35 000,
- (f) aid for small-scale fishing: EUR 70 000.

The measures and the annual amounts allocated thereto shall be decided on by the São Tomé and Príncipe Ministry responsible for fisheries, which shall inform the Commission thereof.

The annual amounts, with the exception of those referred to at (d) and (e), shall be paid into an account designated by the São Tomé and Príncipe Ministry responsible for fisheries and used under the terms of a protocol to be negotiated with the Public Treasury no later than 31 December 2002, 31 May 2003 and 31 May 2004 according to the annual schedule for their use. The amounts referred to at (d) and (e) shall be paid as they are used.

The São Tomé and Príncipe Ministry responsible for fisheries shall transmit a detailed annual report on the implementation of these measures and the results achieved to the Delegation of the European Commission responsible for São Tomé and Príncipe, no later than three months after the anniversary date of the Protocol. The Commission reserves the right to request additional information on these results from the São Tomé and Príncipe Ministry responsible for fisheries and, following consultation with the São Tomé and Príncipe authorities within the framework of meetings of the Joint Committee provided for in Article 8 of the Agreement, to review the payments concerned in the light of the actual implementation of the measures.

Article 5

Should the Community fail to make the payments provided for in Articles 2 and 4, the application of this Protocol may be suspended.

Article 6

A joint scientific meeting shall be held annually to evaluate periodically within the Joint Committee the state of crab resources. Based on the findings, the fishing opportunities laid

down in Article 1 of this Protocol and the financial contribution laid down in Article 2 may be adjusted after agreement between the two parties meeting within the framework of the Joint Committee.

Article 7

Should a fundamental change in circumstances prevent fishing in São Tomé and Príncipe's exclusive economic zone, the European Community may suspend payment of the financial contribution following prior consultation, if possible, between the two parties in the Joint Committee.

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

Article 8

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

Article 9

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

It shall apply from 1 June 2002.

ANNEX

CONDITIONS GOVERNING FISHING BY COMMUNITY VESSELS IN THE SÃO TOMÉ AND PRÍNCIPE FISHING ZONE**1. APPLICATION FOR AND ISSUE OF LICENCES**

The procedure for applications for, and issue of, the licences referred to in Article 4 of the Agreement shall be as follows.

The relevant Community authorities shall present to the São Tomé and Príncipe Ministry responsible for fisheries, via the Delegation of the Commission responsible for São Tomé and Príncipe, an application for each vessel that wishes to fish under the Agreement, at least 20 days before the date of commencement of the period of validity requested.

The applications shall be made on the forms provided for that purpose by the Government of the Democratic Republic of São Tomé and Príncipe, a specimen of which is attached hereto (Appendix 1).

Licences shall be issued by the São Tomé and Príncipe authorities within 20 days of submission of the application to the shipowners or their representatives via the Delegation of the Commission responsible for São Tomé and Príncipe.

Licences shall be issued for specific vessels and shall not be transferable. However, at the request of the Commission, a vessel's licence may, and where *force majeure* is proved, shall, be replaced by a new licence for another vessel whose features are similar to those of the first vessel. The owner of the first vessel shall return the cancelled licence to the São Tomé and Príncipe Ministry responsible for fisheries via the Delegation of the Commission responsible for São Tomé and Príncipe.

The new licence shall indicate:

- the date of issue,
- the fact that it replaces the licence of the previous vessel for the remaining period of validity.

In this case, no new one-off payment as laid down in points 2 and 4 shall be due.

The licence must be kept on board at all times; however, on receipt of notification of payment of the advance sent to the São Tomé and Príncipe authorities by the Commission, the vessel shall be entered on a list of vessels authorised to fish, which shall be sent to the São Tomé and Príncipe authorities responsibilities 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.

2. PROVISIONS APPLICABLE TO TUNA SEINERS, POLE-AND-LINE TUNA VESSELS AND SURFACE LONGLINERS

Licences shall be valid for one year. They shall be renewable.

The fees provided for in Article 4 of the Agreement shall be set at EUR 25 per tonne caught in the São Tomé and Príncipe fishing zone.

The competent authorities of São Tomé and Príncipe shall communicate the detailed rules for payment of the fees, in particular the bank accounts and currencies to be used.

Licences shall be issued following payment into an account designated by the São Tomé and Príncipe Ministry responsible for fisheries to be used under the terms of a protocol to be negotiated with the Public Treasury of a one-off payment of EUR 3 750 per year for each tuna seiner, EUR 625 per year for each pole-and-line tuna vessel, EUR 1 375 per year for each surface longliner, equivalent to the fees for:

- 150 t of tuna caught per year in the case of tuna seiners,
- 25 t of tuna caught per year in the case of pole-and-line tuna vessels,
- 55 t of tuna caught per year in the case of surface longliners.

3. STATEMENT OF CATCH AND STATEMENT OF FEES DUE FROM OWNERS OF TUNA SEINERS, POLE-AND-LINE TUNA VESSELS AND SURFACE LONGLINERS

A fishing log in accordance with the ICCAT model in Appendix 2 shall be kept on vessels for each fishing period spent in São Tomé and Príncipe waters. It shall be filled in even when no catches are made.

The words 'Outside São Tomé and Príncipe's EEZ' shall be entered in the abovementioned logbook in respect of periods during which the said vessels are not in São Tomé and Príncipe waters.

The forms, which must be legible and signed by the captains or their representatives, shall be sent within 45 days of the end of fishing activities in São Tomé and Príncipe's exclusive economic zone to the São Tomé and Príncipe Ministry responsible for fisheries, via the Delegation of the Commission responsible for São Tomé and Príncipe, and as soon as possible, for processing, to the Institut de Recherche pour le Développement (IRD), the Instituto Español de Oceanografía (IEO) or the Instituto Português de Investigação Marítima (IPIMAR).

If these provisions are not complied with, the São Tomé and Príncipe Ministry responsible for fisheries reserves the right to suspend the licence of the offending vessel until these formalities have been carried out and to apply the penalties provided for under national law. In such cases, the Delegation of the Commission responsible for São Tomé and Príncipe shall be informed without delay.

Member States shall inform the Commission before 31 July each year of the tonnages caught during the past year, as confirmed by the scientific institutes. On the basis of those figures the Commission shall draw up the statement of fees due in respect of the fishing year, which it shall then send to the São Tomé and Príncipe Ministry responsible for fisheries.

Shipowners shall receive notification of the statement drawn up by the Commission by 30 September at the latest, and shall have 30 days in which to meet their financial obligations. This payment shall be made by the shipowners to an account designated by the São Tomé and Príncipe Ministry responsible for fisheries to be used under the terms of a protocol to be negotiated with the Public Treasury. In cases where the amount payable in respect of actual fishing operations is less than the advance payment, shipowners cannot recover the balance.

4. PROVISIONS APPLICABLE TO DEEP-WATER FISHING VESSELS TARGETING CRAB

- (a) Licences issued to deep-water fishing vessels targeting crab shall be valid for three months. They shall be renewable.
- (b) The quarterly fee shall be EUR 42 per GRT per vessel.

5. STATEMENT OF CATCH FROM OWNERS OF DEEP-WATER FISHING VESSELS TARGETING CRAB

Deep-water fishing vessels targeting crab authorised to fish in São Tomé and Príncipe's exclusive economic zone under the Agreement shall notify their catch statistics to the São Tomé and Príncipe Ministry responsible for fisheries through the Delegation of the Commission responsible for São Tomé and Príncipe using the form given in Appendix 3. These statements shall be monthly and must be communicated at least once every quarter.

6. INSPECTION AND MONITORING

Community vessels fishing in the São Tomé and Príncipe fishing zone shall permit and facilitate the boarding and fulfilment of the tasks of São Tomé and Príncipe officials responsible for the inspection and monitoring of fishing activities. These officials should not remain on board any longer than the time required to verify catches by sampling and carry out any other inspections relating to fishing activities.

7. OBSERVERS

At the request of the São Tomé and Príncipe authorities, tuna seiners and surface longliners shall take an observer on board who shall be treated as an officer. Deep-water fishing vessels targeting crab shall systematically take an observer on board. That observer shall be treated as an officer. The time spent on board by the observer shall be fixed by the São Tomé and Príncipe authorities but, as a general rule, it should not exceed the time required to carry out his duties. Once on board, observers shall:

- 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 the São Tomé and Príncipe zone recorded in the logbook.

While on board, observers shall:

- 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,
- respect the material and equipment on board and the confidentiality of all documents belonging to the said vessel,
- draw up an activity report to be transmitted to the competent São Tomé and Príncipe authorities and copied to the Delegation of the Commission responsible for São Tomé and Príncipe. For deep-water vessels targeting crab, this report shall include an interim statement of catches taken in the exclusive economic zone and entered in the logbook. This interim statement must be submitted before the licence is issued for the following period.

The conditions under which observers are taken on board, which should neither interrupt nor hinder the fishing activities shall be agreed between the shipowner or his agent and the São Tomé and Príncipe authorities.

The shipowner shall, via his agent, make a payment of EUR 10 to the Government of São Tomé and Príncipe for each day spent by an observer on board a tuna seiner, surface longliner or deep-water fishing vessel targeting crab as a contribution to the cost of the observer on board.

If the shipowner is unable to take the observer on board and put him off at a São Tomé and Príncipe port agreed by common accord with that country's authorities, the shipowner shall bear the cost of taking the observer on board 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.

The salary and social contributions of observers shall be borne by the competent São Tomé and Príncipe authorities.

8. FISHING ZONES

The tuna vessels and surface longliners referred to in Article 1 of the Protocol shall be authorised to engage in fishing activities in the waters beyond 12 nautical miles from the coast of each island.

The deep-water fishing vessels targeting crab referred to in Article 1 of the Protocol shall be authorised to engage in fishing activities in the waters from the 650 isobath.

Without exception, all fishing activity in the zone destined for joint exploitation by São Tomé and Príncipe and Nigeria, delimited by the coordinates set out in Appendix 4, shall be prohibited.

9. ENTERING AND LEAVING THE ZONE

Vessels shall notify the coastal radio station and the São Tomé and Príncipe Ministry responsible for fisheries of their intention to enter or leave São Tomé and Príncipe's fishing zone at least 24 hours in advance (by telephone +239-12-22091, fax +239-12-22828, or e-mail dpescas1@cstome.net).

When notifying their departure, all vessels shall also notify the estimated catches taken during the time they have spent in São Tomé and Príncipe's fishing zone. This information should preferably be communicated by fax or, for vessels not equipped with fax, by radio.

A vessel found to be fishing without having informed the São Tomé and Príncipe Ministry responsible for fisheries shall be regarded as a vessel without a licence.

Vessels shall also be informed of the fax and telephone numbers and e-mail address when the fishing licence is issued.

The São Tomé and Príncipe Ministry responsible for fisheries and the shipowners shall keep a copy of fax communications or a recording of radio communications until both parties have agreed to the final statement of fees due referred to in point 3.

10. BY-CATCHES

Tuna seiners shall make any by-catches available to the São Tomé and Príncipe Directorate for Fisheries, which will take charge of recovering and landing them.

11. SIGNING-ON OF SEAMEN

At the request of the São Tomé and Príncipe authorities, the tuna seiner fleet shall take on board six São Tomé and Príncipe seamen for the duration of the fishing season. No vessel may take more than one seaman on board.

The conditions of employment and remuneration shall be fixed by mutual agreement between the shipowners and representatives of the seamen.

Should the fleet of tuna seiners not take on board six seamen, shipowners shall be obliged to pay compensation for the seamen not taken on board, the level of which shall be fixed by the two parties and shall correspond to the duration of the fishing season.

That sum shall be used for the training of seamen/fishermen in São Tomé and Príncipe and shall be paid into an account specified by the São Tomé and Príncipe Ministry responsible for fisheries.

12. STANDARDS

The international standards on tuna fishing as recommended by ICCAT shall apply.

13. USE OF SERVICES

Community vessels shall, wherever possible, procure the supplies and services they require in São Tomé and Príncipe ports.

14. PROCEDURES IN THE CASE OF BOARDING

(a) Transmission of information

The São Tomé and Príncipe Ministry responsible for fisheries shall inform the Delegation of the European Commission responsible for São Tomé and Príncipe and the flag State, within 48 hours, of the boarding of any Community fishing vessel fishing under the fisheries agreement in the São Tomé and Príncipe fishing zone and shall transmit a brief report of the circumstances and reasons leading to such boarding. The Delegation of the Commission responsible for São Tomé and Príncipe 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 out of court, in which case the amount of the fine shall be determined in accordance with São Tomé and Príncipe legislation laying down minimum and maximum figures,
- or by legal proceedings, if no out-of-court settlement was possible, in accordance with São Tomé and Príncipe law.

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

- either as soon as the obligations imposed by the out-of-court 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.

15. PROCEDURES IN THE CASE OF PENALTIES

The Delegation of the Commission responsible for São Tomé and Príncipe shall be informed of any application of penalties involving a fishing vessel flying the flag of a Member State of the Community fishing under the fisheries agreement between the European Economic Community and São Tomé and Príncipe and shall receive a brief report of the circumstances and reasons leading to such penalties.

Appendix 1

**DEMOCRATIC REPUBLIC OF SÃO TOMÉ AND PRÍNCIPE
MINISTRY OF AGRICULTURE AND FISHERIES****Fishing licence application No**

Name of applicant

Name and address of shipowner

Name and address of any representative in São Tomé and Príncipe

.....

Name of vessel

Type of vessel

Country of registry

Port and registration number

Vessel's external identification

Radio call sign and frequency

Length of vessel

Width of vessel

Engine type and horse power

Hold capacity

Minimum number of seamen

Type of fishing

Species targeted

.....

Period of validity requested:

'I certify that this information is correct.

I hereby declare that I know, approve and undertake to comply with the law governing sea fishing in the Democratic Republic of São Tomé and Príncipe and the applicable international law.'

Date

APPLICANT

Appendix 3

DEEP-WATER FISHING VESSELS TARGETING CRAB

Month _____ Year _____

Vessel name:	
Nationality (flag):	

Horse power:	
GRT:	

Fishing method:	
Port of unloading:	

Date	Fishing zone		Number of catches	Number of hours fishing	Species of fish							Totals	
	Longitude	Latitude											
1.													
2.													
3.													
4.													
5.													
6.													
7.													
8.													
9.													
10.													
11.													
12.													
13.													
14.													
15.													
16.													
17.													
18.													
19.													
20.													
21.													
22.													
23.													
24.													
25.													
26.													
27.													
28.													
29.													
30.													
31.													
TOTAL													

Appendix 4

Latitude				Longitude			
Degrees	Minutes	Seconds		Degrees	Minutes	Seconds	
03	02	22	N	07	07	31	E
02	50	00	N	07	25	52	E
02	42	38	N	07	36	25	E
02	20	59	N	06	52	45	E
01	40	12	N	05	57	54	E
01	09	17	N	04	51	38	E
01	13	15	N	04	41	27	E
01	21	29	N	04	24	14	E
01	31	39	N	04	06	55	E
01	42	50	N	03	50	23	E
01	55	18	N	03	34	33	E
01	58	53	N	03	53	40	E
02	02	59	N	04	15	11	E
02	05	10	N	04	24	56	E
02	10	44	N	04	47	58	E
02	15	53	N	05	06	03	E
02	19	30	N	05	17	11	E
02	22	49	N	05	26	57	E
02	26	21	N	05	36	20	E
02	30	08	N	05	45	22	E
02	33	37	N	05	52	58	E
02	36	38	N	05	59	00	E
02	45	18	N	06	15	57	E
02	50	18	N	06	26	41	E
02	51	29	N	06	29	27	E
02	52	23	N	06	31	46	E
02	54	46	N	06	38	07	E
03	00	24	N	06	56	58	E
03	01	19	N	07	01	07	E
03	01	27	N	07	01	46	E
03	01	44	N	07	03	07	E
03	02	22	N	07	07	31	E