



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.3.2004  
COM(2004) 217 final

Proposal for a

**COUNCIL DECISION**

**on the conclusion of the Agreement  
in the form of an Exchange of Letters concerning the provisional application of the  
Protocol defining for the period 1 January 2004 to 31 December 2006 the tuna fishing  
opportunities and the financial contribution provided for in the Agreement between the  
European Economic Community and the Democratic Republic of Madagascar on  
fishing off Madagascar**

(Presented by the Commission)

## **EXPLANATORY MEMORANDUM**

The Protocol to the Fisheries Agreement between the EC and the Democratic Republic of Madagascar expires on 21 May 2004. A new Protocol defining the technical and financial conditions governing the fishing activities of EC vessels in the waters of Madagascar during the period 1 January 2004 to 31 December 2006 was initialled by both parties on 8 September 2003.

The new Protocol grants fishing opportunities for 40 tuna seiners and 40 surface longliners.

The financial contribution is fixed at €825 000 per year, covering an annual catch of 11 000 tonnes of tuna in Malagasy waters. A large portion of this amount (€505 000 per year) is earmarked for targeted measures, such as scientific and training programmes, support for an inspection and surveillance system, assistance with the development of traditional fisheries, etc.

While it is in keeping with the tuna agreements concluded by the Community with certain Indian Ocean countries, this new Protocol reinforces the concept of responsible, sustainable fisheries and makes it possible to promote a partnership focussing on compliance with the laws and regulations in force under Madagascar's fisheries policy. New provisions have been introduced to this end: (i) the exclusivity clause, which prohibits the existence of private licences or other private arrangements outside the scope of the Agreement, (ii) a detailed programme for the targeted measures, including a schedule and the objectives to be achieved, (iii) VMS requirements to reinforce checks on vessels operating in Malagasy waters, including the transmission of hourly reports giving their course and speed, (iv) the social clause applicable to local seamen signed on by Community vessels, (v) a section on the penalties imposed for infringements of the Protocol and the Annex thereto, and (vi) a section on safeguarding the marine environment and protected species.

On this basis, the Commission proposes that the Council adopt by Decision the draft Agreement in the form of an Exchange of Letters on the provisional application of the new Protocol pending its definitive entry into force.

A proposal for a Council Regulation on the conclusion of the new Protocol is the subject of a separate procedure.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission<sup>1</sup>,

Whereas:

- (1) Under the Agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar<sup>2</sup>, the Community and the Republic of Madagascar conducted negotiations to determine the amendments or additions to be made to that Agreement at the end of the period of application of the Protocol thereto.
- (2) As a result of those negotiations, a new Protocol was initialled on 8 September 2003.
- (3) Under this Protocol, Community fishermen enjoy fishing opportunities in the waters falling within the sovereignty or jurisdiction of the Republic of Madagascar for the period from 1 January 2004 to 31 December 2006.
- (4) In order to guarantee the continuity of fishing activities by Community vessels, it is essential that the new Protocol be applied as soon as possible. For this reason, the two parties have initialled an Agreement in the form of an Exchange of Letters providing for the provisional application of the initialled Protocol as from 1 January 2004.
- (5) The Agreement in the form of an Exchange of Letters should be approved, subject to the conclusion of the Protocol by the Council.
- (6) 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,

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ L 73, 18.3.1986, p. 26.

HAS DECIDED AS FOLLOWS:

*Article 1*

The Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol defining, for the period 1 January 2004 to 31 December 2006, the tuna fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar is hereby approved on behalf of the Community.

The text of the Agreement in the form of an Exchange of Letters is attached to this Decision.

*Article 2*

The fishing opportunities provided for in the Protocol shall be allocated among the Member States as follows:

- (a) tuna seiners:
  - Spain: 22 vessels
  - France: 16 vessels
  - Italy : 2 vessels
- (b) surface longliners:
  - Spain: 24 vessels
  - France: 10 vessels
  - Portugal: 6 vessels

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

*Article 3*

Member States whose vessels fish 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>3</sup>.

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<sup>3</sup> OJ L 73, 15.3.2001, p. 8.

*Article 4*

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

Done at Brussels,

*For the Council  
The President*

## Agreement

### **in the form of an Exchange of Letters concerning the provisional application of the Protocol defining for the period 1 January 2004 to 31 December 2006 the tuna fishing opportunities and the financial contribution provided for in the Agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar**

A. Letter from the Government of Madagascar

Sir,

With reference to the Protocol initialled on 8 September 2003 in Antananarivo defining the tuna fishing opportunities and the financial contribution for the period 1 January 2004 to 31 December 2006, I have the honour to inform you that the Government of the Republic of Madagascar is prepared to apply this Protocol on a provisional basis with effect from 1 January 2004, pending its entry into force in accordance with Article 7 of the said Protocol, provided the Community is prepared to do likewise.

It is understood that, this being the case, the financial compensation provided for in Article 2 of the Protocol is to be paid before 30 September 2004.

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

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

For the Government of the Republic of Madagascar

B. Letter from the 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 8 September 2003 in Antananarivo defining the tuna fishing opportunities and the financial contribution for the period 1 January 2004 to 31 December 2006, I have the honour to inform you that the Government of the Republic of Madagascar is prepared to apply this Protocol on a provisional basis with effect from 1 January 2004, pending its entry into force in accordance with Article 7 of the said Protocol, provided the Community is prepared to do likewise.

It is understood that, this being the case, the financial compensation provided for in Article 2 of the Protocol is to be paid before 30 September 2004.

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

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

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

On behalf of the Council of the European Union

## **PROTOCOL**

### **defining for the period 1 January 2004 to 31 December 2006 the tuna fishing opportunities and the financial contribution provided for in the Agreement between the European Economic Community and the Democratic Republic of Madagascar on fishing off Madagascar**

#### *Article 1*

1. Under Article 2 of the Agreement, licences authorising fishing in the Malagasy fishing zone shall be granted to 40 freezer tuna seiners and 40 surface longliners for a period of three years beginning on 1 January 2004.

In addition, at the request of the Community, certain permits may be granted to other categories of fishing vessel under conditions to be defined within the Joint Committee referred to in Article 9 of the Agreement.

2. Vessels flying the flag of a Member State of the European Community may fish for tuna in Madagascar's fishing zone only if they are in possession of a fishing licence issued under this Protocol in accordance with the arrangements described in the Annex.

#### *Article 2*

1. The financial contribution referred to in Article 7 of the Agreement shall be fixed at €825 000 per year (comprising €320 000 in financial compensation, to be paid not later than 30 September for the first year and 30 April for the second and third years, and €505 000 for the measures referred to in Article 3 of this Protocol).

However, the financial compensation to be paid for the first year of application of the Protocol (1 January 2004 to 31 December 2004) shall be €196 385 following deduction of the amount already paid under the preceding Protocol in respect of the period 1 January 2004 to 20 May 2004.

2. The financial contribution shall cover an annual catch of 11 000 tonnes of tuna in Malagasy waters; if the tuna caught by Community vessels in the Malagasy fishing zone exceeds this weight, the amount referred to above shall be proportionately increased. However, the total amount of the financial contribution paid by the Community shall not be more than twice the amount indicated in paragraph 1.
3. The financial compensation shall be paid into an account opened with the Public Treasury, to be specified by the Malagasy authorities.

#### *Article 3*

1. In order to guarantee the development of sustainable, responsible fisheries, the two parties shall in their mutual interest encourage a partnership aimed at



promoting in particular: enhanced knowledge of fisheries resources and biological resources, fisheries inspection, development of non-industrial fishing, fishing communities and training.

2. From the financial contribution provided for in Article 2(1), the measures set out below shall be funded to the tune of €505 000 per year, broken down as follows:
  - (a) €90 000 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 assistance with expenses associated with international meetings to improve such knowledge, as well as management of fisheries resources.
  - (b) €267 000 towards a system of fisheries monitoring, inspection and surveillance.
  - (c) €60 000 for the financing of study grants and training courses and for the training of seamen.
  - (d) €68 000 for assistance with the development of traditional fisheries.
  - (e) €20 000 towards the management of observers.
3. The amounts referred to in points (a), (b), (d) and (e) shall be paid to the Ministry responsible for fisheries after a detailed annual programme, including a schedule and the objectives set for each of these targeted measures, has been presented to the European Commission and no later than 30 September 2004 for the first year and 30 April for the second and third years; they shall be paid into the bank accounts of the relevant Malagasy authorities. The annual programme must reach the European Commission by 31 July 2004 for the first year and by 28 February for the following years. However, for the first year, the programme must cover only the period 21 May 2004 to 31 December 2004.

The European Commission reserves the right to request the Ministry responsible for fisheries for any additional information which may be considered necessary.

4. The amounts referred to at (c) shall be disbursed to the Ministry responsible for fisheries and paid, as the funds are used, into the bank accounts indicated by it.
5. The relevant Malagasy authorities shall send the European Commission an annual report on the use of the funds allocated to the measures provided for in paragraph 2 above, and on the implementation of those measures and the results achieved, not later than 31 March of the following year. The European Commission reserves the right to request the Ministry responsible for fisheries for any additional information. In the light of the actual implementation of those measures and after consulting the relevant Malagasy authorities in the context of a meeting of the Joint Committee provided for in Article 9 of the Agreement, the European Commission may review the payments concerned.

#### *Article 4*

Should the European Community fail to make the payments provided for in Articles 2 and 3, Madagascar may suspend the application of this Protocol.

#### *Article 5*

If serious circumstances, with the exception of natural phenomena, prevent the exercise of fishing activities in Madagascar's fishing zone, payment of the financial contribution may be suspended by the European Community following prior consultations between the two parties.

Payment of the financial contribution shall be resumed as soon as normality is restored and after consultations between the two parties confirm that the situation is likely to permit a return to fishing activities.

The validity of the licences granted to Community vessels under Article 4 of the Agreement shall be extended by a period equal to the period during which fishing activities were suspended.

#### *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 of its signing.

It shall apply from 1 January 2004.

## ANNEX

### CONDITIONS GOVERNING TUNA-FISHING ACTIVITIES BY EUROPEAN COMMUNITY VESSELS IN THE MALAGASY FISHING ZONE

#### 1. LICENCE APPLICATION AND ISSUING FORMALITIES

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

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

- a licence application for each vessel, completed by owners wishing to fish under this Agreement, no later than 1 December preceding the year of validity of the licence.

By way of derogation from the above provision, vessel-owners who have not submitted a licence application prior to 1 December may do so during the calendar year under way no later than 30 days before the start of the fishing activities. In such cases, vessel owners shall pay the entire fees due for the full year in accordance with point 2(b).

- an annual application for prior authorisation to enter Malagasy territorial waters; such authorisation shall be valid for the duration of the licence.

Licence applications shall 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 chargeable to the vessel-owner.

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

However, at the request of the European Commission and in cases of *force majeure*, a vessel's licence shall be replaced by a new licence for another vessel whose features are similar to those of the vessel to be replaced. The owner of the vessel being replaced shall return the cancelled licence to the Malagasy Ministry responsible for sea fisheries via the European Commission Delegation in Madagascar.

The new licence shall indicate:

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

No fee as laid down in Article 5 of the Agreement shall be due for the unexpired period of validity.

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

- (d) Licences shall be kept on board at all times; however, on receipt of the advance payment notification sent by the European Commission to the Malagasy authorities, 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 vessels shall be represented by an agent in Madagascar.
- (f) Before the Protocol enters into force, the Malagasy authorities shall send the European Commission Delegation in Madagascar full details of the bank accounts to be used for the payment of fees and advances.

## **2. VALIDITY OF LICENCES AND PAYMENT OF FEES**

- (a) Notwithstanding Article 4(4) of the Agreement, licences shall be valid for a period of one calendar year, from 1 January to 31 December. They shall be renewable. However, for the first year of application of the Protocol (1 January 2004 to 31 December 2004), where on 1 January 2004 a vessel has a licence issued under the preceding Protocol which is due to expire on 20 May 2004, that licence shall remain valid until that date.
- (b) The fee shall be €25 per tonne caught in waters under Malagasy jurisdiction. Licences shall be issued in return for the advance payment to the Malagasy Treasury of an annual sum of €2 800 per tuna seiner, €1 750 per surface longliner of more than 150 GRT and €1 200 per surface longliner of 150 GRT or less. These advances correspond to the duties payable in respect of annual catches of 112 tonnes, 70 tonnes and 48 tonnes respectively in the Malagasy fishing zone.

However, for the first year of application of the Protocol (1 January 2004 to 31 December 2004), where on 1 January 2004 a vessel has a licence issued under the preceding Protocol which is due to expire on 20 May 2004, the advances for the unexpired period of that first year (21 May 2004 to 31 December 2004) shall be as follows:

- for tuna seiners: €1 720;
- for surface longliners of more than 150 GRT: €1 091;
- for surface longliners of 150 GRT or less: €735.

## **3. CATCH DECLARATION AND STATEMENT OF FEES**

- (a) Vessels authorised to fish in Madagascar's fishing zone under this Agreement shall send information about their catches to Madagascar's Fisheries Surveillance Centre through the European Commission Delegation 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 relevant authorities referred to above no later than 31 March of the year following the year for which the licences were valid.

Forms must be completed legibly and be signed by the skipper of the vessel. In addition, they must be completed by all vessels which have obtained a licence, even if they have not fished.

- (b) The statement of the fees due for the past calendar year shall be drawn up by the European Commission by 30 June of the year following the year for which the licences were valid, after deducting the advances and fees indicated in point 2(b) above. This statement of fees shall be drawn up using the catch statement based on the catch declarations made by each vessel-owner. The catch statement must be confirmed by the scientific institutes responsible for checking catch data in the Member States of the European Community, such as the Institut de Recherche pour le Développement (IRD), the Institut Français de Recherche et d'Exploitation de la Mer (IFREMER), the Instituto Español de Oceanografía (IEO), the Instituto Português de Investigação Marítima (IPIMAR) and the relevant Malagasy institute, the Antsiranana Tuna Statistical Unit (USTA).

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

After that time, the statement of fees shall be forwarded to the vessel-owners.

In the event of a dispute, the parties shall hold consultations within the Joint Committee provided for in Article 9 of the Agreement to establish the final statement of fees, which shall then be sent to the vessel-owners.

Vessel-owners shall make any additional payments to the Malagasy fisheries authorities within 30 days of notification of the final statement of fees.

Where the statement of fees is lower than the advance referred to in 2(b) above, the resulting balance shall not be reimbursed to the vessel-owner.

#### **4. COMMUNICATIONS**

Skippers shall notify Madagascar's Fisheries Surveillance Centre, at least three hours in advance, by radio (dual frequency 8755 Tx 8231 Rx USB), by fax (261 - 20 - 22 49014) or by e-mail ([csp-mprh@dts.mg](mailto:csp-mprh@dts.mg)) with confirmation, of their intention to bring their vessel into or take it out of Madagascar's fishing zone.

When giving notification of their intention to enter the fishing zone, they shall also report the estimated quantities of catches on board, even when no catches have been made.

Finally, when notifying their intention to leave, they shall report on the estimated catches taken during the time they spent in the Malagasy fishing zone.

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

These requirements shall also apply to Community fishing vessels intending to unload at any Malagasy port.

## **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 defined by the Ministry responsible for fisheries, represented by Madagascar's Fisheries Surveillance Centre.

Vessel-owners or their agents shall inform Madagascar's Fisheries Surveillance Centre at least two days in advance of their vessel's arrival in a Malagasy port with a view to taking the observer on board.

Vessel-owners shall, via their agents, make a payment of €20 to the Malagasy Government (Madagascar's Fisheries Surveillance Centre) for each day spent by each 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 on board and putting them ashore outside Madagascar shall be borne by the vessel-owners. Observers may be taken on board up to 30% of the Community vessels operating in Madagascar's fishing zone. The time spent by observers on board shall depend on the length of the trip in that zone. If a Community vessel fails to go to a Malagasy port to take an observer on board, embarkation shall be carried out using a patrol vessel of Madagascar's Fisheries Surveillance Centre.

The spot where the observer is to be transferred and the associated approach costs shall be agreed with Madagascar's Fisheries Surveillance Centre, the costs being borne by the vessel-owner.

Transfer of the observer on to another vessel at sea shall be agreed between the skipper of the vessel and the Madagascar Fisheries Surveillance Centre.

If the observer is not present at the time and place agreed and during the 12 hours following the time agreed, vessel-owners shall be automatically absolved of their obligation to take the observer on board. If the vessel is delayed in getting under way, the vessel-owner shall bear the observer's board and lodging costs until the time of actual embarkation.

## **6. SIGNING-ON OF SEAMEN**

- (a) At least forty Malagasy seamen shall be employed by the fleet of tuna seiners and surface longliners for the duration of the fishing season in the Malagasy fishing zone. The wages of the seamen employed shall be agreed between the vessel-owners' agents and the seamen concerned. The wages must cover social security benefits.

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

A detailed list of the Malagasy seamen signed on (with their names, period of employment, wages, etc.) shall reach the Ministry responsible for fisheries no later than 31 January of the year following that for which the licence was valid.

If the fleet of tuna seiners and surface longliners is unable to employ a total of forty seamen, vessel-owners who have not signed on seamen shall be obliged to pay compensation for the seamen not employed; the amount of the compensation, which shall be payable for the duration of the fishing season in the Malagasy fishing zone, shall be set by the Joint Committee provided for in Article 9 of the Agreement. That sum shall be used to train Malagasy fishermen and shall be paid into an account whose number shall be notified to the agents, with a copy being sent to the European Commission Delegation in Madagascar.

- (b) The ILO Declaration on Fundamental Principles and Rights at Work shall apply as of right to seamen signed on by EU vessels. This concerns in particular the freedom of association and the effective recognition of the right to collective bargaining, and the elimination of discrimination in respect of employment and occupation.

Local seamen's employment contracts, a copy of which shall be given to the signatories, shall be drawn up between the vessel-owners' representative(s) and the seamen and/or their trade unions or their representatives in consultation with the responsible local authorities. These contracts shall guarantee the seamen the social security cover applicable to them, including life assurance and sickness and accident insurance. The wage conditions granted to local seamen/fishermen shall not be lower than those applied to Malagasy crews and shall under no circumstances be below ILO standards.

Where the employer is a local company, the employment contract shall specify the name of the vessel-owner and the name of the flag State.

Furthermore, vessel-owners shall guarantee local seamen who are recruited living and working conditions similar to those enjoyed by the EU seamen.

## **7. FISHING ZONES**

Community vessels shall have access to all waters under Madagascar's jurisdiction beyond twelve nautical miles from the coastline.

Should the Ministry responsible for fisheries decide to install experimental fish concentration devices, it shall inform the European Commission and the agents of the vessel-owners concerned, indicating the geographical position of the devices.

From the thirtieth day after such notification, it shall be forbidden to go within 1.5 nautical miles of those devices. The dismantling of any experimental devices must be reported to the same parties immediately.

## **8. INSPECTION AND SURVEILLANCE OF FISHING ACTIVITIES**

Vessels holding a licence shall allow on board any officials duly authorised by the Republic of Madagascar to inspect and monitor fishing activities and shall assist them in the accomplishment of their duties.

## **9. SATELLITE MONITORING**

Since the Republic of Madagascar has introduced a Vessel Monitoring System (VMS) for its own fleet and intends to extend this system on a non-discriminatory basis to all vessels fishing in its fisheries zone, and Community vessels have been subject to satellite monitoring wherever they operate under Community legislation since 1 January 2000, it is recommended that the national authorities of the flag States and of the Republic of Madagascar should monitor by satellite as follows vessels fishing under the Agreement:

- (1) For the purposes of satellite monitoring, the Malagasy authorities have communicated to the Community the coordinates (latitudes and longitudes) of Madagascar's fishing zone (Table I). The map relating to the table of coordinates is attached in Appendix 4.

The Malagasy authorities shall transmit this information in electronic form, expressed in decimal degrees, to the WGS-84 *datum* system.

- (2) The parties shall exchange information on X.25 addresses and the specifications for electronic communications between their Control Centres in accordance with the conditions laid down in points 4 and 6. Such information shall include the following wherever possible: names, telephone, telex and fax numbers, and e-mail addresses (Internet or X.400) which may be used for general communications between Control Centres.
- (3) The position of vessels shall be determined with a margin of error of less than 500 metres and a confidence interval of 99%.
- (4) When a vessel which is fishing under the Agreement and is the subject of satellite-based monitoring pursuant to Community legislation enters a fishing zone of the Republic of Madagascar, the subsequent position reports shall immediately be transmitted by the Control Centre of the flag State to Madagascar's Fisheries Surveillance Centre at intervals of no more than one hour (longitude, latitude, course and speed). The messages concerned shall be identified as Position Reports.



- (5) The messages specified in point 4 shall be transmitted electronically in X.25 format, without any further protocol. They shall be communicated in real time in the format set out in Table II.
- (6) Where the continuous satellite-monitoring equipment installed on board a fishing vessel develops a technical fault or breaks down, the skipper of the vessel shall transmit the information specified in point 4 to the Control Centre of the flag State in good time. In such circumstances, a global Position Report shall be sent at 6.00, 12.00 and 18.00 (Madagascar time) while the vessel is in the Malagasy fishing zone. This global position report shall include the position reports as registered by the skipper of the vessel on an hourly basis in accordance with the requirements laid down in point 4.

The Control Centre of the flag State or the fishing vessel shall send these messages immediately to the Fisheries Surveillance Centre. The defective equipment shall be repaired or replaced as soon as the vessel completes its fishing trip or within one month at the latest. After this deadline, the vessel in question may not undertake any further fishing trips until the equipment has been repaired or replaced.

- (7) The Control Centres of the flag States shall monitor the movements of their vessels in Malagasy waters at two-hourly intervals. If the vessels are not being monitored in accordance with the conditions laid down, the Fisheries Surveillance Centre shall be informed immediately and the procedure laid down in point 6 shall be applicable.
- (8) If the Fisheries Surveillance Centre establishes that the flag State is not transmitting the information specified in point 4, the other party shall be informed immediately.
- (9) The surveillance data communicated to the other party in accordance with these provisions is intended solely for the purposes of the Malagasy authorities in controlling and monitoring the Community fleet fishing under the EC/Madagascar Fisheries Agreement. Such data may not under any circumstances be communicated to other parties.
- (10) The parties agree to take all necessary steps to meet the message requirements laid down in points 4 and 6 as soon as possible, and in no case later than six months after these provisions enter into force.
- (11) The parties agree to exchange upon request information on the equipment used for satellite monitoring, in order to ensure that each piece of equipment is fully compatible with the requirements of the other party for the purposes of these provisions.
- (12) Any dispute over the interpretation or application of these provisions shall be the subject of consultation between the parties within the Joint Committee provided for in Article 9 of the Agreement.

*Table I*

**Coordinates (latitudes and longitudes) of the Madagascar fishing zone**

(see also map in Appendix 4)

Ref	Coordinates in decimal degrees		Coordinates in degrees and minutes	
	X	Y	X	Y
A	49.40	-10.3	49°24' E	10°18' S
B	51	-11.8	51°0' E	11°48' S
C	53.3	-12.7	53°18' E	12°42' S
D	52.2	-16.3	52°12' E	16°18' S
E	52.8	-18.8	52°48' E	18°48' S
F	52	-20.4	52°0' E	20°24' S
G	51.8	-21.9	51°48' E	21°54' S
H	50.4	-26.2	50°24' E	26°12' S
I	48.3	-28.2	48°18' E	28°12' S
J	45.4	-28.7	45°24' E	28°42' S
K	41.9	-27.8	41°54' E	27°48' S
L	40.6	-26	40°36' E	26°0' S
M	41.8	-24.3	41°48' E	24°18' S
N	41.6	-20.8	41°36' E	20°48' S
O	41.4	-19.3	41°24' E	19°18' S
P	43.2	-17.8	43°12' E	17°48' S
Q	43.4	-16.9	43°24' E	16°54' S
R	42.55	-15.6	42°33' E	15°36' S
S	43.15	-14.35	43°09' E	14°21' S
T	45	-14.5	45°0' E	14°30' S
U	46.8	-13.4	46°48' E	13°24' S
V	48.4	-11.2	48°24' E	11°12' S

*Table II*

**COMMUNICATION OF VMS MESSAGES TO MADAGASCAR**

**POSITION REPORT**

<b>Data element</b>	<b>Code</b>	<b>Mandatory/ Optional</b>	<b>Remarks</b>
Start record	SR	M	System detail - indicates start of record
Recipient	AD	M	Message detail - recipient. Alpha 3 ISO country code
From	FR	M	Message detail - sender. Alpha 3 ISO country code
Flag State	FS	O	
Type of message	TM	M	Message detail - Message type "POS"
Radio call sign	RC	M	Vessel detail - international radio call sign of vessel
Contracting party internal reference number	IR	O	Vessel detail. Unique contracting party number as flag State ISO-3 code followed by number)
External registration number	XR	O	Vessel detail; number marked on side of vessel
Latitude	LA	M	Vessel position detail - position in degrees and minutes N/S DDMM (WGS-84)
Longitude	LO	M	Vessel position detail - position in degrees and minutes E/W DDDMM (WGS-84)
Course	CO	M	Vessel course 360° scale
Speed	SP	M	Vessel speed in tenths of knots
Date	DA	M	Vessel position detail - date of record of UTC position (YYYYMMDD)
Time	TI	M	Vessel position detail - time of record of UTC position (HHMM)
End record	ER	M	System detail - indicates end of record

Character set: ISO8859.1

Each data transmission is structured as follows:

- a double slash (//) and field code indicate the start of the message;
- a single slash (/) separates the field code and the data;

Optional data elements have to be inserted between the start and end of the record.

## **10. TRANSSHIPMENT**

When fish are transshipped, freezer tuna seiners shall hand over the fish which they do not intend to keep to a company or body appointed by the Malagasy fisheries authorities.

## **11. SUPPLY 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.).

The Madagascar authorities shall define the terms for the use of port facilities together with the beneficiaries of the Agreement.

## **12. PENALTIES**

Any breach of this Protocol or of Malagasy fisheries legislation shall be penalised in accordance with the Malagasy laws and regulations in force.

The European Commission shall be informed in writing within forty-eight hours at the latest of any penalty imposed on any Community vessel, and of all the relevant facts concerning the case.

## **13. BOARDING OF VESSELS**

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

The Malagasy Ministry responsible for fisheries shall inform the European Commission Delegation and the flag State in writing, within 48 hours, of the boarding of any Community fishing vessel operating under the Agreement in Madagascar's fishing zone and shall transmit a brief report of the circumstances and reasons leading to such boarding. The European Commission Delegation and the flag State shall also 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 through a compromise procedure, 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 compromise settlement was 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 compromise 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.

#### **14. ENVIRONMENTAL PROTECTION**

In the interests of the environment, the two parties undertake to introduce the following measures:

- no vessel may spill oil or derivatives thereof into the Malagasy fishing zone, or throw plastic materials or household waste into that zone;
- responsible fisheries, rational management and the preservation of tuna stocks shall be promoted within the IOTC;
- protected and prohibited species, such as whales, dolphins, turtles and sea birds, may not be caught.

The European Community shall be entrusted with the task of notifying the Ministry responsible for fisheries of any environmentally-unfriendly act committed by any vessel fishing in the Malagasy fishing zone.

**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 vessel-owner: .....
5. Address and fax no. of vessel-owner: .....  
.....
6. Name and address of charterer (if different from 4 and 5): .....  
.....
7. Name and address of official representative in Madagascar: .....  
.....
8. Name of skipper of vessel: .....
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. Freezing capacity (t/d):.....
17. Hold capacity (m<sup>3</sup>): .....
18. Radio call sign and frequency: .....
19. Other communications equipment (telex, fax): .....
20. Fishing gear: .....  
.....
21. Crew numbers, broken down by nationality: .....  
.....
22. Fishing licence No (in the event of a renewal, attach licence):  
.....

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

.....

(Stamp and signature of vessel-owner)

.....

(Date)





### **Appendix 3**

#### **EMBARKATION OF OBSERVERS**

Tuna seiners and surface longliners authorised to fish in the Malagasy fishing zone shall take on board an observer from the Fisheries Surveillance Centre holding a professional identity card and a seaman's licence. The time spent on board by observers shall be fixed by Madagascar's Fisheries Surveillance 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, record and report on the fishing activities of vessels in the Malagasy fishing zone;
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 any document belonging to the said vessel,
8. draw up a report on the trip and send it to Madagascar's Fisheries Surveillance Centre, and send a copy to the European Commission Delegation.

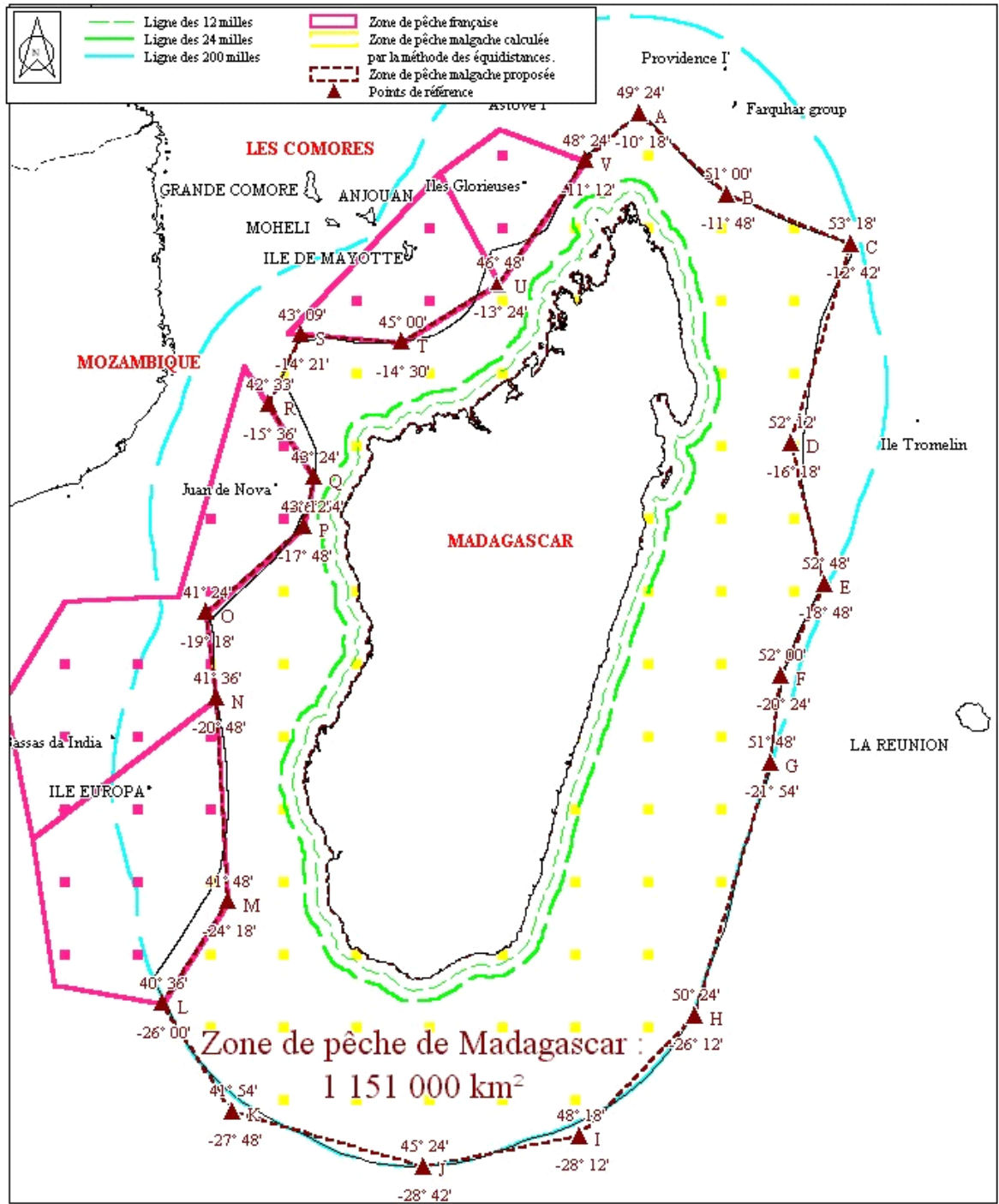
To that end, the owners and skippers of fishing vessels must:

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 table 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 samples to be taken;

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 observers to remove the samples and documents obtained during their stay on board;
11. where observers remain on board the vessel for more than four hours at a time, provide them with food and accommodation on the same terms as the vessel's officers.

## APPENDICE 4 : Zone de pêche de Madagascar.

Echelle : 1 / 14 000 000 ème.



Edition : Septembre 2003

0 250 500  
en kilomètre

### ZONE DE PÊCHE DE MADAGASCAR :

- A l'ouest : Calage de la zone de pêche de Madagascar sur la zone de pêche française.
- Au sud et au sud-est : Calage sur la ligne des 200 milles calculée à partir du trait de cote.
- Au nord et à l'est : Calage sur la zone de pêche calculée par la méthode des équidistances.
- Simplification de la délimitation à partir de points de référence.

## APPENDIX 4: Malagasy fishing zone

Scale: 1: 14 000 000

12 nautical mile line	French fishing zone
24 nautical mile line	Malagasy fishing zone calculated
200 nautical mile line	using the equidistance method
	Proposed Malagasy fishing zone
	Reference points

Edition: September 2003

kilometres

### **MALAGASY FISHING ZONE:**

- To the west: Madagascar fishing zone demarcated by French fishing zone
- To the south and south-east: demarcated by 200 nautical mile line calculated from the coastline
- To the north and east: demarcation of the fishing zone calculated using the equidistance method
- Simplified demarcation using reference points