



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.3.2007  
COM(2007) 89 final

Proposal for a

**COUNCIL DECISION**

**on the conclusion of the Agreement in the form of an exchange of letters on the provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Democratic Republic of São Tomé and Príncipe for the period from 1 June 2006 to 31 May 2010**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

The Community and the Democratic Republic of São Tomé and Príncipe negotiated and initialled, on 25 June 2006, a Fisheries Partnership Agreement which provides Community fishermen with fishing opportunities in São Tomé and Príncipe's fishing zone. This Partnership Agreement, accompanied by a Protocol and the Annex thereto, was signed for a period of four years from its entry into force and is renewable. On the date of its entry into force, this Agreement repeals and replaces 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 which entered into force in 1984.

The Protocol and the Annex thereto setting out the technical and financial conditions governing the fishing activities of European Community vessels were signed for a period of four years from 1 June 2006. Pending the entry into force of the new Agreement, this Protocol and the Annex thereto will enter into force on the date on which the Parties notify each other of the completion of the procedures necessary for that purpose. They will apply with effect from 1 June 2006.

The main objective of the new Partnership Agreement is to strengthen cooperation between the European Community and the Democratic Republic of São Tomé and Príncipe, thereby creating a partnership framework within which to develop a sustainable fisheries policy and sound exploitation of fisheries resources in São Tomé and Príncipe's fishing zone, in the interests of both Parties. The Commission's negotiating position was based in part on the results of an *ex-post* and *ex-ante* evaluation carried out by independent experts.

The two Parties are taking part in a political dialogue on topics of mutual interest in the fisheries sector. In the Partnership Agreement, the current priorities of national fisheries policy in São Tomé and Príncipe will allow the identification by mutual agreement between the two Parties of objectives, and the annual and multiannual programming to attain them, with a view to ensuring sustainable and responsible management of the sector.

The Partnership Agreement also provides for encouraging economic, scientific and technical cooperation in the fisheries sector and related sectors.

The financial contribution is fixed at EUR 663 000 per year. Of this financial contribution, 50% will provide annual financial support for defining and implementing a sectoral fisheries policy in São Tomé and Príncipe, with a view to introducing responsible and sustainable fishing. This financial support will be based on annual and multiannual programming (see above).

The fishing opportunities provided for in the Agreement have been laid down according to two categories: (1) for the fishing category "freezer tuna seiners": 25 vessels; (2) for the fishing category "surface longliners": 18 vessels.

Shipowners' fees have been fixed for each category and, overall, could create an additional annual income of around EUR 165 900 for São Tomé and Príncipe.

The Commission is accordingly proposing that the Council adopt by Decision the Agreement in the form of an exchange of letters concerning the provisional application of the new Protocol, pending its definitive entry into force.

A proposal for a Council Regulation concerning the conclusion of the new Agreement is the subject of a separate procedure.

Proposal for a

## COUNCIL DECISION

**on the conclusion of the Agreement in the form of an exchange of letters on the provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Democratic Republic of São Tomé and Príncipe for the period from 1 June 2006 to 31 May 2010**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

- (1) The Community and the Democratic Republic of São Tomé and Príncipe have negotiated and initialled a Fisheries Partnership Agreement providing Community fishermen with fishing opportunities in the waters falling within the sovereignty or jurisdiction of the Democratic Republic of São Tomé and Príncipe.
- (2) It is necessary to guarantee the pursuit of fishing activities between the date of expiry of the previous Protocol setting out the fishing opportunities off the coast of São Tomé and Príncipe and the date of entry into force of the new Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement.
- (3) To this end the Community and the Democratic Republic of São Tomé and Príncipe have initialled an Agreement in the form of an exchange of letters concerning the provisional application of the new Protocol.
- (4) It is in the Community's interest to approve that Agreement in the form of an exchange of letters.
- (5) The method for allocating the fishing opportunities among the Member States should be defined,

HAS DECIDED AS FOLLOWS:

### *Article 1*

The Agreement in the form of an exchange of letters on the provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Democratic

Republic of São Tomé and Príncipe for the period from 1 June 2006 to 31 May 2010 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 Agreement shall apply provisionally from 1 June 2006.

#### *Article 3*

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

<b>Fishing category</b>	<b>Type of vessel</b>	<b>Member State</b>	<b>Licences or quota</b>
<b>Tuna fishing</b>	Freezer tuna seiners	Spain	13
		France	12
<b>Tuna fishing</b>	Surface longliners	Spain	13
		Portugal	5

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

#### *Article 4*

The Member States whose vessels fish under this Agreement in the form of an exchange of letters shall notify the Commission of the quantities of each stock caught within São Tomé and Príncipe's fishing zone in accordance with Commission Regulation (EC) No 500/2001 of 14 March 2001 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93<sup>1</sup>.

#### *Article 5*

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

Done at Brussels,

For the Council  
*The President*

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<sup>1</sup> OJ L 73, 15.3.2001, p. 8.

## Annex

### **Agreement in the form of an exchange of letters on the provisional application of the Protocol setting out the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Democratic Republic of São Tomé and Príncipe on fishing off the coast of São Tomé and Príncipe for the period from 1 June 2006 to 31 May 2010**

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

Sir,

Referring to the Protocol initialled on Thursday 25 May 2006 setting out the fishing opportunities and financial contribution for the period from 1 June 2006 to 31 May 2010, I have the honour to inform you that the Government of the Democratic Republic of São Tomé and Príncipe is willing to apply this Protocol provisionally from 1 June 2006 pending its entry into force in accordance with Article 12 thereof, provided that the European Community is prepared to do likewise.

This is on the understanding that the first instalment of the financial contribution, laid down by Article 2 of the Protocol, must be paid before 15 May 2007.

I should be grateful if you would confirm the agreement of the European Community to such a provisional application.

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

For the Government 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:

“Referring to the Protocol initialled on Thursday 25 May 2006 setting out the fishing opportunities and financial contribution for the period from 1 June 2006 to 31 May 2010, I have the honour to inform you that the Government of the Democratic Republic of São Tomé and Príncipe is willing to apply this Protocol provisionally from 1 June 2006 pending its entry into force in accordance with Article 12 thereof, provided that the European Community is prepared to do likewise.

This is on the understanding that the first instalment of the financial contribution, laid down by Article 2 of the Protocol, must be paid before 15 May 2007.”

I am pleased to confirm the agreement of the European Community to a provisional application.

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

On behalf of the Council of the European Union

**Protocol setting out the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Democratic Republic of São Tomé and Príncipe on fishing off the coast of São Tomé and Príncipe for the period from 1 June 2006 to 31 May 2010**

*Article 1*

*Period of application and fishing opportunities*

1. For a period of four years from 1 June 2006, the fishing opportunities granted under Article 5 of the Agreement shall be as follows:  
  
highly migratory species (species listed in Annex 1 to the 1982 United Nations Convention):
  - freezer tuna seiners: 25 vessels.
  - surface longliners: 18 vessels.
2. Paragraph 1 shall apply subject to Articles 4 and 5 of this Protocol.
3. Vessels flying the flag of a Member State of the European Community may fish in São Tomé and Príncipe's fishing zone only if they are in possession of a valid fishing licence issued by São Tomé and Príncipe under this Protocol in accordance with the Annex hereto.

*Article 2*

*Financial contribution – Methods of payment*

1. The financial contribution referred to in Article 7 of the Agreement shall comprise, for the period referred to in Article 1, an annual amount of EUR 552 500 equivalent to a reference tonnage of 8 500 tonnes per year and a specific amount of EUR 110 500 per year for the support and implementation of São Tomé and Príncipe's sectoral fisheries policy. This specific amount shall be an integral part of the single financial contribution defined in Article 7 of the Agreement.
2. Paragraph 1 shall apply subject to Articles 4, 5 and 7 of this Protocol.
3. The Community shall pay the total amount referred to in paragraph 1, i.e. EUR 663 000, each year during the period of application of this Protocol.
4. If the overall quantity of catches by Community vessels in São Toméan waters exceeds 8 500 tonnes per year, the amount of the financial contribution (EUR 552 500) shall be increased by EUR 65 for each additional tonne caught. However, the total annual amount paid by the Community shall not be more than twice the amount equivalent to the reference tonnage (i.e. EUR 1 105 000). Where the quantities caught by Community vessels exceed the quantities corresponding to twice the total

annual amount (17 000 tonnes), the amount due for the quantity exceeding that limit shall be paid the following year.

5. Payment of the financial contribution referred to in paragraph 1 shall be made no later than 15 May 2007 for the first year and no later than 31 July 2007, 2008 and 2009 for the following years.
6. Subject to Article 6, the São Toméan authorities shall have full discretion regarding the use to which this financial contribution is put.
7. The financial contribution shall be paid into a São Tomé and Príncipe Public Treasury account opened with a financial institution specified by the São Toméan authorities.

### *Article 3*

#### *Cooperation on responsible fishing – Scientific cooperation*

1. The Parties hereby undertake to promote responsible fishing in São Toméan waters on the basis of the principles of non-discrimination between the different fleets fishing in those waters.
2. During the period covered by this Protocol, the Community and the São Toméan authorities shall endeavour to monitor the evolution of resources in São Tomé and Príncipe's fishing zone.
3. The Parties undertake to promote cooperation at subregional level on responsible fishing and, in particular, within COREP.
4. In accordance with Article 4 of the Agreement and on the basis of the recommendations and resolutions adopted within the International Commission for the Conservation of Atlantic Tunas (ICCAT), and in the light of the best available scientific advice, the Parties shall consult each other within the Joint Committee provided for in Article 9 of the Agreement and adopt, where appropriate after a scientific meeting possibly at subregional level, and by mutual agreement, measures to ensure the sustainable management of fisheries resources affecting the activities of Community vessels.

### *Article 4*

#### *Review of fishing opportunities by mutual agreement*

1. The fishing opportunities referred to in Article 1 may be increased by mutual agreement provided that the conclusions of the scientific meeting referred to in Article 3(4) confirm that such an increase will not endanger the sustainable management of São Tomé and Príncipe's resources. In this case the share of the financial contribution of EUR 552 000 referred to in Article 2(1) shall be increased proportionately and *pro rata temporis*. However, the total amount of the financial

contribution paid by the European Community in respect of the reference tonnage shall not be more than twice the amount of EUR 552 500. Where the quantities caught annually by Community vessels are more than twice 8 500 tonnes (i.e. 17 000 tonnes), the amount due for the quantity exceeding that limit shall be paid the following year.

2. Conversely, if the Parties agree to adopt a reduction in the fishing opportunities provided for in Article 1, the financial contribution shall be reduced proportionately and *pro rata temporis*.
3. The allocation of the fishing opportunities among different categories of vessels may also be reviewed, following consultations and by mutual agreement between the Parties, provided that any changes comply with recommendations made by the scientific meeting referred to in Article 3 regarding the management of stocks liable to be affected by such redistribution. The Parties shall agree on the corresponding adjustment of the financial contribution where the redistribution of fishing opportunities so warrants.

#### *Article 5* *New fishing opportunities*

1. Should Community vessels be interested in fishing activities which are not indicated in Article 1, the Community shall consult São Tomé and Príncipe in order to seek authorisation for these new activities. Where appropriate, the Parties shall agree on the conditions applicable to these new fishing opportunities and, if necessary, make amendments to this Protocol and to the Annex hereto.

#### *Article 6* *Suspension and review of the payment of the financial contribution in the event of unusual circumstances*

1. Where unusual circumstances, other than natural phenomena, prevent fishing activities in São Tomé and Príncipe's exclusive economic zone (EEZ), the European Community may suspend payment of the financial contribution provided for in Article 2(1). The suspension decision shall be taken following consultations between the two Parties within a period of two months following the request of one of the Parties, and provided that the Community has paid in full any amounts due at the time of suspension.
2. Payment of the financial contribution shall resume as soon as the Parties find, by mutual agreement following consultations, that the circumstances preventing fishing activities are no longer present and/or that the situation allows a resumption of fishing activities.
3. Where the validity of the licences granted to Community vessels is suspended along with the payment of the financial contribution, it shall be extended by a period equal to the period during which fishing activities were suspended.

*Article 7*  
*Promotion of responsible fishing in São Toméan waters*

1. Out of the total amount of the financial contribution (EUR 663 000) fixed in Article 2, 50% (or EUR 331 500) shall be allocated each year to the support and implementation of initiatives taken in the context of the sectoral fisheries policy drawn up by the Government of the São Tomé and Príncipe.

São Tomé and Príncipe shall manage the corresponding amount following the identification by mutual agreement between the two Parties, in accordance with the current priorities of São Tomé and Príncipe's fisheries policy for ensuring sustainable and responsible management of the sector, of the objectives to be attained and the annual and multiannual programming required to attain them, pursuant to paragraph 2 below.

2. On a proposal from São Tomé and Príncipe and for the purposes of implementing the preceding paragraph, as soon as this Protocol enters into force and no later than three months after that date, the Community and São Tomé and Príncipe shall agree, within the Joint Committee provided for in Article 9 of the Agreement, on a multiannual sectoral programme and detailed implementing rules covering, in particular:

- (a) annual and multiannual guidelines for using the percentage of the financial contribution referred to in paragraph 1 and its specific amounts for the initiatives to be carried out each year;
- (b) the objectives, both annual and multiannual, to be achieved with a view to promoting responsible fishing and sustainable fisheries, taking account of the priorities expressed by São Tomé and Príncipe in its national fisheries policy and other policies relating to or having an impact on the introduction of responsible fishing and sustainable fisheries;
- (c) criteria and procedures for evaluating the results obtained each year.
- (d) any revision of the percentage of the total amount of the financial contribution referred to in paragraph 1 of this Article, applicable in the years following the first year of application of this Protocol.

3. Any proposed amendments to the multiannual sectoral programme or of the use of the specific amounts for the initiatives to be carried out each year must be approved by both Parties within the Joint Committee.

4. Each year, São Tomé and Príncipe shall allocate the share corresponding to the percentage referred to in paragraph 1 with a view to implementing the multiannual programme. For the first year of application of the Protocol, that allocation must be notified to the Community at the time when the multiannual sectoral programme is approved within the Joint Committee. For each year of application of the Protocol thereafter, São Tomé and Príncipe shall notify the Community of the allocation no later than 1 May of the previous year.

5. Where the annual evaluation of the progress made in implementing the multiannual sectoral programme so warrants, the European Community may ask for the financial contribution referred to in Article 2(1) of this Protocol to be readjusted with a view to bringing the actual amount of financial resources allocated to implementation of the programme into line with its results.

#### *Article 8*

#### *Disputes – suspension of application of the Protocol*

1. Any dispute between the Parties over the interpretation of this Protocol or its application shall be the subject of consultations between the Parties within the Joint Committee provided for in Article 9 of the Agreement, in a special meeting if necessary.
2. Without prejudice to Article 9, application of the Protocol may be suspended at the initiative of one Party if the dispute between the two Parties is deemed to be serious and if the consultations held within the Joint Committee under paragraph 1 have not resulted in an amicable settlement.
3. Suspension of application of the Protocol shall require the interested Party to notify its intention in writing at least three months before the date on which suspension is due to take effect.
4. In the event of suspension, the Parties shall continue to consult with a view to finding an amicable settlement to their dispute. As soon as an amicable settlement is reached, application of the Protocol shall resume and the amount of the financial contribution shall be reduced proportionately and *pro rata temporis* according to the period during which application of the Protocol was suspended.

#### *Article 9*

#### *Suspension of application of the Protocol on grounds of non-payment*

Subject to Article 6, if the Community fails to make the payments provided for in Article 2, application of this Protocol may be suspended on the following terms:

- (a) The competent São Toméan authorities shall notify the European Commission of the non-payment. The latter shall carry out the requisite checks and, where necessary, transmit the payment within no more than 60 working days of the date of receipt of the notification.
- (b) If no payment is made and non-payment is not adequately justified within the period provided for in Article 2(5) of this Protocol, the competent São Toméan authorities shall be entitled to suspend application of the Protocol. They shall inform the European Commission of such action forthwith.
- (c) Application of the Protocol shall resume as soon as the payment concerned has been made.

*Article 10*  
*National law*

The activities of Community vessels operating in São Toméan waters shall be governed by the applicable law in São Tomé and Príncipe, unless otherwise provided in the Agreement, this Protocol and the Annex and Appendices hereto.

*Article 11*  
*Repeal*

The Annex to the Agreement between the European Economic Community and the 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 12*  
*Entry into force*

1. This Protocol with its Annex shall enter into force on the date on which the Parties notify each other of the completion of the procedures necessary for that purpose.
2. They will apply with effect from 1 June 2006.

## *ANNEX*

### **Conditions governing fishing activities by Community vessels in São Tomé and Príncipe's fishing zone**

#### **CHAPTER I - APPLICATION FOR AND ISSUE OF LICENCES**

##### *Section 1* *Issue of licences*

1. Only eligible vessels may obtain a licence to fish in São Tomé and Príncipe's fishing zone.
2. For a vessel to be eligible, neither the owner, the skipper nor the vessel itself must be prohibited from fishing in São Tomé and Príncipe. They must be in order vis-à-vis the São Toméan authorities insofar as they must have fulfilled all prior obligations arising from their fishing activities in São Tomé and Príncipe under fisheries agreements concluded with the Community.
3. The relevant Community authorities shall submit (by electronic means) to the Ministry responsible for fisheries in São Tomé and Príncipe an application for each vessel wishing to fish or assist in fishing activities under the Agreement at least 15 working days before the date of commencement of the period of validity requested.
4. Applications shall be submitted to the Ministry responsible for fisheries on a form drawn up in accordance with the specimen in Appendix I. The São Toméan authorities shall take all the necessary steps to ensure that the data received as part of the licence application are treated as confidential. This data will be used exclusively in the context of the implementation of the Fisheries Agreement.
5. All licence applications shall be accompanied by the following documents:
  - proof of payment of the flat-rate advance for the period of validity of the licence;
  - (any other documents or certificates required under the specific rules applicable to the type of vessel concerned pursuant to this Protocol.)
6. The fee shall be paid into the account specified by the São Toméan authorities in accordance with Article 2(7) of the Protocol.
7. The fees shall include all national and local charges with the exception of port taxes and service charges.

8. Licences for all vessels shall be issued to shipowners or their representatives via the European Commission Delegation to Gabon within 15 working days of receipt of all the documents referred to in point 5 by the Ministry responsible for fisheries in São Tomé and Príncipe.
9. Licences shall be issued for a specific vessel and shall not be transferable.
10. However, at the request of the European Community and where *force majeure* is proven, a vessel's licence shall be replaced by a new licence for another vessel of the same category as the first vessel, as referred to in Article 1 of the Protocol, with no further fee due. In this case, the calculation of the catch levels to determine whether an additional payment should be made shall take account of the sum of the total catches of the two vessels.
11. The owner of the first vessel, or his or her representative, shall return the cancelled licence to the Ministry responsible for fisheries in São Tomé and Príncipe via the European Commission Delegation.
12. The new licence shall take effect on the day that the vessel's owner returns the cancelled licence to the Ministry responsible for fisheries in São Tomé and Príncipe. The European Commission Delegation to Gabon shall be informed of the licence transfer.
13. The licence must be held on board at all times. The European Community shall keep an up-to-date list of the vessels to which a fishing licence has been issued under this Protocol. This draft shall be notified to the São Toméan authorities as soon as it is drawn up, and then each time it is updated. On receipt of this draft list and of notification of payment of the advance sent to the São Toméan authorities by the Commission, the vessel shall be entered by the competent São Toméan authority on a list of vessels authorised to fish, which shall be notified to the authorities responsible for fisheries inspection. In this case, a certified copy of this list shall be sent to the shipowner and kept on board instead of the fishing licence until the licence has been issued.

***Section 2***  
***Licence conditions – fees and advance payments***

1. Licences shall be valid for a period of one year. They shall be renewable.
2. The fee shall be EUR 35 per tonne caught within São Tomé and Príncipe's fishing zone in the case of tuna seiners and surface longliners.
3. Licences shall be issued once the following standard amounts have been paid to the competent national authorities:
  - EUR 5 250 per tuna seiner, equivalent to the fees due for 150 tonnes per year;

- EUR 1 925 per surface longliner, equivalent to the fees due for 55 tonnes per year.
4. Member States shall inform the European Commission not later than 15 June each year of the tonnages caught during the past year, as confirmed by the scientific institutes referred to in point 5 below.
  5. The final statement of the fees due for year n shall be drawn up by the European Commission by 31 July of year n+1 at the latest on the basis of the catch declarations made by each shipowner and confirmed by the scientific institutes responsible for verifying catch data in the Member States, such as the *Institut de Recherche pour le Développement* (IRD), the *Instituto Español de Oceanografía* (IEO) and the *Instituto de Investigação das Pescas e do Mar* (IPIMAR) via the European Commission Delegation.
  6. This statement shall be sent simultaneously to the Ministry responsible for fisheries in São Tomé and Príncipe and to the shipowners.
  7. Any additional payments (for quantities caught in excess of 150 tonnes for tuna seiners and 55 tonnes for longliners) shall be made by the shipowners to the competent São Toméan national authorities by 31 August of year n+1, into the account referred to in point 6 of Section 1 of this Chapter, on the basis of EUR 35 per tonne.
  8. However, if the amount of the final statement is lower than the advance referred to in point 3 of this Section, the resulting balance shall not be reimbursable to the shipowner.

## **CHAPTER II – FISHING ZONES**

1. Community vessels may carry out fishing activities in waters beyond 12 nautical miles from the base lines in the case of tuna seiners and surface longliners.
2. 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 3, shall be prohibited.

## **CHAPTER III – CATCH REPORTING ARRANGEMENTS**

1. For the purposes of this Annex, the duration of a trip by a Community vessel in São Tomé and Príncipe's fishing zone shall be defined as follows:
  - the period elapsing between entering and leaving São Tomé and Príncipe's fishing zone,
  - or the period elapsing between entering São Tomé and Príncipe's fishing zone and a transshipment and/or a landing in São Tomé and Príncipe.

2. All vessels authorised to fish in São Toméan waters under the Agreement shall be obliged to notify their catches to the Ministry responsible for fisheries in São Tomé and Príncipe so that it can check the quantities caught, which shall be validated by the competent scientific institutes in accordance with the procedure referred to in point 4 of Section 2 of Chapter I of this Annex. Catches shall be notified as follows:
  - 2.1 During an annual period of validity of the licence within the meaning of Section 2 of Chapter I of this Annex, declarations shall include the catches made by the vessel during each trip. The original of the declarations shall be transmitted on a physical medium to the Ministry responsible for fisheries in São Tomé and Príncipe within 45 days following the end of the last trip made during the period.
  - 2.2 Vessels shall declare their catches on the corresponding form in the logbook, in accordance with the specimen in Appendix 2. The words “Outside São Tomé and Príncipe’s fishing zone” shall be entered in the logbook in respect of periods during which the vessel is not in São Tomé and Príncipe’s fishing zone.
  - 2.3 The forms shall be filled in legibly and signed by the skipper of the vessel or by his or her legal representative.
3. At the request of one of the Parties, the Joint Committee may meet to compare the data on fishing activities.
4. Where the provisions set out in this Chapter are not complied with, the Government of São Tomé and Príncipe reserves the right to suspend the licence of the offending vessel until formalities have been completed and to apply to the shipowner the penalty laid down in current São Toméan legislation. The European Commission and the flag Member State shall be informed thereof.

#### **CHAPTER IV – LANDING**

The Parties shall cooperate with a view to improving transshipment options in or off São Toméan ports.

1. Transshipment:

Community tuna vessels which opt to tranship their catches in or off a São Toméan port shall benefit from a reduction of EUR 5 per tonne fished in São Tomé and Príncipe’s fishing zone in the fee indicated in point 2 of Section 2 of Chapter 1 of the Annex.

This mechanism shall apply, for all Community vessels, up to a maximum of 50% of the final statement of catches (as defined in Chapter III of the Annex) from the first year of this Protocol.

2. Detailed rules on checks on the tonnages transhipped shall be laid down at the first meeting of the Joint Committee.

3. Evaluation:

The level of the financial incentives and the maximum percentage of the final statement of catches shall be adjusted within the Joint Committee, in accordance with the socio-economic impact of transshipments in the year concerned.

#### CHAPTER V – EMBARKING SEAMEN

1. Owners of tuna seiners and surface longliners shall employ ACP nationals, subject to the following conditions and limits:
  - for the fleet of tuna seiners, at least 20% of the seamen signed on during the tuna-fishing season in the fishing zone of third countries shall be of ACP origin,
  - for the fleet of surface longliners, at least 20% of the seamen signed on during the fishing season in the fishing zone of third countries shall be of ACP origin.
2. Shipowners shall endeavour to sign on additional seamen of São Toméan origin.
3. The International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work shall apply as of right to seamen signed on by Community 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.
4. The employment contracts of ACP seamen shall be drawn up between the shipowners' representative(s) and the seamen and/or their trade unions or representatives. A copy of these contracts shall be given to the signatories. These contracts shall guarantee the seamen the social security cover applicable to them, including life assurance and sickness and accident insurance.
5. The wages of the ACP seamen shall be paid by the shipowners. They shall be fixed by mutual agreement among the shipowners or their representatives and the seamen and/or their trade unions or representatives. However, the wage conditions granted to ACP seamen shall not be lower than those applied to crews from their respective countries and shall under no circumstances be below ILO standards.
6. All seamen employed aboard Community vessels shall report to the skipper of the vessel designated on the day before their proposed embarkation date. Where a seaman fails to report at the date and time agreed for embarkation, shipowners shall be automatically absolved of their obligation to take the seaman on board.
7. However, where no ACP seamen are taken on board for reasons other than that referred to in the previous point, Community shipowners shall be obliged to pay, for each day of the fishing trip in São Toméan waters, a flat-rate amount of USD 20 per day. The payment of this amount shall take place within the limits laid down in point 7 of Section 2 of Chapter I of this Annex.

## CHAPTER VI – TECHNICAL MEASURES

1. Vessels shall comply with the measures and recommendations adopted by ICCAT in the region regarding fishing gear and the technical specifications thereof and all other technical measures applicable to their fishing activities.
2. 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.
3. The two Parties shall agree by mutual agreement on a provision ensuring the effective implementation of the previous point or on an alternative solution in the first meeting of the Joint Committee referred to in Article 9 of the Agreement. The Joint Committee shall analyse all possible options to this end, including an obligation for the seiners concerned to pay an annual contribution equivalent to a share of the value of by-catches to a São Tomé and Príncipe Directorate for Fisheries fund to support small-scale fishing.

## CHAPTER VII – OBSERVERS

1. Vessels authorised to fish in São Toméan waters under the Agreement shall take on board observers appointed by the competent regional fisheries organisation on the terms set out below.
  - 1.1 At the request of the competent authority, Community vessels shall take on board an observer designated by the authority in order to check catches made in São Toméan waters.
  - 1.2 The competent authority shall draw up a list of vessels designated to take an observer on board and a list of the appointed observers. These lists shall be kept up to date. They shall be forwarded to the European Commission as soon as they have been drawn up and every three months thereafter where they have been updated.
  - 1.3 The competent authority shall inform the shipowners concerned, or their representatives, of the name of the observer appointed to be taken on board their vessel at the time the licence is issued, or no later than 15 days before the observer's planned embarkation date.
2. The time spent on board by observers shall be one fishing trip. However, at the express request of the competent São Toméan authorities, this embarkation may be spread over several trips according to the average duration of trip for a particular vessel. This request shall be made by the competent authority when the name of the observer appointed to board the vessel in question is notified.
3. The conditions under which observers are taken on board shall be agreed between shipowners or their representatives and the competent authority.

4. Observers shall be taken on board at a port chosen by the shipowner at the beginning of the first voyage in São Toméan waters after notification of the list of designated vessels.
5. Within two weeks and giving ten days' notice, the shipowners concerned shall make known at which ports in the subregion and on what dates they intend to take observers on board.
6. Where observers are taken on board in a country outside the subregion, their travel costs shall be borne by the shipowner. Should a vessel with a regional observer on board leave the regional fishing zone, all measures must be taken to ensure the observer's return as soon as possible at the expense of the shipowner.
7. If the observer is not present at the time and place agreed and during the twelve hours following the time agreed, shipowners shall be automatically absolved of their obligation to take the observer on board.
8. Observers shall be treated as officers. Where vessels are operating in São Toméan waters, they shall carry out the following tasks:
  - 8.1 observe the fishing activities of the vessels;
  - 8.2 verify the position of vessels engaged in fishing operations;
  - 8.3 perform biological sampling in the context of scientific programmes;
  - 8.4 note the fishing gear used;
  - 8.5 verify the catch data for São Toméan waters recorded in the logbook;
  - 8.6 verify the percentages of by-catches and estimate the quantity of discards of species of marketable fish;
  - 8.7 report by any appropriate means fishing data, including the quantity of catches and by-catches on board, to their competent authority.
9. Skippers shall do everything in their power to ensure the physical safety and welfare of observers during performance of their duties.
10. Observers shall be offered every facility needed to carry out their duties. The skipper shall give them access to the means of communication needed for the discharge of their duties, to documents directly concerned with the vessel's fishing activities, including in particular the logbook and the navigation log, and to those parts of the vessel necessary to facilitate the exercise of their tasks as observer.
11. While on board, observers shall:
  - 11.1 take all appropriate steps to ensure that the conditions of their boarding and presence on the vessel neither interrupt nor hamper fishing operations,

- 11.2 respect the material and equipment on board and the confidentiality of all documents belonging to the vessel.
12. At the end of the observation period and before leaving the vessel, observers shall draw up an activity report to be transmitted to the competent authorities, with a copy to the European Commission. They shall sign it in the presence of the skipper, who may add or cause to be added to it any observations considered relevant, followed by the skipper's signature. A copy of the report shall be handed to the skipper when the observer is put ashore.
  13. Shipowners shall bear the cost of accommodating observers in the same conditions as the officers, within the confines of the practical possibilities offered by the vessel.
  14. The salary and social contributions of the observer shall be borne by the competent authorities.
  15. The two Parties shall consult each other, and interested third parties, as soon as possible as regards the definition of a system of regional observers and the choice of the competent regional fisheries organisation. Pending the implementation of a system of regional observers, vessels authorised to fish in São Tomé and Príncipe's fishing zone under the Agreement shall take on board, instead of regional observers, observers designated by the competent São Toméan authorities in accordance with the rules set out above.

#### **CHAPTER VIII – MONITORING**

1. In accordance with point 13 of Section 1 of Chapter I of this Annex, the European Community shall keep an up-to-date list of the vessels to which a fishing licence has been issued under this Protocol. This list shall be notified to the São Toméan authorities responsible for fisheries inspection as soon as it is drawn up and each time it is updated.
2. On receipt of this draft list and of notification of payment of the advance (referred to in point 3 of Section 2 of Chapter I of this Annex) sent to the coastal state authorities by the European Commission, the vessel shall be entered by the competent São Toméan authority on a list of vessels authorised to fish, which shall be sent to the authorities responsible for fisheries inspection. In this case, a certified copy of this list shall be sent to the shipowner and kept on board instead of the fishing licence until the licence has been issued.
3. Entering and leaving the zone
  - 3.1 At least three hours in advance Community vessels shall notify the competent São Toméan authorities responsible for fisheries inspection of their intention to enter or leave the São Toméan fishing zone; they shall also declare the overall quantities and the species on board.

- 3.2 When notifying leaving, vessels shall also communicate their position. This information should preferably be communicated by fax (+ 239 222 828) or e-mail (dpescas1@cstome.net) or, for vessels not equipped with a fax or e-mail, by radio (call sign: 12.00 Hz from 08.00 to 12.00, and 8.634 Hz from 14.00 to 17.00).
- 3.3 Vessels found to be fishing without having informed the competent São Toméan authority shall be regarded as vessels in breach of the legislation.
- 3.4 Vessels shall also be informed of the fax and telephone numbers and e-mail address when the fishing licence is issued.
4. Control procedures
- 4.1 Skippers of Community fishing vessels engaged in fishing activities in São Toméan waters shall allow and facilitate boarding and the discharge of their duties by any São Toméan official responsible for the inspection and control of fishing activities.
- 4.2. These officials shall not remain on board for longer than is necessary for the discharge of their duties.
- 4.3. Once the inspection has been completed, a certificate shall be issued to the master of the vessel.
5. Satellite monitoring
- 5.1 All Community vessels fishing under this Agreement shall be subject to satellite monitoring in line with Appendix 4. These provisions shall enter into force on the tenth day following notification by the Government of São Tomé and Príncipe to the European Commission Delegation to Gabon of the entry into operation of the São Toméan Fisheries Monitoring Centre (FMC).
6. Boarding
- 6.1 The competent São Toméan authorities shall inform the flag State and the European Commission, within no more than 24 hours, of all boardings of and penalties imposed on Community vessels in São Toméan waters.
- 6.2 The flag State and the European Commission shall at the same time receive a brief report of the circumstances and reasons leading to the boarding.
7. Statement of boarding
- 7.1 After the competent São Toméan authority has drawn up a statement, the skipper of the vessel shall sign it.

- 7.2 This signature shall not prejudice the rights of the master or any defence which the master may make to the presumed infringement. If the skipper refuses to sign this document, he or she shall specify the reasons for doing so in writing and the inspector shall write “refusal to sign” on it.
- 7.3 The skipper shall take the vessel to the port indicated by the São Toméan authorities. In the case of minor infringements, the competent São Toméan authorities may authorise the boarded vessel to continue fishing.
8. Consultation meeting in the event of boarding
- 8.1 Before any measures regarding the skipper or the crew of the vessel or any action regarding the cargo and equipment of the vessel are considered, other than those to safeguard evidence relating to the presumed infringement, a consultation meeting shall be held, within one working day of the receipt of the above information, between the European Commission and the competent São Toméan authorities, possibly attended by a representative of the Member State concerned.
- 8.2 At the meeting, the Parties shall exchange any relevant documentation or information helping to clarify the circumstances of the established facts. The shipowner or his or her representative shall be informed of the outcome of the meeting and of any measures resulting from the boarding.
9. Settlement of boarding
- 9.1. Before any judicial procedure, an attempt shall be made to resolve the presumed infringement through a compromise procedure. This procedure shall end no later than three working days after the boarding.
- 9.2. In the event of an amicable settlement, the amount of the fine shall be determined in accordance with São Toméan legislation.
- 9.3. If the case cannot be settled by amicable procedure and has to be brought before a competent judicial body, a bank security set to take account of the boarding costs and the fines and compensation payable by the parties responsible for the infringement shall be lodged by the shipowner with a bank specified by the competent São Toméan authorities.
- 9.4. The bank security shall be irrevocable until the legal proceedings have been concluded. It shall be released once legal proceedings end without a conviction. Similarly, in the event of a conviction leading to a fine of less than the security lodged, the balance shall be released by the competent São Toméan authorities.
- 9.5. The vessel shall be released and its crew authorised to leave the port:
- once the obligations arising under the amicable settlement have been fulfilled,
  - or

- when the bank security referred to in point 9.3 has been lodged and accepted by the competent São Toméan authorities, pending completion of the legal proceedings.

## 10. Transhipment

10.1 All Community vessels wishing to tranship catches in São Toméan waters shall do so in or off São Toméan ports.

10.2. The owners of such vessels must notify the following information to the competent São Toméan authorities at least 24 hours in advance:

- the names of the transshipping fishing vessels,
- the names, OMI numbers and flag of the cargo vessels,
- the tonnage by species to be transhipped,
- the day and place of transhipment.

10.3. Transhipment shall be considered as an exit from São Tomé and Príncipe's fishing zone. Skippers of vessels must submit their catch declarations to the competent São Toméan authorities and state whether they intend to continue fishing or leave São Tomé and Príncipe's fishing zone.

10.4. Any transhipment of catches not covered above shall be prohibited in São Tomé and Príncipe's fishing zone. Any person infringing this provision shall be liable to the penalties provided for by São Toméan law.

11. Skippers of Community fishing vessels engaged in landing or transhipment operations in a São Toméan port shall allow and facilitate the inspection of such operations by São Toméan inspectors. Once the inspection has been completed, a copy of the inspection and control report or a certificate shall be issued to the master of the vessel.

## APPENDICES

- 1 – Licence application form
- 2 – ICCAT logbook
- 3 – Coordinates of the zone in which fishing is prohibited
- 4 – Provisions applicable to the satellite-based vessel monitoring system (VMS) and coordinates of São Tomé and Príncipe's fishing zone

**Appendix 1**

**MINISTRY RESPONSIBLE FOR FISHERIES IN SAO TOME AND PRÍNCIPE**

**APPLICATION FOR A LICENCE FOR FOREIGN INDUSTRIAL FISHING VESSELS**

1. Name of shipowner: .....
2. Address of shipowner: .....
3. Name of representative or agent: .....
4. Address of shipowner's representative or local agent: .....
- .....
5. Name of skipper: .....
6. Name of vessel: .....
7. Registration No: .....
8. Fax No: .....
9. E-mail address: .....
10. Radio code: .....
11. Date and place of construction: .....
12. Flag country: .....
13. Port of registration: .....
14. Port of fitting out: .....
15. Overall length: .....
16. Width of vessel: .....
17. Gross tonnage: .....
18. Hold capacity: .....
19. Cold storage and freezing capacity: .....
20. Engine type and horse power: .....
21. Fishing gear: .....
22. Number of crew: .....
23. Communications equipment: .....

- 24. Call sign:.....
- 25. Identification markings:.....
- 26. Fishing operations to be carried out: .....
- 27. Place of landing: .....
- 28. Fishing zones:.....
- 29. Species to be caught: .....
- 30. Period of validity:.....
- 31. Special conditions:.....

Opinion of the Directorate-General for Fisheries and Aquaculture:.....

Comments of the Ministry responsible for fisheries:.....



### Appendix 3

Latitude				Longitude			
Degrés	Minutes	Secondes		Degrés	Minutes	Secondes	
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

## Appendix 4

### Protocol (VMS)

setting out the provisions applicable to satellite monitoring of Community fishing vessels operating in São Tomé and Príncipe's EEZ

1. The provisions of this Protocol supplement the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Democratic Republic of São Tomé and Príncipe on fishing off the coast of São Tomé and Príncipe for the period from 1 June 2006 to 31 May 2010 and apply in accordance with point 5 of "Chapter VIII – Monitoring" in the Annex thereto.
2. All fishing vessels with an overall length exceeding 15 metres operating under the Fisheries Agreement between the European Community and São Tomé and Príncipe shall be monitored by satellite when fishing in São Tomé and Príncipe's EEZ.

For the purposes of the satellite monitoring, the São Toméan authorities shall communicate to the Community party the latitude and longitude coordinates of São Tomé and Príncipe's EEZ.

The São Toméan authorities shall transmit this information in electronic form, expressed in decimal degrees (WGS 84).

3. The Parties shall exchange information on X.25 addresses and the specifications for electronic data transmission between their Control Centres in accordance with points 5 and 7. Such information shall include the following where they exist: names, telephone, telex and fax numbers, and e-mail addresses (Internet or X.400) which may be used for general communications between Control Centres.
4. The position of vessels shall be determined with a margin of error of less than 500 metres and a confidence interval of 99%.
5. When a vessel which is fishing under the Agreement and is the subject of satellite monitoring pursuant to Community legislation enters São Tomé and Príncipe's EEZ, the subsequent position reports (vessel identification, longitude, latitude, course and speed) shall be transmitted immediately by the Control Centre of the flag State to São Tomé and Príncipe's Fisheries Monitoring Centre (FMC) at intervals of no more than three hours. The messages concerned shall be identified as position reports.
6. The messages specified in point 5 shall be transmitted electronically in X.25 format, or any other secure protocol. They shall be communicated in real time in the format set out in Table II.
7. 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 5 to the Control Centre of the flag State and São Tomé and Príncipe's FMC in good time. In those circumstances a global position report shall be sent every nine hours. This global position report shall

include the position reports as recorded by the skipper of the vessel on a three-hourly basis in accordance with the requirements laid down in point 5.

The Control Centre of the flag State shall send these messages to São Tomé and Príncipe's FMC. The faulty equipment shall be repaired or replaced within a period of not more than one month. After this deadline, the vessel in question must leave São Tomé and Príncipe's EEZ.

8. The Control Centres of the flag States shall monitor the movements of their vessels in São Toméan waters. If the vessels are not being monitored in accordance with the conditions laid down, São Tomé and Príncipe's FMC shall be informed by the FMC of the flag State as soon as this is discovered and the procedure laid down in point 7 shall be applicable.
9. If São Tomé and Príncipe's FMC establishes that the flag State is not transmitting the information specified in point 5, the competent European Commission departments shall be informed immediately.
10. The monitoring data communicated to the other party in accordance with these provisions is intended solely for the purposes of the São Toméan authorities in controlling and monitoring the Community fleet fishing under the Fisheries Agreement between the European Community and São Tomé and Príncipe. Such data may not under any circumstances be communicated to other parties.
11. The satellite-monitoring system software and hardware components shall be reliable and shall not permit the input or output of false positions or be capable of being manually overridden.

The system shall be fully automatic and operational at all times regardless of environmental and weather conditions. Destroying, damaging, rendering inoperative or tampering with the satellite-monitoring system shall be prohibited.

Skippers shall ensure that:

- data are not altered in any way;
  - the antenna or antennas connected to the satellite-monitoring equipment are not obstructed;
  - the power supply of the satellite-monitoring equipment is not interrupted; and
  - the satellite-monitoring equipment is not removed from the vessel.
12. 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.
  13. 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.

14. The Parties agree to review these provisions, as appropriate.

COMMUNICATION OF VMS MESSAGES TO SÃO TOMÉ AND PRÍNCIPE

POSITION REPORT

Data Element		Mandatory / Optional	Comments
Start record		M	System detail – indicates start of record
Recipient		M	Message detail – recipient. Alpha 3 ISO country code
From		M	Message detail – sender. Alpha 3 ISO country code
Flag State		O	
Type of message		M	Message detail – Message type “POS”
Radio call sign		M	Vessel detail – international radio call sign of vessel
Contracting party internal reference number		O	Unique contracting party number as flag State ISO-3 code followed by number)
External registration number		M	Vessel detail – number marked on side of vessel
Latitude		M	Vessel position detail – position in degrees and minutes N/S DD.ddd (WGS-84)
Longitude		M	Vessel position detail – position in degrees and minutes E/W DD.ddd (WGS-84)
Course		M	Vessel course 360° scale
Speed		M	Vessel speed in tenths of knots

Date		M	Vessel position detail – date of record of UTC position (YYYYMMDD)
Time		M	Vessel position detail – time of record of UTC position (HHMM)
End record		M	System detail - indicates end of record

Character set: ISO 8859.1

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.

LIMITS OF SAO TOME AND PRÍNCIPE'S EEZ  
COORDINATES OF EEZ

COORDINATES OF SAO TOME AND PRÍNCIPE'S FMC

Name of FMC:

SSN tel.:

SSN fax:

SSN e-mail:

DSPG tel.:

DSPG fax:

Address X25 =

Declaration of entries/exits: