



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.8.2006
COM(2006) 453 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 Agreement between the European Community and the Gabonese Republic on fishing off the coast of Gabon for the period from 3 December 2005 to 2 December 2011

(presented by the Commission)

EXPLANATORY MEMORANDUM

The Community and the Gabonese Republic negotiated and initialled, on 28 October 2005, a Fisheries Partnership Agreement which provides Community fishermen with fishing opportunities in the Gabonese fishing zone. This Partnership Agreement, accompanied by a Protocol and the Annex thereto, was signed for a period of six 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 Community and the Gabonese Republic on fishing off the coast of Gabon which entered into force on 3 December 1998.

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 six years from 3 December 2005. 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 are applicable as from 3 December 2005.

The main objective of the new Partnership Agreement is to strengthen cooperation between the European Community and the Gabonese Republic, thereby creating a partnership framework within which to develop a sustainable fisheries policy and sound exploitation of fisheries resources in the Gabonese 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 fisheries policy in Gabon 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 860 000 per year. Of this financial contribution, 60% will allow annual financial support for defining and implementing a sectoral fisheries policy in Gabon, 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": 24 vessels; (2) for the fishing category "surface longliners": 16 vessels.

Shipowners' fees have been fixed for each category and, overall, could create an additional annual income of around EUR 142 000 million for Gabon.

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.

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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,

Whereas:

- (1) The Community and the Gabonese Republic have negotiated and initialled a Fisheries Partnership Agreement providing Community fishermen with fishing opportunities in the waters falling within the sovereignty of the Gabonese Republic.
- (2) It is in the Community's interest to approve that Agreement.
- (3) It is necessary to guarantee the pursuit of fishing activities from the date of expiry of the previous Protocol¹ until the date of entry into force of the Protocol setting out the fishing opportunities and financial contribution provided for in that Agreement.
- (4) 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 Agreement between the European Community and the Gabonese Republic on fishing off the coast of Gabon for the period from 3 December 2005 to 2 December 2011 is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

¹ Approved by Council Regulation (EC) No 580/2002 of 25 March 2002.

Article 2

The Agreement shall apply provisionally from 3 December 2005.

Article 3

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

Fishing category	Type of vessel	Member State	Licences or quota
Tuna fishing	Surface longliners	Spain	13
		Portugal	3
Tuna fishing	Freezer tuna seiners	Spain	12
		France	12

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 4

The Member States whose vessels fish under this Agreement shall notify the Commission of the quantities of each stock caught within the Gabonese 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 on the monitoring of catches taken by Community fishing vessels in third country waters and on the high seas².

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

² 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 financial contribution provided for in the Agreement between the European Community and the Gabonese Republic on fishing off the coast of Gabon for the period from 3 December 2005 to 2 December 2011

A. Letter from the European Community

Sir,

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

"With reference to the Protocol, initialled on Friday 28 October 2005, setting out the fishing opportunities and the financial contribution for the period from 3 December 2005 to 2 December 2011, I have the honour to inform you that Gabon is willing to apply the Protocol provisionally from 3 December 2005 pending its entry into force in accordance with Article 13 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 30 September 2006."

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

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

For the Council of the European Union

B. Letter from the Government of Gabon

Sir,

With reference to the Protocol, initialled on Friday 28 October 2005, setting out the fishing opportunities and the financial contribution for the period from 3 December 2005 to 2 December 2011, I have the honour to inform you that Gabon is willing to apply the Protocol provisionally from 3 December 2005 pending its entry into force in accordance with Article 13 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 30 September 2006.

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 Gabon

Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Community and the Gabonese Republic on fishing off the coast of Gabon for the period from 3 December 2005 to 2 December 2011

Article 1

Period of application and fishing opportunities

1. For a period of six years from 3 December 2005, 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: 24 vessels,
 - surface longliners: 16 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 the Gabonese fishing zone only if they are in possession of a fishing licence issued 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 715 000 equivalent to a reference tonnage of 11 000 tonnes per year and a specific amount of EUR 145 000 per year for the support and implementation of initiatives taken in the context of the Gabonese 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 sum of the amounts referred to in paragraph 1, i.e. EUR 860 000, each year during the period of application of this Protocol.
4. If the overall quantity of catches by Community vessels in Gabonese waters exceeds 11 000 tonnes per year, the amount of the annual financial contribution (EUR 715 000) 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 indicated in paragraph 3 (EUR 1 430 000). Where the quantities caught by Community vessels exceed the quantities corresponding to twice the total annual amount, 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 30 September 2006 for the first year and no later than 30 June 2007, 2008, 2009, 2010 and 2011 for the following years.
6. Subject to Article 6, the Gabonese authorities shall have full discretion regarding the use to which this financial contribution is put.
7. The financial contribution shall be paid into account No 47069 X, "Pêche Maritime" (Sea Fisheries) in the name of the Public Treasury of Gabon.

Article 3
Cooperation on responsible fishing – Scientific meeting

1. The Parties hereby undertake to promote responsible fishing in Gabonese 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 Gabonese authorities shall endeavour to monitor the evolution of resources in the Gabonese 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 Gabon's resources. In this case the financial contribution of EUR 715 000 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 715 000. Where the quantities caught annually by Community vessels are more than twice 11 000 (i.e. 22 000) 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 Gabon 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.
2. The Parties shall encourage exploratory fishing, particularly as regards deep-sea species present in Gabonese waters. To this end, at the request of one of the Parties, they shall consult each other and determine on a case-by-case basis the relevant species, conditions and other parameters.

The Parties shall carry out exploratory fishing in accordance with parameters that shall be agreed by both Parties in an administrative arrangement where appropriate. The authorisations for exploratory fishing should be agreed for a maximum period of six months. If the Parties conclude that the exploratory campaigns have achieved convincing results, the Gabonese Government may allocate fishing opportunities for the new species to the Community fleet, until the expiry of this Protocol. The financial compensation referred to in Article 2(1) of the current Protocol shall consequently be increased.

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 the Gabonese 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 Gabonese waters

1. Sixty percent (60%) of the total amount of the financial contribution fixed in Article 2 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 Gabonese Government.

Gabon shall manage the corresponding amount following the identification by mutual agreement between the two Parties, in accordance with the current priorities of Gabonese 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 Gabon and for the purposes of the preceding paragraph, as soon as this Protocol enters into force and no later than three months after that date, the Community and Gabon 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 Gabon 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.
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, Gabon 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, Gabon 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 3, 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 Gabonese 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 Gabonese 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 Gabonese waters shall be governed by the applicable law in Gabon, unless otherwise provided in the Agreement, this Protocol and the Annex and Appendices hereto.

Article 11
Review clause

During the fourth year of application of this Protocol, the Annex and the Appendices hereto, the Parties may review the provisions of the Protocol, the Annex and the Appendices and, where necessary, make amendments. These amendments may include the reference tonnage and the flat-rate advances paid by shipowners.

Article 12
Repeal

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

Article 13
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. It shall apply as from 3 December 2005.

ANNEX

CONDITIONS GOVERNING FISHING ACTIVITIES BY COMMUNITY VESSELS IN THE GABONESE 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 the Gabonese fishing zone.
2. For a vessel to be eligible, neither the owner, the skipper nor the vessel itself must be prohibited from fishing in Gabon. They must be in order vis-à-vis the Gabonese authorities insofar as they must have fulfilled all prior obligations arising from their fishing activities in Gabon under fisheries agreements concluded with the Community.
3. Any Community vessel applying for a fishing licence may be represented by an agent resident in Gabon. The name and address of that representative shall be stated in the licence application.
4. The relevant Community authorities shall present to the Ministry responsible for fisheries in Gabon an application for each vessel wishing to fish under the Agreement at least 15 working days before the date of commencement of the period of validity requested.
5. Applications shall be submitted to the Ministry responsible for fisheries on a form drawn up in accordance with the specimen in Appendix I.
6. 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.
7. The fee shall be paid into the account specified by the Gabonese authorities in accordance with Article 2(7) of the Protocol.
8. The fees shall include all national and local charges with the exception of port taxes and service charges.
9. 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 6 by the Ministry responsible for fisheries in Gabon.

10. If a licence is signed at a time when the European Commission Delegation offices are closed, it may be sent direct to the vessel's agent, with a copy to the Delegation.
11. Licences shall be issued for a specific vessel and shall not be transferable.
12. 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.
13. The owner of the first vessel, or his or her representative, shall return the cancelled licence to the Ministry responsible for fisheries in Gabon via the European Commission Delegation.
14. 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 Gabon. The European Commission Delegation to Gabon shall be informed of the licence transfer.
15. The licence must be held on board at all times, without prejudice to what is laid down in point 2 of Chapter VIII of this Annex.

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 the Gabonese 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 4 550 per tuna seiner, equivalent to the fees due for 130 tonnes of highly migratory species and associated species caught per year;
 - EUR 2 030 per surface longliner, equivalent to the fees due for 58 tonnes of highly migratory species and associated species caught per year.
4. No later than 15 May of each year, the Member States shall notify the European Commission, with a copy to the European Commission Delegation and the Gabonese authorities, of the catch tonnages for 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 30 June 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 Gabon and to the shipowners.
7. Any additional payments shall be made by the shipowners to the competent Gabonese national authorities by 31 July of year $n + 1$ at the latest, into the account referred to in point 7 of Section 1 of this Chapter.
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. **Zones prohibited to shipping:**

The zones adjacent to oil extraction activities shall be closed to all shipping.

The Ministry responsible for fisheries in the Gabonese Republic shall notify the coordinates of these zones to shipowners when the fishing licence is issued.

The zones closed to shipping shall also be notified for information purposes to the European Commission Delegation in the Gabonese Republic, as shall all changes to these zones, which shall be announced at least two months before enforcement.

CHAPTER III – CATCH REPORTING ARRANGEMENTS

1. For the purposes of this Annex, the duration of a trip by a Community vessel shall be defined as follows:
 - the period elapsing between entering and leaving the Gabonese fishing zone, or
 - the period elapsing between entering the Gabonese fishing zone and a transshipment, or
 - the period elapsing between entering the Gabonese fishing zone and a landing in Gabon.
2. All vessels authorised to fish in Gabonese waters under the Agreement shall be obliged to communicate their catches to the Ministry responsible for fisheries in Gabon 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 communicated as follows:
 - 2.1 During an annual period of validity of the licence within the meaning of point 2 of Section 3 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 Gabon within 45 days following the end of the last trip made during the period. Copies shall be sent at the same time by electronic means or by fax to the flag Member State and the Ministry responsible for fisheries in Gabon.

- 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 Gabonese fishing zone" shall be entered in the logbook in respect of periods during which the vessel is not in the Gabonese 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. Where the provisions set out in this Chapter are not complied with, the Gabonese Government 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 Gabonese legislation. The European Commission and the flag Member State shall be informed thereof.

CHAPTER IV – TRANSHIPMENT AND LANDINGS

The Parties shall cooperate with a view to improving landing or transshipment options in Gabonese ports.

1. Landings:

Community tuna vessels which opt to land their catches in a Gabonese port shall benefit from a reduction of EUR 5 per tonne landed in the fee indicated in point 2 of Section 2 of Chapter 1 of the Annex.

An additional reduction of EUR 5 shall be granted where fisheries products are sold to a Gabonese processing factory.

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 landed or 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 landings in the year concerned.

CHAPTER V – EMBARKING SEAMEN

1. Owners of tuna vessels 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 ACP 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 seamen from the ACP countries shall be drawn up between the shipowners' representative(s) and the seamen and/or their trade unions or representatives. A copy 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 seamen from the ACP countries shall be paid by the shipowners. They shall be fixed, before licences are issued, by mutual agreement among the shipowners or their representatives. However, the wage conditions granted to local seamen shall not be lower than those applied to Gabonese crews 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.

CHAPTER VI – TECHNICAL MEASURES

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.

CHAPTER VII – OBSERVERS

1. Vessels authorised to fish in Gabonese waters under the Agreement shall take on board observers appointed by the competent regional fisheries organisation on the terms set out below.
 - 1.1 Community vessels shall take on board an observer appointed by the competent regional organisation in order to check catches made in Gabonese waters.
 - 1.2 The competent regional 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 regional 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 Gabonese 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 regional 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 regional authorities.
4. Observers shall be taken on board at a port chosen by the shipowner at the beginning of the first voyage in Gabonese 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 Gabonese ports and on what dates they intend to take observers on board.
6. Where observers are taken on board in a foreign port, 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 Gabonese 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 Gabonese 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 fishing data by radio, including the quantity of catches and by-catches on board.

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 regional 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 regional authorities.

CHAPTER VIII – MONITORING

1. 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 Gabonese authorities responsible for fisheries inspection as soon as it is drawn up and each time it is updated.
2. Community vessels may be included on the list referred to in the previous point upon receipt of notification of the advance payment referred to in point 3 of Section 2 of Chapter I of this Annex. The shipowner may then obtain a certified copy of this list to be kept on board instead of the fishing licence until the licence has been issued.
3. Entering and leaving the zone
 - 3.1 Community vessels shall notify, at least three hours in advance, the Gabonese authorities responsible for fisheries inspection of their intention to enter or leave the Gabonese 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 (+241-76 46 02) or, for vessels not equipped with a fax, by radio (call sign DGPA-6241 MH2) or e-mail (dgpa@internetgabon.com).
- 3.3 Vessels found to be fishing without having informed the competent Gabonese 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 Gabonese waters shall allow and facilitate boarding and the discharge of their duties by any Gabonese 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 skipper 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 Gabonese Government to the European Community Delegation in Gabon of the entry into operation of the Gabonese Fisheries Monitoring Centre (FMC).
6. Boarding
- 6.1 The competent Gabonese 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 Gabonese 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 Gabonese authorities have drawn up a statement, the skipper of the vessel shall sign it.
- 7.2 This signature shall not prejudice the rights of the skipper or any defence which he or she may make to the alleged infringement.
- 7.3 The skipper shall take the vessel to the port indicated by the Gabonese authorities. In the case of minor infringements, the competent Gabonese authorities may authorise the boarded vessel to continue its fishing activities.
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 Gabonese 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 Gabonese 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 paid by the shipowner into a bank account specified by the competent Gabonese 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 Gabonese 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 Gabonese authorities, pending completion of the legal proceedings.
10. Transshipment
- 10.1 All Community vessels wishing to tranship catches in Gabonese waters shall do so within Gabonese ports.
- 10.2. The owners of such vessels must notify the following information to the competent Gabonese authorities at least 24 hours in advance:
- the names of the transshipping fishing vessels,
 - the names of the cargo vessels,
 - the tonnage by species to be transhipped,

- the day of transshipment;
- 10.3. Transshipment shall be considered as an exit from the Gabonese fishing zone. Vessels must therefore submit their catch declarations to the competent Gabonese authorities and state whether they intend to continue fishing or leave the Gabonese fishing zone.
- 10.4. Any transshipment of catches not covered above shall be prohibited in the Gabonese fishing zone. Any person infringing this provision shall be liable to the penalties provided for by Gabonese law.
- 11. Skippers of Community fishing vessels engaged in landing or transshipment operations in a Gabonese port shall allow and facilitate the inspection of such operations by Gabonese inspectors. Once the inspection has been completed in the port, a certificate shall be issued to the skipper of the vessel.

APPENDICES

1. Licence application form
2. ICCAT logbook
3. Provisions applicable to the satellite-based vessel monitoring system (VMS) and coordinates of the Gabonese fishing zone

Appendix 1

MINISTRY OF FISHERIES

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 registered tonnage:.....
18. Net tonnage:
19. Hold capacity:
20. Cold storage and freezing capacity:
21. Engine type and horse power:
22. Fishing gear:.....
23. Number of crew:

- 24. Communications equipment:
 - 25. Call sign:
 - 26. Identification markings:
 - 27. Fishing operations to be carried out:
 - 28. Place of landing:.....
 - 29. Fishing zones:.....
 - 30. Species to be caught:
 - 31. Period of validity:.....
 - 32. Special conditions:
- Opinion of the Directorate-General for Fisheries and Aquaculture:.....
- Comments of the Ministry responsible for fisheries:.....

Appendix 3

Provisions applicable to satellite monitoring of Community fishing vessels operating in the Gabonese EEZ and on the basis of the EC/GABON Fisheries Agreement

1. All fishing vessels with an overall length exceeding 15 metres operating under the Fisheries Agreement between the European Community and Gabon shall be tracked by satellite when fishing in the Gabonese EEZ.
2. For the purposes of the satellite tracking, the Gabonese authorities shall communicate to the Community party the latitude and longitude coordinates of the Gabonese EEZ.

The Gabonese 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 tracking pursuant to Community legislation enters the Gabonese 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 the Gabonese Fisheries Monitoring Centre (FMC) at intervals of no more than two 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 at 5 to the Control Centre of the flag State and the Gabonese FMC in good time. It will be necessary in those circumstances to send a global position report every eight hours. This global position report shall include the position reports as recorded by the skipper of the vessel on a two-hourly basis in accordance with the requirements laid down in point 5.

The Control Centre of the flag State shall send these messages to the Gabonese 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 the Gabonese EEZ.

8. The Control Centres of the flag States shall monitor the movements of their vessels in Gabonese waters. If the vessels are not being monitored in accordance with the conditions laid down, the Gabonese 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 the Gabonese FMC establishes that the flag State FMC is not transmitting the information specified in point 5, the competent departments of the flag State FMC and the European Commission 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 Gabonese authorities in controlling and monitoring the Community fleet fishing under the Fisheries Agreement between the European Community and Gabon. Such data may not under any circumstances be communicated to other parties.
11. The satellite-tracking 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-tracking system shall be prohibited.

Skippers shall ensure that:

- data are not altered in any way;
 - the antenna or antennas connected to the satellite-tracking equipment are not obstructed;
 - the power supply of the satellite-tracking equipment is not interrupted; and
 - the satellite-tracking 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 GABON

POSITION REPORT

Data Element	Code	Mandatory/ Optional	Comments
Start of 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 (ISO-3 code of flag State followed by number)
External registration number	XR	M	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 DDMM (WGS-84)
Course	CO	M	Vessel course 360° scale
Speed	SP	M	Vessel speed in tenths of knots
Dates	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 of record	ER	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 THE GABONESE EEZ

COORDINATES OF EEZ

The competent Gabonese authorities shall notify the competent departments of the zones closed to shipping. They undertake to give notification at least one month in advance of any amendment to those prohibited zones.

COORDINATES OF THE GABONESE FMC

Name of FMC:

VMS Tel.:

VMS Fax:

VMS E-mail:

DSPG Tel.:

DSPG Fax:

Address X25 =

Declaration of entries/exits: