

No. 15764

**SPAIN
and
UNITED STATES OF AMERICA**

Agreement concerning fisheries off the coasts of the United States (with annexes). Signed at Washington on 16 February 1977

*Authentic texts: Spanish and English.
Registered by Spain on 28 June 1977.*

**ESPAGNE
et
ÉTATS-UNIS D'AMÉRIQUE**

Accord relatif aux pêcheries situées au large des côtes des États-Unis (avec annexes). Signé à Washington le 16 février 1977

*Textes authentiques : espagnol et anglais.
Enregistré par l'Espagne le 28 juin 1977.*

AGREEMENT¹ BETWEEN THE GOVERNMENT OF SPAIN AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES

The Government of Spain and the Government of the United States of America, Considering their common concern for the rational management, conservation and optimum utilization of fish stocks off the coasts of the United States;

Acknowledging the fishery management authority of the United States as set forth in the Fishery Conservation and Management Act of 1976;

Having regard for the discussions of the Third United Nations Conference on the Law of the Sea regarding coastal state rights over fisheries off its coasts; and

Desirous of establishing reasonable terms and conditions pertaining to fisheries of mutual concern over which the United States exercises fishery management authority,

Have agreed as follows:

Article I. The purpose of this Agreement is to ensure effective conservation, optimum utilization and rational management of the fisheries of mutual interest off the coasts of the United States and to establish a common understanding of the principles and procedures under which fishing may be conducted by nationals and vessels under the jurisdiction of Spain for the living resources over which the United States exercises fishery management authority as provided by United States law.

Article II. As used in this Agreement, the term

1. "living resources over which the United States exercises fishery management authority" means all fish within the fishery conservation zone of the United States except highly migratory species; all anadromous species of fish that spawn in the fresh or estuarine waters of the United States and migrate to ocean waters; and all living resources of the continental shelf appertaining to the United States;

2. "fish" means all finfish, molluscs, crustaceans, and other forms of marine animal and plant life, other than marine mammals, birds and highly migratory species;

3. "fishery" means

a. one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and

b. any fishing for such stocks;

4. "fishery conservation zone" means a zone contiguous to the territorial sea of the United States, the seaward boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the breadth of the territorial sea of the United States is measured;

5. "fishing" means

a. the catching, taking or harvesting of fish;

¹ Came into force on 10 March 1977, the date of the last of the notes by which the Parties informed each other of the completion of their respective internal procedures, in accordance with article XVII (1).

- b. the attempted catching, taking or harvesting of fish;
 - c. any other activity that can reasonably be expected to result in the catching, taking or harvesting of fish; or
 - d. any operations at sea directly in support of, or in preparation for, any activity described in subparagraphs *a* through *c* above, provided that such term does not include other legitimate uses of the high seas, including any scientific research activity conducted by a scientific research vessel;
6. "fishing vessel" means any vessel, boat, ship or other craft that is used for, equipped to be used for, or of a type that is normally used for
- a. fishing; or
 - b. aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including preparation, supply, storage, refrigeration, transportation or processing;
7. "highly migratory species" means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean; and
8. "marine mammals" means any mammal that is morphologically adapted to the marine environment, including sea otters and members of the orders *Sirenia*, *Pinipedia*, and *Cetacea*, or primarily inhabits the marine environment such as polar bears.

Article III. 1. The Government of the United States is willing to allow access for fishing vessels of Spain to harvest, in accordance with terms and conditions to be established in permits issued under Article VI, an allocation of that portion of the allowable catch for a specific fishery that will not be harvested by United States fishing vessels.

2. The Government of the United States shall determine each year, subject to such adjustments as may be necessitated by unforeseen circumstances affecting the stocks,

- a. the total allowable catch for each fishery on the basis of the best available scientific evidence, taking into account the interdependence of stocks, internationally accepted criteria, and all other relevant factors;
- b. the harvesting capacity of United States fishing vessels in respect of each fishery;
- c. the portion of the total allowable catch for a specific fishery that, on an annual basis, will not be harvested by United States fishing vessels; and
- d. the allocation of such portion that can be made available to qualifying fishing vessels of Spain.

3. In implementation of paragraph 2, *d*, of this Article, the United States shall determine each year the measures necessary to prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery. Such measures may include, *inter alia*:

- a. designated areas where, and periods when, fishing shall be permitted, limited, or conducted only by specified types of fishing vessels or with specified types and quantities of fishing gear;
- b. limitations on the catch of fish based on area, species, size, number, weight, sex, incidental catch, total biomass or other factors;
- c. limitations on the number and types of fishing vessels that may engage in fishing and/or on the number of days each vessel or the total fleet may engage in fishing

in a designated area within the fishery conservation zone or for a specified fishery;

- d. requirements as to the types of gear that may, or may not, be employed; and
- e. requirements designed to facilitate enforcement of such conditions and restrictions, including the maintenance of appropriate position-fixing and identification equipment.

4. The Government of the United States shall notify the Government of Spain of the determinations provided for by this Article on a timely basis.

Article IV. In determining the portion of the surplus that may be made available to vessels of Spain, the Government of the United States will promote the objective of optimum utilization, taking into account, *inter alia*, traditional fishing by Spain, contributions to fishery research and the identification of stocks, previous cooperation in enforcement, previous cooperation with respect to conservation and management of fishery resources of mutual concern, the need to minimize social and economic dislocation in cases where vessels have habitually fished for living resources over which the United States now exercises fishery management authority, and other matters deemed appropriate.

Article V. The Government of Spain shall take all necessary measures to ensure:

1. that nationals and vessels under the jurisdiction of Spain refrain from fishing for living resources over which the United States exercises fisheries management authority except as authorized pursuant to this Agreement;
2. that all such vessels so authorized comply with the provisions of permits issued pursuant to this Agreement and applicable laws of the United States; and
3. that the total allocation referred to in Article III, paragraph 2, *d*, of this Agreement is not exceeded for any fishery.

Article VI. The Government of Spain may submit an application to the Government of the United States for a permit for each Spanish fishing vessel that wishes to engage in fishing in the fishery conservation zone pursuant to this Agreement. Such application shall be prepared and processed in accordance with Annex I to this Agreement, which shall constitute an integral part hereof. The Government of the United States may require the payment of reasonable fees for such permits.

Article VII. The Government of Spain shall ensure that nationals and vessels under the jurisdiction of Spain refrain from harassing, hunting, capturing, or killing, or attempting to harass, hunt, capture or kill, any marine mammal within the United States fishery conservation zone, except as may be otherwise provided by an international agreement respecting marine mammals to which the United States is a party, or in accordance with specific authorization for and controls on incidental taking of marine mammals established by the Government of the United States.

Article VIII. The Government of Spain shall ensure that in the conduct of the fisheries under this Agreement:

1. the authorizing permit for each Spanish vessel is prominently displayed in the wheelhouse of such vessel;
2. appropriate position-fixing and identification equipment, as determined by the Government of the United States, is installed and maintained in working order on each such vessel;

3. designated United States observers are permitted to board, upon request, any such fishing vessel, and shall be accorded the equivalent rank of ship's officer while aboard such vessel, and, further, the Government of the United States shall be reimbursed for the costs incurred in the utilization of observers;
4. agents are appointed and maintained within the United States possessing the authority to receive and respond to any legal process issued in the United States with respect to a vessel owner or operator for any cause arising out of the conduct of fishing activities under this Agreement; and
5. all necessary measures are taken to ensure the prompt and adequate compensation of United States citizens for any loss of, or damage to their fishing vessels, fishing gear or catch that is proximately caused by any fishing vessel of Spain as determined by applicable United States procedures.

Article IX. In order to facilitate the prompt and adequate compensation of the citizens of one country for any loss of, or damage to, their fishing vessels, fishing gear or catch caused by any fishing vessel of the other country, both Governments agree to the establishment of the Spanish-American Fisheries Board set forth in Annex II of this Agreement, which constitutes an integral part of this Agreement.

Article X. The Government of Spain shall take such measures as may be necessary to ensure that each Spanish vessel authorized to fish pursuant to this Agreement shall allow and assist the boarding and inspection of such vessel by any duly authorized enforcement official of the United States, and shall cooperate in such enforcement action as may be undertaken pursuant to the laws of the United States.

Article XI. 1. In cases of seizure and arrest of a vessel of Spain by the authorities of the Government of the United States, notification shall be given promptly through diplomatic channels informing the Government of Spain of the action taken and of any penalties subsequently imposed.

2. The Government of the United States will impose appropriate penalties, in accordance with the laws of the United States, on Spanish vessels, or their owners or operators, that violate the requirements of this Agreement or of any permit issued hereunder.

3. Arrested vessels and their crews shall be promptly released, subject to such reasonable bond or other security as may be determined by the court.

Article XII. The Government of Spain undertakes to cooperate to the extent possible with the Government of the United States in the conduct of scientific research required for the purpose of managing and conserving living resources subject to the fishery management authority of the United States, including the compilation of best available scientific information for the management and conservation of stocks of mutual concern. The competent agencies of the two Governments shall enter into such arrangements as may be necessary to facilitate such cooperation, including the exchange of information and scientists, regularly scheduled meetings between scientists to prepare research plans and review progress, and the implementation and maintenance of a standardized system for the collection and archiving of relevant statistical and biological information in accordance with the procedures in Annex III, which constitutes an integral part of this Agreement.

Article XIII. The Government of Spain and the Government of the United States shall carry out periodic bilateral consultations regarding the implementation

of this Agreement and the development of further cooperation in the field of fisheries of mutual concern, including the establishment of appropriate multilateral organizations for the collection and analysis of scientific data respecting such fisheries.

Article XIV. The Government of the United States undertakes to authorize Spanish fishing vessels allowed to fish pursuant to this Agreement to enter United States ports in accordance with United States laws, for the purpose of purchasing bait, supplies, or outfits, or effecting repairs, or for such other purposes as may be authorized.

Article XV. Should the Government of the United States indicate to the Government of Spain that nationals and vessels under its jurisdiction wish to engage in fishing in the fishery conservation zone of Spain or its equivalent, the Government of Spain will allow such fishing on the basis of reciprocity and on terms not more restrictive than those established in accordance with this Agreement.

Article XVI. Nothing contained in the present Agreement shall affect or prejudice in any manner the positions of either Government with respect to the extent of internal waters, of the territorial sea, of the high seas, or of coastal state jurisdiction or authority for any purpose other than the conservation and management of fisheries as provided for in this Agreement.

Article XVII. 1. This Agreement shall enter into force on a date to be mutually agreed by an exchange of notes, upon the completion of the internal procedures of both Parties, and shall remain in force until July 1, 1982, unless extended by an exchange of notes between the Parties. Notwithstanding the foregoing, either Party may terminate this Agreement at any time after giving notice of such termination one year in advance. Should any such notice be given, both Parties shall meet to consider the possibility of entering into a substitute Agreement.

2. This Agreement shall be subject to review by the two Governments two years after its entry into force, upon the conclusion of a multilateral treaty resulting from the Third United Nations Conference on the Law of the Sea or at any time that the two Parties agree such a review would be in their mutual interest.

IN WITNESS WHEREOF, the undersigned, being duly authorized for this purpose, have signed this Agreement.

DONE at Washington, February 16, 1977, in duplicate, in the Spanish and English languages, both texts being equally authentic.

For the Government of Spain:

[Signed]

J. J. ROVIRA

[Ambassador of Spain]¹

For the Government of the United States of America:

[Signed]

ROZANNE L. RIDGWAY

[Ambassador for Oceanographic Affairs
and Fishing]¹

¹ Title between brackets appears only in the authentic Spanish text.

ANNEX I

APPLICATION AND PERMIT PROCEDURES

The following procedures shall govern the application for and issuance of annual permits authorizing Spanish vessels to engage in fishing for living resources over which the United States exercises fishery management authority:

1. The Government of Spain may submit an application to the Government of the United States for each Spanish fishing vessel that wishes to engage in fishing pursuant to this Agreement. Such application shall be made on forms provided by the Government of the United States for that purpose.

2. Any such application shall specify

- a. the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner and operator thereof;
- b. the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other information relating to the fishing characteristics of the vessel as may be requested;
- c. a specification of each fishery in which each vessel wishes to fish;
- d. the amount of fish or tonnage of catch by species contemplated for each vessel during the time such permit is in force;
- e. the ocean area in which, and the season or period during which, such fishing would be conducted;
- f. such other relevant information as may be requested.

3. The Government of the United States shall review each application, shall determine what conditions and restrictions related to fishery management and conservation may be needed, and what fee will be required. The Government of the United States shall inform the Government of Spain of such determinations.

4. The Government of Spain shall thereupon notify the Government of the United States of its acceptance or rejection of such conditions and restrictions and, in the case of a rejection of its objections thereto.

5. Upon acceptance of the conditions and restrictions by the Government of Spain and the payment of any fees, the Government of the United States shall approve the application and issue a permit for each Spanish fishing vessel, which fishing vessel shall thereupon be authorized to fish in accordance with this Agreement and the terms and conditions set forth in the permit. Such permits shall be issued for a specific vessel and shall not be transferred.

6. In the event the Government of Spain notifies the United States of its objections to specific conditions and restrictions, the two Governments may consult with respect thereto and the Government of Spain may thereupon submit a revised application.

7. The procedures in this Annex may be amended by agreement through an exchange of notes between the two Governments.

ANNEX II

AMERICAN-SPANISH FISHERIES BOARD

Section I. ESTABLISHMENT OF THE BOARD

1. There is hereby established an American-Spanish Fisheries Board (hereinafter called the Board).

2. The Board shall consist of four members, two appointed by the Government of the United States of America and two appointed by the Government of Spain. Each Government shall inform the other of the names of the persons it appoints to the Board. Each Government-appointed member shall serve at the pleasure of the appointing Government. It is the responsibility of each Government to maintain its full complement of members.

3. Each Government may appoint one non-voting technical adviser to the Board for each matter heard.

4. All decisions of the Board shall be undertaken unanimously by those members present and voting, so long as at least one member appointed by each Government is present.

5. The Board shall normally sit in Washington, D.C. Insofar as is necessary considering the location of the parties and the availability of evidence, the Board may sit elsewhere.

6. English and Spanish shall be the official working languages of the Board. The Governments shall assist the Board in arranging for necessary translations and interpretations.

7. As used in this Agreement, the term "national" refers to any vessel or person, natural or juridical, including but not limited to a governmental entity.

Section II. CONCILIATION FUNCTIONS

1. The board shall consider claims advanced by a national of either State against a national of the other State regarding financial loss resulting from damage to or loss of the national's fishing vessel or fishing gear.

2. No claim may be brought more than two years after the occurrence of the relevant incident, unless the Board decides unanimously to make an exception for a specific incident.

Section III. CONCILIATION PROCEDURES

1. The Board shall establish its procedures in accordance with this Annex.

2. A claim, as referred to in Section II above, shall be brought before the Board by a written request. The request shall be in the form of a sworn statement which shall include, *inter alia*, a detailed account of the incident from which the claim arises, the identity of all persons and vessels involved, the remedy sought (damages claimed), and a list of potential witnesses knowledgeable about the incident. All appropriate documentary evidence supporting the claim shall be forwarded with the claim to the Board.

3. Upon receipt of a claim, the Board shall, as soon as practicable, commence an inquiry into the incident, and inform both Governments. Each Government shall immediately notify any of its nationals against whom a claim is made. Its nationals may in turn file with the Board a sworn statement responding to the claim. The response may contain a counterclaim insofar as the counterclaim arises from the same incident upon which the claim is based. A counterclaim shall be in the same form and contain the same information as a claim. The Board may join claims that arise from the same incident, without prejudice to the right of each party to present evidence with or without counsel.

4. The Board may request further information and documents from the parties to the dispute or from appropriate governmental agencies. All statements, reports, or other documents presented to the Board shall be duly sworn and attested as to their authenticity, insofar as reasonably possible. Official Government reports and documents need not be so authenticated.

5. If either the claimant or the respondent requests a hearing, or if the Board deems it desirable to hold a hearing, the Board shall convene a hearing regarding the incident. The claimant and respondent may appear at the hearing, personally or through a representative, with or without counsel, and may present witnesses. The Board may invite as witness any person, organization, corporation, or other entity which has a direct interest in or knowledge of the matter. The claimant and respondent shall be permitted to question all persons testifying at the hearing, provided that no person shall be required to respond to any question.

6. The Governments will facilitate the work of the Board.

Section IV. CONCILIATION REPORT

1. The Board shall prepare a report containing its findings as to:

(a) the facts giving rise to the claim;

- (b) the extent of damage or loss;
- (c) the degree of respondent's or claimant's responsibility, if any; and
- (d) the amount, if any, which should be paid by respondent or claimant as compensation for losses arising from the incident.

2. If the Board does not unanimously adopt the findings, this shall be stated in the report, and the report shall contain separate statements of each Board member's opinion.

3. The Board shall transmit its report to the claimant, the respondent, and to each of the two Governments no later than sixty days after the completion of the procedures under Section III.

4. Within thirty days after receipt of the Board's report, either the claimant or the respondent may request in writing that the Board reconsider its report. The request shall set forth the reasons for the request and material substantiating the request. The Board may decide to reconsider its report, and, if it deems appropriate, receive new evidence or convene a rehearing, or both. Section III procedures will be applicable to the reconsideration.

5. The two Governments undertake to encourage settlement of claims in accordance with the findings of the Board.

6. Within sixty days of receipt of the Board's report, each Government shall inform the Board in writing of the actions taken by its nationals pursuant to the Board's findings.

7. If one of the parties to a conciliation proceeding refuses to settle in accordance with the findings of the Board, the Board shall encourage the parties to submit their dispute to binding arbitration.

8. The Board's report and the information provided by each Government shall be published in the form agreed by the Board.

Section V. USE OF THE BOARD

The two Governments shall encourage their nationals to use, as appropriate, the Board to settle claims resulting from damage to or loss of fishing gear and vessels. The Governments shall give information about the Board to interested persons.

Section VI. APPLICABLE LAW

In all proceedings under this Agreement the Board shall apply:

- (a) international conventions, whether general or particular, establishing rules expressly recognized by the two Governments, including bilateral and multilateral agreements between the two Governments dealing with fisheries and maritime matters generally;
- (b) international custom, as evidence of a general practice accepted as law;
- (c) the general principles of law recognized by nations;
- (d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Section VII. OTHER REMEDIES

1. Nothing in this Agreement shall preempt, prejudice, or in any other way affect judicial proceedings, or the right to institute such proceedings, or in any way prejudice or affect the substantive or procedural rights of any person, whether or not such person appears before or participates in the proceedings of the Board.

2. No claim shall be brought the substance of which has been or is being adjudicated or arbitrated between the parties. The Board may refuse to consider a claim on the grounds that it should be joined to an existing judicial proceeding involving substantially the same issues and in which the law applicable to such judicial proceedings appears to permit such joinder.

3. The Board shall immediately suspend conciliation proceedings regarding a claim in respect to which judicial proceedings are instituted, unless the court before which the proceed-

ings are pending determines, in the exercise of its lawful authority, that the parties may continue to proceed before the Board.

4. The Board shall immediately terminate conciliation proceedings regarding a claim in respect to which there is a binding agreement to arbitrate.

Section VIII. FUNDING

Each Government shall pay all expenses, including compensation of the members it appoints to the Board and of any technical advisers it appoints. The two Governments will share equally all the administrative and operational costs of the Board. Such costs do not include expenses related to the presentation or production of evidence or the appearance of witnesses.

Section IX. REVIEW

At the request of either Government, representatives of the two Governments shall meet to review the operation of this Annex and to consider proposals for its revision. This Annex may be amended through an exchange of notes between the two Governments.

Section X. TERMINATION

At any time either Government may give written notice to the other Government of its intention to denounce this Annex, in which case the Annex shall terminate sixty days from the date of the notification, provided that the effect of the Annex shall in any event continue until the conclusion of conciliation proceedings and arbitrations instituted prior to its termination, unless otherwise agreed by the two Governments.

ANNEX III

DATA COLLECTION AND REPORTING REQUIREMENTS FOR SPANISH VESSELS

The reporting procedure described below is designed to contribute to continuing needs for assessment of the status of stocks. However, specific needs may develop from time to time which require a change in standard procedures, or additional data for special studies. Also, the pattern of fisheries will change. These aspects require that the procedures for reporting must be flexible enough to accommodate necessary changes. It also implies that some form of archiving of the basic data be developed so that retrieval at a later date in a different format from that specified below is possible.

All data described below for the Atlantic area shall be reported to the Director, Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts.

1. Statistical Information Requirements for Atlantic Fisheries: Catch and Effort: Three months after the close of each quarter, catch-effort statistics for biweekly time periods for 30-minute square areas will be reported by vessel for the previous quarter. These will be reported using biweekly 30-minute square Statlant 21 B Forms or magnetic tape, computer cards or printouts for all species and gear types. Vessel logbook data is to be available for selected, specific joint assessment studies. The collection of samples, specified in 2 below, should also be annotated in the logbook.
2. Procedures for Scientific Samples From Atlantic Fisheries:
 - a. Length-age composition samples
 - (1) Samples will be taken separately for each gear type (e.g. bottom trawl, pelagic trawl, purse seine) and water layer (e.g. on the bottom, midwater level) combination every month for which fishing is pursued by 30-minute square areas throughout the agreement region. One sample will be taken for every 1,000 tons or fraction thereof within the above categories.

- (2) Data to be recorded for each sample:
- Vessel classification
 - Method of fishing; e.g., pelagic
 - Specific type of trawl, including reference to its construction or actual scale drawing
 - Mesh sizes
 - Tonnage of the species sampled in the trawl haul
 - Total weight of the fish sampled
 - Time of day of haul
 - Date
 - Latitude and longitude of haul.

(3) Sampling procedures:

(a) Species for which the catch is sorted

- (i) From a single net haul take 4 random aliquots of approximately 50 fish each. (For species with less than 200 fish in a single trawl haul accumulate samples over trawl hauls until approximately 200 fish are taken.)
- (ii) Measure fork length for each fish to nearest cm, except for herring where the measurement will be the total length to the nearest cm below. Where other measurement systems are used, appropriate conversion information must be supplied.
- (iii) Take a subsample of one fish from each cm interval and remove scales and otoliths as appropriate. Record the sex of mature individuals.

(b) Species for which catch is not sorted

- (i) From a single trawl take 2 random aliquots of approximately 30 kilos each.
- (ii) Sort to individual species (for “river herring” this means sorting to alewife *Alosa pseudoharengus* and blueback *A. aestivalis*).
- (iii) Measure fork length for each fish to nearest cm except for herring where the measurement will be the total length to the nearest cm below. Where other measurement systems are used, appropriate conversion information must be supplied.
- (iv) Take a subsample of one fish from each cm interval and remove scales and otoliths as appropriate. Record the sex of mature individuals.

b. Length-weight samples

Individuals of one sample of each principal species of fish (e.g., expected yearly catch in the area of agreement of 500 or more tons), per International Commission for the Northwest Atlantic Fisheries (ICNAF) Division per month, will be weighed in grams and measured in millimeters. Each sample will contain 10 fish per centimeter interval for the length range of fish and may be accumulated if necessary from small samples taken over several catches and days. With small fish, where weighing at sea of individuals is not accurate, appropriate numbers of fish of the same length class shall be weighed in aggregate. Sex shall be recorded for mature individuals.

3. Applicable data collection and reporting requirements for fisheries in areas other than the Atlantic will be provided as necessary by the United States.
4. The procedures in this Annex may be amended by agreement through an exchange of notes between the two Parties.