

No. 16655

**UNITED STATES OF AMERICA
and
CUBA**

Agreement concerning fisheries off the coasts of the United States (with annexes and agreed minutes). Signed at Havana on 27 April 1977

Authentic texts: English and Spanish.

Registered by the United States of America on 27 April 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
CUBA**

Accord relatif aux territoires de pêche situés au large du littoral des États-Unis (avec annexes et procès-verbal approuvé). Signé à La Havane le 27 avril 1977

Textes authentiques : anglais et espagnol.

Enregistré par les États-Unis d'Amérique le 27 avril 1978.

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

The Government of the United States of America and the Government of the Republic of Cuba,

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, and as expressed in this Agreement;

Having regard for the discussions of the Third United Nations Conference on the Law of the Sea regarding coastal state rights and obligations 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 vessels of the Republic of Cuba 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 throughout their migratory range, 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;

b. the attempted catching, taking or harvesting of fish;

¹ Came into force on 26 September 1977, the date mutually agreed upon by an exchange of notes, following the completion of the internal procedures of both Parties, in accordance with article XVII (1).

- 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*, *Pinnipedia* 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 the Republic of Cuba 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, including information from the relevant international organizations, 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 the Republic of Cuba.

3. In implementation of paragraph 2, *d*, of this Article, the Government of 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

*Should read "Article VII".

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 the Republic of Cuba of the determinations and measures 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 the Republic of Cuba and other countries, the Government of the United States will promote the objective of optimum utilization, taking into account, *inter alia*, traditional fishing, if any, contributions to fishery research and the identification of stocks, previous cooperation in enforcement and with respect to conservation and management of fishery resources of mutual concern, and the need to minimize economic dislocation in cases where vessels of the Republic of Cuba have habitually fished for living resources over which the United States now exercises fishery management authority.

Article V. The Government of the United States shall take all necessary measures to implement this Agreement, including the issuance of permits in accordance with Articles III and VII and Annex I of this Agreement.

Article VI. The Government of the Republic of Cuba shall take all necessary measures to ensure:

1. that vessels of the Republic of Cuba refrain from fishing for living resources over which the United States exercises fishery 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 VII. The Government of the Republic of Cuba may submit an application to the Government of the United States for a permit for each vessel of the Republic of Cuba 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 VIII. The Government of the Republic of Cuba shall ensure that vessels of Cuba 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 IX. The Government of the Republic of Cuba shall ensure that in the conduct of the fisheries under this Agreement:

1. the authorizing permit for each vessel of Cuba 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 according to a program for implementation which takes into account factors commonly recognized by both Parties;
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 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 caused by any fishing vessel of the Republic of Cuba, as determined by applicable United States procedures.

Article X. 1. The Government of the Republic of Cuba shall take such measures as may be necessary to ensure that each vessel of Cuba authorized to fish pursuant to this Agreement, and any other vessel of Cuba that engages in fishing for living resources subject to the fishery management authority of the United States, 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.

2. In cases of seizure and arrest of a vessel of the Republic of Cuba by the authorities of the Government of the United States, notification shall be given promptly through diplomatic channels informing the Government of the Republic of Cuba of the facts and the action taken.

Article XI. 1. The Government of the United States will impose appropriate penalties, in accordance with the laws of the United States, on vessels of Cuba or their owners or operators, that violate the requirements of this Agreement or of any permit issued hereunder.

2. In cases of an enforcement action undertaken by authorities of the Government of the United States, vessels of Cuba and their crews shall be promptly released upon the posting of reasonable bond or any other security as may be determined by the court.

3. The representatives of the Government of the United States will recommend to the court in any case arising out of fishing activities under this Agreement that the penalty for violation of fishery regulations not include imprisonment or any other form of corporal punishment.

Article XII. 1. The Governments of the United States and Cuba undertake to cooperate, according to their capabilities, in the conduct of scientific research related to living resources of mutual interest. 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, and regularly scheduled meetings between scientists to prepare research plans and review progress.

2. The Government of Cuba shall cooperate with the Government of the United States in the implementation of procedures for collecting, recording, and reporting fisheries data in accordance with the procedures in Annex II, which constitutes an integral part of this Agreement.

Article XIII. The Government of the United States and the Government of the Republic of Cuba shall carry out periodic bilateral consultations regarding the implementation of this Agreement, the development of further cooperation in the field of fisheries of mutual concern, including the establishment of appropriate organizations for the collection and analysis of scientific data respecting such fisheries, and the coordination of national management programs with regard to stocks of species which migrate through the waters of the zones off the coasts of the two countries.

Article XIV. The Government of the United States undertakes to authorize vessels of the Republic of Cuba allowed to fish pursuant to this Agreement to enter designated 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 the Republic of Cuba that nationals and vessels of the United States wish to engage in fishing in the zone established by Decree Law 2 of February 24, 1977, of Cuba, the Government of the Republic of Cuba 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 set forth in this Agreement.

Article XVII. 1. This Agreement shall enter into force on a date to be mutually agreed by an exchange of notes, following the completion of the internal procedures of both Parties and shall remain in force for a five-year period, unless terminated sooner by either Party after giving notification of such termination one year in advance.

2. This Agreement shall be subject to review by the two Governments two years after its entry into force or upon the conclusion of a multilateral treaty resulting from the Third United Nations Conference on the Law of the Sea.

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

DONE in the City of Havana, this 27th day of April, 1977, in duplicate in the English and Spanish languages, both texts being equally authentic.

For the Government
of the United States of America:
[Signed — Signé]¹

For the Government
of the Republic of Cuba:
[Signed — Signé]²

ANNEX I

APPLICATION AND PERMIT PROCEDURES

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

1. The Government of the Republic of Cuba may submit an application to the Government of the United States for each vessel of Cuba 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;

¹ Signed by Terence A. Todman — Signé par Terence A. Todman.

² Signed by Pelegrin Torras — Signé par Pelegrin Torras.

- e. the ocean area in which, and the season or period during which, such fishing would be conducted; and
- 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 the Republic of Cuba of such determinations.

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

6. Upon acceptance of the conditions and restrictions by the Government of the Republic of Cuba and the payment of any fees, the Government of the United States shall approve the application and issue a permit for each vessel of Cuba 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.

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

ANNEX II

DATA REQUIREMENTS FOR VESSELS OF THE REPUBLIC OF CUBA

The reporting procedures are designed to contribute to continuing needs for assessment of the status of stocks and their conservation and management. However, specific needs may develop from time to time which require a change in procedures, or additional data for special studies. Also, the pattern of fisheries will change. These aspects require that the procedures must be flexible enough to accommodate necessary changes. Therefore, the United States shall develop procedures for reporting and recording statistical information, including catch and effort information, and shall make available to authorities of the Government of Cuba the procedures and the forms for reporting such statistical information. The procedures will be announced and forms for reporting will be made available in sufficient time to allow compliance.

All data referred to in this Annex shall be reported to the designated representative of the National Marine Fisheries Service.

1. Procedures for Scientific Samples From Atlantic Fisheries:

a. Length-age composition samples

- (i) 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.
- (ii) 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
- (iii) Sample 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., 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.
- c. The collection of samples, specified above, shall be annotated in fishing logbooks.
2. Applicable procedures for scientific samples from fisheries in areas other than the Atlantic will be provided as necessary by the United States.
 3. The procedures in this Annex may be amended by agreement through an exchange of notes between the two Parties.

ANNEX III

PROCEDURES RELATING TO UNITED STATES PORT CALLS

Article XIV of the Agreement provides for the entry of fishing vessels of the Republic of Cuba allowed to fish pursuant to the Agreement into designated ports of the United States in accordance with United States law for certain purposes. This Annex designates the ports and purposes authorized and describes the procedures which shall govern port entries.

1. The vessels of the Republic of Cuba which have been issued permits or have been authorized to receive permits pursuant to the Agreement are authorized to enter the ports of New York, Boston, and Philadelphia, beginning on the date of entry into force of the Agreement, authorized ports in other coastal areas of the United States to be designated at such time as Cuba receives allocations for fisheries in those areas. Entry into designated ports shall be pursuant to the following procedures.
2. Vessels of the Republic of Cuba may enter the ports specified above to replenish ships' stores or fresh water, obtain bunkers, provide rest for or make changes in their crews, to obtain repairs and other services normally provided in those ports, and, as necessary, to receive permits. Authorized vessels enroute to one of the designated ports to receive a permit shall be treated as non-fishing vessels, so long as such vessels observe the provisions of this Agreement.
3. Entry shall be permitted subject to notice to the United States Coast Guard, forwarded so as to be received four days in advance of the port entry using (1) Telex, using Telex number 89-2427, or (2) Teletype Communication "TWX", using TWX number 710-822-1959, or (3) Western Union, using the address "U.S. Coast Guard Headquarters, 6th and D Streets, S.W., Washington, D.C." All such entries are subject to the applicable laws and regulations of the United States, including the Federal Water Pollution Control Act.
4. The Government of the United States of America at its Embassies in Mexico City and Kingston and its Consulate General in Montreal, will accept crew lists in application for visas valid for a period of six months for multiple entry into the specified United States ports. Such a crew list shall be submitted at least fourteen days prior to the first entry of a vessel into a port of the United States. Submission of an amended (Supplemental) crew list subsequent to departure of a vessel from a port of the Republic of Cuba will also be subject to the Provisions of this paragraph, provided that visas thereunder shall only be valid for six months from the date of issuance of the original crew list visa. Notification of entry shall specify if shore leave is requested under such multiple entry visa.
5. In cases where a seaman of the Republic of Cuba is evacuated from his vessel to the United States for the purpose of emergency medical treatment, authorities of the Republic of Cuba will ensure that the seaman departs from the United States within fourteen days after his release from the hospital. During the period that the seaman is in the United States, representatives of the Cuban side will be responsible for him.
6. The exchange of crews of vessels of the Republic of Cuba in the specified ports shall be permitted subject to submission to the United States Embassies in Mexico City and Kingston and its Consulate General in Montreal of applications for individual transit visas and crewman visas for replacement crewmen. Applications shall be submitted fourteen days in advance of the date of the arrival of the crewmen in the United States and shall indicate the names, dates and places of birth, the purpose of the visit, the vessel to which assigned, and the modes and dates of arrival of all replacement crewmen. Individual passports or seamen's documents shall accompany each application. Subject to United States laws and regulations, the United States Embassies and Consulate General will affix transit and crewman visas to each passport or seaman's document before it is returned. In addition to the requirements above, the name of the vessel and date of its expected arrival, a list of names, dates and places of birth for those crewmen who shall be admitted to the United States under the responsibility of Cuban representatives for repatriation to the Republic of Cuba and the dates and manner of their departure from the United States shall be submitted to the Department of State fourteen days in advance of arrival.
7. Special provisions shall be made as necessary regarding the entry of research vessels of the Republic of Cuba which are engaged in a mutually agreed research program in accordance with the terms of Article XII of the Agreement. Requests for entries of fishery research vessels shall be forwarded to the United States Department of State, Washington, D.C., through diplomatic channels.
8. The provisions of this Annex may be amended by agreement through an exchange of notes between the two Governments.

AGREED MINUTES

The Representative of the Republic of Cuba wished to indicate the interest of Cuba in continuing its fishery of grouper, red snapper, shrimp, shark, and other species in the waters of the Gulf of Mexico belonging to the United States of America, at a level at least corresponding to its historical share in these fisheries, being also of the opinion that the state of the stocks of these species so allows, even in the case that US vessels increase their levels of catch.

Likewise, the Representative of the Republic of Cuba wished to express Cuba's interest in initiating, as soon as possible, fisheries of hake, herring, Alaska pollock and others in the Central and Northeastern Pacific areas off the coasts of the United States of America, because of Cuba's need to develop its fisheries with the fundamental purpose of obtaining foodstuffs for its people.

The Representative of the United States took note of the expression of views and aspirations of the Cuban side and indicated they would be made known to the appropriate fishery management authorities of the United States. The applications received would be forwarded to the Regional Fishery Management Councils for their review and comment in the context of the relevant management plans, existing or in preparation.

The Representative of the Republic of Cuba wished to manifest Cuba's interest in achieving a rapid implementation of the provisions of Articles XII and XIII of the Agreement concerning the establishment of mechanisms for cooperation between the two countries for the purpose of promoting scientific research on the fishery resources of the region, analyzing the scientific evidence contributed by both parties and coordinating national management programs for species which migrate between the respective zones of both countries.

The Representative of the United States of America, taking account of the provisions of Articles XII and XIII, was of the view that the Agreement does establish a framework for scientific cooperation, the elaboration of which the United States hopes will proceed at a positive pace.

The Representative of the Republic of Cuba called upon the competent authorities of the United States to see to it that Cuba's tuna fisheries are not affected by regulatory measures applicable to other highly migratory species constituting associated catches in such fisheries.

The Representative of the United States took note of the statement and, stating that the jurisdiction of the United States within the fishery conservation zone does not include jurisdiction over tuna, undertook to bring the Cuban concern to the attention of the national fishery management authorities of the United States. The hope was also expressed that the cooperation undertaken pursuant to Articles XII and XIII would include an address to the problems of associated catches.
