

No. 20835

**UNITED STATES OF AMERICA
and
PORTUGAL**

Agreement concerning fisheries off the coasts of the United States (with annexes and agreed minutes). Signed at Washington on 16 October 1980

Authentic texts: English and Portuguese.

Registered by the United States of America on 1 March 1982.

**ÉTATS-UNIS D'AMÉRIQUE
et
PORTUGAL**

Accord relatif aux pêcheries situées au large des côtes des États-Unis (avec annexes et procès-verbal approuvé). Signé à Washington le 16 octobre 1980

Textes authentiques : anglais et portugais.

Enregistré par les États-Unis d'Amérique le 1^{er} mars 1982.

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

The Government of the United States of America and the Government of Portugal,

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 insure 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 of Portugal 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.

¹ Came into force on 4 March 1981, the date mutually agreed upon by an exchange of notes, upon the completion of the internal procedures of both Governments, in accordance with article XVI (1).

5. "Fishing" means

- a. The catching, taking or harvesting of fish;
- 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;
- 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 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 mammal" 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. Subject to the terms of this Agreement, the Government of the United States is willing to allow access for fishing vessels of Portugal to harvest, in accordance with terms and conditions to be established in permits issued under article VI, an allocation of that portion of the total 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 Portugal.

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 of the total fleet may engage in a designated area 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 Portugal 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 Portugal, the Government of the United States will promote the objective of optimum utilization of the living resources, taking into account, *inter alia*, traditional fishing, if any, contribution to fishery research and the identification of stocks, previous cooperation with respect to conservation and management of fishery resources of mutual concern, cooperation in enhancing trade and trade opportunities for United States fisheries products, other cooperation in enhancing development of the United States fishing industry, including joint venture arrangements, and such other matters as are deemed appropriate.

Article V. The Government of Portugal shall undertake to improve and increase fisheries trade opportunities in Portugal for the United States fishing industry by taking measures to facilitate access of United States fishery products into Portugal, by providing information concerning technical and administrative requirements, and such other actions as may be necessary and appropriate.

Article VI. The Government of Portugal shall take all necessary measures to insure:

1. That nationals and vessels of Portugal 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 Portugal shall submit an application to the Government of the United States for a permit for each fishing vessel of Portugal 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, which constitutes an integral part of this Agreement. The Government of the United States may require the payment of reasonable fees for such permits and for fishing in the United States fisheries zone.

Article VIII. The Government of Portugal has and shall continue to prohibit nationals and vessels of Portugal 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 Portugal shall ensure that in the conduct of the fisheries under this Agreement:

1. The authorizing permit for each vessel of Portugal 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 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 insure the prompt and adequate compensation of United States citizens for any loss, or damage to, their fishing vessels, fishing gear or catch that is caused by any fishing vessel of Portugal as determined by applicable United States procedures.

Article X. The Government of Portugal shall take all appropriate measures to the extent permissible under its national laws to ensure that each vessel of Portugal authorized to fish pursuant to this Agreement, and any other Portuguese fishing vessel 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 officer 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. The Government of the United States will impose appropriate penalties, in accordance with the laws of the United States, on vessels of Portugal or their owners or operators, that violate the requirements of this Agreement or of any permit issued hereunder.

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

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

Article XII. The Government of the United States undertakes to authorize fishing vessels of Portugal 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 XIII. 1. The Governments of the United States and Portugal shall cooperate according to their capabilities 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 the best available scientific information for management and conservation of stocks of mutual interest.

2. Competent agencies of the two Governments shall agree on an annual research plan through correspondence or meetings as appropriate, and may modify it from time to time by mutual agreement. The agreed annual research plans may include, but are not limited to, the exchange of information and scientists, regularly scheduled meetings between scientists to prepare research plans and review progress, and jointly conducted research projects.

3. The conduct of agreed research during regular commercial fishing operations on board a fishing vessel of Portugal in the United States fishery conservation zone shall not be deemed to change the character of the vessel's activities from fishing to scientific research. Therefore, it will still be necessary to obtain a permit for the vessel in accordance with article VI.

4. The Government of Portugal shall cooperate with the Government of the United States in the implementation of procedures for collecting and reporting biostatistical information and fisheries data, including catch and effort statistics, in accordance with the procedures in annex II which constitutes an integral part of this Agreement.

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

Article XV. 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, or the territorial sea, or the high seas, or coastal state jurisdiction or authority for any purpose other than the conservation and management of fisheries as provided for in this Agreement.

Article XVI. 1. This Agreement shall enter into force on a date to be mutually agreed by exchange of notes, upon the completion of internal procedures of both Governments and shall remain in force for five years, unless extended by exchange of notes between the Parties. Notwithstanding the foregoing, either Party may terminate this Agreement after giving notice 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 at Washington, October 16, 1980, in English, the Portuguese text to be agreed upon and signed at a later date, both texts being equally authentic.

For the Government
of the United States of America:

[Signed — Signé]¹

For the Government
of Portugal:

[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 Portugal to engage in fishing for living resources over which the United States exercises fishery management authority:

1. The Government of Portugal may submit an application to the competent authorities of the United States for each fishing vessel of Portugal 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; and
- f. Such other relevant information as may be requested, including desired transshipping areas.

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 Portugal of such determinations.

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

5. Upon acceptance of the conditions and restrictions by the Government of Portugal and the payment of any fees, the Government of the United States shall approve the application and issue a permit for each Portuguese 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.

¹ Signed by M. D. Busby — Signé par M. D. Busby.

² Signed by João de Albuquerque — Signé par João de Albuquerque.

6. In the event the Government of Portugal notifies the Government of the United States of their objections to specific conditions and restrictions, the two sides may consult with respect thereto and the Government of Portugal 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

DATA COLLECTION AND REPORTING REQUIREMENTS FOR PORTUGUESE VESSELS

The reporting procedures described below are 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. Therefore, the United States will develop procedures for reporting and recording statistical information, including catch and effort information, and shall make available to authorities of the Government of Portugal 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

- (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 and duration 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 pseudo-harengus* 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.
- (c) Length-weight samples

Individuals of one sample of each principal species of fish (e.g., expected yearly catch in area of agreement of 500 or more tons), per Northwest Atlantic Fisheries Organization (NAFO) Division per month, will be weighed in grams and measured in millimeters. Each sample will contain 10 fish per centimeter interval. The length range of fish 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.

The collection of samples specified above shall be annotated in fishing log books.

2. Applicable data collection and reporting requirements for 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.

AGREED MINUTES

The representatives of the Government of the United States and the Government of Portugal have agreed to record the following in connection with the Agreement between the Government of the United States of America and the Government of Portugal concerning Fisheries off the Coast of the United States:

With respect to article IX, paragraph 5, of the Agreement, the representatives of both Governments noted that the Governments of the United States and Portugal may wish to consider establishing a joint fisheries claim board in the event Portuguese vessels fish in the United States fishery conservation zone pursuant to the Agreement.

With respect to article XIII, concerning exchanges of scientists, meetings of scientists, or sending of scientists to work on jointly conducted research projects under an agreed annual research plan, the representatives of both Governments noted that the competent agencies of the two Governments may agree that the dispatching party shall cover round-trip travel expenses and the receiving party shall bear the expenses of lodging, board and local transportation within its territory and aboard its vessels, when this would be advantageous to the implementation of the agreed activity.