

No. 16461

**UNITED STATES OF AMERICA
and
REPUBLIC OF CHINA**

Agreement concerning fisheries off the coasts of the United States (with annexes and agreed minutes). Signed at Washington on 15 September 1976

Authentic texts: English and Chinese.

Registered by the United States of America on 13 February 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
RÉPUBLIQUE DE CHINE**

Accord concernant des activités de pêche au large des côtes des États-Unis (avec annexes et procès-verbal approuvé). Signé à Washington le 15 septembre 1976

Textes authentiques : anglais et chinois.

Enregistré par les États-Unis d'Amérique le 13 février 1978.

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

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

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

Recognizing that the United States has established a fishery conservation zone within 200 nautical miles of its coasts within which the United States exercises fishery management authority over all fish and that the United States also exercises such authority over the living resources of the continental shelf appertaining to the United States and to anadromous species of fish of United States origin throughout their migratory range;

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 of the Republic of China 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;

¹ Came into force on 28 February 1977, the date agreed upon by exchange of notes which took place after completion of the internal procedures of both Parties, in accordance with article XVI (1).

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;
- 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 sub-paragraphs *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 the polar bears.

Article III. 1. The Government of the United States is willing to allow access for fishing vessels of the Republic of China 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 the Republic of China.

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 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 the Republic of China 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 the Republic of China, and vessels of 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, previous cooperation with respect to conservation and management of fishery resources of mutual concern, and the need to minimize economic dislocation in cases where vessels have habitually fished for living resources over which the United States now exercises fishery management authority.

Article V. The Government of the Republic of China shall take all necessary measures to ensure:

- a.* that nationals and vessels of the Republic of China refrain from fishing for living resources over which the United States exercises fishery management authority except as authorized pursuant to this Agreement;
- b.* 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
- c.* that the total allocation referred to in Article III, paragraph 2, *d*, of this Agreement is not exceeded for any fishery.

Article VI. 1. The Government of the Republic of China may submit application to the Government of the United States for a permit for each fishing vessel of the Republic of China 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 shall constitute an integral part of this Agreement. The Government of the United States may require the payment of reasonable fees for such permits.

Article VII. The Government of the Republic of China shall ensure that nationals and vessels of the Republic of China 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 the Republic of China shall ensure that in the conduct of the fisheries under this Agreement:

1. the authorizing permit for each vessel of the Republic of China 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 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 China.

Article IX. 1. The Government of the Republic of China shall take such measures as may be necessary to ensure that each vessel of the Republic of China authorized to fish pursuant to this Agreement, and any other fishing vessel of the Republic of China 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 China 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 China of the action taken and of any penalties subsequently imposed.

Article X. 1. The Government of the United States will impose appropriate penalties, in accordance with the laws of the United States, on vessels of the Republic of China, 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.

Article XI. The Government of the Republic of China undertakes to cooperate 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 Annex II, which shall constitute an integral part of this Agreement.

Article XII. The Government of the United States and the Government of the Republic of China shall cooperate in the exchange of scientific and technical information relating to species of tuna of mutual interest with a view to the establishment of regional arrangements, including appropriate international organizations, to ensure conservation of the species. Such scientific exchanges shall include the reporting of tuna and associated catches.

Article XIII. The Government of the United States and the Government of the Republic of China 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. Should the Government of the United States indicate to the Government of the Republic of China that nationals and vessels of the United States wish to engage in fishing for living resources off the coasts of the Republic of China, the Government of the Republic of China 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, 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.

Article XVI. 1. This Agreement shall enter into force on a date to be mutually agreed by exchange of notes, upon the completion of the internal procedures of both Parties, and shall remain in force until July 1, 1982, unless terminated sooner by either Party after giving written notification of such termination six months in advance.

2. This Agreement shall be subject to review by the two Governments two years after its entry into force.

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

DONE in Washington, September 15, 1976, corresponding to the 15th day of the 9th month of the Sixty-fifth Year of the Republic of China, in duplicate, in the English and Chinese 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 China:

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

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

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 China of such determinations.

4. The Government of the Republic of China 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 the Republic of China and the payment of any fees, the Government of the United States shall approve the application and issue a permit for each fishing vessel of the Republic of China, which fishing vessel shall thereupon be authorized to fish in accordance with

¹ Signed by Rozanne L. Ridgway — Signé par Rozanne L. Ridgway.

² Signed by James C. H. Shen — Signé par James C. H. Shen.

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 the Republic of China 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 China 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 VESSELS OF THE REPUBLIC OF CHINA

The procedures described below are designed to contribute to continuing needs for assessment of the status of stocks and management of the fisheries. 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 must be flexible enough to accommodate necessary changes.

All data described below for the Pacific area shall be provided to the designated representative of the National Marine Fisheries Service.

1. Catch and Effort Statistics

- a.* by May 30 of the following year, annual catch and effort statistics shall be provided as follows: catch in metric tons and effort in hours trawling, effort in number of longline units, effort in number of traps (pots), effort in number of hours of longline or trap soaking time, and effort in number of days fishing by vessel class, by gear type, by month, by half degree latitude by one degree longitude statistical area, by the following species groupings:

Yellowfin sole	Pacific cod
Rock sole	Sablefish
Arrowtooth flounder	Alaska pollock
Flathead sole	Atka mackerel
Dover sole	Herring
Other flounders	Other species taken in excess of 1,000 metric tons
Pacific ocean perch	
Other rockfishes	All other species combined

- b.* in addition to the annual statistical report above, provisional monthly fishery information shall be provided by the end of the following month as follows: catch in metric tons and effort in vessel-days on the grounds by gear type, by vessel class, by the following species groups:

Pollock	Sablefish
Cod	Herring
Rockfishes	Others
Flatfishes	

for each of the following International North Pacific Fisheries Commission (INPFC) statistical areas:

Bering Sea; sub-areas 1, 2, 3, and 4	Charlotte
Aleutian Region	Vancouver
Shumagin	Columbia
Chirikof	Eureka
Kodiak	Monterey
Yakutat	Conception
Southeast	Other designated areas

2. Biological Statistics

Biological sampling by the Republic of China shall be conducted and measurements from sampling recorded as required according to procedures developed and coordinated through consultations between scientists of the United States and the Republic of China so as to determine the representative size, age, and weight of individual fish in the catch.

When such samples are collected, the Republic of China shall provide by May 30 of the following year the annual biological statistics which shall include:

- a. length frequency samples by vessel class, by gear type, by month, by half degree latitude by one degree longitude statistical area, by sex, and by species previously identified in 1, a; and
- b. length-weight samples of each principal species (e.g., expected yearly catch in area of agreement of 500 or more metric tons) by INPFC statistical area (previously identified in 1, b). As scientific need arises, samples of scales or otoliths shall also be collected for age determination.

3. Other Statistical Requirements

As further statistics are required for analyses and should fisheries for other species and areas be conducted (other than those identified in 1 and 2), the procedures for such data collection and reporting shall be developed and coordinated through consultations between scientists of the United States and the Republic of China.

4. United States Observers

United States observers shall be assisted to perform the following duties while aboard vessels of the Republic of China:

- a. sampling the catch to estimate species composition; size, weight, and age composition; and collecting other biological data as appropriate for scientific evaluation of fish stocks;
- b. measuring daily catch rates, determining location and duration of fishing, obtaining gear dimensions, and observing performance of fishing operations; and
- c. transmitting messages to the Government of the United States whenever requested.

5. Amendment Procedure

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

AGREED MINUTES

The representatives of the Government of the United States and the Government of the Republic of China have agreed to record the following in connection with the Agreement between the Government of the United States of America and the Government of the Republic of China Concerning Fisheries off the Coasts of the United States signed today:

1. With respect to Article IV of the Agreement, the Representative of the Government of the Republic of China requested that the Government of the United States, in making its determinations pursuant to that Article, consider the dependence of the people of the Republic of China upon fish as a major source of protein; past cooperation of the Republic of China with the United States in enforcement; contributions of the Republic of China to the international scientific community in the field of fishery research; and the economic dislocation of the fishing industry of the Republic of China arising from the loss of traditional fishing grounds elsewhere.

2. With respect to the provisions of Article X of the Agreement, the Representative of the Government of the United States stated that, should there be cases involving fishermen from the Republic of China arising out of fishing activities under this Agreement, the appropriate representatives of the Government of the United States will recommend to the court that the penalty for violation of fishery regulations not include imprisonment or any other form of corporal punishment. The Representative of the Government of the Republic of China noted this statement by the Representative of the Government of the United States, and expressed his sincere appreciation to the Government of the United States for its readiness to make such recommendations.

3. With respect to Article XII of the Agreement, the two Governments agreed that at the outset of the Agreement and until such time as appropriate regional arrangements are in place, the Government of the Republic of China will, in order to establish a base of scientific information to further such arrangements, provide to the Government of the United States statistics on tuna and related catches off the coasts of the United States.

4. The Representative of the Government of the United States stated that, subject to the applicable laws and regulations of the United States, fishing vessels of the Republic of China could enter United States ports for the purpose of obtaining supplies and services normally available in those ports.
