

No. 18557

**NEW ZEALAND
and
JAPAN**

Agreement on fisheries (with memorandum of understanding and exchange of letters). Signed at Wellington on 1 September 1978

Authentic text: English.

Registered by New Zealand on 17 April 1980.

**NOUVELLE-ZÉLANDE
et
JAPON**

Accord sur la pêche (avec mémorandum d'accord et échange de lettres). Signé à Wellington le 1^{er} septembre 1978

Texte authentique : anglais.

Enregistré par la Nouvelle-Zélande le 17 avril 1980.

AGREEMENT¹ ON FISHERIES BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF JAPAN

The Government of New Zealand and the Government of Japan,
Recalling their concern for the rational management, conservation and utilisation of the living resources of the sea,

Noting the importance of these resources as a source of protein,

Recognising that, in accordance with relevant principles of international law, the Government of New Zealand has established a zone of 200 nautical miles within which it exercises sovereign rights for the purpose of exploring and exploiting, conserving and managing the living resources,

Considering that nationals and fishing vessels of Japan have been engaged, for a considerable period of time, in the utilisation of the living resources off the coast of New Zealand and have also contributed to the development of and research into such resources,

Considering further the desire of the Government of Japan that fishing vessels of Japan continue to pursue their interest in the utilisation of these resources,

Taking into account the work of the Third United Nations Conference on the Law of the Sea,

Desirous of establishing terms and conditions under which their mutual fisheries relations shall be conducted, and

Taking into account their desire to promote cooperation in the field of fisheries,
Have agreed as follows:

Article I. The Government of New Zealand and the Government of Japan undertake to ensure close cooperation between the two countries in matters relating to the conservation and utilisation of the living resources of the sea.

Article II. The Government of New Zealand undertakes to permit fishing vessels of Japan to fish within the area under New Zealand fisheries jurisdiction established by the New Zealand Territorial Sea and Exclusive Economic Zone Act 1977 (hereinafter referred to as "The New Zealand Zone"), subject to the provisions of this Agreement, for allocations, as appropriate, of parts of total allowable catches surplus to the New Zealand harvesting capacity.

Article III. (1) The Government of New Zealand will, in the exercise of its sovereign rights, determine annually, subject to adjustment where necessary to meet unforeseen circumstances, with respect to the living resources within the New Zealand Zone:

- (a) The total allowable catch for individual fishery resources or parts of such fishery resources;
- (b) The New Zealand harvesting capacity in respect of such fishery resources; and
- (c) The allocations for fishing vessels of Japan of parts of surpluses of fishery resources or parts of fishery resources.

¹ Came into force on 1 September 1978 by signature, in accordance with article XIII (1).

(2) The Government of New Zealand shall give to the Government of Japan as much notice as possible of the allocations made pursuant to paragraph (1) (c) of this article and the determinations made pursuant to paragraph (1) (a) and (b) of this article.

(3) In order to fish for allocations pursuant to paragraph (1) (c) of this article, fishing vessels of Japan shall obtain licences in accordance with New Zealand law.

Article IV. (1) The Government of Japan shall take measures, in accordance with the relevant laws and regulations of Japan, to ensure:

- (a) That nationals and fishing vessels of Japan refrain from fishing for living resources within the New Zealand Zone, unless licensed pursuant to article III;
- (b) That all fishing vessels of Japan licensed to fish within the New Zealand Zone comply with the relevant laws and regulations of New Zealand in respect of fisheries, the provisions of this Agreement and the terms and conditions established in their licences;
- (c) That all fishing vessels of Japan allow and assist boarding by competent New Zealand officials for the purposes of inspection or enforcement; and
- (d) That all fishing vessels of Japan comply at all times with instructions given by competent New Zealand officials for the purpose of regulation of fishing, including inspection and enforcement.

(2) The Government of New Zealand shall give to the Government of Japan due notice of all the laws, regulations and terms and conditions of licences referred to in paragraph (1) of this article.

Article V. (1) The Government of New Zealand agrees that prompt notification shall be given through diplomatic channels informing the Government of Japan in the event of the seizure of a fishing vessel of Japan or the arrest of its crew.

(2) In the event of seizure or arrest, fishing vessels of Japan and their crews shall, on compliance with the requirements of New Zealand law relating to bond or other security, be promptly released.

Article VI. (1) In order to ensure that prompt and adequate compensation is paid to the Government of New Zealand or New Zealand citizens for any loss or damage for which fishing vessels of Japan licensed pursuant to article III are responsible, the Government of New Zealand will require all such vessels to be covered by appropriate and adequate insurance while within the New Zealand Zone for the purpose of fishing operations.

(2) The Government of Japan shall take all necessary measures, in accordance with the laws and regulations of Japan, to facilitate prompt and adequate settlement of a claim for loss or damage on the part of the Government of New Zealand or New Zealand citizens for which fishing vessels of Japan licensed pursuant to article III are responsible while within the New Zealand Zone for the purpose of fishing operations.

(3) If any claim referred to in paragraph (2) of this article is not settled promptly and adequately, the Government of Japan shall upon request enter into consultations with the Government of New Zealand for the purpose of contributing to the satisfactory settlement of such claim.

Article VII. (1) The Government of New Zealand and the Government of Japan agree to cooperate in ensuring the proper management and conservation of

the same stock or stocks of associated species occurring both within the New Zealand Zone and in an area beyond and adjacent to the New Zealand Zone.

(2) The Government of New Zealand and the Government of Japan agree to cooperate directly and where appropriate through international organisations in respect of the fishery resources of mutual interest in the sub-Antarctic and, consistently with the Antarctic Treaty signed at Washington on 1 December 1959,¹ the Antarctic.

Article VIII. The Government of Japan shall ensure that nationals and vessels of Japan will refrain from harassing, hunting, capturing or killing any marine mammal within the New Zealand Zone unless specifically authorised by the Government of New Zealand.

Article IX. (1) The Government of Japan agrees to cooperate with the Government of New Zealand in the planning and conduct of scientific research for the purposes of managing and conserving the living resources within the New Zealand Zone.

(2) The Government of Japan shall make available to the Government of New Zealand such statistical and biological information as may be required by the Government of New Zealand for the purposes of managing and conserving the living resources within the New Zealand Zone.

Article X. (1) The Government of New Zealand and the Government of Japan shall hold periodic bilateral consultations regarding the implementation of this Agreement.

(2) In such consultations, the two Governments shall amongst other things examine the possibility of developing further cooperation in the field of fisheries, including in particular:

- (a) Exchanges of technical information and personnel;
- (b) The expansion of markets, including improved market access for fish and fish products originating in New Zealand;
- (c) The facilitation of cooperative arrangements between New Zealand and Japanese enterprises for the catching of living resources from the New Zealand Zone and for the utilisation, processing and marketing of catches from the New Zealand Zone; and
- (d) Such other matters as may be agreed upon.

(3) The Government of New Zealand, in the exercise of its sovereign rights under article III, will take into consideration all relevant factors including, *inter alia*, New Zealand interests, the development of cooperation between the two Governments pursuant to this Agreement and the record of Japanese fishing for living resources off the coast of New Zealand prior to signature of this Agreement.

Article XI. Nothing contained in this Agreement shall affect other existing international agreements to which New Zealand and Japan are Parties or prejudice in any manner the position which either Government may take at the Third United Nations Conference on the Law of the Sea in respect of any question under negotiation at that Conference.

¹ United Nations, *Treaty Series*, vol. 402, p. 71.

Article XII. (1) The Government of New Zealand shall notify the Government of Japan of the laws relating to fisheries from time to time in force in waters under the jurisdiction of the territories for the international relations of which New Zealand is responsible.

(2) Upon receipt of such notification, the Government of Japan shall take measures, in accordance with the laws and regulations of Japan, to ensure that nationals and fishing vessels of Japan comply with such laws to the extent they are consistent with international law.

(3) Without prejudice to the provisions of paragraphs (1) and (2) of this article, this Agreement shall not apply to the territories for the international relations of which New Zealand is responsible.

Article XIII. (1) This Agreement shall enter into force on the date of signature.

(2) This Agreement shall remain in force until 30 June 1982 unless terminated by either Government by giving notification of such termination twelve months in advance.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Wellington, this 1st day of September 1978, in the English language.

For the Government
of New Zealand:
BRIAN TALBOYS

For the Government
of Japan:
UMEO KAGEI

MEMORANDUM OF UNDERSTANDING

The Representatives of the Government of New Zealand and the Government of Japan have agreed to record the following with respect to the Agreement on Fisheries between the Government of New Zealand and the Government of Japan signed today:

1. It is understood that the Government of New Zealand is willing to receive and discuss informally any views of the Government of Japan on matters which might affect the operations of fishing vessels of Japan in respect of the harvesting of living resources from the New Zealand Zone.

2. It is understood that the Government of Japan intends to give administrative guidance to each sector of the fishing industry that the owners of fishing vessels within each sector licensed to operate within the New Zealand Zone should enter into a contract among themselves under which they would accept joint liability in respect of a claim against any one of them not settled by insurance.

3. It is understood that the cooperation referred to in paragraph (1) of article VII means cooperation in respect of areas beyond and adjacent to the New Zealand Zone. It is further understood that the cooperation relates to stocks of species which reside within the New Zealand Zone but extend into areas of the high seas beyond and adjacent to the New Zealand Zone.

4. It is understood that for the purposes of the Agreement the term “harassing” in article VIII relates to the deliberate and persistent pursuit of marine mammals or their wilful injury. It is also understood that the term “killing” includes negligence which results in the death of a marine mammal but does not include accidental killing.

5. It is understood that the territories referred to in article XII are the Cook Islands, Niue and Tokelau.

For the Government
of New Zealand:

BRIAN TALBOYS

For the Government
of Japan:

UMEO KAGEI

EXCHANGE OF LETTERS

I

His Excellency Mr. Umeo Kagei, Ambassador Extraordinary and Plenipotentiary of Japan in New Zealand, to the Right Honourable B. E. Talboys, Minister of Foreign Affairs of New Zealand

Wellington, 1 September 1978

Your Excellency,

I have the honour to refer to the Agreement on Fisheries between the Government of Japan and the Government of New Zealand signed today and to inform Your Excellency that the Government of Japan, taking into account the common concern of the Government of Japan and the Government of New Zealand for the conservation of fishery resources within the New Zealand Zone and in the areas of high seas completely enclosed by the New Zealand Zone, will take measures to ensure that fishing vessels of Japan not licensed under article III of the Agreement will not fish in the above-mentioned areas and that vessels licensed to fish within the New Zealand Zone will, while operating in the above-mentioned areas, respect the conservation and management measures applicable within the New Zealand Zone.

This statement shall not affect the legal status of the above-mentioned areas as high seas or prejudice the position of the Government of Japan in regard to any question under negotiation at the Third United Nations Conference on the Law of the Sea.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

UMEO KAGEI
Ambassador of Japan

II

*The Right Honourable B. E. Talboys, Minister of Foreign Affairs of New Zealand,
to His Excellency Mr. Umeo Kagei, Ambassador Extraordinary and Plenipotentiary
of Japan in New Zealand*

Wellington, 1 September 1978

Your Excellency,

Thank you for your letter of today's date, which reads as follows:

[See letter I]

I am grateful for the assurance contained in your letter and appreciate your Government's cooperation in this matter.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

BRIAN TALBOYS
Minister of Foreign Affairs
