

No. 24576

**CHINA
and
UNITED STATES OF AMERICA**

Agreement concerning fisheries off the coasts of the United States (with annexes and agreed minutes). Signed at Washington on 23 July 1985

Authentic texts: Chinese and English.

Registered by China on 4 December 1986.

**CHINE
et
ÉTATS-UNIS D'AMÉRIQUE**

Accord relatif aux pêcheries au large des côtes des États-Unis (avec annexes et procès-verbal approuvé). Signé à Washington le 23 juillet 1985

Textes authentiques : chinois et anglais.

Enregistré par la Chine le 4 décembre 1986.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING FISHERIES OFF THE COAST OF THE UNITED STATES

The Government of the People's Republic of China and the Government of the United States of America,

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

Recognizing that the United States has established by Presidential Proclamation of March 10, 1983 an exclusive economic zone within 200 nautical miles of its coasts within which the United States has sovereign rights to explore, exploit, conserve and manage all fish and that the United States also has such rights over the living resources of the continental shelf appertaining to the United States and to anadromous species of fish of United States origin; and

Desirous of establishing reasonable terms and conditions pertaining to fisheries of mutual concern over which the United States has sovereign rights to explore, exploit, conserve and manage;

Have agreed as follows:

Article I. The purpose of this Agreement is to promote effective conservation, rational management and the achievement of optimum yield in the fisheries of mutual interest off the coasts of the United States, to facilitate the rapid and full development of the United States fishing industry and to establish a common understanding of the principles and procedures under which fishing may be conducted by nationals and vessels of the People's Republic of China for the living resources over which the United States has sovereign rights to explore, exploit, conserve and manage.

Article II. As used in this Agreement, the term

1. "Living resources over which the United States has sovereign rights to explore, exploit, conserve and manage" means all fish within the exclusive economic zone of the United States (except highly migratory species of tuna), all anadromous species of fish that spawn in the fresh or estuarine waters of the United States and migrate to ocean waters while present in the United States exclusive economic zone and in areas beyond national fisheries jurisdictions recognized by the United States 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;

¹ Came into force on 19 November 1985, the date agreed upon by an exchange of notes (effected on 23 August and 19 November 1985) by which the Parties informed each other of the completion of their internal procedures, in accordance with article XVII (1)

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. "Exclusive economic 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;
- d. Any operations at sea, including processing, 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;

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. The Government of the United States is willing to allow access for foreign fishing vessels to harvest, in accordance with terms and conditions to be established in permits issued under Article VII, that portion of the total allowable catch for a specific fishery that will not be harvested by United States fishing vessels and is determined to be available to foreign fishing vessels in accordance with United States law.

2. The Government of the United States shall determine each year, subject to such adjustments as may be appropriate and in accordance with United States law;

- a. The total allowable catch for each fishery based on optimum yield, taking into account the best available scientific evidence, and social, economic and 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 to which access will be provided, on a periodic basis each year, to foreign fishing vessels; and
- d. The allocation of such portion that may be made available to qualifying fishing vessels of the People's Republic of China.

3. 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 in accordance with United States law. 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 the People's 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 each country, including the People's Republic of China, the Government of the United States will decide on the basis of the factors identified in United States law including:

- 1. Whether, and to what extent, such nations impose tariff barriers or nontariff barriers on the importation, or otherwise restrict the market access, of both United States fish and fishery products particularly fish and fishery products for which the foreign nation has requested an allocation;
- 2. Whether, and to what extent such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;
- 3. Whether, and to what extent, such nations and the fishing fleets of such nations have cooperated with the United States in the enforcement of United States fishing regulations;
- 4. Whether, and to what extent, such nations require the fish harvested from the exclusive economic zone for their domestic consumption;

5. Whether, and to what extent, such nations otherwise contribute to, or foster the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;
6. Whether, and to what extent, the fishing vessels of such nations have traditionally engaged in fishing in such fishery;
7. Whether, and to what extent, such nations are cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and
8. Such other matters as the United States deems appropriate.

Article V. The Government of the People's Republic of China shall cooperate with and assist the United States in the development of the United States fishing industry and the increase of United States fishery exports by taking such measures as reducing or removing impediments to the importation and sale of United States fishery products, providing information concerning technical and administrative requirements for access of United States fishery products into the People's Republic of China, providing economic data, sharing expertise, facilitating the transfer of harvesting or processing technology to the United States fishing industry, facilitating appropriate joint venture and other arrangements, informing its industry of trade and joint venture opportunities with the United States, and taking other actions as may be appropriate.

Article VI. The Government of the People's Republic of China shall take all necessary measures to ensure:

1. That nationals and vessels of the People's Republic of China refrain from fishing for living resources over which the United States has sovereign rights to explore, exploit, conserve and manage 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 People's Republic of China may submit an application to the Government of the United States for a permit for each fishing vessel of the People's Republic of China that wishes to engage in fishing in the exclusive economic zone pursuant to this Agreement. Such application shall be prepared and processed in accordance with the Annex I, which constitutes an integral part of this Agreement. The Government of the United States may require the payment of fees for such permits and for fishing in the United States exclusive economic zone. The Government of the People's Republic of China undertakes to keep the number of applications to the minimum required, in order to aid in the efficient administration of the permit program.

Article VIII. The Government of the People's Republic of China shall ensure that nationals and vessels of the People's 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 exclusive economic 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 People's Republic of China shall ensure that in the conduct of the fisheries under this Agreement:

1. The authorizing permit for each vessel of the People's 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 courtesies and accommodations provided to ship's officers while aboard such vessel, and owners, operators and crews of such vessel shall cooperate with observers in the conduct of their official duties, 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 an owner or operator of a vessel of the People's Republic of China for any cause arising out of the conduct of fishing activities for the living resources over which the United States has sovereign rights to explore, exploit, conserve and manage; and
5. All necessary measures are taken to minimize fishing gear conflicts and to ensure the prompt and appropriate compensation of United States citizens for any loss, or damage to, their fishing vessels, fishing gear or catch, and resultant economic loss, that is caused by any fishing vessel of the People's Republic of China as determined by applicable United States procedures.

Article X. The Government of the People's Republic of China shall take all appropriate measures to assist the United States in the enforcement of its laws pertaining to fishing in the exclusive economic zone and to ensure that each vessel of the People's Republic of China that engages in fishing for living resources over which the United States has sovereign rights to explore, exploit, conserve and manage 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 the People's Republic of China or their owners, operators, or crews 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 any case arising out of fishing activities under this Agreement, the penalty for violation of fishery regulations shall not include imprisonment except in the case of enforcement related offenses such as assault on an enforcement officer or refusal to permit boarding and inspection.

4. In cases of seizure and arrest of a vessel of the People's Republic of China by the authorities of the Government of the United States, notification shall be given within four days through diplomatic channels informing the Government of the People's Republic of China of the action taken and of any penalties subsequently imposed.

Article XII. 1. The Governments of the People's Republic of China and the United States shall cooperate in the conduct of scientific research required for the purpose of managing and conserving living resources over which the United States has sovereign rights to explore, exploit, conserve and manage, including the compilation of the best available scientific information for management and conservation of stocks of mutual interest.

2. The competent agencies of the two Governments shall cooperate in the development of a periodic research plan on stocks of mutual concern through correspondence or meetings as appropriate, and may modify it from time to time by agreement. The agreed 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 the People's Republic of China in the United States exclusive economic 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 VII.

4. The Government of the People's Republic of China 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 procedures which will be stipulated by the United States. The Government of the People's Republic of China shall similarly provide such economic data as may be requested by the United States.

Article XIII. The Government of the People's Republic of China and the Government of the United States shall carry out periodic bilateral consultations regarding the implementation of this Agreement and the development of further cooperation in the field of fisheries of mutual concern, including cooperation within the framework of appropriate multilateral organizations for the collection and analysis of scientific data respecting such fisheries.

Article XIV. The Government of the United States undertakes to authorize fisheries research vessels and fishing vessels of the People's Republic of China allowed to fish pursuant to this Agreement to enter designated ports in accordance with United States laws and regulations referred to in Annex II, which constitutes an integral part of this Agreement.

Article XV. Should the Government of the United States indicate to the Government of the People's Republic of China that nationals and vessels of the United States wish to engage in fishing in the fishery zone adjacent to the territorial sea of the People's Republic of China, or its equivalent, the Government of the People's 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 XVI. Nothing contained in the present Agreement shall prejudice the views of either Government with respect to the existing territorial or other jurisdiction of the coastal State for all purposes other than the conservation and management of fisheries.

Article XVII. 1. This Agreement, together with the Agreed Minutes, shall enter into force on a date to be agreed upon by exchange of notes, following the completion of internal procedures of both Governments, and remain in force until July 1, 1990, unless extended by exchange of notes between the Parties. Notwithstanding the foregoing, either Party may terminate this Agreement after giving written notice of such termination to the other Party six months in advance.

2. At the request of either Party, 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 at Washington, this 23rd day of July, 1985, in duplicate, in the Chinese and English languages, both texts being equally authentic.

For the Government
of the People's Republic of China:

[Signed — Signé]¹

For the Government
of the United States of America:

[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 People's Republic of China to engage in fishing for living resources over which the United States has sovereign rights to explore, exploit, conserve and manage:

1. The Government of the People's Republic of China may submit an application to the competent authorities of the United States for each fishing vessel of the People's 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;

¹ Signed by Han Xu — Signé par Han Xu.

² Signed by E. E. Wolfe — Signé par E. E. Wolfe.

- 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 may be needed, and what fee will be required, and shall inform the Government of the People's Republic of China of such determinations. The Government of the United States reserves the right not to approve applications.

4. The Government of the People's 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 People's 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 People's Republic of China, which fishing vessel shall thereupon be authorized to fish in accordance with this Agreement and the terms and conditions set forth in the permit. Such permits shall be issued for a specific vessel and shall not be transferred.

6. In the event the Government of the People's Republic of China notifies the Government of the United States of its objections to specific conditions and restrictions, the two sides may consult with respect thereto and the Government of the People's 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

PROCEDURES RELATING TO UNITED STATES PORT CALLS

Article XIV of the Agreement provides for the entry of certain vessels of the People's Republic of China 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 procedures which govern such port entries.

1. The following types of vessels may enter the ports specified following a notice received at least four working days in advance of the entry: Fisheries research vessels, fishing vessels participating in joint ventures involving over-the-side purchases of fish from U.S. fishing vessels, and other fishing vessels (including support vessels) of the People's Republic of China which have been issued permits pursuant to the Agreement are authorized to enter the ports of Kodiak, Dutch Harbor, Seattle, Seward, and Nome.

2. Vessels referred to in paragraph 1 above may enter the ports referred to for a period not exceeding seven calendar days for the purpose of scientific planning and discussion, to exchange scientific data, equipment and personnel, and to replenish ships' stores or fresh water, obtain bunkers, provide rest for or make changes in the vessels' personnel, obtain repairs, or obtain other services normally provided in such ports, and, as necessary, to receive permits; provided, however, that in exceptional cases involving *force majeure* vessels may remain in port for longer periods required to effect repairs necessary for seaworthiness and operational reliability without which the voyage could not be continued. All such entries into port shall be in accordance with applicable rules and regulations of the United States and of state and local authorities in the area wherein they have jurisdiction.

3. The notice referred to in paragraph 1 shall be made by an agent for the vessel to the United States Coast Guard (GWPE) in accordance with standard procedures using telex (892427), teletype communication "TWX" (710-822-1959), or Western Union. With respect

to vessels desiring to enter the United States ports under this Agreement, the United States reserves the right to require such vessels to submit to inspection by authorized personnel of the United States Coast Guard or other appropriate Federal agencies.

4. The Government of the United States of America at the consular sections of its diplomatic missions will accept crew lists in application for visas to be issued in accordance with existing visa regulations and reciprocity agreements. Such a crew list shall be submitted prior to the entry of a vessel into a port of the United States in accordance with existing visa regulations and reciprocity agreements.

5. In cases where a seaman of the People's Republic of China is evacuated from his vessel to the United States for the purpose of emergency medical treatment, authorities of the People's Republic of China shall ensure that the seaman departs from the United States within 14 days after his release from the hospital. During the period that the seaman is in the United States, representatives of the People's Republic of China will be responsible for him.

6. The exchange of crews of vessels of the People's Republic of China in the specified ports shall be permitted subject to submission to the consular section of U.S. diplomatic missions of applications for individual transit visas and crewman visas for replacement [crewmen]. Applications shall be submitted in advance of the date of the arrival of the crewmen in the United States in accordance with existing visa regulations and reciprocity agreements, 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 mission 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 the People's Republic of China representatives for repatriation to the People's Republic of China and the dates and manner of their departure from the United States shall be submitted to the Department of State in accordance with existing visa regulations and reciprocity agreements.

7. In addition, special provisions shall be made as necessary regarding the entry into other ports of the United States of fisheries research vessels of the People's Republic of China which are engaged in a mutually agreed research program in accordance with terms of Article XII of the Agreement. Requests for such entry of fisheries research vessels should 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

1. With respect to Article IV of the Agreement, the Representative of the People's Republic of China emphasized the importance of the Chinese fishing industry to the Chinese economy, and urged that the Government of the United States give due consideration to the need for the continuation of stable fishing operations by fishing vessels of the People's Republic of China in the United States Exclusive Economic Zone.

The Representative of the United States of America took note of this statement and indicated that it would be taken into account in accordance with United States laws and regulations.

The Representatives of the Government of the United States of America and the People's Republic of China both acknowledged the advantage to both countries' respective fishing industries of providing continuity and stability of cooperation in fishery relations, including fisheries development, fisheries trade and fishery allocations.

2. With respect to Article IX of the Agreement, the Representative of the People's Republic of China requested that the Government of the United States ensure the prompt and appropriate compensation of Chinese nationals and vessels for any loss, or damage to, Chinese fishing vessels, fishing gear or catch, and resultant economic loss, that is caused by any fishing vessel of the United States as determined by applicable United States procedures.

The Representative of the United States of America stated that, under the legal system of the United States, the United States Government could not ensure the payment of such compensation. Nevertheless, the Representative of the United States of America stated that the United States Government could assure the Representative of the People's Republic of China that Chinese nationals would have full and equal access to the United States judicial and administrative system under the laws and regulations of the United States for the resolution of any such claims which might arise under the Agreement.

3. With respect to Article XI of the Agreement, the Representative of the People's Republic of China requested protection of Chinese nationals and vessels, that are conducting fishing operations under the Agreement in the United States Exclusive Economic Zone, in accordance with United States laws and regulations and international law. The Representative of the United States of America gave assurances that nationals and vessels would receive the same treatment as the nationals and vessels of any other foreign nation in accordance with United States laws and regulations and under customary international law.

4. Annex II, "Procedures Relating to United States Port Calls", is not intended to apply to the entry of vessels described therein into U.S. territorial waters in instances of *force majeure*. In cases involving acute medical emergencies, procedures will be coordinated on a case by case basis in a humanitarian manner.
