

PEOPLE'S REPUBLIC OF CHINA

Fisheries Off the United States Coasts

Agreement signed at Washington July 23, 1985;

Entered into force November 19, 1985.

And amending agreement.

Effected by exchange of notes

Dated at Washington July 24 and August 6, 1987;

Entered into force August 6, 1987.

AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE PEOPLE'S 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 People's Republic of China

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 eco-

conomic 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;

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 non-tariff 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 fish-

ermen, 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 United States and the People's Republic of China 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 United States and the Government of the People's 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 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.¹ 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 English and Chinese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA:
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E.E. Wolfe

Han Xu

¹ Nov. 19, 1985.

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;
- 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 crewman. 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 crewmen 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.

美利坚合众国政府和中华人民共和国 政府关于美国海岸外渔业协定

美利坚合众国政府和中华人民共和国政府，

考虑到对美国海岸外鱼类种群的合理管理、养护和获得最适度产量的共同关切；

认识到美国已通过一九八三年三月十日的总统声明在距其海岸二百海里范围内建立了专属经济区，在该区域内美国对所有鱼类有勘探、开发、养护和管理的主权权利，美国并对其所属的大陆架生物资源和源自美国的溯河性鱼类有同样的主权权利；

愿就属于美国有勘探、开发、养护和管理的主权权利而为双方关切的渔业确立合理的条件；

达成协议如下：

第 一 条

本协定的目的是要促进美国海岸外有相互利益的渔业的有效养护、合理管理并获得最适度产量，便利美国渔业

工业迅速而全面的发展，并就原则和程序建立一项共同谅解，以便中华人民共和国的国民和船只能据此捕捞美国有勘探、开发、养护和管理的主权权利的生物资源。

第 二 条

本协定中的下列用语的含义是：

一、“美国有勘探、开发、养护和管理的主权权利的生物资源”是指在美国专属经济区内的所有鱼类（高度洄游性金枪鱼类除外），所有在美国淡水或河口产卵并洄游到大海，而出现在美国专属经济区内和超出美国承认的国家渔业管辖区域的溯河性鱼类，以及属于美国大陆架的所有生物资源。

二、“鱼类”是指所有有鳍鱼类、软体类动物、甲壳类动物和除海洋哺乳动物、鸟类及高度洄游性鱼类以外的其它种类海生动植物。

三、“渔业”是指：

（一）为了养护和管理的目的，可以根据地理上、科学上、技术上、娱乐上、经济上的特征加以鉴别的一种或多种鱼类种群；

(二)对此类鱼类种群所作的任何捕捞行为。

四、“专属经济区”是指邻接美国领海的海域，其外限为距离测量美国领海宽度的基线二百海里各点所连接成的线。

五、“捕捞”是指：

(一)对鱼类的捕捉、拿取或收获；

(二)对鱼类企图捕捉、拿取或收获的行为；

(三)能被合理地认为将造成捕捉、拿取或收获鱼类的任何其他活动。

(四)任何为上述(一)款至(三)款各项活动提供直接支援或作准备的海上作业，包括加工；但不包括对公海的其他合法利用，如任何科学研究活动。

六、“渔船”是指各种船只，用于、装备用于或其类型通常用于：

(一)捕捞；或

(二)在海上支援或协助一艘或一艘以上船只从事有关捕捞的任何活动，包括准备、补给、贮藏、冷藏、运输或加工。

七、“高度洄游性鱼类”是指根据其生活周期在海洋中产卵并作长距离洄游的金枪鱼类。

八、“海洋哺乳动物”是指在形态上已能适应海洋环境的任何哺乳动物，包括海獭、海牛类、鳍足类、鲸类或主要栖居于海洋环境的动物，如北极熊。

第 三 条

一、美国政府愿意就某种特定渔业的总许可渔获量中，将美国渔船不拟捕捞，并根据美国法律可供外国渔船利用的部分，分配给外国渔船捕捞，并按照第七条规定的条件，核发许可证。

二、美国政府应每年决定下列事项，并根据美国法律作出认为合适的调整：

（一）在考虑最佳科学证据和社会、经济及其他有关因素后，决定每种渔业以最适度产量为基础的总许可渔获量；

（二）美国渔船对每种渔业的渔获能力；

（三）某种渔业的总许可渔获量中，以一年为基础，可供外国渔船入渔的部分；

（四）可给予中华人民共和国合格捕渔船的配额。

三、在始终保持每种渔业的最适度产量的基础上，为

防止捕捞过度，美国政府每年应根据美国法律决定必须采取的措施，此类措施可以包括：

（一）指定允许或限制捕捞的渔区和渔期，或规定对渔船或渔具类型和数量的限制；

（二）根据海域、鱼种、体长、数量、重量、性别、意外渔获、总生物量或其他因素规定的捕鱼限制；

（三）对可以从事捕鱼的渔船的数量、类型的限制，或对在一个指定渔区进行某种特定渔业的整个船队的每只渔船的捕鱼天数的限制；

（四）关于可以或不得使用的渔具类型的规定；

（五）为便于实施此等条件和限制而定的条件，包括对适当的定位及辨识装置的维护。

四、美国政府应将按照本条规定作出的决定，适时地通知中华人民共和国政府。

第 四 条

在决定将剩余部分分配给每个国家，包括中华人民共和国在内的渔船的配额时，美国政府将根据美国法律在下列诸因素的基础上作出决定：

一、这些国家是否和在何种程度上对进口美国的鱼或渔产品，特别是这一外国已要求配额的鱼和渔产品设置关税壁垒或非关税壁垒或其他进口市场的限制；

二、这些国家是否和在何种程度上正在同美国合作，通过购买美国加工者的渔产品，增进现有的和新的美国渔业出口机会，及通过购买美国渔民的鱼和渔业产品，增进渔业贸易，特别是这一外国已要求配额的鱼和渔业产品；

三、这些国家及其捕鱼船队是否和在何种程度上同美国为执行美国渔业法规已经作出合作；

四、这些国家是否和在何种程度上需要将其从专属经济区捕获的鱼供其国内消费；

五、这些国家是否和在何种程度上对一个实体的和经济的美国渔业作出贡献或促进其发展，包括同美国渔民在渔业经营上减少渔具冲突，转让捕鱼或加工技术，以裨益于美国渔业工业；

六、这些国家的渔船是否和在何种程度上已经传统性地从事这类渔业的捕捞；

七、这些国家是否和在何种程度上同美国在渔业研究和渔业资源鉴别上正在进行合作并作出有成效的贡献；

八、其他美国认为是适当的事情。

第 五 条

中华人民共和国政府应采取措施同美国合作并协助其发展渔业工业和增加美国渔产品出口，如减少和消除进口和销售美国渔产品的障碍；提供有关美国渔产品进入中华人民共和国市场的技术和管理方面要求的情报资料；提供经济数据；分享专门知识；为向美国渔业企业转让捕鱼和加工技术提供便利；便利适当的合营企业和其他安排；向本国企业提供同美国进行贸易和建立合营企业的机会的信息以及其他可能适当的行动。

第 六 条

中华人民共和国应采取一切必要的措施，保证：

一、中华人民共和国的公民和船只除依照本协定获准者外，避免捕捞美国有勘探、开发、养护和管理的主权权利的生物资源；

二、所有获准捕鱼的船只，遵守依照本协定和美国的适用法律核发许可证的各项规定；

三、任何渔业的渔获量不得超过本协定第三条第二款第(四)项所称的总配额。

第 七 条

中华人民共和国政府得依照本协定在美国专属经济区内捕鱼的每艘中华人民共和国渔船向美国政府提出一份许可证申请。此项申请应按照本协定附件一的规定办理。该附件一是本协定不可分割的部分。美国政府得要求为颁发许可证和在美国专属经济区内捕鱼收取费用。中华人民共和国政府应保持最低的申请数量，以帮助许可证程序的有效管理。

第 八 条

中华人民共和国政府应保证中华人民共和国国民和船只避免在美国专属经济区内搔扰、猎取、捕捉、杀害或企图搔扰、猎取、捕捉、杀害任何海洋哺乳动物。但美国参加的海洋哺乳动物国际协定另有规定者，或依照美国政府对意外捕获海洋哺乳动物的特殊认可和控制规定者不在此限。

第 九 条

中华人民共和国政府应保证依照本协定从事渔业时：

一、每艘中华人民共和国渔船获准的许可证，应明显地展示在该船的驾驶室内；

二、在每艘船上依照美国政府的规定，安装适当的定位和辨识装置，并使其处于工作状态；

三、美国正式指派的观察员提出要求时允许登上此类渔船，对观察员在船期间给予礼遇和提供相当于船上官员标准的膳宿。船上的船主、经营者和船员应同观察员在执行公务上进行合作并偿付美国政府雇用观察员的费用；

四、委派驻美国代理人。该代理人对因从事捕捞美国有勘探、开发、养护和管理的主权权利的生物资源活动引起的任何事件，而在美国境内向中华人民共和国渔船船主或经营者致送的任何诉讼文书有接受和答复的权限；

五、采取一切必要措施，减少渔具冲突，并对任何经按美国法律程序裁定为由于中华人民共和国渔船的责任，造成对美国公民的渔船、渔具或渔获物的损害和经济损失，保

证给予及时和适当的补偿。

第 十 条

中华人民共和国政府应采取一切适当措施协助美国执行有关在专属经济区捕鱼的法律并保证每艘从事捕捞美国有勘探、开发、养护和管理的主权权利的生物资源的中华人民共和国渔船将允许和协助正式授权执行渔业管理法规的美国官员登船检查，并对其依照美国法律采取的执法行动给予合作。

第 十 一 条

一、美国政府将依照美国法律对违反本协定或按照本协定核发的许可证规定的条件的中华人民共和国渔船或经营者或水手处以适当的处罚。

二、被拘捕的船只及其船员，应根据法院裁定，在提供合理的保证金或其他担保后迅速获得释放。

三、因在本协定下从事渔业活动而发生的任何案件，对违反渔业管理规则的处罚，不应包括监禁，但触犯执法的案件，如殴打攻击执法官员或拒绝其登船检查等除外。

四、当中华人民共和国船只为美国政府当局扣留或拘捕时，应在四天内将采取的行动及科处的处罚通过外交途径通知中华人民共和国政府。

第十二条

一、美国政府和中华人民共和国政府应在美国有勘探、开发、养护和管理的主权权利的生物资源的管理和养护科学研究方面进行合作，包括编辑对有共同利益的鱼类种群的管理和养护的最有效的科学情报资料。

二、两国政府渔业主管部门应就共同关切的鱼类种群，用通讯或适当的会晤方式制订定期的研究计划。该计划经双方同意可随时进行修改。研究计划可包括（但不限于）交换情报资料和科学家，安排科学家准备研究计划和审查进展情况的定期会议，以及各种联合研究项目。

三、在美国专属经济区内一艘从事正常商业性捕鱼的中华人民共和国渔船上进行双方同意的研究活动，不应认为该船的活动性质由捕鱼转变为科学研究，因此，该船仍须按照第七条取得许可证。

四、中华人民共和国政府应同美国政府合作，按照美

国制订的程序,履行收集和报告生物统计资料和渔业数据,包括渔获量和捕捞努力量的统计。中华人民共和国应同样地提供美方可能要求的其他经济数据。

第十三条

美国政府和中华人民共和国政府应就本协定的执行和在共同关切的渔业领域中发展进一步合作举行定期的双边磋商,包括在适当的多边组织范围内进行合作,收集和分析关系这类渔业的科学资料。

第十四条

美国政府同意批准中华人民共和国的渔业研究船和按本协定允许捕鱼的渔船,在协定附件二提及的根据美国法律 and 规定进入指定港口,该附件为本协定不可分割的一部分。

第十五条

美国政府如向中华人民共和国政府表示其国民和船只拟在邻接中华人民共和国领海的渔业区或相当的区域从事

捕鱼时，中华人民共和国政府将在互惠和不比本协定更具限制性的条件的基础上给予许可。

第 十 六 条

本协定的任何规定均不损害各方政府对于沿岸国为除养护和管理渔业以外的其他目的所拥有的领海管辖或其他管辖权的主张。

第 十 七 条

一、本协定连同协商记要经双方完成各自的国内法律程序后，按照换文中约定的日期开始生效。除非双方通过换文同意延长本协定，则本协定的有效期至一九九〇年七月一日为止。尽管如上所述，任何一方可以提前六个月用书面通知另一方终止本协定。

二、本协定生效两年后，应任何一方要求时，可由两国政府加以重新审议。双方正式授权的代表在本协定上签字，以昭信守。

本协定于一九八五年七月 **二十** 日在华盛顿签订，共

两份，每份均用英文和中文写成，两种文本具有同等效力。

美利坚合众国政府

中华人民共和国政府

代表

J. J. Wink

代表

经济

附 件 一

申请和许可证程序

申请和颁发准许中华人民共和国渔船捕捞美国有勘探、开发、养护和管理主权利的生物资源的一年有效期的许可证，按下列程序办理：

一、中华人民共和国政府得为愿依照本协定从事捕鱼的每艘中华人民共和国渔船向美国主管当局提出一份申请。此项申请应按照美国政府专门为此目的规定的表格办理。

二、任何此类申请应说明：

(一)申请许可证的每艘渔船的船名和正式编号或其他识别标志，连同船主或经营者姓名和住址；

(二)吨位、舱容、速度、加工设备、渔具类型及数量和可能被要求提供的有关该船捕鱼特征的其他资料；

(三)每艘渔船拟从事的每种渔业的详细说明；

(四)在许可证有效期内，每艘渔船希望捕捞的鱼类数量或吨数；

(五)从事捕捞的海域、季节或时期；

(六)其他可能被要求提供的资料，包括希望转运的地区。

三、美国政府应审查每一份申请并决定可能需要的条件和限制以及所要求的费用，并应将决定通知中华人民共和国政府。美国政府保留不核准申请的权利。

四、中华人民共和国政府应就是否接受或拒绝此等条件及限制通知美国政府。如系拒绝，应说明拒绝的理由。

五、当中华人民共和国政府接受所提的条件及限制，并支付费用后，美国政府应核准申请并给每艘中华人民共和国渔船颁发许可证，则该渔船得依照本协定和许可证上规定的条件从事捕鱼。此项许可证发给指定的船只，不得转让。

六、当中华人民共和国政府通知美国政府拒绝某些特定条件及限制时，双方得就此进行磋商。中华人民共和国政府可提出一份经修改的申请。

七、本附件的程序，可由两国政府以互换照会同意的方式进行修改。

附 件 二

进入美国港口的程序

本协定第十四条对中华人民共和国的某些船只，为了特定目的而根据美国法律进入指定的美国港口作出了规定。本附件则系指定港口及许可的进港目的，并具体说明进入港口的程序。

一、如至少在四个工作日以前，收到其要求进入的预先通知，则下列类型的船只，可以进入指定的港口：渔业研究船，参加合营的捕鱼船包括从美国捕鱼船直接购买鱼货，以及其他按本协定已发许可证的捕鱼船只（包括辅助船只），可准许进入科迪亚克港、荷兰港、西雅图港、苏厄德港和诺姆港。

二、上述第一款提及的船只可进入指定的港口不超过七历日，从事科学计划和讨论，交换科学数据、设备和人员，补充船用补给品或淡水，购买燃料，船上人员替换或进行休息，修理，或者在这些港口可以正常得到的其他服务，及必要时领取许可证。但是，在特殊情况下，包括不

可抗力情况下，船只可在港口停留较长的时间，这是对船只进行必要的适航性和可靠性的修理所需要的，否则船无法继续航行。

所有这些进入港口的事宜，应按美国适用的法令和规定，以及州和在该地区有管辖权的地方行政当局的规定办理。

三、第一款提到的预先通知，应由船只代理人，向美国海岸警备队（GWPE）提出，根据标准程序使用电传（892427），电传打字电报机“TWX”（710—822—1959），或者通过“西联”（美国西联电报公司）。

对希望根据本协定进入美国港口的船只，美国保留要求它们接受美国海岸警备队授权人员，或者其他联邦适当机关的检查的权利。

四、美利坚合众国政府外交使团领事处接受申请签证的水手明细表，并根据现行签证规定和互惠协议颁发签证。进入美国一个港口的一艘船只，应按现行签证规定和互惠协议，于入港前提供一份水手明细表。

五、假如，中华人民共和国的一名水手，离船进入美国进行紧急医治时，中华人民共和国主管当局，应保证该水

手出院后十四天内，离开美国。该水手在美国期间，中华人民共和国的代表将为他负责。

六、中华人民共和国的水手，在向美国外交使团领事处申请个人过境签证和水手更换的水手签证的条件下，允许在指定的美国港口进行更换。该项申请，应在该水手到达美国前按现行签证规定和互惠协议提出，申请书上注明姓名，出生日期和地点，来美目的，工作的船只，以及所有替换水手到达的日期和方式。提交申请的同时，应附个人护照或水手证件。美国使团按美国法律和规定，在退回护照前，将过境签证或水手签证贴在每份护照或水手证件上面。

除上述要求外，船名及其预计抵达日期，获准进入美国并由中华人民共和国代表负责其返回中华人民共和国的水手名单，包括姓名、出生日期和地点，以及离开美国的日期及方式，应根据现行签证规定和互惠协议提供给美国国务院。

七、此外，按本协定第十二条的规定，进行相互同意的研究计划的中华人民共和国渔业研究船，需要进入美国其他港口时，应视需要作出特殊规定。渔业研究船入港，

应该通过外交途径向在华盛顿特区美国国务院提出请求。

八、本附件内各项规定，可由两国政府以互换照会同意的方式进行修改。

协 商 记 要

一、关于本协定第四条，中华人民共和国代表着重提出捕鱼工业对中国经济的重要性，要求美国政府，对在美国专属经济区进行捕鱼的中华人民共和国渔船的连续稳定经营的需要，给予应有的考虑。

美利坚合众国代表注意到这个声明，同时指出，对此将根据美国法律和规定予以考虑。

美利坚合众国政府代表和中华人民共和国政府代表都认为，在渔业关系方面合作的连续性和稳定性，包括渔业发展，渔业贸易和渔业配额，对双方国家的捕鱼工业都有好处。

二、关于本协定第九条，中华人民共和国代表要求，如对中华人民共和国国民及渔船、渔具或渔获物造成损失或损害，根据美国适用程序裁定应由美国渔船负责时，美国政府应保证及时而适当的补偿。

美利坚合众国政府代表声明，在美国法律制度之下，美国政府不能确保该补偿的支付。然而，美利坚合众国代

表声明，美利坚合众国政府可以向中华人民共和国代表保证，中国国民在本协定期间，为了解决这类赔偿的要求，将按美国法律和规定在美国司法和行政制度下享有充分和平等的权利。

三、关于本协定第十一条，中华人民共和国代表要求，中国国民和船只根据本协定，在美国专属经济区内进行捕鱼作业时，应按照美国法律和规定以及国际法受到保护。美利坚合众国代表保证，中国国民和船只，将根据美国法律和规定以及国际习惯法，得到与任何其他外国国民和船只相同的待遇。

四、附件二中“关于进入美国港口的程序”，不适用于所述渔船在不可抗力的情况下进入美国港口。当发生紧急医疗情况时，该程序将按照人道主义习惯，按逐个情况加以调整。

[AMENDING AGREEMENT]

066/87

The Embassy of the People's Republic of China presents its compliments to the Department of State, the United States of America.

The Embassy of the People's Republic of China hereby notifies the U.S. Department of State that, as permit issued by your government, Chinese fishing vessels shall conduct fishing in Pacific Ocean area off the coasts of Oregon. Therefore those fishing vessels shall need to enter the ports of ABERDEEN, ASTORIA and COOS BAY for the purpose of providing rest for or making changes in vessel's personnel, replenishing ship's stores or fresh water, obtaining bunkers, repairs or other services normally provided in such ports, etc.

The Embassy of the People's Republic of China proposes to have the above-mentioned three ports added to Annex II of the AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES. It is proposed that, if your government agrees to the proposed amendment to the Annex II of such Agreement, this note and the reply of U.S. Department of State shall constitute the Amendment to the Annex II of the Agreement.

The Embassy of the People's Republic of China avails itself of this opportunity to renew to you the assurance of its highest consideration.

The Department of State
The United States of America
Washington, D.C 20250

The Department of State presents its compliments to the Embassy of the People's Republic of China and refers to its Note No. 066/87 of July 24, 1987.

The Department of State agrees with the proposal of the Embassy of the People's Republic of China to add the ports of Aberdeen in Washington, and Astoria and Coos Bay in Oregon to Annex II, paragraph 1, of the Agreement between the Government of the United States of America and the Government of the People's Republic of China concerning Fisheries off the Coasts of the United States, signed at Washington July 23, 1985. In accordance with the provisions of Annex II, paragraph 8, this note and the Embassy's Note No. 066/87 of July 24, 1987, shall constitute an Amendment to Annex II, paragraph 1 of the Agreement and shall enter into force on the date of this note.

Department of State,
Washington, August 6, 1987.