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GOVERNING INTERNATIONAL FISHERY AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF POLAND

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AN AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF POLAND EXTENDING THE AGREEMENT OF AUGUST 1, 1985, AS AMENDED, CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES, ("THE 1985 AGREEMENT"). THE AGREEMENT, WHICH WAS EFFECTED BY AN EXCHANGE OF NOTES AT WARSAW ON DECEMBER 15 AND 20, 1995, EXTENDS THE 1985 AGREEMENT TO DECEMBER 31, 1997, PURSUANT TO 16 U.S.C. 1801 ET SEQ.

FEBRUARY 13, 1996.—Message and accompanying papers referred to the Committee on Resources and ordered to be printed.

U.S. GOVERNMENT PRINTING OFFICE
29–011 WASHINGTON : 1996

To the Congress of the United States:

In accordance with the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*), I transmit herewith an Agreement between the Government of the United States of America and the Government of the Republic of Poland Extending the Agreement of August 1, 1985, as amended, Concerning Fisheries Off the Coasts of the United States ("the 1985 Agreement"). The Agreement, which was effected by an exchange of notes at Warsaw on December 15 and 20, 1995, extends the 1985 Agreement to December 31, 1997.

In light of the importance of our fisheries relationship with the Republic of Poland, I urge that the Congress give favorable consideration to this Agreement at an early date.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *February 9, 1996.*

EMBASSY OF THE
UNITED STATES OF AMERICA

No. 043

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Republic of Poland and refers to the Agreement concerning fisheries off the coasts of the United States, with annexes and agreed Minutes, signed at Washington August 1, 1985, as amended and extended, most recently in 1993 (the Agreement).

The Embassy proposes, on behalf of the Government of the United States of America, that the Agreement, which is currently scheduled to expire on December 31, 1995, be extended for an additional two year period, until December 31, 1997. If this proposal is acceptable to the Government of the Republic of Poland, the Embassy proposes that this note and the Government of the Republic of Poland's favorable Note in reply shall constitute an Agreement between the two Governments, which shall enter into force on a date to be determined in a subsequent exchange of diplomatic notes following the completion of all necessary internal procedures of both parties.

The Embassy of the United States of America avails itself of the opportunity to renew to the Ministry of Foreign Affairs of the Republic of Poland the assurances of its highest consideration.

Embassy of the United States of America,
Warsaw, December 15, 1995.

DPT.I.361-13-94

The Ministry of Foreign Affairs of the Republic of Poland presents its compliments to the Embassy of the United States of America in Warsaw and has the honour to acknowledge the receipt of the Embassy's Note No. 043 of December 15, 1995 which reads as follows:

"The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Republic of Poland and refers to the Agreement concerning fisheries off the coasts of the United States with annexes and agreed Minutes, signed at Washington on August 1, 1985, as amended and extended, most recently in 1993 (the Agreement).

The Embassy proposes, on behalf of the Government of the United States of America, that the Agreement, which is currently scheduled to expire on December 31, 1995, be extended for an additional two year period, until December 31, 1997. If this proposal is acceptable to the Government of the Republic of Poland, the Embassy proposes that this note and the Government of the Republic of Poland's favorable note in reply shall constitute an Agreement between the two Governments, which shall enter into force on a date to be determined in a subsequent exchange of diplomatic notes following the completion of all necessary internal procedures of both parties."

The Embassy
of the United States of America
in Warsaw

The Ministry of Foreign Affairs of the Republic of Poland has the honour to express on behalf of the Government of Poland its consent to the provisions of the above mentioned Note. Therefore the Embassy's Note and this reply shall constitute an Agreement between the Government of the Republic of Poland and the Government of the United States of America in accordance with which the Agreement concerning fisheries off the coasts of the United States, signed at Washington on August 1, 1985 together with annexes and agreed Minutes thereto as well as amendments and extensions whereof is further extended until December 31, 1997.

The Agreement shall enter into force on a date to be determined in a subsequent exchange of diplomatic notes following the completion of all necessary internal procedures of both parties.

The Ministry of Foreign Affairs of the Republic of Poland avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration. f.p.

Warsaw, December 20, 1995.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES

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

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

Considering the past experience of fishery vessels of the Government of the Polish People's Republic in waters off the coasts of the United States, the cooperation between the two Parties under the Agreement between the Government of the United States of America and the Government of the Polish People's Republic Concerning Fisheries Off the Coasts of the United States signed August 2, 1976, and in anticipation of continued and improved cooperation in the field of fisheries;

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;

Taking into account international law relating to oceans and fisheries;

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 Polish People's Republic 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;

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 including fishing vessels of the Polish People's Republic 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 Polish People's Republic.

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 Polish People's Republic 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 Polish Peopl Republic, 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 Polish People's Republic shall cooperate with and assist the United States accordingly 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 Polish People's Republic, 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 Polish People's Republic shall take all necessary measures to ensure:

1. that nationals and vessels of the Polish People's Republic 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 Polish People's Republic may submit an application to the Government of the United States for a permit for each fishing vessel of the Polish People's Republic 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 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 Polish People's Republic undertakes to keep the number of applications to the minimum required, in ord to aid in the efficient administration of the permit program.

ARTICLE VIII

The Government of the Polish People's Republic shall ensur that nationals and vessels of the Polish People's Republic refrain from harassing, hunting, capturing or killing, or attempt to harass, hunt, capture or kill, any marine mammal within the United States exclusive economic zone, except as may be otherwis 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 Polish People's Republic shall ensure that in the conduct of the fisheries under this Agreement:

1. the authorizing permit for each vessel of the Polish People's Republic 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 Polish People's Republic 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 adequate 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 Polish People's Republic as determined by applicable United States procedures.

ARTICLE X

The Government of the Polish People's Republic 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 Polish People's Republic 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 Polish People's Republic 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 Polish People's Republic by the authorities of the Government of the United States, notification shall be given promptly through diplomatic channels informing the Government of the Polish People's Republic of the action taken and of any penalties subsequently imposed.

ARTICLE XII

1. The Governments of the United States and the Polish People's Republic 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 Polish People's Republic 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 Polish People's Republic 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.

ARTICLE XIII

The Government of the United States and the Government of the Polish People's Republic 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 of America undertakes to authorize fisheries research vessels and fishing vessels of the Polish People's Republic 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 Polish People's Republic that nationals and vessels of the United States wish to engage in fishing in the

fishery conservation zone of the Polish People's Republic, or its equivalent, the Government of the Polish People's Republic 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

In order to facilitate the prompt and adequate compensation of the citizens of one country for any loss of, or damage to, their fishing vessels, fishing gear or catch which is caused by any fishing vessel of the other country, both Governments agree to the establishment of the American-Polish Fisheries Board set forth in Annex III to this Agreement, which constitutes an integral part hereof.

ARTICLE XVII

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 XVIII

1. This Agreement 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, 1991, 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 twelve 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, August 1, 1985 in the English and Polish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC:

ANNEX I

Application and Permit Procedures

The following procedures shall govern the application for and issuance of annual permits authorizing vessels of the Polish People's Republic 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 Polish People's Republic may submit an application to the competent authorities of the United States for each fishing vessel of the Polish People's Republic 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 terms and conditions may be needed, and what fee will be required, and shall inform the Government of the Polish People's Republic of such determinations. The Government of the United States reserves the right not to approve applications.

4. The Government of the Polish People's Republic shall thereupon notify the Government of the United States of its acceptance or rejection of such terms and conditions and, in the case of a rejection, of its objections thereto.

5. Upon acceptance of the terms and conditions by the Government of the Polish People's Republic and the payment of any fees, the Government of the United States shall approve the

application and issue a permit for each Polish fishing vessel, which fishing vessel shall thereupon be authorized to fish in accordance with this Agreement and the terms and conditions set forth in the permit. Such permits shall be issued for a specific vessel and shall not be transferred.

6. In the event the Government of the Polish People's Republic notifies the Government of the United States of its objections to specific terms and conditions, the two sides may consult with respect thereto and the Government of the Polish People's Republic 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 Polish People's Republic 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 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 Polish People's Republic which have been issued permits pursuant to the Agreement are authorized to enter the ports of New York, New York; Baltimore, Maryland; Camden, New Jersey; Philadelphia, Pennsylvania; Boston, Massachusetts; San Francisco, California; Coos Bay, Oregon; Astoria, Oregon; Seward, Alaska and Dutch Harbor, Alaska.

2. Vessels referred to in paragraph 1 above may enter the ports referred to for a period not exceeding seven calendar days for the purposes 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 to 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 areas 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 U.S. 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 Polish People's Republic is evacuated from his vessel to the United States for the purpose of emergency medical treatment, authorities of the Polish People's Republic 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 Polish People's Republic will be responsible for him.

6. The exchange of crews of vessels of the Polish People's Republic in the specified ports shall be permitted subject to submission of 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 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 Polish People's Republic representatives for repatriation to the Polish People's Republic and the dates and manner of their departure from the United States shall be submitted to the appropriate United States government agencies 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 Polish People's Republic which are engaged in a mutually agreed research program in accordance with the 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 Annex II may be amended by agreement through an exchange of notes between the two Governments.

ANNEX III

American-Polish Fisheries Board

Section I

Establishment of the Board

1. There is hereby established an American-Polish Fisheries Board (hereinafter called the Board).

2. The Board shall consist of four members, two appointed by the Government of the United States of America and two appointed by the Government of the Polish People's Republic. At least one of the two members appointed by each Government shall have knowledge of the general principles of international law, particularly those relating to fisheries matters. Each Government-appointed member shall serve as an instructed representative of the appointing Government. It is the responsibility of each Government to maintain its full complement of members.

3. Each Government may appoint one non-voting technical advisor to the Board for each matter heard.

4. All decisions of the Board shall be undertaken unanimously by those members present and voting, so long as at least one member appointed by each Government is present.

5. The Board shall normally sit in Washington D.C. Insofar as is necessary considering the location of the parties and the availability of evidence, the Board may sit elsewhere.

6. English and Polish shall be the official working languages of the Board. The Governments shall assist the Board in arranging for necessary translations and interpretations.

7. As used in this Annex, the term "national" refers to any vessel or person, natural or juridical, including but not limited to a governmental entity.

Section II

Conciliation Functions

1. The Board shall consider claims advanced by a national of either State against a national of the other State regarding financial loss resulting from damage to or loss of the national's fishing vessel or fishing gear.

2. No claim may be brought more than one year after the occurrence of the relevant incident, unless the Board decides unanimously to make an exception for a specific incident occurring during the six weeks prior to the entry into force of the Agreement.

Section III

Conciliation Procedures

1. The Board shall establish its procedures in accordance with this Annex.

2. A claim, as referred to in Section II above, shall be brought before the Board by a written request. The request shall be in the form of a sworn statement which shall include, inter alia, a detailed account of the incident from which the claim arises, the identity of all persons and vessels involved, the remedy sought (damages claimed), and a list of potential witnesses knowledgeable about the incident. All appropriate documentary evidence supporting the claim shall be forwarded with the claim to the Board.

3. Upon receipt of a claim, the Board shall, as soon as practicable, commence an inquiry into the incident, and inform both Governments. Each Government shall immediately notify any of its nationals against whom a claim is made. Its nationals may in turn file with the Board a sworn statement responding to the claim. The response may contain a counterclaim insofar as the counterclaim arises from the same incident upon which the claim is based. A counterclaim shall be in the same form and contain the same information as a claim. The Board may join claims that arise from the same incident, without prejudice to the right of each party to present evidence with or without counsel.

4. The Board may request further information and documents from the parties to the dispute or from appropriate governmental agencies. All statements, reports, or other documents presented to the Board shall be duly sworn and

attested as to their authenticity, insofar as reasonably possible. Official Government reports and documents need not be so authenticated.

5. If either the claimant or the respondent requests a hearing, or if the Board deems it desirable to hold a hearing, the Board shall convene a hearing regarding the incident. The claimant and respondent may appear at the hearing, personally or through a representative, with or without counsel, and may present witnesses. The Board may invite as a witness any person, organization, corporation or other entity which has a direct interest in or knowledge of the matter. The claimant and respondent shall be permitted to question all persons testifying at the hearing, provided that no person shall be required to respond to any question.

6. The Governments will facilitate the work of the Board.

Section IV

Conciliation Report

1. The Board shall prepare a report containing its findings as to:

a. the facts giving rise to the claim;

b. the extent of damage or loss;

c. the degree of respondent's or claimant's responsibility, if any; and

d. the amount, if any, which should be paid by respondent or claimant as compensation for losses arising from the incident.

2. If the Board does not unanimously adopt the findings, this shall be stated in the report, and the report shall contain separate statements of each Board member's opinion.

3. The Board shall transmit its report to the claimant, to the respondent, and to each of the two Governments no later than sixty days after the completion of the procedures under Section III.

4. Within thirty days after receipt of the Board's report, either the claimant or the respondent may request in writing that the Board reconsider its report. The request shall set forth the reasons for the request and material substantiating the request. The Board may decide to reconsider its report and, if it deems appropriate, receive new evidence or convene a rehearing, or both. Section III procedures will be applicable to the reconsideration.

5. The two Governments undertake to encourage settlement of claims in accordance with the findings of the Board.

6. Within sixty days of receipt of the Board's report each Government shall report to the Board in writing the

actions taken by its nationals pursuant to the Board's findings.

7. If one of the parties to a conciliation proceeding refuses to settle in accordance with the findings of the Board, the Board shall encourage the parties to submit their dispute to binding arbitration.

8. The Board's report and the report of each Government shall be published in the form agreed by the Board.

Section V

Use of the Board

The two Governments shall encourage their nationals to use in the first instance the Board to settle claims resulting from damage to or loss of fishing gear and vessels. The Governments shall give information about the Board to interested persons.

Section VI

Applicable Law

In all proceedings under this Annex the Board shall apply:

1. international conventions, whether general or particular, establishing rules expressly recognized by the

two Governments, including bilateral and multilateral agreements between the two Governments dealing with fisheries and maritime matters generally;

2. international custom, as evidence of a general practice accepted as law;

3. the general principles of law recognized by nations;

4. judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Section VII

Other Remedies

1. Nothing in this Annex shall preempt, prejudice, or in any other way affect judicial proceedings, or the right to institute such proceedings, or in any way prejudice or affect the substantive or procedural rights of any person, whether or not such person appears before or participates in the proceedings of the Board.

2. No claim shall be brought the substance of which has been or is being adjudicated or arbitrated between the parties. The Board may refuse to consider a claim on the grounds that it should be joined to an existing judicial proceeding involving substantially the same issues and in which the law applicable to such judicial proceeding appears to permit such joinder.

3. The Board shall immediately suspend conciliation proceedings regarding a claim in respect to which judicial proceedings are instituted, unless the court before which the proceedings are pending determines, in the exercise of its lawful authority, that the parties may continue to proceed before the Board.

4. The Board shall immediately terminate conciliation proceedings regarding a claim in respect to which there is a binding agreement to arbitrate.

Section VIII

Funding

Each Government shall pay all expenses, including compensation, of the members it appoints to the Board and of any technical advisors it appoints. The two Governments will share equally all the administrative and operational costs of the Board. Such costs do not include expenses related to the presentation or production of evidence or the appearance of witnesses.

Section IX

Review

At the request of either Government, representatives of the two Governments shall meet to review the operation of

this Annex and to consider proposals for its revision. This Annex may be amended through an exchange of notes between the two Governments.

Section X

Termination

At any time either Government may give written notice to the other Government of its intention to denounce this Annex, in which case the Annex shall terminate ninety days from the date of the notification, provided that the effect of the Annex shall in any event continue until the conclusion of conciliation proceedings and arbitrations instituted prior to its termination, unless otherwise agreed to by the two Governments.

AGREED MINUTES

1. The representative of the Government of the United States took note of a declaration by the representative of the Polish People's Republic that matters referred to in Article IV, paragraph 8, of the Agreement should be confined strictly to the fisheries sector, and that in case of any other matters being taken into account by the United States authorities, the Government of the Polish People's Republic reserves itself the right to undertake steps which it deems appropriate.

2. With respect to Article IV, the representative of the Polish People's Republic emphasized the importance of the Polish fishing industry to the Polish economy, and urged that the Government of the United States give due consideration to the need for continuation for mutual benefit of stable fishing operations by fishing vessels of the Polish People's Republic in the exclusive economic zone of the United States.

   The representative of the Government of the United States taking note of the statement by the representative of the Polish People's Republic, emphasized the importance of rapid and full development of the United States fishing industry to the United States economy and pointed to the importance which his Government attached to Polish cooperation in that regard.

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 11816

FISHERIES OFF THE UNITED STATES COASTS

Agreement Between the
UNITED STATES OF AMERICA
and POLAND

Amending and Extending the
Agreement of August 1, 1985

Effected by Exchange of Notes
Signed at Washington January 24
and June 12, 1991

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89–497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

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POLAND

Fisheries Off the United States Coasts

Agreement amending and extending the agreement of August 1, 1985.
Effected by exchange of notes
Signed at Washington January 24 and June 12, 1991;
Entered into force November 21, 1991;
Effective July 1, 1991.

The Secretary of State to the Polish Ambassador

DEPARTMENT OF STATE
WASHINGTON
January 24, 1991

Excellency:

I have the honor to refer to the Agreement between the Government of the United States of America and the Government of the Republic of Poland Concerning Fisheries off the Coasts of the United States signed at Washington on August 1, 1985 (hereinafter referred to as "the Agreement"). Noting the desire by the United States to address cooperatively with the Republic of Poland the recommendations outlined in United Nations Resolution 44/225 of December 1989 on Large-Scale Pelagic Driftnet Fishing, as well as concerns about the burgeoning fishery for pollock in the central Bering Sea area, I have the further honor to propose that, in accordance with the provisions of Article XVIII, the Agreement be extended until December 31, 1993, and that it be amended as follows:

1. In Article II, delete "(except highly migratory species of tuna)" in paragraph 1, and revise paragraph 2, deleting the phrase "and highly migratory species," and concluding with the phrase "marine mammals and birds;"

2. In Article II, at the end of subparagraph 6. b., add the word "and", delete paragraph 7, and renumber the present paragraph 8 as paragraph 7.

3. In Article IV, paragraph 7, delete "; and" and replace with ";".

4. In Article IV, add a new paragraph 8 as follows:

"8. whether, and to what extent, such nations are cooperating with the United States in matters pertaining to the fulfillment of the recommendations outlined in United Nations General Assembly Resolution 44/225 of December 1989 on Large-scale Pelagic Driftnet Fishing and in the conservation of the pollock resource in the central Bering Sea; and"

His Excellency
Kazimierz Dziewanowski,
Ambassador of the Republic of Poland.

5. In Article IV, renumber the present paragraph 8 as paragraph 9.

6. In Article XII, add a new paragraph 5 as follows:

"5. The Government of the Republic of Poland shall cooperate with the Government of the United States in matters pertaining to the fulfillment of the recommendations outlined in United Nations General Assembly Resolution 44/225 of December 1989 on Large-scale Pelagic Driftnet Fishing and in the conservation of the pollock resource in the central Bering Sea."

7. Delete the existing text of Article XIV and replace it with:

"The Government of the United States undertakes to authorize fisheries research vessels of the Republic of Poland 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."

8. In Annex II, paragraph 1, delete ", fishing vessels participating in joint ventures involving over-the-side purchases of fish from U.S. fishing vessels (including support vessels)" and "which have been issued permits pursuant to the Agreement" from existing paragraph 1.

I have the further honor to propose that if these proposals are acceptable to the Government of the Republic of Poland, this Note and the Embassy's Note in reply to that effect shall constitute an Agreement between the Government of the United States of America and the Government of the Republic of Poland, which will enter into force on a date to be agreed upon in a subsequent exchange of diplomatic notes between the two Governments following the completion of necessary internal procedures.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

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The Polish Ambassador to the Secretary of State

EMBASSY
OF THE REPUBLIC OF POLAND

Dear Mr. Secretary,

I have the honor to acknowledge receipt of the Note of the Department of State dated January 24, 1991, which reads as follows:

[For text of the U.S. note, see pp. 2-3.]

I have the honor to inform you that the Government of the Republic of Poland agrees that the Agreement between the Government of the Republic of Poland and the Government of the United States of America be extended until December 31, 1993 and be amended as proposed in the above cited Note of the Department of State with an understanding that the phrase "the Polish Peoples' Republic" be replaced throughout the text with the phrase "the Republic of Poland".

I have the further honor to inform you that the Government of the Republic of Poland further acknowledges with great satisfaction the announcement by the President of the United States made on May 8, this year of the revision in United States port access policy which provides access for Polish fishing, fishing support and other vessels to all United States ports on the basis of 24-hours notice of entry into the port.

The Government of the Republic of Poland also agrees that the above cited Note of the Department of State dated January 24, 1991 and the present Embassy's reply thereto shall constitute an agreement between the two Governments which shall enter into force on a date to be agreed upon in a subsequent exchange of diplomatic notes between the two Governments following the completion of necessary internal procedures.

Washington, June 12th, 1991

The Honorable James A. Baker, III
Secretary of State

I avail myself of this opportunity to renew to you, Mr. Secretary, the assurances of my highest consideration.

Kazimierz Dziewanowski
Ambassador of the Republic
of Poland