

DEPARTMENT OF STATE

WASHINGTON

June 12, 2009

Excellency:

I have the honor to acknowledge receipt of your note No. UNFN0056 dated June 12, 2009, which reads as follows in its entirety:

Note No. UNEN0056

I have the honor to refer to the proposed amendments to Annexes A and C of the *Treaty between the Government of Canada and the Government of the United States of America on Pacific Coast Albacore Tuna Vessels and Port Privileges*, as developed between the Canadian and U.S. delegations in Long Beach, California on December 16, 2008, which follow in their entirety and which shall be substituted for the existing Annexes A and C:

ANNEX A

1.

- (a) Each Party agrees to provide annually to the other Party a list of its fishing vessels which propose to fish albacore tuna in the Exclusive Economic Zone (EEZ) of the other Party, which is defined in Article 1(b) of the Treaty. The list will include:
  - (i) vessel name,
  - (ii) home port.

His Excellency

Michael H. Wilson

Ambassador of Canada

DIPLOMATIC NOTE

- (iii) radio call sign or vessel identification marking that identifies the flag state of the vessel ("Vessel Identification Marking").
  - (iv) fishing vessel registration number.
  - (v) captain or operator's name, if known, and
  - (vi) vessel length. For Canada, the list of vessels shall be transmitted to the United States as of June 1. For the United States, a provisional list shall be provided by July 1 and may be revised during the fishing season.
- (b) With regard to the list of Canadian vessels, the list shall remain fixed for the entirety of the fishing season as defined in paragraph 2 of Annex C. No vessels may be added to or replaced on the list during the fishing season except pursuant to paragraph 1(c) below.
- (c) In the event of *force majeure* or other cause for an exceptional request by the captain or owner of a Canadian vessel on the list in 1(a) for replacement of a vessel within a season, an ad hoc review panel will be convened by the Government of Canada to review the request and determine whether the request is warranted. If the finding is positive, the basis for the finding and the information regarding the replacement vessel per paragraph 1(a) shall be transmitted to the Government of the United States prior to the vessel entering the EEZ of the United States. Any replacement vessel shall not exceed the length overall of the original vessel it is replacing by more than 10 feet. Any subsequent replacements of that first replacement vessel must be of the same size or shorter than the vessel being replaced.
- (d) As soon as possible after receipt of the list of proposed fishing vessels, and subject to paragraph 1(e) below, the receiving Party shall satisfy itself that the list received meets the criteria of paragraph 1(a) and shall so inform the other Party in order to enable the albacore fishery to proceed pursuant to this Treaty.

- (e) Should one Party object to the inclusion of a particular vessel on the list of the other Party, the two Parties shall consult. Such objection may be made on the basis that the vessel in question has been involved in serious or repeated fisheries violations or offenses. In the event of consultations, actions pursuant to paragraph 1(d), with regard to other vessels shall not be delayed. Following consultations, each Party shall notify its respective vessels that both Parties agree shall not be included on the list referred to in paragraph 1(d).
2. If required by either Party, each vessel shall, prior to entering and leaving the EEZ of such Party, so inform the appropriate authorities and provide the vessel name, radio call sign or Vessel Identification Marking, captain or operator's name and the purpose for being in such Party's EEZ.
3. When in the EEZ of the other Party, each vessel shall have its name and radio call sign or Vessel Identification Marking prominently displayed where they will be clearly visible both from the air and from a surface vessel.
4. Vessels of both Parties shall maintain accurate and complete records of catch, effort and other data on report forms provided by their respective governments while fishing pursuant to this Treaty. The Parties shall develop a real-time data reporting protocol to address the objective of achieving reporting of catches by the vessels of one Party fishing in the EEZ of the other Party. Any logbooks and related databases maintained by either Party shall be made available to the other Party regularly for verification purposes, subject to the Parties' respective rules on data confidentiality.
5. In order that better information may be obtained concerning the stocks of albacore tuna which migrate off the west coasts of the United States and Canada, each vessel engaged in fishing pursuant to this Treaty shall be required to provide to its government statistics and other scientific information on its operations in the EEZ of the other Party. Each Party shall provide to the other Party such information and in particular the amount (weight) and a sampling of biological data of albacore tuna caught by its vessels in the EEZ of the other Party. Such information shall be provided on an annual basis and at least 30 days prior to the annual consultations referred to in paragraph 6 of this Annex. Other specific information to be provided, as well as the forms and procedures for providing such information, shall be agreed upon by the Parties.
6. The Parties shall consult annually, *inter alia*, to:
  - (a) discuss data and information on albacore tuna fisheries exchanged under paragraph 5 of this Annex; and

- (b) exchange information on their respective conservation and management measures for albacore tuna and on implementation of internationally agreed conservation and management measures applicable to the Parties related to fisheries covered under this Treaty.

The Parties shall also notify one another of the conservation and management laws and regulations applicable to vessels fishing in each other's EEZ pursuant to Article 1(b) of this Treaty."

#### ANNEX C

1. Each Party agrees to limit fishing by its respective vessels engaged in fishing for albacore tuna in the in the Exclusive Economic Zone (EEZ) of the other Party, which is defined in Article I(b) of the Treaty, in accordance with the limitation regime (the "Regime") below.
2. During the term of the Regime, a "fishing season" shall be defined as a period of fishing commencing on June 15 and ending on October 31. The regime shall begin on the first June 15 occurring after the date of entry into force of this Annex and expire on the first December 31 occurring after the third fishing season of the Regime.
3.
  - (a) 12 months prior to the conclusion of the Regime, the Parties shall consult with a view to negotiating an extension and/or revision of the Regime, as appropriate, for a period of one or more years.
  - (b) The Parties shall conduct the consultations and negotiations referred to in paragraph 3(a) in good faith, including with sufficient time and resources, with an objective to conclude a new reciprocal fishing regime, if in the national interests of both Parties, within the one year period provided in paragraph 3(a). Criteria of national interest shall include, inter alia:
    - (i) the health of the stock,
    - (ii) the extent of landings of fish in the ports of each Party pursuant to the Regime, and
    - (iii) the economic benefits realized by the economies of both Parties as a result of the Regime.
  - (c) The Parties further agree that they may further extend the period of the Regime for an additional fishing season, by their mutual concurrence in

writing, if that would improve the likelihood of concluding a new agreement extending and/or amending the existing Regime.

4. In each fishing season of the Regime, the Government of Canada shall limit fishing for albacore tuna by its vessels in the EEZ of the United States to 110 troll vessels. The Government of the United States shall limit fishing for albacore tuna by its vessels in the EEZ of Canada to a number of vessels reflective of historical levels.
5. If at any point during the term of this regime a Party receives a request for resolution of a matter related to the implementation of this Treaty with specific regard to the Regime, and notwithstanding the consultations contemplated in paragraphs one and two of Article VI of the Treaty, the Parties may establish through an exchange of letters setting out a mutually held understanding on the terms of reference for an ad hoc consultative group consisting of an equal number of experts knowledgeable about the Pacific albacore tuna fishing industry who will serve in their personal capacity for the purpose of examining questions of implementation referred by the Parties.
  - (a) The Parties will set out any question or matter of difference between them involving the rights, obligations or interests of either in relation to the other or to the inhabitants of the other.
  - (b) Each Party will be responsible for determining the manner in which the travel and other costs associated with the operations of the consultative group for the members of the group that they nominate will be provided, and for the respective shares.
  - (c) Each Party will be responsible for determining the manner in which any jointly incurred expenses associated with the operations of the consultative group are funded.
  - (d) Any report submitted by the group should represent a consensus of the members appointed, but in the absence of a consensus, two reports, one by a majority of the members and the other by a minority of the members, or a report each should the views of the group be equally divided, may be submitted to the Parties for their further consideration.
6.
  - (a) Notwithstanding Article VIII, a Party may only terminate the Regime, by providing written notice to the other Party that:
    - (i) an international fisheries management organization with competence over highly migratory species such as the Inter-American Tropical Tuna Commission has adopted a fisheries

conservation and management measure for North Pacific Albacore that requires one or both Parties to adopt a domestic management regime, structure or measure that may not be consistent with or may undermine the implementation of the Regime, or

(ii) as a result of domestic fisheries management requirements, regulation or laws, a Party must put in place measures for managing fisheries on albacore or associated species that may not be consistent with or may undermine the implementation of the Regime.

(b) Upon notification, the Parties shall consult, taking into account the provisions of paragraph 3, to consider re-establishment of a reciprocal fishing regime. The Regime shall terminate on December 31 of the calendar year following that in which such notice was received by the other Party.

I have the further honor of referring to the proposed arrangement between our two Governments ("the Parties") on terms to apply during the period of the renewed reciprocal fishing regime expressed in paragraph 1 of proposed Annex C above with regard to coordinated bilateral actions on future albacore tuna fishing allocations, which follows:

In the event that an international fisheries management organization such as the Inter-American Tropical Tuna Commission (IATTC) adopts measures for international management of North Pacific albacore using a national catch allocation system, the Parties agree that the portion of any national allocation received by Canada and the United States attributable to the catch taken in the EEZ of the other country shall be reallocated by each country to the country in whose EEZ that catch was taken, or shall otherwise implement the national allocations in a manner that ensures respective future fishing opportunities under international management reflect total catches in each country's EEZ.

The Parties agree and commit that this provision in respect of future allocations shall be implemented in a cooperative and constructive manner, in good faith, and the potential outcomes of the activities to be undertaken in implementing this provision should not serve as the basis for termination of a reciprocal fishing regime or the Treaty. The Parties further commit to work together with a view toward coordinating positions and objectives within international regional fisheries management organizations such as the IATTC in the development of conservation and management measures for North Pacific Albacore, in particular any such measures related to international or national allocations and the manner and method of calculating such allocations.

If the above proposals are acceptable to the Government of the United States of America, I have the honor to propose that this Note, and your Excellency's affirmative Note in reply, which are equally authentic in the English and French versions, shall constitute an Agreement between our two Governments, which shall enter into force on the date of the second note that is part of a subsequent exchange of notes confirming the completion by each Party of all internal procedures necessary for its entry into force.

My Government concurs with the proposed amendments to the Annexes to the Treaty between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, and further concurs with the proposed arrangement regarding coordinated bilateral actions on future albacore tuna fishing allocations. Therefore, your Excellency's note, together with this note in reply, which are equally authentic in the English and French languages, shall constitute an Agreement between our two Governments, which shall enter into force on the date of the second note that is part of a subsequent exchange of notes confirming the completion by each Party of all internal procedures necessary for its entry into force.

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

For the Secretary of State:

A handwritten signature in cursive script, appearing to read "David Kelton".

Canadian Embassy



Ambassade du Canada

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I have the honor to refer to the proposed amendments to Annexes A and C of the *Treaty between the Government of Canada and the Government of the United States of America on Pacific Coast Albacore Tuna Vessels and Port Privileges*, as developed between the Canadian and U.S. delegations in Long Beach, California on December 16, 2008, which follow in their entirety and which shall be substituted for the existing Annexes A and C:

ANNEX A

1.

- (a) Each Party agrees to provide annually to the other Party a list of its fishing vessels which propose to fish albacore tuna in the Exclusive Economic Zone (EEZ) of the other Party, which is defined in Article 1(b) of the Treaty. The list will include:
  - (i) vessel name,
  - (ii) home port,
  - (iii) radio call sign or vessel identification marking that identifies the flag state of the vessel ("Vessel Identification Marking"),
  - (iv) fishing vessel registration number,
  - (v) captain or operator's name, if known, and
  - (vi) vessel length. For Canada, the list of vessels shall be transmitted to the United States as of June 1. For the United States, a provisional list shall be provided by July 1 and may be revised during the fishing season.

- (b) With regard to the list of Canadian vessels, the list shall remain fixed for the entirety of the fishing season as defined in paragraph 2 of Annex C. No vessels may be added to or replaced on the list during the fishing season except pursuant to paragraph 1(c) below.
- (c) In the event of *force majeure* or other cause for an exceptional request by the captain or owner of a Canadian vessel on the list in 1(a) for replacement of a vessel within a season, an ad hoc review panel will be convened by the Government of Canada to review the request and determine whether the request is warranted. If the finding is positive, the basis for the finding and the information regarding the replacement vessel per paragraph 1(a) shall be transmitted to the Government of the United States prior to the vessel entering the EEZ of the United States. Any replacement vessel shall not exceed the length overall of the original vessel it is replacing by more than 10 feet. Any subsequent replacements of that first replacement vessel must be of the same size or shorter than the vessel being replaced.
- (d) As soon as possible after receipt of the list of proposed fishing vessels, and subject to paragraph 1(e) below, the receiving Party shall satisfy itself that the list received meets the criteria of paragraph 1(a) and shall so inform the other Party in order to enable the albacore fishery to proceed pursuant to this Treaty.
- (e) Should one Party object to the inclusion of a particular vessel on the list of the other Party, the two Parties shall consult. Such objection may be made on the basis that the vessel in question has been involved in serious or repeated fisheries violations or offenses. In the event of consultations, actions pursuant to paragraph 1(d), with regard to other vessels shall not be delayed. Following consultations, each Party shall notify its respective vessels that both Parties agree shall not be included on the list referred to in paragraph 1(d).

2. If required by either Party, each vessel shall, prior to entering and leaving the EEZ of such Party, so inform the appropriate authorities and provide the vessel name, radio call sign or Vessel Identification Marking, captain or operator's name and the purpose for being in such Party's EEZ.
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3.
  - (a) 12 months prior to the conclusion of the Regime, the Parties shall consult with a view to negotiating an extension and/or revision of the Regime, as appropriate, for a period of one or more years.
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period provided in paragraph 3(a). Criteria of national interest shall include, inter alia:

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  - (i) an international fisheries management organization with competence over highly migratory species such as the Inter-American Tropical Tuna Commission has adopted a fisheries conservation and management measure for North Pacific Albacore that requires one or both Parties to adopt a domestic management regime, structure or measure that may not be consistent with or may undermine the implementation of the Regime, or
  - (ii) as a result of domestic fisheries management requirements, regulation or laws, a Party must put in place measures for managing fisheries on albacore or associated species that may not be consistent with or may undermine the implementation of the Regime.

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Washington, D.C.

June 12, 2009

*Michael Huber*

