

MEETING SUMMARY
U.S.-CANADA ALBACORE TUNA CONSULTATIONS

April 16-17, 2013
First Floor Conference Room
1201 NE Lloyd Blvd, Suite 1100
Portland, OR 97232

Prepared by Council Staff

Delegation Introductions

David Hogan, Deputy Director, Office of Marine Conservation (OES/OMC), U.S. Department of State, headed the US delegation. The Canadian Delegation was led by Sylvie LaPointe, Department of Fisheries and Oceans Canada. The delegations included representatives from government and industry.

Discussion of Elements of a Future Regime

The meeting focused on reaching agreement on the elements of a reciprocal fishing regime for 2013. The following elements were discussed:

- Term of Regime
- Level of Participation
- Length of season
- Capacity Issues
- Conduct/Etiquette
- International cooperation and management

Over the course of the meeting these elements were reviewed several times. In the interest of clarity this report is organized around these topics rather than strictly according to the meeting chronology.

At the outset Mr. Hogan made it clear that the US was questioning the value of the Treaty given changed conditions since the Treaty was originally negotiated and the lack of support from harvesters for its continuation. Canada responded by acknowledging a fundamentally different perspective on the benefits from the Treaty. Canada believes there are and will be mutual economic benefits of the Treaty and regime, from harvester, processor, states, and other perspectives. It is a matter of “tweaking” the Treaty regime in light of changed circumstances.

Term of Regime

Mr. Hogan made clear that the US would only agree to a 1-year regime for 2013. Canada responded by noting the proposals it put forward at the last bilateral negotiation in February 2013.

Level of Participation

Mr. Hogan began by stating that for the US the starting point for considering participation was 2012 when there was no regime and Canadian vessels were not allowed to fish in US waters. Participation would be

based on reducing negative interactions with the US fleet while recognizing the importance of the regime for Canada. The US noted that Canada had put forward a proposal indicating a level of 55 vessels as indicative of pre-1998 levels of participation. However, the US takes a broader review of reciprocity and the history of Canada's participation in the US EEZ. In today's context that suggests a level of participation more in the neighborhood of 20-25 vessels. This would better represent the levels of effort and catch that occurred in the pre-1998 era given the current capacity of Canadian vessels. Canada countered by stating their previous proposal didn't specify a number of vessels but a 30% reduction to 75-80 vessels would be appropriate. Canada stated they had trouble understanding the argument that fleet capacity and conditions would be substantially different in 2013. The level it proposes represents the core fleet that has been fishing in the US zone for many years. After further discussion Canada emphasized that the elements of a regime are interlinked so agreement on this provision would depend on what other elements were agreed to.

Length of season

Under the previous regime the season was June 15-October 31. From the US perspective the length of the fishing season is more important with respect to port access. Canada noted the statutory framework for port access, which dictates that the Minister of Fisheries and Oceans must approve port access based on the conditions established under the Treaty. In the past the Minister would grant port access out of season based on the existence of a regime in that year. The US emphasized that even in the absence of a regime establishing reciprocal access for fishing US vessels would like to be granted port access for purposes other than landing fish. This is likely to be relevant in the future when reciprocal access may be eliminated. The US opined on the linkage between season length and port access. Canada responded that while the Minister has discretion in this matter such a situation might require a change in the controlling legislation. As to the length of the season for the purposes of fishing, Canada expressed a preference for the previous duration of June 15-October 31. The US emphasized the linkage between the level of participation and length of season and suggested a season structure where Canada would have access to the US EEZ earlier in the season, say June 15-August 31, while the US would have a year-round season for the purpose of port access. Canada responded that the port access and fishing season elements should not be linked. Canada would prefer the same season for both US and Canadian vessels for the purposes of fishing while finding a mechanism to allow port access for US vessels year-round. The legal implications of reciprocal port access outside of a fishing season were discussed.

Capacity Issues

The US underscored the importance of the proposal to fix the list of authorized Canadian vessels to ensure permit trading and vessel substitution would not occur. The US began by stating its preference that no substitutions be allowed. Since the US is looking for progressive reductions in the number of vessels granted access to the US EEZ in the future, attrition from the vessel list could compliment scheduled reductions in the number of vessels granted access. There was discussion about what year would be used to determine which vessels are on the list. Canada made clear that when it originally put forward this proposal it had established the list based on those vessels on the list in May 2012. The US was interested in looking at the beginning of the previous regime (2009) but Canada made it clear that it would not be possible to use an earlier date for legal reasons. There was discussion about how different the list would be if based on 2009 and Canada stated that there has been very little change in those vessels that are ranked near the top of the list.

Canada stated that as part of their proposal changes in the vessel list would not occur inseason but there would still be a possibility for replacements. This would involve a rigorous process with a bi-national review committee and a limitation on replacements to a vessel of the same size or smaller. This would be structured as a government-to-government board or committee. (Canada had also proposed a *force*

majeure provision.) Canada said that relative to a future phase-out of reciprocal access, it didn't see the need to employ attrition as a strategy. The US sought clarity on specifics to ensure that replacement provisions would not open the door to the type of permit transfers that happened in the past. Canada said that ultimately the Minister has complete discretion over permit transfers (and thus vessel replacement) barring arbitrary decisions. Canada discussed the criteria that could be employed in the review of vessel replacements. Previously, the proposal set a deadline of May 1 for considering replacements but this may need to be extended by two weeks given the need to set up the inter-governmental review board if a transfer is requested. Canada also emphasized that since this is a 1-year regime, problems with the vessel replacement provisions could be improved in the subsequent regime based on experience in 2013.

Canada went on to explain in greater detail how the vessel list was compiled in relation to the permits granting access to fishing in the US EEZ under previous fishing regimes ("USA68" licenses). This list was originally compiled in 2006 and had 179 vessels, based on a formula weighting the number of years of fishing in the US EEZ at 60% and catch at 40% during a 1995-2005 eligibility period. In 2008 the Minister reviewed the process for issuing licenses and determined it was fair and equitable. This list was used to identify the 110 vessels eligible under the previous regime.

The US concluded by accepting the Canadian proposal with respect to the vessel eligibility list, including the mechanism for reviewing requests for vessel replacement (and the *force majeure* exception). The US emphasized its understanding that the vessel list and associated USA68 permits are inextricably linked such that permit trading would not be a feature of this or future regimes. Canada agreed with this understanding. The US also requested that the transmitted list provide as much information as possible about each vessel, including photographs. Since this is a requirement for the IATTC Regional Vessel Register, Canada said it would not be a problem. This information would be provided to US harvesters so they can monitor Canadian vessels and assist in identifying possible violations.

Conduct/Etiquette

While recognizing this is an important issue, the US did not favor a government-to-government arrangement. But a 2013 regime must represent a sincere effort to address concerns of US harvesters with respect to conduct on the fishing grounds. Canada responded by emphasizing the importance of this issue. Canada thinks that a purely industry-based response is insufficient. The US suggested a mechanism to refer to a Code of Conduct, which would be implemented through industry organizations. Canada emphasized the need for political support to insure industry moves forward on this but agreed to an arrangement where a Code of Conduct would be referenced in diplomatic exchanges but not be part of a treaty annex.

International Cooperation and Management

The first international cooperation issue is catch attribution in the event an allocation by the IATTC is based on catch history. The exchange of notes for the previous regime included an agreement on catch attribution and the US would like to reinstate that arrangement on a permanent basis. Canada expressed concern about agreeing to a provision with an indefinite duration, because it sees the current discussion as an element of a package of measures for 2013 only.

A second element of international cooperation is an arrangement for research funded jointly by Canadian and US fishing associations. Like conduct, the US sees this as something for the harvesting associations to work through and establish the details of jointly considering and funding research proposals. Canada noted its disappointment that the US did not want to include this as part of the formal agreement (e.g., Treaty annexes). Canada agreed to formula similar to the etiquette issue where this element would be referred to outside of any of the treaty annexes.

Economic and Data Workgroups Intersessional Work

Canada proposed an expanded study by the Economic Workgroup to examine the socioeconomic benefits of reciprocal access (primarily benefits to US fishing communities from Canadian access to the US EEZ). The US questioned the necessity of such a study given the intent of the US to negotiate a phase-out of reciprocal access in the subsequent regime (from 2014 onward). Canada also did not see an immediate need to dissolve the workgroups.

Conclusion of the Meeting

The US discussed its intent to include in diplomatic correspondence a statement with respect to proposing a phase-out in reciprocal access as part of the next regime for 2014 and beyond. (The duration of the phase-out period was not discussed.) As noted above, the code of conduct and jointly funded research would also be referenced in correspondence but not be part of the treaty annexes or the exchange of notes. The parties returned to the issue of level of participation. Since neither country appeared willing to move from its opening position in a plenary setting Canada recommended a government-to-government format. The plenary broke at about 11:00 a.m. on April 17.

The plenary did not reconvene but David Hogan reported the outcome of government-to-government discussions to the US delegation:

- Term of Regime: 2013 only
- Level of Participation: 45 Canadian vessels, US vessels not limited
- Length of season: June 15-September 15 for Canadian vessels, June 15-October 31 for US vessels.
- Capacity Issues: Canadian proposal accepted with vessel replacement requests entertained by the intergovernmental review body through June 1, 2013.
- Conduct/Etiquette: Referred to in correspondence as discussed previously
- International cooperation and management. Catch attribution to be described in exchange of notes along the lines as the previous negotiation but for an indefinite term; jointly-funded research mechanism to be referred to in correspondence.

Mr. Hogan also said that the US's intent to negotiate a phase-out of reciprocal access in the next regime was made clear and will be discussed in covering correspondence from the US to Canada at the exchange of notes. The US prefers this be accomplished within a single regime for a period of years beginning in 2014.