



Monday, October 31, 2022

RE: Proposal on a Pacific Albacore Tuna Treaty Access Regime beyond 2022

Colleagues,

Without a doubt, during the past four decades, the *Treaty between the governments of Canada and the United States on Pacific Albacore Tuna Vessels and Port Privileges* – hereafter referred to as the ‘Treaty’ – has greatly benefited our two countries. The Treaty has been a defining feature for albacore surface fisheries in the eastern Pacific Ocean, and its original spirit of reciprocity continues to be important today.

From an operational perspective, our respective fisheries management authorities have benefitted considerably from the sharing of fishing and port activity data as provided for under the Treaty. From a broader strategic angle, the Treaty has served to strengthen our bilateral relationship at the Inter-American Tropical Tuna Commission and at the Western and Central Pacific Fisheries Commission, where the regional conservation and management regime for the stock is negotiated with other member countries participating in albacore tuna fisheries. From setting controls on fishing effort to, more recently, establishing reference points, our collaboration continues to see us more effectively advance shared interests for this stock at these regional fisheries management organizations.

With regard to the terms of the Treaty, there are several elements that we feel are due to be updated. For example, Canada’s fishing access to the United States (US)’ exclusive economic zone during the past decade has been capped at 45 vessels, whereas US fishing access to Canada’s exclusive economic zone has been unrestricted. Canadian vessels authorized to fish in US waters also see their season end earlier than the same season American vessels benefit from in Canadian waters. I recall that the intent of the negotiations on fishing regimes post-2006 centered on ensuring that neither Party received disproportionate benefits from the fishing opportunities provided by the Treaty and that neither Party’s fish harvesters would be disadvantaged relative to the other’s under the Treaty. We fully appreciate that, during much of the past decade, this was the primary consideration for the US during negotiations.

Over the past five years, our respective harvesters have observed that on the water fishing conditions for North Pacific albacore tuna in Canadian waters have improved considerably and consistently. This is reflected by the increase in requests for fishing licences in Canadian waters and hail-ins from American vessels, from San Diego to Seattle, and noted by our authorities at annual data exchange meetings and consultations.



Taking into account the changing conditions observed in recent years and increased US vessel fishing activity in Canadian waters, we believe that the terms of fishing regime that have been in place for the past decade no longer reflect the spirit of reciprocity. As the 2022 fishing season comes to a close and both our countries look ahead to 2023 and beyond, I would like to propose updating the terms of the fishing regime with a view to returning to a more equitable and balanced Treaty that guarantees similar benefits to our respective fleets.

I have attached Canada's proposal to this letter for your consideration in advance of our meeting in Vancouver on November 8-9, 2022. Below is a summary of the key elements we are proposing to update under **Annex C** aimed at restoring the terms of the fishing regime to those in force from 2009-2011:

- Increasing the number of Canadian vessels on the USA68 List authorized to fish in the United States exclusive economic zone and access designated ports to 110; and,
- Increasing the length of the fishing season for Canadian vessels in the US exclusive economic zone to October 31, to match the season for American vessels in Canada's exclusive economic zone.

In addition, we are also proposing the following changes under **Annex A**:

- Flexibility on the overall length of replacement vessels, allowing for a buffer of up to ten feet (three meters), with a clause to prevent any subsequent increase in vessel length; and,
- Modified text on the requirement to collect and share catch and effort data to ensure the provision of accurate information on fishing activity in the other Party's exclusive economic zones.

I am confident that we will be able to reach an agreement next week to update the terms of the fishing regime so as to better reflect the original reciprocal intent of the Treaty and take into account our shared interests in albacore tuna in the Pacific Ocean.

Regards,

Adam Burns

# **Treaty Between the Government of Canada and the Government of the United States of America on Pacific Coast Albacore Tuna Vessels and Port Privileges**

The Government of Canada and the Government of the United States of America,

Desiring to cooperate in matters concerning the albacore tuna fishery off the Pacific Coast of Canada and the United States,

Desiring to benefit the fishing industries involved in that fishery, and

Taking into account the deliberations of the Third United Nations Conference on the Law of the Sea in the field of fisheries,

Have agreed as follows:

## **Article I**

Without prejudice to the respective juridical positions of both Parties regarding highly migratory species of tuna, each Party shall:

- a. ensure that all its vessels engaged in fishing for albacore tuna in waters under the fisheries jurisdiction of the other Party shall do so in accordance with this Treaty;
- b. permit fishing vessels of the other Party to fish for albacore tuna in waters under its fisheries jurisdiction beyond twelve nautical miles of the baselines from which the territorial sea is measured, in accordance with Annex "A" to this Treaty and subject to other applicable laws and regulations.

## **Article II**

Vessels of the United States of America fishing pursuant to this Treaty shall be authorized to enter the Canadian ports listed in Annex "B" to this Treaty and to use Canadian facilities and services, subject to compliance with applicable customs, navigation, safety, environmental and other laws and regulations pertaining to port privileges, and payment of applicable albacore tuna landing fees provided that such fees do not discriminate according to nationality, for the following purposes:

1. to land their catches of albacore tuna without the payment of duties and
  - a. trans-ship them in bond under customs supervision to any port of the United States of America; or
  - b. sell them for export in bond; or
  - c. sell them locally on payment of the applicable customs duty; and
2. to obtain fuel, supplies, repairs and equipment on the same basis as albacore tuna vessels of the other Party.

## **Article III**

Canadian vessels fishing pursuant to this Treaty shall be authorized to enter the United States ports listed in Annex "B" to this Treaty and to use United States facilities and services, subject to

compliance with applicable customs, navigation, safety, environmental, and other laws and regulations pertaining to port privileges, and payment of applicable albacore tuna landing fees provided that such fees do not discriminate according to nationality, for the following purposes:

1. to land their catches of albacore tuna without the payment of duties and
  - a. trans-ship them in bond under customs supervision to any port of Canada; or
  - b. sell them for export in bond; or
  - c. sell them locally on payment of the applicable customs duty; and
2. to obtain fuel, supplies, repairs and equipment on the same basis as albacore tuna vessels of the other Party.

#### **Article IV**

Neither Party shall, pursuant to its fisheries legislation, prohibit the importation into its territory of Pacific albacore tuna and products from the other Party as a consequence of a dispute arising in other fisheries.

#### **Article V**

1. Vessels of each Party which are not in compliance with this Treaty are subject to enforcement action by the other Party when engaged in fishing for Pacific albacore tuna in waters under the fisheries jurisdiction of the other Party.
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. Enforcement actions under this Treaty shall not include imprisonment.
4. In the case of seizure and arrest of a vessel by the authorities of one Party, notification shall be given promptly through diplomatic or consular channels informing the other Party of the action taken and of any penalties subsequently imposed.

#### **Article VI**

1. Either Party may at any time request consultations on the interpretation or application of this Treaty. Such consultations should commence as soon as practicable but in any case not later than sixty days from the date of receipt of the request for consultations, unless otherwise agreed by the Parties.
2. In the event of a dispute arising between the Parties concerning the interpretation or application of this Treaty, the Parties shall consult with a view to resolving the dispute by negotiation.

#### **Article VII**

The Annexes may be amended by the Government of Canada and the President of the United States through an Exchange of Notes.

#### **Article VIII**

This Treaty shall enter into force upon the exchange of instruments of ratification at Ottawa. After two years from the date of entry into force, either Party may give written notice to the other Party to

terminate this Treaty. The Treaty shall terminate on December 31 of the calendar year following that in which such notice was received by the other Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE at Washington in duplicate, in the English and French languages, both versions being equally authentic, this Twenty-sixth day of May, 1981.

DRAFT

## ANNEX A

1.

- (a) **List of Licensed Canadian Vessels.** The Canadian Government shall create and maintain a list of Canadian vessels with licenses permitting fishing for albacore tuna in the Exclusive Economic Zone (EEZ) of the United States (hereinafter referred to as the “USA68 list”). The USA68 list shall remain fixed as it exists on July 1, ~~2020~~2023. The Canadian Government shall not add or replace vessels and associated licenses on the USA68 list except pursuant to paragraphs 1(e), 1(f) and 1(h), as appropriate.
- (b) **List of Vessels to Fish Each Season.** Each Party agrees to provide to the other Party a list of its fishing vessels that propose to fish albacore tuna in the EEZ of the other Party (hereinafter referred to as “Seasonal List”), as defined in Article I(b) of this Treaty, for the ~~2020, 2021 and 2022~~ [TBD] fishing season[s]. For Canada, any vessel on its Seasonal List must also be included in the USA68 list. Each Party’s Seasonal 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.
- (c) For Canada, the list of vessels for each fishing season shall be transmitted to the United States by June 1, ~~2020~~2023, ~~June 1, 2021 and June 1, 2022~~[TBD]. For the United States, a provisional list of vessels for each fishing season shall be transmitted to Canada by July 1, ~~2020~~2023, ~~July 1, 2021, and July 1, 2022~~[TBD]. The list of U.S. vessels may be revised during those fishing seasons.
- (d) With regard to Canada’s Seasonal List, the list shall remain fixed for each of the fishing seasons as defined in paragraph 2 of Annex C and thereafter. The Canadian Government shall not add or replace vessels on its Seasonal List during the fishing season except pursuant to paragraph 1(e) or (f).

- (e) In the event of *force majeure* or other exceptional circumstances that occur during the 2020, 2021 or 2022 fishing seasons, a captain or owner of a vessel on Canada's Seasonal List may make a request to the Canadian Government for the replacement of the captain or owner's vessel by another vessel in that season. If such a request is received by the Canadian Government, the Parties to this Treaty shall refer the request to an ad hoc panel established pursuant to the process in paragraph 1(f) that shall approve the request provided that the replacement vessel meets the criteria set out in paragraph 1(f).
- (f) If a request for vessel replacement by the owner of a Canadian vessel on Canada's Seasonal List is received by the Canadian Government prior to the commencement of the ~~2020~~2023, ~~2021 or 2022~~ [TBD] fishing season[s], the Parties to this Treaty shall convene, in a timely manner, an ad hoc panel to review the request and determine whether the request is warranted and, if so, to grant the request in accordance with the following criteria:
- The replacement vessel has an enforcement record acceptable to the Parties;
  - The replacement vessel has a history of fishing for albacore tuna in the EEZ of the United States;
  - The replacement vessel is one of the 179 vessels listed on the USA68 list;
  - ~~The replacement vessel does not exceed the length overall of the original vessel it is replacing.~~ The overall length of the replacement vessel is at most 3 meters longer than the overall length of the original vessel it is replacing.<sup>1</sup>
- (g) As soon as possible after receipt of the other Party's Seasonal List, and subject to paragraph 1(f), the receiving Party shall determine whether the list received meets the criteria of paragraph 1(b) and shall so inform the other Party in order to enable the albacore fishery to proceed pursuant to this Treaty.
- (h) Should one Party object to the inclusion of a particular vessel on the Seasonal 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, any actions pursuant to paragraph 1(e) with regard to other vessels shall not be delayed. Following consultations, the relevant Party shall notify its respective vessels that both Parties agree that the vessel shall not be included on the Seasonal List.

2. Each vessel, prior to entering and leaving the EEZ of a Party shall, if so required by that Party, inform the appropriate authorities and provide them with the vessel name, radio call

---

<sup>1</sup> The overall length of any subsequent replacement vessel shall not exceed 3 meters in overall length from the original vessel size.

sign or Vessel Identification Marking, captain or operator's name, and the reason why the vessel is in that Party's EEZ.

3. When in the EEZ of the other Party, each vessel is required to have its name and radio call sign or Vessel Identification Marking prominently displayed where they are clearly visible both from the air and from a surface vessel.
4. Each Party shall ensure that all its vessels operating pursuant to this Treaty 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~~. Each Party shall develop a real-time data protocol to report catches by the vessels of one Party fishing in the EEZ of the other Party. ~~Any~~ All logbooks and related databases maintained by a Party relating to its vessels operating pursuant to this Treaty shall be made available to the other Party regularly for verification purposes, subject to the Parties' respective rules on data confidentiality.
5. In order to obtain better information concerning the stocks of albacore tuna that migrate off the west coasts of the United States and Canada, each vessel engaged in fishing pursuant to this Treaty is required to provide to its government all catch and effort data for each fishing season, as well as statistics and other scientific information on its operations in the EEZ of the other Party. Each Party shall provide to the other Party ~~such~~ this 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. Each Party shall provide this information on an annual basis at least 30 days prior to the annual consultations referred to in paragraph 6. The Parties shall decide on other specific information to be provided, as well as the forms and procedures for providing such information.
6. The Parties shall consult annually, inter alia, to:
  - (a) discuss data and information exchanged on albacore tuna fisheries under paragraph 5; 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.

Each Party shall also notify the other of the conservation and management laws and regulations applicable to vessels fishing in its EEZ pursuant to Article I(b) of this Treaty.

## ANNEX B

1. Fishing vessels of the United States of America shall, pursuant to Article II, be authorized to enter the following ports located in Canada:

Coal Harbour

Port Hardy

Prince Rupert

Victoria

Vancouver

Ucluelet

2. Canadian fishing vessels shall, pursuant to Article III, be authorized to enter the following ports located in the United States of America:

Astoria

Bellingham

Coos Bay

Eureka

Newport

Westport

## ANNEX C

1. Each Party agrees to limit fishing by its respective vessels engaged in fishing for albacore tuna in the EEZ of the other Party, which is defined in Article I(b) of this Treaty, in accordance with the limitation regime (the “Regime”) below. The Regime is defined to include the “fishing seasons” as set out in paragraph 2 and the “port access seasons” as set out in paragraph 3.
2. During the term of the Regime, a “fishing season” is defined as the period of fishing.
3. During the term of the Regime, a “port access season” is defined as the period in which fishing vessels fishing pursuant to this Treaty are authorized to enter the Canadian or American ports as listed in Annex B of this Treaty.
4. For the United States, the fishing season commences, on June 15, ~~2020~~2023, ~~June 15, 2021 and June 15, 2022~~ [TBD] and ends on October 31 of that same year. The port access season commences on June 15, ~~2020~~2023, ~~June 15, 2021 and June 15, 2022~~ [TBD] and ends on December 31 of that same year.
5. For Canada, the fishing season commences on June 15, ~~2020~~2023, ~~June 15, 2021 and June 15, 2022~~ [TBD] and ends on ~~September 15~~ October 31 of that same year. The port access season commences on June 15, ~~2020~~2023, ~~June 15, 2021 and June 15, 2022~~ [TBD] and ends on September 15 of that same year.
6. During the term of the Regime, Canada shall limit fishing for albacore tuna by its vessels in the EEZ of the United States to ~~45~~[110] troll vessels. 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.
7.
  - (a) A Party may only terminate the Regime by providing written notice to the other Party that during the period of June 15, ~~2020~~2023 to December 31, ~~2022~~[TBD]:
    - (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 such notification, and unless termination of the Regime occurs within ~~2022~~[TBD], the Regime shall terminate 30 days after notification and the Parties shall consult to consider re-establishment of a reciprocal fishing regime for a subsequent year.
  
- (c) Unless a Party notifies the other Party of its intention to terminate the Regime in accordance with paragraph 7(a), the Regime terminates on December 31, ~~2022~~[TBD].

End text

DRAFT