

No. 156

UNITED STATES OF AMERICA
and
CANADA

Exchange of Notes constituting a provisional agreement relating to fur seals. Washington, 8 and 19 December 1942

English official text communicated by the Permanent Representative of the United States of America at the seat of the United Nations. The filing and recording took place on 1 April 1949.

ETATS-UNIS D'AMERIQUE
et
CANADA

Echange de notes constituant un accord provisoire concernant les phoques à fourrure. Washington, 8 et 19 décembre 1942

Texte officiel anglais communiqué par le représentant permanent des Etats-Unis d'Amérique au siège de l'Organisation des Nations Unies. Le classement et l'inscription au répertoire ont eu lieu le 1er avril 1949.

No. 156. EXCHANGE OF NOTES¹ CONSTITUTING A PROVISIONAL AGREEMENT BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND CANADA RELATING TO FUR SEALS. WASHINGTON, 8 AND 19 DECEMBER 1942

I

The Secretary of State to the Canadian Minister

DEPARTMENT OF STATE
WASHINGTON

December 8, 1942

Sir:

I have the honor to refer to the conversation on August 12, 1942 between Mr. Merchant M. Mahoney, Counselor of the Canadian Legation, and an officer of the Department when Mr. Mahoney left an informal memorandum dated August 10, 1942² in which it is stated that the terms of the Department's note dated May 7, 1942² and the proposed provisional fur seal agreement between the United States and Canada contained therein are generally acceptable to the Canadian authorities but that the Canadian Department of Fisheries desires an interpretation of certain specific points.

The first of the points on which an interpretation is desired relates to the basis for the suggestion made by this Government that the Canadian share of the fur sealskins taken annually on the Pribilof Islands be increased to 20 percent by adding to the 15 percent heretofore received by Canada under the fur seal convention concluded on July 7, 1911³ between the United States, Great Britain, Japan, and Russia, a part of the share formerly received by Japan under that convention. With regard to this I am pleased to say that, in accordance with conversations between representatives of our two Governments, this Government's proposal that the Canadian share of the fur sealskins be increased to 20 percent is in recognition of the principles underlying the fur seal convention of July 7, 1911, and the cooperation of the Canadian Government in scientific arrangements for the conservation of the fur seal herd. This figure is calculated with reference to the pro rata share heretofore received by Canada and to

¹ Came into force on 30 May 1944, with retroactive effect as from 1 June 1942, in accordance with article X.

² Not printed by the Department of State of the United States of America.

³ De Martens, *Nouveau Recueil général de Traités*, third series, Tome V, page 720.

Canada's established interest in the fur seal resources, and is intended to be provisional only for the purposes of the present agreement.

With reference to the second point mentioned in the Legation's memorandum, I have to say that no objection is perceived to the deletion of the word "North" as used in the expression "North Pacific Ocean" in Article I of the text of the agreement as proposed in the Department's note of May 7, 1942.

No objection is perceived to the suggestion, made under the third point in the Legation's memorandum, that consultations between the two Governments from time to time regarding the level of population of the herd, provided for by Article VIII of the proposed agreement, shall also include other important phases of management or policy relating to the herd.

Likewise, no objection is perceived to the suggestions, made under the fourth point in the Legation's memorandum, that the agreement shall be retroactive for the 1942 season; also that it shall remain in effect for twelve months after the end of the present emergency unless either Government enacts legislation contrary to its provisions or until twelve months after either Government shall have notified the other Government of an intention of terminating the agreement.

With particular reference to the text of the proposed agreement it is understood, from conversations between representatives of our two Governments, that as far as practicable the provisions of the fur seal convention of July 7, 1911 should be incorporated in the agreement together with the following principal changes and additions:

(1) An increase in the Canadian share of the fur sealskins taken annually on the Pribilof Islands from 15 percent to 20 percent.

(2) A provision in the agreement for pelagic sealing under emergency circumstances. It is the view of the Government of the United States that the details regarding the conditions under which pelagic sealing might be conducted and the sharing of the sealskins taken by pelagic sealing should be the subject of consultation between the two Governments in the event circumstances indicate that pelagic sealing should be resorted to in order to utilize effectively the fur seal herd.

(3) A provision permitting the issuance of permits for the taking of fur seals for purposes of scientific research and the exchange of information by such research.

(4) A provision that the two Governments consult from time to time regarding the level of population at which the seal herd is to be maintained or other important phases of management or policy.

In the light of these considerations, the Government of the United States is prepared to enter into a provisional fur seal agreement with the Government of Canada in the following terms which embody the suggestions made by representatives of the Canadian Government:

Article I

The provisions of this Agreement shall apply to all waters of the Bering Sea and the Pacific Ocean, north of the thirtieth parallel of north latitude and east of the one hundred and eightieth meridian.

Article II

The Government of the United States of America and the Government of Canada mutually and reciprocally agree that:

(a) Excepting as may be authorized pursuant to paragraph (c) of this Article, nationals or citizens of the respective countries, and all persons, and vessels, subject to their laws and treaties, shall be prohibited, while this Agreement remains in force, from engaging in pelagic sealing in the waters within the area defined in Article I, and that every such person and vessel offending against such prohibition may be seized, except within the territorial jurisdiction of the other Party to this Agreement, and detained by the naval or other duly commissioned officers of either of the Parties, to be delivered as soon as practicable to an authorized official of their own nation at the nearest point to the place of seizure, or elsewhere as may be mutually agreed upon; and that the authorities of the nation to which such person or vessel belongs alone shall have jurisdiction to try the offense and impose the penalties for the same; and that the witnesses and proofs necessary to establish the offense, so far as they are under the control of either of the Parties to this Agreement, shall be furnished with all reasonable promptness to the authorities having jurisdiction to try the offense;

(b) No person or vessel shall be permitted to use any of the ports or harbors of either of the Parties to this Agreement or any part of the

territories of such Parties for any purposes connected with the operation of pelagic sealing in the waters within the area defined in Article I; and the importation into or possession within their respective territories of skins of fur seals taken in those waters other than in accord with the provisions of this Agreement shall not be permitted; and

(c) Notwithstanding the foregoing provisions, pelagic sealing may be conducted, in the event of emergency circumstances, by an agency or agencies authorized by either of the two Governments under such conditions and for such a period as may be agreed upon by consultation between the two Governments, and the skins thus taken shall be shared in such a manner as may be agreed upon between them.

Article III

The United States agrees that of the total number of sealskins taken annually under the authority of the United States upon the Pribilof Islands or any other islands or shores of the waters defined in Article I subject to the jurisdiction of the United States to which any seal herds hereafter resort, there shall be delivered at the Pribilof Islands or at such other point or points as may be acceptable to both Governments, at the end of each season during the term of this Agreement 20 percent gross in number and value thereof to an authorized agent of the Canadian Government.

Article IV

It is agreed on the part of Canada that in case any fur seals hereafter resort to any islands or shores of the waters defined in Article I subject to the jurisdiction of Canada, there shall be delivered at the end of each season during the term of this Agreement 20 percent gross in number and value of the total number of sealskins taken annually from such herd to an authorized agent of the Government of the United States of America at Vancouver, British Columbia, or at such other point or points as may be acceptable to both Governments.

Article V

The provisions of this Agreement shall not apply to Indians, Aleuts, or other aborigines dwelling on the coasts of the waters defined in Article I, who carry on pelagic sealing in canoes not transported by or used in connection with other vessels, and propelled entirely by oars, paddles, or sails, and manned by not more than five persons each, in the way hitherto practiced, and without the use of firearms; provided that such aborigines are not in the employment of other persons or under contract to deliver the skins to any person.

Article VI

The term pelagic sealing is hereby defined for the purposes of this Agreement as meaning the killing, capturing, or pursuing in any manner whatsoever of fur seals at sea.

Article VII

Notwithstanding anything contained in the preceding Articles of the present Agreement, either Party to this Agreement may grant to any of its nationals or agencies a special permit to take fur seals for purposes of scientific research subject to such restrictions as to number and subject to such other conditions as the Party deems appropriate. Each Party shall at the end of each calendar year inform the other Party of the number of animals taken and the data obtained under such permits.

Article VIII

Nothing contained in the present Agreement shall restrict the right of the United States at any time to suspend altogether the taking of sealskins upon the Pribilof Islands or any other islands or shores of the waters defined in Article I subject to its jurisdiction, or the right of the United States to impose such restrictions and regulations upon the total number of skins which may be taken in any season and the manner and times and places of taking skins as may seem necessary to protect and preserve the seal herd or to increase its numbers, provided, however, that the two Governments will consult from time to time regarding the level of population at which the seal herd is to be maintained or other important phases of management or policy.

Article IX

Each of the Parties agrees to enact and enforce such legislation as may be necessary to make effective the foregoing provisions with appropriate penalties for violations thereof.

The Parties further agree to cooperate with each other in taking such measures as may be appropriate for the enforcement of the foregoing provisions.

Article X

This Agreement shall enter into force on the day the President of the United States of America approves legislation¹ enacted by the Congress of the United

¹ United States of America, Public Law 237, 78th Congress, approved 26 February 1944; 58 Stat. 100.

States for its enforcement, and the day the Government of Canada issues an Order in Council¹ applying the provisions of the Agreement, or should the President's approval of the legislation and the issuance of the Order in Council be on different days, on the date of the later in time of such approval by the President or issuance of such Order in Council. When this Agreement shall have entered into force it shall be deemed to have been in effect as from June 1, 1942. The Agreement shall remain in effect for the duration of the present emergency and twelve months thereafter unless either the Government of the United States of America or the Government of Canada enacts legislation contrary to its provisions or until twelve months after either Government shall have notified the other Government of an intention of terminating the Agreement.

If the foregoing is acceptable to the Government of Canada, this note and your reply thereto will be regarded as placing on record the provisional agreement of the Government of the United States of America and the Government of Canada for the protection, preservation and utilization of the fur seal herd of the Pribilof Islands.

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

Cordell HULL

The Honorable Leighton McCarthy, K.C.
Minister of Canada

II

The Canadian Minister to the Secretary of State

CANADIAN LEGATION
WASHINGTON

No. 794

December 19, 1942

Sir:

I have the honour to acknowledge the receipt of your Note of December 8th, 1942, setting forth the terms of the provisional fur seal agreement which the Government of the United States is prepared to enter into with the Government of Canada.

¹ Canada, Order in Council P. C. 4112, issue 30 May 1944.

Under instructions from my Government, I hereby advise you that the Government of Canada accepts the proposals of the Government of the United States contained in your Note and in particular the provisional agreement.

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

Leighton McCARTHY

The Honourable Cordell Hull
Secretary of State of the United States
Washington, D.C.