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AGREEMENT WITH RUSSIAN FEDERATION CONCERNING POLAR BEAR POPULATION (TREATY DOC. 107-10), AGREEMENT AMENDING TREATY WITH CANADA CONCERNING PACIFIC COAST ALBACORE TUNA VESSELS AND PORT PRIVILEGES (TREATY DOC. 108-1), AND AMENDMENTS TO 1987 TREATY ON FISHERIES WITH PACIFIC ISLAND STATES (TREATY DOC. 108-2)

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JULY 29, 2003.—Ordered to be printed

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Mr. LUGAR, from the Committee on Foreign Relations,  
submitted the following

## REPORT

[To accompany Treaty Doc. 107-10, Treaty Doc. 108-1, and Treaty Doc. 108-2]

The Committee on Foreign Relations, to which was referred the Agreement between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population (Treaty Doc. 107-10); the Agreement with Canada Amending the Treaty on Pacific Coast Albacore Tuna Vessels and Port Privileges (Treaty Doc. 108-1); and the Agreement Amending the 1987 Treaty on Fisheries with Certain Pacific Island States of April 2, 1987 (Treaty Doc. 108-2), having considered the same reports favorably thereon with declarations, and conditions as indicated in the resolutions of advice and consent, and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolutions of advice and consent to ratification.

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### I. PURPOSE

These three treaties address fish and wildlife matters. The treaty with Russia regarding polar bears provides for measures to con-

serve and manage the Alaska-Chukotka polar bear population. The two fisheries treaties make amendments to existing fisheries treaties to address new circumstances.

## II. BACKGROUND

### *U.S.-Russia Polar Bear Treaty*

The Agreement between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population (Treaty Doc. 107–10) (hereinafter “the U.S.-Russia Polar Bear Treaty”) is designed to provide a common legal, scientific, and administrative framework for the conservation and management of the Alaska-Chukotka polar bear population, which is shared by the United States and Russia. Polar bears are a potentially threatened species; they are also important to the survival of Native Alaskan people as a renewable subsistence resource. This treaty builds on a 1973 multilateral agreement on the Conservation of Polar Bears.<sup>1</sup>

### *Fisheries Treaties*

#### *U.S.-Canada Albacore Tuna*

A 1981 treaty between the United States and Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges<sup>2</sup> allows unlimited fishing for albacore tuna by fishers from each country in the waters of the other country subject to the treaty regime. At the time this treaty was concluded, it was anticipated that this arrangement would be mutually advantageous for fishers from each country. In the years since 1981, however, albacore tuna have been found more frequently in U.S. waters than in Canadian waters, and Canadian fishers have thus benefited disproportionately under the treaty. The Agreement with Canada Amending the Treaty on Pacific Coast Albacore Tuna Vessels and Port Privileges (Treaty Doc. 108–1) is primarily designed to remedy this circumstance by providing for limits on fishing by fishers from each country in the waters of the other, and by establishing an initial three-year limitation regime.

#### *Pacific Island States Fisheries*

A 1987 multilateral treaty to which the United States and 16 Pacific Island states are parties<sup>3</sup> provides access for U.S. tuna fishing vessels to areas of the South Pacific within the Pacific Island parties’ jurisdiction and to high seas areas between them pursuant to licenses issued by an administrative body created by the Pacific Island parties. The Secretary of State has described this treaty as “the cornerstone of the economic and political relationship between the United States and these Pacific Islands Parties.” Under an associated agreement, the United States provides economic assistance to the Pacific Island parties to this agreement. In connection with the renewal of this assistance agreement in 2003, the parties concluded the Agreement Amending the 1987 Treaty on Fisheries with

<sup>1</sup> TIAS 8409; 27 U.S.T 3918.

<sup>2</sup> TIAS 10057; 33 U.S.T. 615

<sup>3</sup> TIAS 11100

Certain Pacific Island States of April 2, 1987 (Treaty Doc. 108-2), which makes a number of technical amendments to the treaty and its annexes.

### III. SUMMARY OF KEY PROVISIONS OF THE TREATIES

A detailed discussion of these treaties may be found in the Letters of Submittal from the Secretary of State to the President, which are reprinted in full in the respective Senate Treaty Documents. A summary of the key provisions of the treaties is set forth below.

#### U.S.-RUSSIA POLAR BEAR TREATY

The treaty provides that the United States and Russia shall cooperate with the goal of ensuring the conservation of the Alaska-Chukotka polar bear population, the conservation of its habitat, and the regulation of its use for subsistence purposes by native people. Article 5 prohibits any taking of polar bears from the Alaska-Chukotka population that is inconsistent with the terms of the Agreement or with a 1973 multilateral Agreement on the Conservation of Polar Bears, to which the United States, Russia, Norway, Canada, and Denmark are parties. Article 6 provides for the taking of polar bears by native people for subsistence purposes, but lists a number of conditions for such takings; it also provides for the taking of polar bears under certain circumstances for other specified purposes, including scientific research, rescue or rehabilitation, or where human life is threatened.

Article 8 of the Agreement establishes the U.S.-Russia Polar Bear Commission (the "Commission"), a bi-national commission to coordinate measures for the conservation and study of the Alaska-Chukotka polar bear population, and provides rules governing its operation. Among the Commission's functions is to determine, on the basis of reliable scientific data, including the traditional knowledge of the native people, the polar bear population's annual sustainable harvest level, and to determine annual limits on the number of polar bears that may be taken from the geographic area governed by the treaty. Under Article 9 of the treaty, the United States and Russia shall each have the right to harvest one-half of this annual taking limit.

The treaty will enter into force 30 days after the United States and Russia have exchanged diplomatic notes confirming that they have completed their respective domestic legal procedures to bring the treaty into force. The Agreement provides, in Article 3, that the Parties may, by mutual agreement, modify the geographic area to which the treaty applies.

#### AGREEMENT AMENDING THE U.S.-CANADA TREATY ON PACIFIC COAST ALBACORE TUNA AND PORT PRIVILEGES

This agreement amends an existing 1981 treaty between the United States and Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges. At present, the 1981 treaty permits unlimited fishing for albacore tuna by vessels of each party in waters under the jurisdiction of the other party in accordance with terms of the treaty and subject to other applicable laws and regulations. This

agreement amends the 1981 treaty to allow for a limitation on such fishing, and establishes an initial three-year limitation regime. This agreement also amends the 1981 treaty to provide for annual consultations between the parties and information sharing on conservation and management measures relating to albacore tuna.

AGREEMENT AMENDING THE TREATY ON FISHERIES BETWEEN THE  
UNITED STATES AND CERTAIN PACIFIC ISLAND STATES

This agreement makes a series of amendments to an existing 1987 treaty on fisheries between the United States and 16 Pacific Island States. These amendments allow U.S. vessels to fish for albacore tuna by the longline method in the high seas areas of the Treaty Area (the Treaty currently allows only purse-seine vessels and vessels fishing for tuna by the trolling method in the high seas areas); provide for parties to the treaty to consider, where appropriate, the issue of capacity (i.e., the numbers of fishing vessels) in the treaty area; add references to the recently concluded Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Pacific Ocean; and make changes to facilitate the entry into force of future amendments to the treaty's annexes.

IV. IMPLEMENTING LEGISLATION

Two of these treaties—the U.S.-Russia Polar Bear Treaty and the U.S.-Canada Albacore Tuna Treaty Amendments—will require implementing legislation to allow the United States to fulfill its obligations. With respect to the U.S.-Russia Polar Bear Treaty, the Administration advises that it intends to submit proposed implementing legislation to the Congress in September. With respect to the U.S.-Canada Albacore Tuna Treaty Amendments, the Administration has submitted proposed implementing legislation to the Congress as part of a proposed bill to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act. While not necessary to meet obligations under the amendments to the Pacific Island Fisheries treaty, the Administration is seeking minor amendments to the South Pacific Tuna Act (P.L. 100-330) to allow U.S. vessels to take advantage of its provisions.

V. COMMITTEE ACTION

The Committee held a public hearing on these treaties on June 17, 2003 where it heard testimony from John Turner, Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs. (This hearing also addressed two aviation treaties. A transcript of the hearing and questions and answers for the record may be found in the appendix to S. Exec. Rept. 108-8, which accompanies those treaties, also filed this day). On July 23, 2003, the Committee considered these treaties and ordered them favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to their ratification, subject to declarations and conditions contained in the resolutions of advice and consent to ratification.

## VI. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee recommends that the Senate advise and consent to the ratification of each of the three treaties covered in this report. As explained below, in the case of the U.S.-Russia Polar Bear Treaty, the Committee recommends that the Senate's advice and consent be made subject to a condition, and in the case of the Agreement Amending the Pacific Island Fisheries Treaty, the Committee recommends that the Senate's advice and consent be made subject to a declaration.

The Committee recommends that the Senate's advice and consent to the U.S.-Russia Polar Bear Treaty be made subject to a condition that the Secretary of State shall promptly notify the Senate Committees on Environment and Public Works and Foreign Relations in any instance in which the United States and Russia agree to modify the geographic area to which the treaty applies. This condition was not requested by the Executive Branch, but will serve to ensure that the Senate is informed about such changes, which are authorized under the Treaty.

The Committee supports the requirement in the U.S.-Russia Polar Bear Treaty that management decisions be based on "reliable scientific data." The Executive Branch has stated that "[s]ufficient reliable information exists to propose initial harvest restrictions." The Committee is concerned, however, about whether there are resources in future budgets adequate to meet the standard of "reliable data"; the Executive Branch has indicated that current budget levels do not include funding for the research studies and information-gathering to be undertaken pursuant to the treaty. The Committee urges the Executive Branch to develop a plan to ensure proper funding for the research provisions of this treaty.

The Committee recommends that the Senate's advice and consent to the Agreement Amending the Pacific Island Fisheries Treaty be made subject to a declaration that such advice and consent is without prejudice to any position the Senate may take with respect to providing advice and consent to ratification of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, signed by the United States on September 9, 2000. This declaration was not requested by the Executive Branch. The Agreement Amending the Pacific Island Fisheries Treaty contains language welcoming the conclusion of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, a convention which the United States has signed, but which has not yet been submitted to the Senate for its advice and consent. The Committee has recommended this declaration to avoid suggesting that, in advising and consenting to the Agreement Amending the Pacific Island Fisheries Treaty, the Senate has formed a view on the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. The Committee will consider this convention when it is submitted to the Senate for its advice and consent.

## VII. RESOLUTIONS OF RATIFICATION

*U.S.-Russia Polar Bear Treaty*

*Resolved (two-thirds of the Senators present concurring therein),*

**SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A CONDITION.**

The Senate advises and consents to the ratification of the Agreement Between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population, done at Washington October 16, 2000 (T.Doc. 107–10, in this resolution referred to as the “Agreement”), subject to the condition in section 2.

**SEC. 2. CONDITION.**

The advice and consent of the Senate to the ratification of the Agreement is subject to the condition that the Secretary of State shall promptly notify the Committee on Environment and Public Works and the Committee on Foreign Relations of the Senate in any instance that, pursuant to Article 3 of the Agreement, the Contracting Parties modify the area to which the Agreement applies. Any such notice shall include the text of the modification and information regarding the reasons for the modification.

*U.S.-Canada Albacore Tuna*

*Resolved (two-thirds of the Senators present concurring therein),*

That the Senate advises and consents to the ratification of the Agreement Amending 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, done at Washington May 26, 1981, and effected by an exchange of diplomatic notes at Washington July 17, 2002, and August 13, 2002 (T. Doc. 108–1).

*Pacific Island States Fisheries*

*Resolved (two-thirds of the Senators present concurring therein),*

**SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A DECLARATION.**

The Senate advises and consents to the ratification of the Amendments to the 1987 Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, with Annexes and Agreed Statements, done at Port Moresby, April 2, 1987, done at Koror, Palau, March 30, 1999, and at Kiritimati, Kiribati March 24, 2002 (T. Doc. 108–2, in this resolution referred to as the “Amendments”), subject to the declaration in section 2.

**SEC. 2. DECLARATION.**

The advice and consent of the Senate to the ratification of the Amendments is subject to the following declaration:

The advice and consent provided under section 1 is without prejudice to any position the Senate may take with respect to providing advice and consent to ratification of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, signed by the United States on September 9, 2000.

