

AGREEMENT**in the form of an Exchange of Letters between the European Union and the Republic of Chile on the provisional application of the understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean***A. Letter from the European Union*

Sir/Madam,

I have the honour to refer to the negotiations that have taken place in Brussels on 15 and 16 October 2008 between the European Union and Chile which led to the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean (hereafter 'the Understanding'), as well as to the bilateral technical discussions in New York on 5 and 6 October 2009.

The European Union has started its internal procedures for the conclusion of the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean reached on 15-16 October 2008 including the detailed Annex I agreed on 5-6 October 2009.

Pending the completion of these procedures, the European Union shall provisionally apply the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean reached on 15-16 October 2008 and its Annex I agreed on 5-6 October 2009 as complemented by the Note Verbale of Chile of 23 November 2009.

The following documents and information form an integral part of this Agreement in the form of an Exchange of Letters:

- (a) the Understanding agreed on 15-16 October 2008 in Brussels as modified by:
- (b) the detailed Annex I to the Understanding as agreed during the bilateral technical meeting on 5-6 October 2009 in New York;
- (c) the Note Verbale of Chile of 23 November 2009 designating the Chilean ports of Arica, Antofagasta and Punta Arenas for access by EU vessels fishing for swordfish on the high seas in the South Eastern Pacific Ocean, in relation to point (xi) of the Annex mentioned in (b) above;
- (d) the first meeting of the Bilateral Technical and Scientific Committee will take place at the latest on 1 January 2011.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between Chile and the European Union to provisionally apply the Understanding in accordance with the provisions contained in the documents listed above.

This agreement will apply from the day following the day of your reply.

Please accept, Sir/Madam, the assurance of my highest consideration.

*For the European Union
The President*

B. Letter from the Republic of Chile

Sir/Madam,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

I have the honour to refer to the negotiations that have taken place in Brussels on 15 and 16 October 2008 between the European Union and Chile which led to the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean (hereafter "the Understanding"), as well as to the bilateral technical discussions in New York on 5 and 6 October 2009.

The European Union has started its internal procedures for the conclusion of the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean reached on 15-16 October 2008 including the detailed Annex I agreed on 5-6 October 2009.

Pending the completion of these procedures, the European Union shall provisionally apply the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean reached on 15-16 October 2008 and its Annex I agreed on 5-6 October 2009 as complemented by the Note Verbale of Chile of 23 November 2009.

The following documents and information form an integral part of this Agreement in the form of an Exchange of Letters:

- (a) the Understanding agreed on 15-16 October 2008 in Brussels as modified by:
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- (d) the first meeting of the Bilateral Technical and Scientific Committee will take place at the latest on 1 January 2011.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between Chile and the European Union to provisionally apply the Understanding in accordance with the provisions contained in the documents listed above.

This agreement will apply from the day following the day of your reply.'

I have the honour to confirm that your letter and this reply constitute an Agreement between Chile and the European Union.

Please accept, Sir/Madam, the assurance of my highest consideration.

*For the Republic of Chile
The President*

ANNEX

UNDERSTANDING CONCERNING THE CONSERVATION OF SWORDFISH STOCKS IN THE SOUTH EASTERN PACIFIC OCEAN

1. The document hereby identified replaces the Provisional Arrangement of 25 January 2001 ('2001 Arrangement') and transforms the interim arrangement into a definitive commitment to cooperate for the long-term conservation and management of the swordfish stocks in the South Eastern Pacific.
2. The Understanding is intended to amicably settle the swordfish fishery disputes ⁽¹⁾ currently existing between Chile and the European Community (now succeeded by the European Union (EU) in the International Tribunal for the Law of the Sea (ITLOS) and in the World Trade Organization (WTO).
3. The Parties hereby confirm for the record that the present Understanding shall provide the basic framework for the conservation of swordfish in the South Eastern Pacific Ocean, its management and cooperation thereof.
4. The EU/Chile Bilateral Scientific and Technical Committee ('BSTC') will continue to constitute the necessary point of contact in matters of common interest regarding conservation of swordfish and, in order to maximize the efforts on scientific/technical cooperation, shall have the following mandate:
 - (a) To serve as a forum for the exchange of information on the swordfish stocks and fishing activities of the EU and Chile and any other information required for conservation and management decisions.
 - (b) To periodically evaluate the state of stocks, monitor the fishing trends, and assess impacts on non-target species and the marine ecosystem.
 - (c) To review existing conservation measures and advice on possible new ones, including by-catch regulations.
 - (d) To identify research priorities in the context of the Work Programme and draw up any additional programmes, including protocols on data collection.
 - (e) To exchange information and promote the use of environmentally-safe and cost-effective gear.
 - (f) To exchange in advance of the BSTC meeting catch and effort data covering all segments of their respective fleets in the South Eastern Pacific Ocean.
 - (g) To consider further means of cooperation in the scientific, technical or administrative fields.
5. The BSTC shall be convened in extraordinary session (TIMING) in order to commence work on its mandate, taking into account the following objectives and principles agreed by the Parties:
 - (a) Their respective swordfish fisheries shall be conducted at catch levels maintaining stocks at or near MSY, in a manner commensurate with the objective of ensuring the sustainability of these resources as well as safeguarding the marine ecosystem.
 - (b) The distribution, spatial structure and dynamics of the stocks shall be monitored by Chilean and EU fishing vessels whose scientific observations comply with agreed research parameters designed to develop robust assessments and subsequently generate the appropriate management responses.
 - (c) Data collection systems put in place should be reliable, expeditious and compatible with the requirements and scale of the swordfish fishery.
 - (d) The Parties shall maintain their current level of swordfish fisheries, as expressed by either the present number of vessels or the historic maximum of their vessels operating in the South Eastern Pacific Ocean, in order to ensure the sustainability of the swordfish stock.

⁽¹⁾ ITLOS Case n. 7 and WTO DS 19.

6. The Parties remain committed to further developing the linkage between this bilateral cooperation and the Multilateral Consultation sponsored by the EU and Chile.
7. The Multilateral Consultation currently in place should include all the relevant participants in the South Eastern Pacific Ocean swordfish fishery and invited observers from existing organizations with a legitimate interest in the swordfish fishery.
8. The EU and Chile remain committed to the effective promotion of multilateral cooperation for the conservation and management of these stocks in their habitat and ecosystem, and through their migratory range.
9. Parties shall give due consideration to actions taken at multilateral level, and seek to promote similar conservation and management initiatives in RFMOs of which they are member in order to ensure a sustainable development of the swordfish fishery.
10. In this regard, the Parties shall seek to promote the implementation by other Participants in the swordfish fisheries of the above mentioned principles and objectives notably, in relation to the maintenance of their current fishing levels.
11. In accordance with the above mentioned principles, and in the context of the Work Programme being developed by the BSTC, the Parties will define a general protocol for analyzing, processing and evaluating the information gathered by their fishing vessels. Such protocol should seek to identify the condition, in spatial and time frames, of the stock, probing into its composition and biological features, and exploring its habitats, in order to increase the knowledge of the Parties, considering also the potential impacts of the fishery on its ecosystem components, associated or dependent species and the requirements for mitigation of the environmental impacts and adverse effects on birds, turtles and sharks, as well as the food chains and the physical environment of the South Eastern Pacific Ocean.
12. The Parties declare that under the present Understanding, their fishing vessels will not be bound by specific conservation measures prescribing a minimum length for the harvested species.
13. Nevertheless, they shall apply a precautionary approach considering all biological features of the catches and, on the basis of the best available scientific advice, further strive to develop and apply alternative measures designed to ensure that fishing activities do not pose a risk of unacceptable impacts on sensitive habitats within the marine environment.
14. Parties confirm that their vessels are subject to the following obligations:
 - (a) Use an operational VMS at all times linked to the Flag State;
 - (b) Regularly provide data on the type of vessel, catch, fishing effort by area and periods, to be exchanged by the Parties in advance to BSTC meetings;
 - (c) Provide and exchange information on environmentally-safe and cost-effective fishing gear;
 - (d) Collect data required for the BSTC assessments of the dynamics and status of the swordfish fishery in the South Eastern Pacific Ocean, and other information relevant to conservation and management purposes.
15. Parties agree that EU vessels fishing for swordfish in accordance with the objectives contained in the present understanding concerning the current levels of fishing effort, catch levels maintaining stocks at or near MSY, commensurate with the objective of ensuring sustainability of these resources, as well as the provisions on monitoring and exchange of information, shall be granted access to designated Chilean ports.
16. The procedures for access for landing and transshipment in designated Chilean ports are contained in Annex I to the present Understanding.
17. The Parties will proceed to jointly notify the ITLOS that, as a consequence of having reached a settlement, they have agreed to discontinue the proceedings (ITLOS Case Nr. 7) and request the Tribunal to make an order recording the discontinuance and directing the Registrar to remove this case from the List of cases. Since the Parties have agreed to discontinue the ITLOS proceedings as a direct consequence of them having reached a settlement of the dispute, they shall also request that the Tribunal record this fact and indicate in, or annex to, the respective order of discontinuance, the terms of the settlement.

18. The Parties shall also inform the Director General of the WTO that the compulsory dispute settlement procedure instituted in ITLOS (Case N. 7) has been discontinued and communicate to him the terms of the settlement attained, expressing the decision of the Parties not to revive the dispute settlement procedure of the WTO Understanding on Dispute Settlement regarding case DS 193 concerning the application of pertinent GATT articles to transit, transshipment and commercial access to Chilean ports by EU vessels fishing for swordfish.
 19. The Parties agree to apply to this Understanding the provisions on dispute avoidance and dispute settlement set out in Title VIII of the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, which entered into force on 1 February 2003.
 20. This Understanding shall enter into force the first day of the first month following that in which the Parties have notified each other of the completion of the procedures necessary for that purpose.
 21. Parties agree to provisionally apply point number 15 above upon signature and in any event not later than 31 December 2009.
 22. Notifications shall be sent to the Secretary General of the Council of the European Union, who shall be the depositary of this Understanding.
 23. From the date of its entry into force this Understanding shall replace the Provisional Arrangement that Parties have signed on 25 January 2001.
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ANNEX I

- (i) For the purpose of the implementation of the Understanding, 45 days before the BSTC meetings referred to in paragraph 4 of the Understanding, the Parties shall provide each other with a list of vessels containing the following data:
1. name of the vessel;
 2. call signal;
 3. IMO registration number (if available);
 4. name and details of the shipowner (nationality, address);
 5. the vessel's flag-State;
 6. total length (m);
 7. make and model of the automatic positioning system as well as its identification code and the name of the coastal station (LES) with which it works;
 8. name and location of the contact person in the flag state and the European Commission.
- (ii) The captain, or his representative, of an EU vessel, which wishes to enter a designated Chilean port, shall notify the competent Chilean authorities by means of the form A annexed herewith at least 72 hours in advance of the expected arrival in the port.
- (iii) The competent Chilean authorities shall formally confirm by electronic or other means, within 24 hours, that access is granted and that the landing or transshipment operation can take place.
- (iv) In accordance with paragraph 14 (a) each and every time EU vessels enter the Chilean EEZ to seek port access they will transmit without delay through their flag state monitoring centre (FMC) the satellite signal to the Centro de Monitoreo y Control de la Direccion General del Territorio Maritimo y Marina Mercante.
- The frequency of the basic reports of the VMS system must be 60 minutes intervals.
- (v) At the first BSTC meeting, Chile has to provide the coordinates of its EEZ.
- (vi) In case the Chilean competent authorities have clear grounds to believe that the information referred to above provided by the EU fishing vessel is not correct, the navigational track of the vessel shall be provided by the competent authorities of its flag state, upon request of the competent Chilean authorities. In this case, Chile will inform immediately the flag State and the European Commission with the view to consulting the appropriate authorities.
- (vii) Inspectors designated by the Chilean competent authorities may inspect documents, logbook, fishing gear and catch on board during landing or transshipment operations. Such inspection shall be carried out in such a manner as not to unduly delay the landing or transshipment operations, which themselves should be carried out to the extent possible in the 24 hours following arrival in the port. Prior to an inspection, inspectors are required to present to the master of the vessel the appropriate document identifying the inspector as such.
- (viii) The Chilean competent authorities shall ensure that the results of port inspections are always presented to the master of the vessel for review and signature and that the report is completed and signed by the inspector. The master of the inspected vessel shall be given the opportunity to add any comment to the report and, as appropriate, to contact the relevant authorities of the flag State, in particular when there are serious difficulties in understanding the contents of the report.
- (ix) The Chilean competent authorities shall ensure that a copy of the report of inspection shall be provided to the master of the inspected vessel for retention on board the vessel and to the competent authorities of the flag state of the inspected vessel.
- (x) The captains of the vessels shall be free to decide how their vessel's catches will be disposed of.
- (xi) In accordance with paragraph 15 and 16, EU vessels will use the following designated ports: Arica, Antofagasta and Punta Arenas.

(xii) Only the following activities may be carried out in the authorised ports:

1. landing of swordfish stocks;
2. transshipment of swordfish stocks;
3. replenishing of the vessel;
4. repairs to the vessel.

The foregoing is without prejudice to the possibility for EU vessels to obtain access to other suitable Chilean ports, as advised by the Chilean authorities, solely for the repairs of vessels.

In relation to the replenishing of supplies, lubricants, fuel and material for packing, on-board processing and any other daily use on board, as well as changes of crew, the vessel may take on board only that which it requires for its own operation; the loading of materials and crew members intended for other fishing vessels is prohibited. These provisions do not apply in case of emergency or force majeure.

(xiii) The Chilean competent authorities will deny access to port to those EU vessels which do not comply with the foregoing. The access denial should be motivated and the reasons for denial officially communicated to the captain of the vessel, the flag state and the European Commission without delay. Such cases of denial of access shall be discussed by the Parties at the next BSTC meeting, and until such time the vessel will not have access to Chilean ports.

(xiv) At the request of either Party an extraordinary session of the BSTC shall be convened to discuss any matter related to the implementation of the Understanding.

FORM A

INFORMATION TO BE PROVIDED IN ADVANCE BY VESSELS REQUESTING PORT ENTRY

1. Intended port of call					
2. Estimated date and time of arrival					
3. Purpose(s)					
4. Name of the vessel					
5. Flag State					
6. Type of vessel					
7. International Radio Call Sign					
8. Vessel contact information					
9. Vessel owner(s)					
10. Certificate of registry ID					
11. IMO ship ID, if available					
12. External ID, if available					
13. Vessel dimensions	Length		Beam		Draft
14. Vessel master name and nationality					
15. Total catch on board					
Species	Product form	Catch area		Quantity	
16. Catch to be offloaded					
Species	Quantity				
17. Catch to be transhipped in port					
Species	Quantity				
18. Final Destination of Catches					
Chile	Other				

ANNEX B

THE MISSION OF CHILE TO THE EUROPEAN UNION

No 177/2009

The Mission of Chile to the European Union presents its compliments to the European Commission's Directorate-General for Maritime Affairs and Fisheries and has the honour to refer to the Report agreed between the European Commission and Chile following the bilateral technical consultations held in New York on 5 and 6 October 2009 on swordfish in the South-Eastern Pacific.

Concerning point xi of Annex I to the Report, the Mission of Chile would request the Directorate-General for Maritime Affairs and Fisheries to amend the list of ports designated by Chile as described in the Report.

To that end, the Mission of Chile hereby informs the Directorate-General for Maritime Affairs and Fisheries that the newly designated ports are Arica, Antofagasta and Punta Arenas.

The Mission of Chile to the European Union would request the European Commission's Directorate-General for Maritime Affairs and Fisheries to give the above-mentioned matter its attention and assures it of its highest consideration.

Brussels, 23 November 2009

To the Directorate-General for Maritime Affairs and Fisheries
of the European Commission
Brussels
