

NEWFOUNDLAND FISHERIES

Exchange of notes at London October 6 and 8, 1906, with memorandums dated September 12 and 25, 1906

Entered into force October 8, 1906

*Modified and extended by agreement of September 4 and 6, 1907*¹

¹ Malloy 805; Treaty Series 485

EXCHANGE OF NOTES

The American Ambassador to the Secretary of State for Foreign Affairs

AMERICAN EMBASSY,
London, October 6th, 1906

SIR, I am authorized by my Government to ratify a *modus vivendi* in regard to the Newfoundland Fishery Question on the basis of the Foreign Office Memorandum, dated the 25th of September 1906, in which you accept the arrangement set out in my Memorandum of the 12th of September and consent accordingly to the use of purse seines by American fishermen during the ensuing season, subject of course to due regard being paid in the use of such implements to other modes of fishery, which, as you state, is only intended to secure that there shall be the same spirit of give and take and of respect for common rights between the users of purse seines and the users of stationary nets as would be expected to exist if both sets of fishermen employed the same gear.

My Government understand by this that the use of purse seines by American fishermen is not to be interfered with, and that the shipment of Newfoundlanders by American fishermen outside the 3 mile limit is not to be made the basis of interference or to be penalized; at the same time they are glad to assure His Majesty's Government, should such shipments be found necessary, that they will be made far enough from the exact 3 mile limit to avoid any reasonable doubt.

On the other hand it is also understood that our fishermen are to be advised by my Government, and to agree, not to fish on Sunday.

¹ TS 488, *post*, p. 290.

It is further understood that His Majesty's Government will not bring into force the Newfoundland Foreign Fishing Vessels Act of 1906 which imposes on American fishing vessels certain restrictions in addition to those imposed by the Act of 1905, and also that the provisions of the first part of Section I of the Act of 1905, as to boarding and bringing into port, and also the whole of Section 3 of the same Act, will not be regarded as applying to American fishing vessels.

It also being understood that our fishermen will gladly pay light dues if they are not deprived of their rights to fish, and that our fishermen are not unwilling to comply with the provisions of the Colonial Customs Law as to reporting at a custom house when physically possible to do so.

I need not add that my Government are most anxious that the provisions of the *modus vivendi* should be made effective at the earliest possible moment. I am glad to be assured by you that this note will be considered as sufficient ratification of the *modus vivendi*, on the part of my Government.

I have the honour to be, with the highest consideration, Sir,
Your most obedient, humble Servant,

WHITELAW REID

The Right Honble. SIR EDWARD GREY, Bt.,
Etc., Etc., Etc.

The Secretary of State for Foreign Affairs to the American Ambassador

No. 34002

FOREIGN OFFICE, *October 8, 1906*

YOUR EXCELLENCY, I have received with satisfaction the note of the 6th instant in which Your Excellency states that you have been authorized by your Government to ratify a *modus vivendi* in regard to the Newfoundland Fishery Question on the basis of the Memorandum which I had the honour to communicate to you on the 25th ultimo, and I am glad to assure Your Excellency that the note in question will be considered by His Majesty's Government as a sufficient ratification of that arrangement on the part of the United States Government.

His Majesty's Government fully share the desire of your Government that the provisions of the *modus vivendi* should be made effective at the earliest moment possible and the necessary instructions for its observance were accordingly sent to the Government of Newfoundland immediately on receipt of Your Excellency's communication.

I have the honour to be, with the highest Consideration,
Your Excellency's most obedient, humble Servant,

(In the absence of the Secretary of State)

E. GORST

His Excellency

the Honourable WHITELAW RED,

Etc. Etc. Etc.

UNITED STATES MEMORANDUM

My Government hears with the greatest concern and regret that in the opinion of His Majesty's Government there is so wide a divergence of views with regard to the Newfoundland Fisheries that an immediate settlement is hopeless.

But it is much gratified with His Majesty's Government's desire to reach a *modus vivendi* for this season, and appreciates the readiness to waive the Foreign Fishing Vessels Act of 1906. This and other restrictive legislation had compelled our fishermen to use purse seines or abandon their treaty rights.

My Government sees in the offer not to apply Section 3, Act of 1905 and that part of Section I relating to boarding fishing vessels and bringing them into port fresh proof of a cordial disposition not to press unduly this kind of regulation.

Our fishermen will also gladly pay light dues, if not hindered in their right to fish. They are not unwilling either, to comply with the regulation to report at Custom Houses, when possible. It is sometimes physically impossible, however, to break through the ice for that purpose.

Most unfortunately the remaining proposals, those as to purse-seining and Sunday fishing, present very grave difficulties.

We appreciate perfectly the desire of His Majesty's Government to prevent Sunday fishing. But if both this and purse-seine fishing are taken away, as things stand there might be no opportunity for profitable fishing left under our treaty rights. We are convinced that purse seines are no more injurious to the common fishery than the gill nets commonly used—are not in fact so destructive and do not tend to change the migratory course of the herring as gill nets do, through the death of a large percentage of the catch and consequent pollution of the water.

The small amount of purse-seining this season could not of course materially affect the common fishery anyway. Besides many of our fishermen have already sailed, with purse seines as usual, and the others are already provided with them. This use of the purse seine was not the free choice of our fishermen. They have been driven to it by local regulations and the continued use of it at this late date this year seems vital.

But we will renounce Sunday fishing for this season if His Majesty's Government will consent to the use of purse seines, and we cannot too strongly urge an acceptance of this solution.

AMERICAN EMBASSY, LONDON.

September 12, 1906.

BRITISH MEMORANDUM

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His Majesty's Government have considered, after consultation with the Government of Newfoundland, the proposals put forward in the Memorandum communicated by the United States Ambassador on the 12th instant, respecting the suggested "modus vivendi" in regard to the Newfoundland Fishery question.

They are glad to be able to state that they accept the arrangement set out in the above Memorandum and consent accordingly to the use of purse seines by United States fishermen during the ensuing season, subject, of course, to due regard being paid, in the use of such implements, to other modes of fishery.

His Majesty's Government trust that the United States Government will raise no objection to such a stipulation, which is only intended to secure that there shall be the same spirit of give and take and of respect of common rights between the users of purse seines and the users of stationary nets as would be expected to exist if both sets of fishermen employed the same gear.

They further hope that, in view of this temporary authorization of the purse seines, the United States Government will see their way to arranging that the practice of engaging Newfoundland fishermen just outside the three mile limit which to some extent prevailed last year should not be resorted to this year.

An arrangement to this effect would save both His Majesty's Government and the Newfoundland Government from embarrassment which it is conceived, having regard to the circumstances in which the 'modus vivendi' is being settled, the United States Government would not willingly impose upon them. Moreover it is not in itself unreasonable, seeing that the unwillingness of the United States Government to forego the use of purse seines appears to be largely based upon the inability of their fishermen to engage local men to work the form of net recognized by the Colonial fishery regulations.

The United States Government assured His Majesty's late Government in November last that they would not countenance a specified evasion of the Newfoundland Foreign Fishing Vessels Act 1905, and the proposed arrangement would appear to be in accordance with the spirit which prompted that assurance.

FOREIGN OFFICE,

September 25, 1906.