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MIGRATORY BIRD PROTOCOL WITH CANADA AND MIGRATORY BIRD PROTOCOL WITH MEXICO

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

REPORT

[To accompany Treaty Docs. 104–28 and 105–26]

The Committee on Foreign Relations to which was referred the Protocol between the United States and Canada Amending the 1916 Convention for the Protection of Migratory Birds in Canada and the United States, with a related exchange of notes, signed at Washington on December 14, 1995 (Treaty Doc. 104–28), and the Protocol between the Government of the United States of America and the Government of the United Mexican States Amending the Convention for the Protection of Migratory Birds and Game Mammals, signed at Mexico City on May 5, 1997 (Treaty Doc. 105–26), having considered the same, reports favorably thereon with one understanding to each treaty, one declaration to each treaty, and one proviso to each treaty, 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 ratification.

I. PURPOSE

The Protocol Amending the 1916 Convention with Canada for Protection of Migratory Birds and the Protocol Amending the Convention with Mexico for Protection of Migratory Birds and Game Mammals are intended primarily to resolve long-standing confusion and problems arising from conflicting, insufficient, and restrictive guidelines concerning the rights of aboriginal and indigenous peoples, *i.e.,* Indians and Eskimos, to hunt protected migratory birds for subsistence and traditional uses in Alaska and Northern Canada. Certain non-aboriginal natives or residents of Alaska and Canada who rely on bird hunting for subsistence would also be permitted to hunt during the close season. Currently, such hunting

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takes place illegally outside any effective regulatory scheme. The Protocol would enable legal subsistence hunting within a regulatory conservation framework.

Additionally, the Protocol modernizes existing treaty commitments to reflect current conservation principles and practices. The treaties must be amended to bring subsistence hunting during the close season into conformity with the U.S. Migratory Bird Treaty Act, which implements the four current bilateral migratory bird protection treaties (with Canada, Mexico, Russia and Japan).

II. Background

Existing Treaty Obligations

The U.S.–Canada Treaty, which the proposed Protocol would amend, seeks to preserve migratory birds, particularly those valued as food sources or predators of agricultural pests, during their nesting season and migration. The agreement lists the protected migratory birds species (Article I). A close season for migratory game birds is established from March 10 to September 1, except that in certain coastal regions the season is from February 1 to August 15 (Article II(1)). The hunting season is limited to a period not exceeding three and a half months (Article II(1)). The close season on migratory insectivorous birds and on migratory non-game birds is throughout the year (Article II(2), and (3)). The taking of nests or eggs of the protected migratory birds is prohibited except for scientific or propagating purposes established by laws and regulations (Article V). Certain specified migratory birds are still or were initially protected by a continuous close season for a period of years or other means of conservation (Articles III and IV). The treaty provides for the regulation of commerce in birds and eggs (Article VI). The agreement also authorizes the issuance of permits to kill injurious birds, but only during the time that the threat of injury to agricultural or other interests exists (Article VII). Furthermore, the birds killed under such permits cannot be taken for commercial purposes (Article VII). There are exceptions for subsistence or traditional uses by Indians and/or Eskimos. Indians can take scoters (game birds) at any time for food but not for sale (Article II(1)). Eskimos and Indians can take at any season certain species of non-game birds and their eggs for food and their skins for clothing, but not for sale (Article II(3)).

The U.S.–Mexico Treaty states as its purpose the preservation of migratory birds which live temporarily in the United States and Mexico, by methods permitting the rational use of such birds for sport, food, commerce and industry (Article I). The treaty parties agree to implement domestic laws and regulations establishing different methods of preservation (Article II). Close seasons are established to prohibit the taking, transportation, or sale, alive or dead, of migratory birds, their nests, eggs, products or parts, except when proceeding, with appropriate authorization, from private game farms or when used for scientific purposes, propagation or museums (Article II(A)). However, unlike the U.S.–Canada Treaty, the exact dates of the close seasons are not specified, except for wild ducks, for which the close season is from March 10 to September 1 (Article II(D)). The exception regarding game farms and use for

museums is not found in the U.S.–Canada Treaty. The hunting season is limited to a maximum period of four months per year, longer than under the U.S.–Canada Treaty, under permits issued by the appropriate authorities (Article II(C)). Apparently, since there is no express prohibition outside the close season, nests and eggs can be taken during the open hunting season, unlike under the U.S.–Canada Treaty. Bird refuges are to be established (Article II(B)). The killing of migratory insectivorous birds is prohibited except when such birds become injurious to agriculture and constitute plagues, or when they come from reserves or game farms (Article II(E)). Unlike the U.S.–Canada Treaty, the U.S.–Mexican Treaty explicitly prohibits hunting from aircraft (Article II(F)). Transportation over the U.S.–Mexican border of migratory birds, dead or alive, or of their parts or products, is not permitted without the appropriate permit, and illegal shipments are to be treated as contraband. (Article III). The migratory game and non-game birds protected by the agreement are listed (Article IV). The 1972 amendment to the agreement lists additional protected species. Beyond the protection of migratory birds, the restrictions on transportation of migratory birds under Article III also apply to the transportation of game mammals living in the United States and/or Mexico.

Although the U.S.–Mexico Treaty differs from the U.S.–Canada Treaty in several respects, the most important one with regard to aboriginal and subsistence hunting rights is the absence of any exception for such rights. Although the close season provisions are generally more flexible and the hunting season may be longer in the U.S.–Mexico Treaty, the absence of any aboriginal and subsistence hunting exceptions appears to make the dates of the close season for ducks absolute.

Procedural History

The early procedural history of the Canadian treaty yielded one of the most important judicial decisions regarding U.S. treaty principles. In the early decades of this century, the first congressional attempts were made to deal with the drastic reduction in the avian population resulting from aggressive hunting to meet market demand for bird products. Before that time, state and local governments exercised authority over wildlife protection. The inability of these authorities to handle and prevent the decimation of wildlife led to attempts at federal intervention. The Lacey Act of 1900 had proven ineffective in stopping the illegal interstate shipment of birds. The Weeks-McLean Act of 1913 was intended to stop commercial hunting and the illegal interstate shipment of migratory birds.

The Act was soon challenged as an unconstitutional violation of states' rights. Two federal district courts found the Act unconstitutional and not permissible as a regulation of interstate commerce or as a protection of federal property. However, prior to consideration of these decisions by the Supreme Court, the State Department concluded the Convention for the Protection of Migratory Birds with Great Britain (which then had jurisdiction over Canada). Under Article VIII of the Convention, the parties agreed to take the necessary measures for domestic implementation of the

Convention. The Migratory Bird Treaty Act (MBTA) was signed into law on July 3, 1918, and the Supreme Court subsequently dismissed the appeal regarding the unconstitutionality of the Weeks-McLean Act. However, the MBTA itself was soon challenged as unconstitutional in a case culminating in the landmark Supreme Court decision, *Missouri* v. *Holland* (252 U.S. 416 (1920)). The Supreme Court upheld the MBTA on the basis of the treaty-making power of the federal government under article II of the U.S. Constitution and of the supremacy clause in article VI, making a clear statement that treaties are part of the supreme law of the land.

Addressing the question of subsistence use of migratory birds in Alaska "has been one of the most troublesome issues surrounding the implementation of this country's migratory bird treaties."[1] The problem arose from the inconsistency among subsistence exemptions in the four treaties implemented by the Migratory Birds Treaty Act. The earlier treaties did not permit the administrative flexibility necessary to manage subsistence uses realistically. On January 30, 1979, the United States and Canada concluded a protocol amending the U.S.–Canada Treaty in an effort to address this issue. The 1979 protocol (which is still pending before the Committee) would have permitted the parties to authorize the taking of migratory birds and the collection of their eggs by the indigenous inhabitants of the State of Alaska and the Indians and Inuit of Canada for their own nutritional and other essential needs during any period of the year in accordance with seasons established by Parties so as to provide for the preservation and maintenance of stocks of migratory birds. This new exemption would not have affected the continued validity of the existing subsistence use exemptions under the Treaty.

However, many conservation groups thought that the language of the 1979 protocol was too broad and would result in excessive takings of migratory birds. These groups lobbied strongly against the protocol and broader close season exceptions. Consequently, the 1979 protocol was never ratified, and was never the subject of a hearing or considered by the Foreign Relations Committee.

In the meantime, the U.S. Fish and Wildlife Service had been following a policy of non-enforcement of the MBTA and of its regulations. The MBTA did not explicitly provide for subsistence use exceptions prior to the Fish and Wildlife Improvement Act of 1978. The subsistence use regulation, 50 C.F.R. § 20.132, promulgated in 1973 and still current, provided for subsistence hunting according to the exception in Article II(3) of the U.S.–Canada Treaty. This exception was only for Eskimos and Indians in Alaska with regard to certain species of birds. The regulation also permitted the subsistence taking of snowy owls and cormorants by any person in Alaska.[2] Despite the relatively limited subsistence use permitted by law, for the most part, enforcement against illegal subsistence

[1] S. Rep. No. 1175, 95th Cong., 2d Sess. 6 (1978). This is part of the legislative history of the Fish and Wildlife Improvement Act of 1978, Pub. L. No. 95–616, 92 Stat. 3110. Although paragraphs 3(h)(2) and 3(h)(3) of the act affect the implementation of the four migratory bird treaties, apparently they technically do not amend the MBTA.

[2] Snowy owls and cormorants were not protected under the U.S.–Canada Treaty. However, the U.S.–Mexico, U.S.–Japan, and U.S.–U.S.S.R. Treaties currently protect them. The more flexible language of these treaties permitted the promulgation of regulations which would allow subsistence taking of these species, therefore, this particular subsistence use exception was added to the regulations at 38 Fed. Reg. 17841 (1973).

taking apparently was not feasible in many areas of Alaska and was not actively pursued by the U.S. Fish and Wildlife Service. The first real enforcement attempts were frustrated and the U.S. Fish and Wildlife Service retreated to an informal non-enforcement policy. After an incident in 1975 in which a postal official caught an Eskimo attempting to mail freshly killed ducks, the U.S. Fish and Wildlife Service announced an official policy of non-enforcement, and the Alaska Department of Fish and Game followed suit.

In an attempt to reduce illegal takings, the U.S. Fish and Wildlife Service negotiated and concluded agreements with representatives of the Eskimo community, the 1984 Hooper Bay Agreement and the 1985 Yukon-Kuskokwim Delta Goose Management Plan. These agreements formally recognized and authorized subsistence hunting during the close season in contravention of the MBTA and the more restrictive migratory bird protection treaties. The Alaska Fish and Wildlife Federation and the Alaska Fish and Wildlife Conservation Fund sued the U.S. Fish and Wildlife Service and the Alaska Department of Fish and Game seeking declaratory and injunctive relief. The Conservation Fund sought an injunction against the U.S. Fish and Wildlife Service's acquiescence in close season subsistence takings which the Conservation Fund alleged violated the MBTA, the Administrative Procedure Act (APA) and the National Environmental Policy Act (NEPA). A couple of organizations representing Alaska Natives which intervened in the case cross-claimed that the Alaska Game Act of 1925 (AGL) superseded the MBTA and allowed Alaskan Natives to take migratory birds in the close season for subsistence use.

The district court ruled that the U.S. Fish and Wildlife Service could not restrict the subsistence use takings by Alaskan Natives during the close season and that the AGL repealed the application of the MBTA to Alaska. However, the court also found that the MBTA was incorporated into the AGL, except for the restriction on subsistence hunting. Since the AGL permitted subsistence use takings, the district court found that the two challenged agreements had no legal effect, and thus the claimed violations of the APA and NEPA were moot. The court declined to decide whether the Secretary of Interior had authority under the Fish and Wildlife Improvement Act to restrict subsistence use takings because the U.S. Fish and Wildlife Service had not yet issued regulations pursuant to that Act. The Conservation Fund appealed.

In *Alaska Fish and Wildlife Federation and Outdoor Council, Inc.* v. *Dunkle* (829 F.2d 933, 942–945 (9th Cir. 1987)), the Court of Appeals for the Ninth Circuit held that the AGL did not supersede the MBTA with regard to Alaska. The subsistence takings provision of the AGL prohibited the adoption of regulations restricting subsistence takings of animals and non-migratory birds in Alaska. However, the MBTA still governed the takings of migratory birds in Alaska, including any subsistence use takings. The Court of Appeals ruled that the Secretary of Interior is authorized to issue regulations permitting subsistence taking of migratory birds in Alaska under the MBTA, but only to the extent that the regulations are in accord with all the treaties under the Act. This meant that any subsistence taking had to be in accordance with the most restrictive subsistence provision among the four treaties, *i.e.*, the

U.S.–Canada Treaty. Subsistence use takings beyond the scope of permissible takings under the U.S.–Canada Treaty were in violation of the MBTA even if such takings would be within the scope of permissible takings under the more liberal treaties. Therefore, general close season subsistence takings by Alaskan Natives were not permitted by the MBTA. The Court of Appeals rejected arguments that the Fish and Wildlife Improvement Act required regulations to be in accord only with the U.S.–U.S.S.R. Treaty (which provided for more liberal subsistence taking), noting that the legislative history made clear that regulations permitting closed season subsistence takings may not be promulgated if they are contrary to any of the four treaties. The court also noted that the legislative history showed that Congress believed that the three earlier treaties had to be amended to be consistent with the U.S.–U.S.S.R. Treaty before regulations permitting subsistence hunting could be adopted. To the extent that the two challenged agreements, the 1984 Hooper Bay Agreement and the 1985 Goose Management Plan, conflicted with the provisions of the four treaties, they were invalid, and any future similar agreement would likewise be invalid.

The opinion of the Court of Appeals made it clear that the U.S.–Canada Treaty and the U.S.–Mexico Treaty would have to be amended in order to permit closed season subsistence takings. Only the U.S.–U.S.S.R. Treaty explicitly permitted subsistence hunting by Alaskan Natives. The proposed Protocols would correct this enforcement problem.

Domestic Implementation.

The U.S.–Canada Protocol would resolve some of the problems regarding the subsistence takings by indigenous inhabitants of Alaska during the close season. The U.S.–Mexico Protocol is a component necessary to enable the regulatory implementation of the subsistence use policy under the U.S.–Canada Protocol. The U.S.–U.S.S.R. Treaty does not appear to pose any problem. However, although the U.S.–Japan Treaty does not pose an obstacle to most aspects of the subsistence use provisions contained in the U.S.–Canada Protocol, it remains inconsistent with and more restrictive than that policy in some respects. Therefore, regulations issued pursuant to the MBTA must take into account those restrictive aspects of the U.S.–Japan Treaty.

III. SUMMARY

A. U.S–CANADA PROTOCOL

According to the Letter of Submittal from Secretary of State Warren Christopher to President Clinton, accompanying the Protocol, "[t]he goals of the Protocol are to bring the Convention into conformity with actual practice and Canadian law, and to permit the effective regulation for conservation purposes of the traditional hunt. Timely ratification is of the essence to secure U.S.–Canada conservation efforts."

The Preamble. The preamble expresses a commitment to the conservation of migratory birds for a broad range of values, "nutritional, social, cultural, spiritual, ecological, economic, and aes-

thetic," through international cooperative efforts within a "comprehensive international framework." It goes on to express the primary concern of the Protocol, to accommodate the aboriginal and treaty rights of aboriginal peoples in Canada and to provide for the customary and traditional subsistence taking of migratory birds and eggs by indigenous inhabitants of Alaska. The Protocol is not intended to increase the taking of birds and eggs, since it is supposed to be a formal recognition and authorization of the *de facto* policy of non-enforcement of the current MBTA, whose regulation currently is limited to the most restrictive aboriginal and subsistence provision contained in the four treaties.

Article I—Protected Birds. Article I of the Protocol repeals and replaces the current Article I of the Treaty by modernizing the names and classification of the birds listed as protected by the Treaty. No species were added to or removed from the list. The Canadian provinces regulate the management of bird populations not included in the original Treaty, and the amendment of the list of protected species would have entailed lengthy, complicated Canadian internal negotiations. The Protocol does not follow the U.S.–Japan and U.S.–U.S.S.R. Treaties in creating a general definition for "migratory birds" and placing the list of protected birds in an annex or appendix.

Article II(1)(2)(3)—Close Seasons. Article II of the Protocol deletes and replaces the Article II of the Treaty. A new introductory section of Article II enumerates the conservation principles to be followed in managing migratory bird populations. Article II(1) of the Protocol does not incorporate the flexibility in establishing close seasons found in the U.S.–Japan and U.S.–U.S.S.R. Treaties, choosing to retain the fixed close season for migratory game birds. However, only the period from March 10 to September 1 remains a close season; the close season from February 1 to August 15 for certain regions is eliminated. The year-round close season for migratory non-game and insectivorous birds is retained. The hunting season remains limited to a maximum three and one-half months per year, which the parties agreed would be interpreted to mean 107 days.

Under Article II(2), migratory birds, their nests or eggs shall not be sold or offered for sale. Article II(3) permits the taking of migratory birds at any time of the year for scientific, educational, propagative, or other specific purposes consistent with the conservation principles of the Treaty. This provision is similar to exceptions in the U.S.–Japan and U.S.–U.S.S.R. Treaties. Notably, the current U.S.–Canada Treaty exception for scientific and propagative activities applies only to the prohibition against taking of nests and eggs. The Protocol would therefore broaden the exception to permit the taking of migratory birds during the close season for scientific and propagative purposes.

Article II(4)(a), II(5)—Canadian Subsistence Exceptions. The major change in the exception to close season prohibitions is the expanded provisions for aboriginal and subsistence takings (Article II(4)(a)). In Canada, subject to existing aboriginal treaty rights and to regulatory regimes, self-government agreements, co-management agreements and land claims agreements, migratory birds and their eggs may be harvested at any time by aboriginal peoples having

aboriginal or treaty rights. The down and inedible by-products may be sold, but commerce in the birds and eggs may only occur within or between aboriginal communities. Migratory game and non-game birds and their eggs may be taken throughout the year for food by qualified non-aboriginal residents in areas of northern Canada where the relevant agreements with aboriginal peoples of Canada recognize that the aboriginal peoples may permit such activities. The dates of the fall season for such takings by qualified residents may be varied by law or regulation. The birds or eggs taken by qualified residents shall not be sold or offered for sale. Additionally, under Article II(5), non-aboriginal residents of Newfoundland and Labrador are permitted to take murres from September 1 to March 10, for a period not greater than three and one-half months, but the murres shall not be sold or offered for sale. No exemption for this traditional hunt was included in the U.S.–Canada Treaty originally, because in 1916 Newfoundland and Labrador were not part of Canada (Article II(5)).

No private right of action accrues to indigenous inhabitants or to aboriginal peoples of Canada on the basis of the Protocol.

Article II(4)(b)—Alaskan Subsistence Exceptions. For the United States, migratory birds and their eggs may be harvested by the indigenous inhabitants of Alaska (Article II(4)(b)). Seasons and other regulations for such takings shall be consistent with the "customary and traditional uses by such indigenous inhabitants for their own nutritional and other essential needs." Indigenous inhabitants are to be given an "effective and meaningful role" in the conservation of migratory birds, including a role in the development and implementation of regulations.

According to the Letter of Submittal from the State Department, the term "indigenous inhabitants" "refers primarily to Alaska Natives who are permanent residents of villages within designated areas of Alaska where subsistence hunting of migratory birds is customary and traditional. *The term also includes non-Native permanent residents of these villages who have legitimate subsistence hunting needs.*" (emphasis added). The basis for this definition of "indigenous inhabitants" can be traced back to the discussion of the term as used in the U.S.–U.S.S.R. Treaty. During Committee hearings questions were raised about the definition of the term "indigenous inhabitants" in Article II, and the executive report included an excerpt from the U.S. official delegation report dated March 16, 1977. According to these records, the term "indigenous inhabitants" was chosen deliberately to permit the inclusion of "non-Native Alaskans with legitimate subsistence hunting needs." The provision for subsistence takings was meant to be similar to a provision in the Endangered Species Act of 1973 which permitted any non-Native permanent residents of Alaskan Native villages to participate in subsistence hunts. Thus the subsistence exemption would be racially non-discriminatory.

The legislative history of the Fish and Wildlife Improvement Act of 1978 reflects a congressional concurrence in the use and discussion of the terms "indigenous inhabitants" and "nutritional and other essential needs" by the official U.S. delegation report on the U.S.–U.S.S.R. Treaty. It emphasizes that the term "indigenous inhabitants" includes both Native and non-Native people with legiti-

mate subsistence hunting needs. The executive document transmitting the 1979 U.S.–Canada Protocol to the Senate emphasizes that the Protocol would permit subsistence hunting by residents of Alaska in a racially non-discriminatory manner, meaning that both Native and non-Native residents of Alaska with legitimate subsistence hunting needs were included.

The United States is authorized to establish subsistence taking of migratory birds, their eggs and down in any season. Commercial use would not be permitted aside from limited sales of inedible byproducts of birds taken for food which are then incorporated into authentic, traditional handicraft items. Such use would be strictly controlled by the competent authorities. This interpretation of takings for "nutritional and other essential needs" can also be traced back to the U.S.–U.S.S.R. Treaty.

Article III—Treaty Review by the Parties. Article III of the Protocol deletes and replaces Article III of the Treaty, an obsolete provision which established a continuous close season for ten years after the effective date of the Treaty for certain migratory game birds. The new Article III provides that the Treaty parties will meet regularly to review progress in implementing the Treaty, including matters such as the status of bird populations and habitats and the effectiveness of management and regulatory systems. The parties agree to cooperate to solve identified problems in accordance with the conservation principles expressed in Article II and, if necessary, to make special arrangements for the protection of species of particular concern.

Article IV—Bird Habitat Conservation. Article IV of the Protocol deletes and replaces Article IV of the Treaty, an obsolete provision concerning special protections for wood ducks and eider ducks. The new Article IV provides for the protection and enhancement of bird habitats, requiring the Treaty parties to seek means to prevent damage to the habitats, to try to control the importation of animals and plants which are hazardous to protected birds, to try to control the introduction of animals and plants which could disturb the ecological balance of unique island ecosystems, and to pursue cooperative arrangements to conserve essential habitats. Although this article does not require the Treaty parties to take new steps beyond their current efforts, it fills a gap in the current Treaty which is silent on the subject of preservation of bird habitats. Provisions requiring efforts to protect bird habitats are included in the U.S.–Japan and U.S.–U.S.S.R. Treaties.

Article V—Educational and Scientific Exceptions. Article V of the Protocol deletes and replaces Article V of the Treaty, which prohibits the taking of nests and eggs with limited exceptions, by updating it. The new Article V expands the exceptions, making them consistent with similar provisions in the U.S.–Japan and U.S.–U.S.S.R. Treaties and with similar exceptions for the taking of migratory birds in Article II(3). Exceptions permitting takings for educational purposes, for other specific purposes consistent with the conservation principles of the Treaty, or for subsistence uses permitted under Article II(4), are added to existing exceptions to the prohibition on the taking of nests and eggs.

Article VI—Entry into Force. Article VI provides that the Protocol is subject to ratification. It shall enter into force upon the ex-

change of instruments of ratification and remain in force for the duration of the Treaty and be considered an integral part of the Treaty.

Exchange of Notes—Emphasis of Conservation Principles. The United States and Canada engaged in a further exchange of notes to clarify and affirm the understanding that activities permitted under Article II, including the taking of migratory birds and eggs by aboriginal peoples of Canada and indigenous inhabitants of Alaska, shall be conducted in accord with the conservation principles expressed elsewhere in Article II. This clarification affirmed that the existing aboriginal and treaty rights of the aboriginal peoples of Canada would not override the conservation principles and would not be recognized in a manner inconsistent with those principles. The exchange of notes ensured that there would be no interpretation of the Treaty to the contrary.

B. U.S.–MEXICO PROTOCOL

The U.S.–Mexico Protocol is not as comprehensive as the U.S.–Canada Protocol. Like the U.S.–Canada Protocol, the Protocol Amending Convention with Mexico for Protection of Migratory Birds & Game Mammals (Treaty Doc. 105–26) is intended primarily to resolve long-standing confusion and problems arising from conflicting, insufficient, and restrictive guidelines concerning the rights of aboriginal/indigenous peoples, *i.e.*, Indians and Eskimos, to hunt protected migratory birds for subsistence and traditional uses in Alaska.

The Preamble. The preamble declares a commitment to conservation of migratory birds for their "nutritional, social, cultural, spiritual, ecological, economic, and aesthetic values" through a comprehensive, cooperative, international framework, adopting the broader expression of purpose similarly expressed in the U.S.–Japan and U.S.–U.S.S.R. Treaties.

Article I—Subsistence Taking of wild ducks and eggs. Article I of the Protocol simply deletes and replaces Article II(D) of the Treaty with an updated text permitting subsistence taking of wild ducks and their eggs by indigenous inhabitants of Alaska, consistent with "customary and traditional uses" by these inhabitants "for their own nutritional and other essential needs."

Article II—Entry into Force. Article II of the Protocol provides for the ratification of the Protocol, its entry into force upon the exchange of instruments of ratification, its effectiveness for the duration of the Treaty, and its consideration as an integral part of the Treaty.

IV. Entry into Force and Termination

A. ENTRY INTO FORCE

Both Protocols enter into force upon the exchange of instruments of ratification.

B. TERMINATION

Both Protocols remain in force for the duration of the underlying Conventions.

V. Committee Action

The Committee on Foreign Relations held a public hearing on the proposed protocols on September 25, 1997. The hearing was chaired by Senator Chuck Hagel. The Committee considered the proposed protocols on October 8, 1997, and ordered the proposed protocols favorably reported each with one understanding, one declaration and one proviso by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the proposed treaty.

VI. Committee Comments

The Committee endorses the sound conservation and responsible stewardship principles contained in the Mexico and Canada Protocols dealing with the Protection of Migratory Birds. The Protocols make legal the practice of traditional hunting in Alaska and Canada during the closed seasons. The reality is that when the hunting season opens in Alaska the birds are gone from areas in the far north where many indigenous people hunt and fish. These Protocols attempt to provide an opportunity for traditional hunts to occur in the spring and summer under a controlled management scheme in which natives of the villages where the hunts occur will have a voice in the management and enforcement of the hunt.

The Committee expects that these protocols will do much to improve the management of traditional hunts. As the Fish and Wildlife Service has maintained a practice of non-enforcement of the Treaty requirements that would otherwise prohibit these hunts, these protocols will put in place a rational conservation program that allows the traditional spring hunt to continue while providing better management and data on the numbers and kinds of birds taken in the hunts in both Alaska and Canada. Under the new regime the estimated 10,000 to 13,000 subsistence hunters in Alaska, and the numerous hunters in Canada, will be required to account for their harvests and be accounted for in the continental management scheme. The Committee believes it is important to end the anomaly of a policy of non-enforcement of U.S. law, as currently required by the Migratory Bird Treaty Act.

During the hearing to consider the Protocols the Committee received testimony from the President of the Alaskan Association Village Presidents. He testified to the essential link between the native customary and traditional harvest of migratory birds and the culture of native Alaskans. The Committee supports this link and believes that a legal recognition of the legitimate subsistence and cultural needs of native Alaskans is long overdue.

The Committee's recommended resolutions of ratification each contain one understanding to clarify the interpretation of Article 11(4)(b) of the Canada Protocol and Article I of the Mexico Protocol regarding the definition of indigenous inhabitants. The resolution contains the definition used by the Administration in its transmittal documents of the Protocols to the Senate. Specifically, the resolution makes clear that the shared understanding between the Senate and the Executive is that when implementing treaty commitments, permanent residents of a village within a subsistence harvest area, regardless of race, will be treated as indigenous inhab-

itants. Further, immediate family members of indigenous inhabitants may be invited to participate in the customary spring and summer subsistence harvest, and may also be treated as indigenous inhabitants where it is appropriate to recognize a need to assist indigenous inhabitants in meeting nutritional and other essential needs, or for the teaching of cultural knowledge to or by their family members. These persons, however, must have the permission of the village council and the appropriate permits. The Committee expects that this exception will be used judiciously and sparingly with due regard to the conservation principles set out in the Conventions, as amended.

VII. Resolution of Ratification

U.S.–Canada Protocol

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol Between the United States and Canada Amending the 1916 Convention for the Protection of Migratory Birds in Canada and the United States, with Related Exchange of Notes, signed at Washington on December 14, 1995 (Treaty Doc. 104–28), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) UNDERSTANDING.—The Senate's advice and consent is subject to the following understanding, which shall be included in the instrument of ratification, and shall be binding on the President:

(1) INDIGENOUS INHABITANTS.—The United States understands that the term "indigenous inhabitants" as used in Article II(4)(b) means a permanent resident of a village within a subsistence harvest area, regardless of race. In its implementation of Article II(4)(b), the United States also understands that where it is appropriate to recognize a need to assist indigenous inhabitants in meeting nutritional and other essential needs, or for the teaching of cultural knowledge to or by their family members, there may be cases where, with the permission of the village council and the appropriate permits, immediate family members of indigenous inhabitants may be invited to participate in the customary spring and summer subsistence harvest.

(b) DECLARATION.—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

(1) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISO.—The resolution of ratification is subject to the following proviso, which shall be binding on the President:

(1) SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

U.S.–Mexico Protocol

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol between the Government of the United States of America and the Government of the United Mexican States Amending the Convention for the Protection of Migratory Birds and Game Mammals, signed at Mexico City on May 5, 1997 (Treaty Doc. 105–26), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) UNDERSTANDING.—The Senate's advice and consent is subject to the following understanding, which shall be included in the instrument of ratification, and shall be binding on the President:

(1) INDIGENOUS INHABITANTS.—The United States understands that the term "indigenous inhabitants" as used in Article I means a permanent resident of a village within a subsistence harvest area, regardless of race. In its implementation of Article I, the United States also understands that where it is appropriate to recognize a need to assist indigenous inhabitants in meeting nutritional and other essential needs, or for the teaching of cultural knowledge to or by their family members, there may be cases where, with the permission of the village council and the appropriate permits, immediate family members of indigenous inhabitants may be invited to participate in the customary spring and summer subsistence harvest.

(b) DECLARATION.—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

(1) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISO.—The resolution of ratification is subject to the following proviso, which shall be binding on the President:

(1) SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

APPENDIX

EX. F, 96–1: MARITIME BOUNDARIES TREATY WITH MEXICO; TREATY DOC. 104–28: PROTOCOL AMENDING THE 1916 CONVENTION WITH CANADA FOR THE PROTECTION OF MIGRATORY BIRDS; AND TREATY DOC. 105–26: PROTOCOL AMENDING THE CONVENTION WITH MEXICO FOR THE PROTECTION OF MIGRATORY BIRDS AND GAME MAMMALS

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EX. F, 96–1: MARITIME BOUNDARIES TREATY WITH MEXICO; TREATY DOC. 104–28: PROTOCOL AMENDING THE 1916 CONVENTION WITH CANADA FOR THE PROTECTION OF MIGRATORY BIRDS; AND TREATY DOC. 105–26: PROTOCOL AMENDING THE CONVENTION WITH MEXICO FOR THE PROTECTION OF MIGRATORY BIRDS AND GAME MAMMALS

THURSDAY, SEPTEMBER 25, 1997

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 2:03 p.m. In room SD–419, Dirksen Senate Office Building, Hon. Chuck Hagel presiding.

Present: Senator Hagel.

Senator HAGEL. Good afternoon. I would like to welcome all of you, especially our distinguished witnesses today, for our hearing on three important treaties.

I am pleased to recognize my friend, our distinguished colleague, the Senator from Alaska, chairman of the Senate Energy Committee, Senator Murkowski, who is here to lend his support to our consideration of two treaties relating to migratory birds.

I note, as well, that he is accompanied by another distinguished guest, Alaska's Lieutenant Governor, Lieutenant Governor Ulmer. We welcome you and appreciate very much your participation.

We later will be hearing from Deputy Assistant Secretary of State Mary Beth West. Ms. West will provide the administration's views on the U.S.-Mexico Boundary Treaty. Ms. West will be followed by two panels testifying on the Migratory Birds Protocols. First will be Director Clark of the Fish and Wildlife Service.

Our final panel will include Mr. Naneng, President of the Native Migratory Birds Working Group of the Association of Village Presidents, and Mr. Holmes, Director of the Minnesota Fish and Wildlife Division.

Welcome to all of you.

The U.S.-Mexico Boundary Treaty was first submitted to the Senate in 1979. Initially, there was some controversy over the methodology used to delineate the maritime boundary between the U.S. and Mexico in the Gulf of Mexico. There also was little ur-

gency to ratify the treaty because of the technical difficulties of deep water drilling in the Gulf.

Now, however, those technological challenges are being overcome.

I also understand that the delineation methodology, which was originally controversial, has now been accepted by all sides.

I am pleased that we are able to take quick action on the U.S.-Canada and U.S.-Mexico Protocols amending two 1916 treaties on the protection of migratory birds. These two new protocols are an excellent example of how sportsmen, conservationists, and native groups can work together to address serious issues.

In this case, these protocols will enable remote native populations to continue their historic practice of harvesting migratory birds for subsistence and local use. It will do so without placing any additional pressure on bird populations that are so important to both American sportsmen and conservation groups.

In fact, legalizing and controlling this traditional native harvest will permit better stewardship of migratory bird populations by permitting better accounting of total harvesting each year.

Again, I welcome all of our distinguished guests. Now I would like to call upon the distinguished Senator from Alaska, Senator Murkowski.

Senator MURKOWSKI. Thank you very much, Senator Hagel. I appreciate the opportunity to appear before this committee with which I served for so many years. As you know, my first choice was the Finance Committee. I think it took some 15 years or so to get that spot, and, unfortunately, I had to give up the Foreign Relations Committee.

But I want to defer to our Lieutenant Governor, who journeyed down here from Alaska. Then I will make my statement.

Let me say that it is a pleasure to have you down here, Fran, and I look forward to hearing the position of the State of Alaska.

Senator HAGEL. Mr. Chairman, thank you, and, again, welcome, Lieutenant Governor Ulmer. We are pleased to have you.

STATEMENT OF HON. FRAN ULMER, LIEUTENANT GOVERNOR, STATE OF ALASKA

Lieutenant Governor ULMER. Thank you, Senator.

Mr. Chairman and members of the committee, it is my great privilege to speak to you today on an issue that represents fulfillment of a goal toward which we in Alaska have long aspired.

The Protocol amending the 1916 Convention for the Protection of Migratory Birds in Alaska and the United States along with a conforming Protocol to the 1936 U.S.-Mexico Convention provide a compelling statement that we in Alaska and the United States cherish the rich migratory bird resources that we share and the habitat upon which they depend; that we respect the diverse cultural traditions and the subsistence way of life of the indigenous people of Alaska and Canada; that we recognize and value the interests of conservationists and hunters throughout North America; and that we understand the imperative to expand and strengthen our partnerships for responsible conservation and stewardship of migratory bird stocks.

Many of those at this hearing today and others who could not attend have worked for many years to fit the right pieces together

to make the treaty amendments possible. In recent years, hunters, wildlife agencies, and conservation groups in Alaska have reached mutual understandings on bird conservation goals, broadened public involvement in migratory management, and engaged in cooperative action to sustain migratory bird populations. The resultant vision of more effective conservation was widely shared and discussed with constituencies across the Nation in a search for understanding and common ground.

That common ground emerged as strongly shared appreciation and concern for the migratory birds themselves.

The treaty amendments before you are fundamentally migratory bird conservation amendments. Presently, the Migratory Bird Treaty with Canada prohibits hunting migratory birds from March 10 to September 1. In Alaska, migratory birds have left large areas of northern, western, and interior Alaska by mid-September, and in these areas they generally do not return before March 10. As a consequence, much of the traditional harvest of migratory birds in rural Alaska has taken place and continues to take place during the closed season portion of the year.

In Alaska, prohibitions on traditional hunting practices have been enforced on a very limited basis. But subsistence hunters in Alaska want to hunt within the law when they take what is often the first meat that is available in the spring and the promise of winter's end as well as an important part of their food supply. They want to participate with stakeholders elsewhere in the management of the birds they share in common.

This long-standing inequity has fostered regional and cultural barriers to communication between hunters and agencies, harvest monitoring, identification of conservation concerns, and local involvement in developing cooperative management actions.

I want to say that from Alaska's perspective, these amendments represent an outstanding achievement in migratory bird conservation. This is because, while they acknowledge the importance of subsistence use of birds, the amendments also recognize the willingness of those who are most affected by this agreement to join with State and Federal Governments in effective hunting regulation, habitat protection, enforcement, research, and education. It is this vision of a future in which hunters, conservationists, and wildlife managers work together in managing migratory birds that provides me with the greatest sense of satisfaction and optimism for the future of our magnificent migratory bird resource.

I trust the committee will come to the same conclusion and act favorably on the amendments.

In closing, I would like to join with others in dedicating my testimony on behalf of the State of Alaska to the memory of Mollie Beattie. As Director of the U.S. Fish and Wildlife Service before her recent death, Mollie played a crucial role in inspiring all participants in the negotiations to develop a collective vision of cooperative management and conservation. It is in large measure through her efforts that the treaty amendment process has come successfully to this effort.

Thank you very much.

Senator HAGEL. Lieutenant Governor, thank you very, very much. Mr. Chairman, would you like to say a few words?

STATEMENT OF HON. FRANK MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you very much.

First of all, let me commend the Lieutenant Governor for her statement. I totally agree with the presentation that she has made on behalf of the State of Alaska.

I am going to ask that my entire statement be entered into the record as if read. I am going to highlight a few points that I think need some clarification. Since we don't see each other very often, this might be of interest to her and we can comment on it later because it is not on the subject at all, but it is on another subject.

Senator HAGEL. Glad we could do a little Alaska business in here.

Senator MURKOWSKI. I am happy to have this opportunity to establish a dialog.

First of all, a lot of people misunderstand this issue. The traditional use by Alaska's native people of migratory birds is a simple reality in that when the season traditionally opens, the birds have left the area where many of our indigenous people have frequently hunted and fished—in other words, in the far north. The reality is that the birds are gone in the fall, when the season opens. So the question is what kind of opportunity can be made to insure that the traditional use of the spring hunt can continue under a controlled management scheme that involves enforcement by the native people as well as a voice in the management.

So it is very important to the native people of Alaska. It is important for management because the treaty allows accounting for the take during the spring harvest.

I might add that this is supported by the Alaska Department of Fish and Game and, to my understanding, the Wildlife Management Institute as well.

Now there has been resistance from time to time by sports hunters on the principle that you should not take birds in the spring. But scientific evidence does not bear out that contention, that this relatively insignificant number of birds is harmful by any means.

So, as a consequence, what we have here is a revision of the 1916 Convention for the Protection of Migratory Birds, which was a treaty based on migratory bird conservation programs in North America. However, the original treaty did not adequately provide for the spring migratory bird harvesting in the north in spite of the fact that it was a centuries old practice, which certainly has cultural and nutritional aspects associated with it. It is important, as well, to Alaska's indigenous people and the aboriginal people of Canada.

So what we did for a long time is we had just a nonenforcement approach. I can recall one instance years ago when the U.S. Fish and Wildlife Service decided to enforce the taking of birds in the spring and in Point Barrow, one of the residents brought a bird into the village and was promptly arrested by the U.S. Fish and Wildlife Service. The next day there were probably 200 villagers who walked in with a bird and that ended the process of what to do about the problem.

So for a long time it was simply ignored. I am glad to see that we are not ignoring it today.

The one change I would propose is an issue of fairness. Negotiators saw that in some cases it might be appropriate for village councils to have the option of inviting individuals who no longer reside in the village to return to that village, either to assist family members in the village or to allow relatives to share some cultural exchange.

The letter of transmittal refers to this as an option only for Alaska natives. I believe that, in fairness, this option must also be open to non-native families living in the village or use words to that effect.

What we have here is suggested language that the term "indigenous inhabitants" might be included. This would include other residents of the village, not exclusively native, who clearly were dependent, to some extent traditionally or for their livelihood, on the availability of that. I offer that consideration based on the issue of equity and fairness—indeed, the possibility that the structure could be maintained through an association of the people in the village to determine just how broad that inclusion would be.

That is the extent of my presentation, Mr. Chairman, relative to the migratory birds.

I would like the opportunity to speak very briefly, if I may, on the U.S.-Mexico Maritime Boundary Treaty, if you would allow me that privilege.

Senator HAGEL. Yes. Absolutely.

Senator MURKOWSKI. I very much appreciate that.

Mr. Chairman, the opportunity to present my views, from my perspective as chairman of the committee on Energy and Natural Resources on the U.S.-Mexican Maritime Boundary Treaty is one that I have looked forward to for some time because I have urged this committee to favorably report and my colleagues in the Senate to ratify the treaty before we adjourn this fall. Senator Helms has been very responsive in considering this. I think that Senate ratification of the treaty is a timely one. It is appropriate because, currently, our domestic energy solution and heavy U.S. reliance on foreign oil imports is a reality.

We now import more than 53 percent of our daily crude oil consumption and that number is expected to rise to approximately 60 percent in just a few years.

This situation I think leaves us very susceptible to future supply disruptions and creates a great imbalance in payments and foreign trade because of the tremendous outflow of U.S. dollars to purchase foreign crude oil.

Further, I think it jeopardizes the national energy security of our Nation.

It is rather interesting to reflect that in the 1973-1974 timeframe, when we were 34 to 37 percent dependent on imported oil, we created the Strategic Petroleum Reserve out of necessity, saying we simply had to do something and if we ever got to 50 percent, why we would simply have to seek relief.

Well, we have exceeded 50 percent. We are starting to sell off SPRO to meet budget obligations. It is pretty hard to understand whether the right hand knows what the left hand is doing, and, clearly, our Nation's energy policy needs revision.

But in any event, the Gulf of Mexico and my State of Alaska particularly, and elsewhere in the U.S., have a tremendous potential of untapped reserves of crude oil and national gas that can be brought to market in an environmentally responsible manner to fuel our Nation's economy and stem the tide.

Enactment of the Deep Water Royalty Relief Act in the last Congress was put through by Senator Johnston and I. It had a tremendous potential impact on oil and gas exploration and development on the Federal Outer Continental Shelf, in the Central and Western Gulf of Mexico, in water in depths of 2,000, 3,000, 4,000, and 5,000 feet or more. We have seen sales in that area—they are now drilling in 3,000 feet—as the technology advances.

As a consequence, oil and gas production in the Gulf is expected to double. New jobs will be created in that area. Substantial economic benefits will be realized, and I am very pleased to see that the Gulf area certainly supports that level of activity. The technology that is going along with it has insured that the elements of risk have been reduced dramatically.

Yet, as promising oil and gas tracts are purchased and developed in the deep water areas of the Gulf of Mexico, companies are moving closer and closer to that 200 nautical mile international maritime boundary. Settling a permanent boundary between the U.S. and Mexico in the Gulf will allow an orderly acquisition and development of oil and gas leases along the U.S. side of the international line to continue. It will provide the framework for resolving potential issues in the future concerning reservoirs that might straddle the international line.

Finally, Mr. Chairman, establishment of a permanent international maritime boundary will enable the U.S. and Mexico to delimit an area in the Western Gulf, commonly referred to as a "donut" hole. As the Lieutenant Governor knows, we have a donut hole off Alaska that we share with Russia. The earlier you are to determine where that line is, the better off you will be.

In any event, the donut hole between the U.S. and Mexico is the area which is believed now to contain significant oil and gas resources. It lies outside each country's designated waters, and we are hopeful that a resolution of the permanent boundary will facilitate agreements over divisions in that area that I think has such great promise.

Finally, Mr. Chairman and members of the committee, I am not aware of any reason why this treaty should not be ratified. From an energy perspective, which is where I come from, it is important that the Senate act swiftly to ratify it so that the great progress we are making in the Gulf can continue.

I would urge my colleagues to support the U.S.-Mexico Maritime Boundary Treaty and I thank you for the opportunity. I would be happy to respond to any questions.

[The prepared statement of Senator Murkowski follows:]

PREPARED STATEMENT OF SENATOR FRANK H. MURKOWSKI

Mr. Chairman and Members of the Committee, I appreciate the opportunity to present a few brief words from my perspective as Chairman of the Committee on Energy and Natural Resources about the U.S. - Mexico Maritime Boundary Treaty. I urge the Committee to favorably report and my colleagues in the full Senate to ratify the treaty before we adjourn this Fall.

Senate ratification of the treaty is timely and appropriate because of our current domestic energy situation and heavy U.S. reliance on foreign imports of oil. We now import more than 50 percent of our daily crude oil needs, and that number is expected to rise to well above 60 percent in just a few short years. This situation leaves us susceptible to future supply disruptions, and causes a great imbalance in payments in foreign trade because of the tremendous out-flow of U.S. dollars to purchase foreign crude oil.

In the Gulf of Mexico and my state of Alaska -- and elsewhere in the U.S. -- we have tremendous untapped reserves of crude oil and natural gas that can be brought to market in an environmentally responsible manner to fuel our national economy and stem the tide of imported crude oil.

Enactment of the Deep Water Royalty Relief Act in the last Congress has had a tremendous positive impact on oil and gas exploration and development of the federal Outer Continental Shelf in the Central and Western Gulf of Mexico in water depths of two, three, four, five thousand feet or more. Since enactment of that important legislation, four lease sales in the deep water Gulf have brought $2.3 billion to the U.S. Treasury. The last two lease sales alone have fetched more than $1.2 billion in cash bonus bids. As a result, oil and gas production in the Gulf is expected to double, new jobs will be created, and substantial economic benefits will be realized.

Yet, as promising oil and gas tracts are purchased and developed in the deep water areas of the Gulf of Mexico, companies are moving closer and closer to the 200-nautical-mile international maritime boundary. Great technological advances are making it possible to safely recover oil and gas deposits that heretofore were thought to be unrecoverable or were not even known to exist. Settling a permanent boundary between the U.S. and Mexico in the Gulf will allow the orderly acquisition and development of oil and gas leases along the U.S. side of the international line to continue, and will provide the framework for resolving potential issues in the future concerning reservoirs that might straddle the international line.

In addition, Mr. Chairman, establishment of a permanent international maritime boundary will enable the U.S. and Mexico to delimit an area in the Western Gulf commonly referred to as the "doughnut hole." This area, which also is believed to contain significant oil and gas resources, lies outside of each country's waters. We are hopeful that resolution of the permanent boundary will facilitate agreement over division of that area of such great promise.

Mr. Chairman and Members of the Committee, I am not aware of any reason why this treaty should not be ratified. From any energy perspective, it is important that the Senate act swiftly to ratify it so that the great progress we are making in the Gulf can continue. I urge my colleagues to support the U.S. Mexico Maritime Boundary Treaty.

I thank the Chairman and the Members of the Committee.

Senator HAGEL. First, on behalf of the committee, Mr. Chairman, thank you for what you have done and your leadership and involvement in both areas.

As you suggested, Chairman Helms has said that he wants to move forward on both of these protocols quickly, and I assume we can look forward to some dispatch as to how we will take action in the full committee and then move it to the Senate floor.

Mr. Chairman, last night, in reviewing the history of these protocols, I noted back in some of the testimony in 1980, when you may have been a member of this committee——

Senator MURKOWSKI. I came in in 1980, but I really got aboard in 1981. So I want to be careful here.

Senator HAGEL. All right, and I appreciate your sense of full disclosure here.

Senator MURKOWSKI. I have learned.

Senator HAGEL. That seems to be important in this town, or maybe lack thereof—as may be more appropriate.

Senator MURKOWSKI. To a point, yes.

Senator HAGEL. I noted your former colleague and my friend and former predecessor, United States Senator from the State of Nebraska, the late Ed Zorinsky, I noted his involvement in much of

this debate with the now-distinguished chairman of this committee, Mr. Helms.

So, as you know, this has been around for some time, as you have noted in your testimony and your comments. We will move with dispatch.

I want you to know that as well, Lieutenant Governor. We will work hard to get it done.

If you have any additional thoughts or points to make, please feel free to contact anyone on our committee—me, Chairman Murkowski or Chairman Helms.

Lieutenant Governor ULMER. Thank you.

Senator HAGEL. Thank you. Thank you both very much.

Senator MURKOWSKI. Thank you. I appreciate the opportunity. I do remember Ed Zorinsky. I think his wife's name was Cici.

Senator HAGEL. Yes.

Senator MURKOWSKI. He was a fine representative from your State, a great gentleman, and an outstanding Senator. We miss him.

Senator HAGEL. Thank you. I will pass that on. I keep in touch with his family. So thank you.

Lieutenant Governor, thank you very much.

If I could, I would ask the next two witnesses to come forward. I believe we have two witnesses from the administration. We have Ms. West, whom I have introduced. Maybe if I could keep this just a little more coordinated, I would ask Director Clark to come up as well.

Ms. West, I understand you are winging your way somewhere. Is that correct?

Ms. WEST. I am, yes.

Senator HAGEL. Well, even if that is not correct, we welcome you. We welcome Director Clark as well.

Ms. West, if you would like to offer your testimony, thank you.

STATEMENT OF MARY BETH WEST, DEPUTY ASSISTANT SECRETARY OF STATE FOR OCEANS, SCIENCE AND TECHNOLOGY, BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

Ms. WEST. Thank you very much, Mr. Chairman. We thank you for inviting us to testify today in support of the 1978 treaty between the United States and Mexico establishing maritime boundaries in the Gulf of Mexico and in the Pacific Ocean.

I have submitted written testimony for the record and I will summarize that testimony in an oral statement today.

With me today is Bob Smith, who is a geographer and maritime boundary expert in the Office of Oceans Affairs. He is going to point out some of the boundaries for you, although I apologize that the map here is a little hard to read. There are maps attached to the testimony which I submitted.

This treaty delimits the maritime jurisdiction of the United States and Mexico where the 200 Exclusive Economic Zones of the 2 countries would otherwise overlap.

The potential for overlapping U.S.-Mexico maritime claims became apparent in 1976 and 1977, when the United States extended

its fisheries jurisdiction to 200 nautical miles. Mexico had established a 200 nautical mile Exclusive Economic Zone in 1976.

The treaty establishing maritime boundaries between the United States and Mexico was signed in 1978. Mexico ratified the treaty in 1979, and the treaty was transmitted to the U.S Senate for its advice and consent to ratification that same year.

Mr. Mark Feldman, Deputy Legal Adviser for the State Department, presented testimony before this committee on June 30, 1980. The views expressed by the administration in that statement are still applicable today, and I have submitted a copy of that statement for the record.

The United States 200 mile fishery jurisdiction claim, which was made in accordance with the Fishery Conservation and Management Act of 1976 and which later became an Exclusive Economic Zone in 1983, encompassed an ocean area of approximately 2.8 million square nautical miles. This legislation created about 30 situations where boundaries would need to be established where our opposite and adjacent neighbors were less than 400 miles from our coasts. Mexico was one of these.

The U.S. and Mexico, through an exchange of notes, established provisional maritime boundaries on November 24, 1976, and those lines were confirmed in the treaty signed on May 4, 1978. The treaty established boundary segments off our Pacific Coast and in the Gulf of Mexico. The Pacific Coast boundary is shown here (indicating) on the chart. It extends slightly to the northwest and then takes a turn to the south; and then it extends to the southwest.

As for the boundary in the Gulf of Mexico, on this boundary you will see that there are two segments. There is a segment running from the west into the Gulf. There is then a gap in that area which I will refer to as "the gap." That is what Senator Murkowski referred to as the "donut hole." Then there is another segment in the middle of the Gulf.

The gap is approximately 129 nautical miles in length. It is where the coastlines of the U.S. and Mexico are more than 400 miles apart.

This area beyond 200 miles was not delimited in 1978 for two reasons. First is because the outer limit of the Continental Shelf was a matter under negotiation at that time in the Conference on the Law of the Sea. Second is because the water depths in this gap made the area not commercially accessible at the time.

We have this area under active review and we intend to pursue establishment of a Continental Shelf Boundary in this area once the 1978 treaty is in force.

The boundaries established by the 1978 treaty with Mexico were developed using an equidistant methodology. This involved calculation of a line that was equally distant from the coastlines of both countries, including islands. Giving effect to islands off the coast is in the general U.S. interest and has been our consistent policy and practice.

Following the 1980 hearings, this committee voted unanimously in favor of the treaty. Prior to a full Senate vote, however, one Senator asked that a further resource study be conducted for the Gulf of Mexico. This study was completed in early 1981 and did not change the view of the administration that the boundary treaty

was a fair and balanced agreement that serves the United States' strategic and resource interests.

However, because the depth in the waters of the area did not admit of exploration and production in the early 1980's, the interests in pressing for the treaty at that point were not immediate. Because our boundary experts were deeply involved in other pressing boundary issues, including the Gulf of Maine arbitration with Canada, the treaty with Mexico was not moved forward at that time.

Now, Mr. Chairman, you may ask why we hope that the treaty will be acted upon now, after almost 20 years. In the early 1980's, our offshore oil and gas industry focused on areas relatively near the shore. This situation has changed significantly in recent years. Not only are the oil and gas companies interested in leasing blocks adjacent to the 1978 boundary—and, in fact, such leases are on the books now—but interest also extends to the area beyond 200 miles in the western Gulf in the gap.

Thus, now is a time when for commercial reasons industry needs the certainty provided by this boundary, and we understand that the oil and gas industry fully supports its ratification.

Mr. Chairman, for these reasons we feel the time is right to have this important treaty enter into force and we ask that this committee and the full Senate act favorably on the treaty.

Thank you very much. I would be pleased to answer questions.

[The prepared statement of Ms. West follows:]

PREPARED STATEMENT OF MARY BETH WEST

Mr. Chairman and members of the Committee:

Thank you for inviting me to testify today in support of the 1978 Treaty between the United States and Mexico establishing maritime boundaries in the Gulf of Mexico and in the Pacific Ocean.

This treaty delimits the maritime jurisdiction of the United States and Mexico where the 200 mile exclusive economic zones of the two countries would otherwise overlap. The potential for overlapping U.S.-Mexico maritime claims became apparent in 1976 when the United States extended its jurisdiction over fisheries to 200 nautical miles; Mexico had established a 200 nautical mile exclusive economic zone in 1976.

The treaty establishing maritime boundaries between the United States and Mexico was signed in 1978. Mexico ratified the treaty in 1979, and the treaty was transmitted to the U.S. Senate for its advice and consent to ratification that same year. Mr. Mark Feldman, Deputy Legal Adviser for the State Department, presented testimony before this committee on June 30, 1980. The views expressed by the administration in that statement are still applicable today, and I would like to submit a copy of that statement for the record.

The United States 200-mile fishery jurisdiction claim, which was made in accordance with the Fishery Conservation and Management Act of 1976, encompassed an ocean area of approximately 2.8 million square nautical miles. This legislation created about 30 situations where boundaries would need to be established where our opposite and adjacent neighbors were less than 400 miles from our coasts. Our 200-mile zone (which became an exclusive economic zone in 1983) overlapped the potential zones of Canada (off the Atlantic, Pacific, and Arctic coasts), of the former Soviet Union (in the North Pacific Ocean, Bering Sea, and Arctic Ocean), of The Bahamas and Cuba, off the coasts of the southeastern United States, and of Mexico in the Gulf of Mexico and Pacific Ocean.

For the territories and possessions of the United States, the 200-mile claim raised maritime boundary questions with the Dominican Republic, Venezuela, the Netherlands, and the United Kingdom in the Caribbean. In the Pacific, 200-mile zones drawn from the Northern Marianas, Guam, American Samoa, and other territories created potential maritime boundary issues with Japan, Tonga, Samoa, Niue, Cook Islands, New Zealand (on behalf of Tokelau), Kiribati, the Federated States of Micronesia, and the Marshall Islands.

Mr. Chairman, when the administration testified in 1980, we reviewed the background of the United States policy as it pertained to the establishment of maritime boundaries with its neighbors. I will not reiterate all this information at this time, but I would be more than happy to answer any questions you and your committee may have on our general policy.

The U.S. and Mexico through an Exchange of Notes established provisional maritime boundaries on November 24, 1976, and those lines were confirmed in the treaty signed on May 4, 1978. The treaty established boundary segments off our Pacific coast and in the Gulf of Mexico. In the western Gulf of Mexico there is a gap between the boundary lines, approximately 129 nautical miles in length, where the coastlines of the U.S. and Mexico are more than 400 miles apart. This area beyond 200 miles was not delimited in the 1978 treaty for two reasons: first, because, the outer limit of the Continental Shelf was a matter under negotiation at the time in the conference on the law of the sea, and second, because the water depths in this gap made the area not commercially accessible at the time. We have this area under active review and intend to pursue establishment of a Continental Shelf boundary in this area once the 1978 treaty is in force.

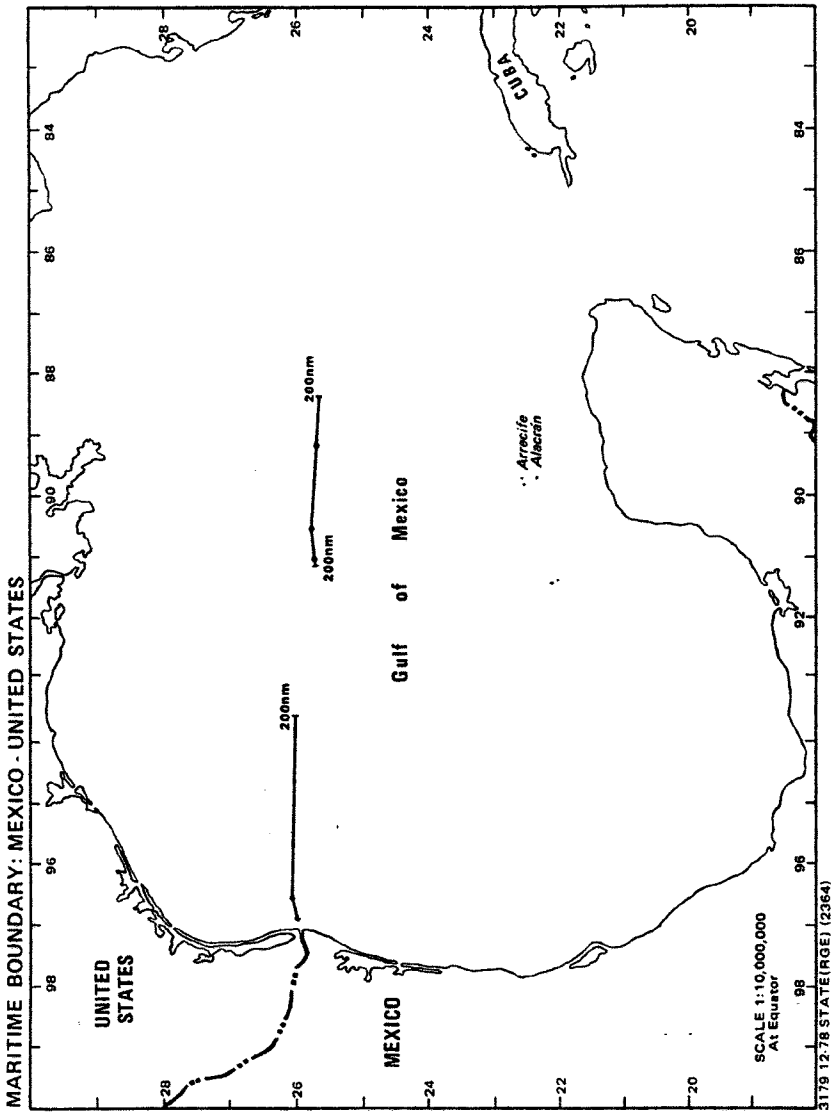
The boundaries established by the 1978 treaty with Mexico were developed using the equidistant methodology. This involved calculation of a line that was equally distant from the coastlines of both countries, including islands. Giving effect to islands off the U.S. coast is in the general U.S. interest and has been our consistent policy and practice.

Following the 1980 hearings, this Committee voted unanimously in favor of the treaty. Prior to a full Senate vote, however, one senator asked that a further resource study be conducted for the Gulf of Mexico. This study was completed in early 1981 and did not change the view of the administration that the 1978 boundary treaty was a fair and balanced agreement that serves United States strategic and resource interests. However, because the depth of the waters in the area did not admit of exploitation in the early 1980s, the interests in pressing the treaty at that point were not immediate; and, because our boundary experts were deeply involved in other pressing boundary issues, including the Gulf of Maine Arbitration with Canada, the treaty with Mexico was not moved forward at that time.

Mr. Chairman, you may ask why we hope the treaty will be acted upon now, after almost 20 years. In the early 1980's our offshore oil and gas industry focused on areas relatively near the shore. This situation has changed significantly in recent years. Not only are the oil and gas companies interested in leasing blocks adjacent to the 1978 boundary, but interest extends to the area beyond 200 miles in the western Gulf of Mexico - in the gap. Thus, now is a time when, for commercial reasons, industry needs the certainty provided by a boundary agreement, and, we understand that the U.S. oil and gas industry supports ratification.

Mr. Chairman, for these reasons we feel the time is right to have this important treaty enter into force, and I ask that this Committee, and the full Senate, act favorably on the treaty.

Thank you, Mr. Chairman.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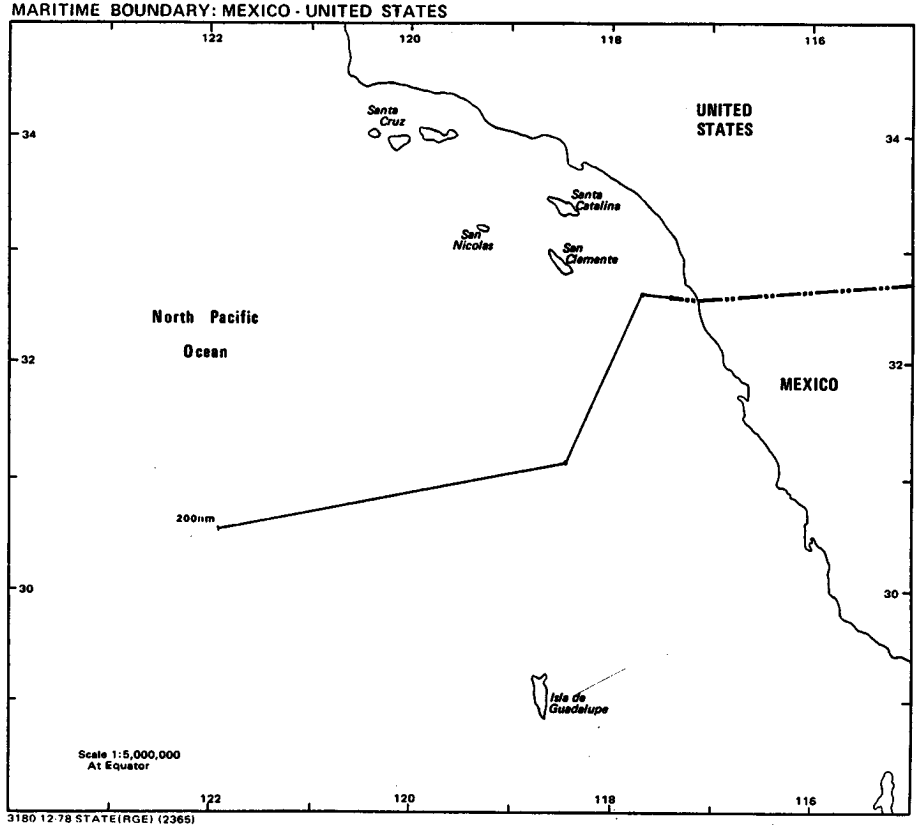

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PREPARED STATEMENT OF MARK B. FELDMAN, DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE BEFORE THE SENATE COMMITTEE ON FOREIGN RELATIONS JUNE 30, 1980

Dear Mr. CHAIRMAN.

I welcome the opportunity to testify today in support of three significant treaties that establish maritime boundaries between the United States and Mexico, between the United States and Cuba, and between the United States and Venezuela off the coasts of Puerto Rico and the U.S. Virgin Islands.

These treaties are necessary to delimit the United States Continental Shelf in these areas and to resolve overlapping claims of jurisdiction arising out of the establishment of a 200 nautical mile fishery conservation zone off the coasts of the United States in accordance with the Fishery Conservation and Management Act of 1976 and the establishment of 200 nautical mile zones by neighboring countries.

The U.S. Fishery Conservation Zone created by act of Congress as of March 1, 1977, encompasses approximately 2.8 million square nautical miles of waters. Together with reciprocal actions by other States, this act created more than thirty new boundaries between areas of United States fisheries jurisdiction and those of other nations. Such boundary questions arise with neighboring states adjacent to the United States and with opposite states wherever the coasts of the two countries are less than 400 nautical miles apart,

Thus, the 200 mile zone off the coasts of the Continental United States abuts that of Canada in the Atlantic Ocean, in the Beaufort Sea, and in two places on the Pacific Coast. It abuts the 200 mile zone of the Soviet Union in the Bering and Chukchi Seas, and the North Pacific Ocean, where the maritime boundary is determined by the 1867 convention with Russia in connection with the purchase of Alaska, and it borders the Mexican 200 mile zone in the Pacific Ocean and in the Gulf of Mexico. It also borders on the 200 mile zone of Cuba and the Bahamas off the coasts of the Southeastern United States. Similar boundary situations arise in the Caribbean between Puerto Rico and the U.S. Virgin Islands and the Dominican Republic, Venezuela, and a number of islands including the British Virgin Islands. In the Pacific our 200 mile zone off American Samoa, Guam and other island territories creates maritime boundaries with Tonga, Western Samoa, the Cook Islands, the Trust Territory, and several other islands including the new country of Kiribati.

Most of these boundaries remain to be established by agreement, although the United States has exercised sovereign rights over the resources of the Continental Shelf since the, Truman Proclamation of 1945, the need to define the boundaries of our Continental Shelf with other nations has only recently become a matter of practical concern as the technical ability to exploit the hydrocarbon resources of the Continental shelf has developed.

The problem of maritime boundary delimitation became urgent, however, with the extension of fisheries jurisdiction out to 200 miles. Precise limits are needed for purposes of fisheries management and law enforcement, and that need forced the issue of international maritime boundaries to the fore.

In anticipation of legislative action, the State Department established in 1975 an interagency group to develop a U.S. maritime boundary position. I chaired that group for the Department's legal adviser, and it included representatives of other interested bureaus in the Department and representatives of the Departments of the Interior, Commerce, Defense, Energy and Transportation (Coast Guard). The task of this group was to identify in each situation the maritime boundary that would maximize United States resource and security interests consistent with international law and friendly relations with our neighbors.

Recognizing that it would not be possible to conclude boundary agreements with most of our neighbors before establishment of the Fishery conservation Zone on March 1, 1977, the United States published the provisional limits of that zone on March 7, 1977, "pending the establishment of permanent maritime boundaries by mutual agreement."

Subsequently, we have pursued negotiations with several nations and have concluded the three treaties before the committee today; the treaty with Canada, submitting the maritime boundary in the Gulf of Maine area to international adjudication, which the committee has under review, and a treaty with the Cook Islands which was signed on June 11 and which will be transmitted to the Senate in due course for advice and consent to ratification. Other boundary negotiations are being undertaken and we intend to work to achieve agreements on all U.S. maritime boundaries as soon as possible.

With this background, I would like to turn to the three pending treaties with our Latin American neighbors. These are the first treaties establishing Continental Shelf and 200 nautical mile fisheries boundaries to be signed by the United States and submitted to the Senate. They are important treaties that demonstrate that the

United States can reach peaceful agreements with our neighbors on sensitive issues of sovereign rights and jurisdiction. We hope this committee will report them favorably and that the Senate will advise and consent to their ratification at an early date.

Mexico:

I would like to consider first the treaty on maritime boundaries between the United States of America and the United Mexican States, signed at Mexico City, May 1978. The United States and Mexico first agreed upon maritime boundaries in 1970 in the treaty to resolve pending boundary differences and maintain the Rio Grande and the Colorado River as the international boundary between the United States of America and the United Mexican States. The 1970 treaty, in addition to dealing with the land frontier, established a maritime boundary in the Pacific Ocean and the Gulf of Mexico to a distance of 12 nautical miles from the coast. The establishment of 200 nautical mile zones by our two countries made it necessary to reach agreement on the seaward extension of those boundaries out to 200 nautical miles. The two governments concluded an exchange of notes establishing provisional maritime boundaries on November 24, 1976, and that line was confirmed in the treaty signed on May 4, 1978.

The 200 mile zones established from the coasts of the United States and Mexico overlap in three areas: off the Pacific Coast and in the Western Gulf of Mexico where the U.S. and Mexican coasts are adjacent, and in the Eastern Gulf of Mexico where Mexico's 200 mile zone developed from certain islands and the Yucatan Peninsula opposite the Louisiana Coast overlaps the U.S. 200 mile zone.

In the Central Gulf of Mexico there is a reach of waters approximately 129 nautical miles in length where there is no fisheries boundary between the two countries. In this area the coasts of the two countries opposite each other are more than 400 nautical miles apart, so our fisheries zones do not overlap. We have not drawn a Continental Shelf boundary in this area for the time being because the limit of the outer edge of the Continental margin is presently a matter under active negotiation at the Third United Nations Conference on the Law of The Sea. In respect of this process and in view of the fact that water depths in this area do not readily admit of exploitation at the present time, it was decided that there is no immediate need to determine a boundary in this area. We intend to keep this matter under active review and at such time as may be appropriate establish a maritime boundary with Mexico in this area.

Mr. Chairman, I am aware that one scholar has questioned the use of islands as base points for the boundary line in the Gulf of Mexico. This practice follows the precedent of the 1970 treaty, but the argument is made that the agreement gives Mexico more area in the deep waters of the East Central Gulf than should be the case. In considering this issue, the committee should note that the use of islands as base points gives the United States substantial areas in the Pacific off the Coast of California. These Pacific areas have hydrocarbon potential and are also of considerable interest to U.S. fishermen. There may also be hydrocarbons in the seabed under the waters of the East Central Gulf, but these areas are under deep waters and will not be exploited for some years. There are not significant fisheries in that area.

I can assure, Mr. Chairman, that before making this agreement the Department of State solicited the best available expert advice including scientists at the U.S. Geological Survey and at Woods Hole Oceanographic Institute and the U.S. fishing industry. We contacted interested Members of Congress at an early stage, and the agreement was and is supported by all interested agencies of the United States Government.

Moreover, the approach followed in the treaty with Mexico is consistent with the general U.S. interest in giving full effect to islands off the U.S. coast. The boundary agreement with Cuba, for example, gives full effect to the Florida Keys. The United States has other important island interests including the Alexander Archipelago in Southeastern Alaska which affects the maritime boundary with Canada in and seaward of Dixon Entrance.

Finally, this agreement is a further example of the efforts of the United States and Mexico to work together as equals to solve problems on the basis of mutual interest. Ratification of the agreement will strengthen relations between the United States and Mexico by settling an issue which could become contentious if left unresolved.

Cuba:

The maritime boundary agreement between the United States of America and the Republic of Cuba signed at Washington December 16, 1977, establishes the boundary in the straits of Florida and the Eastern Gulf of Mexico, it begins in the west at a point 200 nautical miles from each coast and continues through the Eastern Gulf and Straits of Florida to a potential trijunction point with the Bahamas. At its closest point the boundary is approximately 38 nautical miles from the U.S. coast.

As you will recall, in the spring of 1977 the United States resumed direct, formal discussions with the Cuban Government for the first time in many years. The Maritime Boundary Agreement was one of the first items on the agenda for those talks because both countries recognized the need to avoid incidents over that issue. At that time discussions were held in New York and Havana, and on April 27, 1977, the parties concluded a modus vivendi establishing a line which served as the boundary for 1977. Following further negotiations in 1977, a boundary treaty was signed in Washington on December 16, 1977.

That agreement provided for provisional application of the boundary line for two years from January 1, 1978. When that period expired on January 1, 1980, the parties by exchange of notes extended provisional application of the boundary line for another 24 months. The establishment of the boundary with Cuba proved to be a complex technical task due to the difference in charts utilized by the two countries and other technical issues, but the negotiations were conducted on a businesslike basis that could be a model for how relations between our two countries can be conducted. Although relations with Cuba are seriously strained at the present time, both governments see advantage in concluding a permanent understanding as to our maritime boundary. Ratification of this treaty will remove a potential problem in U.S. relations with Cuba and will therefore contribute to the maintenance of peace and security in the area.

Venezuela:

The Maritime Boundary Treaty between the United States of America and the Republic of Venezuela, signed at Caracas on March 28, 1978, establishes the maritime boundary off the coasts of Puerto Rico and the U.S. Virgin Islands in the Caribbean sea. This line is based on the same general principles as the agreements with Mexico and Cuba, and follows the line published by the U.S. when the U.S. Fishery Conservation Zone was established in 1977. The Caribbean Regional Fishery Management Council and the authorities in the U.S. Virgin Islands and Puerto Rico were consulted prior to the establishment of the U.S. boundary position in this area and concurred in this line.

The three treaties have discussed this morning all follow a similar format. Each contains the geographic coordinates of the boundary and technical information concerning the establishment of the boundary. Each contains an article which describes the legal effect of the boundary: that neither country shall claim nor exercise for any purpose sovereign rights or jurisdiction over the waters or seabed and subsoil on the other country's side of the boundary line. Each treaty also provides that establishment of the boundary does not affect or prejudice either country's position concerning the maritime jurisdiction that may be claimed by the other country. This disclaimer was deemed necessary as many of these countries assert claims of jurisdiction over the high seas not recognized by the United States.

Mr. Chairman, as I noted previously, the U.S. position in the negotiation of these treaties was adopted after a full interagency review of legal questions and resource considerations and consultation with interested constituents and Members of Congress, we believe all three treaties are advantageous to the United States and fair to the other party. Ratification of these treaties will resolve issues with neighboring states which could become contentious and difficult if they are left unresolved.

Before I conclude my remarks, I would like to note that much of the work required to establish our boundary position, in general and in these cases, was carried through by Dr. Robert D. Hodgson who passed away last December. Dr. Hodgson was geographer of the Department of State for ten years and a world renowned expert in this field. He was a dedicated American, respected everywhere for his professional integrity as well as his expertise. The United States owes Dr. Hodgson a considerable debt of gratitude for his contribution to the Law of the Sea. The new frontiers we are creating are in significant measure a memorial to his work.

Senator HAGEL. Ms. West, thank you.

Could you tell me what your timeframe is because I don't want to hold you up. What time do you have to leave?

Ms. WEST. I need to leave a little after 3. So I have some time.

Senator HAGEL. Oh, you will be out of here far sooner than that.

If it is OK, Director Clark, I would address a couple of questions to Ms. West and then would ask you to testify. Thank you very much.

Going to your map and some of the comments that you made in your testimony, what is the oil potential now in this area?

Ms. WEST. The area in the gap is a deep water area. It ranges around 10,000 feet, 10,000 to 12,000 feet. Industry now can explore in waters of approximately that depth and can exploit in waters of approximately 5,000 feet.

As I indicated, there are now leases on the line in the western part of the Gulf and there is actual hydrocarbon production within probably 50 to 60 miles of the line. So industry, those who have leases on the line, because of the large investment they need to make, need the certainty of knowing that this, in fact, is the boundary. Those who are interested in having leases in the gap are anxious to have us negotiate the delimitation of the boundary in the gap.

Senator HAGEL. When you talk about the western part, do you mean the Mexican part of this?

Ms. WEST. The line over on the western side there (indicating).

Senator HAGEL. Thank you.

There was some question during the debate when this committee addressed it back in 1980 and in subsequent years about the fisheries on the Pacific side and the Gulf side. I think what I was told is that in 1980, there was a significant fishery area in four different areas, I think on the Pacific side, and none in the Gulf. Has that changed?

Ms. WEST. There are significant fisheries actually in both areas. There is a significant tuna fishery off the Pacific coast in the area of the islands there. There are also significant fisheries in the Gulf, and those fisheries have basically been operating in accordance with the provisional boundary for almost 20 years now.

Senator HAGEL. So the fishing is good?

Ms. WEST. Yes,

Senator HAGEL. In both areas?

Ms. WEST. Yes. There are significant fisheries in both areas.

Senator HAGEL. Thank you.

What would be your assessment of the political impact, if any, of this dragging on for so long without any official action by the U.S., the political impact on our country and on our relationships with Mexico?

Ms. WEST. As we all know, treaties often are ratified because of public interest, that is, are concluded and ratified because of public interest in those treaties.

I think that public interest in this treaty has risen over the years as the commercial interest in the areas affected by the treaty has increased. I think now is certainly a time when the industry is interested in having the treaty go through because there is a very practical reason why they need it now.

Senator HAGEL. Obviously Chairman Murkowski pointed to that rather effectively and has a rather intense interest in this.

Ms. WEST. Yes.

Senator HAGEL. The methodology in determining the boundaries, how did you figure that out?

Ms. WEST. When we originally planned to extend our fisheries jurisdiction back in the mid-1970's, a group was set up to study the methods to conclude boundaries and which methods would be in the U.S. interest.

I think Mr. Feldman, who testified in 1980, sat on that group or chaired the group. The boundaries were basically established based on the principles of international law applied in a manner deemed to be in the overall U.S. interest.

The establishment of equidistant lines is a standard method often used to establish boundaries, and it was determined to be in our overall interest in this case to use that methodology, including islands. That was the method used in this case.

Senator HAGEL. Ms. West, thank you very much. I would say that if you would like to leave, you are certainly welcome to leave. We will hear Director Clark's testimony and talk a little bit about her area. Then we have a panel behind the two of you.

So we would very much welcome you to day, but I know you have other things to do. So you do what you need to do.

Ms. WEST. Thank you very much. I appreciate your accommodation to my schedule, too. Thank you.

Senator HAGEL. Thank you. Director Clark.

STATEMENT OF JAMIE CLARK, DIRECTOR OF FISH AND WILDLIFE SERVICE, DEPARTMENT OF INTERIOR

Ms. CLARK. Thank you and good afternoon, Mr. Chairman. Thank you for the opportunity to testify today concerning the Protocols to amend the 1916 and the 1936 Migratory Bird Conventions with Canada and Mexico. I will summarize my statement today and my entire statement I ask be included in the record.

I would first like to take this opportunity to thank all the members of the negotiating team for their extraordinary work, and that it was, and to offer special thanks to the State Department for their work during the negotiation and transmission of these amendments to the Senate.

Mr. Chairman, the amendments before you today will correct an 80 year old problem involving the use of migratory birds by native people of northern Canada and Alaska. These proposals will buildupon a successful conservation record for migratory birds and they will insure that this resource is managed equitably for all across political boundaries.

I strongly urge you to recommend ratification of these protocols to the full Senate.

The U.S.-Canada Convention was the first of four important bilateral treaties for migratory bird conservation across international boundaries. It established the Federal Government's authority to manage migratory birds and it was driven by concern over the unlimited hunting of migratory birds and the commercial exploitation of this important national resource.

This partnership with Canada began a program to manage waterfowl that is unique in the annals of world wildlife conservation. Subsequent migratory bird treaties between the U.S. and Mexico in

1936, the U.S. and Japan in 1972, and the U.S. and Russia in 1976 continued this conservation tradition.

While these treaties have been effective in protecting migratory bird populations, the treaties with Canada and Mexico did not fully acknowledge the customs and traditions of native people who depend on migratory birds in the spring for subsistence. The bilateral treaties with Japan and Russia recognize the legitimate needs of indigenous people. However, implementation of the provisions in these treaties cannot take place until amendments to the treaties with Canada and Mexico are ratified.

The convention with Canada established a closed season, from March 10 to September 1, with limited exceptions. The treaty with Mexico has similar restrictions for duck hunting. These provisions have long been in conflict with the needs of the native people of northern Canada and Alaska who have traditionally harvested birds in the spring and summer. Over the years, both countries have struggled with the inconsistencies between the treaties and the actual reality of subsistence hunting in the far north.

The Canadian Constitution now recognizes the rights of Canadian aboriginal people to a legal harvest while the treaty prohibits this harvest, creating a conflict that could lead to abrogation of the treaty.

Ratification of these protocols would mean that, for the first time in history, the traditional hunting practices of these indigenous people will be recognized. The changes allow these people, stewards to some of the world's most important waterfowl habitat, to fully participate in the management of migratory bird resources. This will enhance our ability to gather information on the level and pattern of their harvest and data collection and exchange among the United States, Canada, and native people will be increased, expanding the scientific base for migratory bird management.

The subsistence harvest represents only a small portion of the total continental harvest.

The protocols will allow indigenous inhabitants in Alaska to legally harvest migratory birds in designated rural subsistence hunting areas. The Canada Protocol calls for the establishment of management bodies, including native, Federal, and State of Alaska representatives as equals. These management bodies will develop recommendations to the Flyaway Councils and the U.S. Fish and Wildlife Service to shape the regulations governing spring harvest.

Implementation of the amended convention would rely on the current regulatory framework to monitor harvests, allow participation, protect species, and enforce our regulations. Management efforts would continue to be guided by obligations to share harvests among all users. As with the fall season, there would be no unregulated season in the spring.

Any restriction on harvest levels necessary for conservation would be shared equally between users in Alaska and users in other States. The protocol is not intended to create a preference in favor of any group of users in the United States.

In addition to the amendments for spring hunting, the treaty will be modernized in a number of notable areas. The amended Article II provides conservation principles important to the management of this resource. Article III provides for greater consultation among

the responsible agencies and suggests that countries resolve identified problems in a manner consistent with the principles and, if necessary, conclude special arrangements to conserve and protect species of concern.

An example of where this might assist and be very important in conservation is in the over-abundance of snow geese that has caused significant habitat destruction and impacts on other wildlife species. Changes in Articles IV and V are intended to eliminate outdated portions of the treaty and make them consistent with other bilateral treaties.

The protocols represent a major step in furthering the conservation of migratory birds and correct a problem that has troubled us for many years. Properly implemented, the protocols will protect migratory bird populations and provide important harvest information for us to manage in the future.

They will also insure that the interests of conservationists, sport hunters, indigenous people, and all others who value this magnificent resource are met. I urge speedy ratification of these protocols.

Thank you, Mr. Chairman. I would be happy to answer any questions you might have.

[The prepared statement of Ms. Clark follows:]

PREPARED STATEMENT OF JAMIE CLARK

Thank you for the opportunity to testify before you today regarding the Protocols to amend the 1916 and 1936 Migratory Bird Conventions with Canada and Mexico. The proposals before you today will correct a problem that has existed for more than 80 years involving the continental management of migratory birds and the use of these birds by Aboriginal people of northern Canada and Indigenous people of Alaska. We urge you to recommend ratification of this Protocol to the full Senate.

The 1916 Convention between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and United States (hereafter referred to as the U.S. Canada Convention) was the first of four important bilateral treaties for migratory bird conservation across international boundaries. It established the Federal Government's authority to manage migratory birds, and it was driven by concern over the unlimited hunting of migratory birds and the commercial exploitation of this important natural resource. This partnership with Canada began a pro gram to manage waterfowl that is unique in the annals of world wildlife conservation. Subsequent migratory bird treaties between the U.S. and Mexico (1936), the U.S. and Japan (1972) and the U.S. and Russia (1976) continued this conservation tradition.

While these treaties have been effective in protecting migratory bird populations, the 1916 and 1936 treaties with Canada and Mexico have done so without fully acknowledging the customs and traditions of Native people who depend on migratory birds in the spring for subsistence. The more recent bilateral treaties with Japan and Russia do recognize the legitimate subsistence needs of Indigenous people, but the courts in the United States have interpreted the Migratory Bird Treaty Act, which implements the four migratory bird treaties, to require the federal government to follow the most restrictive provisions of the treaties. As a result, the federal government has not been able to implement the subsistence hunting provisions of the Japan and Russia treaties and will not be able to do so until amendments to the treaties with Canada and Mexico are ratified. Today, we ask your support in building upon the extraordinary conservation record made possible by these treaties by recommending to the full Senate that these two Protocols be ratified.

The 1916 Convention with Canada established a "closed season" from March 10 to September 1 during which no hunting is permitted except in extremely limited circumstances. The 1936 Convention with Mexico established a similar March 10 to September 1 "closed season" on duck hunting. Over the years, both countries have struggled with the inconsistencies between the treaties and the reality of migratory waterfowl hunting in the far north. Native people have continued their traditional hunt of migratory birds in the spring and summer and neither government has rigidly enforced the closed season given the realities of life in the arctic and subarctic regions. As a result, discretionary non-enforcement of the prohibition on migratory

waterfowl hunting has led to increased conflicts over migratory bird conservation in Alaska. Urban hunters complain of favoritism and disrespect for the law, and Native hunters feel stigmatized by a law which makes their traditional spring and summer hunts illegal. In addition, waterfowl managers have been handicapped by their inability to collect accurate spring harvest information needed to manage bird populations properly. Thus, the very foundation of the treaties has been threatened and we sought a way to legally correct the deficiencies of the original Migratory Bird Conventions.

The 1916 Convention with Canada also needs to be amended to take into account recent changes in Canadian law and judicial determinations which guarantee a legal harvest. If the Protocol is not ratified by the U.S., Canada may have to abrogate the Treaty. The Canadian constitution guarantees a legal harvest for Canadian Aboriginal people, but the Convention as currently written prohibits this harvest. Abrogation would effectively end 80 years of cooperation between the governments of Canada and the United States in managing these migratory birds. Failure to correct this oversight now will also perpetuate illegal hunting in Alaska, incomplete harvest information, and hard feelings among waterfowl hunters caused by the appearance of unequal enforcement.

To begin the amendment process to the Treaties, the governments sought extensive public comment and review in order to develop their respective negotiating positions. In addition, the International Association of Fish and Wildlife Agencies provided a forum for resource conservation managers, sport hunters and Native people from Alaska and Canada to fully address the concerns and impacts of amending our treaty with Canada. Following these stake holder consultations, the U.S.-Canada Protocol was successfully negotiated by the U.S. negotiation team, lead by former Service Director Mollie Beattie, and made up of representatives of Alaska Natives, state government agencies, the International Association of Fish and Wildlife Agencies, sport hunters from the lower 48 and conservation groups in addition to personnel from the Fish and Wildlife Service and the Department of State. The Protocol was signed December 14, 1995. Similar efforts to amend the Mexico treaty to allow a spring harvest of ducks in Alaska and make it consistent with the Canada Protocol culminated in the signing of a Protocol on May 5, 1997. Both amendments enjoy wide support.

The subsistence harvest in Alaska and Canada is a relatively small portion of the total harvest of migratory birds. Estimates for rural Alaskan communities indicate that 56 percent of bird harvest occurs during the spring to mid-summer period. The number of subsistence hunters in Alaska is estimated to be 10,000-13,000. It is estimated that a little more than 360,000 birds were harvested annually during all seasons for subsistence use in rural Alaska communities during the mid-1980's. Alaska's subsistence harvest represents about 3 percent of all waterfowl shot in North America. Canada's subsistence harvest represents about 8% and 15% of the total annual North American harvests for ducks and geese respectively. Clearly, there is room in the harvest of this migratory wildlife resource for subsistence hunting consistent with sound management.

Ratification of the Protocols will promote more effective management by creating a basis for management and regulation of the spring subsistence harvest throughout Alaska and in Canada. Spring harvest would be acknowledged as a legitimate activity and incorporated into the continental management scheme. The Protocols will allow indigenous inhabitants in Alaska to legally harvest migratory birds only in designated rural subsistence hunting areas. "Indigenous inhabitant" refers primarily to Alaska Natives who are permanent residents of villages where subsistence hunting of migratory birds is customary and traditional. The term also includes permanent resident non-natives of these villages who have legitimate subsistence hunting needs.

The Protocols will permit birds to be taken only for food. The Protocols do provide for the sale, in strictly limited situations, of authentic articles of handicraft using non-edible by-products of birds.

The Canada Protocol calls for the establishment of management bodies to ensure a meaningful role for Indigenous inhabitants of Alaska in the conservation of migratory birds. These management bodies will include Native, Federal, and State of Alaska representatives as equals, and will develop recommendations to be submitted to the Flyway Councils and the Fish and Wildlife Service. The Protocol provides a mechanism for allowing management bodies to shape the face of the regulations for spring harvest. The intent is to bring practice into conformance with the way migratory birds are regulated at other times of the year. It is our intent that management and regulation of the fall harvest of birds will continue to operate under the Flyway Council System currently in place for sport harvest.

With the amended treaties, a traditional subsistence hunt can be managed so as not to cause significant increases in the take of species of birds relative to their continental population sizes. Waterfowl numbers will continue to experience annual fluctuations in response to changing conditions. Controlling harvest by regulations is the only practical way waterfowl managers have found to compensate for these population changes.

The ratification of these Protocols will improve conservation of the migratory bird resource by recognizing and legitimizing the traditional subsistence uses of migratory birds and by bringing subsistence hunters into the management scheme. The changes will allow Native people to fully participate in the management of the migratory bird resource and will enhance our information on the level and pattern of the harvest. Complete information on the harvest will help set standards for migratory birds and continue the partnership of continental management of the resource shared by many people. Under the amendments, exchanges and data collection among the United States, Canada, and Native people will be increased, expanding the scientific base for migratory bird management.

The inclusion of subsistence hunters in management will lead to improved cooperation and to improved understanding of subsistence harvest. Implementation of the amended Conventions will rely upon the regulatory framework currently available to monitor harvest, control participation, protect species and enforce regulations. Management efforts would continue to be guided by obligations to share harvests between countries but would probably attach greater importance to meeting subsistence requirements than in the past. As with the fall season, there would be no open season in the spring without regulations. Any restriction in harvest levels necessary for conservation will be shared equally between users in Alaska and users in other states. The Protocol is not intended to create a preference in favor of any group of users in the United States.

The point I want to emphasize is, all user groups need to be a part of the management scheme, for the exchange of information; for protection of populations from over harvest; and for the setting of equitable opportunities. They must share in the resource's use as well. The reality of subsistence harvest in the spring and summer, not only in Alaska but Canada as well, adds to the complexity of management in North America. It is important that all users are brought into the system of cooperative effort we have forged among the provinces, states, and federal agencies to improve conservation programs.

In addition to the amendments for spring hunting, the Protocol modernizes the U.S.-Canadian Migratory Bird Treaty in a number of notable areas. The amended Article 11 provides conservation principles important to the management of this resource. Article III provides for greater consultation among the responsible agencies and suggests the countries resolve identified problems in a manner consistent with the principles and, if necessary, conclude special arrangements to conserve and protect species of concern. An example of where this might assist in conservation is the overabundance of snow geese that has caused significant habitat destruction and impacts on other wildlife species. Changes in Article IV and V are intended to eliminate outdated portions of the treaty and make them consistent with the other bilateral treaties.

In summary, I urge speedy ratification of these Protocols so that we are able to broaden the continental management framework to include subsistence harvest of migratory birds in the spring and summer. The Protocols will recognize the validity of Indigenous subsistence harvest, manage that harvest in accordance with sound conservation principles, and encourage indigenous inhabitants to participate in management.

Thank you for the opportunity to address the Committee.

Senator HAGEL. Director Clark, thank you very much.

I have a couple of questions on the protocol. It is my understanding that, obviously, it will have some effects, as you have suggested, on sport hunting. Would you talk a little bit about what effects this will have on sport hunting in Alaska?

Ms. CLARK. We actually think it will have minimal to no effects on sport hunting in Alaska at all. The charts do help somewhat. But the actual subsistence hunt will not compromise sport hunting.

Senator HAGEL. Do the conservation principles outlined in the protocol significantly impact sport hunting, do you think, in the lower 48 States?

Ms. CLARK. No, Mr. Chairman. They do not.

This really is positive in a number of ways. It allows for the information or the data that we can gather during the subsistence hunts to help us in managing the overall migratory bird resource. But we do not expect any—we expect limited to no impact on sport hunting in the lower 48, either.

Senator HAGEL. On the issue of subsistence hunting, my understanding is that there are different obligations for Alaska and Canada. Is that correct?

Ms. CLARK. Well, the Canadian Constitution—let's see if I can get this right—there are different—I might have to ask for some help on this. But I would say this protocol acknowledges the independent subsistence use of the aboriginal peoples of northern Canada and the natives of Alaska according to the subsistence use in each area.

Senator HAGEL. And that you think is a good, fair way to approach it?

Ms. CLARK. Yes, Mr. Chairman. In fact, the negotiating team, as one of their over-arching principles, acknowledged the fairness to both people.

Senator HAGEL. Thank you.

I may have some other questions or my colleagues may have, Director Clark, on that issue and others in the protocol. We may want to send those over for further clarification.

But unless you have anything you would like to add, again, I am grateful for your time. You have helped us and we will move this along.

Ms. CLARK. Great. Thank you, Mr. Chairman. I appreciate it.

Senator HAGEL. Ms. Clark, thank you.

Could I ask now for the next panel to come forward. They are Mr. Myron Naneng and Mr. Roger Holmes.

Mr. Naneng, welcome.

Mr. NANENG. Thank you.

Senator HAGEL. Excuse me. I see your name plates have been turned around.

Mr. NANENG. Oh, you were calling him first, then?

Senator HAGEL. Well, I don't know if that offends either of you, but we will give you the "Mr. Chairman" nameplate.

Now, Mr. Naneng, would you like to begin, and thank you.

STATEMENT OF MYRON NANENG, SR., PRESIDENT, ASSOCIATION OF VILLAGE PRESIDENTS, VICE CHAIR, NATIVE MIGRATORY BIRDS WORKING GROUP, ANCHORAGE, ALASKA

Mr. NANENG. Yes. Mr. Chairman and members of the committee, on behalf of thousands of Alaska natives, I sincerely thank you for the invitation to address you today.

My name is Myron Naneng, Sr. I am a Vice Chairman of the Alaska Native Migratory Bird Working Group, a member of the U.S. negotiating team for the 1995 Protocol with Canada, and I am a Yup-ik Eskimo and a subsistence hunter. My Yup-ik name is "Che-sak," which, literally translated by some of my relatives, is "the bug."

I want to begin by expressing our deepest appreciation for the leadership and commitment of Mollie Beattie, demonstrated as head of the U.S. negotiating team. She showed an uncommon un-

derstanding of the nutritional and cultural aspects of the native subsistence way of life, and her actions showed her confidence in native people as responsible caretakers and managers of their subsistence resources. We wish that she had been here today to share the hearing with us.

I also want to express our appreciation to Senators Murkowski and Stevens, Lieutenant Governor Ulmer, and others in her administration, and Roger Holmes and others in the U.S. negotiating team. It was rewarding to be a part of the consensus that the team achieved because of their commitment to conservation and to meeting the customary and traditional subsistence needs of the indigenous inhabitants of Alaska. This consensus is expressed in the Protocol and the Protocol Interpretation of the U.S. delegation.

I want to emphasize three things in my testimony. Number one is the vital protections that the Canadian and Mexican Protocols provide for the Alaska native way of life.

Number two is Alaska natives' strong commitment to the conservation of migratory birds.

Number three is the essential role that the management bodies created in the Canadian Protocol play in achieving the goals of the Migratory Bird Conventions.

There is no way to separate native customary and traditional harvest of migratory birds from who we are as a culture and as a people. The return of the migratory birds in the spring is greeted with the same kind of joy and anticipation as the return of warm, daylight, and open water.

The migratory bird harvest is an essential part of our customary harvest patterns, developed through thousands of years of living with resources in Alaska. The migratory bird harvest provides fresh meat in the spring, when few other wildlife species are available. We also harvest migratory birds at other times of the year when they are available and when necessary.

Their eggs, harvested consistent with our responsibility for conservation, are an important part of our diet. The harvest is shared with our families and tribes, and there are important cultural values in the customary and traditional harvest practices.

I am also a drummer of our dance group, and the customary and traditional migratory bird harvest is a theme of many of our songs and dances that have been passed on from generation to generation. In fact, some of the traditional dance fans that are often used come from the migratory birds.

The Protocol recognizes the importance of migratory birds as an essential part of our way of life by providing for both nutritional needs and other essential needs and by protecting customary and traditional uses.

Native Alaskans are vitally concerned with the conservation of migratory birds. Laws and Protocols do nothing to protect anyone's use of birds unless there are healthy populations. We have demonstrated our commitment to conservation through, among other things, the work of the Waterfowl Conservation Committee with the U.S. Fish and Wildlife Service to protect four species of migratory birds and their nesting habitats in Western Alaska. I have worked closely with the committee as its chairman, and all agree that, since the work began in 1984, meaningful and successful con-

servation measures have been taken through the cooperative efforts of these tribal leaders, Alaska native subsistence hunters, and the State, as well as the Service.

The local traditional knowledge of native subsistence users has played a major role in these successful conservation efforts.

Time and experience have repeatedly demonstrated that meaningful implementation of subsistence harvest and conservation can only be achieved through a management system that incorporates an effective role for the indigenous users of the resource. The Canadian Protocol explicitly provides for the establishment of management bodies that will provide native users, through their village councils, an equal place at the management table and full participation and involvement on all management issues. Alaska natives view this element of the Protocol as essential and look forward to being responsible and cooperative management partners.

With that, I would like to thank you, Mr. Chairman. I would be happy to answer any questions.

Senator HAGEL. Mr. Naneng, thank you. Thank you for coming to testify. We are grateful. It is important that we focus on your concerns. These are historical concerns and it is important that we not lose that heritage and that rich culture. So we are grateful that you would take the time and make the effort to come and share with us your thoughts.

Mr. NANENG. Thank you. Mr. Chairman, I hope that my testimony will be incorporated as part of the record.

Senator HAGEL. Yes, sir, it will be in the record as will all of the testimony of all of our witnesses. Thank you. Mr. Holmes.

STATEMENT OF ROGER HOLMES, DIRECTOR, DIVISION OF FISH AND WILDLIFE, MINNESOTA DEPARTMENT OF NATIONAL RESOURCES

Mr. HOLMES. Thank you very much, Mr. Chairman. I, too, appreciate the opportunity to testify.

First of all, my name is Roger Holmes. I am the Director of the Division of Fish and Wildlife for the State of Minnesota. I also chair the Migratory Wildlife Committee for the International Association of Fish and Wildlife Agencies. I also chaired the Ad Hoc Committee on the Protocol. It was a committee of 26 people from Canada and the U.S. from inside and outside of the Canadian and U.S. Governments and State and provincial governments that held 7 meetings over a 2 year period between Washington, DC and Anchorage Alaska and 5 other places in between. Those meetings were open to the public. We had lots of discussion and put together the original and the first, I guess you would call them, working papers that started all of this.

As I said, I am here representing the International Association. This association was founded in 1902 and, as far as its government membership is concerned, it involves the fish and wildlife agencies of all 50 States.

I would also point out that, while the primary authority and responsibility for managing migratory wildlife resides in the Federal Government, residual authority and responsibility continue to reside with the several States. Therefore, State agency members have a governmental interest in the subject of today's hearing.

The International Association supports the pending amendments to the 1916 convention because they are intended, for the first time, to provide for regulation of the traditional spring harvest of migratory birds, principally migratory waterfowl, and their eggs in remote areas of Alaska and in Canada.

As a member of the U.S. team negotiating the 1995 Protocol, I have been closely involved in the process of formulating the pending amendments. Spring harvest in remote areas of Alaska and Canada has occurred for centuries. But since 1918, it has taken place in violation of the terms of the 1916 Convention, which prescribes a closed season between March 10 and September 1, which you have already heard about.

It is during the closed season that migratory waterfowl are present in these latitudes, presenting an untenable situation for northern native people who rely upon this resource for fresh protein. It is time for this inequitable situation to be addressed so that the spring harvest in these areas will no longer occur outside the terms of the convention and outside the regulatory framework established by the Secretary of Interior.

The 1995 Protocol amendments will bring this harvest within the regime established by the parties to the convention and permit wildlife managers, in cooperation with native communities in Alaska, to regulate this international resource.

In Canada, it is our understanding that aboriginal groups are prepared to negotiate migratory bird management agreements with the Federal and provincial governments. The committee will remember that in 1979, a protocol with a similar purpose was signed by representatives of the United States and Canada and transmitted to this committee for consideration in the following year.

The 1979 protocol failed to make clear how or even if subsistence hunting would be regulated and led to calls for assurance that the migratory waterfowl resource would not suffer a loss of reproductive potential by legitimizing hunting during the breeding season or in general be depleted were the protocol ratified.

Indeed, this International Association resolved formally both in 1979 and again in 1987 to oppose advice and consent to ratification unless and until necessary assurances were provided.

Mr. Chairman, our current support is predicated on the authoritative executive branch representations set forth in the May 20, 1996 letter of submittal of the Secretary of State concerning both the meaning of the 1995 protocol and the manner in which the executive branch intends to implement an amended convention. Those representations include the exchange of notes at signing and the following five critical points.

One: nothing in the protocol is intended to establish in the United States any entitlement or right in any individual to harvest migratory birds.

Two: nothing in the protocol is intended to establish in the United States a preference in favor of any individual or group of users.

Three: subsistence harvest seasons in the United States shall be established by the Secretary so as to provide for the preservation and maintenance of stocks of migratory birds.

Four: it is not the intention of the parties to the protocol to authorize the taking of migratory birds or the collection of eggs or

nests for commercial purposes except in limited circumstances, specified in the letter of submitted dated May 20, 1996, of the Secretary of State.

Five: any restrictions in the United States on harvest levels of migratory birds necessary for conservation shall be shared equitably between users in Alaska and users in other States taking into account nutritional needs.

Accordingly, the International Association urges this committee to recommend advice and consent to ratification of the 1995 protocol only on the basis of the executive branch assurances contained in the transmittal documents.

There is an additional item to which we wish to draw the committee's attention. The two governments affirm that it is not the intent of the 1995 protocol to cause significant increases in the take of species of migratory birds relative to their continental population sizes. The Fish and Wildlife Service has concluded that the Alaska spring and summer subsistence harvest of migratory birds would not increase significantly if legalization occurs.

Nevertheless, neither the U.S. Fish and Wildlife Service nor the Canadian Wildlife Service has accurate information on the existing subsistence harvest. We agree with the Fish and Wildlife Service that it would be important to determine as accurately as possible current levels of subsistence harvest. Without a better handle on the size of the spring-summer harvest in the territories of both parties, assurances that harvest increases will not be significant will not be determinable.

We believe monitoring of the spring-summer harvest is essential and urge this committee in its report to underscore the necessity of adequate funding requests for this purpose by the administration and favorable consideration of such requests by the appropriate committees of Congress.

In conclusion, Mr. Chairman, considering the executive branch assurances that are provided, we believe the proposed amendments will enhance the abilities of the parties to conserve and manage the migratory bird resources of North America.

That concludes my testimony. I would be pleased to try to answer any questions.

[The prepared statement of Mr. Holmes follows:]

PREPARED STATEMENT OF ROGER HOLMES

Thank you for the opportunity to share with the Committee the views of the International Association of Fish and Wildlife Agencies on the Protocol Amending the 1916 Convention for the protection of Migratory Birds, signed at Washington on December 14, 1995. I am Roger Holmes, Director of the Minnesota Division of Fish and Wildlife, and Chairman of the Migratory Wildlife Committee of the International Association of Fish and Wildlife Agencies.

The International Association, founded in 1902, is a quasi-governmental organization of public agencies charged with protection and management of North America's fish and wildlife resources. The Association, whose government members include the fish and wildlife agencies of all fifty States, has been a key instrumentality for nearly a century in promoting sound resource management and strengthening federal, state and provincial cooperation in this area. It was a 1946 proposal of this Association, for example, which led to creation by the U.S. Fish and Wildlife Service the following year of Flyway Councils in each of the four well-defined routes in the seasonal travels of migratory birds.

While primary authority and responsibility for protection and management of migratory birds reside in the federal government, residual authority and responsibility continue to reside in the several States, Carey v. *South Dakota,* 250 U.S. 118 (1919),

and thus the state agency members of the International Association have a governmental interest in the subject of today's hearing.

The International Association supports the pending amendments to the 1916 Convention because they are intended, for the first time, to provide for regulation of the traditional spring harvest of migratory birds, principally migratory waterfowl, and their eggs in remote areas of Alaska and Canada.

As a member of the U.S. team negotiating the 1995 Protocol, I have been closely involved in the process of formulating the pending amendments. Spring harvest in remote areas of Alaska and Canada has occurred for centuries but since 1918 has taken place in violation of the terms of the 1916 Convention which prescribes a closed season between March 10 and September 1 of each year. It is during the closed season that migratory waterfowl are present in these latitudes and precisely during the open season when they have migrated south, presenting an untenable situation for northern native people who rely upon this resource for nutritional sustenance. It is time this inequitable situation be addressed so that the spring harvest in these areas will no longer occur outside the terms of the Convention and outside the regulatory framework established by the Secretary of the Interior.

The 1995 Protocol amendments will bring this harvest within the regime established by the parties to the Convention and permit wildlife managers, in cooperation with native communities in Alaska, to regulate this international resource. In Canada, it is our understanding that aboriginal groups are prepared to negotiate migratory bird management agreements with the federal and provincial governments.

The Committee will remember that, in 1979, a protocol with a similar purpose was signed by representatives of the United States and Canada and transmitted to this Committee the following year for consideration. At that time questions were raised by the International Association and by national conservation organizations as to the meaning and significance of the changes to the 1916 Migratory Bird Convention, an agreement many of us view as one of the most, if not the most, successful international conservation agreements ever undertaken.

The 1979 Protocol failed to make clear how or even if subsistence hunting would be regulated and led to calls for assurance that the migratory waterfowl resource would not suffer a loss of reproductive potential by legitimizing hunting during the breeding season or in general be depleted were the Protocol ratified. Indeed, the International Association resolved formally, both in 1979 and again in 1987, to oppose advice and consent to ratification unless and until necessary assurances were provided. We note that the Protocol signed on January 30, 1979, was formally withdrawn by the President in his transmittal letter to the Senate dated August 2, 1996.

Mr. Chairman, the International Association supports ratification of the revised Protocol as, we understand, do many of the principal conservation organizations, waterfowl hunting organizations, and wildlife managers. Our support is predicated on the authoritative Executive Branch representations, set forth in the May 20, 1996, letter of submittal of the Secretary of State, concerning both the meaning of the 1995 Protocol and the manner in which the Executive Branch intends to implement an amended Convention. Those representations include the exchange of notes at signing making explicit the understanding of the governments of the United States and of Canada that all of the activities newly allowed by Article 11 of the Protocol are to be conducted in accord with the conservation principles also articulated in Article 11. Executive Branch representations also include these critical items:

- Nothing in the Protocol is intended to establish in the United States any entitlement or right in any individual to harvest migratory birds or to collect their eggs except as permitted by regulation of the Secretary of the Interior,
- Nothing in the Protocol is intended to establish in the United States a preference in favor of any individual or group of users over any other individual or group of users;
- Subsistence harvest seasons in the United States shall be established by the Secretary so as to provide for the preservation and maintenance of stocks of migratory birds;
- It is not the intention of the parties to the Protocol to authorize the taking of migratory birds or the collection of eggs or nests for commercial purposes except in the limited circumstances specified in the letter of submittal dated May 20, 1996, of the Secretary of State; and
- Any restrictions in the United States on harvest levels of migratory birds necessary for conservation shall be shared equitably between users in Alaska and users in other States taking into account nutritional needs.

The absence of such assurances caused the International Association to oppose the 1979 Protocol and our support of the 1995 Protocol, in turn, is predicated on the

fact that these assurances now exist. Accordingly, the International Association urges this Committee to recommend advice and consent to ratification of the 1995 Protocol only on the basis of the Executive Branch assurances contained in the transmittal documents. The Protocol Agreement with Mexico, signed at Mexico City on May 5, 1997, essentially is in aid of the agreement with Canada and the Association also supports that agreement with the Executive Branch assurances.

There is an additional item to which we wish to draw the Committee's attention. The two governments affirm in the "Whereas" provisions that "it is not the intent of [the 1995] Protocol to cause significant increases in the take of species of migratory birds relative to their continental population sizes." The Fish and Wildlife Service has concluded that the Alaska spring and summer subsistence harvest of migratory birds "would not increase significantly if legalization occurs." Environmental Assessment dated March 7, 1994, at 31. Nevertheless, neither FWS nor the Canadian Wildlife Service has accurate information on the existing subsistence harvest. We agree with the FWS assertion in its March 1994 environmental assessment that, if the 1916 Convention is amended, "it would first be important to determine as accurately as possible current levels of subsistence harvest." (p. 33) Without a better handle on the size of the spring/summer harvest in the territories of both parties, assurances that harvest increases will not be significant will not be determinable. We believe monitoring of the spring/summer harvest is essential and urge this Committee in its report to underscore the necessity of adequate funding requests for this purpose by the administration and favorable consideration of such requests by the appropriate committees of Congress.

In conclusion, Mr. Chairman, the International Association supports ratification of these amendments to the Migratory Bird Convention. With the Executive Branch assurances that are provided, we believe the proposed amendments will enhance the ability of the parties to conserve and manage the migratory bird resource of North America.

Senator HAGEL. To both of you, again, we are grateful. Thank you for your efforts.

As you heard me say to Chairman Murkowski and Lieutenant Governor Ulmer, we will move expeditiously. Chairman Helms wants to move this through the full committee. I believe the next full committee meeting is October 8. We should be able to get it through the full committee and then on to the Senate. So I would hope that we could finish this before the recess, whenever that is, but certainly this year.

I have no questions. Your testimony will be included in the record.

Thank you very, very much.

The committee is adjourned.

[Whereupon, at 3 p.m., the committee adjourned, subject to the call of the Chair.]

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