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SENATE

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PROTOCOL WITH MEXICO AMENDING CONVENTION
FOR PROTECTION OF MIGRATORY BIRDS AND GAME
MAMMALS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

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



SEPTEMBER 15, 1997.—Protocol was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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WASHINGTON : 1997

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 15, 1997.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith 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 ("the Mexico Protocol"). I transmit also, for the information of the Senate, the report of the Department of State with respect to the Mexico Protocol.

In concert with a similar Protocol between the Governments of the United States and Canada, the Mexico Protocol represents a considerable achievement for the United States in conserving migratory birds and balancing the interests of conservationists, sports hunters, and indigenous people. The Protocol should further enhance the management of and protection of this important resource for the benefit of all users.

The Mexico Protocol is particularly important because it will permit the full implementation of the Protocol Amending the 1916 Convention for the Protection of Migratory Birds in Canada and the United States ("the Canada Protocol") that is pending before the Senate at this time. The Canada Protocol is an important agreement that addresses the management of a spring/summer subsistence hunt of waterfowl in communities in Alaska and northern Canada. The Mexico Protocol conforms the Canadian and Mexican migratory bird conventions in a manner that will permit a legal and regulated spring/summer subsistence hunt in Canada and the United States.

I recommend that the Senate give early and favorable consideration to the Protocol and give its advice and consent to ratification.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

Washington, August 27, 1997.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with the view to its transmission to the Senate for advice and consent to ratification, 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, May 5, 1997 (“the Mexico Protocol”).

The Convention for the Protection of Migratory Birds and Game Mammals, signed at Mexico City on February 7, 1936, (“the 1936 Convention”), mandates “a close season for wild ducks from the tenth of March to the first of September.”

The goals of the Mexico Protocol are to bring the 1936 Convention into conformity with practice, as indigenous people in Alaska have continued their traditional hunt of these birds in the spring and summer for subsistence and other related purposes despite the prohibition in the 1936 Convention, and to permit full application of the Protocol between the Government of the United States of America and the Government of Canada Amending the 1916 Convention Between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States, signed at Washington on December 14, 1995 (“the Canada Protocol”). Prompt ratification is of the essence to secure conservation efforts of the United States and Mexico.

A detailed analysis of the Mexico Protocol follows.

THE MEXICO PROTOCOL

Article I of the Mexico Protocol amends Article II(D) of the 1936 Convention to permit, in the State of Alaska, the harvest of wild ducks and their eggs by indigenous inhabitants during the period from the tenth of March to the first of September for their own nutritional and other essential needs. This is necessary to provide domestic legal authority for this spring/summer hunt in Alaska, where the inhabitants are generally unable to participate in the customary autumn hunt, by which time in the year many of the game birds have departed from the state. In Alaska, the spring harvest of waterfowl and their eggs is a long-practiced custom of the indigenous population that provides important nutritional and cultural benefits to the indigenous populace.

Article II of the Mexico Protocol establishes that the Protocol will enter into force on the date the United States and Mexico exchange instruments of ratification and that the Protocol, which will be con-

sidered an integral part of the 1936 Convention, will continue in force for the duration of the Convention.

DOMESTIC IMPLEMENTATION

An existing statute (16 U.S.C. 712) authorizes the Department of the Interior to promulgate regulations to implement migratory bird treaties with a number of countries, including Mexico. No additional statutory authority is required to implement the Mexico Protocol.

The term "indigenous inhabitants" in Article I of the Mexico Protocol 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. Subsistence harvest areas encompass the customary and traditional hunting areas of villages with a customary and traditional pattern of migratory bird harvest. These areas are to be designated through a deliberative regulatory process, which would include the management bodies discussed below and employ the best available information on nutritional and cultural needs, customary and traditional use, and other pertinent factors.

Once regulations are established, most village areas within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and areas north and west of the Alaska Range would qualify as subsistence harvest areas. Areas that would generally not qualify for a spring or summer harvest include the Anchorage, Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area and southeast Alaska. The list of exceptions does not mean that individual communities within areas that are generally excluded cannot meet the test for designation as subsistence harvest areas. For example, data indicate that there is customary and traditional use of gull eggs by indigenous inhabitants in some villages in southeast Alaska; these villages could be included for this limited purpose even though indigenous inhabitants in southeast Alaska generally would be excluded from the spring/summer harvest.

In recognition of their need to assist their immediate families in meeting their nutritional and other essential needs, or for the traditional teaching of cultural knowledge, residents of excluded areas in Alaska may be invited to participate in the customary spring and summer migratory bird harvest within the designated subsistence harvest areas around the villages in which their immediate families have membership. Such participation would require permission of the village council and an appropriate permit issued through the management body implementing the Protocol. "Immediate family" includes children, parents, grandparents, and siblings.

Harvest levels of migratory birds in the United States may vary for all users, commensurate with the size of the migratory bird populations. Any restrictions in 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 Mexico Protocol is not intended to create a pref-

erence in favor of any group of users in the United States or to modify any preference that may exist.

CONSISTENCY WITH OTHER MIGRATORY BIRD CONVENTIONS

The Mexico Protocol is needed in order for the United States to be able to implement the Canada Protocol. That Protocol, which similarly addresses the issue of the spring and summer hunt, is pending before the Senate. The spring/summer harvest provisions in the Canada Protocol as they apply to wild ducks cannot be implemented by the United States until the 1936 U.S.-Mexico Convention permits such a harvest of wild ducks. As a matter of U.S. domestic law, the Department of Interior may not implement a provision of one convention that allows a hunt prohibited by the provision of another, since U.S. courts have held that the statute implementing the various migratory bird conventions should be interpreted to require application of the most restrictive convention in the case of conflict. *See Alaska Fish & Wildlife Fed'n & Outdoor Council, Inc. v. Dunkle*, 829 F. 2d 933, 941 (9th Cir. 1987), *cert. den.*, 485 U.S. 988 (1988).

It will not be necessary to amend additional conventions in order to implement the Mexico Protocol or the Canada Protocol.

This Protocol represents a major step forward in the conservation and management of migratory birds on a sustainable basis. Properly implemented, it will improve the health of the North American migratory bird population and protect the interests of conservationists, sports hunters, indigenous people and all others who value this important resource.

Accordingly, I recommend that the Mexico Protocol be transmitted to the Senate for advice and consent to ratification.

Respectfully submitted,

MADELEINE ALBRIGHT.

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

The Government of the United States of America and the Government of the United Mexican States, hereinafter the Parties,

REAFFIRMING their commitment to achieving the purposes and objectives of the Convention between the United States of America and the United Mexican States for the Protection of Migratory Birds and Game Mammals, signed at Mexico City February 7, 1936, as supplemented by the agreement effected by exchange of notes at Mexico March 10, 1972, hereinafter "the Convention",

ENCOURAGED by the desire to amend the convention to enable effective actions to be taken to improve the conservation of migratory birds;

COMMITTED to the long-term conservation of shared species of migratory birds for their nutritional, social, cultural, spiritual, ecological, economic, and aesthetic values through a more comprehensive international framework that involves working cooperatively to manage their populations;

- 2 -

ACKNOWLEDGING the desire of the United States to provide for the customary and traditional taking of certain species of migratory birds and their eggs for subsistence use by indigenous inhabitants of the State of Alaska in designated subsistence areas;

HAVE AGREED as follows:

ARTICLE I

Article II (D) of the Convention shall be replaced by the following:

- D) The establishment of a closed season for wild ducks from the tenth of March to the first of September, except in the state of Alaska, United States of America, where wild ducks and their eggs may be harvested by the indigenous inhabitants thereof provided that seasons and other regulations implementing the non-wasteful taking of wild ducks and their eggs in such cases shall be consistent with the customary and traditional uses by such indigenous inhabitants for their own nutritional and other essential needs.

ARTICLE II

1. This Protocol shall enter into force on the date the Parties exchange instruments of ratification.
2. This Protocol shall continue in force for the duration of the Convention and shall be considered an integral part of the Convention.

- 3 -

IN WITNESS WHEREOF the undersigned representatives, being duly authorized by their respective Governments, have signed the present Protocol.

DONE at Mexico City, this 5th day of May, 1997, in duplicate, in the English and Spanish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF
THE UNITED MEXICAN STATES



BRUCE BABBITT

Secretary of the Interior



JULIA CARABIAS LILLO

Secretary of Environment, Natural
Resources and Fisheries