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Canada

*1 PROTOCOL AMENDING THE 1916 CONVENTION FOR THE PROTECTION OF
MIGRATORY
BIRDS

Signed December 5, 1995
Read the first time in the Senate August 2, 1996

LETTER OF TRANSMITTAL

THE WHITE HOUSE, August 2, 1996.

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 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.

The Protocol, which is discussed in more detail in the accompanying report of the Secretary of State, represents a considerable achievement for the United States in conserving migratory birds and balancing the interests of conservationists, sports hunters, and indigenous people. If ratified and properly implemented, the Protocol should further enhance the management and protection of this important resource for the benefit of all users.

The Protocol would replace a protocol with a similar purpose, which was signed January 30, 1979, (Executive W, 96th Cong., 2nd Sess. (1980)), and which I, therefore, desire to withdraw from the Senate.

I recommend that the Senate give early and favorable consideration to the Protocol, with exchange of notes, and give its advice and consent to ratification.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 20, 1996.

The President,
The White House.

I have the honor to submit to you, with the view to its transmission to the Senate for advice and consent to ratification, a 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.

The 1916 Convention for the Protection of Migratory Birds in Canada and the United States ("the Convention") presently does not permit hunting of the migratory species covered under the Convention from March 10 to September 1 except in extremely limited circumstances. Despite this prohibition, aboriginal people of Canada and indigenous people in Alaska have continued their traditional hunt of these birds in the spring and summer for subsistence and other related purposes. In the United States, the prohibition against this traditional hunt has not been actively enforced. In Canada, as a result of recent constitutional guarantees and judicial decisions, the Canadian Federal Government has recognized a right in aboriginal people to this traditional hunt, and the prohibition has not been enforced for this reason.

The 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.

This Protocol would replace a protocol with a similar purpose, which was signed in 1979, transmitted to the Senate with a message from the President dated November 24, 1980, and which is now pending in the Committee on foreign Relations. (Executive W, 96th Cong., 2nd Sess. (1980).)

A detailed analysis of the Protocol follows.

THE PROTOCOL

The Preamble to the Protocol states as its goals allowing a traditional subsistence hunt and improving conservation of migratory birds by allowing for the effective regulation of this hunt. In addition, the Preamble notes that, by sanctioning a traditional subsistence hunt, the Parties do not intend to cause significant increases in the take of species of migratory birds relative to their continental population sizes, compared to the take that is occurring at present. Any such increase in take as a result of the types of hunting provided for in the Protocol would thus be inconsistent with the Convention.

Article I of the Protocol amends Article I of the Convention to modernize the taxonomy and names of the birds subject to the Convention. Species were not added to our subtracted from the list,

however; regulation of birds not included in the original Convention is now within the purview of the Canadian provinces, and any such change to the list would have required time-consuming negotiations between the Canadian federal government and all of the provinces and territories, with uncertain results.

Article II of the Protocol substantially rewrites Article II of the Convention to include new subsistence hunt provisions. An introductory paragraph outlines the conservation principles that apply to all management of migratory birds under the Convention. In addition, this paragraph lists a variety of means to achieve these conservation principles.

The United States and Canada exchanged diplomatic notes at the time of the Protocol signing, in which both governments confirmed that the conservation principles set forth in Article II apply to all activities under Article II. The United States considered this exchange of notes desirable in light of the language of Article II(4)(a), which contains the phrase "subject to existing aboriginal and treaty rights of the Aboriginal peoples of Canada under section 35 of the Constitution Act, 1982, and the regulatory and conservation regimes defined in the relevant treaties, land claims agreements, self-government agreements, and co-management agreements with Aboriginal peoples of Canada...." This phrase was sought by Canada in order to recognize Canadian court decisions that affirm certain rights of aboriginal people to exploit natural resources. However, as the exchange of notes makes clear, this phrase does not override the conservation principles set forth earlier in Article II.

Paragraphs 1, 2, and 3 of Article II of the Protocol continue the basic closed and open seasons for hunting contained in the original Convention, with a closed season between March 10 and September 1. The open season remains limited to three and one half months, which the Parties agreed would be interpreted to mean 107 days. The closed season for migratory insectivorous and nongame birds is maintained. Exceptions to these closed seasons may be made for scientific, educational or other specific purposes consistent with the conservation principles of the Convention. This language is found in similar conventions between the United States and Japan (TIAS 7990; 25 UST 3329) (hereinafter "the Japan Convention") and the successor States to the former U.S.S.R. (TIAS 9073; 29 UST 4647) (hereinafter the "U.S.S.R. Convention"), respectively.

The traditional subsistence hunt is provided for as an exception to the closed season and is dealt with in paragraph 4, with different provisions for the hunt in Canada and the United States reflecting different domestic legal regimes and practices. Paragraph 4(a) recognizes that in Canada, aboriginal people have a right to harvest birds under the Canadian Constitution, treaties between aboriginal people and the Government, and other provisions of Canadian law, and permits Canada to allow such a harvest as a matter of international law. Paragraph 4(b) authorizes the United States to allow such a harvest only in Alaska.

Under the terms of paragraph 4(a), Canada may allow its aboriginal people to harvest birds, their eggs, and down in any season. In addition, down and non-edible by-products of the traditional harvest may be sold, but only within or between aboriginal communities. Finally, Canada can allow two other small groups of people (estimated to be only a couple of hundred hunters) to harvest birds and eggs outside of the normal open season. The first are non-aboriginal residents of the aboriginal communities who are permitted to hunt by those communities. The second are qualified permanent residents of Yukon and the Northwest Territories who are allowed an earlier fall season to hunt.

Paragraph 4(b) concerns subsistence hunting in Alaska by "indigenous inhabitants of Alaska" (understood for the purposes of the Protocol as meaning Alaska Natives and permanent resident non-natives with legitimate subsistence hunting needs living in designated subsistence hunting areas). This paragraph authorizes the United States to establish a subsistence harvest of birds, their eggs and down in any season. Sale of these items is not permitted, except for limited sale of non-edible by-products of birds taken for nutritional purposes incorporated into authentic articles of handicraft. The harvest of such items must be consistent with "customary and traditional uses" of indigenous inhabitants for their "nutritional and other essential needs."

Paragraph 4(b)(ii) states that any subsistence harvest in Alaska will be managed through domestic management bodies that provide indigenous inhabitants a significant voice.

Additional information about the U.S. domestic implementation of Article II(4)(b) can be found below, under the heading "Domestic Implementation."

The final section of Article II permits a murre hunt in the Province of Newfoundland and Labrador. This traditional hunt was not provided for by the Convention because Newfoundland and Labrador were not part of Canada in 1916.

Paragraph 3 of Article II of the original Convention, which provided for a limited subsistence hunt by "Eskimos and Indians," has been subsumed by this new Article II.

The Protocol does not create any private rights of action under U.S. law, and, in particular, does not create a right of persons to harvest migratory birds and their eggs. Similarly, Canada does not regard the agreement as creating a right in aboriginal people of Canada to harvest birds; this right is implemented by the Canadian Constitution and relevant agreements between the Government of Canada and its aboriginal groups.

Article III of the Protocol replaces Article III of the Convention, which establish a 10-year closed season for certain species and is no longer operative. The new Article III sets out a formal consultation process by which the U.S. and Canada agree to meet regularly to review the progress of implementation of the treaty and any other related issues. This article also reinforces the application of the conservation principles of Article II of the Protocol, and creates a mechanism for dealing with emergencies that threaten particular bird species. The consultation process will ensure that any concerns of interested U.S. groups can be effectively addressed at the bilateral level.

Article IV of the Protocol replaces Article IV of the Convention (dealing with conservation of wood ducks and eiders) which also outlived its usefulness. The new provision states that each government will use its authority to protect and conserve habitats essential to migratory bird populations (including protection from pollution and from alien or exotic species). The Protocol does not, as a practical matter, require either Party to take any steps in this area in addition to those already being taken under existing domestic legal authority. Nevertheless, this Article enshrines in the Convention the principle of habitat conservation, where previously the Convention was silent on the issue.

Article V of Protocol slightly modifies Article V of the Convention by allowing the taking of nests and eggs foreseen in the revised Article II, Section 4 and expanding the permitted taking of nests and eggs to include educational or other specific purposes as long as they are consistent with the conservation principles of the treaty. This language is similar to that contained in the Japan and U.S.S.R. Conventions.

CONSISTENCY WITH OTHER MIGRATORY BIRD CONVENTIONS

As a matter of international law, in order for the United States to take advantage of certain provisions of the Protocol, a conforming amendment to the U.S.-Mexico Convention on the Protection of Migratory Birds and Mammals (TS 912; 50 Stat. 1311) will be required. The U.S.-Mexico Convention currently mandates a "close season for wild ducks from the tenth of March to the first of September," while the Protocol would allow a limited hunt of migratory birds, including ducks, in Alaska during part of this time period.

As a matter of domestic law, a conforming amendment to the U.S.-Mexico Convention would also be required. Specifically, the Department of Interior could 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 one 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).

The United States has indicated to Canada that the provision allowing the hunting of wild ducks during the closed season cannot become effective in the United States until the conforming amendment to the U.S.-Mexico Convention enters into force.

It will not be necessary to amend the U.S.-U.S.S.R. Convention, since it allows a subsistence hunt of the type contained in the Protocol.

The U.S.-Japan Convention contains a more restrictive definition of subsistence hunt than is contemplated by the Protocol. It does not include hunting by resident Alaskans who are not "Eskimos" or "Indians," and the purpose of a subsistence hunt is limited to the provision of food and clothing (excluding, for example, the making of traditional handicrafts). The U.S.-Japan Convention does, however, allow each Party to decide on open seasons for hunting, as long as these seasons are set "so as to avoid *** principal nesting seasons and to maintain *** optimum numbers." In addition, there is a specific prohibition on "any sale, purchase or exchange" of birds and their eggs, by-products or parts. A subsistence hunt under the U.S.-Canada Convention therefore will have to be implemented in a manner consistent with these provisions of the U.S.-Japan Convention. Thus, for example, avoidance of principal nesting seasons will allow for only limited taking of eggs.

DOMESTIC IMPLEMENTATION

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

implement the Protocol.

Principal species customarily and traditionally taken for subsistence in the United States are shown in a list enclosed for your information.

The term "indigenous inhabitants" in Article II(4)(2)(b) of the 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 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.

Most village areas within the Alaska Peninsula, Ko/dak 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, the Gulf of Alaska roaded area and Southeast Alaska. This 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 teaching of cultural knowledge to or by their relatives, Natives residing in 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.

As noted in Article II(4)(2)(b)(ii) of the Protocol, management bodies will be created to ensure an effective and meaningful role for indigenous inhabitants in the conservation of migratory birds. These management bodies will include Native, Federal, and State of Alaska representatives as equals, and will develop recommendations for, among other things: seasons and bag limits; law enforcement policies; population and harvest monitoring; education programs; research and use of traditional knowledge; and habitat protection. Village councils shall be involved to the maximum extent possible in all aspects of management. Relevant recommendations will be submitted to the U.S. Fish and Wildlife Service of the Department of the Interior (hereinafter "DOI/FWS") and to the Flyway Councils. Regulations established should be enforced to prevent conservation problems.

Creation of these management bodies is intended to provide more effective conservation of migratory birds in designated subsistence harvest areas without diminishing the ultimate authority

and responsibility of DOI/FWS. It is the intention of DOI/FWS and the Alaska Department of Fish and Game that management information, including traditional knowledge, the number of subsistence hunters and estimates of harvest, will be collected cooperatively for the benefit of management bodies.

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 Protocol is not intended to create a preference in favor of any group of users in the United States or to modify any preference that may exist.

The provisions of Article II(4)(b) will be implemented so that birds are taken only for food. Non-edible by-products of birds taken for nutritional purposes incorporated into authentic articles of handicraft by Alaska Natives may be sold in strictly limited situations and pursuant to a regulation by the competent authority in cooperation with management bodies. Regulations allowing such harvest will be consistent with the customary and traditional uses of indigenous inhabitants for their nutritional and other essential needs. The term "handicraft" does not include taxidermy items. The Protocol does not authorize the taking of migratory birds for commercial purposes.

This Protocol represents a major step forward in the conservation and management of migratory birds on a substantial 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 this Protocol be transmitted to the Senate as soon as possible for its early and favorable advice and consent to ratification.

Respectfully submitted,

WARREN CHRISTOPHER.

Enclosure: As stated.

LIST OF PRINCIPAL SPECIES CUSTOMARILY AND TRADITIONALLY TAKEN FOR SUBSISTENCE IN THE UNITED STATES

Migratory birds known to be used for subsistence in Alaska, from Wolfe, R.J. et al., The Subsistence Harvest of Migratory Bird Species in Alaska (Alaska Department of Fish and Game, Division of Subsistence, Technical Paper No. 197, 1990)

GEESE

White-fronted
Cackling Canada
Lesser snow
Black brant

Lesser Canada
Taverner's Canada
Emperor

DUCKS

Mallard
Gadwall
Shoveler
Ring-necked
Green-winged teal
Bufflehead
Greater scaup
Oldsquaw
Black scoter
Common eider
Spectacled eider
Red-breasted merganser

Pintail
Wigeon
Redhead
Canvasback
Blue-winged teal
Harlequin
Goldeneye
White-winged scoter
Surf scoter
King eider
Common merganser

OTHER

Yellow-billed loon
Common loon
Common murre
Sabine's gull
Arctic tern
Sandhill crane

Red-throated loon
Arctic loon
Mew gull
Glaucous gull
Tundra swan
Miscellaneous shorebirds

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

The Government of the United States of America and the Government of Canada,

REAFFIRMING their commitment to achieving the purposes and objectives of 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;

DESIRING to amend and update 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 together to cooperatively manage their populations, regulate their take, protect the lands and waters on which they depend, and share research and survey information;

AWARE that changes to the Convention are required to ensure conformity with the aboriginal and treaty rights of the Aboriginal peoples of Canada;

ACKNOWLEDGING the intent 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 Alaska; and

AFFIRMING that it is not the intent of this Protocol to cause significant increases in the take of species of migratory birds relative to their continental population sizes;

HAVE AGREED as follows:

ARTICLE I

In order to update the listing of migratory birds included in the terms of this Convention in a manner consistent with their current taxonomic (Family and Subfamily) status, Article I of the Convention is deleted and replaced by the following:

The High Contracting Powers declare that the migratory birds included in the terms of this Convention shall be as follows:

1. Migratory Game Birds:

Anatidae, or waterfowl (ducks, geese and swans); Gruidae, or cranes (greater and lesser sandhill and whooping cranes); Rallidae, or rails (coots, gallinules and rails); Charadriidae, Haematopodidae, Recurvirostridae, and Scolopacidae, or shorebirds (including plovers and lapwings, oystercatchers, stilts and avocets, and sandpipers and allies); and Columbidae (doves and wild pigeons).

2. Migratory Insectivorous Birds:

Aegithalidae (long-tailed tits and bushtits); Alaudidae (larks); Apodidae (swifts); Bombycillidae (waxwings); Caprimulgidae (goatsuckers); Certhiidae (creepers); Cinclidae (dippers); Cuculidae (cuckoos); Emberizidae (including the emberizid sparrows, wood-warblers, tanagers, cardinals and grosbeaks and allies, bobolinks, meadowlarks, and orioles, but not including blackbirds); Fringillidae (including the finches and grosbeaks); Hirundinidae (swallows); Laniidae (shrikes); Mimidae (catbirds, mockingbirds, thrashers, and allies); Motacillidae (wagtails and pipits); Muscicapidae (including the kinglets, gnatcatchers, robins, and thrushes); Paridae (titmice); Picidae (woodpeckers and allies); Sittidae (nuthatches); Trochilidae (hummingbirds); Troglodytidae (wrens); Tyrannidae (tyrant flycatchers); and Vireonidae (vireos).

3. Other Migratory Nongame Birds:

Alcidae (auks, auklets, guillemots, murres, and puffins); Ardeidae (bitterns and herons); Hydrobatidae (storm petrels); Procellariidae (petrels and shearwaters); Sulidae (gannets); Podicipedidae (grebes); Laridae (gulls, jaegers, and terns); and Gaviidae (loons).

ARTICLE II

Article II of the Convention is deleted and replaced by the following:

The High Contracting Powers agree that, to ensure the long-term conservation of migratory birds, migratory bird populations shall be managed in accord with the following conservation principles:

- To manage migratory birds internationally;
- To ensure a variety of sustainable uses;
- To sustain healthy migratory bird populations for harvesting needs;
- To provide for and protect habitat necessary for the conservation of migratory birds; and
- To restore depleted populations of migratory birds.

Means to pursue these principles may include, but are not limited to:

Monitoring, regulation, enforcement and compliance;
Co-operation and partnership;
Education and information;
Incentives for effective stewardship;
Protection of incubating birds;
Designation of harvest areas;
Management of migratory birds on a population basis;
Use of aboriginal and indigenous knowledge, institutions and practices; and
Development, sharing and use of best scientific information.

1. Except as provided for below, there shall be established the following close seasons during which no hunting shall be done:

(a) The close season on migratory game birds shall be between March 10 and September 1, and the season for hunting shall be further restricted to such period not exceeding three and one-half months as the High Contracting Powers may severally deem appropriate and define by law or regulation; and

(b) The close season on migratory insectivorous birds and other migratory nongame birds shall continue throughout the year.

2. Except as provided for below, migratory birds, their nests, or eggs shall not be sold or offered for sale.

3. Subject to laws, decrees or regulations to be specified by the proper authorities, the taking of migratory birds may be allowed at any time of the year for scientific, educational, propagative, or other specific purposes consistent with the conservation principles of this Convention.

4. Notwithstanding the close season provisions in paragraph 1 and the prohibition on the taking of eggs in Article V, and respecting aboriginal and indigenous knowledge and institutions:

(a) In the case of Canada, subject to existing aboriginal and treaty rights of the Aboriginal peoples of Canada under section 35 of the Constitution Act, 1982, and the regulatory and conservation regimes defined in the relevant treaties, land claims agreements, self-government agreements, and co-management agreements with Aboriginal peoples of Canada:

(i) Migratory birds and their eggs may be harvested throughout the year by Aboriginal peoples of Canada having aboriginal or treaty rights, and down and inedible by-products may be sold, but the birds and eggs so taken shall be offered for barter, exchange, trade or sale only within or between Aboriginal communities as provided for in the relevant treaties, land claims agreements, self-government agreements, or co-management agreements made with Aboriginal peoples of Canada; and

(ii) 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 treaties, land claims agreements, self-government agreements, or co-management agreements made with Aboriginal peoples of Canada recognize that the Aboriginal peoples may so permit. The dates of the fall season for the taking of migratory game birds by qualified residents of Yukon and the

Northwest Territories may be varied by law or regulation by the proper authorities. The birds or eggs taken pursuant to this sub-paragraph (ii) shall not be sold or offered for sale.

(b) In the case of the United States:

(i) Migratory birds and their eggs may be harvested by the indigenous inhabitants of the State of Alaska. Seasons and other regulations implementing the non-wasteful taking of migratory birds and the collection of their eggs by indigenous inhabitants of the State of Alaska shall be consistent with the customary and traditional uses by such indigenous inhabitants for their own nutritional and other essential needs; and

(ii) Indigenous inhabitants of the State of Alaska shall be afforded an effective and meaningful role in the conservation of migratory birds including the development and implementation of regulations affecting the non-wasteful taking of migratory birds and the collection of their eggs, by participating on relevant management bodies.

5. Murres may be taken by non-aboriginal residents of the province of Newfoundland and Labrador for food, subject to regulation, during the period from September 1 to March 10, but the murres so taken shall not be sold or offered for sale. The season for murre hunting shall be further restricted to such period not exceeding three and one-half months as the proper authorities may deem appropriate by law or regulation.

ARTICLE III

Article III of the Convention is deleted and replaced by the following:

The High Contracting Powers agree to meet regularly to review progress in implementing the Convention. The review shall address issues important to the conservation of migratory birds, including the status of migratory bird populations, the status of important migratory bird habitats, the effectiveness of management and regulatory systems and other issues deemed important by either High Contracting Power. The High Contracting Powers agree to work cooperatively to resolve identified problems in a manner consistent with the principles underlying this Convention and, if the need arises, to conclude special arrangements to conserve and protect species of concern.

ARTICLE IV

Article IV of the Convention is deleted and replaced by the following:

Each High Contracting Power shall use its authority to take appropriate measures to preserve and enhance the environment of migratory birds. In particular, it shall, within its constitutional authority:

(a) seek means to prevent damage to such birds and their environments, including damage resulting from pollution;

(b) endeavour to take such measures as may be necessary to control the importation of live animals and plants which it determines to be hazardous to the preservation of such birds;

(c) endeavour to take such measures as may be necessary to control the introduction of live animals and plants which could disturb the ecological balance of unique island environments; and

(d) pursue cooperative arrangements to conserve habitats essential to migratory bird populations.

ARTICLE V

Article V of the Convention is deleted and replaced by the following:

The taking of nests or eggs of migratory game or insectivorous or nongame birds shall be prohibited, except for scientific, educational, propagating or other specific purposes consistent with the principles of this Convention under such laws or regulations as the High Contracting Powers may severally deem appropriate, or as provided for under Article II, paragraph 4.

ARTICLE VI

This Protocol is subject to ratification. This Protocol shall enter into force on the date the Parties exchange instruments of ratification, shall continue to remain in force for the duration of the Convention and shall be considered an integral part of the Convention particularly for the purpose of its interpretation.

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

DONE at Washington, this 14th day of December, 1995, in duplicate, in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

[Signature]

FOR THE GOVERNMENT OF CANADA:

[Signature]

December 14, 1995

His Excellency
Raymond Chretien,
Ambassador of Canada.

Excellency:

I have the honor to present my compliments and to refer to 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 (hereinafter, the "Protocol"), signed by representatives of our two Governments today.

I have the honor to inform your Excellency that the Government of the United States of America wishes to confirm the following interpretation of Article II. The opening paragraph of Article II states that both governments shall manage **migratory bird** populations in accord with several stated conservation principles. That paragraph also lists illustrative means to pursue those principles. It is the understanding of the Government of United States of America that all of the activities allowed under Article II, including the taking and use of **migratory birds** and their eggs by Aboriginal peoples in Canada and by indigenous inhabitants of Alaska, are, pursuant to the Protocol, to be conducted in accord with these conservation principles.

I would appreciate confirmation that the Government of Canada shares the aforementioned interpretation of Article II of the Protocol.

Accept, Excellency, the renewed assurances of my highest consideration.

[Signature]

Note No. 205

The Honourable Warren Christopher
Secretary of State
Washington, D.C.

Dear Secretary Christopher,

I have the honour to refer to your Excellency's Note of today, concerning the interpretation of the Protocol Between the Government of Canada and the Government of the United States of America 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 today.

I have the further honour to inform you that the Government of Canada shares the interpretation contained in your Excellency's Note.

Accept, Excellency, the renewed assurances of my highest consideration.

Raymond Chretien
Ambassador
December 14, 1995

Washington, D.C.

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