

1990 PROTOCOL TO THE 1983 MARINE ENVIRONMENT OF THE WIDER CARIBBEAN REGION CONVENTION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE PROTOCOL CONCERNING SPECIALLY PROTECTED AREAS AND WILDLIFE TO THE CONVENTION FOR THE PROTECTION AND DEVELOPMENT OF THE MARINE ENVIRONMENT OF THE WIDER CARIBBEAN REGION, DONE AT KINGSTON ON JANUARY 18, 1990, WITH ACCOMPANYING PAPERS



APRIL 20, 1993.—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

LETTER OF TRANSMITTAL

THE WHITE HOUSE, April 20, 1993.

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, done at Kingston on January 18, 1990. Included for the information of the Senate is a Procès-verbal of Rectification correcting technical errors in the English and Spanish language texts. I also transmit, for the information of the Senate, the Annexes to the Protocol which were adopted at Kingston June 11, 1991, and the report of the Department of State with respect to the Protocol.

The Protocol elaborates and builds on the general obligation in the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, which calls for parties to establish specially protected areas in order to protect and preserve rare or fragile ecosystems, as well as the habitats of threatened or endangered species of fauna and flora. Species of plants and animals that the parties believe require international cooperation to provide adequate protection are listed in three Annexes developed in implementation of the Protocol. The initial version of the Annexes was adopted in 1991. Annexes I and II list species of special concern, including endangered and threatened species, subspecies, and their populations of plants (Annex I) and animals (Annex II). Species included in these Annexes are to receive protection within the geographic area of the Protocol comparable to that for species listed as endangered or threatened under the Endangered Species Act, or protected under the Marine Mammal Protection Act. Annex III lists plants and animals requiring some management, but not necessarily full protection.

The Protocol is considered a major step forward in protecting wildlife and habitats of special concern in the Caribbean. Early ratification will demonstrate our continued commitment to the goal of sound regional environmental management and protection. I recommend that the Senate give early and favorable consideration to the Protocol and give its advice and consent to ratification, subject to the understanding and reservations described in the accompanying report of the Secretary of State.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, March 31, 1993.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, done at Kingston on January 18, 1990, and the Annexes to the Protocol which were adopted at Kingston June 11, 1991. I recommend that the Protocol be transmitted to the Senate for its advice and consent to ratification. I have included for the information of the Senate a Proces Verbal of Rectification correcting technical errors in the English and Spanish language texts. The Protocol also includes three Annexes of species that require international cooperation for their protection which were adopted at Kingston June 11, 1991. These Annexes, which are included for the information of the Senate, are not being submitted for advice and consent because the Department, after consultations with the staff of the Foreign Relations Committee, believes that they are best treated as an Executive Agreement.

The Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention) is a regional "framework convention" negotiated under the auspices of the Regional Seas Program of the United Nations Environment Program (UNEP), which sets out general obligations to protect the environment of the wider Caribbean. It provides for the adoption of additional protocols to facilitate the effective implementation of the Convention, as the parties may deem necessary and desirable.

The Convention areas encompasses the marine environment of the Gulf of Mexico, the Caribbean Sea and the areas of the Atlantic Ocean adjacent thereto south of 30 degrees north latitude and within 200 nautical miles of the Atlantic coasts of the countries invited to sign the Cartagena Convention. The Protocol defines the Wider Caribbean Region in Article 1(c) to include the Convention area and (i) waters on the landward side of the baseline from which the breadth of the territorial sea is measured and extending, in the case of watercourses, up to the fresh water limit; and (ii) such related terrestrial areas (including watersheds) as may be designated by the party having sovereignty and jurisdiction over such areas. The United States does not plan to designate terrestrial area under the Protocol since no state or territory has identified a need or desire to designate terrestrial area.

The Protocol provides that its provisions shall not apply to warships or other ships owned or operated by a state while engaged in government non-commercial service (Article 2). The Protocol requires parties to establish protected areas when necessary (Article 4) and, as appropriate, to take certain specified protection measures, without prejudice to freedom of navigation, in accordance with international law (Article 5) and management measures (Article 6) for each protected area. The Protocol also establishes a regional program for the listing of protected areas (Article 7). Parties may as necessary establish buffer areas in which activities are restricted but to a lesser extent than in protected areas (Article 8). If such buffer zones are established, parties are obligated to consult with affected States regarding protected areas with contiguous international boundaries (Article 9).

In addition to establishing protected areas, each party is obligated to adopt national measures for actions within the protocol areas for the protection of wild flora and fauna (Article 10). The parties are required to regulate activities having adverse effects on protected species or their habitats and ecosystems, including the killing of or trade in such species.

Article 11 of the Protocol contains co-operative measures that the parties are obligated to adopt to ensure the protection and recovery of endangered and threatened species of flora and fauna listed in the three Protocol Annexes. Annexes I and II comprise plant and animal species, respectively, requiring the most protection. They include endangered and threatened species, subspecies, and their populations. Parties are required to prohibit all forms of destruction and disturbance of Annex I species. Parties are obligated to prohibit the taking, possession, killing or commercial trade of Annex II species and, to the extent possible, to prevent their disturbance particularly during periods of biological stress. Parties are obligated to adopt and implement plans for the management and use of Annex III species.

The provisions of Article 11 prohibiting the taking of the species of fauna listed in Annex II are inconsistent with the Marine Mammal Protection Act (P.L. 92-522), which permits limited takings of marine mammals for the purpose of display, in connection with the disposal of offshore drilling rigs, and as incidental catch related to fishing operations. I, therefore, recommend that the following reservation be included in the United States instrument of ratification:

The Government of the United States of America does not consider itself bound by Article 11, paragraph 1, subparagraph (b)(i) of the Protocol to the extent that the United States Government permits the taking of marine mammals for the purpose of display, in connection with the disposal of offshore drilling rigs, and as incidental catch referred to fishing operations.

Annex I contains a total of 57 plant species. Annex II includes all sea turtles and all marine mammals in the region. One hundred nine (109) other taxa are also listed in Annex II. Annex III comprises forty (40) species of plants and thirty (30) species of animals requiring some but not necessarily complete protection. Annex contains several species, including corals, mangroves, and seagrasses, which may be relatively common but are essential compo-

nents of vulnerable ecosystems. These species require special protection because their loss would inevitably lead to the loss of many other species. Signatories to the Protocol have agreed that protection of mangroves, sea grasses and corals should be focused on the system as a whole rather than on protecting individual specimens. Some regulated harvest of Annex III species may be permitted.

Parties may nominate species for inclusion in or deletion from the Annexes. A species shall be listed in the Annexes by consensus, or failing consensus, by a three-quarters vote of the parties. The Administration intends to provide timely notification of proposed amendments to the Annexes to the public through a notice in the *Federal Register* in order to ensure adequate time for meaningful comment prior to their adoption by the Parties.

Recommendations by the United States for listing species on the Annexes (especially Annexes I and II and to a lesser extent Annex III) were based in large part on the coverage of that species under the Endangered Species Act (P.L. 93-205) or the Marine Mammal Protection Act (P.L. 92-522). If, after entry into force of the Protocol, a species status under these statutes changes, and it develops that it warrants either more or less protection than afforded it on the Annexes, the United States intends to propose amendment of the Annexes, e.g., delisting the species from the Annexes or transferring the species to a more appropriate Annex. It would be expected that the Contracting Parties would approve such amendment, at least as to U.S. populations, inasmuch as it would be supported by adequate biological information pursuant to the requirements of domestic law.

The United States intends to notify the depositary at the time it accepts the Annexes that the Protocol will not apply to six species of fauna and flora that do not require the protection provided by the Protocol in U.S. territory. These species are the least tern (*Sterna antillarum*), the Audubon's shearwater (*Puffinus lherminieri*), the Mississippi, Louisiana, and Texas population of the wood stork (*Mycteria americana*), and the Florida and Alabama populations of the brown pelican (*Pelicanus occidentalis*), which are listed on Annex II, as well as the fulvous whistling duck (*Dendrocygna bicolor*) and the populations of widgeon or ditch grass (*Ruppia maritima*) located in the continental United States, which are listed on Annex III.

Several terrestrial species, e.g. bats (*Tadarida brasiliensis* and *Brachyphylla cavernarum*) and falcons (*Falco peregrinus*), are listed in the Annexes. The listing of these species, however, is not intended to describe the relevant terrestrial scope of the Protocol. As the United States has not designated any terrestrial area, the Protocol obligations will not apply with respect to such species.

The parties are also required to regulate or prohibit the introduction of non-indigenous or genetically altered species that may harm indigenous wildlife or natural ecosystems of the region (Article 12). The Protocol obligates each party to evaluate direct and indirect environmental impacts of projects which might have a negative effect on protected areas or species (Article 13). The provision for environmental impact assessments in Article 13 of the Protocol differs in some respects from the corresponding provision in the Convention (Article 12).

The Protocol requires each Contracting party to perform environmental assessments on "industrial and other projects and activities that would have a negative environmental impact." It is ambiguous on its face as to the extent to which Article 13 would apply to non-federal activities and to activities which have an extraterritorial impact. The United States has actively promoted environmental impact assessment internationally and has broad-based laws and policies that implement environmental impact assessments domestically. However, U.S. law and policy does not require domestic impact assessments for non-federal actions and in certain other circumstances. The United States, therefore, intends to reserve to Article 13 of the Protocol to the extent that the obligations contained therein differ from the obligations contained in Article 12 of the Cartagena Convention. I, therefore, recommend that the following reservation be included in the U.S. instrument of ratification:

The Government of the United States of America has long been a champion of environmental impact assessment procedures and has actively sought to promote the adoption of such procedures throughout the world. The national laws and policies of the United States are generally supportive of the provisions for environmental impact assessments under Article 13 of the Protocol. Thus, the United States Government expects that it will, for the most part, be in compliance with Article 13. The Government of the United States of America does not consider itself bound by Article 13 of the Protocol to the extent that the obligations contained therein differ from the obligations of Article 12 of the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region.

The Protocol obligates each party to provide exemptions as necessary for traditional activities (Article 14); give appropriate publicity to protected areas to enhance public understanding and knowledge (Article 16); conduct scientific and technical research (Article 17); cooperate in formulating and implementing programs of mutual assistance (Article 18); and provide reports on protected areas to the organization with Secretariat responsibilities (i.e., United Nations Environment Program) (Article 19).

The Protocol also contains provisions regarding the functions of the Secretariat (Article 22), meetings of the parties (Article 23), funding (Article 24), and signature (Article 28). The same financial arrangements established for the Cartagena Convention will be used to finance the Protocol, with the possibility of supplementary voluntary contributions from Protocol parties, non-governmental organizations, international organizations, and private-sector organizations.

The Protocol explicitly provides that it does not affect the rights and obligations of parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Our obligations under Article 11 regarding international trade are fully met by our adherence to the provisions of CITES and other relevant statutes.

The Protocol's ratification, accession and entry into force are governed directly by the relevant provisions of the Cartagena Convention (i.e. entry into force will take place thirty days after deposit

of the ninth instrument of ratification, acceptance or approval, or accession).

The Protocol will be implemented in the United States through existing statutory authority and no additional legislation is required. Existing legislation relating to protected areas includes, among others, the Marine Protection, Research, and Sanctuaries Act (16 U.S.C. sec. 1431 et seq.), the Coastal Zone Management Act (16 U.S.C. sec. 1451 et seq.), and the Wilderness Act (16 U.S.C. sec. 1131 et seq.). The provisions of the Protocol relating to species conservation will be implemented through the Endangered Species Act (16 U.S.C. sec. 1531 et seq.), the Marine Mammal Protection Act (16 U.S.C. sec. 1361 et seq.), the Coastal Zone Management Act (*id.*) and the Migratory Bird Treaty Act (33 U.S.C. sec. 1251 et seq.), for example.

At the Diplomatic Conference that adopted the Annexes to the Protocol, the parties agreed that the Protocol would not apply to non-native species, defined as species found outside of their natural geographic distribution, as a result of deliberate or incidental human intervention. Thus, in the United States, certain exotic species, e.g., the muscovy duck and the common iguana, are not covered by the Protocol obligations. I, therefore, recommend that the following understanding be included in the United States instruments of ratification:

It is the understanding of the Government of the United States of America that the provisions of the Protocol do not apply to non-native species, defined as species found outside of their natural geographic distribution, as a result of deliberate or incidental human intervention. Therefore, in the United States, certain exotic species, e.g., the muscovy duck (*Carina moschata*) and the common iguana (*Iguana iguana*), are not covered by the Protocol obligations.

All concerned agencies in the Executive Branch strongly support early ratification of the Protocol. It is our understanding that the environmental community also supports early ratification. The Protocol and Annexes serve important United States interests in protecting the marine environment surrounding the U.S. mainland and territories in the Caribbean, as well as demonstrating United States political interest in protecting the environment of the wider Caribbean region.

I recommend, therefore, that the Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region be transmitted to the Senate as soon as possible for its advice and consent to ratification, subject to the understanding and reservations previously described.

Respectfully submitted,

WARREN CHRISTOPHER.