

# HEARING TO CONSIDER 6 TREATIES

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HEARING  
BEFORE THE  
COMMITTEE ON FOREIGN RELATIONS  
UNITED STATES SENATE  
ONE HUNDRED SEVENTH CONGRESS  
SECOND SESSION

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MAY 7, 2002  
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## HEARING TO CONSIDER 6 TREATIES

**TREATY DOC. 106-32**, An amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (the “Montreal Protocol”), adopted at Beijing on December 3, 1999, by the Eleventh Meeting of the Parties to the Montreal Protocol (the “Beijing Amendment”);

**TREATY DOC. 106-10**, An amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (the “Montreal Protocol”), adopted at Montreal on September 15–17, 1997, by the Ninth Meeting of the Parties to the Montreal Protocol;

**TREATY DOC. 103-5**, A 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;

**TREATY DOC. 105-32**, An Agreement Establishing the South Pacific Regional Environment Programme, done at Apia on June 16, 1993;

**TREATY DOC. 105-53**, A Treaty Between the Government of the United States of America and the Government of Niue on the Delimitation of a Maritime Boundary;

**TREATY DOC. 107-2**, A Protocol to Amend the 1949 Convention on the Establishment of an Inter-American Tropical Tuna Commission, done at Guayaquil, June 11, 1999, and signed by the United States, Subject to Ratification, in Guayaquil, Ecuador, on the same date.

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TUESDAY, MAY 7, 2002

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

The committee met at 10:05 a.m., in room SD-419, Dirksen Senate Office Building, Hon. Paul S. Sarbanes, presiding.

Present: Senators Sarbanes, Chafee and Allen.

Senator SARBANES. The committee will come to order.

We meet this morning to consider 6 treaties, amendments, and protocols dealing with the Montreal Protocol, the Caribbean Region, and the Pacific Ocean.

We have two amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer. The Protocol, which entered into force in 1989, has been ratified by the United States and 182 other countries. It identifies substances that contribute to the de-

pletion of the ozone layer and, therefore, need to be subject to international control.

The Protocol also authorized member countries to recommend additional chemicals for inclusion on the list of controlled substances and also to recommend a schedule of reductions in their production and use. Four amendments have emerged from these recommendations. Two have already been ratified and the other two are before the committee this morning.

The first is the Montreal Amendment to the Montreal Protocol, which bans the export or import between a party and a nonparty of the fumigant known as methyl bromide. This amendment also establishes a licensing system for controlled substances to combat illegal trade in these substances.

The second amendment, the Beijing Amendment, phases out, with certain exceptions, a controlled substance called bromochloromethane, which has been used as a flame retardant and solvent. In addition, the amendment also creates a production freeze for HCFC, hydrochlorofluorocarbon, which has been widely used as a refrigerant, and bans the trade of HCFC's between parties and nonparties.

In addition to the two treaties bearing on the Montreal Protocol, we will also consider this morning the following four treaties.

The Protocol for the 1983 Marine Environment of the Wider Caribbean Region Convention, frequently referred to as the SPAW Protocol, which establishes both a regional framework for cooperation on biodiversity conservation and also guidelines for creation and management of protected areas.

The Protocol to Amend the 1949 Convention on the Establishment of an Inter-American Tropical Tuna Commission, which allows the EU to represent individual European countries at this Commission.

Third, an agreement establishing the South Pacific Regional Environment Programme, which is designed to assist the small island nations of the Pacific in establishing environmental programs.

And fourth, the Treaty between the Government of the United States and the Government of Niue on the Delimitation of a Maritime Boundary, which simply draws a boundary line in the Pacific Ocean between American Samoa and the island nation of Niue.

Often the apparently small steps we take to protect the environment carry with them broad and far-reaching implications. We know that international cooperation and coordination are essential. Pollution of the air and the oceans is no respecter of national borders. The complex issue of ozone is obviously a case in point.

The Montreal Protocol addresses the increasingly urgent problem of depletion of the stratospheric ozone level, which has increased the penetration of harmful ultraviolet rays in the Earth's atmosphere. One consequence, of course, is the rise in the number of cases of skin cancer reported in recent years. Ozone depletion has other numerous and serious adverse effects, and it poses a threat to numerous ecosystems. It also affects our weather, sometimes in apparently contradictory ways.

To address the amendments to the Montreal Protocol and the other issues before the committee, we are fortunate to have several expert and distinguished witnesses. We will first hear from John

Turner, the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, and subsequently we will have a panel of witnesses, Tom Grasso, the U.S. director for Marine Conservation Program of the World Wildlife Fund, and Dr. David Read Barker. Dr. Barker is president of Monitor International, an environmental NGO based in Annapolis, Maryland.

John Turner is the State Department's senior official on environmental matters. He has come to the State Department from an impressive career in the environmental field. He was president and chief executive officer of the Conservation Fund. Between 1989 and 1993 he served as Director of the U.S. Fish and Wildlife Service, which of course is a very important Agency of the Government. So, we are very pleased to have Secretary Turner here.

Before turning to you, John, for your statement, I will yield to my colleagues for any opening comments they may have. First, Senator Allen.

Senator ALLEN. Thank you, Mr. Chairman. Thank you for holding this hearing. I look forward to listening to the testimony of all our witnesses.

I would like to make a few statements here as we examine these treaties today. As technical but also very useful advancements in our continuing effort to protect people from harmful substances that may occur in the air or in our water, the 1990 Protocol to the 1983 Caribbean Marine Environment Initiative I think will increase the degree of protection that will be afforded in the Caribbean area, which is clearly of interest to American citizens. With the reservation and understanding included in the transmission, the Protocol appears to strike a reasonable balance worthy of favorable consideration.

The 1997 Montreal Amendment to the Montreal Protocol expands trade controls to cover methyl bromide and provide for licensing, as you stated, Mr. Chairman, for the import and export of these controlled substances with special dispensations for underdeveloped states.

The Beijing Amendment to the Montreal Protocol establishes controls over trade in and production of hydrochlorofluorocarbons, or HCFC's, and adds methyl bromide to the list of these substances controlled by the Protocol. Now, these amendments were posited as steps in a methodical establishment of controls over substances which have legitimate uses but pose an apparent danger to the stratospheric ozone layer.

There are two points I would like to make, as we go forward with this. Point No. 1 is I think it is desirable for us to know what the impact of these agreements or protocols or treaties are. Do we have some scientific data that would indicate how the air or the water has been improved since the production and use of these substances have been lessened?

The second point that I think would follow from any scientific data we could demonstrate would be that in future negotiations, I would like to encourage advancing of the compliance provisions for underdeveloped states which currently do not fall under the Beijing Amendment until the year 2016, at which point the time table for decreasing use and production will apply. The benchmark for that time table is the level of production and consumption in the year

2015, which seems to be a far distant point if we are engaged in serious and deliberate efforts to control these substances which are threats to our ozone layer.

And I hope that the action by the United States will encourage the ratification by other states of the Montreal, Beijing, and earlier amendments. The number of states that have ratified these amendments is lagging significantly behind the number that have ratified the basic Montreal Protocol. And I think that wider acceptance of the full package of amendments is required if the advantages sought by this effort are to be fully recognized.

I want to close by thanking all of our witnesses, Mr. Chairman, for appearing today, in particular Secretary John Turner. Working with the Bureau of Oceans and International Environmental and Scientific Affairs, Secretary Turner is doing a tremendous job, heading up programs concerning HIV/AIDS and other infectious diseases, the environment, the study of climate change, ocean affairs, and science and technology. The Bush administration is very fortunate to have his outstanding leadership. He has a terrific track record in wildlife conservation, outdoor recreation, and natural resources policies. He is also an asset to Secretary Powell.

I will close with a personal note. Secretary Turner, I note you are from Moose, Wyoming. I am going to try to bring my 11-year-old son to Moose this summer so he can go to the Chuck Wagon, not to the bar, but he likes to eat a lot and they have a great—I would not call it a buffet, but just a good feed there. So, anybody who is from Moose, Wyoming clearly appreciates our natural beauty and the protection thereof. So, thank you, Secretary Turner.

Thank you, Mr. Chairman.

Senator SARBANES. Thank you, Senator Allen. And I am sure the Chamber of Commerce of Moose, Wyoming is greatly heartened by your comments here this morning.

Senator CHAFEE.

Senator CHAFEE. Thank you, Mr. Chairman, for holding the hearing, first of all.

I note that these treaties we will be discussing already exist under statutory authority and no new costs will be incurred, and that generally they are noncontroversial. So, I do not know if we will be hearing any dissenting voices here this morning, but I am certainly interested in their swift passage also.

Senator SARBANES. Secretary Turner, we are happy to hear from you.

**STATEMENT OF HON. JOHN F. TURNER, ASSISTANT SECRETARY OF STATE, BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, DEPARTMENT OF STATE, WASHINGTON, DC**

Mr. TURNER. Senator Sarbanes, Senator Allen and Senator Chafee, thank you very much for this opportunity to appear before the committee on six important international agreements. All of us in the administration appreciate the hectic and demanding schedule that you have, so we greatly appreciate your consideration of these six measures which we think are important to the United States. I am, indeed, pleased to join Tom Grasso and David Barker here before you this morning.



I have submitted a written statement, Mr. Chairman, for the record and so I would just like to briefly describe each of the six treaties before you.

Senator SARBANES. The full statement, without objection, will be included in the record.

Mr. TURNER. Mr. Chairman, as you noted, the first measure before you is the Protocol Concerning Specially Protected Areas and Wildlife, called the SPAW Protocol, which is, of course, an outgrowth of the Cartagena Convention. We believe this is an important cooperative effort to protect and improve the marine environment and the living systems of the Caribbean Sea and the Gulf of Mexico, very important to the territories of the Caribbean and those ecosystems around the southeast coast of the United States.

A focus on the Caribbean area is a high priority for the Bush administration. We can recall that President Bush recently called this backyard area our Third Border because of its importance to the people of the United States.

The members will note that we are suggesting two reservations and a clarification, which I am happy to answer any questions on, if the committee is interested.

The second provision has to do with the South Pacific Regional Environment Program, called SPREP. This organization, Mr. Chairman, has been around for a couple of decades. It just recently in 1995 became an independent body, and of all the participating nations in this important organization, all have ratified this except for the United States. So, we appreciate your consideration.

We feel this organization is important to our interests simply because the U.S. territories of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are located there, and of course, the region also interrelates with the State of Hawaii. We feel this organization is the best forum for the United States to influence, cooperate, and help the people in the region deal with environmental programs and sustain their development opportunities. Also this forum allows us to cooperate with Australia, New Zealand, France, and the 22 island nations in the region. We are going to utilize this particular forum as a model where territories are allowed to be participants in the discussion, along with the nation states.

Mr. Chairman, the third provision is a treaty with Niue on the Delineation of the Maritime Boundary. This is a standard maritime agreement which will delineate the boundary in the waters between American Samoa and Niue.

The fourth and fifth important provisions are the Montreal and Beijing Amendments to the Montreal Protocol, which as you noted, was ratified in 1988 and is an important international effort to control some 96 substances which deplete the ozone layer and toxic chemicals like chlorofluorocarbons, CFC's. These two particular amendments before you we consider fine tuning. They are logical steps, taking advantage of science and experience as the world community continues efforts to repair the ozone layer which screens us from a high incidence of skin cancer, cataracts, and even abnormalities in animals.

The Montreal Amendment, the first one, entered into force in the year 2000, and as of mid-April of this year, 79 other countries have

gone ahead and ratified. The Montreal Amendment addresses two important trade matters.

The first bans trade of methyl bromide between parties and nonparties. This avoids giving a competitive advantage to noncomplying nations. It is the same provision that we have applied to other identified chemicals.

Second, it calls on the Protocol parties—all of us who are members—to implement an import and export system so we can track the flow of these controlled substances.

The second amendment to the Montreal Protocol is the Beijing Amendment. That entered into force in February of this year. It has been ratified by 30 other countries. The Beijing Amendment adds bromochloromethane as a controlled substance to ensure its phaseout before it becomes used in a widespread manner, especially in developing countries.

Second, it establishes a trade and production control on hydrochlorofluorocarbons, HCFC's, and it will freeze their use in 2004 and will again ban trade between parties and nonparties.

And No. 3, the Beijing Amendment will require parties to report on the use of methyl bromide for quarantine and preshipment purposes.

The last provision before you, Mr. Chairman, is a Protocol amending the 1949 Convention of the IATTC, the Inter-American Tropical Tuna Commission. This will allow the European Commission to become a member of this 50-year-old organization, which traditionally only states have been party to. The EC has become a competent body to regulate fishing vessels, and it is our belief that it is important to have the EC a member in the conservation and management of the tuna fisheries and the fishing fleets of the eastern Pacific Ocean. We want vessels flying the EC flag to comply with the provisions of IATTC.

In conclusion, Mr. Chairman, these proposals share some common elements and themes which I hope the Senate will find favorable. First, all these agreements will work under existing statutory authority. There is no need for legislative action with our own laws.

No. 2, all these forums operate on a consensus-based decision-making process, the best forum to be sure that we protect U.S. interests.

The third theme, none of these proposals will incur additional budgetary expenses.

And I am pleased to report to date we have had general support from both public and private stakeholders for all six agreements before you, Mr. Chairman.

Again, many thanks for taking the time to consider these provisions, and I am happy to try to answer any questions that members might have. Thank you, Mr. Chairman.

[The prepared statement of Mr. Turner follows:]

PREPARED STATEMENT OF HON. JOHN F. TURNER, ASSISTANT SECRETARY OF STATE,  
BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

Mr. Chairman and Members of the Committee, I am pleased to be here today to discuss six important international agreements that have been submitted to the Senate for Advice and Consent—the Protocol Concerning Specially Protected Areas and Wildlife (SPA) to the Convention for the Protection and Development of the

Marine Environment of the Wider Caribbean Region (Cartagena Convention), or the “SPAW Protocol;” the South Pacific Regional Environment Program (SPREP) Agreement; the Niue Boundary Treaty; an amendment to the Inter-American Tropical Tuna Commission; and two amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer, the “Montreal Amendment” and the “Beijing Amendment.” Because these agreements serve important U.S. foreign policy interests, we favor their early ratification.

While these agreements address different situations in different parts of the world, they share several common elements. First, any obligations set forth in these agreements can be undertaken through existing statutory authority. No changes in law are required. Second, consensus-based decision-making is the modus operandi for the governing bodies of these agreements, even for those agreements that formally provide for voting. This means that in matters affecting the lives of American citizens—whether it concerns protecting the ozone layer or conserving marine resources—the United States can adequately protect American interests. Third, no new costs will be created. And fourth, we understand that U.S. ratification of these agreements is not controversial and is generally supported by the public and private stakeholders.

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

Turning to a brief description of each agreement, the SPAW Protocol serves to protect the marine environment of the Gulf of Mexico and Caribbean sea, including the areas surrounding the U.S. mainland off the coast of Florida and the Gulf States and territories in the Caribbean region. This Protocol is an outgrowth of the Cartagena Convention, and is one of three Protocols anticipated by the Cartagena Convention. The Convention establishes general legal obligations for the protection and preservation of the marine environment of the Caribbean region. Geographically, it covers the marine environment of the Gulf of Mexico, the Caribbean Sea and areas primarily within 200 nautical miles of the Atlantic coasts of 20 countries and island territories. Twenty-eight countries of the Wider Caribbean Region are eligible to become Parties to the Cartagena Convention and its Protocols. Currently, ten countries are Parties to the SPAW Protocol, while eleven others are non-Party Signatories.

The SPAW Protocol also encompasses internal waters extending in the case of watercourses up to the fresh water limit, and any related terrestrial areas (including watersheds) that a party may wish to designate. It requires parties to establish protected areas and to take specified protection and management measures therein, as necessary and appropriate to carry out the provisions of the Protocol, and in conformity with national laws and regulations and international law.

U.S. participation would demonstrate our political interest in protecting the environment of the wider Caribbean Region. We feel so strongly about the need to do so, that we have identified the Caribbean as a focus for the upcoming World Summit on Sustainable Development. Strengthening our support for the Cartagena Convention by ratifying the SPAW Protocol will allow us to better protect the marine resources of the Wider Caribbean region—our backyard and, as President Bush has dubbed, our Third Border. Many non-governmental organizations, such as Monitor International, the World Wildlife Fund, The Nature Conservancy, and the Humane Society of the United States, support U.S. ratification of the SPAW Protocol.

Were the United States to ratify the SPAW Protocol, we would issue two reservations and an understanding along with our ratification. One of the reservations is needed to ensure that our application of Article 11 of the Protocol is consistent with provisions of the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA) that allow for the limited taking of species listed in Annex I and II for the purpose of public display, scientific research, rescue and rehabilitation, or as incidental catch related to fishing operations. The second reservation is to Article 13, which could be interpreted to require environmental assessments for non-Federal activities not covered by the National Environmental Policy Act of 1969, as amended (NEPA). The Understanding would state that the provisions of the Protocol do not apply to non-native species.

There are three Annexes that contain the lists of 481 endangered and threatened species of flora and fauna covered by Article 11 of the Protocol. The United States plans 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. It is envisioned that the Annexes will be treated separately as an Executive Agreement.

## SOUTH PACIFIC REGIONAL ENVIRONMENT PROGRAM (SPREP) AGREEMENT

The South Pacific Regional Environment Program (SPREP) has existed for nearly twenty years to protect and improve the South Pacific environment and to ensure sustainable development in that region. The U.S. territories of American Samoa, Guam and the Commonwealth of the Northern Mariana Islands, are located within the SPREP region. The State of Hawaii is also closely linked to the Pacific basin by geography, history, economics and politics. SPREP provides for increased cooperation among the United States, Australia, New Zealand, France and twenty-one island States and territories of the South Pacific region in addressing issues affecting the environment and development in the region.

SPREP is the best opportunity for us to both influence regional Pacific environmental policies and encourage coordinated approaches on environmental and sustainable development issues. With greater commercial development, the region's unique wildlife and plants are at risk. U.S. participation in SPREP sends a strong signal that the Pacific region is a priority for us.

Negotiations to conclude the agreement ended in 1993. Prior to the agreement, SPREP had the status of an informal institution housed within the South Pacific Commission. The agreement simply accords SPREP formal status as an intergovernmental organization. It will not change our costs or the manner of our participation. The United States as well as its territories, American Samoa, Guam and the Commonwealth of the Northern Mariana Islands believe that U.S. interests would be best served by moving rapidly to become a Party to the Agreement, which entered into force on August 31, 1995. With the exception of the United States, all 18 remaining active members that participated in the negotiations are Parties to the agreement.

## TREATY WITH NIUE ON DELIMITATION OF A MARITIME BOUNDARY

On May 13, 1997, in Wellington, New Zealand, the Governments of the United States and Niue signed a treaty delineating a maritime boundary between their respective territories in the South Pacific. The purpose of the U.S. Treaty with Niue on Delimitation of a Maritime Boundary, is to create a maritime boundary in the waters between American Samoa and Niue. Niue is an island in the South Pacific Ocean about one and a half times the size of Washington D.C. It is in our interest to establish limits of the exclusive economic zone (EEZ) around American Samoa to give certainty to U.S. jurisdiction over the water column and sea floor, which allows the U.S. to manage properly the fisheries resources in these areas. The boundary is based on an equidistant line, calculated from all relevant territories. American Samoa supports U.S. ratification of the agreement.

## MONTREAL AND BEIJING AMENDMENTS TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

The Montreal Protocol on Substances that Deplete the Ozone Layer was ratified by the United States in 1988 to strengthen international efforts to reduce the effects of ozone depleting chemicals, such as chlorofluorocarbons (CFCs). Scientific evidence showed that more steps were needed to protect human health from the debilitating effects of ozone depletion. Increased UVB radiation associated with ozone depletion is linked to serious health and environmental effects including higher incidences of skin cancers and eye cataracts and ecosystem disruption.

A multilateral regime such as that provided in the Montreal Protocol is necessary to control emissions of ozone-depleting substances because such emissions occurring anywhere could affect the ozone layer globally. The Montreal Protocol established schedules and timetables for reducing CFCs and other ozone depleting substances based on sound science. Since the Protocol's entry into force, four amendments have been adopted to quicken the pace of repairing the ozone layer. The London Amendment, which sped up the phase-out schedule for CFCs and other major ozone depleting chemicals, was adopted in 1990 and ratified by the United States in 1991. The 1992 Copenhagen amendment, which provides for controls on three new substances, including methyl bromide, was ratified by the United States in 1994.

*Montreal Amendment*

The 1997 "Montreal" Amendment, which entered into force in 2000, is designed to address two important trade-related matters. First, the amendment bans the trade in methyl bromide between a Party and a non-Party. This provision is identical to trade provisions that have been included in the Montreal Protocol for other controlled chemicals. It is designed to protect the environment by ensuring that countries that have not agreed to the Montreal Protocol's production and consumption rules for methyl bromide do not have unfettered access to this ozone depleting

compound. In addition, the Protocol's trade provisions ensure that non-Parties do not gain a competitive advantage over Parties that do comply with these reduction provisions. Second, the amendment calls on each Party to put in place a system for licensing the import and export of all new, used, recycled and reclaimed controlled substances under the Montreal Protocol. Finally, the amendment makes it illegal for non-complying producers to export "recycled" substances. It is important to note that the last two provisions (both the licensing system and the restriction on exports of recycled substances) will support law enforcement efforts to prevent the illegal trade in controlled substances.

#### *Beijing Amendment*

The 1999 Beijing Amendment, which entered into force in February 2002, further fine-tunes the Montreal Protocol. The amendment adds bromochloromethane, an industrial solvent and flame retardant to the control regime. This action will ensure the phase-out of this new ozone depleting chemical before it can come into widespread use, possibly in developing countries. The Beijing Amendment also establishes trade and production controls on hydrochlorofluorocarbons (HCFCs), similar to those which already exist for other controlled substances. The trade provisions ban trade in HCFCs between Parties and non-Parties, while the production controls limit the amount of HCFCs that can be produced as they are gradually phased out over the next two decades. Finally, the amendment requires Parties to report on their use of methyl bromide for quarantine and preshipment purposes.

U.S. ratification of the Montreal and Beijing Amendments would send a clear signal that the Administration is committed to strengthening international environmental standards on chemicals that degrade the global environment. In addition, because these amendments have both already entered into effect, ratification would allow the United States to fully participate in Montreal Protocol decisions related to these two agreements.

#### PROTOCOL AMENDING 1949 CONVENTION OF INTER-AMERICAN TROPICAL TUNA COMMISSION

Finally, I would like to mention briefly the Protocol amending the 1949 Convention on the Establishment of an Inter-American Tropical Tuna Commission (IATTC). The Protocol amends the Convention to allow the European Commission (EC) to become a member of the IATTC. The original Convention, adopted in 1949, only allows States to be members of the Commission. Today, however, it is the EC, not the Member States, that has the competence to regulate fishing vessels of EC Member States fishing in the Convention area. The Protocol includes language that has become standard in regional fishery conventions to allow membership by "regional economic integration organizations." This would be the first time the Convention has been amended since its entry into force in 1950.

The current members of the IATTC are the United States, Costa Rica, Ecuador, El Salvador, France, Guatemala, Japan, Mexico, Nicaragua, Panama, Vanuatu and Venezuela. Collectively, the members of the IATTC review research conducted by the IATTC scientists and adopt conservation and management measures for the tuna fisheries of the eastern Pacific Ocean, which the members are then legally bound to implement. In recent years, these measures have included catch quotas for yellowfin tuna and bigeye tuna, measures to reduce bycatch in tuna purse seine fisheries, and other measures.

Allowing the EC to accede to the Convention serves important U.S. interests. EC membership in the IATTC is the only way to ensure that vessels flying the flag of any BC Member State are bound by the conservation and management measures adopted by the IATTC for the fishery resources of the eastern Pacific Ocean. Although the BC participates in the meetings of the IATTC and has generally complied with the conservation and management measures adopted by the organization, it is currently not legally bound to do so. If vessels operating under EC jurisdiction are to be legally bound by such measures, the EC must be allowed to accede to the Convention.

#### CONCLUSION

In conclusion, we strongly request your favorable consideration of these agreements. Thank you for the opportunity to appear before you today and I look forward to answering any questions you may have.

Senator SARBANES. Thank you very much, Secretary Turner.

First of all, as I understand it, the administration, obviously since you are here, supports all of these treaties and is asking us to ratify them. Is that correct?

Mr. TURNER. The administration is in strong support of ratification of these six measures.

Senator SARBANES. Second, you mentioned it in a couple of instances but you did not do it with each one, I would be interested in how far along we are on the path of having these various treaties approved by other countries. Could you just give us a rundown on that if you have it there?

Mr. TURNER. I believe I can, Mr. Chairman. On the SPAW Protocol, there are 11 signatories and all have ratified except for the United States. The treaty with Niue, of course, that is bilateral, and both countries still need to ratify that. On the SPREP agreement, 17 of the 18 signatories have ratified pending approval of the United States to make it 18. On the IATTC, there are 8 signatories to that and only France has ratified to date.

Senator SARBANES. That's the tuna—

Mr. TURNER. The tuna one, it is my understanding that the only one to ratify that to date has been France.

Senator SARBANES. All right, go ahead.

Mr. TURNER. And I will clarify these if I am mistaken, for the record.

On the Montreal Amendment, 79 countries have ratified it, and 30 countries have ratified the Beijing Amendment.

Senator SARBANES. That is out of 184? Is that correct?

Mr. TURNER. I believe that would be correct.

Senator SARBANES. Why is the Beijing one not as far along? Do you know?

Mr. TURNER. Well, the Beijing Amendment entered into force February of this year. Sufficient countries had ratified it.

Senator SARBANES. How many were needed to put it into force?

Mr. TURNER. We will supply that answer for the record, Senator. [The following answer was subsequently provided.]

A total of 20 Parties.

In February 2002, the Beijing Amendment entered into force following its ratification by 20 Parties to the Montreal Protocol that had either previously or simultaneously submitted their instruments of ratification for the Montreal Amendment. Thus far, 30 instruments of ratification have been deposited.

Senator SARBANES. You say only 30 have approved it.

Mr. TURNER. Yes, 30 have approved it.

Senator SARBANES. Out of 184? There are 184 countries that have ratified the Montreal Protocol. Is that correct?

Mr. TURNER. It is my understanding 183 countries have ratified the Montreal Protocol.

Senator SARBANES. OK, and 79 of those have approved the Montreal Amendment to the Montreal Protocol. Is that correct?

Mr. TURNER. Yes, Mr. Chairman, and that went into effect in November 1999.

Senator SARBANES. When it had how many signatories, do you know?

Mr. TURNER. I will have to supply for the record the number needed to—

[The following answer was subsequently provided.]

Only countries that are Parties to the Montreal Protocol, not signatories, are eligible to approve amendments to the Protocol. To become a Party to the Montreal Protocol, an instrument of ratification, accession, approval or acceptance must be submitted to the Depository. Each amendment to the Protocol must be ratified individually. The Montreal Amendment entered into force upon the deposit of 20 instruments of ratification by Parties to the Montreal Protocol.

Senator SARBANES. Now, 30 have done the Beijing Amendment.  
Mr. TURNER. Correct.

Senator SARBANES. Out of 183. And that is enough to put it into effect?

Mr. TURNER. Yes, sir. It went into effect in February.

Senator SARBANES. Do we know how many countries it takes to put an amendment to the Protocol in effect?

Mr. TURNER. Mr. Chairman, it is my understanding that it took 20 to ratify the Beijing Amendment for it to go into effect. So, if it went into effect in February 2002—

Senator SARBANES. How many did it take for the Montreal Protocol itself to go into effect?

Mr. TURNER. We will supply that for the record, Senator. It took 20 countries to modify the two amendments under consideration this morning.

[The following answer was subsequently provided.]

The entry-into-force requirement of the Montreal Protocol stipulates that it will enter into force on January 1, 1989, provided that 11 instruments of ratification have been submitted by States or regional economic integration organizations representing at least two-thirds of the 1986 estimated global consumption of controlled substances and provided that the Vienna Convention had entered into force.

The Protocol, indeed, came into force, on January 1, 1989, by which time 29 countries and the EEC, representing approximately 82% of world consumption, had ratified it.

Senator SARBANES. The thrust of my question is obviously a process question. I do not know that it directly has anything to do with the substance because I do not have a problem with the substance. But it is interesting that only 20 countries out of 183 countries that have ratified the treaty can amend the treaty and put that amendment into effect. If you could work that up for us, I would appreciate it.

Mr. TURNER. We will get you some additional information. I think it might be worth noting that it is important that those developing countries that are in a leadership position in the chemical arena—certainly the standard has been in the Montreal Protocol that countries like the United States taking a lead and helping developing countries with their phaseout of their production and their research. So, I think it is important that the United States be a leader in this effort.

[The following answer was subsequently provided.]

The number of ratifications that are required for an amendment to an international environmental agreement to enter into force varies from agreement to agreement. The Montreal Protocol parties decided to allow amendments to enter into force with 20 ratifications, in part to allow controls on ozone depleting chemicals to become effective in a timely manner. However, if the concern is that only a small number of countries can amend the treaty, it also must be agreed by consensus or, after every effort to reach consensus has been made, by 3/4 majority as a last resort.

Senator SARBANES. I do not differ with that. It sort of makes me pause for a minute that you have a treaty that has 183 signatories to it and that only 20 of the 183 can put an amendment into effect with respect to that treaty.

Mr. TURNER. I think it is a worthwhile observation, and we will get back with some further explanation of why that was so.

[The following answer was subsequently provided.]

This process has worked well in practice and a significant number of countries have ratified the four Montreal Protocol amendments. The 1990 London Amendment has now been ratified by 163 countries, the 1993 Copenhagen Amendment by 141 countries, the 1997 Montreal Amendment by 79 countries, and the 1999 Beijing Amendment by 30 countries. Since it is not unusual for some countries to take five years or more to complete their ratification process, this demonstrates the willingness of the Montreal Protocol parties to adhere to new amendments. U.S. ratification is particularly important because it encourages other countries to ratify quickly.

Senator SARBANES. Do you have any other treaties pending, or does this cover your agenda, what we are doing here this morning?

Mr. TURNER. Senator Sarbanes, I believe on Thursday we will have a hearing on the POP's Treaty. Certainly we have the Law of the Sea.

Senator SARBANES. I think that is before another committee, as I understand it. That is the Stockholm Convention on Persistent Organic Pollutants?

Mr. TURNER. Yes, Mr. Chairman. And we have the PIC, the Prior Informed Consent.

Senator SARBANES. Yes. I think you have just sent that up, as I understand it.

Mr. TURNER. And the POP's just recently was sent. The President just recently signed that. The holdup on that one has been legislation accompanying that was prepared by EPA.

Senator SARBANES. Do you have any other treaties?

Mr. TURNER. We have the Law of the Sea before the Senate. And there may be some others that we will notify the committee of that might be before the Senate.

Senator SARBANES. I think it would be helpful if you could send us a letter about the balance of your agenda, if any, as it relates to this committee beyond the six treaties on which we are holding this hearing this morning.

Mr. TURNER. And then, Senator Sarbanes, I know we have some others in the works on fisheries, polar bears, but whether they come before your committee, I will get that to you. Thank you for the question.

[The following answer was subsequently provided.]

The following treaties of particular interest to the OES Bureau are pending in the Committee:

- Treaty Doc. 103-39: United Nations Convention on the Law of the Sea, with Annexes, done at Montego Bay, December 10, 1982 and the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of December 10, 1982, with Annex, adopted at New York, July 28, 1994.
- Treaty Doc. 106-21: Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, with Annexes. Done at Rotterdam, September 10, 1998.
- Treaty Doc. 98-10: Amendment to the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora. Adopted at Gaborone, April 30, 1983.



- Treaty Doc. 103–20: Convention on Biological Diversity. Done at Rio de Janeiro, June 6, 1992.
- Treaty Doc. 107–5: Stockholm Convention on Persistent Organic Pollutants, with Annexes. Done at Stockholm, May 23, 2002.

Below are treaties that we have negotiated that are not yet before the Committee, but may be submitted to the Senate before the end of the 107th session of Congress:

- 1996 Protocol to the Convention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, with Annexes. Done at London, November 7, 1996.
- Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto [to add Annex VI—Regulations for the Prevention of Air Pollution from Ships]. Done at London, September 26, 1997.
- Protocol Concerning Pollution from Land-based Sources and Activities to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, with Annexes. Done at Oranjestad, October 6, 1999. Signed by the U.S. October 6, 1999.
- Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. Done at Honolulu, September 4, 2000. Signed by the U.S. September 5, 2000.
- Agreement with Russia on the Conservation and Management of the Alaska-Chukotka Polar Bear Population. Signed at Washington, October 16, 2000.
- Amendment to the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges. Done at Seattle, April 24, 2002.
- 1987 Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America. Done at Christmas Island, Kiribati, May 24, 2002.

Senator SARBANES. Good.

Senator ALLEN.

Senator ALLEN. Thank you, Mr. Chairman. Let me just ask some questions on this.

First, let me followup on the process—

Senator SARBANES. George, let me just intervene for a second. I am informed that the POP's Treaty would actually be referred to this committee, but that the hearing that you are referring is on the implementing legislation and I think that will be before the Environment and Public Works Committee, just to be clear on that point.

Senator ALLEN. I want to get into some of the merits and science, but let me just followup on the chairman's questions on jurisdiction and effectiveness I guess in process.

Clearly if a country votes and ratifies the Montreal Protocol, it applies to them, the 183. Assume it can be amended with 20 countries, and 30 countries have agreed to an amendment. Is that amendment binding only on those 30 countries?

Mr. TURNER. Yes.

Senator ALLEN. All right, it is. So, you still have a long way to go on some of these amendments. It is just like a new treaty. Granted, it is an add-on or it is an amendment to the basic one. But there are many countries, some of which may be larger producers or users of the substances, but still have to ratify these amendments.

Mr. TURNER. Senator, it is my understanding that the provisions only apply to those that are parties that have ratified it. But certainly the nonparties would be impacted by the prohibitions on trade.

Senator ALLEN. Well, let me ask you on the trade then, to the substance of this. Clearly illegal trade in substances controlled under the Protocol applies. Is illegal trade extensive, and if it is, if this illegal trade is extensive, could you share with us who the major violators are?

Mr. TURNER. Senator, I would like to get back to you on the levels of trade. It certainly is a focus for this administration, and I think we have had some real success stories in reducing the trade on several of these chemicals. Certainly we had a problem with Russia as it went through the breakup and they were still in the production of some of these chemicals, and working positively with Russia, we were able to change that. So, what the actual flow of many of these substances—perhaps we can submit to the committee some more information.

[The following information was subsequently provided.]

The United States and the international community have recognized and worked to address the problem of illegal smuggling of ozone depleting substances (ODS). Significant action has been taken by calling on countries to combat illegal imports, and providing training and assistance to government and customs officials to prevent these illicit activities. Estimates of the levels of illegal trade are highly speculative by their nature. Illegal smuggling of CFCs in the mid-1990s was estimated based on government and industry information to be in the range of 16,000 to 38,000 tons of CFCs annually, representing approximately 6 to 15% of global production. In the United States, the Department of Justice has taken strong action on CFC smuggling, seizing nearly 2.5 million pounds over the past decade and securing numerous convictions resulting in fines and jail sentences. Illegal traffic is believed to have peaked in the mid-1990s and decreased since that time due to (1) the deterrent effect from enhanced efforts and convictions achieved by law enforcement and customs officials, and (2) the reduction in demand for CFCs as obsolete equipment is replaced or retired. The provision included in the Montreal Amendment establishing a licensing system for controlled substances is particularly important because it will assist law enforcement in efforts to track and prevent illegal smuggling.

Senator ALLEN. The reason I ask this, obviously, the effectiveness of any of these treaties is based upon compliance, and if we are going to try to stop illegal trade, we need to know who the violators are, if there are any. There are many things that will come before the Foreign Relations Committee in our dealings with certain countries where this sort of compliance, while it may have to do with, say, foreign aid, it may have to do with various types of assistance to these countries, that we might be able to use compliance with these environmental concerns as one of the conditions precedent for them receiving that aid.

I do not know the extent of it, but there are times—and I am not going to bring up any country because I am not going to cast any aspersions without knowing what the evidence and the facts are. But nevertheless, there are treaties, there are arrangements, there is assistance from our country that we provide to many, many nations around the world, and to the extent that we want to be reducing some of these dangerous substances in the air that affect our ozone layers, it seems to me that maybe there are ways to leverage that or just make that one added concern.

For example, we always care about nuclear proliferation when we are looking at countries and if they have nuclear capabilities and they are exporting arms or possibly nuclear substances to countries that should not be getting them, that ends up affecting

a whole lot of other areas as far as our dealings with those countries. So, maybe this would be another one where we can have some influence in maybe an indirect way to get compliance.

Mr. TURNER. Senator, I think it is an important observation. I appreciate the question. And not only is it important that these toxics be controlled because of ozone depletion, but also we have to be vigilant on illegal trade because it puts American business at an unfair advantage, whether you are in the chemical processing business or you are in the agriculture business. Our industry is trying to comply in the phaseout, and we do not want unfair business competitors, those that are violating the standards of the Protocol.

Senator ALLEN. I agree wholeheartedly. That is why I mentioned in my opening remarks the importance of getting the so-called under-developed countries to abide by this as well, because if our country is abiding by it and others are producing, say, in agriculture or other manufacturing, products, if they are not complying with the same rules, not only are they harming the environment, but it is also harming jobs here in this country because those countries end up being more desirable possibly for those companies to operate in rather than in the United States or, for that matter, in France or Germany or other countries that are complying with it.

As far as the Montreal Protocol—I mentioned this in my opening comments, and if you could share with the committee—has the depletion of the stratospheric ozone layer been reversed in any measurable respect since the implementation of the original Montreal Protocol? If not, if you could share that with us, or has the rate of depletion slowed, maybe not reversed, but is there any measurable data that shows at least the rate of depletion has slowed? Of course, it would be more desirable if it were returning, getting better, but do you have any evidence of that?

Mr. TURNER. Senator, certainly I think the Montreal Protocol has been successful on several fronts, and we can get you additional information on that. Certainly we have seen the science of the ozone is a complex one, but in certain areas of the world, we have seen some restoration. But scientists at least tell me that without the reductions in the phaseout that we have experienced to date, that the ozone levels would be 10 times in four decades what they are going to be if we did not have the efforts going on today which would be like 20 million incidents of skin cancer.

So, it certainly has helped negate where we would be without the Potocol. How much we have done to restore those areas that have been depleted, perhaps I can find some additional information. It has been an extremely important international effort, and as Senator Sarbanes' and your comments have pointed out, we need to do better with it. But the control of some 100 substances has made a difference in what we would experience in ozone depletion if we had not had it.

[The following information was subsequently provided.]

It is expected that the ozone layer will slowly recover over the next 50 years, assuming that the Montreal Protocol and its amendments are fully implemented.

Senator ALLEN. That is a good, broad summary of it. I think it would be helpful to get the specific objective data to show that. Obviously, everything you say is very logical, but I think that as we

move forward, the more empirical scientific data we can get, the better. I think the citizens of this country deserve it, and I think it also will help us as well in the future in making determinations and also sharing that objective data. Especially if you have a country that has a relative democracy, the people of those countries will demand their leaders to act as well. If you have objective data rather than sentiments, it usually bolsters people's instinctive sentiments to have that evidence.

Mr. TURNER. I think it is important that the committee have that objective data, and I will look forward to reviewing it.

[The following information was subsequently provided.]

The Montreal Protocol Scientific Assessment Panel has found that the combined concentration of all ozone-depleting chemicals in the lower atmosphere peaked in 1994 and is now slightly declining.

Senator ALLEN. Finally, Senator Sarbanes, if I may.

Senator SARBANES. Certainly.

Senator ALLEN. Do you foresee any additional substances that might be subject to the Montreal Protocol?

Mr. TURNER. Senator, I do not know of any other materials that are under consideration at the moment that would be coming before you.

Senator ALLEN. Thank you very much, Mr. Secretary.

Mr. TURNER. Senator, on a personal note, we look forward to welcoming you to Wyoming, welcoming you and your son to Moose. If I can be any help in seeing that that is an enjoyable visit whether it is at the Chuck Wagon next to the Snake River or whatever, we look forward to welcoming you to Jackson Hole country.

Senator ALLEN. Thank you.

Senator SARBANES. Mr. Secretary, could you turn to page 4 of your statement please? I want to ask you about the meaning of the paragraph at the top of page 4 with respect to the Caribbean Protocol, the SPAW.

You say there: "There are three Annexes that contain the lists of 481 endangered and threatened species of flora and fauna covered by Article 11 of the Protocol. The United States plans 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." I would like an explanation of that.

And then I would like an explanation of the last sentence. "It is envisioned that the Annexes will be treated separately as an Executive Agreement."

Mr. TURNER. Senator, what we had envisioned was because the list of species changes, as does the list of our own Endangered Species Act and Marine Mammal Protection Act, as it does with the CITES list of species, and animal parts come on and off Appendix 1, 2, and 3, we thought that a good way to handle this, so we would not have to come before the committee with each species change, we would handle it as an annex like we do in CITES.

Certainly the United States shares the interest and effort to protect rare plants and mammals, fish, and birds in the Caribbean region, which we share. These six species, we wanted to be sure we are in compliance with how we handle it under the Endangered

Species Act. For example, they list wood storks. They just list it under the Annex in the Caribbean. Well, under United States law and program provision, we only list wood storks in one region of the United States, and the wood storks, as I recall, in Louisiana and Texas are plentiful and we do not list that population.

So, I see this as a clarification, first of all, to be sure that the United States' adherence will be based on our programs and laws that you all have passed. So, I see it as a clarification, and it will also allow us the flexibility as we change our approach to specific species, or as this list changes, we can handle it on an annex basis.

But we would appreciate any thoughts on that from the committee. It seemed like a reasonable way. And any changes to the Annex will be handled through the "Federal Register" and public comment as we do on the CITES list.

Senator SARBANES. Well, does the last sentence mean that the executive branch can add to the list or take off the list as it sees fit?

Mr. TURNER. Yes, Senator. In a procedure, whether it is the CITES list, as we go through the process under CITES, as we do under the Endangered Species Act, as we propose and have hearings and do biology, and list through the "Federal Register," it would have the same kind of transparency and involvement of the public, public notice. It did not seem convenient for this committee or the Congress to be coming back and submitting lists of specific species to you.

Senator SARBANES. I am not cognizant. How does the Endangered Species Act work? Can the Executive add to or take off of that of its own volition?

Mr. TURNER. The Endangered Species Act, as I recall, gives the Secretary of the Interior, the Secretary of Commerce—they go through a rigorous procedure of findings and public notice and biology, but in fact they can list, remove, down-list species in peril based on biology, based on the laws that the Congress has passed and that we have adhered to for years. There are several hundred domestic and international species on those lists. So, as they change and we find more biology and people comment, those lists do change.

Senator SARBANES. And is the procedure you are suggesting here parallel with that procedure?

Mr. TURNER. We feel it is in compliance with—we simply wanted to clarify that this particular Protocol would not dictate to the United States the handling of species different than we are already required to do under existing law. I do not see a major conflict—

Senator SARBANES. No. That is the part that says that it will not apply to six species that do not require the protection provided by the Protocol in U.S. territory. Right? I understand that part of it. Well, I think I understand both parts of it, but that is not the part that I am asking about now.

I am asking about the provision that the Annexes will be treated separately as an executive agreement and whether that means that the Executive—let me take an extreme example. Could the Executive add 481 additional endangered and threatened species?

Mr. TURNER. Senator, highly unlikely. As species are nominated under our own domestic laws and the Endangered Species Act or

the Migratory Birds, those are identified—the Marine Mammal Protection Act—species go on and come off those lists according to procedures, court cases established by the United States. So, those change. Of course, over decades in our country, the history of wildlife protection, as you are aware of—we are now up to several hundred, maybe over 1,000 species, now domestically and international species as the biology shows.

So, I see it that we would handle this list, as the Caribbean countries come together and identify in peril lists, we would say that is fine, but we just want to be sure we are in compliance with the list that we now have in the United States. So, doing it as an executive agreement allows us to prevent the application of the Annex list out of the Caribbean intruding on the sovereign decisions that the United States makes through its own laws and—

Senator SARBANES. I understand the defensive strategy. We are looking here whether to approve this. You give us a list of 481 items that will be covered. Now, presumably there will be some Member of Congress who is interested in that list, since it may have an impact. Can the Executive now in the future add to the 481 of its own volition?

Mr. TURNER. They certainly could not add on—the Annex could not dictate to the United States the additional protection of species. The Annex under this Protocol could not do that. We could only do it in accordance with the laws of the United States that you have already adopted.

And the reason we do it on an annex, we only have 90 days to file our reservations to an annex. So, this seemed to be the most expedient and the most flexible manner so as not to have to bring it to your attention.

But no, this Annex—nor could the administration just pick 481 species in the Caribbean and somehow impose those on the protection and the rigors of the law that the United States now has. Those will be handled separately under laws that this body has already provided and court law has established these sideboards.

And the 481 are relatively comparable to species and populations we already have listed under United States law. We wanted to clarify these six to be sure that this Annex would not impose any outside regulations against U.S. interests.

Senator SARBANES. Well, we may submit some followup questions to you on this issue.

Also, there have been a number of matters that have come up in the course of the hearing where you have indicated you will be providing us additional information. If you could do that promptly, it would help in terms of consideration of these treaties.

Do you have anything else?

Senator ALLEN. No, I do not. Thank you, Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Secretary.

Mr. TURNER. Senator, thank you again for your indulgence and consideration. We will get that information back to you expeditiously.

Senator SARBANES. OK, very good.

Mr. TURNER. Thank you, sir.

Senator SARBANES. If we could ask the follow-on panel to come forward and take their places, we will continue here.

Our panel consists of Thomas Grasso, the U.S. director for Marine Conservation Program of the World Wildlife Fund. Mr. Grasso is an environmental attorney. He has worked for the National Wildlife Federation, the Chesapeake Bay Foundation, and the Sierra Club Legal Defense Fund.

And he will be followed by Dr. David Read Barker. Dr. Barker is president of Monitor International, an environmental NGO based in Annapolis, Maryland. Dr. Barker actually has spent more than three decades promoting sustainable development through partnerships among governments, community groups, and businesses, and is an expert on the Caribbean. I think we will focus most of his attention on the Protocol to the 1983 Marine Environment of the Wider Caribbean Region Convention.

Mr. Grasso, we would be happy to hear from you and then we will go to Dr. Barker.

**STATEMENT OF THOMAS V. GRASSO, U.S. DIRECTOR, MARINE CONSERVATION PROGRAM, WORLD WILDLIFE FUND, WASHINGTON, DC**

Mr. GRASSO. Thank you, Senator Sarbanes and Senator Allen. It is a pleasure to be here today and it is a privilege as well.

With your permission, I would like to dispense with the reading of my written testimony and just make a few brief comments.

Senator SARBANES. Your full statement will be included in the record.

Mr. GRASSO. Thank you.

On behalf of the World Wildlife Fund, as the director of the U.S. Marine Conservation Program, it is a pleasure to be here today to testify about these two very important treaties that the United States is considering moving forward on.

Today the world's living oceans are under stress from a number of human-induced threats. The U.N. Food and Agriculture Organization estimates that 70 percent of the world's fisheries are considered in an overfished state or approaching being overfished. And 25 percent of the global fish catch is considered unintentional bycatch, or wasted as dead discards. Very dramatic. And if you can imagine explaining that to a Chesapeake Bay waterman that a quarter of his crab catch would be disposed of as dead or dying, he would be taken aback I think dramatically.

Habitats in the marine environment are under stress as well. Some 58 percent of the world's coral reefs are at risk from some sort of human activity, whether it is pollution, dynamite fishing, or other destructive fishing practices. In Indonesia alone, 80 percent of the coral reefs are threatened by dynamite fishing, and this is the type of fishing practice that is seen in much of the developing world.

Climate change is having an impact on the marine environment as well. In 1997 and 1998, as a result of climatic changes, coral bleaching hit the Indian Ocean very hard with 80 percent of the reefs dying as a result of coral bleaching around the Maldives and other islands.

So, clearly international cooperation and strong conservation action are needed to address these threats. The Inter-American Tropical Tuna Commission has been around for close to half a century.

They have faced a number of daunting challenges, but no more daunting than the challenges they face today. The two that I am speaking of are over-capacity of the fishing fleet in the region and the problem of massive bycatch with certain types of fishing practices.

Why do I bring these issues up in the context of the discussion of whether the EU and other regional economic integration organizations should be a party to this treaty? The European Union's member state, Spain, currently has the third largest fishing fleet in the region. All of those boats that the Spanish own, whether they are flagged in Spain or locally, use something called FAD fishing, which is a type of fishing that is based around floating objects. It attracts fish that feed. That type of fishing method has very destructive bycatch as a result, catches of small tuna, sharks, rays, and sea turtles as well.

If the EU decides to join as a party to the IATTC, we fully expect that they will work vigilantly to promote a limit on the capacity of the fishing fleet in the region and address the serious bycatch problems that their fleets, as well as other fleets in the region, poses to the health of the tuna fishery.

I mention this because this committee will likely be considering later in the year a treaty that was recently adopted to manage the tuna fisheries of the Western and Central Pacific Ocean. The EU participated as an observer in those negotiations. The United States provided a true leadership role in promoting that treaty's conclusion. A resolution was adopted midway through the negotiations by the parties that said we will not increase capacity of the fishing fleet in the region until we have adopted a treaty and a management plan is put in place.

Unfortunately, the Spanish fishing industry struck a deal with one of the Pacific island countries to gain access to their waters, thereby breaching the resolution that was adopted by the parties. So, I mention this because I think it is important for the EU to be a party to the IATTC, but they also have to agree to play by the rules and to work toward promoting conservation management.

Moving on to the South Pacific Region Environment Program, this is a very familiar type of program I am sure to both of you with your experience with the Chesapeake Bay agreement. In the Pacific, collaboration, cooperation, and consensus are the Pacific way. SPREP I think demonstrates those principles and values very well. Over the years, the United States has participated as an observer and has participated. The United States' participation as a full party to this agreement and the SPREP program would be a wonderful step forward for the United States, as well as for the SPREP program.

With that, I would like to thank you again for allowing me to testify here today and would be happy to answer any questions.

[The prepared statement of Mr. Grasso follows:]

PREPARED STATEMENT OF THOMAS V. GRASSO, U.S. DIRECTOR, MARINE  
CONSERVATION PROGRAM, WORLD WILDLIFE FUND

Thank you for the opportunity to testify today on the South Pacific Regional Environment Programme Agreement and the Protocol Amending the 1949 Convention of the Inter-American Tropical Tuna Commission. I am Tom Grasso, U.S. Director for Marine Conservation at the World Wildlife Fund. WWF, the world's largest private



conservation organization, works internationally to protect wildlife and wildlife habitats. We currently sponsor conservation programs in more 100 countries thanks to the support of our 1.2 million members in the United States and more than 5 million members worldwide.

Today, the living resources of our world's oceans are facing a variety of threats from human activities ranging from destructive fishing practices, overcapacity of global fishing fleet, unstable coastal land use development and the impacts of climate change. The United Nation's Food and Agriculture Organization estimates that more than 70% of the world's commercial fisheries are being overfished or threatened by overfishing. Moreover, approximately 25% of the world's total commercial catch of fish is unintentional bycatch or wasted as discards. Regarding sensitive marine habitats, 58% of the world's coral reefs are at risk from human activities. Already in Indonesia, over 80% of the reefs are at risk from dynamite fishing—a threat that is widespread in the developing world. In the last decade, climate change has emerged as a major threat to coral reefs. When corals are exposed to high temperatures large areas of reef loose their colorful algae and bleach and die. In 1997-98, coral bleaching hit the Indian Ocean particularly hard with an average of around 80% reef mortality in the Maldives and other islands.

International cooperation and strong conservation action aimed at reducing the myriad human threats to our world's oceans is desperately needed. Today, your committee is considering two such international efforts in the Pacific Ocean: the Inter-American Tropical Tuna Commission and the South Pacific Regional Environment Programme Agreement. I will address the specific issue with respect to each agreement individually.

As you know, the Inter-American Tropical Tuna Commission (IATTC) was first established over half-a-century ago. Since that time, the IATTC has had to address a number of critical issues facing the tuna fisheries of the Eastern Tropical Pacific Ocean (ETP) and the ecosystem upon which they rely. Some of these issues include pursuing advances fisheries science for support and development of fisheries management plans as well as the establishment of fishing quotas and the development and administration of the International Dolphin Conservation Program whose aim it is to reduce dolphin mortality in the tuna fisheries of the ETP.

Today, IATTC is faced with perhaps its most difficult issues to date: that of the gross overcapacity of the region's fishing fleet and the massive by catch problems associated with the FAD fishery (a FAD is the use of an artificial floating object to attract fish). You may ask, why am I raising these issues in the context of hearing on Protocol pertaining to amend the IATTC convention? Let me explain why. As you know, the protocol is intended to amend the 1949 treaty to allow regional economic integration organizations such as the EU to join as full-participating parties.

According to the IATTC, between 1961 and 2001 the number of purse seine vessels operating in the ETP has nearly doubled from 125 to 220. The volume of well space (the fleets' overall fishing capacity) has increased from 31,096m<sup>3</sup> to 197,421m<sup>3</sup>. That increase represents a 642m<sup>3</sup> capacity increase per fishing vessel. Spain currently has 5 Spanish flagged with an additional 8 locally flagged, but Spanish-owned, fishing vessels operating in the region. As of the fall 2001, this aggregated fleet of 13 vessels represents the third largest fishing fleet in the ETP region.

Additionally, from 1992-1999, there has been a dramatic increase in the amount of FAD fishing relative to other fishing methods in the region. In 1992, 31% of the ETP fishery was FAD fishing. By 1999 that percentage had more than doubled with FAD fishing making up 80.4% of the ETP fishery. Why is this important? Use of FADs to catch tuna results in high levels of undersized tuna and other marine species being caught and threatens the health of the marine ecosystem that supports the valuable tuna fisheries of the region. According to a 2000 IATTC bycatch working group document, FAD fishing results in much greater bycatch of undersized fish of the three main tuna species (yellowfin, skipjack and big eye), when compared to other fishing methods (e.g. floating objects 27,133mt, unassociated schools 2,551mt and dolphin sets 747mt during 1998). In addition, the workgroup found that, again, when compared to other fishing methods, FAD fishing resulted in the bycatch of other marine species, such as sea turtles, sharks, billfish, mahi mahi and manta rays, nearly an order of magnitude greater than the other methods.

Accordingly, WWF supports amending the 1949 treaty to allow regional economic integration organizations, when appropriate, to join as party the IATTC. However, as the EU seeks to join the IATTC, WWF believes that the EU should do so with the full intentions of working aggressively to address the fleet overcapacity and FAD fishing bycatch problems that are currently plaguing the region's tuna stocks and associated marine species. In addition, the EU should ensure that the fleets of their

member States comply fully with any regional plans aimed at addressing these and other critical issues faced in the region. Lastly, to date, the United States has shouldered the lion share of costs for administering the IATTC. Should the EU become a party, we fully expect the EU to assume a substantial responsibility for financially support the work of the IATTC commensurate to their interests in the region.

I will now address the South Pacific Regional Environment Programme Agreement. WWF has a substantial interest in the promotion of collaborative efforts to protect and enhance the marine environment in the South Pacific. As part of our effort to prioritize efforts to protect the world's biological diversity, WWF underwent a scientifically rigorous effort to identify the most global significant ecoregions and what we came up with was a list we call the Global 200. In the South Pacific, we have identified marine ecosystems important for preserving marine biodiversity in Vanuatu, Fiji, New Caledonia, Samoa, Tonga, Tuvalu, Palau, Solomon Islands, Federated States of Micronesia and Papua New Guinea. In addition, WWF's South Pacific regional programme office based in Suva, Fiji has worked collaboratively with the SPREP over the years and believes it them to be a valuable partner in the region. The United States support of SPREP over the years has been essential to its success. Should the U.S. decide to join as a party to SPREP, WWF would view this in a very positive light and believe that the United States' full participation can only enhance SPREP's the collaborative efforts in the region.

Mr. Chairman and Members of the Subcommittee, thank you again for the opportunity to testify here today.

Senator SARBANES. Very good.

Dr. Barker, we will be happy to hear from you.

**STATEMENT OF DR. DAVID READ BARKER, PRESIDENT,  
MONITOR INTERNATIONAL, ANNAPOLIS, MD**

Dr. BARKER. Thank you, Senator Sarbanes and Senator Allen. I appreciate the opportunity to appear before your committee to express support for the Protocol Concerning Specially Protected Areas and Wildlife, which I will refer to as the SPAW Protocol, to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, the Cartagena Convention.

The Wider Caribbean Region, as defined by the Cartagena Convention, is the marine environment of the Gulf of Mexico, the Caribbean Sea, and the adjacent areas of the Atlantic Ocean from northern Florida down to Suriname, which is at the northeast coast of South America. It therefore includes the five Gulf States from Texas to Florida, Puerto Rico, and the U.S. Virgin Islands.

This region holds great strategic importance for the United States because it is our southern maritime border and it contains 27 neighboring countries. The population of the islands and the immediate coastal zone is more than 100 million people, and 38 percent of them are poor and depend directly on agriculture and natural resource extraction for their livelihoods. So, the prosperity and economic future of this region depends critically on seashore resort tourism. The 100 million tourists who visit the Caribbean each year contribute 43 percent of the combined gross domestic product and a third of the export revenues of the countries in the region. More than 10 million people are directly employed in tourism-related jobs, and the livelihoods of several times as many people are indirectly affected by the health of the tourism industry and therefore by the health of marine environment.

The hallmarks of Caribbean tourism—living coral reefs, brightly colored fish, clear waters and clean sandy beaches—are components of a healthy marine ecosystem which experience has shown can be easily damaged or destroyed by precisely the sorts of tour-

ism development activities that most depend on them. At the same time, the fact that there is such a large number of countries means that substantial international cooperation throughout the region is required to make conservation efforts effective. It is hard to think of anywhere else on Earth where economic growth and international cooperation for environmental protection are more intimately connected than in the Wider Caribbean Region. This economic and environmental nexus is a fundamental strategic challenge for the region and it is certainly the basis for U.S. participation as a matter of highest national interest.

These considerations formed the backdrop for the formation of the Caribbean Environment Program in 1979 and the adoption of the Cartagena Convention in 1983. The Convention imposes general obligations on contracting parties to "prevent, reduce, and control pollution of the Convention area and to ensure sound environmental management." And it lists six topics for the development of subsequent protocols, one of which is specially protected areas.

Negotiations to develop the SPAW Protocol concluded in January 1990 with the signing of the Protocol by 13 countries, including the United States. The Protocol calls on each party to establish protected areas and to plan, manage, and enforce measures for these areas and for regional cooperation to list and create a network of protected areas. One result has been a rapid increase in the number of marine protected areas throughout the region; more than 300 have now been identified.

The Protocol also calls for parties to undertake national and regional cooperative measures to protect endangered and threatened species of flora and fauna listed in three Annexes. An initial list of species requiring protection was adopted in June 1991. The 481 species cover both marine and terrestrial plants and animals and include all species of marine mammals, of sea turtles, of corals, and sea fans, as well as other species from mollusks to mammals. Many of the listed species migrate within and far beyond the region, while some on the lists are endemic to very small areas. And 190 of the 481 species are listed under the U.S. Endangered Species Act.

Throughout the SPAW negotiations, 15 U.S.-based and international conservation organizations worked in close cooperation with U.S. Government agencies. This cooperation continued until October 26, 1993, when Ambassador David Colson testified on behalf of the executive branch at a public hearing on the SPAW Protocol held by the Foreign Relations Committee. That testimony described two reservations that the State Department recommended be included in the U.S. instrument of ratification. The first reservation concerned limited taking, and the second concerned environmental impact assessment.

On learning of these proposed reservations, many of the conservation groups that had worked for years to bring the SPAW Protocol into existence became concerned that reservations by the U.S. Government, even reservations on rather narrow technicalities, might provide an opening for other signatories to ratify the Protocol with much more substantial reservations, with the result that the Protocol would come into force of law in a greatly weakened form. Some organizations took the view that it would be better for

the U.S. Government to wait for the SPAW Protocol to enter into force of law before ratifying it, in order that the reservations of the United States not serve as an unfortunate precedent for other countries.

It took nearly 7 more years for the requisite nine countries to ratify the SPAW Protocol and bring it into effect, which did not occur until June 2000. During this time, there was a very rapid maturation of multilateral environmental governance in the region, while the parties to the SPAW Protocol turned a paper agreement into a living document linked to actual conservation measures. During the 1990's the Secretariat of the Caribbean Environment Program organized four meetings of an Interim Scientific, Technical and Advisory Committee for the SPAW Protocol, open to all countries in the region. These meetings created an atmosphere of cooperation that fosters an active region-wide work plan now that the Protocol has become law. The first conference of the parties was held in 2001, and the second conference was held yesterday in Jamaica.

Senator Sarbanes, financial and political support and technical leadership from the United States has been important to the success of the Cartagena Convention and the SPAW Protocol. It is in the interest of the United States to ratify the SPAW Protocol in order to be able to participate in its implementation as a party rather than simply as an observer. The stakes are much too high for the United States to remain on the sidelines. The active participation of the United States is necessary to enable our southern neighbors to slow and reverse the accelerating degradation of the marine environment that is at the center of their economic prospects. Now that the SPAW Protocol has come into force of law, the environmental community is no longer concerned that U.S. reservations might set a precedent that would weaken the agreement.

Since 1998 the wider Caribbean environment network has endeavored to inform conservation groups about the SPAW Protocol. We have been able to detect only strong support for it, as exemplified by a May 2, 2001 joint letter to the Committee on Foreign Relations expressing the support of 10 conservation organizations. That letter is attached with my written testimony submitted previously. That letter is just the tip of the iceberg of support.

I, therefore, urge the Foreign Relations Committee to report favorably the SPAW Protocol as soon as possible with a strong recommendation that the full Senate ratify it.

Thank you very much for the opportunity to appear before you.  
[The prepared statement of Dr. Barker follows:]

PREPARED STATEMENT OF DAVID READ BARKER, PRESIDENT, MONITOR  
INTERNATIONAL

Mr. Chairman, I appreciate the opportunity to appear before your Committee to express support for the Protocol Concerning Specially Protected Areas and Wildlife (SPAW Protocol) to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention). I am President of Monitor International, a nonprofit environmental organization that has supported the development of the Caribbean Environment Program for the past 20 years.

The Wider Caribbean Region, as defined by the Cartagena Convention, is the marine environment of the Gulf of Mexico, the Caribbean Sea and the adjacent areas of the Atlantic Ocean, from northern Florida all the way down to Suriname, on the

northeast coast of South America. The five Gulf states from Texas to Florida form the northern border of this region, which also includes Puerto Rico and the U.S. Virgin Islands.

This region clearly holds great strategic importance for the United States because it forms our southern maritime border and contains 27 neighboring countries. The population of the islands and the immediate coastal zone of the Wider Caribbean Region exceeds 100 million people, 38 percent of whom are poor and rely directly on agriculture and extraction of living marine resources. The present and future economic prosperity of the region depends critically on seashore resort tourism. The 100 million tourists who visit the Caribbean each year contribute 43 percent of the combined gross domestic product and one-third of the export revenues of the region. More than 10 million people in the region are directly employed in tourism-related jobs, and the livelihoods of several times as many people are indirectly affected by the health of the tourism industry.

The hallmarks of Caribbean tourism—living coral reefs, brightly-colored fish, clear water and clean sandy beaches—are components of a healthy marine ecosystem. Experience has shown that the ecosystem can be easily damaged or destroyed by precisely the “tourism development” activities that most depend on them. At the same time, the large number of countries means that substantial international cooperation throughout the region is required to make marine conservation efforts effective. It is hard to think of anywhere else on Earth where economic growth and international cooperation for environmental protection are more intimately connected than in the Wider Caribbean Region. This economic and environmental nexus is a fundamental strategic challenge for the region and the basis for U.S. participation as a matter of highest national interest.

These considerations formed the backdrop for the formation of the Caribbean Environment Program (CEP) in 1979 and the adoption of the Cartagena Convention in 1983. The Cartagena Convention imposes general obligations on the Contracting Parties to “prevent, reduce and control pollution of the Convention area and to ensure sound environmental management,” and it lists six topics for subsequent protocols, one of which is specially protected areas.

Negotiations to develop the Protocol on Specially Protected Areas and Wildlife (SPAW) began about the time that the Cartagena Convention entered into force of law, in 1986, and concluded in January 1990 with the signing of the Protocol by 13 countries, including the United States. The SPAW Protocol calls on each party to establish protected areas and to plan, manage and enforce measures for these areas and for regional cooperation to list and create a network of protected areas. One result has been a rapid increase in the number of marine protected areas throughout the Region; more than 300 have now been identified.

The Protocol also calls for parties to undertake national and regional cooperative measures to protect endangered and threatened species of flora and fauna listed in three Annexes. An initial list of species requiring protection was adopted in June 1991. The 481 listed species cover both marine and terrestrial plants and animals and include all species of marine mammals, of sea turtles, and of corals and sea fans, as well as other species from mollusks to mammals. Many of the listed species migrate within and far beyond the region, while some are endemic to very small areas. One hundred ninety of the listed species are also listed under the U.S. Endangered Species Act.

Throughout the SPAW negotiations, 15 U.S.-based and international conservation organizations worked in close cooperation with U.S. Government agencies. This cooperation continued until October 26, 1993, when Ambassador David Colson testified on behalf of the Executive Branch at a public hearing on the SPAW Protocol held by the Foreign Relations Committee. That testimony described two reservations that the State Department recommended be included in the U.S. instrument of ratification. The first reservation concerned limited taking, and the second concerned environmental impact assessment.

On learning of these proposed reservations, many of the conservation groups that had worked for years to bring the SPAW Protocol into existence became concerned that reservations by the U.S. Government, even reservations on rather narrow technicalities, might provide an opening for other signatories to ratify the Protocol with much more substantial reservations, with the result that the Protocol could come into force of law in a weakened form. Some organizations took the view that it would be better for the U. S. Government to wait for the SPAW Protocol to enter force of law before ratifying it, in order that reservations of the United States not serve as an unfortunate precedent for other countries.

It took nearly seven more years for the requisite nine countries to ratify the SPAW Protocol and bring it into force of law, which did not occur until June 2000. During this time, there was a very rapid maturation of multilateral environmental

governance in the Wider Caribbean Region, while the parties to the SPAW Protocol turned a paper agreement into a living document linked to actual conservation measures. During the 1990s the Secretariat of the CEP organized four meetings of an Interim Scientific, Technical and Advisory Committee for the SPAW Protocol, open to all countries in the region. These meetings created an atmosphere of cooperation that fosters an active region-wide workplan now that the Protocol has become law. The first Conference of Parties was held in 2001, and the second was held yesterday, in Jamaica.

Mr. Chairman, financial and political support and technical leadership from the United States has been important to the success of the Cartagena Convention and the SPAW Protocol. It is in the interest of the United States to ratify the SPAW Protocol in order to be able to participate in its implementation as a party rather than simply as an observer. The stakes are much too high for the United States to remain on the sidelines. The active participation of the United States is necessary to enable our southern neighbors to slow and reverse the accelerating degradation of the marine environment that is at the center of their economic prospects. Now that the SPAW Protocol has come into force of law, the environmental community is no longer concerned that U.S. reservations might set a precedent that would weaken the agreement. Since 1998 the Wider Caribbean Environment Network has endeavored to inform conservation groups about the SPAW Protocol. We have been able to detect only strong support for it, exemplified by a May 2, 2001 joint letter to the Committee on Foreign Relations expressing the support of ten conservation organizations.

I therefore urge the Foreign Relations Committee to report favorably the SPAW Protocol as soon as possible with a strong recommendation that the full Senate ratify it.

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MAY 2, 2001.

The Honorable JESSE HELMS  
*United States Senate*  
*Washington, DC 20510*

The Honorable JOSEPH R. BIDEN, JR.  
*United States Senate*  
*Washington, DC 20510*

DEAR SENATORS;

We are writing to urge the Senate Foreign Relations Committee to report favorably on the protocol concerning Specially Protected Areas and Wildlife (SPAW) to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (a.k.a. the Cartagena Convention).

SPAW was developed by the governments of the region, including the United States, and is the only environmental agreement addressing specific biodiversity conservation issues of the Wider Caribbean region. SPAW protects rare and fragile ecosystems and habitats in the Wider Caribbean region, thereby protecting the endangered and threatened species residing therein. The Wider Caribbean region includes the marine environment of the Gulf of Mexico, the Caribbean Sea, and areas of the Atlantic Ocean adjacent thereto south of northern Florida and within 200 nautical miles of the Atlantic coast. It also includes internal waters up to the fresh-water limit and related terrestrial areas.

Adopted in Kingston, Jamaica, on January 18, 1990, SPAW came into force on April 25, 2000 with nine Parties: Colombia, Cuba, Dominican Republic, The Netherlands, Panama, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and Venezuela. The first meeting of the Conference of the Parties is scheduled for September 24-28, 2001, in Cuba.

The United States signed SPAW on January 18, 1990, as one of the original signatories. SPAW was transmitted to the Senate on October 26, 1993, at which time the Department of State urged the Senate Foreign Relations Committee to "report favorably the Protocol as soon as possible with a strong recommendation that the full Senate give early advice and consent to ratification."

We believe it is vital for the United States to be a Party at the first SPAW Conference of the Parties in September 2001 in order to ensure that the protocol continues to serve the interests of the United States. To participate as a Party in the first Conference, the United States' instruments of ratification must be deposited in Colombia (the depository government) by no later than August 24, 2001. We strongly urge the Senate Foreign Relations Committee to report favorably on the protocol

as soon as possible, and the Senate to consent to ratification well in advance of the deadline.

Sincerely,

DAVID GODFREY, <i>Executive Director</i> Caribbean Conservation Corp.	DAVID ROAD BARKER, <i>President</i> Monitor International
ROGER RUFE, <i>President</i> Center for Marine Conservation	CARL POPE, <i>Executive Director</i> Sierra Club
RODGER SCHLICKEISEN, <i>President</i> Defenders of Wildlife	CHRISTINE STEVENS, <i>Secretary</i> Society for Animal Protective Legislation
JOHN PASSACANTANDO, <i>Exec. Director</i> Greenpeace USA	ALEXANDER F. WATSON, <i>VP &amp; Exec. Dir.</i> International Conservation The Nature Conservancy
PAUL G. IRWIN, <i>President and CEO</i> Humane Society of the United States	GINETTE HEMLEY, <i>Vice President</i> Species Conservation, World Wildlife Fund

Senator SARBANES. Well, thank you very much for your testimony, and also I should express appreciation for the fine work that you have done over a sustained period of time on issues in the Caribbean and the environment in the Caribbean.

Mr. GRASSO, how many countries are eligible to sign the South Pacific Regional Environment Programme? Is it 18?

Mr. GRASSO. I think so, Senator Sarbanes. It is my understanding that every country that has been interested in participating as a party has signed other than the United States.

Senator SARBANES. You mean signed and ratified.

Mr. GRASSO. I am not sure about ratification, but they have at least adopted the treaty. I would have to go back and get that information for you.

Senator SARBANES. But it is your understanding that the United States is the only one who has not done so. Is that correct?

Mr. GRASSO. That is my understanding.

Senator SARBANES. Dr. Barker, on the Caribbean agreement, how many countries are eligible to participate in that?

Dr. BARKER. Within the area of the Cartagena Convention, there are 33 states and territories. And 28 of them are now signatories and have ratified the Cartagena Convention. At least nine states have ratified the SPAW Protocol. France and Barbados were set to do so within the last 2 or 3 days, and whether they have actually done so yet or will do so this week or next week is not clear. But clearly the pace of ratification has picked up tremendously. The barrier has been for many countries that it requires legislation, in some cases quite complex legislation, to be in place before they can ratify that, and in many cases it has taken almost a decade for them to develop this legislation for endangered species and for protected areas.

Senator SARBANES. The United States is one of the 28 countries that has ratified the Cartagena agreement. Correct?

Dr. BARKER. Yes.

Senator SARBANES. And now we are dealing with a Protocol to that agreement.

Dr. BARKER. Right, that is correct.

Senator SARBANES. So, presumably there are 28 countries eligible to sign the Protocol. You say 9 have done so? Ratified it?

Dr. BARKER. Thirteen signed it and I believe now 10 have ratified it. Some have ratified it that did not sign it in the beginning. All of the signatories are actively working on ratification. In fact, all of the countries that are active in the region are working on ratification, as far as I know.

Senator SARBANES. Do either of you have a view on the Tropical Tuna Convention?

Mr. GRASSO. On the IATTC?

Senator SARBANES. Yes.

Mr. GRASSO. Yes. As I said in my testimony, we think the EU should join. It would be an important step forward for conservation to have the EU join and actually be bound by the terms and conditions of being parties to that Convention.

Senator SARBANES. Yes. Which EU countries at the moment are playing any part?

Mr. GRASSO. Right now France is a party with respect to its territories in the region, and Spain has 13 vessels either flagged in Spain or locally that fish in the region. Those are the only ones that I am aware of at this point. It is my understanding that France would remain a party, only with respect to its territories, even if the European Commission becomes a party.

Senator SARBANES. Senator Allen.

Senator ALLEN. Thank you, Senator Sarbanes.

Let me first start with you, Mr. Grasso. In your testimony you were talking about 70 percent of the oceans are overfished or threatened to be overfished. I am absolutely amazed with the population increase of the world and these catches. I just flat hate waste. I hate waste of electricity, waste of money, waste of gas, waste of life, wildlife, game animals, and all the rest. And it is amazing the resilience of the ocean with all this, if you just look at its bounty.

Let me just ask you some basic things so we can see where we need to go. You say 70 percent is either overfished or threatened. Is there a definition of overfished that countries of the world will agree that this is overfished? For example, when you have an area that is in noncompliance with air quality, there are measurements. You will argue endlessly over whether these are rational or reasonable or commonsense measurements, but nevertheless, there are measurements. Is there such an internationally agreed upon definition of overfished?

Mr. GRASSO. You ask a very good question because there are, obviously, a variety of views of what overfished could be. But the figure that I gave you is based on the United Nations Food and Agricultural Organization's definition of what overfishing is, and that is generally accepted as the definition internationally for overfishing or at least in analyzing the status of commercial fish stocks. That is why I use that as probably the most legitimate definition for the status of commercial fish stocks.

Senator ALLEN. How much is actually overfished? You use 70 percent for threatened overfished or overfished. Is it 25 percent, 50 percent?

Mr. GRASSO. I will have to clarify this later, but overfished is somewhere around 30 to 40 percent.

Senator ALLEN. If you could get me the absolute amount.



Mr. GRASSO. Absolutely.

Senator ALLEN. At any rate, once we get that definition, then you would look at the specific areas where there needs to be action taken.

This dynamite fishing. Just an abhorrent approach. It is probably pretty much common sense how it would have to be done. How do you enforce this? There are a lot of oceans to patrol, and how, as a practical matter, can that be enforced? I agree with you it ought to be banned and outlawed. You talk about hitting a lot of nontarget fish. You are clearly going to get it there. At least with nets you are catching it live, and if there are ways to throw them back in, there are ways to throw back in alive, whatever the nontarget or smaller fish may be.

We have gone through all of this in the Chesapeake Bay.

Senator SARBANES. Right.

Senator ALLEN. And all those wonderful controversies for crab pots and everything else.

But how do you enforce on all the waters of the world? I guess there are certain areas; Indonesia you mentioned seems to be the ones who use that terrible method. But how do you enforce it? Or how would you propose enforcing it?

Mr. GRASSO. Right. It is not so much an enforcement issue as it is an education issue. As you can imagine, most of this type of fishing occurs in places where poverty exists. There is a demand for cheap protein. Indonesia is only one example.

The most effective method we had was our experience off the coast of East Africa on Mafia Island where dynamite fishermen were coming from the urban centers out to Mafia Island and fishing there with dynamite. We educated the local fishing community about the impacts of that type of fishing on their ecosystem, their environment, their fishing grounds, and they formed their own community awareness and community enforcement program to keep the dynamite fishermen away.

But truthfully, you have to go community by community along the coasts of the developing world to really get at this issue, and it is not something that can be done by international protocols or treaties. It really has to be working on the ground. WWF has a number of programs that are aimed at helping to reduce dynamite fishing around the world.

Senator ALLEN. Thank you.

Now, on tuna, you mentioned the tuna issue, which I understand. There is something coming up and you glancingly referenced the ones in the Western Pacific. I have been focusing on this Andean trade extension. My main focus has been on textiles because of many textile jobs in Virginia being lost, and I do not care to have more of them lost. There is some controversy—and I haven't focused on it—about something in this Andean trade extension that has to do with tuna. Are you familiar with whatever this is and do you have any position on it?

Mr. GRASSO. I am not at all familiar with what the tuna connection is with the Andean trade agreement.

Senator SARBANES. Ecuador would get tariff-free canned tuna into the United States. At the moment, there are six countries that send canned tuna into the United States. Ecuador is one. The other

five are in the Pacific. Well, Thailand is No. 1, but the Philippines is a major exporter of canned tuna from Mindanao, which is the part of the Philippines now where we have this insurgency taking place that we are very concerned about.

The Philippines is very concerned that tariff-free access into the United States for Ecuador tuna will, in effect, knock them out as a supplier of canned tuna to the United States and will shut down an industry in a critical part of their country with respect to this insurgency. They tell us a couple of hundred thousand jobs are at stake. So, it has some very significant consequences. In fact, to accommodate fighting the drug trade in the Andean nations, to try to deal with that problem, you may intensify the insurgency problem in the Philippines, let alone impacting negatively on a country which has always been a consistent supporter and ally of ours.

Senator ALLEN. Thank you for being here and having the Senator on the witness stand. That's good.

Mr. GRASSO. I am honored.

Senator ALLEN. I am glad you did not know the answer.

Senator SARBANES. I was just visiting the Philippines issue.

Senator ALLEN. I was going to say you are very knowledgeable. I also found out that Senators Stevens and Inouye are going to put in an amendment to get that out.

Senator SARBANES. That is right.

Senator ALLEN. Let me ask Dr. Barker a question. I have read your attached list of all the people who are in favor of the Specially Protected Areas and Wildlife Protocol to the Wider Caribbean Region, the Cartagena Convention. Do you know anyone who is opposed to this? The administration is obviously in favor of it. All we have heard is testimony about how useful it is. You hate to ask somebody who is here as a proponent, but sometimes you can figure out the truth of matters by saying, well, who is opposed to it and why.

Dr. BARKER. Thank you, Senator. I appreciate that question because we have really looked for opposition to this so that we would take that opportunity to provide orientation to what this actually means and what its consequences are. I have to say honestly we have detected no opposition whatsoever.

The original support for this effort came from marine mammal and sea turtle protection organizations, and it has spread now to people who are bird watchers. It has spread to people who have interests in coral reefs, and it has spread much more widely into the tourism industry, which really appreciates this linkage between a clean environment and a healthy tourism industry. So, I have to answer honestly no.

Senator ALLEN. Well, good.

So, finally, in discerning your remarks, you earlier had concerns about U.S. reservations on takings and so forth. Now, you feel that even with those reservations on takings, that that is no problem. I want to make sure I understand your written testimony. It states here "the environmental community is no longer concerned with U.S. reservations that might set a precedent that would weaken the agreement." So, you are in support of it with those minor reservations.

Dr. BARKER. That is correct.

Senator ALLEN. Thank you very much, sir.

Senator SARBANES. Dr. Barker, let me impose on you, just generally, to ask you how you see environmental progress or lack thereof with respect to the Caribbean. Are we making improvements, or is the situation worsening?

Dr. BARKER. My understanding is that this is something akin to the ozone layer question that you had asked Secretary Turner. I do not believe that one can say that the environmental degradation of the Wider Caribbean has reached an end. You can still travel around and see very readily areas of mangrove forests that are being cut down to develop new beach resorts. You can see the spread of coral bleaching throughout the region. You can see the increase of hypoxic areas where the oxygen is completely taken up by the extent of phosphate and nitrate pollution. So, I think the answer is that the rate of deterioration is much lower than it would be without these efforts. But frankly, a great deal more effort is needed than is presently being undertaken to really sustain a healthy environment throughout this region.

Senator SARBANES. Of course, you made the point in your statement that much of their economy is very directly related to having a healthy environment. So, unless this deterioration is brought to a halt and you begin to renew the environment, they are actually undercutting their economic prospects. Are they not?

Dr. BARKER. Exactly. That is exactly correct and it is very scary.

Senator SARBANES. Well, gentlemen, we thank both of you for appearing today. It was very helpful testimony.

The committee stands adjourned.

[Whereupon, at 11:25 a.m., the committee was adjourned.]

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#### ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD

RESPONSES OF HON. JOHN F. TURNER, ASSISTANT SECRETARY OF STATE, BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JOSEPH R. BIDEN, JR.

##### QUESTIONS APPLICABLE TO ALL TREATIES

*Question 1.* Has your testimony today been coordinated with the other affected departments and agencies of the Executive Branch (such as the Environmental Protection Agency, the Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration)? If not, why not?

Answer. My testimony today has been coordinated with other Executive Branch entities that play an important role in implementing these agreements, such as the Environmental Protection Agency; the Marine Mammal Commission; the Fish and Wildlife Service, Department of the Interior; and the National Oceanic and Atmospheric Administration, Department of Commerce.

*Question 2.* Are there any related or side agreements with regard to any of these treaties which have not been submitted to the Senate?

Answer. There are no related or side agreements with regard to any of these treaties.

*Question 3.* Are there any significant interpretive statements made by an authorized U.S. official in connection with the negotiation of any of these treaties of which the Committee should be aware?

Answer. No significant interpretive statements were made by an authorized U.S. official in connection with the negotiation of these treaties.

## SPAW PROTOCOL

*Question 1.* The SPAW Protocol was submitted by President Clinton. Does the Bush Administration support the reservations and understanding proposed by the Clinton Administration (note that the proposed reservation related to Article 11 was later amended by a letter to the Committee from Assistant Secretary for Legislative Affairs Wendy Sherman, dated November 3, 1993)?

Answer. After an extensive review, the Bush Administration has determined that it can support the reservations and understandings proposed by the Clinton Administration, as amended.

*Question 2.* The Committee held a hearing on the Protocol on October 26, 1993. Written questions for the record were submitted to the Department following that hearing. Please review those responses and affirm whether they remain valid, or update the responses as appropriate.

Answer. All of the responses remain valid with the following exceptions:

Question #1—The LBS Protocol (The Protocol Concerning Land-based Pollution and Activities) has been negotiated and was adopted in 1999. The United States signed the LBS Protocol on October 6, 1999. There has been no recent discussion of a possible protocol on movement of hazardous waste products in the region.

Question #4—None of the ten Parties to the SPAW Protocol has designated any terrestrial areas as being within the definition of the Wider Caribbean.

Question #7—The United States has not requested, and does not intend to request, the Depositary to circulate a letter setting out details of U.S. law or practice with regard to the reservation to Article 11. The United States also has not outlined, and does not plan to outline, our law and practices with regard to the reservation to Article 11 at meetings of SPAW Parties and signatories such as the Interim Scientific and Technical Committee. To date, none of the Parties has ratified the SPAW Protocol subject to a reservation, declaration or understanding.

*Question 3.* Article 26 of the Protocol states that the “initial versions of the annexes, which constitutes an integral part of the Protocol . . .”

- Given that the Protocol itself provides that the Annexes are an “integral part” of the Protocol, should not the Senate give advice and consent to ratification of the Annexes at the same time that it gives advice and consent to ratification of the Protocol? What is the justification for treating the Annexes as an Executive Agreement?
- If the Senate were to give advice and consent to ratification of the Annexes, would the Executive Branch support inclusion of a declaration stating that the Annexes could be amended in the future without Senate advice and consent, provided that the Senate was given advance notification of the proposed amendments to the Annexes?

Answer. When the SPAW Protocol was being prepared for submission to the Senate in 1993, the State Department consulted with staff of the Foreign Relations Committee and concluded the three Annexes were best treated as an executive agreement. The Annexes were provided to the Committee for the Senate’s information, but were not submitted for advice and consent. If it is currently the desire of the Committee to give its advice and consent to ratification of the Annexes along with the Protocol itself, the State Department is agreeable to that approach as an acceptable alternative.

Because amendments to the Annexes will be based on technical information about the status of a species, and because a Party has only ninety days to object to an amendment, we believe the Senate would not care to become involved in formally reviewing each species listing. We therefore expect that Annex amendments will be treated as revisions to CITES Appendices are handled, i.e., they would not be submitted for advice and consent, but will be concluded as executive agreements. We would be pleased to provide the Committee information about proposed and actual amendments to the Annexes.

*Question 4.* Have the annexes been amended since they were submitted to the Senate in 1993? If so, please provide the current annexes.

Answer. No. The annexes have not been amended since they were submitted to the Senate in 1993.

*Question 5.* Is it anticipated that the U.S. will designate any protected areas under Article 4?

Answer. The United States does not anticipate designating any protected areas under Article 4 at this time.

*Question 6.* Is the discussion of U.S. law related to environmental impact assessments, as set forth on page VIII of the Treaty Doc. 103-5, still accurate? If not, please submit an amended summary.

Answer. Yes. The discussion of U.S. law related to environmental impact assessments, as set forth on page VIII of the Treaty Doc. 103-5, is still accurate.

*Question 7.* Is the discussion of U.S. law regarding the obligations of the Protocol, as set forth on page IX of Treaty Doc. 103-5, still accurate? If not, please submit an amended summary.

Answer. Yes. The U.S. Fish and Wildlife Service and NOAA have confirmed that the Protocol will be implemented in the United States through existing statutory authority and no additional legislation is required.

*Question 8.* Article 11 provides for amendment of the annexes. In the submittal to the Senate (at page VII of Treaty Doc. 103-5) it is stated that "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."

- Is that the intention of this Administration?
- Is there adequate time for such notice under the amendment process set forth in Article 11? At what point in the process would you seek public comment?

Answer. Yes, that is the intention of the Administration.

We believe there is adequate time for such notice under the amendment process set forth in Article 11 based on the interval between the meetings of the SPAW Scientific and Technical Advisory Committee and the biennial meetings of the Conference of the Parties. We anticipate notifying the public through a notice in the Federal Register after the SPAW Scientific and Technical Advisory Committee reports its views on the nomination and before the Parties meet to decide whether or not to list or de-list the nominated species.

*Question 9.* What role has the United States been playing in this Protocol since its entry into force? Have we sent observers to the meetings of the Parties?

Answer. The United States has supported the SPAW Protocol since its adoption through voluntary contributions to the UNEP Caribbean Trust Fund. These contributions support the operation of the UNEP Caribbean Environment Program's (CEP) Regional Coordinating Unit in Kingston, Jamaica (which acts as the secretariat for both the CEP and the Cartagena Convention), and the implementation of programs under the CEP related to the Cartagena Convention and its three Protocols. U.S. contributions to UNEP for the International Coral Reef Initiative have also gone to the CEP in support of SPAW program coral reef projects.

U.S. delegations have participated in SPAW Protocol-related meetings over the years (such as meetings of the Interim Scientific and Technical Advisory Committee, the technical committee convened in the period between adoption and the coming into force of the Protocol), and participated as observers in the first two meetings of the Conference of the Parties to the SPAW Protocol in September 2001 and May 2002 and the first meeting of the Scientific and Technical Advisory Committee in September 2001. The U.S. also participates in the "Ad hoc Working Group for the Review of the Criteria for the Listing of Species in the Annexes of the SPAW Protocol," an inter-sessional working group established at the first Conference of the Parties in September 2001 to review the criteria developed for the listing and delisting of species on the SPAW Annexes.

#### TREATY WITH NIUE ON DELIMITATION OF A MARITIME BOUNDARY

*Question 1.* By what means did New Zealand communicate that the Government of Niue had the requisite competence to enter into this agreement? Orally, or in writing? If in writing, please make available a copy of the written communication.

Answer. New Zealand communicated in writing that the Government of Niue had the requisite competence to enter into an agreement with the United States. A copy of the Diplomatic Note from the Government of New Zealand dated March 5, 1996 is attached.

*Ministry of Foreign Affairs and Trade  
WELLINGTON  
5 March 1996*

The Ministry of Foreign Affairs and Trade presents its compliments to the Embassy of the United States of America and has the honour to refer to the Embassy's

Note No. 128-95 of 18 December 1995 seeking confirmation from the New Zealand Government that the Government of Niue has the requisite competence to conclude on its own behalf a treaty establishing a maritime boundary between the United States Territory of American Samoa and Niue and to undertake all of the rights and obligations specified therein.

The Ministry wishes to confirm to the Embassy that the Government of Niue has the requisite competence to conclude such a treaty on its own behalf.

The Ministry of Foreign Affairs and Trade avails itself of this opportunity to renew to the Embassy of the United States the assurances of its highest consideration.

PROTOCOL AMENDING THE 1949 CONVENTION ON INTER-AMERICAN TUNA  
COMMISSION

*Question 1.* Will the membership of the European Union (EU) result in a reduction in the U.S. financial contribution to the Commission? If so, what is the anticipated reduction? What percentage of the IATTC budget does the U.S. currently contribute?

Answer. EU membership in the Commission will very likely result in a reduction of the U.S. financial contribution to the IATTC. The IATTC is still working to revise the funding formula for determining what the assessed contribution of each Party will be. Based on current formulas being considered, the payment by each country will be based in large part on the quantity of tuna caught and the quantity utilized by that Party. Because it is difficult to predict when the EU will be able to accede and what quantities of tuna will be caught and utilized by various countries at that time, we are not in a position to predict the size of any such reduction at this time.

Since 1998, the U.S. has negotiated a progressive reduction in its annual contribution to the IATTC from \$3.2 million (or about 90 percent of the \$3.6 million budget of the IATTC at the time) to the current level of \$2.1 million. Other IATTC members have increased their contributions substantially to make up for the U.S. reduction. The U.S. payment to the IATTC for FY 2002 is \$2.1 million out of total assessed contributions of \$4.1 million. Thus, the U.S. payment for FY 2002 is 51 percent of total assessed contributions.

*Question 2.* Which states that are members of the EU have a significant number of fishing vessels operating in the convention area? Will the participation of such states in the conservation and management measures of the Commission have a material effect on the fishery?

Answer. The only EU member state with a significant number of fishing vessels operating in the convention area is Spain, which has a number of large purse seine vessels fishing the eastern Pacific Ocean. Currently, these vessels are not legally bound to implement IATTC conservation and management measures such as catch quotas, bycatch reduction measures and others. EU accession to the IATTC would ensure that these vessels are legally bound by the IATTC regime, which, in turn, will strengthen the Commission's efforts to ensure a well-regulated fishery with effective compliance mechanisms.

SOUTH PACIFIC REGIONAL ENVIRONMENT PROGRAM AGREEMENT

*Question.* What is the purpose of the bar on reservations in Article 10(3)? Did the Department consult with the Committee before agreeing to it?

Answer. No reservation clauses are found in many international instruments. They can serve U.S. interests by ensuring that other parties cannot take reservations contrary to our interests and to which the United States would object. Such clauses are particularly common in agreements establishing international organizations in recognition of the need to ensure that all Parties will be subject to the same institutional requirements. We are not aware that the Committee was consulted in this specific instance although we are generally aware that the Committee has concerns about provisions barring reservations.