



December 18, 2003

The Honorable Richard G. Lugar
Chairman, Committee on Foreign Relations
United States Senate
Washington, DC 20510-6225

Dear Mr. Chairman:

This letter provides the views of the Department of Commerce on accession to the Law of the Sea Convention and ratification of the 1994 Agreement on deep seabed mining. In the Department's view, joining the Convention offers the best means to protect and to promote U.S. ocean interests and to strengthen U.S. leadership in ocean policy. Indeed, the Department is concerned that failure to do so will increasingly detract from the ability of the United States to chart the direction of ocean policies, including policies for protection of marine resources, in years to come.

The Department's comments will focus primarily on fisheries and living resource matters, because the recent hearings on the Convention addressed other issues extensively. At the outset I note that the Convention is consistent with the fisheries and other living marine resource laws that the Department administers through the National Oceanic and Atmospheric Administration (NOAA). Joining the Convention would not require amendments to any of those laws.

NOAA administers a host of ocean fisheries laws, including the Magnuson-Stevens Act, which governs fisheries in the Exclusive Economic Zone (EEZ). NOAA also implements many international fishery agreements.

It is vital that we protect our valuable coastal resources and find means to protect the world's fish biomass in the face of increasing demands. The fishing industry contributes significantly to the U.S. economy. In 2002, U.S. commercial landings totaled over 9.4 billion pounds, worth \$3.1 billion. U.S. commercial fisheries generated \$28.4 billion (in value added) to the U.S. Gross National Product, and 73.3 million recreational fishing trips occurred. In 2000 (the most recent year for which information is available), recreational fishing added another \$18.9 billion. The Food and Agriculture Organization predicts that the global annual demand for fish will continue to increase rapidly, to 100-120 million tons by 2010.

Acceding to the Convention would increase protection of U.S. coastal interests by creating specific U.S. treaty rights. For instance, it would confirm and reinforce U.S. sovereign rights and jurisdiction with respect to natural resources in the U.S. EEZ and continental shelf, including the right to prohibit the take of marine mammals. Of special interest to the United States, the Convention protects the primary rights of the coastal State over anadromous species, such as

salmon that originate in its rivers, by banning high seas fishing for such species. It imposes conservation obligations, applicable to all States, that are the basis for the ban on high seas drift net fishing and international protection of resources of great value to the United States, such as salmon and Bering Sea pollock. The Convention also affords coastal States a high degree of discretion in managing their EEZ fishery resources, underscored by the exemption from binding dispute resolution for a coastal State's resource management decisions, such as decisions about allowable catch and allocations.

The Convention protects high seas fishing rights while imposing duties upon States to conserve and manage living resources of the high seas and to cooperate with other States to do so. It has special measures to protect straddling stocks and highly migratory species. These provisions are important because the United States has significant distant water fishing interests. Highly migratory stocks such as tuna and billfish are among the most valuable fish for the United States. In 2002, the United States landed almost 340 million pounds of tuna worth \$200 million.

The United States has played a leading role in the search for ways to conserve straddling stocks and highly migratory species, some of which are seriously overfished. To this end, we already have negotiated agreements that implement the fundamental principles in the Convention, including the Fish Stock Agreement (FSA) covering straddling stocks and highly migratory species, the Food and Agriculture Organization Compliance Agreement addressing flag State duties, the U.N. Resolution banning high seas drift nets, the Donut Hole Agreement regarding straddling stocks in the central Bering Sea, and, most recently, the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. The Law of the Sea Convention provides the foundation and legal framework for these agreements. U.S. policy has been to urge all fishing States, and States that offer their flag to fishing vessels, to become party or to adhere to these agreements and to regional fishery agreements. Acceding to the Convention will further the policy objective by showing that the United States leads by example.

As a party to the Convention, the United States would be in a much stronger position to influence how its fundamental conservation rules are implemented and maintained, as well as how they are applied in new circumstances. One such new circumstance, the increase in flags of convenience in the fishing industry and widespread illegal, unreported and unregulated fishing (so-called "IUU fishing"), poses a new and alarming threat to both coastal and high seas resources.

United States membership in the Convention will become more significant in the future as we seek to find new ways to curb IUU fishing and to promote conservation throughout the oceans. Fishing vessels that fly flags of States that refuse to join the FSA or regional agreements have seriously undermined conservation. When the United States urges these "flag of convenience" States to comply with the Convention's obligation to cooperate in conservation, they are often quick to respond that the United States, a non-party, cannot invoke the Convention. While this

view is incorrect, it has become increasingly clear that being a party to the Convention would substantially advance U.S. coastal and global interests in the long term.

Finally, this letter briefly addresses two other areas. First, NOAA licenses U.S. deep seabed mining under the Deep Seabed Hard Mineral Resources Act. As such, Commerce Department officials have attended the meetings of the International Seabed Authority (ISA) since its inception. The United States has always been the strongest voice for private mining interests. While deep seabed mining is not imminent, we believe it is in the long-term interests of the United States to ensure that the ISA continues to implement properly the provisions of the 1994 Agreement on deep seabed mining. The United States cannot simply leave this responsibility to others. Acceding to the Convention, including ratifying the 1994 Agreement, will ensure continued U.S. leadership in this field.

Second, NOAA has begun coordinating the acquisition of detailed bathymetric data to support a U.S. claim under Article 76 of the Convention to the extensive continental shelf area that lies beyond the U.S. EEZ. The United States' extensive technical expertise in bathymetry and geophysics will provide critical support to a U.S. claim. It will also have a significant influence on future policies of the Commission on the Limits of the Continental Shelf, but only if the United States becomes a party to the Convention. Furthermore, the clock is ticking for States Parties to submit claims to the Commission and, unless it joins the Convention, the United States will have no role in reviewing those claims.

The Department of Commerce appreciates the opportunity to present views on the Law of the Sea Convention. The Office of Management and Budget has advised that there is no objection to the transmittal of this letter from the standpoint of the Administration's program.

Sincerely,



Theodore W. Kassinger

cc: The Honorable Joseph R. Biden, Jr., Ranking Member