

STATEMENT OF SENATOR TED STEVENS
ON THE UN CONVENTION ON THE LAW OF THE SEA
COMMITTEE ON FOREIGN RELATIONS

October 14, 2003

Chairman Lugar, thanks for holding this first of two hearings on the U.N. Convention on the Law of the Sea. In 1969, my first full year in the Senate, Senator Warren Magnuson asked me to monitor the Law of the Sea negotiations. As a freshman minority member then, and assigned to attend all of those negotiations, I learned a great deal from the discussions on the Law of the Sea that took place all over the world, and work on the Magnuson-Stevens Act was really a product of the those negotiations. The concepts embodied in that Act were ahead of its time by 20 or 30 years.

Many of the provisions in the Law of the Sea Convention are consistent with the Magnuson-Stevens Act on living resource management, conservation and exploitation. Before passage of our Act fisheries around the world, including those off the coast of Alaska, were being overfished, primarily by distant foreign fleets. These fleets engaged in "pulse fishing" in U.S. waters. "Pulse fishing" exploits one fishery until its collapse and then move on to another fishery and decimate those stocks. This practice was devastating for our fisheries, and until the 200-mile exclusive economic zones were established there was very little international cooperation to manage or to protect shared fisheries.

After the 200-mile Exclusive Economic Zone for U.S. waters was implemented,

attention turned to the fishing practices on the high seas and the adverse affects on straddling fish stocks and highly migratory species. Addressing this problem was extremely important for Alaska because of the high seas interception of Alaska salmon by foreign fleets. Wild salmon prices were strong at the time, and high seas fishing was damaging the resource by reducing the overall sustainability of the stocks. In response to this problem, the Driftnet Impact Monitoring, Assessment, and Control Act was introduced in 1987. That Act directed the Secretary of State to negotiate observer and enforcement agreements with nations whose vessels used large scale driftnets on the high seas. It also began the process that eventually led to the U.S. recommendation that the U.N. adopt our suggestion for a global moratorium on large-scale driftnet fishing on the high seas.

The Law of the Sea Convention incorporated the 200-mile exclusive economic zones and placed substantive restrictions, such as the moratorium on large-scale driftnets, on the freedom of fishing on the high seas under Article 87. These are real protections that will allow for conservation and management of the world's shared living marine resources. They establish a precedent that, particularly on the high seas outside the jurisdiction of any country, destructive fishing practices will not be tolerated. These important provisions make the Law of the Sea Convention a much better body of international law.

From 1990 to 1994, the U.S. participated in consultations designed to remedy the problems with the deep seabed provisions of the Law of the Sea Convention. President

Clinton signed the 1994 Agreement on the revised deep seabed mining provisions, which was referred to this committee in October of that year. It is my understanding that the U.S. successfully negotiated favorable terms on the deep seabed mining Agreement, which should guarantee the U.S. a seat on the decision-making body of the International Seabed Authority and eliminates mandatory transfer of technology provisions. Further it scales back the administrative structure for the mining regime.

The Arctic continental shelf extends beyond the U.S. 200-mile exclusive economic zone and is of great interest to Alaska, in fact 2/3rds of the continental shelf off the U.S. is off Alaska. Article 76 of the Convention allows member States to lay claim to all bottom resources on their continental shelves beyond 200-miles based on the appropriate charting and relevant geodetic data. It is my understanding that Russia has recently proposed claims to large areas of the Arctic shelf to the International Seabed Authority. These claims maybe of little consequence to the U.S. because we are not a party to the Agreement on deep seabed mining and would likely not respect or recognize these claims. However, it does raise a question of whether we would be better situated if the U.S. became a party to the Convention and were represented on the Authority that oversees these claims. In addition, if we ratify the convention, pursuant to Article 76 the U.S. could lay claim to an area of about 62,000 square kilometers, an area roughly larger than West Virginia, north and east of the Bering Strait. I recommend that this committee closely review the Agreement on deep seabed mining.

Around the same time the agreement on deep seabed mining was completed, work was being done on two other important agreements. Those agreements attempt to better define the obligations and redress for countries where highly migratory species and straddling fish stocks originate. They were titled the “Convention on Conservation and Management of Pollock Resources in the Central Bering Sea” otherwise known as the “Donut Hole,” and the “1995 U.N. Fish Stocks Agreement”. The Donut Hole agreement restricted the U.S., Russia and the four former high seas fishing states-- Japan, South Korea, China and Poland-- from fishing for pollock within an area in the Central Bering Sea until those stocks recovered.

The Donut Hole agreement was important because it effectively coordinated international fishing efforts on certain pollock straddling stocks, and it also was the model for the global treaty that became the 1995 U.N. Fish Stocks Agreement. I carried the commitment to ratify this agreement to the United Nations General Assembly, and the U.S. did the right thing by ratifying it in August of 1996. I believe the “Donut Hole” and U.N. Fish Stocks Agreements cleared up many concerns that had been voiced about the efficacy of enforcing living marine resource laws internationally under the Convention. To this date to my knowledge none of the countries party to the Donut Hole Agreement have permitted fishing in the restricted area and those stocks continue to rebuild. The agreements have proven to be critical first steps toward cooperative international management of

transboundary stocks. Because of good management practices the biomass of pollock off Alaska continues to grow.

The international agreements on shared stocks, especially those in the Bering Sea, demonstrates an important issue on conservation and management under the Convention. The quotas for all groundfish combined (which include pollock, pacific cod, yellowfin sole, turbot, arrowtooth flounder, rock sole, Alaska plaice, sablefish, pacific ocean perch, northern rockfish, roughey, atka mackerel, and squid) in the Bering Sea and Aleutian Islands are capped at a maximum of 2 million metric tons annually, regardless of the maximum recommended acceptable biological catch levels. This is one of the longest standing conservation measures in the North Pacific. For the past 25 years, annual catch limits for groundfish have been set at or below the acceptable biological catch levels recommended by fishery scientists. The pollock biomass is currently near all-time high levels, with a 2002 overfishing level of 3.54 million metric tons and an acceptable biological catch level of 2.1 million metric tons - this is for pollock alone, not combining the rest of the groundfish species in the Bering Sea, and still the Council conservatively does not allow harvesting over the cap. The North Pacific presently has large surpluses of pollock because of the conservative and science-based management by the Regional Council. As you know, Article 62 of the Convention is consistent with the Magnuson-Stevens Act for authorizing the allocation of any surplus to foreign States and provides terms and conditions for any foreign fishing in the U.S. exclusive economic zone.

Apparently, recent changes or proposals to the Law of the Sea have not changed this, but we must be vigilant if we ratify this Convention, to assure that strong conservation measures to protect species in U.S. waters do not lead to arguments by foreign fleets to gain access to our living marine resources.

I would also recommend this committee look closely at the provisions in the Convention relating to freedom of navigation in territorial seas. As a result of the *Exxon Valdez* oil spill, tankers operating in U.S. waters must be double-hulled. There should be a clarification in Part II, Article 21 pertaining to laws and regulations of the coastal State relating to innocent passage. Section 2 of this Article specifies that such laws and regulations of a coastal State shall NOT apply to the design or construction of foreign ships. Therefore, foreign ships carrying toxic materials would be allowed to move freely in the territorial seas of coastal States and not have to meet certain design requirements, such as double-hulls. The spills of the past, such as that off the coast of Spain and Portugal last year should have taught us that some foreign fleets do not meet even basic maintenance and structural integrity requirements. We should not permit this Convention to erode the stringent environmental standards required in the U.S.

I strongly recommend that this committee work closely with the Commerce Committee on the various issues I have raised today, as they are very much within that committee's jurisdiction.

Proponents of ratifying the Law of the Sea argue that active U.S. participation in the Convention and Agreements will guarantee the protections and restrictions are applied in a fair and commensurate manner. I urge caution: the Law of the Sea Convention and other related agreements must not be open ended; provisions must be specific and precise to prevent future misinterpretation. If those determinations are not clear, later interpretations will seriously erode U.S. policy.

Finally, the U.S. Commission on Ocean Policy is expected to release its report on Ocean Policy next month. It is my understanding their report will include a recommendation for the U.S. to become a party to the Convention. The Senate should consider seriously their recommendation. The Law of the Sea Convention has benefitted from the laws that originated in the U.S. This Convention now embodies the 200-mile exclusive economic zone, provisions to prevent destructive fishing practices, and conservation and management of shared living resources. But Congress needs assurance that the Law of the Sea will not undermine future conservation and management initiatives or security measures.

In this and future centuries, demands on the world's oceans will only increase. And, if properly managed oceans will become an even more important and bountiful source of food as well as a place of commerce, communication and resource development. The Law of the Sea can provide us with the comprehensive legal framework we need to maximize our

use of the oceans' resources, while ensuring their healthiness and productivity for generations to come.