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Management of International Living Resources Panel
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Thank you for inviting me to offer testimony to this Commission. And thank you all for undertaking the important task that has been given to this Commission.

Because of the limitations on time, my presentation will be offered in the abbreviated format that follows, but I will be happy to answer any questions that the Commission might have, or to follow up in any other fashion. My recommendations regarding the steps that the United States should be taking to promote the orderly management of the living resources of the world's blue-water oceans follow:

1. **Ratify the 1982 United Nations Law of the Sea Convention.** The single most important action that the United States can take to improve the management of international living resources would be to ratify the 1982 United Nations Law of the Sea Convention. This treaty is an important and progressive document that reflects the values that our country has worked to implement over the years. It was drafted during a period in which a bipartisan United States delegation took an active leadership role and it stands as a remarkable testament to the ability of our country to work with other countries on difficult issues. The problems regarding deep-seabed minerals have been addressed and resolved in the 1994 Part XI Agreement, and no further substantive reasons stand in the way of U.S. ratification. The provisions regarding cooperative management of shared living resources provide a solid framework for future international relationships, and the articles governing environmental protection, navigational freedoms, and dispute resolution also stand as monuments to enlightened diplomacy. The U.S. failure to ratify this global treaty only hurts the United States, by depriving our country of representatives on the tribunals and bodies now actively working out the detailed answers to questions left open by the broad language in the Convention. The inability of the United States to utilize the Convention's advanced dispute-resolution procedures will also make it more difficult to bring closure in an orderly and peaceful fashion to the many maritime disputes that will be emerging in coming years.

2. **Work with Our Asia-Pacific Neighbors to Make the Honolulu Convention a Success.** The 1995 Straddling and Migratory Fish Stocks Agreement, which our country helped negotiate and quickly ratified, built upon the 1982 Convention to provide a framework for cooperative management of those fish stocks that are shared and that live in areas beyond national jurisdiction. The 2000 Honolulu Convention governing the straddling and migratory stocks of the Central and Western Pacific provides additional detail and establishes a working organization to manage the stocks, allocate disputed species, and resolve controversies. Both these treaties are based on the Precautionary Principle or Approach, and both are significant

accomplishments. Japan has refused, however, to sign the Honolulu Convention, and its absence from this treaty would create significant legal questions and management difficulties. The United States must make every possible effort to encourage Japan's full participation and commitment to the principles underlying this important treaty. The home for the organization established by the Honolulu Convention has not, as I understand it, been selected yet. I would encourage the United States to offer Guam and Honolulu as possible locations for the member nations to consider.

3. The United States Must Continue to Work to Maintain the Moratorium on Exploitation of Whales and to Expand the Sanctuaries Within Which Exploitation of Whales Will Remain Forbidden. The gross overexploitation of the great whales during the first two-thirds of the 20th century remains as one of the greatest environmental disasters of recorded history. Because of the global revulsion regarding these practices, international consensus emerged in the 1980s to impose a worldwide moratorium on the harvesting of whales. Today, pressure is building to lift his moratorium, and a few countries have left the International Whaling Commission to form an alternative organization. The United States bears some responsibility for the current position on whaling taken by Japan, because the United States encouraged the development of Japanese whaling after World War II. The United States must continue to work to maintain the global moratorium, and should work to establish additional regional "sanctuaries," where whale harvesting would be forbidden forever.

4. The United States Must Work Through the World Trade Organization to Strengthen the Global Commitment to Environmental Protection, and to Ensure that the Value of Free Trade, as Important as that Is, Does Not Overwhelm the Equally-Important Values of Promoting Biodiversity and Protecting Threatened and Endangered Species. The international community has seen awkward controversies in recent years between (a) U.S. efforts to protect, for instance, dolphins and turtles and (b) the principles of the GATT and the World Trade Organizations, which prohibit trade barriers in order to promote free trade. The governing documents of the GATT and World Trade Organization recognize the importance of environmental protection, but the panels that have adjudicated recent disputes have interpreted these principles narrowly and have particularly frowned upon unilateral efforts to utilize trade sanctions and trade restrictions to protect environmental values. The United States must work together with the international community to resolve these festering disputes by strengthening and clarifying the language in the governing documents and thus by restoring the commitment to biodiversity at the international level.

5. The United States Must Help Establish a Comprehensive and Effective Regime to Govern the Sea Shipments of Radioactive Materials. During the past decade, Japan has been shipping its radioactive wastes to France and the United Kingdom, where it is reprocessed into plutonium and mixed oxide fuel, as well as additional wastes, and then is shipped back to Japan. These shipments are being made with increasing frequency, and they present risks of a new and hitherto unknown dimension. If the cargos were to sink, they would be extremely difficult to recover, creating a dead zone in part of the sea for hundreds of thousands of years and imposing devastating economic consequences on the fishing and tourism industries of that region. Even more dangerous would be a collision creating a high-intensity fire that could release plutonium particles into the air, causing enormous human health consequences. And grave security

problems could be created if any terrorists were to seize any of the plutonium on these shipments. Even though these shipments impose immense risks on communities that gain no benefit from them, the shipping countries have been unwilling to meet their essential international obligations – which include the duty to cooperate, the duty to undertake and share environmental assessments, the duty to engage in contingency planning for anticipated emergencies, and the duty to create a liability regime to provide compensation for possible disasters. The United States should take a leading role in developing an appropriate safety regime to govern these shipments of ultrahazardous cargoes.

6. The United States Must Allow Its Territories and Commonwealths to Manage the Living and Nonliving Resources Within Their 200-Nautical-Mile Exclusive Economic Zones and to Utilize the Revenues Generated from These Resources for Their Own Prioritized Purposes. The United States has five nonselfgoverning island communities that fly its flag – the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. Three of these are “unincorporated territories,” without an indigenously-created governing document and without the ability to make final decisions for themselves or to participate in an effective way in decisions reached in Washington (*i.e.*, their residents cannot vote for voting members of Congress or for the President). The two “commonwealths” have documents that purport to establish their relationship with the United States, but they also have no voting representation in Washington, and the extent to which they have any real autonomy from federal oversight is disputed and unresolved. Their status is thus unique under U.S. and international law, and it is particularly unique that they have neither voting representation nor control over their ocean resources. Recent amendments to the Magnuson Act permits these island communities to retain the revenues from their ocean resources, but the legislation says that they can use these revenues only for the purposes of managing the resources, and not for any other purposes. This limitation must be lifted, and these island communities must have the autonomy to make their own decisions regarding management and exploitation of their ocean resources, and the use of revenues collected.