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**BEFORE THE  
U.S. COMMISSION ON OCEAN POLICY**

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**INTRODUCTION**

I would like to express my sincere thanks to the U.S. Commission on Ocean Policy for the opportunity to appear before you today. In presenting this statement, I am drawing primarily on my experience since 1996, when I first became responsible for oceans and fisheries policy at the U.S. Department of State. My involvement in oceans issues began in the early 1970s, however, when I helped develop the U.S. fisheries platform for the Third UN Conference on the Law of the Sea. It then continued as I worked on international fisheries and marine science issues at NOAA in the late 1970s and early 1980s.

Today's meeting is taking place against the backdrop of profound changes that have reshaped international fisheries in the past decade. We face a world in which the *fishing capacity* of the fleets operating in many key areas has outpaced the *reproductive capacity* of the fish stocks in those areas. We face a growing incidence of fishing vessels that do not abide by agreed rules. Serious concerns have also arisen about the effects of fishing operations on other marine life and on the marine environment as a whole.

My statement today begins with a brief summary of the most serious issues we are confronting in the field of international fisheries. I will then review the international law framework within which the international community has been trying to deal with these problems. Finally, I will offer a few thoughts on the trends and prospects for the future and a brief mention of the upcoming World Summit on Sustainable Development.

**CURRENT SITUATION**

Many of the world's primary fishery resources are under stress. In 1995, the United Nations Food and Agriculture Organization (FAO) reported for the first time that total marine catches had begun to decline after reaching a peak in 1989. A number of key fish stocks have completely collapsed from overfishing and environmental degradation (such as cod in the Northwest Atlantic), while others have become depleted (such as Atlantic bluefin tuna). While stocks in the Pacific Ocean are generally thought to be in somewhat better shape, increasing fishing effort on a number of those stocks gives us reason to be concerned.

In 2000, FAO estimated that, among the major marine fish stocks or groups of stocks for which information is available, about 47 to 50 percent are fully exploited, while another 15 to 18 percent are overexploited. An additional 9 to 10 percent of such stocks have been depleted or are recovering from depletion. In short, there are relatively few major fisheries that can absorb additional fishing effort. Meanwhile, we see a growing demand for fisheries products and many vessels looking for new places to fish.

Many factors contributed to this situation. Improvements in fishing technology, coupled with substantial government subsidies to fishers, greatly increased harvesting capacity worldwide. At the same time, environmental degradation spoiled some fish habitat. The ability of vessels to operate outside governmental controls, including by adopting “flags of convenience,” has rendered fisheries enforcement less than effective in many circumstances.

The use of certain kinds of fishing gear and fishing techniques has also led to serious concerns. For example:

- endangered species of sea turtles and seabirds are taken by longline gear
- the use of poison (such as cyanide) to capture tropical fish for the aquarium trade can cause significant harm to coral reefs
- shrimp trawl nets are a severe threat to sea turtles (unless equipped with turtle excluder devices), while larger trawl nets that drag along the sea floor are thought to damage the ecosystem
- until recently, large numbers of dolphins were caught in purse seine nets used by fishing vessels in the Eastern Pacific Ocean

## **INTERNATIONAL LAW FRAMEWORK**

*1982 LOS Convention.* In confronting these daunting challenges, the international community has one key asset – a generally accepted international law framework for regulating ocean fisheries. That framework, as the Commission is well aware, is the one reflected in the 1982 United Nations Convention on the Law of the Sea. The provisions of the 1982 LOS Convention relating to fisheries can be summarized as follows:

The LOS Convention provides each coastal State with a set of rights that, together, give it full authority over all fishing activities that occur within its exclusive economic zone (EEZ), which may extend up to 200 nautical miles from coastal baselines. More than 90 percent of all fish currently caught in the ocean are harvested within 200 miles of land. Thus, the primary fisheries rule of the LOS Convention is a simple one: the vast majority of living marine resources are placed at the disposal of coastal States.<sup>1</sup>

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<sup>1</sup> The rule of exclusive coastal State jurisdiction over EEZ fisheries benefits the United States most of all, in that the EEZ claimed by the United States is the largest of any nation,

In exchange for this enormous benefit, coastal States must accept general obligations to promote proper stewardship of these resources. Specifically, each coastal State must determine the allowable catch of living resources in its EEZ; protect such resources against over-exploitation; take certain measures with a view to protecting species that are not the direct target of a fishery but are instead killed as by-catch; promote optimum utilization of living resources; and determine its capacity to harvest such resources, giving other States access to any surplus.<sup>2</sup>

Beyond the EEZs lie the remaining high seas, which, if all coastal States claimed EEZs out to 200 miles, would still cover more than 21 percent of the earth's surface and approximately 70 percent of all ocean area. The LOS Convention reaffirms the traditional right of all nations for their nationals and vessels to fish on the high seas, but makes this right subject to a number of important, though general, additional conditions:

- (a) other treaty obligations of the State concerned;
- (b) certain rights and duties as well as the interests of coastal States provided for elsewhere in the Convention; and
- (c) basic obligations to conserve, and to cooperate with other States in the conservation of, high seas living resources.

The LOS Convention authorizes each coastal State to enforce its fishery laws within its EEZ against any vessels that may be fishing there. Fishing vessels on the high seas, by contrast, remain under the exclusive jurisdiction of the flag State, i.e., the State in whose territory the vessel is registered, which is also the State whose flag the vessel is entitled to fly. Generally speaking, only the flag State may enforce fisheries rules against a vessel on the high seas. The flag State may, however, consent to enforcement action by another State, either through an international agreement or on an ad hoc basis.<sup>3</sup>

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spanning approximately 3,362,600 square miles, more than 3 billion acres. The U.S. EEZ is larger than U.S. land territory, in part because it includes sizable marine areas surrounding the non-contiguous states and territories of the United States. The LOS Convention also gives each coastal State exclusive authority over sedentary species, such as crabs and sponges, living on its continental shelf, which, in the case of the United States and some other coastal States, extends in certain areas considerably beyond 200 miles from shore.

<sup>2</sup> Coastal States enjoy considerable discretion in making allocation determinations in the event of any surplus.

<sup>3</sup> The LOS Convention recognizes limited exceptions to the rule of exclusive flag State jurisdiction over vessels on the high seas. See articles 99-111. The 1995 UN Fish Stocks Agreement and some regional fishery agreements provide for non-flag State boarding and inspection of fishing vessels on the high seas under certain circumstances. The United States

From the perspective of the international law, then, the LOS Convention has drawn a bright line in the oceans – the 200-mile line – dividing the EEZs from the high seas. Inside this bright line, coastal States have full authority over fishing activity, subject to general obligations to conserve and to allocate surplus fish to others. Outside this bright line, all States may fish, subject to certain limitations, including the obligation to conserve.

In an ideal world, all fish would remain either solely within the EEZ of a single coastal State or solely on the high seas. In either case, a clear body of rules would apply. To provide for those fish in the real world that insist on crossing the 200-mile line, the LOS Convention contains additional provisions to direct the conservation and management of such categories of sea life as transboundary stocks (i.e., stocks that occur in the EEZs of more than one coastal State), straddling stocks, highly migratory species, marine mammals, anadromous stocks<sup>4</sup> and catadromous stocks.

*Other Instruments.* Building on the framework of the LOS Convention, we have worked with our partners in the international community to develop an impressive array of more specific agreements. The sheer number of treaties (binding international agreements) and other “soft-law” instruments adopted in the field of international fisheries in the past decade alone indicates the seriousness of the problems concerning marine conservation that the international community has been trying to resolve. The United States has been a leader in the development and implementation of most of these agreements. Among the recent treaties of greatest interest to the United States are the:

- 1992 Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean
- 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (not yet in force)
- 1994 Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea

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has also entered into several ad hoc arrangements for the boarding and inspection of fishing vessels on the high seas.

<sup>4</sup> Anadromous stocks such as salmon spawn in fresh water, spend most of their lives in the ocean, then return to their “States of origin” to reproduce. Article 66 of the LOS Convention recognizes that States of origin have the primary interest in these stocks. The Convention, in conjunction with two other treaties (the 1982 Convention for the Conservation of Salmon in the North Atlantic Ocean and the 1992 Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean), prohibits directed fishing for anadromous stocks on the high seas.

- 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
- 1996 Inter-American Convention on the Protection and Conservation of Sea Turtles
- 1999 U.S.-Canada Pacific Salmon Agreement, related to the 1985 Pacific Salmon Treaty
- 1999 Agreement on the International Dolphin Conservation Program
- 2000 Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (not yet in force)
- 2001 Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean (not yet in force)
- 2001 Agreement on the Conservation of Albatrosses and Petrels (not yet in force)

Numerous non-binding instruments have also been adopted in the past decade. Among those of greatest interest to the United States are:

- UN General Assembly Resolution 46/215 (creating a moratorium on large-scale driftnet fishing on the high seas that became effective in 1992)
- 1995 FAO Code of Conduct for Responsible Fisheries
- 1999 FAO International Plans of Action on the Management of Fishing Capacity, on the Conservation and Management of Sharks, and for Reducing Incidental Catches of Seabirds in Longline Fisheries
- 2000 Memorandum of Understanding on the Conservation and Management of Marine Turtles and Their Habitats in the Indian Ocean and South-East Asia
- 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

A final category of new tools in this field has emerged from recent decisions taken by some regional fishery management organizations. For example, some of these organizations have:

- required members to prohibit importation of certain fish from nations whose vessels repeatedly undermine agreed fishery rules

- prohibited their members from allowing vessels of non-members to off-load or transship fish in port, if the vessel was sighted fishing in the area under the purview of that organization (unless the vessel can prove that the fish were caught elsewhere or that the vessel did not otherwise undermine the organization's rules)
- adopted catch or trade documentation schemes to deter trade in illegally harvested fish

## **TRENDS AND PROSPECTS**

It is difficult to analyze (or even to summarize) all of the developments reflected in the blizzard of new instruments mentioned above. Still, a few trends appear to be emerging, trends that give us hope for the future.

First, there is a recognized need for a greater conservation ethic in regulating ocean fisheries. The agreements crafted in the past decade contain commitments to reduce fishing capacity in an effort to reduce pressure for overfishing. Governments have also made commitments to devote more effort to the conduct of marine scientific research related to fisheries and to follow scientific advice more consistently. The UN Fish Stocks Agreement outlines a "precautionary approach" to fisheries management that is starting to be implemented. Governments are trying to move towards "ecosystem-based fisheries management" as well (i.e., away from the regulation of fisheries on a species-by-species basis). Progress is also being made to develop and require the use of more selective fishing gear in order to minimize by-catch and to reduce adverse effects on the marine environment.

Second, we are creating new management regimes to oversee important international fisheries that have, until recently, been largely unregulated. One prime example is for the tuna fisheries in the Central and Western Pacific. With other interested nations, we completed negotiations in September 2000 to establish a new commission to govern those fisheries. We are hard at work now in an effort to bring the new treaty into force and to ensure that all of the major players in these fisheries are bound to the rules.

Third, some of the new tools for enforcing fishing rules are showing some promise. Fisheries enforcement officials from various governments are coordinating their activities as never before. We are seeing improvements in the area of monitoring, control and surveillance of fishing vessels, including through the use of independent observers and satellite-based vessel monitoring systems. Many governments are strengthening their procedures governing the registration and permitting of fishing vessels, in accordance with the new international agreements. While the use of "flags of convenience" remains a very serious problem, we have succeeded in raising the profile of this issue and in putting pressure on some governments to curb this practice.

Finally, I would note that the international community has begun to "think outside the box" in addressing some problems. Recognizing that fishers ultimately need to bring their catch to port for landing or transshipment, new regimes are also being established to

use “port State controls” to deter illegal harvests. Under the auspices of regional fishery management organizations, we are seeing new restrictions being put in place on the importation of fishery products that are harvested in violation of agreed rules. The international community also appears to be reconsidering the notion of exclusive flag-State jurisdiction over fishing vessels on the high seas, as a growing number of agreements allow other States to take certain enforcement actions against such vessels.

I would also note a positive development from this region of the world. The Asia Pacific Economic Cooperation forum – commonly known as APEC – has a growing track record of accomplishments in the oceans area. The United States now leads the APEC Fisheries Working Group, which gives us an opportunity to help set a constructive policy agenda and to steer useful projects related to marine conservation. A key advantage of APEC is that all economies from this region, including Taiwan, participate on an equal footing.

I do not want to leave you with the impression that all is well, however. The situation facing many fisheries remains bleak. We certainly have much more work to do if we are to reestablish sustainable fisheries worldwide. Among other things, we must build the capacity of developing countries to help them manage fisheries in waters under their jurisdiction more effectively. We must continue to search for ways to crack down on illegal fishing, particularly by flag of convenience vessels.

In short, we must ensure that the impressive collection of international agreements we have negotiated in the past decade do not remain mere words on paper. We must turn those words into concrete actions if the situation facing international fisheries is to improve.

## **WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT**

At the upcoming World Summit on Sustainable Development (WSSD), we have the opportunity to press forward on some of these positive developments. WSSD is intended to review progress in the decade since the Rio Earth Summit and, more importantly, to renew the commitment to sustainable development. World leaders will meet in Johannesburg, South Africa, August 26-September 6, 2002, to endorse a summit declaration, a plan of action, and partnerships to advance sustainable development. The final preparatory meeting will take place in Bali, Indonesia at the ministerial level, May 27-June 7. Paula Dobriansky, Under Secretary of State for Global Affairs, will lead the U.S. delegation.

The Oceans community has been actively preparing for WSSD:

- In October, the FAO and Iceland organized the Reykjavik Conference on Responsible Fisheries in the Marine Ecosystem, which resulted in a declaration calling for the incorporation of ecosystem considerations into fisheries management.

- The Global Program of Action had its five-year intergovernmental review in Montreal in November 2001, where participants identified priorities for the immediate future to include wastewater and sewage treatment, sediment input, and coastal zone management.
- The Center for the Study of Marine Policy at the University of Delaware and UNESCO organized a multi-stakeholder conference in December of 2001 in Paris that called for various actions to improve the state of the oceans and coasts, the strengthening of national and regional governance structures and research.
- In April, the APEC Oceans Ministerial meeting recommended a number of similar actions.
- The Bonn Water Forum picked up on the recommendation from these meetings to take a river basin approach to watershed and coastal management – a step that will be positive for ocean and coastal interests.

I would be pleased to provide copies of the documents reflecting the outcome of these meetings if you do not have them.

Preparations within the U.S. government to promote the oceans and coastal agenda at the WSSD are going well. Drawing on the positive outcomes of the meetings I have just mentioned, we are working hard to develop language for adoption in Johannesburg that will pave the way on sustainable development in the years to come. In addition, we are considering a range of more specific initiatives to be undertaken in conjunction with the WSSD, including initiatives in the oceans and fisheries sector.

## **CONCLUSION**

Thank you once again for the opportunity to present this statement. I would be pleased to answer any questions that the Commission might have.