Public Comments on the U.S. Commission on Ocean Policy's Preliminary Report

Topic Area: International

Comments Submitted by:

- Steven MacLeod, Tallahassee, Florida
- John Norton Moore, University of Virginia School of Law
- Dennis L. Schornack, International Boundary Commission

Comment Submitted by Steven MacLeod, Tallahassee, Florida

Dear Commission,

Many of my concerns are addressed by the various recommendations in the Preliminary Report. For instance, I appreciate the structure and efficiency of the Coastal Zone Management Act, and am pleased to see full incorporation of this policy, including the emphasis on state administration and local involvement.

One issue is still on my mind. Recommendations to the US Dept. of State and those related to International Affairs do promote international adherence to certain standards, as with the Fish Stocks Agreement, and these stipulations would further protect US waters from abuse/overuse by foreign vessels/organizations. It seems important, however, that regulation of imported oceanic goods/resources be made explicit. For example, international groups seeking to import tuna fish should be held to some or all of the standards that American tuna fishermen adhere to now, or will have to adopt following the implementation of Commission recommendations. This should apply to, at least, the majority of ocean commodities found in US waters that contribute significantly to the national GDP. (The wording may follow recommendations made for coral resources, which "ensure that coral reef resources that are collected, imported, or marketed are harvested in a sustainable manner.")

The primary reason for my suggestions relates to the protection of marine-associated jobs. The example: it may become even more difficult for a fisherman in the US to earn a living when adhering to more restrictive catch laws, while still competing with an international fish market that is cheaper, in part, because certain foreign groups do NOT follow the same ecologically-conscious practices. What's more, the American consumer may (likely unknowingly) receive product with a higher risk of contamination and/or contribute to greater ocean degradation abroad. These criticisms are similar to those made about NAFTA - will we be sending US jobs abroad in exchange for lower quality products? Clearly it is not the Commissions intention merely to displace our marine woes to other parts of the world. Enforcing import standards should help ensure that.

Sincerely,

Steven MacLeod
Citizen
Tallahassee, Florida

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May 24, 2004

Admiral James Watkins
Chairman, U.S. Commission on Ocean Policy
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Washington, DC 20036

Dear Admiral Watkins:

Congratulations on the preliminary report of the Commission! It is superb.

You have requested comments on the preliminary report through June 4th. Several points I believe might be addressed more thoroughly – although perhaps I missed the discussion in my quick review are:

- revitalizing the United States Deep Seabed Mining Industry. Attached is recent testimony in which I recommended that NOAA chair a meeting of our industry as soon as we accede to the LOS Convention to see what might be done to revitalize our industry.

- mapping the outer edge of our continental shelf for submission to the LOS Boundary Commission.

With warmest regards.

Sincerely,

John Norton Moore
Director and
Walter L. Brown Professor of Law

JNM: kww

cc: Conrad Welling
Larry Mayer
Barbara Moore

Enclosures: LOS Testimony of John Norton Moore before the Senate Foreign Relations Committee

SENATE ADVICE AND CONSENT TO THE LAW OF THE SEA CONVENTION

URGENT UNFINISHED BUSINESS

Testimony of

John Norton Moore

Before the Senate Foreign Relations Committee
October 14, 2003

SENATE ADVICE AND CONSENT TO THE LAW OF THE SEA CONVENTION

Testimony delivered by

John Norton Moore*

"The day is within my time as well as yours,
when we may say by what laws other nations
shall treat us on the sea."

Thomas Jefferson

CHAIRMAN RICHARD G. LUGAR AND HONORABLE MEMBERS OF THE FOREIGN RELATIONS COMMITTEE --

Senate advice and consent to the 1982 Law of the Sea Convention is strongly in the national interest of the United States. Ratification of the Convention will restore United States oceans leadership, protect United States oceans interests, and enhance United States foreign policy. For these reasons the Convention is broadly supported by United States oceans organizations, including the United States Navy (one of the strongest supporters over the years), the National Ocean Industries Association[1], the United States Outer Continental Shelf Policy Committee[2], the American Petroleum Institute[3], the Chamber of Shipping of

[1]On June 6, 2001, the National Ocean Industries Association submitted a resolution to the Chairman of the Senate Foreign Relations Committee declaring: "The National Ocean Industries Association (NOIA) is writing to urge your prompt consideration of the Convention on the Law of the Sea . . . . The NOIA membership includes companies engaged in all aspects of the Outer Continental Shelf oil and natural gas exploration and production industry. This membership believes it is imperative for the Senate to act on the treaty if the U.S. is to maintain its leadership role in shaping and directing international maritime policy."

[2]On May 24, 2001, the Outer Continental Shelf (OCS) Policy Committee adopted the following recommendation: "[T]he OCS Policy Committee recommends that the Administration communicate its support for ratification of UNCLOS to the United States Senate . . . ."

[3]See the statement of Ms. Genevieve Laffly Murphy on behalf of the American Petroleum Institute at the recent oceans forum of the Center for Oceans Law and Policy, Oct. 1, 2003. Ms. Murphy stressed the energy security interest of the American petroleum industry both in access to the continental shelf beyond 200 miles and in protection of navigational freedom. *See also* the letter from the president of the American Petroleum Institute to the Chairman of the Senate Committee on Foreign Relations

America[4], The Center for Seafarers' Rights[5], the Chemical Manufacturers Association[6], and the congressionally established National Commission on Ocean Policy.[7] This testimony will briefly explore reasons for United States adherence to the Convention. First, however, it will set out a brief overview of the Nation's oceans interests and history of the Convention.

Background of the Convention

As the quote by Thomas Jefferson illustrates, the United States, surrounded by oceans and with the largest range of oceans interests in the world, has a vital national interest in the legal regime of the sea. Today those interests include naval mobility, navigational freedom for commercial shipping, oil and gas from the

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of October 1, 1996, which states: "The American Petroleum Institute wishes to express its support for favorable action by the Senate on the United Nations Convention on the Law of the Sea (UNCLOS). API favors ratification of the revised treaty because it promotes unimpeded maritime rights of passage; provides a predictable framework for minerals developed; and , sets forth criteria and procedures for determining the outer limit of the continental shelf. The latter will be accomplished by the soon-to-be established Commission on the Limits of the Continental Shelf."

[4] In a letter to the Chairman of the Senate Foreign Relations Committee of May 26, 1998, the president of the Chamber of Shipping of America writes: "[t]he Chamber of Shipping represents 14 U.S. based companies which own, operate or charter oceangoing tankers, container ships, and other merchant vessels engaged in both the domestic and international trades. The Chamber also represents other entities which maintain a commercial interest in the operation of such oceangoing vessels. Over the past quarter century, the Chamber has supported the strong leadership role of the United States in the finalization of the UN Convention on the Law of the Sea (UNCLOS) into its final form, including revision of the deep seabed mining provision. We believe the United States took such a strong role due to its recognition that UNCLOS is of critical importance to national and economic security, regarding both our military and commercial fleets. … Mr. Chairman, we appreciate your consideration of these issues and strongly urge you to place the ratification of UNCLOS on the agenda of your Committee. The United States was a key player in its development and today, is one of the few industrialized countries who have not yet ratified this very important Convention. The time is now for the United States to retake its position of leadership."

[5] On May 26, 1998, the Director of the Center for Seafarers' Rights wrote the following in a letter addressed to the Chairman of the Senate Foreign Relations Committee: "The 1982 United Nations Convention on the Law of the Sea creates a legal framework that addresses a variety of interests, the most important of which is protecting the safety and well-being of the people who work and travel on the seas. I urge you to support ratification of the 1982 United Nations Convention on the Law of the Sea."

[6] In a July 17, 1998 letter to the Chairman of the Senate Foreign Relations Committee, the President of the Chemical Manufacturers Association wrote the following: "The Law of the Sea Convention promotes the economic security of the United States by assuring maritime rights of passage. More importantly, the Convention establishes a widely-accepted, predictable framework for the protection of commercial interests. The United States must be a full party to the Convention in order to realize the significant benefits of the agreement; and to influence the future implementation of UNCLOS at the international level. On behalf of the U.S. chemical industry, I strongly encourage you to schedule a hearing on UNCLOS, and favorably report the Convention for action by the Senate."

[7] On November 14, 2001, the National Commission on Ocean Policy adopted a resolution – its first on any subject -- providing: "The National Commission on Ocean Policy unanimously recommends that the United States of America immediately accede to the United Nations Law of the Sea Convention. Time is of the essence if the United States is to maintain its leadership role in the ocean and coastal activities. Critical national interests are at stake and the United States can only be a full participant in upcoming Convention activities if the country proceeds with accession expeditiously."

continental margin, fishing, freedom to lay cables and pipelines, environmental protection, marine science, mineral resources of the deep seabed, and conflict resolution. Consistent with these broad interests the United States has been resolute in protecting its ocean freedoms. Indeed, the Nation has fought at least two major wars to preserve navigational freedoms; the War of 1812 and World War I. In point II of his famous 14 Points at the end of World War I, Woodrow Wilson said we should secure "[a]bsolute freedom of navigation upon the seas . . . alike in peace and in war." And the Seventh Point of the Atlantic Charter, accepted by the Allies as their "common principle" for the post World War II world, provided "such a peace should enable all men to traverse the high seas and oceans without hindrance."

In the aftermath of World War II the United States provided leadership in the First and Second United Nations Conferences to seek to protect and codify our oceans freedoms. The first such conference, held in 1958, resulted in four "Geneva Conventions on the Law of the Sea" which promptly received Senate Advice and Consent. One of these, the Convention on the Continental Shelf, wrote into oceans law the United States innovation from the 1945 Truman Proclamation -- that coastal nations should control the oil and gas of their continental margins. During the 1960's a multiplicity of illegal claims threatening United States navigational interests led to a United States initiative to promote agreement within the United Nations on the maximum breadth of the territorial sea and protection of navigational freedom through straits. This, in turn, led some years later, and with a broadening of the agenda, to the convening in 1973 of the Third United Nations Conference on the Law of the Sea. In this regard it should be clearly understood that the United States was a principal initiator of this Conference, and it was by far the preeminent participant in shaping the resulting Convention. Make no mistake; the United States was not participating in this Conference out of some fuzzy feel good notion. Its participation was driven at the highest levels in our Government by an understanding of the critical national interests in protecting freedom of navigation and the rule of law in the world's oceans. Today we understand even more clearly from "public choice theory," which won the Nobel Prize in economics, why our choice to mobilize in a multilateral setting all those who benefited from navigational freedom was a sound choice in controlling individual illegal oceans claims.[8] And the result was outstanding in protecting our vital

[8] The reason supporting this is most easily understood as the high cost of organization of those affected by illegal oceans claims; claims which were externalizing costs on the international community. A multilateral strategy of response to such

navigational and security interests. Moreover, along the way we solidified for the United States the world's largest offshore resource area for oil and gas and fishery resources over a huge 200 nautical mile economic zone, and a massive continental shelf going well beyond 200 miles.[9]

Despite an outstanding victory for the United States on our core security and resource interests a lingering dispute remained with respect to the regime to govern resource development of the deep seabed
beyond areas of national jurisdiction. Thus, when the Convention was formally adopted in 1982, this disagreement about Part XI of the Convention prevented United States adherence. Indeed, during the final sessions of the Conference President Reagan put forth a series of conditions for United States adherence, all of which required changes in Part XI. Following adoption of the Convention without meeting these conditions, Secretary Rumsfeld served as an emissary for President Reagan to persuade our allies not to accept the Convention without the Reagan conditions being met. The success of the Rumsfeld mission set the stage some years later for a successful renegotiation of Part XI of the Convention. In 1994, Part XI, dealing with the deep seabed regime beyond national jurisdiction, was successfully renegotiated meeting all of the Reagan conditions and then some. Subsequently, on October 7, 1994, President Clinton transmitted the Convention to the Senate for advice and consent.[10] Since that time no Administration,

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illegal claims, far from being simply a fuzzy effort at cooperation, effectively enabled coordination of nations to promote the common interest against such illegal claims. Counter to the perception of some that a unilateral U.S. response is always the best strategy, a multilateral forum was indeed the most effective forum for controlling such threats to our navigational freedom. Moreover, since a majority of *coastal* nations are completely "zone locked," that is, they have no access to the oceans without traversing the 200 mile economic zones of one or more neighboring states, a multilateral strategy continues to offer an important forum for rebutting illegal unilateral oceans claims threatening navigational freedom. The fact is, because of this "zone locked" geography, a majority of nations should never either favor extending national jurisdiction beyond 200 nautical miles nor permitting interference with navigational freedom in the 200 nautical mile economic zone.

[9] The Convention powerfully supports United States control of its fisheries resources. Indeed, with respect to fisheries, the United States is already a party to the "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," a treaty that implements certain fisheries provisions of the Law of the Sea Convention. Senator Ted Stevens provided crucial leadership in Senate advice and consent to this implementing Convention.

[10] For the letter of transmittal to the Senate and official United States Government article-by-article commentary on the Convention, see SEN. TREATY DOC. 103-39, *reprinted* in U.S. Department of State Dispatch Supplement, Law of the Sea Convention: Letters of Transmittal and Submittal and Commentary (Feb. 1995, Vol. 6, Supp. No. 1). For the most authoritative article-by-article interpretation of the Convention, see the multi-volume *Commentary on the United Nations Convention on the Law of the Sea 1982*, prepared under the auspices of the Center for Oceans Law and Policy of the University of Virginia School of Law. MYRON H. NORDQUIST (ED.), UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY (1985-2003 Martinus Nijhoff Publishers).

Democratic or Republican, has opposed Senate advice and consent – and United States ratification.

At present the Convention is in force; and with 143 states parties it is one of the most widely adhered conventions in the world. Parties include all permanent members of the Security Council but the United States, and all members of NATO but the United States, Denmark and Canada – and Canada is expected to join in the immediate future as soon as the European Union formally adopts an important fisheries agreement implementing the 1982 Convention. The Convention unequivocally and overwhelmingly meets United States national interests – indeed, it is in many respects a product of those interests.

If one were to travel back in time and inform the high-level members of the eighteen agency National Security Council Interagency Task Force which formulated United States oceans policy during the Convention process – an effort never matched before or since in the care with which it reviewed United States international oceans interests – that the Convention today in force, powerfully meeting all United States oceans interests, would not yet be in force for the United States nine years after being submitted to the Senate, the news would have been received with incredulity. As this suggests, the Senate should understand that United States oceans interests, including our critical security interests, are being injured – and will continue to be injured – until the United States ratifies the Convention. Among other costs of non-adherence we have missed out on the formulation of the mining code for manganese nodules of the deep seabed; we have missed participating in the development of rules for the International Law of the Sea Tribunal and the Commission on the Limits of the Continental Shelf, and in ongoing consideration of cases before the Tribunal as well as ongoing consideration of the Russian continental shelf claim now before the Continental Shelf Commission; we have had reduced effect in the ongoing struggle to protect navigational freedom and our security interests against unilateral illegal claims; and we have been unable to participate in the important forum of Convention States Parties.

Why should the United States give advice and consent to the Law of the Sea Convention? I will summarize the most important reasons under three headings:

I.
Restoring United States Oceans Leadership

Until our prolonged non-adherence to the 1982 Convention, the United States has been the world leader in protecting the common interest in navigational freedom and the rule of the law in the oceans. We have at least temporarily forfeited that leadership by our continued non-adherence. United States ratification of the Convention will restore that leadership. Specifically, ratification will have the following effects, among others:

- The United States will be able to take its seat on the Council of the International Seabed Authority. The authority is currently considering a mining code with respect to polymetallic sulfides and cobalt crusts of the deep seabed. Council membership will also give us important veto rights over distribution of any future revenues from deep seabed exploitation to national liberation groups;

- The United States should, at the next election of judges for the International Tribunal for the Law of the Sea, see the election of a United States national to this important tribunal. Since this Tribunal frequently considers issues relating to navigational freedom and the character of the 200 mile economic zone it is a crucial forum for the development of oceans law;

- The United States should, at the next election of members of the Commission on the Limits of the Continental Shelf, see the election of a United States expert to the Commission. This Commission is currently considering the Russian claim in the Arctic that is of real importance for the United States (and Alaska) and for appropriate interpretation of the Convention respecting continental margin limits. Over the next few years the Commission will begin to consider many other shelf limit submissions, beginning next with Australian and Brazilian claims. This is also the Commission that ultimately must pass on a United States submission as to the outer limits of our continental shelf beyond 200 nautical miles. The early work of the Commission, as it begins to develop its rules and guidelines, could significantly affect the limits of the United States continental shelf.

Not to actively participate in the work of this Commission could result in a loss of thousands of square kilometers of resource-rich United States continental shelf;

- The United States will be able to participate fully in the annual meeting of States Parties that has become an important forum for ongoing development of oceans law. Of particular concern, United States presence as a mere observer in this forum has in recent years led to efforts by some to roll back critical navigational freedoms hard won in the LOS negotiations where we were a leader in the negotiations and our presence was powerfully felt; and

- The United States will be far more effective in leading the continuing struggle against illegal oceans claims through our participation in specialized agencies such as the International Maritime Organization; in bilateral negotiations such as those with the archipelagic states; in acceptance by other states of our protest notes and our ability to coordinate such notes with others; and generally in organizing multilateral opposition to threats to our oceans interests and the rule of law in the oceans.

II.
Protecting United States Oceans Interests

A second set of important reasons for United States adherence to the Law of the Sea Convention relate to the particularized protection of United States oceans interests. Some of the more important and immediate of these include:

- More effectively engaging in the continuing struggle to protect our naval mobility and commercial navigational freedom. Protecting the ability of the United States Navy to move freely on the world's oceans and the ability of commercial shipping to bring oil and other resources to the United States and for us to participate robustly in international trade overwhelmingly carried in ships is the single most important

oceans interest of the United States. This interest, however, is also the single most threatened interest; the continuing threat being the historic pattern of unilateral illegal oceans claims. As of June 22, 2001, there were at least 136 such illegal claims.[11] This struggle has been the key historic struggle for the United States over the last half century and gives every indication of continuing. Adhering to the Convention provides numerous ways for the United States to engage more effectively in protecting these interests. An immediate and important effect is that we are able on ratifying the Convention to attach a series of crucial "understandings" under Article 310 of the Convention as to the proper interpretation of the Convention, as have many other nations – too many of which have made erroneous interpretations as yet unrebutted by United States statements.[12] Moreover, as a party we will be far more effective in multiple fora in protecting the many excellent provisions in the Convention supporting navigational freedom. Indeed, much of the struggle in the future to protect our vital oceans interests will be in ensuring adherence to the excellent provisions in the Convention. Having won in the struggle to protect these interests within UNCLOS we now have a substantial advantage in the continuing struggle -- we need only insist that others abide by the nearly universally accepted Convention. Obviously, that is an advantage largely thrown away when we ourselves are not a party. And for our commercial shipping we will be able to utilize the important Article 292 to obtain immediate International Tribunal engagement for the release of illegally seized United States vessels and crew. It should be emphasized that the threat from these illegal claims is that of death from a thousand pin pricks rather than any single incident in response to which the United States is likely to be

[11] The best general discussion of these illegal oceans claims and their effect on United States interests is J. ASHLEY ROACH & ROBERT W. SMITH, EXCESSIVE MARITIME CLAIMS, 66 U.S. Naval War College International Law Studies (1994), and J. ASHLEY ROACH & ROBERT W. SMITH , UNITED STATES RESPONSES TO EXCESSIVE MARITIME CLAIMS (2d ed. 1996).

[12] United States "understandings" under Article 310 could either be formulated and attached to the Convention by the Executive Branch at the time the United States ratifies the Convention or they could be attached to the Resolution of Senate Advice and Consent. I believe the second of these alternatives would have the greatest effect in the ongoing "struggle for law" as to the correct interpretation of the Convention. Given the highly technical nature of these understandings I would be pleased to work with the Committee to provide a draft of understandings for your consideration. It should be clearly understood that these are not "reservations" altering the correct legal meaning of the Convention. Such reservations or exceptions are barred by Article 309 of the Convention except as specifically permitted by the Convention, as, for example, in Article 298 of the Convention concerning optional exceptions to the compulsory dispute settlement provisions.

willing to employ the military instrument. Moreover, some of the offenders may even be allies of the United States, our NATO partners, or even over zealous officials in our own country who are unaware of the broader security interests of the Nation;

- More effective engagement with respect to security incidents and concerns resulting from illegal oceans claims by others. Examples include the new law of the People's Republic of China (PRC) providing that Chinese civil and military authorities must approve all survey activities within the 200 mile economic zone, the PRC harassment of the Navy's ocean survey ship the *USNS Bowditch* by Chinese military patrol aircraft and ships when the *Bowditch* was 60 miles off the coast, the earlier EP-3 surveillance aircraft harassment, Peruvian challenges to U.S. transport aircraft in the exclusive economic zone, including one aircraft shot down and a second incident in which two U.S. C-130s had to alter their flight plan around a claimed 650 mile Peruvian "flight information area," the North Korean 50 mile "security zone" claim, the Iranian excessive base line claims in the Persian/Arabian Gulf, the Libyan "line of death," and the Brazilian claim to control warship navigation in the economic zone;

- More rapid development of the oil and gas resources of the United States continental shelf beyond 200 nautical miles. The United States oil and gas industry is poised in its technology to begin development of the huge continental shelf of the United States beyond 200 miles (approximately 15% of our total shelf). But uncertainties resulting from U.S. non-adherence to the Convention will delay the substantial investment necessary for development in these areas. Moreover, U.S. non-adherence is causing the United States to lag behind other nations, including Russia, in delimiting our continental shelf. Delimitation of the shelf is an urgent oceans interest of the United States;[13]

[13] For a state-of-the-art assessment of the extent of the United States continental shelf beyond the 200 mile economic zone see the work of Dr. Larry Mayer, the Director of the Center for Coastal and Ocean Mapping at the University of New Hampshire. As but one example indicating the great importance of performing this delimitation of the shelf well – and the importance of the United States participating in the resulting approval process in the Commission on the Limits of the Continental Shelf – Dr. Mayer's work shows that sophisticated mapping and analysis of the shelf would enable the United States to claim an additional area off New Jersey within the lawful parameters of Article 76 of the Convention of approximately 500 square kilometers just by using a system of connecting seafloor promontories. The work of Dr. Mayer has been funded in part

- Reclaiming United States deep seabed mineral sites now virtually abandoned. United States firms pioneered the technology for deep seabed mining and spent approximately $200 million in claiming four first-generation sites in the deep seabed for the mining of manganese nodules. These nodules contain attractive quantities of copper, nickel, cobalt and manganese and would be a major source of supply for the United States in these minerals. Paradoxically, "protecting" our deep seabed industry has sometimes been a mantra for non-adherence to the Convention. Yet because of uncertainties resulting from U.S. non-adherence these sites have been virtually abandoned and most of our nascent deep seabed mining industry has disappeared. Moreover, it is clear that without U.S. adherence to the Convention our industry has absolutely no chance of being revived. I believe that as soon as the United States adheres to the Convention the Secretary of Commerce should set up a working group to assist the industry in reclaiming these sites. This working group might then recommend legislation that would deal with the industry problems in reducing costs associated with reacquiring and holding these sites until deep seabed mining becomes economically feasible;

- Enhancing access rights for United States marine scientists. Access for United States marine scientists to engage in fundamental oceanographic research is a continuing struggle. The United States will have a stronger hand in negotiating access rights as a party to the Convention. As one example of a continuing problem, Russia has not honored a single request for United States research access to its exclusive economic zone in the Arctic Ocean from at least 1998, and the numbers of turn-downs for American ocean scientists around the world is substantial. This problem could become even more acute as the United States begins a new initiative to lead the world in an innovative new program of oceans exploration;

- Facilitating the laying of undersea cables and pipelines. These cables,

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through an innovative forward-looking grant supported by Senator Judd Gregg of New Hampshire. This work, however, is important for the Nation as a whole, and particularly for Alaska, which has by far the largest shelf beyond the 200 mile economic zone.

carrying phone, fax, and internet communications, must be able to transit through ocean jurisdictions of many nations. The Convention protects this right but non-adherence complicates the task of those laying and protecting cables and pipelines; and

- It should importantly be noted in protecting United States oceans interests that no U.S. oceans interest is better served by non-adherence than adherence. This is an highly unusual feature of the 1982 Convention. Most decisions about treaty adherence involve a trade off of some interest or another. I am aware of no such trade off with respect to the 1982 Convention. United States adherence is not just on balance in our interest – it is broadly and unreservedly in our interest.

III.
Enhancing United States Foreign Policy

The United States would also obtain substantial foreign policy benefits from adhering to the 1982 Convention; benefits going quite beyond our oceans interests. These benefits include:

- Supporting the United States interest in fostering the rule of law in international affairs. Certainly the promotion of a stable rule of law is an important goal of United States foreign policy. A stable rule of law facilitates commerce and investment, reduces the risk of conflict, and lessens the transaction costs inherent in international life. Adherence to the Law of the Sea Convention, one of the most important law-defining international conventions of the Twentieth Century, would signal a continuing commitment to the rule of law as an important foreign policy goal of the United States;

- United States allies, almost all of whom are parties to the Convention, would welcome U.S. adherence as a sign of a more effective United States foreign policy. For some years I have chaired the United

Nations Advisory Panel of the Amerasinghe Memorial Fellowship on the Law of the Sea in which the participants on the Committee are Permanent Representatives to the United Nations from many countries. Every year our friends and allies ask when we will ratify the Convention and they express their puzzlement to me as to why we have not acted sooner. In my work around the world in the oceans area I hear this over and over -- our friends and allies with powerful common interests in the oceans are astounded and disheartened by the unilateral disengagement from oceans affairs that our non-adherence represents;

- Adherence would send a strong signal of renewed United States presence and engagement in the United Nations, multilateral negotiation, and international relations generally. At present those who would oppose United States foreign policy accuse the United States of "unilateralism" or a self-proclaimed "American exceptionalism." Adhering to the Law of the Sea Convention will demonstrate that America adheres to those multilateral Conventions which are worthy while opposing others precisely because they do not adequately meet community concerns and our national interest;

- Efforts to renegotiate other unacceptable treaties would receive a boost when an important argument now used by other nations against such renegotiation with us was removed. This argument, now used against us, for example in the currently unacceptable International Criminal Court setting, is: "[W]hy renegotiate with the United States when the LOS renegotiation shows the U.S. won't accept the Treaty even if you renegotiate with them and meet all their concerns?"; and finally

- The United States would obtain the benefit of third party dispute settlement in dealing with non-military oceans interests. The United States was one of the principal proponents in the law of the sea negotiations for compulsory third party dispute settlement for resolution of conflicts other than those involving military activities. We supported such mechanisms both to assist in conflict resolution

generally and because we understood that third party dispute resolution was a powerful mechanism to control illegal coastal state claims. Even the Soviet Union, which had traditionally opposed such third party dispute settlement, accepted that in the law of the sea context it was in their interest as a major maritime power to support such third party dispute settlement.[14]

Conclusion

Senate advice and consent to the 1982 Convention on the Law of the Sea is strongly in the national interest of the United States. There are powerful reasons supporting United States adherence to the Convention; reasons rooted in restoring U.S. oceans leadership, protecting U.S. oceans interests, and enhancing U.S. foreign policy. I would urge the Senate to support advice and consent to the 1982 Convention at the earliest possible time.

[14] The 1994 submission of the LOS Convention to the Senate recommended that the United States accept "special arbitration for all the categories of disputes to which it may be applied and Annex VII arbitration [general arbitration] for disputes not covered by … [this]," and that we elect to exclude all three categories of disputes excludable under Article 298." See U.S. Department of State Dispatch IX (No. 1 Feb. 1995).

About John Norton Moore

[*]John Norton Moore is the Walter L. Brown Professor of Law at the University of Virginia School of Law and Director of the Center for Oceans Law and Policy and the Center for National Security Law. He formerly served as the Chairman of the National Security Council Interagency Task Force on the Law of the Sea, which formulated United States international oceans policy for the law of the sea negotiations, he headed D/LOS, the office which coordinated both State Department and Interagency Policy on the law of the sea, and he served in the international negotiation as a Deputy Special Representative of the President and a United States Ambassador to the Third United Nations Conference on the Law of the Sea. Subsequently, he chaired the Oceans Policy Committee of the Republican National Committee and was a member of the National Advisory Committee on Oceans and Atmosphere (NACOA). In 1982, before the successful renegotiation of Part XI of the Treaty, he wrote to the incoming Reagan Administration opposing United States adherence until the problems with Part XI had been resolved. This letter was instrumental in triggering the Reagan review which in turn led to the successful Rumsfeld mission and ultimately effective renegotiation of Part XI.

June 6, 2004

Admiral James D. Watkins, Chairman
U.S. Commission on Ocean Policy
1120 20th Street, NW
Washington, D.C. 20036

Dear Admiral Watkins:

Thank you for making the Preliminary Report of the U.S. Commission on Ocean Policy available for comment. I commend and congratulate you for producing an excellent, timely, and visionary document to guide future ocean policy in the United States. Indeed, from the perspective of both of my roles – as chairman of the U.S. Section of the International Joint Commission (IJC) and as U.S. Commissioner of the International Boundary Commission (IBC) – your report has will undoubtedly have a major, positive impact on government policy making.

Overall, I heartily concur with the direction, principles, and recommendations contained in the Preliminary Report, particularly those focused on the Great Lakes.

The IJC is a bilateral, U.S./Canada organization formed under the Boundary Waters Treaty of 1909 that resolves disputes, manages levels and flows, and conducts scientific investigations called "references" concerning boundary and transboundary waters shared by the two countries. While the jurisdiction of the IJC stretches from coast to coast, the Great Lakes are the largest and most significant boundary waters shared by the U.S. and Canada, and the IJC operates control structures on the connecting channels formed by the St. Mary's and St. Lawrence Rivers.

The first IBC was created by the Jay Treaty of 1794 while the current IBC was founded in 1925 to reestablish and map of the boundary between the U.S. and Canada from the Atlantic Ocean to the Pacific Ocean. Our agency maintains the boundary in an effective state of demarcation through regular inspections, repairing, relocating or rebuilding damaged monuments or buoys; keeping the vista cleared, and erecting new boundary markers at such locations as new road crossings.

The IJC also plays an oversight role with respect to the Great Lakes Water Quality Agreement (GLWQA) of 1978 – a binational executive agreement that was the

first major international agreement to adopt an ecosystem approach to the management of shared waters. **GLWQA committed the U.S. and Canada to restore the chemical, physical, and biological integrity of the waters of the Great Lakes. This landmark agreement is up for review and potential revision by the governments of the United States and Canada in 2005. The Preliminary Report should mention this key opportunity to enhance ecosystem-based management of the Great Lakes.** That said, the Commission's vision to use ecosystem-based management to integrate multi-jurisdictional and multi-agency efforts to restore, protect, and sustain the beneficial human use of our coastal marine and freshwater resources is welcome and in accordance with previous IJC recommendations.

The following detailed comments are provided from my perspective as a policy maker who has devoted more than 20 years of attention to what U.S. law defines as the "Fourth Seacoast"- the Great Lakes. Key comments are in bold type.

The "Fourth" but not Forgotten Seacoast

The Preliminary Report correctly defines the marine environment and coastal areas to include the Great Lakes. These inland, "sweetwater seas" have more coastline than any of the three ocean coasts and one of every six Americans lives in the basin. Many of the impairments to the beneficial and sustainable use of marine resources identified by the Commission, were first identified and addressed in the Great Lakes basin.

Similarly, the Commission includes the Great Lakes in the definitions of coastal zone counties, coastal watershed counties, and the near-shore area. In fact, it is noted that of the 673 coastal watershed counties, 159 front the Great Lakes. The Commission also rightly adopted NOAA's definition of a "coastal watershed." In the Great Lakes region, "coastal watershed" includes the entire geographic area that drains into one of the lakes, and thus, the entire basin is one interconnected watershed. The Commission's recommendation that the watershed be the geographical unit in which ecosystem-based management is applied to integrate planning, programs and projects is appropriate.

However, many around the basin expressed dismay that the Great Lakes are not mentioned in the Executive Summary and that many opportunities to use Great Lakes examples to illustrate problems and potential solutions throughout the text of the Preliminary Report have been missed. At a time when Great Lakes policy-makers, practitioners, and the public are pushing for a major initiative to restore and sustain the many beneficial uses of the Great Lakes, this oversight strikes a sensitive nerve and fails to give readers a sense of the full scope of the Commission's work. **Therefore, the Commission is urged to incorporate the Great Lakes into the Executive Summary and to incorporate Great Lakes examples throughout the text.** For example, including the Lake Erie dead zone in chapter 14 along with the Gulf of Mexico dead zone discussion would demonstrate the complex nature of the problem and how it may be linked to invasive species.

Indeed, a strong case can be made that the "Fourth Seacoast" deserves not just better recognition, but very special attention because fresh water has several important beneficial uses above and beyond those for salt water. For example:

- Drinking Water – nearly 40 million U.S. and Canadian citizens get their drinking water from ground water, surface waters, and tributaries of the Great Lakes. Chapter 23 contains no reference to the potential health implications from drinking water contamination despite recent incidents like Walkerton, Ontario and the 1993 cryptosporidium contamination of Milwaukee's drinking water that made thousands of people ill and exacted nearly $100 million in economic costs. **The Commission should expand upon the drinking water challenges in both the Great Lakes and marine coastal environments.**

- Out-of-basin Water Demand – because they contain such a vast quantity of fresh water, communities lying just outside of the basin divide often seek access to water from the Great Lakes by way of out-of-basin diversions. An agreement between the eight Great Lakes states and the Canadian provinces of Ontario and Quebec known as the Great Lakes Charter of 1985, established a "prior notice and consultation" process between state and provincial leaders concerning any large new diversion or consumptive use planned within any of their jurisdictions. Moreover, U.S. federal law (the Water Resources Development Act of 1986) puts Great Lakes state governors in charge of managing diversions by requiring that they be unanimously approved by each of the eight governors. Great Lakes governors and premiers hope to complete work by mid-2004 on a new set of binding agreements to manage diversions and consumptive water uses within the Great Lakes basin under an amendment to the Great Lakes Charter known as Annex 2001. This challenge is unique to the Great Lakes basin and unique agreements, laws, and organizations have evolved to deal with it (see additional comments under the heading "Governance"). The Preliminary Report does not mention out-of-basin demand for Great Lakes water or the mechanisms that have been developed to meet this unique challenge. **The Commission should include a discussion of out-of-basin demand for Great Lakes water and its implications for governance.**

- Industrial Use – Many heavy industries and power utilities have located in the near-shore areas of the lakes, tributaries, and connecting channels. While practices have improved dramatically since the Clean Water Act, decades of point-source pollution discharges have left a legacy of sediment contaminated with multiple toxic substances. Some of these contaminants, like PCBs and mercury, bio-accumulate up the fish-to-human food chain and have led to fish consumption advisories. In 1987, the governments of the U.S. and Canada designated 42 Areas of Concern (AOCs) in the Great Lakes where ecosystems were degraded, largely

because of contaminated sediment. Subsequently, one AOC was added to the list and only 2 AOCs, both in Canada, have been restored in the past 17 years. A new $270 million/5 year EPA program – the Great Lakes Legacy Act – has begun to address this problem in the 26 U.S. AOCs, primarily through dredging and on-land disposal. While the Commission's recommendations in Chapter 23 of the Preliminary Report are on target, **a discussion of the special problem of contaminated sediment in the Great Lakes, the excessive costs associated with confined disposal, and the prospects for the beneficial reuse of sediment should be included in the final report.**

- Hydropower – distinct from the pendulum like ebb and flow of the ocean tides, the Great Lakes/St. Lawrence River system has a steady, linear flow of water through several significant elevation drops that enable substantial use for hydropower generation. Hydrological flows are the "master variable" in the Great Lakes and have implications for sediment transport, coastal erosion, riparian uses, recreational boating, marina operations, and wetlands habitat. The IJC manages dams at the outflows of Lake Superior and Lake Ontario in accord with its obligations under the Boundary Waters Treaty, and is in the midst of a $20 million, 5-year study of its orders for operating the 32-gate Moses Saunders dam on the St. Lawrence River. This "lower lakes" study has produced a wealth of data and models on coastal processes, wetlands, bathymetry and topography that is likely far ahead of any such data sets for any of our ocean coasts. Moreover, the study may be the most advanced use of the "Shared Vision Model" – a sophisticated computer simulation that incorporates the views of multiple interest groups in helping to develop regulation plans. In addition, a plan of study has been approved but not yet funded for the "upper lakes" which would greatly improve the data set and models for the basin. **The final report should highlight the importance of hydrological flows and hydropower usage in the Great Lakes/St. Lawrence River system, the binational role of the IJC in managing these flows, and the extensive studies underway to review and improve flow management to the benefit of a broader range of users.**

There are also more subtle distinctions that could add to the scope and stature of the Commission's report. For example, groundwater is used extensively for drinking and irrigation, and the connection of ground to surface water has important implications for the protection of recharge areas – similar to concerns regarding saltwater infiltration of groundwater in the other coasts. In addition, the chemistry and biology of fresh water differs significantly from that of saltwater, raising important issues in the cycling of contaminants. At the same time, such distinctions make stormwater management a much thornier issue in the Great Lakes than on the other coasts. These features warrant mention in the final report.

Last but not least, there are no U.S. federal waters in the Great Lakes, only state waters that are subject to certain federal regulations such as those for free navigation, water pollution and diversions. The Primer on Ocean Jurisdictions in Chapter 3 of the Preliminary Report is particularly enlightening; however, it does not apply to the Great Lakes, **making the development of a similar primer for the "Fourth Coast" a good idea**. Jurisdictional differences are important because they bear directly on the Commission's vision for governance.

Governance

A central feature of the National Ocean Policy Framework recommended by the Commission is the establishment within the Executive Office of the President of a National Ocean Council, chaired by an Assistant to the President and composed of all the cabinet secretaries and independent agency directors with ocean-related responsibilities. The Presidential Council of Advisors on Ocean Policy would add input from nonfederal interests, including the states. Regional Ocean Councils are also recommended to improve non-regulatory state, local, and tribal participation in policy-making. This framework will produce strong, high-level leadership, and improve programmatic coordination, priority setting, and data synthesis. Ultimately, it will result in better decision-making and effectuate the application of ecosystem-based management. The National Ocean Policy Framework proposed in the Preliminary Report is the right approach; indeed it is the key to the sustainable management of our ocean resources. However, there are some unique features of governance in the Great Lakes that bear mention and may suggest adaptation of the framework proposed by the Commission.

The Great Lakes are blessed with an abundance of existing multi-jurisdictional organizations, many of which have binational (U.S. and Canada) representation. Examples include the International Joint Commission, the Great Lakes Fishery Commission, the Great Lakes Cities Initiative and the International Association of Great Lakes and St. Lawrence Mayors**.** In addition, the Great Lakes Commission (GLC), the Council of Great Lakes Governors (CGLG), and their Great Lakes Protection Fund bring together the leadership of eight states to protect and sustain the Great Lakes. Moreover, while the GLC and CGLG do not have a formal binational component, they do grant "associate" member status to Ontario and Quebec and both provinces participate in the work of those organizations. Nongovernmental organizations like Great Lakes United (GLU) also address the challenges confronted within the basin. However, despite this abundance of such organizations, the Great Lakes suffer from the same lack of coordination and accountability identified for our other three coasts because there is no single entity with the authority and responsibility for the entire basin.

Last year, the U.S. General Accounting Office issued a report that identified 148 federal and 51 state programs funding environmental restoration activities in the Great Lakes basin. Most of the programs involve localized application of national or state environmental initiatives and do not focus on basin-wide concerns, however, the GAO did identify 33 Great Lakes specific federal programs administered by a dozen different agencies, and 17 additional state programs addressing unique Great Lakes concerns. In

short, these programs and strategies were found to be uncoordinated and lacking the leadership necessary to establish priorities, assess progress, and apply ecosystem based management in the Great Lakes watershed. In a hearing on the topic conducted by Ohio Senator George Voinovich, the Senator likened Great Lakes governance to an "orchestra without a conductor."

On May 18, 2004, President Bush issued an Executive Order establishing the Great Lakes Interagency Task Force to Promote Collaboration of National Significance for the Great Lakes. The Task Force is chaired by the EPA Administrator who reports to the President through a Presidential Assistant – the chair of the Council on Environmental Quality – and consists of all federal agency secretaries with Great Lakes responsibilities. Simultaneously, Governor Taft (chair of the Council of Great Lakes Governors) and Chicago Major Richard Daley (co-chair of the International Great Lakes Mayors Association) committed to develop a regional entity to work with the federal Task Force.

The parallels between the new National Ocean Policy Framework proposed in the Preliminary Report and the framework recently established by the President's Executive Order are striking. The following recommendations to reconcile the Commission's recommendation and the President's recent action might be helpful:

- The Commission should **immediately consult with the Council on Environmental Quality** to determine whether the Task Force created by the President's Executive Order should be amended to incorporate the broader membership and scope recommended for the National Ocean Commission.
- The National Ocean Council is currently envisioned as a federal-only organization. **The Commission should consider adding Great Lakes gubernatorial and mayoral representation on the National Ocean Commission** because of the direct and prominent role that states and cities have in implementing both state and federal programs and regulations in the basin.
- The Commission should **ensure that the binational perspective that is so important to the Great Lakes is represented on the National Ocean Commission, the Presidential Council of Advisors on Ocean Policy and on any Regional Ocean Council** that is developed for the Great Lakes.
- The Commission should **consult with state governors and mayors to determine whether the entities being developed in accord with the President's Executive Order for the Great Lakes can be transformed into the Regional Ocean Council** envisioned in the Preliminary Report.
- **The fact that states and localities are directly engaged in regulation and restoration activities needs to be reconciled with the lesser "advisory role" envisioned for Regional Ocean Councils** – the federal-state-local linkage in the Great Lakes is critical to the application of a coordinated ecosystem-based management approach for the entire

watershed. It is especially important that Canadian provincial and municipal participation on any Great Lakes Regional Ocean Council be included because of the shared, binational nature of the resource and responsibilities. The Executive Order provides the opportunity for federal state and local authorities to develop a task force that would support the review and implementation of the Great Lakes Water Quality Agreement as the guiding blueprint for Great Lakes management and restoration.

Clearly, the organizations around the Great Lakes are already positioned to participate in the new policy framework envisioned in the Preliminary Report. Creating a duplicative organizational structure would defeat the noble purpose of improving coordination and communication. **Therefore it is imperative that a single policy framework emerges, and that it includes prominent Great Lakes representation and particularly, the binational perspective.**

Role of Science

The recommendations in Chapter 7 and Chapter 25 to enhance and strengthen NOAA and to increase dramatically federal investment in ocean research are key steps to further restoration efforts nationwide and especially in the Great Lakes. There is no doubt in my mind that it is good science that leads to good policy. In this regard, it should be noted that with respect to the Great Lakes, much of the best science is being done in Ann Arbor, Michigan especially at the Great Lakes Environmental Research Laboratory. Indeed, Ann Arbor is the scientific heart of the basin because it is home to so many university, state, federal and international organizations devoted to Great Lakes research.

Such research could benefit from the co-location of these many agencies on one campus and plans for such a facility have been in development for several years. In addition, this facility would be a perfect home for the Regional Ocean Council. It might even be a good repository for the wealth of data collected in the St. Lawrence-Lake Ontario study mentioned earlier. **Therefore, the final report should recommend the construction of a unified Great Lakes Center in Ann Arbor**.

Marine Commerce and Transportation

Recommendations 13-3 through 13-6 calling for a comprehensive analysis of all modes of transporting goods and the development of a national transportation strategy are welcome and timely. **The final report should emphasize that such studies must include ecosystem costs and the potential environmental benefits of short sea shipping linking with other modes of transportation.** This may be particularly relevant to the future of the St. Lawrence Seaway and provide options that benefit both the economy and the environment.

Fisheries Management

The Preliminary Report (Chapter 19) recommends the retention of the highly successful fishery management process in the Great Lakes that is facilitated by the Great Lakes Fishery Commission. In so doing, the Commission recognized that fisheries management in the Great Lakes occurs in a very different context that that found on the other three coasts because there are no federal waters in the Great Lakes. Regional Fishery Management Councils do not exist in this region; rather, federal, state, provincial, and tribal agencies cooperate through a *Joint Strategic Plan for Management of Great Lakes Fisheries*. This non-binding agreement enables managing agencies to collaborate on the development and implementation of fishery objectives, and it works exceedingly well. **Therefore, recommendation 19-11 should explicitly recognize the *Joint Strategic Plan* and this process for the Great Lakes.**

Aquatic Invasive Species

The Preliminary Report prominently addresses the threat posed by aquatic invasive species to the economy and ecology of our oceans by devoting an entire chapter (Chapter 17) to this issue and mentioning it in the first paragraph of the Executive Summary. Unpublished research by Dr. David Pimentel will soon report a $3 billion annual economic impact – $500 million per year in the Great Lakes – due to damages and control costs for aquatic invasive species like the sea lamprey, zebra mussel, and round goby among many others. The prominent attention paid to this problem and the emphasis placed upon prevention of further introductions as "the first line of defense" is appropriate and appreciated. Recommendations 17 – 2, 3, 4, 5, and 6 are key steps forward; however, **it should be noted that areas of focus for recommendation 17-7 must include provisions for binational coordination of research conducted in the boundary waters and information exchange throughout the region**.

The Preliminary Report did not mention the opportunity posed by the impending reauthorization of the National Aquatic Invasive Species Act (NAISA) to set a biologically protective national standard for ballast water discharges. Additionally, the Preliminary Report did not mention the recent International Convention for the Control and Management of Ships' Ballast Water and Sediments prepared under the auspices of the United Nation's International Maritime Organization (IMO). The IMO convention was recently adopted and is awaiting ratification by member states – a process that may take many years. The IMO Convention provides for regional agreements to adopt a more stringent ballast water discharge standard, and to adopt it sooner than the standard and time frame contained in the Convention. This is particularly relevant to the Great Lakes.

The reauthorization of NAISA is a key component of the strategy to prevent further introductions of aquatic invasive species into our ocean coasts by enactment of a biologically protective standard for ballast water discharge. Because the U.S. is the foremost port state in the world, the opportunity to exert leadership is obvious – if the

U.S. adopts a biologically protective ballast water discharge standard via NAISA, then the world will follow because it must. **The final report should address NAISA and note the opportunity it presents to provide a comprehensive response to what is arguably the most solvable problem in the Great Lakes today.**

The Preliminary Report, in Recommendation 17-1, appears to discount regional approaches to preventing aquatic invasive species introductions in favor of "national standards." However, there are unique features of the Great Lakes region that present a special opportunity to lead in achieving a solution to what may be the top threat to aquatic biodiversity and biological integrity in the basin.

The Great Lakes are a single enclosed freshwater ecosystem with a single shipping entrance through the St. Lawrence River that is controlled by two nations. The number of ships, ship designs, customers, and commodities, ports of origin and destination, and carriers plying the lakes are limited and manageable relative to the situation on our other ocean coasts. Given this limited and manageable universe of variables, the application of ship or shore-based treatment technologies is eminently feasible and potentially cost-effective. In addition, the possibility of using transshipment (from ocean-going to Great Lakes only freighters) or alternative transportation modes like railroads to move cargo instead of creatures presents possibilities for advancing a regional solution. The Preliminary Report appropriately recognizes the advanced knowledge, planning, and leadership in the Great Lakes region, but fails to consider that it may be one region where a solution can be developed that would not interfere with national or international approaches. **Recommendation 17-1 should be revised to include the potential for a regional approach to preventing further invasions in the Great Lakes**.

Finally, the IJC is uniquely positioned to assist in developing a binational (U.S.-Canada) approach to preventing further introduction of aquatic invasive species into the Great Lakes. In this regard, pursuant to Article IX of the Boundary Waters Treaty of 1909, the **final report should ask that a reference be given by the governments of Canada and the U.S. to the IJC to study and recommend a common, binational approach to preventing aquatic invasive species introductions into the Great Lakes via all vectors, but particularly with respect to ballast water discharges from ocean-going vessels.**

Integrated Ocean Observing System

The Commission recommends a strong commitment to support, indeed double, our nation's investment in basic research in developing the enhanced technology needed to integrate data and support management decisions. The Integrated Ocean Observing System (IOOS) is the critical infrastructure for achieving this worthy goal – an interconnected network of ocean observing systems linked to the international Global Ocean Observing System. When fully operational, the IOOS will substantially advance the ability to observe, monitor, and ultimately, forecast ocean conditions. The economic,

societal, and ecological benefits, including improved warnings of coastal and health hazards clearly justify this investment and it has our strong support.

A Great Lakes coastal component will directly benefit users of these waters in at least two ways. First, storm events arise quickly and violently on the Great Lakes where there are approximately 4.5 million registered pleasure craft. Improved forecasting and warning systems will enhance boating safety. Second, beach closures due to contamination events like combined sewer overflows and harmful algal blooms can be made more timely and efficient, thereby avoiding human illness. **With respect to the latter, we note that Chapter 23 should include the development of better models and the development of more rapid diagnostic tests for bacterial contamination, as well as better monitoring to improve the accuracy and timing of beach closures and public health advisories.**

In short, the recommended investment in IOOS and its Great Lakes coastal component is an appropriate step. Additionally, Recommendation 7-1 to strengthen NOAA and its role in implementing IOOS and its Great Lakes component is the right approach. **Moreover, it might be helpful for a binational institution to facilitate the Great Lakes Observing System in conjunction with NOAA and appropriate Canadian federal, regional and academic institutions**.

International Cooperation

At the seams of the U.S. borders with Canada and Mexico where issues of fishing rights, pollution and other concerns have flared over the years, many special agreements between the nations have developed. Throughout the Preliminary Report, some of these arrangements are noted, but the importance of international cooperation and the key role played by the U.S. State Department is not emphasized appropriately. From the Gulf of Mexico to the Taku River watershed that Alaska shares with British Columbia, these issues are complicated and controversial and have great impacts, especially with respect to the concerns of native peoples. **Therefore, the final report should focus in more detail on the need for international cooperation and the importance of developing watershed-based arrangements for the management, restoration and protection of such ecologically important areas.**

Ocean Policy Trust Fund

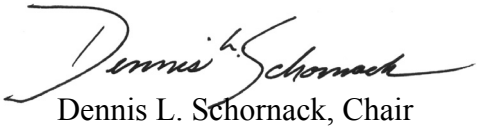
The Commission's recommendation to establish an Ocean Policy Trust Fund to receive revenues from offshore oil and gas development and other new and emerging offshore uses to pay for implementing the recommendations in the report makes sense and is an appropriate use of those resources. It should be noted, however, that the Fund would share these resources with the Fourth Coast even though there are no federal leases for oil or gas development in the Great Lakes. All offshore oil, gas, and other use development falls under state and provincial jurisdiction in the Great Lakes, although there is currently a U.S. federal ban on oil and gas development both offshore and from directional drilling operations.

Summary

The Preliminary Report is a landmark document that sets a clear course for the nation to develop and implement new ocean policy framework based on a coordinated and comprehensive ecosystem-based approach to protecting and managing our marine resources. It is a plan worthy of immediate execution at the highest levels of government. In so doing, decision-making will be dramatically improved, scientific knowledge will be advanced, and a new ethic of stewardship will evolve to guide the sustainable use of our vast and vulnerable marine and fresh water resources for the benefit of present and future generations.

Congratulations to you and your fellow commissioners on producing an important, timely, and scientifically sound document. I very much appreciated a recent opportunity to meet with Malcolm Williams, Jr., from your staff and hope that the forgoing comments and recommendations will enhance the report's particular relevance to the unique features of the "Fourth Coast." I stand ready to assist in the implementation of the Commission's recommendations and would be happy to meet with you or your staff to answer any questions.

Sincerely,



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