EMERGENCY MARINE FISHERIES PROTECTION ACT OF 1974

HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

S. 1988

A BILL TO EXTEND ON AN INTERIM BASIS THE JURISDICTION OF THE UNITED STATES OVER CERTAIN OCEAN AREAS AND FISH IN ORDER TO PROTECT THE DOMESTIC FISHING INDUSTRY, AND FOR OTHER PURPOSES

SEPTEMBER 5, 1974

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EMERGENCY MARINE FISHERIES PROTECTION ACT OF 1974

THURSDAY, SEPTEMBER 5, 1974

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 10:35 a.m., room 4221, Dirksen Senate Office Building, Senator John Sparkman presiding.

Present: Senators Sparkman, Pell, Muskie, Aiken, Case, and Javits.

Senator SPARKMAN. Let the committee come to order, please.

The Committee on Foreign Relations is meeting this morning to receive testimony on S. 1988, the proposed Emergency Marine Fisheries Protection Act.

[Text of S. 1988 follows:]

[S. 1988, 93d Cong., 2d sess.]

AUGUST 8, 1974

Reported By Mr. MAGNUSON, with amendments

[Strike out all after the enacting clause and insert the part printed in italic]

Referred to the Committee on Foreign Relations for not to exceed twenty-one days

A BILL To extend on an interim basis the jurisdiction of the United States over certain ocean areas and fish in order to protect the domestic fishing industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That this Act may be cited as the "Interim Fisheries Zone Extension and Management Act of 1973".

[FINDINGS AND STATEMENT OF PURPOSE

[SEC. 2. (a) The Congress finds—

[(1) that valuable coastal and anadromous species of fish and marine life off the shores of the United States are in danger of being seriously depleted, and in some cases, of becoming extinct;

[(2) that stock of coastal and anadromous species within the nine-mile contiguous zone and three-mile territorial sea of the United States are being seriously depleted by foreign fishing efforts beyond the existing twelve-mile fisheries zone near the coastline of the United States;

[(3) that international negotiations have so far proved incapable of obtaining timely agreement on the protection and conservation of threatened species of fish and marine life;

[(4) that there is further danger of irreversible depletion before efforts to achieve an international agreement on jurisdiction over coastal and anadromous fisheries result in an operative agreement; and

[(5) that it is therefore necessary for the United States to take interim action to protect and conserve overfished stocks and to protect our domestic fishing industry.

[(b) It is the purpose of this Act, as an interim measure, to extend the contiguous fisheries zone of the United States and certain authority over anadromous fish of the United States in order to provide proper conservation management for such zone and fish and to protect the domestic fishing industry until general agreement is reached in international negotiations of law of the sea with respect to the size of such zones and authority over such fish, and until an effective international regulatory regime comes into full force and effect.

[EXTENSION OF CONTIGUOUS FISHERIES ZONE

[SEC. 3. Section 2 of the Act entitled "An Act to establish a contiguous fishery zone beyond the territorial sea of the United States," approved October 14, 1966 (80 Stat. 908), is amended by striking "nine nautical miles from the nearest point in the inner boundary." and inserting in lieu thereof "one hundred and ninety-seven miles from the nearest point in the inner boundary."

[EXTENSION OF JURISDICTION OVER ANADROMOUS FISH

[SEC. 4. (a) The United States hereby extends its jurisdiction to its anadromous fish wherever they may range in the oceans to the same extent as the United States exercises jurisdiction over fish in its territorial waters and contiguous fisheries zone except that—

[(1) such extension of jurisdiction shall not extend to the territorial waters or fishery zone of another country; and

[(2) sixty days after written notice to the President of the Senate and the Speaker of the House of Representatives of intent to do so, the Secretary of the Treasury may authorize a vessel other than a vessel of the United States to engage in fishing for such fish in areas to which the United States has extended jurisdiction pursuant to this section upon determining, after consultation with the Secretary of State and the Secretary of Commerce, that such fishing would not result in depletion of such fish beyond the level necessary for proper conservation purposes.

[(b) As used in this Act the term "anadromous fish" means all living resources originating in inland waters of the United States and migrating to and from waters outside the territorial waters and contiguous fisheries zone of the United States.

[PROMOTION OF PURPOSES OF ACT BY TREATIES AND AGREEMENTS

[SEC. 5. The Secretary of State shall—

[(1) initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in commercial fishing operations for fish protected by this Act, for the purpose of entering into treaties or agreements with such countries to carry out the policies and provisions of this Act;

[(2) review and, if necessary, initiate the amendment of treaties, conventions, and agreements to which the United States is a party in order to make such treaties, conventions, and agreements consistent with the policies and provisions of this Act;

[(3) seek treaties or agreements with appropriate contiguous foreign countries on the boundaries between the waters adjacent to the United States and waters adjacent to such foreign countries for the purpose of rational utilization and conservation of the resources covered by this Act and otherwise administering this Act; and

[(4) seek treaties or agreements with appropriate foreign countries to provide for the rational use and conservation of—

[(a) coastal fish common both to waters over which the United States has jurisdiction and to waters over which such foreign countries have jurisdiction through measures which will make possible development of the maximum yields from such fish;

[(b) anadromous fish spending some part of their life cycles in waters over which such foreign countries have jurisdiction through measures which restrict high seas harvesting and make available to the fishermen

of such foreign countries an equitable share of such anadromous fish which are found in their territorial waters;

[(c) fish originating in the high seas through strengthening existing or, where needed, creating new international conservation organizations; and

[(d) coastal fish in waters over which other countries have jurisdiction through measures which make possible the harvesting by United States fishermen of an appropriate share of such fish not being harvested by the coastal country, under users' fees, licenses, and regulations which are nondiscriminatory and nonpunitive and take United States traditional fishing into account.

[RESEARCH

[SEC. 6. The Secretary of Commerce is authorized to promote the conservation of fish originating in the United States territorial sea and contiguous fisheries zone and anadromous fish by carrying out such research, or providing financial assistance to public or private agencies, institutions, or persons to carry out research, as may be necessary.

[REGULATIONS

[SEC. 7. There are authorized to be promulgated such regulations as may be necessary to carry out the provisions of this Act, but the sums appropriated for any fiscal year shall not exceed $1,000,000.

[EFFECTIVE DATE

[SEC. 9. The provisions of this Act shall become effective on the date of enactment of this Act, except that the provisions of sections 3 and 4 shall become effective after ninety days following such date of enactment.

[TERMINATION DATE

[SEC. 10. This Act shall cease to be in effect on the date the Law of the Sea Treaty or Treaties now being developed regarding fisheries jurisdiction and conservation shall enter into force.

[SEC. 11. Nothing contained in this Act shall be construed to abrogate any treaty or convention to which the United States is a party on the date of the enactment of this Act.]

That this Act may be cited as the "Emergency Marine Fisheries Protection Act of 1974".

DECLARATION OF POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) Valuable coastal and anadromous species of fish off the shores of the United States are in danger of being seriously depleted by excessive fishing effort.

(2) Stocks of coastal and anadromous species which inhabit waters of the 3-mile territorial sea and the existing 9-mile contiguous fishery zone of the United States are being depleted by foreign fishing efforts outside the 12-mile combined zone in which the United States presently possesses fishery management responsibility and authority.

(3) International negotiations have so far failed to result in effective international agreements on the conservation and management of threatened stocks of fish.

(4) There is danger that further depletion of these fishery resources will occur before an effective general international agreement on fishery jurisdiction can be negotiated, signed, ratified, and implemented, unless emergency action is taken pending such international agreement.

(b) PURPOSES.—It is therefore declared to be the purpose of the Congress in this Act—

(1) to take emergency action to protect and conserve threatened stocks of fish by asserting fishery management responsibility and authority over fish in an extended contiguous fishery zone and over certain species of fish beyond such zone, until a general international agreement on fishery jurisdiction comes into force or is provisionally applied;

(2) to extend, as an emergency measure, the fishery management responsibility and authority of the United States to 200 nautical miles;

(3) to extend, as an emergency measure, fishery management responsibility and authority of the United States over anadromous species of fish which spawn in the fresh or estuarine waters of the United States; and

(4) to commit the Federal Government to act to prevent further depletion, to restore depleted stocks, and to protect and conserve fish to the full extent of such emergency responsibility and authority, and to provide for the identification, development, and implementation within 2 years of the date of enactment of this Act of the best practicable management system consistent with the interests of the Nation, the several States, and of other nations.

(c) POLICY.—It is further declared to the policy of the Congress in this Act—

(1) to maintain the existing territorial or other ocean jurisdiction of the United States without change, for all purposes other than the protection and conservation of certain species of fish and fish in certain ocean areas pending international agreement on fishery jurisdiction;

(2) to authorize no action, activity, or assertion of jurisdiction in contravention of any existing treaty or other international agreement to which the United States is party other than that necessary to further the purposes of this Act; and

(3) to authorize no impediment to or interference with the legal status of the high seas, except with respect to fishing to the extent necessary to implement this Act.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires—

(1) "anadromous species" means those species of fish which spawn in fresh or estuarine waters of the United States but which migrate to ocean waters;

(2) "citizen of the United States" means any person who is a citizen of the United States by birth, by naturalization or other legal judgment, or, with respect to a corporation, partnership, or other association, by organization under and maintenance, after the date of enactment of this Act, in accordance with the laws of any State: Provided, That (A) the controlling interest therein is owned or beneficially vested in individuals who are citizens of the United States; and (B) the chairman, and not less than two-thirds of the members, of the board of directors or other governing board thereof are individuals who are citizens of the United States;

(3) "coastal species" means all species of fish which inhabit the waters off the coasts of the United States, other than highly migratory and anadromous species;

(4) "contiguous fishery zone" means a zone contiguous to the territorial sea of the United States within which the United States exercises exclusive fishery management and conservation authority;

(5) "controlling interest" means (A) 75 percent of the stock of any corporation, or other entity, is vested in citizens of the United States free from any trust or fiduciary obligation in favor of any person not a citizen of the United States, (B) 75 percent of the voting power in such corporation, or such other entity, is vested in citizens of the United States, (C) no arrangement or contract exists providing that more than 25 percent of the voting power in such corporation, or such other entity, may be exercised in behalf of any person who is not a citizen of the United States, and (D) by no means whatsoever is control of any interest in such corporation, or such other entity, conferred upon or permitted to be exercised by any person who is not a citizen of the United States;

(6) "fish" includes mollusks, crustaceans, marine mammals (except the polar bear, walrus, and sea otter), and all other forms of marine animal and plant life (but not including birds), and the living resources of the Continental Shelf as defined in the Act of May 20, 1964 (78 Stat. 196);

(7) "fishing" means the catching, taking, harvesting, or attempted catching, taking, or harvesting of any species of fish for any purpose, and any activity at sea in support of such actual or attempted catching, taking, or harvesting;

(8) "fishing vessel" means any vessel, boat, ship, contrivance, or other craft which is used for, equipped to be used for, or a type which is normally used for, fishing;

(9) "fishing-support vessel" means any vessel, boat, ship, contrivance, or other craft which is used for, equipped to be used for, or of a type which is normally used for, aiding or assisting one or more fishing vessels at sea in the performance of any support activity, including, but not limited to, supply, storage refrigeration, or processing;

(10) "highly migratory species" means those species of fish which spawn and migrate during their life cycle in waters of the open ocean, including, but not limited to, tuna;

(11) "optimum sustainable yield" refers to the largest economic return consistent with the biological capabilities of the stock, as determined on the basis of all relevant economic, biological, and environmental factors;

(12) "person" includes any government or entity thereof (and a citizen of any foreign nation);

(13) "Secretary" means the Secretary of Commerce, or his delegate;

(14) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the territories and possessions of the United States;

(15) "stock", with respect to any fish, means a type, species, or other category capable of management as a unit;

(16) "traditional foreign fishing" means longstanding, active, and continuous fishing for a particular stock of fish by citizens of a particular foreign nation in compliance with any applicable international fishery agreements and with the laws of such foreign nation; and

(17) "United States", when used in a geographical context, includes all States.

FISHERIES MANAGEMENT RESPONSIBILITY

SEC. 4. (a) CONTIGUOUS FISHERY ZONE.—(1) There is established, for the duration of this Act, a fishery zone contiguous to the territorial sea of the United States. The United States shall exercise exclusive fishery management responsibility and authority within this contiguous fishery zone.

(2) The contiguous fishery zone has as its inner boundary the outer limits of the territorial sea, and as its seaward boundary a line drawn so that each point on the line is 197 nautical miles from the inner boundary.

(3) Notwithstanding any other provision of law, the fishery management responsibility and authority of the United States within the contiguous fishery zone of the United States shall not include or be construed to extend to highly migratory species, except to the extent such species are not managed pursuant to bilateral or multilateral international fishery agreements.

(b) ANADROMOUS SPECIES.—The fishery management responsibility and authority of the United States with respect to anadromous species, for the duration of this Act, extends to such species wherever found throughout the migratory range of such species: Provided, That such responsibility and authority shall not extend to such species to the extent found within the territorial waters or contiguous fishery zone of any other nation.

(c) GENERAL.—The United States shall manage and conserve, and have preferential rights to, fish within the contiguous fishery zone, and with respect to anadromous species of fish, pursuant to the responsibility and authority vested in it pursuant to this section, subject to traditional foreign fishing rights as defined and recognized in accordance with section 5 of this Act.

(d) REGULATIONS.—The Secretary is authorized to promulgate such regulations in accordance with section 553 of title 5, United States Code, as are necessary to implement the purposes of this Act. The Secretary is further authorized to amend such regulations in the manner originally promulgated.

FOREIGN FISHING RIGHTS

SEC. 5. (a) GENERAL.—The Secretary and the Secretary of State, after consultation with the Secretary of the Treasury, may authorize fishing within the contiguous fishery zone of the United States, or for anadromous species or both, by citizens of any foreign nation, in accordance with this section, only if such nation has traditionally engaged in such fishing prior to the date of enactment of this Act.

(b) PROVISIONS.—The allowable level of traditional foreign fishing shall be set upon the basis of the portion of any stock which cannot be harvested by

citizens of the United States. Allowed traditional foreign fishing and fishing by citizens of the United States annually shall not, for any stock, exceed the optimum sustainable yield for such stock.

(c) RECIPROCITY.—Traditional foreign fishing rights shall not be recognized pursuant to this section unless any foreign nation claiming such rights demonstrates that it grants similar traditional fishing rights to citizens of the United States within the contiguous fishery zone of such nation, if any exist, or with respect to anadromous species which spawn in the fresh or estuarine waters of such nations.

(d) PROCEDURES.—(1) In determining the allowable level of foreign fishing with respect to any stock, the Secretary shall utilize the best available scientific information, including, but not limited to, catch and effort statistics and relevant available data compiled by any foreign nation claiming traditional fishing rights.

(2) The Secretary is authorized to establish reasonable fees which shall be paid by the citizens of any foreign nation engaged in exercising foreign fishing rights recognized under this section. Such fees shall be set in an an amount sufficient to reimburse the United States for administrative expenses incurred pursuant to this section and for an equitable share of the management and conservation expenses incurred by the United States in accordance with this Act, including the cost of regulation and enforcement.

(e) PROHIBITION.—Except as provided in this Act, it shall be unlawful for any person not a citizen of the United States to own or operate a fishing vessel or fishing support vessel engaged in fishing in the contiguous fishery zone of the United States or for anadromous species of fish.

MARINE FISHERIES MANAGEMENT AND CONSERVATION PLANNING

SEC. 6. (a) OBJECTIVES.—It is the intent of the Congress that the following objectives be considered and included (to the extent practicable) in plans, programs, and standards for the management and conservation of marine fisheries; (1) evaluation of actual and foreseeable costs and benefits attributable thereto; (2) enhancement of total national and world food supply; (3) improvement of the economic well-being of fishermen; (4) maximum feasible utilization of methods, practices, and techniques that are optimal in terms of efficiency, protection of the ecosystem of which fish are a part, and conservation of stocks and species; and (5) effectuation of the purposes stated in section 2(b)(4) of this Act. Due consideration shall be given to alternative methods for achieving these objectives.

(b) FISHERIES MANAGEMENT COUNCIL.—There is established a Fisheries Management Council (hereinafter referred to as the "Council"). The Council shall consist of 11 individual members, as follows:

(1) a Chairman, a qualified individual who shall be appointed by the President, by and with the advice and consent of the Senate;

(2) three Government members, who shall be the Secretary, the Secretary of the department in which the Coast Guard is operating, and the Secretary of State, or their duly authorized representatives; and

(3) seven nongovernment members, who shall be appointed by the President, by and with the advice and consent of the Senate, on the following basis—

(A) three to be selected from a list of qualified individuals recommended by each of the regional fisheries commissions or their successors, one of whom shall be a representative respectively of Atlantic, Pacific, and Gulf of Mexico commercial fishing efforts; and

(B) four to be selected from a list of qualified individuals recommended by the National Governors Conference, at least one of whom shall be a representative of a coastal State.

As used in this paragraph, a list of qualified individuals shall consist of not less than three individuals for each Council member to be appointed.

As used in this subsection, "qualified individual" means an individual who is distinguished for his knowledge and experience in fisheries management and conservation, and who is equipped by experience, known talents, and interests to further the policy of this Act effectively, positively, and independently if appointed to be a member of the Board. The terms of office of the nongovernment members of the Council first taking office shall expire as designated by the President at the time of nomination—two at the end of the first year; two at the end of the second year; and three at the end of the third year. The term of office

of the Chairman of the Council shall be 3 years. Successors to members of the Council shall be appointed in the same manner as the original members and, except in the case of Government members, shall have terms of office expiring 3 years from the date of expiration of the terms for which their predccessors were appointed. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(c) POWERS AND DUTIES.—The Council shall—

(1) engage in the preparation of a plan or plans for marine fisheries management and conservation;

(2) provide information and expert assistance to States and local or regional fisheries authorities in marine fisheries management and conservation;

(3) adopt, amend, and repeal such rules and regulations governing the operation of the Council and as are necessary to carry out the authority granted under this section; conduct its affairs, carry on operations, and maintain offices; appoint, fix the compensation, and assign the duties of such experts, agents, consultants, and other full- and part-time employee as it deems necessary or appropriate;

(4) consult on an ongoing basis (A) with other Federal agencies and departments; (B) with officials of coastal States who are concerned with marine fisheries management and conservation planning; (C) with appropriate officials of other nations which are exercising traditional foreign fishing rights, through the good offices of the Secretary of State; and (D) with owners and operators of fishing vessels;

(5) enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its functions and duties with any person (including a government entity);

(6) prepare a survey of fisheries subject to the emergency conservation and management authority granted to the United States by this Act, including, but not limited to, depleted stocks and stocks threatened with depletion; and

(7) survey, study, and prepare a marine fisheries management plan setting forth the elements of a national management system to conserve and protect fish.

(d) REVIEW BY CONGRESS.—The Council shall submit the marine fisheries management plan adopted by the Council to the Senate Committee on Commerce and the Committee on Merchant Marine and Fisheries of the House of Representatives not later than 2 years after the date of enactment of this Act. The marine fisheries management plan shall be deemed approved at the end of the first period of 180 calendar days of continuous session of Congress after such date of transmittal unless the House of Representatives and the Senate pass resolution in substantially the same form stating that the marine fisheries management plan is not favored. If the House and the Senate pass resolutions of for review pursuant to this subsection, the Council shall prepare, determine, and adopt a revised plan. Each such revised plan shall be submitted to Congress for review pursuant to this subsection. For purposes of this section (1) continuity of session of Congress is broken only by an adjournment sine die; and (2) the days on which either House is not in sesssion because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 180-day period.

(e) MISCELLANEOUS.—(1) The marine fisheries management plan which is adopted by the Council and which becomes effective after review by the Congress is not subject to review by any court.

(2) The Council shall have a seal which shall be judicially recognized.

(3) The Administrator of General Services shall furnish the Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(4) A member of the Council who is not otherwise an employee of the Federal Government may receive $300 per diem when engaged in the actual performance of his duties as a member of the Council plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties. Each member of the Council shall be authorized such sums as are necessary to enable him to appoint and compensate an adequate qualified full-time profes-

sional staff responsible and subject to his control, but not otherwise subject to control by the Council.

(f) TERMINATION.—The Council shall cease to exist 30 days after adoption by Congress of the marine fisheries plan pursuant to subsection (d) of this section.

(g) AUTHORIZATION.—There are hereby authorized to be appropriated for the purposes of this section a sum not to exceed $1,000,000 for each of the fiscal years ending June 30, 1975, and June 30, 1976.

INTERNATIONAL FISHERY AGREEMENTS

SEC. 7. (a) GENERAL.—The Secretary of State, upon the request of and in cooperation with the Secretary, shall initiate and conduct negotiations with any foreign nation which is engaged in, or whose citizens are engaged in, fishing in the contiguous fishery zone of the United States or for anadromous species. The Secretary of State, upon the request of and in cooperation with the Secretary, shall, in addition, initiate and conduct negotiations with any foreign nation in whose contiguous fishery zone or equivalent economic zone citizens of the United States are engaged in fishing or with respect to anadromous species as to which such nation asserts management responsibility and authority and for which citizens of the United States fish. The purpose of such negotiations shall be to enter into international fishery agreements on a bilateral or multilateral basis to effectuate the purposes, policy, and provisions of this Act. Such agreements may include, but need not be limited to, agreements to provide for the management and conservation of—

(1) coastal species, which are found in both the contiguous fishery zone of the United States and the equivalent such zone of a foreign nation adjacent thereto;

(2) anadromous species, which are found during the course of their migrations in ocean areas subject to the fishery management responsibility and authority of more than one nation;

(3) highly migratory species which are or may be covered by international fishery agreements; and

(4) coastal species, which are found in areas subject to the fishery management responsibility and authority of any foreign nation, through measures which allow citizens of the United States to harvest an appropriate portion of such species in accordance with traditional United States fishing rights in such areas.

(b) REVIEW.—The Secretary of State shall review in cooperation with the Secretary, each treaty, convention, and other international fishery agreements to which the United States is party to determine whether the provisions of such agreements are consistent with the purposes, policy, and provisions of this Act. If any provision or terms of any such agreement are not so consistent, the Secretary of State shall initiate negotiations to amend such agreement: Provided, That nothing in this Act shall be construed to abrogate any duty or responsibility of the United States under any lawful treaty, convention, or other international agreement which is in effect on the date of enactment of this Act.

(c) BOUNDARIES AGREEMENT.—The Secretary of State is authorized and directed to initiate and conduct negotiations with adjacent foreign nations to establish the boundaries of the contiguous fishery zone of the United States in relation to any such nation.

(d) NONRECOGNITION.—It is the sense of the Congress that the U.S. Government shall not recognize the limits of the contiguous fishery zone of any foreign nation beyond 12 nautical miles from the base line from which the territorial sea is measured, unless such nation recognizes the traditional fishing rights of citizens of the United States, if any, within any claimed extension of such zone or with respect to anadromous species, or recognizes the management of highly migratory species by the appropriate existing bilateral or multilateral international fishery agreements irrespective of whether such nation is party thereto.

RELATIONSHIP TO STATE LAWS

SEC. 8. Nothing in this Act shall be construed to extend the jurisdiction of any State over any natural resources beneath and in the waters beyond the territorial sea of the United States, or to diminish the jurisdiction of any State over any natural resource beneath and in the waters within the territorial sea of the United States.

PROHIBITED ACTS AND PENALTIES

SEC. 9. (a) PROHIBITED ACTS.—It is unlawful for any person to—

(1) violate any provision of this Act, or any regulation issued under this Act, regarding fishery within the contiguous fishery zone or with respect to anadromous species;

(2) violate any provision of any international fishery agreement to which the United States is party negotiated or reviewed pursuant to this Act, to the extent that such agreement applies to or covers fishing within the contiguous fishery zone or fishing for anadromous species as defined in section 4 of this Act;

(3) ship, transport, purchase, sell or offer for sale, import, export, possess, control, or maintain in his custody any fish taken in violation of paragraph (1) or (2) of this subsection where such person knew or had reason to know that such taking was not lawful;

(4) violate any duly issued regulation under this Act with respect to making, keeping, submitting, or furnishing to the Secretary any records, reports, or other information;

(5) refuse to permit a duly authorized representative of the Secretary, or of the Secretary of the department in which the Coast Guard is operating, to board a fishing vessel or fishing-support vessel subject to his control where the purpose of such requested boarding is to inspect the catch, fishing gear, ship's log, or other records or materials; or

(6) fail to cooperate with a duly authorized representative of the Secretary, or of the Secretary of the department in which the Coast Guard is operating, engaged in a reasonable inspection pursuant to paragraph (5) of this subsection, or to resist any lawful arrest.

(b) CIVIL PENALTIES.—(1) Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by subsection (a) of this section, shall be liable to the United States for a civil forfeiture in accordance with subsection (d) of this section and for a civil penalty. The amount of the civil penalty shall not exceed $25,000 for each day of each violation. The amount of such civil penalty shall be assessed by the Secretary, or his delegate, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(2) Any person who is found to have committed a prohibited act and against whom a civil penalty is assessed under paragraph (1) of this subsection may obtain review in the appropriate court of appeals of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings of the Secretary shall be set aside if found to be unsupported by substantial evidence, as provided by section 706(2)(c) of title 5, United States Code.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) The Secretary may, in his discretion, compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this subsection.

(c) CRIMINAL PENALTIES.—Any person who willfully commits an act prohibited by subsection (a) of this section shall, upon conviction, be fined not more than $50,000 or imprisoned for no more than 1 year, or both.

(d) CIVIL FORFEITURE.—(1) Any district court of the United States shall have jurisdiction, upon application by the Secretary or the Attorney General, to order forfeited to the United States any fish or fishing gear, used, intended for use, or acquired by activity in violation of any provision of subsection (a)

of this section. In any such proceeding, such court may at any time enter such restraining orders or prohibitions or take such other actions as are in the interest of justice, including the acceptance of satisfactory performance bonds in connection with any property subject to civil forfeiture.

(2) If a judgment is entered under this subsection for the United States, the Attorney General is authorized to seize all property or other interest declared forfeited upon such terms and conditions as are in the interest of justice. All provisions of law relating to the disposition of forfeited property, the proceeds from the sale of such property, the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informants with respect to forfeitures shall apply to civil forfeitures incurred, or alleged to have been incurred, under this subsection, insofar as applicable and not inconsistent with the provisions of this section. Such duties as are imposed upon the collector of customs or any other person with respect to seizure, forfeiture, or disposition of property under the customs laws shall be performed with respect to property used, intended for use, or acquired by activity in violation of any provision of subsection (a) of this section by such officers or other persons as may be designated for that purpose by the Secretary of the department in which the Coast Guard is operating.

ENFORCEMENT

SEC. 10. (a) GENERAL.—The provisions of this Act shall be enforced, together with regulations issued under this Act, by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, and facilities of any other Federal agency in the performance of such duties.

(b) POWERS.—Any person duly authorized pursuant to subsection (a) of this section may—

(1) board and inspect any fishing vessel or fishing-support vessel which is within the contiguous fishery zone of the United States, or which he has reason to believe is fishing for anadromous species;

(2) arrest any person, with or without a warrant if he has reasonable cause to believe that such person has committed an act prohibited by section 9(a) of this Act;

(3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and

(4) seize all fish and fishing gear found onboard any fishing vessel or fishing-support vessel engaged in any act prohibited by section 9(a) of this Act.

(c) COURTS.—The district courts of the United States shall have exclusive jurisdiction over all cases or controversies arising under this Act. Such court may issue all warrants or other process to the extent necessary or appropriate. In the case of Guam, such actions may be bought and such process issued by the District Court of Guam; in the case of the Virgin Islands, by the District Court of the Virgin Islands; and in the case of American Samoa, by the District Court for the District of Hawaii. The aforesaid courts shall have jurisdiction over all actions brought under this Act without regard to the amount in controversy or the citizenship of the parties.

DURATION OF ACT

SEC. (a) EFFECTIVE DATE.—The provisions of section 4 of this Act shall become effective 90 days after the date of enactment of this Act. All other provisions of this Act shall become effective on the date of enactment.

(b) TERMINATION DATE.—The provisions of this Act shall expire and cease to be of any legal force and effect on such date as the Law of the Sea Treaty, or other comprehensive treaty with respect to fishery jurisdiction, which the United States has signed or is party to, shall come into force or is provisionally applied.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 12. Except with respect to section 6 and section 9 of this Act, there are authorized to be appropriated for the purposes of this Act to the Secretary such sums as are necessary not to exceed $4,000,000 for each of the fiscal years ending June 30, 1975, June 30, 1976, and June 30, 1977, and to the Secretary of the department in which the Coast Guard is operating such sums as are necessary,

not to exceed $13,000,000 for each of the fiscal years ending June 30, 1975, June 30, 1976, and June 30, 1977.

Amend the title so as to read: "A bill to extend, pending international agreement, the fisheries management responsibility and authority of the United States over the fish in certain ocean areas in order to conserve and protect such fish from depletion, and for other purposes."

Senator SPARKMAN. The primary purpose of this bill is to extend the U.S. fisheries jurisdiction from 12 miles to 200 miles until such time as a general international agreement on fishery jurisdiction comes into force.

We have several witnesses. Our first witness this morning will be Senator Ted Stevens of Alaska.

Senator Stevens, we are glad to have you.

STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Senator STEVENS. Mr. Chairman, I will be very happy to defer to our Commerce Committee chairman. Senator Magnuson has been the leader in this.

Senator SPARKMAN. Senator Magnuson said that he would prefer that the two Senators from Alaska testify first.

Senator MAGNUSON. Mr. Chairman, I have no written statement this morning. I wish to ask unanimous consent to put one in the record, and I will have an oral statement after the other two Senators testify.

Senator SPARKMAN. All right.

Senator MAGNUSON. So I will change seats with Senator Stevens.

Senator SPARKMAN. Sit over there by the microphone, Senator Stevens. All right, Senator Stevens.

Senator STEVENS. Thank you very much, Mr. Chairman. If I may ask you to print my statement in full in the record, I would like to highlight it to save the time of the committee.

Senator SPARKMAN. We have your statement, and it will be published in the record in toto.

TIME INVOLVED IN MOLDING INTERNATIONAL LAW

Senator STEVENS. It was my privilege to attend, along with members of this committee, particularly my good friend from Maine, the meeting in Caracas. I also attended the meeting in Geneva of the Law of the Sea Conference. I have come away with the impression, as we were all told at the time, that it does take a great deal of time to mold international law, and I do not think that we can argue with that statement. The Senator from Maine, the Senator from Rhode Island, Mr. Pell, and I were repeatedly told that it does take a great deal of time for something like the Law of the Sea Conference, and I think it is fair to say that for most issues under consideration in Caracas, we do have time. We have the time for the world community to deliberate and come up with a Law of the Sea Treaty that will promulgate sound principles of international law that all can abide by.

The problem, in regard to fisheries, is that we have run out of time. With the rapid expansion of the fishing effort that has been underway in the world for the past 10 years, we find that the high seas fishery, which had been practically untouched before that time, has now

reached the point where the exploitation has gone beyond the limit of sustained yield in many regions of the oceans, and I would like to point out to the committee, at least 11 commercially valuable species off our shores have been depleted or are threatened with depletion. These are the haddock, the herring, the menhaden, and yellowtail flounder of the Atlantic; the mackerel, sable fish, shrimp, Alaska pollock, yellow fin sole, and the hake of the Pacific; and the halibut of the Atlantic and Pacific. This is slightly less than half of the total number of species that have been severely damaged by overfishing worldwide. But the pressure of foreign fleets off our shores means to me that we do not have time to wait for the Law of the Sea Conference, as far as the fisheries issues are concerned. As far as taking action to protect this protein base that is off our shores the urgency is substantial.

PROMPT ACTION URGED ON S. 1988

I would like to urge this committee to act promptly upon the bill that the Commerce Committee has reported to the Senate and is now before you, through the leadership of our chairman. I think we have a bill that is practical, and I would like to particularly emphasize the fact that it is an interim measure. It is unilateral action admittedly, but it is still an interim measure, one that will put into effect sound conservation practices pending the completion of the Law of the Sea Conference.

Mr. Chairman, there are more than 50 percent more nations in the Law of the Sea Conference than there were involved in the Geneva Law of the Sea Conference that met 14 years ago. We now have 149 nations trying to reach an agreement in the Law of the Sea Conference. There are only 33 nations who signed the previous agreement that was reached with regard to the law of the sea. I think it can be said, as I pointed out in my statement, that there are not many nations in the world really relying upon the old Geneva Conference Agreement entered into 16 years ago as sound international law. There are at least 59 more nations participating in the Law of the Sea Conference now, and not all of those who participated 16 years ago signed that agreement. So it would be very difficult for me to urge you, and as a matter of fact, I would urge you not to rely on article 7 of the 1958 Convention on Fishing and Conservation of the High Seas, which has been proposed as an alternative to the route that our committee has taken with regard to S. 1988. This bill, S. 1988, presents the only workable solution that I know of with regard to our fisheries, and that is to take the action that will give us the authority to impose sound conservation principles beyond the contiguous zone today, and these would be principles that would be applied not only to foreign fishermen but to our own fishermen to protect the resources of the sea until the world has reached an agreement as to what should be the principles with regard to the Law of the Sea Conference.

If I had my way, I would have declared a moratorium off our shores at the very beginning of this pressure that came upon our fishing stocks. I see we have some good representation from New England here. I think the New England people have had as much or greater pressure than we have had off of Alaska, but it is coming in great numbers off Alaska now. We have already lost hake, and they took

over a billion pounds of Alaska pollock out of the Bering Sea in 1 year alone. That species cannot stand that pressure. And it is not being harvested at all by American fishermen or by Canadian fishermen, to my knowledge. I think that we must take the action that is necessary to give us the interim control over the fishing stocks off our shores, and that is the purpose of this bill before you.

I am very pleased to be associated with my good friend from Washington. He has been known as the third Senator from Alaska. We are proud to have him along with us in terms of this battle to protect, if we can, the fishing stocks of the North Pacific as well as those from the North Atlantic and other areas under so much heavy pressure.

Thank you very much for your courtesy.

[Senator Stevens' prepared statement follows:]

PREPARED STATEMENT OF SENATOR TED STEVENS

Mr. Chairman, I wish, first of all, to express to the members of this Committee my appreciation for the opportunity to testify today. I attach great importance to the urgency for early consideration by the Senate Foreign Relations Committee in its examination of the bill S. 1988 as an instrument of United States Foreign Policy. It is crucial that the short- and long-range effects of an enacted S. 1988 on foreign relations and on the developing international legal order be accurately anticipated in Senate deliberations on the legislation.

For several years I have followed closely the evolution of negotiations aimed at establishing an international legal order of the sea. Along with members of this Committee, as an advisor to the United States delegation, I attended the third United Nations Conference on Law of the Sea, which met in Geneva and again in Caracas. I was afforded the opportunity to discuss main trends in the Law of the Sea negotiations at some length with leaders of the United States and foreign delegations. Most of those with whom I spoke in Caracas were very aware of the possibility of action by the United States Congress on matters directly related to Law of the Sea issues—particularly of the emergency fisheries conservation and management measure, S. 1988.

I would like to take this opportunity to share with you some observations on current trends in the Law of the Sea negotiations and an assessment of the importance and ramifications of immediate action by Congress to conserve American fisheries in the interim period prior to the signing of a comprehensive Law of the Sea treaty. My visit to Caracas left me with little doubt that the enlightened national and international interest will best be served by the prompt enactment of S. 1988 and that the process of establishing a fair system of international law governing the world's oceans will be facilitated by this action.

When, in 1971, the General Assembly of the United Nations passed a resolution calling for a major conference on the Law of the Sea, it did so in anticipation of a rapid global intensification of the use of the high seas for commerce, resource exploitation, military activities, and scientific research. The General Assembly recognized the desirability of preventing this intensification from occurring in anything but a peaceful manner. The success of the Law of the Sea Conference is dependent upon the degree to which it can anticipate potential ocean-related problems and confrontations and resolve them by an equitable and agreeable statement of law before injury occurs. I think it is fair to say that for most issues under consideration by the delegates in Caracas there is time for deliberation—even if the promulgation of a comprehensive Law of the Sea Treaty is delayed longer as most Caracas observers are now predicting.

However, in the fisheries issue we have already run out of time. A rapid international expansion of effort in fishing has been underway world wide for more than ten years. While more resources of the high seas have barely been touched commercially, the exploitation of fisheries has been pushed to, and even beyond, the limit of sustained yield in many regions of the ocean. At least 11 commercially valuable species have been depleted, or are threatened with depletion, off the coasts of the United States; these are the haddock, herring, menhaden, and yellow tail flounder of the Atlantic; the mackerel, sable fish, shrimp, Alaska pollock, yellow fin sole, and hake of the Pacific; and the halibut of the Atlantic

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and Pacific. This is slightly less than half the total number of species severely damaged by over-fishing world wide.

The depletion of stocks because of inadequate conservation practices is of no benefit to any nation in the long run, including those responsible for such destruction. A fishery is a self-renewing source of protein which, if properly managed and protected, can endure indefinitely. However, if it is senselessly exploited, stocks are reduced below the level where self-renewal is possible and the fishery is destroyed. Protein is more and more becoming a limited commodity in this crowded world and the extensive destruction of fisheries through over-fishing, particularly off the coasts of the United States, will in the long run be as detrimental to the international community as to the United States itself.

Nearly all of the present 11 species of fish now in advanced stages of depletion off the coast of the United States have been the subject of some sort of international agreement. Many fundamental and necessary conservation regulations cannot be imposed on foreign fleets under such agreements. As an example, one highly visible source of concern to United States fishermen and conservationists is the small mesh monofilament net which is often found drifting at sea or washed onto beaches. Foreign fishermen employ huge expanses of such net to sweep clean local populations of fish located by advanced sonar equipment. The nets have been outlawed for use by United States fishermen because they kill immature fish of lesser economic value but vital to the perpetuation of the species. However, the mobility of foreign fleets allows them to attack stocks of fish with these nets, reaping maximum short-term benefits, and to move on when there is little of value left; perpetuation of the species is apparently not of immediate concern to those who practice "pulse fishing."

Fishermen in Bristol Bay, Alaska, have little doubt about the lack of concern of some foreign fishermen for fundamental conservation principles. The Japanese high seas salmon fishermen, who in 1973 caught 40% of the total catch of Bristol Bay salmon, were informed early this year that the best scientific evidence indicated that two severe winters had reduced the Bristol Bay salmon population to below the spawning requirement. They expressed sympathy—and continued fishing. Bristol Bay has now been declared a state and national disaster area because of the depleted salmon runs upon which the economy of the area depends.

It was heartening for me to learn earlier in the summer through State Department cables that widespread agreement had developed in Caracas in favor of a 200 mile economic zone. The State Department joined this growing international consensus in what I believe to be a major policy shift announced on July 11 in the Law of the Sea Conference Plenary by Ambassador John R. Stevenson, leader of the United States delegation. Ambassador Stevenson proposed a 200 mile economic zone giving the coastal nation exclusive rights to all seabed resources and preferential rights to living resources. This means that within the zone the coastal nation would have full discretionary control over the exploitation of the seabed, but would be obligated to allow foreign fishermen to exploit coastal stocks which could not be fully utilized by the coastal nation up to a scientifically determined maximum sustainable yield. International navigation and overflight would remain unhampered.

S. 1988 closely resembles the State Department fisheries proposal. It attempts to minimize economic hardship and dislocation caused historic foreign fishermen of United States coastal stocks by stricter conservation and management regulations. The State Department proposal was viewed as one of the most moderate proposals under consideration in Caracas. Other economic zone proposals which enjoyed major support called for coastal state sovereignty over all resources within 200 miles of shore, while the most extreme proposals advocate a 200 mile territorial sea. The only nation of which I am aware expressly to oppose any kind of 200 mile economic zone is Japan. However, the Japanese, I feel, have indicated the inevitability of a 200 mile economic zone in international law for they sought concessions in the zone despite their continued opposition to it.

The popularity of the general 200 mile fishing jurisdiction concept as a conservation as well as an economic measure is based on the general assessment that it is the coastal nation which has the greatest interest in conserving and managing fish stocks within 200 miles of its shores, particularly if it has preferential or exclusive rights to coastal fisheries. This interest is plainly not shared

in the same degree by distant water fishermen. Furthermore, experience with international management authorities has generally been disappointing.

Of great concern to me is that although there now exists almost universal agreement that the coastal nation has the right to conserve and protect its fisheries within 200 miles of shore, implementation of this agreement must wait until all of the more than 80 issues under consideration in Caracas have been resolved and incorporated into a single comprehensive Law of the Sea Treaty. Ambassador Stevenson in his July 11 speech emphatically stated that the United States delegation would accept nothing less than a single comprehensive treaty—this position is shared by a number of foreign delegations. Unfortunately, this position does nothing to answer the difficult reality we are facing. It would be a cruel irony if the mechanics of the Law of the Sea Conference contribute to a continued lawlessness on the seas and that fish stocks are destroyed while the world is working to preserve them.

The basis for my concern is my conclusion, shared by many others, that the prospects for a prompt agreement on many Law of the Sea issues are not good. It is my understanding that several international scholars who only last year testified against S. 1988 are now, after Caracas, considering returning and reversing their testimony. They have concluded, as I have, that it is unrealistic to expect American fisheries to survive as long as will be necessary for a Law of the Sea agreement to be reached.

The more than 80 issues which comprised the official agenda at Caracas are of enormous political, strategic, and economic importance to the international community. World interest in the Law of the Sea negotiations has increased remarkably since the First United Nations Conference on the Law of the Sea was held in Geneva in 1958. An unprecedented 149 nations participated in the 1974 Caracas Conference, 59 more than were present in Geneva sixteen years ago. The importance of this cannot be overemphasized for global negotiations are based primarily on a consensus method of agreement, or, if consensus is unattainable, on a one nation-one vote, two-thirds majority voting procedure. Most new participants in the negotiations are developing nations, newly independent, which have only recently turned their attention to Law of the Sea issues.

They mistrust the motives of developed nations and doubt their own present ability to discern their future national interest in Law of the Sea issues. Many have, therefore, taken highly nationalistic and secure positions which are, unfortunately, quite unacceptable to developed maritime nations, such as the United States. Privately, the new participants admit that they will eventually compromise on their positions but they do not presently have sufficient confidence in their own knowledge of the issues to negotiate realistically, and they plainly do not see hastiness as working in their favor. Thus for a large bloc of developing nations, all of whom have one vote, the Law of the Sea negotiations have just begun. The 33 signers of the 1958 Geneva Law of the Sea Convention now make up less than a quarter of the nations now participating in Law of the Sea negotiations. Several new nations which did not participate in the Geneva Conference have gone so far as to question, and implicitly repudiate, the Geneva Convention as viable international law because of the lack of adequate representation of developing nations in the 1958 proceedings. Few nations today would risk relying on a provision of the Geneva Convention as having the force of international law when there is widespread agreement in 1974 superseding it as, I believe, is the case with Article VII of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas which has been proposed as an alternative to enacting S. 1988.

I continue to believe that international law governing the oceans is attainable and eminently worthwhile, particularly law preserving world fisheries. But if the present lack of concern for basic conservation principles on the seas persists among some foreign fish operators for the indefinite amount of time necessary to conclude the Law of the Sea negotiations then we may be left very little of value to preserve. Enactment of S. 1988 by the United States will not be prejudicial to the successful formulation of a Law of the Sea treaty; it is not a substitute for Law of the Sea negotiations on fisheries. On the contrary, S. 1988 conforms closely to world trends and is strictly an interim conservation measure. I am confident that, given the consensus now evident in Caracas, any eventual Law of the Sea treaty will affirm or strengthen the fisheries protection established through S. 1988.

There has been expresed some disappointment with the management provisions of S. 1988. Some would like to see provision for domestic management taking immediate effect rather than a study plan which would institute domestic management in two years. Strong domestic management whether immediate or delayed is crucial to the success of S. 1988. However, two years is probably adequate time for the implementation of domestic management since it will take some time for U.S. fishermen to build their fleets to the point where they are able to catch as much as foreigners are catching now. Furthermore S. 1988 calls for a gradual rather than an immediate phasedown in foreign fishing. The point is that the phase down must be started now.

There has been no moratorium on international fishing within 200 miles off our shores in deference to the deliberations in Caracas and the world consensus evident there. It does indeed take time to formulate international law and the nations fishing our coastal and anadromous stocks to the point of depletion are apparently quite content to wait. We must act firmly and demonstrate openly we will not abandon our commitment, enunciated in Senate Concurrent Resolution 11, to preserve United States fisheries. Strength, rather than weakness, on this issue will not only be in the overall best interest of the United States, but will serve the world by removing an important incentive for delay in the Law of the Sea negotiations.

I returned from Caracas with the conviction that we must act to extend our fisheries management authority to 200 miles. This United States Congress is now the only organization capable of taking measures to insure the survival of United States fisheries. Thank you.

Senator SPARKMAN. You did attend the Caracas meeting?

Senator STEVENS. Yes, Mr. Chairman, along with Senator Muskie and Senator Pell, I was at the Caracas meeting, and I also was at the preliminary Geneva meeting.

SECTION 7 OF 1958 CONVENTION ON FISHING AND CONSERVATION OF THE HIGH SEAS

Senator SPARKMAN. You say section 7 should be striken?

Senator STEVENS. I say that there are people who have suggested to this committee, as they did suggest to us, that section 7 of the 1958 convention could be relied upon to protect our fishing stocks. There has been a suggestion that article 7 be implemented and I am opposed to that because, in the first place, it requires the initiation of procedures to bring about compliance, and in the second place and most importantly, the two nations that are doing the most fishing off our shores, Russia and Japan, did not sign that agreement. So, if we take action under the 1958 convention, we are taking action unilaterally against Japan and Russia anyway. I think we ought to take the interim unilateral action against the whole world as far as protection of our fisheries issues are concerned. It would do us no good to take unilateral action under the 1958 convention.

S. 1988 SUPPORTED AS INTERIM MEASURE

Senator SPARKMAN. Do you favor the bill as reported from the Commerce Committee?

Senator STEVENS. I certainly support that bill and I think it is the least we can do at the present time, it is an interim measure, it is not as far as I would like to go, but I do believe it is a good measure.

Senator SPARKMAN. Thank you very much.

Senator Muskie.

HEARING IS APPROPRIATE

Senator MUSKIE. Yes, Mr. Chairman. May I first of all, express my appreciation for this hearing by the Foreign Relations Committee. I am not sure the committee sought it, but I think it is appropriate that we hold it.

CARACAS CONFERENCE

I also appreciate the fact that the distinguished Senator from Alaska is the first witness. He and I attended the Caracas Conference in mid-August. I gather that our impressions of the conference were pretty much the same by the time we ended our 3 days of discussions. Both of us indicated, as I think did Senator Pell, our support for S. 1988, and the reaction was predictable. The reaction was that this kind of unilateral action could conceivably torpedo the conference.

With respect to the conference, let me state my own view. I was reassured that the prospects for eventually writing a new law of the sea were more promising than I had expected them to be before I attended the conference.

My second impression is that achieving that goal is going to take much longer than the more optimistic of the delegates to the conference would like to suggest.

Even President Amerasinghe [H. Shirley Amerasinghe of Sri Lanka], chairman of the conference, expressed doubt in private, and later in public, that an agreement can be written in the spring meeting, that it may take at least another meeting in 1975. My own guess is that we would have to go into 1976 before we could work out the complex range of issues. There are some 80 to 90 issues that must be worked out if a new law of the sea is to be written.

In the meantime, as the Senator from Alaska has pointed out, time is running out on our fisheries stocks. We created a stir in the conference by indicating our vigorous support of S. 1988. We were told that the United States ought not to act that irresponsibly, so we suggested a course of action that might serve as a substitute.

LACK OF RESTRAINT OF COUNTRIES FISHING IN U.S. WATERS

If we were being asked to exercise restraint with respect to this kind of legislation, then it seemed to us not unreasonable to ask restraint of those who created the problem off our coasts, the Soviet Union and Japan, and I suggested that to them, and got very little positive response, I might say.

Upon my return to this country and to my own State, I was disturbed by the lack of restraint on the part of those countries which are fishing our waters. Haddock is already an endangered species, yet Britain is now increasing its fishing for haddock off our coasts and every evidence is that it is exceeding the quota agreed to under ICNAF [International Commission for the Northwest Atlantic Fisheries]. This is taking place while the Law of the Sea Conference continues and we are asked to be restrained by unilateral legislation to protect our rights. Where is the restraint in the practice of their fishing fleets that Britain asks us to exercise with respect to legislation?

Second, this summer there have been a number of incidents, and the number are increasing, of intrusions upon the fixed gear of our fishermen, such as gill-nets. It is wanton and apparently deliberate destruction, and leaves our fishermen with nothing but uncertain claims against nameless perpetrators operating through diplomatic channels with frustrations that one can usually expect at the end of the road.

Where is the restraint on the part of those countries and their fishing fleets who are intruding upon our coastal waters and our Continental Shelf with respect to our fisheries resources and our fishermen? Where is their restraint when they ask us to be restrained about legislation?

Where is the restraint with respect to the incidents of fishing that have not been negotiated under ICNAF, of lobsters and other ground species and so on, that incidental fishing goes on without any pretense of control under ICNAF and no restraint is shown?

So I say to these great maritime countries, like the Soviet Union and Japan, if you really believe in the protection of the Law of the Sea Conference, and you believe that protection may be undermined by unilateral legislative action on the part of the United States, then I say to you and your fishing fleets that your unilateral violation of what I think are legitimate interests of American fishermen in our own coastal waters is at least as great a danger to the Law of the Sea Conference as this legislation would be.

ICNAF AGREEMENT

There is a precedent for taking this kind of hard-nosed attitude to protect our own people. That precedent has to do with the ICNAF agreement.

In June of 1973, the 17-member nations of the International Commission for the Northwest Atlantic Fisheries, or ICNAF, held their annual meeting and discussed the need to limit the total fishing effort in the Northwest Atlantic. The meeting did not produce any agreement because we could not get any other members to support us, apparently.

During the summer of 1973, in large part due to domestic political pressure, the U.S. Government announced that it would withdraw its membership from ICNAF if concrete progress was not made in 1973 to limit foreign fishing off our coasts. So in October of 1973, a special meeting of ICNAF was convened in Ottawa in which agreement was reached on an overall quota system for fisheries off the Atlantic coast of the United States. The quotas reached applied both to individual species, some 54, and to the overall fish catch for 1974. The overall quota was set at 929 metric tons. For 1975 the overall quota is to be reduced to 850 metric tons, with the U.S. share of the total quota increasing from roughly 20 percent in 1974 to 25 percent in 1975.

For 1976, the member nations have agreed to set an overall quota at a level consistent with maintaining the maximum sustainable yield. The difficulty with this agreement, and some of the Russian delegates in Caracas pointed to this agreement as evidence of their good faith in protecting our interests—the trouble is it is not enforceable. It is not being enforced. Is it enforceable against what the British are

doing? It does not have any effect at all in protecting our fishermen with fixed gear from deliberate sabotage and destruction of their gear which is taking place off our coasts.

A Russian delegate said to me, "Senator, you are being a little hard-nosed about this." I said," Yes, but I have never seen you Russians reluctant to be hard-nosed in protecting your national interests, and I say it is time for us to be hard-nosed about this matter if we are to have any effective protection of our fishery stock." Protecting these fisheries stocks is something more than a national interest, it is a global interest. If we coastal states do not take effective action to protect these stocks, who in heaven's name is going to do so? The Russian fishing fleets and the Japanese fishing fleets will protect their own, if they have anything to protect; but who is going to protect us?

S. 1988 SUPPORTED

So I say it is proper for us to support this legislation, and I do. Whatever doubts I have had on that score before I went to Caracas have been resolved by my attendance at that conference, notwithstanding the fact that I would still prefer an international law of the sea in this field. I would like to see that conference succeed. I think it has more promise than I thought it had, but the hard negotiation has not been done because those who were leading the conference did not want to precipitate premature confrontations which could be destructive of an ultimate agreement. I understand that tactic. But worthwhile as that tactic may be from the point of view of a long-term success of the conference, it is eating up precious time, as the Senator from Alaska has pointed out, in the preservation of our coastal species.

Mr. Chairman, I apologize for taking this time but I have very deep feelings about this whole issue when my own peoples' rights are concerned and I want to take this opportunity to say so.

Senator SPARKMAN. We appreciate your statement. Since you were a participant in the conference, naturally you are prepared to talk on it.

Senator Aiken.

POSSIBILITY OF OVERLAPPING JURISDICTION

Senator AIKEN. If this bill should be enacted into law, would there be overlapping jurisdictions then between Russia, Japan, and Canada, or any other countries that you can think of?

Senator STEVENS. No; I do not see how this can happen. This is unilateral action on the part of the United States alone to establish a conservation zone beyond the 12-mile contiguous zone.

LENGTH OF TIME INVOLVED IN GETTING INTERNATIONAL AGREEMENT

Senator AIKEN. Do you have an idea the United States, showing an interest now in holding these hearings, might speed up the international agreement which appears to be the ultimate necessity?

Senator STEVENS. Senator Aiken, I thought before I went to Caracas that might be the case. I am convinced after my visit in Caracas there

are a sufficient number of nations in the world that are participating in the Law of the Sea Conference that do not want an agreement. Without regard to what we do, the pace of the Law of the Sea Conference is going to be the same and I am now convinced, unless we take some action we could well drag into the 14 years that was involved in the 1958 negotiations, and we do not have 14 years left of our fishing under the present pressure that is being exerted by foreign fishing fleets.

Senator AIKEN. But your trip to Caracas did not slow up the possibility any?

Senator STEVENS. Well, I would hope that it did not.

Senator SPARKMAN. Senator Pell.

Senator PELL. Thank you, Mr. Chairman.

SENATOR PELL'S INTEREST IN OCEANS LAW

Senator SPARKMAN. You were a member of the conference at Caracas?

Senator PELL. That is correct, and I have been an adviser, I think, to every meeting on this subject. I have long been interested in it since I started working on the idea of a regime law for the oceans at the time of the San Francisco conference many years back.

We have advanced a great deal over the years. President Johnson's statement on the oceans, on the heritage of all mankind is our national policy. The question is the limitation of the area of the oceans and how much freedom we have on it.

S. 1988 SUPPORTED

As a New Englander, as a Rhode Islander, I share completely the thoughts that Senator Muskie expressed. We have seen our fish vacuumed up and dissolved before our eyes, the haddock have almost disappeared. I went out in a Coast Guard helicopter and landed on a cutter and saw the ships engaged in these operations. I know how my people are suffering, not so much from reduced profits, but from reduced catches. The result is that the consumers are paying more for fish and sea products than they ever have.

I used to think that this bill of Senator Magnuson's might be harmful to our net overall interests, but I have now come to the conclusion that I would support it. I believe that it would serve the purpose of protecting our fisheries until the time comes when we have an international treaty. While I see the harm of setting a poor example, I think that is balanced by saving the industry. That is why I have not cosponsored S. 1988, but will be glad to support it when it comes to a vote.

I believe that the current Law of the Sea negotiations will eventually result in an "economic zone" which will more than protect U.S. fishery interests and I fully support these negotiations. However, the real problem is when will this "zone" go into effect? Consequently, I believe it necessary to support this interim legislation. In doing so, I recognize that other countries may, in following our lead, extend their jurisdiction and restrict more than just the freedom of fishing. Some nations may attempt to restrict the right of free passage or navi-

gation. Should this happen, over thirty percent of the oceans which are now high seas would fall into national jurisdictions. This would cause serious problems with respect to our commercial shipping and the free transit of our military vessels. However, in balancing the interests between the severe depletion of our coastal stocks and the potential problems with respect to our rights of free transit, I have to choose the option which would protect our fisheries. So for this reason, and hanging my head a little in shame to see my friend, Mr. Stevenson there, I will be supporting this legislation.

COMPLETION OF INTERNATIONAL AGREEMENT IS BEST SOLUTION

Senator SPARKMAN. Senator Case.

Senator CASE. Thank you, Mr. Chairman.

I had the privilege of being one of the Senate representatives at this conference, too. It was my misfortune not to be there when the Senator from Alaska and the Senator from Maine were there, but I read in the local newspaper the sterling remarks they made in the press conference, which have been largely reflected in the statements each have made today, and I understand fully their concerns, because, after all, we have fisheries in New Jersey on our coastline.

The best solution, as everybody has said, is the early completion of an international agreement. The problems are enormous, of course. New ground is going to be broken with respect to the availability of the open oceans for all peoples.

We have before us another program we are hearing this morning also, the Metcalf bill [S. 1134], dealing with the mining of resources. I am not sure whether that is on our agenda but it is very much before us in this connection.

I think we are not too far away from agreement with most of the nations. That is my judgment. But that last mile is going to be a long, tough one, and I have the greatest sympathy for the people in our delegation who have been working on this thing so diligently and so very effectively for so very long. Also, I have sympathy, of course, for those concerns—proper concerns—of the representatives of the coastal States. Their concern is not just a parochial, selfish one. We are talking about the preservation of conditions for an enormous amount of fish for everybody. If we do not take that responsibility now it is not going to be taken, and we are going to be that much worse off not only in this country but in all nations that depend on the ocean for food.

NEGOTIATIONS SHOULD BE AT HEADS OF STATES LEVEL

The only thing I could say that perhaps has not been said—and I say this in no way withdrawing my expression of admiration for the the job our delegation and Mr. Stevenson has been doing—I think it is probably time when this whole matter has to be taken up between the heads of state. It cannot be left to people who negotiate at a level below that because of the importance of the questions that are holding up the agreement. I refer to the questions that I have mentioned and particularly those that Senator Pell and Senator Muskie mentioned, questions about the exploitation of the oceans, the sharing and control of specific areas of the oceans, and the problems with nations who fear

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that we will exploit ocean minerals in a manner that is going to hurt their domestic mining industry. Our own position in regard to the ocean resources, and in sharing the profits of exploiting them, has in my judgment, been a very generous one. But I do not think we can agree on regulations that would fully protect the domestic interests of all foreign nations. That is one of the things that is going to require negotiations among heads of states.

EXPRESSION OF INTEREST

Thank you very much, Mr. Chairman. These observations are perhaps the very obvious kind, but they do indicate this committee's great interest in this enormous problem, and the fact that we share very much the concerns of the U.S. Delegation. I followed with the greatest interest and some sympathy and support, the efforts of our Government and our people in seeking a solution to these problems. They should be encouraged and commended for what they have done.

Senator SPARKMAN. Thank you.

Senator Javits.

Senator JAVITS. Thank you, Mr. Chairman. I will get oriented before I try any questions.

TIME INVOLVED IN WORKING OUT INTERNATIONAL AGREEMENT

Senator SPARKMAN. As I recall, way back in the days of John Foster Dulles, we were trying to work out some kind of an international agreement for the Law of the Sea, were we not?

Senator STEVENS. We have been at it for a long time, Mr. Chairman.

I would like to add to my statement and echo the statements that have been made by the members of your committee concerning the efforts of our delegation. I think the change that was put forth by Ambassador Stevenson on July 11, as I pointed out in my statement, was a spectacular one, where the United States did indicate an agreement to the 200-mile economic zone, subject to specific conditions. His leadership and that of Prof. John Norton Moore at both Geneva and Caracas, I think, has been unique and they have certainly the respect and admiration of the members that we met representing delegations from throughout the world. They are doing a fine job for us. Our problem is that we just do not think that the other people down there are going to let them do it within the time limit that we see is necessary to protect our fisheries. That is all.

LETTER FROM STATE DEPARTMENT TO SENATOR MAGNUSON

Senator Magnuson. Mr. Chairman, I have here a letter sent to me this morning by the State Department setting forth some new guidelines for foreigners to observe regarding the incidental capture of our Continental Shelf fishery resources. It applies to what you said.

May I just briefly say something at this time?

Senator SPARKMAN. Let me say in connection with the letter, we do have——

Senator MAGNUSON. Have you seen the letter, too?

Senator SPARKMAN. Yes, we have people from the State Department here who will testify.

[The information referred to follows:]

DEPARTMENT OF STATE,
Washington, D.C., September 5, 1974.

Hon. WARREN G. MAGNUSON,
Senate Commerce Committee, U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: In response to your recent inquiry concerning enforcement procedures in connection with continental shelf fishery resources, I am pleased to advise you that foreign governments whose vessels fish above the continental shelf of the United States are being notified of the following new guidelines for the enforcement of our rights to continental shelf fishery resources.

"1. The taking of continental shelf fishery resources from the United States continental shelf will result in the arrest and seizure of any vessel taking such resources, except as provided by the United States in bilateral agreements. For the purpose of determining whether such a taking has occurred, vessels may be boarded when engaging in either of the following acts:

(a) Fishing above the continental shelf of the United States with gear which is designed specifically to catch continental shelf fishery resources; or

(b) Fishing above the continental shelf of the United States with bottom gear which can be expected to result in the catch of continental shelf fishery resources except where the procedures used are designed to reduce and control such incidental catch pursuant to an agreement with the United States.

"2. In those instances where the taking of continental shelf fishery resources does not result in a substantial catch and such taking does not appear to be deliberate or repeated, a warning will normally be given. In any event, fishermen are expected to return to the sea immediately any continental shelf fishery resources which may be taken incidentally in the course of directed fisheries for other species. Fishermen who encounter concentrations of continental shelf fishery resources in the course of their fishing operations should take immediate steps to avoid such concentrations in future tows.

"3. To facilitate the transition in fishing procedures required by these procedures, U.S. enforcement officers will act with discretion during a short period to allow fishermen operating in the region to become familiar with these procedures.

"4. The boarding and where appropriate the arrest of any vessel pursuant to these procedures shall be in strict conformity with paragraph 1 above.

"5. The effective date of these new procedures will be December 5, 1974."

These guidelines should substantially enhance our protection efforts and help conserve our valuable resources. The practical effect of the change in procedure contemplated by paragraph 1(b) is to require the negotiation of bilateral agreements with all nations fishing over our continental shelf with bottom gear which can be expected to result in the catch of continental shelf fishery resources. These agreements would set forth appropriate procedures to ensure the fullest protection of our resources.

I hope that you will conclude, as I have, that this effort will materially assist in providing added protection to our continental shelf fishery resources.

Sincerely,

JOHN NORTON MOORE,
Chairman, National Security Council Intragency Task Force on the Law of the Sea and Deputy Special Representative of the President for the Law of the Sea Conference.

STATE DEPARTMENT COMMUNICATION TO FOREIGN COUNTRIES REGARDING POLICY OUTLINED IN MR. MOORE'S LETTER TO SENATOR MAGNUSON

The Secretary of State presents his compliments to Their Excellencies and Messieurs the Chiefs of Mission of the Governments whose fishermen have been known to or currently do fish in the waters adjacent to the coasts of the United States of America, and has the honor to inform the Chiefs of Mission of new guidelines for the enforcement of the rights of the United States to the living resources of the continental shelf.

Pursuant to the Convention on the Continental Shelf and international law, the United States exercises exclusive sovereign rights for the purposes of exploration and exploitation of the living resources of its continental shelf. These rights have been implemented by domestic legislation.

Any vessel taking continental shelf fishery resources of the United States will be subject to arrest and seizure, except as provided by the United States in bilateral agreements. For the purpose of determining whether such a taking has occurred, vessels may be boarded when engaging in either of the following acts:

(a) fishing with gear which is designed specifically to catch continental shelf fishery resources of the United States, or

(b) fishing with bottom gear (including bottom trawling gear) which would normally result in the catch of continental shelf fishery resources of the United States, except where the procedures used are designed to reduce and control such incidental catch pursuant to an agreement with the United States.

In those instances where the taking of continental shelf fishery resources does not result in a substantial catch and such taking does not appear to be deliberate or repeated, a warning will normally be given. In any event, fishermen are expected to return to the sea immediately any continental shelf fishery resources which may be taken incidentally in the course of directed fisheries for other species. Fishermen who encounter concentrations of continental shelf fishery resources in the course of their fishing operations should take immediate steps to avoid such concentrations in future tows.

To facilitate the transition in fishing methods required by these procedures, United States enforcement officers will act with discretion during a short period to allow fishermen operating in the region to become familiar with these procedures.

The boarding and where appropriate the arrest of any vessel pursuant to these procedures shall be in strict conformity with the above.

The effective date of these new procedures will be December 5, 1974.

The United States Government is prepared to enter into negotiations with any government for the purpose of establishing procedures designed to reduce and control the incidental catch of continental shelf fishery resources of the United States by fishermen using bottom gear (including bottom trawling gear).

The Secretary of State would be grateful if each Chief of Mission would forward this information to his Government.

Attachment.

LIST OF ADDRESSEES

Government of Canada.
Government of the Czechoslovak Socialist Republic (in charge of Cuban Interests).
Government of Denmark.
Government of the Federal Republic of Germany.
Government of the German Democratic Republic.
Government of Finland.
Government of France.
Government of the United Kingdom.
Government of Greece.
Government of Iceland.
Government of Italy.
Government of Japan.
Government of the Republic of Korea.
Government of Mexico.
Government of Norway.
Government of the People's Republic of Bulgaria.
Government of the Polish People's Republic.
Government of Portugal.
Government of Spain.
Government of the Socialist Republic of Romania.
Government of the Union of Soviet Socialist Republics.
Government of Venezuela.

[Department of State Press Release, Sept. 12, 1974]

NEW ENFORCEMENT MEASURES FOR PROTECTION OF FISHERY RESOURCES OF THE U.S. CONTINENTAL SHELF

New enforcement measures for the protection of U.S. continental shelf fishery resources were set out in a September 5 letter from John Norton Moore, the Chairman of the National Security Council Interagency Task Force on the Law

of the Sea, to Senator Warren G. Magnuson, the Chairman of the Senate Commerce Committee. The new procedures provide for boarding of vessels fishing with gear which is designed specifically to catch continental shelf fishery resources of the United States or which is bottom gear (including bottom tending trawls) which would normally result in the catch of continental shelf fishery resources of the United States. The procedures will also require agreements with the U.S. for the protection of U.S. continental shelf fishery resources when such bottom gear is used. Because of their potential impact on foreign fishing, the new measures will go into effect only after a 90 day grace period.

The new measure will enable substantially increased protection of U.S. continental shelf fishery resources against increased foreign fishing pressure. The new measures are based on recognized legal rights of the United States as set out in the 1958 Geneva Convention on the Continental Shelf and do not constitute a new claim.

Discussion of fishery problems with Senators Magnuson of Washington, Muskie of Maine, Pell of Rhode Island and Stevens of Alaska has been particularly helpful in the formulation of the new procedures.

STATEMENT OF HON. WARREN G. MAGNUSON, U.S. SENATOR FROM WASHINGTON

Senator MAGNUSON. Mr. Chairman, the Senator from New Jersey said that we have been pretty generous about this matter of foreign fishing over the years, and when you talk about waiting, I have been waiting 14 years to get something done on this. Countries meet and they meet, and the only thing they resolve at the end, the only thing they do is resolve to meet someplace else. This has been going on and on. I have no quarrel with the fact that some of our people try, but I have had some sad experiences when they have not succeeded. A lot of problems have been with treaties which have ignored, particularly in the States of Washington, Oregon, and California, just as involved in the 200-mile question as the New England States. I think we have been patsies sometimes with these people. I really do. I know the Japanese pretty well in regard to fishing. If we were to send a fleet within 200 miles of the shores of Japan, the Diet would meet in 24 hours and kick us out. That is some reciprocity, is it not? If they could meet earlier, they would.

The same goes for Russian shores. The Russians have been a little more flexible in their fishing practices off the coasts of Washington and Oregon. But there are some zones which have constantly been violated, too, as you point out—destroying gear, all these sort of things. Now, in the meantime, as has been so well stated here, time is running out and our stocks continue to go down, down, down. Off the coasts of Oregon and California there is hardly any ocean perch left at all. Just gone, And sure, international cooperation would be the best way. I know it would. But how long can we wait?

Now, even if they do something—I used to wager with some of the State Department people a cigar that nothing would happen in Caracas. Oh, give us a little time, they said. So we did. We waited. And nothing happened. Out of 80 issues, not a single one was resolved.

The Senator from Rhode Island, as we have, has been working on these things. But I want it clear we are talking only about fish. I can understand the real problem of minerals in the seabed, of oil, and other matters. But we are talking about fish that are disappearing. If there is any oil in the Continental Shelf, it will be there, and I guess a year or two will not matter, although we need it right now.

So it seems to me that our problem is one of immediate necessity, and that involves steps which we did not quite want to take, but I know of no other answer.

Now, if the committee will look closely at the bill—and I know you have—we encourage in the bill treaties within the 200-mile limit. In other words, if we can settle with England, or even in your area, Mr. Chairman, on the question of shrimp within 200 miles, a treaty with Brazil, the question of reciprocity, we encourage that and suggest it be done with conservation as the goal. I consider this to be, and I hope it will remain, an interim measure. I hope something can happen at the Conference.

Now, another thing, we are talking about time. We call it the Emergency Marine Fisheries Act. We call it that. In the meantime, of course, even if the Conference agrees on a treaty or treaties, it is going to have to go the round of nations. How long will that take? In the meantime, our stocks are being depleted. And I can never get excited about what the Japanese say. I have had too many experiences with them. Oh, they say maybe they will get out of the North Pacific Salmon Treaty. Well, the 200 miles has nothing to do with fishing salmon beyond the 200-mile limits and we encourage treaties within the 200-mile limit. But I say that we have waited too long and been too generous.

Senator SPARKMAN. Let me ask you——

Senator MAGNUSON. The king crab has been injured by the Japanese. There seems to be nothing but problems with these people. We do not fish off their shores, so we are not asking anything from them, if we can work out treaties. The best example of why we are late is that about 50 years ago, and no longer, the best fishing in the world was off the Japanese islands. The best in the world. There are no fish left because they did not practice conservation, and that is why they are encroaching on our shores and taking what they can. So I think the time has come, and I ask permission to put a further statement in the record.

Senator SPARKMAN. Without objection, that will be done.

[Senator Magnuson's prepared statement follows:]

PREPARED STATEMENT OF SENATOR WARREN MAGNUSON

Mr. Chairman, I appreciate the opportunity to appear here today before your committee in the continuing consideration of S. 1988, the "Emergency Marine Fisheries Protection Act of 1974."

As you know, the Senate committee has held extensive hearings on this measure, not only here in Washington, but in fishing communities around the country. Our hearing records clearly reflect strong support for immediate enactment of this kind of interim legislation.

Your hearings today serve a vital purpose in that our discussions and deliberations on this measure occurred prior to the ending of the Caracas Law of the Sea Conference. Many witnesses asked that the Congress not take action until we could ascertain what kind of action might be forthcoming from that world gathering. Today, you are hearing administration witnesses, many of whom appeared before our Committee who can no longer petition for delay until the Conference could be ended there. Some even expressed hope that there might be some concrete decisions forthcoming.

On July 11 of this year, when Special Representative of the President and U.S. Representative to the Law of the Sea Conference Ambassador John R. Stevenson placed the United States in alliance with those willing to agree to some kind of 200 mile fishery jurisdiction, a major portion of the minority objec-

tions filed during hearings before the Senate Commerce Committee became invalid. We have now concluded the Caracas meetings, new and continued discussions are scheduled for 1975 in Geneva, and I am convinced that the fisheries issue will still be unresolved at that time, though I would join in hope with those who foresee such agreement.

As these world conferences grind slowly onward, our fishery resource condition is not static, but rather worsening. Our fishery Treaties are not providing resource protection, and the various Executive Agreements, also ineffective to the need, were never intended to be more than "stopgap" arrangements until some kind of world order could be established.

The foreign fishing efforts of today are too intensive and the decimation of further stocks is at hand. The harvest is current taking a valuable protein source which is infinitely renewable when properly managed, and leaving a path of destruction. S. 1988 is interim legislation, it would cease to function on the date of the Law of the Sea Treaty, or other comprehensive treaty with respect to fishery jurisdiction, takes force or is provisionally applied.

In closing, I urge that your committee join with ours in reporting S. 1988 favorably. It is no longer a simple matter of protecting our fishermen and their industry, it is a question of the fate of our adjacent fishery resources themselves.

AGREEMENT ON TUNA

Senator MAGNUSON. Another thing is that we have a loose tuna treaty in the Pacific. It is not enforced very well. Some of the tuna people say that the Mexicans will establish a 200-mile limit on tuna if we enact this bill. Well, somebody better put some limits someplace. The Mexicans and the United States could make an agreement, just as easy as not, on tuna. Tuna is also rapidly disappearing in the Pacific, and this is what happened in the Atlantic. It is coming back a little bit but not very much.

REPEAL OF S. 1988 IF INTERNATIONAL AGREEMENT WORKED OUT

So I just think we have to do what this bill says. It is an Emergency Fish Protection Act, and I will be the first one to ask for its repeal if and when the Conference can work something out.

COMMENTS ON S. 3783

Senator CASE. Mr. Chairman, I wonder if our colleagues are in a position to comment on the bill introduced by our chairman, Senator Fulbright, S. 3783? This bill which was introduced in July of this year, expresses the same purpose as this bill but sets forth a somewhat different approach to it based upon the existing convention.

Senator MAGNUSON. The Senator from Alaska directed himself to that here earlier.

Senator CASE. I am sorry.

Senator MAGNUSON. But I think it should be made clear.

Senator STEVENS. In my statement, I pointed out that that bill would implement section 7 of the 1958 agreement, and the impact would be negligible because of the fact that neither Russia nor Japan were parties to that Convention. We are speaking specifically of article 7 of the 1958 Convention on Fishing and Conservation and Living Resources of the High Seas. Because the two principal offenders at the present time are not parties to that convention, if we were to implement that, we would be taking unilateral action against them any-

way. Article 7 has some requirement for procedures which in effect are dilatory in and of themselves.

Senator CASE. It does provide for a 6-month period in which efforts are made to negotiate.

Senator MAGNUSON. Yes, that is one thing we are concerned with.

BILL WILL BE NEGOTIATING TOOL

One other thing. Communist China, the People's Republic of China, is starting to build a big fishing fleet, and we are going to have some trouble with them unless we do this. I think they might be more susceptible to a treaty within a treaty with us. In addition, the Koreans are starting fishing, South Korea. You know what with? Boats that we gave them. How can you stand up in front of fishermen who cannot find fish and answer that question? The North Koreans will get in the act pretty soon up in your waters as sure as I am sitting here. And let me tell you one other thing. The nations on the border, the bulge off Africa, which is a great fishing ground, have put restrictions extending sometimes 200 miles off their shores. So the other countries say, "You nations are not fishing that fishing ground at all. Why can't we fish it?" "Well, you can't fish it and leave the fish alone. We may want to fish some day, so don't take it away." As I pointed out, 200 miles is a difficult step, but we are not talking about navigation, we are not talking about minerals—we are talking about fish. And that is why I think the time for the bill has come. I think it will give the State Department a negotiating tool.

CONSERVATION AND ECONOMIC ZONE PROPOSED

Senator SPARKMAN. Let me ask you this question. What you are seeking to do is virtually the same thing as has already been declared by some of our South American friends.

Senator MAGNUSON. No.

Senator SPARKMAN. They have 200 miles?

Senator MAGNUSON. No, not necessarily. We have an interim measure, and we will allow a treaty within a treaty for foreign fishing.

Senator SPARKMAN. I realize you said that.

Senator STEVENS. We go a little different direction. They asserted a territorial sea of 200 miles.

Senator MAGNUSON. The whole business.

Senator STEVENS. Jurisdiction. We are asserting beyond the 12-mile contiguous zone a conservation and economic zone within which we seek to regulate the taking of fish, and in which we declare that we have a primary interest in their preservation. But we are not seeking an exclusive zone in this bill, nor are we asserting that the total jurisdiction of the United States in the territorial sea concept extend out to 200 miles. This is an interpressure.

I personally believe the Law of the Sea Conference will go further than this measure before it is through.

STATEMENT OF HON. MIKE GRAVEL, U.S. SENATOR FROM ALASKA

Senator GRAVEL. If the chairman is looking for precedents, there is one when the *Manhattan* voyage was undertaken in the Northwest

Passage where Canada unilaterally exercised an environmental zone, and for obvious reasons, so there could be some degree of management, since it would impact upon their shores.

MANAGEMENT FOR WORLD FISHERIES SOUGHT

What we are seeking to do with this 200-mile limit is to provide some management for world fisheries, which is presently a situation of anarchy. We have made efforts with respect to a treaty. We all recognize these treaties did not work and the only way to handle it, of course, is to bring some order at least around the coastline that affect our country now. The rest of the world has not quite matured to that point of view yet, and I think we would be derelict—totally derelict—in our duty in not doing it. The arguments primarily made are that we do it in our own self-interest. That is very accurate and very true and we should have brains enough to do it for that reason, but I would submit, and I would hope, the Foreign Relations Committee has broad scope and acumen to realize we are not only doing it for our selfish American interest, we are doing it for the world.

EXAMPLE OF POLLOCK

Let us take the classic example of pollock. We do not fish pollock off Alaska but they are fished. Under this proposal we would have 200 miles and we would work out a treaty that let people come in and fish pollock. We will not be acting like the people off the bulge of Africa. We are concerned about feeding the world, we are concerned about the protein content of the diet of other people. But if we acquiesce in the situation that presently exists, the world will just go on a rampage and there will be no protein from fish in future decades because of the lack of maturity that has been exercised in the depletion of these resources.

REGENERATION OF ALASKAN FISHERIES

Now if I could only underscore one facet that affects Alaska. I think it is absolutely ridiculous; we have had our fisheries wiped out. It is going to be a good deal worse. We have intelligent State programs, sound programs to regenerate our fisheries, but it makes little sense to generate our fisheries or spend the money if it is turned around and they are fished out of hand. The money is going down the tube. We would be prepared obviously, to undertake some rehabilitation programs of great note, and so would the entire Nation, if we could have some umbrella that would protect these regenerative programs, and that would be a 200-mile limit. And I would disagree with those proponents who say the 200-mile limit would be an incursion, unilateral incursion, into the possibility of an agreement on an international level. I think it would be just the opposite. I think we are the most mature Nation—I say this most humbly—Nation in the world and if we can lead the way, as we have in the areas of ecology and environment, if we can now show some degree of economic management, other nations would emulate our example, and I think it would bring pressure for an agreement, and not delay it.

ACTIONS PROPOSED FOR FOREIGN RELATIONS COMMITTEE

So I would hope the Foreign Relations Committee would act: one, on motivation, at least have the good sense to protect our selfish interests, and two, to have the good sense to act as a world leader, a responsibility we have had thrust upon us by circumstances, to bring some management to at least the fisheries within our boundaries, and to the economic interests within our boundaries. I would like to add my word to my colleagues and ask that my statement be placed in the record.

Senator SPARKMAN. Thank you very much, Senator Gravel.

[Senator Gravel's prepared statement follows:]

PREPARED STATEMENT OF SENATOR MIKE GRAVEL

Mr. Chairman, thank you for this opportunity to testify on this measure.

The bill which this committee is considering today has great significance to my home state. The largest segment of the Alaskan labor force is employed in the fishing industry. Until the recent advent of oil development within the State, fishing was the major industry. Today, while it still remains a major industry, its importance is diminishing. It is only sensible, in this time of non-renewable resource extraction, to concentrate some of our efforts on preserving renewable resources.

I was greatly dismayed, as were many Alaskans, to learn that the Third Law of the Sea Conference had adjourned without resolution of the fisheries problem. It was indeed a heartening time when Ambassador Stevenson announced the U.S. position regarding fisheries jurisdiction. Although this position was conditional upon a comprehensive package resolving the other issues faced by the conferees, it was a position that could be embraced by all our coastal fishing interests.

I adhere to the premise that this measure could be handled by international agreement. I have had difficulty in balancing the international implications of unilateral action with the overriding need to protect our living marine resources. Only through multi-lateral action could we be assured there would be no international friction. But international negotiations have failed.

Since this measure and similar measures were introduced in the Senate, we have been told to await the outcome of International negotiations. The Nixon Administration, which prided itself on forging international accords, has failed to effect agreement in this area. Similarly, this International conference that was to be the bulwark of protection for these resources has also failed. To delay enactment of this measure further, only sanctions the rapacious actions in marine resource harvesting. The time is ripe to curtail the overexploitation of these resources.

The situation facing Alaska's commercial fisheries is grave, at best. Last November, the U.S. delegation to the International North Pacific Fisheries Commission meeting were totally frustrated in attempting to get the Japanese to refrain from the high seas harvesting of salmon. The valuable Bristol Bay salmon fishery has been seriously depleted by this Japanese fishing effort. In December, the Alaska Department of Fish and Game announced it was no longer able to carry out its constitutional mandate to manage the Bristol Bay fishery.

In May of this year, the governor of Alaska, in the face of an expected catastrophe, declared Bristol Bay to be a state disaster area. This was followed in June by a similar declaration from the Federal Government. Massive aid was mobilized, as the residents of this area rely mainly on commercial fishing. Few fishermen even bothered to put their vessels into the water. Alternative sources of livelihood for these people had to be found.

As if this situation were not serious enough, on June 14 the U.S. Coast Guard seized a Japanese gill-netter for fishing in violation of the International Convention for the High Seas Fishery of the North Pacific. Again, on July 1, the Coast Guard seized another Japanese gill-netter for a similar violation. This appalling behavior further underscores the need for some action on this issue.

As the Commerce Committee report on this measure points out, the inroads of foreign fleets on American coastal fisheries is destroying this valuable re-

source. Further delay is encouragement for these foreign fleets to take what they can get, as soon as possible. A workable International pact is years away; our coastal fisheries cannot tolerate further exploitation.

Thank you.

LOAN PROGRAM FOR FISHING VESSELS

Senator PELL. Seeing both the chairman and a member of the Commerce Committee here makes me think of another way that American fishermen could be helped. Has the Commerce Committee ever considered the repeal of the law that's been on the books for some time which requires that American fish can only be landed in America from fishing vessels built in America. In my part of the country our fishermen could buy their vessels in Nova Scotia and it would cost them about half of their original capitalization. One of the problems we face in competing is the other nations are subsidizing the fishermen, giving them all kinds of government help, and our fishermen are receiving very little help. They have to operate out of very old boats and are not receiving the support from our Government they should.

Senator STEVENS. We did pass a bill—again our chairman was the leader in this—to permit the American fisherman to escrow the Federal Government in taxes in order to modernize and replace his vessels, and that is working very well up in Alaska.

Senator MAGNUSON. And a loan program.

Senator STEVENS. Given time, that plus the improved loan program would have the same effect.

One of our problems about those foreign fishing vessels is once you get them you have to get spare parts and you can be entirely at the mercy of a foreign builder.

200-MILE ZONE IS NOT COMPLETELY PROTECTIVE MEASURE

Let me mention one last thing. You are going to hear, I think, that the 200-mile zone will not protect our fish, that many of our fish go beyond the 200 miles, particularly our Alaska salmon and halibut. Take Japan, for instance. Japan consumes more fish than any nation in the world. Only 2 percent of their salmon is caught on the high seas but some 40 percent of the fish that they do consume is caught within the 200-mile zone. We think the leverage we would have over the 40 percent will give us the ability to protect the 2 percent they are taking outside of the 200-mile zone, and that by the leverage that would come from this bill we can protect the east and west coasts as far as the fish go beyond the 200-mile zone. It is not a completely protective measure as far as all American fish species are concerned, I think that is acknowledged. I personally would like to go to the Continental Shelf. Sixty-five percent of the Continental Shelf is off Alaska and certainly this bill will not protect all of the Continental Shelf. But this bill is better than nothing, and it would give us again the leverage we need to protect the fishing stocks that go beyond the 200-mile zone.

WHALES

Senator MAGNUSON. The Japanese even want to catch whales because they say they have to survive on whale meat. That is how far they go or attempt to go. They say they need whale meat to eat.

OYSTERS AND SHRIMP FROM ALABAMA

Senator SPARKMAN. Senator Magnuson, you mentioned the very fine shrimp we produce down our way. Won't you include oysters too, the best oysters in the country? In your testimony you made reference to shrimp——

Senator MAGNUSON. Yes, sir.

Senator SPARKMAN [continuing]. That come from down in my State, will you not include the oysters too, the best in the country?

Senator MAGNUSON. Sure. I did not know about the oysters. [Laughter.]

Senator SPARKMAN. I want to be sure you did know.

Senator MAGNUSON. I'm for the oysters.

Senator SPARKMAN. Thank you very much, gentlemen.

Our next witness is Mr. John R. Stevenson, Special Representative to the President for the Law of the Sea Conference.

Mr. John Norton Moore, Chairman, NSC Interagency Task Force on the Law of the Sea and Deputy Special Representative of the President for the Law of the Sea Conference.

And Mr. Carlyle E. Maw, Under Secretary of State for Security Assistance.

If you gentlemen will take your seats at the table.

STATEMENT OF CARLYLE E. MAW, UNDER SECRETARY OF STATE FOR SECURITY ASSISTANCE

Mr. MAW. Mr. Chairman, distinguished members of the Senate Foreign Relations Committee, I appreciate the opportunity to appear before this committee to testify on S. 1988. The Department of State attaches great importance to the successful conclusion of a comprehensive Oceans Law Treaty, and we are concerned that unilateral action at this time would seriously damage the chances for agreement.

IMPLICATIONS OF S. 1988 FOR FOREIGN RELATIONS OF UNITED STATES

S. 1988, as amended, has major implications for the foreign relations of the Nation. The administration strongly supports the effort to conclude a timely Oceans Law Treaty within the Third United Nations Conference on the Law of the Sea. It is in the interest of all nations that such a comprehensive treaty be concluded. The testimony thus far today underscores that importance.

The great potential of the world's oceans can only be fully realized with the stability which accompanies broadly based agreement on their legal regime. And without such an agreement, their great potential for peaceful development may be overshadowed by the potential for conflict.

It is particularly important that during the final stages of the Law of the Sea Conference all nations should refrain from new ocean claims which could irreparably damage the delicate fabric of the negotiation. Passage of S. 1988 or similar legislation unilaterally extending the fisheries jurisdiction of the United States would be seriously damaging to the negotiations as well as more broadly to the overall oceans and foreign relations interests of the United States.

We strongly oppose the passage of this or similar legislation at this time.

Mr. Chairman, Ambassador John R. Stevenson, the special representative of the President for the Law of the Sea Conference, will report on the progress made at the Caracas session of the Third United Nations Conference on the Law of the Sea. Prof. John Norton Moore, the Chairman of the National Security Council Interagency Task Force on the Law of the Sea and deputy special representative of the President, will then give the executive branch views on S. 1988.

Thank you, Mr. Chairman.

Senator SPARKMAN. Thank you very much.

Mr. Stevenson.

STATEMENT OF AMBASSADOR JOHN R. STEVENSON, SPECIAL REPRESENTATIVE OF THE PRESIDENT FOR THE LAW OF THE SEA CONFERENCE

Mr. STEVENSON. Thank you, Mr. Chairman.

I have a statement which I would like to submit for the record.

Senator SPARKMAN. That will be printed in full in the record.

Mr. STEVENSON. And I would just like to touch on some of the highlights, if I may.

Senator SPARKMAN. Very well.

Mr. STEVENSON. In the first place, let me say I do appreciate the opportunity to appear and report on this first substantive session of the Third U.N. Conference on the Law of the Sea.

May I also say that the members of the delegation, and myself, particularly appreciated the attendance of Senators Case, Muskie, and Pell of this committee and members of their staff and the committee's staff.

Senator CASE. You meant to say Stevens, too?

Mr. STEVENSON. Yes, of course. We also appreciated having Senators Stevens and Buckley representing other Senate committees with us. We have consistently appreciated the advice and assistance of this committee in helping us to achieve a legal regime for two-thirds to three-quarters of the world. We hope we will continue to have the close cooperation of the Congress and this committee in achieving a treaty which fully protects basic U.S. interests.

RESULTS ACHIEVED AT CONFERENCE IN CARACAS

Turning to the results of last summer, clearly the results were obviously not all many of us had hoped for in advance. On the other hand, the session was certainly not a failure.

I think perhaps the most significant result was the expressed or implicit agreement of most nations that participated that their interests would be best served by an acceptable and timely treaty. Now particularly, in view of some of the comments that were made earlier in this session, I want to say that the U.S. delegation at all times indicated that our concept of a timely treaty was a treaty that is completed not later than 1975, and that we were particularly gratified that the conference did decide, despite a number of logistic and other problems, to call for the next session to begin in the spring, thus leaving additional

time, if necessary later on, to complete the treaty, and that they also indicated that the signing of the treaty should take place in Caracas, again on the assumption that we can make a maximum effort and reach agreement next year.

I think a second indication of the widespread support for and a prompt international solution was the adoption by consensus of rules of procedures, including a number of new types of procedures designed to promote widespread agreement.

In the third place, I think the tone of the general debate and the informal meetings was moderate and serious with only a handful of nations resorting to polemics.

Furthermore, in the general debate there was a clear indication of the broad lines of agreement which would be generally acceptable.

Finally, Mr. Chairman, unlike some of the earlier meetings of the Seabed Committee, I think there is no question that the delegations from all countries worked very hard. There were three or four simultaneous meetings every day and a number of night sessions, and I think there was very little attempt at procedural or other delay in dealing with the difficult problems with which we have to cope.

Other results of the conference, to which I would like to refer, were the very broad support for a 12-mile territorial sea with an economic zone extending to 200 miles. Upward of 100 countries expressly endorsed this combination, which the Chairman of the Second Committee in his final statement, which was endorsed by that committee, and circulated as a Conference document, stated was the keystone of the compromise solution favored by the majority of the states participating in the Conference.

Now, of course, this summer marked the first time that the United States, the United Kingdom, and the Soviet Union all expressly agreed to accept as the basis for general settlement the 12-mile territorial sea combined with the 200-mile limit for the economic zone as part of an overall treaty package, including provisions for unimpeded transit of international straits and a balance between coastal State rights and duties within this economic zone.

TREATY ARTICLES DEALING WITH ZONE FISHING AND CONTINENTAL SHELF

Furthermore, to promote negotiations on the essential balance of coastal state rights and duties within this 200-mile economic zone, the United States submitted detailed treaty articles dealing with the economic fishing, and the Continental Shelf.

I will not relate the substance of those provisions. They are included in my formal statement.

But I would like to say that with respect to fisheries they do provide for exclusive coastal state rights within the 200-mile zone, with respect to coastal and anadromous species subject to a duty to conserve and to insure full utilization. There is a prohibition on fishing for salmon beyond a 12-mile territorial sea without the consent of the State of origin. Highly migratory fish, such as tuna, would be regulated within the 200-mile zone by the coastal state, and outside by the flag state, in both cases in accordance with international regulations.

Moreover, because of the particular interest in coastal states within whose economic zone highly migratory fish are caught, these articles indicate that a fee would be paid to the coastal state in respect of such catches, and that special interest of the coastal state in fish caught within their zone would be taken into account in allocation provisions.

Mr. Chairman, I think that the submission of these draft articles indicated to a number of the other countries our seriousness of purpose in embracing the 200-mile economic zone concept.

OPPOSITION OF SOME COUNTRIES TO INTERNATIONAL LIMITATION

We were somewhat disappointed that a number of countries have in some respects strengthened their own views of an economic zone, to provide not only for coastal state control or resources, but also complete control over pollution and scientific research.

They have also been very opposed to any international limitation, such as the full utilization principle with respect to fish, on coastal state jurisdiction within the zone.

However, Mr. Chairman, we certainly have entered the stage of detailed negotiation with respect to the character of this economic zone with very general acceptance that this plus the 12-mile territorial sea and the other elements, such as transit through straits of an overall acceptable package.

CONFERENCE HAS BASIC TREATY TEXT

On the technical side, for the first time, following this session, we will have draft treaty articles which will present to governments the options that they really have to consider within the very general lines of agreement that now seem apparent. Because for the first time the large number of traditional law of the sea issues, with which the Second Committee of the conference has been dealing, namely, the territorial sea economic zone straits fisheries, and the Continental Shelf, which up to now have been represented only by a large disorganized number of proposals of specific states, have now been reduced to a limited number of working papers in which the precise treaty alternatives are presented.

So now for the first time the Conference has a basic treaty text to work from in which the specific alternatives are presented.

INTEGRATION INTO CONFERENCE OF COUNTRIES NOT PREVIOUSLY PARTICIPATING

Another result this summer was the very successful integration into the work of the Conference of the countries which had previously not participated in the work of the preparatory committee. The preparatory committee at the end constituted 90 countries. We had almost 150, including many newly independent countries, at Caracas this summer, and I think the process of integrating them into the work of the Conference was achieved with a minimum of delay.

MINING OF MANGANESE NODULES IN DEEP SEABEDS

With respect to the deep seabed, particularly the question of the mining of manganese nodules in this area beyond national jurisdiction, for the production of nickel, copper, cobalt, and some other metals, the first step toward real negotiation on the critical question of a system of exploitation and the conditions of exploitation were undertaken. However, it is only fair to say that it is in this area that the sharpest difference between the position of the United States and that of most other countries remain.

The difference very simply is essentially a difference as to the degree of discretion that an international authority should have over access to these resources by nations and their nationals, and in the regulation of the exploitation of these resources.

MOVEMENT AWAY FROM TRADITIONAL REGIONAL AND POLITICAL ALINEMENTS

Another result this summer was a gradual movement away from the traditional regional and political alinements toward more informal groups with similarities of interest on a particular issue.

Thus, for example, during the latter half of the Conference, a group of countries, including the United States, particularly interested in impartial compulsory dispute settlement, met together under the co-chairmen of El Salvador and Australia, and on the last day of the session introduced a working paper cosponsored by eight countries from different regions presenting alternative draft treaty articles on all the critical issues in this dispute settlement area.

Finally, Mr. Chairman, I must refer to the number and tempo of private meeting between delegations which increased very markedly this summer and, of course, moved beyond formal and public positions.

LACK OF POLITICAL WILL TO MAKE HARD NEGOTIATING CHOICES

Now, what was the principal shortcomings of Caracas? I think it is entirely clear it was the lack of sufficient political will to make hard negotiating choices on a limited number of critical issues.

Why was this so?

In the first place, there was a very general conviction that that was not the last session and it was too early to make the necessary accommodations.

I think it was partially in reaction to this, Mr. Chairman, that there was a very strong feeling that only one session should be formally scheduled for next year in the expectation that governments will make those decisions at this first session and only move on to another session, if necessary, for final cleanup work.

ABSENCE OF DETAILED TREATY TEXT PRIOR TO SESSION'S COMPLETION

Second, governments were clearly handicapped by the absence prior to the completion of last summer's session of detailed treaty text, presenting the alternatives on the critical issues.

NECESSITY FOR PROMPT INTERNATIONAL SOLUTION

Mr. Chairman, returning to the discussion earlier in this meeting, I do want to say how conscious all of the members of our delegation are of the necessity for a prompt international solution to the problem of the oceans, and particularly the pressing problems of fisheries.

ACHIEVING TREATY BY 1975

However, I do disagree that this is something that can only be achieved in the very distant future. I think a comprehensive treaty is obtainable within the United Nations time schedule calling for the completion of a treaty in 1975.

However, to achieve this result governments must make the hard political decisions necessary to resolve the small number of critical issues. We must move from the technical drafting and preliminary exchange of views, which was completed at Caracas, and where both the general outlines of agreement as well as the details of the remaining disagreements were rather starkly revealed, to the highest political levels, and in this I agree completely with Senator Case's judgment that frequently this must involve the heads of states themselves, if we are to make the accommodations on the critical issues that are necessary to achieve general agreement.

Moreover, we must do this promptly in the intersessional period between now and Geneva so that when the conference reconvenes in March, from the first day serious negotiations can begin among delegations that have been instructed in such a manner that a successful negotiation can take place.

Finally, Mr. Chairman, let me say again that a multilateral convention, which is clearly of unparalleled complexity and importance to our vital economic, strategic, and other interests, is within our reach.

I would certainly be the last one to deny that the international law-making process is a tedious, frequently frustrating, and very difficult enterprise. By the same token, it is the only way of achieving a generally acceptable agreement which will avoid conflict, and clearly the desirability of this international solution seems to be common ground.

I do hope that in the year ahead we can get the necessary decisions from governments to complete the convention, and we certainly hope that we will continue to have the guidance and support of the Congress and of this committee in striving to the utmost to make 1975 the year when this treaty is completed.

Thank you, Mr. Chairman.

Senator SPARKMAN. Thank you very much, Mr. Ambassador.

[Mr. Stevenson's prepared statement follows:]

PREPARED STATEMENT OF AMBASSADOR JOHN R. STEVENSON

Mr. Chairman, I welcome this opportunity to appear before the Senate Foreign Relations Committee to report on the progress made at the first substantive session of the Third United Nations Conference on the Law of the Sea held in Caracas, Venezuela, from June 20 to August 29, 1974.

Before proceeding with this report, I would like to say how much we appreciated the attendance at the Conference of three members of this Committee, Senators Clifford Case, Edmund Muskie, and Claiborne Pell, as well as members

of their and the Committee's staffs. We are deeply grateful for their willingness to attend the Conference and for the advice and assistance that they and other members of the Committee have given to our efforts to achieve an agreed constitution and supporting legal regime for two-thirds of this planet. It has been and will remain a fundamental part of our policy to work closely with the Congress and this Committee to achieve a Law of the Sea Treaty that fully protects the basic interests of the United States.

I want to emphasize at the outset that, while the results of the Caracas session were not all we hoped for, the session was not a failure.

A most significant result was the apparent agreement of most nations represented there that the interests of all will be best served by an acceptable and timely treaty.

To that end, the Conference has scheduled not only the next session in the spring in Geneva, but a return to Caracas for the signing of this agreement in the expectation that this will take place in accordance with the United Nations timetable. That timetable provides for conclusion of the treaty in 1975.

Further evidence of this desire to achieve promptly a widely acceptable treaty was reflected in the adoption by consensus of the rules of procedure early in the session. These rules make several changes in normal procedures that are designed to promote widespread agreement.

The tone of the general debate and the informal meetings was moderate and serious and reflected wide agreement on the broad outlines of a comprehensive general agreement.

Finally, I am sure the members of the Senate who were with us will agree that the Delegates from all regions worked hard. Three or four simultaneous meetings were common and there were some night sessions. The number of papers worked on was enormous, but this time the object—largely achieved—was organizing and reducing the alternatives, not proliferating them.

Other accomplishments of the session were considerable. Among the most important are the following:

(*a*) The vast array of critical law of the sea issues and proposals within the mandate of Committee II—including among others the territorial sea, economic zone, straits, fisheries and the continental margin—was organized by the Committee into a comprehensive set of working papers containing precise treaty texts reflecting main trends on each precise issue. All states can now focus on each issue, and the alternative solutions, with relative ease.

A similar development occurred with respect to marine scientific research in Committee III. Committee I, dealing with the novel subject of a legal regime for exploiting the deep seabed, had previously agreed to alternative treaty texts in the preparatory Committee and further refined these texts at the Caracas session.

(*b*) The transition from a preparatory Committee of about 90 to a Conference of almost 150, including many newly independent states, was achieved without major new stumbling blocks and a minimum of delay.

(*c*) The inclusion in the treaty of a 12-mile territorial sea and a 200-mile economic zone was all but formally agreed, subject of course to acceptable resolution of other issues, including unimpeded transit of straits. Accordingly, expanded coastal state jurisdiction over living and non-living resources appears assured as part of the comprehensive treaty.

(*d*) With respect to the deep seabeds, the first steps have been taken into real negotiation of the basic questions of the system of exploitation and the conditions of exploitation.

(*e*) Traditional regional and political alignments of states are being replaced by informal groups whose membership is based on similarities of interest on a particular issue. This has greatly facilitated clarification of issues and is necessary for finding effective accommodations.

(*f*) The number and tempo of private meetings has increased considerably and moved beyond formal positions. This is essential to a successful negotiation. Of course, by their very nature, the results of such meetings cannot be discussed publicly.

With few exceptions, the Conference papers now make it clear what the structure and general content of the Treaty will be. The alternatives to choose from, and the blanks to be filled in, and even the relative importance attached to different issues, are well known.

What was missing in Caracas was sufficient political will to make hard negotiating choices. A principal reason for this was the conviction that this would not be the last session. The absence prior to the completion of this session of organized alternate treaty texts on many issues also inhibited such decision making.

The next step is for Governments to make the political decisions necessary to resolve a small number of critical issues. In short, we must now move from the technical drafting and preliminary exploratory exchanges of views at this just completed session, which has laid bare both the outlines of agreement and the details of disagreement, to the highest political levels, involving heads of states themselves, to make accommodation on these critical issues possible.

The fundamental problem is that most states believe the major decisions must be put together in a single package. Every state has different priorities, and agreement on one issue is frequently conditioned on agreement on another. Thus, it might have been possible—and might have been helpful to the Executive Branch in its efforts here today—to adopt a general declaration of principles in Caracas endorsing, among other things, a 12-mile territorial sea and a 200-mile economic zone. Our Delegation opposed such an idea, because it would have diverted us from negotiating the key details of an economic zone that can spell the difference between true agreement and the mere appearance of agreement, and because our willingness to support such concepts is also conditioned on satisfactory resolution of other issues, including unimpeded passage of straits. In choosing to concentrate on precise texts and alternatives, our Delegation believed we were in fact best promoting widespread agreement on schedule. However, we recognized that the absence of tangible symbols of agreement would place us in a politically difficult situation between sessions.

In his closing statement before the Caracas session, the President of the Conference, recognizing the problem, stated, "we should restrain ourselves in the face of the temptation to take unilateral action", and then urged states to prepare to reach agreement "without delay" since governments cannot be expected to exercise "infinite patience."

We regret that for a variety of reasons the Conference was unable to capitalize upon the initial, prevailing good will to produce a final treaty at the Caracas session. Nevertheless, the political parameters of an overall agreement were made much clearer at Caracas and we are at the stage were differences in approaches are embodied in specific treaty articles expressed as alternative formulations on almost all the major issues.

On July 11 at a Plenary session, we noted there was a growing consensus on the limits of national jurisdiction, which we expressed in the following terms: "A maximum outer limit of 12 miles for the territorial sea and of 200 miles for the economic zone . . . conditioned on a satisfactory overall treaty package and, more specifically, on provisions for unimpeded transit of international straits and a balance between coastal state rights and duties within the economic zone." To promote negotiations on the essential balance of coastal state rights and duties the United States submitted draft articles proposing the establishment of a 200-mile economic zone in the treaty. The U.S. draft articles consist of three sections: the economic zone, fishing, and the continental shelf.

The economic zone section provides for a 200-mile outer limit with coastal state sovereign and exclusive rights over resources, exclusive rights over drilling and economic installations, and other rights and duties regarding scientific research and pollution to be specified. There would be coastal state environmental duties with respect to installations and seabed activities. All states would enjoy freedom of navigation and other rights recognized by international law within the economic zone.

The fishing section gives the coastal state exclusive rights for the purpose of regulating fishing in the 200-mile economic zone, subject to a duty to conserve and to ensure full utilization of fishery stocks taking into account environmental and economic factors. In substance, there is no significant difference between the objectives of S. 1988 and the United States proposal at the Conference. Fishing for anadromous species such as salmon beyond the 12-mile territorial sea would be prohibited except as authorized by the host state. Highly migratory species such as tuna would be regulated by the coastal state in the zone and by the flag state outside the zone, in both cases in accordance with regulations established

by appropriate international or regional organizations. Membership in the organization would be mandatory and the coastal state would receive reasonable fees for the highly migratory fish caught in its zone by foreign vessels. The international organization in establishing equitable allocation regulations, would be obligated to ensure full utilization of the resource and to take into account the special interests of the coastal states within whose economic zones highly migratory fish are caught.

The continental shelf section provides for coastal state sovereign rights over exploration and exploitation of continental shelf resources. The continental shelf is defined as extending to the limit of the economic zone or beyond to a precisely defined outer limit of the continental margin. The coastal state would have a duty to respect the integrity of foreign investment on the shelf and to make payments from mineral resource exploitation for international community purposes, particularly for the economic benefit of developing countries. In our plenary statement we suggested that these payments should be at a modest and uniform rate. The revenue sharing area would begin seaward of 12 miles or 200 meters water depth, whichever is further seaward.

The draft articles on the economic zone place the United States in the mainstream of the predominant trends in the Conference, and we were pleased with the favorable reaction to our proposal. We were disappointed, however, at the support, particularly among a number of African countries, for an economic zone in which there would be plenary, coastal state jurisdiction, not only over resources, but over scientific research and vessel-source pollution as well and in all of these areas there would be no international standards except provisions for freedom of navigation and overflight and the right to lay submarine cables and pipelines. Many of the same countries are saying that if a pattern of unilateral action by individual countries emerges before a treaty is agreed, they would go further and opt for a full 200-mile territorial sea.

We believe that specifying the rights and duties of both coastal states and other states in the economic zone is the approach best designed to avoid the sterile debate over abstract concepts.

At the final meeting of the Second Committee on August 28, the Chairman, Ambassador Andres Aguilar of Venezuela, made a constructive and challenging statement summing up its work. On its own initiative, the Committee decided to have the statement circulated as an official Committee document. This occurred after initial opposition by the 200-mile territorial sea supporters, which was withdrawn in the face of other Delegations' willingness to proceed to a vote if necessary. Because of its great importance and the universal respect and admiration earned by Chairman Aguilar for his strong and effective leadership, I would like to quote briefly from that statement.

"No decision on substantive issues has been taken at this session, nor has a single Article of the future Convention been adopted, but the States represented here know perfectly well which are at this time the positions that enjoy support and which are the ones that have not managed to make any headway.

"The paper that sums up the main trends does not pronounce on the degree of support which each of them had enlisted at the preparatory meetings and the Conference itself, but it is now easy for anyone who has followed our work closely to discern the outline of the future Convention.

"So far each State has put forward in general terms the position which would ideally satisfy its own range of interests in the seas and oceans. Once these positions are established, we have before us the opportunity of negotiating based on an objective and realistic evaluation of the relative strength of the different opinions.

"It is not my intention in this statement to present a complete picture of the situation as I see it personally, but I can offer some general evaluations and comments.

"The idea of a territorial sea of 12 miles and an exclusive economic zone beyond the territorial sea up to a total maximum distance of 200 miles is, at least at this time, the keystone of the compromise solution favoured by the majority of the States participating in the Conference, as is apparent from the General debate in the Plenary meetings and the discussions held in our Committee.

"Acceptance of this idea is, of course, dependent on the satisfactory solution of other issues, especially the issue of passage through straits used for international navigation, the outermost limit of the continental shelf and the actual retention of this concept and, last but not least, the aspirations of the land-

locked countries and other countries which, for one reason or another, consider themselves geographically disadvantaged.

"There are, in addition, other problems to be studied and solved in connection with this idea, for example, those relating to archipelagos and the regime of islands in general.

"It is also necessary to go further into the matter of the nature and characteristics of the concept of the exclusive economic zone, a subject on which important differences of opinion still persist.

"On all these subjects substantial progress has been made which lays the foundations for negotiation during the intersessional period and at the next session of the Conference."

Mr. Chairman, perhaps the most marked differences between the position of the United States and that of a majority of other states at the Conference emerged in the First Committee, which deals principally with the mining of manganese nodules in the deep seabed for the production of nickel, copper, cobalt and perhaps certain other metals. The basic differences relate to who will exploit the deep seabed resources and how this exploitation will take place. The United States took the position that access to the resources should be guaranteed on a non-discriminatory basis under reasonable conditions that provide the security of expectations needed to attract the investment for development of the resources. This would generate international revenues to be used for international community purposes, particularly for developing countries. A number of developing countries have supported a concept under which the international seabed authority would itself undertake exploration and exploitation, and which, under the new formula introduced by the developing countries at Caracus, would in addition have discretion to contract with States and private companies to operate under its direct and effective control and under basic conditions of exploitation set forth in the Convention itself.

During the last few weeks of the Conference real negotiations began on the basic conditions for exploitation when the First Committee agreed to establish a small, informal negotiating group. This group will resume its work at the next session of the Conference and we hope that negotiations in this context and during the intersessional period will lead to a narrowing of differences and a realistic approach that will promote access by industrialized consumer countries and the development of the mineral resources of the deep seabeds. The differences between what we call regulation and what others call control may be narrowed if we can agree on the conditions of exploitation, including measures to ensure that exploitation on a non-discriminatory basis will take place, and if agreement can be reached on protecting relevant interests in the decision-making process.

In the Third Committee of the Conference, there were mixed results on formulating treaty texts for protection of the marine environment and oceanographic scientific research. We were pleased that texts concerning the preservation of the marine environment were prepared on several points including basic obligations, particular obligations, global and regional cooperation and technical assistance. But basic political issues remain to be resolved on the jurisdiction of port and coastal states with respect to vessel-source pollution and on whether there will be different obligations for states depending upon their stage of economic development—the so-called double standard. We believe that the Caracas session broadened the basis of understanding of the complex problems involved in drafting new legal obligations to protect the marine environment, and there were indications that all states were analyzing their environmental policies in detail.

On the scientific research issue, the various proposals were reduced to four principal alternatives regarding scientific research within the areas of national jurisdiction. Some states advocated a regime requiring coastal state consent for all research. Others supported a modified consent regime. The United States supported a regime which places obligations on the state conducting the research to notify the coastal state, provide for its participation and ensure sharing of the data, and assistance in interpreting such data. Other states proposed complete freedom of scientific research.

We were encouraged by the fact that for the first time states appeared to be moving toward serious negotiations on this subject, including serious consideration of our proposal.

Mr. Chairman, we know there will be disputes with respect to the interpretation and application of the provisions of the Treaty. The willingness of the United States and many others to agree to a particular balance of the rights and duties of states and the International Authority is predicated upon reasonable confidence that the balance will be fairly maintained. Accordingly, the establishment of an impartial system of peaceful and compulsory third party dispute settlement is critical. We were encouraged to find at the Caracas session that there were states from all Regional Groups that support the need for comprehensive dispute settlement provisions. At the end of the session, the United States co-sponsored, with eight other states from different regions, a working paper containing alternative texts of draft treaty articles. This document was prepared, and is in general supported, by a broader informal Group chaired by the Representatives of Australia and El Salvador, for which Professor Louis Sohn of the Harvard Law School served as Rapporteur. We hope this document will facilitate the drafting of treaty articles on this important element of the Convention.

With your permission, Mr. Chairman, I will submit for the Record a copy of the Report transmitted by the Delegation to the Department of State on August 30, and copies of all draft articles sponsored or co-sponsored by the United States. The consolidated Treaty texts in Committee II and other documents will be transmitted to the Committee as soon as we receive them from the U.N. Secretariat.

[Committee staff note: Materials referred to are retained in the committee files.]

Mr. Chairman, it is my firm conviction that a comprehensive treaty is obtainable by the end of 1975 as contemplated in last year's United Nations General Assembly Resolution. To do so, however, governments must begin serious negotiation the first day at Geneva, and to prepare for that, they must during the intersessional period appraise the alternatives, meet informally to explore possible accommodations that go beyond stated positions, and supply their delegates with instructions that permit a successful negotiation.

A multilateral convention of unparalleled complexity affecting some of our nation's most vital economic and strategic interests is within our reach. We cannot and will not sign just any Treaty; but in my judgment we would be terribly remiss in our responsibilities to the United States and to the international community as a whole if we were now to overlook broader and longer-range perspectives. In the year ahead we intend to work diligently and carefully for a Convention that will protect our interests in the broadest sense of that term. In this endeavor, Mr. Chairman, we trust that we shall have the guidance and support of the Congress and of your Committee.

Through our mutual cooperative efforts I am certain that we can take the necessary steps and develop constructive initiatives so that all will agree that the United States has done all it could to foster a successful outcome of the Third United Nations Conference on the Law of the Sea on schedule in 1975.

Thank you, Mr. Chairman.

STATEMENT OF JOHN NORTON MOORE, CHAIRMAN, THE NATIONAL SECURITY COUNCIL INTERAGENCY TASK FORCE ON THE LAW OF THE SEA AND DEPUTY SPECIAL REPRESENTATIVE OF THE PRESIDENT FOR THE LAW OF THE SEA CONFERENCE, ACCOMPANIED BY HON. HOWARD W. POLLOCK, DEPUTY ADMINISTRATOR OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE; WILLIAM SULLIVAN, ACTING COORDINATOR OF OCEAN AFFAIRS, DEPARTMENT OF STATE

Senator SPARKMAN. Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

Mr. Chairman, and distinguished members of this committee, it is a particular pleasure to appear before this committee to testify for the

executive branch on two bills of fundamental importance to U.S. oceans policy. With your permission, I would like to place my prepared remarks in the record and briefly highlight the central issues.

Senator SPARKMAN. We will be happy to include your statement in the record.

Mr. MOORE. Ambassador Stevenson has just described the ongoing efforts to reach international agreement at the Third United Nations Conference on the Law of the Sea. With these bills, which would unilaterally extend the fishing jurisdiction of the United States, we face what may well be the most important oceans policy decision in the history of the Nation. How we decide may deeply affect the foreign relations of our country.

Is U.S. oceans policy to be pursued through cooperative efforts at international agreement or is it to be pursued through unilateral national measures risking an irreversible pattern of competing national claims?

PROBLEM FROM EXPANDED FOREIGN FISHING PRESSURE

Mr. Chairman, in posing the issue as starkly as this, I am deeply appreciative of the very real problems confronting our coastal and anadromous stocks, particularly those off the Atlantic and Pacific coasts.

The report of the Commerce Committee clearly illustrates the seriousness of this problem from expanded foreign fishing pressure as has the testimony this morning from Senators Magnuson and Stevens and the statements of Senators Muskie and Pell.

To see the problems at first hand, I recently overflew the foreign fleets fishing off Alaska in the Bering Sea, and I can attest that the magnitude of the fishing pressure was very real indeed. As such I am completely appreciative of the problem that has given rise to the legislation that this committee is considering.

COMPREHENSIVE NEW OCEANS TREATY

But the solution to the problem is a comprehensive new oceans treaty, a treaty which will place management jurisdiction over coastal species in the coastal State and which would give the United States jurisdiction over our coastal species, at least to 200 miles off our coast.

Such a treaty should also place jurisdiction in the host State for anadromous species, the salmon, throughout the range of those species on the high seas, and it would place highly migratory species, such as tuna, which do not live in the waters of any one particular coastal State, under regional or international management.

Mr. Chairman, if the other issues are satisfactorily resolved in the Law of the Sea Conference, that Conference offers every promise of solving the coastal and anadromous fisheries problems which have prompted the legislation before this committee.

There is simply overwhelming support in the Conference for the concept of some version of a 200-mile economic zone and all of those versions would give coastal States broad management jurisdiction over coastal species.

TIMING OF ACHIEVING INTERNATIONAL AGREEMENT

I also understand the frustration with respect to the timing of achieving international agreement. The process of internal agreement is long and difficult. There have been several earlier conferences held, but for a variety of reasons realistic expectations of concluding a treaty at the present time are different from what we have seen before. There is a realistic expectation that we can have a comprehensive treaty on the law of the sea within a matter of months.

STEPS TO ALLEVIATE INTERIM FISHERIES PROBLEM

Mr. Chairman, in the meantime, a number of steps are being taken to alleviate our interim fisheries problems.

First, we are actively pursuing bilateral and limited multilateral solutions to assist with this problem. Senator Muskie has described the nature of some of those efforts off the eastern coast of the United States within ICNAF, and also some of the problems that we have in enforcement of that ICNAF agreement. Enforcement has been a problem and we are making every effort to improve the situation.

The administration is preparing a statement for the record on these efforts to protect our stocks in the interim through bilateral and limited multilateral solutions, and with your permission, Mr. Chairman, we will submit that statement for the record.

Senator SPARKMAN. Without objection.

[The information referred to follows:]

STATUS OF MAJOR FISHERIES STOCKS OFF U.S. COASTS AND ONGOING INTERNATIONAL MANAGEMENT ACTIVITIES

[Supplied by U.S. Department of Commerce, National Oceanic and Atmospheric Administration]

Since the turn of the century, there has been a rapid increase in the utilization of living resources of the oceans, and during the past 72 years, the world-wide harvest of marine fishes has increased fifteen-fold, with the current catch in the vicinity of 70 million metric tons. The potential annual yield of traditional fisheries resources from the oceans is now estimated to be in the vicinity of 100–150 million metric tons; it has been estimated that the upper limits of sustainable yield will be reached well before the year 2000.

While the importance of marine fish to most other countries is generally recognized, there is a tendency to underrate their importance to the United States. Americans are not traditionally fish eaters, with an annual direct consumption of only 12 pounds per capita, but the total utilization of fish and fish products in the United States is 85 pounds (live weight) per capita. The difference is largely accounted for by the use of fish meal in poultry and animal husbandry, which has been a major factor contributing to the relatively low cost of meat in this country. Hence, we are dependent in a major way on fish as a raw material, and this helps to account for the United States being the ranking importer of fish and fish products.

The oceans' living resources play an important role in human recreational activities and meet certain aesthetic needs. In 1972, for example, Americans spent 17 million man-days fishing for marine sport fish and their catch accounted for about 7.4 pounds of fish per capita.

The rising demand for fish over the past several decades has led to increased exploitation of ocean fishes, thus intensifying problems concerned with conservation of resources and in achieving national and international social and economic objectives. Failure to resolve these problems has (1) led to biological and economic waste, (2) diminished the biological productivity of a number of important commercial fish species, (3) introduced a variety of social and economic

problems to fishing nations of the world, and (4) heightened international tensions between major fishing nations, as well as between developed and developing countries of the world. The failures of management can be associated with archaic institutional constraints, conflicting interest of user groups, fragmentation of jurisdiction at the national and international levels, excessive demands for precise scientific information, the validity of which must be accepted by all user groups, and delays in developing management systems, which have led to biological and economic overfishing and overcapitalization.

The volume of fish harvested off the U.S. coast has increased dramatically in 25 years from 2.0 million metric tons (MMT) in 1948, to 5.0 MMT in 1972. Almost all this additional catch has gone to foreign fishermen in their worldwide search for further protein supplies. The growth in U.S. demand, therefore, has been supplied by imports. This multiplying fishing pressure and the lack of effective management has resulted in overfishing of several important species. Management of fisheries resources within the territorial seas lies mainly with states whose policies, interests, and authorities often result in conflicting and inefficient regulations. Moreover, the roles of state and Federal governments in management in the contiguous zones have not always been clearly defined, leading in some cases to a management vacuum. International fisheries resources off the coasts of the U.S. have been managed through 8 international commissions and 12 bilateral agreements.

In the case of international commissions, agreement has been by consensus; bilaterals have been negotiated, where multilateral agreements have not been applicable. None of these commissions or bilaterals has resulted in fully satisfactory arrangments for the resources or our U.S. sport and commercial fishermen. Largely as a result of these arrangements, characterized as being too-little, too-late, there has been a serious depletion of some major fisheries stocks of the U.S. coastal fishery resources and a major deterioration of some important segments of the fishing industry.

The amount and variety of fishes found in the oceans adjacent to the U.S. and in our estuaries are enormous. The American Fisheries Society has indentified by common name over 2,000 species of finfish in the inland and ocean waters of the U.S. and Canada. U.S. commercial landings of about 170 species of finfish and 50 species of shellfish are reported annually. Present limited reports identify about 78 species groups as forming the basis of marine angling. It is estimated that the potential harvest off the U.S. coast is around 18.5 million metric tons. In 1972, the U.S. and foreign fleets caught around 5.0 million metric tons.

To take advantage of these abundant fisheries resources off our coasts, many nations have built and equipped huge fleets, which are capable of sustained large-scale operations in waters distant from their home bases. This has resulted in large, often subsidized foreign fleets fishing intensively just outside the U.S. contiguous fisheries zone (CFZ) in many instances on stocks historically harvested by U.S. fishermen, or stocks of potential interest to U.S. fishermen.

Fisheries stocks are continually self-renewing and may be harvested regularly in moderation. However, continued overfishing of a resource can lead to severe and possibly lasting damage. Since the advent of large foreign fleets off New England, the total haddock harvest decreased from about 249 thousand metric tons in 1965, to 26 thousand metric tons in 1972. A zero quota was established, but foreign fishing still continues with limited effective controls. In the North Pacific, halibut stocks are at a low level, with a U.S.-Canada catch of 14 thousand metric tons in 1973, compared to 29 thousand metric tons in 1963.

U.S. efforts through the International Pacific Halibut Commission (IPHC) have been influential in initiatives concerned with foreign trawling activities and small successes have been achieved in this area. However, incidental foreign catches still present a serious problem to the conservation of the halibut resource. Thus, the stock's ability to respond to remedial measures may be lost by continuation of largely uncontrolled foreign fisheries.

A further indication of the tremendous increase in foreign fishing off our coasts can be seen from a look at Japan's historical fishery record in the North Pacific. In 1954, the Japanese catch totalled 13,000 metric tons; whereas, in 1972, the catch had risen to 2.3 million metric tons. Virtually all of these fish were taken within 200 miles of the U.S. coast. Japan, incidentally, takes by far the greatest percentage of the total foreign catch off our U.S. coast in the Pacific Ocean.

To a very large degree, the impact of foreign fishing has resulted in the depletion of over twenty U.S. fisheries species. This estimate may be too low, since in many cases, adequate data for sound assessment are not available or not in a usable form.

The list of overfished and depleted stocks in the Pacific includes the halibut, pollock, sablefish, yellowfin sole, black cod, ocean perch, Alaska shrimp, and king and tanner crabs.

Apart from the serious effects of this concentrated harvest on stocks, damage to U.S. fishermen's gear and damage to nursery stocks of fish not sought, but important to the U.S. fleet, frequently occurs.

While the number of species damaged by distant-water fishing along the Atlantic coast may not be as long, the impact has been, in many ways, even more dramatic, since it includes several traditional fisheries which have been carried on for many decades by American fishermen. Two outstanding examples have been the depletion of the haddock off New England and the possible destruction of the river herring in the middle Atlantic area. Other Atlantic stocks severely damaged or threatened include herring, yellowtail flounder, and redfish.

The solution to these fishery problems is a new comprehensive Law of the Sea Treaty. In fact fisheries stocks off the U.S. coast can be most effectively managed and conserved only by a comprehensive Law of the Sea Treaty. In the meantime, a number of measures have been taken to protect these stocks between now and the implementation of the Treaty. Steps have been undertaken to strengthen the present arrangements to make them more effective and additional initiatives will be pursued during the next several months to continue this course of action. The following examples are illustrative of actions that have been taken recently and objectives that will be pursued in the near future.

Considerable effort has been directed toward strengthening the *International Commission for the Northwest Atlantic Fisheries*, which involves 17 nations that conduct extensive fisheries off the eastern coast of the U.S. and Canada. Last year, the U.S. was able to achieve an overall catch quota program designed to permit stocks to recover to levels permitting maximum sustainable yield within a 3-year period. The overall quota was set below the sum of individual species, or stock quotas, to force more selective fishing and minimize longstanding incidental catch problems. The intermixing of species, particularly characteristic of the Georges Bank area, makes it impossible to implement species quotas accurately or effectively. The so-called two-tiered quota is a management method which encompasses the entire ecosystem for the area under consideration.

Gear regulations were also adopted to force selective fishing and additional regulations to afford greater protection are on the agenda this fall. International enforcement measures, while still short of U.S. objectives, have come a long way over the past few years. Boarding and inspection of vessels of participating countries are carried out on a routine basis. It was largely the result of such inspections that recent violations involving Spanish, West German, and United Kingdom vessels were discovered and brought to the attention of flag-state authorities. At a special meeting scheduled this fall for members of Panel 5 who are engaged in fishing in areas off the U.S. coast, the U.S. will seek amendment of existing gear restriction controls, area closures, and modification of the exemption provision for regulated trawl fisheries and stocks under a zero quota. These initiatives concern haddock and yellowtail flounder stocks, which are evidencing serious difficulties due to foreign as well as domestic pressures.

The problem of the depletion of halibut stocks in the eastern Bering Sea and the Gulf of Alaska continues to be a major concern to the Federal Government. Faced with serious declines in the catches of North American set-line fishermen, the Governments of Canada and the U.S. recently obtained the cooperation of Japan in taking voluntary measures in the eastern Bering Sea to reduce the incidental catch of halibut by Japanese trawelers. These measures were taken in addition to measures adopted by Japan, Canada, and the U.S., under the auspices of the *International North Pacific Fisheries Commission*. Subsequently, Canada and the U.S. approached the Soviet Union, urging the adoption of appropriate conservation measures similar to those already adopted by Japan, and also to take appropriate steps to reduce the incidental catch of halibut in the

Gulf of Alaska, where increased trawling efforts with a substantial incidental catch of halibut were observed earlier this year.

The Soviets agreed to undertake joint scientific cooperation to assess the problem and discuss within the next several months appropriate measures to deal with the problem. One of the continuing U.S. objectives is to seek adequate joint and voluntary measures to protect halibut. This will not only be done within the framework of the *International North Pacific Fisheries Commission*, but also through discussions with those countries not members of that Commission. Other objectives within the *International North Pacific Fisheries Commission* are to reduce fishing effort on several stocks which are believed to be overfished (such as pollock, Pacific ocean perch, black cod, and herring), to pursue additional measures needed to protect western Alaska salmon (Bristol Bay), to commence studies on groundfish (other than halibut) in the Bering Sea and to seek conservation measures concerning these groundfish.

U.S. efforts through the *International Pacific Halibut Commission*, which involves Canada and the U.S., have also been influential in initiatives concerned with foreign trawling activities in the eastern Bering Sea and Gulf of Alaska, where the incidental catch of halibut presents a serious problem. This is, again, another means of exerting pressure to achieve needed protection.

Since the mid-sixties, the U.S. has entered into a number of bilateral agreements to protect U.S. interests in the coastal fisheries lying outside the contiguous fisheries zone. These agreements involve the U.S.S.R., Japan, Canada, the Republic of Korea, Poland, and Romania. The objective has been to provide workable arrangements to protect established U.S. fisheries and to foster conservation for stocks of interest to the U.S. which fell outside established international fisheries commissions or involved non-members of these commissions. Under these arrangements, the U.S. has sought to reduce fishing effort on stocks that were under great pressure, assure provisions for adequate scientific and biological assessment to enable the development of rational catch limitations, to ensure that catch and effort limitations and other provisions are adequately enforced, and to provide measures to reduce interference by foreign trawlers of established U.S. coastal fisheries.

An international agreement with Brazil provides access for U.S. vessels and for conservation of shrimp in coastal waters off Brazil. These arrangements appear satisfactory from both the standpoint of Brazil and the U.S.

New guidelines have also been formulated concerning enforcement procedures relating to continental shelf fishery resources. These guidelines, which provide for agreements concerning procedures to reduce and control incidental catches, as well as enforcement procedures, were recently communicated to foreign governments whose vessels fish above the continental shelf of the United States. The substance of the guidelines is contained in the letter addressed to Senator Magnuson on September 5, 1974, and is a part of the record.

In addition to pursuing a course of strengthening the present arrangements, the U.S. intends to initiate at an early date, multilateral discussions with all countries fishing in the eastern Bering Sea and the eastern North Pacific Ocean, to develop arrangements for cooperative collection and analyses of biological data to permit quality conservation and management decisions. Our major concern is the increasing level of foreign fishing activities on stocks of present or potential importance to American fishermen and the lack of adequate information to allow for timely assessments and, consequently, followup with needed actions whenever this may be necessary.

BILATERAL AND LIMITED EFFORTS TO ALLEVIATE INTERIM FISHERIES PROBLEM

Mr. MOORE. I am also accompanied this morning by the Honorable Howard Pollack, the Deputy Administrator of NOAA, and by Mr. William Sullivan, the Acting Coordinator of Ocean Affairs of the Department of State. They are prepared to discuss these bilateral and limited multilateral efforts to alleviate this interim problem.

Second, Mr. Chairman, to deal with the interim problem we have proposed in the Conference that the fisheries as well as certain other aspects of the new law of the sea treaty should be provisionally applied. That is, that they should go into force as soon as the treaty is signed without waiting for the treaty to come into full legal force after the appropriate number of ratifications. We will, of course, consult with this committee and the Congress as to how provisional application should be effectuated.

Third, we are today announcing a significant new enforcement procedure for the protection of our coastal resources. These are contained in the letter referred to by Senator Magnuson which was sent to him this morning and which has been appended to my testimony.

These new enforcement procedures will enable more liberal boarding practices whenever foreign ships are fishing with bottom gear which would normally result in the taking of Continental Shelf fishery resources.

Senator MUSKIE. Will you yield for a point of clarification? I assume that your new procedure will apply only to the 12-mile zone and not to the 200?

Mr. MOORE. The new procedures would apply throughout the range of the U.S. Continental Shelf where there would be a taking or a use of bottom gear which would normally take Continental Shelf living resources. It would go beyond the 12-mile fisheries contiguous zone.

Senator MUSKIE. It would go out to 200 miles?

Mr. MOORE. In situations where the Continental Shelf were to go beyond 200 miles, it would, of course, follow the Continental Shelf.

Senator MUSKIE. I will pursue this later but the letter was not explicit on that point and I thought it would be helpful at this point to understand that.

Mr. MOORE. Yes.

Second, these new procedures will require that those foreign nations using such bottom gear would be required to enter into agreements with the United States for the protection of our Continental Shelf fishery resources.

These new measures, though far reaching, are consistent with international law as set out in the present 1958 Continental Shelf Convention, but because of their potentially severe impact on foreign fishing off the United States, they will not be placed into effect for a 90-day grace period.

SITUATION REGARDING RELATIONS WITH RUSSIA

Senator CASE. What is the situation with regard to our relations with Russia in particular?

Mr. MOORE. The Soviet Union is a party to the 1958 Continental Shelf Convention. In fact, most of the states fishing off our coast, unlike the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, are a party to the 1958 Continental Shelf Convention. So this is one of the major differences between this approach and proceeding under either of the other two approaches represented by legislation before the committee.

We are also studying the availability of means to provide increased enforcement to protect our coastal and anadromous species in particularly vulnerable areas.

REASONS EXECUTIVE BRANCH OPPOSES S. 1988

Despite these interim problems in protecting our fish stocks, the executive branch is strongly opposed to enactment of legislation such as S. 1988 which would unilaterally extend U.S. fishing jurisdiction. We believe that such unilateral action would be seriously harmful to our oceans and foreign relations interests in at least five principal ways.

First, it has been counter to U.S. oceans policy ever since the Truman proclamation concerning Continental Shelf resources to have unilateral extensions of national jurisdiction. We have consistently protested such unilateral extensions and we feel that such claims cannot be controlled. That is, if a claim were to be made by the United States with respect to fishing resources, some other nation may, for example, make a claim with respect to a 200-mile territorial sea, or they might make a claim with respect to the control of navigation, which is vital to the United States, either in the security field or with respect to the movement of energy supplies to the United States. They might also make claim which would interfere with the freedom of marine scientific research on the world's oceans or a variety of other damaging claims. U.S. leadership and the U.S. role in the world makes any unilateral action by the United States of particular significance. Extension by other nations following the example of the United States, where we were to unilaterally extend our jurisdiction, is not merely a theoretical concern. We have carefully taken soundings both from our embassies and at the Law of the Sea Conference in Caracas and it is our feeling that a unilateral step by the United States at this time would have been highly likely to trigger additional claims by other nations.

Second, a unilateral extension of fisheries jurisdiction pursuant to S. 1988 would be seriously harmful to important foreign relations interests of our Nation.

Such a unilateral extension could cause a confrontation with the Soviet Union, Japan, or other nations which are the principal distant water fishing nations within this 200-mile area off the United States.

Such a unilateral extension could also threaten existing distant water U.S. fishing interests and seem certain to insure continuation of the disputes such as those we have had with Equador and Peru concerning our distant water tuna fishing interests.

Our national interest is also strongly to encourage cooperative solutions to our oceans and other foreign relations problems. To go unilateral in this area would have grave implications for our conflict management efforts in general.

Again, this is not merely a theoretical problem, as we have seen from the lesser 50 miles unilateral extension by Iceland of its jurisdiction over fisheries. This action did precipitate the recent Cod War between the United Kingdom and Iceland.

Third, S. 1988 is not compatible with existing international law, and particularly with the 1958 Convention on the High Seas.

The United States has consistently protested extensions of fishing jurisdiction beyond 12 miles. Moreover, the International Court of Justice held only last July in two cases arising from the Cod War that Iceland's 50-mile fisheries extension was not consistent with the legal rights of the United Kingdom and the Federal Republic of Germany.

It seems particularly inappropriate in view of the International Court of Justice ruling for the United States to extend its jurisdiction unilaterally at a time when a new international agreement can be reasonably expected and is in the process of intensive negotiation.

WHY EXECUTIVE BRANCH OPPOSES S. 1988

Fourth, unilateral extension of our jurisdiction by this legislation would pose serious risks for our fisheries interests. Lasting protection of our coastal stocks and anadromous stocks requires a comprehensive multilateral agreement.

The only way to solve the common pool problem in global fisheries is a comprehensive agreement dealing on a rational basis with the different kinds of species.

Unilateral action could also deter long-run solutions or even interim solutions in the form of bilaterals with the States that are now fishing off our coasts, or endanger existing fishery agreements. For example, should a unilateral extension amount to a violation of existing agreements permitting other nations in turn to abrogate their existing bilateral or other agreements with the United States, then passage of this legislation could endanger those existing agreements.

Passage would also pose risks for our distant water tuna industry. Highly migratory species such as tuna need to be managed on a different basis and we are trying to encourage a more rational way of dealing with the problem than simply 200-mile unilateral claims.

Similarly, we have important distant water coastal fishing interest, for example, our shrimp industry. We feel that the example of a 200-mile extension, despite being carefully drawn to include the principle of full utilization on highly migratory species would present a substantial risk to these distant water coastal fishing interests.

We also feel that it would be more difficult in the Law of the Sea Conference to achieve meaningful guarantees binding on all nations for conservation of living resources if this legislation were passed. It is important that all nations be willing to accept such conservation obligations in their extensions of jurisdiction and the way to get such an obligation is through appropriate international agreement, not by unilateral action.

Finally, Mr. Chairman, unilateral extension by legislation such as S. 1988, could seriously undercut efforts to conclude the Law of the Sea Treaty. If a wave of unilateral action and ocean claims is precipitated by other states, such action once taken is very difficult to undo. It would tend to harden positions which would make it extremely difficult to have the kind of compromise that is in the interest of all nations.

Passage could also detract attention from the negotiations in the upcoming session of the Conference and turn attention to a series of debates on the merits of the unilateral action as opposed to the hard task of negotiating a compromise on an effective oceans law treaty.

Last, it could undermine the political compromise necessary for the package treaty which is shaping up in the negotiations. If some nations feel that it is possible to get the interests which they seek by unilateral action, particularly without the necessity to reach agreement on the other issues, then it is entirely possible that we will be back into the existing situation we have now of a series of different agreements in which nations are free to pick and choose among them, rather than a comprehensive new oceans law treaty.

S. 3783

I would like, in closing, to say a brief word about S. 3783, introduced by the chairman of this committee. This bill, because it is apparently intended to be based on article 7 of the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, is not potentially as objectionable as S. 1988. As it stands, of course, it does attempt to apply U.S. jurisdiction to non-parties to the agreement; that is, the Soviet Union and Japan, which in this case are not parties to the 1958 Geneva Convention on Fishing and Conservation on the High Seas.

Senator JAVITS. Could we ask a question at that point? I thought you said before that the Soviet Union was a party to the 1958 agreement.

Mr. MOORE. The difference is between the Convention on the Continental Shelf, which is also a 1958 Geneva convention, in which the Soviet Union is a party, and in which it is lawful for us to take the recent measures that we are announcing today, and the situation under the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, in which the Soviet Union is not a party.

Senator JAVITS. That is a very important point, I think. Would you be good enough, with the Chair's permission, to give us a tech nical memorandum specifying the differences? Would you be good enough to do that?

Mr. MOORE. I would be pleased to do that.

Senator JAVITS. I think that is of critical importance. We are deeply affected like everybody else because we are such big consumers in New York.

So I congratulate my colleagues like Senator Pell and Senator Muskie and Senator Case, and we want to support all their efforts, but I think this technical point could prove very important.

Mr. MOORE. We would be pleased to do that, Senator, as well as to work with this committee and the other concerned committees to see whether some legislation might be possible which could be built, with appropriate modifications on S. 3783, but which would build on existing international law rather than constituting a unilateral action that would have the costs which we have enumerated.

Senator JAVITS. I ask unanimous consent that that reply may be incorporated.

Senator PELL [now presiding]. Without objection.

[The information referred to follows:]

PROTECTION OF LIVING RESOURCES OF THE OCEANS BEYOND THE CONTIGUOUS FISHERIES ZONE

(Memorandum supplied by Department of State)

On July 25, 1974, the International Court of Justice stated that the extension of the fisheries jurisdiction of a coastal state to a twelve-mile zone contiguous to the coast now appears to be generally accepted as customary international law. *Fisheries Jurisdiction* (United Kingdom v. Iceland), Merits, Judgment, I.C.J. Reports 1974, p. 3, 23; *Fisheries Jurisdiction* (Federal Republic of Germany v. Iceland), Merits, Judgment, I.C.J. Reports 1974, p. 175, 192. Iceland's unilateral claim to a 50-mile contiguous fisheries zone was held to constitute an infringement of the principle enshrined in Article 2 of the 1958 Geneva Convention on the High Seas (TIAS 5969), which requires that all states, including coastal states, pay reasonable regard to the interests of other states in the exercise of their freedom of fishing on the high seas, in this case the historic fishing rights of the United Kingdom. United Kingdom v. Iceland at 29; Federal Republic of Germany v. Iceland at 198. The Court further declared that any rights over fisheries that a state may seek in adjacent areas of the high seas must be implemented by agreement between the states concerned. United Kingdom v. Iceland at 25–26; Federal Republic of Germany v. Iceland at 194.

While several coastal states have unilaterally claimed fisheries jurisdiction or territorial seas in broad areas adjacent to their coasts, the United States and others have consistently protested every extension of fisheries jurisdiction beyond twelve miles and every extension of the territorial sea beyond three miles. The basis of these protests has been that any such unilateral extension of coastal state jurisdiction is a violation of international law.

The question then arises, in light of the need to protect coastal fisheries stocks from depletion pending the outcome of the Third United Nations Conference on the Law of the Sea, what steps may a coastal state take consistent with existing international law?

First, a coastal state may undertake negotiations with any state or states for the purpose of achieving bilateral or multilateral agreement on conservation measures to be taken.

Second, a coastal state may take reasonable measures, in the exercise of its sovereign right to explore and exploit the natural resources of its continental shelf, to avert the taking of living organisms belonging to sedentary species by nationals of other states without the express consent of the coastal state. The legal basis for such measures is the continental shelf doctrine, which is widely recognized to be customary international law, as codified in the 1958 Geneva Convention on the Continental Shelf (TIAS 5578). This is because the coastal state's rights to living organisms belonging to sedentary species (otherwise known as continental shelf fishery resources) are exclusive in the sense that if the coastal state does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal state. *See* Convention on the Continental Shelf, Article 2, paragraph 2; *North Sea Continental Shelf*, Judgment, I.C.J. Reports 1969, p. 3, 22. Of course, any steps taken by the coastal state in the exercise of these rights must not result in any unjustifiable interference with navigation, fishing or the conservation of living resources of the sea. *See* Convention on the Continental Shelf, Article 5, paragraph 1.

An example of reasonable steps taken to avert the taking of living organisms belonging to sedentary species is the plan for enforcement of the United States' rights to continental shelf fishery resources contained in the diplomatic note of September 5, 1974 circulated by the United States to the governments whose fishermen are known to fish in the waters adjacent to the coast of the United States.

Third, a coastal state may take unilateral measures of conservation within the meaning of and pursuant to Article 7 of the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas (TIAS 5969).

Such measures differ fundamentally from measures taken to avert the taking of continental shelf fisheries resources pursuant to the continental shelf doctrine in that Article 7 unilateral measures of conservation relate to living resources of the high seas which are not subject to the jurisdiction of any state rather than to sedentary species which are subject to coastal state jurisdiction. Furthermore, Article 7 was not a codification of customary international law and has not been used to assert unilateral measures against states not party to the Convention on Fishing and Conservation of the Living Resources of the High Seas.

Unilateral measures of conservation pursuant to Article 7 must meet four conditions to be recognized as valid: (1) prior to adoption, negotiations with the other states concerned with a view to the maintenance of the productivity of any stock of fish or other marine resource in the relevant area of the high seas have not led to an agreement within six months; (2) here is a need for urgent application of conservation measures; (3) the measures adopted are based upon appropriate scientific findings; and (4) such measures do not discriminate in form or in fact against foreign fishermen.

The United States (with an understanding) and the following states are parties to the Convention on Fishing and Conservation of the Living Resources of the High Seas: Australia, Belgium, Cambodia, Colombia, Denmark (with a reservation), Dominican Republic, Fiji, Finland, France, Haiti, Jamaica, Kenya, Lesotho (notification that it considers itself bound), Madagascar, Malawi, Malagsia, Mauritius, Mexico, The Netherlands, Nigeria, Portugal, Sierra Leone, South Africa, Spain (with a statement), Switzerland, Thailand, Tongo, Trinidad and Tobago, Uganda, The United Kingdom (with a statement), Upper Volta, Venezuela and Yugoslavia.

CHOICE: COOPERATIVE OR UNILATERAL SOLUTIONS

Mr. MOORE. In conclusion, Mr. Chairman, this committee, the Congress, and the Nation are faced with a fundamental choice. That choice is, are we to pursue cooperative efforts at solutions to our oceans and foreign relations problems, even when the going is rough, and the pace slower than we would like, or are we to pursue unilateral policies destined to lead to escalating conflict in the oceans? The overall oceans interest of our Nation, our foreign relations interests, compliance with our international legal obligations, our fisheries interests themselves, and our interests in concluding a timely and successful Law of the Sea Treaty, all require that we firmly set our course toward cooperative solutions. Thank you.

[Mr. Moore's prepared statement follows:]

PREPARED STATEMENT OF JOHN NORTON MOORE

Mr. Chairman, it is a particular pleasure to appear before this Committee to testify for the executive branch on two bills of fundamental importance to United States oceans policy. Both bills raise questions deeply affecting the foreign relations of the nation as well as our fishery and other ocean interests. They also pose a stark choice for our policy toward an area covering more than two-thirds of the surface of the earth. Is United States oceans policy to be pursued through cooperative efforts at international agreement? Or is it to be pursued through unilateral national measures risking an irreversable pattern of conflicting national claims?

In testifying on these bills, I am appreciative of the outstanding service the sponsors of this legislation have continually rendered to the nation in fishery and other ocean matters. I am also appreciative of the very real problems confronting coastal and anadromous species off our coasts. This increased pressure is part of a global trend which in the absence of an adequate international legal framework for fisheries jurisdiction has in many areas led to over-exploitation. The depletion of the haddock stock off our Atlantic coast is an example.

The principal problem in the present pattern of international fisheries jurisdiction is that management jurisdiction does not generally coincide with the

range of the stocks. As such any effort at sound management and conservation confronts the classic "common pool problem" similar to that experienced in the early days of the east Texas oil fields. That is, in the absence of agreement, it is not in the interest of any producer acting alone to conserve the resource. The solution to this common pool problem in fisheries is broadly based international agreement providing coastal states with management jurisdiction over coastal and anadromous species with highly migratory species managed by appropriate regional or international organizations.

For the first time in the history of oceans law it is realistic to expect such a broadly based agreement covering fisheries jurisdiction. After lengthy preparatory work in the United Nations Seabed Committee, the Third United Nations Conference on the Law of the Sea has recently completed its first substantive session held in Caracas, Venezuela from June 20 to August 29. If other issues are satisfactorily resolved the Conference offers every promise of solving the coastal and anadromous fisheries problems which prompted the bills before this Committee.

The strong trend in the Conference is for acceptance of a 200-mile economic zone providing coastal states with jurisdiction over coastal fisheries in a 200-mile area off their coast. There is also considerable support for host state control of anadromous species throughout their migratory range and growing support for special provisions on international and regional management of highly migratory species. In this connection the United States Delegation has indicated that we can accept and indeed would welcome the 200-mile economic zone as part of a satisfactory overall treaty which also protects our other oceans interests, including unimpeded transit of straits used for international navigation.

It is also realistic to expect a broadly based oceans treaty in the near future. The General Assembly Resolution which established the Law of the Sea Conference provided that any subsequent session or sessions necessary after the Caracas session would be held no later than 1975. Pursuant to this schedule, the Caracas session of the Conference agreed on a second session to be held in Geneva from March 17 to May 3–10, 1975. It also agreed that the formal signing session will take place in Caracas, with July and August 1975 discussed in this regard. We believe that it is important to adhere to this Conference schedule.

Even on this schedule, it is, of course, also important that we prevent further depletion of our coastal and anadromous stocks before the new Law of the Sea Treaty comes into force. We are taking several important steps to meet this need.

First, we are actively pursuing bilateral and limited multilateral approaches for the protection of our stocks. Progress has been significant in recent months, and we intend to continue to vigorously pursue improved protection bilaterally and within regional fisheries commissions.

For the information of the Committee the Administration is preparing and will shortly submit for the record a report on the present condition of our coastal and anadromous stocks and efforts to provide increased interim protection to those stocks. I am accompanied by the Honorable Howard Pollack, Deputy Administrator of the National Oceanic and Atmospheric Administration, Department of Commerce and Mr. William Sullivan, Acting Coordinator of Ocean Affairs, Department of State, who are prepared to answer questions on these and future efforts to protect our coastal and anadromous stocks in the interim period before a new Law of the Sea Treaty is applied.

Second, we have proposed that the fisheries as well as certain other provisions of the new Law of the Sea Treaty should be applied on a provisional basis. That is, they should be applied after signature of the new treaty but before waiting for the process of ratification to bring the treaty into full legal effect. Provisional application is a recognized concept of international law and our proposal was favorably received. We will, of course, consult closely with the Congress as to how provisional application is to be effectuated.

Third, we are today announcing a significant new measure to provide increased protection for our stocks until the new Law of the Sea Treaty can be fully applied. That is, new enforcement procedures to substantially tighten control over the incidental catch of living resources from the United States continental shelf. In addition, we are carefully reviewing the availability of means to make possible increased Coast Guard enforcement efforts to protect our coastal and anadromous species in particularly vulnerable areas.

Attached is a letter to Senator Magnuson setting out the new enforcement measures for tighter control over incidental catches of U.S. continental shelf

resources. Because of their potentially severe impact of foreign nations fishing over our continental shelf, these far reaching new measures will go into effect only after a 90 day grace period to enable affected nations to adjust their fishing methods or to conclude agreements further protecting our living resources. We are today notifying affected states of these new measures.

These new procedures will provide substantial increased protection to our valuable living resources. We believe that they are entirely justified by existing international law and that jurisdiction over the living resources of the continental shelf carries with it the right to require other states to enter into agreements for the protection of such resources if they are taken during fishing for nonshelf stocks as well as if the taking of such shelf resources is intentional.

An expanded enforcement effort by the Coast Guard would also help ensure compliance with existing regulations and will assist in the transition from the present limited fisheries jurisdiction to the broader jurisdiction which is the likely outcome of a successful Law of the Sea Conference.

Despite the interim problem in protection of our coastal and anadromous stocks, the Executive Branch is strongly opposed to the enactment of legislation such as S. 1988 which would unilaterally extend United States fisheries jurisdiction. Enactment of this legislation would not satisfactorily resolve our fisheries problems, would at most merely anticipate a result likely to emerge in a matter of months from a successful Law of the Sea Conference, and would be seriously harmful to United States oceans and foreign relations interests in at least five principal ways.

First, unilateral action extending national jurisdiction in the oceans is harmful to overall United States oceans interests and as such we have consistently protested any extension of fishery or other jurisdiction beyond recognized limits. A unilateral extension of jurisdiction for one purpose will not always be met by a similar extension but rather may encourage broader claims which could have serious implications, for example, with respect to our energy needs in transportation of hydrocarbons, our defense and national security interests in the unimpeded movement of vessels and aircraft on the worlds oceans, or our interest in the protection of marine scientific research rights in the oceans.

Because of our broad range of oceans interest and our leadership role in the world, an example of unilateral action by the United States would have a particularly severe impact upon the international community which could quickly lead to a crazy quilt of uncontrolled national claims. Indeed it was the threat of just such a result with its open ended invitation to conflicts and pressures on vital U.S. interests that led to a decision in two prior Administrations at the highest level of Government that U.S. ocean interests and the stability of the world community would best be served by a broadly supported international agreement. This Administration strongly agrees with that judgment. Soundings from our Embassies and at the Caracas session of the Law of the Sea Conference indicate that the possibility of unilateral claims by others is not merely an abstract concern should this legislation pass.

Second, enactment of legislation such as S. 1988 could be seriously damaging to important foreign policy objectives of the United States. Unilateral extension of our fisheries jurisdiction could place the nation in a confrontation with the Soviet Union, Japan and other distant water fishing nations fishing off our coasts. These nations strongly maintain the right to fish in high seas areas and are unlikely to acquiesce in unilateral claims, particularly during the course of sensitive law of the sea negotiations in which they have substantial interests at stake. The implications for détente and our relations with Japan are evident. In fact, both the Soviet Union and Japan have already expressed serious concern over this legislation to our principal negotiators at the Law of the Sea Conference.

Similarly, unilateral extension of our fisheries jurisdiction coupled with reliance on the Fishermen's Protective Act to protect threatened distant water fishing interests of the United States seem certain to assure continuation of disputes with Ecuador and Peru as well as to generate new disputes with other coastal states off whose coasts our nationals fish.

It is strongly in the national interest to encourage cooperative solutions to oceans problems rather than a pattern of competing national claims. A widely agreed comprehensive Law of the Sea Treaty will promote development of ocean uses and will reduce the chances of ocean disputes leading to conflict among nations. If these interests seem too theoretical we might recall the recent "Cod

War" between the United Kingdom and Iceland which resulted from a more modest Icelandic claim of a 50-mile fisheries contiguous zone.

Third, a unilateral extension of our fisheries jurisdiction beyond 12 miles would not be compatible with existing international law, and particularly with the Convention on the High Seas to which the United States and forty-five other nations are party. The United States has consistently protested any extension of fisheries jurisdiction beyond 12 miles as a violation of international law. And the International Court of Justice held only last month in two cases arising from the "Cod War" that the 50-mile unilateral extension of fisheries jurisdiction by Iceland was not consistent with the rights of the United Kingdom and the Federal Republic of Germany.

Mr. Chairman, what would we do if this bill were to become law and another country brings us before the International Court of Justice? Would we invoke our reservation and maintain that issues relating to the use of the seas up to 200-miles from our coast, or even hundreds of miles beyond this in the case of salmon, are exclusively within our domestic jurisdiction? Or would we respond on the merits and risk losing what we are certain to get from a widely accepted Law of the Sea Treaty?

Violation of our international legal obligations by encroaching on existing high seas freedoms can be seriously detrimental to a variety of oceans interests dependent on maintenance of shared community freedoms in the high seas. The appropriate way to change these obligations in order to deal with new circumstances is by agreement. It is particularly inappropriate to argue that a unilateral act contrary to these obligations is required by such circumstances when a widely supported agreement that resolves the problem is nearing completion. As this Committee knows, violation of our international legal obligations can have the most serious short and long run costs to the nation.

Fourth, a unilateral extension of our fisheries jurisdiction would pose serious risks for our fisheries interests. Protection of our coastal and anadromous stocks can only be achieved with the agreement of the states participating in the harvesting of those stocks. Unilateral action not only fails to achieve such agreement but it may also endanger existing fishery agreements and efforts to resolve the problem on a more lasting basis with such countries. Similarly, protection of our interests in fishing for highly migratory species such as tuna or coastal species such as shrimp where U.S. nationals may fish off the coasts of other nations can only be achieved through cooperative solutions. In short, we cannot expect to achieve acquiescence from states fishing off our coast, and we will harden the positions of other countries off whose coasts we fish. The resolution of old disputes will be made more difficult and their costs to our fishermen and our Government will continue. At the same time we will face new disputes off our own coast and elsewhere.

S. 1988 or other similar legislation unilaterally extending United States fisheries jurisdiction would provide others with an opportunity to make unilateral claims damaging to our distant water fishing interests despite any exceptions for highly migratory species or provisions for full utilization written into the legislation. If the United States can make a unilateral claim eliminating the freedom to fish on the high seas, it is difficult to assert that other nations are bound by the exceptions and provisions contained in our own legislation.

Moreover, even by its terms S. 1988 would include highly migratory species in the extension of coastal state jurisdiction where such species "are not managed pursuant to bilateral or multilateral fishery agreements." We should keep in mind that the principal countries with which we have disputes concerning jurisdiction over highly migratory species are not now parties to agreements relating to the management of such stocks.

A unilateral extension of fisheries jurisdiction by the United States could also make it more difficult to achieve meaningful guarantees such as those we are advocating at the Law of the Sea Conference binding on all nations for the conservation of the living resources of the oceans. Moreover, it could make more difficult acceptance of a rational basis for fisheries management; that is, jurisdiction over anadromous species in the host state and jurisdiction over highly migratory species in a regional or international organization. As such, legislation such as S. 1988, although intended to protect our fish stocks, could paradoxically, have the opposite effect not only on stocks off our coast but on fish stocks the world over.

Finally, passage at this time of legislation such as S. 1988 unilaterally extending the fisheries jurisdiction of the United States would seriously undercut the effort of all nations to achieve a comprehensive oceans law treaty. Our nation has urged particular care and restraint in avoiding new oceans claims during the course of the Third United Nations Conference on the Law of the Sea. A pattern of escalating unilateral claims during the Conference could destroy the delicate fabric of this most promising and difficult negotiation. It could also undermine the essential political compromise by which all nations would agree on a single package treaty. And by unilaterally taking action which we have said must be dependent on a satisfactory overall compromise, it could harm other United States oceans interests such as protection of vital navigational freedoms, marine scientific research, environmental goals, or economic interests such as a regime for deep seabed mining which will promote secure access to the minerals of the deep seabed area.

Mr. Chairman, these principal difficulties with legislation such as S. 1988 are in no sense alleviated by its emergency or interim nature. Section 11(B) of S. 1988 provides that the act would expire on such date as the Law of the Sea Treaty comes into force or is provisionally applied. Unfortunately, however, in the interim period the legislation would be simply a unilateral extension with all of the associated costs of unilateralism and with none of the benefits of a lasting solution. Moreover, this legislation could well prevent the agreement which is expected to supercede it.

In commenting on S. 1988 I have sought only to deal with the fundamental issue of unilateral extension of United States fisheries jurisdiction which is the central feature of this bill. The Executive Branch has not at this time taken a position on the fisheries management aspects of the bill. Similarly, I have not sought to discuss the specifics of S. 3783 which, because it is intended to be rooted in the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas, is potentially not as objectionable as S. 1988. The principal problem with S. 3783, of course, is that the most important nations fishing for our coastal and anadromous species, including the Soviet Union and Japan, are not parties to the 1958 Convention. With appropriate changes it is possible that S. 3783 or a similar measure rooted in existing international law could be a useful alternative to S. 1988 without the grave impact on our overall oceans and foreign relations interests. Accordingly before commenting further on S. 3783 the Executive Branch would welcome an opportunity for further study with the Congress with a view to examining the possibility of changes which might make S. 3783 acceptable.

Mr. Chairman, this Committee, the Congress, and the nation are faced with a fundamental choice. Are we to pursue cooperative efforts at solution to our oceans problems even when the going is rough and the pace slower than we would like? Or are we to pursue unilateral policies destined to lead to escalating conflict in the oceans?

The overall oceans interests of our nation, our foreign relations interests, compliance with our international legal obligations, our fisheries interests themselves, and our interest in concluding a timely and successful Law of the Sea Treaty all strongly require that we firmly set our course toward cooperative solutions. In any event, I am particularly heartened that this fundamental choice is being examined by this Committee, and trust that on this issue, as on all others, it will bring its understanding and experience to bear on the short and long range implications of this choice for the foreign relations of the nation.

Thank you, Mr. Chairman.

COMMENDATION OF WITNESSES

Senator PELL. Thank you very much, gentlemen.

Before I ask some questions, I would like to say a few words. I am pleased to have had the pleasure of hearing the distinguished members of the American delegation to the recent Law of the Sea Conference in Caracas. Their efforts, and their contribution to the Conference, have been noticed and appreciated by many Americans. There are few concerns before the world today that deserve more urgent attention.

U.S. ACTION PROTECTING FISH WITHOUT UNDERMINING INTERNATIONAL NEGOTIATIONS

The issue we are considering here today is not a simple one. I share the concern of many U.S. fishermen that the Government must move to protect their source of livelihood. At the same time, I support U.S. efforts at the Law of the Sea proceedings. The question must then be asked: How can the United States act to protect certain species of fish without undermining its commitment to the establishment of an orderly international law of the sea?

Certain facts must be kept in mind in attempting to answer this question. No final agreement emerged from Caracas. Realistically, although I am optimistic that a satisfactory agreement will ultimately materialize, it will be several years and perhaps longer before one does. But time is of the essence. I, for one, am afraid that there may not be any fish to save or fishing to regulate if steps to protect fish stocks are not taken immediately.

I am fully aware that any U.S. actions to regulate fishing that either in fact or appearance benefit U.S. fishermen to the detriment of foreign fishermen, will result in retaliatory actions by other nations. As a result, we must make clear that any controls regulating fishing distribute the burden fairly and even to all fishermen, regardless of nationality.

In the long run, it is in the interest of everyone concerned—United States, Japan, the Soviet Union—and the fish themselves—that proper action be taken to insure a lasting supply of fish. As a result, I am prepared to support legislation that is clearly conservation oriented and nondiscriminatory, with confidence that such legislation is fully consistent with our long-term aims regarding international law of the sea.

COMMENDATION OF AMBASSADOR STEVENSON, U.S. DELEGATION

At this time, I congratulate and thank Ambassador Stevenson for all of the work he has been doing. We in the committee know the family and personal sacrifice that he has undergone in taking on this responsibility, the respect and regard which he is held by other nations is seen and observed, and I trust very much he will be seeing this project through to conclusion. I want to congratulate the delegation on all of the work that they have done, because I think the press has given them scant credit. I read a column the other day talking about cocktails and sunning themselves. I never saw a group who worked harder starting from 9 in the morning to very often 1 in the next morning.

Senator CASE. They started before 9 a.m. That is the trouble.

ALTERNATIVES TO PROPOSED LEGISLATION

Senator PELL. Are there any alternatives to the legislation that we are proposing which are stronger than Senator Fulbright's legislation, any that would be acceptable?

For example, can you see an agreement covering the management of specific species of fish between the United States and the foreign nations actually being concluded? I realize there are conversations.

Can you see an agreement with the Soviets, an agreement with the Japanese, reaching conclusion within the next period of a few weeks?

Mr. STEVENSON. First, Mr. Chairman, let me thank you very much on behalf of myself and the delegation. I think we did have a very hard-working delegation this summer, and on behalf of them and their wives, I appreciate very much the correction that you have placed into the record as to their activities.

I think, Mr. Chairman, the alternative that we feel is by far the best alternative, is really a maximum effort to finish in 1975. I think there was some indication that if we would take the interim legislation, that then we could leisurely complete the treaty over a period of 2 or 3 or even 4 years. My perception is quite different. I think unless we get agreement next year, it is going to be increasingly difficult to get an international agreement, so that the interim legislation will tend to become permanent rather than interim. While, as I indicated, our progress in terms of agreement on concrete texts was not as much as we would have liked this summer, I think the groundwork has been prepared in all ways for this maximum effort next year, and what we do need is this Government attention to the problem at the highest level.

Now, on your concrete question about the interim or other approaches, Professor Moore did mention, and I think this is consistent with the maximum effort to finish next year, that we very much do favor provisional application, and this, of course, will require appropriate legislative arrangements. I personally would favor proceeding with that very promptly so we will have the necessary legislation in place for the provisional application of the fisheries provisions.

We have also suggested the same thing for the deep seabed. There may be other areas. So I certainly think that is highly desirable.

I also think that whatever we can do with respect to still further improvements in the ICNAF and other regional arrangements and through bilateral discussions with the Soviets and Japanese, should be vigorously pursued. In addition to the multilateral discussions that we were having in Caracas, we, of course, particularly in light of the visits of the representatives of this committee, have been talking to the Japanese and Soviets about trying to do something on an interim basis to relieve the pressure on our domestic fisheries.

As Professor Moore indicated, I think building on S. 3783 there certainly would be a possibility of doing something more.

POSSIBILITY OF BILATERAL AGREEMENT WITH RUSSIA OR JAPAN

Senator PELL. My question was more specific. Do you see any real possibility in the next few weeks of the conclusion of a bilateral agreement with either Russia or Japan?

Mr. STEVENSON. Not within the next few weeks.

BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

Senator PELL. Within the Department of State, they will be creating a Bureau of Oceans and International Environmental and Scientific Affairs, headed by an Assistant Secretary. As chairman of the

Oceans and International Subcommittee of the Foreign Relations Committee, I am very interested in that, and it was my legislation which caused it to be set up.

In this regard what is being done to help the fishing industry? My understanding is the Deputy Assistant Secretary in charge of the fisheries side of it will be accorded the rank of Ambassador, but I would like to know a little more specifically what is being done. How many positions are being budgeted for this job? I think it should be at least 20. And have you found a specific man to occupy it?

I think these should be addressed to Mr. Maw, probably.

Mr. MAW. I understand, Mr. Chairman, steps are actively being taken to fill those positions and to reorganize that department and we hope you will hear something on it very soon.

Senator PELL. I would like again a more specific reply. The law was passed a year ago.

Mr. MAW. That is right.

Senator PELL. And I am asking specifically will the man in charge be given the rank of Ambassador? That is agreed on, I think.

Mr. MAW. I am not, unfortunately, in a position to answer your specific question today but we will give you that information.

Senator PELL. Can you give me a specific answer to the number of positions?

Mr. MAW. Yes, we will give you those answers.

Senator PELL. That will be for the record?

Mr. MAW. Yes, sir.

Senator PELL. The record will be kept open for that purpose.

[The information referred to follows:]

UNDER SECRETARY OF STATE,
FOR SECURITY ASSISTANCE,
Washington, D.C., September 17, 1974.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am pleased to provide the following information in response to the questions posed by Senator Pell during the Committee's hearing on September 5.

Within the new Bureau of Oceans and International Environmental and Scientific Affairs there will be a Deputy Assistant Secretary for Oceans and Fisheries who will concentrate exclusively on these matters, which the Department regards as extremely important. The Department will recommend to the President that this official be granted the personal rank of Ambassador, with the concurrence of the appropriate Senate authorities. We believe that this designation will strengthen the hand of the Deputy Assistant Secretary in international negotiations for the protection and promotion of United States interests in oceans and fisheries. It is our intention in these negotiations to achieve as much as possible for the U.S. coastal, anadromous, and highly migratory fishing interests.

The Deputy Assistant Secretary for Oceans and Fisheries will be in charge of that portion of the Bureau which will deal with oceans and fisheries matters. That will include the present Office of the Coordinator of Ocean Affairs and Special Assistant for Fisheries and Wildlife to the Secretary, and the personnel of that Office.

The Department will be in a better position to determine the staffing requirements of the Bureau when it becomes fully operative. There are currently eighty-six positions authorized for the Bureau of which twelve are for fish and wildlife activities. If possible, and clear priority need is determined, a limited number

of additional positions will be reprogrammed for the Bureau this year from available resources. This may prove difficult since, like other Departments, the Department of State 1975 employment ceiling has been reduced by the Office of Management and Budget. Additional positions will be proposed in the 1976 budget.

In addition to the staff of the Bureau concerned with fisheries activities the Department contributes $4.0 million to international fisheries commissions and councils in which the United States is a member.

In conclusion, I wish to assure you that the Department recognizes the vital importance of our international oceans and fisheries interests. The establishment of the new Bureau considerably strengthens the Department's ability to coordinate foreign policy in these matters, and to give them the attention they must have. I expect that the names of the principal officers of the Bureau will be officially conveyed to you in the near future.

Sincerely,

CARLYLE E. MAW.

PROVISION FOR INSPECTION TO ENFORCE INTERNATIONAL SEA LAW

Senator PELL. Going back to the more general subject with Ambassador Stevenson, one of the ideas that we have talked about is the thought of some day there will be some kind of international sea guard, along the line of our Coast Guard, some method of enforcing the law that comes out of the conference in the deep oceans. Have you seen any signs of movement in that direction? I believe there is provision for inspection. Who will be doing the inspecting, in your view?

Mr. STEVENSON. Thank you, Mr. Chairman. I think that in this area there has been a general feeling that perhaps initially the role of the international authority would be somewhat more circumscribed and that when confidence in the authority builds up over the years there might be the possibility of additional provisions.

There was no specific proposal along the lines of a sea guard. There, of course, are differences of opinion with respect to whether there should be international pollution standards, for example, within the 200-mile economic zone, and whether there should be any inspection by international organization within that zone. We, of course, felt that there should be minimum international standards and that there should be some inspection, but I would think that to date the feeling on enforcement beyond economic zones has been largely concentrated on enforcement by flag states or in some cases there have been suggestions that there be authorization for states generally to enforce particular provisions, but there have not been specific discussions of an enforcement arm of the authority itself.

IDEA OF LAW OF SEA HAS BECOME RESPECTABLE

Senator PELL. While there has not been much progress, and this is being pointed out in the Conference in Caracas, I introduced a resolution back in the sixties which embodied a treaty of this type, and had that concept laughed at, the idea that there ever be one such regime of law for the oceans and seabeds. I find cause for some rejoicing because at least the idea has become respectable, the nations are engaging in this task, and it now seems within grasp. I would urge you to keep your optimism up and we hope success will reward your efforts.

COMMENDATION OF U.S. DELEGATION IN CARACAS

Senator MUSKIE. First of all, let me repeat or echo the commendations that have been expressed to you, Mr. Ambassador and your delegation and your working group in Caracas. I share that impression. We did have to attend meetings much earlier than 9 o'clock in order to participate and I was impressed by the work sessions—the obvious effort that was made to stay on top of the wide range of discussions and complexity of the issues. It was a very impressive preformance, but still did not resolve our differences on this particular point.

ASSERTIONS BY NATIONS OF THEIR VIEWS AND INTERESTS

One of the reasons I think it is taking some time to reach an agreement is that you have allowed this summer in Caracas as a time for nations to assert their own views and their own interests, is that not true?

Mr. STEVENSON. Yes; that certainly was true, although some moved beyond prior assertions of their views toward what they thought were formulas for general agreement. Certainly in the past, in our own case, and it is even more true of the Soviet Union, we had not explicitly endorsed the 200-mile economic zone and that was put forward in part in the hopes of getting general agreement and not merely in terms of our own views.

Senator MUSKIE. In your statement, you say with respect to future that you expect a treaty to be available by the end of 1975 and you say this: "To do so, however, governments must begin serious negotiations the first day at Geneva, and to prepare for that, they must during the intersessional period appraise the alternatives, meet informally to explore possible accommodations that go beyond stated positions.* * *"

In other words, there has been a tolerance throughout the Conference on the part of all concerned for stated positions which might differ from what the conferees might hope would be the ultimate result?

Mr. STEVENSON. Yes.

Senator MUSKIE. And yet somehow it is inappropriate for the U.S. Congress in this period of stated positions to state a position?

Mr. STEVENSON. Well, Mr. Chairman——

Senator MUSKIE. The point I am trying to make, Mr. Ambassador, is that you know these 150 nations gathered for a reason. I assume that on part of most of them it was either good faith determination to pursue the objective of a new law of the sea, or to create obstructions to that objective. In any case, what you have been in the process of doing is getting a comprehensive view of where nations stand, what their interests are, what they believe are to be done. Personally, I do not think it is inappropriate for the U.S. Congress in this context to vigorously articulate its view of what our Nation's interests are with respect to our coastal fishery stocks. I cannot believe that kind of vigorous articulation on our part should be any more of a danger to the prospect for agreement than the vigorous assertion or articulation by other nations of their interests, as they see them. They have asserted territorial seas out to 200 miles, much more comprehensive than S. 1988.

S. 1988 is not a territorial sea proposal. But on page 15 of the bill there is this:

> The allowable level of traditional foreign fishing shall be set upon the basis of the portion of any stock which cannot be harvested by citizens of the United States. Allowed traditional foreign fishing and fishing by citizens of the United States annually shall not, for any stock, exceed the optimum sustainable yield for such stock.

When you take that recognition of traditional fishing rights, together with section 7, which is an encouragement for the negotiation of those foreign fishing rights within the 200-mile economic zone, what you have here is not the kind of action that has been taken by many nations, including Ecuador and Peru, but a much more moderate one and one completely consistent with the position that you yourself asserted at the Caracas Conference. I just cannot persuade myself that this kind of assertion on our part of our national interests as we now see them is inconsistent with our commitment to the objective of an international rule. Therefore, I do not agree with Mr. Moore's suggestion that to pursue a unilateral policy is destined to lead to escalated conflicts in the oceans.

Every nation down there at this point is pursuing its own unilateral view of what its interests require, and it is only when you move beyond that point, the period of meaningful negotiation, that you begin to develop a shared view. I persuaded myself that working toward a shared view means that we unilaterally refuse to assert our national interest.

Let me ask you this question in this connection:

12-MILE LIMIT LAW

We now have by law a 12-mile limit. Wasn't that a unilateral action enacted by the Congress of the United States, signed into law by the President of the United States? It goes beyond the 3-mile limit that was theretofore traditional. Isn't that true?

Mr. MOORE. Senator Muskie, the point you have been making really does cut to the core of the important distinctions to be made.

It is very important for the United States and the U.S. Congress to vigorously assert its national interest and its negotiating position, including the protection of our coastal stocks, and to make known the kind of problems that those stocks now have.

I do feel, however, that it would be fundamentally different if our actions went beyond a vigorous assertion of national interest within the negotiation to in fact an assertion of a legally binding unilateral oceans claim.

Most of the nations now participating at the Caracas Conference have exercised restraint. Like us they are vigorously asserting their ocean interest in the negotiations. They are not, however, making unilateral ocean claims.

NUMBER OF NATIONS ASSERTING LIMIT BEYOND 12-MILE LIMIT

Senator MUSKIE. How many nations have asserted a limit, whether it is called an economic zone or a territorial sea, beyond the 12-mile limit?

Mr. MOORE. With respect to fisheries jurisdiction, I believe out of the 148 to 150 nations participating, there are roughly 30 or so that are beyond 12 miles on fishing jurisdiction.

Senator MUSKIE. How many of the 149 are landlocked?

Mr. MOORE. There are 119–120 coastal states and the rest are landlocked. Out of those 119 or 120 coastal states approximately between 30 and 40 have made fisheries claims beyond the present 12-mile limit.

Senator MUSKIE. Their action in asserting that has not torpedoed the conference?

Mr. MOORE. They have in most cases asserted this sometime ago.

Senator MUSKIE. We should have acted earlier.

Mr. MOORE. No, it is the same problem if they asserted jurisdiction earlier, but it is more acute now. And it would be much more acute if it were the United States with its present role in the world which made this claim rather than many of the smaller nations which have made such claims.

U.S. RESTRAINT IN NOT SEEKING 200-MILE TERRITORIAL SEA

Senator MUSKIE. Let me make the point on S. 1988. Ecuador and Peru have asserted a 200-mile territorial sea. We have not done that in S. 1988. Is not our restraint on that point in this bill an important contribution to the objective you are seeking on this very issue? You as a delegation are down there saying we do not want a territorial sea, and here the Congress would be saying amen, we do not want a territorial sea. Is that not important backing in the negotiations?

Mr. MOORE. The signal that other nations would perceive is that the United States, even though it has exercised restraint of a sort in not going to a 200-mile territorial sea we have always sought vigorously to avoid, certainly has, nevertheless, acted unilateral in a way which would be contrary to the recent International Court of Justice decision, and I think in their future claims they would not feel particularly restrained by the nature of our claim.

Senator MUSKIE. Let me say this, then I will yield to Senator Case. They certainly will get that signal, if that is the signal you people say they ought to get. If you people say, look, what the Congress is doing is supporting the position we have advanced in Caracas, that is going to be a different signal, but you are telling them here in this hearing that the signal they are going to take is that we are acting unilaterally with the risk of torpedoing the conference.

DIFFERENCE IN ACTIONS PROPOSED IN MAGNUSON'S LETTER, ENACTMENT OF S. 1988

Senator CASE. Why would the passage of this bill be a bad signal when the action that you have announced that you are going to take in the letter to Senator Magnuson would not be a bad signal?

Mr. MOORE. The action that we have taken in the letter to Senator Magnuson is completely consistent with the U.S. legal obligations which are widely accepted internationally and which are now binding on the principal states that fish off the U.S. coast. They are simply measures to provide further protection to our Continental Shelf fishery resources which are recognized as under U.S. jurisdiction.

Senator CASE. You mean by an international agreement with the countries involved?

Mr. MOORE. That is right, yes, an agreement——

Senator CASE. I can see a formal difference here but I am not sure there is a substantive difference because the action proposed, as Senator Muskie points out, is it not a reasonable conservation measure, in effect?

Mr. MOORE. There is no question that some of our stocks are in severe difficulty off the east and west coast of the United States. We are not at all questioning the severity of the problem, though we do feel that interim measures offer substantial promise in the interim period in relieving those problems. But there is a fundamental difference were we to go beyond that and claim jurisdiction which is clearly not recognized internationally and particularly not recognized by those nations such as the Soviet Union and Japan, which are fishing off our coast.

With respect to the earlier extension of the U.S. fisheries' jurisdiction from 3 miles to 12 miles, I believe again this was done in a situation comparable to that of the new procedures we have announced today in the letter to Senator Magnuson. The 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone provides in article 24 for a 12-mile contiguous zone. In addition, at the 1960 Geneva Conference, the second U.N. Conference on the Law of the Sea, there was overwhelming support for 12-miles fisheries jurisdiction. A limit of 6 plus 6, of 6 miles for the territorial sea plus 6 miles for fisheries, was defeated not because of the difficulty with extending fishery jurisdiction to 12 miles, but because of difficulty by many nations in accepting a 6-mile territorial sea. Many nations at the time we extended the jurisdiction to 12 miles, had at least a 12-mile fishery contiguous zone. It had become part of customary international law that one can have a 12-mile fishery contiguous zone.

STATE DEPARTMENT'S POSITION WHEN 12-MILE ZONE LEGISLATION WAS PENDING

Senator MUSKIE. That was not the position taken by the State Department when that legislation was pending. I recall being very strongly pressured by the State Department not to support that unilateral legislation. The arguments given were much the same we heard here this morning, and yet we proceeded. Now you tell me that it was recognized at this point anyway.

CONSENSUS FOR 200-MILE LIMIT

You are also telling us this morning that there is a broad consensus for the 200-mile limit. If there is, why should they take such offense if we announce that we support that under legislation that will give way to international agreement, if that is indeed the consensus?

Mr. MOORE. There are, of course, several other additional distinctions to be drawn between the two circumstances. One is that we are considering this bill during the negotiation of perhaps the most important multilateral conference since the founding of the U.N. system. That was not the case in the earlier extension.

Senator MUSKIE. It is always a question when you play your hole card.

Mr. STEVENSON. I would like from the standpoint of the negotiations, to come back to one point. While upward of 100 countries have indicated the 12-mile territorial sea and 200-mile economic zone is the cornerstone of general agreement, many of them, including ourselves and the Soviet Union and the United Kingdom and others, have made it very clear that it is only in the context of a general agreement that they are willing to accept this. I think that looking at some specific issues, if, for example, we establish unilaterally an economic zone, even though it is clearly subject to the international regime subsequently agreed upon, other countries, particularly some African countries, will feel free to establish unilaterally an economic zone that goes much further than ours does. One of the problems that we are having right now in negotiating the economic zone is that, while there is very general acceptance of the idea, there remains very serious differences as to the content: whether there should be any limitations whatsoever on coastal state resource management, whether you should have the full utilization principle, whether in addition to controlling resources you should also control scientific research, and whether as some suggested, this should also become a 200-mile contiguous zone.

Now, all of these things are in the negotiations, and while we have no trouble with the bill in terms of its substance, as it basically, as you say, reflects what we are talking about getting internationally, if we do it unilaterally, how can we say to the others it is OK to do this, but if you go beyond this and put in some of these other features we do not like, that is wrong and——

VIEW THAT S. 1988 IS NOT ENOUGH PROTECTION

Senator MUSKIE. Let me put this to you again, Mr. Ambassador. There are those in this country, especially off the coast of Maine right now where gill net depredations have taken place, who will not settle for this bill. They would like a 200-mile territorial sea, so that we can keep these guys out, and they want to build up the Coast Guard to do just that. This bill represents a concession from the point of view of those who think this bill is not protection enough, and I think that is an important signal to your colleagues in the Conference that the Congress was able to resolve this issue and not go that far, notwithstanding the domestic pressures. Yet we do not give them that signal? This is an important concession. We did not go as far as Equador or Peru, nor did we go as far as our own fishermen would like us to go. There is such a thing as whether this is half empty or half full. There are some pluses in this legislation from the point of view of the conference that I think ought not to be overlooked.

S. 1988 WILL MAKE INTERNATIONAL NEGOTIATIONS MORE DIFFICULT

Mr. STEVENSON. I think once we go beyond, here I agree completely with Professor Moore, suggesting what we would like to have in the treaty; once we unilaterally say this is what the law is going to be, it is very difficult to resist other countries doing the same thing, not only in this area but in other areas which can affect navigation and other

things as well. One of the practical problems is that if they do that, then domestically it is very hard for them to make some of the agreements that they would have otherwise made. One of the problems right now with some of the 200-mile territorial sea countries is that, while they would like to participate more in the negotiations, it is very difficult once having gone that far domestically to turn back. So I think it will make it much more difficult to have a successful negotiation if we do have a good deal of this unilateral action at this time.

UNDERSTANDING S. 1988 IS LEGISLATIVE RESPONSE TO DOMESTIC PROBLEM

Senator MUSKIE. I will make one further point, then I will yield.

I understand that your position is different than ours. I do not ask you to endorse this legislation. I would not expect you to. And you can certainly denounce this legislation. But I find it difficult to believe that these delegates are so unfamiliar with the parliamentary process as not to understand that when there is this kind of pressing domestic problem, Parliaments by their nature will respond.

As I said to that Russian at lunch, yes, we are being hardnosed because our people are hurting. I think it is our responsibility as a legislative body to recognize the problems of our people. It is your responsibility representing the diplomatic branch of our Government to try to negotiate these agreements, and we wish you well and we think you are doing a good job. I happen to believe that taking this action would strengthen and not weaken your hand. Even if you agreed with me, I would not expect you to say so, given the responsibility that you face next year.

Senator CASE. And vice versa.

Senator MUSKIE. Yes.

HOPE THAT AMBASSADOR STEVENSON WILL REMAIN IN POST

Senator CASE. Mr. Chairman and gentlemen, I think we have said all the nice things, and I will not take time repeating them. But with respect to Ambassador Stevenson, we hope you will continue to make the sacrifice until this treaty is completed.

COASTAL STATES RIGHTS OF FISHERY RESOURCES IN CONTINENTAL SHELF

Mr. Ambassador, with reference to a point made by Senator Stevens in regard to the Continental Shelf beyond the 200-mile economic zone, you pointed out that:

> The Continental Shelf section provides for coastal state sovereign rights over exploration and exploitation of Continental Shelf resources. The Continental Shelf is defined as extending to the limit of the economic zone or beyond to a precisely defined outer limit of the continental margin.

As to the specifics that you said will be covered in the statement, you say this only:

> The coastal state would have a duty to respect the integrity of foreign investment on the shelf and to make payments from mineral resource exploitation for international community purposes, particularly for the economic benefit of developing countries.

You do not say anything in specific terms about the matter of conservation of fishing resources in that area beyond the 200-mile economic zone which still is on the Continental Shelf.

Is there anything in your statement of position relating to coastal States rights of conservation and fishery resources in that particular area?

Mr. STEVENSON. Basically, Senator, we have been talking about a 200-mile economic zone as far as fisheries is concerned. With respect to the Continental Shelf, we have suggested that very reasonable accommodation between those countries that want to go to the edge of the margin when it is beyond 200 miles and those who say even for minerals you stop at 200 miles, is to provide for that coastal State jurisdictional, but have a revenue-sharing obligation.

Now, with respect to the fisheries, of course, you do have the seabed sedentary fisheries, although it is not likely there would be many of those beyond 200 miles. Our concept with respect to fisheries beyond 200 miles has related primarily to the anadromous species, such as salmon. We are suggesting basically a high seas ban on fishing for salmon, because the scientific evidence shows that those fish are best caught when returning to the streams where they originate and, therefore, you can apply your conservation measures and so forth, much more effectively because you know what streams those salmon are going back to.

Now, with respect to highly migratory fish, which are the other type of fish that will be most revelant beyond 200 miles, we have suggested a more or less mixed system with the coastal state managing within the zone and the flag state beyond, but where both would be observing internationally agreed conservation principles, so you would have the same principles applying to those stocks, which is very necessary, because they could be caught beyond 200 miles just as easily as within. So I think it is in everyone's interest to do that.

Now, to the extent that you may have some coastal species that get beyond 200 miles, we do talk in terms of general duty to cooperate in developing arrangements, particularly with States that are adjacent, which is the most real problem. So we are very definitely concerned about this problem beyond 200 miles.

Senator CASE. Thank you, sir.

I wanted to get your position in the record in view of what Senator Stevens said.

NEW PROCEDURE IN SENATOR MAGNUSON'S LETTER EFFECTIVE IN 90 DAYS

In the letter to Senator Magnuson, why do you not propose putting the effective date of these new procedures December 1974 instead of 1975?

Mr. MOORE. The reason that we are having the 90-day grace period before the regulations go into effect is that they really will have a potentially severe effect on foreign fishing——

Senator CASE. Ninety-days or a year and 90 days?

Mr. MOORE. Ninety days. There has been an error in the letter. It should read December 5, 1974, rather than 1975.

Senator CASE. You mean the date should be 1974 and this copy is a mistake?

Mr. MOORE. That is correct.

Senator CASE. There is no doubt about that at all? You all agree, gentlemen?

Mr. MOORE. The new procedures that went into effect and were announced today on the Continental Shelf in the letter to Senator Magnuson will go into effect 90 days from today. That is a typographical error, it is an error in the original as well as the copy. Thank you for calling it to our attention.

Senator CASE. Not at all. You mean 90 days from now?

Mr. MOORE. From today. And diplomatic notes will go out quickly to the affected foreign nations.

Senator MUSKIE. I would like to express my appreciation to Senator Case.

Mr. STEVENSON. We are glad there are some skillful lawyers here.

Senator MUSKIE. Thank you very much.

Senator CASE. I have to go because I have a date with a constituent at 1 o'clock and one with you, Senator Muskie, at 1:15. I leave these gentlemen in the hands of my colleagues here and I know that we are all working toward a very common purpose.

Senator PELL. Thank you.

DESTRUCTION OF GILL NETS

Senator MUSKIE. I have one question I would like to put on the record and that is in connection with this destruction of gill nets that is taking place. It does not sound like a very important problem, but these nets cost our fishermen from $3,500 to $6,000 apiece and most of them have had to go to the local banks to borrow the money to buy them. When they are destroyed, the resources of most of these fishermen are such that they cannot get another loan. There is no insurance coverage, there is no way for them to effectively pursue their claims. A lot of this destruction takes place in the course of night fishing when it would be impossible to identify the offender, under any circumstances, and so this just raises havoc with the morale of these people along the coast. Hardly a week passes that there are not more incidents. Most of them protect their nets with radar reflectors. They assure me they are easily detectable, especially on the modern radar equipment that is carried by these huge foreign factory ships. In addition, most of them comply with the fixed gear system that has been created under which the fishermen notify the Coast Guard where their nets are located and the Coast Guard sends that information out over radio stations that can be monitored by foreign fishing fleets. Notwithstanding all of these precautions, the depredation goes on.

I am simply not going to leave those people without recourse. They have absolutely no way of protecting themselves or recovering from the loss out of their own resources. I say if their Government is interested in protecting the fleet on the seas it has an obligation to protect them, and that is why I make such a point of this. At the very time when these nations are urging restraint on our part with respect to legislation, they allow their nationals to roam up and down our

coast doing this damage to our people. By permitting that they are doing more to threaten this Conference than we are with this legislation.

I want to make that as a matter of record, hoping that some of this will get back to some of these governments who are so disturbed about this legislation. Let them control their nationals. The ICNAF agreement is enforced by flag states. What good is that enforcement if flag states will not run down their nationals in this situation to protect our people? That is meaningless. So what I would like to ask, I have protested this to the Secretary of State and he communicated this in an appropriate way to you people at the Conference. I realized that this Conference is not the place to get involved in these problems but, nevertheless, I wanted to get the message through to you. Is there anything you can tell me this morning that has any interest or even help to these fishermen in this situation about steps that have been taken?

Senator PELL. I would like to associate myself with Senator Muskie's question. Our own fishermen are suffering in exactly the same way and being demoralized and put out of business.

Mr. POLLOCK. Senator, with some countries we have some negotiations for settlement of situations of this nature. We do not have them with all nations. If we did have them with all nations, we would still have a problem. If we do not know who did it, if it happens in the middle of the night, the gear is torn up, which nation are you going to go to and say we want some compensation? I do not know what the solution to that would be unless there was Federal legislation to protect them. I do not know how you would do it unless you had every nation, and I do not think they would volunteer to do this, put money into a pool for compensation. It would not happen.

POSSIBILITY OF U.S. GOVERNMENT PAYING FISHERMEN'S CLAIMS FOR EQUIPMENT

Senator MUSKIE. One thing I think we could consider, and this idea occurs to me out of our lend-lease experience in World War II—why not enact legislation under which these fishermen would assign their claim to the Federal Government in return for full reimbursement? The Federal Government is in a much better position to enforce those claims than the fishermen. It would have the responsibility. The claims may be worthless if you did not get the evidence. If the claims are worthwhile, who ought to stand that, the fishermen or Federal Government? It seems to me that that is an approach that is worthy of some consideration. How about the Coast Guard? Have you reviewed, or is it your responsibility to review, the steps taken by the Coast Guard? I know they have tried, and I am raising the question. I am not being critical, but they are undermanned and underequipped to do this job.

Mr. MOORE. Without responding to your very interesting suggestion on possible new approaches to the problem, there are some additional facts that have come to my attention this morning, that I might convey to you on this.

INCIDENT OF AUGUST 12 OFF NEW HAMPSHIRE COAST

It is our understanding that this incident was one which occurred on August 12, approximately 28 miles off the New Hampshire coast. We also understand that the National Marine Fisheries Service Regional Office in Gloucester has been assisting the fishermen in filing their claims, that the NMFS has a series of affidavits they have been asked to hold until next week, that the Coast Guard has investigated the claims of damage over the period of August 10 to 20 and is working with the National Marine Fisheries Service on this.

It is also our understanding that according to witnesses present, the damage was caused by West Germany fishing vessels, but we have not yet identified the specific vessels, and we will be working to cooperate through the Coast Guard and the NMFS with the fishermen affected in this case.

Senator MUSKIE. In that particular case, the foreign ship fishing vessel involved was badly in need of a paint job, it was peeling, so some of the letters or numbers on the identification were missing.

Is there any way of trying to run down that kind of fragmentary evidence to nail down the offender? If there is not, it is almost hopeless to ever try to recover a claim in these cases.

Mr. MOORE. I simply do not know the answer to that or the present state of the investigation.

Senator MUSKIE. I will pursue it in other ways.

GOVERNMENT RESPONSIBILITY

Mr. POLLACK. What you were talking about was a more generalized problem, not the specific one where you cannot identify. I think where you can identify action can be taken, but I think it is a serious problem, and I think perhaps the only solution is a Government responsibility.

INTERNATIONAL AGREEMENT WILL HAVE ENFORCEMENT PROBLEM

Senator MUSKIE. If we have an international agreement, we are still going to have the enforcement problem, are we not?

Mr. POLLACK. Yes, sir.

Senator MUSKIE. And that problem is going to have to be shared by our own Coast Guard even as it would be under unilateral legislation. We probably would have to have a strong national enforcement arm with an international agreement as we would with unilateral legislation, would we not?

Mr. MOORE. Yes.

Mr. STEVENS. You are absolutely correct, and this is one of the advantages of this interim procedure we have been talking about, this will begin to strengthen Coast Guard capability when we do have internationally agreed 200-mile zones, so they will be able to discharge those requests.

PROPOSAL IN LETTER TO SENATOR MAGNUSON APPLAUDED

Senator MUSKIE. Incidentally, may I applaud that letter? I think it does not go as far as the legislation, but it does indicate concern and

indicates a determination to protect our people and so on. As far as it goes, I would think that it is a very useful initiative.

Senator PELL. I share Senator Muskie's approval of this proposal. As I understand it, it deals primarily with creatures of the Continental Shelf.

Senator Case has a question he would like answered concerning conservation he will send up to you.

[The information referred to follows:]

RESPONSE OF DEPARTMENT OF STATE TO ADDITIONAL QUESTION SUBMITTED BY SENATOR CASE

Question—Matters related to environmental protection seem to be lagging behind progress on matters concerning the development of the ocean's resources. Particularly if we are going to have provisional application, I am concerned that environmental protection issues proceed apace with development of ocean resources issues. Will the Delegation place increased emphasis on environmental protection to make up any deficiency? Will the need for environmental protection be taken into consideration in connection with provisional application?

Response—The negotiations on protection of the marine environment did not move as rapidly as we would have liked in Caracas. Although several draft articles were produced on items such as general and particular obligations to protect the environment, technical assistance, and global and regional cooperation, the Third Committee did not resolve the critical issues of jurisdiction to prescribe and enforce pollution control standards. However, there was considerable informal discussion of these central issues and many indications that countries were carefully examining their positions and the proposals of others. While the main political issues remain to be resolved, we expect them to be resolved on the same time schedule as the other issues. Finally, we will take environment considerations into account with regard to provisional application to ensure an adequate framework for protecting the environment during that period.

Senator PELL. I would also like to have unanimous consent that a statement by Congressman Fraser be inserted in the record.

[Congressman Fraser's prepared statement follows:]

PREPARED STATEMENT OF HON. DONALD M. FRASER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. Chairman, it is my strong conviction that passage of the bill now before your committee, S. 1988, would not benefit the national interests of the United States. The international repercussions of passage would redound seriously to our disadvantage and gains for American fishermen would be questionable at best, in both and long and short term.

Proponents of this legislation argue that it would protect dwindling fish stocks off our coasts from overfishing by highly mechanized foreign fishing fleets and that it would not damage the chances for concluding an equitable ocean treaty at the UN Law of the Sea Conference because it would go out of existence as soon as the treaty provisions take effect. The facts of the situation simply do not support this position.

The title of the bill is "The Fisheries Conservation Act of 1974", but under its provisions it would be 1976 or 1977 before U.S. fishermen would be subject to conservation regulations. In the interim period of consultations, there would be less protection than at present for rapidly-depleting fish stocks. One could say that, even so, the absence of foreign fishermen from the area would in itself reduce the danger of overfishing. But it is not at all certain that foreigners would absent themselves from the area. They would probably take the position that, under existing treaties, the United States has no right to unilateral jurisdiction beyond twelve miles. The case might be taken to the International Court of Justice, which only last month ruled that Iceland's claim to 50 miles of fisheries jurisdiction is illegal.

We could be faced with a dilemma in which other nations—asserting their rights under existing treaties and international law—sent their fishing fleets into

our 200-mile contiguous fisheries zone, daring the U.S. Coast Guard to blow them up. Surely the United States does not wish to precipitate a "fishing war."

Passage of this bill also would have the effect of "throwing the baby out with the bath water". Fisheries is only one of a number of important American interests at the Law of the Sea Conference. The Conference is addressing itself to the full range of issues on ocean use including freedom of navigation, protection of the marine environment, breadth of territorial sea, deep sea mining and freedom of scientific research. Like the United States, other nations have important interests in these areas. Accordingly, the work of the Conference is to strike a balance among contending national claims. Striking the balance, as we have seen, is a long and difficult process, but disruptive actions by major nations can destroy the balance very quickly. What could be more disruptive than for the most powerful nation in the world to assert 200 miles of unilateral fishing jurisdiction when the balance of national interests is reaching the point of promise for a treaty next year?

Specifically, we could expect consequences at the Conference such as the following:

1. Other important U.S. interests at the Conference would be jeopardized, such as free transit through international straits, a system of compulsory settlement of ocean disputes, and international management of migratory species of fish.

2. Extremist unilateral positions would be strengthened. Some nations have been asserting all along that any nation has the right to define its own territorial sea and economic jurisdiction without regard for international concurrence. In such a situation, there would be gross danger that the ocean treaty (if one was produced at all) would provide for a non-system of unilateral assertions rather than an orderly system prescribing the rights and duties of nations.

3. The contention that this would be a harmless "interim" measure is lost on most delegations at the Conference. As far as they are concerned, once the United States makes this hasty and selfish move, the damage would be done. It would demonstrate that the United States intended to do what it pleased in defiance of international law, regardless of the opinions of the international community. And the hope and desirability of agreement through a treaty would accordingly diminish.

Additionally, we know that several nations intend to retaliate by making unilateral claims of their own. These include some nations who prefer no unilateral claims at all, but who feel that if the United States goes in that direction, they must do likewise to protect their own interests. Nor can we assume that other unilateral assertions would be confined to fisheries. Foreign representatives have told us that some will go farther, including even a declaration of 50 miles of territorial sea, with the restriction on freedom of navigation that that entails.

The international consequences of passing this legislation are clear. But one must not ignore the crying need for conservation of fish stocks off our coasts. It is not enough to say that this bill is bad, and simply forget that the food fish population is in danger of dwindling to levels of unsustainable yield. But there is a way to alleviate this plight without wrecking the Law of the Sea Conference. The major goals of this bill would be more likely to be achieved by conservation measures taken under the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, which could be put into effect by the U.S. in six months whether or not other nations concur. And this action would not violate any treaty obligations; it is provided for in the treaty.

The 1958 Convention recognizes in its Article 6 of the special interest of coastal states in maintaining the productivity of fish stocks in areas adjacent to their territorial waters, and in Article 7 provides that after six months of negotiations with other concerned nations a coastal state may unilaterally declare appropriate conservation measures. As an alternative to the international lawlessness of S. 1988, I urge the Committee to consider an amendment requiring the Administration to implement these provisions of the 1958 Convention.

Passage of S. 1988 in its present form would be self-defeating, both in terms of effective conservation of our coastal fish stocks and achievement of U.S. objectives at the Law of the Sea Conference.

[Representative Fraser is chairman of the Subcommittee on International Organizations and Movements of the House Committee on Foreign Affairs and a Congressional Advisor on the U.S. delegation to the UN Law of the Sea Conference. He was the principal sponsor of H. Res. 330, the Law of the Sea Resolution, passed by the House in 1973.]

S. 1988 IS UNDER TIME LIMITATION

Senator PELL. And I would also add that we have the bill under a time limitation, so we would appreciate the Department's responses as quickly as possible. Some of the time has already expired, and we have to move very quickly.

S. 1134

Also, we have before us the mineral bill, S. 1134, and we will probably have a separate hearing on this. We would be appreciative of the Department's comments and answers to the same specific questions that will be passed to you.

[The information referred to follows:]

RESPONSES OF DEPARTMENT OF STATE TO QUESTIONS SUBMITTED FOR THE RECORD BY SENATOR PELL

Question 1. Do you agree, as S. 1134 states, that it is in the national interest of the United States to provide for interim legislation which will encourage further efforts to ensure national access to available deep seabed hard minerals?

Answer. The members of the Executive Branch concerned with the law of the sea have only recently returned from the Caracas session of the Law of the Sea Conference and, accordingly, the Executive Branch has not yet had adequate opportunity to review its position on the desirability of interim legislation for deep seabed mining. We are currently studying this question in the light of our experience at the Caracas meeting. Of course, we continue to support the provisional application of those portions of the law of the sea convention dealing with the deep seabeds and fisheries as a means of encouraging deep seabed mineral development during the period following signature of the convention before it comes into force.

Question 2. How many United States companies are currently engaged in the mining of hard minerals of the deep seabed?

Answer. To our knowledge, no United States companies are presently extracting manganese nodules from the deep seabed in commercial quantities. Three United States companies—Deepsea Ventures, Kennecott Copper and Summa Corporation—are actively engaged in developing deep seabed mining technology, and public statements by representatives of these companies indicated that they may be technologically prepared to commence actual commercial mining within the 1976–1980 time frame.

Question 3. What are the prospects of concluding an international agreement dealing with deep seabed mining operations?

Answer. There were several positive indications during the Caracas session of willingness on the part of other delegations to negotiate the major issues of contention before Committee I more seriously than has been the case before, but this continues to be one of the most difficult areas in the negotiation.

Question 4. Was any progress made in this area during the Law of the Sea Conference which was held in Caracas?

Answer. The Caracas session of the Law of the Sea Conference witnessed limited progress in certain areas of the Committee I negotiation. First, the general mood of the Committee was more purposeful and serious than in previous sessions of the UN Seabed Committee or the Preparatory Committee. Delegations rarely engaged in polemical debate but instead concentrated their efforts on pragmatic identification and analysis of their positions and the reasons underlying them. In certain limited respects, compromises were reached and alternative texts eliminated. Second, the Committee focused its attention on the key areas where agreement is critical before the lengthy compilation of alternative treaty texts on the international regime and machinery can be merged into a single agreed convention. These issues were the exploitation system—Who May Exploit the Area, the conditions of exploitation and the economic aspects of exploitation. Third, the Group of 77 (a developing country negotiating group) agreed that the convention must contain the basic conditions to govern exploitation and introduced a draft text of these conditions. While their version of basic

conditions is at considerable variance with the United States position, we were encouraged by their commitment to negotiation conditions of exploitation, since for several years these nations had rejected including such provisions in the convention. Fourth, Committee I formally established a negotiating group to consider the exploitation system and the conditions of exploitation together, and the several meetings held by that group constituted first steps of a genuine negotiation. Fifth, the Committee discussed the question of economic effects of deep seabed production on the economies of developing country producers of the metals contained in manganese nodules, and, for the first, time, developing country representatives publicly supported the need to protect consumers from artificially high prices that might result from production or price controls in the deep seabed. Moreover, there seemed greater understanding of the uncertainty of projections of the probable economic implications of deep seabed production.

Given the wide difference between positions on this issue, a gap that in part results from differing political and economic interests, it would have been surprising had we made greater progress at a session of the Conference that we clearly understood not to be the final session at which critical compromises must be made. We are encouraged, however, that the positive steps taken by Committee I occurred on major issues of disagreement. If these issues can be successfully negotiated, we believe the remainder of the negotiation will be greatly facilitated. At this point, however, we would be reluctant to predict the extent to which nations will be willing to compromise in order to achieve widely accepted treaty articles on this subject.

Senator PELL. This concludes this session, and the committee will stand in recess subject to the call of the Chair.

[Whereupon, at 1:10 p.m., the committee was recessed, subject to the call of the Chair.]

APPENDIX

THE DEPUTY SECRETARY OF DEFENSE,
Washington, D.C., September 14, 1974.

Hon. J. WILLIAM FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: It is my understanding that the Senate Foreign Relations Committee will shortly take up consideration of S. 1988, the Emergency Marine Fisheries Protection Act of 1974. Accordingly, I am taking this opportunity to convey to you the views of the Department of Defense, that enactment of this legislation would have a serious adverse impact on the national security interests of the United States.

The bill would extend the contiguous fisheries zone of the United States to a distance of 200 miles from the baseline from which the US territorial sea is measured. Within this expanded zone the United States would exercise exclusive fishery management responsibility and authority, with the exception of certain highly migratory species. In addition, the bill would extend the fisheries management responsibility and authority with respect to US anadromous species, beyond 200 miles, to the full extent of the migratory range of such species on the high seas. The bill asserts on behalf of the United States preferential rights to all fish within the new US contiguous zone and to US anadromous species, and provides for a method whereby foreign nations which have traditionally fished within the new zone or for US anadromous species may, for a fee, be permitted such poreions of any stock which cannot be fully harvested by US citizens.

The United States is a signatory to the 1958 Convention on the High Seas, which specifically identifies freedom of navigation, freedom of overflight, and freedom of fishing as among the constituent elements of the overall freedom of the high seas. The proposed legislation would unilaterally abrogate, contrary in our view to US obligations under that Convention, the freedom of fishing in significant portions of the high seas. The response of other nations to this legislation is not likely to be limited to comparable restrictions on fishing. If the United States, by unilateral act, abrogates one identified freedom, we face the unhappy prospect that other nations may claim the right unilaterally to abrogate other identified freedoms, including the freedoms of navigation and overflight.

This threat to high seas freedoms is not, in our view, at all fanciful. A logical and predictable outgrowth of expanded fisheries jurisdiction is expanded jurisdiction over marine pollution which arguably affects marine resources. Given the misconceptions in many countries on the "pollution" aspects of nuclear powered vessels and vessels carrying nuclear weapons, we are genuinely concerned that such restrictive claims may be advanced, either on their own merits or for unrelated political ends, as a direct consequence of enactment of this legislation. This is in fact the history of most claims to expanded territorial jurisdiction.

Our strategic deterrent is based upon a triad of nuclear delivery systems, an essential portion of which is seaborne. Our general purpose forces, designed to deter war below the strategic nuclear war level, must, if the deterrent is to be credible, be free to move by air and sea to those areas where our vital interests are threatened. Military mobility on and over the high seas is dependent to a significant degree on the maintenance of the freedom of the seas. These freedoms sanction and protect the activities of our forces. Reduced international waters and closed straits, therefore, threaten both the survivability and utility of our deterrent. In this connection, it should be noted that over 40 percent of the world's oceans lie within 200 miles of some nation's coast and that virtually the entire operating areas of the United States' 6th and 7th fleets lie within such waters.

Whether the proposed legislation contains sufficient distinguishing features to remove it from the ambit of the recent International Court of Justice decision that Iceland's unilateral declaration of 50 mile exclusive fisheries zone was under the relevant circumstances illegal is not for this Department to decide. However, we do perceive that the United States would not be in a strong position to oppose by legal means, unilateral claims by foreign states restricting our naval or air mobility near their coasts.

Our experience in attempting to obtain overflight clearances in Europe during the most recent Arab-Israeli conflict leads us to conclude that bilateral negotiations cannot be depended upon to ensure the military mobility necessary to achieve US foreign policy objectives. What this bill invites then, is a situation wherein the United States must either acquiesce in serious erosion of its rights to use the world's oceans, or must be prepared to forcefully assert those rights.

Thus far I have focused on what I consider the short term consequences to flow from enactment of this legislation. The long term adverse consequences. to our national security interests are of equal, if not greater, concern. We recognize the worldwide trend toward expanded jurisdiction by coastal states over fisheries and other economic resources off their coasts. One of the fundamental objectives of the Department of Defense in the Law of the Sea negotiations undertaken with the express consent of the Senate extending over the last several years, has been to ensure that such expansion takes place in a multilateral context resulting in a treaty which clearly identifies the limits beyond which such expansion may not go. As the negotiation has progressed, we have developed a degree of confidence that we will be able to influence and control the limits of any expanded jurisdiction so as to protect and exclude from foreign control, those activities, facilities and operations essential to our national security.

In our judgment, enactment of the proposed legislation would seriously erode the prospect for a broadly based multilateral treaty putting to rest the broad range of increasingly contentious ocean issues.

We base this judgment on a number of factors. Our appreciation of the criticallity of the multilateral solution has led us over the yers to protest vigorously virtually all unilateral extensions of coastal state jurisdiction, whatever their avowed functional purpose. Enactment of the proposed legislation would be a dramatic and highly visible reversal of past U.S. policy. For the U.S. to adopt unilateralism as a viable approach to oceans policy problems at this juncture, would seriously undercut the credibility of U.S. negotiators not only on the fisheries issue, but also on our basic commitment to international agreement. This unilateral action could result in an erosion of the world's perception of our other essential objectives such as unimpeded transit through and over straits, which we have identified as both cornerstones of our policy and essential elements of an acceptable solution.

From a substantive interest standpoint, the legislation lends support and gives added international respectability to the positions and policies of precisely those states who have been most hostile to our defense objectives, and it would at the same time offend and impose economic losses on the very states who have most consistently supported at the Law of the Sea Conference positions we deem essential for the protection of our national security interests.

Finally, we believe enactment of the proposed legislation would give substantial aid and comfort to the hard line proponents of delay in the Conference. It would lend credence and support to their argument that the long term trend in ocean law is toward a 200 mile territorial sea, evolved through a conscious parallelism of unilateral claims. In short, the prophesy of extended delays in law of the sea negotiations, which some argue requires the proposed legislation, will, in our view, become self-fulfilling prophesy if it is enacted.

If the United States now abandons its opposition to unilateral claims in the ocean, we will inevitably be faced with an increasing number of competing, retaliatory or unrelated claims impacting aversely on national security interests. If, as we expect, enactment of this legislation results in extended delay in the Law of the Sea negotiations, we will have reverted to the uncertain and dangerous procedure of shaping a new legal order for the world's oceans by the process of claim and counterclaim, action and reaction, which hopefully eventually would coalesce into customary international law. This is a dangerous way to regulate even economic relations among states. But when the claims begin to

affect the mobility of our strategic and general purpose forces, the risk involved in the process of challenge is much higher. To set the nation on this path toward resolution of oceans policy issues is, in our view, both dangerous and extremely unwise.

I very much appreciate this opportunity to set forth the views of the Department of Defense with respect to S. 1988, and appreciate the consideration I am sure they will receive from you and your Committee.

W. P. CLEMENTS, Jr.

THE SECRETARY OF STATE,
Washington, D.C., September 22, 1974.

Hon. J. WILLIAM FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Foreign Relations Committee recently held hearings on S. 1988, a bill to extend unilaterally the fisheries jurisdiction of the United States from the present 12-mile limit to 200 miles. I wanted you to be aware of my view that passage of this bill would be seriously harmful to our foreign relations and I was pleased to learn that the Committee reported out S. 1988 with an unfavorable recommendation.

I sympathize with the concern for our coastal fishermen which has motivated this legislation. However, the best protection for them and the best solution for our fisheries problems is a timely ocean law treaty. The United Nations Conference on the Law of the Sea has made substantial progress in formulating such a treaty and will be meeting again next spring with a view towards concluding an agreement in 1975. Passage of S. 1988 or similar legislation unilaterally extending our jurisdiction at this time would be especially damaging to the chances of concluding a treaty.

Passage of S. 1988 would hurt our relations with Japan and the Soviet Union as well as with other nations fishing off our coasts. In addition, any effort to enforce a unilaterally established 200-mile fisheries zone against non-consenting nations would be likely to lead to confrontations. Adverse reactions by foreign nations would be understandable for the United States itself has consistently protested unilateral extensions of fishery jurisdiction beyond 12 miles. A unilateral extension by the United States now could encourage a wave of claims by others which would be detrimental to our overall oceans interests, including our interests in naval mobility and the movement of energy supplies.

I very much appreciate that a majority of the Foreign Relations Committee opposed passage of S. 1988. I hope that other members of the Senate will also carefully evaluate the foreign affairs consequences from passage of this legislation in the middle of the law of the sea negotiations.

Warm regards,

HENRY A. KISSINGER.

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