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Admiral James D. Watkins  
Chair, U.S. Commission on Ocean Policy  
1120 20<sup>th</sup> Street, N.W., Suite 200 North  
Washington, D.C. 20036

Dear Admiral Watkins and Members and Staff of the U.S. Commission on Ocean Policy:

Thank you for the questions that you have sent to me in your letter dated July 15, 2002. These questions raise large and profound issues that deserve extensive examination, and I will be able to give only preliminary and general responses in the limited time that I have to respond. Nonetheless, I hope these summary answers may be helpful in pointing directions for the Commission.

**1. Swordfish Long-Line Fishery and Turtle Mortality.**

The United States has an important role to serve as steward on behalf of the international community with regard to the threatened and endangered species of the Pacific, including the sea turtles, the monk seals, the cetaceans, and numerous sea birds. This is the same role that we expect the countries of Africa and Asia to play with regard to the elephants, the primates, and the other threatened creatures in their regions. It is not appropriate to say, therefore, that U.S. fishers are "paying the price to save endangered Pacific sea turtles." It is our national responsibility to save these ancient and noble creatures, which are now under severe stress, and we must accept this duty with enthusiasm and vigor. We must modify our behavior to protect the turtles and set a strong example for others to copy.

The challenge is to develop a cooperative strategy with other nations to ensure that our efforts are, in fact, successful. Our nation frequently has difficulty cooperating with others, and we seem much more comfortable taking a unilateral approach, whereby we try to impose our will on others. That approach will not work when international environmental issues are at stake, and it will be important to listen to the concerns of other countries and then to build a cooperative arrangement that will work for all of us. Particularly in light of the interlocking trade relationships we have with other countries fishing in the Pacific, it will not be possible to ignore their views. A strong scientific base will be crucial and completely transparent data and decisionmaking will also be essential. We can and should use carefully-targeted trade sanctions and economic pressure when appropriate, but only after noncoercive efforts have been fully explored.

I support the decisions rendered by Chief Judge David Ezra of the U.S. District Court for the District of Hawai`i, who has tried to sort out these complex issues carefully. U.S. law must be strict and strictly enforced, to protect the remaining sea turtles before it is too late. It will be necessary for our fishers to modify their gear and behavior in order to avoid further mortality of the turtles. We must then inform other countries whose fishing affects these turtles that we expect them to modify their gear and behavior as well. We must make every possible effort to engage them in discussions, to listen to their perspectives, and then to develop new mutual agreements designed to protect the turtles. These agreements, like Judge Ezra's orders, must limit fishing in certain areas and at certain times, and will require gear modification. Through such concerted and cooperative efforts, it should be possible to protect the sea turtles for the benefit of future generations.

## **2. Coordinating U.S. International Negotiations.**

The premise of this question is that the United States has not been effective in its international negotiations because of the very different perspectives presented by different departments and branches of our government. It has always been awkward that NOAA is based in the Department of Commerce, because that location has skewed its mission toward resource exploitation and perhaps away from its stewardship responsibility, and it would be better if all our nation's oceans-related activities were coordinated by a free-standing and separate federal agency. The Defense Department has wide-ranging interests in ocean activities, and its perspectives frequently dominate federal decisions, rather than being coordinated through the State Department. (The recent decision to allow the Navy to use low frequency active sonar is, for instance, an example of other federal agencies' deferring to a claim of military necessity with regard to an untested technology that is likely to cause substantial impacts on the marine environment and will lead to conflicts with other nations.)

At international negotiating meetings I have attended, I have often noticed that the United States negotiating team has been less effective than it might have been because the United States will typically send a large negotiating team that must frequently engage in internal negotiations before it will be in a position to negotiate externally with other nations. In addition, the United States tends to have a lot of turnover in its delegations, with many new faces at each session, thus depriving the United States with the institutional memory and personal contacts that are so important for successful negotiations. Other countries will tend to send the same diplomats year after year to the negotiations, and these experienced ambassadors will be more effective in understanding the background necessary to find the appropriate compromise and bring the negotiations to a successful conclusion. The practice in the U.S. State Department of requiring most Foreign Service Officers to retire at age 60, or even earlier, also puts the United States at a disadvantage, because we lose the experience and wisdom of our veteran diplomats and are constantly forced to reeducate new generations of negotiators. With the increases in longevity and health that our population is experiencing, it is highly inefficient to force such early retirements.

I would recommend reaffirming the primary role of the State Department in all international negotiations, developing a coordinated U.S. position before the negotiations begin (utilizing as much public input as is feasible), reducing the size of U.S. delegations at international negotiating sessions, reducing the turnover of the U.S. diplomats sent to ongoing negotiations and maintaining the head-of-delegation to the extent possible, and keeping our experienced Foreign Service Officers in service beyond the age of 60, so that they can provide

continuity and service to the country for many more years.

### **3. Governing the High Seas.**

The Grotian concept of freedom of the seas is no longer viable because technology now allows countries to exhaust fisheries in short periods of time. We have seen repeatedly that overcapitalization and technological innovations have led to rapid and sometimes irreversible declines in fish stocks. This has happened both in coastal areas, which should have been subject to national management, and also in the open ocean.

Strong cooperative international agreements are one essential element in addressing this problem. The United States is a party to the 1995 Straddling and Migratory Fish Stocks Agreement, but it must also become a party to the 1982 United Nations Law of the Sea Convention, and must make every effort to bring the 2000 Honolulu Convention into full force and effect. These agreements are important in identifying the applicable substantive norms, but they are also important in spelling out the legitimate enforcement techniques, and in establishing dispute-resolution mechanisms that give teeth to the substantive norms. The United States led the effort to develop the binding dispute-resolution alternatives established by the Law of the Sea Convention, and these innovative provisions will prove to be very useful in addressing and resolving the controversies that will inevitably arise between resource protection and exploitation on the one hand and navigational freedoms on the other.

The 1995 Agreement and the Honolulu Convention adopt these same dispute-resolution strategies. The Honolulu Convention is particularly innovative, because it gives its Commission the power to allocate high-seas fishery resources to specific countries, and could provide a potent model to be used in other areas of the world. The United States should work closely with the Republic of Korea and Japan, to encourage their ratification of the Honolulu Treaty, and then should make every effort to make this new treaty regime work according to its design.

Thank you again for inviting me to participate in these discussions. I hope these comments are helpful. Let me know if there are other ways I can be of assistance.

Sincerely yours,

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