

## **AMERICAN BAR ASSOCIATION**

**ADOPTED BY THE HOUSE OF DELEGATES  
August 8-9, 2005**

### **RECOMMENDATION**

RESOLVED, that the American Bar Association urges the United States Government to continue and enhance efforts to play a leadership role in the development and implementation of international initiatives to protect the world's marine ecosystems and ensure the ecologically sustainable use and development of the world's marine resources, emphasizing good stewardship, ecosystem-based management, preservation of biodiversity, use of best available science, and international responsibility, including by:

- (1) Ratifying the United Nations (UN) Convention on the Law of the Sea, Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, and the International Convention for the Prevention of Pollution from Ships, Annex VI (air pollution).
- (2) Encouraging other countries to ratify both the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Sea, and actively promoting effective international implementation of the UN FAO's Code of Conduct for Responsible Fisheries and regional plans of action in which the United States participates;
- (3) Reviewing and updating regional and bilateral fishery agreements to which the United States is a party, and amending and initiating, as appropriate, international agreements to address critical concerns not yet adequately addressed;
- (4) Ensuring trade and oceans-related objectives, agreements, policies and practices are mutually supportive; and
- (5) Increasing United States funding and technical assistance to build scientific and management capacity in developing nations.

## REPORT

### I. INTRODUCTION

This American Bar Association resolution urges the United States Government to promote effective international efforts to protect the world's marine ecosystems and ensure the ecologically sustainable use and development of the world's marine resources. The ABA urges the United States to continue to play a leadership role and to take specific actions commensurate with this role to facilitate meaningful, timely international action.

As detailed more fully below, the world's oceans are in peril due to factors including unsustainable levels and methods of harvesting of living marine resources and pollution of marine ecosystems from both land and ocean-based sources. Two commissions on the oceans, the Administration, members of Congress and others have supported continuing and expanding United States efforts at the regional and international level (as well as domestically). In the specific context of the oceans, this resolution reinforces and builds upon prior ABA resolutions, including resolutions supporting ratifications of important international agreements and concerning sustainable development, good governance and the rule of law.

### II. THE NEED FOR INTERNATIONAL ACTION

#### A. The Importance and State of the World's Oceans

The importance of the world's oceans is profound. The oceans and the resources they provide are essential to our survival and fundamental to our economic well being. "[T]he oceans play a critical role in the global water cycle and in regulating climate, sustain a large part of Earth's biodiversity, provide an important source of food and a wealth of other natural products, act as a frontier for scientific exploration, are critical to national and economic security, and provide a vital means of transportation"<sup>1</sup> For the U.S., ocean-related activities provide direct benefits of \$117 billion to the nation's economy and create over two million jobs.<sup>2</sup>

Human activity, however, is depleting ocean resources and damaging marine ecosystems. Many fish populations are in decline; some marine species are disappearing. Pollution from the land and air is degrading coastal waters and marine life. Habitats, including wetlands and coral nurseries, are being damaged; and non-native species are being introduced to the detriment of competing native species and their ecosystems.<sup>3</sup>

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<sup>1</sup> S. 2647, 108<sup>th</sup> Cong., § 101(1) (as enrolled Nov. 10, 2004).

<sup>2</sup> U.S. COMMISSION ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21<sup>ST</sup> CENTURY: FINAL REPORT, *Executive Summary* xxxii (Sept. 20, 2004).

<sup>3</sup> PEW OCEANS COMMISSION, AMERICA'S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE: SUMMARY REPORT 1 (May 2003); U.S. COMMISSION ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21<sup>ST</sup> CENTURY: FINAL REPORT, *Executive Summary* 1 (Sept. 20, 2004).

## B. Recognition of the Need to Reform International Oceans Policy

In 2000, it had been three decades since the United States comprehensively assessed federal management of marine resources in the Congressionally mandated Stratton Commission report of 1969, which led to the creation of the National Oceanic and Atmospheric Administration (NOAA) by Congress in 1970 among other legislative actions. Recognizing the need for another comprehensive review of the nation's marine laws, regulations, and policies, Congress enacted the Oceans Act of 2000.<sup>4</sup>

Pursuant to the Oceans Act, on June 15, 2001, President George W. Bush appointed 16 members to the U.S. Commission on Ocean Policy. Under its statutory mandate, the Commission was charged with recommending changes to the nation's existing ocean and coastal legal and regulatory regimes that would result in a "coordinated and comprehensive national ocean policy."

On September 20, 2004, the U.S. Commission on Ocean Policy issued its final report to Congress and the President, entitled *An Ocean Blueprint for the 21<sup>st</sup> Century*. In December 2004, in accordance with the Oceans Act, President George Bush released an Executive Order and a *U.S. Ocean Action Plan* in response to the U.S. Commission's report.<sup>5</sup>

On a parallel track, in June 2000 the Pew Charitable Trusts brought together a non-governmental, 16-person commission, the Pew Oceans Commission, to complete "the first national review of ocean policies in more than thirty years."<sup>6</sup> The Pew Commission issued its Report, *America's Living Oceans*, in May 2003.

During and following the preparation of these reports and measures, various bills were proposed in Congress to initiate reform of federal oceans policy.

The U.S. and Pew Commissions, and the Bush Administration, as well as Congressional legislative proposals, have emphasized that the United States should play an important role in establishing international legal norms for ocean management. As stated in the bi-partisan Senate bill S.2647 of 2004, for example, one element of the national ocean policy should be to "preserve the role of the United States as a global leader in ocean, atmospheric, and climate-related activities, and promote cooperation in the national interest by the United States with other nations and international organizations in ocean and climate-related activities."<sup>7</sup>

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<sup>4</sup> Public Law 106-256, 114 Stat. 644 (Aug. 7, 2000).

<sup>5</sup> PRESIDENT GEORGE W. BUSH, U.S. OCEAN ACTION PLAN: THE BUSH ADMINISTRATION'S RESPONSE TO THE U.S. COMMISSION ON OCEAN POLICY (Dec. 17, 2004).

<sup>6</sup> PEW OCEANS COMMISSION, AMERICA'S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE: SUMMARY REPORT 2 (May 2003).

<sup>7</sup> S. 2647, 108<sup>th</sup> Cong., § 101(13) (as enrolled Nov. 10, 2004).

### III. THE UNITED STATES SHOULD PLAY A LEADERSHIP ROLE IN INTERNATIONAL OCEAN LAW AND POLICY

#### A. The Need for a Global Perspective and Global Leadership

The oceans are one of the truly global resources. All parts of the ocean are connected. Moreover, at least some marine resources that humans deem important have worldwide ranges, and many more have ranges reaching across the national waters of multiple nations as well as through international waters.

International agreements and other international initiatives establish norms and duties for the international community. Encouraging development of such regimes and participation in them is important to establishing expectations and responsibilities of nations. In addition, these mechanisms offer an efficient and potentially highly effective means to raise awareness of the nature and magnitude of the challenges associated with sustainable oceans management and to increase governments' commitments to meeting them, particularly when combined with meaningful, effective forms of assistance and other incentives.

In August 1991, in anticipation of the United Nations Conference on Environment and Development (the Rio Summit), the ABA adopted a policy urging the U.N. and all nations to adopt and implement measures to ensure that activities within their jurisdiction or control are conducted in a manner that accounts for the interests of present and future generations, to generate plans promoting conservation and efficient use of natural resources, and to cooperate with other nations in this regard. In August 2003, the ABA adopted a resolution, reaffirming its commitment to sustainable development and the role of good governance in its achievement, and calling on the United States to meet the targets and timetables agreed upon in the Plan of Implementation adopted at the 2002 World Summit on Sustainable Development (WSSD) that are applicable to the United States and to which the United States agreed.

The WSSD Plan of Implementation calls for effective coordination at the global and regional levels and actions at all levels to ensure the sustainable development of the oceans, detailing specific actions for governments to pursue consistent with this overarching objective. This ABA resolution focuses on particular actions the United States can take consistent with this objective of the Plan. The ABA continues to endorse full implementation by the United States of all its commitments under the Plan, including with respect to oceans resource management. This resolution reflects many of the specific action items detailed in the Plan.<sup>8</sup> However, the focus of

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<sup>8</sup> For example, the Plan calls for: encouraging membership in and implementation of the United Nations Convention on the Law of the Sea, United Nations and associated regional fisheries agreements or arrangements, particularly the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Sea, the United Nations Food and Agriculture Organization's 1995 Code of Conduct for Responsible Fisheries, and relevant instruments of the International Maritime Organization; encouraging an ecosystem approach; promoting integrated, multidisciplinary and multisectoral coastal and ocean management; strengthening regional cooperation and coordination; maintaining or restoring fish stocks on an urgent basis; eliminating subsidies that contribute to illegal, unreported and unregulated fishing and to over-capacity while completing efforts at the World Trade Organization to clarify and improve trade disciplines on

this resolution is to highlight what the ABA believes are fundamental aspects of an effective United States agenda to lead urgently needed global and regional efforts to restore and sustainably manage the world's ocean resources.<sup>9</sup>

The world's oceans are in crisis, the need for effective international action urgent. The United States has the capacity to lead global efforts to achieve timely, necessary reforms. In keeping with the ABA's prior statements in support of sustainable development and the importance of good governance and rule of law to such development, the ABA urges the U.S. to aggressively pursue such a leadership role.

#### B. Actions the U.S. Must Take to Play an Effective Leadership Role

For the U.S. to play an effective leadership role, it must act on a variety of fronts in a variety of ways, as both Commissions, the Administration and members of Congress have recognized. The ABA believes these efforts should include the following:

*Ratifying critical international agreements.* The ABA urges U.S. ratification of (or accession to, as appropriate) important agreements, including the United Nations Law of the Sea Convention (UNCLOS); the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPF Convention); and the International Convention for the Prevention of Pollution from Ships, Annex VI (MARPOL Annex VI), addressing air pollution from ships.

Both the Pew and U.S. Oceans Commission have endorsed ratification of UNCLOS. The Administration has committed to pursuing ratification of all three instruments.<sup>10</sup> The ABA has previously endorsed the United States' becoming a party to UNCLOS (1994 resolution), the primary international legal authority on use and protection of oceans resources.<sup>11</sup>

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fisheries subsidies; and strengthening donor coordination and partnership, and implementing the work program of the Jakarta Mandate on the Conservation and Sustainable Use of Marine and Coastal Biological Diversity, to assist developing countries. *See* Plan of Implementation, paras 29-34.

<sup>9</sup> For example, the Plan calls for advancing efforts to address land-based sources of marine pollution by implementing both the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities and the Montreal Declaration on the Protection of the Marine Environment from Land-based Activities. *Id.* at para 32. This is certainly an important marine policy area, which the ABA might address, together with domestic legislative action, in the future.

<sup>10</sup> U.S. COMMISSION ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21<sup>ST</sup> CENTURY: FINAL REPORT, chp. 29 (Sept. 20, 2004); PEW OCEANS COMMISSION, AMERICA'S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE: SUMMARY REPORT, chp. 7 (May 2003); PRESIDENT GEORGE W. BUSH, U.S. OCEAN ACTION PLAN: THE BUSH ADMINISTRATION'S RESPONSE TO THE U.S. COMMISSION ON OCEAN POLICY 35-37 (Dec. 17, 2004). The Administration did not address accession to the WCPF Convention in its Ocean Action Plan, but, as discussed *supra*, has transmitted the Convention to the Senate for advice and consent.

<sup>11</sup> The ABA has also previously endorsed United States ratification of the Stockholm Convention (2002 resolution), the primary international agreement on management of use and release of hazardous substances. As discussed in the ABA's 2002 resolution, the Stockholm Convention addresses certain chemicals of global concern, persistent organic pollutants (POPs), which share four characteristics that cause them to adversely affect human health and the environment: (1) toxicity; (2) persistence in the environment; (3) global circulation through the atmosphere and oceans; and (4) biomagnification through accumulation in fatty tissue as they move up the food chain. The Convention commits the parties to it to eliminate or restrict production, use and trade in specified POPs, and to develop action plans and use best available techniques to address their unintentional release. It establishes

It has been over ten years since the ABA called for U.S. to become a party to UNCLOS. It is particularly appropriate as part of this recommendation for a United States' leadership agenda on oceans policy to reaffirm the ABA's call for U.S. participation in this foundational treaty regime on international regulation and use of the sea. In part, this international accord addresses pollution from seagoing vessels, from seabed activities, ocean dumping and land-based sources of pollution. UNCLOS also provides criteria and procedures to promote access to marine areas and coastal waters for research purposes.

It has now also been over ten years since the Clinton Administration presented UNCLOS to the Senate for its advice and consent. The ABA believes United States accession to UNCLOS is critically important to an effective leadership agenda on marine resource issues, and urges the Administration and Senate to work together to ensure prompt completion of this process.

The objective of the WCPF Convention is the long-term conservation and sustainable use of fish, such as tuna, swordfish and marlin, that migrate over extensive areas of the high seas as well as through territorial seas and Exclusive Economic Zones of numerous coastal states. It builds upon provisions of UNCLOS relating to the management of straddling and highly migratory fish stocks and the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Fish Stocks Agreement).

UNCLOS obligates nations in regions where fishing for highly migratory species occurs to cooperate through appropriate international organizations to ensure conservation and promote sustainable use of these species, and calls for cooperative efforts to establish these organizations. The Fish Stocks Agreement, which entered into force December 11, 2001, establishes additional requirements to strengthen the highly migratory species provisions of UNCLOS. For example, it requires nations to establish regional fishery management organizations (RFMO). The Western and Central Pacific Ocean was the last major marine area with extensive fishing for highly migratory fish stocks lacking an RFMO.

Incorporating, in part, provisions from the Fish Stocks Agreement, the WCPF Convention establishes legal obligations and cooperative mechanisms to ensure long-term conservation and sustainable use of highly migratory fish stocks, which includes stocks of worldwide importance.

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obligations for management of POPs stockpiles and wastes. It also establishes science-based procedures for selection of additional chemicals to address, meeting defined criteria.

As even this abbreviated discussion reflects, POPs present a threat both to living marine resources and to human health, including through consumption fish stocks contaminated by these toxins. The United States played a leadership role in the negotiation of the Stockholm Convention, and the Bush Administration transmitted the Stockholm Convention to the Senate in 2001. Nonetheless, the Convention entered into force May 17, 2004 without United States participation, and there are now almost 100 parties to it. Although there has been debate within the government and among stakeholders as to specific aspects of implementing legislation for the instrument, it appears that all interested parties continue to support the United States' becoming a party. Timely accession is important to ensure that the United States can continue to play an influential role and to encourage remaining countries to join as well.

The United States played an active role in negotiation of the WCPF Convention, promoting the approach ultimately adopted, balancing protection of important fishery resources and the interests of distant water fishing nations.

The WCPF Convention establishes obligations for the parties to adopt a variety of measures to ensure long-term sustainability of stocks and promote utilization, based on best available scientific evidence and in accordance with a precautionary approach, as well as to take measures to minimize waste, pollution from fishing vessels, by-catch of non-target species and impacts on other species, particularly endangered species.<sup>12</sup> The Convention establishes and empowers a commission of the member nations to adopt measures and recommendations, including determining total allowable catch of fish stocks and total level of fishing effort for them in the Convention area.<sup>13</sup> The Convention establishes specific duties applicable to the individual member nations, such as promptly implementing measures adopted under the Convention, reporting on implementation, taking steps to address involvement with unauthorized fishing by their nationals and compliance by flag vessels with the Convention and management measures adopted pursuant to it.<sup>14</sup> It also sets forth rights and duties of member governments to take measures, consistent with the Convention, UNCLOS, the Fish Stocks Agreement and international law, to promote the effectiveness of conservation and management measures.<sup>15</sup>

The WCPF entered into force June 19, 2004, and the Administration recently transmitted the Convention to the Senate for its advice and consent. It is an important regime to the United States, particularly as both a major distant water fishing nation and an important coastal state with significant Exclusive Economic Zone waters in the region. The United States can and should play an active, leadership role, and can do so as a party to the Convention.

The MARPOL agreement is a global agreement to control pollution from ships. The annexes to the agreement address specific, related issues: Annex I, transport of oil; Annex II, harmful substances carried in bulk; Annex III, harmful substances carried in packaged form; Annex IV, ship-generated sewage; Annex V, garbage; Annex VI, regulation of emissions of certain pollutants (as discussed more fully below). The United States is currently a party to Annexes I through III and V.

MARPOL Annex VI mandates prevention of several sorts of air pollution from ships through various requirements. The Annex limits discharge of nitrogen oxide from larger marine diesel engines.<sup>16</sup> It regulates sulfur content in marine diesel fuel.<sup>17</sup> It prohibits emission of ozone-depleting substances<sup>18</sup> and regulates emission of volatile organic compounds during cargo transfer.<sup>19</sup> It sets standards for shipboard incinerators<sup>20</sup> and fuel quality,<sup>21</sup> and its requirements reach drilling rigs and platforms.<sup>22</sup>

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<sup>12</sup> See WCPF Convention, arts. 5-8.

<sup>13</sup> See *id.* arts. 9-11, 20.

<sup>14</sup> See *id.* arts. 23, 24.

<sup>15</sup> See *id.* arts. 27, 32.

<sup>16</sup> MARPOL Annex VI, reg.13, app. II; Technical Code on Control of Nitrogen Oxides from Marine Diesel Engines.

<sup>17</sup> *Id.* reg. 14, app. III.

<sup>18</sup> *Id.* reg. 12.

<sup>19</sup> *Id.* reg. 15.

<sup>20</sup> *Id.* reg. 16, app. IV.

The Bush Administration transmitted MARPOL Annex VI to the Senate for advice and consent May 15, 2003. Annex VI entered into force May 19, 2005. As the Administration stated, U.S. accession will demonstrate the nation's commitment to an international solution to controlling and preventing harmful air pollution from ships. Accession will enhance the ability of the United States to work within the treaty system, including to champion amendments to require further reductions in emissions of nitrogen oxides, which are now achievable with modern control technologies.

There does not appear to be any stakeholder opposition to the United States becoming a party to any of these agreements. The U.S. cannot play a true leadership role in regimes to which it is not a party, and, as discussed above, all of these regimes address critical aspects of oceans resource protection and use.

*Encouraging ratification and implementation of key agreements.* Existing agreements to which the U.S. is a party and that the U.S. should encourage other nations to ratify include the Fish Stocks Agreement and the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Sea, which entered into force April 24, 2003. The Oceans Commission has recommended encouraging ratification of both agreements.<sup>23</sup> Particularly important to encourage governments to implement, as the Oceans Commission has recommended as well, are the U.N. Food and Agriculture Organization's 1995 Code of Conduct for Responsible Fisheries and other regional plans of action in which the United States participates.<sup>24</sup>

Wide participation is particularly important for regimes addressing shared resources, such as fish stocks, which are not under the control of any one nation and for which collective action can be substantially undermined by the actions of non-participatory "free riders." Encouraging nations to join, implement and enforce these agreements and comply with these international and regional commitments is important, in particular, to help promote a variety of goals, including: reducing or eliminating illegal, unreported, and unregulated (IUU) fishing; reducing fleet capacity (especially on high seas), reducing by-catch of unwanted species, including endangered species; and collecting and reporting data.

*Reviewing and updating regional fisheries agreements, amending existing international agreements and initiating negotiation of new international agreements.* Review and updating of regional and bilateral fishing agreements will help ensure full incorporation of the latest science and harmonization with the Fish Stocks Agreement. Amending existing and initiating negotiation of new international agreements provide ways to address critical concerns not yet adequately addressed, including coral reef protection, reducing by-catch and adverse effects to marine mammals, preventing marine debris, controlling the spread of aquatic invasive species, addressing pollutants, including mercury and other air pollutants not currently covered by

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<sup>21</sup> *Id.* regs. 18.

<sup>22</sup> *Id.* reg. 19.

<sup>23</sup> U.S. COMMISSION ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21<sup>ST</sup> CENTURY: FINAL REPORT, rec. 19-24 (Sept. 20, 2004).

<sup>24</sup> *Id.* rec. 19-27



international agreement, and promoting appropriate mechanisms to address additional issues as they emerge.<sup>25</sup>

*Ensuring that trade and oceans-related objectives and efforts are mutually supportive.* Because of the scale and scope of international commerce in living and non-living ocean resources and the magnitude of international transport across the oceans, inconsistency between trade incentives and oceans policy objectives can be expected to undermine many if not all ocean management reform efforts. As reflected in current U.S. policies and practices and as recognized by the U.S. Ocean Commission, coordination of trade and oceans policy is essential to the success of oceans policy reform efforts.

A particular challenge for international oceans policy is the urgency of some of the issues needing to be addressed. As a consequence, development of regional and multilateral agreements and the extent of their implementation may be insufficient to ensure sufficiently timely and comprehensive action. To encourage more rapid progress, the United States has utilized trade measure to promote preservation of marine resources and compliance with marine resource management agreements, including to address threats to sea turtles and dolphins.

At the multilateral level, the United States has played a leading role in World Trade Organization (WTO) negotiations to reduce subsidies to the fisheries sector that have encouraged over-fishing and over-capacity of fishing fleets. Should these negotiations prove successful, the full force of WTO enforcement authorities, including the dispute settlement system, could be brought to bear to ensure that WTO members reduce or eliminate these subsidies to the extent agreed.<sup>26</sup>

| It may be appropriate for the U.S. to consider the need for additional uses of [voluntary](#) (e.g., standards for non-required labeling) or mandatory (e.g., prohibitions on import and marketing of violative products) trade measures to promote sustainable fishing practices if other measures appear insufficient to achieve timely, necessary reforms. However, it will be important to pursue viable alternatives and to ensure that any trade measures if pursued are carefully tailored, to guard against unnecessary constraints and discriminatory effects, which could unproductively interfere with free and open international trade.

*Increasing significantly provision of funding and technical assistance* to build scientific and management capacity in developing nations is one means by which the U.S. can and should encourage and facilitate the efforts of countries with fewer resources and less expertise. Availability of meaningful assistance, particularly financial assistance, to address environmental challenges of international importance is a perennial concern to developing countries. The United States and other developed countries have committed to addressing these needs somewhat more robustly, for example, in the 2000 United Nations Millennium Declaration, 2002 Monterrey Consensus of the United Nations International Conference on Financing and

<sup>25</sup>*Id.* recs 14-4, 17-7, 18-4, 20-10, 21-4, 22-4, 29-2, 29-4.

<sup>26</sup> The outcome of these negotiations remains unclear. Some WTO members have, in fact, questioned the legitimacy of these negotiations. See, e.g., *Contribution to the Discussion on the Framework for the Disciplines on the Fisheries Subsidies, Communication from Japan; the Republic of Korea; and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu* (Feb. 22, 2005).

Development, and the 2002 Johannesburg Declaration on Sustainable Development and World Summit on Sustainable Development Plan of Implementation.

#### IV. CONCLUSION

The United States has long played a central, leading role in the development and promotion of international environmental. It is critically important that the United States continue to play this role, particularly with regard to pressing issues such as the state of the world's oceans. The ABA urges the United States to adopt and implement an aggressive leadership agenda to work with the governments of the world to address current threats to these ocean resources and ensure against their recurrence.

GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations  
(Please refer to instructions for completing this form.)

Submitting Entity: Standing Committee on Environmental Law

Submitted By: R. Kinnan Golemon, Chair

1. Summary of Recommendation(s). Urges the United States Government to promote effective international efforts to protect the world's marine ecosystems and ensure the ecologically sustainable use and development of the world's marine resources. Also urges the United States to continue to play a leadership role and to take specific actions commensurate with this role to facilitate meaningful, timely international action.
2. Approval by Submitting Entity. Approved by the Committee in May 2005.
3. Has this or a similar recommendation been submitted to the House or Board previously? Several resolutions addressing the Law of the Sea treaty were adopted by the ABA, dating to 1973, most recently in 1994; the ABA has been on record supporting U.S. ratification of the treaty. In August 1991, the ABA adopted policy urging the U.N. and all nations to adopt and implement measures to ensure that activities within their jurisdiction or control are conducted in a manner that accounts for the interests of present and future generations, to generate plans promoting conservation and efficient use of natural resources, and to cooperate with other nations in this regard. In February 2002, the Association adopted policy supporting prompt ratification and implementation by the U.S. of the Stockholm Convention on Persistent Organic Pollutants (POPs). The present policy proposal reinforces these goals and proposes particular measures with specific reference to the oceans.
4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption? See #3. Also, in August 2003, the ABA adopted policy urging the U.S. to meet targets and timetables contained in the Plan of Implementation adopted at the World Summit on Sustainable Development in September 2002 that are applicable to the U.S. and to which the U.S. agreed, and to enter into appropriate partnerships to help foster sustainable development. The proposed recommendations renew the ABA's ten-year old policy position urging U.S. ratification of UNCLOS; reinforce the ABA position supporting U.S. adoption of POPs; build on the 2003 policy position promoting good governance and the rule of law; and set out an ABA position with specific reference to the oceans.
5. What urgency exists which requires action at this meeting of the House? Two major reports have issued, one by legislative mandate, reviewing critical oceans issues and presenting recommendations for U.S. statutory and policy changes. The Administration has offered an Action Plan to address some, but not all, of the recommendations. Last year,

several oceans-protection bills were introduced in Congress, and bills are anticipated to be introduced in this session. The oceans are in peril. The proposed policy allows ABA to speak out on the issues, including on legislation that inevitably will be introduced.

6. Status of Legislation. (If applicable.)  
Administration sources report plans to propose legislation in this congressional session.
7. Cost to the Association. (Both direct and indirect costs.)  
None
8. Disclosure of Interest. (If applicable.)  
None
9. Referrals.  
The recommendations were drafted with the input of several ABA Sections. The resultant documents are being referred to all ABA Sections in May 2005, and also will be circulated to the state bar associations of California, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, Washington, and the District of Columbia, among others, and to the Maritime Law Association of the U.S.
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