

**TESTIMONY OF
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**BEFORE THE
SENATE COMMITTEE ON FOREIGN RELATIONS**

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Mr. Chairman and Members of the Committee:

I am pleased to testify today in support of the Senate's provision of advice and consent to three treaties designed to protect the oceans. The three treaties address different aspects of marine pollution in distinct and vital ways. One controls toxic side effects of certain substances used on hulls to prevent attachment of barnacles and other unwanted organisms. Another reduces land-based sources of marine pollution in the Wider Caribbean Region. The third updates and improves an existing treaty on ocean dumping.

As you know, the Administration supported Senate action on each of these treaties in its February 2007 letter to Chairman Biden setting out its treaty priorities for the 110th Congress. Although the treaties are not legally or institutionally connected, we commend the Committee for taking advantage of this opportunity to consider them together in an effort to send a strong message about the urgent need to protect the world's oceans.

The three treaties before you are: the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, or the "AFS Convention," transmitted to the Senate on January 22, 2008; the Protocol Concerning Pollution from Land-Based Sources and Activities, or the "LBS Protocol" to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, or the "Cartagena Convention," transmitted to the Senate on February 16, 2007; and the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, or the "London Protocol," transmitted to the Senate on September 4, 2007.

Prompt action to facilitate ratification of these treaties will allow the United States to reinforce and maintain its leadership role on oceans issues at the international and regional levels. Ratification would enhance our ability to work with other States to promote effective implementation of these treaties. As a Party to these treaties, the United States would be able to participate fully in meetings of States Parties aimed at implementation of these treaties and, thereby, more directly affect the implementation and interpretation of these treaties. Further, after the United States ratifies a treaty, other nations are more likely to ratify as well, resulting in greater overall protection of the oceans from marine pollution.

The United States participated actively in the negotiation of each of these treaties. Our technical expertise and drafting skills significantly influenced the final language of each instrument. Throughout these processes, affected U.S. stakeholders provided meaningful input. We believe that ratification of all three treaties enjoys widespread support among these stakeholders and should not be contentious.

Two of the three treaties – the London Protocol and the AFS Convention – require implementing legislation prior to ratification. As discussed in more detail below, the Administration has in both cases developed and forwarded to Congress draft legislation for this purpose. We believe that early action by the Senate to provide advice and consent would spur both Houses to enact such legislation.

The transmittal packages for these treaties detail the provisions under each regime. I would, however, like to highlight a few key elements in this testimony.

Anti-Fouling Systems Convention

I would like to first address the AFS Convention, which was adopted at the International Maritime Organization (IMO) in London and aims to protect the marine environment and human health from the negative effects of certain anti-fouling systems.

Anti-fouling systems are mainly paint-like coatings used on a ship's hull to prevent attachment of barnacles and other unwanted organisms that slow down ships. Some anti-fouling systems may adversely affect the marine environment through leaching of biocides into the water. In particular, anti-fouling systems containing organotin biocides can cause adverse reproductive effects and shell deformities in marine animals, including economically important species of oysters.

A Party to the AFS Convention must prohibit use and application of organotin-based anti-fouling systems on ships flying its flag or operating under its authority, as well as ships entering its ports, shipyards, or offshore terminals. A survey and certification system, which the Coast Guard would implement domestically for the United States, serves to verify that a ship is in compliance. Domestic law would govern violations of the certificate system and resulting sanctions. The Convention contains standard language on the treatment of vessels entitled to sovereign immunity.

While the treaty is currently limited to prohibitions on organotin-based systems, Annex 1 sets forth procedures for evaluating proposals to add controls on other harmful anti-fouling systems, after the IMO's Marine Environment Protection Committee has completed a comprehensive risk and benefits analysis. As described in the proposed declaration for Article 16 in the Administration's transmittal package, a Party may choose to require its express consent prior to being bound by any amendment to Annex 1. The Administration recommends that the United States exercise this option.

The Organotin Anti-Fouling Paint Control Act of 1988 (OAPCA), 33 U.S.C.A. §§ 2401-2410, restricts the release rate of organotin from anti-fouling systems and prohibits use of such

systems on most vessels in the United States under 25 meters in length. The last organotin anti-fouling paint registration was cancelled in December 2005. The proposed implementing legislation forwarded to Congress would prohibit the use of organotin anti-fouling systems on U.S. ships and foreign ships entering U.S. ports and certain other waters. This prohibition would result in greater protection of the marine environment in near-coastal waters of the United States, and apply the same standards for anti-fouling systems on U.S. vessels and foreign vessels entering U.S. ports. The anti-fouling coatings industry has consistently supported the standards in the AFS Convention and the proposed implementing legislation. Most international shipping interests have already switched to alternative anti-fouling systems that do not contain organotin.

The AFS Convention will enter into force on September 17, 2008. Thirty States have ratified or otherwise accepted the Convention, including Panama, Japan, Mexico and Spain, representing more than 49% of the world's shipping tonnage. It would be highly desirable for the United States to be a Party to the Convention when it enters into force, or soon thereafter, so that we can participate fully in the international implementation of the Convention, especially the review of proposals to control other anti-fouling systems. Ratification of the treaty by the United States would more generally demonstrate our continued environmental leadership in this area and our support for more environmentally friendly anti-fouling technologies.

Land-Based Sources Protocol

The second treaty I would like to address is a Protocol to the Cartagena Convention, a regional seas agreement negotiated under the auspices of the United Nations Environment Program. The Cartagena Convention, which the United States ratified in 1984, is a framework agreement that sets out general obligations to protect the marine environment of the Wider Caribbean Region, an area encompassing the Gulf of Mexico, Straits of Florida, Caribbean Sea, and the immediately adjacent areas of the Atlantic Ocean within 200-nautical miles of shore. This region is of particular importance to the United States, as waste from other nations combined with the circulation patterns in this area could result in increased pollution in U.S. waters.

The LBS Protocol is in fact one of three subsidiary agreements to the Cartagena Convention. The United States is already a Party to the other two agreements: the Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region, and the Protocol Concerning Specially Protected Areas and Wildlife. Together, these agreements offer significant protection to marine and coastal resources in this crucial region.

In negotiating the LBS Protocol, the United States sought to create requirements for other nations bordering this region that would, in effect, bring them up to U.S. standards with respect to controlling land-based sources of marine pollution. As a result of the success of this strategy, U.S. ratification of this instrument would not require new implementing legislation.

It is estimated that 70 to 90 percent of pollution entering the marine environment worldwide emanates from land-based sources and activities. Land-based sources of pollution endanger public health, degrade coral reefs and other sensitive coastal habitats, undermine fisheries resources, and negatively affect regional economies, recreation, and tourism.

The LBS Protocol elaborates on the obligation set forth in Article 7 of the Cartagena Convention to "...take all appropriate measures to prevent, reduce and control pollution of the Convention area caused by coastal disposal or by discharges emanating from rivers, estuaries, coastal establishments, outfall structures, or any other sources on their territories."

Among the principal land-based sources of marine pollution in the Wider Caribbean Region are domestic wastewater and agricultural non-point source runoff. Specific effluent limitations for domestic wastewater and a requirement to develop plans for the prevention, reduction and control of agricultural non-point sources of pollution are contained in the legally binding annexes III and IV. Annex I sets forth a list of additional pollutants for Parties to take into account. The Protocol envisions that additional annexes will be developed to address these pollutants, and Annex II sets out factors to be considered by the Parties in developing such annexes. While these original four annexes apply to all Protocol Parties, a Party to the Protocol may choose to require its express consent prior to being bound by any additional annexes that may be adopted in the future. As described in the proposed declaration under Article XVII of the transmittal package, the Administration recommends that the United States exercise this option.

While having significant beneficial impacts in a region of specific interest to the United States, the Protocol is also expected to have an impact even beyond the Wider Caribbean Region, as it is the first regional agreement to establish effluent standards to protect the marine environment. It therefore serves as a model for other regions that are also seeking to address this urgent problem.

The United States signed the LBS Protocol in October 1999. It is not yet in force, as only four of the nine necessary ratifications for entry into force have been received – from France, Panama, Saint Lucia, and Trinidad and Tobago.

However, given the strong leadership role played by the United States in the negotiation of the Protocol, U.S. ratification would provide strong encouragement to other States to become contracting parties. Indeed, several States in the region have indicated that they would be more likely to join following U.S. ratification.

London Protocol

The third treaty before you is the 1996 London Protocol, a treaty designed to protect the world's oceans from the dumping of harmful wastes and other matter. The Protocol regulates deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms, or man-made structures at sea. The Protocol also bans incineration at sea of all wastes or other matter. It represents the culmination of a thorough and intensive effort to update the 1972 London Convention, to which the United States has been a Party since 1975. The Protocol is a free-standing treaty that is intended eventually to replace the London Convention.

Although the Protocol and the London Convention share many features, the Protocol will protect the marine environment more effectively. The Protocol moves from a structure of listing substances that may not be dumped to a "reverse list" approach, which generally prohibits ocean dumping of all wastes or other matter, except for a few specified wastes in Annex 1. When

considering whether to allow the dumping of a waste or other matter listed in Annex 1, a Party must follow detailed environmental assessment criteria found in Annex 2, which provide a complete waste management strategy, including consideration of alternatives to ocean disposal.

A few types of activities are not considered dumping under the Protocol. These include placement of matter, such as research devices or artificial reefs, for a purpose other than mere disposal, provided that such placement is not contrary to the aims of the Protocol. Activities related to oil and gas exploration are excluded from the definition of dumping. Further, there are exceptions for “*force majeure*” and emergency situations. The Protocol contains standard language on the sovereign immunity of ships.

The Protocol, like the Convention, requires a Party to use a permit process to regulate dumping activities within areas subject to national jurisdiction, on vessels loaded in its territory and on vessels flying its flag. Permits are issued and violations are addressed domestically.

The list of substances on Annex 1 that currently may be considered for dumping is meant to be a dynamic list that can be amended when necessary as new information and technologies develop. For example, an amendment, which the U.S. supported, was adopted in November 2006 to add carbon dioxide streams from carbon dioxide capture processes for sequestration, to allow for the possibility of sequestration in sub-seabed geological formations. The United States would join the treaty as amended. As a party, of course, the United States would be able to have a say in the addition of other substances to this list, thereby protecting its interests in determining how and when the ocean may be used for dumping.

The Administration’s transmittal package proposes one declaration and one understanding to be deposited along with the instrument of ratification. The declaration in Article 3 stems from a suggestion of the United States during the negotiations that at the time of ratification, a State may declare that its consent is required before it may be subject to binding arbitration about the interpretation or application of the general principles in Article 3.1 or 3.2 on precaution and polluter pays. The Administration proposes making such a declaration for the United States.

With respect to Article 10, the Administration proposes an understanding making clear that disputes regarding the interpretation or application of the Protocol with respect to sovereign immune vessels are not subject to Article 16 dispute settlement procedures.

The United States signed the Protocol on March 31, 1998. It entered into force on March 24, 2006, having met the 26-State requirement. It currently has 35 Parties. The IMO serves as the Secretariat for both the Convention and the Protocol.

Now that the London Protocol has entered into force, it is highly desirable for the United States to join. The United States supported the updating and improvements of the Convention that the Protocol reflects. Further, it is important for the United States to maintain its current leadership role in this area and to ensure our participation in the development of policies and procedures under the Protocol.

The Administration has transmitted to Congress a legislative proposal to implement the London Protocol in the form of amendments to the Ocean Dumping Act. While ratification of the Protocol would not require significant changes to the U.S. ocean dumping program as it currently operates, some changes to the Ocean Dumping Act would be needed. For example, it has long been U.S. practice not to authorize incineration at sea or dumping of low-level radioactive wastes. The proposed amendments to the Ocean Dumping Act would explicitly reflect those prohibitions.

Conclusion

United States' ratification of the treaties before you today would advance our national interest and would promote our leadership on the prevention of marine pollution. These treaties are widely supported and not contentious in our view.

Thank you, Mr. Chairman and members of the committee for this opportunity to convey the support of the Administration for this effort. I urge that the Committee give prompt and favorable consideration to these treaties. I would be happy to answer any questions.