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United States Oceans Politics

ANN L. HOLLICK*

The United States Government has been actively engaged since 1967 in the formulation of policy relating to the control and use of the oceans involving a network of issues that surrounds the exploitation of the seabed, the breadth of the territorial sea, transit rights through straits, and the conservation and allocation of fishery resources. Few issues of foreign policy impinge on such a complex array of national and commercial interests in the United States and abroad and at the same time involve such a complex interaction of interests and perspectives within the U. S. Government.

At the heart of these ocean issues and of the debate on the law of the sea is the allocation and use of ocean space. In a broad sense, the contending parties are coastal economic interests versus global maritime interests. Governments as well as private interests may

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espouse either a coastal or a maritime policy or a combination of the two. The natural alliances, therefore, transcend national boundaries. Such alliances may link U. S. petroleum interests seeking national jurisdiction over extended offshore areas with Latin American nations claiming a 200 mile jurisdiction. Or they may bind naval establishments of maritime nations with land locked countries anxious to restrict the claims of coastal nations. Perhaps the most pronounced division is between developed nations with global maritime interests and developing nations anxious to curb the activities of maritime powers off their coasts.

Since 1967, the forum for international negotiations between these contending forces has been the U.N. Seabed Committee.¹ In 1970, the Seabed Committee was officially designated as the preparatory body for the Third United Nations Law of the Sea Conference.² The conference is scheduled to begin with a two week organizational session in November/December 1973 in New York to be followed by an eight week session in Santiago, Chile, during April and May of 1974. The agenda items for the conference are numerous and include the issues of an international regime for the seabed, the breadth of the territorial sea, coastal state preferential rights over resources beyond the territorial sea, straits used for international navigation, the preservation of the marine environment and scientific research.

While the United States is obviously the world's foremost maritime power, given its two long coastlines and its Hawaiian and Alaskan archipelagos, it is also a nation with substantial coastal interests.³ U.S. ocean policy is, therefore, characterized by a high degree of conflict between coastal and maritime interests and represents a series of tenuous compromises. Since the first announcements in 1970 of U.S. policies on seabed resource exploitation and other law of the sea issues, the policy compromises have evolved steadily away from ones favoring military-strategic interests to ones favoring coastal economic interests. This evolution has been due in part to international pressure and in part to an increase in policy influence of domestic interest groups with substantial coastal state concerns.

As announced in August 1970, United States policy with respect to the exploitation of seabed minerals favored a narrow zone of

1. Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction.

2. G.A. Res. 2750 (1970), 10 INT'L LEGAL MATERIALS 224 (1971).

3. Indeed, under a universal 200 mile territorial sea, the United States would gain more territory than any other nation.

national jurisdiction and the establishment of an international seabed regime beyond.⁴ Exclusive coastal state control over the mineral resources of the Continental Shelf would extend only to the 200 meter isobath. Beyond that, in an intermediate zone reaching to the outer edge of the continental margin, the coastal state would act as a "trustee" for the international seabed authority. In the deep seabed the international authority would license the exploitation of minerals, and a substantial portion of the revenues generated in the international area (including the intermediate zone) would be distributed to developing nations.

Since the announcement of this policy three years ago, there has been a discernible shift in U. S. policy away from insistence that national jurisdiction be limited to the 200 meter isobath; increasingly evident is an accommodation to strong international and domestic pressures in favor of a broader national resource or economic zone. Although the U.S. has never explicitly abandoned the 200 meter isobath as the limit to coastal state seabed jurisdiction, it no longer insists on it in policy statements. Instead the Government simply delineates the provisions that must apply in coastal zones of national resource jurisdiction. In such areas, the U.S. now insists on international agreement to certain standards and provisions for compulsory dispute settlement to protect other uses of the area, and to safeguard the integrity of investments. These conditions are, of course, acceptable to U.S. domestic interests planning to operate in coastal areas.

On the second set of major policy issues before the United States Government there has been a similar movement toward greater concessions for coastal interests. The American position on the breadth of the territorial sea, international straits, and fisheries was presented to the U.N. Seabed Committee in August 1971.⁵ The U.S. Government indicated that it was prepared to agree to a twelve mile territorial sea provided that international agreement was reached on freedom of transit through and over international straits that would otherwise be closed by this extension of the territorial sea. At the same time, the United States was prepared to accept limited preferential rights for coastal nations over the fishery re-

4. Draft United Nations Convention in the International Seabed Area, U.N. Doc. A/AC.138/25; 9 INT'L LEGAL MATERIALS 1046 (1970).

5. U.N. Doc. A/AC.138/SC.II/L.4, 65 *Dep't. State Bull.* 261 (1971).

sources off their shores. In the two years since this announcement, there has been little modification of the U.S. position on straits and the territorial sea. The U.S. fishery position, however, has evolved to one of acceptance of coastal state management of coastal and anadromous species of fish.

One cannot understand the U. S. position on these ocean issues without understanding the pressures and concessions produced by diverse national and commercial interests as they interact with these same kinds of interests in other countries. These pressures and concessions are transmitted through a policy process that ultimately shapes the U.S. position. Although the process of formulating ocean policy is in many ways distinctive, it nonetheless illuminates some perennial features of the foreign policy decision-making process, with particular reference in this case to the Nixon Administration and the operation of its National Security Council.

Perhaps the most fruitful approach to understanding how ocean policy is formulated is that of bureaucratic politics. In this approach the actors or "makers" of ocean policy are public officials and large bureaucracies engaged in a continuous process of bargaining which is influenced throughout by domestic interests as well as foreign interests. The ocean policies that result are a product of contention—within the Government and with domestic and foreign interests—and not of a rational centralized decision-making process.⁶

Several low-level generalizations or lessons emerge from a bureaucratic politics approach to ocean policy. First, it is apparent that the ocean policy process involves a blend of domestic and foreign policy considerations. As domestic interests have become more involved in the process, the foreign policy latitude of both the State Department and White House has diminished correspondingly. While decisions and policies on the oceans have remained a product of conflict and compromise, the active participation of domestic interests has restricted the process of tradeoffs. Bureaucrats that initially interjected themselves into a variety of ocean issues now limit their policy involvement to issues of direct relevance to their agency.

The policy process has been characterized by contention between interests with varying degrees of political and economic power.

6. The bureaucratic politics approach to foreign policy is most articulately elaborated in Allison, *Conceptual Models and the Cuban Missile Crisis*, 63 AM. POL. SCI. REV. — (1970); Halperin, *Why Bureaucrats Play Games*, — FOR. POL. — (1971); Allison and Halperin, *Bureaucratic Politics: A Paradigm and Some Policy Implications*, 24 WORLD POL. — (Supplement) (19—).

The most powerful private interest in the seabed debate has been the petroleum industry. Equally powerful and initially in opposition to petroleum has been the Defense Department, representing more traditional foreign policy considerations regarding use of the oceans. What emerges from an examination of the policy role of these and other ocean interest groups is the not-too-surprising fact that an interest's influence on policy is a function of its economic and political power⁷—of its contacts within the bureaucracy, the Congress and the White House, of its ability to glean information, and of the skill of its policy partisans.

A number of generalizations flow from a consideration of the ocean policy of the Nixon NSC system. While the NSC system presided over by Henry Kissinger has ensured that contentious ocean policy questions come to the White House for resolution, countervailing factors have allowed lower level bureaucrats to retain substantial policy control. The process leading up to a White House decision, and even the decision itself, may be largely determined by the skill of contending bureaucrats in formulating and presenting options for Presidential consideration. Then, of course, the implementation of policy, once a Presidential decision is reached, allows the bureaucrat substantial freedom from White House supervision. This has been especially true of ocean policy where the subject is relatively technical and its urgency has not been self evident to high level officials. Due in large part to the complexity of the issues, the ocean bureaucrat tends to deal exclusively with ocean questions. This not only results in a rather closed group of interacting policy experts but also tends to insulate these decision-makers from close White House scrutiny.

UNITED STATES SEABED POLICY

The Policy Participants

Of the domestic interests affected by the disposition of the seabed and its mineral resources, only four have had a significant influence on or involvement in policy formulation through 1972—the petroleum industry, the military, the hard minerals industry, and the marine science community. While the military and the scientist

7. Tables 1 and 2 provide a rough index of priorities accorded to agencies and ocean uses by the Federal Government. See pp. 500, 501, *infra*.

use the oceans for the more traditional purposes of mobility, the petroleum and hard minerals industries share a more recent interest in the exploitation of fixed mineral resources. The resulting clash between these new and traditional ocean uses has been a central element in the formulation of U.S. seabed policy.

Seabed policy has two major aspects: (1) the delimitation of national jurisdiction over seabed minerals and (2) the nature of the seabed regime to be established beyond national jurisdiction. Each of the four interest groups is concerned with different aspects of seabed policy. While the petroleum industry is primarily intent upon determining the location of the boundary of national jurisdiction, the hard minerals industry is concerned with the seabed regime to be established beyond that boundary. The military and the marine scientist are affected by both of these questions insofar as they might restrict their mobility on the oceans. Conflict has therefore arisen over both the national boundary and the international regime issues—between Defense and the petroleum industry in the former case and between Defense and the hard minerals industry in the latter. The clash over the boundary issue began earlier than that over the regime and was much more virulent, due in no small measure to the relative power parity of defense and petroleum interests. Only in 1972 did the Department of Defense withdraw from active involvement in the boundary issue to concentrate on the straits question.

The policy dispute over the boundary found its origin in the 1968 discovery that seabed petroleum deposits are generally limited to the continental margin. Although offshore petroleum operations had been underway for over two decades, they were confined to the shallow areas of the continental shelf and knowledge of the area beyond was at best vague. In 1967 and early 1968, new discoveries and developments led the petroleum industry to reevaluate its interest in the deeper offshore areas. The Malta proposal at the United Nations⁸ raised worldwide hopes of boundless seabed treasure while simultaneously threatening to jeopardize national access to them. In the same period, estimates of the magnitude of offshore petroleum resources were skyrocketing as technological advances were lowering the cost of deep water operations.

Important in unifying the entire petroleum industry around a

8. Declaration and Treaty Concerning the Reservation Exclusively for Peaceful Purposes of the Sea-Bed and of the Ocean Floor Underlying the Seas Beyond the Limits of Present National Jurisdiction, and the Use of their Resources in the Interests of Mankind, 22 U.N. GAOR ___, U.N. Doc. A/6695 (1967).

single position on offshore jurisdiction were two reports emanating from the U.S. Geological Survey in early 1968. In the first, the Director of the Geological Survey indicated that commercial petroleum deposits would be restricted to the continental margin and suggested that the legal definition of the Continental Shelf should be adapted to correspond with the geological boundary.⁹ The impact of this statement on subsequent petroleum policy was reinforced by new and substantially increased estimates of offshore petroleum resources. The Geological Survey reported recoverable reserves on the U. S. continental margins ranging from 180 to 220 billion barrels of petroleum liquids and from 820 to 1,100 trillion cubic feet of gas.¹⁰

On the basis of these findings, major segments of the U.S. petroleum industry moved quickly to stake out a policy position on the location of the Continental Shelf boundary. The National Petroleum Council offered a definitive policy formulation in the interim report entitled *Petroleum Resources under the Ocean Floor*.¹¹ The NPC's argumentation combined an ingenious early version of a national "energy crisis" with elaborate legal reasoning. Using the Interior Department's estimates, the NPC pointed to the substantial resources off U.S. shores and advanced the view that it was vital to the nation's security to guarantee national control of all the energy resources of the continental margin. The alternative, it was suggested, would be a dangerous dependence on foreign supplies of petroleum.

To secure national control of these offshore petroleum resources, the U.S. Government was urged to unilaterally assert sovereign rights over offshore seabed resources to the outer edge of the continental margin. Such a move, the petroleum industry argued, would be consistent with the intent of the Geneva Convention on

9. U.S. Dept. of the Interior (Geological Survey), *Geologic Boundary at the Continents*, (Statement of W. T. Pecora) (Feb. 21, 1968).

10. U.S. Dept. of the Interior, McKelvey, *et al.*, *Potential Mineral Resources of the United States Outer Continental Shelf*, Unpublished Report of the Geological Survey to the Public Land Law Review Commission, March, 1968. A year later the Geological Survey estimated potential reserves in place to a depth of 200 meters to be 660-780 billion barrels of oil and 1,640-2,200 trillion cubic feet of natural gas with reserves of the same magnitude from 200 to 2500 meter isobath.

11. Published July, 1968; the final report came out in March, 1969.

the Continental Shelf and would in no way impair high seas freedoms in the area. According to Article 1 of the 1958 Geneva Convention, coastal state jurisdiction over seabed resources, or the limit of the legal Continental Shelf, extends to the 200 meter (656 feet) isobath or beyond that to the depth that admits of exploitation. Although in 1969 producing wells were operating well within the 200 meter isobath (340 feet), exploratory wells were being drilled at depths far exceeding this limit (1,300 feet).¹² Adding the expected advance of recovery capabilities to the geological break between the margin and the deep seabed, the industry contended that the intent of the Geneva Convention was to advance the Continental Shelf boundary to the outer limit of the continental margin. Underlying the early petroleum position was the traditional belief shared by both the domestic and overseas branches of the petroleum industry that in gaining access to resources off the U.S. coasts as well as off those of other nations it was safer and more profitable for American firms to deal bilaterally with coastal nations rather than with an unfamiliar international regime possibly weighted against U.S. interests.¹³

As the petroleum industry began to advance this position within the Government, the Defense Department position on the boundary moved in the opposite direction. The military observed that the Interior Department's issuing of leases at depths far greater than the 200 meter isobath constituted de facto extension of the U.S. Continental Shelf based on the exploitability clause of the Geneva Convention. Although under the terms of the Continental Shelf Convention resource jurisdiction was not to affect other uses of the area, the military came increasingly to fear that such would not be the case. Not only was it concerned about the effect of such extensions on the placement of ASW detection devices, but Defense was equally fearful that the limited resource sovereignty delegated to a coastal state would gradually expand, through the phenomenon of "creeping jurisdiction," to claims of total territorial sovereignty. Thus the military came to the view that the seaward extension of the Continental Shelf boundary as exploitation proceeded, together with the expansion of coastal state sovereignty over superjacent waters, would ultimately close off U.S. military access to coastal areas around the world.

12. *Hearings Special Study on United Nations Suboceanic Lands Policy Before Senate Comm. on Commerce*, 91st Cong., 1st Sess. 103 (1969).

13. For the most articulate public statements of this view within the Government, *See*: 116 CONG. REC. 12240-42 (1970) (remarks of Senator Hansen); 116 CONG. REC. 22169 (1970) (remarks of Congressman Bush).

At that time the Defense Department solution to the threat of creeping jurisdiction was to attempt to limit the size of special purpose or resource zones in the oceans. Constrained from a resort to force to protect its navigational rights from coastal state encroachment, Defense Department representatives opted for a broad international agreement through a formal conference. With regard to seabed minerals, the Defense Department sought international agreement on a Continental Shelf extending no farther than the 200 meter isobath. To sell such a scheme to governments of developing nations the Defense Department proposed the establishment of a generous and powerful seabed mineral regime in the area beyond the narrow Continental Shelf.¹⁴ In an unsuccessful effort to convince the skeptical petroleum industry of the merits of such a boundary, the Defense Department pointed out that 92% of the world's continental margins were off foreign shores. To gain access to these, it was far better for the petroleum industry to deal with an impartial international seabed authority than to deal bilaterally with unpredictable national governments that might resort to harassment, profit squeezing or outright expropriation.¹⁵ The technological superiority of the American petroleum industry and the dominant role that the U.S. Government would probably play in an international seabed authority would presumably assure favorable treatment for U.S. companies.

Inherent in the policy position that Defense was advancing within the Government was a readiness to risk the petroleum industry's resource interests, as industry saw them, in return for internationally agreed rights of transit. The industry was predictably opposed to such a tradeoff and fought it vigorously through the Interior Department. The petroleum industry's ready access to information and to policy makers within the Government contributed to its effective and early input into the policy process.

The hard minerals and marine science interests were less fortunate. Throughout 1969 and 1970 neither hard minerals nor science was adequately represented in the closely-held policy deliberations

14. For public statements of these points see: HENKIN and RATNER, *LAW OF THE SEA: UNITED NATIONS AND OCEAN MANAGEMENT* 19, 325-27 (L. M. Alexander ed.) (1971).

15. Ratner, *National Security Interests in Ocean Space*, 4 *NAT. RES. LAW* 582 (1971).

within the Government. The primary concern of the hard minerals industry with seabed policy has been with the nature of the regime rather than with the location of the Continental Shelf boundary. Of interest to the ocean miner is the manganese nodule, a dark potato-shaped accretion containing varying amounts of a large number of metals such as cobalt, nickel, copper, manganese, iron, silicone and aluminum. While manganese nodules are scattered widely over the deep floor, the nodules with the greatest proportion of commercially attractive cobalt, nickel and copper are generally found in the deepest parts of the oceans (at depths as great as 18,000 feet).¹⁶ Because nodules of commercial value are rarely found on the continental margin, locating the national Continental Shelf boundary at any point up to the outer edge of the margin will not significantly effect the miner of nodules.

First discovered in the 1870's, the manganese nodule came to be considered as a potential resource only recently. As information about nodules has increased, mining industry policy has undergone several transitions—from early support for a broad Continental Shelf, to a policy of a moving Shelf boundary, to a total disregard of the boundary issue and a strong position on the regime beyond national jurisdiction. In August 1968 the petroleum and hard minerals industries were in substantial agreement on the boundary question as was reflected in a Joint Report sent to the American Bar Association House of Delegates by the Sections of Natural Resources Law, International and Comparative Law, and the Standing Committee on Peace and Law through the United Nations. The Joint Report supported the National Petroleum Council view that the rights of coastal states to the minerals of the seabed already extended to the foot of the continental margin. The Report also considered it premature to consider establishing a regime for the seabed beyond that boundary.

By 1969 the hard mineral interest group began to move away from this position. In an August 1969 Joint Report by the same Section of the American Bar Association, the split was evident. The new Joint Report explicitly stated that some members no longer supported the interpretation of the Continental Shelf boundary that had been advocated a year before. Instead these members argued that the Geneva Convention on the Continental Shelf "extends sovereign rights over the seabed beyond the 200 meter line

16. Brooks, *Deep Sea Manganese Nodules: From Scientific Phenomenon to World Resources*, 8 NAT. RES. L. 406 (1968); Rothstein, *Deep Ocean Mining: Today and Tomorrow*, 6 COLUM. J. WORLD BUS. ___ (1971).

only as technological progress makes exploitation in that area possible in fact."¹⁷

This diverging position on the Continental Shelf boundary coincided with increased industry interest in the recovery of manganese nodules and increased knowledge of the location of commercially attractive deposits. Although the mineral industry shared the petroleum industry's aversion to international administrative organizations, it came gradually to realize that mining companies would be operating in areas beyond the limits of national jurisdiction, no matter where the Continental Shelf boundary was drawn. Ocean miners became increasingly concerned, therefore, with the nature of the seabed regime which would govern deep sea exploitation—a concern which was not shared by the petroleum interest group given petroleum's stand on the extent of national seabed jurisdiction.

Despite the lack of a direct interest in the boundary issue, the hard minerals industry continued to involve itself in the boundary dispute for tactical purposes in 1969 and 1970. The industry was willing to support a narrow but outward moving boundary, if such a boundary could be used to buy a satisfactory seabed regime.¹⁸ By a "satisfactory regime," the hard minerals industry meant a system of freedom to explore the seabed, to stake a claim and to receive an exclusive license to exploit the claimed area. An international authority, in this view, should be no more than a registry agency,

17. A.B.A., *Non-Living Resources of the Sea (A Critique)*, 2 NAT. RES. LAW. 429 (1969).

18. *Hearings on Outer Continental Shelf Before the Senate Comm. on Interior and Insular Affairs*, 91st Cong., 1st and 2nd Sess. [*Hearings*] pt. I, at 136 (1969) (statement of John G. Laylin): "[T]hose who have primarily in mind of the extraction of oil are interested only in the area landward of the foot of the continental slope. They have been informed, it would appear, that there is little likelihood of oil pools below the bed of the deep sea. In consequence they are not concerned with the regime to be established for the deep sea bed. It does not matter to them that their demands may hurt the efforts of the United States to bring about a satisfactory regime for the deep sea.

"In contrast . . . [those] . . . who have in mind the interests of hard metal miners find themselves agreeing with many of the contentions of the Navy and the scientists. They do not object to a broad shelf, but they do object to sacrificing the chances of reaching agreement on a satisfactory deep sea regime by insisting willy nilly that the United States now take the position that the outer limit of the shelf is now at the foot of the continental slope."

and its financial exactions should be minimal. Although the mining industry was willing to trade the petroleum industry's interest in the boundary for a favorable seabed authority, it soon found the Defense Department to be a dangerous ally. To induce other nations to agree to a narrow Continental Shelf, Defense was urging the establishment of a generous and powerful seabed regime to administer the exploration and exploitation of seabed resources and to allocate substantial revenues from these activities to an international development fund. Despite its opposition to the Defense Department position, the hard minerals industry was not particularly successful in blocking it. Due to its position on the boundary, the hard minerals interest had lost the support of the petroleum industry. And within the Interior Department, hard minerals had to compete with petroleum for the time and energy of government bureaucrats responsible for seabed policy.

The problems of the marine science interest were somewhat different. Because the marine scientist shares the military's interest in unrestricted access to the world's oceans, he is concerned both with the boundary and with the regime. However, the scientific community believes it can and should distinguish its research in the oceans from commercial and military investigations. In all ocean policy efforts, therefore, the scientist has sought to include explicit guarantees for open scientific research. Such guarantees, however, necessarily imply the absence of a similar freedom of military access for research, monitoring and even transit. They were, therefore, strongly resisted by the military.

The policy position advocated by the United States in 1970, with its strong emphasis on maintaining ocean freedoms, was consonant with the scientific interest. While State Department officials representing science and, to a lesser extent, the National Science Foundation were in substantial agreement on the needs of science, they were unable to override military opposition to explicit guarantees for freedom of scientific research. The scientific community, therefore, failed to secure inclusion of the coveted guarantees for scientific freedom in the U. S. Draft Seabed Treaty of 1970.

An additional interest which has not been mentioned, and one with limited influence on ocean policy until 1970, was that of the Department of State itself—the Government's official foreign policy arm. The State Department's guiding purpose has been to advance U.S. ocean interests in international negotiations while maintaining ordered and harmonious relations with other nations on a broad range of ocean issues. Its overriding bias is toward reaching an international agreement. To achieve these objectives the De-

partment of State seeks to maintain control over the formulation of ocean policy. This in turn has required strenuous efforts to resolve domestic contention over ocean issues to arrive at a policy position acceptable to all parties. When the seabed issue was first introduced in the United Nations in 1967, the State Department encountered a series of obstacles to the achievement of its objectives. These impediments placed the Department in the unenviable position of having to stall in the face of growing international pressures. The first difficulty was that of resolving internal bureaucratic contention over control of ocean policy. This was temporarily resolved in February 1970 when the then Legal Advisor, John R. Stevenson, became the head of a consolidated Law of the Sea Task Force.¹⁹ With Mr. Stevenson's retirement from government in January 1973, the issue of directing overall U. S. ocean policy has been once again raised.

A second difficulty in formulating early seabed policy was the growing dispute between the Departments of Interior and Defense. In a successful effort to forestall the imposition of a boundary policy by the State Department, the Department of Defense requested an Under Secretaries Committee review of the seabed boundary question. In response to this request, the White House issued a National Security Study Memorandum in April 1969²⁰ proposing that, in the absence of inter-agency agreement, the Under Secretaries Committee meet to consider the position that the United States should take in the United Nations regarding the location of the Continental Shelf boundary. The NSSM further proposed that the Under Secretaries Committee attempt to reconcile the U.S. position on the Continental Shelf boundary with that on the territorial sea and related issues.

Between the April, 1969 NSSM and the January, 1970 meeting of the Under Secretaries Committee, the State Department intensified its efforts to reach a compromise acceptable to both sides. To accommodate the interests of both the Department of Defense and the Department of the Interior, the State Department proposed the

19. A useful discussion of the role of the legal advisor within the Department of State may be found in Bilder, *The Office of the Legal Advisor: The State Department Lawyer and Foreign Affairs*, 56 AM. J. INT'L L. 633-84 (1962).

20. The date of the Seabed N.S.S.M. given by John P. Leacacos is April 11, 1969. See Leacacos, *Kissinger's Apparatus*, — FOR. POL. 25 (1972).

adoption of an intermediate zone in the disputed area between the 200 meter isobath and the edge of the continental margin. In this zone, the coastal nation would enjoy control over the exploration and exploitation of seabed resources. While responsible for enforcing standards to protect against pollution and navigation hazards, the coastal nation would not have the right to exclude other nations from conducting scientific research or military activities on the continental margin beyond the 200 meter isobath. The State Department compromise further stipulated that a small royalty of 2% based on the value of resources exploited in the zone would be paid to an international community fund.

The State Department compromise proposal received a mixed reception. While Interior did not object to it strenuously, the Defense Department rejected it flatly. Defense argued that an intermediate zone would be temporary at best and that giving the coastal state exclusive jurisdiction over resource exploitation on the continental margin would jeopardize the freedom of other nations to use that area for other purposes. Explicit guarantees of access for military or scientific purposes, Defense argued, would simply not be acceptable to coastal nations. Only by combining a narrow Continental Shelf with a satisfactory international regime would there be any chance of halting the proliferation of unilateral national claims.

The NSC System

With this final failure to reach agreement, the Under Secretaries Committee meeting was scheduled for January 29, 1970, and the major contenders assiduously recruited allies within the bureaucracy. Interior consolidated the backing of the Commerce Department and won the added support of the Bureau of the Budget and John Ehrlichman's White House staff. The Defense Department found backing within the Justice Department and the National Security Council (while continuing to lobby in the State Department for a revision of its proposal). And, in back of its intermediate zone proposal, the State Department lined up the Transportation Department and the National Science Foundation.

Given the obvious power of the major antagonists—the petroleum industry and the military—allies seemed scarcely necessary to ensure that the Under Secretaries Committee would not render a judgment adverse to either interest. In any case, under the NSC options system the Committee did not have the power to impose a decision. Chaired by then Under Secretary of State Elliott Richardson, the Committee's mandate was limited to submitting a re-

port to Presidential Assistant Henry Kissinger, for review and consideration by the President.²¹ The result of the meeting, therefore, was a foregone conclusion. While the pros and cons of the State, Interior and Defense positions were heatedly discussed, they were not resolved. The only decision taken was to send the policy dispute further up the NSC ladder with Under Secretary Richardson's recommendation accompanied by position papers from the dissenting agencies.

In the month and a half immediately after the Under Secretaries Committee meeting, the Defense Department and its supporters mounted a particularly vigorous campaign against the State Department position. In response to these objections and in his capacity as Chairman of the Under Secretaries Committee, Elliott Richardson proposed a fourth policy position on the Continental Shelf boundary and the seabed regime. The new position was an obvious compromise between the State Department position on an intermediate zone and the Defense Department position in favor of a narrow Continental Shelf. In his proposal Richardson suggested that the concept of the intermediate zone be retained but that the zone be expressly incorporated into the international regime. The proposal went on to stipulate that, within the intermediate zone, the coastal state would have the exclusive right to grant concessions and to collect royalties as a "trustee" of the international community. Substantial royalties from exploitation in the zone would be allocated to international economic development. Richardson's proposal differed from the original State Department position on the outer limit of the national Continental Shelf boundary and the size of royalties to be allocated to the international community. It promptly superseded the earlier State Department proposal as the new official State Department position.

The reactions of both Defense and Interior to the revised State Department position were revealing. The Defense Department continued to prefer its own concept of preferential bidding rights for coastal nations, but it deemed the new proposal acceptable as a "fall-back" position since it explicitly stipulated that national

21. For a description of the role and stature of the Under Secretaries Committee in the National Security Council Committee hierarchy, see: Smith, *Foreign Policy: Kissinger at Hub*, New York Times, Jan. 19, 1971, at 1; Reston, *The Kissinger Role*, New York Times, March 3, 1971, at 39.

sovereignty would end at the 200 meter isobath and concentrated its efforts on assuring the international character of the trusteeship zone. The Interior Department was far less sanguine about Mr. Richardson's proposal. Interior's main objection was to the provisions that would give the international community discretionary authority in the intermediate zone and would only allow the coastal state to act as "trustee." Such authority would mean that the international community, of which developing nations constitute a majority, would have the power to decide upon and to impose production controls, to fix high royalty payments, to impose other onerous restrictions upon the coastal state, or to exclude the coastal state altogether from its trusteeship zone. Finally, the Interior Department expressed concern that the Richardson proposal, unlike its predecessor in the State Department, called for a large amount in royalties to be paid to an international fund. The Interior Department urged, therefore, a return to the abandoned State Department position on the Shelf boundary and a seabed regime.

With the formulation of the Richardson proposal and the retention of the original State Department proposal at the insistence of Interior, there were four policy options to be considered by the White House.²² Although these were sent to the President in March, no decision on the options was forthcoming until the end of May. An obvious cause of the delay was the fact that the Continental Shelf/seabed regime issue had to compete with more urgent matters for the time and attention of busy presidential advisors. The invasion of Cambodia is a case in point. A more fundamental source of delay, however, was the difficulty for White House officials of mastering the complex technical and legal issues of the seabed question. Mr. Kissinger was particularly reluctant to involve himself in a subject with which he had little experience. Hence the problem was shoved aside.

This state of affairs might have persisted indefinitely had not other parts of the White House intervened in the agency dispute. Because the Continental Shelf/seabed regime problem spans domestic as well as foreign policy considerations, Interior Department officials directly solicited the support of John Ehrlichman, the President's advisor for domestic affairs. Unlike Mr. Kissinger,

22. On the agency positions that were considered by the President, see: Landauer, *Nixon Is Urged to Yield Some Ocean Floor Oil to Help the World's Poor*, Wall Street Journal, March 27, 1970, at 1; *Hearings*, pt. II 399; Orr, *Domestic Pressures Quicken U.S. Policy-Making on Seabed Jurisdiction*, C.P.R. INT'L J. 676, March, 1970.

Mr. Ehrlichman was quite prepared to take a position on this question after an initial briefing by Interior Department officials. Mr. Ehrlichman was concerned that an Executive branch policy in support of a narrow Continental Shelf would expose the President to the politically damaging claim of "giving away" the nation's mineral estate. Therefore, Ehrlichman opted for either the Interior Department or the original State Department position. Officials of the National Security Council received Mr. Ehrlichman's intervention in a matter of foreign policy with less than complete enthusiasm. NSC officials were concerned that American strategic interests would be gravely endangered by the wide Continental Shelf policies of the Interior and original State Department positions. Thus the lines were firmly drawn between the President's foreign and domestic affairs advisors and the issue was once again stalled.²³

External events, however, combined to force strenuous efforts within the White House to negotiate a mutually acceptable options paper for the President. While the U.N. Seabed Committee was pressing ahead with its deliberations, a growing number of countries were laying claim to extensive offshore jurisdiction—Brazil to a 200 mile territorial sea and Canada to a 100 mile pollution safety zone.²⁴ At the same time, news of the interagency dispute was leaking to Congress and the press.²⁵ The Senate Interior and Insular Affairs Committee was threatening to hold hearings which would have exposed the interagency dispute and to issue a report on its own in the absence of a prompt Presidential decision.²⁶

23. *Hearings*, pt. II, at 399. On the operation of these two power centers in the White House, see: Semple, *Nixon's Style as Boss Combines Desire for Order and Solitude*, *New York Times*, Jan. 12, 1970, at 1.

24. *Secret Crisis*, *Wall Street Journal*, March 20, 1970, at 1.

25. Examples include: *Oceans of Oil*, *Nat. Observer*, — (1970); Landauer, *supra* note 22; Orr, *supra* note 22.

26. Unwilling to have the agency dispute aired publicly, the White House sent John Whittaker to ask Senator Metcalf for more time to reach a unified Government position. Senator Metcalf agreed to postpone the hearings from April 8 to April 22. The intra-White House disagreement, however, was not easily resolved and on April 17, Senator Metcalf was once again asked to delay the hearings. The Senator agreed but made it clear that in the absence of a Presidential decision, his Subcommittee would issue a report on its own. In a letter dated April 28, Kenneth Belieu, Deputy Assistant to the President, pledged that the Administration would present a unified position to the subcommittee on May 27. Senator Metcalf *speaking on the Seaward Limit of our Legal Continental Shelf*, *Hearings*, pt. II at 423.

The challenge, therefore, was to prepare an options memorandum for the President that was acceptable to both Ehrlichman and Kissinger. The NSC staff drafted a series of memorandum for review and comment by the domestic affairs staff. Of paramount concern to Mr. Ehrlichman in the first drafts was the NSC's omission of the original State Department position as one of the options to go to the President. It was that position, in Mr. Ehrlichman's view, that offered the best compromise between domestic and foreign policy considerations. The Defense Department position did not ensure national control over the valuable petroleum resources of the U.S. continental margin. The Interior Department position, on the other hand, ignored the problem of creeping jurisdiction. And, in a contest between the Richardson and the first State Department positions, Mr. Ehrlichman preferred the latter since it recognized the inherent legal rights of states to the resources of their continental margins.

The Ehrlichman views were taken into account in the final version of the option paper that was sent to the President over Mr. Kissinger's signature at the end of April. The NSC staff, however, was responsible for the structuring of the memorandum, giving it an obvious advantage in determining the President's decision. After setting out the four agency positions and their rationales and after explaining Mr. Ehrlichman's support for the original State Department, the Kissinger memorandum concluded with the recommendation that the President choose the Defense or the Richardson option. The Richardson position thereby became the obvious middle position, and it was that policy that was ultimately adopted by the President.

Following months of delay while the issue made its way to the White House, the President's decision was taken after only brief consideration and on the basis of a carefully constructed set of options. Once President Nixon selected the Richardson option, the "NSC system" again took over. In cooperation with the State Department, the victorious agency, the NSC staff drafted a National Security Decision Memorandum conveying the President's decision to the heads of all interested federal agencies. The NSDM not only outlined the principles that were to govern a prospective treaty to be submitted to the United Nations Seabed Committee, but it also specified that the State Department would be responsible for preparing the treaty, the U.S. negotiating position, and the necessary legislative measures, in coordination with the Departments of Defense and Interior.

The stipulation that the State Department coordinate its efforts

to negotiate a Seabed Treaty with both Interior and Defense merely confirmed the fact that the NSC system reserved all critical foreign policy issues for White House decision. From the time of the June 1969 National Security Study Memorandum, the State Department had been effectively precluded from making an independent decision on the seabed regime without the agreement of all affected agencies. The January 1970 meeting of the Under Secretaries Committee was simply one further step in the progress of the decision to the White House. Elliot Richardson, Chairman of the Committee, did not have the authority under the NSC system to impose a decision. His recommendation simply went to the President as one of several options advanced by the dissenting agencies. The options as they reached the President were carefully structured and articulated by Mr. Kissinger and his staff, with the intervention in this instance of Mr. Ehrlichman. At the top of the pyramid was the President, advised by Mr. Kissinger to adopt the Richardson or the Defense option. The success of the Richardson position lay as much in its presentation as in its intrinsic merit or persuasiveness. No doubt Mr. Kissinger's and Mr. Nixon's personal rapport with Mr. Richardson also played an important role in their choice.

While the NSC options system reserved the key or disputed ocean policy decisions for the White House, the implementation of those decisions was left to lower level bureaucrats. Important power, thereby, remained in the hands of the technicians who had mastered the complex legal, geological, strategic and economic ocean issues.

The President's Seabed Policy

With the issuance of the May 22 NSDM, the task of announcing and implementing the President's decision returned to the bureaucracy. The "President's seabed policy" was announced by John Stevenson, the Legal Advisor, and Ronald Zeigler at a White House press conference on May 23.²⁷ The public was told that the President was calling for the renunciation of national claims to seabed resources beyond the depth of 200 meters and for the establishment,

27. White House Press Release, News Conference #607; also in, 62 DEPT. STATE BULL., — (1970).

beyond this point, of an international regime to govern the exploitation of seabed resources. Two types of machinery would be created to authorize resource exploitation in this international seabed area. To the edge of the continental margin, an area called the "trusteeship zone," the coastal state would administer exploitation as a trustee for the international community. In return the "coastal state would receive a share of the international revenues from the zone in which it acts as trustee." Beyond the continental margin, international machinery would authorize and regulate exploitation and would collect "substantial mineral royalties" to be used for economic assistance to developing countries. In addition the international regime would formulate "rules to prevent unreasonable interference with other uses of the ocean, to protect the ocean from pollution, to assure the integrity of the investment necessary for such exploitation, and to provide for peaceful and compulsory settlement of disputes."

The May 23 statement, Elliot Richardson informed the Congress, represented only an initial "approach to dealing with the exploitation of the continental margin." The President promised that the Executive would introduce more specific proposals at the U.N. Seabed Committee meeting scheduled in August 1970.²⁸ On August 3, the first day of the session, the United States presented a "United Nations Draft Convention on the International Seabed Area." Five officials from the Departments of State, Defense and Interior had drafted the seventy-eight articles and five appendices of the Convention. The ad hoc drafting committee included Bernard Oxman, of the Legal Advisor's Office, chairman, Louis Sohn and Stuart McIntyre of the State Department, Leigh Ratiner of the Defense Department, and Vincent McKelvey of the Interior Department. This lengthy and complex document, rather than the President's May 23 statement, quickly became the focus of domestic opposition to a narrow offshore resource zone. While the President's announced decision was not considered a legitimate object of attack, its implementation in the draft Convention was.

Even before its presentation at the Seabed Committee, private industry,²⁹ the Congress³⁰ and the Interior Department had stren-

28. *Hearings*, pt. II, at 30-35.

29. In the week of July 9-14 representatives of the National Petroleum Council, American Petroleum Institute, Standard of New Jersey, Kennecott Copper, Union Carbide, and Deep Sea Ventures met with the drafting committee to review early versions of the draft treaty. Most vocal in its opposition to its provisions was the petroleum industry. 12 OCEAN SCIENCE NEWS, 1 (1970).

30. On June 29 Senator Metcalf requested that a copy of the draft treaty be sent to his Subcommittee and subsequently expressed grave

uously opposed many of the draft treaty's provisions and had succeeded in securing some modifications. Then with the draft treaty's tabling at the Geneva meeting, the domestic contention over the extent of the Continental Shelf merged with United Nations debate over the breadth of an economic resource zone.

U.S. TERRITORIAL SEA, STRAITS AND FISHERIES POLICY

The principal strategy behind the U.S. seabed proposal was to encourage other nations to adopt a narrow Continental Shelf policy. It was also hoped, at least by Defense Department officials, that the seabed proposal would have a positive effect on separate negotiations then underway regarding the breadth of the territorial sea, international straits and fisheries. The territorial sea, straits and fisheries issues had been linked together since 1967 and 1968 when they were first discussed with the Soviet Government and then with U.S. and Soviet allies. Within each Government agency the issues had been handled as a package by a group of officials distinct from that dealing with seabed policy.

Among the three issues, those of strategic importance—straits and the territorial sea—were accorded primacy. Fisheries was incorporated within the policy package as a tradeoff for concessions on straits and territorial sea and because there was no policy objection raised by the fishing industry.³¹ The United States position announced in 1970 was that it was prepared to recognize a twelve mile territorial sea only if freedom of transit through and over international straits were to be guaranteed by international agreement.³² If the breadth of the territorial sea were universally ex-

doubts to Secretary of State Rogers about many of its provisions. The Subcommittee urged that it be revised and not be presented at Geneva. In an effort to accommodate these objections, officials from the Departments of State, Defense and Interior met in executive session on July 27 with members of the Subcommittee. Recommendations made in the text of the draft included a downward revision of the percentage of fees to be paid to the international trusteeship area, the reduction of status of the draft treaty to a working paper, and the addition of a stipulation that the appendices were included solely by way of example. *Hearings*, pt. II, at 25; Orr, *Soviet, Latin Opposition Blocks Agreement on Seabeds Treaty*, C.P.R. NAT'L J. 197, Sept. 1970; *The U.S. Should Not Present a Seabed Treaty at Geneva*, 12 OCEAN SCIENCE NEWS 1 (1970).

31. Loring, *The United States-Peuvian 'Fisheries' Dispute*, 23 STAN. L. REV. 429 (1971).

32. Address by John R. Stevenson to Philadelphia Bar Association and

tended to twelve miles, 116 international straits would be covered by territorial waters. In these straits high seas corridors would cease to exist and transit would be subject to the regime of innocent passage. To avoid the application of coastal state discretion to these vessels, it was necessary to guarantee the right of freedom of transit.

Although the Soviets adopted a twelve mile territorial sea in 1927, they have since become a maritime power with global interests. They have therefore fully supported the U.S. position on freedom of transit through and over international straits. The interests of the Japanese and Soviets, however, diverge from those of the United States over fisheries. The second and third largest fishing nations of the world, respectively, the Japanese and Soviets were not in accord with the preferential fishing rights the United States was prepared to grant to coastal nations dependent on their coastal fisheries. United States proposals on fishing, however, were designed to appease coastal rather than distant water fishing interests. By the late 1960's nine Latin American nations had claimed zones of 200 miles to protect fishery resources off their shores. To halt the trend toward such claims and to induce these nations to roll back established claims, the United States proposed that special preferential rights over offshore living resources be granted to coastal nations. According to the concept of preferential rights, a coastal fishing nation would be able to reserve a portion of the catch off its shores for its own fishermen.³³ The amount would be determined by the coastal state's economic dependence on or extent of investment in offshore fisheries. At the insistence of the Department of Defense, this proposal deliberately avoided the concept of a fishing zone that might subsequently evolve into a fixed area of expanded coastal state jurisdiction.³⁴

Among fishing nations, the United States ranks sixth, and it fishes off its own coasts as well as those of other nations. U.S. proposals with regard to preferential rights, therefore, were not detrimental to all U.S. fishing interests. They were, however, primarily determined by external rather than domestic considerations—by the need to balance Soviet and Japanese distant water fishing

Philadelphia World Affairs Council, Feb. 18, 1970, 62 DEPT. STATE BULL. 314 (1970); 62 DEPT. STATE BULL. 343 (1970); U.S. Department of Defense, "United States Policy with Respect to Territorial Seas", Department of Defense Press Release, February 25, 1970.

33. Ratiner, *United States Ocean Policy: An Analysis*, J. OF MARITIME L. AND COMM. 248 (1971).

34. *Hearings on Territorial Sea Boundaries Before a Subcomm. on Seapower of the House Comm. on Armed Services*, 90th Cong., 2d Sess. 9291 (1970).

interests with the coastal interests of developing countries and by the need to persuade the latter to accept a twelve mile territorial sea and freedom of transit through straits.

Reasons for the early lack of policy input by the U.S. fishing industry were twofold. First, the fishing industry, unlike the petroleum industry, simply lacked the knowledge that discussions were underway within and between governments and that the Department of Defense was determining the fisheries position in exchange for concessions on straits and the territorial sea. The second problem hampering industry policy input was that of internal differences within the industry between coastal and distant water fishing interests. With the public announcement of U.S. policy on straits, territorial seas, and fisheries of February 18, 1970, the industry was first apprised of governmental discussions. Although the Stevenson reference to preferential rights was quite sketchy in his speech to the Philadelphia Bar Association, it was sufficient to alarm the distant water fishing segments of the U.S. fishing industry. The reaction of the distant water fishermen to the preferential rights approach was analogous to that of the Soviet Union and Japan. The U.S. coastal fishermen, on the other hand, shared the interests of developing coastal countries in obtaining preferential rights to offshore resources. Neither segment of the industry, however, appreciated being excluded from the policy deliberations. Despite intra-industry differences, they recognized that if they were to have a say in determining U.S. fisheries policy, they would have to act in concert.³⁵

The first sign of a tenuous resolution of industry differences was visible in the adoption of the "species approach" presented by the U.S. Government to the U.N. Seabed Committee on August 3, 1971.³⁶ In this approach, the concept of preferential rights for the coastal state was applied only to stocks that were adjacent to the coast or that spawned in fresh water. Highly migratory oceanic stocks were excluded, thereby protecting the U.S. tuna fleets fish-

35. 117 CONG. REC. 21,155 (daily ed. Dec. 13, 1971) (remarks of Senator Hatfield); 117 CONG. REC. 19,908 (daily ed. Nov. 30, 1971) (remarks of Senator Hatfield); 117 CONG. REC. 13,076 (daily ed. Dec. 7, 1971) (remarks of Congressman Pell).

36. U.N. Doc. A/AC.138/SC.II/L.4 (30 July 1971); 10 INT'L LEGAL MATERIALS 1018 (1971).

ing off the west coast of Latin America. The U.S. proposed that the actual fishing capacity of a coastal state be used to determine the extent of its preferential rights in an offshore fishery. As that capacity expanded, so would its preferential rights. This posed an obvious problem with regard to phasing out other national fishing efforts in the area. In its approach to historic fishing rights, the U.S. "species approach" of 1971 resembled the 1970 U.S. seabed proposal. Both envisioned a strong role for international and regional organizations in the regulation of high seas resources in order to reduce pressure for unilateral extension of coastal state control over offshore resources. Provisions for international cooperation in the U.S. fishing proposal included inspection and dispute settlement as well as joint conservation measures to prevent overfishing. Only if all other measures failed was unilateral state action deemed acceptable.

The elaboration of the species approach in the U.S. August 1971 statement was one facet of a speech dealing with international straits and territorial seas as well. Whereas the fisheries segment of the speech showed an evolution from previous statements and reflected an increased industry input, the straits and territorial waters position remained essentially unchanged reflecting a consistent Defense Department support for these policies. The United States was prepared to accept a twelve mile limit if the right of free transit were provided for all vessels and aircraft through and over international straits overlapped by territorial seas. Mr. Stevenson stressed that free transit was a "limited but vital right" and added that the right was merely one of "transiting the straits, not of conducting any other activities." In a further elaboration of U. S. views, Stevenson stipulated that the coastal state could designate corridors suitable for transit, and international traffic safety regulations would be agreed upon. The right of a vessel to transit, however, could not be left to the discretion of a coastal state.

UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

The linking of the issues of straits, territorial sea and fisheries in the U.S. statement of August 3, 1971, reflected the official U.S. policy of keeping Continental Shelf and seabed issues separate from the other law of the sea questions. The Government thereby hoped to preserve its packages of tradeoffs—a narrow Continental Shelf for a generous seabed regime and freedom of transit through and over international straits in exchange for a twelve mile territorial sea with preferential coastal state fishing rights in the area beyond.

In the course of 1971 and 1972 this division of issues, and the tradeoffs thereby implied, gradually broke down.³⁷ A combination of pressures was working against the official U.S. grouping of tradeoffs. First, domestic interests were becoming more active in the formulation of ocean policy. As the involvement of these domestic industries increased, the priority formerly accorded U.S. strategic considerations over resource interests decreased. Secondly, and at cross purposes with domestic pressures, foreign nations were pressing for a single international conference to handle all law of the sea issues.³⁸ Developing countries were hopeful that by combining and trading on all law of the sea questions, they would gain greater concessions from the maritime nations.

The Domestic Perspective

U.S. bureaucratic machinery for ocean issues was consolidated in early 1970. Separate staffs for Continental Shelf and seabed issues on the one hand and straits, territorial seas and fisheries on the other were merged into single offices in the Departments of State, Defense and Interior. A central policy body designated as the Inter-Agency Law of the Sea Task Force was officially established on February 4 and held its first meeting on February 17 under the chairmanship of John Stevenson. Mr. Stevenson also headed the Delegation to the U. N. Seabed Committee. The Inter-Agency Task Force comprises representatives of all affected Federal agencies and bureaus including the Departments of State, Defense, Interior, Commerce, Treasury, Justice, Transportation, the National Security Council, the National Science Foundation, the Central Intelligence Agency, the Office of Management and Budget, and the U.S. Mission to the United Nations.

37. As noted above, the division of issues was not always observed in practice by policy participants. When Defense Department officials pressed for a generous seabed regime to encourage acceptance of a narrow Continental Shelf, they hoped at the same time to discourage other coastal state extensions of jurisdiction and to have the straits proposal favorably received.

38. G.A. Res. 2574 A (XXIV) (1969), called on the Secretary General to poll the membership on the desirability of calling a conference to discuss all law of the sea regimes. Opposed by the U.S. and the Soviet Union, it passed by a vote of 65 in favor, 12 opposed and 30 abstaining. G.A. Res. 2750C (XXV) (1970), 10 INT'L LEGAL MATERIALS 224 (1971), called for a third U.N. Conference on the Law of the Sea and identified seabed, straits, territorial seas and fisheries issues as potential agenda items.

. In response to strong industry pressure, an Advisory Committee on the Law of the Sea was formed in early 1972. The official purpose of the Advisory Committee has been to advise the head of the United States Delegation to the U.N. Seabed Committee. The membership of sixty is divided into eight subcommittees: petroleum, hard minerals, international law and relations, marine science, fisheries, international finance and taxation, marine environment, and maritime industries. One member each from the petroleum, hard minerals, marine science and international law and relations subcommittees and two from the fisheries subcommittee are given official status on the U.S. delegation to each session of the U.N. Seabed Committee. The marine environment subcommittee was officially represented for the first time at the July-August 1973 session. Through this institutional structure and by means of additional pressures through Congressional hearings and legislation and informal contacts, each of the industry interest groups has sought to make its interests felt and to participate actively in the policy process.

The effect on the military interest of the increased participation of other interests has been to circumscribe the ease with which Defense Department officials had heretofore furthered strategic interests by determining policy in other areas. Whereas the military previously intervened in seabed as well as fisheries policy, it is largely restricted to policy inputs relating directly to military mobility—that is to straits and territorial sea boundaries affecting navigation. This not only results from the increased policy participation by other interests but is also in keeping with extensive changes in Defense Department personnel. Responsibility for law of the sea policy in the Defense Department lies no longer with the Legal Office but is officially vested in the International Security Agency. In keeping with overall trends in the Nixon Administration's Defense Department, the military has reasserted its supremacy over civilian offices handling law of the sea questions and the Office of the Joint Chiefs of Staff plays an active role in decision-making.

Substantial changes have also occurred in the policy behavior of the other major protagonist over the Continental Shelf boundary, the petroleum industry. After a strong blast at the 1970 U.S. Draft Treaty on the Seabed, the petroleum industry lapsed into virtual silence on the subject of the seabed regime and the boundaries of national jurisdiction. That silence was first broken in the NPC's summary report on the "U.S. Energy Outlook" of December 1972.

Under recommendations for a U.S. Energy Policy the NPC suggests that ". . . any proposed international treaty dealing with seabed mineral resources should confirm the jurisdiction of coastal nations over . . . the mineral resources of the entire submerged continental mass off their coasts."³⁹ In this recommendation, the NPC no longer insists that national jurisdiction over these resources is "exclusive" and no longer calls for an immediate unilateral U. S. declaration of jurisdiction. Instead the NPC recommends that an international treaty ". . . should provide for security of investment made in resource development in areas of the continental margin pursuant to agreement with or license from the coastal state." To assure these investments, the NPC recommends referral of disputes in the area ". . . to an international tribunal for compulsory objective decision." Support for international agreement on compulsory dispute settlement for the continental margin is a significant move away from the notion of exclusive coastal state jurisdiction, although it is still far from acceptance of a strong international authority in the area.

This shift in industry position, however limited, may be traced in large measure to the rapidly changing international and domestic environment in which petroleum policy is formulated. A major shift in the international environment has been the growing difficulty of dealing with producing nations that operate as a bloc through the Organization of Petroleum Exporting Countries (OPEC). OPEC successes in increasing the revenues to producing countries, buttressed by threats of expropriation, have no doubt undermined earlier industry confidence that it is safer and more profitable to deal bilaterally with foreign governments than with an international regime.

The domestic environment of petroleum policy has also shifted with the advent of the recently discovered "energy crisis." Given present projections of U.S. petroleum demand and domestic supply, it is more difficult to assert that the United States must have jurisdiction over its entire continental margin. Estimated reserves off the U.S. alone do not begin to satisfy the projected demand for energy. In the future, the United States will be importing vast quantities of petroleum from the margins as well as continents of

39. N.P.C. SUMM REP., U.S. ENERGY OUTLOOK, at 79 (Dec. 1972).

other nations. This raises the question for petroleum policy of whether those imported supplies would be more secure if they were recovered from areas controlled by an international regime, or from areas under national jurisdiction.

An additional policy complication stemming from the "energy crisis" relates to petroleum shipping: with increased imports to the U.S., the petroleum industry will be in the same proverbial boat as the military. Greater quantities of petroleum will be shipped across the world's oceans and through the world's straits. Like the military, the petroleum industry will be adversely affected by coastal state pollution and resource controls that threaten to hinder navigation or restrict straits transit. Canadian legislation on Arctic waters effectively closing the northwest passage to the *Manhattan* is a sample of pollution restrictions that may be expected in the future.

As the ocean interests of the petroleum industry become more diverse, a single policy is increasingly difficult to elaborate. Whereas domestic sectors of the major petroleum companies formerly determined ocean policy in cooperation with the Interior Department and its National Petroleum Council, the major firms and more international sectors of the industry, with close relations to the Department of State, are playing an increasing role. The involvement of new segments of the industry has been reflected in changes in personnel—the disappearance of the colorful, outspoken oil man lobbying conspicuously through the Interior Department and the appearance of the oil diplomat, working skillfully and quietly with the Department of State. It is also apparent in the willingness evidenced by the industry to accommodate its shipping interests to reasonable coastal state pollution controls.

Since the beginning of U.N. negotiations on the seabed, the hard minerals industry has also adjusted its ocean policy to a changing domestic and international environment. By 1971, several mining firms were making substantial investments in developing technology for the recovery of manganese nodules. Surprised by the far reaching provisions of the U. S. Draft Seabed Treaty, the industry responded with a vigorous approach to the U. S. Congress. The American Mining Congress, at the request of Senator Metcalf, drafted legislation for a seabed regime that would be more congenial to mining interests. Introduced originally as S. 2801 on November 2, 1971 (H. R. 13904, March 20, 1972), the bill lapsed with the 92nd Congress. Identical legislation, however, has already been reintroduced in the 93rd Congress (H.R. 9, January 3, 1973; S. 1134,

March 8, 1973).⁴⁰ The industry-sponsored legislation would authorize U. S. firms to mine the deep seabed under a national licensing system until the establishment of an international regime. It provides for reciprocal recognition of similar practice by other countries and for the establishment of a fund drawn from income taxes with aid directed to less developed reciprocating states.

Opposition to this legislation has been voiced, both domestically and internationally. Much of the domestic protest centers on the provisions for a U. S. Government guarantee to reimburse the licensee for any loss of investment or for increased costs incurred in a forty year period after issuance of the license resulting from requirements or limitations imposed by a subsequently agreed international regime. Foreign as well as domestic opponents point out, moreover, that enactment of this legislation could prejudice the character of the international regime to be established through negotiations in the Seabed Committee. Concern over such an outcome is increased by knowledge that in the absence of timely agreement on a suitable international regime, the State Department would begin at once to formulate a legislative approach on a contingency basis.⁴¹

The increased attention devoted to the problems of the mining industry is reflected in the number of Congressional hearings⁴² and the corresponding inputs required of the Executive branch. The resources and attention of Interior Department officials which were formerly devoted to petroleum are now largely concentrated on the hard minerals industry. This is due to a combination of factors: the advent of new Interior Department personnel, the shift away from Interior of petroleum industry attention, the emphasis on the deep ocean floor as opposed to the continental margin, and the heightened concern of the hard minerals industry and its

40. See Laylin, *The Law to Govern Deep Sea Mining Until Superseded by International Agreement*, 10 SAN DIEGO L. REV. 433 (1973); Knight, *The Deep Seabed Mineral Resources Act—A Negative View*, 10 SAN DIEGO L. REV. 446 (1973); Appendix A thereto, 10 SAN DIEGO L. REV. 461 (1973).

41. Letter from Charles N. Brower to Senator Fulbright, March 1, 1973, p. 5.

42. House Merchant Marine and Fisheries Comm., May, 1972; Senate Interior and Insular Affairs Comm., June, 1972; Senate Commerce Comm., October, 1972; House Merchant Marine and Fisheries Comm., March 1 and April 3, 1973; House Foreign Affairs Comm., March 21 and March 27, 1973.

Congressional allies with the direction of U. S. Government policy in the law of the sea negotiations.

The fishing industry is also faring better than it was in 1971 and it too has resorted to Congressional backing to gain a voice in the ocean policy process. Using Congressional leverage, the industry was accorded two seats on the U. S. Delegation to the U. N. Seabed Committee. While the extra seat reflects sharp industry differences between coastal, distant water and anadromous interests, the desire for a policy input has on the other hand buttressed the alliance of U. S. fishing groups. This precarious coalition, maintained through frequent, albeit heated, meetings, played a direct role in the policy shift from a preferential rights approach to the species approach currently espoused by the U. S. Government. The durability of the present species approach, however, is uncertain given strong coastal fishing pressures, both domestic and foreign, toward the adoption of a 200 mile resource zone. The New England Governors Conference called for 200 mile legislation in 1971 and several states have since unilaterally enacted such measures.⁴³ Through Congressional and state activities, the industry has acquired a voice in policy. It has also cemented relations with appropriate Executive agencies: the State Department's Special Assistant to the Secretary for Fisheries and Wildlife and Commerce Department's National Marine Fisheries Service located in NOAA.

Brief mention must be made of the evolving marine science input into ocean policy. With the creation in 1972 of a Freedom of Science Task Force within the Ocean Affairs Board of the National Academy of Science, the marine scientist first began to take a regular and direct part in the policy process. The support of prestigious domestic and international scientific bodies was enlisted and the scientific interest made its needs felt regularly through its advisory seat on the U.S. delegation to the U. N. Seabed Committee. Then in 1973, the marine scientist gained a full-time representative with the National Science Foundation's creation of a position to represent marine science within the Government and on the U. S. Delegation. In addition, the State Department's Coordinator of Ocean Affairs continues to represent the scientific interest.

Coincident with the full time participation of the National Science Foundation in law of the sea negotiations at the March/April 1973 session has been the renewed interest of the Depart-

43. SPORT FISHING INSTITUTE, SFI BULL., *Marine Fisheries and Law of the Sea*, at 1, Nov.-Dec., 1972.

ments of Transportation and Treasury. Transportation officials are concerned with non-military ocean transport and the U. S. Coast Guard's interests. The Treasury Department view, going beyond revenue considerations, is that overall U. S. ocean policy must be based on sound economic concepts and must take into account benefits to the economy as a whole.

The net effect of the direct policy input of all interests affected by ocean policy is difficult to discern at present. An early result, visible first in U. S. statements made at the August 1972 session, was a trend toward parity between the several U. S. interests—most notably between strategic and resource interests. While there had been no change in the firm U. S. position on straits and territorial sea breadth, Mr. Stevenson's August 10 speech laid a new emphasis on the national interest in ocean resources. Also at the August 1972 session (only a year after the U. S. had introduced an early version of the species approach stressing international regulation of all fishing) the Government indicated that it was prepared to move toward coastal state management of coastal and anadromous species.

Similarly, with regard to mineral resources, the U. S. position has evolved toward a coastal state approach as a result of more direct interest group involvement. Most significantly, the Government no longer contemplates limiting national jurisdiction to the 200 meter isobath. In response to strong domestic and international pressures in favor of a broad Continental Shelf or some form of economic resource zone, there was movement in the 1972 United States position toward accepting an intermediate zone of jurisdiction. Although the U. S. Government has not submitted any articles officially superseding the August 1970 draft treaty position on the Continental Shelf and seabed regime, a careful reading of subsequent U. S. policy statements reveals a changed attitude. In an area extending to the outer edge of the continental margin or to some agreed distance from shore, the United States now says that it is prepared to accept coastal state regulation of the exploitation of mineral resources subject to international standards and compulsory settlement of disputes. Other uses of the area are not to be restricted and pollution controls are to be internationally determined. Revenues from seabed resources would be shared with the international community and foreign investment in the area would be protected from expropriation.

Statements made at the March/April 1973 session in New York elaborated existing positions. This may have been due in part to the retirement of John Stevenson from Government and the resulting need for his successors to reaffirm continuity in the U.S. position. John Norton Moore replaced Mr. Stevenson as head of the delegation while Charles Brower chaired the Inter-Agency Task Force on Law of the Sea. With the active participation of all ocean users, further concessions or developments in U.S. policy have been difficult at best. Given the very limited advances in the work of the U.N. Seabed Committee, moreover, the Conference still appears too distant to warrant the sacrifice of some domestic interests for others. This situation remains highly fluid and might alter significantly by the summer session of the Seabed Committee in 1973. At that meeting, new U.S. representatives will be present and increased policy inputs by the agencies newly active—NSF, Transportation and Treasury—may be expected. Mr. Stevenson will again head the U.S. delegation and Mr. Moore will chair the Inter-Agency Task Force.

International Perspective

The response of other governments to the seeming parity among U.S. interests and to any policy shifts caused by new actors is difficult to predict. The negotiations are at an early stage where each delegate is seeking to discover which interests other delegations are or are not willing to compromise. Indeed a major purpose for developing countries of combining all law of the sea issues in a single conference was to increase the pressure for tradeoffs on the maritime nations. By the August 1972 session of the Seabed Committee, the developing nations had succeeded in expanding the conference agenda to twenty-five subjects.⁴⁴ In the face of apparently increasing parity among U.S. interests, however, the negotiations will have to proceed much further before international pressures for compromise will result in the sacrifice of some facets of the U.S. position for the retention of others.

The success of developing nations in expanding the number of

44. In addition to the standard items of straits, territorial seas, fisheries, the seabed regime, marine pollution and scientific research, some of the new items include: land-locked countries, rights and interests of states with broad shelves, rights and interests of shelf-locked states and states with narrow shelves or short coastlines, regional arrangements, high seas, archipelagos, enclosed and semi-enclosed seas, artificial islands and installations, the development and transfer of technology, dispute settlement, zones of peace and security, archaeological and historical treasures on the ocean floor and peaceful uses of ocean space.

agenda items to be considered by the Conference may prove the greatest obstacle to the progress of negotiations and ultimately to the Conference itself. How the diverse agenda items will be procedurally considered remains in doubt as the last preparatory session of the Conference begins in Geneva in July.

As of the March/April preparatory session, Subcommittees I and III of the Seabed Committee were considering the seabed regime and machinery, marine pollution and scientific research. All other agenda items (such as the territorial sea, economic zone, preferential rights, straits, fisheries, continental shelf) remained within the purview of Subcommittee II. While the first and third Subcommittees established thirty-three member working groups, Subcommittee II had one ninety-one member working group of the whole. Because the agenda items in Subcommittee II touch on the critical issue of the extent of coastal state jurisdiction, no agreement was possible on dividing the issues among smaller working groups. And, given the interdependence of the various agenda items, the work of the other subcommittees on the seabed regime, marine pollution and scientific research will necessarily be hindered by delays in the work of Subcommittee II.

Procedural dilemmas, of course, mask political differences. The slow pace of Seabed Committee negotiations indicates the absence to date of a willingness and/or ability to find legal formulae that will adequately secure divergent political interests. Wide disparities in the member nations and in their resulting ocean interests are far from reconciled. The early beginnings, however, of such a reconciliation may be discerned in the draft articles embodying the Santo Domingo principles on the patrimonial sea and the final document of the Inter-American Juridical Committee. Whether the Seabed Committee can build on these compromises will become apparent in the July/August preparatory meeting.

TABLE 1
TOTAL FEDERAL MARINE SCIENCE PROGRAM AND PERCENT
OF TOTAL BY MAJOR PURPOSE: FYs 1966-71^a

Major Purpose	Year											
	1966		1967		1968		Estimated 1969		Estimated 1970		Estimated 1971	
	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
National Security	125.4	37.6	161.8	36.9	119.9	27.8	127.2	27.4	127.0	24.7	102.0	19.6
Oceanographic Research	71.6	21.5	61.5	14.0	78.1	18.1	78.4	16.9	78.4	15.2	101.5	19.4
Ocean Exploration, Mapping, Charting and Geodesy	32.3	9.7	77.4	17.7	75.7	17.5	79.7	17.2	89.9	17.5	79.7	15.1
Fishery Development and Seafood Technology	38.7	11.6	38.1	8.7	40.1	9.3	45.3	9.8	49.8	9.7	45.5	8.7
Development of Coastal Zone Environmental Observation and Prediction	19.9	6.0	21.4	4.9	27.6	6.4	32.1	6.9	43.5	8.5	48.9	9.4
Transportation	13.7	4.1	24.4	5.6	28.8	6.7	33.7	7.3	39.8	7.7	43.0	8.2
General Purpose Ocean Engineering	10.4	3.1	11.9	2.7	11.1	2.6	16.7	3.6	23.5	4.5	37.3	7.1
International Cooperation and Collaboration	3.5	1.0	14.8	3.4	19.2	4.4	19.1	4.1	24.8	4.8	29.1	5.6
Health	5.1	1.5	7.1	1.5	9.6	2.2	8.4	1.8	10.0	1.9	8.8	1.7
Non-living Resources	5.1	1.5	6.6	1.5	5.3	1.2	6.0	1.4	5.4	1.0	5.9	1.1
Education	3.8	1.1	7.2	1.6	7.3	1.7	8.0	1.7	10.5	2.4	11.4	2.2
National Data Centers	2.2	0.7	4.0	0.9	7.0	1.6	6.7	1.4	8.2	1.6	6.9	1.3
	1.7	0.5	1.8	0.4	2.1	0.5	2.2	0.4	2.6	0.5	3.1	0.6
Total	333.4	100.0	438.0	100.0	431.8	100.0	463.4	100.0	513.3	100.0	522.5	100.0

Note: All dollars are in millions, all percentages are of yearly totals.

^a For FY data 1966-70 see the following publications by the U.S. National Council on Marine Resources and Engineering Development, Government Printing Office, Washington, D.C.

1966: *Marine Science Affairs—A Year of Transition*, February, 1967, p. 105.

1967: *Marine Science Affairs—A Year of Plans and Progress*, March, 1968, p. 171.

1968: *Marine Science Affairs—A Year of Broadened Participation*, January, 1969, p. 205.

1969: *Marine Science Affairs—Selecting Priority Programs*, April, 1970, p. 202.

1970: *Marine Science Affairs*, April, 1971, p. 13.

For FY 1971 see: U.S. Office of Science and Technology, *The Federal Ocean Program*, Government Printing Office, Washington, D.C., April, 1972, p. 106.

TABLE 2
TOTAL FEDERAL MARINE SCIENCE PROGRAM BY DEPARTMENT
AND INDEPENDENT AGENCY: FYs 1966-71^a

Agency	1966		1967		1968		Estimated 1969		Estimated 1970		Estimated 1971	
	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
Department of Defense	174.9	52.8	277.7	63.4	240.6	55.7	259.7	56.0	263.7	51.2	231.2	44.2
Department of Interior	56.5	15.2	64.1	14.6	70.5	16.3	80.8	17.4	29.2	5.6	27.5	5.3
National Science Foundation	47.7	14.4	47.8	8.6	38.1	8.6	34.9	7.5	30.3	6.4	49.4	9.5
Department of Commerce	25.0	7.5	35.3	8.0	33.6	7.8	38.1	8.2	118.3	23.1	139.3	26.7
Department of Transportation	8.1	2.4	8.3	1.9	15.4	3.6	19.8	4.3	23.4	4.5	34.3	6.6
Atomic Energy Commission	8.3	2.5	11.3	2.6	13.8	3.2	10.6	2.3	9.5	1.9	7.7	1.4
Department of Health, Education and Welfare	5.4	1.6	7.7	1.8	6.5	1.5	7.3	1.6	6.5	1.3	6.0	1.1
State Department	5.0	1.5	5.1	1.2	6.6	1.5	6.9	1.5	7.7	1.5	8.3	1.6
Smithsonian Institution	1.5	0.4	1.6	0.4	1.9	0.4	1.9	0.4	1.9	0.3	2.8	0.6
Agency for Internat'l Development	0.1	b	2.0	0.5	3.0	0.7	1.5	0.3	2.3	0.4		
National Aeronautics and Space Administration	0.9	b	0.1	b	1.8	0.4	1.9	0.4	2.3	0.4	3.3	0.7
Environmental Protection Agency									18.2	3.4	12.2	2.3
Total	333.4	100.0	438.0	100.0	431.8	100.0	463.4	100.0	513.3	100.0	522.0	100.0

Note: All dollars are in millions, all percentages are of yearly totals.

^a For FY data 1966-70 see the following publications by the U.S. National Council on Marine Resources and Engineering Development, Government Printing Office, Washington, D.C.

1966: *Marine Science Affairs—A Year of Transition*, February, 1967, p. 109.

1967: *Marine Science Affairs—A Year of Plans and Progress*, March, 1968, p. 176.

1968: *Marine Science Affairs—A Year of Broadened Participation*, January, 1969, p. 211.

1969: *Marine Science Affairs—Selecting Priority Programs*, April, 1970, p. 201.

1970: *Marine Science Affairs*, April, 1971, p. 13.

For FY 1971 see: U.S. Office of Science and Technology, *The Federal Ocean Program*, Government Printing Office, Washington, D.C., April, 1972, p. 106.

^b Less than 0.1%.