

The History of the United Nations influence on the United States Oceanic Environmental Policy (1973-2010)

research documented for

Southeastern Fisheries Association, Inc.

by

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Introduction

This article outlines the history of the United Nations' influence on the United States' oceanic environmental policy and its relevance to the US fishing industry from 1973 to 2010. The general timeline covered begins with the United Nations Convention on the Law of the Sea, follows UN development of the Convention on Biological Diversity, Agenda 21 presented at the United Nations Conference on Environment and Development and articulates US congressional and executive positions and actions with regard to United Nations Convention on the Law of the Sea ending with the early stages of the Obama administration in 2010.

Background

The UN drafted the United Nations Convention on the Law of the Sea (UNCLOS), between the years of 1973 and 1982 during the Third United Nations *Conference* on the Law of the Sea (UNCLOS III) ("United Nations Conference on the Law of the Sea, 1958", 2009, para. 6). In 1982 the UN adopted the conference and by 1996 it ratified UNCLOS (Edeson, 2005). UNCLOS establishes comprehensive UN legal governance over the oceans and seas including

universally agreed limits on the territorial sea, contiguous zone and the exclusive economic zone and the continental shelf; the regimes of innocent passage through the territorial sea, transit passage through straits used for international navigation and archipelagic sea lanes passage through archipelagic waters; a framework for conservation and utilization of the living marine resources; a new regime for the deep seabed beyond national jurisdiction; new rules for protection and preservation of the marine environment from pollution; new rules on marine and scientific research; and, the peaceful settlement of disputes concerning the interpretation and application of the provisions of the Convention (Edeson, 2005, para. 1).

At the time of UN ratification of UNCLOS, the US agreed to the terms but rejected Part XI which defined multilateral controls over seabed mining activity ("United Nations Convention on the Law of the Sea", 2010). US officials argued that the treaty undercut its economic and security concerns and favored those of Communist states ("United States non-ratification of the UNCLOS", 2010). In the interim of 1983 to 1990 the US sought to define alternative international conventions for deep seabed mining. In 1994 the US signed UNCLOS, recognizing it as international law, but never ratified it in Congress.

In 2007, over a decade later, George W. Bush urged the Senate to approve UNCLOS ("United States non-ratification of the UNCLOS", 2010). Likewise, the succeeding Obama administration demonstrated a commitment to UNCLOS early on. At her confirmation hearing, Secretary of State Hillary Clinton stated that UNCLOS would be a long overdue priority and held support from the Joint Chiefs of Staff, energy, business, and environmental interests (*Transcript of Hillary Clinton's Confirmation Hearing*, 2009). Obama also sets as policy the pursuit of US accession to UNCLOS in Executive Order 13547 discussed below.

Arguments against US ratification of UNCLOS include but are not limited to the following. David Ridenour (2006) argues that adoption of UNCLOS could be counterproductive to environmental concerns. By submitting US environmental policy control to the international entities, the US's hands may be tied with respect to domestic environmental issues. Likewise, Amy Ridenour (2007) posits that the UNCLOS requirement of countries to exploit their total allowable catch or export their surplus to other nations could lead to overfishing. Furthermore, other concerns include issues of eminent domain, unfair taxation and licensing fees, limits to domestic funding control, possible impairment to de-militarizing strategies, and a general lack of need for such a treaty due to existing laws ("United States non-ratification of the UNCLOS", 2010).

Agenda 21

At the United Nations Conference on Environment and Development (UNCED), Agenda 21 was presented

as a comprehensive blueprint of action to be taken globally—from now into the twenty-first century—by Governments, United Nations organizations, the development agencies, non-governmental organizations and independent-sector groups, in every area in which human activity impacts on the environment (United Nations, 1992, p. 3).

A fundamental theme throughout Agenda 21 is international, State, local government, and non-governmental organizational conformity with UN policies and committees¹ as well as the call for trade liberalization as an essential component for environmental sustainability.

Several items in the Agenda are relevant to the fishing industry, particularly chapter 15: "Conservation of biological diversity;" and chapter 17: "Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the

¹Principle 26: "States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations" (United Nations, 1992, p. 10).

protection, rational use and development of their living resources.” Chapter 15 will be addressed in the following section devoted to the Convention on Biological Diversity. In the management and protection of marine and coastal environments, Agenda 21, as well as UNCLOS, utilizes Europe’s Precautionary Principle², *in dubio pro natura* or “If in doubt, decide in favour of the environment” (Kogan, 2009, p. 4). *In dubio pro natura* calls for preventative, precautionary, and anticipatory approaches rather than reactionary ones attending to problems as they arise. Principle 15 of Agenda 21 states

In order to protect the environment, the precautionary approach shall be widely applied by the States according to their capabilities. Where there are threats of serious or irreversible damage, *lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation* [emphasis added] (United Nations, 1992, p. 10).

Agenda 21 posits, in no uncertain terms, the need for “increased national and international efforts” promoting “sustainable and environmentally sound development in all countries” as well as an “intergovernmental follow-up” to the UNCED “within the framework of the United Nations system” appointing the General Assembly as “the supreme policy-making forum” providing “overall guidance to Governments, the United Nations system and relevant treaty bodies” (United Nations, 1992, p. 274). It states that in addition to governing bodies, local authorities should work with citizens and local and private agencies to co-opt “a local Agenda 21” (United Nations, 1992, p. 233). Agenda 21 asserts that for the purpose of carrying out these measures:

- Habitat and other relevant organs and organizations of the United Nations system are called upon to strengthen services in collecting information on strategies of local authorities, in particular for those that need international support;
- Periodic consultations involving both international partners and developing countries could review strategies and consider how such international support could best be mobilized. Such a sectoral consultation would complement concurrent country-focused consultations, such as those taking place in consultative groups and round tables (United Nations, 1992, pp. 233-234).

Likewise, regarding local compliance, at the time it was written Agenda 21 proposed the following objectives:

² See (United Nations, 1992, p. 150), (Doulman, 2005, para. 3), and (FAO, 2010, para 1).

- By 1996, most local authorities in each country should have undertaken a consultative process with their populations and achieved a consensus on “a local Agenda 21” for the community;
- By 1993, the international community should have initiated a consultative process aimed at increasing cooperation between local authorities;
- By 1994, representatives of associations of cities and other local authorities should have increased levels of cooperation and coordination with the goal of enhancing the exchange of information and experience among local authorities;
- All local authorities in each country should be encouraged to implement and monitor programmes which aim at ensuring that women and youth are represented in decision-making, planning and implementation processes (United Nations, 1992, p. 233).

To ensure capacity building, the Agenda claims there is a need for training, administrative, and financial support from intergovernmental and non-governmental organizations (NGO's) to contribute support and monitoring of Agenda 21 programs (United Nations, 1992).

Finally, with regard to global cooperation, Agenda 21 promotes trade liberalization at the local and international level as a strategy for sustainability and as mutually supportive with environmental protection (United Nations, 1992). It posits the need for provision of resources to indebted developing economies and implementation of policies conducive to environment and development.

Relating specifically to environmental concerns, Agenda 21 asserts, somewhat counter-intuitively and nearly two decades before the Deep Water Horizon Gulf of Mexico oil spill, that although 600, 000 tons of oil contaminates the ocean *each year*, “environmental impacts from offshore oil exploration and production activities generally account for a very small proportion of marine pollution” (United Nations, 1992, p. 150). Nevertheless, concerning oil and other forms of contamination, it stresses the need for the cautionary approach.

With regard to management of living marine resources, Agenda 21 declares that coastal States should comply with UNCLOS by addressing “issues of straddling stocks and highly migratory species³,” and “access to the surplus of allowable catches” (United Nations, 1992, p. 157). Additionally, the Agenda calls for coastal states to

³ Straddling stocks are “fish stocks that migrate through, or occur in, more than one exclusive economic zones [EEZ's]” (“Straddling Fish Stocks Agreement”, 2010, para. 2). EEZ's are seazones “over which a state has special rights over the exploration and use of marine resources” (“Exclusive Economic Zone”, 2010, para. 1). Highly migratory species include “tuna and tuna-like species (albacore, bluefin, bigeye tuna, skipjack, yellowfin, blackfin,

- Assess the potential of marine living resources, including underutilized or unutilized stocks and species, by developing inventories, where necessary, for their conservation and sustainable use;
- Implement strategies for the sustainable use of marine living resources, taking into account the special needs and interests of small-scale artisanal fisheries, local communities and indigenous people to meet human nutritional and other development needs;
- Implement, in particular in developing countries, mechanisms, to develop mariculture, aquaculture and small-scale, deep-sea and oceanic fisheries within areas under national jurisdiction where assessments show that marine living resources are potentially available;
- Strengthen their legal and regulatory frameworks, where appropriate, including management, enforcement, and surveillance capabilities, to regulate activities related to the above strategies;
- Take measures to increase the availability of marine living resources as human food by reducing wastage, post-harvest losses and discards, and improving techniques of processing, distribution and transportation;
- Develop and promote the use of environmentally sound technology under criteria compatible with the sustainable use of marine living resources, including assessment of the environmental impact of major new fishery practices;
- Enhance the productivity and utilization of their marine living resources for food and income (United Nations, 1992, p. 157).

Some of the implemental strategies for sustainable fisheries suggested in Agenda 21 include, *inter alia*, the following:

- Develop and increase the potential of marine living resources to meet human nutritional needs, as well as social, economic and developmental goals;
- Maintain or restore populations of marine species at levels that can produce the maximum sustainable yield as qualified by relevant environmental and economic factors, taking into consideration relationships among species;
- Promote the development and use of selective fishing gear and practices that minimize waste in the catch of target species and minimize by-catch of non-target species;

little tunny, southern bluefin and bullet), pomfret, marlin, sailfish, swordfish, saury and ocean going sharks” as well as mammals such as dolphins and other cetaceans (“Highly migratory species”, 2010, para. 1).

- Ensure effective monitoring and enforcement with respect to fishing activities;
- Protect and restore endangered marine species;
- Preserve habitats and other ecologically sensitive areas;
- Promote scientific research with respect to the marine living resources in the high seas (United Nations, 1992, p. 154)

Most of the provisions in Agenda 21 regarding fishing and other marine activities call for management in compliance with UNCLOS and other UN policies and directives. These include States monitoring and directing ships flying flags on high seas ensuring observance of conservation and management rules including “full, detailed, accurate and timely reporting of catches and effort” (United Nations, 1992, p. 155). Likewise, Agenda 21 says States ought to take actions to increase marine resources used for food by reducing wastage, post-harvest losses and discards, and improving techniques of processing, distribution and transportation” (United Nations, 1992, p. 155). Chapter 17 of the Agenda asserts the need for States’ rights and international obligations “upon which to pursue the protection and sustainable development of the marine and coastal environment and its resources” (United Nations, 1992, p. 147). In line with these pursuits, Chapter 17 defines, among other things, a program for “Sustainable use and conservation of marine living resources under national jurisdiction” (United Nations, 1992, p. 147).

Part of sustainable use includes emphasizing “multi-species management and other approaches” to account for “relationships among species” (United Nations, 1992, p. 156). Likewise, Agenda 21 asks States to identify “marine ecosystems exhibiting high levels of biodiversity and productivity and other critical habitat areas” and to “provide necessary limitations on use in these areas, through, *inter alia*, designation of protected areas” (United Nations, 1992, p. 158).

Chapter 17 states generally that countries should take unilateral and multilateral measures to make certain high seas fisheries are overseen in symmetry with UNCLOS (United Nations, 1992). One of the goals to ensure this is the development of a global centralized system hosting legislative information and advice on application of legal treaties on oceanic environmental and development concerns. These measures include but are not limited to studies on migratory and straddling fish stocks, minimization of incidental catches, prohibition of dynamiting and poisoning methods, implementation of General Assembly resolutions on large-scale drift-netting, and increasing the availability of marine-derived human food sources “by reducing wastage, post-harvest losses and discards, and improving techniques of processing, distribution and transportation” (United Nations, 1992, p. 155). Moreover, and speaking to the principle of biological diversity, chapter 17 posits that states and other governing bodies should

emphasize “multi-species management” and other measures to account for interspecies relationships (United Nations, 1992, p. 156).

Convention on Biological Diversity

The UN began development of the Convention on Biological Diversity (CBD) in 1988 (About the Convention, 2010). The three primary stated objectives of the CBD are

- The conservation of biological diversity
- The sustainable use of the components of biological diversity
- The fair and equitable sharing of the benefits arising out of the utilization of genetic resources (Convention on Biological Diversity, 2010, para. 1).

The Magnuson-Stevens Act, first signed into law in 1976 and amended several times up through 2006, establishes US federal and state management of fish and other species and regulation of foreign fishing ("Fishery Conservation and Management Act of 1976"). The act underwent an amendment entitled the Sustainable Fisheries Act in 1996, which includes parameters for identifying what have come to be known as “essential fish habitats.”⁴ Aleta Hohn (1997) of the Southeast Fisheries Science Center argues that the enhancement and conservation of essential fish habitats and other aims within the Magnuson-Stevens Act are parallel to those of the CBD.

Under the CBD, the Jakarta Mandate on coastal and marine ecosystems and a work plan on the ecosystems of inland water were drafted (FAO, 2010). These plans hold many of the same principles as Agenda 21 such as conservation of marine biological diversity, sustainable use of marine resources, and a precautionary stance toward risk assessment and development.

When it opened for signatures at UNCED in 1992, then US president George H.W. Bush refused to sign the CBD (Sovereignty International, 1998). It went into force in 1993 (Convention on Biological Diversity, 2010) and was ratified by the UN in 1995 (Bartley, 2005). Shortly after his election in 1993, President Bill Clinton signed the CBD (Sovereignty International, 1998). However, senators, the Environmental Conservation Organization, and other individuals and not-for-profit groups collaborated to draft and sign a letter of opposition (Sovereignty International, 1998). As a result, the CBD was removed from the calendar and never voted upon by the 103rd Congress. Therefore, it was never ratified by the US. It was, however, ratified by the UN in 1995 (FAO, 2010).

⁴ “The term ‘essential fish habitat’ means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity” (“U.S. Code: § 1802. Definitions”) para. 10.

US Executive Orders

In 1996, President Bill Clinton signed Executive Order 12996: Management and General Public Use of the National Wildlife Refuge System. In it he states that the mission of the National Wildlife Refuge System is the preservation of a US “national network of lands and waters” to conserve and manage “fish, wildlife, and plant resources of the United States for the benefit of present and future generations” (Clinton, 1996, sect. 1).

Reflecting his agreement with and signing of CBD, Clinton’s Executive Order 12996 mandates the principle of conservation and enhancement of “the quality and diversity of fish and wildlife habitat within refuges” (Clinton, 1996, sect. 2). The overall theme of the order is conservation of, use of, and recreation within natural habitats mutually beneficial to humans, the habitats, flora, fish and wildlife.

In 2004, President George W. Bush signed Executive Order 13366: Committee on Ocean Policy. In it he establishes an administrative committee overseeing policies concerning “matters involving the oceans, the Great Lakes, the coasts of the United States (including its territories and possessions), and related seabed, subsoil, and natural resources” (Bush, 2004, sect. 2). The committee aims to coordinate with and consult “Federal, State, tribal, local governments, the private sector, *foreign governments, and international organizations*” in the advancement of “environmental, economic, and security interests of present and future generations of Americans” [emphasis added] (Bush, 2004, sect. 1). Along with his urging Senate to agree to UNCLOS, mentioned previously, this order further exemplifies President Bush’s observance of UN environmental policy.

In 2010, President Barack Obama signed Executive Order 13547: Stewardship of the Ocean, Our Coasts, and the Great Lakes. In part, as a response to the Deep Water Horizon oil spill in the Gulf of Mexico, and reiterating the themes of the CBD, the order calls for the restoration, protection, and maintenance of “the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources” (Obama, 2010, sect. 2). Moreover, Obama (2010) puts forth policy in the order that will cooperate and exercise “leadership at the international level” and pursue “*the United States’ accession to the Law of the Sea Convention*” [emphasis added] (sect. 2).

Conclusion

Although never ratified by US Congress, the international oversight mechanisms concerning fishing and oceanic biological diversity in UNCLOS, Agenda 21 and the CBD have direct relevance to the US fishing industry. The genealogy of present US environmental policy shares common undertakings with that of the UN. However, as

we have seen, US and UN alignment of environmental policy is only partial. Despite US recognition of UNCLOS and the influence of CBD on US policy, neither has been ratified by US Congress. Figure 1 illustrates the timeline covered in this article. Beginning in 1973, UNCLOS III spanned nearly a decade. During the development and up to the UN ratification of UNCLOS, the US accepted everything in UNCLOS but Part XI. Near the end of this period, UNCED adopted CBD. President George H.W. Bush refused to sign it, but his successor President Clinton did. The CBD was never ratified by the US, but was ratified by the UN in 1995. In the next decade and a half, we see three US presidents sign executive orders reflecting UNCLOS and CBD and statements on the record in support of UNCLOS.

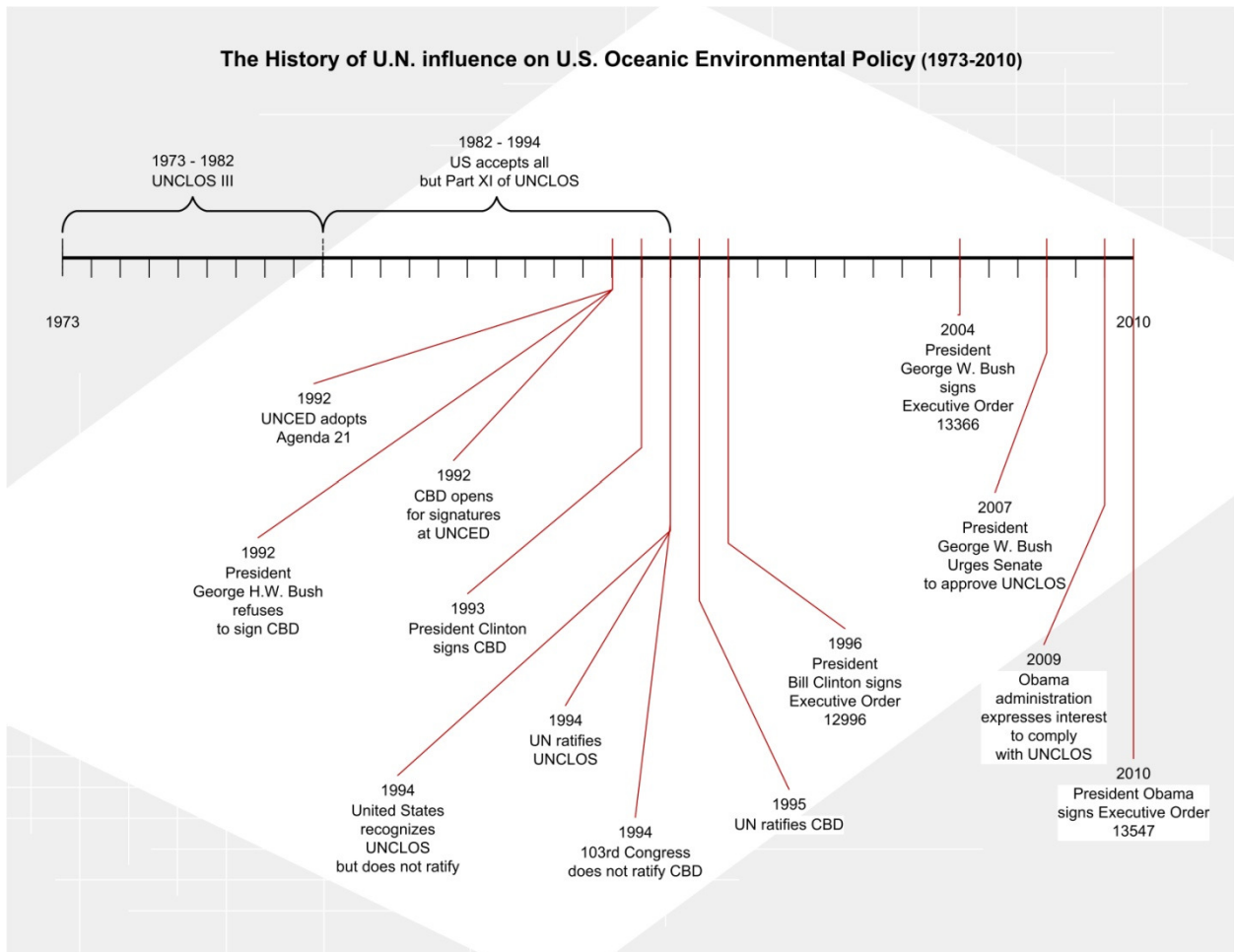


Figure 1. Timeline illustrating UN influence on US environmental policy beginning with UNCLOS III in 1973 and ending with Obama's Executive Order 13547 in 2010

References

- Bartley, D. (2005). Convention on Biological Diversity. *FAO Fisheries and Aquaculture Department* from <http://www.fao.org/fishery/topic/14906/en>
- Bush, G. W. (2004). *Executive Order 13366: Committee on Ocean Policy*. Retrieved. from.
- Clinton, W. (1996). *Executive Order 12996: Management and General Public Use of the National Wildlife Refuge System*. Retrieved August 13, 2010. from http://en.wikisource.org/wiki/Executive_Order_12996.
- Diversity, C. o. B. (2010, January 4, 2010). About the Convention. *Convention on Biological Diversity* Retrieved August 15, 2010, from <http://www.cbd.int/convention/about.shtml>
- Doulman, D. (2005). Agenda 21 and FAO's contribution to fisheries. *FAO Fisheries and Aquaculture Department* Retrieved August 13, 2010, 2010, from <http://www.fao.org/fishery/topic/14765/en>
- Edeson, W. (2005). The United Nations Convention on the Law of the Sea. *FAO Fisheries and Aquaculture Department* Retrieved August 13, 2010, from <http://www.fao.org/fishery/topic/14839/en>
- Exclusive Economic Zone. (2010, August 9). Retrieved August 27, 2010, from http://en.wikipedia.org/wiki/Economic_exclusion_zone
- FAO. (2010). Background Retrieved August 16, 2010, from <http://www.fao.org/fishery/topic/14906/en>
- Fishery Conservation and Management Act of 1976. *Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service* Retrieved August 27, 2010, from <http://www.fws.gov/laws/lawsdigest/fishcon.html>
- Highly migratory species. (2010, August 14). Retrieved August 27, 2010, from http://en.wikipedia.org/wiki/Highly_migratory_fish#Highly_migratory_species
- Hohn, A. (1997). Essential fish habitat: Essentially biodiversity conservation. *The South Atlantic update, October*.
- International, S. (1998). How the Convention on Biodiversity was defeated. Retrieved August 15 2010, from <http://www.sovereignty.net/p/land/biotreatystop.htm>
- Kogan, L. (2009). What Goes Around Comes Around: How UNCLOS Ratification Will Herald Europe's Precautionary Principle as US Law. *Santa Clara Journal of international Law*, 7(1), 21-166.
- United Nations. (1992). *Earth Summit: Agenda 21--The United Nations Programme of Action from Rio*. Paper presented at the United Nations Conference on Environment and Development, Rio de Janeiro.

- Obama, B. (2010). *Executive Order 13547: Stewardship of the Ocean, Our Coasts, and the Great Lakes*. Retrieved August 13, 2010, from <http://edocket.access.gpo.gov/2010/2010-18169.htm>.
- Ridenour, A. (2007). Bush Administration Law of the Sea Treaty Defense Inaccurate Retrieved August 15, 2010, from <http://www.nationalcenter.org/2007/06/bush-administration-law-of-sea-treaty.html>
- Ridenour, D. (2006). Ratification of the Law of the Sea Treaty: A Not-So-Innocent Passage. Retrieved August 15, 2010, from <http://www.nationalcenter.org/NPA542LawoftheSeaTreaty.html>
- Straddling Fish Stocks Agreement. (2010). Retrieved August 27, 2010, from http://en.wikipedia.org/wiki/Straddling_Fish_Stocks_Agreement
- Transcript of Hillary Clinton's Confirmation Hearing*, (2009).
- U.S. Code: § 1802. Definitions. Retrieved August 27, 2010, from http://www.law.cornell.edu/uscode/16/usc_sec_16_00001802----000-.html
- United Nations Conference on the Law of the Sea, 1958. (2009). *United Nations Diplomatic Conferences* Retrieved 2010, August 15, from <http://untreaty.un.org/cod/diplomaticconferences/lawofthesea-1958/lawofthesea-1958.html>
- United Nations Convention on the Law of the Sea. (2010, July 18). *Wikipedia: The free encyclopedia* Retrieved August 13 2010, from http://en.wikipedia.org/wiki/United_Nations_Convention_on_the_Law_of_the_Sea
- United States non-ratification of the UNCLOS. (2010, January, 12). Retrieved August 13, 2010, from http://en.wikipedia.org/wiki/United_States_non-ratification_of_the UNCLOS