Transcript of comments by Ambassador Dave Colson, U.S. State Dept., at Regional Council Chairmen's Meeting, July 12, 1995.

Colson: . . . [introductory remarks] . . . When I joined the Department in 1975 the State Department and the Defense Department and the Justice Department were fighting tooth and nail against passage of this law that was going to establish a 200-mile jurisdiction, one of the things that I had as a new young lawyer in the Department to do was, in April of '76 when the law was finally passed, I wrote the proposed veto message that State and Defense and Justice sent to President Ford proposing that the law be vetoed and that the Commerce Department's view on this should be rejected. Congress at that time . . . very hard for the establishment of the 200-mile zone. President Ford, of course, had announced publicly that he was going to sign this so we were sort of up against it, but we nonetheless tried.

And after that happened and the law was passed, we had a period of time between April of '76 and March of '77 when the zone actually took effect, that we had to suddenly change our full mind set about this, particularly the State Department, and move very expeditiously to implement this law requiring at that time the restructuring of a wide array of agreements that were in place that related to international fisheries issues and try to deal with the establishment of all the GIFAs that at that time were sort of the centerpiece of what we . . . international fisheries business. And also the establishment of something that had not been thought about at all during the process of the development of the Magnuson Act -- how we deal with our boundaries with our neighbors. We have 32 maritime boundaries that are occasioned by the establishment of . . . and we hadn't really thought about how we were going to handle that problem, just the whole politics was we were going to get rid of the foreigners, but we found out that we still had neighbors in this process and there were boundary issues with those neighbors. And so it was a very exciting time early on and I met a number of you during that period as we were trying to structure the new international fisheries relationships that we have. And, we've had some real successes and we've had some real failures. I think Doug Marshall and I probably participated in one of the largest fisheries failures that the United States has had. We had a treaty developed with Canada. It started out as an effort to get all of our West Coast and East Coast fisheries relationships with Canada sorted out, including the salmon problems on the West Coast, all the problems on the East Coast. We negotiated for about two-and-a-half years, and when we got done we had a Secretary of State signed treaty. We put it before the Senate and we couldn't get one vote in the Senate for this treaty, and I hope that I learned a few things out of that process, largely that we do have a political system that we are going to have to deal with on these things. We have constituent groups that we have to deal with, and even though you may have the most perfect academic perspective on some of these issues, it's not necessarily the one that's going to prevail once we get through with the U.S. political process that relates to fisheries issues.

And, I've had an enjoyable career in working on these things and I was excited in 1990 when I was given the opportunity to take on the leadership at State on international fisheries issues. I have about 25 officers that work for me. We do a lot of other things other than fisheries, about a third of them work on fisheries issues full time, but we also deal with all of the other issues that relate to U.S. foreign policy issues in the oceans. This includes marine pollution, maritime boundary issues; it includes our navigation interests in various parts of the world, moving commerce and our navy through the narrow straits and passages in many places. We have also the responsibility for the United States . . . policy, a growing area of interest, and our efforts in Antarctica.

When I took the job in 1990 I had sort of three objectives that I wanted to accomplish during my tenure and I think that we were able to get those done reasonably expeditiously. At that time we had a growing high seas driftnet fishery problem that was expanding globally and we had a very strong interest being voiced by . . . constituent groups that we had to basically get rid of that international fishing practice. Through a lot of hard work by a lot of people we were able to accomplish that by using the vehicle of a United Nations resolution and

get the international community to agree that we simply were going to stop high seas driftnet fishing. That required a large amount of effort by then-Secretary Baker, and someday when that story is told, the fact that we could get a Secretary of State into a fisheries issue . . . is very telling because when somebody like Jim Baker would get into this with the Koreans or the Japanese and was clearly understanding the issue personally and wasn't just reading some talking points that we had written for him, the foreign leaders began to get the message that the United States was not going to tolerate this practice and they were going to have to get out of it.

We also had at that time what was a standing fishery in the central Bering Sea donut hole that was of great concern here in this region and we wanted to find a way to reconcile our management with that fishery and basically to bring it to an end and get it under control if it were ever to resume. The numbers in that fishery . . . we were talking about 1.5 million metric tons at that time that were being taken out of the central Bering Sea and it was an enormous fishery, and again to try to move the countries that were participating in that fishery out of it in a negotiating process that took . . . meetings was a real challenge. We got that done, we got a treaty negotiated, the Senate approved it and we're just about to get the required implementing legislation passed and we will be moving into the implementation phase of that agreement shortly.

Another issue that was in front of us in 1990 that we had to deal with was the extension of the South Pacific Tuna Treaty. This is the treaty that gives our vessel operators in the Western Pacific access to 16 different zones of jurisdiction out there with one license and it's sort of the centerpiece of the way our tuna fleet operates out there. In fact, we had a need to get that treaty extended and we were trying to get it extended for a 10-year period to give that industry some certainty and we were able to do that.

So, we've moved sort of into the implementing phase on all of those agreements and now we're looking at a number of challenges in front of us and I'd like to sort of go through them. In no particular order, and I think I'll cover most of the items here that I wanted to sort of organize it this way.

I think one of the largest challenges that we have, if we get past all of the sort of nit-picking that we traditionally do, is to begin to create a structure for dealing with pelagic species in the Pacific Ocean. Right now it's a void, frankly, and, if you believe people like Bill Aron and scientists, we are dealing with many of the same stocks that come through areas of the Western Pacific Council, the Pacific Council, are fished on the high seas throughout the Pacific, they're fished in zones of national jurisdiction in Japan and the Phillippines and Indonesia, they're fished in the small island countries in the middle of the Pacific Ocean, and this fishery is expanding by leaps and bounds out there and we have no good information about what really happens throughout that region. We've got a lot of Americans that participate in parts of the fishery, we have our own domestic management interests about the way we manage our own 200-mile zones in this area, and we simply don't know very much about what's going on and we're a long way toward establishing regional management program for the Pacific Ocean. I think that everybody recognizes that that's a long way off in the future, but we do think that we need to come to grips with the data collection, the information gathering, and beginning to create some sort of institutional structures that will be available to us as we begin to try to develop some international cooperation. This is an enormous challenge because it brings a large number of sort of disparate groups together. We've had traditional relationships with Latin America that largely relate to the Inter-American Tropical Tuna Commission that traditionally has had the fisheries management relationship off the coasts of Latin American and the Eastern Pacific Ocean. There's something called the South Pacific Commission that in the Western Pacific has been sort of the data collection, gathering, and it has a lot of other things that it does, but it's sort of been a vehicle through which we have tried to gather information about the fisheries. We have something called the Foreign Fisheries Agency which is an organization of the 16 countries in the Western Pacific that make up the South Pacific Forum. We're not a member of that, but they are the zones of jurisdiction of the independent countries in that part of the world where they coordinate very well their fisheries policies. . .Papua, New Guinea, Solomon Islands, areas where there's a lot of fish taken out of those zones, and I think one of the statistics that just boggles my mind is that last year we had 600 Chinese longliners show up in the Marshall Islands to go fishing and boy they come in

there with that checkbook and those little countries, pretty good deal here you know, to sell some licenses for a year, and bang, they're in there and there's no way, of course, that we know what happens, we have no idea how much catch is coming out of there. There's sort of a nominal "sure, we'll tell you what's going on," but there's not much that we really know about what happens in this area. You can buy a longliner in a box today. You can go to Germany and you can buy a container ship full of longliners; you can get 40 longliners on a container ship and you can buy them and go to these companies in Germany that builds these things, they take them to Taiwan, pull them off the ship, get a bunch of guys with welding torches, and they put them together like a picture puzzle in about three days, and you've got a longliner. And you will get your investment back on that longliner in about 18 months, and the rest of it's gravy, and that fishery is just going to go crazy out there, and we're going to have to work very hard. The one ally I think we have in this is that we will be working closely with throughout, is Japan because they see what's happening and they are very concerned about their own market, they're concerned about a lot of cheap fish entering their market and what that does to their domestic industry and we have begun a dialogue with them and the islanders about this but it's going to take a lot of work to begin to create a structure that makes sense for us as a country, and which begins to get a handle on this question.

This then brings me to the question of the future of the Inter-American Tropical Tuna Commission which has had a very high degree of success, frankly, in international fisheries management. I think you could look at the yellowfin tuna stocks in the Eastern Pacific Ocean and you can probably say that since that Commission was established in 1948 that fishery has been managed on a sustainable basis. We have generally had good healthy yellowfin catches coming out of that region and the international cooperation that has been developed through that organization has worked. We've had a lot of trouble in that organization over the years, we've had a lot of disagreement and dispute, but the way that fisheries commission has . . . the respect in which it is held by virtually is everybody is . . . that has allowed governments to regulate their own people in such a way that we really haven't overfished any yellowfin stocks. Now, that Commission . . . is under stress and it is under stress because of the dolphin problem and we may end up losing this Commission simply because the Latins are about to walk and leave it because they are fed up with the United States' inability to get rid of tuna embargos. We have had a situation in that region where 20 years ago it's estimated that perhaps the fishery was killing as many as 400,000 dolphins annually in the fishery, five years ago the industry was taking, this is in total, everybody, about 25,000 dolphins, mortalities occurred incidentally in the fishery; it is now down to 4,000 dolphins in the fishery, which is four one-hundredths of one percent of the population. It can stand up to any other domestic management program as far as incidental mortality of marine mammals, yet we have all these Latin countries embargoed because they're still not doing well enough as far as the Marine Mammal Protection Act is concerned, and like I said, the Latin countries figure that at this point there's no longer any real reason to cooperate with us on this, or the IATC on this, and if we don't get this job done this year in Congress I really do feel that we may lose what may be the strongest international fisheries management organization anywhere in the world and it's sort of a . . . posture as we see more and more need for coordinated international fisheries . . . to be in a . . . to maybe knocking down the one that's done the best job because of this tuna-dolphin interaction which obviously has a very . . . [tape seems to have not recorded for a couple of minutes] . . .

. . . manage, this is an agreement that we negotiated that got our . . . into, like I said, 16 zones with one license so that they don't have to every time they move between . . . and . . . , someplace like that, they are able to use one license throughout the region, . . . we will have to begin to move toward working with the island countries on management and conservation issues. There doesn't seem to be an outcry yet that we need to manage the fishery in any particular way, but as we begin to see the explosion of effort into the Western Pacific one can only expect that we are going to have to start thinking about controlling fishing effort in that area. We also have the South Pacific Commission and this institution out there that we have had some relationship in the past and I must say that we had to . . . at lengths to keep the very small contribution that the United States makes to this organization together this year in the budget process because it came under attack immediately as one of those sort of things that was way out there and why is the United States contributing by even the very small amount of money that we contribute to the South Pacific Commission; but were able though, fortunately, to get the right

people to make the right phone calls and that got put back into our authorization. We also have a question, and I would be interested to hear Kitty's view, that appears this year in proposed legislation, and that is to allow some of our island territories in that part of the world to essentially reap the financial benefits of providing for access for foreign fishing to occur in their zones under agreements that we would negotiate. For instance, if Japan wanted to fish off the Northern Mariannas or something, we would negotiate some kind of a deal with Japan and the license fees and whatnot, instead of coming into the Treasury, they would go into the Northern Mariannas, basically give them the return on the value of those resources in their waters. There's a lot going on out in that part of the world and I think that from the challenges that we face over the next five years, trying to rationalize this and put it together and give it structure in some way that is consistent with our interests, and if all of the countries that work out there are thinking the same way, it's going to be a very important for our fisheries interests.

Another area of challenge is the proliferation of large-scale multi-lateral meetings that are dealing with fisheries issues. We've been able to use these to some degree to accomplish some objectives that we have. I also see them as areas of difficulty, though, as they continue to proliferate because they are generally induced by the environmental movement throughout the world and they're generally attacks on the way fisheries management and fisheries programs are developed. I think we all know we can do better, but these various fora, these various UN institutions that want to get into fisheries management issues, setting up new treaties, new agreements, are perhaps going to be a real area of challenge. We've had success in something call the FAO Reflagging Agreement. Again, one of the challenges that we face is that whereas we have a tradition of dealing with countries like Japan and the European Union and Russia and Korea, the problem is that a lot of those boats are now being flagged in other countries, tiny little countries, and they're out there flagging convenience boats. And, countries like Liberia and Panama and Belize and Honduras; they had Honduran boats coming up . . . in the middle of the Donut hole and, I mean, what the hell is Honduras. . . , you know, they don't even know they've got this. Some Consulate has given some guy that wanted to reflag his boat, he's paid $500 to the Honduran Consulate and . . . Japan or something, and now there's a boat over the Honduran flag, and the way that our laws work is that that's the nationality of that vessel and that's the country that we have to work with, and there's nothing to work with. And, we're even seeing this. . .and I want to mention this because it's very important, we're seeing this happen with United States vessels. We are seeing U.S. vessels being used as flagging convenience vessels in other parts of the world where a foreign bottom is reflagged, they're not going to come into the United States ever, so they're not subject to the Jones Act, and other types of requirements. So, they've got a U.S. flag and they're mucking around way off the Indian Ocean, creating problems, or they're in the Northeast Atlantic creating problems up to Norway and Russia and our laws, which were put together to protect what we think of as American fishermen, are there because that's a U.S. flagged boat and we've got all these legal requirements to sort of protect that guy when you've got nothing but a shell corporation in the United States, and it's an entirely foreign operation. This is the sort of thing we're seeing in international fisheries more and more and we're going to have to do something about it. And, this flagging agreement is a first start, the Senate has approved it and, again, the implementing legislation is moving through, it's moved through the Senate, it's going to move through the House, . . . will allow us to be a party to that agreement.

There's another conference that's going on in New York, this was a conference that arose out of the Rio conference. You'll remember a few years ago there was a big group summit down in Rio and one of the calls out of that conference was that there was to be a UN conference on straddling stocks and highly migratory species. The reason for this was that . . . one of the early shots in the Canada-EU battle and they had both been playing word games in Rio about who was to win that tug of war and they checkmated themselves into the drafting of the various documents and all they could agree on was let's have a meeting and in turn it evolved into this big United Nations conference. But, again, we have tried to in that conference, which is going to end up in a Convention, do some things that will help us and the area that we thought would help us the most was seeing if we could get a little bit further down the road on international enforcement issues on the high seas. We had hoped that we could advance international law . . . in this process so that coastal states would have a little bit more opportunity,

authority, ability, to get a handle on bad acting outside of the 200-mile zone. And, I think we are going to make some progress in that area and I think it will be largely regarded favorable.

We went into that, though, with two straight-forward political objectives. I didn't want to bring home a convention that I was going to have to tell Congress was going to require changes in U.S. domestic management, that we did not want to get into a position where we were either saying the Magnuson Act has to be changed because of this treaty, or that the councils have to do something in particular. We also did not want to be in a situation where by virtue of this treaty we would be required to change some of the international agreements that we are fond of, including the South Pacific Tuna Treaty and the Donut Hole Convention. I think we have accomplished these objectives, both Lee [Anderson] and Kitty [Simonds] have participated on our delegation, sort of watching this from a council point of view and we have appreciated that, and we have one more negotiating round which will begin next week for two weeks in New York and our expectation is that at the end of that two-week period the negotiations will have been brought to closure and we will be moving into the formal stages of getting the language comparisons done, and I would suggest that by early next year we probably will have put this treaty . . . and for . . . the Senate, and I hope that it is one that will enjoy large support. I'm not aware of anyone that is particularly troubled by this and we've done what we can to involve the interests that are most affected, whether in industry. . . [tape changeover . . . some comments lost]

. . . fishing outside of our jurisdiction, we haven't created a rule yet that relates, between the United States and . . . and until you do that, you're out of luck. But if you've got enough countries that think that this is the way to handle a problem and you go ahead and handle the problem that way, you're probably going to have some success on the issue.

[NPFMC Vice Chairman Wally Pereyra offered the following statement] Another issue involves the whole dispute settlement regime that's set up. We have a Donut hole agreement that six nations, I believe, are party to it. I don't believe Taiwan is, China is, but Taiwan's not. Now, Taiwan, as you all know, tend to be renegades and I could see a potential, Taiwan all of sudden comes in, they've got trawlers so if they want to fish up in the Donut hole, they're not a party to the Donut hole agreement. They may be a party to this convention, this agreement, but not the Donut hole portion, this then goes to dispute resolution because they don't agree to it, and so how do we know that in that dispute resolution process that we're not going to find ourselves having to accede in some way to Taiwan, maybe outside the Donut hole, to provide fish for them in order to get them to back off in some respect? We might have to alter the way in which we're managing the pollock resource in the North Pacific in order to accommodate them.

Ambassador Colson: . . .if they're a party to that agreement they're breaking the agreement because they're fishing in a region where they're not a member of the regional fisheries. . .so, I think it's a pretty clear-cut case in that situation. But the issue of dispute settlement, more generally, is one where like any other legal situation it's got its pros and cons and the thing that we have to evaluate is whether we think we're going to be better off with something that will allow us another option for dealing with a country that is fishing outside of our 200-mile zone, than being concerned about that country's going to somehow be able assert some kind of . . . that's going to cause us to flip flop. I'm very much convinced that we are better off in a situation where Argentina shows up in the Donut hole; there's nothing inconsistent about the Donut Hole Convention in international law; Argentina is out there, they are not participating in our regional agreement; we can take Argentina to dispute settlement, they are not cooperating, and to get them out of there. And, when we might not have a law enforcement option, we might have a legal option. So, yes, maybe if we are acting bad in some way maybe a country can challenge us and say the United States isn't acting properly in some fashion. I really don't think that's going to happen. I don't think dispute settlement is going to be used very much at all in international fisheries issues except in sort of these crisis sort of things like the Europeans and the Canadians, or something like that. But, I think that we will tend to use it as a diplomatic tool, as an alternative, as a threat, sort of like the Pelly Amendment. You sit there and pound people, we're going to impose trade sanctions, we're going to impose trade sanctions if you don't

behave; if you don't behave. . .you know, countries like Japan are not going to take us to dispute settlement. When did Japan ever have to take anybody to dispute settlement? But we can use this . . . against other countries in cases where we choose, not because we really want to go to dispute settlement, of course, . . . but as part of a diplomatic arsenal that we would use when you're trying to get a handle on a situation.

[Comments by unidentified participant, possibly Dave Cupka, S. Atlantic Council] . . . [must not be near a microphone, could not hear very well] . . . One group of resources that in my opinion needs some sort of organized international attention are the sharks of the Western Atlantic, Gulf of Mexico, and the Virgins. Some have suggested that perhaps . . . might be appropriate in there so the body could deal with Atlantic sharks, but I don't think so myself because I'm only aware of a couple of species where there's any scientific evidence that suggests they're . . . . For the most part, sharks in the Western Atlantic migrate toward the South, and are widely dispersed. Sharks tagged off New England end up off of Brazil or Mexico or Venezuela, or somewhere. And we as a nation cannot hope to manage these resources independently under a domestic . . . if we don't have international cooperation and I'm personally unaware of any international body that's responsible for dealing with this. I would urge that State Department give some serious to looking at this issue and try to develop a strategy as to how we might focus on international management of sharks in the Western Atlantic.

Colson: Let me just respond. . .one, we are not normally the ones that are coming up with the ideas. We're not the ones that are normally saying, 'there's a problem someplace and we're going to . . .' You all, the industry, the National Marine Fisheries Service, are the ones that come to us and say here's the problem as we see it, let's figure it out. And, our role then is to sort of start thinking about how do we do this, how do we do this internationally, and if the fisheries service and the councils and the industry say, yes, let's think about a new Western Atlantic shark deal of some sort, then that's where we come in and say, O.K., let us understand this a little bit better and how do we put that together. And, I'm quite willing to entertain that, but it's one of those things that . . . a consensus again on our side about how to go about doing business. Let me just mention one other thing I wanted to . . . a few of the people here, particularly . . . were very instrumental in the series of negotiations we had on North Pacific issues and that arose out of an advisory group that was put together for the State Department to help us in the negotiating process on these issues with Japan and Russia. And, I found it very valuable because the putting together of a team of people that was sort of representative of the spectrum of interests, that were free to participate in the international negotiations, guide, help, direct, and who were there and understood the. . .decisions and perhaps compromises in order to get the job done, was very very useful and I think as we think of other new institutions, things to do, that having. . .this was a body that was created by statute, it doesn't necessarily have to be created by statute, but some way of identifying a group of people that are sort of responsible for advising us through the process, I think, is the key to successful negotiations, the key to making sure that we understand our interests and it is also key to the constituent groups understanding the results of the negotiations because they have been there, they have participated in the process, they have understood why we did "x" instead of "y" and why the agreement is written this way instead of that way and I found it very beneficial and if we were to do something as you are suggesting, or any other initiative in this area, I think we would be willing to try to have a similar kind of mechanism that would guide the . . .

[Chairmen took a break and when they came back, there were no more questions of Mr. Colson]