

ENDORSE THE LAW OF THE SEA CONVENTION

Action Item for Harbors Navigation and Environment Committee Corporate Members

In June 2009, the Joint Ocean Commission Initiative (JOCI) began a renewed effort to push for U.S. accession to the Law of the Sea (LOS) treaty. JOCI contacted AAPA, as well as some AAPA member port authorities, and requested our signature on an ad supporting LOS. After researching the issue, staff determined that AAPA did not have a policy position on LOS.

LOS entered into force in 1994 and establishes navigational rights, territorial sea limits, economic jurisdiction, legal status of certain natural resources and protection of the marine environment for the seabed beyond boundaries of national jurisdiction.

According to the U.N. website, some key provisions of the Convention are

- Coastal States exercise sovereignty over their territorial sea which they have the right to establish its breadth up to a limit not to exceed 12 nautical miles; foreign vessels are allowed "innocent passage" through those waters;
- Ships and aircraft of all countries are allowed "transit passage" through straits used for international navigation; States bordering the straits can regulate navigational and other aspects of passage;
- Coastal States have sovereign rights in a 200-nautical mile exclusive economic zone (EEZ) with respect to natural resources and certain economic activities, and exercise jurisdiction over marine science research and environmental protection;
- All other States have freedom of navigation and overflight in the EEZ, as well as freedom to lay submarine cables and pipelines;
- Coastal States have sovereign rights over the continental shelf (the national area of the seabed) for exploring and exploiting it; the shelf can extend at least 200 nautical miles from the shore, and more under specified circumstances;
- Coastal States share with the international community part of the revenue derived from exploiting resources from any part of their shelf beyond 200 miles;
- The Commission on the Limits of the Continental Shelf shall make recommendations to States on the shelf's outer boundaries when it extends beyond 200 miles;
- All States enjoy the traditional freedoms of navigation, overflight, scientific research and fishing on the high seas; they are obliged to adopt, or

cooperate with other States in adopting, measures to manage and conserve living resources;

- States are bound to prevent and control marine pollution and are liable for damage caused by violation of their international obligations to combat such pollution;
- All marine scientific research in the EEZ and on the continental shelf is subject to the consent of the coastal State, but in most cases they are obliged to grant consent to other States when the research is to be conducted for peaceful purposes and fulfils specified criteria;
- States are bound to promote the development and transfer of marine technology "on fair and reasonable terms and conditions", with proper regard for all legitimate interests;
- States Parties are obliged to settle by peaceful means their disputes concerning the interpretation or application of the Convention;
- Disputes can be submitted to the International Tribunal for the Law of the Sea established under the Convention, to the International Court of Justice, or to arbitration. Conciliation is also available and, in certain circumstances, submission to it would be compulsory. The Tribunal has exclusive jurisdiction over deep seabed mining disputes.

Major environmental groups support U.S. accession, as well as most of the oil and gas industry, which views the treaty as critical to legally claiming certain offshore resources. The World Shipping Council is supportive though is not lobbying on the issue, and the Chamber of Shipping of America strongly supports LOS because it would secure innocent passage and navigational rights in certain waters.

Major conservative political groups, such as the Heritage Foundation and the Cato Institute have opposed LOS as a flawed treaty that subjects too much of the world's oceans to a bureaucratic international body.

The JOCI believes that the treaty is critical to military and maritime security, protecting economic interests and stewardship of the marine environment. Arguing that the melting of ice in the Arctic is opening up "new shipping routes and access to potentially vast oil and mineral deposits," JOCI is renewing its efforts to support U.S. accession to LOS under this new administration.

The United States is one of a handful of coastal nations around the world that has not yet acceded to the treaty, including Cambodia, Colombia, Ecuador, El Salvador, Iran and Thailand, among others. Canada and Mexico are both party to the treaty, as are most Caribbean, European and Asian nations.

Because of the broad support for LOS and the perceived benefits for navigation, AAPA staff recommends that the Harbors Navigation and Environment Committee endorse U.S. accession to the Law of the Sea Convention.