

# The US and the Law of the Sea Convention

Past, Present and Future LOS Politics

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# Why Am I Here Today?

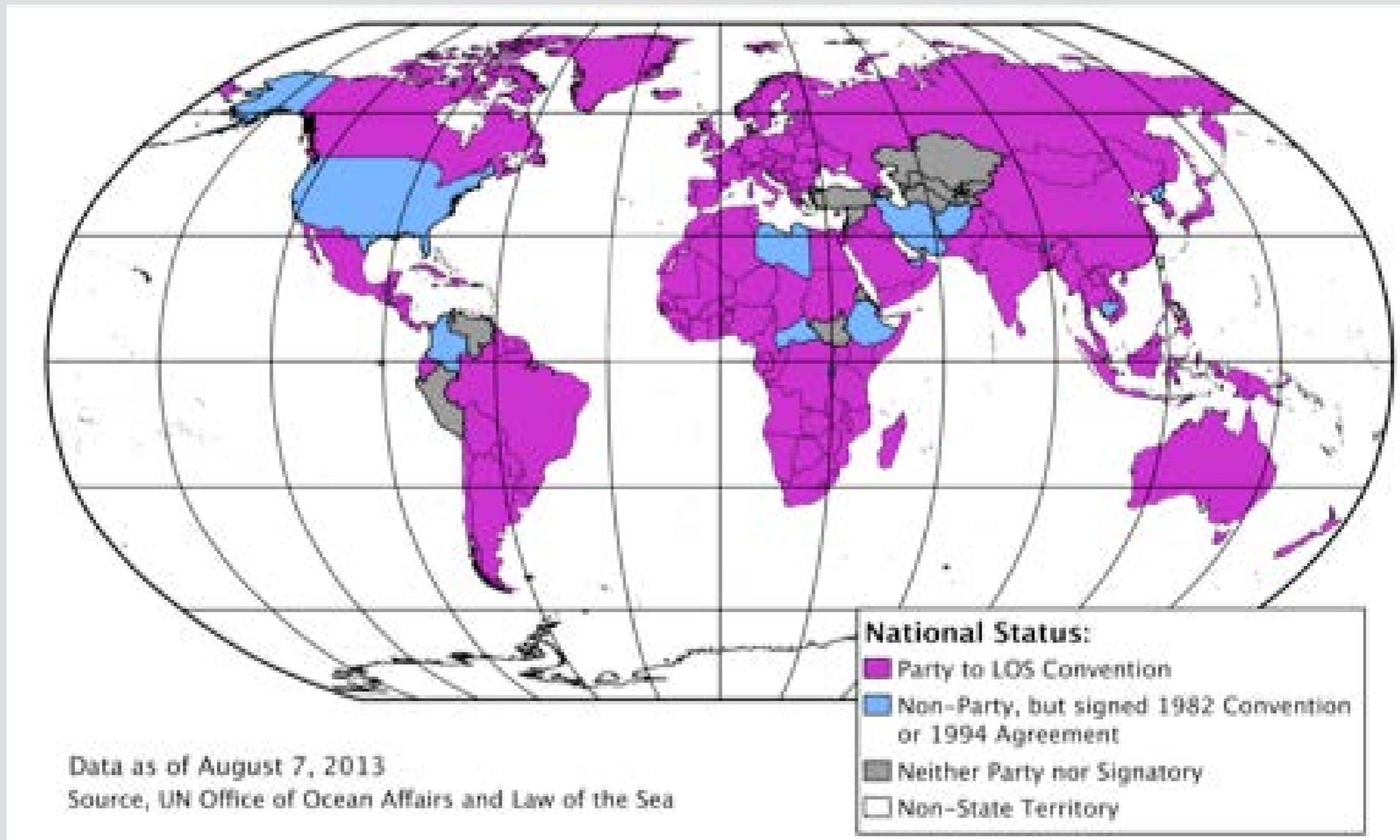
- **WHY:** US Accession to the UN Convention on the Law of the Sea Continues to be an Important Issue
- **HERE:** I began my work on the LOS Convention here at the Commerce Department and recognize that DOC has broad interests in the Law of the Sea
- **TODAY:** We are marking some major anniversaries related to the Convention in 2015

# Current and Future Law of the Sea Issues

- Freedom of Navigation (EEZ, Straits, High Seas, Archipelagic Waters, Ice Covered Areas)
- Telecommunications
- Sustainable Development at Sea/Business and Environment
- Continental Shelf beyond the EEZ
- Deep Seabed Minerals
- Biological Diversity Beyond National Jurisdiction
- Dumping in International Waters
- Climate Change, Sea Level Rise, Ocean Acidification

# The Law of the Sea Convention and 1994 Agreement

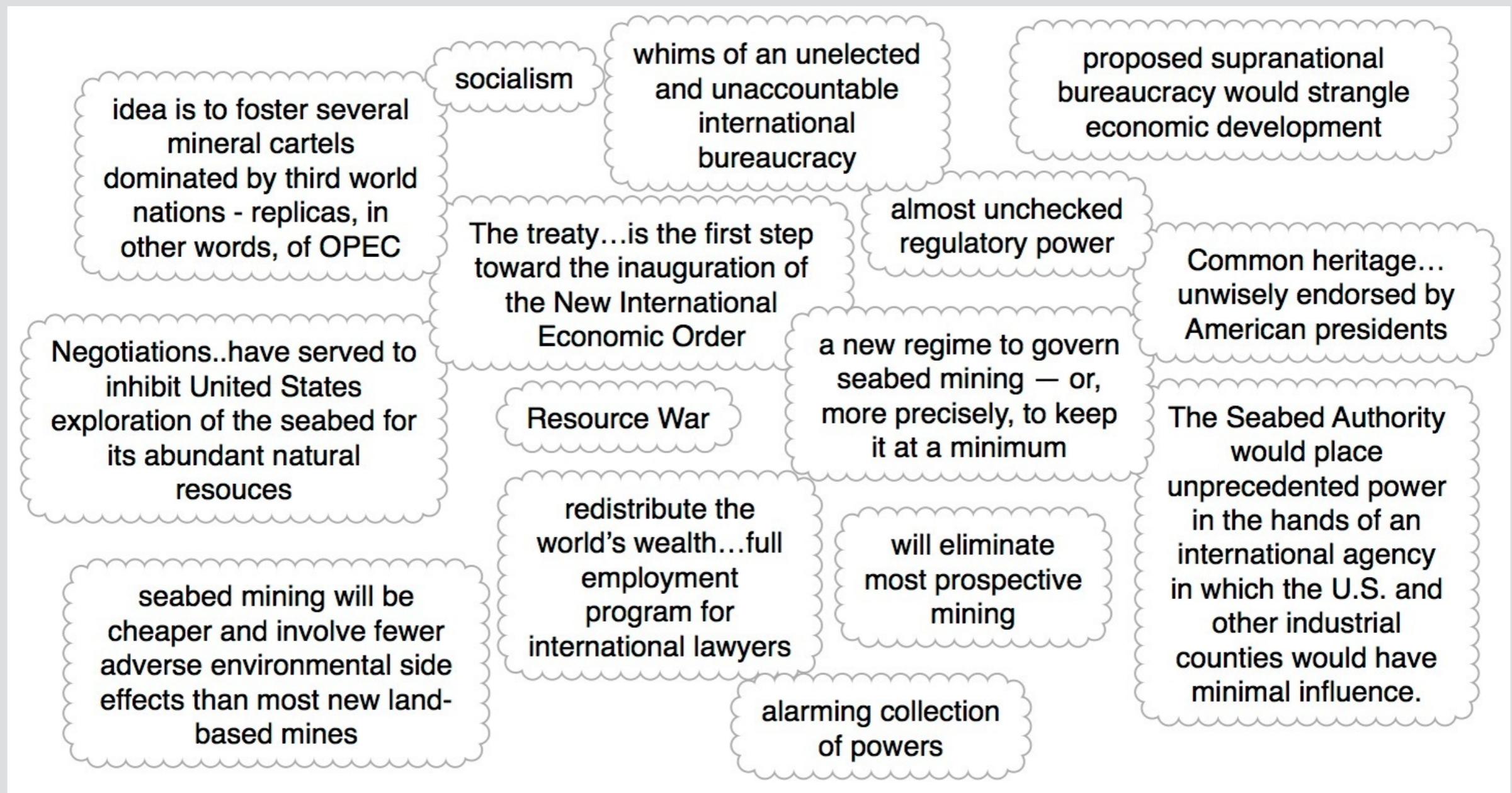
- An Agreement among States on jurisdiction, rights and obligations at sea;
- A “Constitution for the Oceans” that provides the legal Infrastructure for future ocean agreements;
- 167 Parties (Including the EU);
- 20 Years in force and 32 years of acceptance for navigation, EEZ and continental shelf use.



# Parties, Signatories and Non-Signatories of the LOS Convention

Non-party Coastal States: United States, North Korea, Iran, Syria, Libya, Venezuela, Colombia, Peru, El Salvador, Cambodia, United Arab Republics, Israel, Turkey and Eritrea

# Opposition to the LOS Convention



# Seabed Mining Today

- LOS Convention Came Into Force 20 Years Ago; Now has 167 Members, 31 Non-Party States;
- Only 14 Coastal States are Non-Parties;
- 20 member states sponsor 26 deep seabed mining operations;
- The only groups conducting At-Sea Exploration and Development are operating under the Convention;
- The LOS Convention is the only “Reciprocating Regime” for mutual recognition of claims;
- The Seabed Authority remains limited in size: its budget is less than 10% that of the Heritage Foundation and has 1/7th the staff.

# State Party Sponsors of Deep Seabed Mining

<b>Industrialized States</b>	<b>Advanced Developing States</b>	<b>Pacific Small Island States</b>	<b>Eastern European &amp; Socialist States</b>
Belgium	Brazil	Cook Islands	Bulgaria
France	China	Kiribati	Czech Republic
Germany	India	Nauru	Cuba
Japan	Russia	Singapore	Poland
United Kingdom	South Korea	Tonga	Slovakia

# The Commerce Department and the LOS Convention

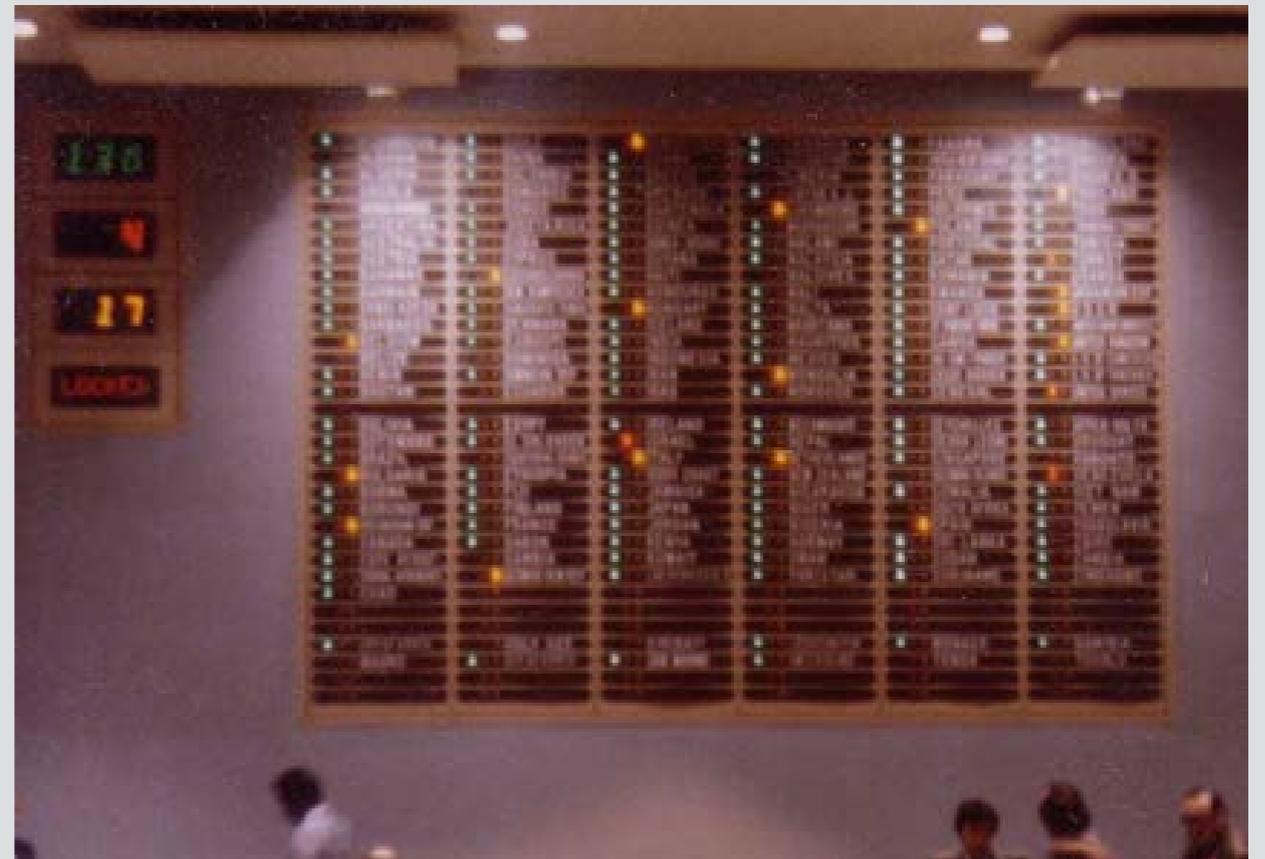
- **Secretary & Deputy Secretary**
  - Critical Materials
- **NOAA**
  - Fisheries & EEZ
  - Marine Science
  - Seabed Mining and OTEC
- **ITA**
  - Critical Materials Supplies
  - Commodity Markets and Agreements
- **General Counsel**
- **Patent and Trademark**
  - Technology Transfer
- **Economic Affairs**
  - Competitiveness of US Industries
- **Science and Technology**
  - Leadership in New Technology
- **Maritime Administration** (Until 1981)
  - **NTIA** (since 1978)

# LOS Timeline

- 1966-67: Lyndon Johnson and Arvid Pardo
- 1969-79: Seabeds Committee and 1970 UN Resolution
- 1970: Nixon's Draft Convention
- 1974: UNCLOS III Begins Substantive Negotiations
- 1980: Draft Convention Complete
- 1982: Reagan review and return with 6 criteria for a convention he would sign

# Vote to Adopt - April 30, 1982

- US Calls for Vote
- Final Vote:
  - 130 Yes
  - 4 No (US, Venezuela, Israel, Turkey)
  - 17 Abstain (Eastern Socialist Block, UK and some western Europe)
- Open for Signature on Dec. 10, 1982 with 119 Signatories incl. France and Netherlands. Japan, Belgium and EC sign within 2 years.



# Timeline 1982-94

- 1982-1990: US and PrepComm on parallel tracks
  - NOAA issues 4 DSM Licenses under DSHMRA; Seeks Reciprocating States Regime, but no formal alternative regime established;
  - LOS Preparatory Commission;
  - Metal Markets Stagnate and Interest in Seabed Mining Declines;
- 1990-94: UN Secretary General's consultations produce an Implementation Agreement that US signs;

# Timeline 1994-2014

- 1994: Convention comes into force; Seabed Authority established with US as Provisional Member;
- 1998: US Provisional Membership Ends; Takes Observer role;
- 2001-02: Seven Pioneer Contractors Approved (France, Russia, Japan, South Korea, China, India and East European Group);
- 2005: German Application Approved as first regular applicant;
- 2007-2014 18 Additional applications approved

# LOS in the Senate

- Oct. 1994: Clinton Administration sends 1982 Convention and 1994 Agreement to Senate;
- Nov. 1994: Republicans take control of Senate; Jesse Helms takes Foreign Relations Committee Chair;
- Nov 2002: Jesse Helms retires; Richard Lugar takes Chair
- October 2003: Lugar begins hearings; Foreign Relations Committee give unanimous approval; Senate Republican Leadership blocks floor action.

# Second Attempt

- Nov 2006: Democrats win control of Senate; Biden chairs Foreign Relations Committee
- April, 2007: Bush Administration renews endorsement
- Oct. 2007: SFRC Hearings; Vote 17-4 to recommend Senate approval; Sent to Senate floor in December.
- Spring, 2008: Bush Administration Declines to Push UNCLOS to avoid undermining McCain Campaign (McCain dropped his support for LOS during campaign stop in Iowa)

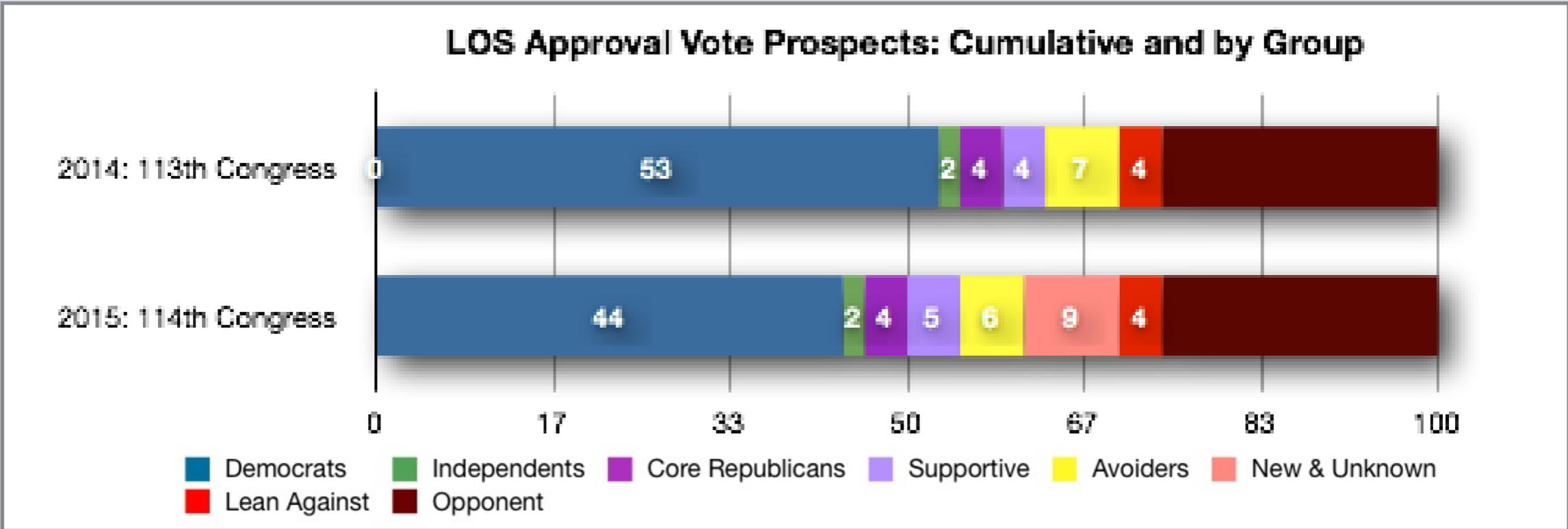
# Third Attempt

- June 2011: Initial push put on hold during Sen. Lugar's primary campaign;
- May, 2012: Lugar loses primary; Push begins with substantial political and financial support;
- July, 2012: SFRC Hearings begin;
- Summer-Fall, 2012: Opposition gets 34 Senators to sign letters opposing a vote in the full Senate;
- Third Attempt notable for support from present and past Secretaries of State, Joint Chiefs, DOD Secretaries and a broad range of Industries.

# Four Lessons from Past Ratification Efforts

- High-level central strategy and leadership within the Administration are essential;
- Presidential campaign seasons are bad times to address contentious conventions;
- Senators have three options: Yes, No and Later;
- Fear-based opposition stories trump detail-based explanations;
- Nationally coordinated State-based pressure can push uncommitted Senators to avoid a vote altogether.

# Prospects for 2015-16



# A New Focus on LOS Education

Groups outside the government need to step up their activities:

- Focus outside the beltway where support is thin;
- Industry and NGOs can speak out where the swing votes are ;
- Address LOS before it becomes a major media issue again;
- Address local interests and fears and counter opposition misinformation.

# Present the Seabed Minerals Regime in a Positive Light

- Nixon designed the seabed regime; Reagan brought it back on track for US Interests;
- The Seabed Authority is working, due in large part to the contributions and leadership of Presidents Nixon and Reagan;
- US can and should lead work within the Seabed Authority to prepare rules and regulations for exploitation of deep seabed minerals;
- Regain a domestic deep seabed mining industry providing resources, jobs and profit;
- Reduce Dependence on China for REE and Refined Cobalt Needed by US Industry.

# Emphasize Commercial Benefits

- As a Non-Party, US Industry cannot get exclusive access to sites, international recognition of title to minerals or investment from overseas for deep seabed mineral development;
- Commercial access to foreign EEZs can't be secured by force. Joining the Convention would provide the US with legal and political leverage to protect our Interests;
- Diversification of supply and access to new sources of critical and strategic minerals and metals;
- US Leadership in negotiations affecting maritime trade and industry will be strengthened by demonstrating that the US is committed to the legal order of the seas.

# Highlight US Interests in Environmental Provisions

- Guide interpretation and application of Sustainable Development principles: precautionary approach, polluter pays, right to develop, liability for damage;
- Promote international application of national responsibilities to address harm to the marine environment;
- Lead in developing new rules and regulations for activities in the International Seabed Area.

# Observations

- US Leadership can fundamentally shape complex treaties and organizations;
- Negotiations such as BBNJ touch on business, trade issues and property issues; The whole of the Commerce Department should be engaged early in preparing for international consultations and negotiations;
- US participation in multilateral agreements is desirable but no longer viewed as “indispensable;”
- Senate advice must be sought during negotiations, not just consent after the negotiations are over;
- Senators have three options: “Yes,” “No” and “Later.” They and their constituents must be kept informed and engaged during negotiations to promote support after agreement is reached.