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APPROVED
JUL 24 1975

THE WHITE HOUSE
WASHINGTON
July 22, 1975

ACTION
Last Day: July 26

Partial
7/25
To archive
7/25

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON *JMC*
SUBJECT: Enrolled Bill H.R. 5709 - Offshore Shrimp Fisheries Act Amendments of 1975

Attached for your consideration is H.R. 5709, sponsored by Representative Sullivan and three others, which amends and extends until September 30, 1977, the Offshore Shrimp Fisheries Act of 1973, which implemented an agreement between the United States and Brazil concerning the regulation of shrimp fishing off the coast of Brazil.

A discussion of the enrolled bill is provided in OMB's bill report at Tab A.

OMB, Max Friedersdorf, Phil Buchen (Lazarus), NSC and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 5709 at Tab B.

Info to Thym Smith, Press Office 7/24/75 (5:45 PM)



Signeal
7/24

To
J. Caranough
7-21-75
5:30 p.m.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUL 21 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5709 - Offshore Shrimp
Fisheries Act Amendments of 1975
Sponsor - Rep. Sullivan (D) Missouri and 3 others

Last Day for Action

July 26, 1975 - Saturday

Purpose

Amends and extends until September 30, 1977, P.L. 93-242, the Offshore Shrimp Fisheries Act of 1973, which implemented an agreement between the United States and Brazil concerning the regulation of shrimp fishing off the coast of Brazil.

Agency Recommendations

Office of Management and Budget	Approval
Department of Commerce	Approval
Department of State	Approval

Discussion

In 1970, Brazil asserted a claim to a territorial sea extending 200 miles from its shore. The United States did not recognize Brazil's claim, but sought an agreement with Brazil to allow American fishing vessels to continue shrimp fishing off the coast of Brazil, although in a more limited fashion than previously. In May 1972, Brazil and the United States reached an agreement on shrimp fishing that did not prejudice the positions of the two governments as to the jurisdiction of the fishing areas. The Offshore Shrimp Fisheries Act implemented that agreement, which was viewed as an interim agreement until the United Nations-sponsored Law of the Sea conference settles the issue of territorial jurisdiction of the seas. The original agreement and the Act have now expired.



The Act authorized the Secretary of Commerce to impose restrictions on U.S. fishermen fishing for shrimp in a defined area off the coast of Brazil. It authorized him to issue a certain number of permits, to collect permit fees, to assess penalties against violators, and to pay \$200,000 to Brazil for enforcement expenses. In addition, it provided that a duly authorized Brazilian officer could act on behalf of the United States to enforce the Agreement by boarding, searching, and, if necessary, seizing a U.S. vessel if he had reasonable cause to believe that it had violated the Agreement. Seized vessels would be returned to the U.S. Government as soon as practicable.

The Act and the 1972 agreement broke new ground in several respects:

(1) for the first time the U.S. Government was empowered to limit the entry of its citizens into a high seas fishery.

(2) unilateral enforcement powers, surpassing any provided in other bilateral or multilateral fishery agreements to which the United States is a party, were granted to another country.

(3) the U. S. Government undertook to collect fees from American fishermen and transfer such fees to a foreign government for enforcement of a conservation agreement.

H.R. 5709 would implement a new agreement, signed by Brazil and the United States on March 14, 1975, which made largely technical changes to the 1972 pact. H.R. 5709 would amend the Act to take account of those changes and would extend it until September 30, 1977.

The principal changes which the new Agreement and H.R. 5709 make increase the permit fees and specify the number of vessels with permits that may fish in any calendar quarter. The enrolled bill also would provide that the amendments shall take effect on the entry into force of the Agreement, in order to allow both the United States and Brazil to complete internal constitutional procedures. H.R. 5709 would fulfill one of the obligations of the United States in implementation of the Agreement. Ratification by the Senate is still pending.

The shrimp fishing agreement has been instrumental in avoiding disputes between the United States and Brazil such as those involved in the "tuna war" with Ecuador and Peru. It has the support of the shrimp fishing industry as evidenced by their voluntary compliance with the terms of the new Agreement prior to its entry into force.

James M. Frey

Assistant Director for
Legislative Reference

Enclosures





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUL 21 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5709 - Offshore Shrimp
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Last Day for Action

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The Act authorized the Secretary of Commerce to impose restrictions on U.S. fishermen fishing for shrimp in a defined area off the coast of Brazil. It authorized him to issue a certain number of permits, to collect permit fees, to assess penalties against violators, and to pay \$200,000 to Brazil for enforcement expenses. In addition, it provided that a duly authorized Brazilian officer could act on behalf of the United States to enforce the Agreement by boarding, searching, and, if necessary, seizing a U.S. vessel if he had reasonable cause to believe that it had violated the Agreement. Seized vessels would be returned to the U.S. Government as soon as practicable.

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(2) unilateral enforcement powers, surpassing any provided in other bilateral or multilateral fishery agreements to which the United States is a party, were granted to another country.

(3) the U. S. Government undertook to collect fees from American fishermen and transfer such fees to a foreign government for enforcement of a conservation agreement.

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James M. Frey
Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 21

Time: 700pm

FOR ACTION:

~~Paul Leach~~ *Tod Hultin*
Max Friedersdorf *oh*
Ken Lazarus *m*
NSC/S *oh*

cc (for information): Jim Cavanaugh
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: July 22

Time: 400pm

SUBJECT:

Enrolled Bill H.R. 5709 - Offshore Shrimp Fisheries Act
Amendments

ACTION REQUESTED:

- | | |
|---|--|
| <input type="checkbox"/> For Necessary Action | <input checked="" type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President



**GENERAL COUNSEL OF THE
DEPARTMENT OF COMMERCE**
Washington, D.C. 20230

JUL 17 1975

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning H. R. 5709, an enrolled enactment

"To extend until September 30, 1977, the provisions of the Offshore Shrimp Fisheries Act of 1973 relating to the shrimp fishing agreement between the United States and Brazil, and for other purposes."

H. R. 5709 would extend until September 30, 1977 the provisions of the Offshore Shrimp Fisheries Act of 1973 which expired June 15, 1975. The enrolled enactment would also make a number of technical amendments to the Act reflecting changes made in the shrimp fishing agreement between the United States and Brazil.

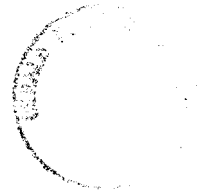
The Department of Commerce recommends approval by the President of H. R. 5709 in order to permit U. S. participation in the shrimp fisheries off the coast of Brazil.

Enactment of this legislation will involve the expenditure of additional funds by this Department, the level of which will depend upon the degree of U. S. participation in the shrimp fisheries in question. It should be noted that for FY 1975 a supplemental appropriation of \$230,000 was requested to finance this Department's activities under the Act.

Sincerely,

Karl E. Bakke

General Counsel





DEPARTMENT OF STATE

Washington, D.C. 20520

JUL 16 1975

Honorable James T. Lynn
Director
Office of Management and Budget

Dear Mr. Lynn:

This is in response to a communication from Mr. James M. Frey requesting comments and recommendations on H. R. 5709, an act to extend until September 30, 1977, the provisions of the Offshore Shrimp Fisheries Act of 1973 relating to the shrimp fishing agreement between the United States and Brazil.

The Offshore Shrimp Fisheries Act of 1973 implemented the Agreement Between the United States and Brazil Concerning Shrimp signed May 9, 1972. This agreement expired February 28, 1975, and a new two-year agreement has been negotiated which was signed on March 14. The legislation under consideration would amend and extend the Offshore Shrimp Fishery Act to accommodate the new agreement when it enters into force. As such, the Act would provide the legal authority for the United States to issue permits to a limited number of United States vessels to fish for shrimp in a defined area on the high seas off the coast of northeastern Brazil, to set the conditions for operating under such permits, to penalize violations of these conditions, and to reimburse the Government of Brazil for its services in enforcing the treaty.

In 1970, the Government of Brazil asserted a claim to a territorial sea of 200 miles. The United States has not recognized this claim, which includes areas in which United States Shrimp vessels have operated over the past decade.

The purpose of the shrimp agreement with Brazil has been to ensure the conservation and orderly exploitation of important shrimp resources lying off the Brazilian coast without prejudice to the conflicting positions of the two Governments as to the juridical status of the area in which those resources occur. Despite the potential jurisdictional dispute, it has been possible to find a basis for agreement by reconciling the

practical interests of the two parties. For the United States, the principal concern has been to ensure that American fishermen would continue to have the opportunity of peaceful access to a major fishery which they pioneered and developed over the past decade. For Brazil, the major concern appears to have been to ensure that resources of great potential importance to the developing Brazilian fishing industry would be preserved from over-exploitation. These concerns have been accommodated by an appropriate control on the number of vessels in the fishery, certain restrictions of fishing season, fishing area and fishing methods, and an undertaking to gather and exchange data on fishing effort and catches and the results of analysis of those data. It has been agreed that Brazil would bear responsibility for enforcing the agreement, for reasons of convenience and economy in view of the great distance of the area from the United States, and that the United States would try and punish United States violators of the agreement.

The new agreement differs in some respects from the previous agreement, and these differences necessitate some amendments to the implementing legislation, particularly with respect to the number of vessels authorized to fish and to the amount they must pay for permit fees. In addition, because the new agreement will not enter into force until both the United States and Brazil complete internal Constitutional procedures, it is important to provide that the amendments included in the Act shall not become effective until the date of entry into force of the new agreement. Pursuant to Administration comments on H. R. 5709, the Act takes care of our concerns in these areas. In addition, the Act makes some other technical changes in the original 1973 Act to which the Department does not object.

The Department of State strongly supports passage of legislation to extend the current Act and to implement the new agreement with Brazil concerning shrimp when it enters into force. We believe that the shrimp agreement with Brazil is a reasonable and equitable conservation arrangement which successfully accommodates the interests of two nations in a major high-seas fishery resource. The agreement was produced after hard bar-

gaining by a broadly-based negotiating team of experts on international fisheries agreements, on the United States legal position on marine fisheries jurisdiction, on shrimp biology, on inter-American relations, and included representatives of the U.S. shrimp industry. All of these participants considered the resulting agreement to be a reasonable and satisfactory one.

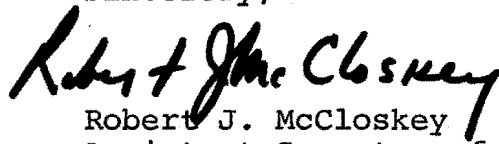
The full implementation of the treaty, which the proposed legislation would make possible, is important for the continued smooth operation of a major American fishery which supports at the present time a fleet of approximately 200 United States shrimp trawlers and associated American-owned processing plants, and which brings economic benefits of many millions of dollars annually to the United States. We believe the arrangement negotiated is in the interest of the U.S. shrimp industry and that it has their support. We see evidence of this support at the present time in the voluntary compliance of the industry with the terms of the new agreement, including the voluntary depositing of permit fees into a special bank account pending passage of implementing legislation. Without enactment of such legislation, which would mean we could not fulfill our treaty obligations to Brazil, it is our view that the American shrimp fishery off Brazil will face serious operating difficulties and might be placed in jeopardy.

Also, the full implementation of the treaty is important to the maintenance of harmonious relations between the United States and Brazil in general and in the fisheries field in particular. We believe it important that this country continue to demonstrate its readiness to cooperate in the conservation of resources of international interest. Such a demonstration may contribute indirectly to improving the conditions under which our distant-water fishermen operate off the coasts of other foreign countries.

Thus, the Department of State recommends that the President approve and sign H. R. 5709.

The Department would incur no additional expenses as a result of this legislation.

Sincerely,

A handwritten signature in black ink that reads "Robert J. McCloskey". The signature is written in a cursive style with a large, prominent "R" and "M".

Robert J. McCloskey
Assistant Secretary for
Congressional Relations

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 21

Time: 700pm

FOR ACTION: Paul Leach
Max Friedersdorf
Ken Lazarus 106
NSC/S

cc (for information): Jim Cavanaugh
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: July 22

Time: 400pm

SUBJECT:
Enrolled Bill H.R. 5709 - Offshore Shrimp Fisheries Act
Amendments

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection. -- Ken Lazarus 7/22/75

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James H. Cavanaugh
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 21

Time: 700pm

FOR ACTION: *Tod Hullin*
~~Paul Leach~~
Max Friedersdorf
Ken Lazarus
NSC/S

cc (for information): Jim Cavanaugh
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: July 22

Time: 400pm

SUBJECT:
Enrolled Bill H.R. 5709 - Offshore Shrimp Fisheries Act
Amendments

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

no objective

JH
7-22-75
3:00
mm

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately

James H. Cavanaugh
For the President

7/22

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: July 21

Time: 700pm

FOR ACTION: Mike Duval
Paul Leach
Tod Hullin
NSC/S
Max Friedersdorf

cc (for information): Jim Cavanaugh
Jack Marsh
Ken Lazarus

FROM THE STAFF SECRETARY

DUE: Date: July 22

Time: 400pm

SUBJECT:

H.R. 5710 - 15 month extension of Marine Protection, Research and Sanctuaries Act

ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection. -- Ken Lazarus 7/23/75



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James H. Cavanaugh
For the President

July 22, 1975

MEMORANDUM FOR: JIM CAVANAUGH
FROM: *for* ^{*mtt*} Jeanne W. Davis
SUBJECT: Enrolled Bill H. R. 5706 -
Offshore Shrimp Fisheries
Act Amendments

The NSC Staff concurs in the enrolled bill H. R. 5706 -
Offshore Shrimp Fisheries Act Amendments.

X

THE WHITE HOUSE

WASHINGTON

July 22, 1975

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.L.F.*
SUBJECT: Enrolled Bill H.R. 5709 - Offshore Shrimp
Fisheries Act Amendments

The Office of Legislative Affairs concurs with the agencies
that the subject bill be signed.

Attachments

OFFSHORE SHRIMP FISHERIES ACT AMENDMENTS OF
1975

MAY 15, 1975.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mrs. SULLIVAN, from the Committee on Merchant Marine and
Fisheries, submitted the following

REPORT

[To accompany H.R. 5709]

The Committee on Merchant Marine and Fisheries, to whom was
referred the bill (H.R. 5709) having considered the same, report
favorably thereon with amendments and recommend that the bill do
pass.

The amendments are as follows:

Strike out all after the enacting clause and insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Offshore Shrimp Fisheries Act
Amendments of 1975".

EXTENSION OF CERTAIN PROVISIONS

SEC. 2. Section 13 of the Offshore Shrimp Fisheries Act of 1973 (16 U.S.C.
1100b note) (hereinafter in this Act referred to as the "Act") is amended by strik-
ing out "June 15, 1975" and inserting in lieu thereof "September 30, 1977".

TECHNICAL AMENDMENTS

SEC. 3. (a) Section 2(a) of the act (16 U.S.C. 1100b(a)) is amended by strik-
ing out "May 9, 1972" and inserting in lieu thereof "March 14, 1975".

(b) (1) The first sentence of section 3(a) of the Act (16 U.S.C. 1100b-1(a))
is amended by inserting immediately before the period at the end thereof the
following: " : *Provided further*, That no more than two hundred vessels with
permits shall be authorized to fish in any quarter of 1975 beginning March 1
and ending February 29, 1976, and no more than one hundred and seventy-five
vessels with permits shall be authorized to fish in any quarter of 1976 begin-
ning March 1 and ending February 28, 1977, or such other number or period
as may be specified in the treaty from time to time".

(2) Section 3(f) of the Act (16 U.S.C. 1100b-1(f)) is amended—

(A) by striking out "for any year other than 1973";

(B) by striking out "\$615" the first place it appears therein and insert-
ing in lieu thereof "\$1,115"; and

(C) by striking out the second sentence thereof.

PURPOSE OF THE BILL

The purpose of this legislation is to implement the new shrimp agreement between the Government of the United States and the Government of Brazil thereby allowing United States fishermen to continue fishing in a defined area off the coast of Brazil.

LEGISLATIVE BACKGROUND

The original agreement between the United States and Brazil concerning shrimp was signed at Brasilia on May 9, 1972. The Senate gave its advice and consent on October 3, 1972, and President Nixon ratified it on November 29. An exchange of notes bringing the agreement into effect was completed on February 14, 1973. The agreement remained in effect until February 28, 1975. By mutual consent the agreement could be extended and a new agreement was entered into and signed March 14, 1975. It will remain in effect until December 31, 1976.

The text of the new agreement with agreed minute and annexes I and II together with other appropriate documents are set forth herein following the Departmental Reports.

H.R. 5709 was introduced on April 8, 1975, by Mrs. Sullivan and co-sponsored by Mr. Ruppe, Mr. Leggett, and Mr. Forsythe. The bill as introduced, would extend until September 30, 1977, the provisions of the Offshore Shrimp Fisheries Act of 1973.

The Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on the legislation on April 28, 1975. At the hearings, witnesses for the Departments of State and Commerce strongly recommended enactment of the bill and both of the Departments reiterated their support in their departmental reports. Also, both of the departments suggested a number of amendments to the legislation, all of which were adopted by the Committee.

The only other witness testifying at the hearings was a representative of the American Shrimptoat Association and the National Shrimp Congress who strongly endorsed the legislation.

After giving careful consideration to the evidence presented at the hearings and the departmental reports, H.R. 5709, with amendments (which were accomplished by striking out all after the enacting clause and substituting new language and amending the title), was unanimously ordered reported by the Committee to the House by voice vote.

THE AMENDMENTS

As previously explained, the amendments to the bill were accomplished by striking out all after the enacting clause and substituting new language and amending the title.

In general, the changes to the bill as a result of the amendments were technical in nature. They will be commented on in the section-by-section analysis of this report.

BACKGROUND AND NEED FOR THE LEGISLATION

The United States recognizes a 3-mile territorial sea and, by statute (Public Law 89-658), claims a 9-mile contiguous zone of exclusive

(c) (1) Section 4(d)(1) of the Act (16 U.S.C. 1100b-2(d)(1)) is amended by inserting immediately after "issued" the following: "after March 14, 1975".

(2) The first sentence of section 4(d)(2) of the Act (16 U.S.C. 1100b-2(d)(2)) is amended—

(A) by inserting "under permits" immediately after "fishing"; and

(B) by striking out "during the last five years" and inserting in lieu thereof, "after May 9, 1972".

(3) The second sentence of section 4(d)(2) of the Act (16 U.S.C. 1100b-2(d)(2)) is amended—

(A) by striking out "of this Act" the first place it appears therein and inserting in lieu thereof the following: "described in section 4(b) of the Offshore Shrimp Fisheries Act Amendments of 1975";

(B) by striking out "May 9, 1972" and inserting in lieu thereof "March 14, 1975";

(C) by striking out "the effective date of this Act" the second place it appears therein and inserting in lieu thereof the following: "such effective date";

(D) by inserting "section" immediately before "8(a)(5)" the second place it appears therein;

(E) by inserting immediately after "fishing gear" the following: ", fishing vessels and fishing methods,"; and

(F) by striking out "if the Act had been in effect during such period".

(d) Section 5 of the Act (16 U.S.C. 1100b-3) is amended—

(1) by striking out "May 9, 1972" and inserting in lieu thereof "March 14, 1975"; and

(2) by striking out "\$700" and inserting in lieu thereof "\$1,215".

(e) Section 6(a) of the Act (16 U.S.C. 1100b-4(a)) is amended by adding at the end thereof the following new sentence: "Any funds remaining in the fund shall remain available for expenditure under this Act."

(f) (1) Section 8(a) of the Act (16 U.S.C. 1100b-6(a)) is amended—

(A) by striking out "master" and inserting in lieu thereof "vessel owner, master,";

(B) by striking out the period at the end of paragraph (5) thereof and inserting in lieu thereof a semicolon; and

(C) by adding at the end thereof the following new paragraph:

"(6) engage in fishing in the area of agreement contrary to regulations establishing a procedure for limiting the number of vessels with permits which may be authorized to fish during any period in 1975 or 1976 as specified in section 3(a)."

(2) Section 8(a)(4) of the Act (16 U.S.C. 1100b-6(a)(4)) is amended by inserting immediately after "one hundred and sixty" the following: "in 1975 and one hundred and twenty in 1976".

(3) Section 8(b) of the Act (16 U.S.C. 100b-6(b)) is amended by striking out "master" and inserting in lieu thereof "vessel owner, master,".

(g) (1) Section 9(a) of the Act (16 U.S.C. 1100b-7(a)) is amended by inserting immediately after "section 8 hereof" the following: ", or any vessel owner whose vessel is involved in such violation,".

(2) Section 9(b) of the Act (16 U.S.C. 1100b-7(b)) is amended by inserting immediately after "any proceeding" the following: "against the master or other person in charge of the vessel".

(3) Section 9(c) of the Act (16 U.S.C. 1100b-7(c)) is amended by striking out "section 8(a)(1)" and all that follows through "or subsequent violation." and inserting in lieu thereof "section 8."

EFFECTIVE DATES

Sec. 4. (a) Except as provided in subsection (b), the foregoing provisions of this Act shall take effect on the date of the enactment of this Act.

(b) The amendments made by subsections (a), (b), (c), (e), (f), and (g) of section 3 shall take effect upon the entry into force of the Agreement Between the Government of the Federative Republic of Brazil and the Government of the United States of America Concerning Shrimp, signed on March 14, 1975.

Amend the title so as to read:

A bill to extend until September 30, 1977, the provisions of the Offshore Shrimp Fisheries Act of 1973 relating to the shrimp fishing agreement between the United States and Brazil, and for other purposes.

jurisdiction over fisheries. However, ten Latin American countries (Argentina, Brazil, Chile, Costa Rica, Ecuador, El Salvador, Nicaragua, Panama, Peru, and Uruguay) claim fishing or territorial jurisdiction over 200 miles of their coastal area.

Differences over the breadth of the territorial sea and coastal-state rights to the resources of the water adjacent to their coasts have caused disputes between the U.S. and some Latin American countries for two decades. The most notorious example is the perennial "tuna war" between this country and Peru and Ecuador, which over a twenty year period has resulted in the seizure of more than 100 U.S. tuna clippers, and the payment by our fishermen of nearly \$7 million in fines and fees eventually repaid by the United States Treasury under the Fishermen's Protective Act (Public Law 92-569).

International fishery disputes of this kind, even when the economic interests involved are relatively minor, can have serious repercussions on other, more weighty interests, simply because the highly sensitive issue of sovereignty is in contest. While our twenty-year "tuna war" with Ecuador and Peru readily comes to mind, this is not a problem unique to the United States. An example of such conflicts not involving this country is the "cod war" between the United Kingdom and Iceland which flared up, almost to the shooting stage, not many months ago, and which places two NATO allies in postures of conflict.

Past and present U.S. diplomatic efforts attempting to reach some kind of international agreement with Ecuador and Peru in regard to fishing rights have produced no results. The State Department, on behalf of the U.S., continues to seek a basis of negotiation, however, because it sees no other satisfactory way out of the impasse in the near future. This country is presently engaged, with most of the other nations of the world, in a general conference on the law of the sea under the auspices of the Seabeds Committee of the United Nations and it is hoped that this will result in general worldwide agreement on the extent of coastal-state jurisdiction over fisheries and other important questions of the law of the sea which are unsettled and controversial at the present time. Until such agreement is achieved, we continue to face the necessity of finding interim solutions to our problems in this area.

In response to continued harassment and seizure of this country's fishing vessels, this Committee enacted the Fishermen's Protective Act in 1954 to alleviate some of the financial hardships of U.S. fishermen by reimbursing them for fines and fees paid as a result of such illegal seizures. This law was amended during the 92nd Congress to expedite payment of such reimbursement and the Committee at that time expressed the hope that that legislation would serve to further strengthen the ability of the U.S., acting through the State Department, to effectively resolve the complex and increasing problem of illegal seizures.

It should be noted that the Fishermen's Protective Act does not apply if a vessel seizure takes place in accord with the operation of an international fishery agreement to which the United States is a party. Consequently, the Act would not apply to a seizure by Brazil of a U.S. vessel that was fishing for shrimp in waters covered by the U.S.-Brazil Shrimp Agreement in violation of the terms of the agreement.

The Fishermen's Protective Act would operate to assist a U.S. vessel that was seized by Brazil in waters outside those covered by the agreement and beyond the territorial jurisdiction of Brazil is recognized by the United States.

The agreement between the United States and Brazil concerning shrimp was negotiated in response to the situation created when, on March 29, 1970, Brazil asserted its 200-mile territorial sea claim and subsequently promulgated regulations controlling fishing by foreign-flag vessels within that area. This claim was not recognized by the U.S. but it encompasses areas in which a large number of U.S. vessels have carried on shrimp fishing over the past decade. The value of the annual shrimp catch off the coast of northern Brazil by American-flag vessels has been estimated at \$30 million.

In 1971 the Government of Brazil issued a fishery decree to regulate fishing within the claimed 200-mile territorial sea. The decree is severely exclusive as regards operations of non-Brazil vessels, and the penalty provided for violations appeared to be incarceration rather than the monetary penalties for which the Fishermen's Protective Act provides a remedy. Active patrolling of the fishing grounds by the Brazilian Navy began in the summer of 1971, and the stage seemed set for a "shrimp war" potentially even more damaging than our troubles in the tuna industry.

Fortunately both governments had from the beginning of the problem shown a willingness to get together to discuss its effects and possible solutions, and the Brazilian fishery decree itself contained the saving clause that any of its provisions could be set aside by international agreement. When delegations of the two governments met in Brasilia in October 1971 to begin their search for a way of avoiding a confrontation over the issue, they were faced with two general problems. A formula had to be found that would not harm the judicial positions of the governments on jurisdiction, which were of great importance to each of them, and which likewise would not weaken the negotiating position of either government in the preparations for the third law of the sea conference. Within these constraints, practical answers had to be found to the very real and present concerns of both sides in the shrimp fishery situation. From the United States point of view, it was important to maintain access on reasonable terms for our fishermen to a resource which they had developed and to protect indirectly the right of Americans to engage in other high seas fisheries.

From the Brazilian point of view, the problem seemed to be one of ensuring that a resource of interest to the Brazilian fishery industry, which the Government of Brazil was strongly committed to develop would not be overexploited and destroyed, and that the competition for the harvest from that resource would not be so overwhelmingly competitive that the fledgling Brazilian shrimp industry could never get firmly on its feet.

The agreement which H.R. 5709 would implement resulted from the joint search by the two governments for a formula which would meet the needs described above. The State Department believes that the agreement satisfactorily protects the fishery interests of both countries in the particular situation of the shrimp fishery off northeastern Brazil and that it also successfully avoids prejudice, both in form and in fact, to the juridical positions of both parties.

The preamble to the agreement briefly sets forth the differing positions of the parties on jurisdiction, notes their desire to find an interim solution without prejudice to those positions, and concludes that, while general international solutions to issues of maritime jurisdiction are being sought and until more adequate information regarding the shrimp fisheries is available, it is desirable to conclude an interim agreement which takes into account the parties' mutual interest in the conservation of the shrimp resources of the area of this agreement.

Article IX of the agreement specifically states: "Nothing contained in this agreement shall be interpreted as prejudicing the position of either party regarding the matter of territorial seas or fisheries jurisdiction under international law" and the reservation of juridical positions is made at other appropriate points in the documents which make up the agreement.

Passage of H.R. 5709 is necessary for the United States to carry out its obligations under the agreement with Brazil. This legislation would make the provisions of the agreement mandatory on those U.S. vessels that desire to participate in the fishery and enable the U.S. Government to take appropriate action on U.S. violations that Brazilian enforcement agents may bring to our attention. It would also enable the U.S. to transfer voluntary compliance funds, set aside by industry, into the Offshore Shrimp Fisheries Fund in the Treasury to be used in compensating Brazil for enforcement costs associated with the agreement. Without this legislation the U.S. Government can neither pay enforcement costs to Brazil nor punish violators of the agreement. It is questionable whether Brazil would wish to continue with the agreement on a voluntary basis beyond the expiration date of December 1976 or consider an extension of the agreement under these circumstances.

The shrimp industry and the Departments of State and Commerce report favorable results on the operation of the prior agreement for more than two years. The Committee finds that during the period the agreement has proved to be a practical accommodation of the interests of U.S. fishermen in continuing their access to a fishery which they have developed and of the interests of Brazil in the conservation of a resource which it hopes to develop further as an export fishery, without prejudice to the position of either party regarding the matter of territorial seas or fisheries jurisdiction under international law.

The Committee believes that this agreement should be implemented for this additional two-year period in order to assure that it will indeed provide a continuing workable solution to these problems and, possibly, serve as a model for developing practical interim solutions to similar international fishery problems between coastal and distant-water fishing nations elsewhere in the world. Given the declining state of the world's fishery resources, the Committee believes such efforts to conserve these resources for the future are vital and must be encouraged.

The Committee points out that this agreement and implementing legislation, as did the prior agreement and implementing legislation, break new ground in several respects: (1) for the first time the U.S. Government is empowered to limit the entry of its citizens into a high seas fishery; (2) unilateral enforcement powers surpassing

any provided in other bilateral or multilateral fishery agreements to which the U.S. is a party, are granted to another country; and (3) the U.S. Government has undertaken to collect fees from U.S. fishermen and transfer such fees to a foreign government for enforcement of a conservation agreement. Consequently, the Committee has provided a termination date for H.R. 5709 so that the Congress may have an opportunity prior to such date to assure that these new concepts will continue to meet the test of time.

WHAT THE BILL DOES: SECTION-BY-SECTION ANALYSIS

As indicated in the legislative background of this report, the committee ordered reported to the House H.R. 5709, with amendments, which were accomplished by striking out all after the enacting clause and substituting new language and amending the title of the bill.

There follows a section-by-section summary of H.R. 5709, as amended, accompanied by discussion where appropriate.

SECTION 1 OF THE ACT

Section 1 of the bill would amend section 1 of the Act to cite this Act as the "Offshore Shrimp Fisheries Act Amendments of 1975."

SECTION 2 OF THE ACT

Section 2 of the Act defines certain terms used in the Act. Of particular note is subsection (c), which defines the limits of the area to which the agreement applies and to which the proposed legislation and any rules and regulations in implementation thereof would apply. The area is defined so as to include essentially all of the major grounds traditionally fished by United States shrimp trawlers off the coast of Brazil and in a way which does not coincide with jurisdictional limits as they would be drawn by either side, although it is entirely beyond 12 nautical miles from shore and therefore in the view of the United States entirely on the high seas.

Also, it is to be noted that section 2(a) of the Act refers to the date the treaty was signed. In this regard, section 3(a) of the bill would amend section 2(a) of the Act to change "May 9, 1972," to "March 14, 1975," to reflect the date the new agreement was signed.

SECTION 3 OF THE ACT

Section 3 of the Act authorizes the Secretary of Commerce to issue annual permits for United States vessels, consistent with the numerical limit and other requirements prescribed by the agreement, to fish within the area of the agreement. In this regard, not more than 325 vessels will be authorized to fish in the area or such other number of vessels as may be specified in the treaty from time to time.

Section 3(b) (1) of the bill would amend section 3(a) of the Act to provide that not more than 200 vessels with permits could fish in any quarter of 1975 and not more than 175 in any quarter of 1976. This was a new concept that was not included in the prior agreement.

Section 3(d) of the Act details some of the conditions which may be attached to the permits, all of which are necessary for enabling the

United States to fulfill the terms of the agreement or for the execution of other portions of the Act.

Section 3(e) of the Act authorizes the Secretary of Commerce to make regulations requiring the return of permits by vessel operators who do not make use of them and for their subsequent reissue to other operators for a prorated fee. Such a provision appears necessary since the agreement places a limit on the maximum number of vessels that may be permitted to fish in the agreement area and there is a possibility that there may be a demand from the fleet operators for the total number of permits available. This provision would prevent the tying up of any of the available permits by operators who have no present plans to fish in the area but wish to prevent potential competitors from doing so.

Section 3(f) of the Act prescribes the fees for permits to fish under the terms of the Agreement. The basic fee is determined by a formula which would recover for the Government all costs of participating in the Agreement as well as a portion of the cost of administering the permit system, if the total number of 325 permits available under the Agreement were issued. (In the event that the number of permits issued is less than 325, an appropriation will be requested to make up the difference between the income from permit fees and the financial obligations of the Government resulting from the agreement.)

Section 3(b) (2) of the bill would amend section 3(f) of the Act to set the permit fee under the new agreement at \$1,115 for enforcement services (versus \$615 for the prior agreement) and an amount of not more than \$100 for the purpose of covering administrative costs.

SECTION 4 OF THE ACT

Section 4 of the Act prescribes the procedures under which the Secretary of Commerce would issue permits for fishing within the area of the agreement. Section 4(a) would ensure that interested vessel operators would have the opportunity to have knowledge of the method and time for applying for permits through publication of this information in the Federal Register. Section 4(b) provides that a vessel owner whose application for a permit is refused shall, upon his petition, be entitled to a hearing and reconsideration of his application.

Section 4(c) of the Act authorizes the Secretary of Commerce to reissue permits which have been returned to him to vessel owners who have applications pending. The recipient of such a reissued permit would have to pay a pro-rated share of the annual permit fee.

Section 4(d) of the Act provides a set of criteria for priority in the granting of permits, to be used in the event that applications are received for a greater number of permits than is available under the terms of the Agreement (325), an eventuality that is considered unlikely. First priority for permits will go to vessels which have been operated in voluntary compliance with the provisions of the Agreement, as certified in letters of voluntary compliance to be issued by the Secretary of Commerce in accordance with Section 5. Second priority will go to vessels operated by owners who, although not in possession of letters of voluntary compliance, have been engaged in the fishery after May 9, 1972, as compared to the past five-year period under the original Act. However, no vessel will be eligible for receiving a permit during the first six months of operation of the permit system if the

Secretary of Commerce determines that it has been operated subsequent to the signing of the new agreement in a way which constituted failure to voluntarily observe the terms of the agreement in any one of the following three respects: (1) by fishing in the area of the agreement during a closed season; (2) by using a type of fishing gear, fishing vessel, or fishing method prohibited by the agreement; or (3) by assaulting or attempting to prevent any duly authorized officer from boarding, searching, seizing or detaining the vessel in accordance with such officer's duties under the Agreement. The vessel owner shall be notified of any such denial of eligibility for a permit and given an opportunity for a hearing. The purpose of this subsection is to ensure that operators who flagrantly fail to observe the terms of the Agreement during the period of voluntary compliance shall not enjoy the same priority for the issuance of permits as those who have voluntarily complied in good faith with the Agreement prior to the enactment of this implementing legislation.

The final paragraph of this section (Section 4 of the Act) provides that if the number of vessels for which applications for permits are received is greater than the number of permits available for issue within a given priority category, the available permits shall be suitably distributed among the applying vessel owners in an equitable fashion.

Section 3(c) (1), (2), and (3) of the bill make appropriate technical amendments to section 4(d) of the Act to reflect the above changes between the old agreement and the new agreement.

SECTION 5 OF THE ACT

Section 5 authorizes the Secretary of Commerce to provide documentary evidence of voluntary compliance with the terms of the agreement to vessel owners who, subsequent to the signing of the agreement, deposited and retained \$700, approximately equivalent to the proposed annual permit fee, in a special bank account in respect of each of their vessels for which they intend to seek permit under this Act. The possession of such a letter of voluntary compliance would entitle the vessel concerned to priority in the granting of a permit, as provided in Section 4(d) (1) above. The issuance of a letter of voluntary compliance would be accompanied or preceded by the transfer of the deposited funds to the Offshore Shrimp Fisheries Fund, established pursuant to Section 6 below, for use in defraying the financial obligations assumed by the United States under the terms of the Agreement. Funds so transferred would be credited against the initial permit fee for the vessel in question.

Section 3(d) of the bill would change the deposit requirement for each vessel from \$700 to \$1,215 thereby conforming the Act to the permit fee established by the new agreement.

SECTION 6 OF THE ACT

Section 6 of the Act provides for the establishment in the Treasury of a special revolving fund, to be known as the Offshore Shrimp Fisheries Fund. Into this Fund would be placed the appropriate portion of permit fees, appropriated funds authorized under Section 12 of the

Act, sums transferred from the special accounts set up, as provided in Section 5, by vessel owners in voluntary compliance, and the minimum civil penalties assessed as provided in Section 9 against violators to cover the unusual enforcement expenses incurred by the United States pursuant to Article VI of the agreement. These unusual enforcement expenses, as provided by the new agreement, are \$500 for each day during which a United States vessel is being escorted to port and \$200 per day while such vessel is in port. The prior agreement provided for a charge of only \$100 per day while the vessel was in custody of Brazilian enforcement authorities.

From the Offshore Shrimp Fisheries Fund there will be paid by the Secretary of Commerce, through the Secretary of State, the annual payment of \$361,000 which the new agreement obligates the United States to make to Brazil for enforcement services. Also, if a vessel owner whose vessel is seized and detained pays the special enforcement expenses on behalf of the United States, in order to expedite the delivery of his vessel to an authorized official of the United States in accordance with Article V(4) of the Agreement, and the vessel owner is not assessed a civil penalty for the alleged violation within two years, monies from the Fund would be used to reimburse the vessel owner.

Section 3(e) of the bill would amend section 6(a) of the Act by adding at the end thereof a clause to provide that any monies remaining in the fund would remain available for expenditure under the Act.

SECTION 7 OF THE ACT

Section 7 of the Act would place on any person in charge of a vessel which has received a permit under the Act the obligation of keeping a logbook record of his fishing operations in a prescribed form and would also require the owner of a permitted vessel to furnish to the Secretary of Commerce other information necessary for carrying out the provisions of the Agreement, this Act or related regulations, including data on operations in the shrimp fishery beyond the limits of the agreement area. All such information that fell within the proper legal categories for exception from the requirements of the Freedom of Information Act would be treated as confidential commercial information in accordance with relevant United States law, except insofar as the Agreement requires the United States to turn some portion of it over to the Brazilian Government, which has undertaken to protect its confidentiality. Section 7(d) would empower the Secretary of Commerce to subpoena the log books and other information referred to above, and Section 7(e) would authorize the Secretary, in cases where a person refused to obey a subpoena, to request the Attorney General to seek aid from U.S. district courts to secure compliance with the subpoena.

The collection of raw data is the most important part of any fishery statistics system. The Agreement, by requiring the maintenance of log books by the vessels of both countries and the exchange of data as appropriate, has provided an opportunity for in depth study and the collection of the information necessary to understand the dynamics of this fishery and allow for its proper management. Log books kept by U.S. fishermen under the terms of the Agreement have already

provided better and more complete data on shrimp in the Agreement area than ever before available.

The bill would make no change to this section of the Act.

SECTION 8 OF THE ACT

Section 8(a) of the Act prohibits the person in charge of any United States vessel from performing certain acts in the area of agreement. The prohibited acts are those which would be at variance with the obligations which the United States has assumed in the Agreement, to wit, (1) fishing without authorization, as indicated for U.S. vessels by a permit issued under this Act, (2) engaging in transshipment of shrimp with other than authorized vessels, (3) assaulting or otherwise obstructing the performance of enforcement duties by a duly authorized officer, (4) failing to observe regulations designed to limit the number of vessels operating in the area at any one time to that prescribed by the Agreement, or (5) fishing with a type of vessel or gear prohibited by the Agreement or during a time when fishing is closed by the Agreement.

Section 3(f) of the bill would amend section 8(a) of the Act to make the prohibitions run against the owner of the vessel in addition to the master or other person in charge of the vessel, as provided under the original Act.

Also, section 3(f)(1) of the bill would amend section 8(a) of the Act by adding a new category (6) to make it a prohibited act to engage in fishing in the area of agreement contrary to the regulations allowing not more than 200 vessels in 1975 and 175 vessels in 1976 to fish during any quarter of each calendar year.

In addition, section 3(f)(2) of the bill would amend section 8(a)(4) of the Act to make the prohibition apply to the number of vessels that would be allowed to be present in the area at any one time to 160 in 1975 and 120 in 1976, which is in conformity with the new agreement.

Section 8(b) of the Act makes the master or other person in charge of a vessel subject to a penalty for failure or refusal to keep or furnish information required by the Act, or furnish false information, etc.

Section 3(f)(3) of the bill would amend section 8(b) of the Act to extend the prohibitions enumerated in section 8(b) to the owner of the vessel.

It was pointed out in the departmental reports on the legislation that by making the owners of the vessels subject to the prohibitions and penalties of the Act, hopefully, the owners would be encouraged to hire masters who will comply fully with the provisions of the treaty and this Act.

SECTION 9 OF THE ACT

Section 9 of the Act sets maximum civil penalties which the Secretary may assess against the person in charge of a vessel for violations resulting from the commission of acts prohibited in Section 8, with the higher maximum of \$10,000 for acts violating the specific provisions of the Agreement and a lower figure of \$3,000 for acts not specified in the Agreement but inimical to its implementation. The section provides

that when a violation entails the special enforcement expenses incurred by the United States pursuant to Article VI of the Agreement, the penalty must as a minimum be sufficient to cover such expenses, unless the owner of the vessel involved has already paid these enforcement expenses on behalf of the United States. The Section also provides for notification to vessel owners of the outcome of any proceeding against the person in charge of their vessel for commission of a prohibited act. In the case of a violation of the prohibition against fishing with an unlicensed vessel, or a repeat violation involving the commission of any other act prohibited by Section 8(a), when the person in charge of the vessel had previously been penalized for a violation committed with a vessel of the same owner, the Secretary may proceed against the vessel owner by assessing a civil penalty equal to the value of the catch and fishing gear. Section 9(d) authorizes the Secretary, through the Attorney General, to seek relief in the appropriate Federal District Court if the penalties assessed by him are not paid within 30 days. Section 9(d) also provides that, in such relief actions, a penalty assessed by the Secretary shall be final unless the party penalized specifically seeks judicial review of the Secretary's decision. Section 9(e) provides that persons liable to a penalty may appear in person at hearings to be held by the Secretary or may submit affidavits or positions in their defense.

Section 3(g)(1) of the bill would amend section 9(a) of the Act to make the vessel owner whose vessel is involved in a violation subject to a civil penalty as well as the master or other person in charge of the vessel. This is a conforming change resulting from the change made to section 8 of the Act by the bill.

Section 3(g)(2) would amend section 9(b) of the Act to require notification to the owner of a vessel when the master or other person in charge of the vessel has been involved in a violation.

Section 3(g)(3) of the bill would amend section 9(c) of the Act to have the effect of making the vessel owner subject to an additional civil penalty for a violation of any provision of section 8 of the Act equal to the value of the catch on board and the value of gear involved.

SECTION 10 OF THE ACT

Section 10 of the Act provides that the Act shall be enforced jointly by the Secretary of Commerce, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of the Treasury. The enforcement responsibilities of the Secretary of Commerce are indicated in the other sections of this Act. The Coast Guard has responsibility for documenting United States vessels of the size that will operate in the shrimp fishery off Brazil. A vessel must be documented in order to apply to the Secretary of Commerce for a permit. Furthermore, under some conceivable circumstances enforcement action by the Coast Guard at sea or in port might be necessary to supplement the primary efforts of the Secretary and of the Brazilian authorities in order to secure custody of a vessel which was accused of violating some provision of the Act or the Agreement. Part (b) of the Section provides that a duly authorized Brazilian officer may act on behalf of the United States to enforce the provisions of the agreement by boarding and searching, and if necessary seizing and detaining, a United

States vessel which he has reasonable cause to believe has violated the Agreement. Vessels so seized are to be delivered as soon as practicable to the United States Government.

The United States agreed to Brazilian enforcement of the Agreement on the basis of convenience and economy. Due to the distance involved, U.S. enforcement in the agreement area would be impractical and was estimated to cost from \$600,000 to \$1.2 million annually as opposed to our payment to Brazil for this purpose of \$200,000 a year.

The bill would make no changes to this section of the Act.

SECTION 11 OF THE ACT

Section 11 of the Act authorizes the Secretary of Commerce to issue all regulations necessary for carrying out the purposes and objectives of the agreement and the Act.

The bill would make no change to this section of the Act.

SECTION 12 OF THE ACT

Section 12 of the Act authorizes the appropriation of the sums necessary to pay the Government of Brazil for its enforcement services, as provided in the agreement, and for the expenses of administration.

The bill would make no change to this section of the Act.

SECTION 13 OF THE ACT

Section 13 of the Act provides a termination date for the Act of June 15, 1975.

Section 2 of the bill would amend section 13 of the Act to change the termination date of the Act from June 15, 1975, to September 30, 1977.

SECTION 14 OF THE ACT

Section 14 of the Act is a standard separability clause. The bill would make no change to this section of the Act.

SECTION 4 OF THE BILL

Section 4(a) of the bill would provide that section 1 of the bill (which designates the title of the Act), section 2 of the bill (which changes the termination date of the Act), and section 3(d) of the bill (which relates to voluntary compliance under section 5 of the Act with respect to the depositing of permit fees in escrow) would take effect on the date of enactment of this Act.

Section 4(b) of the bill would provide that all other changes to the old Act made by the bill would take effect upon entry into force of the new agreement, that is upon its ratification by the U.S. Senate.

COST OF THE LEGISLATION

In the event this legislation is enacted into law, it is estimated by the Committee—based on information supplied by the Departments of State and Commerce—that the cost to the Federal Government will be approximately \$200,000 during each of fiscal years 1976 and 1977.

COMPLIANCE WITH CLAUSE 2(1)(3) OF RULE XI

With respect to the requirements of Clause 2(1)(3) of House Rule XI of the Rules of the House of Representatives—

(A) No oversight hearings were held on the administration of this Act during this session of Congress, beyond the one day of hearings on the particular problem held by the Subcommittee on Fisheries and Wildlife Conservation and the Environment. The Subcommittee does plan to hold oversight hearings on the administration of this Act before the end of this session of the Congress.

(B) Section 308(a) of the Congressional Budget Act of 1974 is not presently in effect. Therefore, no statement is furnished.

(C) No estimate and comparison of costs has been received by the Committee from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974.

(D) The Committee on Government Operations has sent no report to the Committee on Merchant Marine and Fisheries pursuant to Clause 2(b)(2) of Rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to Clause 2(1)(4) of Rule XI, of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 5710 would have no significant inflationary impact on the prices and costs in the national economy.

DEPARTMENTAL REPORTS

Views on H.R. 5709 were requested from the Departments of Commerce, State, Transportation and Treasury. Replies were received from the Department of Commerce dated April 22, 1975 and the Department of State dated April 22, 1975. The replies follow herewith:

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., April 22, 1975.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in response to your request for the views of this Department on H.R. 5709, a bill "To extend until September 30, 1977, the provisions of the Offshore Shrimp Fisheries Act of 1973 relating to the shrimp fishing agreement between the United States and Brazil."

The original agreement was negotiated in response to the situation created in 1970, when the government of Brazil asserted a claim to a territorial sea 200 nautical miles in breadth, which was not recognized by the United States, but which encompassed areas where a large number of United States vessels have carried on shrimp fishing over the past decade. The purpose of the original agreement was to respond to the question of disputed jurisdiction between two friendly governments by providing appropriate conservation safeguards for the fishery resource of common concern, principally by a limitation of

fishing effort, while reserving the juridical positions of the two Parties pending resolution of these juridical issues.

The original agreement between the two countries was signed May 9, 1972, ratified as a treaty by the United States on November 29, 1972, and entered into force on February 14, 1973. The agreement was implemented in the United States by the Offshore Shrimp Fisheries Act of 1973 (Public Law 93-242). The provisions of the Act, except section 15 thereof, expire on June 15, 1975. Section 15 amended the Act of May 20, 1964, the so-called Bartlett Act, designating a listing of continental shelf fishery resources.

A new agreement for 1975-1976 concerning the conservation of shrimp resources off Brazil was signed in Brasilia on March 14, 1975, by representatives of the government of the Federative Republic of Brazil and the government of the United States. This agreement is in the process of being submitted to the Senate for ratification. The new agreement contains the same basic conceptual approach of the 1972 agreement in that it continues to reflect the mutual interest of both Parties in the conservation of shrimp resources and provides for U.S. shrimp fishing operations to continue in waters off Brazil at mutually acceptable levels through 1976, while reserving the juridical positions of both countries. However, the new agreement does incorporate several changes which will require modifications in the present legislation.

Under the 1972 agreement a maximum of 325 U.S. vessels were authorized to fish in the defined agreement area, of which no more than 160 could be in the area at any one time. Under the terms of the new agreement, the maximum number of 325 U.S. vessels authorized to shrimp in the agreement area is retained. However, the new agreement adds the requirement that not more than 200 vessels with permits shall be authorized to fish during any quarter (beginning March 1) in 1975 and not more than 175 vessels in any such quarter of 1976. The March 1 date was selected to coincide with the start of the fishing season. Of these 200 vessels with permits to fish during a quarter, not more than 160 shall be on the fishing grounds at any one time during 1975 and during 1976 not more than 120 of the 175 vessels with permits for the quarter shall be on the fishing grounds at any one time. The number of vessels on the grounds would be documented by fishing logbook records.

Also, as in the 1972 agreement, vessels authorized to fish are to be of the same general size and type, and are to use the same gear and methods as those commonly employed in the fishery in the past. However, under the terms of the new agreement, vessels shall not employ, in fishing operations, electrical fishing equipment, nor shall chemical, toxic, explosive, or polluting substances, or other material with similar destructive effect be employed.

Such changes reflect efforts to insure that conservation concerns are met, while accommodating a realistic projection of the number of U.S. vessels likely to have a serious interest in fishing off Brazil in 1975 and 1976. The final figures were acceptable to the industry advisors of the U.S. delegation as fewer U.S. vessels may participate in the shrimp fishery in Brazil in 1975-1976 because of present marketing and fishing conditions and increased fuel costs.

The enforcement of the agreement continues to remain the responsibility of Brazil for reasons of convenience. Subject to the appropri-

tion of funds, the United States agreed to increase from \$200,000 to \$361,000 in view of Brazil's general rate of inflation as well as increased fuel costs, the amount of annual compensation to Brazil for enforcement expenses. This increase necessitates the need for a proportionate increase in the annual fees for permits to fish under the terms of the agreement authorized in the implementing legislation. Such a proportionate increase would raise the annual permit fee to about \$1,215.

Because the new agreement differs in some respects from the previous agreement as noted above, amendments to the present statute are required to reflect these differences. Also, experience in operating under the 1972 agreement has pointed out the desirability of making certain additional amendments to the statute.

Accordingly, the Department believes that a simple extension of the Act as proposed in H.R. 5709 is not sufficient and would make it impossible to administer the Act, particularly in regard to the adjusted levels of fishing vessels that will be participating in the fishery.

In an effort to make enforcement of the Act realistic, we propose that the Act be amended to extend the prohibitions and penalties sections to the vessel owners for all infractions. This would encourage the vessel owners to hire masters who will comply with the provision of the treaty and this Act.

The Department of Commerce is in complete support of initiatives that would allow U.S. offshore shrimp fishermen to continue their traditional fisheries; however, we feel that H.R. 5709 must be modified to amend the Offshore Shrimp Fisheries Act of 1973 to reflect the changes in the new treaty and for other purposes.

The Department therefore proposes the following amendments to H.R. 5709, which would amend the Offshore Shrimp Fisheries Act of 1973 as follows:

(1) By striking in section 2(a) the words "May 9, 1972", and inserting in lieu thereof, "March 14, 1975".

(2) By striking all of section 3(a) and inserting in lieu thereof the following: "(a) The Secretary is authorized to issue permits to vessel owners for vessels documented under the laws of the United States to engage in fishing in the area of the agreement: *Provided*, That the number of vessels which are the subject of permits shall not exceed three hundred and twenty-five or such other number of vessels as may be specified in the treaty from time to time as authorized to fish in the area of agreement. *Provided further*, That no more than 200 vessels with permits shall be authorized to fish in any quarter of 1975 beginning on March 1 and ending February 29, 1976, and no more than 175 vessels with permits shall be authorized to fish in any quarter of 1976 beginning on March 1 and ending February 28, 1977, or such other number or period as may be specified in the treaty from time to time. No vessel owner may be issued a permit with respect to a vessel unless such vessel meets the requirements of the treaty, the Act, and the regulations".

(3) By striking all of section 3(f) and inserting in lieu thereof the following: "(f) The annual fee for a permit shall be \$1115 for enforcement services plus an amount of not more than \$100, as determined by the Secretary, for the purpose of covering administrative costs. The amount of any deposit transferred to the Offshore Shrimp Fisher-

ies Fund pursuant to section 5 of this Act shall be credited toward the annual permit fee".

(4) By inserting in section 4(d)(1) after the words "have been issued," the words, "after March 14, 1975".

(5) By striking all of section 4(d)(2) and inserting in lieu thereof the following: "(2) After all vessel owners under subparagraph (1) have been considered for permits, all vessel owners who have been engaged in fishing under permits in the area of agreement, after May 9, 1972, shall have second priority for permits. However, in no event shall a vessel owner be eligible for receiving a permit under this subsection for a given vessel during the first six months after the effective date of these amendments if the Secretary determines that such vessel has engaged in activities during the period from March 14, 1975, to the effective date of these amendments, which would have constituted a violation specified in section 8(a)(3) or 8(a)(5), but only to the extent section 8(a)(5) relates to use of fishing gear, fishing vessels and fishing methods and the closure of the area of agreement to fishing. In the event of any such determination, the vessel owner affected thereby shall be given notice thereof and an opportunity for a hearing. The decision of the Secretary rendered in connection with the hearing shall be final and binding".

(6) By striking in section 5 the words "May 9, 1972", and inserting in lieu thereof "March 14, 1975".

(7) By striking in section 5 "\$700", and inserting in lieu thereof "\$1215".

(8) By inserting in section 6(a) at the end thereof, a new sentence to read as follows: "Any funds remaining in the Offshore Shrimp Fisheries Fund established by this section shall remain available for expenditure under this Act, as amended".

(9) By inserting in the first sentence in section 8(a) after the word "No", the words "vessel owner,".

(10) By inserting in section 8(a)(4) after the words "one hundred and sixty", the words "in 1975 and one hundred and twenty in 1976".

(11) By striking in section 8(a)(5) the period after the words "such annex" and inserting a semicolon, and adding a new paragraph "(6)" to read as follows: "engage in fishing in the area of agreement contrary to regulations establishing a procedure for limiting the number of vessels with permits that may be authorized to fish during any period of 1975 or 1976 as specified in section 3(a).".

(12) By inserting in the first sentence in section 8(b) after the word "No", the words "vessel owner,".

(13) By inserting in the first sentence in section 9(a) the words "or any vessel owner whose vessel is involved in such violation" after the words "section 8 hereof".

(14) By inserting in section 9(b) after the words "any proceeding", the words "against the master or other person in charge of the vessel".

(15) By striking in section 9(c) the following: "(a)(1) or involved in a second or subsequent violation of any other provision of section 8(a) by a person against whom a penalty had previously been assessed under section 9(a) for a violation involving the operation of a vessel owned by the same person as the vessel involved in such second or subsequent violation.".

(16) By renumbering section 15 to section 16 and adding a new section 15 to read as follows: "Except for the amendments to section 5 and section 13 which shall be effective immediately, these amendments shall become effective upon entry into force of the March 14, 1975 treaty."

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

BERNARD V. PARRETTE,
Deputy General Counsel.

DEPARTMENT OF STATE,
Washington, D.C., April 22, 1975.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in response to your letter of April 10 requesting comments on H.R. 5709, a bill to extend until September 30, 1977, the provisions of the Offshore Shrimp Fisheries Act of 1973 relating to the shrimp fishing agreement between the United States and Brazil.

The Offshore Shrimp Fisheries Act of 1973, Public Law 93-242, implementing the Agreement Between the United States and Brazil Concerning Shrimp, signed May 9, 1972. This agreement expired February 28, 1975, and a new agreement has been negotiated which was signed on March 14, 1975.

The Department of State supports the extension of the Offshore Shrimp Fisheries Act, which has provided for the effective implementation of the 1972 Shrimp Agreement. However, since a new Agreement has been concluded, we believe it would be advisable to amend the Act so that it would include provision for the implementation of the new Shrimp Agreement when that Agreement enters into force.

The new agreement differs in some respects from the previous agreement, and these differences would necessitate some amendments to the implementing legislation. In addition to other changes, some modifications in the financial provisions would be required. The Department of Commerce, which is responsible under the Act for administering the terms of the legislation, is, in cooperation with the Department of State, preparing some specific technical amendments for submission to the Committee.

The new Shrimp Agreement, of course, will not enter into force until both the United States and Brazil complete their internal Constitutional procedures. Because of this fact, we believe that the date of effectiveness of the amendments necessary to implement the new agreement, except for those amendments to Sections 5 and 13 of the Act should be made contingent upon the entry into force of the new agreement. This could be accomplished by the inclusion in the bill of language such as the following: "Except for the amendments to Sections 5 and 13, which shall take effect immediately, the amendments set forth herein shall become effective upon the date of entry into force of the Agreement Between the Governments of the United States of

America and the Federative Republic of Brazil Concerning Shrimp, signed on March 14, 1975."

Because it was the view of the Congress in 1973 that the shrimp agreement and implementing legislation broke new ground in several respects, a termination date for Public Law 93-242 was provided to ensure that the new concepts would meet the test of time. In our view this test has been met by the successful operation for over three years of an agreement which has allowed U.S. shrimp fishermen to continue their activities without incident and which has prevented exacerbation of a juridical dispute presently the subject of international negotiation. Because it may be considered desirable by those parties affected to extend this agreement for a reasonable period of time beyond its present termination date, the Department recommends that the termination date in Section 13 be modified to allow for an extension of up to two years from December 31, 1976.

The Department of State would incur no additional expenses as a result of this legislation.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

ROBERT J. McCLOSKEY,
Assistant Secretary for Congressional Relations.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

OFFSHORE SHRIMP FISHERIES ACT OF 1973

(87 Stat. 1061; Public Law 93-242)

AN ACT To implement the shrimp fishing agreement with Brazil, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Offshore Shrimp Fisheries Act of 1973".

DEFINITIONS

SEC. 2. When used in this Act—

(a) the term "treaty" shall mean the Agreement Between the Government of the Federative Republic of Brazil and the Government of the United States of America Concerning Shrimp, signed on [May 9, 1972,] *March 14, 1975*, including related annexes, notes, and agreed minutes, as these documents may be amended from time to time;

(b) the term "shrimp" shall mean the shrimp *Penaeus (M.) duorarum notialis*, *Penaeus brasiliensis*, and *Penaeus (M.) aztecus subtilis*;

(c) the term "area of agreement" shall mean the area in which United States vessels carry on a shrimp fishery in the vicinity of Brazil, as described by the following boundaries: the waters of the coast of Brazil having the isobath of thirty meters as the southwest limit, the latitude 1 degree north as the southern limit, the longitude 47 degrees 30 minutes west as the eastern limit, and a line running from the point of 4 degrees 44 minutes north latitude, 51 degrees 30 minutes west longitude at an azimuth of 17 degrees to the point of 4 degrees 51 minutes north latitude, 51 degrees 28 minutes west longitude and thence at an azimuth of 43 degrees to the point of 8 degrees 58 minutes north latitude, 47 degrees 30 minutes west longitude as the northwestern boundary;

(d) the term "vessel" shall mean every description of watercraft or other contrivance used, or capable of being used, as a means of transportation in water;

(e) the term "Secretary" shall mean the Secretary of Commerce or his delegate;

(f) the term "transshipment" shall mean the transfer of shrimp from one vessel to another vessel, or the receipt of shrimp by one vessel from another vessel;

(g) the term "fishing" shall mean the taking or attempted taking of shrimp by any means whatsoever;

(h) the term "vessel owner" shall mean any person, partnership, corporation, or association which is the owner of record of a vessel documented under the laws of the United States, except that, with respect to sections 4 and 5 hereof, the Secretary may issue such regulations as he deems appropriate to cover applications for and issuance of letters of voluntary compliance and permits with respect to vessels owned by corporations which are owned or controlled by one or more other corporations;

(i) the term "regulations" shall mean rules and regulations issued by the Secretary from time to time as he deems necessary to carry out the purposes and objectives of the treaty and this Act; and

(j) the term "gear" when applied to any vessel involved in a violation shall mean any single set of net and doors for a single trawl vessel, or for a vessel capable of towing more than one set at a time, as many sets of net and doors as the vessel is capable of towing: *Provided*, That if the vessel owner, master, or other person in charge of the vessel can show that a particular set (or sets) of net and doors was actually involved in the violation, then that set (or sets) shall be deemed to be the gear of the vessel involved in the violation.

PERMITS

SEC. 3. (a) The Secretary is authorized to issue permits to vessel owners for vessels documented under the laws of the United States to engage in fishing in the area of agreement: *Provided*, That the number of vessels which are the subject of permits shall not exceed three hundred and twenty-five or such other number of vessels as may be specified in the treaty from time to time as authorized to fish in the area of agreement. No vessel owner may be issued a permit with

respect to a vessel unless such vessel meets the requirements of the treaty, the Act, and the regulations: *Provided further*, That no more than two hundred vessels with permits shall be authorized to fish in any quarter of 1975 beginning March 1 and ending February 29, 1976, and no more than one hundred and seventy-five vessels with permits shall be authorized to fish in any quarter of 1976 beginning March 1 and ending February 28, 1977, or such other number or period as may be specified in the treaty from time to time.

(b) Except as provided in section 4(d), a permit shall be valid only for the vessel with respect to which it is issued and shall not cover more than one vessel, except that a vessel owner may, with the prior consent of the Secretary, transfer a permit to another vessel whether or not owned by the same vessel owner.

(c) Permits shall be issued for a calendar year, and may be renewed annually.

(d) Permits shall contain such provisions, and shall be issued upon, and subject to, such terms and conditions as the Secretary deems necessary to carry out the treaty, the Act, and the regulations. Permit provisions may include, but are not limited to—

(i) the manner, place, and time of conducting fishing operations,

(ii) the keeping of records,

(iii) the furnishing of information to the Secretary,

(iv) the identification and marking of the vessels,

(v) limitations on transshipment operations,

(vi) restrictions or prohibitions on the employment on any permitted vessel of a master or other person against whom a civil penalty has been assessed pursuant to section 9,

(vii) prohibited activities,

(viii) revocation of permit for failure to pay a civil penalty assessed against a vessel owner pursuant to section 9, and

(ix) the maintaining of an office in the United States by the holder of a permit at which all notices, legal documents, and other material may be served.

Permits may be suspended or revoked by the Secretary for failure to comply with any of the terms or conditions thereof, or with the treaty, this Act or the regulations. Upon any such suspension or revocation, the permittee shall be afforded a prompt opportunity, after due notice, for a hearing by the Secretary. The decision of the Secretary rendered in connection with such hearing shall be final and binding.

(e) Permits may be returned to the Secretary. In addition, the Secretary may issue regulations requiring the return of unutilized permits under such circumstances and upon such terms and conditions as he deems appropriate. If the Secretary reissues a permit to another vessel owner, a prorated amount of the annual permit fee for the portion of the year during which the permit is held by another vessel owner shall be refunded to the original permittee. Except as specified in this subsection (e) and in section 4(c), permit fees shall not be prorated.

(f) The annual fee for a permit [for any year other than 1973] shall be [\$615] \$1,115 for enforcement services plus an amount of not more than \$100, as determined by the Secretary, for the purpose of covering administrative costs. [The fee for a permit for 1973 shall be \$1,230 for

enforcement services plus an amount of not more than \$200, as determined by the Secretary, for the purpose of covering administrative costs: *Provided*, That the annual fee for a permit for 1973 for any vessel first documented in that year or certified as not having been engaged in fishing in the area of agreement in 1972 shall be \$615 for enforcement services plus an amount of not more than \$100, as determined by the Secretary, for the purpose of covering administrative costs. The amount of any deposit transferred to the Offshore Shrimp Fisheries Fund pursuant to section 5 of this Act shall be credited toward the annual permit fee.

(g) Any permit which has been suspended or revoked, or which is required to be returned, shall be surrendered to the Secretary.

PERMIT PROCEDURE

SEC. 4. (a) Vessel owners may apply for permits to engage in fishing in the area of agreement. The method and time for application shall be announced in advance in the Federal Register.

(b) The owner of any vessel for which application for a permit is refused may petition the Secretary for reconsideration, and shall be entitled to a hearing. The decision of the Secretary rendered in connection with such reconsideration shall be final and binding.

(c) The Secretary may reissue permits which have been returned pursuant to section 3, to vessel owners with outstanding applications, who have not been able to obtain permits under the procedure set out in subsection (d). The fee for such reissued permits shall be the prorated share of the annual fee for the portion of the year during which the new permittee holds the permit.

(d) If application is made with respect to more vessels than the number of permits allowed to be issued under section 3(a), the following procedure for granting permits shall apply:

(1) All vessel owners to whom letters of voluntary compliance have been issued *after March 14, 1975*, pursuant to section 5 of this Act, shall have first priority for permits but only as to vessels covered by such letters.

(2) After all vessel owners under subparagraph (1) have been considered for permits, all vessel owners who have been engaged in fishing *under permits* in the area of agreement [during the last five years.] *after May 9, 1972*, shall have second priority for permits. However, in no event shall a vessel owner be eligible for receiving a permit under this subsection for a given vessel during the first six months after the effective date [of this Act] *described in section 4(b) of the Offshore Shrimp Fisheries Act Amendments of 1975*, if the Secretary determines that such vessel has engaged in activities during the period from [May 9, 1972.] *March 14, 1975*, to [the effective date of this Act] *such effective date* which would have constituted a violation specified in section 8(a)(3) or 8(a)(5), but only to the extent *section 8(a)(5)* relates to use of fishing gear, *fishing vessels and fishing methods*, and the closure of the area of agreement to fishing. [if the Act had been in effect during such period.] In the event of any such determination, the vessel owner affected thereby shall be given notice thereof and an

opportunity for a hearing. The decision of the Secretary rendered in connection with the hearing shall be final and binding.

(3) After all vessel owners under subparagraphs (1) and (2) have been considered for issuance of a permit, all other vessel owners who have made application may be considered for permits.

If the number of vessels for which application is made in the categories outlined in subparagraph (2) or (3) is more than the number of permits available after having accounted for the vessels in the previous category (or in the case of subparagraph (1), if the number of vessels for which application is made in that category is more than the number of permits available pursuant to the treaty), then the number of permits available shall be proportionally distributed with the applicable category, in a manner provided in the regulations.

VESSELS WHICH VOLUNTARILY COMPLY

SEC. 5. The Secretary shall issue a letter of voluntary compliance to a vessel owner who has had vessels engaged in fishing in the area of agreement at any time subsequent to [May 9, 1972.] *March 14, 1975*, for all vessels of such owner documented under the laws of the United States which meet the requirements of the treaty, and for each of which the vessel owner has deposited and continuously maintained, until the transfer referred to in the following sentence, [\$700] *\$1,215* in a special account in a bank or trust company insured by the Federal Deposit Insurance Corporation for the purpose of reimbursing the United States for enforcement expenses as provided in article 6 of the treaty. On or before the issuance of a letter of voluntary compliance the deposited funds referred to above shall be transferred, in the manner provided for in regulations, through the Secretary, to the Offshore Shrimp Fisheries Fund, established pursuant to section 6 of this Act.

OFFSHORE SHRIMP FISHERIES FUND; ENFORCEMENT EXPENSES

SEC. 6. (a) There is hereby established on the books of the Treasury a separate fund, the Offshore Shrimp Fisheries Fund, to be used by the Secretary to make payments for enforcement expenses as provided in article VI of the treaty. The fund shall be credited with permit fees collected pursuant to section 3 for enforcement expenses, funds appropriated under section 12(a), amounts transferred through the Secretary from deposits in the special accounts referred to in section 5, and amounts collected for minimum penalties pursuant to section 9. *Any funds remaining in the fund shall remain available for expenditure under this Act.*

(b) The Secretary of Commerce, through the Secretary of State, shall pay, or cause to be paid, on behalf of the United States the enforcement expenses as provided in article VI of the treaty.

(c) In the event that a vessel owner, master, or other person in charge of a vessel, pays on behalf of the United States the unusual enforcement expenses incurred in carrying out the seizure and detention of a vessel, referred to in article VI of the treaty, and is not assessed a civil penalty under section 9 of this Act within two years from the date of such seizure in respect to the violation for which the vessel was seized, such vessel owner, master, or other person

shall be entitled to reimbursement of amounts so paid. Application for reimbursement shall be made to the Secretary.

INFORMATION AND REPORTS

SEC. 7. (a) Each master or other person in charge of a vessel which is the subject of a permit under this Act shall keep a logbook in the form and manner prescribed pursuant to the treaty and set forth in regulations.

(b) In addition to the logbook, owners of vessels which have permits under this Act shall supply to the Secretary, in such form and at such times as he may prescribe, any other information necessary in order to carry out the purposes and objectives of the treaty, the Act or the regulations, which information may include data on fishing beyond the area of agreement in order to determine to the extent possible the full potential of the shrimp fishery.

(c) Except as otherwise provided in the treaty, information obtained pursuant to this Act shall be treated as confidential commercial information pursuant to section 552 of title 5, United States Code.

(d) The Secretary shall have the power to require by subpoena the production of all such logbooks, records, or other information required pursuant to this section. The Secretary may delegate the power to sign subpoenas and to receive documents.

(e) In case of contumacy or refusal to obey a subpoena issued to any person, corporation, partnership, or other entity, the Secretary may request the Attorney General to invoke the aid of any district court of the United States or the United States courts of any territory or possession within the jurisdiction of which said person, corporation, partnership, or other entity is found, resides, or transacts business to secure compliance.

PROHIBITIONS

SEC. 8. (a) No [master] vessel owner, master, or other person in charge of a vessel documented under the laws of the United States shall—

(1) engage in fishing in the area of agreement, unless the vessel is the subject of a permit in force pursuant to this Act;

(2) transship shrimp in the area of agreement, unless each vessel engaged in the transshipment is the subject of a permit in force pursuant to this Act, or is otherwise authorized to fish in the area of agreement pursuant to the treaty;

(3) assault or attempt to prevent any duly authorized officer from boarding, searching, seizing or detaining a vessel in accordance with such officer's duties under the treaty;

(4) engage in fishing in the area of agreement contrary to regulations establishing a procedure for limiting the number of vessels allowed to be present in the area of agreement at any one time to one hundred and sixty in 1975 and one hundred and twenty in 1976 or such other number as may be allowed pursuant to the treaty;

(5) engage in fishing in the area of agreement in contravention of annex II, as it may be modified from time to time pursuant to article II of the treaty, or any regulations issued by the Secretary to implement such annex [.] :

(6) engage in fishing in the area of agreement contrary to regulations establishing a procedure for limiting the number of vessels with permits which may be authorized to fish during any period in 1975 or 1976 as specified in section 3(a).

(b) No [master] vessel owner, master, or other person in charge of a vessel documented under the laws of the United States shall—

(1) fail or refuse to keep or provide any logbooks or any other information required pursuant to this Act, or provide or furnish false logbooks or other information;

(2) violate any other provision of the treaty, this Act, or any regulations promulgated by the Secretary, the violation of which is not covered by subsection (a).

PENALTIES

SEC. 9. (a) Any master or other person in charge of a vessel who violates section 8 hereof, or any vessel owner whose vessel is involved in such violation, may be assessed a civil penalty by the Secretary, after notice and opportunity for a hearing, of not more than \$10,000 for a violation of section 8(a) and \$3,000 for a violation of section 8(b). Except as provided in this section, the minimum penalty assessed shall be not less than an amount sufficient to cover the unusual enforcement expenses, if any, incurred by the United States pursuant to article VI of the treaty in connection with such violation: *Provided*, That if the person against whom the penalty has been assessed has paid on behalf of the United States such unusual enforcement expenses, the minimum penalty requirements shall not apply. The amount of any such minimum civil penalty assessed shall be deposited directly into the Offshore Shrimp Fisheries Fund. The amount of any such civil penalty over the minimum penalty may be compromised by the Secretary.

(b) The Secretary shall notify any vessel owner involved in a violation of section 8 of the outcome of any proceeding against the master or other person in charge of the vessel under subsection (a) above.

(c) The Secretary, after notice and opportunity for hearing, may assess against a vessel owner a civil penalty equal to the value of the catch on board the vessel when detained and the value of the gear involved in a violation of [section 8(a)(1), or involved in a second or subsequent violation of any other provision of section 8(a) by a person against whom a penalty had previously been assessed under section 9(a) for a violation involving the operation of a vessel owned by the same person as the vessel involved in such second or subsequent violation.] section 8. The amount of any such penalty shall be deposited as miscellaneous receipts into the general fund of the Treasury.

(d) Upon failure of the party penalized as provided in this section to pay the penalty within thirty days of the assessment thereof, the Secretary may request the Attorney General to commence action in the Federal district court having jurisdiction over the party for such relief as may be appropriate. In any such action for relief, the Secretary's penalty assessment shall be final and unreviewable unless the penalized party has otherwise sought judicial review thereof.

(e) In any hearing held by the Secretary in connection with the assessment of a civil penalty hereunder, the vessel owner, the master or

any other person against whom a penalty may be assessed may appear in person or by counsel at such hearing or in lieu of a personnel appearance may submit such affidavits or depositions as he deems necessary to the defense of any charges which may be considered by the Secretary at such hearing.

ENFORCEMENT

SEC. 10. (a) This Act shall be enforced jointly by the Secretary, the Secretary of the department in which the Coast Guard is operating, and the Secretary of the Treasury.

(b) Any duly authorized law enforcement officer of the Government of Brazil who is exercising responsibility under article V of the treaty shall be empowered to act on behalf of the United States to enforce the provisions of the treaty in the area of agreement as follows: Any such officer may board and search any vessel which he has reasonable cause to believe has violated any provisions of the treaty. If after boarding and searching such vessel the officer continues to have reasonable cause to believe that a violation has been committed, he may seize and detain the vessel for the sole purpose of delivering it, as soon as practicable, to an agent of the United States Government at the nearest port to the place of seizure or any other place which is mutually agreed upon by the Government of Brazil and the Secretary of State.

REGULATIONS

SEC. 11. In addition to any specific authority contained in this Act, the Secretary is authorized to issue all regulations necessary to carry out the purposes and objectives of the treaty and this Act. Prior to the issuance of any regulations dealing with the marking of vessels or with the use of radiotelephone frequencies, the Secretary shall consult with the Secretary of the department in which the Coast Guard is operating.

APPROPRIATIONS

SEC. 12. (a) There is hereby authorized to be appropriated such amounts as are necessary for enforcement expenses pursuant to article VI of the treaty, to be deposited in the Offshore Shrimp Fisheries Fund.

(b) There is also hereby authorized to be appropriated such amounts as are necessary for domestic enforcement expenses and the expenses of administering the provisions of the treaty, this Act, and the regulations, to be available until expended, when so provided in appropriation acts. So much of the permit fees as are identified for administrative costs shall be deposited as miscellaneous receipts to the general fund of the Treasury.

TERMINATION

SEC. 13. The provisions of this Act, except section 15, shall expire [June 15, 1975.] *September 30, 1977.*

SEVERABILITY

SEC. 14. The provisions of this Act shall be severable and if any part of the Act is declared unconstitutional or the applicability thereof is

held invalid, the constitutionality of the remainder and the applicability thereof shall not be affected thereby.

SEC. 15. Subsections (a) and (b) of section 5 of the Act of May 20, 1964 (78 Stat. 196), are amended to read as follows:

“(a) As used in this Act, the term ‘Continental Shelf fishery resource’ means living organisms belonging to sedentary species; that is to say, organisms, which at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil of the Continental Shelf, including the following species:

“CRUSTACEA

“Tanner Crab—*Chionoecetes tanneri*;
 “Tanner Crab—*Chionoecetes opilio*;
 “Tanner Crab—*Chionoecetes angulatus*;
 “Tanner Crab—*Chionoecetes bairdi*;
 “King Crab—*Paralithodes camtschatica*;
 “King Crab—*Paralithodes platypus*;
 “King Crab—*Paralithodes brevipes*;
 “Stone Crab—*Menippe mercenaria*;
 “Lobster—*Homarus Americanus*;
 “Dungeness Crab—*Cancer magister*;
 “California King Crab—*Paralithodes californiensis*;
 “Golden King Crab—*Lithodes aequispinus*;
 “Northern Stone Crab—*Lithodes maia*;
 “Stone Crab—*Menippe mercenaria*; and
 “Deep-sea Red Crab—*Ceryon quinquedens*.

“MOLLUSKS

“Red abalone—*Haliotis rufescens*;
 “Pink Abalone—*Haliotis corrugata*;
 “Japanese Abalone—*Haliotis kamtschatkana*;
 “Queen Conch—*Strombus gigas*;
 “Surf Clam—*Spisula solidissima*; and
 “Ocean Quahog—*Artica islandica*.

“SPONGES

“Glove Sponge—*Hippiospongia canaliculata*;
 “Sheepswool Sponge—*Hippiospongia lachne*;
 “Grass Sponge—*Spongia graminea*;
 “Yellow Sponge—*Spongia barbera*.

“(b) The Secretary of Commerce, in consultation with the Secretary of State, is authorized to publish in the Federal Register additional species of living organisms covered by the provisions of subsection (a) of this section.”

Calendar No. 261

94TH CONGRESS }
1st Session }

SENATE

{ REPORT
{ No. 94-270

OFFSHORE SHRIMP FISHERIES ACT AMENDMENTS OF 1975

JULY 9 (legislative day JULY 7), 1975.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, submitted
the following

REPORT

[To accompany H.R. 5709]

The Committee on Commerce, to which was referred the bill (H.R. 5709) to extend until September 30, 1977, the provisions of the Offshore Shrimp Fisheries Act of 1973 relating to the shrimp fishing agreement between the United States and Brazil, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE AND BRIEF DESCRIPTION

The purpose of H.R. 5709 is to implement amendments to the shrimp fishing agreement between the United States and Brazil recently negotiated by the two countries and agreed to on March 14, 1975. The original agreement was signed at Brazilia on May 9, 1972. The Senate gave its advice and consent to the treaty on October 3, 1972, and President Nixon gave notice of U.S. ratification on November 29, 1972. The Offshore Shrimp Fisheries Act (the Act) implements into domestic law U.S. responsibilities under the agreement. H.R. 5709 amends the Offshore Shrimp Fisheries Act to implement the recent changes in the agreement.

The proposed bill contains technical amendments to the Act regarding the life of the agreement, the permissible number of vessels allowed to fish at any particular time, the fees for licenses, and other changes needed to conform the Act with the new agreement.

BACKGROUND AND NEED

(1) The Brazil Shrimp Agreement

The United States recognizes a 3-mile territorial sea and, by statute (Public Law 89-658), claims an additional 9-mile contiguous zone of exclusive jurisdiction over fisheries. However, ten Latin American countries (Argentina, Brazil, Chile, Costa Rica, Ecuador, El Salvador, Nicaragua, Panama, Peru, and Uruguay) claim fishing or territorial jurisdiction over 200 miles off their coastal area.

Differences over the breadth of the territorial sea and coastal-state rights to the resources of the water adjacent to their coasts have caused disputes between the United States and some Latin American countries for two decades. The most notorious example is the perennial "tuna war" between this country and Peru and Ecuador, which over a twenty-year period has resulted in the seizure of more than 100 U.S. tuna clippers, and the payment by our fishermen of nearly \$4 million in fines and fees eventually repaid by the United States Treasury under the Fishermen's Protective Act (Public Law 92-569).

International fishery disputes of this kind, even when the economic interests involved are relatively minor, can have serious repercussions on other, more weighty interests, simply because the highly sensitive issue of sovereignty is in contest. While our twenty-year "tuna war" with Ecuador and Peru readily comes to mind, this is not a problem unique to the United States. An example of such conflicts not involving this country is the "cod war" between the United Kingdom and Iceland which flared up, almost to the shooting stage, not many months ago, and which places two NATO allies in postures of conflict.

Past and present U.S. diplomatic efforts attempting to reach international agreement with Ecuador and Peru in regard to fishing rights have produced no results. The State Department, on behalf of the United States, continues to seek a basis of negotiation, however, because it sees no other satisfactory way out of the impasse in the near future. This country is presently engaged, with most of the other nations of the world, in a general conference on the law of the sea under the auspices of the United Nations. It is hoped that the conference will produce a general worldwide agreement on the extent of coastal-state jurisdiction over fisheries and other important questions of the law of the sea which are unsettled and controversial at the present time. Until such agreement is achieved, we continue to face the necessity of finding interim solutions to our problems in this area.

In response to continued harassment and seizure of this country's fishing vessels, this Committee enacted the Fishermen's Protective Act in 1954 to alleviate some of the financial hardships of U.S. fishermen by reimbursing them for fines and fees paid as a result of such illegal seizures. This law was most recently amended during the last Congress to expedite payment of such reimbursement and the Committee at that time expressed the hope that such legislation would serve to further strengthen the ability of the United States, acting through the State Department, to effectively resolve the complex and increasing problem of illegal seizures.

It should be noted that the Fishermen's Protective Act does not apply if a vessel seizure takes place in accord with the operation of an international fishery agreement to which the United States is a party.

Consequently, the Act would not apply to a seizure by Brazil of a U.S. vessel that was fishing for shrimp in waters covered by the United States-Brazil Shrimp Agreement in violation of the terms of the agreement.

The Fishermen's Protective Act would operate to assist a U.S. vessel that was seized by Brazil in waters outside those covered by the agreement and beyond the territorial jurisdiction of Brazil as recognized by the United States.

The agreement between the United States and Brazil concerning shrimp was negotiated in response to the situation created when, on March 29, 1970, Brazil asserted its 200-mile territorial sea claim and subsequently promulgated regulations controlling fishing by foreign-flag vessels within that area. This claim was not recognized by the United States, but it encompasses areas in which a large number of U.S. vessels have carried on shrimp fishing over the past decade. The value of the annual shrimp catch off the coast of northern Brazil by American-flag vessels has been estimated at \$30 million.

In 1971 the Government of Brazil issued a fishery decree to regulate fishing within the claimed 200-mile territorial sea. The decree is severely exclusive as regards operations of non-Brazil vessels, and the penalty provided for violations appeared to be incarceration rather than the monetary penalties for which the Fishermen's Protective Act provides a remedy. Active patrolling of the fishing grounds by the Brazilian Navy began in the summer of 1971, and the stage seemed set for a "shrimp war" potentially even more damaging than our troubles in the tuna industry.

Fortunately both governments had from the beginning of the problem shown a willingness to get together to discuss its effects and possible solutions, and the Brazilian fishery decree itself contained the saving clause that any of its provisions could be set aside by international agreement. When delegations of the two governments met in Brasilia in October 1971 to begin their search for a way of avoiding a confrontation over the issue, they were faced with two general problems. A formula had to be found that would not harm the judicial positions of the governments on jurisdiction, which were of great importance to each of them, and which likewise would not weaken the negotiating position of either government in the preparations for the law of the sea conference. Within these constraints, practical answers had to be found to the very real and present concerns of both sides in the shrimp fishery situation. From the United States point of view, it was important to maintain access on reasonable terms for our fishermen to a resource which they had developed and to protect indirectly the right of Americans to engage in other high seas fisheries.

From the Brazilian point of view, the problem seemed to be one of ensuring that a resource of interest to the Brazilian fishery industry, which the government of Brazil was strongly committed to develop, would not be overexploited and destroyed, and that the competition for the harvest from that resource would not be so overwhelmingly competitive that the fledgling Brazilian shrimp industry could never get firmly on its feet. The agreement which H.R. 5709 would implement resulted from the joint search by the two governments for a formula which would meet the needs described above.

The preamble to the agreement briefly sets forth the differing positions of the parties on jurisdiction, notes their desire to find an interim solution without prejudice to those positions, and concludes that, while general international solutions to issues of maritime jurisdiction are being sought and until more adequate information regarding the shrimp fisheries is available, it is desirable to conclude an interim agreement which takes into account the parties' mutual interest in the conservation of the shrimp resources of the area of this agreement.

Article IX of the agreement specifically states: "Nothing contained in this agreement shall be interpreted as prejudicing the position of either party regarding the matter of territorial seas or fisheries jurisdiction under international law", and the reservation of juridical positions is made at other appropriate points in the documents which make up the agreement.

The agreement between the United States and Brazil concerning shrimp was signed at Brasilia on May 9, 1972. The Senate gave its advice and consent on October 3, 1972, and President Nixon ratified it on November 29. An exchange of notes bringing the original agreement into effect was completed on February 14, 1973.

(2) Amendments to the Agreement

The new agreement for 1975-76 was signed in Brasilia on March 14, 1975, by the representatives of the Government of the Federal Republic of Brazil and the Government of the United States. The agreement is presently pending before the Senate Foreign Relations Committee for advice and consent. This agreement contains the same basic conceptual approach of the 1972 agreement in that it continues to reflect the mutual interests of both countries.

Under the 1972 agreement, a maximum of 325 vessels were authorized to fish in the defined agreement area, of which not more than 160 could be in the area at any one time. Under the terms of the new agreement, the maximum of 325 vessels is retained. However, the new agreement adds the requirement that not more than 200 vessels with permits shall be allowed to fish during any quarter (beginning March 1) in 1975 and not more than 175 vessels in any such quarter of 1976. The March 1 date was selected to coincide with the start of the fishing season. Of the 200 vessels allowed to fish during any quarter in 1975, not more than 160 can be on the fishing grounds at any one time. In 1976, 120 vessels out of the 175 licensed to fish may be on the fishing grounds at any one time during any quarter. The number of vessels on the fishing grounds would be documented by vessel logbooks.

Also, as in the 1972 agreement, vessels authorized to fish are to be of the same general size and type and are to use the same gear and methods as those commonly employed in the fishery in the past. However, under the terms of the new agreement, vessels shall not employ in fishing operations, electrical fishing equipment, nor shall chemical, toxic, explosive, or polluting substances, or other material with similar destructive effect be employed.

The enforcement of the agreement continues to remain the responsibility of Brazil. Subject to the appropriation of funds, the United States agreed to increase from \$200,000 to \$361,000 the amount of annual compensation to Brazil for enforcement in view of Brazil's general rate of inflation as well as increased fuel costs. This increase

necessitates the need for a proportionate increase in the annual fees for permits to fish under the terms of the agreement authorized in the Act. Such a proportionate increase would raise the annual permit fee to about \$1,215.]

(3) The legislation

Passage of H.R. 5709 is necessary for the United States to carry out its obligations under the agreement with Brazil. This legislation would make the provisions of the agreement mandatory on those U.S. vessels which desire to participate in the fishery and would enable the U.S. Government to take appropriate action on U.S. violations which Brazilian enforcement agents may bring to our attention. It would also enable the U.S. to transfer voluntary compliance funds, set aside by industry, into the Offshore Shrimp Fisheries Fund in the Treasury to be used in compensating Brazil for enforcement costs associated with the agreement. Without this legislation the U.S. Government can neither pay enforcement costs to Brazil nor punish violators of the agreement. It is questionable whether Brazil would wish to continue with the agreement on a voluntary basis beyond the expiration date of December 1976 or consider an extension of the agreement under these circumstances.

The shrimp industry and the Departments of State and Commerce report favorable results on the more than two year operation of the prior agreement. The Committee finds that during that period the agreement has proved to be a practical accommodation of the interests of U.S. fishermen in continuing their access to a fishery which they have developed and of the interests of Brazil in the conservation of a resource which it hopes to develop further as an export fishery, without prejudice to the position of either party regarding the matter of territorial seas or fisheries jurisdiction under international law.

The Committee believes that this agreement should be implemented for this additional two-year period in order to assure that it will indeed provide a continuing workable solution to these problems and, possibly, serve as a model for developing practical interim solutions to similar international fishery problems between coastal and distant-water fishing nations elsewhere in the world. Given the declining state of the world's fishery resources, the Committee believes such efforts to conserve these resources for the future are vital and must be encouraged.

The Committee points out that this agreement and implementing legislation, as did the prior agreement and implementing legislation, break new ground in several respects: (1) for the first time the U.S. Government is empowered to limit the entry of its citizens into a high seas fishery; (2) unilateral enforcement powers surpassing any provided in other bilateral or multilateral fishery agreements to which the U.S. is a party, are granted to another country; and (3) the U.S. Government has undertaken to collect fees from U.S. fishermen and transfer such fees to a foreign government for enforcement of a conservation agreement. Consequently, the Committee has provided a termination date for H.R. 5709 so that the Congress may have an opportunity prior to such date to assure that these new concepts will continue to meet the test of time.

SECTION-BY-SECTION ANALYSIS

The following is a section-by-section analysis of the Offshore Shrimp Fisheries Act specifying how it is amended by H.R. 5709.

SECTION 1: SHORT TITLE

Section 1 of the bill provides a short title to cite this amendatory Act as the "Offshore Shrimp Fisheries Act Amendments of 1975."

SECTION 2: DEFINITIONS

Section 2 of the Act defines certain terms used in the Act. Of particular note is subsection (c), which defines the limits of the area to which the agreement applies and to which the proposed legislation and any rules and regulations in implementation thereof would apply. The area is defined so as to include essentially all of the major grounds traditionally fished by United States shrimp trawlers off the coast of Brazil and in a way which does not coincide with jurisdictional limits as they would be drawn by either side, although it is entirely beyond 12 nautical miles from shore and therefore, in the view of the United States, entirely on the high seas.

Also, it is to be noted that section 2(a) of the Act refers to the date the treaty was signed. In this regard, section 3(a) of the bill would amend section 2(a) of the Act to change "May 9, 1972," to "March 14, 1975," to reflect the date the new agreement was signed.

SECTION 3: PERMITS

Section 3 of the Act authorizes the Secretary of Commerce to issue annual permits for United States vessels, consistent with the numerical limit and other requirements prescribed by the agreement, to fish within the area of the agreement. In this regard, not more than 325 vessels will be authorized to fish in the area or such other number of vessels as may be specified in the treaty from time to time.

Section 3(b)(1) of the bill would amend section 3(a) of the Act to provide that not more than 200 vessels with permits could fish in any quarter of 1975 and not more than 175 in any quarter of 1976. This was a new concept that was not included in the prior agreement.

Section 3(d) of the Act details some of the conditions which may be attached to the permits, all of which are necessary for enabling the United States to fulfill the terms of the agreement or for the execution of other portions of the Act.

Section 3(e) of the Act authorizes the Secretary of Commerce to make regulations requiring the return of permits by vessel operators who do not make use of them and for their subsequent reissue to other operators for a prorated fee. Such a provision appears necessary since the agreement places a limit on the maximum number of vessels that may be permitted to fish in the agreement area and there is a possibility that there may be a demand from the fleet operators for the total number of permits available. This provision would prevent the tying up of any of the available permits by operators who have no present plans to fish in the area but wish to prevent potential competitors from doing so.

Section 3(f) of the Act prescribes the fees for permits to fish under the terms of the Agreement. The basic fee is determined by a formula which would recover for the Government all costs of participating in the Agreement as well as a portion of the cost of administering the permit system, if the total number of 325 permits available under the Agreement were issued. (In the event that the number of permits issued is less than 325, an appropriation will be requested to make up the difference between the income from permit fees and the financial obligations of the Government resulting from the agreement.)

Section 3(b)(2) of the bill would amend section 3(f) of the Act to set the permit fee under the new agreement at \$1,115 for enforcement services (versus \$615 for the prior agreement) and an amount of not more than \$100 for the purpose of covering administrative costs.

SECTION 4: PERMIT PROCEDURE

Section 4 of the Act prescribes the procedures under which the Secretary of Commerce would issue permits for fishing within the area of the agreement. Section 4(a) would ensure that interested vessel operators would have the opportunity to have knowledge of the method and time for applying for permits through publication of this information in the Federal Register. Section 4(b) provides that a vessel owner whose application for a permit is refused shall, upon his petition, be entitled to a hearing and reconsideration of his application.

Section 4(c) of the Act authorizes the Secretary of Commerce to reissue permits which have been returned to him to vessel owners who have applications pending. The recipient of such a reissued permit would have to pay a pro-rated share of the annual permit fee.

Section 4(d) of the Act provides a set of criteria for priority in the granting of permits, to be used in the event that applications are received for a greater number of permits than is available under the terms of the Agreement (325), an eventuality that is considered unlikely. First priority for permits will go to vessels which have been operated in voluntary compliance with the provisions of the Agreement, as certified in letters of voluntary compliance to be issued by the Secretary of Commerce in accordance with Section 5. Second priority will go to vessels operated by owners who, although not in possession of letters of voluntary compliance, have been engaged in the fishery after May 9, 1972, as compared to the past five-year period under the original Act. However, no vessel will be eligible for receiving a permit during the first six months of operation of the permit system if the Secretary of Commerce determines that it has been operated subsequent to the signing of the new agreement in a way which constituted failure to voluntarily observe the terms of the agreement in any one of the following three respects: (1) by fishing in the area of the agreement during a closed season; (2) by using a type of fishing gear, fishing vessel, or fishing method prohibited by the agreement; or (3) by assaulting or attempting to prevent any duly authorized officer from boarding, searching, seizing or detaining the vessel in accordance with such officer's duties under the Agreement. The vessel owner shall be notified of any such denial of eligibility for a permit and given an opportunity for a hearing. The purpose of this subsection is to ensure that operators who flagrantly fail to observe the terms of the

Agreement during the period of voluntary compliance shall not enjoy the same priority for the issuance of permits as those who have voluntarily complied in good faith with the Agreement prior to the enactment of this implementing legislation.

The final paragraph of this section (Section 4 of the Act) provides that if the number of vessels for which applications for permits are received is greater than the number of permits available for issue within a given priority category, the available permits shall be suitably distributed among the applying vessel owners in an equitable fashion.

Section 3(c) (1), (2), and (3) of the bill make appropriate technical amendments to section 4(d) of the Act to reflect the above changes between the old agreement and the new agreement.

SECTION 5: VESSELS WHICH VOLUNTARILY COMPLY

Section 5 authorizes the Secretary of Commerce to provide documentary evidence of voluntary compliance with the terms of the agreement to vessel owners who, subsequent to the signing of the agreement, deposited and retained \$700, approximately equivalent to the proposed annual permit fee, in a special bank account in respect of each of their vessels for which they intend to seek permit under this Act. The possession of such a letter of voluntary compliance would entitle the vessel concerned to priority in the granting of a permit, as provided in Section 4(d)(1) above. The issuance of a letter of voluntary compliance would be accompanied or preceded by the transfer of the deposited funds to the Offshore Shrimp Fisheries Fund, established pursuant to Section 6 below, for use in defraying the financial obligations assumed by the United States under the terms of the Agreement. Funds so transferred would be credited against the initial permit fee for the vessel in question.

Section 3(d) of the bill would change the deposit requirement for each vessel from \$700 to \$1,215 thereby conforming the Act to the permit fee established by the new agreement.

SECTION 6: OFFSHORE SHRIMP FISHERIES FUND; ENFORCEMENT EXPENSES

Section 6 of the Act provides for the establishment in the Treasury of a special revolving fund, to be known as the Offshore Shrimp Fisheries Fund. Into this Fund would be placed the appropriate portion of permit fees, appropriated funds authorized under Section 12 of the Act, sums transferred from the special accounts set up, as provided in Section 5, by vessel owners in voluntary compliance, and the minimum civil penalties assessed as provided in Section 9 against violators to cover the unusual enforcement expenses incurred by the United States pursuant to Article VI of the agreement. These unusual enforcement expenses, as provided by the new agreement, are \$500 for each day during which a United States vessel is being escorted to port and \$200 per day while such vessel is in port. The prior agreement provided for a charge of only \$100 per day while the vessel was in custody of Brazilian enforcement authorities.

From the Offshore Shrimp Fisheries Fund there will be paid by the Secretary of Commerce, through the Secretary of State, the annual

payment of \$361,000 which the new agreement obligates the United States to make to Brazil for enforcement services. Also, if a vessel owner whose vessel is seized and detained pays the special enforcement expenses on behalf of the United States, in order to expedite the delivery of his vessel to an authorized official of the United States in accordance with Article V(4) of the Agreement, and the vessel owner is not assessed a civil penalty for the alleged violation within two years, monies from the Fund would be used to reimburse the vessel owner.

Section 3(e) of the bill would amend section 6(a) of the Act by adding at the end thereof a clause to provide that any monies remaining in the fund would remain available for expenditure under the Act.

SECTION 7: INFORMATION AND REPORTS

Section 7 of the Act would place on any person in charge of a vessel which has received a permit under the Act the obligation of keeping a logbook record of his fishing operations in a prescribed form and would also require the owner of a permitted vessel to furnish to the Secretary of Commerce other information necessary for carrying out the provisions of the Agreement, this Act or related regulations, including data on operations in the shrimp fishery beyond the limits of the agreement area. All such information that fell within the proper legal categories for exception from the requirements of the Freedom of Information Act would be treated as confidential commercial information in accordance with relevant United States law, except insofar as the Agreement requires the United States to turn some portion of it over to the Brazilian Government, which has undertaken to protect its confidentiality. Section 7(d) would empower the Secretary of Commerce to subpoena the log books and other information referred to above, and Section 7(e) would authorize the Secretary, in cases where a person refuses to obey a subpoena, to request the Attorney General to seek aid from U.S. district courts to secure compliance with the subpoena.

The collection of raw data is the most important part of any fishery statistics system. The Agreement, by requiring the maintenance of log books by the vessels of both countries and the exchange of data as appropriate, has provided an opportunity for in depth study and the collection of the information necessary to understand the dynamics of this fishery and allow for its proper management. Log books kept by U.S. fishermen under the terms of the Agreement have already provided better and more complete data on shrimp in the Agreement area than ever before available.

The bill would make no change to this section of the Act.

SECTION 8: PROHIBITIONS

Section (8)a of the Act prohibits the person in charge of any United States vessel from performing certain acts in the area of agreement. The prohibited acts are those which would be at variance with the obligations which the United States has assumed in the Agreement, to wit, (1) fishing without authorization, as indicated for U.S. vessels by a permit issued under this Act, (2) engaging in transshipment of

shrimp with other than authorized vessels, (3) assaulting or otherwise obstructing the performance of enforcement duties by a duly authorized officer, (4) failing to observe regulations designed to limit the number of vessels operating in the area at any one time to that prescribed by the Agreement, or (5) fishing with a type of vessel or gear prohibited by the Agreement or during a time when fishing is closed by the Agreement.

Section 3(f) of the bill would amend section 8(a) of the Act to make the prohibitions run against the owner of the vessel in addition to the master or other person in charge of the vessel, as provided under the original Act.

Also, section 3(f)(1) of the bill would amend section 8(a) of the Act by adding a new category (6) to make it a prohibited act to engage in fishing in the area of agreement contrary to the regulations allowing not more than 200 vessels in 1975 and 175 vessels in 1976 to fish during any quarter of each calendar year.

In addition, section 3(f)(2) of the bill would amend section 8(a)(4) of the Act to make the prohibition apply to the number of vessels that would be allowed to be present in the area at any one time to 160 in 1975 and 120 in 1976, which is in conformity with the new agreement.

Section 8(b) of the Act makes the master or other person in charge of a vessel subject to a penalty for failure or refusal to keep or furnish information required by the Act, or furnish false information, etc.

Section 3(f)(3) of the bill would amend section 8(b) of the Act to extend the prohibitions enumerated in section 8(b) to the owner of the vessel.

It was pointed out in the departmental reports on the legislation that by making the owners of the vessels subject to the prohibitions and penalties of the Act, hopefully, the owners would be encouraged to hire masters who will comply fully with the provisions of the treaty and this Act.

SECTION 9: PENALTIES

Section 9 of the Act sets maximum civil penalties which the Secretary may assess against the person in charge of a vessel for violations resulting from the commission of acts prohibited in Section 8, with the higher maximum of \$10,000 for acts violating the specific provisions of the Agreement and a lower figure of \$3,000 for acts not specified in the Agreement but inimical to its implementation. The section provides that when a violation entails the special enforcement expenses incurred by the United States pursuant to Article VI of the Agreement, the penalty must as a minimum be sufficient to cover such expenses, unless the owner of the vessel involved has already paid these enforcement expenses on behalf of the United States. The Section also provides for notification to vessel owners of the outcome of any proceeding against the person in charge of their vessel for commission of a prohibited act. In the case of a violation of the prohibition against fishing with an unlicensed vessel, or a repeat violation involving the commission of any other act prohibited by Section 8(a), when the person in charge of the vessel had previously been penalized for a violation committed with a vessel of the same owner, the Secretary may proceed against the vessel owner by assessing a civil penalty equal to the value of the catch and fishing gear. Section 9(d) authorizes the Secretary, through the Attorney General, to seek relief in the appropriate Federal District Court

if the penalties assessed by him are not paid within 30 days. Section 9(d) also provides that, in such relief actions, a penalty assessed by the Secretary shall be final unless the party penalized specifically seeks judicial review of the Secretary's decision. Section 9(e) provides that persons liable to a penalty may appear in person at hearings to be held by the Secretary or may submit affidavits or depositions in their defense.

Section 3(g)(1) of the bill would amend section 9(a) of the Act to make the vessel owner whose vessel is involved in a violation subject to a civil penalty as well as the master or other person in charge of the vessel. This is a conforming change resulting from the change made to section 8 of the Act by the bill.

Section 3(g)(2) would amend section 9(b) of the Act to require notification to the owner of a vessel when the master or other person in charge of the vessel has been involved in a violation.

Section 3(g)(3) of the bill would amend section 9(c) of the Act to have the effect of making the vessel owner subject to an additional civil penalty for a violation of any provision of section 8 of the Act equal to the value of the catch on board and the value of gear involved.

SECTION 10: ENFORCEMENT

Section 10 of the Act provides that the Act shall be enforced jointly by the Secretary of Commerce, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of the Treasury. The enforcement responsibilities of the Secretary of Commerce are indicated in the other sections of this Act. The Coast Guard has responsibility for documenting United States vessels of the size that will operate in the shrimp fishery off Brazil. A vessel must be documented in order to apply to the Secretary of Commerce for a permit. Furthermore, under some conceivable circumstances enforcement action by the Coast Guard at sea or in port might be necessary to supplement the primary efforts of the Secretary and of the Brazilian authorities in order to secure custody of a vessel which was accused of violating some provision of the Act or the Agreement. Part (b) of the Section provides that a duly authorized Brazilian officer may act on behalf of the United States to enforce the provisions of the agreement by boarding and searching, and if necessary seizing and detaining, a United States vessel which he has reasonable cause to believe has violated the Agreement. Vessels so seized are to be delivered as soon as practicable to the United States Government.

The United States agreed to Brazilian enforcement of the Agreement on the basis of convenience and economy. Due to the distance involved, U.S. enforcement in the agreement area would be impractical and was estimated to cost from \$600,000 to \$1.2 million annually as opposed to our payment to Brazil for this purpose of \$200,000 a year.

The bill would make no changes to this section of the Act.

SECTION 11: REGULATIONS

Section 11 of the Act authorizes the Secretary of Commerce to issue all regulations necessary for carrying out the purposes and objectives of the agreement and the Act.

The bill would make no change to this section of the Act.

SECTION 12: APPROPRIATIONS

Section 12 of the Act authorizes the appropriation of the sums necessary to pay the Government of Brazil for its enforcement services, as provided in the agreement, and for the expenses of administration. The bill would make no change to this section of the Act.

SECTION 13: TERMINATION

Section 13 of the Act provides a termination date for the Act of June 15, 1975.

Section 2 of the bill would amend section 13 of the Act to change the termination date of the Act from June 15, 1975, to September 30, 1977.

SECTION 14: SEPARABILITY

Section 14 of the Act is a standard separability clause. The bill would make no change to this section of the Act.

SECTION 4 OF H.R. 5709

Section 4(a) of the bill would provide that section 1 of the bill (which designates the title of the Act), section 2 of the bill (which changes the termination date of the Act), and section 3(d) of the bill (which relates to voluntary compliance under section 5 of the Act with respect to the depositing of permit fees in escrow) would take effect on the date of enactment of this Act.

Section 4(b) of the bill would provide that all other changes to the old Act made by the bill would take effect upon entry into force of the new agreement, that is upon its ratification by the U.S. Senate.

ESTIMATED COST

Pursuant to the requirements of section 252 of the Legislative Reorganization Act of 1970, the Committee estimates that the cost of the proposed legislation will be as follows:

	Fiscal year—		
	1976	Transitional quarter	1977
Cost.....	\$200,000	\$50,000	\$200,000

Note: These estimates are based on information provided by the Departments of State and Commerce.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no changes are proposed is shown in roman):

OFFSHORE SHRIMP FISHERIES ACT OF 1973

(87 Stat. 1061; Public Law 93-242)

AN ACT To implement the shrimp fishing agreement with Brazil, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Offshore Shrimp Fisheries Act of 1973".

DEFINITIONS

SEC. 2. When used in this Act—

(a) the term "treaty" shall mean the Agreement Between the Government of the Federative Republic of Brazil and the Government of the United States of America Concerning Shrimp, signed on [May 9, 1972,] *March 14, 1975*, including related annexes, notes, and agreed minutes, as these documents may be amended from time to time;

(b) the term "shrimp" shall mean the shrimp *Penaeus (M.) duorarum notialis*, *Penaeus brasiliensis*, and *Penaeus (M.) aztecus subtilis*;

(c) the term "area of agreement" shall mean the area in which United States vessels carry on a shrimp fishery in the vicinity of Brazil, as described by the following boundaries: the waters of the coast of Brazil having the isobath of thirty meters as the southwest limit, the latitude 1 degree north as the southern limit, the longitude 47 degrees 30 minutes west as the eastern limit, and a line running from the point of 4 degrees 44 minutes north latitude, 51 degrees 30 minutes west longitude at an azimuth of 17 degrees to the point of 4 degrees 51 minutes north latitude, 51 degrees 28 minutes west longitude and thence at an azimuth of 43 degrees to the point of 8 degrees 58 minutes north latitude, 47 degrees 30 minutes west longitude as the northwestern boundary;

(d) the term "vessel" shall mean every description of watercraft or other contrivance used, or capable of being used, as a means of transportation in water;

(e) the term "Secretary" shall mean the Secretary of Commerce or his delegate;

(f) the term "transship" shall mean the transfer of shrimp from one vessel to another vessel, or the receipt of shrimp by one vessel from another vessel;

(g) the term "fishing" shall mean the taking or attempted taking of shrimp by any means whatsoever;

(h) the term "vessel owner" shall mean any person, partnership, corporation, or association which is the owner of record of a vessel documented under the laws of the United States, except that, with respect to sections 4 and 5 hereof, the Secretary may issue such regulations as he deems appropriate to cover applications for and issuance of letters of voluntary compliance and permits with respect to vessels owned by corporations which are owned or controlled by one or more other corporations;

(i) the term "regulations" shall mean rules and regulations issued by the Secretary from time to time as he deems necessary to carry out the purposes and objectives of the treaty and this Act; and

(j) the term "gear" when applied to any vessel involved in a violation shall mean any single set of net and doors for a single trawl vessel, or for a vessel capable of towing more than one set at a time, as many sets of net and doors as the vessel is capable of towing: *Provided*, That if the vessel owner, master, or other person in charge of the vessel can show that a particular set (or sets) of net and doors was actually involved in the violation, then that set (or sets) shall be deemed to be the gear of the vessel involved in the violation.

PERMITS

SEC. 3. (a) The Secretary is authorized to issue permits to vessel owners for vessels documented under the laws of the United States to engage in fishing in the area of agreement: *Provided*, That the number of vessels which are the subject of permits shall not exceed three hundred and twenty-five or such other number of vessels as may be specified in the treaty from time to time as authorized to fish in the area of agreement. No vessel owner may be issued a permit with respect to a vessel unless such vessel meets the requirements of the treaty, the Act, and the regulations: *Provided further*, That no more than two hundred vessels with permits shall be authorized to fish in any quarter of 1975 beginning March 1 and ending February 29, 1976, and no more than one hundred and seventy-five vessels with permits shall be authorized to fish in any quarter of 1976 beginning March 1 and ending February 28, 1977, or such other number or period as may be specified in the treaty from time to time.

(b) Except as provided in section 4(d), a permit shall be valid only for the vessel with respect to which it is issued and shall not cover more than one vessel, except that a vessel owner may, with the prior consent of the Secretary, transfer a permit to another vessel whether or not owned by the same vessel owner.

(c) Permits shall be issued for a calendar year, and may be renewed annually.

(d) Permits shall contain such provisions, and shall be issued upon, and subject to, such terms and conditions as the Secretary deems necessary to carry out the treaty, the Act, and the regulations. Permit provisions may include, but are not limited to—

- (i) the manner, place, and time of conducting fishing operations,
- (ii) the keeping of records,
- (iii) the furnishing of information to the Secretary,
- (iv) the identification and marking of the vessels,
- (v) limitations on transshipment operations,
- (vi) restrictions or prohibitions on the employment on any permitted vessel of a master or other person against whom a civil penalty has been assessed pursuant to section 9,
- (vii) prohibited activities,
- (viii) revocation of permit for failure to pay a civil penalty assessed against a vessel owner pursuant to section 9; and

(ix) the maintaining of an office in the United States by the holder of a permit at which all notices, legal documents, and other material may be served.

Permits may be suspended or revoked by the Secretary for failure to comply with any of the terms or conditions thereof, or with the treaty, this Act or the regulations. Upon any such suspension or revocation, the permittee shall be afforded a prompt opportunity, after due notice, for a hearing by the Secretary. The decision of the Secretary rendered in connection with such hearing shall be final and binding.

(e) Permits may be returned to the Secretary. In addition, the Secretary may issue regulations requiring the return of unutilized permits under such circumstances and upon such terms and conditions as he deems appropriate. If the Secretary reissues a permit to another vessel owner, a prorated amount of the annual permit fee for the portion of the year during which the permit is held by another vessel owner shall be refunded to the original permittee. Except as specified in this subsection (e) and in section 4(c), permit fees shall not be prorated.

(f) The annual fee for a permit [for any year other than 1973] shall be [\$615] \$1,115 for enforcement services plus an amount of not more than \$100, as determined by the Secretary, for the purpose of covering administrative costs. [The fee for a permit for 1973 shall be \$1,230 for enforcement services plus an amount of not more than \$200, as determined by the Secretary, for the purpose of covering administrative costs: *Provided*, That an annual fee for a permit for 1973 for any vessel first documented in that year or certified as not having been engaged in fishing in the area of agreement in 1972 shall be \$615 for enforcement services plus an amount of not more than \$100, as determined by the Secretary, for the purpose of covering administrative costs.] The amount of any deposit transferred to the Offshore Shrimp Fisheries Fund pursuant to section 5 of this Act shall be credited toward the annual permit fee.

(g) Any permit which has been suspended or revoked, or which is required to be returned, shall be surrendered to the Secretary.

PERMIT PROCEDURE

SEC. 4. (a) Vessel owners may apply for permits to engage in fishing in the area of agreement. The method and time for application shall be announced in advance in the Federal Register.

(b) The owner of any vessel for which application for a permit is refused may petition the Secretary for reconsideration, and shall be entitled to a hearing. The decision of the Secretary rendered in connection with such reconsideration shall be final and binding.

(c) The Secretary may reissue permits which have been returned pursuant to section 3, to vessel owners with outstanding applications, who have not been able to obtain permits under the procedure set out in subsection (d). The fee for such reissued permits shall be the prorated share of the annual fee for the portion of the year during which the new permittee holds the permit.

(d) If application is made with respect to more vessels than the number of permits allowed to be issued under section 3(a), the following procedure for granting permits shall apply:

(1) All vessel owners to whom letters of voluntary compliance have been issued *after March 14, 1975*, pursuant to section 5 of this Act, shall have first priority for permits but only as to vessels covered by such letters.

(2) After all vessel owners under subparagraph (1) have been considered for permits, all vessel owners who have been engaged in fishing *under permits* in the area of agreement [during the last five years.] *after May 9, 1972*, shall have second priority for permits. However, in no event shall a vessel owner be eligible for receiving a permit under this subsection for a given vessel during the first six months after the effective date [of this Act] *described in section 4(b) of the Offshore Shrimp Fisheries Act Amendments of 1975*, if the Secretary determines that such vessel has engaged in activities during the period from [May 9, 1972.] *March 14, 1975*, to [the effective date of this Act] *such effective date* which would have constituted a violation specified in section 8(a)(3) or 8(a)(5), but only to the extent *section 8(a)(5)* relates to use of fishing gear, *fishing vessels and fishing methods*, and the closure of the area of agreement to fishing. [if the Act had been in effect during such period.] In the event of any such determination, the vessel owner affected thereby shall be given notice thereof and an opportunity for a hearing. The decision of the Secretary rendered in connection with the hearing shall be final and binding.

(3) After all vessel owners under subparagraphs (1) and (2) have been considered for issuance of a permit, all other vessel owners who have made application may be considered for permits.

If the number of vessels for which application is made in the categories outlined in subparagraph (2) or (3) is more than the number of permits available after having accounted for the vessels in the previous category (or in the case of subparagraph (1), if the number of vessels for which application is made in that category is more than the number of permits available pursuant to the treaty), then the number of permits available shall be proportionally distributed with the applicable category, in a manner provided in the regulations.

VESSELS WHICH VOLUNTARILY COMPLY

SEC. 5. The Secretary shall issue a letter of voluntary compliance to a vessel owner who has had vessels engaged in fishing in the area of agreement at any time subsequent to [May 9, 1972.] *March 14, 1975*, for all vessels of such owner documented under the laws of the United States which meet the requirements of the treaty, and for each of which the vessel owner has deposited and continuously maintained, until the transfer referred to in the following sentence, [\$700] *\$1,215* in a special account in a bank or trust company insured by the Federal Deposit Insurance Corporation for the purpose of reimbursing the United States for enforcement expenses as provided in article 6 of the treaty. On or before the issuance of a letter of voluntary compliance the deposited funds referred to above shall be transferred, in the manner provided for in regulations, through the Secretary, to the Offshore Shrimp Fisheries Fund, established pursuant to section 6 of this Act.

OFFSHORE SHRIMP FISHERIES FUND; ENFORCEMENT EXPENSES

SEC. 6. (a) There is hereby established on the books of the Treasury a separate fund, the Offshore Shrimp Fisheries Fund, to be used by the Secretary to make payments for enforcement expenses as provided in article VI of the treaty. The fund shall be credited with permit fees collected pursuant to section 3 for enforcement expenses, funds appropriated under section 12(a), amounts transferred through the Secretary from deposits in the special accounts referred to in section 5, and amounts collected for minimum penalties pursuant to section 9. *Any funds remaining in the fund shall remain available for expenditure under this Act.*

(b) The Secretary of Commerce, through the Secretary of State, shall pay, or cause to be paid, on behalf of the United States the enforcement expenses as provided in article VI of the treaty.

(c) In the event that a vessel owner, master, or other person in charge of a vessel, pays on behalf of the United States the unusual enforcement expenses incurred in carrying out the seizure and detention of a vessel, referred to in article VI of the treaty, and is not assessed a civil penalty under section 9 of this Act within two years from the date of such seizure in respect to the violation for which the vessel was seized, such vessel owner, master, or other person shall be entitled to reimbursement of amounts so paid. Application for reimbursement shall be made to the Secretary.

INFORMATION AND REPORTS

SEC. 7. (a) Each master or other person in charge of a vessel which is the subject of a permit under this Act shall keep a logbook in the form and manner prescribed pursuant to the treaty and set forth in regulations.

(b) In addition to the logbook, owners of vessels which have permits under this Act shall supply to the Secretary, in such form and at such times as he may prescribe, any other information necessary in order to carry out the purposes and objectives of the treaty, the Act or the regulations, which information may include data on fishing beyond the area of agreement in order to determine to the extent possible the full potential of the shrimp fishery.

(c) Except as otherwise provided in the treaty, information obtained pursuant to this Act shall be treated as confidential commercial information pursuant to section 552 of title 5, United States Code.

(d) The Secretary shall have the power to require by subpoena the production of all such logbooks, records, or other information required pursuant to this section. The Secretary may delegate the power to sign subpoenas and to receive documents.

(e) In case of contumacy or refusal to obey a subpoena issued to any person, corporation, partnership, or other entity, the Secretary may request the Attorney General to invoke the aid of any district court of the United States or the United States courts of any territory or possession within the jurisdiction of which said person, corporation, partnership, or other entity is found, resides, or transacts business to secure compliance.

PROHIBITIONS

SEC. 8. (a) No [master] vessel owner, master, or other person in charge of a vessel documented under the laws of the United States shall—

(1) engage in fishing in the area of agreement, unless the vessel is the subject of a permit in force pursuant to this Act;

(2) transship shrimp in the area of agreement, unless each vessel engaged in the transshipment is the subject of a permit in force pursuant to this Act, or is otherwise authorized to fish in the area of agreement pursuant to the treaty;

(3) assault or attempt to prevent any duly authorized officer from boarding, searching, seizing or detaining a vessel in accordance with such officer's duties under the treaty;

(4) engage in fishing in the area of agreement contrary to regulations establishing a procedure for limiting the number of vessels allowed to be present in the area of agreement at any one time to one hundred and sixty in 1975 and one hundred and twenty in 1976 or such other number as may be allowed pursuant to the treaty;

(5) engage in fishing in the area of agreement in contravention of annex II, as it may be modified from time to time pursuant to article II of the treaty, or any regulations issued by the Secretary to implement such annex[.];

(6) engage in fishing in the area of agreement contrary to regulations establishing a procedure for limiting the number of vessels with permits which may be authorized to fish during any period in 1975 or 1976 as specified in section 3(a).

(b) No [master] vessel owner, master, or other person in charge of a vessel documented under the laws of the United States shall—

(1) fail or refuse to keep or provide any logbooks or any other information required pursuant to this Act, or provide or furnish false logbooks or other information;

(2) violate any other provision of the treaty, this Act, or any regulations promulgated by the Secretary, the violation of which is not covered by subsection (a).

PENALTIES

SEC. 9. (a) Any master or other person in charge of a vessel who violates section 8 hereof, or any vessel owner whose vessel is involved in such violation, may be assessed a civil penalty by the Secretary, after notice and opportunity for a hearing, of not more than \$10,000 for a violation of section 8(a) and \$3,000 for a violation of section 8(b). Except as provided in this section, the minimum penalty assessed shall be not less than an amount sufficient to cover the unusual enforcement expenses, if any, incurred by the United States pursuant to article VI of the treaty in connection with such violation: *Provided*, That if the person against whom the penalty has been assessed has paid on behalf of the United States such unusual enforcement expenses, the minimum penalty requirements shall not apply. The amount of any such minimum civil penalty assessed shall be deposited directly into the Offshore Shrimp Fisheries Fund. The amount of any such civil penalty over the minimum penalty may be compromised by the Secretary.

(b) The Secretary shall notify any vessel owner involved in a violation of section 8 of the outcome of any proceeding against the master or other person in charge of the vessel under subsection (a) above.

(c) The Secretary, after notice and opportunity for hearing, may assess against a vessel owner a civil penalty equal to the value of the catch on board the vessel when detained and the value of the gear involved in a violation of [section 8(a)(1), or involved in a second or subsequent violation of any other provision of section 8(a) by a person against whom a penalty had previously been assessed under section 9(a) for a violation involving the operation of a vessel owned by the same person as the vessel involved in such second or subsequent violation.] section 8. The amount of any such penalty shall be deposited as miscellaneous receipts into the general fund of the Treasury.

(d) Upon failure of the party penalized as provided in this section to pay the penalty within thirty days of the assessment thereof, the Secretary may request the Attorney General to commence action in the Federal district court having jurisdiction over the party for such relief as may be appropriate. In any such action for relief, the Secretary's penalty assessment shall be final and unreviewable unless the penalized party has otherwise sought judicial review thereof.

(e) In any hearing held by the Secretary in connection with the assessment of a civil penalty hereunder, the vessel owner, the master or any other person against whom a penalty may be assessed may appear in person or by counsel at such hearing or in lieu of a personal appearance may submit such affidavits or depositions as he deems necessary to the defense of any charges which may be considered by the Secretary at such hearing.

ENFORCEMENT

SEC. 10. (a) This Act shall be enforced jointly by the Secretary, the Secretary of the department in which the Coast Guard is operating, and the Secretary of the Treasury.

(b) Any duly authorized law enforcement officer of the Government of Brazil who is exercising responsibility under article V of the treaty shall be empowered to act on behalf of the United States to enforce the provisions of the treaty in the area of agreement as follows: Any such officer may board and search any vessel which he has reasonable cause to believe has violated any provisions of the treaty. If after boarding and searching such vessel the officer continues to have reasonable cause to believe that a violation has been committed, he may seize and detain the vessel for the sole purpose of delivering it, as soon as practicable, to an agent of the United States Government at the nearest port to the place of seizure or any other place which is mutually agreed upon by the Government of Brazil and the Secretary of State.

REGULATIONS

SEC. 11. In addition to any specific authority contained in this Act, the Secretary is authorized to issue all regulations necessary to carry out the purposes and objectives of the treaty and this Act. Prior to the issuance of any regulations dealing with the marking of vessels or with the use of radiotelephone frequencies, the Secretary shall consult with the Secretary of the department in which the Coast Guard is operating.

APPROPRIATIONS

SEC. 12. (a) There is hereby authorized to be appropriated such amounts as are necessary for enforcement expenses pursuant to article VI of the treaty, to be deposited in the Offshore Shrimp Fisheries Fund.

(b) There is also hereby authorized to be appropriated such amounts as are necessary for domestic enforcement expenses and the expenses of administering the provisions of the treaty, this Act, and the regulations, to be available until expended, when so provided in appropriation acts. So much of the permit fees as are identified for administrative costs shall be deposited as miscellaneous receipts to the general fund of the Treasury.

TERMINATION

SEC. 13. The provisions of this Act, except section 15, shall expire [June 15, 1975.] September 30, 1977.

SEVERABILITY

SEC. 14. The provisions of this Act shall be severable and if any part of the Act is declared unconstitutional or the applicability thereof is held invalid, the constitutionality of the remainder and the applicability thereof shall not be affected thereby.

SEC. 15. Subsections (a) and (b) of section 5 of the Act of May 20, 1964 (78 Stat. 196), are amended to read as follows:

"(a) As used in this Act, the term 'Continental Shelf fishery resource' means living organisms belonging to sedentary species; that is to say, organisms, which at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil of the Continental Shelf, including the following species:

"CRUSTACEA

- "Tanner Crab—*Chionoecetes tanneri*;
- "Tanner Crab—*Chionoecetes opilio*;
- "Tanner Crab—*Chionoecetes angulatus*;
- "Tanner Crab—*Chionoecetes bairdi*;
- "King Crab—*Paralithodes camtschatica*;
- "King Crab—*Paralithodes platypus*;
- "King Crab—*Paralithodes brevipes*;
- "Stone Crab—*Menippe mercenaria*;
- "Lobster—*Homarus Americanus*;
- "Dungeness Crab—*Cancer magister*;
- "California King Crab—*Paralithodes californiensis*;
- "Golden King Crab—*Lithodes aequispinus*;
- "Northern Stone Crab—*Lithodes maia*;
- "Stone Crab—*Menippe mercenaria*; and
- "Deep-sea Red Crab—*Ceryon quinquedens*.

"MOLLUSKS

- "Red abalone—*Haliotis rufescens*;
- "Pink Abalone—*Haliotis corrugata*;
- "Japanese Abalone—*Haliotis kamtschatkana*;
- "Queen Conch—*Strombus gigas*;
- "Surf Clam—*Spisula solidissima*; and
- "Ocean Quahog—*Artica islandica*.

"SPONGES

- "Glove Sponge—*Hippiospongia canaliculata*;
- "Sheepswool Sponge—*Hippiospongia lachne*;
- "Grass Sponge—*Spongia graminea*;
- "Yellow Sponge—*Spongia barbera*.

"(b) The Secretary of Commerce, in consultation with the Secretary of State, is authorized to publish in the Federal Register additional species of living organisms covered by the provisions of subsection (a) of this section."

AGENCY COMMENTS

No agency comments on H.R. 5709 were filed with the Commerce Committee.



Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday, the fourteenth day of January,
one thousand nine hundred and seventy-five*

An Act

To extend until September 30, 1977, the provisions of the Offshore Shrimp Fisheries Act of 1973 relating to the shrimp fishing agreement between the United States and Brazil, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Offshore Shrimp Fisheries Act Amendments of 1975".

EXTENSION OF CERTAIN PROVISIONS

SEC. 2. Section 13 of the Offshore Shrimp Fisheries Act of 1973 (16 U.S.C. 1100b note) (hereinafter in this Act referred to as the "Act") is amended by striking out "June 15, 1975" and inserting in lieu thereof "September 30, 1977".

TECHNICAL AMENDMENTS

SEC. 3. (a) Section 2(a) of the Act (16 U.S.C. 1100b(a)) is amended by striking out "May 9, 1972" and inserting in lieu thereof "March 14, 1975".

(b) (1) The first sentence of section 3(a) of the Act (16 U.S.C. 1100b-1(a)) is amended by inserting ~~immediately~~ before the period at the end thereof the following: ": *Provided further*, That no more than two hundred vessels with permits shall be authorized to fish in any quarter of 1975 beginning March 1 and ending February 29, 1976, and no more than one hundred and seventy-five vessels with permits shall be authorized to fish in any quarter of 1976 beginning March 1 and ending February 28, 1977, or such other number or period as may be specified in the treaty from time to time".

(2) Section 3(f) of the Act (16 U.S.C. 1100b-1(f)) is amended—

(A) by striking out "for any year other than 1973";

(B) by striking out "\$615" the first place it appears therein and inserting in lieu thereof "\$1,115"; and

(C) by striking out the second sentence thereof.

(c) (1) Section 4(d) (1) of the Act (16 U.S.C. 1100b-2(d) (1)) is amended by inserting immediately after "issued" the following: "after March 14, 1975".

(2) The first sentence of section 4(d) (2) of the Act (16 U.S.C. 1100b-2(d) (2)) is amended—

(A) by inserting "under permits" immediately after "fishing"; and

(B) by striking out "during the last five years" and inserting in lieu thereof "after May 9, 1972".

(3) The second sentence of section 4(d) (2) of the Act (16 U.S.C. 1100b-2(d) (2)) is amended—

(A) by striking out “of this Act” the first place it appears therein and inserting in lieu thereof the following: “described in section 4(b) of the Offshore Shrimp Fisheries Act Amendments of 1975”;

(B) by striking out “May 9, 1972” and inserting in lieu thereof “March 14, 1975”;

(C) by striking out “the effective date of this Act” the second place it appears therein and inserting in lieu thereof the following: “such effective date”;

(D) by inserting “section” immediately before “8(a)(5)” the second place it appears therein;

(E) by inserting immediately after “fishing gear” the following: “, fishing vessels and fishing methods,”; and

(F) by striking out “, if the Act had been in effect during such period”.

(d) Section 5 of the Act (16 U.S.C. 1100b-3) is amended—

(1) by striking out “May 9, 1972” and inserting in lieu thereof “March 14, 1975”; and

(2) by striking out “\$700” and inserting in lieu thereof “\$1,215”.

(e) Section 6(a) of the Act (16 U.S.C. 1100b-4(a)) is amended by adding at the end thereof the following new sentence: “Any funds remaining in the fund shall remain available for expenditure under this Act.”.

(f)(1) Section 8(a) of the Act (16 U.S.C. 1100b-6(a)) is amended—

(A) by striking out “master” and inserting in lieu thereof “vessel owner, master,”;

(B) by striking out the period at the end of paragraph (5) thereof and inserting in lieu thereof a semicolon; and

(C) by adding at the end thereof the following new paragraph:

“(6) engage in fishing in the area of agreement contrary to regulations establishing a procedure for limiting the number of vessels with permits which may be authorized to fish during any period in 1975 or 1976 as specified in section 3(a).”.

(2) Section 8(a)(4) of the Act (16 U.S.C. 1100b-6(a)(4)) is amended by inserting immediately after “one hundred and sixty” the following: “in 1975 and one hundred and twenty in 1976”.

(3) Section 8(b) of the Act (16 U.S.C. 1100b-6(b)) is amended by striking out “master” and inserting in lieu thereof “vessel owner, master,”.

(g)(1) Section 9(a) of the Act (16 U.S.C. 1100b-7(a)) is amended by inserting immediately after “section 8 hereof” the following: “, or any vessel owner whose vessel is involved in such violation,”.

(2) Section 9(b) of the Act (16 U.S.C. 1100b-7(b)) is amended by inserting immediately after “any proceeding” the following: “against the master or other person in charge of the vessel”.

(3) Section 9(c) of the Act (16 U.S.C. 1100b-7(c)) is amended by striking out “section 8(a)(1)” and all that follows through “or subsequent violation.” and inserting in lieu thereof “section 8.”.

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EFFECTIVE DATES

SEC. 4. (a) Except as provided in subsection (b), the foregoing provisions of this Act shall take effect on the date of the enactment of this Act.

(b) The amendments made by subsections (a), (b), (c), (e), (f), and (g) of section 3 shall take effect upon the entry into force of the Agreement Between the Government of the Federative Republic of Brazil and the Government of the United States of America Concerning Shrimp, signed on March 14, 1975.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

July 15, 1975

Dear Mr. Director:

The following bills were received at the White House on July 15th:

H.R. 5709 ✓
H.R. 5710

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.