The original documents are located in Box 61, folder "1976/10/09 HR5446 International Navigational Rules Act of 1976 (vetoed)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

POCKET VETOED (EFF. MIDNIGHT 10/9/76)
MEMO OF DISAPPROVAL ISSUED 10/10/76

returned 10/8/76 Okla.

THE WHITE HOUSE

WASHINGTON

ACTION

Last Day: October 9

October 4, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: H.R. 5446 - International Navigational Rules Act of 1976

Attached for your consideration is H.R. 5446, sponsored by Representative Sullivan and nine others.

The enrolled bill implements the Convention on the International Regulations for Preventing Collisions at Sea, 1972.

The Convention on the International Regulations for Preventing Collisions at Sea, 1972, which would bring what is commonly called the International Rules of the Nautical Road up to date with modern maritime practice and technology, was transmitted to the Senate for advice and consent on November 9, 1973. The Senate ratified the Convention on October 28, 1975. It is to go into effect on July 15, 1977, in the signatory nations, whose vessels total more than 65% of the world's merchant tonnage. It will not take effect in the United States, however, unless implementing legislation is enacted.

As enrolled, H.R. 5446 contains a provision that would allow a one-house congressional veto of any proposed changes to the international regulations.

A detailed explanation of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

RECOMMENDATIONS

The Counsel's Office (Roth), Max Friedersdorf, NSC and I recommend disapproval of H.R. 5446.

DECISION

Sign H.R. 5446 at Tab B and issue signing statement at Tab C which has been cleared by Doug Smith.

Approve _____ Disapprove _____

Veto H.R. 5446 and sign the memorandum of disapproval at Tab D.

Veto
Signed statement

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

OCT 2 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5446 - International Navigational Rules Act of 1976
Sponsor - Rep. Sullivan (D) Missouri and 9 others.

Last Day for Action

October 9, 1976 - Saturday

Purpose

Implements the Convention on the International Regulations for Preventing Collisions at Sea, 1972; and provides for a one-house congressional veto of any proposed changes to the international regulations.

Agency Recommendations

Office of Management and Budget	Disapproval (Memorandum of disapproval attached)
Department of State	Disapproval (Memorandum of disapproval attached)
Department of Justice	Constitutional objection but defers
Department of Defense	Defers on one-house veto provision but approves remainder of bill
Department of Commerce	Defers on one-house veto provision but approves remainder of bill
Department of Transportation	Approval (Signing statement attached)

Discussion

The Convention on the International Regulations for Preventing Collisions at Sea, 1972, which would bring what is commonly called the International Rules of the Nautical Road up to date with modern maritime practice and technology, was transmitted

to the Senate for its advice and consent on November 9, 1973. The Senate ratified the Convention on October 31, 1975. It is to go into effect on July 15, 1977, in the signatory nations, whose vessels total more than 65% of the world's merchant tonnage. It will not take effect in the United States, however, unless implementing legislation is enacted.

H.R. 5446 would implement the Convention and repeal the current international rules of the road which were adopted in 1960. The 1972 Convention contains significant changes from the 1960 Convention in the areas of navigation of vessels in sight of one another, operations in restricted visibility, sound and light signals, navigation in narrow channels, and vessel traffic separation schemes.

The enrolled bill would require persons operating vessels subject to the Act to comply with the Convention and related regulations promulgated by the Secretary of the Department in which the Coast Guard is operating -- Transportation (DOT) in peacetime, and Defense (DOD) in times of war. The Convention would apply to all U.S. flag vessels operating in U.S. territorial waters and on the high seas, and to foreign flag vessels in U.S. territorial waters. It would not apply to U.S. inland waterways, the Great Lakes, or the Gulf of Mexico. The bill would authorize the Coast Guard and DOD to issue exemptions and special regulations if needed for vessels owned by the United States. Civil penalties of up to $500 could be assessed and compromised by the Coast Guard for violations of the Act.

Justice objects to the penalty provisions of the enrolled bill because of "adverse litigatory consequences" and "the need to rationalize civil penalty legislation." A detailed explanation of Justice's position is contained in its attached views letter. DOT, in views submitted to OMB while this bill was in Congress, disagreed with Justice on this issue. We do not believe that this disagreement between the two agencies on the penalty provisions is a major consideration in determining Presidential action on this bill.

As enrolled , H.R. 5446 contains a provision that would allow a one-house congressional veto of any proposed changes to the international regulations. The Convention contains a tacit

amendment procedure. It specifies that any amendment to the regulations proposed by a signatory country must be approved by 2/3 of the General Assembly of the Inter-Governmental Maritime Consultative Organization (IMCO). IMCO would then set an effective date for the amendment and a cut-off date for objections to it, and send the proposed change to the signatory countries for action. The amendment would take effect on the date specified unless 1/3 of the signatory countries objected to it by the cut-off date. The change would not go into effect in those countries which objected to it. No positive action of acceptance is required.

The regulations adopted under the 1960 Convention are contained in statute in the United States. Changes to the regulations in the U.S. currently can be adopted only by an Act of Congress. The enrolled bill would incorporate the 1972 Convention regulations by reference, thus making it much easier to adopt changes to them, since an Act of Congress would not be needed each time.

The legislative proposal submitted to Congress by DOT provided that any suggested amendments to the international regulations would be reviewed and accepted or rejected by the President. The Congress amended the proposal, however, to provide for congressional review as well. Section 3(d) of H.R. 5446 would require that the President promptly transmit to Congress any proposed amendments received from IMCO. Either House of Congress could pass a simple resolution of disapproval within 60 days of its receipt of the amendment, or 10 days prior to the cut-off date for registering objections, whichever comes first. The President would then be required to register an objection with IMCO, if he had not done so already on his own behalf. In letters to the Senate Commerce Committee, both DOT and the State Department stated that this provision was extremely objectionable.

Agency Views

Justice believes this provision to be constitutionally objectionable as violative of Article I, Section 7 of the Constitution, but states that "We are aware that practical consideration regarding the bill's effect on navigation and the need to keep the United States current with other nations plying international waters

may result in Executive approval." Justice, therefore, defers to other agencies more directly concerned with the bill's subject matter. In the event the bill is signed, Justice recommends a statement calling attention to its unconstitutionality and to the fact that you have directed the Attorney General to join in a lawsuit challenging a similar provision in the Federal Election Campaign Act.

Agreeing with Justice on the unconstitutionality of Section 3(d), the State Department recommends that the bill be vetoed. The Department also points out that amendments to the regulations would also be amendments to a treaty, and that "there is ample precedent in U.S. practice for treaties or implementing legislation authorizing the President to enter into executive agreements modifying or implementing treaty provisions." State recognizes that a veto "creates at least the possibility of risk to life and property at sea" should the Congress fail to enact implementing legislation prior to July 1977, the effective date of the Convention, but does not believe the risk to be great enough to justify disregarding of an important constitutional principle. The Department is also concerned that this bill could be cited as a precedent for action by Congress in connection with future Conventions utilizing the tacit amendment procedure, as in this case.

Finally, State asserts that "Signature of this act, even with a signing statement of some kind would, in our view, contribute to the continued erosion of the constitutional balance between the President and the Congress."

In disagreement with Justice and State, DOT believes that, because of the special circumstances of this bill, the one-house veto provision is not unconstitutional. It points out that a one-house disapproval would not nullify an agency regulation or an executive commitment of funds that is authorized by law, but rather "would prevent a change in a treaty that could otherwise result from Presidential inaction." DOT states, however, that even if the provision is considered unconstitutional, there is "precedent for the President signing an enrolled bill, while reserving the issue of the constitutionality of the one-house veto. Such reservation was made in the President's statement on signing the Amtrak Improvement Act of 1975, P.L. 94-25." The Department recommends that such action be taken in this case. If the bill is not approved, DOT doubts that "acceptable legislation would be passed soon enough in the 95th Congress to allow time for orderly implementation of the 1972 International Regulations."

The Department is also concerned that disapproval of the bill could prompt the 95th Congress to return to a practice of incorporating the international regulations into statute, thus requiring an Act of Congress to amend them, inevitably leading to delay, with the result that U.S. regulations would be different from those of the other nations. According to DOT, failure of the United States to implement this Convention after being one of its major proponents, "when coupled with other recent United States rebuffs of international maritime agreements, would deal a serious blow to our influence in IMCO and the international maritime safety field and may have far reaching adverse consequences in the Law of the Sea negotiations." DOT proposes a signing statement, attached, which states that a resolution of disapproval will be regarded "as only an advisory opinion of the resolving House, not constitutionally binding on the President."

Commerce and Defense note the unconstitutionality of Section 3(d), but defer to Justice on whether the bill should be approved.

Recommendation

We concur in the State Department's recommendation that you veto the bill because of the constitutionally objectionable provision in Section 3(d). Because the next Congress will have six months to enact acceptable legislation implementing the Convention, the risk that is of concern to State and DOT does not appear to be a bar to disapproval of H.R. 5446.

A memorandum of disapproval is attached for your consideration.

Paul H. O'Neill
Acting Director

Enclosures

DEPARTMENT OF STATE

Washington, D.C. 20520

SEP 29 1976

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

Dear Mr. Lynn:

This is in reply to Mr. Frey's communication of September 27, requesting the Department of State's views on the enrolled bill titled "An Act to implement the Convention on the International Regulations for Preventing Collisions at Sea, 1972."

We believe that this legislation includes provisions which are clearly unconstitutional, and that it should not be approved by the President.

This legislation is intended to implement the United States obligations under the 1972 International Convention on the Regulations for Preventing Collisions at Sea. That Convention substantially changes generally accepted international navigational rules regarding such matters as the navigation of vessels in sight of one another, operations in restricted visibility, sound and light signals, navigation in narrow channels, and vessel traffic separation schemes. The United States strongly supported development of the 1972 Convention, and the Senate has given its advice and consent to ratification. U.S. ratification has been delayed pending enactment of appropriate implementing legislation. However, the Convention will enter into force for more than 65% of the world's merchant tonnage in July 1977, whether or not the United States ratifies.

The implementing legislation enacted by Congress differs considerably from that originally proposed by the Administration. We believe that one of these Congressional changes - section 3(d), relating to the procedure for adopting changes to the international rules is unconstitutional.

The 1972 Convention involves numerous highly technical rules. The negotiators sought to permit prompt amendment of these rules to reflect changing circumstances, including changing ship technology. Accordingly, Section 6 of the Convention utilizes a "tacit amendment" procedure. Under this procedure, amendments to the technical regulations must be approved by the Intergovernmental Maritime Consultative Organization (IMCO) and then recommended to governments. Governments would then have to state that they do not accept the amendment, or would be bound by them, provided a specified number of other governments accepted the amendments.

Any amendments adopted under the tacit amendment procedure would be amendments to a treaty. There is ample precedent in U.S. practice for treaties or implementing legislation authorizing the President to enter into executive agreements modifying or implementing treaty provisions. In preparing the implementing legislation which was recommended to Congress, the Administration drew upon these precedents and proposed legislation authorizing the President to accept or reject amendments proposed under the tacit amendment procedure. This legislation thus would have authorized the President to enter into executive agreements amending the treaty.

The legislation enacted by Congress abandoned this approach. Section 3(d) requires that the President promptly to report to Congress any amendment proposed by IMCO. Either house of Congress could then, by resolution, require the President to object to an amendment and thus prevent its entry into force for the United States. This approach is without precedent or legal justification.

Although we do not believe that it would be advisable in this case, constitutionally Congress might require that the Convention be amended only through the treaty process, with Senate advice and consent to ratification. It has not done so. Alternatively, and more appropriately, Congress could empower the President to enter into executive agreements amending the treaty. Conceivably, the Congress could reserve the right to disapprove particular proposed agreements through joint resolutions. However, this Bill goes much further by providing that either house, acting alone, could block adoption of an amendment and thereby direct the President to object to the amendment. Accordingly, this legislation conflicts with the clear requirement of Article I, Section 7, clause 3 of the

Constitution, that enactments intended to have the effect of law have the approval of both houses of Congress and be presented to the President for his approval or other action before taking effect.

Conclusion and Recommendation

We recommend that the President veto this legislation.

We recognize that such action may create substantial difficulties, and creates at least the possibility of risk to life and property at sea should the Congress fail to enact implementing legislation that would be Constitutional prior to the entry into force of the Convention in July of 1977. We do not believe that this risk is great enough to jusitfy disregarding of an important constitutional principle. Signature of this act, even with a signing statement of some kind would, in our view, contribute to the continued erosion of the constitutional balance between the President and the Congress. It would also set a clear precedent for future Congressional action in connection with future Conventions utilizing the tacit amendment procedure and could be cited as a precedent by supporters of the much broader and more dangerous Morgan-Zablocki Bill.

The Convention will enter into force in July of 1977. If the United States enacts suitable implementing legislation prior to that date, its ratification of the Convention can take effect on the date on which the Convention enters into force. Accordingly, there will be time during the early months of the next Congress to seek implementing legislation which meets the requirements of the Constitution.

A suggested message for the President is included with this report.

Sincerely,

Kempton B. Jenkins
Acting Assistant Secretary
for Congressional Relations

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

SEP 30 1976

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

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 5446, "To implement the Convention on the International Regulations for Preventing Collisions at Sea, 1972."

This act implements the Convention on the International Regulations for Preventing Collisions at Sea, 1972. The effect of this Convention is to bring what is commonly called the International Rules of the Nautical Road up to date with modern maritime practice and technology.

This being the case, the Convention and implementing legislation involve technical matters outside our competence and upon which the Department of Justice makes no recommendation except as indicated below.

The bill authorizes in Section 3(c) that the President may proclaim any amendment to the International Regulations hereafter adopted in accordance with the provisions of Article VI of the Convention, and to which the United States does not object. Such proclamation, after due time, would make the amendment constitute a part of the International Regulations and shall have the same effect as if enacted by statute. However, Section 3(c) is made subject to Section 3(d) of the bill, which section in effect authorizes a one-House veto of any amendments to the Rules, communicated to the United States pursuant to clause 3 of Article VI of the Convention.

You are aware of our constitutional objections to Section 3(c) as being violative of the provisions of Article I, Section 7 of the Constitution. We are aware that practical consideration regarding the bill's effect on navigation and

the need to keep the United States current with other nations plying international waters may result in Executive approval. In the event of Executive approval, the President may wish to note the unconstitutionality of the provision and to call attention to his having directed the Attorney General to become a party plaintiff in a lawsuit challenging the constitutionality of a comparable provision in the Federal Election Campaign Act (Clark v. Valeo, No. 76-1825, D.C. Cir. 1976).

In addition, section 9 of this Act would adversely affect Department of Justice penalty collection activities. Section 9 shows a need at least to discuss a more coherent approach to civil penalty legislation, which discussion I think should take place before you. There are four basic objections to this Act. The first of these relates both to the adverse litigating consequences and to the need to rationalize civil penalty legislation. The last three relate only to litigating difficulties.

There are basically two penalty-assessing methods used by Congress when providing a civil penalty for a forbidden activity. By far the older and therefore more common method is for Congress to forbid an act, which if committed makes the violator subject to a definite and certain penalty set by Congress. A second more recent method is for Congress to provide a maximum statutory penalty, vesting in the administering agency authority to assess an appropriate penalty within the statutory range.

Section 9 of this enrolled bill incorporates both methods. Section 9(a) provides that whoever operates a vessel in violation of the Act or of a Coast Guard regulation thereunder shall be liable to a civil penalty of not more than $500. Section 9(b) provides that a vessel operated in violation of the Act or regulation shall be liable in rem to a civil penalty of $500, for which she may be seized and proceeded against in any district court within whose district she may be found. Without distinguishing between these two methods, Section 9(c) authorizes the Secretary to "assess any civil penalty authorized by this section", upon notice and after hearing. For cause, the Secretary may thereafter remit, mitigate, or compromise any penalty he has assessed. The Secretary may then refer the case to the Attorney General should the violator fail to pay the penalty assessed.

The first of this Department's four grounds of objection is the apparent conflict between sections 9(b) and (c).

Section 9(b) clearly contemplates a judicial proceeding, which necessarily implies the determination of liability. Yet section 9(c) sayd that the Secretary may assess any civil penalty authorized by this Section. Congress has set the penalty, so that the Secretary has no authority to set the penalty amount. This leaves the arguable construction then, that the Secretary could "assess" liability.

Fortunately, this possible breach of the separation of powers is only apparent. For it is possible, indeed necessary, to construe section 9(b) as vesting the traditional exclusive jurisdiction in the district courts, without derogation by 9(c). But careful legislative drafting which kept in mind the difference between the two penalty methods would have eliminated the need for litigation leading to such a construction. The lack of such care illustrates the need for precise terminology and concepts.

The unfortunate effect of the Act as couched will be that we will not only be contending in court with future defendants, but with our own client agency. For it is quite likely that the Secretary will give the Act the fullest possible reading from his point of view, and will construe it as authorizing him to assess vessel liability under section 9(b). If he does so, previous experience to be discussed immediately below suggests that alleged violators will not be offered administrative due process. The Coast Guard (which will administer this Act) agrees that due process must be accorded, but has taken the unvarying position that it must be accorded by the district court on a new trial. One probable consequence of the time consumed is that the vessel will escape, leaving the district courts without jurisdiction come enforcement time.

The remaining three of the four basic objections expressed below relate both to sections 9(a) and 9(b) proceedings under this Act.

The second basic objection is that the Coast Guard construes similar language in other acts as not requiring

it to offer even the most rudimentary administrative due process. Obviously the bill contemplates the administrative assessment of a firm and binding penalty. No firm and binding penalty can be assessed without due process. It will not do to say that the courts later can offer due process should the violator elect to review the assessment, for the bill does not authorize the courts to assess the penalty; they can only enforce or remand. But if the assessment under review was made without due process, the courts can only remand and order the Coast Guard to grant due process and assess a proper penalty. Accordingly, the bill should at the outset require administrative due process and clothe the agency with all the powers necessary to accomplish this end.

The third basic objection is that the bill fails to provide that the Secretary's mitigating power ends upon referral to the Attorney General. Similar power in the Coast Guard under 46 U.S.C. 7 has been construed to authorize remission even after entry of final judgment. 29 Op. Atty. Gen. 149. This conflicts with the Attorney General's plenary control over litigation. Accordingly, this bill should provide expressly that the Secretary's functions end when the Attorney General's begin.

The fourth basic objection is that the bill authorizes the Secretary to exercise his discretion twice in arriving at but a single penalty; he is first authorized in his discretion to assess, then in his discretion to remit or to mitigate. There appears no logic in exercising twice that discretion which can be exercised all at once to reach one result. Discretion exercised once yields a definite, dignified and vigorous result which we can pursue with dignity and vigor in court. Discretion exercised twice would give the appearance, if not actually reflect the fact, of mere vacillation, or arbitrariness.

Having made our objections known, the Department of Justice defers to those agencies more directly concerned with the subject matter of the bill as to whether it should receive Executive approval.

Sincerely,

(Signed) Michael M. Uhlmann

Michael M. Uhlmann
Assistant Attorney General

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

September 29, 1976

Dear Mr. Lynn:

Your transmittal sheet dated September 27, 1976, enclosing a facsimile of an enrolled bill of Congress, H.R. 5446 "To implement the Convention on the International Regulations for Preventing Collisions at Sea, 1972," and requesting the comments of the Department of Defense, has been received. The Department of the Navy has been assigned the responsibility for the preparation of a report expressing the views of the Department of Defense.

As stated in its title, the purpose of H.R. 5446 is to implement the Convention on the International Regulations for Preventing Collisions at Sea, 1972. This Convention, if implemented, would supersede the International Rules now in effect which were proposed in 1960 and adopted for United States vessels in 1963 as provided in Public Law 88-131 (77 Stat. 194; 33 U.S.C. 1061-1094).

Since the Senate gave its advice and consent to ratification of the Convention on October 31, 1975, the only act necessary to bring the rules into effect for United States vessels is the enactment of the implementing legislation of H.R. 5446.

It is noted that Section 3(d)(1) of H.R. 5446 contains provisions making proposed amendments to the Convention subject to a 60-day review period during which either House of Congress may disapprove the amendment by simple resolution. The President has previously expressed his opposition to such provisions as being contrary to the general principle of separation of powers and violative of Article I, Section 7 of the Constitution. The Department of the Navy defers to the Department of Justice on the merits of Section 3(d)(1).

Subject to the above, the Department of the Navy, on behalf of the Department of Defense, strongly supports H.R. 5446.

Sincerely yours,

David R. Macdonald

David R. Macdonald
Acting Secretary of the Navy

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

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

September 30, 1976

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

Dear Mr. Lynn:

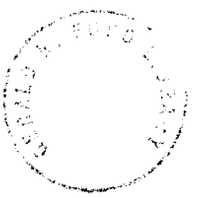
In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 5446, "To implement the Convention on the International Regulations for Preventing Collisions at Sea, 1972."

This act implements the Convention on the International Regulations for Preventing Collisions at Sea, 1972. The effect of this Convention is to bring what is commonly called the International Rules of the Nautical Road up to date with modern maritime practice and technology.

This being the case, the Convention and implementing legislation involve technical matters outside our competence and upon which the Department of Justice makes no recommendation except as indicated below.

The bill authorizes in Section 3(c) that the President may proclaim any amendment to the International Regulations hereafter adopted in accordance with the provisions of Article VI of the Convention, and to which the United States does not object. Such proclamation, after due time, would make the amendment constitute a part of the International Regulations and shall have the same effect as if enacted by statute. However, Section 3(c) is made subject to Section 3(d) of the bill, which section in effect authorizes a one-House veto of any amendments to the Rules, communicated to the United States pursuant to clause 3 of Article VI of the Convention.

You are aware of our constitutional objections to Section 3(c) as being violative of the provisions of Article I, Section 7 of the Constitution. We are aware that practical consideration regarding the bill's effect on navigation and



the need to keep the United States current with other nations plying international waters may result in Executive approval. In the event of Executive approval, the President may wish to note the unconstitutionality of the provision and to call attention to his having directed the Attorney General to become a party plaintiff in a lawsuit challenging the constitutionality of a comparable provision in the Federal Election Campaign Act (Clark v. Valeo, No. 76-1825, D.C. Cir. 1976).

In addition, section 9 of this Act would adversely affect Department of Justice penalty collection activities. Section 9 shows a need at least to discuss a more coherent approach to civil penalty legislation, which discussion I think should take place before you. There are four basic objections to this Act. The first of these relates both to the adverse litigating consequences and to the need to rationalize civil penalty legislation. The last three relate only to litigating difficulties.

There are basically two penalty-assessing methods used by Congress when providing a civil penalty for a forbidden activity. By far the older and therefore more common method is for Congress to forbid an act, which if committed makes the violator subject to a definite and certain penalty set by Congress. A second more recent method is for Congress to provide a maximum statutory penalty, vesting in the administering agency authority to assess an appropriate penalty within the statutory range.

Section 9 of this enrolled bill incorporates both methods. Section 9(a) provides that whoever operates a vessel in violation of the Act or of a Coast Guard regulation thereunder shall be liable to a civil penalty of not more than $500. Section 9(b) provides that a vessel operated in violation of the Act or regulation shall be liable in rem to a civil penalty of $500, for which she may be seized and proceeded against in any district court within whose district she may be found. Without distinguishing between these two methods, Section 9(c) authorizes the Secretary to "assess any civil penalty authorized by this section", upon notice and after hearing. For cause, the Secretary may thereafter remit, mitigate, or compromise any penalty he has assessed. The Secretary may then refer the case to the Attorney General should the violator fail to pay the penalty assessed.

The first of this Department's four grounds of objection is the apparent conflict between sections 9(b) and (c).

Section 9(b) clearly contemplates a judicial proceeding, which necessarily implies the determination of liability. Yet section 9(c) sayd that the Secretary may assess any civil penalty authorized by this Section. Congress has set the penalty, so that the Secretary has no authority to set the penalty amount. This leaves the arguable construction then, that the Secretary could "assess" liability.

Fortunately, this possible breach of the separation of powers is only apparent. For it is possible, indeed necessary, to construe section 9(b) as vesting the traditional exclusive jurisdiction in the district courts, without derogation by 9(c). But careful legislative drafting which kept in mind the difference between the two penalty methods would have eliminated the need for litigation leading to such a construction. The lack of such care illustrates the need for precise terminology and concepts.

The unfortunate effect of the Act as couched will be that we will not only be contending in court with future defendants, but with our own client agency. For it is quite likely that the Secretary will give the Act the fullest possible reading from his point of view, and will construe it as authorizing him to assess vessel liability under section 9(b). If he does so, previous experience to be discussed immediately below suggests that alleged violators will not be offered administrative due process. The Coast Guard (which will administer this Act) agrees that due process must be accorded, but has taken the unvarying position that it must be accorded by the district court on a new trial. One probable consequence of the time consumed is that the vessel will escape, leaving the district courts without jurisdiction come enforcement time.

The remaining three of the four basic objections expressed below relate both to sections 9(a) and 9(b) proceedings under this Act.

The second basic objection is that the Coast Guard construes similar language in other acts as not requiring

it to offer even the most rudimentary administrative due process. Obviously the bill contemplates the administrative assessment of a firm and binding penalty. No firm and binding penalty can be assessed without due process. It will not do to say that the courts later can offer due process should the violator elect to review the assessment, for the bill does not authorize the courts to assess the penalty; they can only enforce or remand. But if the assessment under review was made without due process, the courts can only remand and order the Coast Guard to grant due process and assess a proper penalty. Accordingly, the bill should at the outset require administrative due process and clothe the agency with all the powers necessary to accomplish this end.

The third basic objection is that the bill fails to provide that the Secretary's mitigating power ends upon referral to the Attorney General. Similar power in the Coast Guard under 46 U.S.C. 7 has been construed to authorize remission even after entry of final judgment. 29 Op. Atty. Gen. 149. This conflicts with the Attorney General's plenary control over litigation. Accordingly, this bill should provide expressly that the Secretary's functions end when the Attorney General's begin.

The fourth basic objection is that the bill authorizes the Secretary to exercise his discretion twice in arriving at but a single penalty; he is first authorized in his discretion to assess, then in his discretion to remit or to mitigate. There appears no logic in exercising twice that discretion which can be exercised all at once to reach one result. Discretion exercised once yields a definite, dignified and vigorous result which we can pursue with dignity and vigor in court. Discretion exercised twice would give the appearance, if not actually reflect the fact, of mere vacillation, or arbitrariness.

Having made our objections known, the Department of Justice defers to those agencies more directly concerned with the subject matter of the bill as to whether it should receive Executive approval.

Sincerely,

Michael M. Uhlmann
Assistant Attorney General

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

September 30, 1976

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

Dear Mr. Lynn:

Reference is made to your request for the views of the Department of Transportation concerning H.R. 5446, an enrolled bill

> "To implement the Convention on the International Regulations for preventing Collisions at Sea, 1972."

The International Regulations for Preventing Collisions at Sea, 1972 will become effective for the great majority of major maritime nations on July 15, 1977. The 1972 International Regulations will replace the 1960 international rules which have been in force since 1965 for certain territorial waters of the United States and for United States flag vessels on the high seas under the authority of P.L. 88-131 (33 U.S.C. 1051 et seq). The 1972 International Regulations are a much needed revision and reorganization of the international rules that reflect the rapid technological changes in maritime commerce and in operations in the marine environment.

This Act is the culmination of eight years of effort to further promote safety of life and property at sea. The need for uniformity in the rules governing the navigation of vessels on the high seas compels the Department to recommend most strongly that the President sign the bill. Should the United States fail to enact implementing legislation (the deposit of the instrument of ratification of the Convention has been held in abeyance pending enactment of this legislation since the Senate gave its advice and consent on October 28, 1975) a potentially chaotic situation may result in which United States vessels on the high seas are required to comply with the statutory 1960 rules while the vessels of a large majority of the major maritime nations comply with the 1972 International Regulations. Similarly, foreign vessels in large portions of United States territorial waters would be required by United States statutory law to comply with the outmoded 1960 international rules instead of the 1972

International Regulations that they follow elsewhere. In both situations, misunderstandings are possible and the risk of collision and attendant loss of life and pollution both on the high seas and in the territorial waters of the United States will be increased correspondingly.

The question of a possible veto of the enrolled bill has been raised out of concern over the procedure adopted by the Congress in relation to future amendments to the International Regulations. Because rules governing the conduct of mariners must keep pace with technological change, the Convention provides a rapid amendment procedure for changes to the International Regulations and the annexes thereto. Under this procedure, proposed amendments will be studied by the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization (IMCO) and after approval by the Assembly of IMCO will be sent to Contracting Parties for their acceptance. In order to prevent an amendment from entering into force, Contracting Parties will have to take affirmative action by objecting to the proposed amendment. In the absence of objections by one-third of the Contracting Parties, the amendment will come into force for the non-objecting Contracting Parties on the date specified by the Assembly. The United States delegation was an active proponent of this rapid amendment procedure at the Conference, because the adoption of this procedure will avoid the five to ten year delays that have been experienced heretofore in the implementation of changes to international collision regulations.

The Administration proposal submitted to Congress provided that amendments to the International Regulations will be implemented by the Secretary of Transportation after consultation with the Secretary of State and an opportunity for public comment. The House of Representatives amended H.R. 5446 to require that the text of proposed amendments received from the IMCO Assembly be sent to the Congress and that if within 60 days, either House of Congress passed a simple resolution of disapproval concerning a proposed amendment, the President would be obligated to register an objection with IMCO. At the request of your office and in support of the views of the Departments of Justice and State, the Department of Transportation registered an objection to this provision on the grounds that it violated the Presentation Clauses of the Constitution (Art. I, Section 7, cl. 2-3) and

the principle of separation of powers, despite our view that the provisions of this bill can readily be distinguished from other Congressional assertions of veto authority.

Unlike H.R. 12944 (Federal Insecticide, Fungicide and Rodenticide Act) and H.R. 12567 (Appropriations for Federal Fire Prevention and Control), which were vetoed by the President, the "resolution of disapproval" provided for in H.R. 5446 will not nullify either an agency regulation or an executive commitment of funds that is authorized by law. Rather a resolution of disapproval of a proposed amendment to the International Regulations would require the President to register an objection to IMCO before the amendment attained the force and effect of law; it would prevent a change in a treaty that could otherwise result from Presidential inaction. Our review of existing statutes as well as vetoed bills reveals no situation where Congress has given up its direct legislative control over a subject, and in effect, delegated to an international body and the President final authority over regulations having the force and effect of law in the United States. Although amendments to the International Regulations are expected to be technical and non-controversial in nature, and the United States will be represented in the IMCO-approval stage of any proposed amendment, H.R. 5446 is a substantial concession by the Congress, despite the attempted reservation of veto authority.

Should this bill not be signed, the Administration will have to press the 95th Congress for prompt action on implementing legislation. While a joint resolution of disapproval was urged as an acceptable compromise, traditionally Congress has enacted the International Collision Regulations into positive law, and could well return to the practice of statutory enactment in order to maintain full control over the subject matter. This would be a step backward from the Administration's objective of promoting a rapid amendment procedure, and would almost inevitably result in recurring inconsistencies between United States law and the internationally accepted collision regulations. In the absence of Presidential objection, amendments approved by the IMCO Assembly would be binding on the United States, within a limited period of time, yet either House of Congress, by inaction, could prevent the amendment from coming into full effect in regard to the United States. Alternatively, pending the passage of legislation implementing the amendment, the United States would have to register its objection with IMCO within the specified period, but the Convention has no provisions for withdrawing the objection once United States

statutory provisions are brought into conformity with the amended Convention. While not conforming to the Administration's proposal, the provisions of H.R. 5446 will not pose practical problems since Congressional action must take place during the time the President would normally have a proposed amendment under consideration.

As suggested above this Department believes that due to the particular circumstances of the rapid amendment article of the Convention the procedures imposed by the Congress are not unconstitutional and we recommend that the enrolled bill be signed. If, however, the President adopts the contrary view we nevertheless urge that the President sign the bill and issue a statement indicating he has been advised that the one-house veto is unconstitutional.

There is precedent for the President signing an enrolled bill, while reserving the issue of the constitutionality of the one-house veto. Such a reservation was made in the President's statement on signing the Amtrak Improvement Act of 1975, P.L. 94-25. Also in signing P.L. 94-88, the President restated the view that one-house disapproval of proposed regulations was an unconstitutional exercise of Congressional power, while recognizing that it is proper for Congress to request information and to be consulted. The President went on to indicate that the veto provision of that Act would be treated "simply as a request for information."

Since the 1972 International Regulations will go into effect on 15 July 1977, prompt action to place these regulations into effect for U.S. vessels and U.S. waters is essential. If the enrolled bill is not signed we seriously doubt that acceptable legislation would be passed soon enough in the 95th Congress to allow time for orderly implementation of the 1972 International Regulations, in view of the regulatory action that must be accomplished. For example, under the provisions of Rule 1(e) of the International Regulations, as implemented by section 6 of the enrolled bill, exemptions for individual vessels will have to be granted and published prior to the effective date.

Failure of the United States to give effect to the 1972 International Regulations and to deposit its accession to the Convention, when coupled with other recent United States rebuffs of international maritime agreements, would deal a serious blow to our influence in IMCO and the international maritime safety field and may have far reaching adverse consequences in the Law of the Sea negotiations.

The Department of Transportation urges that, the President sign the enrolled bill. If deemed necessary he could issue a statement indicating the one-house veto provision is considered unconstitutional and will be regarded as only an advisory opinion. A draft statement which would accomplish this is attached.

Sincerely,

John W. Barnum
Acting

THE ASSISTANT SECRETARY OF COMMERCE
Washington, D.C. 20230

OCT 1 1976

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. 5446, an enrolled enactment

"To implement the Convention on the International Regulations for Preventing Collisions at Sea, 1972,"

to be cited as the "International Navigational Rules Act of 1976".

This enrolled enactment authorizes the President to proclaim the International Regulations for Preventing Collisions at Sea, 1972 and requires, with certain exceptions, that all public and private vessels of the United States, while upon the high seas, or in waters connected therewith, navigable by sea-going vessels, and all other vessels on waters subject to the jurisdiction of the United States, shall comply with the regulations. Civil penalties are provided for persons operating a vessel subject to the Act in violation of the provisions of the Act.

The Department of Commerce recommends approval by the President of H. R. 5446.

We note that section 3(d) of the enrolled enactment provides for disapproval by either House of the Congress of amendments to the International Regulations hereafter adopted. With respect to the constitutionality of this provision, we would defer to the views of the Department of Justice.

Enactment of this legislation would not require any additional appropriations to this Department.

Sincerely,

Robert J. Blackwell

Robert J. Blackwell
Assistant Secretary
for Maritime Affairs

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 6 1976

THE ADMINISTRATOR

Dear Mr. Lynn:

We would like to take this opportunity to endorse the views on maritime safety that the Department of Transportation has expressed on H.R. 5446, an enrolled bill implementing the 1972 Convention on the International Regulations for Preventing Collisions at Sea.

Failure to enact H.R. 5446 may have a deleterious effect on the marine environment by creating a dual standard of safety for vessels travelling on the high seas. The 1972 International Regulations will become effective on July 15, 1977 and vessels of a large majority of the maritime nations will begin complying with the 1972 International Regulations. If H.R. 5446 is not enacted, ships with United States flags will continue to comply with the 1960 International Regulations and foreign vessels in large portions of the United States territorial waters will be required by United States law to comply also with these outdated regulations. The resulting effect of having two sets of rules will be confusion and a lack of uniformity which may result in an increase in maritime collision. More collisions will, of course, increase pollution of the marine environment.

To help promote maritime safety and assist in the protection of the marine environment, I recommend that the enrolled bill be signed into law.

Sincerely yours,

Russell E. Train

Russell E. Train

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

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 2 Time: 600pm

FOR ACTION: NSC/S
Max Friedersdorf
Bobbie Kilberg
Robert Hartmann
Judy Hope

cc (for information): Jack Marsh
Jim Connor
Paul Leach
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 4 Time: 1100am

SUBJECT:

H.R. 5446-International Navigational Rules Act of 1976

ACTION REQUESTED:

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

REMARKS:

please return to judy johnston,ground floor west wing

Concur in OMB's recommendation for disapproval on the assumption that implementing legislation as a realistic chance for passage prior to the effective date of the treaty. In the envent the decision is reached to sign this legislation, the signing statement should note the constitutional defect contained in Section 3(d).

Barry Roth 10/4

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 M. Cannon
For ..

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date October 2 Time: 600pm

FOR ACTION: NSC/S
Max Friedersdorf M.F.
Bobbie Kilberg
Robert Hartmann
Judy Hope

cc (for information): Jack Marsh
Jim Connor
Paul Leach
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 4 Time: 1100am

SUBJECT:

H.R. 5446-International Navigational Rules Act of 1976

ACTION REQUESTED:

____ For Necessary Action
____ For Your Recommendations
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X For Your Comments
____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

Recommend veto. -JMC

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 M. Cannon
For ...

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

Mike Duval

OCT 2 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5446 - International Navigational Rules Act of 1976
Sponsor - Rep. Sullivan (D) Missouri and 9 others.

Recommend Veto

Last Day for Action

October 9, 1976 - Saturday

Purpose

Implements the Convention on the International Regulations for Preventing Collisions at Sea, 1972; and provides for a one-house congressional veto of any proposed changes to the international regulations.

Agency Recommendations

Office of Management and Budget	Disapproval (Memorandum of disapproval attached)
Department of State	Disapproval (Memorandum of disapproval attached)
Department of Justice	Constitutional objection but defers
Department of Defense	Defers on one-house veto provision but approves remainder of bill
Department of Commerce	Defers on one-house veto provision but approves remainder of bill
Department of Transportation	Approval (Signing statement attached)

Discussion

The Convention on the International Regulations for Preventing Collisions at Sea, 1972, which would bring what is commonly called the International Rules of the Nautical Road up to date with modern maritime practice and technology, was transmitted

MEMORANDUM 5538

NATIONAL SECURITY COUNCIL

October 4, 1976

MEMORANDUM FOR: JAMES M. CANNON

FROM: Jeanne W. Davis for

SUBJECT: H. R. 5446

The NSC Staff concurs in the memorandum of disapproval for H. R. 5446 - International Navigational Rules Act of 1976,

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

OCT 2 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5446 - International Navigational Rules Act of 1976
Sponsor - Rep. Sullivan (D) Missouri and 9 others.

Last Day for Action

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Purpose

Implements the Convention on the International Regulations for Preventing Collisions at Sea, 1972; and provides for a one-house congressional veto of any proposed changes to the international regulations.

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Department of Commerce	Defers on one-house veto provision but approves remainder of bill
Department of Transportation	Approval (Signing statement attached)

Discussion

The Convention on the International Regulations for Preventing Collisions at Sea, 1972, which would bring what is commonly called the International Rules of the Nautical Road up to date with modern maritime practice and technology, was transmitted

Statement for use if
Bill is approved

Paper
Bill was Voted and attached
was not used!

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

September 30, 1976

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

Dear Mr. Lynn:

Reference is made to your request for the views of the Department of Transportation concerning H.R. 5446, an enrolled bill

> "To implement the Convention on the International Regulations for preventing Collisions at Sea, 1972."

The International Regulations for Preventing Collisions at Sea, 1972 will become effective for the great majority of major maritime nations on July 15, 1977. The 1972 International Regulations will replace the 1960 international rules which have been in force since 1965 for certain territorial waters of the United States and for United States flag vessels on the high seas under the authority of P.L. 88-131 (33 U.S.C. 1051 et seq). The 1972 International Regulations are a much needed revision and reorganization of the international rules that reflect the rapid technological changes in maritime commerce and in operations in the marine environment.

This Act is the culmination of eight years of effort to further promote safety of life and property at sea. The need for uniformity in the rules governing the navigation of vessels on the high seas compels the Department to recommend most strongly that the President sign the bill. Should the United States fail to enact implementing legislation (the deposit of the instrument of ratification of the Convention has been held in abeyance pending enactment of this legislation since the Senate gave its advice and consent on October 28, 1975) a potentially chaotic situation may result in which United States vessels on the high seas are required to comply with the statutory 1960 rules while the vessels of a large majority of the major maritime nations comply with the 1972 International Regulations. Similarly, foreign vessels in large portions of United States territorial waters would be required by United States statutory law to comply with the outmoded 1960 international rules instead of the 1972

International Regulations that they follow elsewhere. In both situations, misunderstandings are possible and the risk of collision and attendant loss of life and pollution both on the high seas and in the territorial waters of the United States will be increased correspondingly.

The question of a possible veto of the enrolled bill has been raised out of concern over the procedure adopted by the Congress in relation to future amendments to the International Regulations. Because rules governing the conduct of mariners must keep pace with technological change, the Convention provides a rapid amendment procedure for changes to the International Regulations and the annexes thereto. Under this procedure, proposed amendments will be studied by the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization (IMCO) and after approval by the Assembly of IMCO will be sent to Contracting Parties for their acceptance. In order to prevent an amendment from entering into force, Contracting Parties will have to take affirmative action by objecting to the proposed amendment. In the absence of objections by one-third of the Contracting Parties, the amendment will come into force for the non-objecting Contracting Parties on the date specified by the Assembly. The United States delegation was an active proponent of this rapid amendment procedure at the Conference, because the adoption of this procedure will avoid the five to ten year delays that have been experienced heretofore in the implementation of changes to international collision regulations.

The Administration proposal submitted to Congress provided that amendments to the International Regulations will be implemented by the Secretary of Transportation after consultation with the Secretary of State and an opportunity for public comment. The House of Representatives amended H.R. 5446 to require that the text of proposed amendments received from the IMCO Assembly be sent to the Congress and that if within 60 days, either House of Congress passed a simple resolution of disapproval concerning a proposed amendment, the President would be obligated to register an objection with IMCO. At the request of your office and in support of the views of the Departments of Justice and State, the Department of Transportation registered an objection to this provision on the grounds that it violated the Presentation Clauses of the Constitution (Art. I, Section 7, cl. 2-3) and

the principle of separation of powers, despite our view that the provisions of this bill can readily be distinguished from other Congressional assertions of veto authority.

Unlike H.R. 12944 (Federal Insecticide, Fungicide and Rodenticide Act) and H.R. 12567 (Appropriations for Federal Fire Prevention and Control), which were vetoed by the President, the "resolution of disapproval" provided for in H.R. 5446 will not nullify either an agency regulation or an executive commitment of funds that is authorized by law. Rather a resolution of disapproval of a proposed amendment to the International Regulations would require the President to register an objection to IMCO before the amendment attained the force and effect of law; it would prevent a change in a treaty that could otherwise result from Presidential inaction. Our review of existing statutes as well as vetoed bills reveals no situation where Congress has given up its direct legislative control over a subject, and in effect, delegated to an international body and the President final authority over regulations having the force and effect of law in the United States. Although amendments to the International Regulations are expected to be technical and non-controversial in nature, and the United States will be represented in the IMCO-approval stage of any proposed amendment, H.R. 5446 is a substantial concession by the Congress, despite the attempted reservation of veto authority.

Should this bill not be signed, the Administration will have to press the 95th Congress for prompt action on implementing legislation. While a joint resolution of disapproval was urged as an acceptable compromise, traditionally Congress has enacted the International Collision Regulations into positive law, and could well return to the practice of statutory enactment in order to maintain full control over the subject matter. This would be a step backward from the Administration's objective of promoting a rapid amendment procedure, and would almost inevitably result in recurring inconsistencies between United States law and the internationally accepted collision regulations. In the absence of Presidential objection, amendments approved by the IMCO Assembly would be binding on the United States, within a limited period of time, yet either House of Congress, by inaction, could prevent the amendment from coming into full effect in regard to the United States. Alternatively, pending the passage of legislation implementing the amendment, the United States would have to register its objection with IMCO within the specified period, but the Convention has no provisions for withdrawing the objection once United States

statutory provisions are brought into conformity with the amended Convention. While not conforming to the Administration's proposal, the provisions of H.R. 5446 will not pose practical problems since Congressional action must take place during the time the President would normally have a proposed amendment under consideration.

As suggested above this Department believes that due to the particular circumstances of the rapid amendment article of the Convention the procedures imposed by the Congress are not unconstitutional and we recommend that the enrolled bill be signed. If, however, the President adopts the contrary view we nevertheless urge that the President sign the bill and issue a statement indicating he has been advised that the one-house veto is unconstitutional.

There is precedent for the President signing an enrolled bill, while reserving the issue of the constitutionality of the one-house veto. Such a reservation was made in the President's statement on signing the Amtrak Improvement Act of 1975, P.L. 94-25. Also in signing P.L. 94-88, the President restated the view that one-house disapproval of proposed regulations was an unconstitutional exercise of Congressional power, while recognizing that it is proper for Congress to request information and to be consulted. The President went on to indicate that the veto provision of that Act would be treated "simply as a request for information."

Since the 1972 International Regulations will go into effect on 15 July 1977, prompt action to place these regulations into effect for U.S. vessels and U.S. waters is essential. If the enrolled bill is not signed we seriously doubt that acceptable legislation would be passed soon enough in the 95th Congress to allow time for orderly implementation of the 1972 International Regulations, in view of the regulatory action that must be accomplished. For example, under the provisions of Rule 1(e) of the International Regulations, as implemented by section 6 of the enrolled bill, exemptions for individual vessels will have to be granted and published prior to the effective date.

Failure of the United States to give effect to the 1972 International Regulations and to deposit its accession to the Convention, when coupled with other recent United States rebuffs of international maritime agreements, would deal a serious blow to our influence in IMCO and the international maritime safety field and may have far reaching adverse consequences in the Law of the Sea negotiations.

The Department of Transportation urges that, the President sign the enrolled bill. If deemed necessary he could issue a statement indicating the one-house veto provision is considered unconstitutional and will be regarded as only an advisory opinion. A draft statement which would accomplish this is attached.

Sincerely,

ORIGINAL SIGNED BY

John W. Barnum
Acting

Proposed Statement upon signing H.R. 5446

I have today signed H.R. 5446, the International Navigational Rules Act of 1976.

This Act implements the Convention on the International Regulations for Preventing Collisions at Sea, 1972, the nautical rules of the road that will go into effect on July 15, 1977. The Convention was developed over a period of four years through the efforts of the Inter-Governmental Maritime Consultative Organization (IMCO), culminating in a conference held in London in the fall of 1972 in which fifty-two Governments, including the United States, participated. On November 9, 1973 the Convention was transmitted to the Senate and on October 29, 1975 that body gave its advice and consent to the ratification of the Convention by the United States. Deposit of our instrument of ratification has been withheld pending the enactment of implementing legislation.

This Act, passed in the final days of the 94th Congress, culminates eight years of effort to modernize the International Collision Regulations, so that they reflect present day technology and the operation of vessels, such as supertankers, not envisioned when the rules were last revised. The Act authorizes the President to issue the new International Collision Regulations by executive proclamation. In order to promote the safety of life and property at sea and to protect our coastal environment, it is imperative that all vessels follow the same rules of the road. Therefore, the United States must become a party to the Convention and implement the International Collision Regulations at the same time as other nations.

The Convention establishes a procedure for the rapid amendment of the International Collision Regulations and the annexes thereto in an effort to reduce the time needed to effect changes. The Administration's proposed implementing legislation sought to take maximum advantage of this procedure. Regrettably, however, the Congress has amended the Administration's proposal to require that future amendments to the International Collision Regulations which are adopted by IMCO be submitted to the Congress and to require the President to register an objection to a proposed amendment if either House of Congress passes a simple resolution of disapproval. I have been advised that this provision is unconstitutional under the provisions of Article I, Section 7, clause 3 of the Constitution. I have vetoed several bills solely because they contained similar provisions. However, I have decided to sign this bill in order to avoid any possibility that United States vessels or our coastal waters may be endangered by delayed implementation of the International Collision Regulations by the United States. Since Congress has adjourned, a veto of this bill would result in intolerable delay in the United States implementation of the revised International Collision Regulations.

Should future amendments to the International Collision Regulations be proposed, I will inform the Congress of the contents of such proposals. However, I will regard a simple resolution of disapproval of any proposed amendment as only an advisory opinion of the resolving House, not constitutionally binding on the President. At the same time, in view of the highly technical nature of the Rules, I do not anticipate that Congress and the President will have occasion to disagree on the adoption by the United States of amendments affecting maritime safety which have been developed and recommended by IMCO.

DOT

Proposed Statement upon signing H.R. 5446

I have today signed H.R. 5446, the International Navigational Rules Act of 1976.

This Act implements the Convention on the International Regulations for Preventing Collisions at Sea, 1972, the nautical rules of the road that will go into effect on July 15, 1977. The Convention was developed over a period of four years through the efforts of the Inter-Governmental Maritime Consultative Organization (IMCO), culminating in a conference held in London in the fall of 1972 in which fifty-two Governments, including the United States, participated. On November 9, 1973 the Convention was transmitted to the Senate and on October 29, 1975 that body gave its advice and consent to the ratification of the Convention by the United States. Deposit of our instrument of ratification has been withheld pending the enactment of implementing legislation.

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10/4/76 - 9:55 am

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 2 Time: 600pm

FOR ACTION: NSC/S
Max Friedersdorf
Bobbie Kilberg
Robert Hartmann
Judy Hope

cc (for information): Jack Marsh
Jim Connor
Ed Schmults
Paul Leach

276 to Pres 10/4 10:00 am

FROM THE STAFF SECRETARY

DUE: Date: October 4 Time: 1100am

SUBJECT:

H.R. 5446-International Navigational Rules Act of 1976

ACTION REQUESTED:

____ For Necessary Action
____ For Your Recommendations
____ Prepare Agenda and Brief
____ Draft Reply
X For Your Comments
____ 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.

James M. Cannon
For ...

MEMORANDUM OF DISAPPROVAL

I am today withholding my signature from H.R. 5446, a bill to implement the United States obligations under the Convention on the International Regulations for Preventing Collisions at Sea, 1972.

The bill includes a provision which I believe to be unconstitutional. It would empower either the House of Representatives or the Senate to block amendments to the Convention's regulations merely by passing a resolution of disapproval.

This provision is incompatible with the express provision in the Constitution that a resolution having the force and effect of law must be presented to the President and, if disapproved, repassed by a two-thirds majority in the Senate and the House of Representatives. It extends to the Congress the power to prohibit specific transactions authorized by law without changing the law -- and without following the constitutional process such a change would require. Moreover, it would involve the Congress directly in the performance of Executive functions in disregard of the fundamental principle of separation of powers.

I believe that this procedure is contrary to the Constitution, and that my approval of it would threaten an erosion of the constitutional powers and responsibilities of the President. I have already directed the Attorney General to become a party plaintiff in a lawsuit challenging the constitutionality of a similar provision in the Federal Election Campaign Act.

In addition, this provision would allow the House of Representatives to block adoption of what is essentially an amendment to a treaty, a responsibility which is reserved by the Constitution to the Senate.

This legislation would forge impermissible shackles on the President's ability to carry out the laws and conduct the foreign relations of the United States. The President cannot function effectively in domestic matters, and speak for the nation authoritatively in foreign affairs, if his decisions under authority previously conferred can be reversed by a bare majority of one-house of the Congress.

The Convention-- which has already been approved by the Senate--makes important changes in the international rules for safe navigation. It will enter into force in July of 1977. The United States should become a party to it. If the United States does not implement the Convention before it enters into force, there will be major differences between the navigational rules followed by U.S. ships and by the ships of many other countries. These differences will increase the danger of collisions at sea and create hazards to life and property at sea.

I strongly urge the 95th Congress to pass legislation early next year that will be consistent with our Constitution, so that the United States can implement the Convention before it enters into force.

Presidential Statement

Attached Back-up

I have decided not to approve H.R. 5446, a bill to implement the United States obligations under the Convention on the International Regulations for Preventing Collisions at Sea, 1972.

This bill includes provisions which I believe to be unconstitutional. It would empower either the House of Representatives or the Senate to block amendments to the Convention's regulations merely by passing a resolution of disapproval. I believe that this procedure is contrary to the Constitution, and that my approval of it would contribute to the erosion of the constitutional powers and responsibilities of the President.

The Convention - which has already been approved by the Senate - makes important changes in the international rules for safe navigation. It will enter into force in July of 1977. The United States should become a party to it. If the United States does not ratify the Convention before it enters into force, there will be major differences between the navigational rules followed by U.S. ships and by the ships of many other countries. These differences will increase the danger of collisions at sea and create hazards to life and property at sea.

I sincerely hope that the next Congress will pass implementing legislation early in the Session, that will be consistent with our Constitution so that the United

10/4/76 - 9:55 am
m

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 2 Time: 600pm

FOR ACTION: NSC/S
Max Friedersdorf
Bobbie Kilberg
Robert Hartmann
Judy Hope

cc (for information): Jack Marsh
Jim Connor
Paul Leach
Ed Schmults

FROM THE STAFF SECRETARY

Memorandum of Disapproval & signing statement

DUE: Date: October 4 Time: 1100am

SUBJECT:

H.R. 5446-International Navigational Rules Act of 1976

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

X For Your Comments ____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

10/4/76 - Copy sent for researching. mm
10/4/76 - Researched copy returned

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 M. Cannon

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Original returned to WH Records Office attached to the bill.
(Tom Jones)

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Gerald R. Ford

THE WHITE HOUSE,

Info for use of bill is to be filled!

Memo of disapproval was issued See "attachment B"

DEPARTMENT OF STATE

Washington, D.C. 20520

SEP 29 1976

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

Dear Mr. Lynn:

This is in reply to Mr. Frey's communication of September 27, requesting the Department of State's views on the enrolled bill titled "An Act to implement the Convention on the International Regulations for Preventing Collisions at Sea, 1972."

We believe that this legislation includes provisions which are clearly unconstitutional, and that it should not be approved by the President.

This legislation is intended to implement the United States obligations under the 1972 International Convention on the Regulations for Preventing Collisions at Sea. That Convention substantially changes generally accepted international navigational rules regarding such matters as the navigation of vessels in sight of one another, operations in restricted visibility, sound and light signals, navigation in narrow channels, and vessel traffic separation schemes. The United States strongly supported development of the 1972 Convention, and the Senate has given its advice and consent to ratification. U.S. ratification has been delayed pending enactment of appropriate implementing legislation. However, the Convention will enter into force for more than 65% of the world's merchant tonnage in July 1977, whether or not the United States ratifies.

The implementing legislation enacted by Congress differs considerably from that originally proposed by the Administration. We believe that one of these Congressional changes - section 3(d), relating to the procedure for adopting changes to the international rules is unconstitutional.

The 1972 Convention involves numerous highly technical rules. The negotiators sought to permit prompt amendment of these rules to reflect changing circumstances, including changing ship technology. Accordingly, Section 6 of the Convention utilizes a "tacit amendment" procedure. Under this procedure, amendments to the technical regulations must be approved by the Intergovernmental Maritime Consultative Organization (IMCO) and then recommended to governments. Governments would then have to state that they do not accept the amendment, or would be bound by them, provided a specified number of other governments accepted the amendments.

Any amendments adopted under the tacit amendment procedure would be amendments to a treaty. There is ample precedent in U.S. practice for treaties or implementing legislation authorizing the President to enter into executive agreements modifying or implementing treaty provisions. In preparing the implementing legislation which was recommended to Congress, the Administration drew upon these precedents and proposed legislation authorizing the President to accept or reject amendments proposed under the tacit amendment procedure. This legislation thus would have authorized the President to enter into executive agreements amending the treaty.

The legislation enacted by Congress abandoned this approach. Section 3(d) requires that the President promptly to report to Congress any amendment proposed by IMCO. Either house of Congress could then, by resolution, require the President to object to an amendment and thus prevent its entry into force for the United States. This approach is without precedent or legal justification.

Although we do not believe that it would be advisable in this case, constitutionally Congress might require that the Convention be amended only through the treaty process, with Senate advice and consent to ratification. It has not done so. Alternatively, and more appropriately, Congress could empower the President to enter into executive agreements amending the treaty. Conceivably, the Congress could reserve the right to disapprove particular proposed agreements through joint resolutions. However, this Bill goes much further by providing that either house, acting alone, could block adoption of an amendment and thereby direct the President to object to the amendment. Accordingly, this legislation conflicts with the clear requirement of Article I, Section 7, clause 3 of the

Constitution, that enactments intended to have the effect of law have the approval of both houses of Congress and be presented to the President for his approval or other action before taking effect.

Conclusion and Recommendation

We recommend that the President veto this legislation.

We recognize that such action may create substantial difficulties, and creates at least the possibility of risk to life and property at sea should the Congress fail to enact implementing legislation that would be Constitutional prior to the entry into force of the Convention in July of 1977. We do not believe that this risk is great enough to jusitfy disregarding of an important constitutional principle. Signature of this act, even with a signing statement of some kind would, in our view, contribute to the continued erosion of the constitutional balance between the President and the Congress. It would also set a clear precedent for future Congressional action in connection with future Conventions utilizing the tacit amendment procedure and could be cited as a precedent by supporters of the much broader and more dangerous Morgan-Zablocki Bill.

The Convention will enter into force in July of 1977. If the United States enacts suitable implementing legislation prior to that date, its ratification of the Convention can take effect on the date on which the Convention enters into force. Accordingly, there will be time during the early months of the next Congress to seek implementing legislation which meets the requirements of the Constitution.

A suggested message for the President is included with this report.

Sincerely,

Kempton B. Jenkins
Acting Assistant Secretary
for Congressional Relations

State

Presidential Statement

I have decided not to approve H.R. 5446, a bill to implement the United States obligations under the Convention on the International Regulations for Preventing Collisions at Sea, 1972.

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I sincerely hope that the next Congress will pass implementing legislation early in the Session, that will be consistent with our Constitution so that the United States can ratify the Convention before it enters into force.

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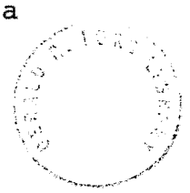

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FOR IMMEDIATE RELEASE OCTOBER 10, 1976

Office of the White House Press Secretary
(Dallas, Texas)

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