

Union Calendar No. 366

104TH CONGRESS
2^D SESSION

H. R. 2823

[Report No. 104-665, Parts I and II]

A BILL

To amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

JULY 23, 1996

Reported from the Committee on Ways and Means, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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To amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 21, 1995

Mr. GILCHREST (for himself, Mr. CUNNINGHAM, Mr. RICHARDSON, Mr. BOEHLERT, Mr. BILBRAY, Mr. GOSS, Mr. YOUNG of Alaska, Mr. PACKARD, Mr. CASTLE, Mr. LAZIO of New York, Mr. GILLMOR, Mr. KOLBE, Mr. SHAYS, Mr. HUNTER, Mr. KLUG, Mr. HANSEN, Mr. POMBO, Mr. CARDIN, Mr. DEFazio, Mr. COBLE, Mr. EHLERS, Mr. UPTON, Mr. DAVIS, Mrs. MORELLA, Mr. TORKILDTSEN, Mr. FOLEY, and Mr. BLUTE) introduced the following bill; which was referred to the Committee on Resources

JULY 10, 1996

Reported from the Committee on Resources with an amendment, referred to the Committee on Ways and Means for a period ending not later than July 23, 1996, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(s), rule X

[Strike out all after the enacting clause and insert the part printed in *italic*]

JULY 23, 1996

Additional sponsors: Mr. ORTIZ, Mr. FRELINGHUYSEN, Mr. LARGENT, Mr. FARR of California, Mr. WALSH, Mr. KASICH, Mr. GOODLATTE, Mrs. KELLY, Ms. MOLINARI, Mr. TRAFICANT, Mr. RIGGS, Mr. ACKERMAN, and Mr. ALLARD

Deleted sponsor: Mr. DEFazio (added December 21, 1995; deleted April 18, 1996)

JULY 23, 1996

Reported from the Committee on Ways and Means, committed to the Commit-

tee of the Whole House on the State of the Union, and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on December 21, 1995]

A BILL

To amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
 5 *“International Dolphin Conservation Program Act”.*

6 (b) *REFERENCES TO MARINE MAMMAL PROTECTION*
 7 *ACT.*—*Except as otherwise expressly provided, whenever in*
 8 *this Act an amendment or repeal is expressed in terms of*
 9 *an amendment to, or repeal of, a section or other provision,*
 10 *the reference shall be considered to be made to a section or*
 11 *other provision of the Marine Mammal Protection Act of*
 12 *1972 (16 U.S.C. 1361 et seq.).*

13 **SEC. 2. PURPOSE AND FINDINGS.**

14 (a) *PURPOSE.*—*The purposes of this Act are—*

15 (1) *to give effect to the Declaration of Panama,*
 16 *signed October 4, 1995, by the Governments of Belize,*
 17 *Colombia, Costa Rica, Ecuador, France, Honduras,*

1 *Mexico, Panama, Spain, the United States of Amer-*
2 *ica, Vanuatu, and Venezuela, including the establish-*
3 *ment of the International Dolphin Conservation Pro-*
4 *gram, relating to the protection of dolphins and other*
5 *species, and the conservation and management of*
6 *tuna in the eastern tropical Pacific Ocean;*

7 (2) *to recognize that nations fishing for tuna in*
8 *the eastern tropical Pacific Ocean have achieved sig-*
9 *nificant reductions in dolphin mortality associated*
10 *with that fishery; and*

11 (3) *to eliminate the ban on imports of tuna from*
12 *those nations that are in compliance with the Inter-*
13 *national Dolphin Conservation Program.*

14 (b) *FINDINGS.—The Congress finds the following:*

15 (1) *The nations that fish for tuna in the eastern*
16 *tropical Pacific Ocean have reduced dolphin mortali-*
17 *ties associated with that fishery from hundreds of*
18 *thousands annually to fewer than 5,000 annually.*

19 (2) *The provisions of the Marine Mammal Pro-*
20 *tection Act of 1972 that impose a ban on imports*
21 *from nations that fish for tuna in the eastern tropical*
22 *Pacific Ocean have served as an incentive to reduce*
23 *dolphin mortalities.*

1 (3) *Tuna canners and processors of the United*
2 *States have led the canning and processing industry*
3 *in promoting a dolphin-safe tuna market.*

4 **SEC. 3. DEFINITIONS.**

5 *Section 3 (16 U.S.C. 1362) is amended by adding at*
6 *the end the following new paragraphs:*

7 “(28) *The term ‘International Dolphin Conserva-*
8 *tion Program’ means the international program es-*
9 *tablished by the agreement signed in La Jolla, Cali-*
10 *fornia, in June 1992, as formalized, modified, and*
11 *enhanced in accordance with the Declaration of Pan-*
12 *ama, that requires—*

13 “(A) *that the total annual dolphin mortal-*
14 *ity in the purse seine fishery for yellowfin tuna*
15 *in the eastern tropical Pacific Ocean not exceed*
16 *5,000, with the commitment and objective to pro-*
17 *gressively reduce dolphin mortality to levels ap-*
18 *proaching zero through the setting of annual*
19 *limits;*

20 “(B) *the establishment of a per-stock per-*
21 *year mortality limit for dolphins, for each year*
22 *through the year 2000, of between 0.2 percent*
23 *and 0.1 percent of the minimum population esti-*
24 *mate;*

1 “(C) beginning with the year 2001, that the
2 per-stock per-year mortality of dolphin not ex-
3 ceed 0.1 percent of the minimum population esti-
4 mate;

5 “(D) that if the mortality limit set forth in
6 subparagraph (A) is exceeded, all sets on dol-
7 phins shall cease for the fishing year concerned;

8 “(E) that if the mortality limit set forth in
9 subparagraph (B) or (C) is exceeded sets on such
10 stock and any mixed schools containing members
11 of such stock shall cease for that fishing year;

12 “(F) in the case of subparagraph (B), to
13 conduct a scientific review and assessment in
14 1998 of progress toward the year 2000 objective
15 and consider recommendations as appropriate;
16 and

17 “(G) in the case of subparagraph (C), to
18 conduct a scientific review and assessment re-
19 garding that stock or those stocks and consider
20 further recommendations;

21 “(H) the establishment of a per-vessel maxi-
22 mum annual dolphin mortality limit consistent
23 with the established per-year mortality caps; and

24 “(I) the provision of a system of incentives
25 to vessel captains to continue to reduce dolphin

1 *mortality, with the goal of eliminating dolphin*
2 *mortality.*

3 “(29) *The term ‘Declaration of Panama’ means*
4 *the declaration signed in Panama City, Republic of*
5 *Panama, on October 4, 1995.’”.*

6 **SEC. 4. AMENDMENTS TO TITLE I.**

7 *(a) AUTHORIZATION FOR INCIDENTAL TAKING.—Sec-*
8 *tion 101(a)(2) (16 U.S.C. 1371(a)(2)) is amended as fol-*
9 *lows:*

10 *(1) By inserting after the first sentence “Such*
11 *authorizations may also be granted under title III*
12 *with respect to the yellowfin tuna fishery of the east-*
13 *ern tropical Pacific Ocean, subject to regulations pre-*
14 *scribed under that title by the Secretary without re-*
15 *gard to section 103.’”.*

16 *(2) By striking the semicolon in the second sen-*
17 *tence and all that follows through “practicable”.*

18 *(b) DOCUMENTARY EVIDENCE.—Section 101(a) (16*
19 *U.S.C. 1371(a)) is amended by striking so much of para-*
20 *graph (2) as follows subparagraph (A) and as precedes sub-*
21 *paragraph (C) and inserting:*

22 *“(B) in the case of yellowfin tuna harvested*
23 *with purse seine nets in the eastern tropical Pa-*
24 *cific Ocean, and products therefrom, to be ex-*
25 *ported to the United States, shall require that the*

1 *government of the exporting nation provide docu-*
2 *mentary evidence that—*

3 “(i) *the tuna or products therefrom*
4 *were not banned from importation under*
5 *this paragraph before the effective date of*
6 *the International Dolphin Conservation*
7 *Program Act;*

8 “(ii) *the tuna or products therefrom*
9 *were harvested after the effective date of the*
10 *International Dolphin Conservation Pro-*
11 *gram Act by vessels of a nation which par-*
12 *ticipates in the International Dolphin Con-*
13 *servation Program, such harvesting nation*
14 *is either a member of the Inter-American*
15 *Tropical Tuna Commission or has initiated*
16 *(and within 6 months thereafter completed)*
17 *all steps (in accordance with article V,*
18 *paragraph 3 of the Convention establishing*
19 *the Inter-American Tropical Tuna Commis-*
20 *sion) necessary to become a member of that*
21 *organization, or the Inter-American Tropi-*
22 *cal Tuna Commission, whichever is appro-*
23 *priate, and such harvesting nation has im-*
24 *plemented the obligations of the Inter-*
25 *national Dolphin Conservation Program*

1 *and the obligations of that member as mem-*
2 *ber of the Inter-American Tropical Tuna*
3 *Commission;*

4 “(iii) *the total dolphin mortality per-*
5 *mitted under the International Dolphin*
6 *Conservation Program will not exceed 5,000*
7 *in 1996, or in any year thereafter, consist-*
8 *ent with the commitment and objective of*
9 *progressively reducing dolphin mortality to*
10 *levels approaching zero through the setting*
11 *of annual limits and the goal of eliminating*
12 *dolphin mortality; and*

13 “(iv) *the tuna or products therefrom*
14 *were harvested after the effective date of the*
15 *International Dolphin Conservation Pro-*
16 *gram Act by vessels of a nation which par-*
17 *ticipates in the International Dolphin Con-*
18 *servation Program, and such harvesting na-*
19 *tion has not vetoed the participation by any*
20 *other nation in such Program.”.*

21 (c) *ACCEPTANCE OF EVIDENCE COVERAGE.—Section*
22 *101 (16 U.S.C. 1371) is amended by adding at the end the*
23 *following new subsections:*

24 “(d) *ACCEPTANCE OF DOCUMENTARY EVIDENCE.—The*
25 *Secretary shall not accept documentary evidence referred to*

1 *in section 101(a)(2)(B) as satisfactory proof for purposes*
2 *of section 101(a)(2) if—*

3 “(1) *the government of the harvesting nation*
4 *does not authorize the Inter-American Tropical Tuna*
5 *Commission to release sufficient information to the*
6 *Secretary to allow a determination of compliance*
7 *with the International Dolphin Conservation Pro-*
8 *gram; or*

9 “(2) *after taking into consideration this infor-*
10 *mation, findings of the Inter-American Tropical*
11 *Tuna Commission, and any other relevant informa-*
12 *tion, including but not limited to information that a*
13 *nation is consistently failing to take enforcement ac-*
14 *tions on violations which diminish the effectiveness of*
15 *the International Dolphin Conservation Program, the*
16 *Secretary, in consultation with the Secretary of State,*
17 *finds that the harvesting nation is not in compliance*
18 *with the International Dolphin Conservation Pro-*
19 *gram.*

20 “(e) *EXEMPTION.—The provisions of this Act shall not*
21 *apply to a citizen of the United States when such citizen*
22 *incidentally takes any marine mammal during fishing op-*
23 *erations outside the United States exclusive economic zone*
24 *(as defined in section 3(6) of the Magnuson Fishery Con-*
25 *servation and Management Act (16 U.S.C. 1802(6))) when*

1 *employed on a foreign fishing vessel of a harvesting nation*
2 *which is in compliance with the International Dolphin*
3 *Conservation Program.”.*

4 (d) *ANNUAL PERMITS.—Section 104(h) is amended to*
5 *read as follows:*

6 “(h) *ANNUAL PERMITS.—(1) Consistent with the regu-*
7 *lations prescribed pursuant to section 103 and the require-*
8 *ments of section 101, the Secretary may issue an annual*
9 *permit to a United States vessel for the taking of such ma-*
10 *rine mammals, together with regulations to cover the use*
11 *of any such annual permits.*

12 “(2) *Annual permits described in paragraph (1) for*
13 *the incidental taking of marine mammals in the course of*
14 *commercial purse seine fishing for yellowfin tuna in the*
15 *eastern tropical Pacific Ocean shall be governed by section*
16 *304, subject to the regulations issued pursuant to section*
17 *302.”.*

18 (e) *REVISIONS AND FUNDING SOURCES.—Section*
19 *108(a)(2) (16 U.S.C. 1378(a)(2)) is amended as follows:*

20 (1) *By striking “and” at the end of subpara-*
21 *graph (A).*

22 (2) *By adding at the end the following:*

23 “(C) *discussions to expeditiously negotiate*
24 *revisions to the Convention for the Establishment*
25 *of an Inter-American Tropical Tuna Commis-*

1 *sion (1 UST 230, TIAS 2044) which will incor-*
2 *porate conservation and management provisions*
3 *agreed to by the nations which have signed the*
4 *Declaration of Panama; and*

5 *“(D) discussions with those countries likely*
6 *to participate in the International Dolphin Con-*
7 *servation Program, to identify alternative*
8 *sources of funds to ensure that needed research*
9 *and other measures benefiting effective protection*
10 *of dolphins, other marine species, and the ma-*
11 *rine ecosystem;”.*

12 *(f) REPEAL OF NAS REVIEW.—Section 110 (16 U.S.C.*
13 *1380) is amended as follows:*

14 *(1) By redesignating subsection (a)(1) as sub-*
15 *section (a).*

16 *(2) By striking subsection (a)(2).*

17 *(g) LABELING OF TUNA PRODUCTS.—Paragraph (1)*
18 *of section 901(d) of the Dolphin Protection Consumer Infor-*
19 *mation Act (16 U.S.C. 1385(d)(1)) is amended to read as*
20 *follows:*

21 *“(1) It is a violation of section 5 of the Federal Trade*
22 *Commission Act for any producer, importer, exporter, dis-*
23 *tributor, or seller of any tuna product that is exported from*
24 *or offered for sale in the United States to include on the*
25 *label of that product the term ‘Dolphin Safe’ or any other*

1 *term or symbol that falsely claims or suggests that the tuna*
2 *contained in the product was harvested using a method of*
3 *fishing that is not harmful to dolphins if the product con-*
4 *tains any of the following:*

5 “(A) *Tuna harvested on the high seas by a vessel*
6 *engaged in driftnet fishing.*”

7 “(B) *Tuna harvested in the eastern tropical Pa-*
8 *cific Ocean by a vessel using purse seine nets unless*
9 *the tuna is considered dolphin safe under paragraph*
10 *(2).*”

11 “(C) *Tuna harvested outside the eastern tropical*
12 *Pacific Ocean by a vessel using purse seine nets un-*
13 *less the tuna is considered dolphin safe under para-*
14 *graph (3).*”

15 “(D) *Tuna harvested by a vessel engaged in any*
16 *other fishery with a regular and significant inciden-*
17 *tal mortality of marine mammals.*”

18 *(h) DOLPHIN SAFE TUNA.—(1) Paragraph (2) of sec-*
19 *tion 901(d) of the Dolphin Protection Consumer Informa-*
20 *tion Act (16 U.S.C. 1385(d)(2)) is amended to read as fol-*
21 *lows:*

22 “(2)(A) *For purposes of paragraph (1)(B), a tuna*
23 *product that contains tuna harvested in the eastern tropical*
24 *Pacific Ocean by a vessel using purse seine nets is dolphin*
25 *safe if the vessel is of a type and size that the Secretary*

1 *has determined, consistent with the International Dolphin*
2 *Conservation Program, is not capable of deploying its purse*
3 *seine nets on or to encircle dolphins, or if the product meets*
4 *the requirements of subparagraph (B).*

5 “(B) *For purposes of paragraph (1)(B), a tuna prod-*
6 *uct that contains tuna harvested in the eastern tropical Pa-*
7 *cific Ocean by a vessel using purse seine nets is dolphin*
8 *safe if the product is accompanied by a written statement*
9 *executed by the captain of the vessel which harvested the*
10 *tuna certifying that no dolphins were killed during the sets*
11 *in which the tuna were caught and the product is accom-*
12 *panied by a written statement executed by—*

13 “(i) *the Secretary or the Secretary’s designee;*

14 “(ii) *a representative of the Inter-American*
15 *Tropical Tuna Commission; or*

16 “(iii) *an authorized representative of a partici-*
17 *parting nation whose national program meets the re-*
18 *quirements of the International Dolphin Conservation*
19 *Program,*

20 *which states that there was an observer approved by the*
21 *International Dolphin Conservation Program on board the*
22 *vessel during the entire trip and documents that no dol-*
23 *phins were killed during the sets in which the tuna con-*
24 *cerned were caught.*

1 “(C) *The statements referred to in clauses (i), (ii), and*
2 *(iii) of subparagraph (B) shall be valid only if they are*
3 *endorsed in writing by each exporter, importer, and proc-*
4 *essor of the product, and if such statements and endorse-*
5 *ments comply with regulations promulgated by the Sec-*
6 *retary which would provide for the verification of tuna*
7 *products as dolphin safe.”.*

8 (2) *Subsection (d) of section 901 of the Dolphin Protec-*
9 *tion Consumer Information Act (16 U.S.C. 1385(d)) is*
10 *amended by adding the following new paragraphs at the*
11 *end thereof:*

12 “(3) *For purposes of paragraph (1)(C), tuna or a tuna*
13 *product that contains tuna harvested outside the eastern*
14 *tropical Pacific Ocean by a vessel using purse seine nets*
15 *is dolphin safe if—*

16 “(A) *it is accompanied by a written statement*
17 *executed by the captain of the vessel certifying that no*
18 *purse seine net was intentionally deployed on or to*
19 *encircle dolphins during the particular voyage on*
20 *which the tuna was harvested; or*

21 “(B) *in any fishery in which the Secretary has*
22 *determined that a regular and significant association*
23 *occurs between marine mammals and tuna, it is ac-*
24 *companied by a written statement executed by the*
25 *captain of the vessel and an observer, certifying that*

1 *no purse seine net was intentionally deployed on or*
2 *to encircle marine mammals during the particular*
3 *voyage on which the tuna was harvested.*

4 *“(4) For purposes of paragraph (1)(D), tuna or a tuna*
5 *product that contains tuna harvested in a fishery identified*
6 *by the Secretary as having a regular and significant inci-*
7 *dental mortality or serious injury of marine mammals is*
8 *dolphin safe if it is accompanied by a written statement*
9 *executed by the captain of the vessel and an observer par-*
10 *ticipating in a national or international program accept-*
11 *able to the Secretary certifying that no marine mammals*
12 *were killed in the course of the fishing operation or oper-*
13 *ations in which the tuna were caught.*

14 *“(5) No tuna product may be labeled with any ref-*
15 *erence to dolphins, porpoises, or marine mammals, unless*
16 *such product is labeled as dolphin safe in accordance with*
17 *this subsection.”.*

18 *(i) TRACKING AND VERIFICATION.—Subsection (f) of*
19 *section 901 of the Dolphin Protection Consumer Informa-*
20 *tion Act (16 U.S.C. 1385(f)) is amended to read as follows:*

21 *“(f) TRACKING AND VERIFICATION.—The Secretary, in*
22 *consultation with the Secretary of the Treasury, shall issue*
23 *regulations to implement subsection (d) not later than 3*
24 *months after the date of enactment of the International Dol-*
25 *phin Conservation Program Act. Such regulations shall,*

1 *consistent with international efforts and in coordination*
2 *with the Inter-American Tropical Tuna Commission, estab-*
3 *lish a domestic and international tracking and verification*
4 *program that provides for the effective tracking of tuna la-*
5 *beled under subsection (d), including but not limited to each*
6 *of the following:*

7 “(1) *Specific regulations and provisions address-*
8 *ing the use of weight calculation.*

9 “(2) *Additional measures to enhance observer*
10 *coverage if necessary.*

11 “(3) *Well location and procedures for monitor-*
12 *ing, certifying, and sealing holds above and below*
13 *deck or other equally effective methods of tracking and*
14 *verifying tuna labeled under subsection (d).*

15 “(4) *Reporting receipt of and database storage of*
16 *radio and facsimile transmittals from fishing vessels*
17 *containing information related to the definition of*
18 *sets.*

19 “(5) *Shore-based verification and tracking*
20 *throughout the transshipment and canning process.*

21 “(6) *Provisions for annual audits for caught,*
22 *landed, and processed tuna products labeled in ac-*
23 *cordance with subsection (d).*

24 *The Secretary, when developing these regulations, shall es-*
25 *tablish appropriate procedures for ensuring the confiden-*

1 *tiality of proprietary information either mandated or sub-*
2 *mitted voluntarily.”.*

3 **SEC. 5. AMENDMENTS TO TITLE III.**

4 (a) *HEADING.*—*The heading of title III is amended to*
5 *read as follows:*

6 **“TITLE III—INTERNATIONAL**
7 **DOLPHIN CONSERVATION**
8 **PROGRAM”.**

9 (b) *FINDINGS.*—*Section 301 (16 U.S.C. 1411) is*
10 *amended as follows:*

11 (1) *In subsection (a), by amending paragraph*
12 *(4) to read as follows:*

13 “(4) *Nations harvesting yellowfin tuna in the*
14 *eastern tropical Pacific Ocean have demonstrated*
15 *their willingness to participate in appropriate multi-*
16 *lateral agreements to reduce, with the goal of elimi-*
17 *nating, dolphin mortality in that fishery. Recognition*
18 *of the International Dolphin Conservation Program*
19 *will assure that the existing trend of reduced dolphin*
20 *mortality continues; that individual stocks of dol-*
21 *phins are adequately protected; and that the goal of*
22 *eliminating all dolphin mortality continues to be a*
23 *priority.”.*

24 (2) *In subsection (b), by amending paragraphs*
25 *(2) and (3) to read as follows:*

1 “(2) support the International Dolphin Con-
2 servation Program and efforts within the Program to
3 reduce, with the goal of eliminating, the mortality re-
4 ferred to in paragraph (1);

5 “(3) ensure that the market of the United States
6 does not act as an incentive to the harvest of tuna
7 caught with driftnets or caught by purse seine vessels
8 in the eastern tropical Pacific Ocean that are not op-
9 erating in compliance with the International Dolphin
10 Conservation Program;”.

11 (c) *INTERNATIONAL DOLPHIN CONSERVATION PRO-*
12 *GRAM.*—Section 302 (16 U.S.C. 1412) is amended to read
13 *as follows:*

14 **“SEC. 302. AUTHORITY OF THE SECRETARY.**

15 “(a) *REGULATIONS TO IMPLEMENT PROGRAM REGU-*
16 *LATIONS.*—(1) *The Secretary shall issue regulations to im-*
17 *plement the International Dolphin Conservation Program.*

18 “(2)(A) *Not later than 3 months after the date of enact-*
19 *ment of this section, the Secretary shall issue regulations*
20 *to authorize and govern the incidental taking of marine*
21 *mammals in the eastern tropical Pacific Ocean, including*
22 *any species of marine mammal designated as depleted*
23 *under this Act but not listed as endangered or threatened*
24 *under the Endangered Species Act of 1973 (16 U.S.C. 1531*

1 *et seq.*), by vessels of the United States participating in the
2 *International Dolphin Conservation Program.*

3 “(B) Regulations issued under this section shall in-
4 clude provisions—

5 “(i) requiring observers on each vessel;

6 “(ii) requiring use of the backdown procedure or
7 other procedures equally or more effective in avoiding
8 mortality of marine mammals in fishing operations;

9 “(iii) prohibiting intentional deployment of nets
10 on, or encirclement of, dolphins in violation of the
11 *International Dolphin Conservation Program*;

12 “(iv) requiring the use of special equipment, in-
13 cluding dolphin safety panels in nets, ocean current
14 sensors or monitoring devices, as practicable, to detect
15 unsafe fishing conditions before nets are deployed by
16 a tuna vessel, operable rafts, speedboats with towing
17 bridles, floodlights in operable condition, and diving
18 masks and snorkels;

19 “(v) ensuring that the backdown procedure dur-
20 ing the deployment of nets on, or encirclement of, dol-
21 phins is completed and rolling of the net to sack up
22 has begun no later than 30 minutes after sundown;

23 “(vi) banning the use of explosive devices in all
24 purse seine operations;

1 “(vii) establishing per vessel maximum annual
2 dolphin mortality limits, total dolphin mortality lim-
3 its and per-stock per-year mortality limits, in accord-
4 ance with the International Dolphin Conservation
5 Program;

6 “(viii) preventing the intentional deployment of
7 nets on, or encirclement of, dolphins after reaching ei-
8 ther the vessel maximum annual dolphin mortality
9 limits, total dolphin mortality limits, or per-stock
10 per-year mortality limits;

11 “(ix) preventing the fishing on dolphins by a
12 vessel without an assigned vessel dolphin mortality
13 limit;

14 “(x) allowing for the authorization and conduct
15 of experimental fishing operations, under such terms
16 and conditions as the Secretary may prescribe, for the
17 purpose of testing proposed improvements in fishing
18 techniques and equipment (including new technology
19 for detecting unsafe fishing conditions before nets are
20 deployed by a tuna vessel) that may reduce or elimi-
21 nate dolphin mortality or do not require the encircle-
22 ment of dolphins in the course of commercial yellow-
23 fin tuna fishing;

24 “(xi) authorizing fishing within the area covered
25 by the International Dolphin Conservation Program

1 *by vessels of the United States without the use of spe-*
2 *cial equipment or nets if the vessel takes an observer*
3 *and does not intentionally deploy nets on, or encircle,*
4 *dolphins, under such terms and conditions as the Sec-*
5 *retary may prescribe; and*

6 *“(xii) containing such other restrictions and re-*
7 *quirements as the Secretary determines are necessary*
8 *to implement the International Dolphin Conservation*
9 *Program with respect to vessels of the United States.*

10 *“(C) The Secretary may make such adjustments as*
11 *may be appropriate to the requirements of subparagraph*
12 *(B) that pertain to fishing gear, vessel equipment, and fish-*
13 *ing practices to the extent the adjustments are consistent*
14 *with the International Dolphin Conservation Program.*

15 *“(b) CONSULTATION.—In developing regulations under*
16 *this section, the Secretary shall consult with the Secretary*
17 *of State, the Marine Mammal Commission and the United*
18 *States Commissioners to the Inter-American Tropical Tuna*
19 *Commission appointed under section 3 of the Tuna Conven-*
20 *tions Act of 1950 (16 U.S.C. 952).*

21 *“(c) EMERGENCY REGULATIONS.—(1) If the Secretary*
22 *determines, on the basis of the best scientific information*
23 *available (including that obtained under the International*
24 *Dolphin Conservation Program) that the incidental mortal-*
25 *ity and serious injury of marine mammals authorized*

1 *under this title is having, or is likely to have, a significant*
2 *adverse effect on a marine mammal stock or species, the*
3 *Secretary shall take actions as follows—*

4 “(A) *notify the Inter-American Tropical Tuna*
5 *Commission of the Secretary’s findings, along with*
6 *recommendations to the Commission as to actions*
7 *necessary to reduce incidental mortality and serious*
8 *injury and mitigate such adverse impact; and*

9 “(B) *prescribe emergency regulations to reduce*
10 *incidental mortality and serious injury and mitigate*
11 *such adverse impact.*

12 “(2) *Prior to taking action under paragraph (1) (A)*
13 *or (B), the Secretary shall consult with the Secretary of*
14 *State, the Marine Mammal Commission, and the United*
15 *States Commissioners to the Inter-American Tropical Tuna*
16 *Commission.*

17 “(3) *Emergency regulations prescribed under this sub-*
18 *section—*

19 “(A) *shall be published in the Federal Register,*
20 *together with an explanation thereof; and*

21 “(B) *shall remain in effect for the duration of*
22 *the applicable fishing year; and*

23 *The Secretary may terminate such emergency regulations*
24 *at a date earlier than that required by subparagraph (B)*
25 *by publication in the Federal Register of a notice of termi-*

1 nation, if the Secretary determines that the reasons for the
2 emergency action no longer exist.

3 “(4) If the Secretary finds that the incidental mortal-
4 ity and serious injury of marine mammals in the yellowfin
5 tuna fishery in the eastern tropical Pacific Ocean is con-
6 tinuing to have a significant adverse impact on a stock or
7 species, the Secretary may extend the emergency regulations
8 for such additional periods as may be necessary.

9 “(d) RESEARCH.—The Secretary shall, in cooperation
10 with the nations participating in the International Dolphin
11 Conservation Program and with the Inter-American Tropi-
12 cal Tuna Commission, undertake or support appropriate
13 scientific research to further the goals of the International
14 Dolphin Conservation Program. Such research may include
15 but shall not be limited to any of the following:

16 “(1) Devising cost-effective fishing methods and
17 gear so as to reduce, with the goal of eliminating, the
18 incidental mortality and serious injury of marine
19 mammals in connection with commercial purse seine
20 fishing in the eastern tropical Pacific Ocean.

21 “(2) Developing cost-effective methods of fishing
22 for mature yellowfin tuna without deployment of nets
23 on, or encirclement of, dolphins or other marine
24 mammals.

1 “(3) *Carrying out a stock assessment as de-*
2 *scribed in section 117 for those marine mammal spe-*
3 *cies and stocks taken in the purse seine fishery for*
4 *yellowfin tuna in the eastern tropical Pacific Ocean,*
5 *including species or stocks not within waters under*
6 *the jurisdiction of the United States.*

7 “(4) *Studying the effects of chase and encircle-*
8 *ment on the health and biology of dolphin and indi-*
9 *vidual dolphin populations incidentally taken in the*
10 *course of purse seine fishing for yellowfin tuna in the*
11 *eastern tropical Pacific Ocean. There are authorized*
12 *to be appropriated to the Department of Commerce*
13 *\$1,000,000 to be used by the Secretary, acting through*
14 *the National Marine Fisheries Service, to carry out*
15 *this paragraph. Upon completion of the study, the*
16 *Secretary shall submit a report containing the results*
17 *of the study, together with recommendations, to the*
18 *Congress and to the Inter-American Tropical Tuna*
19 *Commission.*

20 “(5) *Determining the extent to which the inci-*
21 *idental take of nontarget species, including juvenile*
22 *tuna, occurs in the course of purse seine fishing for*
23 *yellowfin tuna in the eastern tropical Pacific Ocean,*
24 *the geographic location of the incidental take, and the*

1 *impact of that incidental take on tuna stocks, and*
2 *nontarget species.*

3 *The Secretary shall include a description of the annual re-*
4 *sults of research carried out under this subsection in the*
5 *report required under section 303.”.*

6 (d) *REPORTS.—Section 303 (16 U.S.C. 1414) is*
7 *amended to read as follows:*

8 **“SEC. 303. REPORTS BY THE SECRETARY.**

9 *“Notwithstanding section 103(f), the Secretary shall*
10 *submit an annual report to the Congress which includes*
11 *each of the following:*

12 *“(1) The results of research conducted pursuant*
13 *to section 302.*

14 *“(2) A description of the status and trends of*
15 *stocks of tuna.*

16 *“(3) A description of the efforts to assess, avoid,*
17 *reduce, and minimize the bycatch of juvenile yellow-*
18 *fin tuna and other nontarget species.*

19 *“(4) A description of the activities of the Inter-*
20 *national Dolphin Conservation Program and of the*
21 *efforts of the United States in support of the Pro-*
22 *gram’s goals and objectives, including the protection*
23 *of dolphin populations in the eastern tropical Pacific*
24 *Ocean, and an assessment of the effectiveness of the*
25 *Program.*

1 “(5) *Actions taken by the Secretary under sub-*
2 *sections (a)(2)(B) and (d) of section 101.*

3 “(6) *Copies of any relevant resolutions and deci-*
4 *sions of the Inter-American Tropical Tuna Commis-*
5 *sion, and any regulations promulgated by the Sec-*
6 *retary under this title.*

7 “(7) *Any other information deemed relevant by*
8 *the Secretary.”.*

9 (e) *PERMITS.—Section 304 (16 U.S.C. 1416) is*
10 *amended to read as follows:*

11 **“SEC. 304. PERMITS.**

12 “(a) *IN GENERAL.—(1) Consistent with section 302,*
13 *the Secretary is authorized to issue a permit to a vessel*
14 *of the United States authorizing participation in the Inter-*
15 *national Dolphin Conservation Program and may require*
16 *a permit for the person actually in charge of and control-*
17 *ling the fishing operation of the vessel. The Secretary shall*
18 *prescribe such procedures as are necessary to carry out this*
19 *subsection, including, but not limited to, requiring the sub-*
20 *mission of—*

21 “(A) *the name and official number or other iden-*
22 *tification of each fishing vessel for which a permit is*
23 *sought, together with the name and address of the*
24 *owner thereof; and*

1 “(B) the tonnage, hold capacity, speed, process-
2 ing equipment, and type and quantity of gear, in-
3 cluding an inventory of special equipment required
4 under section 302, with respect to each vessel.

5 “(2) The Secretary is authorized to charge a fee for
6 issuing a permit under this section. The level of fees charged
7 under this paragraph may not exceed the administrative
8 cost incurred in granting an authorization and issuing a
9 permit. Fees collected under this paragraph shall be avail-
10 able, subject to appropriations, to the Under Secretary of
11 Commerce for Oceans and Atmosphere for expenses incurred
12 in issuing permits under this section.

13 “(3) After the effective date of the International Dol-
14 phin Conservation Program Act, no vessel of the United
15 States shall operate in the yellowfin tuna fishery in the
16 eastern tropical Pacific Ocean without a valid permit is-
17 sued under this section.

18 “(b) PERMIT SANCTIONS.—(1) In any case in which—

19 “(A) a vessel for which a permit has been issued
20 under this section has been used in the commission of
21 an act prohibited under section 305;

22 “(B) the owner or operator of any such vessel or
23 any other person who has applied for or been issued
24 a permit under this section has acted in violation of
25 section 305; or

1 “(C) any civil penalty or criminal fine imposed
2 on a vessel, owner or operator of a vessel, or other
3 person who has applied for or been issued a permit
4 under this section has not been paid or is overdue, the
5 Secretary may—

6 “(i) revoke any permit with respect to such
7 vessel, with or without prejudice to the issuance
8 of subsequent permits;

9 “(ii) suspend such permit for a period of
10 time considered by the Secretary to be appro-
11 priate;

12 “(iii) deny such permit; or

13 “(iv) impose additional conditions or re-
14 strictions on any permit issued to, or applied for
15 by, any such vessel or person under this section.

16 “(2) In imposing a sanction under this subsection, the
17 Secretary shall take into account—

18 “(A) the nature, circumstances, extent, and grav-
19 ity of the prohibited acts for which the sanction is im-
20 posed; and

21 “(B) with respect to the violator, the degree of
22 culpability, any history of prior offenses, and other
23 such matters as justice requires.

24 “(3) Transfer of ownership of a vessel, by sale or other-
25 wise, shall not extinguish any permit sanction that is in

1 effect or is pending at the time of transfer of ownership.
2 Before executing the transfer of ownership of a vessel, by
3 sale or otherwise, the owner shall disclose in writing to the
4 prospective transferee the existence of any permit sanction
5 that will be in effect or pending with respect to the vessel
6 at the time of transfer.

7 “(4) In the case of any permit that is suspended for
8 the failure to pay a civil penalty or criminal fine, the Sec-
9 retary shall reinstate the permit upon payment of the pen-
10 alty or fine and interest thereon at the prevailing rate.

11 “(5) No sanctions shall be imposed under this section
12 unless there has been a prior opportunity for a hearing on
13 the facts underlying the violation for which the sanction
14 is imposed, either in conjunction with a civil penalty pro-
15 ceeding under this title or otherwise.”

16 (f) PROHIBITIONS.—Section 305 is repealed and sec-
17 tion 307 (16 U.S.C. 1417) is redesignated as section 305,
18 and amended as follows:

19 (1) In subsection (a):

20 (A) By amending paragraph (1) to read as
21 follows:

22 “(1) for any person to sell, purchase, offer for
23 sale, transport, or ship, in the United States, any
24 tuna or tuna product unless the tuna or tuna product
25 is either dolphin safe or has been harvested in compli-

1 *ance with the International Dolphin Conservation*
2 *Program by a country that is a member of the Inter-*
3 *American Tropical Tuna Commission or has initi-*
4 *ated steps, in accordance with Article V, paragraph*
5 *3 of the Convention establishing the Inter-American*
6 *Tropical Tuna Commission, to become a member of*
7 *that organization;”.*

8 *(B) By amending paragraph (2) to read as*
9 *follows:*

10 *“(2) except in accordance with this title and reg-*
11 *ulations issued pursuant to this title as provided for*
12 *in subsection 101(e), for any person or vessel subject*
13 *to the jurisdiction of the United States intentionally*
14 *to set a purse seine net on or to encircle any marine*
15 *mammal in the course of tuna fishing operations in*
16 *the eastern tropical Pacific Ocean; or”.*

17 *(C) By amending paragraph (3) to read as*
18 *follows:*

19 *“(3) for any person to import any yellowfin*
20 *tuna or yellowfin tuna product or any other fish or*
21 *fish product in violation of a ban on importation im-*
22 *posed under section 101(a)(2);”.*

23 *(2) In subsection (b)(2), by inserting “(a)(5)*
24 *and” before “(a)(6)”.*

25 *(3) By striking subsection (d).*

1 (g) *REPEAL*.—Section 306 is repealed and section 308
 2 (16 U.S.C. 1418) is redesignated as section 306, and
 3 amended by striking “303” and inserting in lieu thereof
 4 “302(d)”.

5 (h) *CLERICAL AMENDMENTS*.—The table of contents in
 6 the first section of the Marine Mammal Protection Act of
 7 1972 is amended by striking the items relating to title III
 8 and inserting in lieu thereof the following:

“TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

“Sec. 301. Findings and policy.

“Sec. 302. Authority of the Secretary.

“Sec. 303. Reports by the Secretary.

“Sec. 304. Permits.

“Sec. 305. Prohibitions.

“Sec. 306. Authorization of appropriations.”.

9 **SEC. 6. AMENDMENTS TO THE TUNA CONVENTIONS ACT.**

10 (a) *MEMBERSHIP*.—Section 3(c) of the Tuna Conven-
 11 tions Act of 1950 (16 U.S.C. 952(c)) is amended to read
 12 as follows:

13 “(c) at least one shall be either the Director, or
 14 an appropriate regional director, of the National Ma-
 15 rine Fisheries Service; and”.

16 (b) *ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY*
 17 *SUBCOMMITTEE*.—Section 4 of the Tuna Conventions Act
 18 of 1950 (16 U.S.C. 953) is amended to read as follows:

19 **“SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC**
 20 **ADVISORY SUBCOMMITTEE.**

21 “The Secretary, in consultation with the United States
 22 Commissioners, shall:

1 “(1) *Appoint a General Advisory Committee*
2 *which shall be composed of not less than 5 nor more*
3 *than 15 persons with balanced representation from*
4 *the various groups participating in the fisheries in-*
5 *cluded under the conventions, and from nongovern-*
6 *mental conservation organizations. The General Advi-*
7 *sory Committee shall be invited to have representa-*
8 *tives attend all nonexecutive meetings of the United*
9 *States sections and shall be given full opportunity to*
10 *examine and to be heard on all proposed programs*
11 *of investigations, reports, recommendations, and regu-*
12 *lations of the commission. The General Advisory*
13 *Committee may attend all meetings of the inter-*
14 *national commissions to which they are invited by*
15 *such commissions.*

16 “(2) *Appoint a Scientific Advisory Subcommit-*
17 *tee which shall be composed of not less than 5 nor*
18 *more than 15 qualified scientists with balanced rep-*
19 *resentation from the public and private sectors, in-*
20 *cluding nongovernmental conservation organizations.*
21 *The Scientific Advisory Subcommittee shall advise the*
22 *General Advisory Committee and the Commissioners*
23 *on matters including the conservation of ecosystems;*
24 *the sustainable uses of living marine resources related*
25 *to the tuna fishery in the eastern Pacific Ocean; and*

1 *the long-term conservation and management of stocks*
2 *of living marine resources in the eastern tropical Pa-*
3 *cific Ocean. In addition, the Scientific Advisory Sub-*
4 *committee shall, as requested by the General Advisory*
5 *Committee, the United States Commissioners or the*
6 *Secretary, perform functions and provide assistance*
7 *required by formal agreements entered into by the*
8 *United States for this fishery, including the Inter-*
9 *national Dolphin Conservation Program. These func-*
10 *tions may include each of the following:*

11 *“(A) The review of data from the Program,*
12 *including data received from the Inter-American*
13 *Tropical Tuna Commission.*

14 *“(B) Recommendations on research needs,*
15 *including ecosystems, fishing practices, and gear*
16 *technology research, including the development*
17 *and use of selective, environmentally safe and*
18 *cost-effective fishing gear, and on the coordina-*
19 *tion and facilitation of such research.*

20 *“(C) Recommendations concerning scientific*
21 *reviews and assessments required under the Pro-*
22 *gram and engaging, as appropriate, in such re-*
23 *views and assessments.*

24 *“(D) Consulting with other experts as need-*
25 *ed.*

1 “(E) *Recommending measures to assure the*
2 *regular and timely full exchange of data among*
3 *the parties to the Program and each nation’s Na-*
4 *tional Scientific Advisory Committee (or equiva-*
5 *lent).*

6 “(3) *Establish procedures to provide for appro-*
7 *priate public participation and public meetings and*
8 *to provide for the confidentiality of confidential busi-*
9 *ness data. The Scientific Advisory Subcommittee shall*
10 *be invited to have representatives attend all nonexecu-*
11 *tive meetings of the United States sections and the*
12 *General Advisory Subcommittee and shall be given*
13 *full opportunity to examine and to be heard on all*
14 *proposed programs of scientific investigation, sci-*
15 *entific reports, and scientific recommendations of the*
16 *commission. Representatives of the Scientific Advi-*
17 *sory Subcommittee may attend meetings of the Inter-*
18 *American Tropical Tuna Commission in accordance*
19 *with the rules of such Commission.*

20 “(4) *Fix the terms of office of the members of the*
21 *General Advisory Committee and Scientific Advisory*
22 *Subcommittee, who shall receive no compensation for*
23 *their services as such members.”.*

1 **SEC. 7. EQUITABLE FINANCIAL CONTRIBUTIONS.**

2 *It is the sense of the Congress that each nation meeting*
3 *the comparability requirements under section 101(a)(2)(B)*
4 *of the Marine Mammal Protection Act of 1972, as amended*
5 *by this Act, should contribute an equitable amount to the*
6 *expenses of the Inter-American Tropical Tuna Commission.*
7 *Such contributions shall be proportionate to the number of*
8 *purse seine vessels from that nation fishing for tuna in the*
9 *eastern tropical Pacific Ocean.*

10 **SEC. 8. EFFECTIVE DATE.**

11 *This Act and the amendments made by this Act shall*
12 *take effect upon certification by the Secretary of State to*
13 *the Congress that a binding resolution of the Inter-Amer-*
14 *ican Tropical Tuna Commission, or another legally binding*
15 *instrument, establishing the International Dolphin Con-*
16 *servation Program has been adopted and is in effect.*