

104TH CONGRESS
2D SESSION

H. R. 2856

To amend the Marine Mammal Protection Act of 1972 to uphold the integrity of the United States tuna labeling program, support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1996

Mr. MILLER of California (for himself, Mr. TORRICELLI, Mr. TOWNS, Ms. MCKINNEY, Ms. FURSE, Mr. FALEOMAVAEGA, Ms. RIVERS, Mr. MORAN, Mr. WAXMAN, Mr. TORRES, Mr. MANTON, Mrs. MINK of Hawaii, Mr. JOHNSTON of Florida, Mrs. MORELLA, Mr. EVANS, Ms. PELOSI, Mr. DELLUMS, Mr. LEWIS of Georgia, Mr. BROWN of California, Mr. BEIL-ENSON, Mr. YATES, and Ms. ESCHOO) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committees on Commerce, International Relations, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Marine Mammal Protection Act of 1972 to uphold the integrity of the United States tuna labeling program, 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,*

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 “International Dolphin Protection and Consumer Infor-
4 mation Act of 1995”.

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

12 **SEC. 2. FINDINGS AND PURPOSES.**

13 (a) FINDINGS.—The Congress finds the following:

14 (1) The nations that fish for tuna in the east-
15 ern tropical Pacific Ocean have reduced dolphin
16 mortalities associated with that fishery from hun-
17 dreds of thousands annually to fewer than 5,000 an-
18 nually.

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 tropi-
22 cal Pacific Ocean have served as an incentive to re-
23 duce dolphin mortalities.

24 (3) Consumers of the United States and Eu-
25 rope have made clear their preference for tuna that

1 has not been caught through the killing, chasing, or
2 harming of dolphins.

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

6 (5) The 12 signatory nations to the Declaration
7 of Panama, including the United States, agreed
8 under that Declaration to require that the total an-
9 nual dolphin mortality in the purse seine fishery for
10 yellowfin tuna in the eastern tropical Pacific Ocean
11 not exceed 5,000, with a commitment and objective
12 to progressively reduce dolphin mortality to a level
13 approaching zero through the setting of annual lim-
14 its.

15 (b) PURPOSES.—The purposes of this Act are—

16 (1) to recognize that nations fishing for tuna in
17 the eastern tropical Pacific Ocean have achieved sig-
18 nificant reductions in dolphin mortality associated
19 with that fishery; and

20 (2) to eliminate the ban on imports of dolphin-
21 safe tuna from those nations.

22 **SEC. 3. DEFINITIONS.**

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

1 “(28) The term ‘International Dolphin Con-
2 servation Program’ means the international program
3 established by the agreement signed in La Jolla,
4 California, in June 1992, as formalized, modified,
5 and enhanced in accordance with the Declaration of
6 Panama, that requires—

7 “(A)(i) that the total annual dolphin mor-
8 tality in the purse seine fishery for yellowfin
9 tuna in the eastern tropical Pacific Ocean be
10 limited to 5,000; and

11 “(ii) a commitment and objective to pro-
12 gressively reduce dolphin mortality to a level
13 approaching zero through the setting of annual
14 limits;

15 “(B) the establishment of a per stock per
16 year mortality limit for dolphins at a level be-
17 tween 0.2 percent and 0.1 percent of the mini-
18 mum estimated population each year through
19 2000;

20 “(C) beginning with the year 2001, the es-
21 tablishment of a per stock per year mortality
22 limit for dolphins at a level less than or equal
23 to 0.1 percent of the minimum population esti-
24 mate;

1 “(D) that if a mortality limit is exceeded
2 under—

3 “(i) subparagraph (A), all purse seine
4 net sets on dolphins shall cease for the
5 fishing year concerned; or

6 “(ii) subparagraph (B) or (C), all
7 purse seine net sets on the stocks covered
8 under subparagraph (B) or (C) and on any
9 mixed schools that contain any of those
10 stocks shall cease for the fishing year con-
11 cerned;

12 “(E) a scientific review and assessment to
13 be conducted in 1998 to—

14 “(i) assess progress in meeting the ob-
15 jectives set for the year 2,000 under sub-
16 paragraph (B); and

17 “(ii) as appropriate, consider rec-
18 ommendations for meeting these objectives;

19 “(F) a scientific review and assessment to
20 be conducted—

21 “(i) to review the stocks covered
22 under subparagraph (C); and

23 “(ii) as appropriate, to consider rec-
24 ommendations to further the objectives set
25 under that subparagraph;

1 “(G) the establishment of a per vessel
 2 maximum annual dolphin mortality limit con-
 3 sistent with the applicable per year mortality
 4 limits under subparagraphs (A), (B), and (C);
 5 and

6 “(H) the provision of a system of incen-
 7 tives to vessel captains to continue to reduce
 8 dolphin mortality, with the goal of eliminating
 9 dolphin mortality.

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

13 **SEC. 4. AMENDMENTS RELATING TO TITLE I.**

14 (a) AUTHORIZATION TO TAKE MARINE MAMMALS.—
 15 Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is amended—

16 (1) in the first sentence, by inserting before the
 17 period the following: “, and authorizations may be
 18 granted under title III with respect to the yellowfin
 19 tuna fishery of the eastern tropical Pacific Ocean,
 20 subject to regulations prescribed under that title by
 21 the Secretary without regard to section 103”; and

22 (2) in the second sentence, by striking the semi-
 23 colon and all that follows through “practicable”.

24 (b) EXPORTING NATIONS.—Section 101(a)(2)(B) (16
 25 U.S.C. 1371(a)(2)(B)) is amended to read as follows:

1 “(B) in the case of yellowfin tuna har-
2 vested with purse seine nets in the eastern trop-
3 ical Pacific Ocean, and products therefrom, to
4 be exported to the United States, shall require
5 that the government of the exporting nation
6 provide documentary evidence that—

7 “(i) the tuna or products therefrom
8 were not banned from importation under
9 this paragraph before the effective date of
10 the International Dolphin Protection and
11 Consumer Information Act of 1995; or

12 “(ii) the tuna or products therefrom
13 were harvested after the effective date of
14 the International Dolphin Protection and
15 Consumer Information Act of 1995 by ves-
16 sels of a nation that—

17 “(I) is a member of the Inter-
18 American Tropical Tuna Commission;

19 “(II) is participating in the
20 International Dolphin Conservation
21 Program; and

22 “(III) has implemented the obli-
23 gations of that nation as a member of
24 the Inter-American Tropical Tuna
25 Commission; and

1 “(iii) the total dolphin mortality per-
2 mitted under the International Dolphin
3 Conservation Program will not exceed
4 5,000 in 1996 or in any year thereafter
5 and the total dolphin mortality limit for
6 each vessel in each successive year shall be
7 reduced by a statistically significant
8 amount until the goal of zero mortality is
9 reached, except that the per stock per year
10 mortality limits for stocks designated as
11 depleted under this Act shall not exceed
12 the actual 1994 mortality level;
13 except that the Secretary shall not accept such
14 documentary evidence as satisfactory proof for
15 purposes of clauses (i) through (iii) if the gov-
16 ernment of the harvesting nation does not au-
17 thorize the Inter-American Tropical Tuna Com-
18 mission to release sufficient information to the
19 Secretary to allow a determination of compli-
20 ance with the International Dolphin Conserva-
21 tion Program, or if after taking into consider-
22 ation that information, findings of the Inter-
23 American Tropical Tuna Commission, and any
24 other relevant information, including informa-
25 tion that a nation is consistently failing to take

1 enforcement actions on violations specified in
2 the agreement signed in La Jolla, California, in
3 June 1992 and adopted by the International
4 Dolphin Conservation Program, the Secretary,
5 in consultation with the Secretary of State,
6 finds that the violations diminish the effective-
7 ness of the International Dolphin Conservation
8 Program and that the harvesting nation is not
9 in compliance with the International Dolphin
10 Conservation Program;”.

11 (c) UNITED STATES CITIZENS.—Section 101 (16
12 U.S.C. 1371) is amended by adding at the end the follow-
13 ing new subsection:

14 “(d) The provisions of this Act shall not apply to a
15 citizen of the United States when such citizen takes any
16 marine mammal incidental to tuna purse seine fishing op-
17 erations outside the United States exclusive economic zone
18 (as that term is defined in section 3(6) of the Magnuson
19 Fishery Conservation and Management Act (16 U.S.C.
20 1802(6)) when employed on a foreign fishing vessel of a
21 harvesting nation that is in compliance with the Inter-
22 national Dolphin Conservation Program.”.

23 (d) PERMIT.—Section 104(h) (16 U.S.C. 1374) is
24 amended to read as follows:

1 “(h)(1) Consistent with the regulations prescribed
2 pursuant to section 103 and the requirements of section
3 101, the Secretary may issue—

4 “(A) an annual permit to a United States vessel
5 authorizing the taking of such marine mammals;
6 and

7 “(B) regulations governing the use of such an-
8 nual permits.

9 “(2) An annual permit for the incidental taking of
10 marine mammals in the course of commercial purse seine
11 fishing for yellowfin tuna in the eastern tropical Pacific
12 Ocean shall be governed by section 304, subject to the reg-
13 ulations issued under section 302.”.

14 (e) TECHNICAL CORRECTION.—Section 110(a) (16
15 U.S.C. 1380(a)) is amended—

16 (1) by striking “(a)(1) The Secretary” and in-
17 serting “(a) The Secretary”; and

18 (2) by striking paragraph (2).

19 (f) DOLPHIN SAFE LABEL.—Section 901(d)(1) of the
20 Dolphin Protection Consumer Information Act (16 U.S.C.
21 1385(d)(1)) is amended to read as follows:

22 “(1) It is a violation of section 5 of the Federal
23 Trade Commission Act (15 U.S.C. 45) for any pro-
24 ducer, importer, exporter, distributor, or seller of
25 any tuna product that is exported from or offered

1 for sale in the United States to include on the label
2 of that product the term ‘Dolphin Safe’ or any other
3 term or symbol that falsely claims or suggests that
4 the tuna contained in the product was harvested
5 using a method of fishing that is not harmful to dol-
6 phins if the product contains—

7 “(A) tuna harvested on the high seas by a
8 vessel engaged in driftnet fishing;

9 “(B) tuna harvested in the eastern tropical
10 Pacific Ocean which does not meet the require-
11 ments for being considered dolphin safe under
12 paragraph (2); or

13 “(C) tuna harvested outside the eastern
14 tropical Pacific Ocean which does not meet the
15 requirements for being considered dolphin safe
16 under paragraph (3).”.

17 (g) DOLPHIN SAFE DEFINED.—Section 901(d) of the
18 Dolphin Protection Consumer Information Act (16 U.S.C.
19 1385(d)) is amended by adding at the end the following
20 new paragraphs:

21 “(3) For purposes of paragraph (1)(C), tuna or
22 a tuna product that contains tuna harvested outside
23 the eastern tropical Pacific Ocean by a fishing vessel
24 using purse seine nets is dolphin safe if—

1 “(A) it is accompanied by a written state-
2 ment executed by the captain of the vessel cer-
3 tifying that no purse seine net was intentionally
4 deployed on or to encircle dolphins during the
5 particular voyage on which the tuna was har-
6 vested; or

7 “(B) in the case of tuna from any fishery
8 in which the Secretary has determined that a
9 regular and significant association occurs be-
10 tween marine mammals and tuna, it is accom-
11 panied by a written statement executed by the
12 captain of the vessel and an observer, certifying
13 that no purse seine net was intentionally de-
14 ployed on or to encircle marine mammals dur-
15 ing the particular voyage on which the tuna was
16 harvested.

17 “(4) No tuna product may be labeled with any
18 reference to dolphins, porpoises, or other marine
19 mammals, except as dolphin safe in accordance with
20 this subsection.”.

21 (h) REGULATIONS.—Section 901(f) of the Dolphin
22 Protection Consumer Information Act (16 U.S.C. 1385(f))
23 is amended to read as follows:

24 “(f) The Secretary, in consultation with the Secretary
25 of the Treasury, shall issue regulations to implement this

1 section, not later than 3 months after the effective date
2 of the International Dolphin Protection and Consumer In-
3 formation Act of 1995.”.

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

5 (a) CLERICAL AMENDMENT.—The heading for title
6 III is amended to read as follows:

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

10 (b) INTERNATIONAL PROGRAM.—Section 301 (16
11 U.S.C. 1411) is amended—

12 (1) in subsection (a), by striking paragraph (4)
13 and inserting the following:

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

1 (2) in subsection (b), by striking paragraphs
2 (2) and (3) and inserting the following:

3 “(2) support the International Dolphin Con-
4 servation Program and efforts within the Program
5 to reduce, and eventually eliminate, the mortality re-
6 ferred to in paragraph (1);

7 “(3) ensure that the market of the United
8 States does not act as an incentive to the harvest of
9 tuna with driftnets, or by deploying purse seine nets
10 on or to encircle dolphins, in the eastern tropical Pa-
11 cific Ocean other than in compliance with the Inter-
12 national Dolphin Conservation Program;”.

13 (c) SECRETARY’S AUTHORITY.—Section 302 (16
14 U.S.C. 1412) is amended to read as follows:

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

16 “(a) REGULATIONS.—

17 “(1) GENERAL REQUIREMENT.—The Secretary
18 shall issue regulations to implement the Inter-
19 national Dolphin Conservation Program.

20 “(2) INCIDENTAL TAKINGS IN ETP.—

21 “(A) ISSUANCE OF REGULATIONS.—Not
22 later than 3 months after the effective date of
23 the International Dolphin Protection and
24 Consumer Information Act of 1995, and con-
25 sistent with section 101, the Secretary shall

1 issue regulations that authorize and govern the
2 incidental taking of marine mammals in the
3 eastern tropical Pacific Ocean by vessels of the
4 United States in accordance with the Inter-
5 national Dolphin Conservation Program.

6 “(B) CONTENTS.—Subject to subpara-
7 graph (C) the regulations issued under this
8 paragraph shall include provisions—

9 “(i) requiring observers on each ves-
10 sel;

11 “(ii) requiring the use of the back-
12 down procedure or other procedures that
13 are equally or more effective in avoiding
14 mortality of marine mammals in fishing
15 operations;

16 “(iii) prohibiting intentional setting of
17 nets on or to encircle stocks and schools of
18 marine mammals except in accordance
19 with the International Dolphin Conserva-
20 tion Program;

21 “(iv) requiring the use of special
22 equipment, including dolphin safety panels
23 in nets, operable rafts, speedboats with
24 towing bridles, floodlights in operable con-
25 dition, and diving masks and snorkels;

1 “(v) ensuring that the backdown pro-
2 cedure during any setting of a purse seine
3 net on or to encircle marine mammals is
4 completed, and rolling of the net to sack
5 up has begun, no later than 30 minutes
6 after sundown;

7 “(vi) banning the use of explosive de-
8 vices in all purse seine net operations;

9 “(vii) establishing per vessel maxi-
10 mum annual dolphin mortality limit, total
11 dolphin mortality limits, and per stock per
12 year mortality limits, subject to section
13 101 and in accordance with the Inter-
14 national Dolphin Conservation Program;

15 “(viii) preventing the making of inten-
16 tional setting of purse seine nets on or to
17 encircle dolphins after reaching either any
18 vessel maximum annual dolphin mortality
19 limits, total dolphin mortality limit, or per
20 stock per year mortality limit;

21 “(ix) preventing intentional setting of
22 purse seine nets on or to encircle dolphins
23 by a vessel that does not have an assigned
24 dolphin mortality limit;

1 “(x) allowing for the authorization
2 and conduct of experimental fishing oper-
3 ations, under such terms and conditions as
4 the Secretary may prescribe, for the pur-
5 pose of testing proposed improvements in
6 fishing techniques and equipment that may
7 reduce or eliminate dolphin mortality or
8 that do not require the encirclement of dol-
9 phins in the course of commercial yellowfin
10 tuna fishing; and

11 “(xi) containing such other restric-
12 tions and requirements as the Secretary
13 determines are necessary to implement the
14 International Dolphin Conservation Pro-
15 gram with respect to the vessels of the
16 United States;

17 “(C) ADJUSTMENTS TO REQUIREMENTS.—
18 The Secretary may make such adjustments as
19 may be appropriate to requirements under sub-
20 paragraph (B) that pertain to fishing gear and
21 fishing practices in order to carry out the Inter-
22 national Dolphin Conservation Program.

23 “(b) CONSULTATION.—In developing a regulation
24 under this section, the Secretary shall consult with the
25 Secretary of State, the Marine Mammal Commission, and

1 the United States Commissioners to the Inter-American
2 Tropical Tuna Commission appointed under section 3 of
3 the Tuna Conventions Act of 1950 (16 U.S.C. 952).

4 “(c) EMERGENCY REGULATIONS.—

5 “(1) IN GENERAL.—If the Secretary deter-
6 mines, on the basis of the best scientific information
7 available (including scientific information obtained
8 under the International Dolphin Conservation Pro-
9 gram) that the incidental mortality and serious in-
10 jury of marine mammals authorized under this title
11 is having, or is likely to have, a significant adverse
12 effect on a marine mammal stock or species, the
13 Secretary shall take the following actions:

14 “(A) Notify the Inter-American Tropical
15 Tuna Commission of the findings of the Sec-
16 retary, and include in that notification rec-
17 ommendations to the Commission concerning
18 actions necessary to reduce incidental mortality
19 and serious injury and mitigate such adverse
20 impact.

21 “(B) Prescribe emergency regulations to
22 reduce incidental mortality and serious injury
23 and mitigate such adverse impact.

24 “(2) CONSULTATIONS.—Prior to taking action
25 under subparagraph (A) or (B) of paragraph (1),

1 the Secretary shall consult with the Secretary of
2 State, the Marine Mammal Commission, and the
3 United States Commissioners to the Inter-American
4 Tropical Tuna Commission appointed under section
5 3 of the Tuna Conventions Act of 1950 (16 U.S.C.
6 952).

7 “(3) CONTENTS OF REGULATIONS.—Emergency
8 regulations prescribed under this subsection—

9 “(A) shall be published in the Federal
10 Register, together with an explanation thereof;

11 “(B) subject to subparagraph (C) shall re-
12 main in effect for the duration of the applicable
13 fishing year; and

14 “(C) may be terminated by the Secretary
15 at an earlier date by publication in the Federal
16 Register of a notice of termination, if the Sec-
17 retary determines that the reasons for the
18 emergency action no longer exist.

19 “(4) EXTENSION OF REGULATIONS.—If the
20 Secretary finds that the incidental mortality and se-
21 rious injury of marine mammals in the yellowfin
22 tuna fishery in the eastern tropical Pacific Ocean is
23 continuing to have a significant adverse impact on a
24 stock or species, the Secretary may extend the emer-

1 agency regulations for such additional periods as may
2 be necessary.

3 “(d) RESEARCH.—

4 “(1) FURTHERING INTERNATIONAL PRO-
5 GRAM.—The Secretary may, in cooperation with the
6 nations participating in the International Dolphin
7 Conservation Program and with the Inter-American
8 Tropical Tuna Commission, undertake or support
9 appropriate scientific research to further the goals of
10 the International Dolphin Conservation Program, in-
11 cluding—

12 “(A) devising cost-effective fishing methods
13 and gear so as to reduce, with the goal of elimi-
14 nating, the incidental mortality and serious in-
15 jury of marine mammals in connection with
16 tuna purse seine fishing in the eastern tropical
17 Pacific Ocean;

18 “(B) developing cost-effective methods of
19 fishing for mature yellowfin tuna without set-
20 ting nets on or to encircle dolphins or other ma-
21 rine mammals; and

22 “(C) carrying out a scientific research pro-
23 gram (as described in section 117) for those
24 marine mammal species and stocks taken in the
25 purse seine fishery for yellowfin tuna in the

1 eastern tropical Pacific Ocean, including species
2 or stocks that are not within waters under the
3 jurisdiction of the United States.

4 “(2) REQUIRED RESEARCH.—The Secretary,
5 acting through the National Marine Fisheries Serv-
6 ice, shall undertake a research program to—

7 “(A) determine the effect of harassment by
8 chase and encirclement on the health and biol-
9 ogy of dolphins encircled by purse seine nets in
10 the course of fishing for yellowfin tuna in the
11 eastern tropical Pacific Ocean; and

12 “(B) regarding the incidental take of
13 nontarget species, including juvenile tuna, de-
14 termine—

15 “(i) the extent to which such inciden-
16 tal take occurs when fishing for yellowfin
17 tuna using dolphin-safe methods including
18 fish aggregation devices;

19 “(ii) the impact of that incidental take
20 on tuna stocks; and

21 “(iii) the locations in which such
22 methods are occurring.

23 “(3) REPORT.—

24 “(A) IN GENERAL.—Not later than 3 years
25 after the date of enactment of the International

1 Dolphin Protection and Consumer Information
2 Act of 1995, the Secretary shall submit a re-
3 port to the Congress on the results of the re-
4 search program conducted under paragraph (2).

5 “(B) RECOMMENDATIONS.—The Secretary
6 shall include in the report under this paragraph
7 any recommendations, made on the basis of the
8 results of the research program conducted
9 under paragraph (2), that the Secretary consid-
10 ers to be appropriate concerning—

11 “(i) legislation to address issues that
12 the Secretary determines to be relevant to
13 the results of the research program; and

14 “(ii) changes to the International Dol-
15 phin Conservation Program.

16 “(4) AUTHORIZATION OF APPROPRIATIONS.—
17 There are authorized to be appropriated to the Sec-
18 retary of Commerce \$1,000,000 to carry out para-
19 graph (2).”.

20 (d) GENERAL REPORTING REQUIREMENTS; PER-
21 MITS.—Title III (16 U.S.C. 1411 et seq.) is amended—

22 (1) by striking sections 303 and 304;

23 (2) by inserting after section 302 the following:

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

2 “The Secretary shall annually submit to the Congress
3 a report that includes—

4 “(1) results of research conducted under section
5 302;

6 “(2) a description of the status and trends of
7 stocks of tuna;

8 “(3) a description of the efforts to assess,
9 avoid, reduce, and minimize the incidental take of
10 juvenile yellowfin tuna and other nontarget species;

11 “(4) a description of the activities of the Inter-
12 national Dolphin Conservation Program and of the
13 efforts of the United States in support of the goals
14 and objectives of the International Dolphin Con-
15 servation Program, including the protection of dol-
16 phin populations in the eastern tropical Pacific
17 Ocean, and an assessment of the effectiveness of the
18 Program;

19 “(5) actions taken by the Secretary under the
20 matter following clause (iii) of section 101(a)(2)(B);

21 “(6) copies of any relevant resolutions and deci-
22 sions of the Inter-American Tropical Tuna Commis-
23 sion, and any regulations promulgated by the Sec-
24 retary under this title; and

25 “(7) any other information that the Secretary
26 considers to be relevant.”;

1 (3) by striking sections 305 and 306;

2 (4) by inserting after section 303 the following:

3 **“SEC. 304. PERMITS.**

4 “(a) IN GENERAL.—

5 “(1) ISSUANCE.—In a manner consistent with
6 the regulations issued under section 302, the Sec-
7 retary—

8 “(A) shall require and issue a permit to a
9 vessel of the United States authorizing partici-
10 pation in the International Dolphin Conserva-
11 tion Program and incidental takes of marine
12 mammals under that program; and

13 “(B) may require such a permit for the
14 person actually in charge of and controlling the
15 fishing operation of a vessel operating under
16 such a permit.

17 “(2) PROCEDURES.—The Secretary shall pre-
18 scribe such procedures as are necessary to carry out
19 this subsection, including requiring the submission
20 of—

21 “(A) the name and official number or
22 other identification of each fishing vessel for
23 which a permit is sought, and the name and ad-
24 dress of the owner thereof; and

1 “(B) the tonnage, hold capacity, speed,
2 processing equipment, and type and quantity of
3 gear, including an inventory of special equip-
4 ment required under section 302, with respect
5 to each fishing vessel for which a permit is
6 sought.

7 “(3) FEES.—The Secretary may charge a fee
8 for issuing a permit under this section. The level of
9 fees charged under this paragraph may not exceed
10 the administrative cost incurred in granting an au-
11 thorization and issuing a permit. Fees collected
12 under this paragraph shall be available to the Under
13 Secretary of Commerce for Oceans and Atmosphere
14 for expenses incurred in granting authorizations and
15 issuing permits under this section.

16 “(4) PERMIT REQUIRED.—After the effective
17 date of the International Dolphin Protection and
18 Consumer Information Act of 1995, no vessel of the
19 United States shall encircle dolphins with purse
20 seine nets in the course of fishing for yellowfin tuna
21 fishery in the eastern tropical Pacific Ocean without
22 a valid permit issued under this section.

23 “(b) PERMIT SANCTIONS.—

1 “(1) IN GENERAL.—The Secretary may impose
2 a sanction under paragraph (2) in any case in
3 which—

4 “(A) a vessel for which a permit has been
5 issued under this section has been used in the
6 commission in an act prohibited under section
7 305;

8 “(B) the owner or operator of any such
9 vessel or any other person who has applied for
10 or been issued a permit under this section has
11 acted in violation of section 305; or

12 “(C) any civil penalty or criminal fine im-
13 posed on a vessel, owner or operator of a vessel
14 as provided for under the International Dolphin
15 Conservation Program, or other person who has
16 applied for or been issued a permit under this
17 section has not been paid or is overdue.

18 “(2) SANCTIONS DESCRIBED.—As a sanction
19 imposed under paragraph (1) with respect to a ves-
20 sel, the Secretary may—

21 “(A) revoke any permit with respect to the
22 vessel, with or without prejudice to the issuance
23 of subsequent permits;

1 “(B) suspend a permit referred to in sub-
2 paragraph (A) for a period of time the Sec-
3 retary considers to be appropriate;

4 “(C) deny a permit referred to in subpara-
5 graph (A); or

6 “(D) impose additional conditions or re-
7 strictions on any permit issued to, or applied
8 for by, any such vessel or person under this sec-
9 tion.

10 “(3) CONSIDERATIONS.—In imposing a sanc-
11 tion under this subsection, the Secretary shall take
12 into account—

13 “(A) the nature, circumstances, extent,
14 and gravity of the prohibited acts for which the
15 sanction is imposed; and

16 “(B) with respect to the violator, the de-
17 gree of culpability, the history of prior offenses,
18 and other such matters as justice requires.

19 “(4) SANCTION NOT EXTINGUISHED BY TRANS-
20 FER OF OWNERSHIP.—

21 “(A) IN GENERAL.—Transfer of ownership
22 of a vessel, by sale or otherwise, shall not extin-
23 guish any permit sanction that is in effect or is
24 pending at the time of transfer of ownership.

“(B) DISCLOSURE.—Before executing a transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.

“(5) REINSTATEMENT OF PERMIT SUSPENDED FOR NONPAYMENT.—In the case of any permit that is suspended for a failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and any accrued interest on that penalty or fine (as determined by the Secretary).

“(6) HEARING REQUIREMENT.—No sanction may be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this title or otherwise.”;

(5) by redesignating section 307 as section 305;

(6) in section 305, as so redesignated—

(A) in subsection (a)—

(i) by striking paragraph (1) and inserting the following:

1 “(1) for any person to sell, purchase, offer for
2 sale, transport, or ship, in the United States, any
3 tuna or tuna product unless the tuna or tuna prod-
4 uct is dolphin-safe under section 901(d) of the Dol-
5 phin Protection Consumer Information Act (16
6 U.S.C. 1385(d)) and has been harvested in compli-
7 ance with the International Dolphin Conservation
8 Program by a nation that is a member of the Inter-
9 American Tropical Tuna Commission;”;

10 (ii) by striking paragraphs (2) and (3)

11 and inserting the following:

12 “(2) except as provided for in section 101(d),
13 for any person or vessel subject to the jurisdiction
14 of the United States to intentionally set a purse
15 seine net on or to encircle any marine mammal in
16 the course of tuna fishing operations in the eastern
17 tropical Pacific Ocean, except in accordance with
18 this title and regulations issued under this title;

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;”;

23 (B) in subsection (b)(2), by inserting

24 “(a)(5) or” before “(a)(6)”;

1 (7) by redesignating section 308 as section 306;

2 and

3 (8) in section 306, as so redesignated, by strik-

4 ing “section 303” and inserting “section 302(d)”.

5 (e) CLERICAL AMENDMENT.—The table of contents

6 in the first section of the Marine Mammal Protection Act

7 of 1972 is amended by striking the items relating to title

8 III and inserting the following:

“TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

“Sec. 301. Finding 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 OF**

10 **1950.**

11 (a) COMMISSIONER FROM NMFS.—Section 3(c) of

12 the Tuna Conventions Act of 1950 (16 U.S.C. 952(c)) is

13 amended to read as follows:

14 “(c) at least one shall be the Director, or an appro-

15 priate regional director, of the National Marine Fisheries

16 Service; and”.

17 (b) ADVISORY COMMITTEES.—Section 4 of the Tuna

18 Conventions Act of 1950 (16 U.S.C. 953) is amended to

19 read as follows:

1 **“SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC**
2 **ADVISORY SUBCOMMITTEE.**

3 “(a)(1) The Secretary, in consultation with the
4 United States Commissioners, shall appoint a committee
5 to be known as the ‘General Advisory Committee’. The
6 General Advisory Committee shall be composed of not less
7 than 5 and not more than 15 individuals and shall have
8 balanced representation from the various groups partici-
9 pating in the fisheries included under the conventions, and
10 from nongovernmental conservation organizations.

11 “(2) The General Advisory Committee shall be in-
12 vited to have representatives attend all nonexecutive meet-
13 ings of the United States sections and shall be given full
14 opportunity to examine and to be heard on all proposed
15 programs of investigations, reports, recommendations, and
16 regulations of the Commission. The General Advisory
17 Committee may attend any meeting of an international
18 commission on the invitation of that commission.

19 “(b)(1) The Secretary, in consultation with the
20 United States Commissioners, shall appoint a subcommit-
21 tee to be known as the ‘Scientific Advisory Subcommittee’.
22 The Scientific Advisory Subcommittee shall be composed
23 of not less than 5 and not more than 15 qualified individ-
24 uals with recognized scientific expertise, and shall have
25 balanced representation from the public and private sec-
26 tors, including nongovernmental conservation organiza-

1 tions. The Scientific Advisory Subcommittee shall advise
2 the General Advisory Committee and the United States
3 Commissioners on matters relating to the conservation of
4 ecosystems, the sustainable uses of living marine resources
5 related to the tuna fishery in the eastern Pacific Ocean,
6 and the long-term conservation and management of stocks
7 of living marine resources in the eastern tropical Pacific
8 Ocean.

9 “(2)(A) In addition to carrying out the duties speci-
10 fied in paragraph (1), the Scientific Advisory Subcommit-
11 tee shall, upon request by the General Advisory Commit-
12 tee, the United States Commissioners, or the Secretary,
13 perform functions and provide assistance required by for-
14 mal agreements entered into by the United States for this
15 fishery, including the International Dolphin Conservation
16 Program.

17 “(B) The functions referred to in subparagraph (A)
18 may include but are not limited to—

19 “(i) reviewing data from the International Dol-
20 phin Conservation Program, including data received
21 from the Inter-American Tropical Tuna Commission;

22 “(ii) making recommendations concerning re-
23 search needs, including ecosystems, fishing practices,
24 and gear technology research (including the develop-
25 ment and use of selective, environmentally safe, and

1 cost-effective fishing gear), and the coordination and
2 facilitation of such research;

3 “(iii) making recommendations concerning sci-
4 entific reviews and assessments required under the
5 International Dolphin Conservation Program, and
6 engaging, as appropriate, in such reviews and as-
7 sessments;

8 “(iv) consulting with other experts as needed;
9 and

10 “(v) recommending measures to ensure the reg-
11 ular and timely full exchange of data among the par-
12 ties to the International Dolphin Conservation Pro-
13 gram and the national scientific advisory committee
14 of each country that participates in the program (or
15 the equivalent entity of that country).

16 “(c) The Secretary, in consultation with the United
17 States Commissioners, shall establish procedures to pro-
18 vide for appropriate public participation and public meet-
19 ings and to provide for the confidentiality of confidential
20 business data. The Scientific Advisory Subcommittee shall
21 be invited to have representatives attend all nonexecutive
22 meetings of the United States sections and the General
23 Advisory Subcommittee and shall be given full opportunity
24 to examine and to be heard on all proposed programs of
25 scientific investigation, scientific reports, and scientific

1 recommendations of the Commission. Representatives of
2 the Scientific Advisory Subcommittee may attend meet-
3 ings of the Inter-American Tropical Tuna Commission in
4 accordance with the rules of the Commission.

5 “(d)(1) The Secretary, in consultation with the
6 United States Commissioners, shall fix the terms of office
7 of the members of the General Advisory Committee and
8 the Scientific Advisory Subcommittee.

9 “(2) Each member of the General Advisory Commit-
10 tee and the Scientific Advisory Subcommittee who is not
11 an officer or employee of the Federal Government shall
12 serve without compensation.

13 “(3) The General Advisory Committee and the Sci-
14 entific Advisory Subcommittee shall be exempt from the
15 Federal Advisory Committee Act (5 U.S.C. App.).”.

16 **SEC. 7. EFFECTIVE DATE.**

17 This Act and the amendments made by this Act shall
18 become effective upon—

19 (1) a certification by the Secretary of State to
20 the Congress that a binding resolution of the Inter-
21 American Tropical Tuna Commission, or other le-
22 gally binding instrument, establishing the Inter-
23 national Dolphin Conservation Program has been
24 adopted by each nation participating in the Inter-

1 national Dolphin Conservation Program and is in ef-
2 fect; and

3 (2) the promulgation of final regulations under
4 section 302(a) of the Marine Mammal Protection
5 Act of 1972, as amended by this Act.

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