

105TH CONGRESS
1ST SESSION

H. R. 408

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

JANUARY 9, 1997

Mr. GILCREST (for himself, Mr. CUNNINGHAM, Mr. CARDIN, Mr. YOUNG of Alaska, Mr. ORTIZ, Mr. BILBRAY, and Mr. KOLBE) introduced the following bill; which was referred to the Committee on Resources

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
8 in this Act an amendment or repeal is expressed in terms

1 of an amendment to, or repeal of, a section or other provi-
2 sion, the reference shall be considered to be made to a
3 section or other provision of the Marine Mammal Protec-
4 tion Act of 1972 (16 U.S.C. 1361 et seq.).

5 **SEC. 2. PURPOSE AND FINDINGS.**

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

7 (1) to give effect to the Declaration of Panama,
8 signed October 4, 1995, by the Governments of
9 Belize, Colombia, Costa Rica, Ecuador, France,
10 Honduras, Mexico, Panama, Spain, the United
11 States of America, Vanuatu, and Venezuela, includ-
12 ing the establishment of the International Dolphin
13 Conservation Program, relating to the protection of
14 dolphins and other species, and the conservation and
15 management of tuna in the eastern tropical Pacific
16 Ocean;

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

21 (3) to eliminate the ban on imports of tuna
22 from those nations that are in compliance with the
23 International Dolphin Conservation Program.

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

1 (1) The nations that fish for tuna in the east-
2 ern tropical Pacific Ocean have achieved significant
3 reductions in dolphin mortalities associated with the
4 purse seine fishery from hundreds of thousands an-
5 nually to fewer than 5,000 annually.

6 (2) The provisions of the Marine Mammal Pro-
7 tection Act of 1972 that impose a ban on imports
8 from nations that fish for tuna in the eastern tropi-
9 cal Pacific Ocean have served as an incentive to re-
10 duce dolphin mortalities.

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

14 (4) 12 signatory nations to the Declaration of
15 Panama, including the United States, agreed under
16 that Declaration to require that the total annual dol-
17 phin mortality in the purse seine fishery for yellow-
18 fin tuna in the eastern tropical Pacific Ocean not ex-
19 ceed 5,000, with a commitment and objective to pro-
20 gressively reduce dolphin mortality to a level ap-
21 proaching zero through the setting of annual limits.

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) that the total annual dolphin mortal-
8 ity in the purse seine fishery for yellowfin tuna
9 in the eastern tropical Pacific Ocean not exceed
10 5,000, with the commitment and objective to
11 progressively reduce dolphin mortality to levels
12 approaching zero through the setting of annual
13 limits;

14 “(B) the establishment of a per-stock per-
15 year mortality limit for dolphins, for each year
16 through the year 2000, of between 0.2 percent
17 and 0.1 percent of the minimum population es-
18 timate;

19 “(C) beginning with the year 2001, that
20 the per-stock per-year mortality of dolphin not
21 exceed 0.1 percent of the minimum population
22 estimate;

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

1 “(E) that if the mortality limit set forth in
2 subparagraph (B) or (C) is exceeded sets on
3 such stock and any mixed schools containing
4 members of such stock shall cease for that fish-
5 ing year;

6 “(F) in the case of subparagraph (B), to
7 conduct a scientific review and assessment in
8 1998 of progress toward the year 2000 objec-
9 tive and consider recommendations as appro-
10 priate; and

11 “(G) in the case of subparagraph (C), to
12 conduct a scientific review and assessment re-
13 garding that stock or those stocks and consider
14 further recommendations;

15 “(H) the establishment of a per-vessel
16 maximum annual dolphin mortality limit con-
17 sistent with the established per-year mortality
18 caps; and

19 “(I) the provision of a system of incentives
20 to vessel captains to continue to reduce dolphin
21 mortality, with the goal of eliminating dolphin
22 mortality.

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

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

2 (a) AUTHORIZATION FOR INCIDENTAL TAKING.—

3 Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is amended as
4 follows:

5 (1) By inserting after the first sentence “Such
6 authorizations may also be granted under title III
7 with respect to the yellowfin tuna fishery of the east-
8 ern tropical Pacific Ocean, subject to regulations
9 prescribed under that title by the Secretary without
10 regard to section 103.”.

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

13 (b) DOCUMENTARY EVIDENCE.—Section 101(a) (16
14 U.S.C. 1371(a)) is amended by striking so much of para-
15 graph (2) as follows subparagraph (A) and as precedes
16 subparagraph (C) and inserting:

17 “(B) in the case of yellowfin tuna har-
18 vested with purse seine nets in the eastern tropi-
19 cal Pacific Ocean, and products therefrom, to
20 be exported to the United States, shall require
21 that the government of the exporting nation
22 provide documentary evidence that—

23 “(i) the tuna or products therefrom
24 were not banned from importation under
25 this paragraph before the effective date of

1 the International Dolphin Conservation
2 Program Act;

3 “(ii) the tuna or products therefrom
4 were harvested after the effective date of
5 the International Dolphin Conservation
6 Program Act by vessels of a nation which
7 participates in the International Dolphin
8 Conservation Program, such harvesting na-
9 tion is either a member of the Inter-Amer-
10 ican Tropical Tuna Commission or has ini-
11 tiated (and within 6 months thereafter
12 completed) all steps (in accordance with
13 article V, paragraph 3 of the Convention
14 establishing the Inter-American Tropical
15 Tuna Commission) necessary to become a
16 member of that organization;

17 “(iii) such nation is meeting the obli-
18 gations of the International Dolphin Con-
19 servation Program and the obligations of
20 membership in the Inter-American Tropi-
21 cal Tuna Commission, including all finan-
22 cial obligations;

23 “(iv) the total dolphin mortality per-
24 mitted under the International Dolphin
25 Conservation Program will not exceed

1 5,000 in 1997, or in any year thereafter,
2 consistent with the commitment and objec-
3 tive of progressively reducing dolphin mor-
4 tality to levels approaching zero through
5 the setting of annual limits and the goal of
6 eliminating dolphin mortality; and

7 “ (v) the tuna or products therefrom
8 were harvested after the effective date of
9 the International Dolphin Conservation
10 Program Act by vessels of a nation which
11 participates in the International Dolphin
12 Conservation Program, and such harvest-
13 ing nation has not vetoed the participation
14 by any other nation in such Program.”.

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

18 “(d) ACCEPTANCE OF DOCUMENTARY EVIDENCE.—
19 The Secretary shall not accept documentary evidence re-
20 ferred to in section 101(a)(2)(B) as satisfactory proof for
21 purposes of section 101(a)(2) if—

22 “(1) the government of the harvesting nation
23 does not provide directly or authorize the Inter-
24 American Tropical Tuna Commission to release com-
25 plete and accurate information to the Secretary to

1 allow a determination of compliance with the Inter-
2 national Dolphin Conservation Program;

3 “(2) the government of the harvesting nation
4 does not provide directly or authorize the Inter-
5 American Tropical Tuna Commission to release com-
6 plete and accurate information to the Secretary in a
7 timely manner for the purposes of tracking and veri-
8 fying compliance with the minimum requirements es-
9 tablished by the Secretary in regulations promul-
10 gated under subsection (f) of the Dolphin Protection
11 Consumer Information Act (16 U.S.C. 1385(f)); or

12 “(3) after taking into consideration this infor-
13 mation, findings of the Inter-American Tropical
14 Tuna Commission, and any other relevant informa-
15 tion, including information that a nation is consist-
16 ently failing to take enforcement actions on viola-
17 tions which diminish the effectiveness of the Inter-
18 national Dolphin Conservation Program, the Sec-
19 retary, in consultation with the Secretary of State,
20 finds that the harvesting nation is not in compliance
21 with the International Dolphin Conservation Pro-
22 gram.

23 “(e) EXEMPTION.—The provisions of this Act shall
24 not apply to a citizen of the United States who incidentally

1 takes any marine mammal during fishing operations out-
2 side the United States exclusive economic zone (as defined
3 in section 3(6) of the Magnuson Fishery Conservation and
4 Management Act (16 U.S.C. 1802(6))) when employed on
5 a foreign fishing vessel of a harvesting nation which is
6 in compliance with the International Dolphin Conservation
7 Program.”.

8 (d) ANNUAL PERMITS.—Section 104(h) is amended
9 to read as follows:

10 “(h) ANNUAL PERMITS.—(1) Consistent with the
11 regulations prescribed pursuant to section 103 and the re-
12 quirements of section 101, the Secretary may issue an an-
13 nual permit to a United States vessel for the taking of
14 such marine mammals, and shall issue regulations to cover
15 the use of any such annual permits.

16 “(2) Annual permits described in paragraph (1) for
17 the incidental taking of marine mammals in the course
18 of commercial purse seine fishing for yellowfin tuna in the
19 eastern tropical Pacific Ocean shall be governed by section
20 304, subject to the regulations issued pursuant to section
21 302.”.

22 (e) REVISIONS AND FUNDING SOURCES.—Section
23 108(a)(2) (16 U.S.C. 1378(a)(2)) is amended as follows:

24 (1) By striking “and” at the end of subpara-
25 graph (A).

1 (2) By adding at the end the following:

2 “(C) discussions to expeditiously negotiate
3 revisions to the Convention for the Establish-
4 ment of an Inter-American Tropical Tuna Com-
5 mission (1 UST 230, TIAS 2044) which will in-
6 corporate conservation and management provi-
7 sions agreed to by the nations which have
8 signed the Declaration of Panama;

9 “(D) a revised schedule of annual con-
10 tributions to the expenses of the Inter-American
11 Tropical Tuna Commission that is equitable to
12 participating nations; and

13 “(E) discussions with those countries par-
14 ticipating or likely to participate in the Inter-
15 national Dolphin Conservation Program, to
16 identify alternative sources of funds to ensure
17 that needed research and other measures bene-
18 fitting effective protection of dolphins, other ma-
19 rine species, and the marine ecosystem;”.

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

22 (1) By redesignating subsection (a)(1) as sub-
23 section (a).

24 (2) By striking subsection (a)(2).

1 (g) LABELING OF TUNA PRODUCTS.—Paragraph (1)
2 of section 901(d) of the Dolphin Protection Consumer In-
3 formation Act (16 U.S.C. 1385(d)(1)) is amended to read
4 as follows:

5 “(1) It is a violation of section 5 of the Federal Trade
6 Commission Act for any producer, importer, exporter, dis-
7 tributor, or seller of any tuna product that is exported
8 from or offered for sale in the United States to include
9 on the label of that product the term ‘Dolphin Safe’ or
10 any other term or symbol that falsely claims or suggests
11 that the tuna contained in the product was harvested
12 using a method of fishing that is not harmful to dolphins
13 if the product contains any of the following:

14 “(A) Tuna harvested on the high seas by a ves-
15 sel engaged in driftnet fishing.

16 “(B) Tuna harvested in the eastern tropical Pa-
17 cific Ocean by a vessel using purse seine nets unless
18 the tuna is considered dolphin safe under paragraph
19 (2).

20 “(C) Tuna harvested outside the eastern tropi-
21 cal Pacific Ocean by a vessel using purse seine nets
22 unless the tuna is considered dolphin safe under
23 paragraph (3).

24 “(D) Tuna harvested by a vessel engaged in
25 any fishery identified by the Secretary pursuant to

1 paragraph (4) as having a regular and significant in-
2 cidental mortality of marine mammals.”.

3 (h) DOLPHIN SAFE TUNA.—(1) Paragraph (2) of
4 section 901(d) of the Dolphin Protection Consumer Infor-
5 mation Act (16 U.S.C. 1385(d)(2)) is amended to read
6 as follows:

7 “(2)(A) For purposes of paragraph (1)(B), a tuna
8 product that contains tuna harvested in the eastern tropi-
9 cal Pacific Ocean by a vessel using purse seine nets is dol-
10 phin safe if the vessel is of a type and size that the Sec-
11 retary has determined, consistent with the International
12 Dolphin Conservation Program, is not capable of deploy-
13 ing its purse seine nets on or to encircle dolphins, or if
14 the product meets the requirements of subparagraph (B).

15 “(B) For purposes of paragraph (1)(B), a tuna prod-
16 uct that contains tuna harvested in the eastern tropical
17 Pacific Ocean by a vessel using purse seine nets is dolphin
18 safe if the product is accompanied by a written statement
19 executed by the captain of the vessel which harvested the
20 tuna certifying that no dolphins were killed during the sets
21 in which the tuna were caught and the product is accom-
22 panied by a written statement executed by—

23 “(i) the Secretary or the Secretary’s designee;

24 “(ii) a representative of the Inter-American
25 Tropical Tuna Commission; or

1 “(iii) an authorized representative of a partici-
2 pating nation whose national program meets the re-
3 quirements of the International Dolphin Conserva-
4 tion Program,

5 which states that there was an observer approved by the
6 International Dolphin Conservation Program on board the
7 vessel during the entire trip and documents that no dol-
8 phins were killed during the sets in which the tuna con-
9 cerned were caught.

10 “(C) The statements referred to in clauses (i), (ii),
11 and (iii) of subparagraph (B) shall be valid only if they
12 are endorsed in writing by each exporter, importer, and
13 processor of the product, and if such statements and en-
14 dorsements comply with regulations promulgated by the
15 Secretary which would provide for the verification of tuna
16 products as dolphin safe.”.

17 (2) Subsection (d) of section 901 of the Dolphin Pro-
18 tection Consumer Information Act (16 U.S.C. 1385(d)) is
19 amended by adding the following new paragraphs at the
20 end thereof:

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

1 “(A) it is accompanied by a written statement
2 executed by the captain of the vessel certifying that
3 no purse seine net was intentionally deployed on or
4 to encircle dolphins during the particular voyage on
5 which the tuna was harvested; or

6 “(B) in any fishery in which the Secretary has
7 determined that a regular and significant association
8 occurs between marine mammals and tuna, it is ac-
9 companied by a written statement executed by the
10 captain of the vessel and an observer, certifying that
11 no purse seine net was intentionally deployed on or
12 to encircle marine mammals during the particular
13 voyage on which the tuna was harvested.

14 “(4) For purposes of paragraph (1)(D), tuna or a
15 tuna product that contains tuna harvested in a fishery
16 identified by the Secretary as having a regular and signifi-
17 cant incidental mortality or serious injury of marine mam-
18 mals is dolphin safe if it is accompanied by a written state-
19 ment executed by the captain of the vessel and, where de-
20 termined to be practicable by the Secretary, an observer
21 participating in a national or international program ac-
22 ceptable to the Secretary certifying that no marine mam-
23 mals were killed in the course of the fishing operation or
24 operations in which the tuna were caught.

1 “(5) No tuna product may be labeled with any ref-
2 erence to dolphins, porpoises, or marine mammals, unless
3 such product is labeled as dolphin safe in accordance with
4 this subsection.”.

5 (i) TRACKING AND VERIFICATION.—Subsection (f) of
6 section 901 of the Dolphin Protection Consumer Informa-
7 tion Act (16 U.S.C. 1385(f)) is amended to read as fol-
8 lows:

9 “(f) TRACKING AND VERIFICATION.—The Secretary,
10 in consultation with the Secretary of the Treasury, shall
11 issue regulations to implement subsection (d) not later
12 than 3 months after the date of enactment of the Inter-
13 national Dolphin Conservation Program Act. In the devel-
14 opment of these regulations, the Secretary shall establish
15 appropriate procedures for ensuring the confidentiality of
16 proprietary information the submission of which is vol-
17 untary or mandatory. Such regulations shall, consistent
18 with international efforts and in coordination with the
19 Inter-American Tropical Tuna Commission, establish a
20 domestic and international tracking and verification pro-
21 gram that provides for the effective tracking of tuna la-
22 beled under subsection (d), including but not limited to
23 each of the following:

24 “(1) Specific regulations and provisions ad-
25 dressing the use of weight calculation for purposes

1 of tracking tuna caught, landed, processed, and ex-
2 ported.

3 “(2) Additional measures to enhance observer
4 coverage if necessary.

5 “(3) Well location and procedures for monitor-
6 ing, certifying, and sealing holds above and below
7 deck or other equally effective methods of tracking
8 and verifying tuna labeled under subsection (d).

9 “(4) Reporting receipt of and database storage
10 of radio and facsimile transmittals from fishing ves-
11 sels containing information related to the tracking
12 and verification of tuna, and the definition of sets.

13 “(5) Shore-based verification and tracking
14 throughout the transshipment and canning process
15 by means of Inter-American Tropical Tuna Commis-
16 sion trip records or otherwise.

17 “(6) Provisions for annual audits and spot
18 checks for caught, landed, and processed tuna prod-
19 ucts labeled in accordance with subsection (d).

20 “(7) The provision of timely access to data re-
21 quired under this subsection by the Secretary from
22 harvesting nations to undertake the actions required
23 in paragraph (6) of this subsection.”.

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

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

4 **“TITLE III—INTERNATIONAL**
5 **DOLPHIN CONSERVATION**
6 **PROGRAM”.**

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

9 (1) In subsection (a), by amending paragraph
10 (4) to read as follows:

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

22 (2) In subsection (b), by amending paragraphs
23 (2) and (3) to read as follows:

24 “(2) support the International Dolphin Con-
25 servation Program and efforts within the Program

1 to reduce, with the goal of eliminating, the mortality
2 referred to in paragraph (1);

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

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

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

13 “(a) REGULATIONS TO IMPLEMENT PROGRAM REGU-
14 LATIONS.—(1) The Secretary shall issue regulations to
15 implement the International Dolphin Conservation Pro-
16 gram.

17 “(2)(A) Not later than 3 months after the date of
18 enactment of this section, the Secretary shall issue regula-
19 tions to authorize and govern the incidental taking of ma-
20 rine mammals in the eastern tropical Pacific Ocean, in-
21 cluding any species of marine mammal designated as de-
22 pleted under this Act but not listed as endangered or
23 threatened under the Endangered Species Act of 1973 (16

1 U.S.C. 1531 et seq.), by vessels of the United States par-
2 ticipating in the International Dolphin Conservation Pro-
3 gram.

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

6 “(i) requiring observers on each vessel;

7 “(ii) requiring use of the backdown procedure
8 or other procedures equally or more effective in
9 avoiding mortality of marine mammals in fishing op-
10 erations;

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

14 “(iv) requiring the use of special equipment, in-
15 cluding dolphin safety panels in nets, monitoring de-
16 vices as identified by the International Dolphin Con-
17 servation Program, as practicable, to detect unsafe
18 fishing conditions before nets are deployed by a tuna
19 vessel, operable rafts, speedboats with towing bri-
20 dles, floodlights in operable condition, and diving
21 masks and snorkels;

22 “(v) ensuring that the backdown procedure dur-
23 ing the deployment of nets on, or encirclement of,
24 dolphins is completed and rolling of the net to sack

1 up has begun no later than 30 minutes after sun-
2 down;

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

5 “(vii) establishing per vessel maximum annual
6 dolphin mortality limits, total dolphin mortality lim-
7 its and per-stock per-year mortality limits, in ac-
8 cordance with the International Dolphin Conserva-
9 tion Program;

10 “(viii) preventing the intentional deployment of
11 nets on, or encirclement of, dolphins after reaching
12 either the vessel maximum annual dolphin mortality
13 limits, total dolphin mortality limits, or per-stock
14 per-year mortality limits;

15 “(ix) preventing the fishing on dolphins by a
16 vessel without an assigned vessel dolphin mortality
17 limit;

18 “(x) allowing for the authorization and conduct
19 of experimental fishing operations, under such terms
20 and conditions as the Secretary may prescribe, for
21 the purpose of testing proposed improvements in
22 fishing techniques and equipment (including new
23 technology for detecting unsafe fishing conditions
24 before nets are deployed by a tuna vessel) that may

1 reduce or eliminate dolphin mortality or do not re-
2 quire the encirclement of dolphins in the course of
3 commercial yellowfin tuna fishing;

4 “(xi) authorizing fishing within the area cov-
5 ered by the International Dolphin Conservation Pro-
6 gram by vessels of the United States without the use
7 of special equipment or nets if the vessel takes an
8 observer and does not intentionally deploy nets on,
9 or encircle, dolphins, under such terms and condi-
10 tions as the Secretary may prescribe; and

11 “(xii) containing such other restrictions and re-
12 quirements as the Secretary determines are nec-
13 essary to implement the International Dolphin Con-
14 servation Program with respect to vessels of the
15 United States.

16 “(C) The Secretary may make such adjustments as
17 may be appropriate to the requirements of subparagraph
18 (B) that pertain to fishing gear, vessel equipment, and
19 fishing practices to the extent the adjustments are consist-
20 ent with the International Dolphin Conservation Program.

21 “(b) CONSULTATION.—In developing regulations
22 under this section, the Secretary shall consult with the
23 Secretary of State, the Marine Mammal Commission and
24 the United States Commissioners to the Inter-American

1 Tropical Tuna Commission appointed under section 3 of
2 the Tuna Conventions Act of 1950 (16 U.S.C. 952).

3 “(c) EMERGENCY REGULATIONS.—(1) If the Sec-
4 retary determines, on the basis of the best scientific infor-
5 mation available (including that obtained under the Inter-
6 national Dolphin Conservation Program) that the inciden-
7 tal mortality and serious injury of marine mammals au-
8 thorized under this title is having, or is likely to have, a
9 significant adverse effect on a marine mammal stock or
10 species, the Secretary shall take actions as follows—

11 “(A) notify the Inter-American Tropical Tuna
12 Commission of the Secretary’s findings, along with
13 recommendations to the Commission as to actions
14 necessary to reduce incidental mortality and serious
15 injury and mitigate such adverse impact; and

16 “(B) prescribe emergency regulations to reduce
17 incidental mortality and serious injury and mitigate
18 such adverse impact.

19 “(2) Prior to taking action under paragraph (1) (A)
20 or (B), the Secretary shall consult with the Secretary of
21 State, the Marine Mammal Commission, and the United
22 States Commissioners to the Inter-American Tropical
23 Tuna Commission.

24 “(3) Emergency regulations prescribed under this
25 subsection—

1 “(A) shall be published in the Federal Register,
2 together with an explanation thereof; and

3 “(B) shall remain in effect for the duration of
4 the applicable fishing year; and

5 The Secretary may terminate such emergency regulations
6 at a date earlier than that required by subparagraph (B)
7 by publication in the Federal Register of a notice of termi-
8 nation, if the Secretary determines that the reasons for
9 the emergency action no longer exist.

10 “(4) If the Secretary finds that the incidental mortal-
11 ity and serious injury of marine mammals in the yellowfin
12 tuna fishery in the eastern tropical Pacific Ocean is con-
13 tinuing to have a significant adverse impact on a stock
14 or species, the Secretary may extend the emergency regu-
15 lations for such additional periods as may be necessary.

16 “(d) RESEARCH.—The Secretary shall, in coopera-
17 tion with the nations participating in the International
18 Dolphin Conservation Program and with the Inter-Amer-
19 ican Tropical Tuna Commission, undertake or support ap-
20 propriate scientific research to further the goals of the
21 International Dolphin Conservation Program. Such re-
22 search may include but shall not be limited to any of the
23 following:

24 “(1) Devising cost-effective fishing methods and
25 gear so as to reduce, with the goal of eliminating,

1 the incidental mortality and serious injury of marine
2 mammals in connection with commercial purse seine
3 fishing in the eastern tropical Pacific Ocean.

4 “(2) Developing cost-effective methods of fish-
5 ing for mature yellowfin tuna without deployment of
6 nets on, or encirclement of, dolphins or other marine
7 mammals.

8 “(3) Carrying out stock assessments for those
9 marine mammal species and marine mammal stocks
10 taken in the purse seine fishery for yellowfin tuna in
11 the eastern tropical Pacific Ocean, including species
12 or stocks not within waters under the jurisdiction of
13 the United States.

14 “(4) Studying the effects of chase and encircle-
15 ment on the health and biology of dolphin and indi-
16 vidual dolphin populations incidentally taken in the
17 course of purse seine fishing for yellowfin tuna in
18 the eastern tropical Pacific Ocean. There are author-
19 ized to be appropriated to the Department of Com-
20 merce \$1,000,000 to be used by the Secretary, act-
21 ing through the National Marine Fisheries Service,
22 to carry out this paragraph. Upon completion of the
23 study, the Secretary shall submit a report containing

1 the results of the study, together with recommenda-
2 tions, to the Congress and to the Inter-American
3 Tropical Tuna Commission.

4 “(5) Determining the extent to which the inci-
5 dental take of nontarget species, including juvenile
6 tuna, occurs in the course of purse seine fishing for
7 yellowfin tuna in the eastern tropical Pacific Ocean,
8 the geographic location of the incidental take, and
9 the impact of that incidental take on tuna stocks,
10 and nontarget species.

11 The Secretary shall include a description of the annual
12 results of research carried out under this subsection in the
13 report required under section 303.”.

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

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

17 “Notwithstanding section 103(f), the Secretary shall
18 submit an annual report to the Congress which includes
19 each of the following:

20 “(1) The results of research conducted pursu-
21 ant to section 302.

22 “(2) A description of the status and trends of
23 stocks of tuna.

1 “(3) A description of the efforts to assess,
2 avoid, reduce, and minimize the bycatch of juvenile
3 yellowfin tuna and other nontarget species.

4 “(4) A description of the activities of the Inter-
5 national Dolphin Conservation Program and of the
6 efforts of the United States in support of the Pro-
7 gram’s goals and objectives, including the protection
8 of dolphin populations in the eastern tropical Pacific
9 Ocean, and an assessment of the effectiveness of the
10 Program.

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

13 “(6) Copies of any relevant resolutions and de-
14 cisions of the Inter-American Tropical Tuna Com-
15 mission, and any regulations promulgated by the
16 Secretary under this title.

17 “(7) Any other information deemed relevant by
18 the Secretary.”.

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

21 **“SEC. 304. PERMITS.**

22 “(a) IN GENERAL.—(1) Consistent with section 302,
23 the Secretary is authorized to issue a permit to a vessel
24 of the United States authorizing participation in the Inter-
25 national Dolphin Conservation Program and may require

1 a permit for the person actually in charge of and control-
2 ling the fishing operation of the vessel. The Secretary shall
3 prescribe such procedures as are necessary to carry out
4 this subsection, including, but not limited to, requiring the
5 submission of—

6 “(A) the name and official number or other
7 identification of each fishing vessel for which a per-
8 mit is sought, together with the name and address
9 of the owner thereof; and

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

14 “(2) The Secretary is authorized to charge a fee for
15 issuing a permit under this section. The level of fees
16 charged under this paragraph may not exceed the adminis-
17 trative cost incurred in granting an authorization and is-
18 suing a permit. Fees collected under this paragraph shall
19 be available, subject to appropriations, to the Under Sec-
20 retary of Commerce for Oceans and Atmosphere for ex-
21 penses incurred in issuing permits under this section.

22 “(3) After the effective date of the International Dol-
23 phin Conservation Program Act, no vessel of the United
24 States shall operate in the yellowfin tuna fishery in the

1 eastern tropical Pacific Ocean without a valid permit is-
2 sued under this section.

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

5 “(A) a vessel for which a permit has been is-
6 sued under this section has been used in the com-
7 mission of an act prohibited under section 305;

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

12 “(C) any civil penalty or criminal fine imposed
13 on a vessel, owner or operator of a vessel, or other
14 person who has applied for or been issued a permit
15 under this section has not been paid or is overdue,
16 the Secretary may—

17 “(i) revoke any permit with respect to such
18 vessel, with or without prejudice to the issuance
19 of subsequent permits;

20 “(ii) suspend such permit for a period of
21 time considered by the Secretary to be appro-
22 priate;

23 “(iii) deny such permit; or

24 “(iv) impose additional conditions or re-
25 strictions on any permit issued to, or applied

1 for by, any such vessel or person under this sec-
2 tion.

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

5 “(A) the nature, circumstances, extent, and
6 gravity of the prohibited acts for which the sanction
7 is imposed; and

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

11 “(3) Transfer of ownership of a vessel, by sale or oth-
12 erwise, shall not extinguish any permit sanction that is
13 in effect or is pending at the time of transfer of ownership.
14 Before executing the transfer of ownership of a vessel, by
15 sale or otherwise, the owner shall disclose in writing to
16 the prospective transferee the existence of any permit
17 sanction that will be in effect or pending with respect to
18 the vessel at the time of transfer.

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

23 “(5) No sanctions shall be imposed under this section
24 unless there has been a prior opportunity for a hearing
25 on the facts underlying the violation for which the sanction

1 is imposed, either in conjunction with a civil penalty pro-
2 ceeding under this title or otherwise.”.

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

6 (1) In subsection (a):

7 (A) By amending paragraph (1) to read as
8 follows:

9 “(1) for any person to sell, purchase, offer for
10 sale, transport, or ship, in the United States, any
11 tuna or tuna product unless the tuna or tuna prod-
12 uct is either dolphin safe or has been harvested in
13 compliance with the International Dolphin Conserva-
14 tion Program by a country that is a member of the
15 Inter-American Tropical Tuna Commission or has
16 initiated steps, in accordance with Article V, para-
17 graph 3 of the Convention establishing the Inter-
18 American Tropical Tuna Commission, to become a
19 member of that organization;”.

20 (B) By amending paragraph (2) to read as
21 follows:

22 “(2) except in accordance with this title and
23 regulations issued pursuant to this title as provided
24 for in subsection 101(e), for any person or vessel

1 subject to the jurisdiction of the United States in-
2 tentiously to set a purse seine net on or to encircle
3 any marine mammal in the course of tuna fishing
4 operations in the eastern tropical Pacific Ocean; or”.

5 (C) By amending paragraph (3) to read as
6 follows:

7 “(3) for any person to import any yellowfin
8 tuna or yellowfin tuna product or any other fish or
9 fish product in violation of a ban on importation im-
10 posed under section 101(a)(2);”.

11 (2) In subsection (b)(2), by inserting “(a)(5)
12 and” before “(a)(6)”.

13 (3) By striking subsection (d).

14 (g) REPEAL.—Section 306 is repealed and section
15 308 (16 U.S.C. 1418) is redesignated as section 306, and
16 amended by striking “303” and inserting in lieu thereof
17 “302(d)”.

18 (h) CLERICAL AMENDMENTS.—The table of contents
19 in the first section of the Marine Mammal Protection Act
20 of 1972 is amended by striking the items relating to title
21 III 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.”.

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

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

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

8 (b) ADVISORY COMMITTEE AND SCIENTIFIC ADVI-
9 SORY SUBCOMMITTEE.—Section 4 of the Tuna Conven-
10 tions Act of 1950 (16 U.S.C. 953) is amended to read
11 as follows:

12 **“SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC**
13 **ADVISORY SUBCOMMITTEE.**

14 “The Secretary, in consultation with the United
15 States Commissioners, shall:

16 “(1) Appoint a General Advisory Committee
17 which shall be composed of not less than 5 nor more
18 than 15 persons with balanced representation from
19 the various groups participating in the fisheries in-
20 cluded under the conventions, and from nongovern-
21 mental conservation organizations. The General Ad-
22 visory Committee shall be invited to have representa-
23 tives attend all nonexecutive meetings of the United
24 States sections and shall be given full opportunity to
25 examine and to be heard on all proposed programs

1 of investigations, reports, recommendations, and reg-
2 ulations of the commission. The General Advisory
3 Committee may attend all meetings of the inter-
4 national commissions to which they are invited by
5 such commissions.

6 “(2) Appoint a Scientific Advisory Subcommit-
7 tee which shall be composed of not less than 5 nor
8 more than 15 qualified scientists with balanced rep-
9 resentation from the public and private sectors, in-
10 cluding nongovernmental conservation organizations.
11 The Scientific Advisory Subcommittee shall advise
12 the General Advisory Committee and the Commis-
13 sioners on matters including the conservation of
14 ecosystems; the sustainable uses of living marine re-
15 sources related to the tuna fishery in the eastern Pa-
16 cific Ocean; and the long-term conservation and
17 management of stocks of living marine resources in
18 the eastern tropical Pacific Ocean. In addition, the
19 Scientific Advisory Subcommittee shall, as requested
20 by the General Advisory Committee, the United
21 States Commissioners or the Secretary, perform
22 functions and provide assistance required by formal
23 agreements entered into by the United States for
24 this fishery, including the International Dolphin

1 Conservation Program. These functions may include
2 each of the following:

3 “(A) The review of data from the Pro-
4 gram, including data received from the Inter-
5 American Tropical Tuna Commission.

6 “(B) Recommendations on research needs,
7 including ecosystems, fishing practices, and
8 gear technology research, including the develop-
9 ment and use of selective, environmentally safe
10 and cost-effective fishing gear, and on the co-
11 ordination and facilitation of such research.

12 “(C) Recommendations concerning sci-
13 entific reviews and assessments required under
14 the Program and engaging, as appropriate, in
15 such reviews and assessments.

16 “(D) Consulting with other experts as
17 needed.

18 “(E) Recommending measures to assure
19 the regular and timely full exchange of data
20 among the parties to the Program and each na-
21 tion’s National Scientific Advisory Committee
22 (or equivalent).

23 “(3) Establish procedures to provide for appro-
24 priate public participation and public meetings and

1 to provide for the confidentiality of confidential busi-
2 ness data. The Scientific Advisory Subcommittee
3 shall be invited to have representatives attend all
4 nonexecutive meetings of the United States sections
5 and the General Advisory Subcommittee and shall be
6 given full opportunity to examine and to be heard on
7 all proposed programs of scientific investigation, sci-
8 entific reports, and scientific recommendations of
9 the commission. Representatives of the Scientific
10 Advisory Subcommittee may attend meetings of the
11 Inter-American Tropical Tuna Commission in ac-
12 cordance with the rules of such Commission.

13 “(4) Fix the terms of office of the members of
14 the General Advisory Committee and Scientific Advi-
15 sory Subcommittee, who shall receive no compensa-
16 tion for their services as such members.”.

17 **SEC. 7. EQUITABLE FINANCIAL CONTRIBUTIONS.**

18 It is the sense of the Congress that each nation par-
19 ticipating in the International Dolphin Conservation Pro-
20 gram should contribute an equitable amount to the ex-
21 penses of the Inter-American Tropical Tuna Commission.
22 Such contributions shall take into account the number of
23 vessels from that nation fishing for tuna in the eastern
24 tropical Pacific Ocean, the consumption of tuna and tuna

1 products from the eastern tropical Pacific Ocean and other
2 relevant factors as determined by the Secretary.

3 **SEC. 8. EFFECTIVE DATE.**

4 This Act and the amendments made by this Act shall
5 take effect upon certification by the Secretary of State to
6 the Congress that a binding resolution of the Inter-Amer-
7 ican Tropical Tuna Commission, or another legally bind-
8 ing instrument, establishing the International Dolphin
9 Conservation Program has been adopted and is in effect.

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