

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM ACT

APRIL 24, 1997.—Ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 408]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

SECTION 1. SHORT TITLE; REFERENCES.

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

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

SEC. 2. PURPOSE AND FINDINGS.

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

(1) to give effect to the Declaration of Panama, signed October 4, 1995, by the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, the United States of America, Vanuatu, and Venezuela, including the establishment of the International Dolphin Conservation Program, relating to the protection of dolphins and other species, and the conservation and management of tuna in the eastern tropical Pacific Ocean;

(2) to recognize that nations fishing for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with that fishery; and

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

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

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

(2) The provisions of the Marine Mammal Protection Act of 1972 that impose a ban on imports from nations that fish for tuna in the eastern tropical Pacific Ocean have served as an incentive to reduce dolphin mortalities.

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

(4) 12 signatory nations to the Declaration of Panama, including the United States, agreed under that Declaration to require that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean not exceed 5,000, with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits.

SEC. 3. DEFINITIONS.

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

“(28) The term ‘International Dolphin Conservation Program’ means the international program established by the agreement signed in La Jolla, California, in June 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama, that requires—

“(A) that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean not exceed 5,000, with the commitment and objective to progressively reduce dolphin mortality to levels approaching zero through the setting of annual limits;

“(B) the establishment of a per-stock per-year mortality limit for dolphins, for each year through the year 2000, of between 0.2 percent and 0.1 percent of the minimum population estimate;

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

“(D) that if the mortality limit set forth in subparagraph (A) is exceeded, all sets on dolphins shall cease for the fishing year concerned;

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

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

“(G) in the case of subparagraph (C), to conduct a scientific review and assessment regarding that stock or those stocks and consider further recommendations;

“(H) the establishment of a per-vessel maximum annual dolphin mortality limit consistent with the established per-year mortality caps; and

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

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

SEC. 4. AMENDMENTS TO TITLE I.

(a) AUTHORIZATION FOR INCIDENTAL TAKING.—Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is amended as follows:

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

(2) By striking the semicolon in the second sentence and all that follows through “practicable”.

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

“(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

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

“(ii) the tuna or products therefrom were harvested after the effective date of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps (in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission) necessary to become a member of that organization;

“(iii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations;

“(iv) the total dolphin mortality permitted under the International Dolphin Conservation Program will not exceed 5,000 in 1997, or in any year thereafter, consistent with the commitment and objective of progressively reducing dolphin mortality to levels approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality; and

“(v) the tuna or products therefrom were harvested after the effective date of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation has not vetoed the participation by any other nation in such Program.”.

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

“(d) ACCEPTANCE OF DOCUMENTARY EVIDENCE.—The Secretary shall not accept documentary evidence referred to in section 101(a)(2)(B) as satisfactory proof for purposes of section 101(a)(2) if—

“(1) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary to allow a determination of compliance with the International Dolphin Conservation Program;

“(2) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)); or

“(3) after taking into consideration this information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program.

“(e) EXEMPTION.—The provisions of this Act shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 3(6) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(6))) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.”.

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

“(h) ANNUAL PERMITS.—(1) Consistent with the regulations prescribed pursuant to section 103 and the requirements of section 101, the Secretary may issue an annual permit to a United States vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

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

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

(1) By striking “and” at the end of subparagraph (A).

(2) By adding at the end the following:

“(C) discussions to expeditiously negotiate revisions to the Convention for the Establishment of an Inter-American Tropical Tuna Commission (1 UST 230, TIAS 2044) which will incorporate conservation and management provisions agreed to by the nations which have signed the Declaration of Panama;

“(D) a revised schedule of annual contributions to the expenses of the Inter-American Tropical Tuna Commission that is equitable to participating nations; and

“(E) discussions with those countries participating or likely to participate in the International Dolphin Conservation Program, to identify alternative sources of funds to ensure that needed research and other measures benefiting effective protection of dolphins, other marine species, and the marine ecosystem;”.

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

(1) By redesignating subsection (a)(1) as subsection (a).

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

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

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

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

“(B) Tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets unless the tuna is considered dolphin safe under paragraph (2).

“(C) Tuna harvested outside the eastern tropical Pacific Ocean by a vessel using purse seine nets unless the tuna is considered dolphin safe under paragraph (3).

“(D) Tuna harvested by a vessel engaged in any fishery identified by the Secretary pursuant to paragraph (4) as having a regular and significant incidental mortality of marine mammals.”.

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

“(2)(A) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if the vessel is of a type and size that the Secretary has determined, consistent with the International Dolphin Conservation Program, is not capable of deploying its purse seine nets on or to encircle dolphins, or if the product meets the requirements of subparagraph (B).

“(B) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna certifying that no dolphins were killed during the sets in which the tuna were caught and the product is accompanied by a written statement executed by—

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

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

“(iii) an authorized representative of a participating nation whose national program meets the requirements of the International Dolphin Conservation Program,

which states that there was an observer approved by the International Dolphin Conservation Program on board the vessel during the entire trip and documents that no dolphins were killed during the sets in which the tuna concerned were caught.

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

(2) Subsection (d) of section 901 of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(d)) is amended by adding the following new paragraphs at the end thereof:

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

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

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

“(4) For purposes of paragraph (1)(D), tuna or a tuna product that contains tuna harvested in a fishery identified by the Secretary as having a regular and significant incidental mortality or serious injury of marine mammals is dolphin safe if it is accompanied by a written statement executed by the captain of the vessel and, where determined to be practicable by the Secretary, an observer participating in a national or international program acceptable to the Secretary certifying that no marine mammals were killed in the course of the fishing operation or operations in which the tuna were caught.

“(5) No tuna product may be labeled with any reference to dolphins, porpoises, or marine mammals, unless such product is labeled as dolphin safe in accordance with this subsection.”.

(i) TRACKING AND VERIFICATION.—Subsection (f) of section 901 of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)) is amended to read as follows:

“(f) TRACKING AND VERIFICATION.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement subsection (d) not later than 3 months after the date of enactment of the International Dolphin Conservation Program Act. In the development of these regulations, the Secretary shall establish appropriate procedures for ensuring the confidentiality of proprietary information the submission of which is voluntary or mandatory. Such regulations shall, consistent with international efforts and in coordination with the Inter-American Tropical Tuna Commission, establish a domestic and international tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d), including but not limited to each of the following:

“(1) Specific regulations and provisions addressing the use of weight calculation for purposes of tracking tuna caught, landed, processed, and exported.

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

“(3) Well location and procedures for monitoring, certifying, and sealing holds above and below deck or other equally effective methods of tracking and verifying tuna labeled under subsection (d).

“(4) Reporting receipt of and database storage of radio and facsimile transmittals from fishing vessels containing information related to the tracking and verification of tuna, and the definition of sets.

“(5) Shore-based verification and tracking throughout the transshipment and canning process by means of Inter-American Tropical Tuna Commission trip records or otherwise.

“(6) Provisions for annual audits and spot checks for caught, landed, and processed tuna products labeled in accordance with subsection (d).

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

SEC. 5. AMENDMENTS TO TITLE III.

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

“TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM”.

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

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

“(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce, with the goal of eliminating dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues; that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority.”.

(2) In subsection (b), by amending paragraphs (2) and (3) to read as follows:
 “(2) support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);

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

(c) INTERNATIONAL DOLPHIN CONSERVATION PROGRAM.—Section 302 (16 U.S.C. 1412) is amended to read as follows:

“SEC. 302. AUTHORITY OF THE SECRETARY.

“(a) REGULATIONS TO IMPLEMENT PROGRAM REGULATIONS.—(1) The Secretary shall issue regulations to implement the International Dolphin Conservation Program.

“(2)(A) Not later than 3 months after the date of enactment of this section, the Secretary shall issue regulations to authorize and govern the incidental taking of marine mammals in the eastern tropical Pacific Ocean, including any species of marine mammal designated as depleted under this Act but not listed as endangered or threatened under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), by vessels of the United States participating in the International Dolphin Conservation Program.

“(B) Regulations issued under this section shall include provisions—

“(i) requiring observers on each vessel;

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

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

“(iv) requiring the use of special equipment, including dolphin safety panels in nets, monitoring devices as identified by the International Dolphin Conservation Program, as practicable, to detect unsafe fishing conditions before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;

“(v) ensuring that the backdown procedure during the deployment of nets on, or encirclement of, dolphins is completed and rolling of the net to sack up has begun no later than 30 minutes after sundown;

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

“(vii) establishing per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits, in accordance with the International Dolphin Conservation Program;

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

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

“(x) allowing for the authorization and conduct of experimental fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment (including new technology for detecting unsafe fishing conditions before nets are deployed by a tuna vessel) that may reduce or eliminate dolphin mortality or do not require the encirclement of dolphins in the course of commercial yellowfin tuna fishing;

“(xi) authorizing fishing within the area covered by the International Dolphin Conservation Program by vessels of the United States without the use of special equipment or nets if the vessel takes an observer and does not intentionally deploy nets on, or encircle, dolphins, under such terms and conditions as the Secretary may prescribe; and

“(xii) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.

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

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

“(c) EMERGENCY REGULATIONS.—(1) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse effect on a marine mammal stock or species, the Secretary shall take actions as follows—

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

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

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

“(3) Emergency regulations prescribed under this subsection—

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

“(B) shall remain in effect for the duration of the applicable fishing year; and The Secretary may terminate such emergency regulations at a date earlier than that required by subparagraph (B) by publication in the Federal Register of a notice of termination, if the Secretary determines that the reasons for the emergency action no longer exist.

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

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

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

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

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

“(4) Studying the effects of chase and encirclement on the health and biology of dolphin and individual dolphin populations incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. There are authorized to be appropriated to the Department of Commerce \$1,000,000 to be used by the Secretary, acting through the National Marine Fisheries Service, to carry out this paragraph. Upon completion of the study, the Secretary shall submit a report containing the results of the study, together with recommendations, to the Congress and to the Inter-American Tropical Tuna Commission.

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

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

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

“SEC. 303. REPORTS BY THE SECRETARY.

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

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

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

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

“(4) A description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the Program’s goals and objectives, including the protection of dolphin populations in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the Program.

“(5) Actions taken by the Secretary under subsections (a)(2)(B) and (d) of section 101.

“(6) Copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this title.

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

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

“SEC. 304. PERMITS.

“(a) IN GENERAL.—(1) Consistent with section 302, the Secretary is authorized to issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including, but not limited to, requiring the submission of—

“(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and

“(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 302, with respect to each vessel.

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

“(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

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

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

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

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

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

“(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

“(iii) deny such permit; or

“(iv) impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.

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

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

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

“(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the 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.

“(4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

“(5) No sanctions shall 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.”.

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

(1) In subsection (a):

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

“(1) for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the International Dolphin Conservation Program by a country that is a member of the Inter-American Tropical Tuna Commission or has initiated steps, in accordance with Article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;”.

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

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

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

“(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2);”.

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

(3) By striking subsection (d).

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

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

SEC. 6. AMENDMENTS TO THE TUNA CONVENTIONS ACTS.

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

“(c) at least one shall be either the Director, or an appropriate regional director, of the National Marine Fisheries Service; and”.

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

“SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.

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

“(1) Appoint a General Advisory Committee which shall be composed of not less than 5 nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations. The General Advisory Committee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the commission. The General Advisory Committee may attend all meetings of the international commissions to which they are invited by such commissions.

“(2) Appoint a Scientific Advisory Subcommittee which shall be composed of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations. The Scientific Advisory Subcommittee shall advise the General Advisory Committee and the Commissioners on matters including the conservation of ecosystems; the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and the long-term conservation

and management of stocks of living marine resources in the eastern tropical Pacific Ocean. In addition, the Scientific Advisory Subcommittee shall, as requested by the General Advisory Committee, the United States Commissioners or the Secretary, perform functions and provide assistance required by formal agreements entered into by the United States for this fishery, including the International Dolphin Conservation Program. These functions may include each of the following:

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

“(B) Recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research.

“(C) Recommendations concerning scientific reviews and assessments required under the Program and engaging, as appropriate, in such reviews and assessments.

“(D) Consulting with other experts as needed.

“(E) Recommending measures to assure the regular and timely full exchange of data among the parties to the Program and each nation’s National Scientific Advisory Committee (or equivalent).

“(3) Establish procedures to provide for appropriate public participation and public meetings and to provide for the confidentiality of confidential business data. The Scientific Advisory Subcommittee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and the General Advisory Subcommittee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the commission. Representatives of the Scientific Advisory Subcommittee may attend meetings of the Inter-American Tropical Tuna Commission in accordance with the rules of such Commission.

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

(c) BYCATCH REDUCTION.—The Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.) is amended by redesignating section 10, both sections 11, and section 12 in order as sections 11, 12, 13, and 14, and by inserting after section 9 the following new section:

“REDUCTION OF BYCATCH IN EASTERN TROPICAL PACIFIC OCEAN

“SEC. 10. The Secretary of State, acting through the Commissioners, should immediately take the necessary steps to establish standards and measures for a bycatch reduction program for vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The program shall include to the maximum extent practicable—

“(1) that sea turtles and other threatened species and endangered species are released alive, to the maximum extent practicable;

“(2) measures to reduce, to the maximum extent practicable, the harvest of nontarget species;

“(3) measures to reduce, to the maximum extent practicable, the mortality of nontarget species; and

“(4) measures to reduce, to the maximum extent practicable, the mortality of juveniles of the target species.”.

SEC. 7. EQUITABLE FINANCIAL CONTRIBUTIONS.

It is the sense of the Congress that each nation participating in the International Dolphin Conservation Program should contribute an equitable amount to the expenses of the Inter-American Tropical Tuna Commission. Such contributions shall take into account the number of vessels from that nation fishing for tuna in the eastern tropical Pacific Ocean, the consumption of tuna and tuna products from the eastern tropical Pacific Ocean and other relevant factors as determined by the Secretary.

SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect upon certification by the Secretary of State to the Congress that a binding resolution of the Inter-American Tropical Tuna Commission, or another legally binding instrument, establishing the International Dolphin Conservation Program has been adopted and is in effect.

PURPOSE OF THE BILL

The purposes of H.R. 408 are to amend the Marine Mammal Protection Act of 1972 and to implement in domestic law the Declaration of Panama, to recognize that significant reduction in dolphin mortality has been achieved by nations fishing for tuna in the eastern tropical Pacific Ocean, and to eliminate the import bans on tuna from those nations that are certified to be in compliance with the International Dolphin Conservation Program.

BACKGROUND AND NEED FOR LEGISLATION

There are many fishing experts who believe that the eastern tropical Pacific Ocean (ETP), an area of more than five million square miles and stretching from southern California to Chile, contains one of the world's most important fisheries. It is here that large and valuable stocks of yellowfin tuna (*Thunnus albacares*) reside. Development of this fishery began in the early 1900s, mostly by baitboats from the United States. By the 1950s, however, the U.S. fleet was suffering economic hardship due to foreign competition and the low efficiency of baitboat fishing. Efficiency more than doubled in 1957 when the first U.S. baitboat was converted to purse-seine fishing, making use of newly developed synthetic nets and power blocks that were used to retrieve the net. Within a few years, all the baitboats had been converted to purse-seine vessels.

In the mid-1970s, the U.S. fleet consisted of more than 150 vessels and accounted for about 70 percent of the fishing capacity in the ETP. Since then, the fleet has steadily decreased due to foreign competition and increasing regulatory pressures, and now has largely been replaced by foreign fleets. While the U.S. fleet was at 106 vessels in 1976, by 1993 only eight vessels remained, while the foreign fleet increased to about 89 vessels.

For reasons not yet understood, schools of large yellowfin tuna associate with schools of dolphins. By sighting the surfacing dolphins, fishermen are able to locate these large tuna. Since the late 1950s, fishermen have deployed these large purse-seine nets around schools of dolphins to harvest the tuna swimming below, a routine referred to as "fishing on dolphins" or "setting on dolphins". Fishermen now use improved techniques for hauling in the net that allow the encircled dolphins to escape by swimming over the upper edge of the net, but occasionally, some become tangled in the net and are seriously injured or killed. This mortality of dolphins and the biological, economic, and political effects of programs developed both nationally and internationally to reduce dolphin mortality have been the subject of strong debate.

The yearly catch of yellowfin tuna in the ETP is greater than 300,000 short tons and, according to Inter-American Tropical Tuna Commission (IATTC) reports, the stock is capable of sustaining harvests at this level. Tuna caught by purse-seine setting on dolphins average 45 pounds per fish, which are approximately 2.5 years old, and about half the fish are at spawning maturity. These large fish command a superior price and are of a superior quality compared with tuna caught by other methods.

By catching tuna with the setting on dolphin fishing method, one of the interesting side effects is the lack of bycatch of other species.

During the early history of this fishery, the dolphin mortality was estimated at 350,000 animals per year, but it is more likely about half that number were actually killed. In recent years, great improvements have been realized in releasing the dolphins using a technique known as the "back down procedure". This technique allows the back edge of the net to sink below the surface and allows dolphins to swim out of the net. The current level of dolphin mortality for 1996 was 2,547 animals, a level considered to be below biological significance.

As an alternative to setting on dolphins, other methods of fishing include setting nets around tuna that have been attracted to floating objects (log fishing) or around free swimming schools of fish (school fishing). While these methods almost totally eliminate dolphin mortality, they have other negative aspects. Recent studies of log fishing have shown that approximately 25 percent (by weight) of the harvest is bycatch. This bycatch consists of many species, but most significantly, sharks, billfish, sea turtles, and a great number of immature yellowfin tuna. In 1993 and 1994, it is estimated that between 3 and 7 million small tuna were discarded in the log set harvest method alone. These tuna are dead by the time they are returned to the sea and this loss of immature tuna is considered, by some, as a serious threat to maintaining the tuna population. Also, compared to setting on dolphins, the catch per day is significantly less, the average weight per fish is much lower, the proportion of the smaller and less valuable skipjack tuna in the catch is greater, and the catch brings a significantly lower price.

While a few U.S. vessels continue to fish for tuna in the ETP using methods other than setting on dolphins, the majority of the vessels in the U.S. fleet have either been sold or reflagged under Central and South American registries or have moved to the western Pacific fishery where mid-depth trawling is the preferred method and is "dolphin-safe" under current U.S. law. Currently, the canned tuna market in the U.S. is served primarily from this fishery where the catch is largely skipjack tuna.

In addition, to the effects on the number of vessels remaining in the fishery, those U.S. vessels which decided to leave the fishery and move to the western Pacific Ocean incurred costs amounting to almost \$1 million per vessel to regear for that fishery. Those vessels remaining in the fishery had been led to believe that the increase in market price for tuna caused by consumer interest in the new dolphin safe label would make up for their reduced harvest. Unfortunately, sales of canned tuna in the U.S. dropped from 35 percent in the mid-1980s to less than 20 percent currently.

Domestic law protecting dolphins from effects of tuna fishing

The Marine Mammal Protection Act (MMPA) was enacted in 1972 for the purpose of protecting marine mammals from the adverse effects of human activities. The law states in Section 101(a)(2) that "marine mammals may be taken incidentally in the course of commercial fishing operations * * *" and "in any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. * * *"

During the 1984 reauthorization of the MMPA, the U.S. tuna industry and the environmental community raised concerns that the progress realized by the U.S. fleet in reducing dolphin mortality was being offset by increased mortalities occurring in the foreign tuna fleet. Because the U.S. was the largest market for canned tuna, the MMPA was amended to require each nation wishing to export tuna to the U.S. to document that their adopted dolphin protection program was “comparable” to that of the U.S. and that the incidental mortality rate was “comparable” to that of the U.S. fleet. Without this documentation, an automatic embargo on the importation of yellowfin tuna would be invoked. The U.S. also prevented the export of tuna from those nations not meeting the comparability standard through third party or “intermediary” nations.

The 1984 MMPA comparable amendments were not implemented until March of 1988 and, in the interim, dolphin mortality by foreign fleets steadily increased. In response, the MMPA was further amended in 1988, affecting both the U.S. fleet and foreign-flagged tuna fleets. These amendments included a prohibition on setting nets on dolphins at sundown, a prohibition on using all but the weakest explosive devices for herding dolphins and tuna, and the establishment of a skipper performance system.

In addition, the 1988 MMPA amendments gave specific guidance as to when a foreign dolphin protection program would be considered “comparable” to that of the United States. This guidance included the requirement for remedial training for skippers with poor records, regulations comparable to those for U.S. vessels, and an observer program comparable to that of the U.S. fleet. Most important was the requirement that the per-vessel annual dolphin mortality rate of any foreign fleet was to be less than 1.25 times that of the U.S. fleet. Any nation not satisfying these conditions would be prevented from exporting tuna to the U.S. market.

On April 12, 1990, the Starkist Seafood Company (a subsidiary of the H. J. Heinz Company) announced its policy to discontinue the purchase of any tuna caught in association with dolphins and to begin to label products with “dolphin-safe” labels. Almost immediately, Van Camp Seafood (Chicken of the Sea) and Bumble Bee endorsed this dolphin-safe policy. These companies accounted for about 80 percent of the canned tuna sold in the United States. This amount was further increased by several smaller suppliers who also chose to adopt the dolphin-safe policy.

Following this voluntary action, legislation was enacted in 1990 as part of the Fishery Conservation Amendments of 1990 to codify criteria for labeling tuna and tuna products as dolphin-safe. To qualify as dolphin-safe, tuna caught in the ETP must have been caught either by a vessel too small to deploy nets around dolphins or, for larger vessels, the catch must be accompanied by certification from a qualified observer that no dolphin sets were made for the entire fishing trip. Also, the 1990 Act specified that tuna caught in driftnets cannot qualify as dolphin-safe.

In August 1990, Mexico was embargoed under the 1988 provisions for not achieving comparability with the U.S. fleet. In response, Mexico requested consultations with the U.S. and, after bilateral consultations failed to reach an accord, requested that a panel be established under the General Agreement on Tariffs and

Trade (GATT) to resolve this dispute. On September 3, 1991, the panel delivered its decision in favor of Mexico. The panel found that the embargo of Mexican tuna and the provision in the MMPA dealing with intermediary nations were inconsistent with GATT. The GATT Council, however, did not immediately adopt the panel's findings and, therefore, the U.S. is technically not in violation of GATT. At present, Mexico has not reinstituted the challenge to the World Trade Organization, which is the successor to GATT.

In 1992, Congress enacted further amendments to the MMPA (Public Law 102-523) designed to promote international dolphin protection and to resolve the Mexican challenge. This legislation imposed a five-year moratorium on setting on dolphins and, in the interim before the effective date of the moratorium, it lifted the embargoes against all nations that made a declared commitment to implement the moratorium and to take other steps to reduce dolphin mortality. After making these commitments, nations that do not continue to honor the agreement were subject to a reinstatement of the yellowfin tuna embargo and an import ban on other fish products. To date, no nation has issued an intent to honor the provisions of this Act.

In 1994, the U.S. put into effect embargoes of tuna from Colombia, Mexico, Panama, Vanuatu, and Venezuela and intermediary nation embargoes against Costa Rica, Italy and Japan.

The La Jolla Agreement

At about the same time, representatives from a number of governments were attending a meeting sponsored by the IATTC in La Jolla, California, (April 21-23, 1992) to prepare and adopt a resolution with the goal of reducing dolphin mortality in the ETP fishery to levels approaching zero. The governments in attendance were Colombia, Costa Rica, Ecuador, Mexico, Nicaragua, Panama, Spain, the United States, Vanuatu and Venezuela. The limits established for dolphin mortality would diminish each year, and by 1999 are to be below 5,000, a number less than 0.1 percent of the estimated total dolphin population.

Compliance with the agreement was to be assured by assigning each vessel a dolphin mortality limit (DML) and by requiring an observer on each vessel. When the DML limit for a vessel is reached, that vessel would be required to discontinue "setting on dolphins" for the remainder of the year. In 1994, 75 vessels under the La Jolla Agreement requested and received individual DMLs. Only three of those vessels were from the United States. In 1995, 81 vessels requested DMLs, none of which were U.S. vessels. To date, the signatories have continued to operate under this agreement.

Deleterious effects of current law

In recent years, studies on the tuna fishery have shown an alarming unintended effect of the U.S. law. Meant to discourage the use of the encirclement technique, alternative fishing practices were shown to have a negative effect on other marine species including sea turtles, sharks, billfish and juvenile tunas. The two primary methods of fishing dolphin safe are the school set and the log set techniques. While both methods do minimize dolphin mortality,

there has been shown to be some mortality in both methods of fishing. The bycatch of other marine species associated with these two fishing techniques is significantly higher than the bycatch associated with the encirclement technique. School sets generate approximately 10 times the amount of bycatch and log sets generate approximately 100 times the bycatch of juvenile tunas and other marine species. In short, while current law focuses on techniques of reducing dolphin bycatch, the alternative fishing practices exacerbate fishing pressure on other sensitive marine populations.

The goal of each revision to the dolphin-specific provisions of the MMPA was to further reduce dolphin mortality in the ETP. The effectiveness of each of these changes has been questioned. Though the embargo provisions have been credited with bringing about international cooperation, recent studies have shown that fishing effort using the encirclement technique have remained fairly stable, approximately 50–60 percent of the of the current effort in the fishery. It is important to note that while dolphin stocks decreased rapidly in the 1970s, the population levels have remained relatively stable during the last decade despite continued effort using the encirclement technique.

Many argue that the greatest contribution to the reduction in the dolphin mortality was the development and implementation of the voluntary La Jolla Agreement. As discussed above, this agreement established a program of observer coverage, gear modifications, and technological changes in former fishing practices which led to drastic reductions in dolphin mortality. It is important to note that none of the dolphin stocks in the ETP are considered endangered or threatened. In fact the National Marine Fisheries Service (NMFS) notes that the rebuilding of one of the two stocks which are considered depleted, the northeastern spotted dolphin, will not be adversely affected by the continued practice of encircling dolphins. In fact, NMFS estimates that rebuilding of this stock to historical levels would take 27 years under the current conditions, which includes the 50–60 percent effort directed on dolphin stocks. With no effort directed on dolphin sets, NMFS estimates the rebuilding would take 26 years.

As currently drafted, the U.S. dolphin safe definition restricts the use of certain gear types, rather than basing the definition on a mortality standard. The current definition prohibits the use of driftnets and the practice of encircling dolphin schools. A study presented at the 1994 International Whaling Commission highlighted a gillnet fishery in Sri Lanka which harvested tuna and had an estimated mortality of between 8,000 and 11,000 small cetaceans per year. Because this fishery did not employ either prohibited fishing practice, this tuna could, under current law, be imported as “dolphin safe” tuna. H.R. 408 modifies the dolphin safe definition to base it on an actual mortality-based standard rather than merely a gear restriction.

A concern was raised last year during hearings on this fishery on the effects encirclement will have on the reproductive ability of dolphins in the fishery. While some preliminary work has been conducted, there is little or no evidence to indicate that there will be any long-term effect on the populations. Despite the lack of evi-

dence, H.R. 408 authorizes an additional \$1 million to continue to study this possibility.

Declamation of Panama

In October 1995, twelve nations, including the United States, met in Panama to develop a binding international agreement to protect dolphins and other species in the ETP. The twelve nations involved in the development of this agreement were: Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, Vanuatu, Venezuela and the United States. Five environmental organizations were also instrumental in developing this agreement. These groups included the Center for Marine Conservation, World Wildlife Fund, Greenpeace, National Wildlife Federation and the Environmental Defense Fund.

These meetings resulted in the Declaration of Panama, signed by all twelve nations on October 4, 1995. The Panama Declaration would:

- Establish a permanent dolphin mortality limit with the goal of reducing dolphin mortality to zero for all participants in the fishery. An increase in the number of vessels entering the fishery will not result in an increase in the overall cap;

- Establish mortality caps for individual species of dolphin found in the ETP;

- Establish per-vessel mortality caps to provide for individual vessel accountability;

- Provide greater protection for other species currently at risk from bycatch under certain harvesting techniques;

- Increase the enforcement and monitoring systems to ensure compliance by signatory nations and the vessels flagged by these nations, including the use of mandatory observer coverage on all vessels; and

- Continue scientific assessment and review of progress toward meeting the goals of zero dolphin mortality and to review the status of individual dolphin stocks.

H.R. 408 implements the La Jolla Agreement and the Declaration of Panama for the United States.

COMMITTEE ACTION

H.R. 408 was introduced on January 9, 1997, by Congressman Wayne Gilchrest (R-MD). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries Conservation, Wildlife and Oceans. On April 9, 1997, the Subcommittee held a hearing on H.R. 408, where five witnesses testified on the tuna fishery in the ETP, the status of dolphin populations in that fishery and how the provisions of H.R. 408 would effect this fishery. Witnesses included: Ms. Mary Beth West, Deputy Assistant Secretary for Oceans, Bureau of Oceans, Environment and Science, Department of State; Dr. Elizabeth Edwards, Director, Dolphin Safe Research Program, Southwest Fisheries Science Center, NMFS; Dr. James Joseph, Director of Investigations, IATTC; Ms. Nina Young, Marine Mammalogist, Center for Marine Conservation; and Mr. Jeffrey R. Pike, Dolphin Safe/Fair Trade Campaign.

On April 10, 1997, the Subcommittee met to mark up H.R. 408. An amendment in the nature of a substitute was offered by Congressman George Miller (D-CA); the amendment failed by a rollcall vote of 4–7, as follows:

Members	Yea	Nay	Present	Members	Yea	Nay	Present
Mr. Saxton, Chairman		X	.....	Mr. Abercrombie	X	.....	.....
Mr. Tauzin		X	.....	Mr. Ortiz		X	.....
Mr. Gilchrest		X	.....	Mr. Pallone	X	.....	.....
Mr. Jones		X	.....	Mr. Farr	X	.....	.....
Mr. Peterson		X	.....	Mr. Kennedy	X	.....	.....
Mr. Crapo		X	.....		X	.....	.....

The bill was then ordered favorably reported to the Full Committee in the presence of a quorum.

On April 16, 1997, the Full Resources Committee met to consider H.R. 408. An amendment to cap the dolphin mortality at the level of observed mortality for 1996 was offered by Congressman George Miller, and not adopted by rollcall vote of 15–24, as follows:

Committee on Resources
U.S. House of Representatives
105th Congress

Full Committee

Date 4/16/97Roll No. 1

Bill No. H.R. 408 Short Title International Dolphin Conservation Program Act.

Amendment or matter voted on: Miller Amendment #1

Mr. Young (Chairman)		X	Mr. Miller	X		
Mr. Tauzin		x	Mr. Markey	X		
Mr. Hansen			Mr. Rahall			
Mr. Saxton		X	Mr. Vento	X		
Mr. Gallegly			Mr. Kildee	X		
Mr. Duncan			Mr. DeFazio	X		
Mr. Hefley	X		Mr. Faleomavaega			
Mr. Doolittle		X	Mr. Abercrombie	X		
Mr. Gilchrest		X	Mr. Ortiz		X	
Mr. Calvert			Mr. Pickett		X	
Mr. Pombo		X	Mr. Pallone	X		
Mrs. Cubin		X	Mr. Dooley		X	
Mrs. Chenoweth		X	Mr. Romero-Barcelo			
Mrs. Linda Smith		X	Mr. Hinchey	X		
Mr. Radanovich		X	Mr. Underwood	X		
Mr. Jones		X	Mr. Farr	X		
Mr. Thornberry		X	Mr. Kennedy			
Mr. Shadegg		X	Mr. Adam Smith		X	
Mr. Ensign	X		Mr. Delahunt	X		
Mr. Bob Smith		X	Mr. John		X	
Mr. Cannon			Dr. Green	X		
Mr. Brady			Mr. Lampson			
Mr. Peterson		X	Mr. Kind	X		
Mr. Hill		X				
Mr. Schaffer		X				
Mr. Gibbons		X				
Mr. Crapo		X	TOTAL	15	24	

An amendment to change the definition for dolphin safe to include “seriously injured or intentionally harassed” to the definition included in the bill was offered by Congressman Frank Pallone (D-NJ), and not adopted by rollcall vote of 12–28, as follows:

Committee on Resources
U.S. House of Representatives
105th Congress

Full Committee

Date 4-16-97Roll No. 2

Bill No. H.R. 408 Short Title International Dolphin Conservation Program Act.

~~Amendment or matter voted on:~~ Pallone Amendment #2

Mr. Young (Chairman)		X		Mr. Miller	X		
Mr. Tauzin		X		Mr. Markey	X		
Mr. Hansen				Mr. Rahall			
Mr. Saxton		X		Mr. Vento	X		
Mr. Gallegly		X		Mr. Kildee	X		
Mr. Duncan				Mr. DeFazio	X		
Mr. Hefley		X		Mr. Faleomavaega			
Mr. Doolittle		X		Mr. Abercrombie	X		
Mr. Gilchrest		X		Mr. Ortiz		X	
Mr. Calvert				Mr. Pickett		X	
Mr. Pombo		X		Mr. Pallone	X		
Mrs. Cubin		X		Mr. Dooley		X	
Mrs. Chenoweth		X		Mr. Romero-Barcelo			
Mrs. Linda Smith		X		Mr. Hinchey	X		
Mr. Radanovich		X		Mr. Underwood		X	
Mr. Jones		X		Mr. Farr	X		
Mr. Thornberry		X		Mr. Kennedy			
Mr. Shadegg		X		Mr. Adam Smith		X	
Mr. Ensign		X		Mr. Delahunt	X		
Mr. Bob Smith		X		Mr. John		X	
Mr. Cannon				Dr. Green	X		
Mr. Brady				Mr. Lampson			
Mr. Peterson		X		Mr. Kind	X		
Mr. Hill		X					
Mr. Schaffer		X					
Mr. Gibbons		X					
Mr. Crapo		X		TOTAL	12	28	

An amendment to encourage the Secretary of State through the Commissioners to ensure that the IATTC further develops a bycatch reduction program was offered by Congressman Neil Abercrombie (D-HI), and after being further modified by a unanimous consent request of Congressman Wayne Gilchrest, was adopted by voice vote. An amendment requiring new language be added to the dolphin safe label was offered by Congressman Sam Farr (D-CA), and not adopted by voice vote. An amendment to require certification of noninvolvement in drug trafficking by vessels was offered by Congressman George Miller. The amendment was ruled non-germane. Congressman George Miller appealed the ruling of the Chair and the Chair's ruling was sustained by a rollcall vote of 17-12, as follows:

Committee on Resources
U.S. House of Representatives
105th Congress

Full Committee

Date 4-16-97Roll No. 3Bill No. H.R. 408 Short Title International Dolphin Conservation Program Act.

Amendment or matter voted on: Sustain rule of Chair re: non-germainess
of Mr. Miller Amendment #4B.

Mr. Young (Chairman)	X			Mr. Miller		X	
Mr. Tauzin	X			Mr. Markey			
Mr. Hansen				Mr. Rahall		X	
Mr. Saxton	X			Mr. Vento			
Mr. Gallegly				Mr. Kildee		X	
Mr. Duncan				Mr. DeFazio		X	
Mr. Hefley		X		Mr. Faleomavaega			
Mr. Doolittle	X			Mr. Abercrombie		X	
Mr. Gilchrest	X			Mr. Ortiz			
Mr. Calvert				Mr. Pickett			
Mr. Pombo	X			Mr. Pallone		X	
Mrs. Cubin	X			Mr. Dooley	X		
Mrs. Chenoweth				Mr. Romero-Barcelo			
Mrs. Linda Smith				Mr. Hinchey		X	
Mr. Radanovich				Mr. Underwood			
Mr. Jones	X			Mr. Farr		X	
Mr. Thornberry				Mr. Kennedy			
Mr. Shadegg	X			Mr. Adam Smith		X	
Mr. Ensign	X			Mr. Delahunt			
Mr. Bob Smith	X			Mr. John	X		
Mr. Cannon				Dr. Green		X	
Mr. Brady				Mr. Lampson			
Mr. Peterson	X			Mr. Kind		X	
Mr. Hill	X						
Mr. Schaffer	X						
Mr. Gibbons	X						
Mr. Crapo				TOTAL	17	12	

The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote, in the presence of a quorum.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE; REFERENCES

This Act may be cited as the “International Dolphin Conservation Program Act”.

Amendments in the Act are to the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

SECTION 2. PURPOSE AND FINDINGS

The purpose of this Act is to give effect to the Declaration of Panama, including the establishment of the International Dolphin Conservation Program, relating to the protection of dolphins and other species, and the conservation and management of tuna in the ETP. Another purpose of the Act is to recognize the significant reductions in dolphin mortality associated with that fishery by nations fishing for tuna and to eliminate the ban on imports of tuna from those nations in compliance with the International Dolphin Conservation Program.

The findings of this Act are: (1) that nations that fish in the ETP yellowfin tuna fishery have achieved significant reductions in dolphin mortality from hundreds of thousands annually to fewer than 5,000 annually; (2) that provisions in the MMPA that impose a ban on the imports of tuna from nations fishing in the ETP have served as an incentive to reduce dolphin mortalities; (3) that tuna canners and processors of the United States have led the tuna products industry to promote a dolphin-safe tuna market; and (4) that the 12 signatory nations to the Declaration of Panama, including the United States, agreed under that Declaration to require that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the ETP not exceed 5,000, with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits.

SECTION 3. DEFINITIONS

The term “International Dolphin Conservation Program” has been defined to mean the international program established by the agreement in La Jolla, California, in June 1992, as formalized, modified and enhanced by the Declaration of Panama, that: (1) requires the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the ETP not exceed 5,000, with the commitment to progressively reduce dolphin mortality to levels approaching zero through the setting of annual limits; (2) establishes a per-stock per-year mortality limit up to the year 2001 of between 0.2 percent and 0.1 percent of the minimum population estimate; (3) beginning in the year 2001, requires that the per-stock per-year mortality of dolphin not exceed 0.1 percent of the minimum population estimate; (4) requires that in the event the mortality limits are exceeded, all sets on dolphins shall cease; (5) establishes a per-vessel annual dolphin mortality limit consistent with the established per-year mortality caps; and (6) provides a system of incen-

tives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating all dolphin deaths.

The “Declaration of Panama” has been defined as the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

SECTION 4. AMENDMENTS TO TITLE I

Section 101 of the MMPA is amended to allow nations who comply with the International Dolphin Conservation Act to export yellowfin tuna harvested with purse seine nets in the ETP into the United States. The government of the exporting nation shall provide documentary evidence that: (1) the tuna or tuna products were not caught prior to the effective date of the International Dolphin Conservation Program Act; (2) the tuna or tuna products were harvested after the effective date of the International Dolphin Conservation program (IDCP) by a harvesting nation that is either a member of the IATTC or is a nation that has initiated (and within six months completed) all steps necessary to become an IATTC member and has implemented the appropriate international obligations, including financial obligations; (3) total dolphin mortality permitted under the IDCP will remain below 5,000 in the future, with the goal of reducing dolphin mortality to levels approaching zero through the setting of annual limits; and (4) that the participating nation has not prevented any other nation from participating in the IATTC.

Section 101 of the MMPA is further amended to include three new subsections. Subsection (d) requires the Secretary of Commerce to reject a government’s documentary evidence if that nation does not authorize the IATTC to release sufficient information to the Secretary to determine the nation’s compliance with the IDCP. In addition, the Secretary must reject the evidence if the government of the harvesting nation does not provide directly or authorize the IATTC to release information for the purposes of tracking and verifying compliance with the IDCP. The Secretary may also refuse to accept the documentary evidence, if the nation consistently fails to take enforcement actions on violations that diminish the effectiveness of the IDCP or the harvesting nation is not in compliance with the IDCP. Subsection (e) exempts the provisions of this Act from applying to a United States citizen, when the citizen incidentally takes a marine mammal outside of the United States Exclusive Economic Zone and is employed on a foreign fishing vessel of a harvesting nation in compliance with the IDCP.

Section 104(h) is amended to allow the Secretary of Commerce to issue an annual permit to a United States vessel for the taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the ETP. The permits shall be governed by section 304, subject to regulations issued through section 302 of MMPA.

Section 108 is amended to allow the Secretary to initiate discussions: (1) to expeditiously negotiate revisions to the Convention for the Establishment of an Inter-American Tropical Tuna Commission which will incorporate conservation and management provisions agreed to by nations which have signed the Declaration of Panama; (2) pursue a revision to the schedule of annual contributions to the expenses of the Inter-American Tropical Tuna Commission that is

equitable to participating nations; and (3) with those countries likely to participate in the IDCP, to identify alternative sources of funding to ensure that needed research and other measures benefiting effective protection of dolphins, other marine species, and the marine ecosystem.

Section 110 repeals a National Academy of Sciences review.

Paragraph 1 of section 901(d) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(d)(1)) is amended to make it a violation of section 5 of the Federal Trade Commission Act for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term “dolphin-safe” or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains the following: tuna harvested on the high seas by a vessel engaged in driftnet fishing; tuna harvested from the ETP and outside of the ETP using purse seine nets in a manner not considered dolphin-safe under paragraphs (2) and (3); or tuna harvested by a vessel engaged in any fishery identified by the Secretary pursuant to paragraph (4) as having a regular and significant incidental mortality of marine mammals.

Paragraph (2) of subsection (d) of the Dolphin Protection Consumer Information Act is amended to define dolphin-safe tuna as a tuna product that contains tuna harvested in the ETP by a vessel not capable of deploying its purse seine nets on or to encircle dolphins, or which deployed purse seine nets, but with certification that no dolphins died in the set.

Subsection (d) is further amended by requiring that tuna harvested outside the ETP by vessels using purse seine nets is dolphin-safe if it is certified that the nets were not intentionally deployed on dolphins or, in a fishery which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, it is accompanied by a written statement by the captain and, where determined practicable by the Secretary, an observer certifying that no purse seine net was deployed on or used to encircle marine mammals. No tuna product may be labeled with any reference to dolphins, porpoises, or marine mammals, except as dolphin-safe in accordance with this subsection.

Subsection (f) of the Dolphin Protection Consumer Information Act is amended to establish a domestic and international tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d). The Secretary, when developing the regulations, shall establish appropriate procedures for ensuring the confidentiality of proprietary information.

SECTION 5. AMENDMENTS TO TITLE III

Title III of the MMPA is renamed the International Dolphin Conservation Program.

The findings in section 301 are amended to recognize that nations harvesting yellowfin tuna in the ETP have demonstrated their willingness to participate in appropriate multilateral agreements to reduce dolphin mortality; recognize that the IDCP will assure that the existing trend of reduced dolphin mortality continues;

recognize that the goal of eliminating dolphin mortality continues to be a priority; and to ensure that the U.S. market does not act as an incentive to the harvest of tuna using purse seine nets not in compliance with the IDCP.

Section 302 is amended to require the Secretary of Commerce to issue regulations, not later than three months after the date of enactment, to implement the International Dolphin Conservation Program. In developing the regulations under this section, the Secretary will consult with the Marine Mammal Commission and the U.S. Commissioners to the IATTC.

These regulations shall include provisions requiring observers on each vessel; requiring the use of the backdown method or other equally effective procedures; prohibiting the intentional deployment of nets in violation of the IDCP; requiring the use of special equipment; ensuring that the backdown procedure or deployment of nets begin no later than 30 minutes after sundown; banning the use of explosive devices; establishing per vessel mortality limits, total dolphin mortality limits, and per stock per year mortality limits; preventing the intentional deployment of nets on dolphins after reaching the total dolphin mortality limits, the per stock or vessel mortality limits; preventing fishing by vessels not assigned a vessel mortality limit; allowing for the authorization of experimental fishing operations; authorizing fishing within the area covered by the IDCP by vessels of the U.S. without specific requirements under special conditions prescribed by the Secretary; and containing other such necessary restrictions or requirements as determined by the Secretary.

If the Secretary determines, using the best scientific information available, that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse impact on a marine mammal stock or species, the Secretary shall prescribe emergency regulations and notify, along with recommendations on actions necessary to reduce the adverse impacts, to the IATTC.

The Secretary shall, in cooperation with the nations participating in the IDCP and the IATTC, undertake or support appropriate scientific research to further the goals of the Program. The research may include but is not limited to: devising cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality and serious injury of marine mammals; devising cost-effective fishing methods for mature yellowfin tuna without deployment of nets on dolphins or other marine mammals; carrying out a stock assessment of those marine mammal species and stocks taken in the purse seine fishery for yellowfin tuna in the ETP; studying the effects of chase and encirclement on the health and biology of dolphin and individual dolphin populations incidentally taken in the course of purse seine fishing in the ETP and determining the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the ETP yellowfin tuna fishery. The results of the research in this section shall be included in the report required in section 303.

Section 303 of the MMPA is amended to have the Secretary submit an annual report to Congress which includes: the results of research conducted in section 302; a description of the status and

trends of stocks of tuna; a description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and other nontarget species; a description of activities of the IDCP and the efforts of the U.S. in support of the Program's goals and objectives; an assessment of the effectiveness of the IDCP; and any other information the Secretary deems relevant.

Section 304 is amended to authorize the Secretary to issue permits to a vessel of the United States authorizing participation in the IDCP. This may include issuing a permit to the person actually in charge of and controlling the fishing operation of the vessel. The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The levels of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit.

After the effective date of the IDCP, no vessel of the United States shall operate in the yellowfin tuna fishery in the ETP without a valid permit. Permits may be sanctioned if a vessel has been used in the commission of an act in violation of section 305, or the owner, operator, or any other person who has applied for or been issued a permit under this section has acted in violation of section 305. The Secretary may also revoke, suspend, deny, or impose conditions or restrictions on a permit for any person who has not paid and is overdue on a civil penalty or criminal fine.

When imposing sanctions under this subsection the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited act for which the sanction is imposed, and with respect to the violator, the degree of culpability, any history or prior offenses, and other matters as justice requires. No sanctions will be imposed unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed. Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. The Secretary shall reinstate the permit upon payment of the penalty of fine and any interest.

Section 305 of the MMPA is repealed, section 307 is redesignated as 305, and is amended to prohibit any person from selling, transporting, or shipping, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the IDCP by a country that is a member of the IATTC, or has initiated steps to join the IATTC.

The amendments to redesignated MMPA section 305 also prohibit, except in accordance with this title, any person or vessel subject to the jurisdiction of the United States from intentionally deploying a purse seine net on or encircling any marine mammal in the course of tuna fishing in the ETP or for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2).

Finally, section 5 of the bill repeals MMPA section 306, redesignates section 308 as section 306, and further amends that section by striking "303" and inserting "302(d)".

SECTION 6. AMENDMENTS TO THE TUNA CONVENTIONS ACT

Section 3 of the Tunas Conventions Act is amended to require at least one IATTC commissioner be the Director or an appropriate regional director of the NMFS.

Section 4 of the Tuna Conventions Act is amended to have the Secretary, in consultation with the United States Commissioners, appoint a General Advisory Committee and a Scientific Advisory Subcommittee. The General Advisory Committee will be composed of not less than five nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations. The Committee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations and regulations of the commissions.

The Scientific Advisory Subcommittee will be composed of not less than five nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations. The Subcommittee shall advise the General Advisory Committee and the United States Commissioners on matters including the conservation of ecosystems; the sustainable uses of living marine resources related to the tuna fishery in the ETP; and the long-term conservation and management of stocks of living marine resources in the ETP. The Subcommittee, as requested by the Committee, the United States Commissioners, or the Secretary, will perform functions and provide assistance required by formal agreements entered into by the United States for this fishery, including the IDCP. The functions may include: review of data from the Program, including data from the IATTC; recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research; recommendations concerning scientific reviews and assessments required under the Program; consultation with other experts; recommendations of measures to assure the regular and timely full exchange of data among the parties to the Program and each nation's National Scientific Advisory Committee (or equivalent).

Subsection (c) amends the Atlantic Tunas Convention Act of 1975 to encourage the Secretary of State, acting through the IATT Commissioners, to take the necessary steps to further develop a bycatch reduction program which shall, to the extent practicable, consist of the following provisions: (1) that sea turtles and other threatened and endangered species are released alive to the maximum extent practicable, (2) measures to reduce, to the maximum extent practicable, the harvest of nontarget species, (3) measures to reduce, to the maximum extent practicable, the mortality of nontarget species, and (4) measures to reduce, to the maximum extent practicable, the mortality of juveniles of the target species.

SECTION 7. EQUITABLE FINANCIAL CONTRIBUTIONS

This section adds a new Sense of the Congress provision that each nation participating in the International Dolphin Conservation Program should contribute an equitable amount to the expenses of the IATTC and that such contributions should take into account the number of vessels from that nation fishing for tuna in the ETP and the consumption of tuna and tuna products from the ETP, as well as any other relevant factors as determined by the Secretary.

SECTION 8. EFFECTIVE DATE

This Act and the amendments made by this Act shall take effect upon the certification by the Secretary of State to Congress that a binding resolution of the IATTC, or another legally binding instrument, establishing the IDCP has been adopted and is in effect.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

FEDERAL ADVISORY COMMITTEE STATEMENT

The functions of the proposed advisory committees authorized in H.R. 408 are not currently being nor could they be performed by one or more agencies, an advisory committee already in existence or by enlarging the mandate of an existing advisory committee.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact H.R. 408.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 408. However, clause 7(d) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 408 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease tax expenditures. The bill would lead to a increase in appropriated spending but also decreases direct spending by increasing offsetting receipts from permit fees. In addition,

H.R. 408 would increase government receipts from tariffs on imported canned tuna.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 408.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 408 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 23, 1997.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 408, the International Dolphin Conservation Program Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Victoria V. Heid (for federal costs), and Lesley Frymier (for the private-sector impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 408—International Dolphin Conservation Program Act

Summary: H.R. 408 would modify the protection of marine mammals, including dolphins, in connection with tuna harvesting. CBO estimates that enacting H.R. 408 would lead to an increase in appropriated spending of about \$1 million in fiscal year 1998, assuming appropriations consistent with the bill's provisions. In addition, CBO estimates that enacting H.R. 408 could decrease direct spending beginning in fiscal year 1998 by generating additional offsetting receipts from fees on fishing permits. We estimate that any new permit fees would total less than \$100,000 a year over the 1998–2002 period. Finally, based on information from the International Trade Commission (ITC), CBO estimates that H.R. 408 would increase governmental receipts by less than \$500,000 annually. Because H.R. 408 could affect both direct spending and receipts, pay-as-you-go procedures would apply.

H.R. 408 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), and would have no impact on state, local, or tribal governments. The bill would impose new private-sector mandates on tuna vessels while removing an existing mandate on tuna vessels and providing other benefits to tuna importers. CBO estimates that the direct costs of the new private-sector mandates would most likely be less than the costs of the existing mandate.

Description of the bill's major provisions

The bill would recognize and incorporate into law many of the provisions of the Declaration of Panama, signed October 4, 1995, by the United States and the governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, Vanuatu, and Venezuela. The Declaration of Panama addresses the protection of dolphins and other species, and the conservation and management of tuna, in the eastern tropical Pacific Ocean (ETP). Several provisions of the bill would address the use of purse seines in tuna fishing. Purse seines are large nets that encircle tuna and are then drawn shut like a purse.

Specifically, the bill would:

- declare that it is U.S. policy to support the International Dolphin Conservation Program (IDCP) operated under the auspices of the Inter-American Tropical Tuna Commission (IATTC);

- eliminate the current ban by the Secretary of the Treasury on imports of yellowfin tuna from countries whose vessels catch tuna in the ETP using a procedure known as “setting on dolphins” by allowing tuna imports from those nations complying with the IDCP;

- amend the Marine Mammal Protection Act of 1972 to allow the Department of Commerce (DOC) to issue permits to U.S. fishermen authorizing the incidental taking of dolphins during commercial yellowfin tuna harvesting;

- limit the number of dolphins that can be killed by tuna fishing in the ETP to 5,000 annually, with the mortality limit apportioned among various dolphin types—but the limit for each type could not exceed 0.2 percent of the minimum estimated abundance of that type through 2000, and 0.1 percent of that minimum in 2001 and thereafter;

- require U.S. vessels fishing for tuna in the ETP to obtain individual, annual permits from the Secretary of Commerce to authorize their participation in the IDCP, and authorize the Secretary to charge fees to cover the administrative costs of the permits (Under current law, vessels must pay an annual fee for a certificate of inclusion in one umbrella permit.);

- authorize to be appropriated to the DOC \$1 million for scientific research on dolphin conservation;

- amend the Dolphin Protection Consumer Information Act by redefining tuna that may be labeled “dolphin safe” as that caught in any set of a purse seine net in which no dolphins were killed, regardless of whether any dolphins were encircled as part of the tuna harvest (Under the bill, tuna would be determined to be “dolphin safe” on a set-by-set basis, rather than by vessel-trip as under current law.); and

- state that it is the sense of the Congress that each nation participating in the International Dolphin Conservation Program should contribute an equitable amount to the expenses of the IATTC.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 408 is shown in the table below. CBO estimates that implementing the bill would increase discretionary spending by about \$1 million in 1998, and by less than \$100,000

annually thereafter. The bill also could affect direct spending and revenues, but in each case CBO estimates that any such changes would be less than \$500,000 a year.

	By fiscal years, in millions of dollars					
	1997	1998	1999	2000	2001	0002
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated authorization level	0	1	(1)	(1)	(1)	(1)
Estimated outlays	0	1	(1)	(1)	(1)	(1)

¹ Less than \$100,000.

The costs of this legislation fall within budget function 300 (natural resources and environment).

Basis of estimate

Spending subject to appropriation

Assuming appropriations consistent with the bill, enacting H.R. 408 would result in about \$1 million in additional appropriated spending in fiscal year 1998. H.R. 408 would authorize the appropriation of \$1 million to be used by the DOC's National Marine Fisheries Service to support scientific research on dolphin conservation. We estimate outlays of about \$1 million in fiscal year 1998, assuming appropriation of the authorized amount.

The bill also states that it is the sense of the Congress that each nation participating in the International Dolphin Conservation Program should contribute an equitable amount to the expenses of the IATTC, which administers the International Dolphin Conservation Program and employs the international observers currently required on all tuna boats operating in the ETP. Currently, the Department of State contributes about \$3 million annually to the IATTC. That amount represents about 90 percent of the contributions from all nations to the IATTC, and about 65 percent of the IATTC's \$4.5 million budget. H.R. 408 would not, by itself, change the U.S. contribution to the IATTC, and it is unclear whether the factors identified in the bill would lead to a change in the U.S. contribution. Hence, CBO estimates that this provision would not change discretionary spending.

H.R. 408 would require U.S. vessels operating in the ETP to obtain individual permits from the Secretary of Commerce. Such permits would authorize vessels' participation in the IDCP and allow some incidental deaths of marine mammals from using purse seines in commercial fishing for yellowfin tuna. H.R. 408 would authorize the Secretary to charge a permit fee, but such fees could not exceed the administrative costs of issuing permits. Income from fees could be spent, subject to appropriation, by the Under Secretary of Commerce for Oceans and Atmosphere for the expenses incurred in issuing permits. As explained below, CBO estimates that any such increase in fees would be less than \$100,000 a year. Hence, the potential effect of this provision on discretionary spending also would be less than \$100,000 a year.

Direct spending (including offsetting receipts)

Under current law, all U.S. vessels fishing for tuna in the ETP may operate under one permit issued to the American Tunaboat

Association in 1980 by the Secretary of Commerce. Individual vessels pay an annual fee to the DOC to renew certificates of inclusion under that permit. The current permit expires December 31, 1999. Over the last year, about five U.S. vessels have been harvesting tuna in the ETP under the permit.

H.R. 408 would not affect the fees paid by U.S. vessels currently fishing for tuna. The bill could result in additional U.S. vessels seeking permit authority to operate in the ETP. Under current law, to meet the "dolphin safe" definition for tuna, U.S. vessels in the ETP cannot set purse seine nets on dolphins in the course of fishing for tuna. The bill would permit this practice and allow for limited dolphin mortality in accordance with the international program as long as certain safeguards are adopted. This increase in flexibility could encourage additional U.S. vessels to operate in the ETP, where they would be subject to permit fees. We estimate, however, that any change in receipts from permit fees would be less than \$100,000 a year.

Revenues

The Marine Mammal Protection Act of 1972 bans imports of yellowfin tuna from nations that fish for tuna in the eastern tropical Pacific Ocean. H.R. 408 allow tuna imports from nations that comply with the IDCP. Currently, fresh tuna imported to the U.S. is not subject to duty. However, the U.S. Customs Service collects about \$30 million annually from tariffs on canned tuna. Based on historical information provided by the ITC, prior to the embargo about 1 percent of the duties collected on canned tuna imports were from IDCP signatory nations. Therefore, CBO estimates that eliminating the ban on imports of tuna from these nations would not significantly increase governmental receipts.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting H.R. 408 could affect both direct spending and governmental receipts, but that any change would be less than \$500,000 a year in both cases.

Estimated impact on State, local, and tribal governments: H.R. 408 contains no intergovernmental mandates as defined in the UMRA and would have no impact on the budgets of state, local, or tribal governments.

Estimated impact on the private sector: The bill would impose new private-sector mandates on tuna vessels while removing an existing mandate on tuna vessels and providing other benefits to tuna importers. CBO estimates that the direct costs of the new mandates would most likely be less than the costs of the existing mandate.

Section 4 of H.R. 408 would change the labeling of dolphin-safe tuna. In order to be labeled dolphin-safe, tuna harvested in the ETP would have to be accompanied by a certification that no dolphins were killed (instead of the current requirement that no dolphin sets are made). Tuna harvested outside of the ETP could be labeled dolphin-safe if it is accompanied by a statement certifying that no sets were intentionally set on dolphins, or, in some fisheries, marine mammals. Based on information obtained from indus-

try and government sources, these mandates would impose minimal, if any, costs on U.S. vessels.

Section 4 of the bill also would give the Secretary of Commerce the authority to require certain vessels to provide observer certification in fisheries where the Secretary has identified a regular and significant incidental mortality or serious injury rate of marine mammals. In those fisheries, in order for tuna to be labeled as dolphin-safe, observers would have to certify that no marine mammals were killed. Based on information obtained from industry and government sources, CBO does not expect the Secretary would use this authority for U.S.-registered vessels.

H.R. 408 would require U.S. tuna vessels fishing in the ETP to comply with tracking and verification procedures to separate dolphin-safe and dolphin-unsafe tuna. In addition, each tuna vessel in the ETP would be required to register for a dolphin mortality limit with the IATTC. Based on information provided by industry experts, CBO does not expect these requirements to entail significant costs to the U.S. tuna industry.

Section 5 of the bill includes provisions that would codify existing regulations of the National Oceanic and Atmospheric Administration. These include provisions that would require the use of certain gear and procedures and would require vessels to obtain permits from the Secretary of Commerce for the incidental taking of marine mammals.

Section 6 of the bill would encourage the Secretary of State to establish a bycatch reduction program that would include the live release of threatened and endangered species, and measures to reduce the harvest and mortality of nontarget species and the mortality of juvenile tuna. Based on information provided by the U.S. Department of State, CBO does not expect that such a program, if established, would result in measurable costs to the private sector.

H.R. 408 would lift the existing prohibition on U.S. vessels setting nets on dolphins in the ETP as long as vessels comply with all appropriate regulations. The bill also would lift the ban on the importation and sale of dolphin-unsafe tuna from countries participating in the International Dolphin Conservation Program. Overall, CBO estimates that enacting this bill would result in decreased costs to the private sector.

Estimate prepared by: Federal Costs: Victoria V. Heid and Gary Brown. Revenues: Stephanie Weiner. Impact on the Private Sector: Lesley Frymier.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 408 contains no unfunded mandates.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

MARINE MAMMAL PROTECTION ACT OF 1972

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* * * * *

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) * * *

* * * * *

(28) *The term “International Dolphin Conservation Program” means the international program established by the agreement signed in La Jolla, California, in June 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama, that requires—*

(A) that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean not exceed 5,000, with the commitment and objective to progressively reduce dolphin mortality to levels approaching zero through the setting of annual limits;

(B) the establishment of a per-stock per-year mortality limit for dolphins, for each year through the year 2000, of between 0.2 percent and 0.1 percent of the minimum population estimate;

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

(D) that if the mortality limit set forth in subparagraph (A) is exceeded, all sets on dolphins shall cease for the fishing year concerned;

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

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

(G) in the case of subparagraph (C), to conduct a scientific review and assessment regarding that stock or those stocks and consider further recommendations;

(H) the establishment of a per-vessel maximum annual dolphin mortality limit consistent with the established per-year mortality caps; and

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

(29) The term "Declaration of Panama" means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

* * * * *

TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

MORATORIUM AND EXCEPTIONS

SEC. 101. (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) * * *

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 104 subject to regulations prescribed by the Secretary in accordance with section 103, or in lieu of such permits, authorizations may be granted therefor under section 118, subject to regulations prescribed under that section by the Secretary without regard to section 103. *Such authorizations may also be granted under title III with respect to the yellowfin tuna fishery of the eastern tropical Pacific Ocean, subject to regulations prescribed under that title by the Secretary without regard to section 103.* In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate[; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable]. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards.

For purposes of applying the preceding sentence, the Secretary—

(A) * * *

[(B) in the case of yellowfin tuna harvested with purse seines in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

[(i) the government of the harvesting nation has adopted a regulatory program governing the incidental taking of marine mammals in the course of such harvesting that is comparable to that of the United States; and

[(ii) the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of marine mammals by United States vessels in the course of such harvesting,

except that the Secretary shall not find that the regulatory program, or the average rate of incidental taking by vessels, of a harvesting nation is comparable to that of the United States for purposes of clause (i) or (ii) of this paragraph unless

[(I) the regulatory program of the harvesting nation includes, by no later than the beginning of the 1990 fishing season, such prohibitions against encircling pure schools of species of marine mammals, conducting sundown sets, and other activities as are made applicable to United States vessels;

[(II) the average rate of the incidental taking by vessels of the harvesting nation is no more than 2.0 times that of United States vessels during the same period by the end of the 1989 fishing season and no more than 1.25 times that of United States vessels during the same period by the end of the 1990 fishing season and thereafter;

[(III) the total number of eastern spinner dolphin (*Stenella longirostris*) incidentally taken by vessels of the harvesting nation during the 1989 and subsequent fishing seasons does not exceed 15 percent of the total number of all marine mammals incidentally taken by such vessels in such year and the total number of coastal spotted dolphin (*Stenella attenuata*) incidentally taken by such vessels in such seasons does not exceed 2 percent of the total number of all marine mammals incidentally taken by such vessels in such year;

[(IV) the rate of incidental taking of marine mammals by the vessels of the harvesting nation during the 1989 and subsequent fishing seasons is monitored by the porpoise mortality observer program of the Inter-American Tropical Tuna Commission or an equivalent international program in

which the United States participates and is based upon observer coverage that is equal to that achieved for United States vessels during the same period, except that the Secretary may approve an alternative observer program if the Secretary determines, no less than sixty days after publication in the Federal Register of the Secretary's proposal and reasons therefor, that such an alternative observer program will provide sufficiently reliable documentary evidence of the average rate of incidental taking by a harvesting nation; and

[(V) the harvesting nation complies with all reasonable requests by the Secretary for cooperation in carrying out the scientific research program required by section 104(h)(3) of this title;]

(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

(i) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of the International Dolphin Conservation Program Act;

(ii) the tuna or products therefrom were harvested after the effective date of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps (in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission) necessary to become a member of that organization;

(iii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations;

(iv) the total dolphin mortality permitted under the International Dolphin Conservation Program will not exceed 5,000 in 1997, or in any year thereafter, consistent with the commitment and objective of progressively reducing dolphin mortality to levels approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality; and

(v) the tuna or products therefrom were harvested after the effective date of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation

Program, and such harvesting nation has not vetoed the participation by any other nation in such Program.

* * * * *

(d) *ACCEPTANCE OF DOCUMENTARY EVIDENCE.*—*The Secretary shall not accept documentary evidence referred to in section 101(a)(2)(B) as satisfactory proof for purposes of section 101(a)(2) if—*

(1) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary to allow a determination of compliance with the International Dolphin Conservation Program;

(2) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)); or

(3) after taking into consideration this information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program.

(e) *EXEMPTION.*—*The provisions of this Act shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 3(6) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(6))) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.*

* * * * *

PERMITS

SEC. 104. (a) * * *

* * * * *

[(h)(1) Consistent with the regulations prescribed pursuant to section 103 of this title and to the requirements of section 101 of this title, the Secretary may issue general permits for the taking of such marine mammals, together with regulations to cover the use of such general permits.

[(2)(A) Subject to subparagraph (B), the general permit issued under paragraph (1) on December 1, 1980 to the American Tuna-boat Association is extended to authorize and govern the taking of marine mammals incidental to commercial purse seine fishing for yellowfin tuna during each year after December 31, 1984.

[(B) The extension granted under subparagraph (A) is subject to the following conditions:

[(i) The extension shall cease to have force and effect at the time the general permit is surrendered or terminated.

[(ii) The permittee and certificate holders shall use the best marine mammal safety techniques and equipment that are economically and technologically practicable.

[(iii) During the period of the extension, the terms and conditions of the general permit that are in effect on the date of the enactment of this paragraph shall apply, except that

[(I) the Secretary may make such adjustments as may be appropriate to those terms and conditions that pertain to fishing gear and fishing practice requirements and to permit administration;

[(II) any such term and condition may be amended or terminated if the amendment or termination is based on the best scientific information available, including that obtained under the monitoring program required under paragraph (3)(A); and

[(III) during each year of the extension, not to exceed 250 coastal spotted dolphin (*Stenella attenuata*) and not to exceed 2,750 eastern spinner dolphin (*Stenella longirostris*) may be incidentally taken under the general permit, and no accidental taking of either species is authorized at any time when incidental taking of that species is permitted.

[(iv) The Secretary shall, by January 1, 1989, prescribe regulations to ensure that the backdown procedure during sets of the purse seine net on marine mammals is completed and rolling of the net to sack up has begun no later than thirty minutes after sundown. The Secretary may waive or otherwise modify such regulations for—

[(I) a designated certificate holder on an observed trip if the Secretary determines, based on observer reports, that such restriction is not necessary because the certificate holder has consistently utilized fishing techniques and equipment so as to result in an incidental marine mammal mortality rate during sundown sets that is no higher than the average such rate for the fleet during daylight sets; or

[(II) all certificate holders on observed trips if the Secretary determines that such restriction is not necessary because all certificate holders have developed and are utilizing fishing techniques and equipment that assure that the incidental marine mammal mortality rate during sundown sets will be no higher than such rate during daylight sets.

[(v) The Secretary may authorize, after public notice and opportunity for comment, designated certificate holders to conduct experimental fishing operations on observed trips, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce the incidental mortality of marine mammals in the course of commercial yellowfin tuna fishing operations, and the Secretary may waive such terms and conditions of the general permit and this section, other than the quotas on incidental taking of marine mammals

and the prohibition against encircling pure schools of certain species of marine mammals, as the Secretary determines to be necessary and appropriate for the conduct of such experimental fishing.

[(vi) The Secretary, after public notice and opportunity for comment and consultation with the skippers' panel of experts established pursuant to the general permit, shall develop and implement by not later than the beginning of the 1990 fishing season a system of performance standards to maintain the diligence and proficiency of certificate holders in the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable. The system shall include such arrangements as are necessary for the identification of certificate holders whose incidental marine mammal mortality rate is consistently and substantially higher than the average rate of the fleet, and for the supplemental training and observation of such certificate holders, and provisions for suspension or revocation of certificates of inclusion of those certificate holders whose unacceptably high rate of incidental taking reflects a lack of diligence or proficiency in the use of the best marine mammal safety techniques and equipment.

[(vii) It shall be unlawful to use any explosive devices other than class C explosive pest control devices in the course of commercial yellowfin tuna fishing subject to the general permit. The Secretary shall prescribe regulations, effective April 1, 1990, to prohibit or restrict the use of class C explosive pest control devices in the course of commercial yellowfin tuna fishing unless the Secretary determines, based on a study which the Secretary shall undertake, that the use of such devices does not result in physical impairment or increased mortality of marine mammals.

[(viii) During the 1989 and subsequent fishing seasons, each certificated vessel shall carry on every fishing trip subject to this subsection an official observer certified by the Secretary or by the Inter-American Tropical Tuna Commission for the purpose of conducting research and observing fishing operations unless, for reasons beyond the control of the Secretary, an observer is not available for such purpose. The Secretary may waive this requirement after the 1991 fishing season and establish a less extensive observer program if the Secretary, after notice and opportunity for comment, determines that such an alternative program will provide sufficiently reliable information.

[(ix) The Secretary shall annually convene meetings with representatives of conservation and environmental organizations, the commercial tuna fishing industry, and other interested persons for the purpose of discussing the results of efforts to reduce the incidental mortality and serious injury of marine mammals under this subsection as well as throughout the international fleet as a whole and developing plans for such efforts during the next year. On or before April 1, 1992, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee

on Merchant Marine and Fisheries of the House of Representatives a comprehensive report on the results of such efforts. The report shall discuss the results of the scientific research programs, performance standards, observer program, prohibition on sundown sets, development of alternative fishing techniques, and other efforts required by this section, and shall include recommendations for such action as the Secretary considers necessary and desirable to reduce further the total mortality and serious injury of marine mammals in the course of commercial yellowfin tuna fishing throughout the international fleet.

[(C) The quota on the incidental taking of coastal spotted dolphin and eastern spinner dolphin under paragraph (2)(B)(iii)(III) shall be treated

[(i) as within, and not in addition to, the overall annual quota under the general permit on the incidental taking of marine mammals; and

[(ii) for purposes of paragraph (2)(B)(iii)(II), as a term of the general permit in effect on the date of the enactment of this paragraph.

[(3)(A) The Secretary shall, commencing on January 1, 1985, undertake a scientific research program to monitor for at least five consecutive years, and periodically as necessary thereafter, the indices of abundance and trends of marine mammal population stocks which are incidentally taken in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

[(B) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the monitoring program), that the incidental taking of marine mammals permitted under the general permit referred to in paragraph (2) is having a significant adverse effect on a marine mammal population stock, the Secretary shall take such action as is necessary, after notice and an opportunity for an agency hearing on the record, to modify the applicable incidental take quotas or requirements for gear and fishing practices (or both such quotas and requirements) for such fishing so as to ensure that the marine mammal population stock is not significantly adversely affected by the incidental taking.

[(C) For each year after 1984, the Secretary shall include in his annual report to the public and the Congress under section 103(f) a discussion of the proposed activities to be conducted each year as part of the monitoring program required by subparagraph (A).

[(D) There are authorized to be appropriated to the Department of Commerce for purposes of carrying out the monitoring program required under this paragraph not to exceed \$4,000,000 for the period beginning October 1, 1984, and ending September 30, 1988.]

(h) ANNUAL PERMITS.—(1) Consistent with the regulations prescribed pursuant to section 103 and the requirements of section 101, the Secretary may issue an annual permit to a United States vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

(2) Annual permits described in paragraph (1) for the incidental taking of marine mammals in the course of commercial purse seine

fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 304, subject to the regulations issued pursuant to section 302.

* * * * *

INTERNATIONAL PROGRAM

SEC. 108. (a) The Secretary, through the Secretary of State, shall—

(1) * * *

(2) initiate—

(A) negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species or population stock of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals, with the Secretary of State to prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums; **[and]**

* * * * *

(C) discussions to expeditiously negotiate revisions to the Convention for the Establishment of an Inter-American Tropical Tuna Commission (1 UST 230, TIAS 2044) which will incorporate conservation and management provisions agreed to by the nations which have signed the Declaration of Panama;

(D) a revised schedule of annual contributions to the expenses of the Inter-American Tropical Tuna Commission that is equitable to participating nations; and

(E) discussions with those countries participating or likely to participate in the International Dolphin Conservation Program, to identify alternative sources of funds to ensure that needed research and other measures benefiting effective protection of dolphins, other marine species, and the marine ecosystem;

* * * * *

MARINE MAMMAL RESEARCH GRANTS

SEC. 110. **[(a)(1)]** (a) The Secretary is authorized to make grants, or to provide financial assistance in such other form as he deems appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects which are relevant to the protection and conservation of marine mammals. In carrying out this subsection, the Secretary shall undertake a program of, and shall provide financial assistance for, research into new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals. The Secretary shall include a description of the annual results of research carried out under this section in the report required under section 103(f).

[(2) For purposes of identifying appropriate research into promising new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals, the Secretary shall contract for an independent review of information pertaining to such potential alternative methods to be conducted by the National Academy of Sciences with individuals having scientific, technical, or other expertise that may be relevant to the identification of promising alternative fishing techniques. The Secretary shall request that the independent review be submitted to the Secretary on or before September 8, 1989, and the Secretary shall submit the report of the independent review, together with a proposed plan for research, development, and implementation of alternative fishing techniques, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on or before December 5, 1989.]

* * * * *

[TITLE III—GLOBAL MORATORIUM TO PROHIBIT CERTAIN TUNA HARVESTING PRACTICES]

TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

SEC. 301. FINDINGS AND POLICY.

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

(1) * * *

* * * * *

[(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have indicated their willingness to participate in appropriate multilateral agreements to reduce, and eventually eliminate, dolphin mortality in that fishery.]

(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce, with the goal of eliminating, dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues; that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority.

(b) POLICY.—It is the policy of the United States to—

(1) * * *

[(2) secure appropriate multilateral agreements to reduce, and eventually eliminate, the mortality referred to in paragraph (1);

[(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught in association with dolphins or with driftnets;]

(2) support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);

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

* * * * *

[SEC. 302. INTERNATIONAL AGREEMENTS TO ESTABLISH GLOBAL MORATORIUM TO PROHIBIT CERTAIN TUNA HARVESTING PRACTICES.

[(a) IN GENERAL.—The Secretary of State, in consultation with the Secretary, may enter into international agreements which establish, in accordance with this title, a global moratorium of at least 5 years duration to prohibit harvesting tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals.

[(b) TERMS OF AGREEMENT.—Any agreement entered into under this section shall—

[(1) establish a moratorium described in subsection (a) which takes effect on March 1, 1994;

[(2) include an international research program and, notwithstanding the moratorium, authorize harvesting of tuna under that program;

[(3) provide for reviews and reports in accordance with section 304 on results of research conducted under the research program;

[(4) require each country that is a party to the agreement to take all the necessary and appropriate steps to ensure compliance with the moratorium; and

[(5) encourage each country that is a party to the agreement to seek, through bilateral and multilateral negotiations, to encourage other countries that participate in fisheries to which the agreement applies to become parties to the agreement.

[(c) COMPLIANCE BY UNITED STATES WITH MORATORIUM.—The moratorium authorized under subsection (a) may be terminated prior to December 31, 1999, with respect to the United States for the harvesting of tuna in the eastern tropical Pacific Ocean only if—

[(1) the Secretary submits to the Congress in accordance with section 304(b) a recommendation that the moratorium be terminated; and

[(2) the recommendation is approved by enactment of a joint resolution of approval.

[SEC. 303. RESEARCH PROGRAMS.

[(a) IN GENERAL.—An agreement entered into under section 302 shall—

[(1) establish an international research program to develop methods of fishing for large yellowfin tuna—

[(A) without setting nets on dolphins or other marine mammals; or

【(B) by setting nets on dolphins or other marine mammals with zero set-caused mortality;

[(2) require that proposals for research under the program be reviewed and authorized by a competent regional organization;

[(3) require that research under the program be conducted by dedicated vessels that—

【(A) are authorized to conduct that research by a competent regional organization; and

【(B) have on board in accordance with section 305(a)(2) an observer who is responsible to, and supervised by, a competent regional organization.

[(b) LIMITATIONS ON DOLPHIN MORTALITY.—For the eastern tropical Pacific Ocean, an agreement entered into under section 302 shall require that—

[(1) the total number of research sets on dolphins conducted pursuant to this section during the period beginning March 1, 1994, and ending December 31, 1999, shall not exceed 400 annually, and that the total annual dolphin mortality shall not exceed 1,000;

[(2) the Inter-American Tropical Tuna Commission shall establish a panel to review and report on the compliance of the international yellowfin tuna fishery fleet with the limits established in paragraph (1) and make recommendations as appropriate; and

[(3) the Inter-American Tropical Tuna Commission shall establish an Advisory Board of technical specialists from the international communities of scientists, government agencies, environmental groups, and the fishing industry, to assist that commission in efforts to coordinate, facilitate, and guide research.

[(c) FUNDING.—

[(1) IN GENERAL.—An agreement entered into under section 302 shall establish fair and equitable mechanisms for funding research conducted pursuant to this section.

【(2) PROCEEDS OF RESEARCH HARVESTS.—An agreement entered into under section 302 shall provide that the proceeds of any tuna harvested for the purpose of research conducted pursuant to this section should, to the extent possible, be used for funding research conducted pursuant to this section.

[(3) LIMITATION ON USE OF UNITED STATES FUNDING.—Funding provided by the United States for research shall be used only for the purpose of developing methods of fishing for large yellowfin tuna that do not involve intentionally encircling dolphins or other marine mammals.

[(d) REVIEW OF RESEARCH PROPOSALS.—The Marine Mammal Commission established under section 201 shall—

【(1) review all research proposals submitted to the Inter-American Tropical Tuna Commission; and

【(2) recommend an appropriate response to each of those proposals, to the United States Commissioners on the Inter-American Tropical Tuna Commission.

[SEC. 304. REVIEWS, REPORTS, AND RECOMMENDATIONS.

[(a) REPORTS BY THE SECRETARY.—The Secretary shall submit annual reports to the Congress which include—

- [(1)** results of research conducted pursuant to section 303;
- [(2)** a description of the status of stocks of yellowfin tuna;
- [(3)** an assessment of the economic impacts on the tuna industry and consumers caused by the moratorium established by agreements entered into under section 302;
- [(4)** an assessment of the effectiveness of the moratorium in protecting dolphin populations in the eastern tropical Pacific Ocean;
- [(5)** results of reviews conducted under section 305(c);
- [(6)** copies of any international agreements or undertakings authorized by or related to this title;
- [(7)** an assessment of the impact on fishery resources, other than yellowfin tuna, of methods of fishing for large yellowfin tuna in the eastern tropical Pacific Ocean that do not involve the intentional encirclement of dolphins; and
- [(8)** any other relevant information.

[(b) RECOMMENDATIONS OF THE SECRETARY.—If a competent regional organization under the auspices of which research is conducted pursuant to section 303, or any country which participates in such an organization, submits to the United States a recommendation that a moratorium established by agreements entered into under section 302 should be terminated prior to December 31, 1999, the Secretary shall—

- [(1)** review the information on which the recommendation is based;
- [(2)** consult with relevant Federal agencies, including the Marine Mammal Commission, and other interested persons; and
- [(3)** submit to the Congress a recommendation regarding the termination of the moratorium.

[SEC. 305. INTERNATIONAL COMMITMENTS.

[(a) LIMITATION ON APPLICATION OF BAN ON IMPORTS.—Except as provided in subsection (b), the Secretary of the Treasury shall not, under section 101(a)(2) (A) and (B), ban the importation of yellowfin tuna or yellowfin tuna products from a country that transmits to the Secretary of State a formal communication in which the country commits to—

- [(1)** implement a moratorium of at least 5 years duration beginning March 1, 1994, on the practice of harvesting tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals unless the moratorium is terminated in accordance with section 302(c);
- [(2)** require an observer on each vessel of the country larger than 400 short tons carrying capacity which engages in purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, and ensure that at least 50 percent of all such observers are responsible to, and supervised by, a competent regional organization;
- [(3)** reduce the dolphin mortality resulting from purse seine net operations conducted by vessels of the country in 1992 to

a level that is lower than such mortality in 1991 by a statistically significant margin; and

[(4) reduce the dolphin mortality resulting from purse seine net operations conducted by vessels of the country in the period beginning January 1, 1993, and ending February 28, 1994, to a level that is lower than such mortality in 1992 by a statistically significant margin.

[(b) SUBSEQUENT BANS ON FISH AND FISH PRODUCT IMPORTS FOR FAILURE TO COMPLY WITH COMMITMENTS.—

[(1) BAN ON IMPORTS OF YELLOWFIN TUNA AND YELLOWFIN TUNA PRODUCTS.—The Secretary, in consultation with the Secretary of State, shall periodically determine whether each country which has transmitted a formal communication expressing the commitments described in subsection (a) is fully implementing those commitments. If the Secretary determines that any such country is not implementing those commitments—

[(A) the Secretary shall notify the President and the Congress of that determination; and

[(B) 15 days after such notification, the Secretary of the Treasury shall ban the importation from that country of all yellowfin tuna and yellowfin tuna products.

[(2) BAN ON IMPORTS OF OTHER FISH AND FISH PRODUCTS.—

[(A) IN GENERAL.—If—

[(i) a country does not, within 60 days after the establishment with respect to that country of a ban on importation under paragraph (1)(B), certify and provide reasonable proof to the Secretary that the country has fully implemented the commitment described in subsection (a)(1) or has taken the necessary actions to remedy its failure to comply with the commitments described in subsection (a) (2), (3), and (4); and

[(ii) the Secretary does not, before the end of that 60-day period, certify to the President that the country has provided such certification and proof;

the President shall direct the Secretary of the Treasury to ban the importation from that country of all articles (other than those subject to an importation ban under paragraph (1)(B)) that are classified under one or more of those fish and fish product categories that the President, subject to subparagraph (B), considers appropriate to carry out this paragraph.

[(B) BAN CRITERIA.—The one or more fish and fish product categories to which the President imposes an import ban under subparagraph (A) with respect to a country must be a fish and fish product category or categories with respect to which the articles classified thereunder and imported from that country in the base year had an aggregate customs valuation equal to 40 percent of the aggregate customs valuation of all articles classified under all fish and fish product categories that were imported from that country during the base year.

[(C) DEFINITION OF BASE YEAR.—For purposes of subparagraph (B), the term “base year” means the calendar

year immediately occurring before the calendar year in which the import ban under subparagraph (A) commences with respect to the country.

[(3) DURATION OF IMPORT BANS.—Bans on importation imposed under paragraphs (1) and (2) with respect to a country shall continue in effect until the Secretary determines that the country is implementing the commitments described in subsection (a).

[(4) IMPLEMENTATION OF IMPORT BANS.—The Secretary of the Treasury shall take such action as may be necessary or appropriate to implement importation bans imposed under paragraphs (1) and (2).

[(c) REVIEWS AND REPORTS.—The Secretary, in consultation with the Secretary of State, shall—

[(1) periodically review the activities of countries which have transmitted to the Secretary of State formal communications expressing the commitments described in subsection (a), to determine whether those countries are complying with those commitments; and

[(2) include the results of those reviews in annual reports submitted to the Congress pursuant to section 304(a).

[SEC. 306. PERMITS FOR TAKING DOLPHINS.

[(a) ADDITIONAL RESTRICTIONS UNDER GENERAL PERMIT.—Notwithstanding section 104(h), the general permit issued to the American Tunaboat Association on December 1, 1980, shall be subject to the following additional restrictions:

[(1) Total dolphin mortalities (including mortalities resulting from research) authorized by the permit shall not exceed 1,000 during the period beginning January 1, 1992, and ending December 31, 1992, and 800 during the period beginning January 1, 1993, and ending March 1, 1994.

[(2) No purse seine net may be deployed under the permit on or to encircle any school of dolphins in which any eastern spinner dolphin (*Stenella longirostris*) or coastal spotted dolphin (*Stenella attenuata*) is observed prior to release of the net skiff.

[(3) The permit shall expire March 1, 1994, unless no major purse seine tuna fishing country enters into an agreement with the Secretary in accordance with section 302 before that date (notwithstanding any agreement under that section with a country that is not a major purse seine tuna fishing country).

[(4) If no major purse seine tuna fishing country enters into an agreement with the Secretary in accordance with section 302 before March 1, 1994, and notwithstanding any agreement under that section with a country that is not a major purse seine tuna fishing country—

[(A) the total dolphin mortalities authorized by the permit for each year after 1992, including mortalities caused by research, shall not exceed the number of dolphin mortalities which occurred under the permit during the preceding year;

[(B) the total dolphin mortalities occurring under the permit each year shall continue to be reduced by statis-

tically significant amounts each year to levels approaching zero by December 31, 1999;

[(C) the permit shall be subject to any additional restrictions that the Secretary considers appropriate; and

[(D) the permit shall expire December 31, 1999.

[(b) PERMITS REQUIRED FOR TAKING DOLPHINS FOR RESEARCH PURPOSES.—An agreement entered into under section 302 shall not supersede or be interpreted to supersede any provision of this Act under which a permit under this Act is required for activities conducted pursuant to this title.

[(c) MAJOR PURSE SEINE TUNA FISHING COUNTRY DEFINED.—For purposes of this section, the term “major purse seine tuna fishing country” means a country which on the effective date of this title has an active purse seine tuna fishing fleet of 20 or more vessels.】

SEC. 302. AUTHORITY OF THE SECRETARY.

(a) *REGULATIONS TO IMPLEMENT PROGRAM REGULATIONS.*—(1) *The Secretary shall issue regulations to implement the International Dolphin Conservation Program.*

(2)(A) *Not later than 3 months after the date of enactment of this section, the Secretary shall issue regulations to authorize and govern the incidental taking of marine mammals in the eastern tropical Pacific Ocean, including any species of marine mammal designated as depleted under this Act but not listed as endangered or threatened under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), by vessels of the United States participating in the International Dolphin Conservation Program.*

(B) *Regulations issued under this section shall include provisions—*

- (i) *requiring observers on each vessel;*
- (ii) *requiring use of the backdown procedure or other procedures equally or more effective in avoiding mortality of marine mammals in fishing operations;*
- (iii) *prohibiting intentional deployment of nets on, or encirclement of, dolphins in violation of the International Dolphin Conservation Program;*
- (iv) *requiring the use of special equipment, including dolphin safety panels in nets, monitoring devices as identified by the International Dolphin Conservation Program, as practicable, to detect unsafe fishing conditions before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;*
- (v) *ensuring that the backdown procedure during the deployment of nets on, or encirclement of, dolphins is completed and rolling of the net to sack up has begun no later than 30 minutes after sundown;*
- (vi) *banning the use of explosive devices in all purse seine operations;*
- (vii) *establishing per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits, in accordance with the International Dolphin Conservation Program;*
- (viii) *preventing the intentional deployment of nets on, or encirclement of, dolphins after reaching either the vessel maxi-*

mum annual dolphin mortality limits, total dolphin mortality limits, or per-stock per-year mortality limits;

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

(x) allowing for the authorization and conduct of experimental fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment (including new technology for detecting unsafe fishing conditions before nets are deployed by a tuna vessel) that may reduce or eliminate dolphin mortality or do not require the encirclement of dolphins in the course of commercial yellowfin tuna fishing;

(xi) authorizing fishing within the area covered by the International Dolphin Conservation Program by vessels of the United States without the use of special equipment or nets if the vessel takes an observer and does not intentionally deploy nets on, or encircle, dolphins, under such terms and conditions as the Secretary may prescribe; and

(xii) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.

(C) The Secretary may make such adjustments as may be appropriate to the requirements of subparagraph (B) that pertain to fishing gear, vessel equipment, and fishing practices to the extent the adjustments are consistent with the International Dolphin Conservation Program.

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

(c) EMERGENCY REGULATIONS.—(1) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse effect on a marine mammal stock or species, the Secretary shall take actions as follows—

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

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

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

(3) Emergency regulations prescribed under this subsection—

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

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

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

(4) If the Secretary finds that the incidental mortality and serious injury of marine mammals in the yellowfin tuna fishery in the eastern tropical Pacific Ocean is continuing to have a significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for such additional periods as may be necessary.

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

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

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

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

(4) Studying the effects of chase and encirclement on the health and biology of dolphin and individual dolphin populations incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. There are authorized to be appropriated to the Department of Commerce \$1,000,000 to be used by the Secretary, acting through the National Marine Fisheries Service, to carry out this paragraph. Upon completion of the study, the Secretary shall submit a report containing the results of the study, together with recommendations, to the Congress and to the Inter-American Tropical Tuna Commission.

(5) Determining the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, the geographic location of the incidental take, and the impact of that incidental take on tuna stocks, and nontarget species.

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

SEC. 303. REPORTS BY THE SECRETARY.

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

- (1) The results of research conducted pursuant to section 302.*
- (2) A description of the status and trends of stocks of tuna.*

(3) A description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and other non-target species.

(4) A description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the Program's goals and objectives, including the protection of dolphin populations in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the Program.

(5) Actions taken by the Secretary under subsections (a)(2)(B) and (d) of section 101.

(6) Copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this title.

(7) Any other information deemed relevant by the Secretary.

SEC. 304. PERMITS.

(a) *IN GENERAL.*—(1) Consistent with section 302, the Secretary is authorized to issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including, but not limited to, requiring the submission of—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and

(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 302, with respect to each vessel.

(2) The Secretary is authorized to charge a fee for issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available, subject to appropriations, to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in issuing permits under this section.

(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

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

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

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

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

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

- (ii) suspend such permit for a period of time considered by the Secretary to be appropriate;
 - (iii) deny such permit; or
 - (iv) impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.
- (2) In imposing a sanction under this subsection, the Secretary shall take into account—
- (A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and
 - (B) with respect to the violator, the degree of culpability, any history of prior offenses, and other such matters as justice requires.
- (3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the 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.
- (4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.
- (5) No sanctions shall 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.

SEC. [307.] 305. PROHIBITIONS.

(a) IN GENERAL.—It is unlawful—

[(1) for any person, after June 1, 1994, to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product that is not dolphin safe;

[(2) for any person or vessel that is subject to the jurisdiction of the United States, intentionally to set a purse seine net on or to encircle any marine mammal during any tuna fishing operation after February 28, 1994, except—

[(A) as necessary for scientific research approved by the Inter-American Tropical Tuna Commission;

[(B) in accordance with a recommendation that is approved under section 302(c)(2); or

[(C) as authorized by the general permit issued to the American Tunaboat Association on December 1, 1980 (including any additional restrictions applicable under section 306(a)), notwithstanding any agreement under section 302 with a country that is not a major purse seine tuna fishing country (as that term is defined in section 306(c));

[(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 305(b) (1) or (2);]

(1) for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the International Dolphin Conserva-

tion Program by a country that is a member of the Inter-American Tropical Tuna Commission or has initiated steps, in accordance with Article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(2) except in accordance with this title and regulations issued pursuant to this title as provided for in subsection 101(e), for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal in the course of tuna fishing operations in the eastern tropical Pacific Ocean; or

(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2);

* * * * *

(b) PENALTIES.—

(1) * * *

(2) CRIMINAL PENALTY.—A person that knowingly and willfully violates subsection (a)(5) and (a)(6) shall be subject to a criminal penalty under section 105(b).

* * * * *

[(d) DOLPHIN SAFE TUNA.—For purposes of this section, tuna or a tuna product is dolphin safe if—

[(1) it does not contain tuna that was harvested on the high seas by a vessel engaged in driftnet fishing, as that term is defined in section 4003 of the Driftnet Impact, Monitoring, Assessment, and Control Act of 1987;

[(2) in the case of tuna or a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean, it is dolphin safe under subsection (d)(2) of the Dolphin Protection Consumer Information Act;

[(3) in the case of tuna or a tuna product that contains tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel, it is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the particular voyage on which the tuna was harvested; and

[(4) in the case of tuna or a product that contains tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals, it is accompanied by a written statement executed by the captain of the vessel and by an observer, certifying that no purse seine net was intentionally deployed on or to encircle marine mammals during the particular voyage on which the tuna was harvested.]]

SEC. [308.] 306. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the National Marine Fisheries Service for carrying out section [303] 302(d), \$3,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

* * * * *

SECTION 901 OF THE DOLPHIN PROTECTION CONSUMER INFORMATION ACT

SEC. 901. (a) SHORT TITLE.—This section may be cited as the “Dolphin Protection Consumer Information Act”.

* * * * *

(d) LABELING STANDARD.—[(1) It is a violation of section 5 of the Federal Trade Commission Act for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term “Dolphin Safe” or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains—

[(A) tuna harvested on the high seas by a vessel engaged in driftnet fishing; or

[(B) tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets which do not meet the requirements for being considered dolphin safe under paragraph (2).

[(2) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a fishing vessel using purse seine nets is dolphin safe if—

[(A) the vessel is of a type and size that the Secretary has determined is not capable of deploying its purse seine nets on or to encircle dolphin; or

[(B)(i) the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna certifying that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphin;

[(ii) the product is accompanied by a written statement executed by—

[(I) the Secretary or the Secretary’s designee, or

[(II) a representative of the Inter-American Tropical Tuna Commission,

which states that there was an approved observer on board the vessel during the entire trip and that purse seine nets were not intentionally deployed during the trip on or to encircle dolphin; and

[(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product.]

(1) It is a violation of section 5 of the Federal Trade Commission Act for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term “Dolphin

Safe” or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains any of the following:

(A) Tuna harvested on the high seas by a vessel engaged in driftnet fishing.

(B) Tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets unless the tuna is considered dolphin safe under paragraph (2).

(C) Tuna harvested outside the eastern tropical Pacific Ocean by a vessel using purse seine nets unless the tuna is considered dolphin safe under paragraph (3).

(D) Tuna harvested by a vessel engaged in any fishery identified by the Secretary pursuant to paragraph (4) as having a regular and significant incidental mortality of marine mammals.

(2)(A) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if the vessel is of a type and size that the Secretary has determined, consistent with the International Dolphin Conservation Program, is not capable of deploying its purse seine nets on or to encircle dolphins, or if the product meets the requirements of subparagraph (B).

(B) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna certifying that no dolphins were killed during the sets in which the tuna were caught and the product is accompanied by a written statement executed by—

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

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

(iii) an authorized representative of a participating nation whose national program meets the requirements of the International Dolphin Conservation Program,

which states that there was an observer approved by the International Dolphin Conservation Program on board the vessel during the entire trip and documents that no dolphins were killed during the sets in which the tuna concerned were caught.

(C) The statements referred to in clauses (i), (ii), and (iii) of subparagraph (B) shall be valid only if they are endorsed in writing by each exporter, importer, and processor of the product, and if such statements and endorsements comply with regulations promulgated by the Secretary which would provide for the verification of tuna products as dolphin safe.

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

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

(B) in any fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, it is accompanied by a written statement executed by the captain of the vessel and an observer, certifying that no purse seine net was intentionally deployed on or to encircle marine mammals during the particular voyage on which the tuna was harvested.

(4) For purposes of paragraph (1)(D), tuna or a tuna product that contains tuna harvested in a fishery identified by the Secretary as having a regular and significant incidental mortality or serious injury of marine mammals is dolphin safe if it is accompanied by a written statement executed by the captain of the vessel and, where determined to be practicable by the Secretary, an observer participating in a national or international program acceptable to the Secretary certifying that no marine mammals were killed in the course of the fishing operation or operations in which the tuna were caught.

(5) No tuna product may be labeled with any reference to dolphins, porpoises, or marine mammals, unless such product is labeled as dolphin safe in accordance with this subsection.

* * * * *

[(f) REGULATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this section not later than 6 months after the date of the enactment of this Act, including regulations establishing procedures and requirements for ensuring that tuna products are labeled in accordance with subsection (d).**]**

(f) TRACKING AND VERIFICATION.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement subsection (d) not later than 3 months after the date of enactment of the International Dolphin Conservation Program Act. In the development of these regulations, the Secretary shall establish appropriate procedures for ensuring the confidentiality of proprietary information the submission of which is voluntary or mandatory. Such regulations shall, consistent with international efforts and in coordination with the Inter-American Tropical Tuna Commission, establish a domestic and international tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d), including but not limited to each of the following:

(1) Specific regulations and provisions addressing the use of weight calculation for purposes of tracking tuna caught, landed, processed, and exported.

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

(3) Well location and procedures for monitoring, certifying, and sealing holds above and below deck or other equally effective methods of tracking and verifying tuna labeled under subsection (d).

(4) Reporting receipt of and database storage of radio and facsimile transmittals from fishing vessels containing information related to the tracking and verification of tuna, and the definition of sets.

(5) *Shore-based verification and tracking throughout the transshipment and canning process by means of Inter-American Tropical Tuna Commission trip records or otherwise.*

(6) *Provisions for annual audits and spot checks for caught, landed, and processed tuna products labeled in accordance with subsection (d).*

(7) *The provision of timely access to data required under this subsection by the Secretary from harvesting nations to undertake the actions required in paragraph (6) of this subsection.*

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ATLANTIC TUNAS CONVENTION ACT OF 1975

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REDUCTION OF BYCATCH IN EASTERN TROPICAL PACIFIC OCEAN

SEC. 10. The Secretary of State, acting through the Comissioners, should immediately take the necessary steps to establish standards and measures for a bycatch reduction program for vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The program shall include to the maximum extent practicable—

(1) that sea turtles and other threatened species and endangered species are released alive, to the maximum extent practicable;

(2) measures to reduce, to the maximum extent practicable, the harvest of nontarget species;

(3) measures to reduce, to the maximum extent practicable, the mortality of nontarget species; and

(4) measures to reduce, to the maximum extent practicable, the mortality of juveniles of the target species.

AUTHORIZATION OF APPROPRIATIONS

SEC. [10.] 11. There are authorized to be appropriated to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in Article X of the Convention, the following sums:

(1) For fiscal year 1995, \$4,103,000, of which \$50,000 are authorized in the aggregate for the advisory committee established under section 4 and the species working groups established under section 4A, and \$2,890,000 are authorized for research activities under this Act and the Act of September 4, 1980 (16 U.S.C. 971i).

(2) For fiscal year 1996, \$5,453,000, of which \$50,000 are authorized in the aggregate for such advisory committee and such working groups, and \$4,240,000 are authorized for such research activities.

(3) For fiscal year 1997, \$5,465,000 of which \$62,000 are authorized in the aggregate for such advisory committee and such working groups, and \$4,240,000 are authorized for such research activities.

(4) For fiscal year 1998, \$5,465,000 of which \$75,000 are authorized in the aggregate for such advisory committee and such

working groups, and \$4,240,000 are authorized for such research activities.

SEPARABILITY

SEC. [11.] 12. If any provision of this Act or the applications of such provision to any circumstance or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.

§ [11.] 13. Annual report

Not later than April 1, 1996, and annually thereafter, the Secretary shall prepare and transmit to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report, that—

(1) details for the previous 10-year period the catches and exports to the United States of highly migratory species (including tunas, swordfish, marlin and sharks) from Nations fishing on Atlantic stocks of such species that are subject to management by the Commission;

(2) identifies those fishing Nations whose harvests are inconsistent with conservation and management recommendations of the Commission;

(3) describes reporting requirements established by the Secretary to ensure that imported fish products are in compliance with all international management measures, including minimum size requirements, established by the Commission and other international fishery organizations to which the United States is a party; and

(4) describes actions taken by the Secretary under section 6.

§ [12.] 14. Savings clause

Nothing in this Act shall have the effect of diminishing the rights and obligations of any Nation under Article VIII(3) of the Convention.

TUNA CONVENTIONS ACT OF 1950

* * * * *

SEC. 3. The United States shall be represented on the two commissions by a total of not more than four United States Commissioners, who shall be appointed by the President, serve as such during his pleasure, and receive no compensation for their services as such Commissioners. Of such Commissioners—

(a) * * *

* * * * *

[(c) at least one shall be an officer of the United States Fish and Wildlife Service; and]

(c) at least one shall be either the Director, or an appropriate regional director, of the National Marine Fisheries Service; and

* * * * *

[SEC. 4. The United States Commissioners shall (a) appoint an advisory committee which shall be composed of not less than five

nor more than fifteen persons who shall be selected from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations, and (b) shall fix the terms of office of the members of such committee, who shall receive no compensation for their services as such members. The advisory committee shall be invited to attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the commissions. The advisory committee may attend all meetings of the international commissions to which they are invited by such commissions.】

SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.

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

(1) Appoint a General Advisory Committee which shall be composed of not less than 5 nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations. The General Advisory Committee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the commission. The General Advisory Committee may attend all meetings of the international commissions to which they are invited by such commissions.

(2) Appoint a Scientific Advisory Subcommittee which shall be composed of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations. The Scientific Advisory Subcommittee shall advise the General Advisory Committee and the Commissioners on matters including the conservation of ecosystems; the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean. In addition, the Scientific Advisory Subcommittee shall, as requested by the General Advisory Committee, the United States Commissioners or the Secretary, perform functions and provide assistance required by formal agreements entered into by the United States for this fishery, including the International Dolphin Conservation Program. These functions may include each of the following:

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

(B) Recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research.

(C) Recommendations concerning scientific reviews and assessments required under the Program and engaging, as appropriate, in such reviews and assessments.

(D) Consulting with other experts as needed.

(E) Recommending measures to assure the regular and timely full exchange of data among the parties to the Program and each nation's National Scientific Advisory Committee (or equivalent).

(3) Establish procedures to provide for appropriate public participation and public meetings and to provide for the confidentiality of confidential business data. The Scientific Advisory Subcommittee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and the General Advisory Subcommittee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the commission. Representatives of the Scientific Advisory Subcommittee may attend meetings of the Inter-American Tropical Tuna Commission in accordance with the rules of such Commission.

(4) Fix the terms of office of the members of the General Advisory Committee and Scientific Advisory Subcommittee, who shall receive no compensation for their services as such members.

* * * * *

DISSENTING VIEWS

H.R. 408 is a deeply flawed bill that undercuts a broadly popular mammal protection law because of foreign government trade pressure on the United States to weaken our environmental standards. Good faith efforts to develop a reasonable compromise that would open U.S. markets to tuna caught by foreign fleets while protecting the integrity of U.S. environmental and consumer protection laws have been spurned. The Congress is being told, in effect, take this bill or leave it. We believe the sound pro-environment, pro-consumer vote is to leave it if reasonable compromise continues to be rejected.

In October 1995, five environmental organizations announced their support for a document which became known as the "Panama Declaration": the result of their negotiations with the government of Mexico on changes to the Marine Mammal Protection Act (MMPA) and U.S. tuna labeling law. Until their announcement, the Congress, general public, and other interested parties had been unaware that these negotiations were underway.

Since that time, numerous efforts have been made by those not included in the negotiations—including more than 80 environmental, labor, and consumer protection organizations—to find a compromise on this highly controversial and emotional issue. However, the supporters of H.R. 408 have consistently argued that the Panama Declaration is an unamendable agreement, presented to the Congress under much the same terms as a Fast Track agreement. They have rejected any compromise not supported by the Mexican government and the Mexican tuna industry. We find the substance of this legislation unacceptable, and object to the dangerous precedent set by the process under which it was brought before the Congress.

The "fast track" analogy is appropriate, since there is little doubt that the international trade dispute between Mexico and the United States over dolphin protection is the driving force behind the legislation. The U.S. Marine Mammal Protection Act contains provisions which prohibit imports of tuna from nations whose tuna fishing fleets kill more dolphins than the U.S. fleet. Public outrage at the high level of dolphin slaughter by the eastern Pacific tuna fishery prompted the original passage of this provision, and it is clear that the American public continues to hold broad support for this law. In fact, public outcry against this well-documented slaughter has historically been so strong that in 1990 the U.S. tuna canning industry announced a voluntary policy of refusing to purchase tuna caught by harming or killing dolphins: the now well-known "Dolphin Safe" label found on cans of tuna sold in the United States.

In response to the U.S. embargo of their canned tuna, in 1990, Mexico and Venezuela filed a formal complaint with the General

Agreement on Tariffs and Trade (GATT). The GATT panel of judges hearing the Mexican complaint ruled against the United States, declaring, among other things, that no nation could impose trade restrictions against another (a) based on the way a product is harvested or made; or (b) to conserve natural resources outside of its territorial jurisdiction. Since that time, Mexico has been pressuring the U.S. to change its laws and lift the embargoes. It should be noted, however, that the GATT panel made no ruling on the dolphin-safe label itself. Mexico is aware that American consumers will not choose to purchase tuna caught by harming dolphins; therefore, in order to gain a large share of the U.S. tuna market, they are urging that we dupe American consumers into purchasing tuna labeled with a redefined "Dolphin Safe" label that has a much weaker standard. This label change is contained in H.R. 408.

The fact that this issue continues to be of major importance to international relations between Mexico and the U.S.—as evidenced by the strong lobbying of the State Department in support of H.R. 408—is an indication that it concerns far more than dolphins and a single tuna fishery.

H.R. 408 is designed to solve a trade problem, not a conservation problem. We are concerned that the labeling change sets a sweeping and damaging precedent for other U.S. labeling laws designed to protect and inform American consumers.

For example, in response to concerns about the safety of imported produce—raised most recently by the importation of unlabeled, contaminated strawberries from Mexico—the Congress is beginning to consider legislation requiring the country of origin to be clearly labeled on both fresh and frozen produce. At the same time, other nations and multinational corporations are increasingly raising objections to labeling laws—even those as simple as requiring that country of origin be clearly visible on the front of a package of frozen produce. Some have even gone so far as to complain that such labels constitute a barrier to trade. Why? Because they know that American consumers rely on these labels, and prefer to purchase American products.

Under the current statutory definition of dolphin-safe—which when enacted in 1990 was supported by the Bush Administration and most of the organizations now supporting H.R. 408—no tuna product can be labeled "Dolphin Safe" if caught by chasing, harassing, or netting of dolphins. Currently, it is common practice for large tuna purse-seine vessels to deploy several speedboats and a helicopter in a high-speed, non-stop chase until the exhausted dolphins and the tuna swimming with them can be encircled with a net.

H.R. 408 as adopted by the Committee on Resources would change the meaning of dolphin-safe to allow dolphins to be injured, chased, and netted without limit. Mothers could be separated from their calves, feeding disrupted or prevented, animals could even be seriously injured and, provided that no dolphins are observed to die during this process, the tuna could be labeled with the famous "Dolphin Safe" label.

Marine mammal biologists are divided over the potential impact this fishing method may have on dolphin populations. Committee staff spoke with several biologists who have studied these dolphin

populations for years—in some cases, for more than a decade—and those biologists have expressed serious concerns about the ramifications of changing the dolphin-safe definition while also opening U.S. markets to all tuna caught under international agreement in the eastern Pacific. The change would certainly increase the effort to catch tuna through the chasing and netting of dolphins.

The two dolphin stocks most frequently chased and netted during tuna fishing—the eastern spinner and the northern offshore spotted dolphin—are at 20% or less of their original population sizes, according to biologists from the National Marine Fisheries Service. Although mortalities of these two stocks have been reduced greatly in recent years, neither stock is increasing. The best that biologists can tell us is that, if mortalities remain at their current low levels, the depleted dolphin stocks should increase. The fact that mortalities remain low but stocks are not currently increasing may be due to the effects of chase and netting. Committee Democrats have urged that Congress authorize a study to determine the possible effects of chase and encirclement and the status of dolphin stocks prior to changing the law.

The Committee Majority rejected this amendment, based on sound scientific advice, and chose instead to change the law first and study the effects later. The Majority could offer no better defense for their adherence to Mexico's insistence on a definition change than that no studies had been conducted to indicate that the process was not safe for dolphins. We find this defense shortsighted, and suggest that the above information on dolphin stocks demonstrates that the little evidence we have on this issue indicates that the wiser course would be the opposite of that chosen by the Committee. Applying the Majority's views to other products would support, for example, the application of a "Child Safe" label to toys provided that no studies had been conducted to prove them harmful to children. We believe this standard sets a dangerous precedent for other consumer information programs, and cannot support any legislation containing this provision.

H.R. 408 would also authorize a doubling of the number of dolphin permitted to be killed by this fishery. Over the last six years, Mexico and the other nations fishing in the eastern Pacific have drastically reduced their level of dolphin mortality, to 2,574 animals in 1996. Yet H.R. 408—while claiming a goal of reducing dolphin mortality to zero—would allow the fishing nations to kill 5000 dolphins annually and still import their tuna into the U.S. An amendment was offered by Mr. Miller to H.R. 408 which would have reduced the quota of dolphin kills allowed by the bill from 5000 to 2,574. Mr. Miller argued that, since the proponents of H.R. 408 claim that the goal of the legislation is to eventually reduce dolphin deaths to zero, it made little sense to begin by increasing the mortality quota to double the actual kill level. The amendment was rejected by the Committee Majority.

It is clear from a close examination of this legislation that it is a misguided effort to resolve a trade dispute while weakening U.S. environmental protection and consumer information standards, and should be rejected unless its flaws are corrected.

GEORGE MILLER.
FRANK PALLONE.
MAURICE HINCHEY.
ENI FALEOMAVAEGA.
DALE E. KILDEE.
SAM FARR.
WILLIAM DELAHUNT.
PETER DEFazio.
NEIL ABERCROMBIE.
PATRICK J. KENNEDY.

A P P E N D I X

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, April 23, 1997.

Hon. DON YOUNG,
Chairman, Committee on Resources, Longworth House Office Building, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: On April 16, 1997, the Committee on Resources ordered reported H.R. 408, the "International Dolphin Conservation Program Act." This measure, just as H.R. 2823 from the 104th Congress, provides for the implementation of the Declaration of Panama signed in 1995 by the United States and 11 other nations.

H.R. 408 includes several provisions within the jurisdiction of the Committee on Commerce. In implementing the Declaration, the bill amends the "Dolphin Consumer Information Act of 1989," on which the Commerce Committee took action during the 101st Congress. The 1989 Act was incorporated into the reauthorization bill for the Magnuson Fishery Conservation and Management Act (Pub. L. 101-627). H.R. 408 provides for implementation of the Declaration in an effort to increase international participation in activities to reduce the number of dolphins and other marine mammals that die each year as a result of tuna fishing techniques. The Act would modify the definition of "dolphin safe" for the purpose of labeling tuna products sold in the United States, and alter current regulations on the importation of tuna products. Also, the bill would make misuse of the "dolphin safe" label an unfair and deceptive trade practice under Section 5 of the Federal Trade Commission Act.

Recognizing your Committee's desire to bring this legislation expeditiously before the House, I will not seek a sequential referral of the bill. However, by agreeing not to seek a sequential referral, this Committee does not waive its jurisdictional interest in any matter within its purview. I reserve the right to seek equal conferees on all provisions of the bill that are within my Committee's jurisdiction during any House-Senate conference that may be convened on this legislation. I want to thank you and your staff for your assistance in providing the Commerce Committee with an opportunity to review its jurisdictional interests in H.R. 408.

I would appreciate your including this letter as a part of the Resource Committee's report on H.R. 2823, and as part of the record during consideration of this bill by the House.

Sincerely,

THOMAS J. BLILEY Jr., *Chairman.*

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