

105TH CONGRESS
1ST SESSION

H. R. 1259

To amend the Marine Mammal Protection Act of 1972 to lift the trade embargoes on dolphin-safe tuna harvested in the eastern tropical Pacific Ocean, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 1997

Mr. MILLER of California (for himself, Mr. FALEOMAVAEGA, Mr. ABERCROMBIE, Mr. OLVER, Mr. PALLONE, Mr. FARR of California, Mr. SMITH of New Jersey, Mr. STARK, Ms. PELOSI, Mr. DEFazio, Mr. YATES, Mr. KENNEDY of Rhode Island, Mr. BROWN of California, Mr. EVANS, Mr. LANTOS, Mr. DELLUMS, Mr. DELAHUNT, Ms. WOOLSEY, and Mr. TOWNS) introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Marine Mammal Protection Act of 1972 to lift the trade embargoes on dolphin-safe tuna harvested in the eastern tropical Pacific Ocean, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Dolphin-Safe Fishing Act”.

1 (b) REFERENCES TO MARINE MAMMAL PROTECTION
2 ACT.—Except as otherwise expressly provided, whenever
3 in this Act an amendment or repeal is expressed in terms
4 of an amendment to, or repeal of, a section or other provi-
5 sion, the reference shall be considered to be made to a
6 section or other provision of the Marine Mammal Protec-
7 tion Act of 1972 (16 U.S.C. 1361 et seq.).

8 **SEC. 2. FINDINGS AND PURPOSES.**

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

10 (1) The provisions of the Marine Mammal Pro-
11 tection Act of 1972 that impose a ban on imports
12 from nations that fish for tuna in the eastern tropi-
13 cal Pacific Ocean and the provisions of that Act that
14 prescribe the conditions under which tuna may be la-
15 beled as “dolphin-safe” have served as a powerful in-
16 centive to reduce the incidence of chasing and net-
17 ting dolphins and the incidence of dolphin mortali-
18 ties.

19 (2) The American public has come to rely on
20 the integrity of the dolphin-safe labeling regime, and
21 that requirements of that regime have been an effec-
22 tive means of promoting dolphin conservation
23 through education and market mechanisms.

24 (3) In response to United States dolphin con-
25 servation efforts, in 1993 the Inter-American Tropi-

1 cal Tuna Commission initiated an international dol-
2 phin conservation program that has helped to sig-
3 nificantly reduce dolphin mortalities and regulate
4 the harvest of yellowfin tuna in the eastern tropical
5 Pacific Ocean by vessels chasing and netting dol-
6 phins.

7 (b) PURPOSES.—The purposes of this Act are the fol-
8 lowing:

9 (1) To recognize that individual tuna fishermen
10 fishing in the eastern tropical Pacific Ocean have
11 made efforts to reduce, and in some cases eliminate,
12 the practice of harvesting yellowfin tuna by chasing
13 and netting dolphins.

14 (2) To eliminate the ban on imports of dolphin-
15 safe tuna harvested by vessels in the eastern tropical
16 Pacific Ocean that are in compliance with the re-
17 quirements of the Inter-American Tropical Tuna
18 Commission and the Intergovernmental Agreement
19 on the Conservation of Tunas and Dolphins in the
20 Eastern Pacific Ocean, otherwise known as the “La
21 Jolla Agreement”.

22 (3) To strengthen the effectiveness of the dol-
23 phin-safe label to ensure that the label is not being
24 used on tuna products that contain tuna harvested

1 on a voyage in which dolphins were chased and net-
 2 ted, killed, or seriously injured.

3 (4) To encourage the contracting parties of the
 4 Inter-American Tropical Tuna Commission to adopt
 5 a program to—

6 (A) require that any sea turtles or other
 7 threatened species or endangered species har-
 8 vested in the eastern tropical Pacific Ocean in
 9 the course of fishing for tuna be released when
 10 alive;

11 (B) reduce the harvest of nontarget species
 12 in the yellowfin tuna fishery; and

13 (C) eliminate, to the maximum extent pos-
 14 sible, the mortality of nontarget species in the
 15 yellowfin tuna fishery.

16 **SEC. 3. AMENDMENTS TO TITLE I COMPARABILITY EMBAR-**
 17 **GO PROVISIONS.**

18 (a) AUTHORIZATION OF IMPORTATION.—Section
 19 101(a) (16 U.S.C. 1371(a)) is amended—

20 (1) by striking so much of paragraph (2) as fol-
 21 lows subparagraph (A) and as precedes subpara-
 22 graph (C) and inserting the following:

23 “(B) in the case of yellowfin tuna har-
 24 vested with purse seine nets in the eastern trop-

1 ical Pacific Ocean, and products therefrom, to
2 be exported to the United States—

3 “(i) shall require that the government
4 of exporting nation provide documentary
5 evidence that—

6 “(I) the tuna or products there-
7 from do not consist of or contain, re-
8 spectively, tuna harvested on a voyage
9 on which dolphins were chased, net-
10 ted, killed, or seriously injured;

11 “(II) the tuna was harvested
12 after the effective date of the Dolphin-
13 Safe Fishing Act solely by a vessel
14 that, at the time the tuna was har-
15 vested, was registered in a nation that
16 is party to the Intergovernmental
17 Agreement on the Conservation of
18 Tunas and Dolphins in the Eastern
19 Pacific Ocean (in this paragraph re-
20 ferred to as the ‘La Jolla Agree-
21 ment’), and was operating in compli-
22 ance with that agreement, except that
23 in lieu of the mortalities specified in
24 the agreement, dolphin mortalities

1 shall not exceed the total observed
2 1996 mortality; and

3 “(III) such vessels have not had
4 major fines or penalties recommended
5 by the La Jolla Agreement’s Intergov-
6 ernmental Review Panel which were
7 not paid or adjudicated within 6
8 months after the date of recommenda-
9 tion; and

10 “(ii) shall ban the importation of such
11 tuna and products in a year from a coun-
12 try, unless the Secretary has certified—

13 “(I) for importation in 1998,
14 that the total observed dolphin mor-
15 tality in 1997 in fishing operations in
16 the Eastern Pacific Ocean by vessels
17 registered in that country did not ex-
18 ceed the total observed dolphin mor-
19 tality in 1996;

20 “(II) for importation in each year
21 thereafter, that the total observed dol-
22 phin mortality in the preceding year
23 in such fishing operations ensures
24 that steady progress is being made by
25 the Inter-American Tropical Tuna

1 Commission to achieve the La Jolla
2 Agreement's commitment and objec-
3 tive of progressively reducing observed
4 dolphin mortality to levels approach-
5 ing zero through the setting of annual
6 limits and the goal of eliminating dol-
7 phin mortality; and

8 “(III) that tuna fishing vessels
9 registered in that county are not in-
10 volved in any way in the transport of
11 illegal drugs.”.

12 (b) ACCEPTANCE OF EVIDENCE OF COVERAGE.—
13 Section 101 (16 U.S.C. 1371) is amended by adding at
14 the end the following new subsection:

15 “(d) ACCEPTANCE OF DOCUMENTARY EVIDENCE.—
16 The Secretary shall not consider information provided for
17 yellowfin tuna harvested by a vessel to be documentary
18 evidence required by subsection (a)(2)(B)(i) if the govern-
19 ment of the country in which the vessel is registered does
20 not provide to the Secretary, or authorize the Inter-Amer-
21 ican Tropical Tuna Commission to provide to the Sec-
22 retary, complete and accurate information necessary to
23 allow the Secretary to determine whether or not the vessel
24 is in compliance with the Intergovernmental Agreement on

1 the Conservation of Tunas and Dolphins in the Eastern
2 Pacific Ocean.”.

3 **SEC. 4. AMENDMENTS TO TITLE III GLOBAL MORATORIUM**
4 **PROVISIONS.**

5 (a) FINDINGS.—Section 301(a)(4) (16 U.S.C.
6 1411(a)(4)) is amended to read as follows:

7 “(4) Nations harvesting yellowfin tuna in the
8 eastern tropical Pacific Ocean have demonstrated
9 their willingness to participate in appropriate multi-
10 lateral agreements to reduce, with the goal of elimi-
11 nating, dolphin mortality in that fishery. Recognition
12 that persons fishing in the eastern tropical Pacific
13 Ocean have made efforts to reduce, and in some
14 cases eliminate, the practice of harvesting yellowfin
15 tuna by chasing and netting dolphins will assure
16 that the existing trend of reduced dolphin mortality
17 continues and will increase the likelihood that the
18 practice of chasing and netting dolphins is elimi-
19 nated.”.

20 (b) PROHIBITIONS.—Section 307 (16 U.S.C. 1417)
21 is amended—

22 (1) in subsection (a)(2), by striking “inten-
23 tionally” and all that follows through “except—”
24 and inserting “intentionally chase and net any dol-
25 phin in any tuna fishing operation, except—”;

1 (2) by amending subsection (a)(3) to read as
2 follows:

3 “(3) for any person to import any yellowfin
4 tuna or yellowfin tuna product or any other fish or
5 fish product in violation of a ban on importation im-
6 posed under section 101(a)(2);” and

7 (3) in subsection (b)(2), by striking “subsection
8 (a)(6)” and inserting “subsection (a)(5) and (6)”.

9 (c) DOLPHIN SAFE STANDARD.—Section 307(d) (16
10 U.S.C. 1417(d)) is amended by striking paragraphs (2),
11 (3), and (4) and inserting the following:

12 “(2) in the case of a tuna product that contains
13 tuna referred to in paragraph (1)(B), (C), or (D) of
14 section 901(d) of the Dolphin Protection Consumer
15 Information Act, it is dolphin safe under, respec-
16 tively, paragraph (2), (3), or (4) of that section; or

17 “(3) in the case of tuna referred to in para-
18 graph (1)(B), (C), or (D) of section 901(d) of the
19 Dolphin Protection Consumer Information Act, the
20 export or offering for sale of a tuna product contain-
21 ing that tuna would not, by reason of the presence
22 of the tuna in that product, be a violation under
23 that section.”.

1 **SEC. 5. DOLPHIN SAFE LABELING STANDARDS.**

2 Section 901(d) of the Dolphin Protection Consumer
3 Information Act (16 U.S.C. 1385(d)) is amended to read
4 as follows:

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

14 “(A) the tuna product contains tuna harvested
15 on the high seas by a vessel engaged in driftnet fish-
16 ing;

17 “(B) the tuna product contains tuna harvested
18 in the eastern tropical Pacific Ocean by a vessel
19 using purse seine nets, unless the tuna product is
20 dolphin safe under paragraph (2);

21 “(C) the tuna product contains tuna harvested
22 outside the eastern tropical Pacific Ocean by a fish-
23 ing vessel using purse seine nets, unless the tuna
24 product is dolphin safe under paragraph (3); or

25 “(D) the tuna product contains tuna harvested
26 outside the eastern tropical Pacific Ocean by a fish-

1 ing vessel not using purse seine nets while engaged
2 in any fishery identified by the Secretary as having
3 a regular and significant incidental mortality or seri-
4 ous injury of marine mammals, unless the tuna
5 product is dolphin safe under paragraph (4).

6 “(2) For purposes of paragraph (1)(B), a tuna prod-
7 uct that contains tuna referred to in that paragraph is
8 dolphin safe if—

9 “(A) the vessel is of a type and size that the
10 Secretary has determined is not capable of chasing
11 and netting, killing, or seriously injuring dolphins
12 and cannot accommodate an observer on board dur-
13 ing a tuna fishing voyage; or

14 “(B)(i) the product is accompanied by a written
15 statement executed by the captain of the vessel
16 which harvested the tuna certifying that no dolphins
17 were netted, killed, or seriously injured on the voy-
18 age in which the tuna were harvested;

19 “(ii) the product is accompanied by a written
20 statement executed by—

21 “(I) the Secretary or the Secretary’s des-
22 ignee, or

23 “(II) a representative of the Inter-Amer-
24 ican Tropical Tuna Commission,

1 which states that there was an approved observer on
2 board the vessel during the entire voyage and that
3 no dolphins were chased and netted, killed, or seri-
4 ously injured on the voyage in which the tuna was
5 harvested; and

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

9 “(3) For purposes of paragraph (1)(C), a tuna prod-
10 uct that contains tuna referred to in that paragraph is
11 dolphin safe if—

12 “(A) it is accompanied by a written statement
13 executed by the captain of the vessel certifying that
14 no dolphins were chased and netted, killed, or seri-
15 ously injured during the particular voyage on which
16 the tuna was harvested; or

17 “(B) in the case of a tuna product that con-
18 tains tuna harvested in a fishery in which the Sec-
19 retary has determined that a regular and significant
20 association occurs between marine mammals and
21 tuna, it is accompanied by a written statement exe-
22 cuted by the captain of the vessel and an observer,
23 certifying that no dolphins were chased and netted,
24 killed, or seriously injured on the particular voyage
25 on which the tuna was harvested.

1 “(4) For the purposes of paragraph (1)(D), a tuna
 2 product that contains tuna referred to in that paragraph
 3 is dolphin safe if it is accompanied by a written statement
 4 executed by the captain of the vessel and, where deter-
 5 mined to be practicable by the Secretary, an observer par-
 6 ticipating in a national or international program accept-
 7 able to the Secretary certifying that no marine mammals
 8 were killed or seriously injured in the course of the fishing
 9 operation or operations in which the tuna were caught.

10 “(5) The Secretary shall on a regular basis identify
 11 and publish a list of tuna fisheries that have a regular
 12 and significant incidental mortality or serious injury of
 13 marine mammals.”.

14 **SEC. 6. REDUCTION OF BYCATCH IN EASTERN TROPICAL**
 15 **PACIFIC OCEAN.**

16 The Atlantic Tunas Convention Act of 1975 (16
 17 U.S.C. 951 et seq.) is amended by adding at the end the
 18 following new section:

19 **“REDUCTION OF BYCATCH IN EASTERN TROPICAL**
 20 **PACIFIC OCEAN**

21 **“SEC. 13.** The Secretary of State, acting through the
 22 Commissioners, shall immediately take the necessary ac-
 23 tions to ensure that the Commission adopts a bycatch re-
 24 duction program for those vessels fishing for yellowfin
 25 tuna in the eastern tropical Pacific Ocean. Such program
 26 shall include, at a minimum—

1 “(1) that all sea turtles and other threatened
2 species and endangered species are released alive;

3 “(2) measures to reduce, to the maximum ex-
4 tent possible, the harvest of nontarget species; and

5 “(3) measures to eliminate, to the maximum ex-
6 tent possible, the mortality of nontarget species.”.

7 **SEC. 7. EQUITABLE FINANCIAL CONTRIBUTIONS TO INTER-**
8 **AMERICAN TROPICAL TUNA COMMISSION.**

9 (a) SENSE OF CONGRESS.—It is the sense of the Con-
10 gress that each nation participating in the International
11 Dolphin Conservation Program should contribute an equi-
12 table amount for payment of the expenses of the Inter-
13 American Tropical Tuna Commission, and that currently,
14 the United States is paying an inequitable share of the
15 Inter-American Tropical Tuna Commission’s budget and
16 expenses.

17 (b) DETERMINATION OF AMOUNT.—In determining
18 the amount to be paid by the United States as its con-
19 tribution toward the expenses of the Inter-American Trop-
20 ical Tuna Commission, the Secretary of State shall take
21 into account the number of vessels participating in the
22 eastern tropical Pacific Ocean yellowfin tuna fishery, the
23 consumption within the United States of tuna and tuna
24 products from the eastern tropical Pacific Ocean, and
25 other relevant factors as determined by the Secretary.

1 **SEC. 8. EFFECTIVE DATE.**

2 This Act and the amendments made by this Act shall
3 take effect upon promulgation by the Secretary of Com-
4 merce implementing the provisions of this Act.

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