

Committee on Resources

Witness Testimony

Testimony of

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Wildlife, and Oceans

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My name is Mary Walker, and I am an environmental lawyer, currently in private practice in San Diego. I have an education in biological sciences/ecology as well as law, and I have practiced in the area of environmental law for nearly 23 years. As such, I have been closely involved in the implementation of federal environmental statutory policies, in many cases from their inception. I have also served the federal government in various positions involving the management of natural resources and the protection of the environment. During the period 1982 to 1988, I served as the Chief Deputy Assistant Attorney General of the U.S. Department of Justice's Land and Natural Resources Division (now the Environment and Natural Resources Division), as the Deputy Solicitor of the U.S. Department of Interior, and as the Assistant Secretary for Environment, Safety & Health of the U.S. Department of Energy. In these positions, I represented the federal government in legal matters, policy formulation and decisionmaking involving domestic and international environmental issues, including, in some instances, fisheries.

From 1988 to 1995, I was a U.S. Commissioner on the InterAmerican Tropical Tuna Commission ("IATTC"). In this latter role, I participated in the negotiations and drafting of the La Jolla Agreement in April and June 1992 and oversaw its implementation in the years that followed. It is the La Jolla Agreement and the International Dolphin Conservation Program contained within it, upon which the 1995 Panama Declaration and at least one of the bills before you today are based.

My perspective is that of an ecologist and an environmental lawyer who has devoted her career to achieving a balance between the needs of man that dictate the use of our natural resources, and the desire to conserve our natural resources for the future. When such competing needs and demands exist, achieving a balance is often difficult. Over the last quarter century, I have observed what has worked and what has not. Supporting positive change that preserves and protects the ecosystem while recognizing and allowing a reasonable use of our resources works, particularly when such a program is based upon sound science and good technical information. On the other hand, prohibitions and moratoria that effectively disallow the use of a resource and embargoes that close access to markets do not work. It is, therefore, no surprise to me that the La Jolla Agreement, and the efforts of the fishermen who made its implementation possible, have been a success and are now being recognized internationally as models for progressive fisheries management.

The La Jolla Agreement

In April 1992 at a special meeting of the IATTC, which included not only member countries but participating observer governments, support was expressed for the concept of a multi-lateral approach to dolphin conservation in the Eastern Pacific Ocean ("EPO") tuna fishery, rather than the unilateral embargoes mandated by the Marine Mammal Protection Act. We wrestled with such issues as mortality limits and enforcement of the limits and program elements by member and nonmember countries. Notwithstanding these difficult issues, we reached agreement on key aspects of the program, including 100% observer coverage, and mortality limits for the next 7 years. Representatives of Greenpeace, who participated in the meeting, concurred in the approach utilizing a multi-lateral agreement and recognized the fishermen's efforts in reducing dolphin mortality.

In its regular meeting in June 1992, the IATTC reaffirmed its April 1992 action to adopt a multi-lateral

program with the objectives of (1) progressively reducing dolphin mortality to levels approaching zero through the setting of annual limits and with a goal of eliminating dolphin mortality in the fishery, (2) seeking ecologically sound means of capturing large yellowfin tuna not in association with dolphin while maintaining the populations of yellowfin tuna at a level which would permit maximum sustained catches year after year, and (3) to limit, and if possible eliminate, the mortality of dolphins in the fishery. The Commission also took action to establish a Review Panel including non-governmental organizations to make the process more transparent in the review and reporting of the international fleet's compliance with the agreed to mortality limits. This Panel, in turn, set vessel mortality limits. These were the fundamental elements of the program that has resulted in a decrease in dolphin mortality to a level scientists have now determined to be biologically insignificant.

The Panama Declaration

The 1995 Panama Declaration was a response to the desire of all the countries involved in the IATTC and the EPO fishery to see the voluntary successes of the IATTC International Dolphin Conservation Program be established as formal policy in the United States and elsewhere. This necessarily involves a change in U.S. statutory policy regarding the proper method to achieve the goals of protecting one resource (the dolphin) while utilizing on a sustained basis another (the yellowfin tuna), thus achieving balance in the ecosystem. The Panama Declaration and the legislative change it seeks, are a natural product of the successful IATTC program and the underlying treaty between the member countries.

H.R. 2823 - The International Dolphin Conservation Program Act

H.R. 2823 is the proposed bill that implements both the letter and spirit of the Panama Declaration and the La Jolla Agreement. In implementing the successful International Dolphin Conservation Program, it includes per-vessel annual dolphin mortality limits, and a total EPO mortality limit of 5,000 with a goal of zero mortality. It goes further, however, and provides for a per-stock, per-year limit, and it allows tuna caught in association with dolphin to be labeled "dolphin safe" if no dolphin mortality occurred in the set. The latter provides a clear incentive to continue sound fishing techniques and to develop new techniques and implement new gear technology that will continue to improve the already outstanding performance of the fishermen in the EPO.

H.R. 2856 - The International Dolphin Protection and Consumer Information Act of 1995

H.R. 2856 purports to implement some provisions of the Panama Declaration and the La Jolla Agreement while missing the mark entirely. It fails to lift existing embargoes and defines "dolphin safe" in a manner that would preclude U.S. fishermen from fishing in association with dolphin.

This bill elevates a single species over others in the ecosystem, including those endangered species, like the sea turtle, that would be adversely affected if fishing in association with dolphin were no longer pursued and fishermen were forced to fish only on logs or schools. However, we know the fishermen of other countries can and will pursue a dolphin fishery even if we deny this to U.S. fishermen. Thus, this bill would deny participation in the fishery to U.S. fishermen while having no effect upon the fleets of other countries. If this bill is adopted into law, the international community that has worked so hard to build the International Dolphin Conservation Program will likely not remain united. The end result will not be a balanced multinational approach to managing the fishery in an ecologically sound manner, but an open invitation for the other countries to go their own way.

Since 1990, when the U.S. canneries announced their "dolphin safe" policy, only 5 of the then 35 U.S. vessels fishing in the EPO remain. The rest have moved to the Western Pacific, have gone inactive, or have been sold to foreign companies. The industry the U.S. began in the EPO was abandoned to other countries. Notwithstanding the cannery policy, which was essentially a prohibition against U.S. fishermen fishing for tuna in association with dolphin, fishing in association with dolphin has continued by the tuna fleets of other countries, and it remains the most common fishing method in the EPO today. In other words, we may have eliminated a U.S. fishing opportunity, but we did not eliminate the practice that is used because it is the most sound practice from the standpoint of the resource, but which H.R. 2856 seeks to prohibit. Importantly, while the practice of fishing in association with dolphin has continued (by other countries), the

mortality of dolphin from this practice has declined to levels that are now a mere fraction of natural mortality and are considered biologically insignificant.

Since 1986, the mortality of dolphin in the tuna fishery in the EPO has declined from 133,000 to less than 3,300 in 1995--a 98% decrease. The mortality per set has also declined 96%. This is due to the efforts of the fishermen operating under the La Jolla Agreement--and not, as some have claimed, to the negative "dolphin safe" policy of the U.S. canneries. (None of the fish produced by fishing in association with dolphin received the "dolphin safe" label.) The fishermen operating under the intergovernmental agreement had an incentive to reduce mortality--they could fish on large tuna while conserving a resource they sought to protect. The incentive worked well. But there must be continued incentives in order for these countries to continue to participate in this program and an opportunity for U.S. fishermen to return to the fishery. The Panama Declaration provides such support by allowing the fishermen to sell their fish as "dolphin safe" in U.S. markets as long as no dolphin mortality has occurred. New methods, new equipment and highly trained captains and crews have achieved--and can continue to achieve--this result.

We now have an opportunity to make this scientifically sound and successful program our U.S. statutory policy. H.R. 2823 accomplishes that. The current U.S. policy on dolphins, under the Marine Mammal Protection Act may have been well intended but it has not been the impetus behind the now healthy dolphin populations that we have achieved in the EPO. Instead, we must codify a policy that balances our need to fish in the soundest manner possible for the tuna resource, while preserving the optimum populations of dolphin and other species. This is the policy that is consistent with the U.S. positions taken in the discussions on the UN treaty on Highly Migratory Species and Straddling Stocks, Agenda 21 of the Rio Summit on the Environment, and the FAO Code of Conduct for Responsible Fishing. These instruments call for us to maintain commercially harvested populations at levels which can support maximum sustainable yields, and to maintain ecosystem balance and biodiversity. If you support H.R. 2856, which prohibits fishing for tuna in association with dolphin, you will not be acting in a manner consistent with these policies. The use of alternative fishing techniques that involve fishing on logs or schools results in an excessive take of immature yellowfin tuna threatening the future health of the fishery. It would also involve the taking of many other species as a "bycatch" adversely affecting the ecosystem.

I live in San Diego. There was a time that U.S. tuna fishing boats dotted our coast. Now they are gone. I would like to see U.S. tuna boats in the EPO, and I'd like to see the tuna industry continue in California. I'd also like to see the continued growth of healthy populations of dolphin. I know the members of the Congressional delegation from San Diego agree with me because of their strong role in developing and supporting H.R. 2823. Your vote for H.R. 2823 will be a vote for the U.S. tuna industry as well as a vote for the dolphin. It will also be a vote for balance in our domestic and international environmental policies and an endorsement of a science-based program that will effectively manage our natural resources for the future. Twelve countries, five major environmental groups representing 10 million members, and all the scientists and fishermen involved in the EPO fishery can't be wrong--and they aren't. I join them in strongly urging you to support H.R. 2823.

Thank you for the opportunity to address the Subcommittee.

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