

Presented at the "Wild Dolphin Swim Program Workshop" held in conjunction with the 13th Biennial Conference on the Biology of Marine Mammals, November 28, 1999

Interactions Between the Public and Wild Dolphins in the United States: Biological Concerns and the Marine Mammal Protection Act.

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The National Marine Fisheries Service (NMFS) is the U.S. federal agency responsible for administering the Marine Mammal Protection Act of 1972 (MMPA, 16 U.S.C. *et seq.*) for the conservation and management of all cetaceans (whales, dolphins and porpoises) and most pinnipeds (seals and sea lions). The MMPA and its implementing regulations promulgated by NMFS prohibit the harassment and feeding of wild marine mammals. NMFS is concerned that recreational interactions between the public and wild dolphins -- specifically swimming and feeding activities -- are causing disturbance of the dolphins (*i.e.*, "harassment"), and that the health and welfare of the animals is at risk. Many members of the scientific research and wildlife conservation communities share this concern. In addition, there are significant public safety considerations involved as people have been seriously injured while trying to interact with wild dolphins (Webb 1978, Shane *et al.* 1993, Bryant 1994, Santos 1997).

In the U.S., there are two primary locations where "Swim-With-Dolphin" (SWD) activities occur in the wild: (1) in the southeast (primarily the state of Florida) where SWD activities target bottlenose dolphins (*Tursiops truncatus*), and (2) throughout the Hawaiian Islands where SWD activities target spinner dolphins (*Stenella longirostris*).

Several of the SWD programs in the southeast appear to be enabled by either feeding the dolphins or habituating them to human presence over time (Seideman 1997, Spradlin *et al.* 1998, Samuels and Bejder 1998, Colborn 1999). Feeding has been determined to be harmful to the health and welfare of wild marine mammals and was specifically prohibited by the MMPA regulations promulgated in 1991 (Bryant 1994). Even though most commercial SWD operators in the southeast maintain that they do not feed wild dolphins, NMFS is concerned that SWD activities (1) are facilitated by past or present efforts to either feed or to habituate the animals to human presence, and/or (2) pursue the dolphins for interaction, thereby continuing their habituation to humans.

The SWD programs in Hawaii do not appear to involve feeding of spinner dolphins, but rather encroach on the sensitive habitat areas that the dolphins use for resting and sheltering. Spinner dolphins hunt in large groups at night in the deep waters off shore; during the day, they enter the shallow coves and bays of the Hawaiian Islands to rest, socialize, care for their young, and escape predators. Several commercial operators and private citizens have discovered these resting areas and have made a practice of swimming with the dolphins. There is concern that these SWD activities are disturbing the behavior of the animals, and that they may abandon their historical resting areas due to human encroachment (NMFS 1995, Würsig 1996).

In addition to the biological concerns, there are several legal issues regarding the MMPA and its regulations that need to be considered. Under the MMPA, it is illegal to “take” any marine mammal. The term “take” is defined as:

to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

The prohibition on “taking” applies to all marine mammals within U.S. jurisdiction, and there are limited exceptions to the prohibition for permitted “takes” (e.g., harassment) pursuant to specific activities such as: scientific research, public display, enhancement of a species or stock, commercial/educational photography, and incidental take in commercial fisheries.

In 1991, NMFS amended the definition of “take” in the MMPA regulations to include a prohibition on:

“...the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild.”
(50 CFR 216.3)

In 1994, the U.S. Congress amended the MMPA and defined the term “harassment” as:

“Any act of pursuit, torment, or annoyance which --

(1) has the potential to injure a marine mammal or marine mammal stock in the wild, (Level A harassment), or

(2) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).”

Thus, “harassment” can be an act of pursuit that has the potential to disturb behavior (i.e., *Level B harassment*). NMFS is concerned that SWD activities in the wild risk causing harassment to the dolphins since, by their nature, they pursue interactions with wild dolphins that can disrupt the animals’ natural behavior.

In order to avoid harassment of wild dolphins, NMFS recommends that people observe them from a safe and respectful distance from on board a vessel, avoid approaching dolphins closer than 50 yards (150 feet or 45 meters), and use binoculars or telephoto lenses to get a good view of the animals. If people conduct dolphin watching at a distance and do not closely approach or chase (pursue) the animals, the potential for harassment should be minimized. However, if people closely approach wild dolphins within 50 yards and try to interact with or entice the animals to approach, the potential for harassment – and possibly injury – is high.

NMFS recognizes that there are situations where wild dolphins will approach people on their own accord, either out of curiosity or to ride the bow wave/surf the stern wake of a vessel underway. If wild dolphins approach a vessel, NMFS recommends that the vessel maintain its course and avoid abrupt changes in direction or speed to avoid running over or injuring the animals. If wild dolphins approach a vessel that is stationary, the vessel should remain still to allow the dolphins to pass. If wild dolphins approach swimmers or divers, NMFS recommends that the people avoid abrupt movements and try to move away. Under no circumstances should people try to feed, touch, pet, ride or chase wild dolphins.

With respect to the feeding prohibition, it is illegal to feed or attempt to feed a wild marine mammal either food or non-food items. In July 1999, NMFS successfully prosecuted a case in Florida where a federal judge fined a commercial operation and vessel operator \$4,500 for feeding several wild dolphins. The judge commented on the seriousness of the violation and started the procedure to revoke the operator's U.S. Coast Guard license (NOAA Press Release 99-R143). The MMPA carries both civil and criminal penalties for violations: the maximum civil penalty is \$10,000 and the maximum criminal penalty is \$20,000 and one year in jail.

The National Watchable Wildlife Program (NWWP) is a consortium of federal and state wildlife agencies working with wildlife protection groups to promote responsible viewing of wild animals. NMFS has joined the NWWP to compliment on-going efforts to educate the public about safe dolphin viewing practices. The NWWP offers the following "Golden Rules for Watching Wildlife" (Duda 1995), which apply to viewing wild dolphins:

- **View wild animals from an appropriate distance** – for dolphins, keep a safe distance of at least 50 yards.
- **Stay clear of areas used for resting or sheltering; they are especially vulnerable to disturbance** – dolphins use some shallow areas to care for their young and avoid predators. It is particularly important to stay clear of mothers and their calves.
- **Avoid surprising wildlife** – sneaking up on wild dolphins, or approaching them at speed, may cause the dolphins to become stressed and flee the area. The risk of injury to dolphins is also high, as they can get run over by a vessel.
- **Never feed wild animals** – feeding wild dolphins, or any wild animals, is a bad idea because:
 - (1) Feeding and conditioning wild dolphins substantially alters the dolphins' normal behavior by creating dependency on humans, and negatively modifies foraging and social behavior.
 - (2) Feeding causes dolphins to lose their natural fear of humans, which increases their vulnerability to injuries and death from vessel strikes, or malicious behavior by people.
 - (3) The food items offered to wild dolphins are inappropriate and often contaminated. People who have fed dolphins bait fish (which is often spoiled) or human food (*e.g.*, sandwiches, candy, chips, soft drinks), have placed the animals at a significant risk of illness or death. Wild dolphins need a diet of live fish that they have caught themselves.

- (4) Wild dolphins, like all wild animals, are unpredictable in their behavior, and can seriously injure people. When fed, teased, and harassed by people, dolphins have been known to bite, ram, and pull people under the waters' surface. Several people have required medical attention due to injuries inflicted by wild dolphins.
- (5) Feeding wild dolphins is illegal under the federal Marine Mammal Protection Act.

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