

On Wild Dolphin Provisioning - Strategies to Limit Wild Dolphin Harassment in Panama City, Florida

This letter was sent to all the Dolphin Tour Operators in the Bay County area in March of 2012. It explains the necessity of a concerted action within the Dolphin Tour Industry aimed at promoting safe and respectful dolphin encounters.

I have found that several of my dolphin tour operator competitors shared my concerns about the future of the dolphin tour industry in our area. The escalation of the number of boats and jet skis getting into this business needs to be addressed as well as the practice of feeding and petting the animals in order to control their behavior and their whereabouts. In my opinion, this unacceptable practice leads to harassment of the animals and it attracts negative attention on every tour operator including the ones that do not feed. It is also detrimental to the Dolphin/Whale Watching Industry in general.

As I have predicted since several years, this practice is going to give the State Law Enforcement no choice but to start enforcing the Marine Mammal Protection Act

<http://www.nmfs.noaa.gov/pr/laws/mmpa/> inclusive of the NOAA Guidelines to the letter. NMFS has already considered whether the current viewing guidelines should be incorporated as an enforceable rule into NMFS regulations. This would essentially "*criminalize human-wild dolphin interactions in U.S. waters*" (NMFS, 2002). You surely understand the implications for your operation. We have been lucky so far to get away with what we do.

For those who may not be aware of the history and content of the MMPA, I am attaching a very informative document on the subject. *Appendix 1 (Dolphins and the MMPA – by Doctor Kristin L. Stewart – 2006)*

I have been talking to several other dolphin tour operators and it seems that many are open to the idea of *self discipline* or of a *voluntary code of practice* as an alternative to drastic official enforcement measures and new regulations. "Self discipline" is already happening on the water but unfortunately, the non-compliant operations keep ruining these efforts. If you do feel concerned and are open to discussing this further, I would very much like to meet with you to include you in our on-going concerted action.

On November 27, 2011 I attended a workshop organized by NOAA/NMFS in Tampa on "Viewing and Interacting with Wild Marine Mammals" The purpose of this workshop was to "bring together stakeholders to discuss activities for viewing and interacting with wild marine mammals that may impact individuals and populations, and to discuss the advantages and disadvantages of various management solutions for minimizing potential impacts, including enforcement challenges for management". The workshop was very informative and productive. I was able to make contact with two NOAA/NMFS representatives of Protected Resources with whom I had the opportunity to discuss the issues we are facing in Panama City with dolphin harassment. Contrarily to what the local tour industry might think, NOAA is ready to be supportive of stakeholders, who are willing to improve the quality of their dolphin tours.

It has become obvious to most everyone engaged in dolphin tours in Panama City that the way the tours are being conducted is not sustainable and potentially harmful and detrimental to the operators, their clients and above all to the wild dolphins, being the resource they are drawing on to make a living.

I am convinced that every single business owner has the desire to run a successful operation and is able to understand that the quality of the services they offer is directly linked to the health and abundance of the resource they rely on. We all remember the anxiety the whole Gulf Coast population experienced during the Deep Water Horizon Oil Spill. All of a sudden, it became obvious to everyone that our

livelihood was directly linked to the Gulf waters and the many marine species they sustain. Everyone pulled together in the face of this disaster. Government agencies and the private sector joined forces to respond adequately. It so happens that should the local wild dolphin population become threatened or displaced by our reckless behavior, we would be facing the same realization. We are all hoping that it will never come down to that. Wild dolphins, like any other natural resource, need to be managed. The dolphin-tour operators of Panama City are stakeholders of the Gulf Coast's marine resources. If nothing else, due to the fact that they have invested time and money in their operation, operators should have an interest and the desire to take part in the conservation of the resource they are living off of and feel concerned about anything that could compromise their source of income.

How can dolphin-tour operators take part in the management of the area's natural resources? By conducting their tours in a responsible manner and by becoming educated on dolphin social life, behavior and physiology; by educating their staff on dolphin etiquette and by networking with the City, County, State and Federal Agencies as a unified industry. The most efficient way for our industry to get organized and to have any impact on and control over the behavior of anyone attempting to interact recreationally with the local population of wild dolphins would be for the stakeholders to form an association with specific guidelines and rules. At this time, for lack of a better way, self policing in conjunction with State and Federal Law Enforcement efforts is probably the most efficient way at our disposal to get a grip on a situation, which has already gotten way out of hand.

In my opinion, the feeding and the touching are at the core of the problems we are facing on the water. Although feeding and petting originally is a way humans have to express their empathy and attraction, this practice can also be used to control the animals in order to exploit them. In the last 20 years the local tour industry has grown so fast that the number of users given access to our coastal area has become disproportionate to the availability of existing marine resources. It so happens that one of the most sought after natural resource in our area is the local population of wild dolphins. Based on research (T. Bouveroux 2010) the total population of bottlenose dolphins using the area of Grand Lagoon, the Bay of St. Andrews, the Pass and about 5 miles on each side of the jetties is of about 150 animals. The Panama City Beach Convention and Visitors Bureau publishes the number of Visitor Days for the year 2010 as being 6.4 millions for Panama City Beach alone. With 86 million visitors in Florida for 2011, for the sake of argument, a very rough and conservative estimate of the number of boaters, swimmers and visitors partaking in saltwater-based trips, tours or charters using the same zones as the dolphins during peak season is of about one million per summer season (March through October), which is an average of 4'166 (four thousand one hundred and sixty six) recreational coastal saltwater users per day. To this number we can add the number of commercial fishing boats crew, military and Government boat crew members, who are using the same area. Even though the distribution of wild dolphins may not always coincide with the distribution of human users, we potentially have in excess of 27 recreational human users per dolphin any given day in the area described above. Of course, compared to the impact of uneducated target-driven humans, the impact of recreational human users who are not specifically looking for dolphins is not as important on the wild dolphin population.

In a "normal" setting where dolphins are occupying the area in an organic "natural" manner, the negative impact would be minimal. When users start provisioning, we have a different dynamic, which throws off the natural distribution of the animals in the area. The dolphins will concentrate in the provisioning areas and become captive targets. They will generally stay in the provisioning area until no more food is being handed out. While they are in the provisioning areas, people touch them, pet them, grope at them, and try to hang on to their fins. At least for the last two seasons (2010 & 2011), based on our observation, the provisioning has mostly been done by sports fishers or dolphin tour operators, who

for the most part are aware of the Marine Mammal Protection Act. Independent recreational sport fishers are mostly driven by curiosity while commercial tour guides are driven by gain (tips). We have noticed that the trend in dolphin provisioning has substantially changed between our first recorded observations in 2002 and the present time. It seems that the trend is influenced by the degree of intervention of the law enforcement boats. Between 2002 and 2006, our data shows a fairly even number of observed Provisioning Occurrences per season. In 2007, the number of observed provisioning occurrences decreases by about 50% compared to the previous five seasons. We have noticed that as of 2007, FWC has been more consistent with their enforcement efforts as far as provisioning is concerned. For 2006 and 2007, our data shows that the number of provisioning *Florida registered watercrafts* decreases by more than 50% compared to the previous five seasons suggesting that the “locals” are reacting positively to the officials enforcement and education efforts. Even though we have no consistent written data after August of 2007, we feel fairly confident asserting (based on visual monitoring) that most dolphin provisioning between 2009 and 2011 has been done by dolphin tour/fishing charters guides and that the number of dolphin provisioning occurrences from private vessels and boat rentals has decreased significantly. This would indicate that the official enforcement and education effort (patrol boats, signs, brochures and newspapers) has had an impact on the general public. On the other hand, these efforts have had no impact on the dolphin tour guides and/or their employers. The reason for this lack of response from the dolphin tour industry is probably economic. Since 1994, the number of businesses offering dolphin tour has increased drastically and the industry has become much more competitive. In the last five years, in addition to the existing boat tours offering an occasional dolphin experience on top of the main feature of their tour (sightseeing, parasailing, banana boats, jet skiing, snorkeling, sports fishing charters, etc.), we estimate that roughly 10 new dolphin tour companies have opened their doors and at least 5 existing boat sightseeing companies have added “swim with” opportunities to their tours. A rough estimate of the number of boats targeting dolphins commercially in our area at this time would be 30. A rough and conservative estimate of the number of *dolphin tour jet skis* at this time would be 60.

Since the typical natural behavior of wild dolphins confronted to water crafts or swimmers is avoidance, the easiest way for tour operators to provide the “Dolphin Experience” to their clients is to create a dependency by feeding them on a regular basis, habituating them to approach their boats. Provisioning takes place from the boat but the most efficient way is obviously to feed the animals from within the water since this technique, in addition to being less conspicuous, attracts the animals to the swimmers rather than to the boats, calling for a more striking experience. Most patrons want to have an in-water experience. The dolphins will stay around the feeding tour guide while his clients are gathered around him. Most tour guides encourage their clients to touch the dolphins. Due to the important number of boats and jet skies in one area, it becomes more difficult to get the dolphins attention without bait resulting in more provisioning to compete with the other provisioning guides. Some dolphin tour boat captains employed by companies with a “No Feed Policy” will feed dolphins on their days off from their private boats. Dolphins not only know the boats they are likely to receive fish from but they also know the individuals who feed them no matter what boat they are on. Therefore, a dolphin tour company can retain its “law abiding” reputation while able to compete with “feeding” operators thanks to a high occurrence of close encounters. Other boat captains cast fishing lines during their tours and to the delight of their patrons, reel fish in to their boat to keep the dolphins by the side of the boat while their clients are swimming with them. Needless to say that this practice is potentially dangerous for both their clients and the dolphins. Luring and teasing also occurs. It goes from dumping a bucket of water over the side to chumming. According to findings by NOAA/NMFS, the typical progression when feeding wild dolphins goes by stages potentially leading to serious injuries and possible death. With the escalation of feeding and petting by commercial tour operations this summer (2012), I have observed and as well as

heard reports of a dramatic increase in dolphins becoming rough and physical with swimmers in Panama City. I have observed behaviors like brushing and rubbing, humping, breaching, pushing, butting, dragging by a limb and biting hard enough to leave bruises. All these behaviors have been observed during feeding and petting sessions. As a result, the animals become excited and demanding, sometimes frustrated by the teasing. An adult dolphin can weigh in excess of 600 lbs. It is a powerful mass of muscle capable of inflicting serious injuries to swimmers. I have often seen parents leaving 4 or 5-year-old children in the water by themselves within inches of large wild dolphins being handfed and petted. Addressing these parents with my comments about the dangers involved, the most common response I have gotten from them and from the tour guides pushing them to do it has been laughter, disdain and sometimes insults. These parents are reckless and unaware but ultimately, the responsibility lies with the ignorant tour guides who brought them out there.

At several occasions, we have counted up to 30 jet skis with an average of 2 riders and 15 boats with an average of 4 passengers around 2 dolphins. It is a ratio of 120 people to 2 dolphins or 60 to 1. We have noticed at least 3 pairs of habituated cows with calf. Nursing females are more likely to fall into the pattern for several reasons. They need more food than other dolphins and tour guides favor them as targets over other dolphins for the appeal of baby dolphins.

The boats or Jet Ski tours who do not feed dolphins have 2 choices: either they shadow a “feeding tour” to “benefit” from the on-going provisioning or they leave the area to look for other dolphins. Fewer tours choose to leave the provisioning area since finding other dolphins will force them to travel further using more fuel and forcing them to rely on a knowledge of wild dolphin behavior which they might not have.

Where is all this going? What is the future of the dolphin tour industry at this rate?

If stakeholders do not change their behavior and do not stop (among other practices) the practice of provisioning and touching, several scenarios are fairly obvious:

- A serious accident could happen where a swimmer or a dolphin or both will be seriously injured or killed. I have witnessed an accident where a Jet Ski tour guide had his foot seriously injured by the propeller of a tour boat backing up in the confusion of a multi-jet ski and multi-boat dolphin encounter.
- Negative press campaign affecting our area and the dolphin tour industry. Loss of visitors' confidence.
- Drastic law enforcement measures could be imposed in the area restricting access to wild dolphins to a maximum.
- New regulations could be passed, which may not be as progressive as they would have been had tour operators shown more willingness to improve their behavior and to embrace some kind of uniform code of safe practice to run their operations more responsibly or had they been more open to working with government agencies.

As a stakeholder, what would you be willing to give up in order to improve the quality of your operation? What would you be willing to change in order to be able to insure and to protect the future of your industry? In a broader sense, what measures can stakeholders take to ensure the sustainability of Wild Marine Life Tourism? Even though wild dolphins are protected by law, they are your resource and as a stakeholder you can make your voice heard when it comes to the management of this resource, we can and we need to stake our claim to a bottom-up participation in the decision making process since it is one of the basis for our democracy.

In my opinion, nothing will be achieved without a concerted and organized effort within our community. Feeling some kind of responsibility and a sense of empowerment should motivate operators to educating themselves and their staff on wild dolphin behavior, physiology and social structure; laws and regulations. Here are some of the advantages of forming a structured association:

- The ability to efficiently communicate with the public to control patrons' expectations.
- The ability to efficiently communicate with the media to promote realistic advertizing.
- The ability to efficiently communicate with the Visitors Bureau for help with public outreach coordination and networking, preferential representation and promotion of responsible tour operations.
- The ability to show the need for and obtain a State sponsored Wildlife Tourism Management Educational Program at the PC FSU Campus or at Gulf Coast.
- The ability to efficiently communicate with government agencies to obtain inexpensive access to quality education programs and to actively partake in the design of site-specific management strategies.
- The ability to efficiently communicate with competitors to maintain discipline and safety and to promote a courteous and cooperative work environment.

Our community is not the only one facing these issues. The resource management problems associated with a rapid growth of *wildlife tourism* have been debated and strategies have already been put in place in several coastal areas. In my opinion, the most striking and valuable examples of a progressive *marine tourism* management can be found in Australia where communities have been facing a very rapid growth of the recreational use of their marine environment (Best Practice and Interpretation in Tourist/Wildlife Encounters: A Wild Dolphin Swim Tour Example by Fleur O'Neill, Sam Barnard & Diane Lee)

<http://www.innz.net.nz/Interp101/Ecotourism%20and%20interpretation/InterpWildlifeEncounters.pdf> .

Dolphin Mania tells the story of a coastal community outside of Melbourne where a small number of operators—with differing philosophies—are licensed to run dolphin swim tours. A code of practice has been established to protect the dolphins, but these regulations are rarely policed, leaving the operators to enforce the law amongst themselves:

http://www.abc.net.au/programsales/studyguide/StGd_Dolphin_Mania.pdf

A valuable resource for management strategies of sustainable wildlife tourism: CRC Sustainable Tourism. (www.crctourism.com.au).

After what you have read so far, if you are not concerned about the future of dolphin tours in your area and if you are not ready to participate in an action to limit or stop the harassment of wild dolphins in Panama City, you should seriously think about finding another line of work.

What is the future of Dolphin tours in the US?

Right now, due to a lack of law enforcement resources, dolphin tour operators are still able to sell the thrill and the adrenaline rush of an experience thanks to an artificially created behavior induced in dolphins by feeding and touching them. Since the recommendations of every scientist who has focused on the issues associated with dolphin viewing are that guidelines for interaction need to be established and enforced, it has become obvious that the practices of provisioning petting and otherwise harassing will not be tolerated in the future. If operators want to stay in business, they will have to replace the high adrenaline SeaWorld-Ride type experience with something more adapted to the needs of wild

dolphins and of educated clients. We can already see that change happening since many years within the Whale Watching Industry in New England, Canada, Alaska and Hawaii. In our area, “Dolphin Watchers” will have to be educated on dolphin behavior and other aspects in order to render their experience more interesting since the occurrence of close encounters and of spectacular behavior will be much lower than they were while the dolphins were fed. Operators will have to rely on their skills and knowledge to allow their patrons to be in proximity of the animals without harassing them. Contrarily to what is going on now, only tour guides with a solid experience and a good knowledge of wild dolphin behavior, social structure and physiology will be able to lead these tours successfully to the satisfaction of their clients.

The tour operators, who have understood the issues at hand and who want to do the right thing will not stand idle while other less conscious business owners threaten the future of the dolphin tour industry with their reckless behavior.

Thank you for your time

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Appendix 1 (Dolphins and the MMPA - Doctor Kristin L. Stewart – 2006)

Dolphins and the Marine Mammal Protection Act by Kristin L. Stewart PhD*

The 1970s were generally a time of burgeoning public awareness and participation in policy matters concerning the environment. Recognizing the current investigations into the intelligence of whales and dolphins, and responding to the “wide support for ... protection for marine mammals [as] expressed by representatives of conservation and environmental organizations, humane groups, independent scientists [and others]” (H. R. Rep. No. 92–707, 1972, p. 4145), the U.S. Congress enacted the Marine Mammal Protection Act of 1972 (MMPA;

13 USC 1361 et seq.). The legacy of human interaction with dolphins is partly why the legislation protecting marine mammals was enacted. Congress specifically commented that humans have “been involved with mammals of the sea since at least the beginning of recorded history ... [and that] the dolphin was highly regarded in ancient Rome” (H. R. Rep. No. 92–707, p. 4147). Additionally, the MMPA was created to address habitat degradation, declining numbers of whales due to whaling, and growing numbers of dolphin deaths in the ETP tuna fishery²¹ (Buck, 1997; H. R. Rep. No. 92-707).

The MMPA is the primary legal vehicle for regulating dolphins and their habitats in the United States. It goes beyond concern with conserving endangered species, but aims to protect *population stocks*, meaning that different groups of dolphins may be distinguished as needing greater protection than others, even if they belong to the same species. This was a new concept in 1972 (H. R. Rep. No. 92-707, 1972) and was not a part of any U.S. environmental law before the MMPA was enacted. Further still, although Congress meant to keep population stocks of marine mammals from diminishing below their *optimum sustainable population*, the MMPA also ^{*21} provided for every individual dolphin’s protection from human harm; the Act prohibits anyone from “taking” a dolphin in the wild (Marine Mammal Protection Act of 1972).

The MMPA essentially contains four main components: Marine mammal protection, a moratorium, exceptions to the moratorium, and penalties. Policy statements and goals declared in the MMPA include:

1. Certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man’s activities;
2. such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population. Further measures should be immediately taken to replenish any species or population stock that has already diminished below that population; and
3. marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem (Marine Mammal Protection Act of 1972).

To achieve these goals, Congress established a moratorium on the taking and importation of dolphins and other marine mammals (86 Stat. at 1029). Exceptions to the moratorium were created through the allowance of permits that could be granted for scientific research purposes, or for public display ^{*21}. The power to issue permits relating to dolphins was granted to the Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), which is responsible for the management and protection of whales, dolphins, porpoises and seals under the MMPA. The MMPA carries both civil and criminal penalties for violations.²³ The National Marine Fisheries Service (NMFS), under NOAA, is responsible for implementation of the MMPA as it applies to dolphins (and some other marine mammals) in the wild. Before the 1994 amendments to the MMPA, NMFS was also responsible for specifying the ^{*22} care requirements of captive marine mammals (66 F. R. 35209). NMFS no longer has jurisdiction over requirements for the standard of care for dolphins in captivity, but still must determine whether someone seeking a public display permit offers a program for education or

observational purposes. Once dolphins are in captivity, the Department of Agriculture through the Animal and Plant Health Inspection Service (APHIS) has control of most matters under the exclusive jurisdiction of the Animal Welfare Act (AWA), although NMFS retains control over marine mammals captured from the wild, first-time imports of marine mammals to the United States, and the standards under which dolphins may be released from captivity.

All actions undertaken by government agencies with respect to the MMPA are transparent by design. The public is encouraged to fully participate in agency decision-making processes for permit applications and other regulations affecting the MMPA (86 Stat. at 1035). Policy-making is assisted by the Marine Mammal Commission, an independent body created to monitor the implementation of the MMPA and to recommend policies and undertake research as necessary (86 Stat. at 1030).

Key Terms Defined

Section 1372 (a)(1) of the MMPA declares that it is unlawful “for any person subject to the jurisdiction of the United States . . . to take any marine mammal on the high seas.” *Taking* under the MMPA is defined as meaning “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal” (16 U.S.C. §1362(11)(A)). The term may seem straightforward, but a good deal of controversy has been caused by what, exactly, constitutes a taking in light of the MMPA and related agency regulations.

In the 1990s, the Ninth Circuit Court of Appeals provided an analysis of the term taking in *United States v. Hayashi*, 22 F.3d 859 (9th Cir. 1994). Defendants, fishermen who tried to scare porpoises away from eating tuna off their fishing lines by firing a couple of rifle shots into the water, were charged with a taking under the MMPA. The Court found that *to harass* was the only action that could apply to the case, but at the time of the occurrence the term harass was not defined in the MMPA or any other regulation. Thus the Court interpreted *harassment* under the MMPA to involve “a direct and significant intrusion” on normal marine mammal behavior.

In 1991, NMFS promulgated regulations relating to the take definition under the MMPA to include specific examples of harassment (50 CRF 216.3; 56 F.R. 11693). The 1991 definition of a taking therefore included “the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild” (50 CRF 216.3).

In 1994, the definition of the term harassment was further clarified in the amendments to the MMPA. As it currently stands, the definition is separated into two levels. Level A harassment is defined as, “any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild.” Level B harassment is defined as, any act of pursuit, torment, or annoyance which 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. (16 U.S.C. §1362 18(A))

The current, two-tiered definition of harassment is complex and somewhat ambiguous. As a result, NMFS has faced many difficulties in implementing and interpreting the amended definition. According to the recent testimony by a NMFS representative given to the U.S. Senate on Reauthorization of the MMPA:

NOAA has experienced difficulties with interpretation, implementation, and enforcement of the current MMPA harassment definition. First, the definition is limited to acts involving “pursuit, torment, or annoyance.” Second, the definition is overly broad and

does not provide a clear enough threshold for what activities do or do not constitute harassment. Third, the definition does not provide an adequate mechanism to address activities intentionally directed at individual or groups of marine mammals that disturb the animals. (*Testimony of Dr. Rebecca Lent, Deputy Assistant Administrator for Fisheries*, 2003)

The question of harassment has been particularly difficult as it applies to the increasing number of wild swim-with-dolphins operations (see Spradlin, Drevenak, Terbush, & Nitta, 1999). Most wild swim-with-dolphins operators contend that they are not harassing the dolphins with whom their customers interact (see chapter 7 herein).²⁴ But NMFS “is concerned that [such] 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” (Spradlin et al., 1999, p. 2).^{*24}

In order to discourage in-water human–dolphin encounters, NMFS worked with the National Watchable Wildlife Program to create guidelines for dolphin interactions: These include: (a) view wild animals from an appropriate distance (for dolphins, they designate a distance of at least 50 yards); (b) stay clear of areas used for resting or sheltering; (c) avoid surprising wildlife; and (d) never feed wild animals (Spradlin et al., 1999). All five NMFS regions also developed viewing guidelines to inform the public how to view with dolphins without harassing them (NMFS Regional Wildlife Viewing Guidelines for Marine Mammals are available online at <http://www.nmfs.noaa.gov/pr/education/viewing.htm>).

To support the guidelines, NMFS initiated a nationwide education and outreach program that includes the *Protect Dolphins* campaign to address continued concerns about feeding and harassment activities with wild dolphins, particularly in the southeast United States (67 F.R. 4379). In addition, NMFS’ stated policy with regard to close human–dolphin interaction is plain: Interacting with wild marine mammals should not be attempted and viewing marine mammals must be conducted in a manner that does not harass the animals. NOAA Fisheries does not support, condone, approve, or authorize activities that involve closely approaching, interacting, or attempting to interact with whales, dolphins, porpoises, seals, or sea lions in the wild. This includes attempting to swim with, pet, touch, or elicit a reaction from the animals. (Office of Protected Resources, 2005)

Nevertheless, wild swim-with-dolphins operations have continued to increase in parts of the country. And although the taking of marine mammals is subject to prosecution under the MMPA, neither NMFS’ policy statement nor the viewing guidelines are enforceable. Thus, in 2002 NMFS published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register stating that it was considering the development of additional regulations that would in effect codify the viewing guidelines and essentially define wild swim-with activities as harassment under the MMPA (67 F.R. 4379). NMFS received over 500 comments to the ANPR from various people affected by the potential regulations, including experts in the marine mammal community, commercial wild swim-with tour operators, the captive dolphin display and interaction industry, animal advocates, citizens who wished to continue swimming with dolphins in the wild, and others. A range of viewpoints were expressed, but what was clear from the comments is that the ANPR is controversial, eliciting voices that range from hotly contesting any additional regulations to arguing that even stricter regulations were needed (Lewandowski, 2005; Spradlin, personal communication, August 9, 2004). NMFS has not yet implemented the proposed regulations, and the policy dispute continues.

**This compilation is part of Kristin L. Stewart's dissertation for the degree of Doctor in Philosophy entitled "HUMAN-DOLPHIN ENCOUNTER SPACES: A QUALITATIVE INVESTIGATION OF THE GEOGRAPHIES AND ETHICS OF SWIM-WITH-THE-DOLPHINS PROGRAMS" FSU 2006*
<http://etd.lib.fsu.edu/theses/available/etd-03092006-162411/>

**21 Even after the MMPA was enacted, however, dolphin deaths in the ETP tuna fishery remained a hot topic on environmental organizations' agendas. In 1984, Earth Island Institute mounted a well-organized campaign to bring public pressure to bear on the dolphin deaths and called for a consumer boycott of all tuna not dolphin-safe (Taylor, 2003). The response was moderate, but then in 1988 a young biologist (Sam LaBudde) videotaped images of dolphins caught and struggling in tuna nets while aboard a tuna fishing boat. The startling images were shown on television, at conferences, and around the world. With the dolphin-tuna issue before the public in a new, more tangible way, people responded with fervor and demanded even greater protection for dolphins, writing to their legislators and boycotting canned tuna fish in their local grocery stores that was not dolphin-safe (Stewart, 1998; Taylor, 2003).*

**22 Other exemptions to the moratorium on taking marine mammals included commercial fishing operations and takings by Alaskan natives (86 Stat. at 1031). Congress has enacted several amendments to the MMPA since its original creation (in 1981, 1984, and 1988) (H.R. 97-228, reprinted at 1981 U.S.C.C.A.N. 1458; 98 Stat. at 440; 1994 U.S.C.C.A.N. 518). Among the most significant changes to the MMPA came with the 1984 amendments which required that all nations exporting to the United States have approved marine mammal protection programs, meaning that foreign governments had to prove that they have marine mammal protection programs comparable to the United States' (98 Stat. at 440).*

**23 The maximum civil penalty is \$10,000 and the maximum criminal penalty is \$20,000 and one year in jail.*

**24 Except for specific listed purposes, like scientific research, the MMPA does not provide for a permit or other authorization process to view or interact with dolphins.*