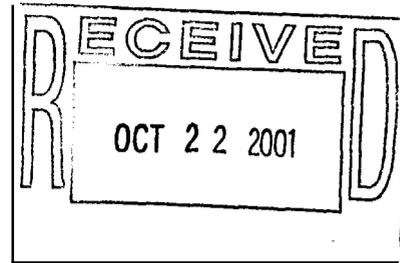


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# DOLPHIN RESEARCH CENTER

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For Marine Mammals & The Environment We Share



October 16, 2001

National Marine Fisheries Service  
Office of Protected Resources  
Permits Division (F/PR1)  
1315 East-West Highway  
Room 13705  
Silver Spring, MD 20910

RE: Docket No. 001031304-0304-01

Dear Sir:

DRC objects strongly to the NMFS proposed rules amending public display requirements under the Marine Mammal Protection Act. It is our belief that these proposed rules are inconsistent and contradict the 1994 amendments to the MMPA. Furthermore, they represent many of the same proposals NMFS proposed in 1993, which Congress rejected in 1994.

### Facility Inspection Proposed Regulation

In 1994, Congress decided that it would be wasteful for two agencies to have identical responsibilities. Therefore, Congress clearly provided that APHIS would have sole authority over the establishment and enforcement of marine mammal care and maintenance standards.

Furthermore, the Proposed Regulations state that "any person" designated by NMFS will have the right to examine any marine mammal held for public display, to inspect any public display facility, and to review and copy all records. This raises public policy issues not to mention significant privacy issues. DRC does not believe that any member of the public should be designated by NMFS as having the authority to inspect facilities for compliance with APHIS standards. Furthermore, DRC does not believe public display facilities should be required to turn over all of their records.

### Exportation Proposed Regulation

DRC also strongly objects to all efforts by NMFS to apply the MMPA internationally, whether it be through letters of "comity" or inventory requirements. Both Congress and the courts have rejected NMFS' effort to apply the MMPA in foreign nations, yet the Proposed Regulations

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would make foreign citizens subject to NMFS' regulations. Furthermore, the Proposed Regulations require that NMFS independently determine that the facility complies with APHIS' care and maintenance standards.

DRC asserts that these proposals not only raise very serious international relations issues, but they also raise serious questions about whether NMFS should be using its limited resources to transform itself into an international regulatory agency.

### Removal from the Wild Proposed Regulations

Existing MMPA regulations require a permit applicant to demonstrate that any taking will not likely have a significant adverse impact on the species or stock. This is reasonable. However the Proposed Regulations significantly change this existing standard, creating an impossible burden to meet. Unlike the existing regulations which require a showing that the taking is not "likely" to have a significant adverse effect on the species, the Proposed Regulations require that the public display community prove a negative, that the taking "will not have" a significant adverse effect.

We strongly object to the establishment of standards that are impossible to meet. Even the Endangered Species Act does not have a take provision as stringent as that which NMFS is attempting to insert into the MMPA.

### Transfer Proposed Regulations

The 1994 Amendments provide that a person issued a permit to take or import marine mammals for public display shall have the right "without obtaining any additional permit or authorization" to sell, transport, transfer, etc. the marine mammal to persons who meet the MMPA requirements. The MMPA also provides that a person exercising these permit rights must notify the Secretary of Commerce no later than 15 days before any sale, transport, etc.

However, this simple 15-day notification has been transformed into the submission of three transport notifications for the same transaction and three Marine Mammal Data Sheet forms restating the information already in the inventory. Moreover, the Proposed Regulations require that before a transport can occur, both the holder and the receiver must provide NMFS with a certification that the receiver meets the three requirements for holding a marine mammal. It is not clear why an APHIS determination of compliance with APHIS requirements is not adequate and why the shipper and receiver must provide an independent certification, particularly when the MMPA says the transfer may occur without further permit or authorization.

We contend the agency **has** taken the simple notification requirement provided for in the MMPA and converted it into a needlessly cumbersome process that could result in criminal penalties.

### Reporting of Stillbirth Proposed Regulation

Congress intended that the marine mammal inventory be a record of marine mammals actually held at public display facilities. It is neither appropriate nor necessary that the Proposed

Regulations require facilities to report stillbirths since such animals will not become part of the inventory of animals at public display facilities. The issue regarding stillbirths is with respect to genetics and public display facilities already report stillbirths to the persons who maintain these genetic records.

### Conclusion

The Alliance of Marine Mammal Parks and Aquariums will be submitting more detailed comments on these Proposed Regulations. We support the Alliance comments.

We hope these comments will be helpful in promulgating a rule that more closely reflects the 1994 amendments to the MMPA.

Sincerely,

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Jayne Shannon-Rodriguez  
President/CEO  
Dolphin Research Center

JSR/ebp