

# Hawaiian Spinner Dolphin Proposed Rule



**NOAA**  
**FISHERIES**

**Pacific Islands**  
**Regional Office**

To learn more about the proposed rule and to provide comments in person, please join us for one of the public meetings.

## **HAWAII ISLAND**

**September 7, 2016**

**5:30-9:30pm**

Konawaena High School  
81-1043 Konawaena School Rd.  
Kealahou, HI 96750

**September 8, 2016**

**5:30-9:30pm**

Kealahou High School  
74-5000 Puuhuluhuli St.  
Kailua-Kona, HI 96740

## **KAUAI**

**September 21, 2016**

**5:30-9:00pm**

Kauai High School  
3577 Lala Rd.  
Lihue, HI 96766

## **MAUI**

**September 22, 2016**

**5:30-9:00pm**

Hawaiian Islands Humpback  
Whale Sanctuary Visitor Center  
726 S. Kihei Rd.  
Kihei, HI 96753

## **OAHU**

**September 27, 2016**

**5:30-9:30pm**

Roosevelt High School  
1120 Nehoa St.  
Honolulu, HI 96822

**September 28, 2016**

**5:30-9:30pm**

Waianae High School  
85-251 Farrington Hwy.  
Waianae, HI 96792



## Questions & Answers

### Purpose and Description of the Action

#### What action is NOAA Fisheries taking?

NOAA Fisheries is publishing a proposed rule to prohibit swimming-with and approaching a Hawaiian spinner dolphin within 50 yards. These regulations are designed to reduce human activities that result in take of spinner dolphins under the Marine Mammal Protection Act (MMPA), including harassment and disturbance.

#### What is “take” under the MMPA?

The MMPA defines take to mean “to harass, capture, or kill” any marine mammal or attempt to do so. Harass is further defined by the MMPA as any act of pursuit, torment, or annoyance that has the potential to do the following:

- **Level A harassment** - injure a marine mammal or marine mammal stock in the wild; or
- **Level B harassment** - disturb a marine mammal or marine stock in the wild by causing disruption of behavioral patterns, including but not limited to migration, breathing, nursing, breeding, feeding, or sheltering.

#### Why is NOAA Fisheries proposing protections for Hawaiian spinner dolphins now?

Resident populations of Hawaiian spinner dolphins use Hawaii’s nearshore waters to rest each day after feeding in deep waters all night. In recent years these dolphins face intense pressure from increasing dolphin-viewing activities. Surrounded by people and vessels throughout the day, the dolphins’ resting and recuperation can be disrupted. NOAA Fisheries is concerned that these chronic disruptions will negatively affect the health and fitness of individual dolphins, leading to negative effects on the already small resident populations in the main Hawaiian Islands. The proposed regulations prohibit those activities that result in take of Hawaiian spinner dolphins, including harassment and disturbance, and are intended to protect the health and sustainability of our resident spinner dolphin populations.

### Where would the proposed regulations apply?

Proposed regulations would be implemented within 2 nautical miles from shore of all main Hawaiian Islands and in designated waters between the islands of Maui, Lanai, and Kahoolawe where spinner dolphins are found throughout the day.

### How does disturbance negatively affect Hawaiian spinner dolphins?

Spinner dolphins are reliant on group dynamics in Hawaii's nearshore habitats to support resting and recuperation, socializing, and nurturing their young. People and vessels engaged in activities that involve closely approaching, swimming with, or interacting with the dolphins distract dolphins from group behavioral patterns that support their health. Disturbed individuals incur an energetic cost, which may include the energetic cost of responding to the disturbance in some manner (e.g., responding by swimming swiftly away) or the loss from energy-replacing behaviors (e.g., losing rest). Over time, these losses can accumulate, negatively affecting the health and fitness of the individual. Individuals with poor health may affect the whole group's effectiveness while engaged in group behaviors, such as foraging or detecting predators.

## Exceptions to Prohibitions

### Are there exceptions that apply to the prohibitions?

NOAA Fisheries identified six situations in which being within 50-yards of a spinner dolphin may be necessary or unavoidable, and made exceptions to the prohibitions in these cases. These proposed exceptions include the following:

- Persons who inadvertently come within 50 yards of a spinner dolphin, or who are approached by a Hawaiian spinner dolphin, provided they make no effort to engage or pursue the animals, and take immediate steps to move away from the animals.
- Vessels that are underway and approached by a Hawaiian spinner dolphin provided they continue normal navigation and make no effort to engage or pursue the animals;
- Vessels transiting to and from a port, harbor, or in a restricted channel when a 50-yard distance will not allow the vessel to maintain safe navigation;
- Vessel operations necessary to avoid an imminent and serious threat to a person or vessel;
- Activities authorized through a permit or authorization issued by the National Marine Fisheries Service to take Hawaiian spinner dolphins; and
- Federal, State, and local government vessels when necessary in the course of performing official duties.

### How do I know if a spinner dolphin is being disturbed?

Individual dolphin responses to disturbance varies and in some cases may not be apparent (e.g., elevated heart rates or increased watchfulness). Any change to natural behaviors constitutes disturbance, including but not limited to:

- Rapid or abrupt changes in swimming direction or speed
- Erratic swimming patterns
- Escape tactics such as prolonged diving, underwater exhalation, underwater course changes, or rapid swimming away from the source of disturbance at the surface
- Females attempting to shield calves with their bodies or movements
- Abandoning important breeding, nursing, feeding, or resting activities
- Increased aerial behaviors including spins, leaps, head slaps, body slaps, and tail slaps (particularly during normal resting periods)

## Next Steps in the Rulemaking Process

### What are the next steps in the rulemaking process?

Publication of the proposed rule begins a 60 day period for public comment.

### How do my comments affect the final rule?

The proposed rule and the public comments received on it form the basis for the final rule. Public comments that provide new data, or identify questions or concerns that need to be addressed, may shape the outcome of the final rule. However, NOAA Fisheries does not base its final rule on the number of comments in support of the rule versus those in opposition to it.

### When will NOAA Fisheries publish a final rule?

In general, final rules are published within one year of a proposed rule. We will make every effort to publish the final rule within this period.

## For More Information

Find additional information about the proposed regulations and spinner dolphins at

[http://www.fpir.noaa.gov/PRD/prd\\_spinner\\_EIS.html](http://www.fpir.noaa.gov/PRD/prd_spinner_EIS.html).

