



Contact: Jolene Lau, Jolene.Lau@noaa.gov, (808) 721-4098

Proposed Rule to Enhance Protections for Hawaiian Spinner Dolphins

Public meetings scheduled throughout September to collect comments

NOAA Fisheries is proposing to enhance protections for Hawaiian spinner dolphins to prevent disturbance and harassment from dolphin-directed human activities. The proposed rule would prohibit swimming with and approaching a Hawaiian spinner dolphin within 50 yards by any means (vessel, person, or other object) and would be implemented within two nautical miles from shore of the Main Hawaiian Islands and in designated waters between Maui, Lanai, and Kahoolawe where spinner dolphins are found throughout the day.

Resident populations of Hawaiian spinner dolphins feed offshore throughout the night and return to Hawaii's coasts to rest during the day. Because Hawaiian spinner dolphins rest in Hawaii's sheltered bays and along its coastlines and are one of the most easily encountered cetaceans in the waters of the Main Hawaiian Islands, they are vulnerable to disturbance and harassment. Dolphin-directed activities have grown dramatically in recent years, and the easily accessible Hawaiian spinner dolphins face heavy and increasing pressures from people seeking a dolphin experience. Chronic disturbance to resting activities can negatively affect the health and fitness of dolphins.

These regulations are designed to protect the health and sustainability of our resident spinner dolphin populations by reducing human activities that result in "take" of spinner dolphins. The Marine Mammal Protection Act (MMPA) prohibits the "take" of any marine mammals, including Hawaiian spinner dolphins. Take is defined as "to harass, hunt, capture, or kill" any marine mammal or attempt to do so. "Harass" is further defined by MMPA as any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or stock in the wild, or potential to disturb a marine mammal or stock in the wild by causing disruption of behavioral patterns. This includes but is not limited to migration, breathing, nursing, breeding, feeding, or sheltering. Exceptions for taking marine mammals are made through a permit or authorization issued by the National Marine Fisheries Service.

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:

1. 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.
2. 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.
3. 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.
4. Vessel operations necessary to avoid an imminent and serious threat.
5. Activities authorized through a permit or authorization issued by the National Marine Fisheries Service to take Hawaiian spinner dolphins.

6. Federal, State, and local government vessels when necessary in the course of performing official duties.

Although not proposed in the regulation, NOAA Fisheries is considering a future rulemaking that would involve closures to activities at certain times of day (6 a.m. and 3 p.m.) within certain essential daytime habitats. These would be identified as time-area closures. The rule discusses four bays on the island of Hawaii and one bay on the island of Maui as potential areas in which to designate time-area closures. NOAA Fisheries is requesting information and comments on the selection of areas, whether time-area closures are necessary in addition to approach regulations, and whether time-area closures, if implemented, should be voluntary or mandatory. Five potential areas have been identified for time-area closures:

- Kealahou Bay, Hawaii Island
- Honaunau Bay, Hawaii Island
- Kauhako Bay, Hawaii Island
- Makako Bay, Hawaii Island and
- La Perouse Bay, Maui

The Proposed Rule will be published in the Federal Register on August 24, 2016, and the Notice of Availability of the accompanying draft Environmental Impact Statement (EIS) will be published in the Federal Register on August 26, 2016. Following the publication, there will be a 60-day public comment period to voice opinions on the proposed rule. We expect the Final Rule to publish in the Federal Register in August 2017. The final EIS and Record of Decision is expected to be published in July 2017. A 30-day public review will follow that publication. The prohibitions would go into effect in September 2017.

NOAA will continue to work with communities to help them understand how the agency's proposal may affect them. Public meetings are scheduled for:

- September 7th from 5:30 – 10 p.m. at Konawaena High School cafeteria in Kealahou
- September 8th from 5:30 – 9:30 p.m. at Kealahou High School cafeteria in Kona
- September 21st from 5:30 – 9:30 p.m. at Kauai High School cafeteria in Lihue
- September 22nd from 5:30 – 9:30 p.m. at Hawaiian Islands Humpback Whale National Marine Sanctuary Visitor Center in Kihei
- September 27th from 5:30 – 9:30 p.m. at Roosevelt High School dining Hall in Honolulu
- September 28th from 5:30 – 9:30 p.m. at Waianae High School cafeteria in Waianae

“NOAA is seeking your comments on our proposal, specifically comments that provide new data or identify questions or concerns that need addressing,” said Michael Tosatto, Pacific Islands Regional Administrator of NOAA Fisheries. Comments must be received no later than 5 PM October 23, 2016. You can provide comments, information or data to NOAA by electronic submission, mail, or during a public meeting. Typically, we would expect a final rule to publish within about a year of our proposed rule.

###