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Marine Mammal Viewing Guidelines & Regulations: Past, Present & Future Directions

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May 7, 2015

Examples of Concerns



Swim-with Activities in the Southeast U.S. Facilitated by Illegal Feeding



Different coasts, species & decades but similar concerns....



1988 Workshop to Review and Evaluate Whale Watching Programs and Management Needs

Center for Marine Conservation & National Marine Fisheries Service



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1988 Workshop on Whale Watching

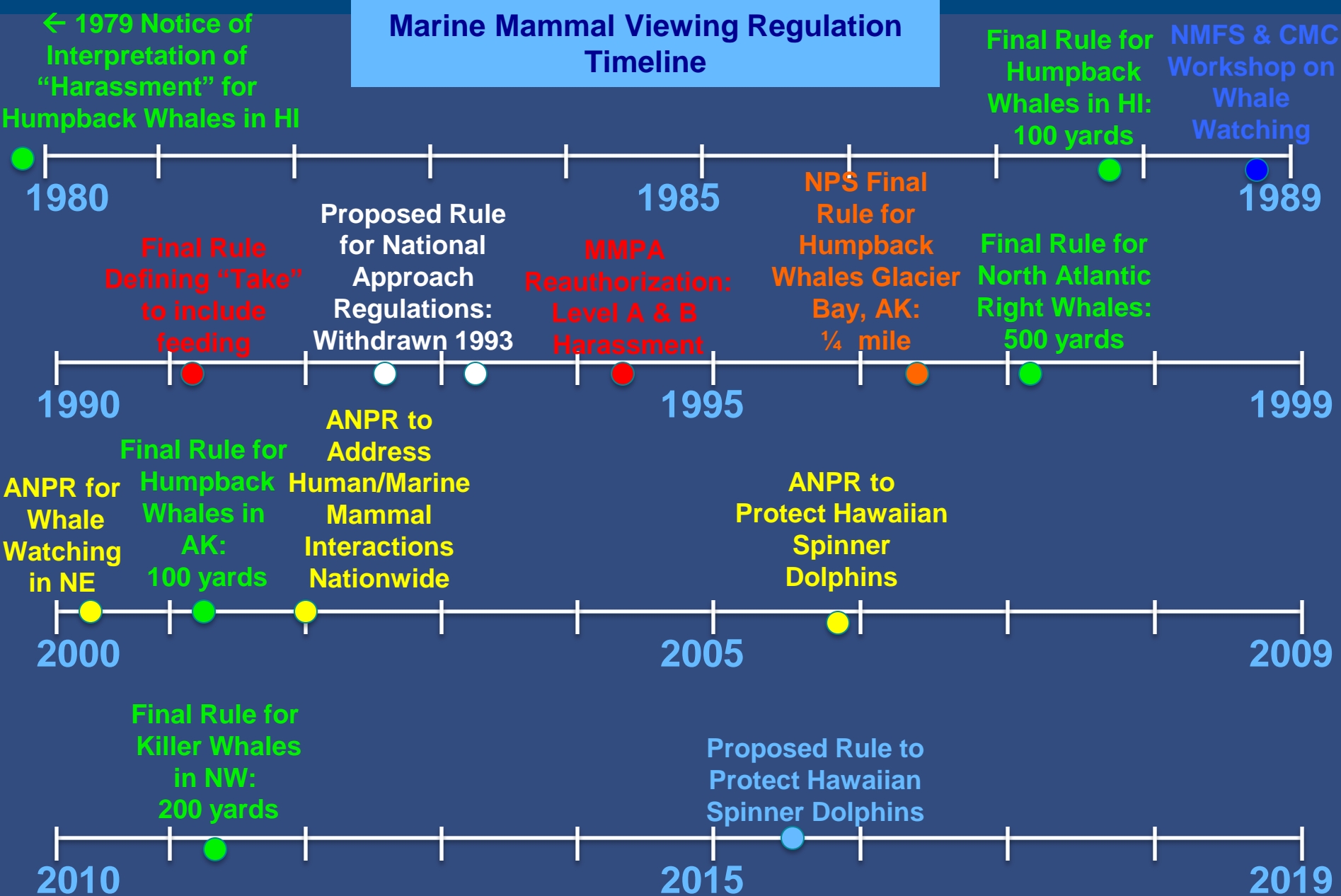
Final Recommendations

IV. Each NMFS Region should issue regulations on whale watching.

- A. Primary focus of new regulations should be minimum approach distances based on Regional considerations.
- B. Include in regulations restrictions on related activities, including thrill craft, swimming and diving with whales.
- C. The regulations should address behavior, such as how to operate a vessel if a whale approaches the vessel, as well as distances.
- D. The regulations should provide special restrictions, as warranted, for particular areas, such as feeding or calving grounds, or special situations, such as whale watching on mating pairs or cow/calf pairs.
- E. The regulations should include a prohibition on whale watching activities that involve the feeding of wild populations of cetaceans.



Marine Mammal Viewing Regulation Timeline



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Marine Mammal Protection Act and NMFS Regulations Define “take” as:

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

For NMFS regulations at 50 CFR §216.3 this includes –

- 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
- feeding or attempting to feed a marine mammal in the wild

Marine Mammal Protection Act defines “harassment” as:

any act of pursuit, torment or annoyance which:

- (i) has the potential to injure a marine mammal or marine mammal stock in the wild (**Level A harassment**); or
- (ii) 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**).

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Marine Mammal Viewing Guidelines

Do not chase, closely approach, surround, feed, swim with, or attempt to touch any wild marine mammal

- Keep 50 yards (150 feet) from dolphins & pinnipeds by sea & land
- Keep 100 yards (300 feet) from large whales by sea & land
- Keep ~300 yards (1,000 feet) from all marine mammals by air
- Limit observation time to 30 minutes
- Never encircle, chase or entrap animals with boats
- Place boat engine in neutral if approached by a wild marine mammal
- Leave the water if approached while swimming
- *Never feed wild marine mammals*



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Marine Mammal Approach Restrictions

50 CFR §223.202 & §224.103

For certain endangered species, it is unlawful to:

- Approach Steller sea lion rookeries within **3 nautical miles** in AK
- Approach humpback whales within **100 yards (300 feet)** in HI & AK
(and **1,000 feet by air** in HI)
- Approach killer whales within **200 yards (600 feet)** in the NW
- Approach North Atlantic right whales within **500 yards (1,500 feet)**
(including by air)



Closely Approaching Marine Mammals



Photo-id & Behavioral Research



Swimming with wild dolphins

Are these ***“acts of pursuit...that have the potential to disturb”***
→ ***i.e., Level B harassment?***



www.nmfs.noaa.gov/pr/education/viewing.htm

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Responsible Marine Wildlife Viewing




Killer Whale
(Orcinus orca)
Photo: Whale Museum

ADMIRE FROM A DISTANCE...
for your safety and their protection.

*Never touch, swim with, feed,
or harm in the wild.*

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Overview

NOAA Fisheries believes that watching marine animals in their natural habitat can be a positive way to promote conservation and respect for the animals and the marine environment. However, irresponsible human behavior can disturb animals, destroy important habitats, and even result in injury to animals and people. To promote responsible and sustainable marine animal viewing, NOAA Fisheries has developed numerous educational programs, viewing guidelines and regulations, and enforcement actions.

Ocean Etiquette

Recognizing the importance of outreach partnerships, NOAA Fisheries and NOAA's [National Marine Sanctuary Program](#) have developed the [Ocean Etiquette](#) program to more effectively promote ocean stewardship. Anyone who visits, works, or plays in the marine environment and those who visit remotely (i.e. the Internet and aquariums) have an opportunity to make a difference in protecting the ocean. Ocean Etiquette is designed to provide the public with guidance on minimizing impacts to marine life and habitats. By making these direct connections between human behavior and environmental protection, the Ocean Etiquette program empowers visitors with specific knowledge of how to protect marine wildlife and habitats.


NOAA Fisheries Policy on Human Interactions With Wild Marine Mammals

The MMPA does not provide for a permit or other authorization to view or interact with wild marine mammals, except for specific listed purposes such as scientific research. Therefore, 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.

www.nmfs.noaa.gov/pr/dontfeedorharass.htm

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Feeding or Harassing Marine Mammals in the Wild is Illegal and Harmful to the Animals

Why is it illegal to feed, attempt to feed or harass marine mammals in the wild?
Feeding, attempting to feed, and harassment of marine mammals in the wild by anyone is prohibited by regulations enacted under the Marine Mammal Protection Act.

Feeding, attempting to feed, or otherwise harassing marine mammals in the wild was made illegal because it is harmful to the animals in the following ways:

- It causes marine mammals to lose their natural wariness of humans or boats and become conditioned to receiving handouts and associate people with food.
- It changes their natural behaviors, including feeding and migration activities, and decreases their willingness to forage for food on their own. They may also begin to take bait/catch from fishing gear. These changed behaviors may be passed on to their young and other members of their social groups and increases their risk of injury from boats, entanglement in fishing gear, and intentional harm by people frustrated with the behavioral changes.
- Some of the items that are fed to marine mammals may be contaminated (old or spoiled) or not food at all. Feeding marine mammals inappropriate food, non-food items, or contaminated food jeopardizes their health.
- Marine mammals sometimes become aggressive when seeking food, and are known to bite or injure people when teased or expecting food.

How is "harassment" defined under the MMPA?
Harassment means any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment), or that has the potential to disturb a marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering, but does not have the potential to injure a marine mammal or marine mammal stock in the wild (Level B harassment).

Does NOAA Fisheries Service have a policy about interacting with marine mammals in the wild?
NOAA Fisheries Service maintains a policy on human interactions with wild marine mammals that states:

- 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 Service 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.

You can find recommendations on proper viewing of marine mammals on our website <http://www.nmfs.noaa.gov/pr/education/viewing.htm>

How can people responsibly view marine mammals in the wild?
NOAA Fisheries Service supports responsible viewing of marine mammals in the wild. Each of our six Regional Offices have developed viewing guidelines or regulations tailored to the specific needs of the species in their area to help people responsibly view the animals and avoid harassment. In general, the guidelines recommend:







- Observing wild dolphins, porpoises, and seals from safe distances of at least 50 yards (150 feet) by land or sea
- Observing large whales from a safe distance of at least 100 yards (300 feet) by land or sea
- Observing whales, dolphins, porpoises, and seals from a safe distance of at least 333 yards (1,000 feet) by air
- Use binoculars or telephoto lenses for a better view of the animals
- Limit overall viewing time to no more than 30 minutes
- Avoid circling or entrapping marine mammals between watercraft, or watercraft and shore
- Avoid abrupt movements or loud noises around marine mammals
- Avoid separating mother/calf pairs
- Move away cautiously if behaviors are observed that indicate the animal is stressed
- Avoid touching or swimming with wild marine mammals, even if they approach you

In addition to these recommended guidelines, Federal regulations strictly prohibit close approaches to certain species of marine mammals and feeding or attempting to feed any species of marine mammal:


- It is illegal to feed or attempt to feed any species of marine mammal
- It is illegal to approach humpback whales in Hawaii and Alaska within 100 yards (300 feet) by land or sea
 - It is illegal to approach humpback whales in Hawaii within 333 yards (1,000 feet) by air
- It is illegal to approach killer whales in inland waters of Washington State within 200 yards (600 feet) by land or sea
- It is illegal to approach North Atlantic right whales within 500 yards (1,500 feet) by land, sea, or air

For more details, please see our website, [Responsible Marine Wildlife Viewing](#), as well as 50 Code of Federal Regulations (CFR) 216.3 and 50 CFR 224.103.

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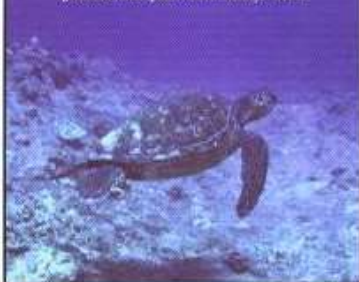
Cultivating Wildlife Stewardship Etiquette

NMFS Southeast Region Marine Mammal and Sea Turtle Viewing Guidelines



Protected Resources Management Division

green sea turtle (photo: Bruce Mundy, NMFS)



These guidelines are intended to inform the public about protection of marine wildlife. They are not a replacement for Federal legal requirements.

Protect Marine Wildlife While Enjoying Their Natural Beauty



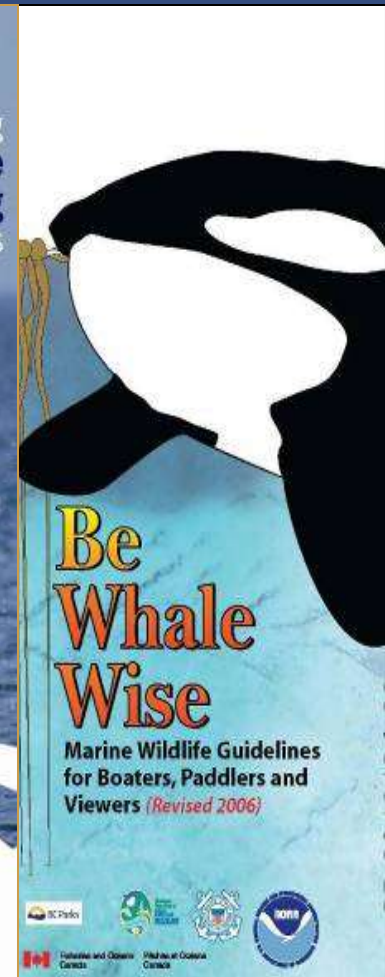
Hawaii Marine Mammal & Sea Turtle Viewing Guidelines



Protect Dolphins

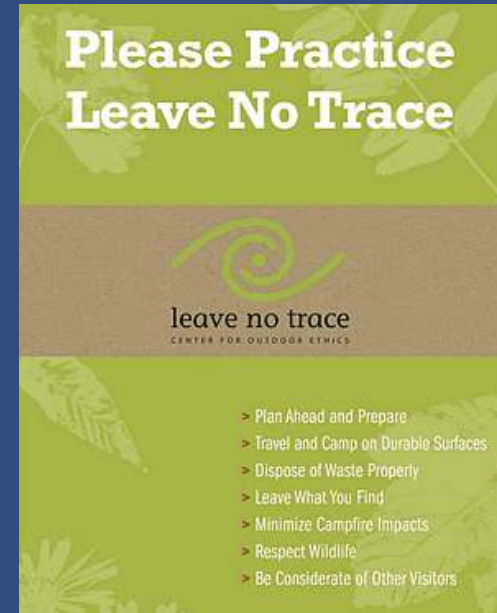


admire them
from a **distance**



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Cultivating Wildlife Stewardship Etiquette

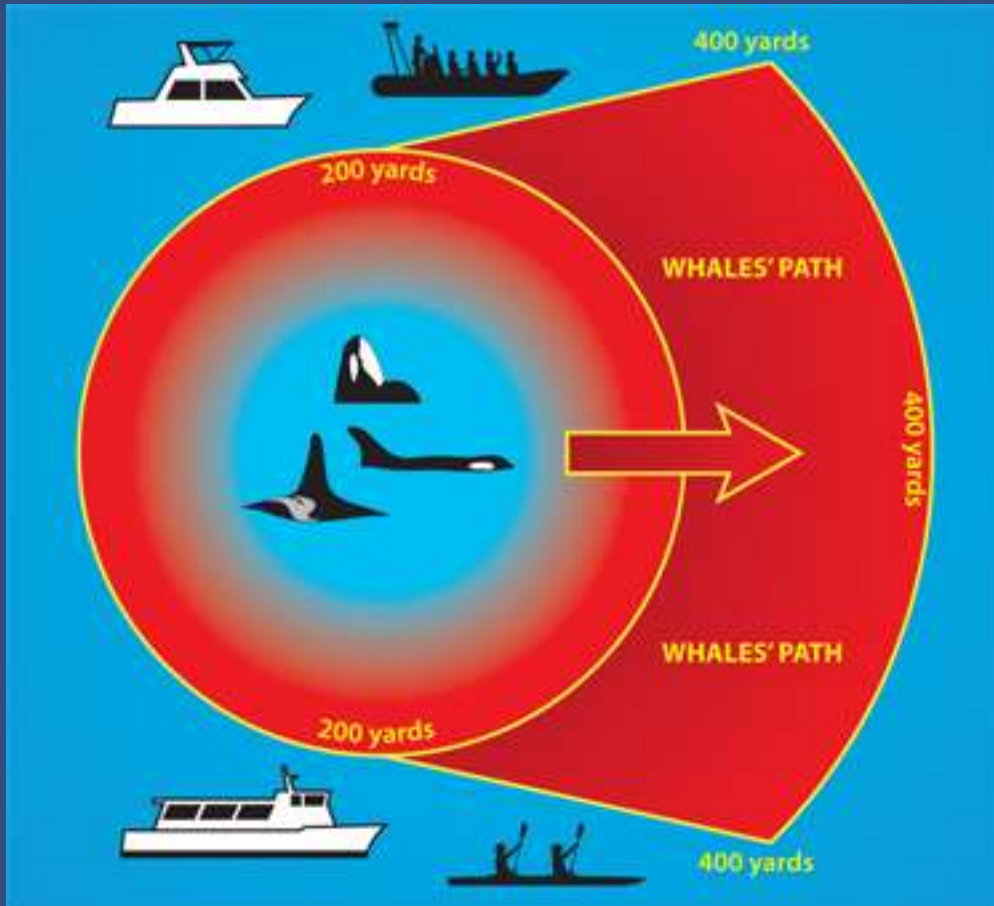


- > Plan Ahead and Prepare
- > Travel and Camp on Durable Surfaces
- > Dispose of Waste Properly
- > Leave What You Find
- > Minimize Campfire Impacts
- > Respect Wildlife
- > Be Considerate of Other Visitors



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Be Whale Wise Campaign



Public Service Announcement Video



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Voluntary Recognition Programs



FL: 12 AL: 1
HI: 6

Total = 19



ME: 1 MA: 6
NY: 1 NJ: 4
AK: 5

Total = 17



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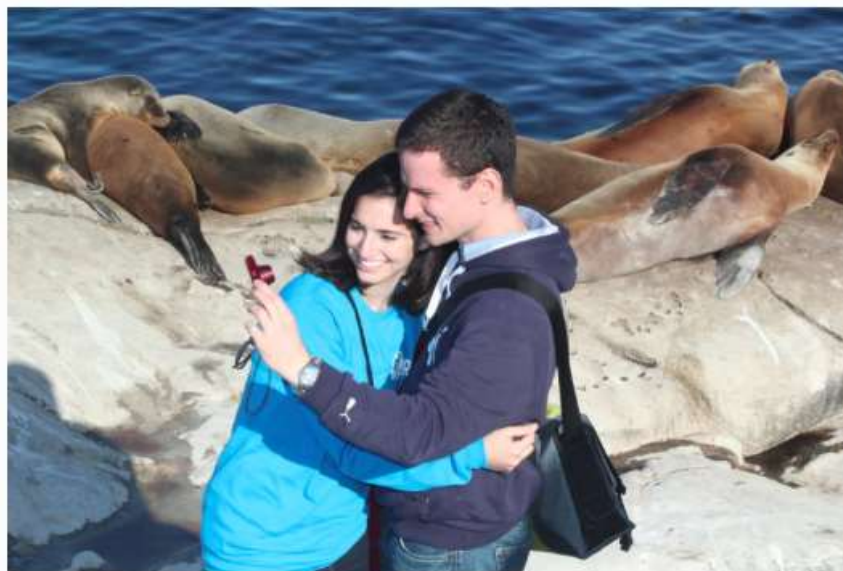
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City considers sea lion behaviorist to nix La Jolla Cove odor

Meanwhile, visitors line up for sea lion 'selfies'

By [Pat Sherman](#) 4:34 p.m. Jan. 6, 2015

[Print](#)[Comments](#)[6](#)

A couple reviews their 'selfie,' taken just feet from a backdrop of sunning sea lions at La Jolla Cove. — *Pat Sherman*

Meanwhile, visitors line up for sea lion 'selfies'



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Sea lion bites 5-year-old boy on face in La Jolla



A young boy was rushed to the hospital after he was bitten by a sea lion at a San Diego beach.


By **TONY PERRY**
contact the reporter


SHARELINES

🐦 5-year-old boy nipped in face by sea lion in La Jolla

MARCH 23, 2015, 11:02 AM

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GREAT READ
WHALE-WATCHING RIVALS SPAR OFF DANA POINT
By **ADOLFO FLORES**
APRIL 1, 2014, 3:00 AM

Captain Dave Anderson's face tightens as he peers toward the horizon through his binoculars. The Manutea has been out at sea for nearly an hour, bouncing across the waters off Dana Point, and so far there's not a single whale to be seen.

Clutching cameras and wrapped in sweaters, passengers, who moments before were entranced by a pod of dolphins, crane their necks, looking in every direction.


Anderson's reputation rides on giving his 49 passengers an up-close view they'll share over and over once they get back to port. And, with any luck, some eye-catching video he can upload to his website.

As Anderson searches, his rival is one step ahead. Donna Kaler's crews have already spotted a pair of whales during their first voyage of the day.

Just then, a passenger shouts up to Anderson, "10 o'clock!"

Anderson revs the boat's engine. Was that a puff of water in the distance?


::



SHOW CAPTION

In Dana Point — a city so well-known for whale watching that it's home to an annual festival dedicated to the mammal — two companies doing business from docks only half a mile apart compete over nearly 12 square miles of wide open sea.

Anderson's outfit, Captain Dave's Dolphin and Whale Safari, and Kaler's Dana Wharf

Los Angeles Times
LOCAL

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UAS: Important New Tools for Scientific Research & Emergency Response

www.nmfs.noaa.gov/podcasts/2014/10/aerial_vehicle_killer_whale.html#_VSPwRPnF_Tq

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Unmanned Aerial Vehicle Offers a New View of Killer Whales

For the first time, scientists have used an unmanned aerial vehicle to photograph killer whales from above. This gives scientists a new way to monitor killer whale health and reproduction while giving us all a stunning new view of the species.

By Rich Press, NOAA Fisheries Science Writer | Posted: October 7, 2014
Follow Rich on Twitter: @Rich_NOAAFish



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View Transcript

For the first time, scientists have used an unmanned aerial vehicle to study killer whales from above. The device they're using is a remote-controlled hexacopter with a high-resolution camera mounted in its belly, and the photos it produces are beautiful and full of detail. The images offer an entirely new view of this species.

But scientists aren't taking pictures just because they look nice. The images contain detailed information that scientists can use to monitor the health of individual killer whales and of their population as a whole.

To get these photos, scientists from NOAA Fisheries teamed up with colleagues at the Vancouver Aquarium. The animals they studied are the Northern Resident killer whales of British Columbia, a population that's listed as threatened under Canada's Species At Risk Act, and the pilots were trained and operating under permits issued by the Canadian Government. Like the endangered Southern Residents that spend summers near Seattle, these whales eat salmon—mainly Chinook salmon—and some of the salmon runs they rely on are much smaller than they used to be. In fact, several Chinook runs are themselves endangered, and scientists are concerned that a lack of prey may be limiting the whale populations.



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Example of Concerns re: Recreational UAS Use



<https://youtu.be/zjzxBWl8xN4>



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www.nmfs.noaa.gov/pr/uas.html

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Good Stewardship: Using Your UAS Responsibly in Marine Environments to Protect Marine Species

NOAA Fisheries reminds you to keep your distance from protected wildlife

Unmanned aircraft systems (UAS) – also known as model aircraft or drones – are a new way to obtain unique views of wildlife and natural landscapes. Besides this, they also offer a new method for scientific researchers and emergency responders to obtain important information about marine mammals that can further support the conservation of these protected species. NOAA Fisheries supports these uses and plans to develop additional guidance for scientists using UAS in their research projects in order to help reduce their impacts on the animals.

Despite these benefits, UAS can also be disruptive to both people and animals if not used safely, appropriately, or responsibly. Scientists and wildlife managers are concerned that acute or chronic disturbances of wildlife can significantly impact the animals' health and fitness by disrupting migratory patterns, breeding, feeding, and sheltering. As a result, NOAA Fisheries continues to evaluate both scientific research permit applications to ensure that the potential hazards do not outweigh the benefits, and other types of public activity that have the potential to negatively impact protected marine species.

For recreational use of UAS, NOAA Fisheries reminds the public that dolphins, whales, seals, and sea lions, are protected species and harming or disturbing them can be a violation of Federal law. The Marine Mammal Protection Act of 1972 (MMPA) makes it illegal to harass marine mammals by changing their behavior, which may occur if they are approached too closely. **Federal guidelines** recommend keeping a safe aerial distance of at least 1000 feet (300 yards) from marine mammals in the wild. The Endangered Species Act of 1973 (ESA) also provides additional protections for those species of marine mammals listed as threatened or endangered. For example, Federal regulations restrict close approaches by air for humpback whales in Hawaii (1000 feet = 300 yards) and for North Atlantic right whales (1500 feet = 500 yards).


When using your UAS in the marine environment, NOAA Fisheries recommends using common sense and following existing Federal marine mammal viewing guidelines to ensure a positive viewing experience for the public, whether on the water, on land, or in the air. These guidelines provide helpful tips for members of the public who want to observe whales, dolphins, seals or sea lions. As we continue to assess the impacts of UAS on marine mammals (and wildlife in general), a good rule of thumb is to take a precautionary approach and avoid flying UAS in the vicinity of the animals.

In addition, it is important to remember that the Federal Aviation Administration (FAA) also provides hobbyists with some basic guidance for operating UAS to address safety and privacy concerns. For example, do not fly UAS above 400 feet, keep the UAS within sight, and avoid flying them near airports or over people. The U.S. National Park System has also recently prohibited the use of UAS in our National Parks (some of which provide habitat to marine mammals).






We all have a responsibility to help keep whales, dolphins, seals, and sea lions safe. Remember to use UAS safely and appropriately, and avoid flying it close to protected species. Below are some helpful online resources if you are interested in learning more.

Resources for UAS Pilots:


- NOAA Fisheries Marine Wildlife Viewing Guidelines
- NOAA Unmanned Aircraft Systems Program
- FAA Frequently Asked Questions for UAS
- FAA Unmanned Aircraft Systems Fact Sheet
- FAA Regulations and Policies for UAS
- US Forest Service Tips for Responsible Use of UAS
- Unmanned Aircraft to be Prohibited in National Parks
- National Marine Mammal Laboratory: Dyson UAS Test Flights
- Monterey Bay National Marine Sanctuary


Photo Credit: NOAA NMFS-C

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1992 and 2002 National Rulemaking Efforts

1992 Proposed Rule

- Whales: 100 yards
- Dolphins & Porpoises: 50 yards
- HI humpback whales: 300 yards
- HI monk seals: 100 yards
- Aerial approach: 1,000 feet
- No “head-on” approach

Outcome: Withdrawn in 1993

2002 Advance Notice of Proposed Rulemaking

- Codify existing guidelines?
- Codify existing guidelines with improvements?
- Establish minimum approach distances?
- Restrict activities of concern (e.g., swim-with, touching)?

Outcome: Tabled to address complexities with 1994 definition of “Harassment” & Regions encouraged to pursue local regulations

**Articulated NMFS position re: human/marine mammal interactions*



What's Next for the Future...?

- Are new regulations needed or are the ones we have sufficient?
- Is additional scientific research needed to assess behavioral disturbance by the public? What are the data gaps?
- How can we ensure potential new regulations are enforceable?
- How can we keep up with new and emerging platforms/technology?
- How can we effectively cultivate additional collaborators to assist with education/outreach?

**Thank You to the Marine Mammal Commission for
all its support over several decades helping us
promote safe & responsible marine mammal
viewing practices!**



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