



IMATA
International Marine Animal
Trainers' Association

May 4, 2016

Dr. Barbara Kohn
Re: Docket Number APHIS 2006-0085
Regulatory Analysis and Development, PPD, APHIS
Station 3A-03.8
4700 River Road Unit 118
Riverdale, MD 20737-1238

Dear Dr. Kohn,

The International Marine Animal Trainers' Association (IMATA) is pleased to have the opportunity to comment on the proposed rule published by the Animal and Plant Health Inspection Service (APHIS) regarding Animal Welfare Act regulations with regard to the humane handling, care, treatment and transportation of marine mammals in zoological environments 81 Fed. Reg. 5629 (February 3, 2016).

IMATA is an international association dedicated to advancing the humane care and handling of marine animals by fostering communication between professionals that serve marine animal science through training, public display, research, husbandry, conservation, and education. Our 1,494 members are dedicated to providing and advancing the most professional, effective, and humane care of marine animals in all habitats. IMATA provides opportunities for marine animal trainers to exchange and disseminate current knowledge, research and training information in both professional and social settings. In addition, IMATA maintains a positive public image by preparing its members to act as ambassadors of the marine animal community. IMATA provides its professional members a forum through which to share and learn the most progressive and responsible management techniques benefiting the marine animals in their care. The animals' well-being is IMATA's priority. The public's experience with these animals fosters emotional and personal connections that promote conservation of our marine environments and respect for marine species.

As members of IMATA, each of us is committed to exercising the highest levels of respect and humaneness for all animals, exercising professional integrity in representing ourselves as members of the marine animal community, as representatives of the facilities we serve, or as members of this Association, fostering respect, understanding, and cooperation among fellow members and others associated with the zoological community in general and the marine animal community in particular; and contributing to the promotion of public and professional interest in IMATA and accepting the obligations of membership.

IMATA is an accrediting body based on guidelines set forth by the association. IMATA's Accreditation for Animal Trainer Development Programs was developed to recognize those facilities that have exceptional systems for training animal care givers in the science and art of animal training, while utilizing positive reinforcement. Inspectors review the trainer development program of an organization to insure appropriate educational opportunities are being provided, quantification of skills and advancement are employed, materials containing modern training techniques are available readily, and that management experience of senior staff is appropriate for an environment in which trainers can improve their expertise as an effective animal trainer. These detailed guidelines that form the basis for IMATA's accreditation standards include trainer development manuals, a policy, focus and philosophy of animal training programs, application of animal trainer development, statements of animal care and treatment principles, and the facility management's responsibility and accountability for the program. It must also include a behavior development and management plan including a description of the animal trainer development program and its objectives, methods of accomplishment and success criteria. Trainer development oversight, standard and emergency procedures, and record-keeping, including animal trainer development decision authority, categorized lists of behavior goals and objectives, representative animal trainer development plans for key individual behaviors, criteria for measuring success of animal trainer development plans, schedule of frequency to maintain criteria, and plans to address aggressive or potentially dangerous animals must also be included. Staff responsibilities and advancement policies includes a generalized description of the facility's staff positions, including proficiency requirements, qualifications, animal trainer development responsibilities for each position, and the facility's approach to staff advancement. Facility and leadership staff are also addressed and include a detailed list of all current animal trainer development staff and their qualifications. There must also be teaching process in place to include a facility's process for teaching learning and conditioning theory to entry-level trainers, an educational program to include a description of which methods are used by the facility such as seminars, self-study program, in-house classes, outside courses, mentoring program, and continuing education. Educational materials and how they are made available to all staff and a description of how the materials are used and implemented at the facility. For example, in connection with its trainer development program these may include third-party manuals or books; collections of articles; required reading list; videos; glossary; library; and electronic media. Facilities must also have a process for testing trainers' knowledge and understanding of learning and conditioning theory and the facility's trainer development policies. There must be procedures for providing hands-on experience to novice trainers, including mechanism for providing novice trainers feedback and guidance from more experienced trainers. There must be a mechanism in place at the facility for evaluating trainers' skill levels, criteria for advancement and a description of the process by which staff is made aware of the criteria and there must be supplemental materials that may be relevant to a determination as to whether a facility meets the Guidelines for Accreditation of Facility Animal Trainer Development Programs.

IMATA is a professional member of the Alliance of Marine Mammal Parks and Aquariums (AMMPA). We work closely with our colleagues in the AMMPA.

Additionally, IMATA and its members have a long history of working with APHIS to help develop regulations ensuring the proper treatment and care of marine mammals. We were active participants in 1995 Marine Mammal Negotiated Rulemaking Advisory Committee, and we are pleased to work with the agency again to complete a review of these regulations as well as regulations governing interactive programs. IMATA supports standards that are based on current industry knowledge, experience, best practices, and findings from peer reviewed scientific literature.

Collectively, IMATA's membership represents the largest grouping of experience and knowledge with respect to marine mammal training, care, and husbandry. IMATA members have set standards for animal training by applying positive reinforcement-based behavioral techniques to condition desirable behavior. It is from this perspective that IMATA offers its comments on the proposed rule.

IMATA commends APHIS for embracing many performance-based standards in this proposed rule. Such an approach appropriately affords knowledgeable and responsible experts at licensed facilities a degree of flexibility while still ensuring the animals receive proper care. IMATA also appreciates the agency's efforts to avoid redundancy with other animal welfare regulations and to streamline its regulations while still protecting the welfare of marine mammals.

IMATA is gratified to see APHIS acknowledge the tremendous safety record of marine mammal interactive programs. "We note that interactive programs have been operating for over 20 years without any indications of health problems or incidents of aggression in the marine mammals, as evidenced by medical records maintained by licensed facilities and observations by experienced APHIS inspectors."¹

IMATA's members work at facilities and provide the training of the animals that offer a wide variety of opportunities for guests to interact with many different species of marine mammals in many different formats – far beyond the "dolphin swims" originally contemplated by APHIS in 1995. As diverse as these programs are, they all have common goals – inspiring and educating millions of participants in a manner that is safe for animals and humans alike. IMATA members are justifiably proud of these programs and of their safety record. Given the fact that APHIS suspended enforcement of its swim-with-the-dolphin (SWTD) rule shortly after it was promulgated in 1998, this impeccable record has occurred while facilities offering interactive programs were operating under general Animal Welfare Act (AWA) guidelines rather than under additional regulatory requirements imposed solely on interactive programs. It is also noteworthy that the SWTD rule was intended to only apply to certain more narrowly defined interactive programs involving cetaceans. Accordingly, IMATA believes it is necessary to consider any proposed regulations for interactive programs from that perspective.

IMATA membership includes a majority of trainers who work in U.S. based facilities. Our members work in a broad spectrum of institutions caring for marine mammals, in

¹ See Footnotes 2 and 24, 81 Fed. Reg. 5629 (February 3, 2016).

terms of size, species held, and geographic location. Our comments reflect the experience of our members.

IMATA is committed to the belief that all marine mammals should be cared for in conditions that promote their health and welfare. Consistent with that belief, IMATA strongly recommends that all facilities holding marine mammals, including “sea sanctuaries” should be licensed as Exhibitors and, as such, be required to comply with all Animal Welfare Act regulations concerning the humane handling, care, treatment and transportation of marine mammals in captivity and be subject to APHIS inspections.

In offering the following commentary on the proposed rule, IMATA reemphasizes their commitment to the health and well-being of all animals in our care, as well as those existing in the wild. As previously stated, we value the opportunity to offer our views on the proposed rule and do so based upon our experiences in marine mammal husbandry, best practices, ongoing observation and research, and the best science and data.

COMMENTS OF THE INTERNATIONAL MARINE ANIMAL TRAINERS’ ASSOCIATION IN RESPONSE TO THE PROPOSED RULE ISSUED BY THE ANIMAL AND PLANT HEALTH INSPECTION SERVICE REGARDING ANIMAL WELFARE ACT REGULATIONS CONCERNING THE HUMANE HANDLING, CARE, TREATMENT AND TRANSPORTATION OF MARINE MAMMALS IN ZOOLOGICAL ENVIRONMENTS

IMATA submits for full consideration the following section-by-section comments on Docket Number APHIS 2006-0085.

Section 3.111 – Interactive Programs

The proposal by APHIS to add additional regulations specific to marine mammal interactive programs seem unjustified based on the historically strong safety record of these types of encounters. With interactive programs having the depth and breadth of a positive safety record to date as acknowledged by APHIS, there does not seem to be validity in requiring additional agency oversight above and beyond the general AWA requirements where the animals have been shown to be thriving under current standards and guidelines. In fact it would be duplicative. To our knowledge there is no peer-reviewed scientific data that demonstrates a need for additional regulation or how further regulation would be a benefit to marine mammals. It will be explained further below how some of the proposed language could actually have a detrimental effect on the animals. IMATA believes it is appropriate to consider any proposed regulations for interactive programs from that perspective.

Section 1.1 - Definitions

Interactive Area -

IMATA supports the proposed new definition of interactive area.

Interactive program -

IMATA members have safely and successfully conducted interactive sessions with a wide variety of marine mammals in diverse settings for many decades. These programs offer guests an exciting opportunity to engage with marine mammals in a meaningful and impactful way that fosters a sense of caring for these animals and their ocean environment.

IMATA is unclear regarding which programs are covered as interactive programs in the new definition and disagrees with the programs the agency proposes are to be subjected to these regulations. For example, IMATA opposes the inclusion of programs where the participants sit on a dock, boardwalk or ledge adjacent to a cetacean's primary enclosure. Programs that take place exclusively on the dry resting place or social activity area of a pinniped primary enclosure should also be excluded from the definition.

If the participant does not enter the water, a cetacean's primary enclosure, by the agency's proposed definition, it is not an interactive program. APHIS offers no justification for extending the application of this proposed rule to a program where the participant does not enter the marine mammal's primary enclosure. A distinction can also be drawn for poolside pinniped interactions in which the pinniped may move between water and land locations while the participant remains on land throughout.

IMATA also finds the definition's reference to "potentially dangerous marine mammals, such as, but not limited to, polar bears" confusing and believes it needs to be clarified. As written, the language leaves the term "potentially dangerous marine mammals" open to misinterpretation. The proposed definition does not clearly state that the term "potentially dangerous," which is not defined, should apply to and is intended to address a specific species.

IMATA would propose the definition of "interactive program" be amended to read:

“Interactive program means any human-marine mammal interactive program where a member of the public enters a primary enclosure for a marine mammal with the intent of interacting with the marine mammal(s), ~~except for potentially dangerous marine mammals, such as, but not limited to polar bears.~~ Such programs include, but are not limited to sessions in which the human participants swim, snorkel, scuba dive, or wade in the enclosure ~~and sessions in which the human participants sit on the dock or ledge, including therapeutic sessions.~~ Such programs exclude, but such exclusions are not limited to, feeding or petting pools where the members of the public are not allowed to enter the enclosure, sessions

in which the human participants sit on the dock or ledge or remain poolside, programs in which animal care staff bring marine mammals, such as, but not limited to pinnipeds, into a public area under stimulus control, and the participation of an audience member at what has been traditionally known as a performance or show involving the exhibition of marine mammals.”

Interactive Session -

IMATA supports the proposed definition of “interactive session.”

Primary enclosure -

Although APHIS describes the proposed definition of primary enclosure as being non-substantive, as written, the change could have significant substantive ramifications for the regulated community. IMATA is concerned the proposed definition would create confusion as it appears to conflict with language in §3.104(a) - “Enclosures smaller than required by the standards may be temporarily used for nonmedical training, breeding, holding, and transfer purposes.” §3.104(a) also states “Any enclosure that does not meet the minimum space requirement for primary enclosures (including, but not limited to, medical pools or enclosures, holding pools or enclosures, and gated side pools smaller than the minimum space requirements) may not be used for permanent housing purposes.”

Requirements that all enclosures meet the space requirements in §3.104 overlooks the very important husbandry activities and health in which a smaller enclosure is in the best interest of the animal. We can see this time and time again with our daily involvement with the animals.

Since there would be adverse consequences and confusion that would flow from the proposed language change, IMATA recommends that APHIS drop the proposed change. At a minimum, the regulation could be amended to clarify that, consistent with APHIS’s explanation contained in the Proposed Rule, exemptions otherwise provided in the regulations and standards, including the exemptions provided in §3.104(a), still apply.

“Primary enclosure means any structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool or hutch. This term, which may also be referred to as enclosures, includes, but such inclusions are not limited to, display enclosures, holding enclosures, night enclosures, off-exhibit enclosures, **maternity enclosures**, and medical enclosure, **if these areas were going to be used as a primary enclosure of less than two weeks. This list of inclusions is not intended to supersede any exemptions otherwise provided for in the regulations or standards.**”

Sanctuary Area -

IMATA supports the proposed definition of “sanctuary area” and the elimination of the requirement for and definition of “buffer area.” IMATA would like to suggest changing “Sanctuary Area” to a more objective and clear name such as “Public Free Area.”

§3.111 –

The newly worded introductory paragraph to §3.111 seeks to require that “all marine mammal interactive programs must comply in all respects with the regulations set forth in 9 CFR parts 2 and 3, which address animal welfare.”² This language is redundant and should be deleted from this paragraph.

§3.111(a) – Space requirements –

As for the proposed changes to the space requirements for interactive programs in proposed §3.111(a), IMATA is pleased with the agency’s approach to a performance-based requirement that provides flexibility while promoting the health and well-being of the animals. We concur that it is justified based on program history and is also consistent with the approach taken by the agency in other sections.

At the same time IMATA believes there is no reason to separate space requirements for interactive, sanctuary and/or public free areas. Facilities offering marine mammal interactive programs have successfully managed these programs according to the general AWA space requirements found in §3.104. Experience has shown it provides sufficient space for all marine mammals to freely swim or move about. It is also important to note that interactive areas for pinnipeds may extend beyond what is typically seen in cetacean interactions, emphasizing the importance of flexible performance-based standards. Language set forth in §3.104 is redundant and is not necessary to provide for the health and well-being of the animals. There is no empirical data that would merit a change in current minimum space requirements. The dolphins, sea lions, and other marine mammals IMATA members care for and train on a daily basis are thriving. The keys to animal welfare – and the focus of animal care professionals like members of IMATA – are the advanced, state-of-the-art veterinary, husbandry, and behavioral enrichment programs that offer an array of activities, including regular exercise, play, and trained behaviors that are mentally and physically stimulating. It is important to note that years of observation by marine mammal trainers show animals often chose to spend time in the smaller or shallower areas of the enclosures. This is underscored by a study published in the *Journal of Applied Animal Welfare Science*,³ which concluded that animals themselves often choose the smaller or shallower pool options over the larger, deeper pool sections available to them. According to the study, dolphins show a strong preference for moderate or shallower pools, spending less than 3% of their time in the

² 81 Fed. Reg. 5629 at 5640 (Feb. 3, 2016).

³ Shyan, M.R., Merritt, D., 2002. Effects of Pool Size on Free-Choice Selections by Atlantic Bottlenosed Dolphins at One Zoo Facility. *Journal of Applied Animal Welfare Science*. Vol. 5, No. 3, Pages 215-225.

deepest areas of their enclosures. Studies involving residential dolphin pods found in the Sarasota Bay area observed the dolphins in six different physiographic subdivisions of habitat, ranging from shallows less than 2 meters deep to passages between 2 and 11 meters deep. Most sightings showed these animals in areas less than 3 meters deep, and the scientists' reports indicate that the dolphins resided in the shallower areas (approximately 2 meters deep) and moved to the deeper areas predominantly for feeding, and only when resources became less available in shallower areas.⁴ It is for this reason, trainers choose to provide animals with a variety of options in a complex of pools.

IMATA would recommend §3.111(a) be amended to read:

“§3.111(a) Space requirements. During an interactive session, each animal must have unrestricted access to the interactive area and the ~~sanctuary~~ **public free** area. Neither area may be made uninviting to the animals. Each area must meet the requirements of paragraphs (a)(1) and (2) of this section.

- (1) The interactive **and public free** areas must provide sufficient space for all marine mammals to freely swim or move about, consistent with the type of interaction, even with a full complement of public participants and employees in the area.
- (2) The ~~sanctuary~~**public free area** may be within the enclosure containing the interactive area or it may be within a second enclosure to which free and unrestricted access is provided during the interactive session. ~~The sanctuary area must meet the minimum space requirements found in §3.104.”~~

§3.111(b) Water clarity –

APHIS proposes to require that sufficient water clarity be maintained so that attendants are able to observe the marine mammals and the human participants at all times while within the interactive area. IMATA suggests this be changed to require sufficient clarity to safely supervise and manage marine mammals and human participants, which is consistent with other sections in the Proposed Rule, including those covering attendants (proposed §3.111(d)(4)), which states “...still ensuring proper supervision to ensure the health and safety of marine mammals and human participants.” This proposed revision is consistent with current practices in interactive environments, the effectiveness of which is evidenced by the safety record of marine mammal interactive programs.

IMATA recommends §3.111(b) be revised to read:

“§3.111(b) Water clarity. Sufficient water clarity must be maintained so that attendants are able to **safely supervise and manage** ~~observe~~ the marine mammals and the human participants at all times while within the interactive area. If water

⁴ Barros, N.B., & Wells, R.S. (1998). Prey and feeding patterns of resident bottlenose dolphins (*Tursiops truncatus*) in Sarasota Bay, Florida. *Journal of Mammalogy*, 79, 1045-1059.

clarity does not allow these practices observations, the interactive session must be suspended cancelled until the required clarity is provided.”

§3.111(c) Employees –

IMATA can support the statement that attending veterinarians in §2.40 and §3.110 provide sufficient oversight, interactive programs have not been shown to need additional restrictions. IMATA also agrees that personnel qualifications should be based on the level of knowledge and skill needed for a particular position. We are quite clear about this in our own IMATA guidelines.

§3.111(d) Program animals -

IMATA appreciates APHIS for their sensitivity to duplicative requirements that were contained in the previous §3.111(d).

§3.111(d) Handling -

IMATA cannot support proposed §3.111(d), which provides that interactive sessions must not exceed 3 hours per day per animal. Interaction limits are simplistic and wrong. The amount of daily interactive time should be based around the best interests and capabilities of the animals as determined by the caregivers that know them best. In general, training sessions have proven to be a very enriching part of an animal’s day – providing physical/mental stimulation. In fact, trainers find for the animals, more time is better. The notion that somehow limiting or reducing this interaction would provide some benefit to marine mammals is not data-driven and has no scientific basis. Any changes to the management of the marine animals in our care should build on the high quality of our existing animal care and training programs, and provide additional opportunities for the animals to engage and interact with the professionals to whom their care has been entrusted. At its core, an interactive program session is simply a training session – which is a highly beneficial and important component of an animal’s day. With that said, there is no indication that any restriction in time for interactive sessions is needed, and, is likely not in the best interest of the individual animal.

IMATA disagrees with the agency’s description of this as a “proposed increase of daily interactive time from 2 hours to 3 hours.”⁵ Because the enforcement of the 1998 SWTD regulations was suspended, the interactive programs safely and successfully being managed by IMATA experts have not been restricted to 2 hours. Any time limits that are based on the best interest of the animals. To describe the proposed 3 hours as an “increase” is inaccurate.

⁵ 81 Fed. Reg. 5629 at 5646 (Feb. 3, 2016).

The animal welfare plans in place for interactive programs, which are drafted with input from IMATA animal training specialists, are structured so that interactive programming is enriching to the animals. APHIS acknowledges that point and references a study of Atlantic bottlenose dolphins showing that interactive programs can be an important part of an enrichment program.⁶ Based on the extensive combined experience of IMATA members there is no indication that any specific restriction in time for interactive sessions is needed, and would not be in the best interest of the individual animal.

IMATA recommends the 3 hour upper limit be replaced with a performance-based standard and amended, §3.111(d) therefore should read:

“§3.111(d) *Handling*. (1) **The animal training staff must draft animal welfare plans for interactive sessions. The plan should include guidelines setting interactive time between marine mammals and the public (i.e., interactive session), based on the capabilities, interests, and needs of the animals. must not exceed 3 hours per day per animal. Each animal must have at least one period in each 24 hours of at least 10 continuous hours without public interactions. Animal welfare plans must be maintained at the facility and made available to APHIS during inspection or upon request.**”

§3.111(d)(2) –

IMATA supports the proposed change that simplifies and clarifies the handling requirements.

§3.111(d)(3) –

IMATA also strongly believes in the objective of ensuring all marine mammals participating in interactive sessions are in good health. The scope of “veterinary treatment” is very broad however, covering minor conditions that may not preclude participation in interactive programs. Based on decades of experience participating in and managing these programs, IMATA recommends modifying the proposed language.

“§3.111(d)(3) All marine mammals used in interactive sessions must be good health, including, but not limited to, not being infectious. Marine mammals undergoing veterinary treatment may be used in interactive sessions ~~only with the written approval of~~ **unless excluded by** the attending veterinarian.”

⁶ See Footnote 26, 81 Fed. Reg. 5629 at 5641 (Feb. 3, 2016), which references L.J. Miller, J. Mellen, T. Greer, S.A. Kuczaj II, n (2011) “The effects of education programs on Atlantic bottlenose dolphin.” *Animal Welfare* 20(2): 159-172.

§3.111(d)(4) –

IMATA supports the performance-based language in the proposed paragraph which requires a sufficient number of session attendants to effectively conduct the session in a safe manner. Because on the many, many years of experience of our members, IMATA believes the proposed requirement that there must be at least one attendant per marine mammal in the session and at least one attendant positioned to monitor each session is unnecessary. In many cases, it is excessive and in all cases, the specific ratios should be left to the animal management teams to decide based on the best interests of the animals, they are the experts and know the animals.

As acknowledged by APHIS in the Proposed Rule, “The number of attendants required to monitor each session may vary by facility according to how many are needed to ensure the safety of the animals and human participants involved in the interactive session. The programs are observed routinely by the attending veterinarian and the APHIS inspector to ensure safe functioning of the program.”⁷ IMATA would further suggest that the programs are also designed and staffed by individuals with expertise in animal behavior, this is our practice and professional expertise we have as trainers. The ratios should be left to their discretion. By restricting this aspect, APHIS takes away the ability of expert trainers and animal care staff to create enriching and variable experiences for the animals in their facilities. A performance-based standard, consistent with that in proposed §3.111(c) and the language proposed in this paragraph dealing with the number of public participants per marine mammal, is appropriate. We as animal behavior specialists have the expertise to establish ratios needed to effectively conduct the session in a safe manner.

There has been no scientific or safety rationale offered for proposing a 1:1 ratio of attendants per marine mammals. Marine mammal trainers have successfully conducted safe interactions with various ratios of animals to attendants. Through all the many years of experience, trainers can testify that there are many occasions when a 1:1 ratio is simply not necessary to conduct a session in a manner that is safe for both the animals and the human participants. These can include shallow-water interactive programs APHIS references when advocating a performance-based approach for the number of public participants to marine mammals. They can include a pair of animals engaging as a team. Training animals as teams can be an enriching part of their training plan. If the “team” is participating in interactive programming, it would be unnecessary to assign a 1:1 ratio of attendant to marine mammal. The pair might also be a mother and calf, and the calf might be provided autonomy to remain independent in the environment until individual training has commenced. The appropriate ratio is also influenced by many other factors and can change depending on variables that may be encountered throughout the day. Providing the flexibility of a performance-based approach, rather than establishing an arbitrary ratio, is the most appropriate approach to take.

IMATA finds it unnecessary to require an attendant to monitor the interaction based on the definition of what qualifies as an interactive program. APHIS has not offered any

⁷ Footnote 27, 81 Fed. Reg. 5629 at 5641 (Feb. 3, 2016).

scientific or safety rationale for such a proposal. While many facilities already employ this monitor position in many situations, there are some circumstances where this would be considered excessive and unnecessary for the safety of the human participants and marine mammals including, but not limited to dockside programs or platform sessions, which we believe should already be exempt from the definition of interactive program.

IMATA proposes the language be amended to read:

“§3.111(d)(4) There must be a sufficient number of session attendants (includes trainer, handler, or attendants) to effectively **supervise the animals and human participants and to effectively** conduct the session in a safe manner. ~~There must be at least one attendant per marine mammal in the session, and at least one attendant positioned to monitor each session.~~ The number of participants per marine mammal must not exceed the number that the attendant can monitor safely, appropriate to the type of interactive session.”

§3.111(d)(5) –

IMATA agrees with the proposed language and practices listed for posting written rules and contact information. IMATA members are frequently the people conveying this information to park visitors. Based on our experience, in order to provide the flexibility to present the rules in the most effective manner, IMATA believes it is reasonable to omit “oral” from the requirement.

The amended text would read:

“§.111(d)(5) – Prior to participating in an interactive session, members of the public must be provided with ~~oral~~ rules and instructions for the session. The program must also either...”

IMATA supports the language in this paragraph regarding the expulsion of session participants.

§3.111(d)(6) -

IMATA concurs with efforts to ensure the interactions between marine mammals and human participants are safe. However, some of the language in the Proposed Rule used to describe the behaviors, specifically “unsatisfactory” and “undesirable,” do not have any acceptable common definition.

IMATA does not support the proposed 1:1 ratio of attendants per marine mammal or the requirement that there also be one attendant monitoring each session.

The proposed language that would prohibit the recalling of animals from the sanctuary or public free area could also have the unintended consequence of limiting the ability of animal care staff to prevent social challenges between animals in the sanctuary or public free area. Animal training staff are in the best position to best determine if an animal exhibits unsafe behavior and facilitate behavioral redirection or the termination of its participation in a session due to such behavior.

IMATA recommends amending §3.111(d)(6) to read:

“§3.111(d)(6) All interactive programs must ~~limit~~ **manage** interactions between marine mammals and human participants so that the interaction does not harm the marine mammal or the human participants **and provides**, ~~does not elicit unsatisfactory, undesirable, or unsafe behaviors from the marine mammal, and does not restrict by word or action (including recalling), from the public free sanctuary area, or enclosure design, the ability of the animal~~ **the ability** to leave the interactive area and session as it chooses.

§3.111(d)(8) -

To be consistent with regard to §3.111(d)(6), some of the language used to describe “unsatisfactory” or “undesirable” behaviors are addressed here again. Using broad examples followed by “not limited to” could create confusion for trainers leading these programs. A performance-based approach focusing on unsafe behaviors specific to an individual, the circumstances at hand and the location in which they reside is a preferable way to ensure safety-based decision making. Trainers are in the best position to best determine if an animal exhibits unsafe behavior and facilitate behavioral redirection or the termination of its participation in a session due to such behavior. IMATA members are experienced and skilled in using scientifically proven and positive reinforcement-based training methods to address unsafe behavior⁸. A performance-based approach focusing on safe behaviors specific to an individual, the circumstances at hand, and the location in which they reside, is a preferable way to ensure safety based decision making.

IMATA recommends inclusion of the following language:

“§3.111(d)(8) – Marine mammals that exhibit ~~unsatisfactory, undesirable, or unsafe behaviors,~~ **as determined by the animal training staff,** ~~including, but not limited to, charging, biting, mouthing, or sexual contact with humans,~~ must be **provided alternate behavior response opportunities such as redirection or recall, be** removed from the interactive session immediately, or, if the **unsafe situation cannot be remedied** ~~animal cannot be removed,~~ the session must be **suspended** ~~terminated~~. Such an animal must not be used in an interactive session until the **animal training staff** ~~trainer~~ determines that the animal is no longer exhibiting the ~~unsatisfactory, undesirable, or unsafe behavior.~~ Written criteria for

⁸ Kazdin, A.E., (2001) Behavior Modification in Applied Settings, 6th Edition, p. 187-194.

the suspension~~termination~~ of a session due to such behavior and the ~~retraining of such an animal~~ **management of such a situation** must be developed and maintained at the facility and be made available to APHIS during inspection or upon request.

§3.111(e) Veterinary care –

Veterinarian skill sets are medical and not behavioral based. IMATA does not find it necessary to have any additional attending veterinarian requirements under the section of interactive programming

If APHIS insists on requiring observation or review of interactive programs, it should be done by the director of animal behavior or training within the organization who can ensure staff training and consistency in programming. This is our expertise, it is what we do as trainers.

IMATA recommends the following changes to §3.111(e):

“§3.111(e) Veterinary care. The facility must comply with all provisions of §§2.33, 2.40, and 3.110 of this subchapter. ~~In addition, the attending veterinarian must observe an interactive session at least once a month or each interactive session if they are offered less frequently than twice a month, and review the feeding records, behavior records, and water quality records biannually, or more often if needed to assure the health and well-being of the marine mammals.~~ Necropsy requirements are found in §3.110(g).”

§3.111(f)(4) Recordkeeping (injuries) –

IMATA finds in the proposed language that the term “injury,” is undefined, leaving too much possibility for misinterpretation. We also feel AWA does not provide APHIS with authority to regulate human injuries, and injuries to employees are outside the scope of APHIS’s authority and fall within OSHA’s jurisdiction. Reporting on human injuries may involve protected health information and raise serious privacy concerns. If trainers are required to report on injuries to humans, IMATA believes it is inappropriate to expand injury reporting requirements for interactive programs beyond animals and individuals directly involved in or participating in an interactive program. The handling of marine mammals within general training sessions or other non-interactive programming sessions should not require further monitoring, particularly as part of a regulation pertaining interactive programs.

Safety is the responsibility of each organization and an essential component of animal management. Determining behavioral patterns, concern areas, staff development requirements and safety protocols must be the responsibility of each organization and their staff. Given the strong safety record of marine mammal interactive programs, APHIS has not identified a reason to justify why requirements for reporting of injuries for

marine mammal programs should be any different than for any other animal interactive program.

IMATA suggests the language be amended to read:

“§3.111(f)(4) All incidents resulting in an injury to ~~either~~ a marine mammal **that requires veterinary intervention**, ~~members of the public, or facility staff~~ during an interactive session ~~or training session~~ must be reported to APHIS within 24 business hours of the incident. A written report detailing the incident and the facility’s response to the incident must be submitted to APHIS within 7 calendar days of the incident.”

There may be circumstances in which a facility is not aware of an injury to a member of the public, or may be made aware of such well after the fact. The requirement that the facility notify APHIS within 24 business hours of the incident and file a written report detailing the incident within 7 calendars of the incident is not feasible in these cases. Therefore, the timeline for notification and reporting should be tied to being aware of the injury.

If language were to be utilized in this area IMATA would recommend the language be amended to read:

“§3.111(f)(4) All incidents resulting in injury **(requiring a hospital stay of more than 24 hours for a human or veterinary intervention for a marine mammal)** to either a marine mammal; **or** a members of the public, ~~or facility staff~~ during an interactive session ~~or training session~~ must be reported to APHIS within 24 business hours of the incident or within 24 hours of the facility becoming aware of the injury. A written report detailing the incident and the facility’s response to the incident must be submitted to APHIS within 7 calendar days of the incident or of the facility becoming aware of the injury.”

§3.111(f)(5) Recordkeeping (Program Changes) -

Requirement that changes to an interactive program be reported to APHIS within 30 calendar days is overly burdensome for trainers, the regulated community and the agency. Based on the experience of IMATA members and trainers, changes of the nature described in the Proposed Rule frequently occur on a weekly, if not daily, basis. Having to report within 30 days every seasonal staffing change or adjustment to programming would add an undue burden to trainers, facilities, and APHIS.

Animals and programming can be constantly modified to account for individual animal needs such as pregnancy, nursing, training, hormones, weather, special programming and staffing. Interactive sessions are training sessions and therefore must be managed as such to ensure progressive positive behavior. Behavioral plans have to be variable and evolve as the animals are not robots. Training goals are progressive, developed, and modified

weekly and daily for both staffing and animals. Animals are in training throughout their lives for enrichment and for welfare enhancement. An animal's behavioral repertoire changes progressively. We as trainers maintain updated behavioral lists for the animals, reporting this level of detail to APHIS is time consuming and an unnecessary use of time.

IMATA and its members are also concerned that the requirement to report personnel information to the agency could result in trainer names and addresses becoming publicly available through FOIA requests, possibly exposing trainers and employees to potential threats, harassment or danger.

IMATA recommends that facilities be required to maintain updated program information reflecting any changes to current interactive programs on site and be made available to APHIS during inspection or upon request.

"§3.111(f)(5) Any changes to the interactive program, such as, but not limited to ~~personnel~~, animals, facilities (enclosures and interactive areas), and behaviors used, must be **documented in writing. The documentation must be maintained at the facility and be made available** submitted to APHIS **during inspection or upon request** within 30 calendar days of the change."

In conclusion we would also like to state we support the comments made by the Alliance of Marine Mammal Parks and Aquariums on the proposed regulations with respect to variances, indoor facilities, outdoor facilities, and space requirements, and water quality.

IMATA would like to thank the agency for its diligent commitment to animal welfare. We look forward to continuing to work with APHIS to ensure the well-being of animals in human care. Regulations governing the care and handling of marine mammals must be based on sound, peer-reviewed science as well as professional best practices and current industry knowledge.

We appreciate that you recognize that U.S. marine mammal parks are dedicated to providing top quality care and public education and trust that you will not feel compelled to change regulations that limit our ability to care for the animals.

Sincerely,



Michele Sousa
IMATA President