

MARINE MAMMAL COMMISSION
4340 EAST-WEST HIGHWAY, ROOM 905
BETHESDA, MD 20814

27 October 2003

William T. Hogarth, Ph.D.
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910

Dear Dr. Hogarth:

On 10 August 2003, the National Marine Fisheries Service's Southeast Regional Office authorized the release to the wild of five pilot whales that stranded on 18 April 2003 in the Florida Keys. Four of the animals were juveniles; the fifth was a dependent calf. Nine days after the animals' release, those tracking the whales observed sharks attacking the calf in waters off the east coast of Florida. The calf is presumed to have been killed. Two of the other four whales, which traveled in different directions after their release, apparently are still being tracked using satellite. It appears that, at least with respect to the release of the calf, neither the Service's draft criteria for the release of rehabilitated stranded animals nor the opinion of the majority of experts consulted in this case was adopted. As such, the Commission has procedural and substantive concerns about the decision to release all of the animals.

The Commission understands that the Southeast Regional Office and Southeast Fisheries Science Center sought advice from experts in the fields of cetacean biology, behavior, and veterinary medicine on the appropriateness of releasing the whales. These included Frances Gulland, M.R.C.V.S., Vet. M.B., Ph.D., The Marine Mammal Center, and a member of the Commission's Committee of Scientific Advisors; Mike Walsh, D.V.M.; Randall Wells, Ph.D., Chicago Zoological Society/Mote Marine Laboratory; Aleta Hohn, Ph.D., Southeast Fisheries Science Center, NMFS; Mr. Greg Early, Northeast Fisheries Science Center; Amy Samuels, Ph.D., Brookfield Zoo; and Mr. Jeff Foster, Marine Research Consultants; and the animals' attending veterinarian, Dr. Charles Manire, Mote Marine Laboratory's Director of Veterinary Care. The majority of the expert group, including Dr. Gulland, expressed serious doubts about the ability of the dependent calf (identified as whale #7) to survive on its own and strongly advised against its release. The experts expressed concern that releasing the animal would be unethical and inhumane. Many of the experts also expressed concern about the releasability of whale #3 because the animal was not swimming well and not interacting with the other animals. The experts further noted that the Service's draft criteria for the release of rehabilitated stranded animals would preclude the release of dependent calves and animals exhibiting aberrant behavior.

Despite the group's recommendations and contrary to the Service's own release guidelines,

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the Southeast Regional Office authorized the release of the calf based on the assumptions that (1) it was bonded to its pod mates and would be protected by them after release (although at least one of the experts consulted specifically stated that the other animals in the group, being juveniles, would be unlikely to protect or nurture the calf post-release), and (2) it could be monitored by satellite tag and recaptured if something went wrong.

The Service developed draft release criteria in early 1997 in conjunction with the Fish and Wildlife Service and in consultation with marine mammal biologists, behaviorists, and veterinarians. These criteria were published for public review and comment in 1998 as a NOAA Technical Memorandum entitled “Release of Stranded Marine Mammals to the Wild: Background, Preparation, and Release Criteria.” The public comments received on the technical memorandum were reviewed by two expert advisory panels in 2001, and based on the panels’ recommendations, the Service published a revision to the 1998 document. However, throughout the review process, the criteria pertaining to release categories for rehabilitated cetaceans have not changed from the 1998 document. Over the years, the Service’s draft release criteria, although never finalized, appear to have been adopted by the stranding networks as standard practice for making determinations regarding the release of stranded cetaceans, although the advice of experts is sometimes sought in complex or borderline cases. Consequently, the Commission is unable to understand why, in this particular case, the Southeast Regional Office chose to disregard the accepted standards and majority expert opinion in favor of speculative assumptions of how the animals might fare. Specifically, it is unclear –

- why the Service’s draft criteria for the release of rehabilitated stranded animals – which were developed in consultation with experts in the fields of marine mammal biology, medicine, and behavior, and generally have been adopted as accepted practice by the stranding networks – were not followed with respect to this release;
- what criteria, other than the currently established draft criteria, were used by the Southeast Regional Office to determine that the whales – particularly animals #7 and #3 – were releasable;
- what was the basis for using these alternative criteria; and
- why the Southeast Regional Office discounted the majority recommendations of the experts with whom it consulted in this case.

In addition, it appears that the experts consulted by the Service expressed concern about certain matters related to the rescue and rehabilitation of the whales (*e.g.*, lack of teamwork and disagreements by the various personnel involved, the use of the general public to assist in the rehabilitation effort, and disagreements between rehabilitation personnel and the attending veterinarian about how best to diagnose and treat the animals). The Animal and Plant Health Inspection Service also expressed concerns to the Service about the “specific facilities [at which the animals were maintained], feeding, sanitation, employee/volunteer qualifications, [and] care and handling requirements....” The Animal and Plant Health Inspection Service is also investigating whether the Animal Welfare Act was violated by exhibiting the animals during their rehabilitation. The Commission would appreciate receiving from the Service additional details concerning the

nature of the problems encountered during this rehabilitation and release effort and the steps that have been taken or are being considered to prevent similar problems from occurring in the future.

Section 109(h) of the Marine Mammal Protection Act, which provides the statutory basis for the rescue, rehabilitation, and release of stranded marine mammals, specifies that “[i]n any case in which it is feasible to return to its natural habitat a marine mammal taken...under...this subsection, steps to achieve that result shall be taken.” Thus, while there is a directive to return stranded animals to the wild when possible, it is tempered by the requirement that such a return be feasible. That is, before authorizing the release, the Service must make an affirmative determination that release is likely to be successful. In this case, it appears that substantial doubts about the chances for successfully re-introducing at least one of the animals were raised by experts consulted by the Service, which, under the statutory scheme, should have precluded the release of the calf.

The Commission recognizes the Service’s efforts in supporting the stranding program but is concerned that the actions taken by the Southeast Regional Office in regard to the above situation may set an undesirable precedent with respect to future releases of stranded animals. We encourage the Service to investigate this incident, and, as soon as possible, to finalize the development and implementation of scientifically objective criteria for determining at what point rehabilitated marine mammals are returnable to the wild. Under section 303(b) of Public Law 102-587, such criteria were to have been in place by 4 November 1994. In addition, although not specifically required by Public Law 102-587, the Service should consider establishing criteria for determining when stranded marine mammals should be brought to rehabilitation facilities, recognizing the finite resources available for such efforts and the need to focus on population-level impacts.

We look forward to the Service’s response. Please contact me if you have any questions concerning this letter.

Sincerely,

A handwritten signature in black ink that reads "David Cottingham". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

David Cottingham
Executive Director

cc: Barbara A. Kohn