

# RESCUE OF TWO BOTTLENOSE DOLPHINS RELEASED TO THE WILD WITHOUT ADEQUATE PREPARATION



Luther boat following at Boca Chica Naval Air Station, May 1996  
Injuries are visible on right side.

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Buck following rescue boat to DRC facility, June 4, 1996.

## Abstract

Releasing captive marine mammals to the wild can be hazardous to both the released animal(s) and wild marine mammal populations if conducted improperly and without appropriate safeguards. Issues of concern include: disease transmission and/or unwanted genetic exchange between released animals and wild stocks; the ability of released animals to adequately forage and defend themselves from predators; and any behavioral patterns developed in captivity that could affect the social behavior of wild animals, as well as the social integration of the released animals. The 1996 release of two adult male bottlenose dolphins (*Tursiops truncatus*) exemplifies the hazards of such releases. The dolphins had been on public display at a facility in the Florida Keys, and were released to the wild without adequate preparation or any authorization under the Marine Mammal Protection Act (MMPA), such as a scientific research permit. They were originally collected in Mississippi Sound and had been in human care for almost ten years. On May 23, 1996, they were transported by boat approximately nine miles offshore of Key West, FL, and were dumped overboard. Upon release, the dolphins separated: one swam immediately to Key West while the other traveled northward towards Marathon Key. Both dolphins approached people, begged for food, had suffered injuries and were emaciated. The National Marine Fisheries Service (NMFS) organized a rescue operation with members of the southeast marine mammal stranding network, the U.S. Navy, U.S. Coast Guard and Florida Marine Patrol. The dolphins were successfully rescued and provided medical care. NMFS charged the individuals responsible for the release with several violations of the MMPA. The behavior and poor physical condition of the dolphins underscores the need for release projects to be conducted according to peer-reviewed scientific protocols that are humane and provide emergency contingency plans for rescuing released animals in distress.

## Introduction

Public and media interest in releasing captive cetaceans to the wild (*i.e.*, killer whales and dolphins) increased notably over the past decade as seen in fund-raising campaigns for the Sugarloaf Dolphin Sanctuary (SDS), the "Welcome Home Bogie and Bacall Project," and the "Free Willy/Keiko Foundation" (NMFS 1996). However, there is concern that releasing captive cetaceans to the wild can be hazardous to both the released animal(s) and wild marine mammal populations if conducted improperly and without appropriate safeguards. Issues of concern include:

- disease transmission and/or unwanted genetic exchange between a released animal and wild marine mammal stocks;

- the ability of a released animal to adequately forage and defend itself from predators; and

- any behavioral patterns developed in captivity that could affect the social behavior of wild animals as well as the social integration of the released animal.

Although there have been several well documented reintroduction attempts with terrestrial mammals (red wolves, golden lion tamarins, and Arabian oryx) and the International Union for the Conservation of Nature developed reintroduction guidelines (IUCN 1995), the scientific literature is sparse for the reintroduction of captive marine mammals. For stranded marine mammals that have been rescued and rehabilitated, there are established protocols in place to ensure that the animals are reintroduced into the wild appropriately, and that concerns regarding disease transmission, genetic exchange and behavioral adaptations have been addressed (Geraci and Lounsbury 1993, St. Aubin *et al.* 1996). However, no such established protocols exist for the release of captive marine mammals from public display or research facilities. Of the few release projects that have been attempted so far, only two were conducted scientifically, and both reported widely different results (Bassos 1993, Gales and Waples 1993, Waples 1997, Wells *et al.* 1998).

## Legal Issues Under the Marine Mammal Protection Act, NMFS Policy and the U.S. Congressional Language in H.R. 4650 (P.L. 103-335)

The National Marine Fisheries Service (NMFS) is the federal agency entrusted by Congress to protect all cetaceans, seals and sea lions in the wild pursuant to the Marine Mammal Protection Act of 1972 (MMPA, 16 U.S.C. *et seq.*). Under the MMPA, it is illegal to "take" any marine mammal. The term "**take**" is defined as:

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

The prohibition on "taking" applies to all marine mammals within U.S. jurisdiction. There are limited exceptions to the prohibition for permitted "takes" pursuant to specific activities such as: scientific research, public display, enhancement of a species or stock, commercial/educational photography, and incidental take in commercial fisheries.

In 1994, the U.S. Congress amended the MMPA and defined the term "**harassment**" as:

*"Any act of pursuit, torment, or annoyance which --*

*(1) has the potential to injure a marine mammal or marine mammal stock in the wild, (Level A harassment), or*

*(2) 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)."*

NMFS has consistently stated that the release of captive marine mammals to the wild may result in a "take" as defined in the MMPA, and therefore, should only occur after a scientific research permit has been issued. Since there are no established scientific protocols for releasing captive marine mammals back into the wild, it is NMFS policy that any release project be done in a manner that protects wild stocks and populations, as well as ensuring the survivability of an individual to be released (*i.e.*, to prevent the "take" of marine mammals). NMFS has consistently stated that scientific protocols must be developed through the issuance of scientific research permits for *bona fide* scientific release projects which provide for public and scientific peer review, and would involve the development of a release protocol that addresses important concerns such as whether: 1) a released animal is properly and humanely prepared to live in the wild; 2) long-term follow up monitoring of the animal is conducted; 3) wild marine mammals are affected; and 4) contingency plans are in place if it is necessary to rescue a released animal.

On May 10, 1996, NMFS published regulations for scientific research permits on marine mammals that state:

*"Captive marine mammals shall not be released to the wild unless specifically authorized by the Office Director [NMFS Office of Protected Resources] under a scientific research or enhancement permit." (50 CFR 216.34(e))*

The lack of documentation and scientifically established protocols and their critical importance for responsible reintroduction of any captive animal into the wild was acknowledged by the U.S. Congress in 1994 regarding dolphins held by the U.S. Navy. Great media pressure was placed on Congressional members to make dolphins available for release into the wild. In doing so, Congress declared its intent that any release of these captive dolphins be done through scientifically accepted protocols as stated in the Conference Report of H.R. 4650 (P.L. 103-335):

*"The conferees are informed that there are no scientifically established or accepted protocols for such releases. Moreover, documented success of previous attempts to reintroduce captive marine mammals to the wild is sparse. Accordingly, the conferees believe that any attempts at releasing Navy marine mammals to the wild should be pursued cautiously and on an experimental basis until scientifically sound protocols have been developed and reintroductions have proven successful. The conferees recognize that the Department of Defense does not have the authority to allow the return of once-captive Navy marine mammals into the wild. This authority rests with the Department of Commerce, through the National Marine Fisheries Service. Accordingly, the conferees direct the Navy to cooperate with the Secretary of Commerce and the Marine Mammal Commission in developing rigorous scientific protocols for experimental releases. Given the potential for 'takes' under the [MMPA] or the Endangered Species Act, the conferees direct that in no case shall any release be attempted unless authorized by a scientific research permit issued by the Secretary of Commerce under the appropriate statutory authority."*

The U.S. Navy conducted a series of workshops in 1992 with various marine mammal experts to review reintroduction concerns, and to review the feasibility of releasing dolphins no longer required by the Navy to the wild. A report was subsequently published (Brill and Friedl 1993) which concluded that: the success of reintroducing marine mammals to the wild would depend upon resources, methodologies and technologies which do not currently exist; there is no compelling scientific reason for reintroducing non-endangered species; and there are significant risks to both the released animals and wild stocks of marine mammals.

## Literature Cited

- Bassos, M.K. 1993. A behavioral assessment of the reintroduction of two bottlenose dolphins. M.Sc. Thesis, University of California, Santa Cruz, CA. 84 pp.
- Brill, R.L. and W.A. Friedl. 1993. Reintroduction to the wild as an option for managing Navy marine mammals. NCCOSC/NRaD Tech. Rept. 1549, 86 pp.
- Gales, N. and K. Waples. 1993. The rehabilitation and release of bottlenose dolphins from Atlantis Marine Park, Western Australia. *Aquatic Mammals*, 19(2):49-59.
- Geraci, J.R. and V.J. Lounsbury. 1993. *Marine Mammals Ashore: A Field Guide for Strandings*. Texas A&M University Sea Grant College Program Publication TAMU-SG-93-601, 305 pp.
- IUCN. 1995. Guidelines for re-introductions. Annex 6 to Minutes of 41<sup>st</sup> Meeting of Council. Re-introduction Specialist Group of the Species Survival Commission. IUCN - The World Conservation Union. Chicago Zoological Society, Brookfield Zoo, Brookfield, IL 60513, 9 pp.
- IUCN. 1998. Guidelines for re-introductions. Prepared by the IUCN/SSC Re-introduction Specialist Group. IUCN, Gland, Switzerland and Cambridge, U.K. 10 pp.
- St. Aubin, D.J., J.R. Geraci and V.J. Lounsbury (Eds.). 1996. *Rescue, rehabilitation, and release of marine mammals: an analysis of current views and practices*. Proceedings of a workshop held in Des Plaines, IL, 3-5 December 1991. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-OPR-8, 65 pp.
- Waples, K.A. 1997. The rehabilitation and release of bottlenose dolphins from Atlantis Marine Park, Western Australia. Ph.D. Thesis, Texas A&M University, Galveston, TX. 211 pp.
- Wells, R.S., K. Bassos-Hull and K.S. Norris. 1998. Experimental return to the wild of two bottlenose dolphins. *Marine Mammal Science*, 14(1):51-71.



Luther at Boca Chica Naval Air Station lagoon, May 1996

## Release and Rescue of Sugarloaf Dolphin Sanctuary Dolphins: May - June 1996

In 1994, the Sugarloaf Dolphin Sanctuary (SDS) in the Florida Keys received three male bottlenose dolphins (*Tursiops truncatus*) from the U.S. Navy's marine mammal research program in San Diego, CA. The dolphins, named "Luther," "Buck" and "Jake," had been collected from the wild in 1987 and 1988 off the coast of Mississippi. SDS' stated intentions were to prepare the dolphins for eventual release to wild in their original home waters. Although SDS met the MMPA public display requirements and had obtained the necessary exhibitor's license under the Animal Welfare Act (AWA) from the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) to hold the dolphins in a lagoon at the Sugarloaf Lodge (located on Sugarloaf Key, Florida Keys mile marker 17), SDS did not apply for a scientific research permit from NMFS for the release project. Throughout the time that the dolphins were at SDS, NMFS consistently reminded SDS personnel that a scientific research permit would be required to release the dolphins. Several APHIS inspections found the SDS facility to be in "non-compliance" with the animal care regulations under the AWA. NMFS and APHIS grew increasingly concerned about the health and welfare of the dolphins at SDS.

On May 23, 1996, personnel from SDS and "The Dolphin Project" (TDP) illegally transported Luther and Buck approximately 6 miles off the coast of Key West, FL via a small motorized vessel and dumped the dolphins overboard. Jake was left at the SDS facility due to health concerns. NMFS, with support from APHIS, had been in the process of planning and obtaining a warrant for the seizure of all three dolphins when the unauthorized release of Luther and Buck occurred.

Immediately after the release, Luther appeared in Key West marinas and public waterways alone, visibly underweight and injured with a series of three deep lacerations on his right side below the dorsal fin. NMFS embarked upon a rescue effort to recover the dolphins under the authority of the MMPA and at the direction of NMFS personnel from the Office of Protected Resources and the Office of Enforcement who were on-site. The NMFS rescue team assembled on May 25, 1996, comprised of personnel from the Dolphin Research Center (DRC), the U.S. Navy's marine mammal research program, Florida Keys Wildlife Rescue, the Marine Mammal Conservancy and NOAA's Florida Keys National Marine Sanctuary. Additional logistical assistance was provided by the U.S. Naval Air Station in Key West (Boca Chica Key), the Florida Marine Patrol and the U.S. Coast Guard. The NMFS rescue team observed Luther approaching moving vessels, interacting with the public, performing trained behaviors, begging for food, and being fed fish-bait and unidentified objects by the public. Luther's behavior demonstrated that he was still highly conditioned and dependent upon human care indicating that he was not prepared for life in the wild. The NMFS rescue team was particularly concerned about Luther's poor body condition and injuries which required medical attention. On May 30, 1996, the NMFS rescue team was able to safely secure Luther in a lagoon at the nearby U.S. Naval Air Base on Boca Chica Key and provide him with necessary veterinary care. The professional marine mammal trainers on the rescue team were able to work easily with Luther without causing him stress by using standard operant conditioning training techniques. Luther's responsiveness to an acoustic recall and hand signals enabled the team to engage him in a trained boat-follow and lead him to safety without ever having to deploy a net for capture.



Luther at Boca Chica lagoon. Note injury on side below dorsal fin.



Close up of injury showing three parallel lacerations.



Detail of injuries, showing additional laceration which had initially been obscured by the water line.

On June 4, 1996, Buck was found in Vaca Cut near Marathon Key -- over 40 miles north of Key West -- in considerably worse body condition than Luther. Buck was emaciated and had numerous injuries: three deep gashes on his head between the blow hole and dorsal fin, a deep puncture wound on his right side below the dorsal fin, and four long horizontal lacerations on the left side of his peduncle. Buck's emaciated condition was evident by the concave shape of his head, the protrusion of his scapulae, and the protrusion of his tail vertebrae. Members of the public who alerted the rescue team of Buck's whereabouts reported that he, similar to Luther, had been approaching people begging for food. The NMFS rescue team observed that Buck was also still highly conditioned to humans. The marine mammal trainers were able to engage Buck in a boat-follow and lead him to the DRC facility in Marathon where he was provided with medical care.



Buck undergoing medical exam at DRC. Note thin body condition and injury behind blowhole.



Close up of wound behind blowhole



Wound is cleaned by one of the veterinarians.



Cleaned wound, showing depth of lacerations.

On June 7, 1996, NMFS seized Jake, the only remaining former Navy dolphin at the SDS facility. The seizure occurred after APHIS suspended SDS' exhibitor's license for multiple violations of the AWA, including the failure to utilize a qualified veterinarian, provide necessary physical examinations and blood testing, and maintain the dolphins within the facility. The seizure was conducted pursuant to the MMPA, which authorizes NMFS to seize animals that are held by a public display facility that does not have a valid AWA exhibitor's license. The veterinarians who examined Jim determined that he was underweight and needed a nutritional diet.

Jake and Luther were returned to the Navy's marine mammal facility in San Diego, CA, where they received the appropriate care and treatment they were denied at SDS. Given his poor medical condition, Buck did not travel with the other dolphins to San Diego, and remained at DRC for rehabilitation.

## Legal Case: 1998 - 1999

In January, 1998, NMFS' parent agency, the National Oceanic and Atmospheric Administration (NOAA) filed charges against the responsible parties alleging multiple violations of the MMPA. NOAA assessed a maximum allowable \$10,000 for each of the six counts charged, resulting in a total of \$60,000 in penalties against those involved. The charges were filed against Richard O'Barry, Lloyd Good, III, the Sugarloaf Dolphin Sanctuary, Inc. (SDS), and The Dolphin Project, Inc. (TDP). All four parties (the "respondents") were charged with an illegal "take" by harassment and illegal transportation of each dolphin. In addition, SDS and TDP were charged with failing to notify NOAA prior to the transport of the dolphins. The respondents had the option to settle the case with NOAA out of court or request a civil hearing in U.S. Federal Court in front of an Administrative Law Judge (ALJ). The respondents elected to go to hearing.

In February 1999, the civil case was brought before an ALJ in Key West, FL. NOAA argued that the dolphins were injured, needed medical attention, and could have died as a result of the release. Furthermore, NOAA argued that the release was reckless and irresponsible since, prior to the release, NMFS had repeatedly warned SDS and TDP personnel of the risks inherent in releasing dolphins without a scientific research permit, but those warnings were ignored. The hearing lasted five days, during which NOAA and the respondents each called several witnesses to the stand to testify on the events that happened between 1994-1996. NOAA's witnesses included NMFS personnel, members of the rescue team, past and present personnel from SDS and other cooperating organizations, and the veterinarians who examined Luther and Buck.

In June 1999, the ALJ rendered a decision and found all four respondents guilty of multiple violations of the MMPA. The respondents were ordered to pay \$59,500 in civil penalties for harassing and illegally transporting Luther and Buck in connection to their deliberate release to the wild. Richard O'Barry, Lloyd Good III, SDS and TDP were fined \$40,000 for illegally "taking" by harassment and illegally transporting each of the dolphins. SDS was fined an additional \$19,500 for failing to notify NOAA Fisheries prior to the transport of the dolphins.

The ALJ's ruling supported NOAA/NMFS' position that the release of captive dolphins to the wild needs to be conducted according to peer-reviewed scientific protocols and authorized pursuant to a MMPA scientific research permit, in order to protect the health and welfare of the animals.

## Acknowledgements

Many individuals and organizations dedicated their time, expertise, and equipment to ensure that Luther, Buck and Jake were brought into safety and given the proper medical attention they needed. NMFS sincerely appreciates the hard work of everyone who assisted with the rescue and seizure operations, including: Dolphin Research Center, U.S. Navy's Marine Mammal Research Program, U.S. Naval Air Station at Boca Chica, U.S. Special Forces Waterborne Operations, Florida Marine Patrol, U.S. Coast Guard, NOAA's Florida Keys National Marine Sanctuary Program, Chicago Zoological Society's Dolphin Connection, Gulf World, Sea World, Florida Keys Wildlife Rescue, Marine Mammal Conservancy, and M. Smith and J. Bynum.

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