Space Requirement

We are proposing to require in § 3.111(a) that primary enclosures used to contain dolphins that are used in SWTD programs consist of three areas: An interactive area, a buffer area, and a sanctuary area. Both the buffer area and the sanctuary area would be off-limits to members of the public. The sanctuary area is necessary to allow dolphins to separate themselves voluntarily from the area of the enclosure where humans are permitted during program sessions. The buffer area, situated between the interactive area and the sanctuary area. is necessary to ensure that the sanctuary area is an adequate distance from the interactive area to ensure dolphins the opportunity for complete freedom from the public.

We would establish the same minimum space requirements for each of the three required areas. Each of the areas would be required to meet minimum space requirements for horizontal dimension, surface area, depth, and volume. Each of these proposed space requirements exceeds that in the current regulations for Tursiops truncatus. The space requirements set forth in this proposed rule were developed in conjunction with professional industry organizations, and were recommended by those organizations as providing adequate space for the health and wellbeing of dolphins used in the SWTD programs.

We believe the increased space is necessary in the interactive area to accommodate the presence of both dolphins and humans, and that a like

amount of space is necessary in both the buffer area and the sanctuary area, so that the buffer and sanctuary areas are not made intentionally uninviting to participating dolphins. For the same reason, we would prohibit the restriction of a dolphin's entrance into the buffer and sanctuary areas. In our view, SWTD programs are not to be forced contact programs. The dolphins must always have the choice not to participate. In this regard, the dolphin's choice of area should not be influenced by factors such as restricted entrance into an area or differences between sizes of areas (e.g., a sanctuary area that is smaller than the interactive area).

The minimum space requirements for the three required areas and for the entire primary enclosure are set forth in proposed $\S 3.111(a)(5)$ in a table which is replicated below.

MINIMUM SPACE REQUIREMENTS FOR EACH AREA AND PRIMARY ENCLOSURE

Number of animals	Minimum horizontal dimension		Surface area		Depth		Volume	
	Each area (ft)	Enclosure (ft)	Each area (ft ²)	Enclosure (ft ²)	Each area (ft)	Enclosure (ft)	Each area (ft ³)	Enclosure (ft ³)
1–2 3 Each additional animal	27 27 (¹)	81 81 (¹)	572 1,144 254	1,716 3,432 763	9 9 (¹)	9 9 (¹)	5,148 10,296 2,289	15,444 30,888 6,867

¹No change.

Proposed section 3.111(a) also sets forth the formulae used to arrive at the space requirements, which are based on the average adult body length of *Tursiops truncatus* (9 feet) and which assume use of a circular pool. The measurements in the table were calculated as follows. 1. Horizontal dimension. The minimum horizontal dimension for each area would be at least three times the average adult body length of the species of animal used in the program. As noted above, under this proposed rule, only *Tursiops truncatus* would be allowed in SWTD programs. 2. *Surface area.* The minimum surface area for each of the three required areas would be based on the following formulae:

Up to two dolphins

Surface Area (SA) =
$$\left(\frac{3 \times \text{average adult body length (L)}}{2}\right)^2 \times 3.14$$

Three dolphins

$$SA = \left(\frac{3 \times L}{2}\right)^2 \times 3.14 \times 2$$

Additional SA for each animal in excess of three

$$SA = \left(\frac{2 \times L}{2}\right)^2 \times 3.14$$

3. *Depth.* The average depth for each area would be required to be at least 9 feet.

4. *Volume.* The minimum volume required for each animal would be based on the following formula:

Volume = $SA \times 9$

Water Quality

Standards for water quality for marine mammals are set forth in existing § 3.106. In § 3.111(b) of this proposed rule, we are providing that SWTD programs must also maintain sufficient water clarity so that attendants are able to observe dolphins and humans at all times within the interactive area. If the level of water clarity does not allow these observations to be made, the interactive sessions would be required to be canceled until such clarity is achieved.

Personnel

In proposed § 3.111(c), we are setting forth minimum requirements for the type and number of personnel necessary for operating a SWTD program. Additionally, we are proposing to set forth minimum levels of experience necessary for each required employee. We believe this experience is necessary to ensure that these individuals have been exposed to the critical elements of safe human/dolphin interactions.

In this proposed rule, we are providing that each SWTD program must have, at the minimum, the following personnel with the following backgrounds: