- (1) Licensee or manager—at least one full-time staff member with at least 6 years in a professional or managerial position dealing with captive cetaceans;
- (2) Primary behaviorist—at least one full-time staff member with at least 6 years experience in training cetaceans for SWTD behaviors, or with an equivalent amount of experience involving in-water training of cetaceans, who serves as the head trainer for the SWTD program;
- (3) Supervising attendant—at least one full-time staff member with at least 3 years experience involving human/ dolphin interactions;
- (4) Attending veterinarian—at least one staff or consultant veterinarian who has had at least the equivalent of 2 years experience with cetacean medicine within the past 10 years.

A separate individual would be required to fill each of the required positions.

Handling

We are providing in proposed § 3.111(e)(1) that time dolphins spend interacting with humans as part of a SWTD program may not exceed 2 hours per day, and that each participating dolphin must have no less than 10 continuous hours without public interaction in each 24 hours. We are providing in proposed § 3.111(e)(2) that all dolphins used in the session must be adequately conditioned and trained for interaction, so that they respond in the session to the attendants with appropriate behavior for safe interaction.

We are also providing in proposed § 3.111(e)(3) that the ratio of human participants to dolphins shall not exceed 3:1, and that the ratio of human participants to attendants shall not exceed 3:1. These ratios are based on permit requirements established by NMFS as part of their regulation of SWTD programs, and, based on MNFS' enforcement experience, we believe they are adequate to protect dolphins used in SWTD programs.

Under § 3.111(e)(5) of this proposed rule, all sessions must have at least two attendants, and more if required according to the ratio discussed above. At least one attendant would be required to be positioned in the water, except in cases where at least one attendant is positioned so as to be able to intervene during the interactive session as quickly as if positioned in the water. However, if the program has had more than two incidents during interactive sessions that have been dangerous or harmful to either dolphins or humans, at least one attendant would

be required to be positioned in the water.

To help ensure that the requirements of this proposed rule regarding interactive sessions are met, we are requiring in § 3.111(e)(4) that, prior to participation in a SWTD program, members of the public be provided with, and agree in writing to abide by, the SWTD program rules. We are also proposing that any participant who fails to follow the rules or the instructions of the attendants be removed from the session.

Under § 3.111(e)(6) of this proposed rule, a SWTD program must limit contact between humans and dolphins so as to ensure that the dolphins and humans are not harmed, that the element of choice regarding interaction is not removed from the dolphins (such as by recalling the animal from the sanctuary area), and that undesirable behavior is not elicited from the dolphins. At all times, each dolphin must be free to remove itself from the human/dolphin interaction. To ensure that this is possible, grasping or holding of the dolphin's body, unless under the direct and explicit instruction of an attendant eliciting a specific dolphin behavior, and the chasing or harassing of dolphins, would be prohibited by the SWTD programs.

We would require in proposed $\S 3.111(e)(7)$ that, in cases where animals used in the program exhibit unsatisfactory behaviors, such as charging, biting, mouthing, or sexual contact between dolphins and humans, these animals must be removed from the interactive session. We recognize that, in some cases, it may become difficult or impossible to remove a particular animal from an interactive session. For instance, in some cases, an animal may refuse to respond to commands from attendants. In order for a facility to anticipate and respond to such situations, we would require that written criteria must be developed and submitted to APHIS regarding conditions and procedures for the termination of a session. The primary behaviorist shall determine when operations will be terminated, and when they may resume. In the primary behaviorist's absence, these determinations shall be made by the supervising attendant.

Recordkeeping

We would establish reporting and recordkeeping requirements for SWTD programs. This information would help us monitor compliance with the regulations, and assist us in evaluating SWTD programs to assess the effectiveness of the regulations.

As part of the reporting requirements, we would require in § 3.111(f)(1) that a description of each SWTD program be provided to APHIS at least 30 days prior to initiation of any SWTD program. Facilities which have programs in place when this rule becomes final would also be required to provide APHIS with the same information within thirty days after the rule becomes final. This description would be required to include, at the minimum, the following: (1) Identification of each dolphin in the program by means of name and/or number, sex, age, and any other means determined by the Administrator as necessary to adequately identify the dolphin; (2) a description of the educational content and agenda of planned interactive sessions, and the anticipated average and maximum frequency and duration, of encounters per dolphin per day; (3) the content and method of pre-encounter orientation, rules, and instructions, including restrictions on types of physical contact with the dolphins; (4) a description of the SWTD facility, including the primary enclosure and other housing at the facility; (5) a description of the training the dolphin has undergone or will undergo prior to the participation in the program; (6) curriculum vitae for all staff involved in the handling, care, and maintenance of the dolphins; (7) the current behavior patterns and health of each dolphin, to be assessed and submitted by the attending veterinarian; (8) a written program of veterinary care (APHIS form 7002), including protocols and schedules of professional visits; and (9) a detailed description of the monitoring program to be used to detect and identify changes in the behavior and health of the dolphins.

We would require in § 3.111(f) (3) and (4) that the following records be kept at the SWTD site and be made available to an APHIS official upon request during normal business hours: (1) Individual dolphin veterinary records, including all examinations, lab reports, treatments, and necropsy reports; (2) individual dolphin feeding records; and (3) individual dolphin behavioral records. The veterinary records would be required to be kept at the site at least 5 years. The feeding and behavioral records would be required to be kept at the site at least 3 years.

Under § 3.111(f)(5) of this proposed rule, the following reports would be required to be kept at the SWTD site at least 3 years, and a copy would be required to be submitted to the Administrator on a semi-annual basis: (1) Statistical summaries of the number of minutes per day and the number of hours per week that each animal