



# MARINE MAMMAL COMMISSION

12 April 2012

Mr. P. Michael Payne, Chief  
Permits, Conservation, and Education Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Re: Permit Application No. 17159  
(Simon Nash,  
Parthenon Entertainment Films)

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the above-referenced permit application with regard to the goals, policies, and requirements of the Marine Mammal Protection Act.

## **RECOMMENDATION**

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the permit but condition it to require Mr. Nash to (1) monitor and report all cases when filming activities lead to sufficient disturbance that the dolphins alter their behavior or otherwise exhibit strong response to filming activities, the vessel, and divers and (2) cease filming a particular dolphin or group of dolphins if it or they appear to be unduly disturbed by the activity.

## **RATIONALE**

Mr. Nash is requesting authorization to take by Level B harassment up to 1,300 spinner dolphins per year during filming activities in waters near Midway Atoll in the Pacific Ocean during a five-year period. The purpose of the project is to document the dolphins' use of shallow-water habitats and use the footage for an Animal Planet documentary regarding Hawaiian wildlife. Mr. Nash has more than 15 years of experience producing wildlife documentaries including filming dolphins in the Bahamas and Antarctic fur seals for the documentary series "Frozen Planet."

Mr. Nash would conduct the proposed filming activities from June through July for approximately two weeks. He plans to film for a maximum of four non-consecutive days and would rely on the U.S. Fish and Wildlife Service for vessel support. The Service has indicated that only personnel trained and qualified to captain vessels around marine mammals would be used. Those personnel would captain either a 7.0- or 9.5-m vessel during filming activities. Mr. Nash would approach the dolphins during morning and late afternoon hours when they are typically active. However, he would not approach them during their mid-day resting period or during nighttime feeding. A typical interaction would involve using high-definition video cameras to film the dolphins

Mr. P. Michael Payne

12 April 2012

Page 2

for up to two hours at a distance of 46 m as the dolphins engage in social behaviors (e.g., leaping and other aerial displays). Depending on the behaviors that the dolphins display, Mr. Nash would then approach the dolphins at a minimum distance of 10–20 m to obtain better quality footage. He would approach the dolphins from behind, would ensure that they have an exit route, and would avoid any activity that alters the dolphins' natural behavior.

Mr. Nash also would photograph the dolphins underwater. He would use a polecam to obtain underwater footage of the dolphins at a minimum distance of 10–20 m. In addition, one underwater cameraman (Mr. Michael Pitts) and one safety diver would snorkel to obtain additional footage using a high-definition video camera inside a waterproof housing unit. Those individuals would enter the water approximately 50 m behind the dolphins and could remain in the water for up to 30 minutes. They would try to remain behind or to the side of any dolphin or dolphin group and to maintain the maximum distance that will still allow filming. If the dolphins do not alter their behavior or otherwise react to the divers' presence, the cameraman would approach them slowly to a distance no closer than 10 m. If at any time, the divers' presence does disturb the dolphins, they would swim back to the vessel. Evidence of disturbance could include rapid changes in swimming direction or speed, erratic swimming patterns, escape tactics (i.e., prolonged diving, underwater exhalation, or rapid swimming away), females shielding their calves, or sudden cessation of important breeding, nursing, or resting behaviors. Mr. Pitts has filmed spinner dolphins at Midway Atoll previously, and he also has filmed sperm whales, blue whales, killer whales, and bottlenose dolphins for numerous documentaries including "Blue Planet."

The filming activities would occur in the Midway Atoll National Wildlife Refuge, which is part of the Papahānumokuākea Marine National Monument. Mr. Nash has applied for the relevant permits to film in the Refuge and currently is awaiting issuance of the permit.

The Commission supports the filming of marine mammals as films can be an important means of educating the public about these animals, their natural history, and the value of conserving them. Nevertheless, the proposed activities pose some risk of disturbance, and the Commission believes it is useful and informative to monitor the activities and report any cases where the impacts might be deemed excessive. In this case, excessive impacts might include causing the dolphins to leave an area, alter their social structure (i.e., break up into smaller groups), or cease their social behaviors. In addition, any instances in which a dolphin and the vessel or a diver comes into contact should be reported. Because the proposed activities may cause unintended responses, the Marine Mammal Commission recommends that the National Marine Fisheries Service issue the permit but condition it to require Mr. Nash to (1) monitor and report all cases when filming activities lead to sufficient disturbance that the dolphins alter their behavior or otherwise exhibit strong response to filming activities, the vessel, and divers and (2) cease filming a particular dolphin or group of dolphins if it or they appear to be unduly disturbed by the activity.

The Commission believes that the activities for which it has recommended approval are consistent with the purposes and policies of the Marine Mammal Protection Act.

Mr. P. Michael Payne  
12 April 2012  
Page 3

Please contact me if you have any questions concerning the recommendation.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Timothy J. Ragen, Ph.D.  
Executive Director