



MARINE MAMMAL COMMISSION

13 January 2021

Ms. Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Re: Permit Application No. 25417
(Silverback Films)

Dear Ms. Harrison:

The Marine Mammal Commission (the 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 (the MMPA). Silverback Films is requesting authorization to conduct filming activities on gray and killer whales in California for an upcoming documentary series on Netflix highlighting wildlife migrations.

Silverback Films is requesting authorization to film¹ gray and killer whales for eight weeks between April 2021 and May 2022. Individuals of any age class and either sex could be harassed (see application and take table for specifics). Several pinniped and other cetacean species could be opportunistically filmed if encountered. Drs. Trevor Joyce and Aimee Lang of the National Oceanic and Atmospheric Administration Southwest Fisheries Science Center have served as off-site advisors. The filmmakers would implement various measures to minimize impacts on marine mammals and also would be required to abide by the National Marine Fisheries Service's (NMFS) standard permit conditions.

In its application, Silverback Films proposed to approach up to 15 m and film killer whales hunting a gray whale female-calf pair in either a rigid-hulled inflatable boat (RHIB) or a solid-hulled vessel. If killer whales attempted to kill a calf, the filmmakers would retreat to a distance of at least 22 m from the animals. However, it is not clear what cues Silverback Films would use to distinguish between killer whale hunting activity versus an attempt at a kill, and thus filmmakers may not retreat at the appropriate moment. More critically, when positioned at such a close distance to a dynamic event involving large cetaceans, the filmmakers may inadvertently interfere with essential foraging and/or defense behavior. A female-calf pair already undergoing extreme stress may also be unintentionally further harassed. Based on these issues, the Commission recommends that NMFS

¹ Including filming underwater, from a vessel, and with unmanned aircraft systems.

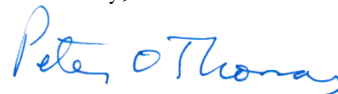
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condition the final permit to specify 50 m as the minimum approach distance from a vessel to a gray whale being hunted or a killer whale engaged in a hunt.

Additionally, Silverback Films did not indicate in its application that a researcher with expertise in gray or killer whale behavior would be present in the field during filming. Even though the filmmakers have experience filming cetaceans, the Commission feels that having a cetacean biologist knowledgeable of gray and killer whale behavior accompany them in the field during at least their first few days of filming activities around gray and killer whales, including one attempted or successful hunt, would be prudent². The presence of an expert in the field would allow the filmmakers to learn firsthand about the types of behavior on their part that would constitute harassment and how to avoid interfering with foraging and defense behavior during a hunt. Therefore, the Commission recommends that NMFS condition the final permit to require a cetacean expert to accompany Silverback Films into the field for at least one initial day of filming activities on (1) a gray whale female-calf pair and (2) an attempted or successful killer whale predation event on a gray whale female-calf pair.

The Commission believes that the proposed activities are consistent with the purposes and policies of the MMPA. Kindly contact me if you have any questions concerning the Commission's recommendations.

Sincerely,



Peter O. Thomas, Ph.D.,
Executive Director

² The Commission has made similar recommendations in previous letters, including its [13 February 2020 letter](#) for Wall to Wall Productions.