



# MARINE MAMMAL COMMISSION

7 February 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. 17011  
(NHK Enterprises, Inc.,  
Nature & Science Programs)

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.

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the permit, provided that it

- condition the permit to require NHK Enterprises to (1) monitor and report all cases when filming activities lead to sufficient disturbance that the whales alter their behavior or otherwise exhibit strong response to filming activities and the boats and (2) cease filming a particular whale or whales if the whale or whales appear to be unduly disturbed by the activity; and
- advise NHK Enterprises of the need to obtain additional permits from the Alaska Maritime Wildlife Refuge before filming in the refuge.

## RATIONALE

NHK Enterprises, Inc., is requesting authorization to take by Level B harassment up to 300 killer whales up to three times and 100 gray whales up to two times during filming activities in waters of the eastern Aleutian Islands during the course of the five-year period. The purposes of the project are to document (1) killer whale and gray whale interactions from Unimak Pass to Sand Point. NHK Enterprises would use the footage to create a film documenting the hunting behavior of transient killer whales and the food chain that develops from this predation. The film would be shared with the Japanese public through television and internet broadcasts, a DVD, and other publications (e.g., a photographic book).

NHK Enterprises would conduct the proposed filming activities from April through June of each year for approximately 35 days. Mr. Craig Matkin would serve as a research assistant and Mr. John Rogers would captain both the 30-m R/V *Kittiwake* and a 6.4-m aluminum skiff during filming

activities. Mr. Matkin has been conducting research on cetaceans, including killer whales and gray whales in Alaska for more than 25 years. Mr. Rogers has conducted marine mammal surveys for the Service and the Alaska Department of Fish and Game and worked with numerous wildlife documentary film companies and producers. In addition, Mr. Daniel Katz would pilot a Robinson R-44 Clipper II helicopter. Mr. Katz has experience filming humpback whales in the Aleutian Islands and conducting photographic surveys of walrus for the Fish and Wildlife Service.

The *Kittiwake* would serve as the launching platform for the skiff and helicopter and would remain at a distance of at least 100 m (328 ft) from any marine mammal at all times. Mr. Rogers would use the skiff to approach the whales more closely. He would approach the whales at a minimum distance of 40 m (131 ft) for up to 20 minutes to document feeding and socialization behavior. Mr. Rogers would avoid approaching the whales closely when killer whales are hunting or resting and when gray whales are attempting to avoid detection by the killer whales. The applicants would use both still and video cameras to obtain footage from the vessels. They also may use a polecam to obtain underwater footage at a minimum distance of 10 m (33 ft) on no more than 15 occasions. In addition, the filmmakers could lower a hydrophone from either vessel to record vocalizations of the killer whales.

During use of the helicopter the *Kittiwake* would remain at least 274 m (900 ft) from any marine mammals to avoid harassing them. Once airborne, the helicopter would remain at an altitude of at least 305 m (1,000 ft) until aerial filming commences. At that time, Mr. Katz would lower the helicopter to a minimum altitude of 228 m (750 ft) for up to 10 minutes to obtain footage via the high-definition video camera. If the presence of the helicopter at that altitude appears to be harassing any of the marine mammals, Mr. Katz would return the helicopter to an altitude of at least 305 m immediately.

NHK Enterprises proposes to harass up to 60 Pacific white-sided dolphins, 20 harbor porpoise, 40 Dall's porpoise, 60 harbor seals, and 40 northern fur seals incidental to the proposed filming activities.

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 disrupting important behaviors (i.e., feeding) or social organization, 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 whales to stop feeding, to leave an area, or to alter their social structure (i.e., break up into smaller groups). In addition, any instances in which a whale and the boat come 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, provided that it condition the permit to require NHK Enterprises to (1) monitor and report all cases when filming activities lead to sufficient disturbance that the whales alter their behavior or otherwise exhibit strong response to filming activities and the boats

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and (2) cease filming a particular whale or whales if the whale or whales appear to be unduly disturbed by the activity.

Based on the locations of the proposed filming activities, some of those activities may occur in the Alaska Maritime Wildlife Refuge. It is unclear whether NHK Enterprises is aware that additional permits are needed from the refuge prior to filming in it. As such, the Marine Mammal Commission recommends that the National Marine Fisheries Service advise NHK Enterprises of the need to obtain additional permits from the Alaska Maritime Wildlife Refuge before filming in the refuge.

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.

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

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a long horizontal line extending from the start of the name.

Timothy J. Ragen, Ph.D.  
Executive Director