



MARINE MAMMAL COMMISSION

6 June 2011

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. 16360
(Oceanic Nature Film Productions)

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 approve the requested permit, provided that—

- the permit is conditioned to require the applicant to monitor and report all cases where the filming activities lead to sufficient disturbance that a whale alters its behavior or otherwise exhibits strong response to filming activities, the boats, or the divers;
- the permit is conditioned to require cessation of filming a particular whale or whales if the whale or whales appear to be unduly disturbed by the activity; and
- the applicant obtains the appropriate authorization to conduct filming activities from the state of Hawaii, if needed.

RATIONALE

The applicant is requesting authorization to take by Level B harassment up to 50 individuals each of melon-headed whales, pygmy killer whales, false killer whales, killer whales, short-finned pilot whales, Blainville's beaked whales, Cuvier's beaked whales, Longman's beaked whales, pygmy sperm whales, dwarf sperm whales, Bryde's whales, and minke whales by close approach during filming activities in waters off Kona, Hawaii. The applicant would use film footage of the whales to educate the public regarding marine mammal conservation issues, impacts from anthropogenic sound, and the importance of the Pacific Islands. It would conduct most of the proposed filming activities from two 18-m sailing catamarans that also have electric engines. The boats would approach the whales cautiously from the side and would slowly make adjustments to their heading and course to maintain their position. During surface photography, the boat would remain at least 50 m from the whales. In addition, the boat driver would reduce the boat's speed to 5 knots within 200 m of any marine mammal and within 500 m of a threatened or endangered marine mammal.

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Further, the boat driver would place the boat's engine in neutral if a threatened or endangered marine mammal approaches within 100 m of the boat.

The applicant also would photograph marine mammals underwater. The boat would approach no closer than 50 m to allow two free divers to enter the water. The divers would photograph the whales using a high-definition digital camera with internal zoom contained in an underwater housing unit. Care would be taken to make only calm movements if any whale approaches within 50 m of the divers. The divers would require at least 5–10 minutes in the water as their efforts would be interrupted every 2 minutes so that they can surface to breathe. They would not pursue any whale that moves away from them. In addition, the applicant does not intend to approach cetaceans with calves. Finally, the applicant would tow a 100-m passive acoustic array with two mid-frequency elements to record vocalizations.

The applicant states that its primary consideration would be to avoid influencing or changing the whales' natural behaviors. The applicant plans to employ Mr. Magnus Danbolt, captain of the *Hine Moana*, Auckland, New Zealand, as the boat's captain. Mr. Danbolt and his sailing crew have experience sailing around marine mammals, particularly with whales in Tonga in 2010. The applicant would conduct the filming over a period of six weeks, in the summer of 2011. The applicant is requesting that the permit cover a continuous four-month period in 2011, because adverse weather conditions may hinder filming.

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., nursing and 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 nursing or feeding, to leave an area, or alter their social structure (i.e., break up into smaller groups). In addition, any instance in which a whale and the boat come into contact should be reported, as well as, any strong whale responses to the presence of the divers. The Marine Mammal Commission recommends that the National Marine Fisheries Service approve the requested permit but, because the proposed activities may cause unintended responses, condition the permit to require the applicant to monitor and report all cases where the filming activities lead to sufficient disturbance that a whale alters its behavior or otherwise exhibits strong response to filming activities, the boats, or the divers. The Commission also recommends that the Service condition the permit to require cessation of filming if a particular whale or whales appear to be unduly disturbed by the activity.

In addition to the authorization under the Marine Mammal Protection Act, the applicant may have to obtain additional permits to conduct the proposed filming activities from the state of Hawaii. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service require the applicant to obtain the appropriate authorization to conduct filming activities from the state of Hawaii, if needed.

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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 these recommendations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael L. Gork", followed by a horizontal line and the word "for".

Timothy J. Ragen, Ph.D.
Executive Director