



MARINE MAMMAL COMMISSION

6 September 2024

Angela Picco, Manager
Regional Ecological Services Program
Pacific Southwest Region
U.S. Fish and Wildlife Service
2800 Cottage Way
Sacramento, CA 95825

Re: Permit Application Nos.
9423620, Plimsoll Productions
11105737, Kovacs Films

Dear Dr. Picco:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the above-referenced permit applications with regard to the goals, policies, and requirements of the Marine Mammal Protection Act. Plimsoll Productions and Kovacs Films are proposing to film¹ southern sea otters in California for an episode of a nature documentary series focusing on how sea otters are adapting to shrinking kelp habitat and climate change. The applicants would film the sea otters in Monterey Bay, Carmel Bay, and Morro Bay through December 2025. Individuals of any age class and either sex could be harassed. The filmmakers would implement various measures to minimize impacts on sea otters and other marine mammals.

Multiple permits for the same project

In April 2024, the Commission informally reviewed the Plimsoll Productions application, which listed Ernie Kovacs as a co-investigator to be authorized to conduct underwater filming. In July 2024, the Commission received and informally reviewed the application from Kovacs Films proposing to film southern sea otters for the same documentary series episode as Plimsoll Productions. According to the original applications and the responses to the Commission's informal reviews, it appears that Plimsoll Productions's scheduling protocols would have made it difficult to take advantage of good weather and clear visibility for underwater filming. Mr. Kovacs, in consultation with Plimsoll Productions, applied for his own permit to allow greater flexibility to film when conditions are ideal.

It is still unclear to the Commission why Mr. Kovacs could not conduct filming activities, as proposed in the Kovacs Films application, as a co-investigator authorized for topside and underwater filming under the Plimsoll Productions permit. The Commission is unaware of any other

¹ Including filming topside from a vessel, on land, and underwater with divers. Plimsoll Productions also would conduct filming underwater with a polecam and in air with unmanned aircraft systems (UAS).

instance in which the U.S. Fish and Wildlife Service (FWS) has issued two permits authorizing taking by the same methods and personnel for the same filming activities.

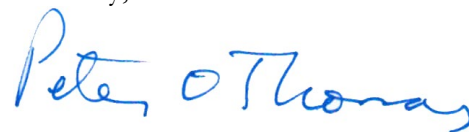
The Kovacs Films application proposes to take 300 sea otters per year for topside filming and 200 sea otters per year for underwater filming and states that filming under that company's own permit would "directly reduce the number of days [Plimsoll] will need to film Sea Otters". The Plimsoll Productions application proposes to take 720 sea otters per year across all filming platforms. The Commission recommends that FWS specify how many takes would be authorized per filming platform in any Plimsoll Productions permit and reduce the proposed 720 takes of sea otters based on the number of takes authorized for topside and underwater filming under the Kovacs Films permit.

Filming newborn pups

According to the Plimsoll Productions application, sea otters one month of age and older could be filmed, and a sea otter expert would accompany the crew in the field to advise the crew on the age of any pup. The Kovacs Films application, however, proposes to conduct topside filming of newborn pups. Underwater filming would be conducted only on pups old enough to dive on their own. When asked to further justify the need to film newborn pups, Kovacs Films responded that "seeing the challenging existence of a mother and pup sea otter demonstrates the vulnerability of sea otters" and that "moms and pups are also emotionally powerful to people and make them care about the environmental changes that are happening along the California coast". The Commission does not view this as sufficient justification to film and potentially disturb young and vulnerable individuals of a threatened species. Filming newborn pups also is inconsistent with past southern sea otter photography permits². Therefore, the Commission recommends that FWS condition both permits to prohibit filming of pups less than one month of age. The Commission further recommends that FWS ensure that Mr. Kovacs has the expertise to determine whether pups meet the minimum age requirement and, if not, condition the Kovacs Films permit to require that the sea otter expert accompany him in the field similar to the Plimsoll Productions permit.

Kindly contact me if you have any questions concerning the Commission's recommendations.

Sincerely,



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

² e.g., BBC Studios #0003402, BBC Studios #53019C, Offspring Films #29633C, and Silverback Films #92150B permits.