



# MARINE MAMMAL COMMISSION

13 February 2020

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. 23640  
(Wall to Wall Productions)

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). Wall to Wall Productions (Wall to Wall) is proposing to conduct filming activities<sup>1</sup> on harbor seals at sites in California<sup>2</sup> and Oregon<sup>3</sup> during a one-year period. Individuals of any age class and either sex could be harassed. Other pinniped and cetacean species also could be approached and filmed on an opportunistic basis (see the application for specifics). The filmmakers would implement various measures to minimize impacts on marine mammals and would be required to abide by the National Marine Fisheries Service's (NMFS) standard permit conditions. The footage would be included in an upcoming National Geographic documentary series on parental behavior including courtship, mating, birthing, and weaning.

## **Approaches and filming of harbor seals**

Wall to Wall proposed to conduct various filming activities, with a particular focus on filming the birthing, nursing, weaning, courting, and mating processes of harbor seals. Wall to Wall would approach seals on foot, with a vessel, and underwater at close distances. Filming could occur along the Oregon coast and at South Casa Beach, designated herein as unrestricted sites, while Wall to Wall would film from behind closure barriers at Casa Beach and along the Carpinteria coastline, designated herein as restricted sites. Wall to Wall intends to film the same seals day after day, including three neonates, three pups, three juveniles, three adult females, and five males at each site. The filmmakers would approach a neonate or pup twice in a given day and all other age classes three times in a given day.

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<sup>1</sup> Including filming underwater from land and vessels and with unmanned aircraft systems (UAS).

<sup>2</sup> Including Casa and South Casa Beaches and the Carpinteria coastline.

<sup>3</sup> Including Yaquina and Alsea Bays and the Fogarty Creek and Strawberry Hill coastlines.

*Filming on land*—To fulfill its filming objectives, Wall to Wall proposed to approach female seals that are giving birth and their neonates to as close as 5 m. Female-pup pairs and actively nursing pups also would be approached at 5 m. Wall to Wall indicated that it would “start an approach to pinnipeds at 46 m (50 yards) and would approach to a distance of 10 m, and if no adverse behaviors are observed, we would then approach to the closer 5 m distance.” The filmmakers would terminate their approach and retreat if adverse behaviors such as “looking up a lot, moving away, increase in alertness or vigilance, head turning and posture changes, threat displays” are observed.

Those mitigation measures may be sufficient to minimize harassment of some pinniped species during filming activities. However, harbor seals are more skittish than other species and increase their vigilance in response to the presence of humans (Suryan and Harvey 1999). The seals would very likely react to Wall to Wall filmmakers at distances greater than 46 m, especially at the proposed unrestricted filming sites along the Oregon coast. Seals would definitely react to the filmmakers’ presence at 10 m, the distance at which Wall to Wall would begin to look for adverse seal behaviors before approaching to 5 m. Given that harbor seals often progress quite rapidly from a head raise to movement toward the water, Wall to Wall’s measures would be ineffective at minimizing the risk that animals would be disturbed and ultimately flush into the water.

Of greatest concern is that Wall to Wall plans to approach seals at very sensitive life stages. Wall to Wall noted that the filmmakers would be cognizant of whether an approach was disrupting nursing or any other vital pair-bonding function by noting “reduced suckling time, mothers flushing into the sea and mothers not approaching pups, or moving away from them.” If those behaviors are observed, they would back away from the pair and not block the seals’ route to the water. Filmmakers also would not position themselves between a female and pup. Wall to Wall, however, did not indicate what, if any, additional measures would be taken to minimize impacts on female seals giving birth.

The Commission considers the proposed methods of approach inappropriate and the mitigation measures woefully insufficient, as pregnant and post-partum harbor seals have been shown to be more sensitive to disturbance (Suryan and Harvey 1999), particularly when pups less than nine days of age are present (Stein 1989). Such vulnerable seals are thus likely to exhibit adverse behaviors at the unrestricted sites the moment they detect the filmmakers approaching—this could even occur at distances beyond which the filmmakers are able to see the seals. As such, the potential exists for Wall to Wall to interrupt a female in the process of giving birth or separate a female-pup pair<sup>4</sup> and flush either both of them or just the female into the water. Non-target females and pups present at the haul-out site could be similarly disturbed. A female in labor could lose her pup, a newborn pup<sup>5</sup> could be injured as other animals flush into the water, and a newborn pup could be at risk of being abandoned by the female<sup>6</sup>. All of these outcomes would result in greater than Level B harassment, which would violate the issuance criteria for a photography permit<sup>7</sup>.

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<sup>4</sup> Including one that is actively suckling.

<sup>5</sup> Defined as a pup with its umbilicus still attached or with the lanugo still present.

<sup>6</sup> A newborn pup would be considered abandoned if it is observed for 24 hours or longer without the female present following a disturbance event.

<sup>7</sup> Under section 104(c)(6) of the MMPA, a photography permit can only be issued for taking by Level B harassment.

In short, the risks of approaching seals at unrestricted sites outweigh the benefits of obtaining the footage. The Commission is unconvinced that filming at these locations is necessary. Filming of sensitive life stages could occur at both Casa Beach and Carpinteria as proposed, as well as additional sites in California (e.g., Hopkins Marine Station, Sea Ranch Bluffs, or Fanshell Beach) that are well-established for viewing females and their pups from behind barriers or from bluffs<sup>8</sup>. Hopkins Marine Station may be a particularly suitable filming location for Wall to Wall, as many of the seals are identifiable based on natural pelage markings (Nicholson 2000). [The Harbor Seals of Pacific Grove](#) continues to monitor and is able to identify the individual seals<sup>9</sup> under the guidance of Ms. Nicholson, who is based at the Monterey Bay Aquarium. Filming at this location would allow Wall to Wall to track and film more readily the same pup from birth to weaning, one of the company's primary objectives, as well as to consult with Ms. Nicholson and others involved with the local harbor seal organization. It would otherwise be difficult for Wall to Wall to carry out longitudinal filming successfully, because very few harbor seals are marked or tagged at the proposed filming areas. To avoid undue harassment of females giving birth and females with newborn pups and to ensure that Wall to Wall is able to obtain the footage it seeks, the Commission recommends that NMFS require Wall to Wall to film female harbor seals giving birth, actively nursing female-pup pairs, and newborn pups only at restricted sites where the filmmakers can observe the seals from behind closure barriers or from structures or bluffs overlooking the haul-out sites.

If NMFS chooses to allow Wall to Wall to film females and pups on unrestricted sites, it is critical that the filmmakers observe the behavior of both target and non-target harbor seals for the slightest sign of disturbance at the greatest possible distance and that approaches are made slowly and cautiously. Notwithstanding the previous recommendation, the Commission recommends that NMFS require Wall to Wall to (1) observe the behavior of target and non-target harbor seals for any adverse reactions at the greatest possible distance to the animals<sup>10</sup> rather than beginning observations at a distance of 10 m, (2) retreat carefully, if the filmmakers observe that they are interfering with any vital function<sup>11</sup>, including when a target or non-target female is giving birth or attempting to nurse a newborn pup, and cease filming activities on those animals for that day, (3) retreat if all of the animals flush into the water and only one or more newborn pups remain on the beach and cease filming activities on those animals for that day, and (4) refrain from positioning filmmakers between a female and her pup or between the pup and the water's edge. The Commission further recommends that, if a disturbance event occurs and a newborn pup is injured or observed without the female for 24 hours or longer after the event, NMFS require Wall to Wall to (1) contact the local stranding network responders or West Coast Regional Stranding Coordinator(s) immediately and (2) cease its activities.

*Filming underwater*—Wall to Wall also proposed to film harbor seals underwater using divers, snorkelers, and/or a polecam. It did not indicate which specific types of underwater behaviors it would target, how seals would be approached, or what mitigation measures would be implemented if a seal reacted to the presence of a diver or snorkeler. However, it is well known that copulation occurs underwater, with male harbor seals establishing and defending underwater territories (Hayes et al. 2006). As such, divers and snorkelers could inadvertently position themselves between courting

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<sup>8</sup> Wall to Wall plans to use telephoto lenses, so filming at these sites is practicable.

<sup>9</sup> Including their reproductive stages.

<sup>10</sup> i.e., the distance at which a filmmaker can observe seal behavior clearly with the naked eye or with binoculars.

<sup>11</sup> Similar to condition 3(d) in BBC permit 23117.

or mating seals or two competing males, interfering with those vital functions. Therefore, the Commission recommends that NMFS prohibit Wall to Wall from positioning the divers or snorkelers between (1) fighting male harbor seals, (2) a courting female and male, or (3) a mating female and male. Additionally, the Commission recommends that NMFS require Wall to Wall to approach seals slowly and cautiously underwater and terminate an approach if adverse or evasive changes in behavior are noted<sup>12</sup>.

### **Role of scientific experts**

In its application, Wall to Wall consulted with several pinniped and cetacean experts for its filming activities and referenced their guidance regarding the types of behaviors to observe. Wall to Wall also stated that some of the experts “may be” present for filming. If NMFS allows Wall to Wall to film at unrestricted sites, Wall to Wall must have a harbor seal expert accompany its field team at South Casa Beach and the Oregon sites until filmmakers capture footage of a seal giving birth. The Commission feels strongly about this for several reasons. First, none of the filmmakers indicated that they have experience filming harbor seals. Having an expert in the field allows the filmmakers to learn firsthand about the various types of seal behavior that constitute disturbance and enables them to identify behavior that would necessitate a retreat. In particular, understanding the behavior of harbor seals giving birth is of utmost importance given the critical nature of such an event, the sensitivity of the animals to human presence, and the filmmakers’ intention to closely approach and film those sensitive life stages. An expert also could help the filmmakers identify when a disturbance event could lead to a female abandoning her pup and whether a pup should be considered abandoned. Second, an expert present in the initial days of filming can help the filmmakers identify seals that are suitable for potential longitudinal filming. Third, it is important for an expert to be present in both California and Oregon, as the response of seals to humans likely varies among the filming sites depending on the normal proximity of the public to the seals. Finally, based on Wall to Wall proposing inappropriate minimum approach distances to the harbor seals, it is clear that the filmmakers would benefit from an expert’s advice in the field regarding approaching harbor seals and conducting the various filming activities. If NMFS allows filming to occur at unrestricted sites, the Commission recommends that NMFS require a harbor seal expert to accompany Wall to Wall into the field at the beginning of harbor seal filming activities at South Casa Beach and at the Oregon sites until filmmakers capture footage of a seal giving birth.

### **Incidental harassment of harbor seals**

Wall to Wall proposed to target for filming only a few harbor seals of each age class and sex<sup>13</sup> at each site rather than film all hauled-out seals. As with any activity that specifically targets certain individuals of a group, approaching and filming a particular harbor seal at a haul-out site likely would result in the incidental harassment of other harbor seals. Wall to Wall indirectly acknowledged that incidental harassment of other seals could result from its filming activities, as it requested 600 takes of harbor seals in both California and Oregon to account for the possible flushing of an entire colony of 150 animals up to four times in a year of filming. Thus, in its informal comments, the Commission indicated that “incidental harassment” should be included in the procedure column for harbor seals in the take tables. However, that addition to the procedures was

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<sup>12</sup> Similar to condition 3(m) in BBC permit 23117.

<sup>13</sup> Including three neonates, three pups, three juveniles, three adult females, and five adult males.

not made. As the Commission noted in its [14 November 2019 letter](#) regarding NMFS's revised application instructions, pinnipeds have the potential to be harassed directly or incidentally during certain activities and so both types of takes should be included in the relevant take tables. NMFS followed that approach when it issued the BBC's final permit (23117) authorizing it to film Weddell seals. In the case of Wall to Wall, it is even more evident that incidental harassment takes, in addition to direct takes, could result from the proposed filming activities, given that the filmmakers have clearly requested to target only certain harbor seals. As such, the Commission recommends that NMFS include incidental harassment as a procedure for harbor seals in Wall to Wall's take tables for both California and Oregon

### **Filming at South Casa Beach**

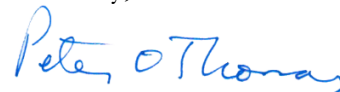
Unlike Casa Beach/Children's Pool, the much smaller South Casa Beach allows visitors unrestricted access to harbor seals and their pups, which have begun hauling out more frequently there. Based on issues with the public approaching and harassing harbor seals at South Casa Beach, NMFS installed signage in 2017 discouraging visitors from crowding in and taking photos with the seals. Visitors present during Wall to Wall's filming activities and who observe the filmmakers' close approaches to the seals may be inclined to ignore NMFS's signage and conclude that they too can approach the seals closely. To avoid possible violations of the MMPA by the public, the Commission recommends that NMFS require Wall to Wall to display information about its permit<sup>14</sup> clearly and conspicuously while filming harbor seals or any other pinnipeds on South Casa Beach.

### **Permit end date**

The Commission notes that, if Wall to Wall intends to begin filming on 1 April 2020 and film for only one year, it would miss the peak of the pupping season in California and would likely need to extend the duration of its permit. As such, the Commission suggests that, if NMFS plans on issuing Wall to Wall's permit on 1 April 2020, NMFS extend the end date of the permit to ensure that Wall to Wall can complete its filming activities without having to request an additional extension to its permit.

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 recommendation.

Sincerely,



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

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<sup>14</sup> Similar to researchers flying flags with their permit numbers while conducting vessel-based activities on cetaceans.

## References

- Hayes, S.A., D.E. Pearse, D.P. Costa, J.T. Harvey, B.J. Le Boeuf, and J.C. Garza. 2006. Mating system and reproductive success in eastern Pacific harbour seals. *Molecular Ecology* 15:3023–3034.
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