

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 022399A]

## Marine Mammals; File No. 782-1447-02

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit amendment.

**SUMMARY:** Notice is hereby given that the National Marine Mammal Laboratory, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0070 has been issued an amendment to scientific research Permit No. 782-1447.

**ADDRESSES:** The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802-1668 (907/586-7221).

**FOR FURTHER INFORMATION CONTACT:** Sara Shapiro or Ruth Johnson, 301/713-2289.

**SUPPLEMENTARY INFORMATION:** On January 14, 1999, notice was published in the **Federal Register** (64 FR 2472) that an amendment of Permit No. 782-1447, issued May 20, 1998 (63 FR 30201), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 782-1447 authorizes the National Marine Mammal Laboratory to: count, capture, handle, flipper tag, blood sample, and biopsy sample Steller sea lion pups (*Eumetopias jubatus*); dart biopsy adult and juvenile Steller sea lions; and disturb Stellers of all ages through aerial surveys over a two-year period. Research activities are scheduled to take place in Alaska. In

addition, the Holder is authorized to disturb a small number of northern fur seals (*Callorhinus ursinus*) on Bogoslof Island during aerial surveys.

This amendment now authorizes the Holder to: (1) conduct aerial surveys in February and March; (2) collect 25 cc blood from young-of-the-year and capture and handle all pups from March through July; and (3) administer Valium (5 mg/ml) to restrained sea lions as needed to minimize the potential for injury to animals and handlers.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 26, 1999.

**Ann D. Terbush,**

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99-5500 Filed 3-4-99; 8:45 am]

BILLING CODE 3510-22-F

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[I.D. 021199B]

## Marine Mammals; File No. P368F

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit amendment.

**SUMMARY:** Notice is hereby given that Dr. James T. Harvey, Associate Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039-0450, has been issued an amendment to scientific research Permit No. 974 (File No. P368F).

**ADDRESSES:** The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213 (562/980-4001).

**FOR FURTHER INFORMATION CONTACT:** Sara Shapiro or Ruth Johnson, 301/713-2289.

**SUPPLEMENTARY INFORMATION:** On June 30, 1998, notice was published in the **Federal Register** (63 FR 35568) that an amendment of Permit No. 974, issued August 25, 1995 (60 FR 46577), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 974 authorizes the permit holder to: determine body fat of harbor seals (*Phoca vitulina*); handle 20 harbor seal pups up to four times and 80 pups one time annually to track changes in health, physiological condition, and diving behavior; handle 20 adults and 20 juveniles four times annually to determine seasonal shifts in health, physiological condition, and diving behavior; and harass 600 harbor seals as a result of the above activities. The permit holder is now authorized to increase: 1) the total number of takes of non-pups and 2) the number of seals to be inadvertently harassed during scat collection.

Dated: March 2, 1999.

**Ann D. Terbush,**

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99-5502 Filed 3-4-99; 8:45 am]

BILLING CODE 3510-22-F

## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 99-C0004]

## Carter Brothers Manufacturing Co., Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Carter Brothers Manufacturing Co., Inc., a corporation, containing a civil penalty of \$125,000.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with

the Office of the Secretary by March 20, 1999.

**ADDRESSES:** Person wishing to comment on this Settlement Agreement should send written comments to the Comment 99-C0004, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Ronald G. Yelenik, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0626, 1346.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: March 1, 1999.

**Sadye E. Dunn,**  
*Secretary.*

### Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between Carter Brothers Manufacturing Co., Inc. ("Carter Brothers" or "Respondent"), and the staff of the Consumer Product Safety Commission ("staff"), pursuant to the procedures set forth in 16 CFR 1118.20, is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

### The Parties

2. The staff is the staff of the Consumer Product Safety Commission ("Commission"), an independent federal regulatory agency of the United States government, established by Congress pursuant to section 4 of the Consumer Product Safety Act ("CPSA"), as amended, 15 U.S.C. 2053.

3. Respondent Carter Brothers is a corporation organized and existing under the laws of the State of Alabama with its principal corporate offices located in Brundidge, Alabama. Respondent is a manufacturer of go-carts and lawn mowers.

### Staff Allegations

4. Section 15(b) of the CPSA, 15 U.S.C. 2064(b) requires a manufacturer of a consumer product who, inter alia, obtains information that reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard or creates an unreasonable risk of serious injury or death, to immediately inform the Commission of the defect or risk.

5. Between October 1992 and March 1995, Carter Brothers, manufactured and sold, approximately 1,700 model 2535 go-carts ("go-carts(s)"). A go-cart is a "consumer product" and Carter Brothers is a "manufacturer" of a

"consumer product," which is "distributed in commerce" as those terms are defined in sections 3(a)(1), (4), (11) of the CPSA, 15 U.S.C. 2052(a)(1), (4), (11).

6. The go-carts are defective because there is an open space between the engine and the belt-chain guard, which covers the drive shaft mechanism. Hair and clothing entrapment is possible in the open space around the belt-chain guard, which could lead to serious injury or death.

7. On July 26, 1994, Carter Brothers learned of an incident in which a nine-year old girl was killed when her hair became entangled in the drive shaft mechanism of the go-cart.

8. On July 28, 1994, Carter Brothers became aware of another hair entanglement incident involving the go-cart in which a young girl sustained a fractured skull.

9. Between August 1994 and February 1996, Carter Brothers made several design and material changes to the go-cart and engaged in a corrective action and notice program in an attempt to address the problem in question.

10. Not until May 17, 1996, after receiving a letter from the staff requesting generic information about go-cart entrapment incidents, did Carter Brothers provide any information about the go-carts. However, the information provided by Respondent at this time was very limited in nature.

11. Although Carter Brothers had obtained sufficient information to reasonably support the conclusion that these go-carts contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to report such information to the Commission, as required by section 15(b) of the CPSA. This is a violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

12. Carter Brother's failure to report to the Commission, as required by section 15(b) of the CPSA, was committed "knowingly," as that term is defined in section 20(d) of the CPSA, and Respondent is subject to civil penalties under section 20 of the CPSA.

### Response of Carter Brothers

13. Carter Brothers denies it violated the CPSA.

### Agreement of the Parties

14. The Commission has jurisdiction over this matter under the CPSA, 15 U.S.C. 2051-2084.

15. Carter Brothers agrees to pay to the Commission a civil penalty in the amount of one hundred twenty five thousand dollars (\$125,000) payable as

follows: \$41,666.66 within 20 days of the service of the Final Order upon Respondent, \$41,666.66 three months thereafter, and an additional \$41,666.66 three months after that.

16. Respondent knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's Order, (3) to a determination by the Commission as to whether Respondent failed to comply with section 15(b) of the CPSA, as alleged, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

17. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and order within 15 days, the Settlement Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

18. This Settlement Agreement and Order becomes effective upon its final acceptance by the Commission and service upon Respondent.

19. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and Order.

20. The provisions of this Settlement Agreement and Order shall apply to Respondent, its successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality.

21. Carter Brothers agrees to immediately inform the Commission if it learns of any additional incidents involving the go-carts, or any additional information regarding the alleged defect and hazard identified in paragraph six, herein.

22. Nothing in this Settlement Agreement and Order shall be construed to preclude the Commission from pursuing a corrective action or other relief not described above.

23. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made

outside of this Settlement Agreement and Order may not be used to vary or contradict its terms.

Dated: January 5, 1999.

Stuart W. Arn,

*President, Carter Brothers Mfg. Co., Inc.*

The Consumer Product Safety Commission

Alan H. Schoem,

*Assistant Executive Director, Office of Compliance.*

Eric L. Stone,

*Director, Legal Division, Office of Compliance.*

Dated: January 22, 1999.

Ronald G. Yelenik,

*Trial Attorney, Legal Division, Office of Compliance.*

### Order

Upon consideration of the Settlement Agreement between Respondent Carter Brothers Manufacturing Co., Inc., a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Carter Brothers Manufacturing Co., Inc., and it appearing the Settlement Agreement is in the public interest, it is

*Ordered*, that the Settlement Agreement be and hereby is accepted, and it is

*Ordered*, that Carter Brothers Manufacturing Co., Inc. shall pay to the order of the U.S. Treasury a civil penalty in the amount of one hundred twenty five thousand dollars (\$125,000), payable as follows: \$41,666.66 within 20 days of the service of the Final Order upon Respondent, \$41,666.67 three months thereafter, and an additional \$41,666.67 three months after that.

Upon failing to make a payment or upon making a payment that is at least five days late, the outstanding balance of the civil penalty shall become due and payable by Carter Brothers Manufacturing Co., Inc., and the interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. sections 1961 (a) and (b).

*Further ordered*, Carter Brothers Manufacturing Co., Inc. shall immediately inform the Commission if it learns of any additional incidents involving the go-carts, or any additional information regarding the alleged defect and hazard identified herein.

Provisionally accepted and Provisional Order issued on the 1st day of March, 1999.

By Order of the Commission.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 99-5408 Filed 3-4-99; 8:45 am]

BILLING CODE 6355-01-M

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Jackson Port Environmental Impact Statement (EIS) for Proposed Public Port Facilities on the Tombigbee River at the City of Jackson, in Clarke County, Alabama

**AGENCY:** U.S. Army Corps of Engineers, Mobile District, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** This Notice of Availability announces the public release of the Draft (EIS) for the Proposed Public Port Facilities on the Tombigbee River at the City of Jackson, in Clarke County, Alabama. This Draft EIS has been prepared and released for public review and comment in compliance with the National Environmental Policy Act (40 Code of Federal Regulation, parts 1500-1508). The comment period begins March 5, 1999 and extends to April 19, 1999. The actions proposed and analyzed in the EIS include the construction of a spur canal and port facilities off the Black Warrior-Tombigbee River Federal navigation channel in Jackson, Alabama. The Federal construction of the spur canal would facilitate construction of a public port facility by the City of Jackson pursuant to authorization by a Department of the Army permit. It identifies existing environmental conditions at the City of Jackson's proposed port site and analyzes the impacts of the U.S. Army Corps of Engineers proposed construction of a Federal spur canal at the site, as well as the City of Jackson's proposed phased port development under a Department of the Army permit application. The potential impacts analyzed in the Draft EIS include impacts to water resources, ecological resources, cultural resources, and sociological resources. The principal objective of the EIS is to provide a complete, objective appraisal of the positive and negative impacts of the proposed overall port development action (including both Federal and non-Federal components), and mitigation alternatives.

**FOR FURTHER INFORMATION CONTACT:** Beverley Stout, Jackson Port EIS Project Coordinator, U.S. Army Corps of Engineers, Mobile District, CESAM-PD-EI, Post Office Box 2288, Mobile AL 36602-0001, phone number (334) 694-4637, facsimile number (334) 694-3815, or e-mail address (Beverley.H.Statut@sam.usace.army.mil).

**SUPPLEMENTARY INFORMATION:** The purpose of the EIS is to provide sufficient information to support a decision by the Mobile District Engineer for construction of Federal navigation facilities which would provide for development of a public port on the Tombigbee River, at Jackson, Clarke County, Alabama; and to support a decision by the District Engineer on issuance of a Section 10 and Section 404 permit to the City of Jackson Industrial Development board for construction of the ancillary port development facilities adjacent to the Federal navigation facilities. The proposed alternatives are divided into two Federal project alternatives (FP-A and FP-B) and three City of Jackson Alternatives. There are also three no action alternatives. The purpose of both of the Federal project alternatives is to expand the existing barge slop to a 300-foot-wide by 1000-foot-long spur canal to provide navigation facilities to support a public port facility at Jackson, Alabama. This would include suitable disposal areas to accommodate construction and future maintenance dredging. Alternative FP-A has a total development area of 140.0 acres and alternative FP-B has a total development area of 121.6 acres. The total wetland development areas for alternatives FP-A and FP-B are 18.3 acres and 10.1 acres, respectively. The City of Jackson plans to completely develop the Jackson Port through three proposed Jackson Port phases. The purpose of the City of Jackson's proposed port development is to provide ancillary port infrastructure to accommodate berthing, docking and terminal facilities, and transloading/temporary storage areas for industrial users requiring port-related facilities. The port-related facilities would be adjacent to the Federal spur canal. The City of Jackson project would also accommodate disposal of materials associated with construction and future maintenance of the vessel berthing areas. The three Jackson Port phases would involve continuing development and expansion to the Federal projects. Jackson Port Phase 1, Jackson Port Phase 2, and Jackson Port Phase 3 have total development areas of 206.4 acres, 235.0 acres, and 343.5 acres, respectively. The total wetland development areas for these phases are 70.0 acres, 94.2 acres, and 189.1 acres, respectively. The three no action alternatives are No Federal Project/No City Project (No Action Alternative (1)); No Federal Project/City Project constructed (No Action Alternative (2)); and Federal Project constructed/No City Project (No Action Alternative (3)). No Action Alternative 1