

sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 21, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011-16217 Filed 6-27-11; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XA521**

#### Fisheries of the South Atlantic and Gulf of Mexico; South Atlantic Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting via conference call.

**SUMMARY:** The South Atlantic Fishery Management Council (SAFMC) will hold a meeting of its Scientific and Statistical Committee (SSC) to discuss the Acceptable Biological Catch (ABC) recommendation for Atlantic Migratory Group Spanish mackerel and assessment priorities for 2013. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The meeting will be held on Friday, July 29, 2011, via conference call from 1:30 p.m. to 2:30 p.m. E.D.T. See **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** Listening stations are available at the South Atlantic Fishery Management Council, 4055 Faber Place Drive #201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; *telephone:* (843) 571-4366; *e-mail:* [Kim.Iverson@safmc.net](mailto:Kim.Iverson@safmc.net).

**SUPPLEMENTARY INFORMATION:** Under the Magnuson-Stevens Reauthorized Act, the SSC is the body responsible for reviewing the Council's scientific materials. The SSC will discuss an alternative approach to deriving ABC for Atlantic Migratory Group Spanish Mackerel and SEDAR assessment priorities for 2013.

#### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 3 business days prior to the meeting.

Dated: June 23, 2011.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2011-16168 Filed 6-27-11; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XA522**

#### Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a meeting of its Law Enforcement AP in Orlando, FL.

**DATES:** The meeting will take place July 20, 2011. See **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will be held at the Marriott Renaissance Orlando Hotel, 5445 Forbes Place, Orlando, FL 32812; *telephone:* (407) 240-1000.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *telephone:* (843) 571-4366 or *toll free:* (866) SAFMC-10; *fax:* (843) 769-4520; *e-mail:* [kim.iverson@safmc.net](mailto:kim.iverson@safmc.net).

**SUPPLEMENTARY INFORMATION:** Members of the Law Enforcement AP will meet from 8:30 a.m. to 5 p.m. on July 20, 2011.

The Law Enforcement AP will review the Comprehensive Annual Catch Limit (ACL) Amendment as well as Regulatory Amendment 11 to the Snapper Grouper Fishery Management Plan. The Comprehensive ACL Amendment establishes ACLs and Accountability Measures for species not undergoing overfishing in order to comply with the Magnuson-Stevens Act. Changes affect snapper grouper complex species, dolphin, wahoo and golden crab. Regulatory Amendment 11 addresses the current 240-foot depth closure (also known as the 40-fathom closure) implemented through Amendment 17B. The closure currently applies to deepwater snapper grouper species (snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper) and

was put in place to minimize bycatch of speckled hind and warsaw grouper. The AP will receive an overview of the amendments and provide recommendations.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

Dated: June 23, 2011.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2011-16170 Filed 6-27-11; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XA402**

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Monterey Bay National Marine Sanctuary (MBNMS) to incidentally harass, by Level B harassment only, two species of marine mammals incidental to permitting professional fireworks

displays within the sanctuary in California waters.

**DATES:** This authorization is effective from July 4, 2011, through July 3, 2012.

**ADDRESSES:** A copy of the IHA and application are available by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Supplemental documents are available at the same site. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, NMFS, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and monitoring and reporting of such takings. NMFS has defined "negligible impact" in 50 CFR 216.103 as "\* \* \* an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for

NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

**Summary of Request**

On April 28, 2011, NMFS received an application from the MBNMS requesting an IHA under section 101 (a)(5)(D) of the MMPA for the potential harassment of California sea lions (*Zalophus californianus*) and harbor seals (*Phoca vitulina*) incidental to coastal fireworks displays conducted at MBNMS under permits issued by MBNMS. This would effectively constitute a renewed authorization; NMFS first issued an IHA to MBNMS on July 4, 2005 (70 FR 39235; July 7, 2005), and subsequently issued five-year regulations governing the annual issuance of Letters of Authorization under section 101 (a)(5)(A) of the MMPA (71 FR 40928; July 19, 2006). Those regulations expire on July 3, 2011.

The MBNMS adjoins 276 mi (444 km), or approximately 25 percent, of the central California coastline, and encompasses ocean waters from mean high tide to an average of 25 mi (40 km) offshore between Rocky Point in Marin County and Cambria in San Luis Obispo County. Fireworks displays have been conducted over current MBNMS waters for many years as part of national and community celebrations (e.g., Independence Day, municipal anniversaries), and to foster public use and enjoyment of the marine environment. In central California, marine venues are the preferred setting for fireworks in order to optimize public access and avoid the fire hazard associated with terrestrial display sites. Many fireworks displays occur at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers.

In 1992, the MBNMS was the first national marine sanctuary (NMS) to be

designated along urban shorelines and therefore has addressed many regulatory issues previously not encountered by the NMS program. Since 1993, the MBNMS, a component of NOAA's Office of National Marine Sanctuaries, has processed requests for the professional display of fireworks that affect the sanctuary. The MBNMS has determined that debris fallout (i.e., spent pyrotechnic materials) from fireworks events may constitute a discharge into the sanctuary and thus violate sanctuary regulations, unless a permit is issued by the superintendent. Therefore, sponsors of fireworks displays conducted in the MBNMS are required to obtain sanctuary authorization prior to conducting such displays (see 15 CFR 922.132).

Authorization of professional fireworks displays has required a steady refinement of policies and procedures related to this activity. Fireworks displays, and the attendant increase in human activity, are known to result in the behavioral disturbance of pinnipeds, although there is no known instance of this disturbance resulting in more than temporary abandonment of haul-outs. As a result, pinnipeds hauled out in the vicinity of permitted fireworks displays may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA. Numbers of California sea lions and harbor seals, the species that may be subject to harassment, have been recorded extensively at four regions where fireworks displays are permitted in MBNMS. Based on these data and MBNMS' estimated maximum number of fireworks displays, NMFS has authorized MBNMS' request to incidentally harass up to 6,170 California sea lions and 1,065 harbor seals during the one-year time span of the proposed IHA, from July 4, 2011 to July 3, 2012.

**Description of the Specified Activity**

In accordance with regulations implementing the MMPA, NMFS published notice of the proposed IHA in the **Federal Register** on May 20, 2011 (76 FR 29196). A complete description of the action was included in that notice and will not be reproduced here.

The MBNMS has issued 87 permits for professional fireworks displays since 1993. However, the MBNMS staff projects that as many as 20 coastal displays per year may be conducted in, or adjacent to, MBNMS boundaries in the future. Thus, the number of displays will be limited to not more than 20 events per year in four specific areas along 276 mi (444 km) of coastline. Fireworks displays will not exceed 30

minutes (with the exception of up to two displays per year, each not to exceed 1 hour) in duration and will occur with an average frequency of less than or equal to once every two months within each of the four prescribed display areas. NMFS believes—and extensive monitoring data indicates—that incidental take resulting from fireworks displays will be, at most, the short-term flushing and evacuation of non-breeding haul-out sites by California sea lions and harbor seals.

MBNMS' four designated display areas, which were described in detail in NMFS' notice of proposed IHA (76 FR 29196), include Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek). The number of displays will be limited to not more than 20 total events per year within these four specific areas combined, along the whole 276 mi (444 km) of coastline. This effectively limits permitted fireworks displays to approximately five percent of the MBNMS coastline.

A more detailed description of the fireworks displays permitted by MBNMS may be found in MBNMS' application, in MBNMS' Assessment of Pyrotechnic Displays and Impacts within the MBNMS 1993–2001 (2001), or in the report of Marine Mammal Acoustic and Behavioral Monitoring for the MBNMS Fireworks Display, 4 July 2007 (2007), which are available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

### Comments and Responses

On May 20, 2011, NMFS published a notice of the proposed IHA (76 FR 29196) in response to MBNMS' request to take marine mammals incidental to permitting of coastal fireworks displays and requested comments and information concerning that request. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (MMC). The MMC recommended that NMFS issue the requested authorization, subject to inclusion of the proposed mitigation and monitoring measures. As described in this document, NMFS has included the proposed measures in the final authorization.

### Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species that may be harassed incidental to permitted fireworks displays are the harbor seal and California sea lion. Neither of these species is listed as threatened or endangered under the ESA, nor are they

categorized as depleted under the MMPA. NMFS presented a more detailed discussion of the status of these stocks and their occurrence in the action area in the notice of the proposed IHA (76 FR 29196; May 20, 2011).

### Potential Effects of the Activity on Marine Mammals

NMFS has determined that permitted coastal fireworks displays, as outlined in the project description, have the potential to result in behavioral harassment of California sea lions and harbor seals that may be swimming, foraging, or resting in the display vicinity. Based on the analysis contained in NMFS' notice of proposed IHA, it is unlikely that this project will result in temporary or permanent hearing impairment or non-auditory physical or physiological effects for any marine mammal. Given the frequency, duration, and intensity of sounds (maximum measured 82 dB sound pressure level for larger aerial shells) that marine mammals may be exposed to, it is unlikely that they would sustain temporary, much less permanent, hearing impairment during fireworks displays. Observations of behavioral disturbance of pinnipeds, resulting from sound and light from fireworks displays or from increased vessel traffic in the vicinity of a display, have been limited to short-term disturbance only.

The effects of behavioral disturbance resulting from this project are difficult to predict, as behavioral responses to sound are highly variable and context specific. A number of factors may influence an animal's response to noise, including its previous experience, its auditory sensitivity, its biological and social status (including age and sex), and its behavioral state and activity at the time of exposure. These behavioral changes may include changes in vocalization; visible startle response or aggressive behavior; avoidance of areas where noise sources are located; and/or flight responses. Pinnipeds may increase their time spent in water, possibly to avoid disturbance on land. Because permitted fireworks displays are limited in number and are of short duration, they are unlikely to result in permanent displacement from a given area. In addition, timing restrictions are in place to ensure that no displays are permitted during sensitive breeding periods. Temporary avoidance of haul-out areas resulting from fireworks displays could be experienced by individual marine mammals but would not be likely to cause population level impacts, or affect any individual's long-term fitness.

### Anticipated Effects on Habitat

NMFS provided a detailed discussion of the potential effects of this action on marine mammal habitat in the notice of the proposed IHA (76 FR 29196; May 20, 2011). Coastal fireworks displays at MBNMS will not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, and are unlikely to impact food sources such as forage fish. As described in the proposed IHA, impacts to habitat could come through debris or chemical residue from fireworks. However, no negative impacts to water quality have been detected, and it is unlikely that the limited amount of fireworks used per year would degrade habitats. In addition, MBNMS requires permittees to remove all debris following fireworks displays. While some debris is likely to remain, NMFS does not believe the small amount of remaining debris is likely to significantly impact the environment, including marine mammals or their habitat. Therefore, the main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed previously in this document, and habitat is unlikely to suffer significant impacts.

### Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The MBNMS and NMFS worked to craft a set of mitigation measures designed to minimize fireworks impacts on the marine environment, as well as to outline the locations, frequency, and conditions under which the MBNMS will authorize marine fireworks displays. These mitigation measures, which were successfully implemented under NMFS-issued ITAs from 2005–2010, include four broad approaches for managing fireworks displays:

- Establish a sanctuary-wide seasonal prohibition to safeguard pinniped reproductive periods. Fireworks events will not be authorized between March 1 and June 30 of any year, since this period is the primary reproductive season for pinnipeds in MBNMS.
- Establish four conditional display areas and prohibit displays along the

remaining 95 percent of sanctuary coastal areas. Permitted fireworks displays will be confined to four prescribed areas of the sanctuary while prohibiting displays along the remaining 95 percent of sanctuary coastal areas. The conditional display areas are located at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek).

- Create a per-annum limit on the number of displays allowed in each display area. There is a per-annum limit of 20 displays along the entire sanctuary coastline in order to prevent cumulative negative environmental effects from fireworks proliferation. Additionally, displays will be authorized at a frequency equal to or less than one every two months in each area.

- Retain permitting requirements and general and special restrictions for each event. Fireworks displays will not exceed thirty minutes with the exception of two longer displays per year that will not exceed one hour. Standard requirements include the use of a ramp-up period, wherein salutes are not allowed in the first five minutes of the display; the removal of plastic and aluminum labels and wrappings; and post-show reporting and cleanup. The sanctuary will continue to assess displays and restrict the number of aerial salute effects on a case-by-case basis, and will implement general and special restrictions unique to each fireworks event as necessary.

These measures are designed to prevent an incremental proliferation of fireworks displays and disturbance throughout the sanctuary and minimize area of impact by confining displays to primary traditional use areas. They also effectively remove fireworks impacts from 95 percent of the sanctuary's coastal areas, place an annual quota and multiple permit conditions on the displays authorized within the remaining five percent of the coast, and impose a sanctuary-wide seasonal prohibition on all fireworks displays. These measures were developed in order to assure that protected species and habitats are not jeopardized by fireworks activities. They have been well received by local fireworks sponsors who have pledged their cooperation in protecting sanctuary resources.

NMFS has carefully evaluated the mitigation measures described previously and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our

evaluation of potential measures includes consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

It is unlikely that injury, serious injury, or mortality to marine mammals would result from any permitted coastal fireworks display. The impacts of the project will likely be limited to temporary behavioral disturbance. However, to reduce the amount and degree of behavioral disturbance that occurs, NMFS and MBNMS have developed the previously described mitigation measures. Based on evaluation of the applicant's proposed measures and their efficacy over the past 6 years of permitting fireworks, NMFS has determined that these mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

#### Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

The MBNMS has monitored commercial fireworks displays for potential impacts to marine life and habitats for many years, beginning in 1993. Though monitoring techniques and intensity have varied over the years and visual monitoring of wildlife abundance and behavioral responses to nighttime displays is challenging, observed impacts have been consistent. Wildlife activity nearest to disturbance areas returns to normal (pre-display species distribution, abundance, and activity patterns) within 12–15 hours, and no signs of wildlife injury or mortality have ever been discovered as a result of managed fireworks displays.

In order to continue the long-term understanding of the effects of fireworks displays on pinnipeds, as well as to estimate levels of incidental take and ensure compliance with MMPA authorizations, MBNMS will require its applicants to conduct a pre-event census of local marine mammal populations within the acute fireworks impact area no earlier than 36 hours prior to the display. Each applicant will also be required to conduct post-event monitoring in the acute fireworks impact area to record injured or dead marine mammals, within 24 hours of completion of the display. In addition, applicants will be required to notify NMFS and the local stranding network of any injured or dead marine mammals discovered during post-event monitoring.

MBNMS must submit a draft annual monitoring report to NMFS within 60 days after the conclusion of the calendar year. MBNMS must submit a final annual monitoring report to the NMFS within thirty days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final report. In addition, the MBNMS will continue to make its information available to other marine mammal researchers upon request.

#### Estimated Take by Incidental Harassment

NMFS is authorizing MBNMS to take harbor seals and California sea lions, by Level B harassment only, incidental to permitting of coastal fireworks displays. These activities are expected to harass marine mammals present in the vicinity of the displays through behavioral disturbance only, in the form of temporary evacuation of usual and accustomed haul-out sites. The estimated take of sea lions and harbor seals was determined by using a synthesis of information, including unpublished data gathered by MBNMS biologists at the specific display sites, unpublished aerial survey data from Point Piedras Blancas to Bodega Rock, results of independent surveys conducted in the MBNMS and personal communication with those researchers, and population estimates from surveys covering larger geographic areas. Numbers of animals that may be present were analyzed for four general areas: Half Moon Bay (HMB), North Monterey Bay (NMB; containing Santa Cruz/Soquel sites), South Monterey Bay (SMB; containing Monterey Peninsula sites), and Cambria. Table 1 details the total number of authorized takes. Methodology of take estimation was

discussed in detail in NMFS' notice of proposed IHA (76 FR 29196; May 20, 2011).

TABLE 1—AUTHORIZED NUMBERS OF INCIDENTAL MARINE MAMMAL TAKES, BY DISPLAY AREA

| Display location                | Time of year  | Estimated maximum number of events per year | Estimated maximum number of animals present per event (total) |              |
|---------------------------------|---------------|---|---|--------------|
|                                 |               |   | California sea lions  | Harbor seals |
| HMB .....                       | July .....    | 4   | 100 (400)   | 65 (260)     |
| NMB (Santa Cruz) .....          | October ..... | 3   | 190 (570)   | 5 (15)       |
| NMB (Aptos) .....               | October ..... | 2   | 5 (10)  | 50 (100)     |
| NMB (Capitola) .....            | May .....     | 1   | 190   | 50           |
| SMB (Monterey) .....            | July .....    | 4   | 800 (3,200)   | 60 (240)     |
| SMB (Monterey) .....            | January ..... | 1   | 1,500   | 60           |
| SMB (Pacific Grove) .....       | July .....    | 1   | 150   | 100          |
| Cambria* (high intensity) ..... | July .....    | 2   | 50 (100)  | 60 (120)     |
| Cambria* (low intensity) .....  | July .....    | 2   | 25 (50)   | 60 (120)     |
| Total .....                     | .....         | 20  | 6,170   | 1,065        |

\* Intensity refers to public and private displays. Private displays tend to be of lower intensity, and would thus likely result in lower numbers of California sea lions disturbed. Harbor seals are more sensitive to stimuli than California sea lions and numbers disturbed would likely be unchanged.

**Negligible Impact and Small Numbers Analysis and Determination**

NMFS has defined “negligible impact” in 50 CFR 216.103 as “ \* \* \* an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

In determining whether or not authorized incidental take will have a negligible impact on affected species stocks, NMFS considers a number of criteria regarding the impact of the proposed action, including the number, nature, intensity, and duration of Level B harassment take that may occur. The effects of coastal fireworks displays are typically limited to short term and localized changes in behavior, including temporary departures from haul-outs to avoid the sight and sound of commercial fireworks. Fireworks displays are inherently highly limited in duration and will not occur on consecutive days at any fireworks site in the sanctuary. The mitigation measures proposed by MBNMS—and implemented as components of NMFS’ incidental take authorizations since 2005—further reduce potential impacts. As described previously, these measures ensure that permitted fireworks displays avoid times of importance for breeding, as well as limiting displays to five percent of sanctuary coastline that is already heavily used by humans, and generally limiting the overall amount and intensity of activity. No take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned

previously in this document. Additionally, the MBNMS fireworks displays will not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence use, as there are no subsistence uses for California sea lions or harbor seals in California waters.

As shown in Table 1, at all four designated display sites combined, twenty fireworks events per year could likely disturb a maximum total of 6,170 California sea lions out of a total estimated population of 238,000. This number is small relative to the population size (2.6 percent). For harbor seals, a maximum of 1,065 animals out of a total estimated population of 34,233 could be disturbed within the sanctuary as a result of twenty fireworks events per year at all four designated display sites combined. These numbers are small relative to the population size (3.1 percent).

Based on the foregoing analysis, behavioral disturbance to marine mammals in MBNMS will be of low intensity and limited duration. To ensure minimal disturbance, MBNMS will implement the mitigation measures described previously, which NMFS has determined will serve as the means for effecting the least practicable adverse effect on marine mammals stocks or populations and their habitat. NMFS finds that MBNMS’ permitting of coastal fireworks displays will result in the incidental take of small numbers of marine mammals, and that the authorized number of takes will have no more than a negligible impact on the affected species and stocks.

**Impact on Availability of Affected Species for Taking for Subsistence Uses**

There are no relevant subsistence uses of marine mammals implicated by this action.

**Endangered Species Act (ESA)**

There are no ESA-listed marine mammals under NMFS’ jurisdiction found in the action area that will be affected by the action; therefore, no consultation under the ESA is required by NMFS.

**National Environmental Policy Act (NEPA)**

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS and MBNMS prepared an Environmental Assessment (EA) on the Issuance of Regulations Authorizing Incidental Take of Marine Mammals and Issuance of National Marine Sanctuary Authorizations for Coastal Commercial Fireworks Displays within the Monterey Bay National Marine Sanctuary, to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of sanctuary permits for fireworks displays and issuance of an IHA to MBNMS. NMFS signed a Finding of No Significant Impact (FONSI) on June 21, 2006. NMFS has reviewed MBNMS’s application and determined that there are no substantial changes to the proposed action and that there are no new direct, indirect, or cumulative effects to the human environment resulting from issuance of an IHA to

MBNMS. Therefore, NMFS has determined that a new or supplemental EA or Environmental Impact Statement is unnecessary, and reaffirms the existing FONSI for this action. The existing EA and FONSI for this action are available for review at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

#### Determinations

NMFS has determined that the impact of conducting the specific activities described in this notice and in the IHA request in the specific geographic region in California may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

#### Authorization

As a result of these determinations, NMFS has issued an IHA to MBNMS to permit fireworks displays in the coastal waters of California from the period of July 4, 2011, through July 3, 2012, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 23, 2011.

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2011-16204 Filed 6-27-11; 8:45 am]

**BILLING CODE 3510-22-P**

## CONSUMER PRODUCT SAFETY COMMISSION

[CPSA Docket No. 11-C0005]

### Viking Range 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 Viking Range Corporation, containing a civil penalty of \$450,000.00.

**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 July 13, 2011.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 11-C0005, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

**FOR FURTHER INFORMATION CONTACT:** William J. Moore, Trial Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7583.

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

Dated: June 21, 2011.

**Todd A. Stevenson,**  
*Secretary.*

#### Settlement Agreement

1. In accordance with 16 CFR 1118.20, Viking Range Corporation (“Viking”) and the staff (“Staff”) of the United States Consumer Product Safety Commission (“Commission”) hereby enter into this Settlement Agreement (“Agreement”) under the Consumer Product Safety Act (“CPSA”). The Agreement and the incorporated attached Order resolve the Staff’s allegations set forth below.

#### The Parties

2. The Staff is the staff of the Consumer Product Safety Commission, an independent federal regulatory agency established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. 2051-2089.

3. Viking is a corporation organized and existing under the laws of the State of Mississippi, with its principal corporate office located at 111 W. Front Street, Greenwood, Mississippi.

#### Staff Allegations

4. Between 1999 and April 2006, Viking manufactured and distributed approximately forty-five thousand (45,000) built-in, 48 inch, side-by-side refrigerators and 36 inch refrigerators with bottom freezers under the Viking brand name (the “Refrigerators”). The Refrigerators were sold nationwide through retailers and authorized Viking distributors for between \$4,700 and \$6,400.

5. The Refrigerators are “consumer products” and, at all times relevant hereto, Viking was a “manufacturer” of these consumer products, which were “distributed in commerce,” as those terms are defined or used in sections 3(a)(5), (8) and (11) of the CPSA, 15 U.S.C. 2052(a)(5), (8) and (11).

6. The Refrigerators are defective because the “tower” hinges attaching the Refrigerator door to the cabinet can detach, allowing the door to fall on consumers.

7. Viking received its first complaints involving hinge failure in January 2001 and introduced redesigned hinges by January 2002.

8. By September 2006, Viking stopped using the “tower” hinge on new production. By April 2008, Viking had received eight injury complaints. In April 2008, Viking developed a new field repair fix kit for consumers whose refrigerators exhibited problems with the hinges.

9. Despite being aware of the information set forth in Paragraphs six through eight, Viking did not report to the Commission until April of 2009. By that time, Viking was aware of at least ten injury reports involving Refrigerator hinge failures. The Refrigerators were recalled in June of 2009.

10. Although Viking had obtained sufficient information to reasonably support the conclusion that the Refrigerators contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, Viking failed to immediately inform the Commission of such defect or risk as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4). In failing to do so, Viking knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4) as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

11. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Viking is subject to civil penalties for its knowing failure to report as required under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

#### Response of Viking Range Corporation

12. Viking denies the allegations of the Staff that the Refrigerators contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death, and denies that it violated the reporting requirements of Section 15(b) of the CPSA, 15 U.S.C. 2064(b).

#### Agreement of the Parties

13. Under the CPSA, the Commission has jurisdiction over this matter and over Viking.