

June 12–13, 2000 (Adelaide, Australia): IWC Scientific Committee Working Groups and Sub-committees.

June 14–26, 2000 (Adelaide, Australia): IWC Scientific Committee.

June 28 - July 1, 2000 (Adelaide, Australia): IWC Commission Committees, Sub-committees and Working Groups.

July 3–6, 2000 (Adelaide, Australia): IWC 52nd Annual Meeting.

Special Accommodations

Department of Commerce meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cathy Campbell (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Dated: March 2, 2000.

Art Jeffers,

Deputy Director, Office of Protected Resources, National Marine Fisheries Services.

[FR Doc. 00–6346 Filed 3–10–00; 3:05 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021100C]

Marine Mammals; Scientific Research Permit (PHF# 642–1536–00)

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

ACTION: Issuance of Permit.

SUMMARY: Notice is hereby given that Joseph R. Mobley, Jr., Ph.D., University of Hawaii - West Oahu, 96–129 to take (*i.e.*, harass) several species of cetaceans in Hawaiian waters for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Protected Species Program Manager, Pacific Islands Area Office, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700;

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On December 3, 1999, notice was published in the Federal Register (64 FR 67882) that a request for a scientific research permit to take several species of cetaceans for purposes of scientific research had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222–226).

Issuance of this permit, 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: March 3, 2000.

Ann D. Terbush,

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

[FR Doc. 00–6354 Filed 3–14–00; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0007]

Tacoma Electric, 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 1115.20(4). Published below is a provisionally-accepted Settlement Agreement with Tacoma Electric Supply, Inc., containing monetary payments totalling between \$205,000 and \$375,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comments on its contents by filing a written request with the Office of the Secretary by March 30, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comment to the Comment 00–C0007, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Margaret H. Plank, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, 1450.

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

Dated: March 9, 2000.

Sadye E. Dunn,

Secretary.

Consent Agreement

This Consent Agreement is made by and between the staff of the Consumer Product Safety Commission, and Tacoma Electric Supply, Inc. (“Tacoma”), a domestic corporation, to settle the staff’s allegations that Tacoma distributed in commerce certain allegedly defective in-wall electric heaters manufactured by Cadet Manufacturing Company (“Cadet”), a domestic corporation, with its principal place of business located at 2500 West Fourth Plain Boulevard, Vancouver, Washington 98660.

Parties

1. The “staff” is the staff of the Consumer Product Safety Commission (“the CPSC” or “the Commission”), an independent regulatory agency of the United States of America, established by Congress pursuant to Section 4 of the Consumer Product Safety Act (“CPSA”), 15 U.S.C. 2053, as amended.

2. Respondent Tacoma is a corporation organized and existing under the laws of the State of Washington, with its principal place of business located at 1311 South Tacoma Way, Tacoma, WA 98409. Tacoma is a distributor of electrical materials and products.

Subject Matter

3. Since approximately 1978, Cadet has allegedly manufactured, sold and/or distributed in commerce in-wall electric heaters for use in homes and residences under the brand names “Cadet” and “Encore.” These include all models and variants within each model of the series FW (including models FW–051, FW–101, FW–122, FW–202, and FW–751), manufactured between 1978 and 1987, series FX (including models FX–051, FX–052, FX–071, FX–072, FX–101, FX–102, FX–122, FX–151, FX–152, FX–202, and FX–242), manufactured between

1985 and 1994; series LX (including models LX-242, LX-302, LX-402, and LX-482), manufactured between 1985 and 1994; series TK (including models TK-051, TK-071, TK-072, TK-101, TK-102, TK-151, and TK-152), manufactured between 1984 and 1998; series ZA (including models ZA-051, ZA-052, ZA-071, ZA-072, ZA-101, ZA-102, ZA-122, ZA-151, ZA-152, ZA-202, and ZA-242), manufactured between 1985 and 1994; series Z (including models Z-072, Z-101, Z-102, Z-151, Z-152, Z-202, and Z-208), manufactured between 1993 and 1999; and all series and models of the same or functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX (including models RX-072, RX-101, RX-102, RX-151, RX-152, RX-202, and RX-242), manufactured between 1985 and 1994; series RLX (including models RLX-302, RLX-402, and RLX-482) manufactured between 1985 and 1994; series RK (including models RK-101 and RK-102), manufactured between 1984 and 1998; series RA (including models RA-101, RA-102, RA-151, RA-152, and RA-202), manufactured between 1985 and 1994, and series ZC (including models ZC-072, ZC-101, ZC-102, ZC-151, ZC-152, ZC-202, and ZC-208) manufacture between 1993 and 1999. For each of these heaters, the variants signified by the suffix T (with thermostat), W (white color), and TW (with thermostat and white color) found after the model number are included. All the heaters and variants referred to in this paragraph shall hereinafter be collectively referred to as "the Heaters." The Heaters were sold and/or distributed to consumers principally in the States of California, Idaho, Montana, Oregon, and Washington. Since approximately 1982, Tacoma has allegedly sold and/or distributed certain of the Heaters in commerce.

4. On January 14, 1999, the staff filed an Administrative Complaint ("Complaint") against Cadet, seeking a determination that certain of the Heaters present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), and public notice and a recall of certain of the Heaters pursuant to Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d). The Complaint alleged that certain of the Heaters are defective and present a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), because their design and/or manufacture causes them to overheat, fail, and catch fire, and/or allows lint,

dirt, or debris to build up within the heaters and catch fire. The Complaint also alleged that the design of certain of the Heaters can cause the Heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence, or energize the Heaters creating a risk of electric shock. On July 30, 1999, the CPSC approved a Consent Agreement and Order ("the Cadet Order") between the Staff and Cadet which, *inter alia*, required Cadet to undertake a remediation program for notification to consumers and for the replacement of the Heaters ("the Cadet Corrective Action Plan" or "the Plan"), upon final approval of the Plan by the United States Bankruptcy Court for the Western District of Washington at Tacoma (the date of final approval being referred to herein as the "Effective Date" of the Cadet Order).

Agreement of the Parties

5. It is the express purpose of the parties entering this Consent Agreement to protect the public safety by assisting Cadet's recall and replacement of the Heaters.

6. Fulfillment of the terms of this Consent Agreement and the attached Order (hereinafter "Order" or "the Order"), which is hereby incorporated by reference, shall resolve all potential obligations of Tacoma (and each of Tacoma's predecessors, successors, assigns, parents, subsidiaries, affiliated entities, agents, representatives, attorneys, employees, officers, directors, stockholders, and principals) (collectively "the Tacoma Releasees") under Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d), to give public notice of the alleged hazard presented by the Heaters, and to repair, replace, or refund the purchase price of the Heaters. Fulfillment of the terms of this Consent Agreement and Order shall also resolve all potential obligations and liabilities of the Tacoma Releasees for all other claims and causes of action which could have been alleged by the CPSC against the Tacoma Releasees relating to the Heaters, based upon information known to the CPSC, or otherwise in the CPSC's possession, at the time the CPSC staff signs this Consent Agreement. Nothing in this Paragraph 6 is intended to limit the CPSC's rights under Paragraph 20 of this Consent Agreement.

7. The staff believes that this Consent Agreement and Order is an equitable resolution of consumer claims against Tacoma for replacement heaters, and the staff has concluded that the Cadet Corrective Action Plan, and Tacoma's participation in that Plan, will provide

an effective, fair, reasonable and adequate remedy for consumers throughout the United States who own or are otherwise exposed to the Heaters by notifying consumers of the alleged hazard and providing replacement heaters to them, and that this Agreement is, therefore, in the best interests of consumers.

8. This Consent Agreement and Order shall not be deemed or construed as an admission by Tacoma or as evidence: (a) Of any violation of law or regulation by Tacoma; (b) of other wrongdoing by Tacoma; (c) that the Heaters are defective, create a substantial product hazard, or are unreasonably dangerous; or (d) of the truth of any claims or other matters alleged or otherwise stated by the CPSC or any other person either against Tacoma or with respect to the Heaters.

9. The Heaters are "consumer products" within the meaning of Section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

10. Tacoma is a "distributor" of "consumer product[s]," which are "distributed in commerce," as those terms are defined in Sections 3(a)(1), (5), and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (5), and (11).

11. The CPSC has jurisdiction over Tacoma and the Heaters under Sections 3(a)(1), (5), and (11) and Section 15 of the CPSA, 15 U.S.C. 2052(a)(1), (5), and (11) and 2064.

12. For purposes of this settlement only, Tacoma agrees not to contest the staff's allegation, which Tacoma denies, that the Heaters contain a "defect which creates a substantial product hazard," as those terms are defined in Section 15(a) of the CPSA, 15 U.S.C. 2064(a).

13. Upon final acceptance by the CPSC of this Consent Agreement and Order, Tacoma knowingly, voluntarily, and completely waives and relinquishes any past, present, and/or future right or rights in this matter: (a) To the issuance of a proposed complaint in accordance with 16 CFR 1115.20(6), to an administrative or judicial hearing, and to all further procedural steps—including findings of fact and conclusions of law—to determine whether the Heaters contain a defect which creates a substantial product hazard within the meaning of Section 15 of the CPSA; (b) to seek judicial review or otherwise challenge or contest the validity of this Consent Agreement and Order as issued and entered; (c) to seek judicial review of this or any past orders, findings, and/or determinations of the CPSC in this matter, except as set forth in Paragraphs 21 and 24 of this Consent Agreement, and (d) to file any

claim or to seek any remedy under the Equal Access to Justice Act.

14. The Order is issued under Sections 15(c) and (d) of the CPSA, 15 U.S.C. 2064(c) and (d), and a violation of this Consent Agreement and Order is a prohibited act within the meaning of Section 19(a)(5) of the CPSA, 15 U.S.C. 2068(a)(5), and may subject Tacoma to civil and/or criminal penalties under Sections 20 and 21 of the CPSA, 15 U.S.C. 2069 and 2070.

15. Tacoma agrees to fulfill all requirements of this Consent Agreement and Order.

16. For all purposes, this Consent Agreement and Order shall constitute an enforceable judgment obtained in an action or proceeding by a governmental unit to enforce its police and regulatory power. Tacoma acknowledges and agrees that this Consent Agreement and Order are pursuant to the CPSC's police and regulatory power to remedy the alleged risk created by the Heaters, and that, once Tacoma signs the Consent Agreement and Order, the Consent Agreement and Order will not be subject to an automatic stay in any bankruptcy proceeding involving Tacoma.

17. Tacoma acknowledges that any interested person may bring an action pursuant to Section 24 of the CPSA, 15 U.S.C. 2073, in any United States District Court in which Tacoma is found or transacts business, to enforce the Order and to obtain appropriate injunctive relief.

18. This Consent Agreement and Order shall be binding upon and inure to the benefit of the parties hereto and their successors, assigns, and any operating bankruptcy trustees or receivers. If, prior to the termination of this Consent Agreement and Order, Tacoma merges with any other business entity or sells, assigns, or otherwise transfers substantially all of its assets, Tacoma shall provide reasonable prior notice to the surviving corporation or to the purchaser, assignee, or transferee of substantially all of Tacoma's assets, of this Consent Agreement and Order, and of its binding effect upon said surviving corporation, purchaser, assignee, or transferee. The existence of this Consent Agreement and Order and its binding effect shall be noted in any agreement between Tacoma and such surviving corporation, purchaser, assignee, or transferee. It shall be a condition of any such merger, sale, assignment, or transfer that the surviving corporation or the purchaser, assignee, or transferee shall execute a document agreeing to be bound by the provisions of this Consent Agreement and Order and shall submit to the jurisdiction of the CPSC for purposes of enforcement of this Consent

Agreement and Order. In the event of any merger, sale, assignment, or transfer of substantially all of Tacoma's assets, Tacoma shall provide written notice to the staff at least sixty (60) days prior to any such merger, asset sale, assignment, or transfer.

19. The CPSC, the staff, and/or Tacoma may disclose terms of this Consent Agreement and Order to the public.

20. The CPSC, at its sole discretion and upon reasonable notice to the staff and Tacoma, may void, suspend, or rescind this Consent Agreement and Order if, in Tacoma's submissions to the staff dated March 4, 1999 and June 18, 1999, Tacoma materially misrepresented the quantity of Heaters is sold. Notwithstanding the provision of Paragraph 28 of this Consent Agreement, the CPSC may exercise its rights under this Paragraph 20 within, and not later than, three (3) years after the date on which the CPSC finally accepts this Consent agreement and enters the Order.

21. If any provisions of this Consent Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Consent Agreement and Order, such provision shall be fully severable. In such event, there shall be added as part of this Consent Agreement and Order a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. The effective date of this added provision shall be the date upon which the prior provision was held to be invalid, illegal, or unenforceable. The rest of the Consent Agreement and Order shall remain in full effect, unless the CPSC determines, after providing Tacoma with notice and a reasonable opportunity to comment, that severing the provision materially impacts the Cadet Corrective Action Plan. The CPSC determination shall constitute the final agency decision and shall be subject to judicial review, such review to be based upon the record of any such CPSC proceeding and according to law.

22. This Consent Agreement and Order have been negotiated by the parties. Tacoma is not relying on the advice of the staff, nor anyone associated with the staff, as to legal, tax, or other consequences of any kind arising out of this Consent Agreement and Order, and Tacoma specifically assumes the risk of all legal, tax, and other consequences.

23. Tacoma acknowledges that this Consent Agreement and Order have been negotiated between unrelated, sophisticated, and knowledgeable

parties acting in their own self-interest and represented by counsel, and the provisions of this Consent Agreement and Order shall not be interpreted or construed against any person or entity because that person or entity or any of its attorneys or representatives drafted or participated in drafting this Consent Agreement and Order.

24. The provisions of this Consent Agreement and Order shall be interpreted in a reasonable manner to effect its purpose to remedy the alleged hazard that the Heaters pose and to resolve potential claims by the CPSC against Tacoma with respect to the Heaters. In the event of a dispute between the parties arising under this Consent Agreement and Order, the parties agree to submit the dispute to non-binding arbitration by a panel of three arbitrators, according to the rules of the American Arbitration Association then in effect. The CPSC and Tacoma shall each have the right to select one arbitrator, and shall jointly select the third arbitrator. If the CPSC and Tacoma are unable to agree on the selection of the third arbitrator, that arbitrator shall be selected by the American Arbitration Association. Either party may institute an action arising under this Consent Agreement and order, following the non-binding decision rendered by the arbitration panel, in the United States District Court for the District of Columbia.

25. The existence of a dispute between the staff and Tacoma over any provision of this Consent Agreement and Order shall not excuse, toll, or suspend any obligation of deadline imposed upon Tacoma under this Consent Agreement and Order, other than the specific provision in dispute.

26. This Consent Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the parties and approved by the CPSC.

27. This Consent Agreement and Order contain the entire agreement, understanding, representation, and interpretation of the parties herein, and nothing else may be used to vary or contradict its terms.

28. Tacoma's obligations under this Consent Agreement and Order shall terminate when Tacoma makes the final payment required under Paragraphs 4 and 5 of the Order.

29. Tacoma makes the monetary payments described in Paragraphs 4 and 5 of the Order solely as restitution to fund the Cadet Corrective Action Plan and thereby to settle claims arising out of its alleged distribution of the Heaters. No payment made pursuant to or referred to in this Consent Agreement

and Order is a fine or other penalty paid with respect to any violation of any law or regulation. Payment hereunder does not constitute, nor shall it be construed or treated as, payment in lieu of a fine or other penalty, punitive recovery, or forfeiture.

30. Tacoma may request appropriate verification from the staff, including record review, of the number of replacement heaters ordered from Cadet under the Cadet Corrective Action Plan. Upon receipt of a request from Tacoma, the staff shall provide such verification, subject to appropriate protective orders preserving the confidentiality of business records obtained from Cadet. In the event that such verification demonstrates the number of replacement heaters represented by the CPSC to Tacoma pursuant to Paragraph 5 of the Order to be incorrect, thus rendering Tacoma's payment into the escrow account incorrect, the staff shall direct the Escrow Agent to refund the overpayment to Tacoma in the amount of \$0.85 per heater. A dispute as to the proper amount of contingent contribution shall be resolved in accordance with Paragraph 24 of this Consent Agreement.

31. Tacoma and the staff consent to the entry of the Order attached hereto.

32. Upon provisional acceptance of this Consent Agreement and Order by the CPSC, this Consent 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 1115.20(b)(4). If the CPSC does not receive any written request not to accept this Consent Agreement and Order within fifteen (15) calendar days, this Consent Agreement and Order shall be deemed finally accepted on the twentieth (20th) calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1115.20(b)(5).

33. Upon final acceptance by the CPSC of this Consent Agreement and Order, the CPSC shall issue the incorporated Order. This Consent Agreement and Order shall become effective upon service of the signed Order upon Tacoma.

34. The parties have executed two (2) identical copies of this Consent Agreement and the two copies shall be treated as one and the same executed Consent Agreement.

Dated: February 7, 2000. Original fax transmission signed and dated February 3, 2000.

Howard N. Tarnoff,
Trial Attorney.
Margaret H. Plank,
Trial Attorney.
Eric L. Stone,
Director, Legal Division.

Alan H. Schoem,
Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, Telephone: (301) 504-0626, Facsimile: (301) 504-0359.

Dated: February 2, 2000.

Randy Mauerman,
President, Tacoma Electric Supply, Inc., 1311 South Tacoma Way, Tacoma, WA 98409, Telephone: (253) 627-3982, Facsimile: (253) 383-7122.

Order

Upon consideration of the Consent Agreement entered into between Respondent Tacoma Electric Supply, Inc. ("Tacoma") and the staff of the Consumer Product Safety Commission ("the staff") (Collectively "the parties"); and

The Consumer Product Safety Commission ("the CPSC" or "the Commission") having jurisdiction over the subject matter and Tacoma;

It is hereby ordered that:

1. The Consent Agreement between Tacoma and the staff is incorporated herein by reference and accepted, and Tacoma shall comply with all obligations of the Consent Agreement and this Order.

2. Based on the Consent Agreement, the CPSC finds that the Consent Agreement and this Order are necessary to protect the public from the alleged hazard presented by Cadet's series FW, FX, LX, TK, ZA, and Z in-wall electric heaters, and the functionally identical heaters manufactured and distributed by Cadet under the Encore brand name, including series RX, RLX, RK, RA, and ZC. These heaters shall hereinafter be collectively referred to as "the Heaters."

3. Tacoma shall immediately cease and desist offering for sale and/or distributing in commerce any of the Heaters, whether by itself or through its subsidiaries, affiliates, Tacoma-owned distribution centers, or any other persons or entities over whom Tacoma has control.

4. Tacoma shall pay into an escrow account (Chase Manhattan Trust Company, National Association, Account #76609060682) established by the staff and Cadet for the purpose of remedying the alleged hazard posed by the heaters ("Escrow Account") the sum of two hundred and five thousand

dollars (\$205,000) upon the CPSC's final acceptance of this Order.

5. Tacoma shall pay into the Escrow Account contingent contribution(s) of an additional (\$0.85) for every heater in excess of two hundred and fifty thousand (250,000) heaters ordered by consumers under the Cadet Consent Agreement and Order, which was approved by the CPSC on July 30, 1999 ("the Cadet Order"); provided that the sum total of all of Tacoma's contingent contribution(s) shall be capped at one hundred and seventy thousand dollars (\$170,000). Tacoma shall pay contingent contributions quarterly within fifteen (15) days of Tacoma's receipt of written notice from the staff of the number of replacement heaters over 250,000 ordered by consumers during each quarter within twenty-four months of the Effective Date of the Cadet Order issued by the CPSC on July 30, 1999.

6. The CPSC may authorize the distribution of the monetary payments referred to in Paragraphs 4 and 5 above: (a) To offset expenses directly related to Cadet's CPSC-approved Corrective Action Plan; and/or (b) to otherwise remedy the alleged hazard posed by the Heaters.

7. In addition to any penalty it may incur pursuant to Paragraph 14 of the Consent Agreement, if Tacoma fails to make timely contributions to the Escrow Account, as required by Paragraphs 4 and 5 of this Order, Tacoma shall be liable for additional contributions to the Escrow Account. Such additional contributions shall consist of the follows:

a. Interest at the percentage rate established by the Department of the Treasury pursuant to 31 U.S.C. 3717, for any period after the due date; and

b. A five percent (5%) per month penalty charge if the deposit is not made within thirty (30) days after the due date.

In no event shall a failure by Tacoma to make timely contributions to the Escrow Account result in an increase in the \$170,000 cap on total contingent contributions by Tacoma to the Escrow Account.

Provisionally accepted and Provisional Order issued on the 9th day of March, 2000.

By order of the Commission.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 00-6280 Filed 3-14-00; 8:45 am]

BILLING CODE 6355-01-M