

project area's largest harassment zone. Pinnipeds may occasionally haul out in areas closer to the proposed project, but not with any regularity. Marine mammals approaching the action area would likely be traveling or opportunistically foraging. The amount of take NMFS proposes to authorize, is considered small (less than one percent) relative to the estimated populations of 91,000 harbor seals, 250,000 gray seals, 89,054 harbor porpoises, and 63,000 Atlantic white-sided dolphins. Marine mammals may be temporarily adversely impacted by pile driving noise. However, some marine mammals are expected to avoid the area when pile driving is occurring, thereby reducing exposure and impacts, and mitigation will further ensure that injury is unlikely to occur (although it would not be expected even in the absence of mitigation given the source levels, density of animals in the area, and short duration of the activities). Pile driving activities are expected to occur for about 7–12 days total (up to 180 minutes per day). There is no anticipated effect on annual rates of recruitment or survival of affected marine mammals. Based on the application and subsequent analysis, the impact of the described pile driving operations may result in, at most, short-term modification of behavior by small numbers of marine mammals within the action area. Marine mammals may avoid the area or temporarily alter their behavior at time of exposure.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily determines that ORPC's proposed pile driving activities will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking will have a negligible impact on the affected species or 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)**

No marine mammal species listed under the ESA are anticipated to occur within the action area. Therefore, no effects to listed species are expected and section 7 consultation under the ESA is not required.

#### **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 is preparing an Environmental Assessment (EA) to consider the environmental impacts of issuance of a one-year IHA. Upon completion, this EA will be available on the NMFS Web site listed in the beginning of this document (see **ADDRESSES**).

Dated: January 13, 2012.

**James H. Lecky,**

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

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#### **COMMODITY FUTURES TRADING COMMISSION**

##### **Performance of Registration Functions by National Futures Association With Respect To Swap Dealers and Major Swap Participants**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice and Order.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is authorizing the National Futures Association (NFA), effective January 19, 2012, in accordance with the standards established by the Commodity Exchange Act (CEA) and the Commission's regulations issued thereunder, to take the following actions: To process and grant applications for registration and withdrawals of registration with respect to swap dealers (SDs) and major swap participants (MSPs), and to notify of provisional registration; to confirm initial compliance with requirements applicable to SDs and MSPs under CEA Section 4s; to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any SD or MSP or of any applicant for registration in either category; to maintain records regarding SDs and MSPs; and to serve as the official custodian of those Commission records.

**DATES:** Effective date: January 19, 2012.

**FOR FURTHER INFORMATION CONTACT:** Barbara S. Gold, Associate Director, Christopher W. Cummings, Special Counsel, or Elizabeth Miller, Attorney-Advisor, Division of Swap Dealer and Intermediary Oversight, 1155 21st Street NW., Washington, DC 20581. Telephone

Number: (202) 418–6700 and electronic mail: [bgold@cftc.gov](mailto:bgold@cftc.gov), [ccummings@cftc.gov](mailto:ccummings@cftc.gov), or [emiller@cftc.gov](mailto:emiller@cftc.gov).

#### **SUPPLEMENTARY INFORMATION**

##### **I. Authority and Background**

In a separate document published elsewhere in today's **Federal Register**, the Commission is issuing final regulations regarding the registration process for SDs and MSPs. These final regulations follow the publication of proposed regulations on November 23, 2010,<sup>1</sup> and they implement the registration requirements for SDs and MSPs set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>2</sup> Specifically, Section 731 of the Dodd-Frank Act added Sections 4s(a) and 4s(b) to the CEA<sup>3</sup> to provide for the registration of SDs and MSPs in pertinent part as follows:

(a) REGISTRATION.—

(1) SWAP DEALERS.—It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.

(2) MAJOR SWAP PARTICIPANTS.—It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.

(b) REQUIREMENTS.—

(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

(2) CONTENTS.—

(A) IN GENERAL.—The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged. Pursuant to CEA Sections 4s(a) and 4s(b), then, the Commission is today issuing Regulations 23.21(a) and 23.21(b), which respectively subject each person who meets the definition of an SD or MSP to the registration provisions under the CEA and to Part 3 of the Commission's regulations.<sup>4</sup>

<sup>1</sup> 75 FR 71379.

<sup>2</sup> Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed through the Commission's Web site, <http://www.cftc.gov>.

<sup>3</sup> The CEA and the Commission's regulations issued thereunder similarly may be accessed through the Commission's Web site.

<sup>4</sup> Regulation 23.21(c) makes clear that each affiliate of an insured depository institution described in Dodd-Frank Act Section 716(c) is subject to the registration provisions under the CEA and Part 3 of the regulations as an SD, if the affiliate is an SD, or as an MSP, if the affiliate is an MSP.

The Commission also is issuing today such amendments to Part 3 of its regulations as may be

Additionally, pursuant to CEA Sections 4p, 8a and 17, the Commission is issuing Regulation 170.16, which provides that each registered SD or MSP must become and remain a member of an RFA.

CEA Section 4s further directs the Commission to adopt regulations applicable to SDs and MSPs with respect to the following areas: Capital and margin, reporting and recordkeeping, daily trading records, business conduct standards, documentation standards, duties, chief compliance officer,<sup>5</sup> and, with respect to uncleared swaps, segregation.<sup>6</sup>

CEA Section 8a(10) provides that the Commission may authorize any person—including an RFA—to perform any of the registration functions under the CEA. Further, CEA Section 17(o) provides that the Commission may require an RFA to perform registration functions under the CEA with respect to its members.<sup>7</sup> The Commission has previously authorized NFA to perform the full range of registration functions with regard to applicants for and persons registered as: A futures commission merchant, commodity pool operator or commodity trading advisor;<sup>8</sup> an introducing broker;<sup>9</sup> a leverage transaction merchant;<sup>10</sup> a floor broker;<sup>11</sup> a floor trader;<sup>12</sup> or a retail foreign exchange dealer.<sup>13</sup> By today's Order, the Commission is authorizing NFA, in accordance with the standards established by the CEA and the Commission's regulations issued thereunder,<sup>14</sup> to perform the full range

necessary to accommodate the registration of SDs and MSPs thereunder.

<sup>5</sup> Sections 4s(e) through 4s(k), respectively, added to the CEA by Dodd-Frank Act Section 731.

<sup>6</sup> Section 4s(l), added to the CEA by Dodd-Frank Act Section 724(c).

<sup>7</sup> Section 17(o)(1) excepts from this authority a member who is a "registered entity." CEA Section 1a(40) defines this term to include, among other persons, a board of trade designated as a contract market under CEA Section 5 and a swap execution facility registered under CEA Section 5h.

Although CEA Section 17 provides that "[a]ny association of persons may be registered with the Commission as a registered futures association," to date, NFA is the sole association that has applied for and has been granted registration as a futures association with the Commission.

<sup>8</sup> See 49 FR 39593 (Oct. 9, 1984).

<sup>9</sup> See 48 FR 35158 (Aug. 3, 1983).

<sup>10</sup> See 54 FR 19556 (May 8, 1989).

<sup>11</sup> See 51 FR 34490 (Sep. 29, 1986).

<sup>12</sup> See 58 FR 19657 (Apr. 15, 1993).

<sup>13</sup> See 75 FR 55310 (Sep. 10, 2010).

<sup>14</sup> See, e.g., 49 FR 8208 (Mar. 5, 1984), whereby, among other things, the Commission: Amended Part 3 of its regulations, which concerns registration under the CEA, by adopting a new Subpart C to provide for denial, suspension or revocation of registration; and amended Appendix A to Part 3, to provide for interpretative advice with respect to statutory disqualification under CEA Sections 8a(2)(C) and 8a(2)(E) and Sections 8a(3)(J) and 8a(3)(M).

of registration functions under the CEA and the Commission's regulations with regard to SDs and MSPs. It is also authorizing NFA to notify an applicant for registration as an SD or an MSP that it is provisionally registered, and to confirm the applicant's initial compliance with such regulations as the Commission may adopt to implement the requirements for SDs and MSPs in CEA Sections 4s(e) through 4s(l).

The Commission further notes that it has, by prior Orders, authorized NFA to maintain various Commission registration records, and has certified NFA as the official custodian of such records for the Commission.<sup>15</sup> The Commission has determined, in accordance with its authority under Section 8a(10) of the Act, to authorize NFA to maintain and serve as the official custodian of the Commission's registration records with respect to SDs and MSPs.

In maintaining the Commission's registration records pursuant to this Order, NFA shall remain subject to all other requirements and obligations imposed upon it by the Commission in existing or future Orders or regulations. In this regard, NFA shall also implement such additional procedures and shall modify existing procedures as are necessary to ensure the security and integrity of these records as may be acceptable to the Commission; to facilitate prompt access to these records by the Commission and its staff; to facilitate disclosure of public or nonpublic information in these records when permitted by Commission Orders or regulations; to keep logs as required by the Commission concerning disclosures of nonpublic information; and otherwise to safeguard the confidentiality of the records.

## II. Conclusion and Order

The Commission has determined, pursuant to the provisions of CEA Sections 8a(10) and 17(o), to authorize NFA, effective January 19, 2012, to perform the following registration functions:

(1) To process and grant applications for registration and withdrawals from registration of swap dealers (SDs) and major swap participants (MSPs), and to notify of provisional registration;

(2) In connection with processing and granting applications for registration of SDs and MSPs, to confirm initial compliance with such regulations as the

Commission may adopt to implement CEA Sections 4s(e) through 4s(k) and, where applicable, CEA Section 4s(l);

(3) To conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any SD or MSP or of any applicant for registration in either category; and

(4) To maintain records regarding SDs and MSPs, and to serve as the official custodian of those Commission records.

NFA shall perform these functions in accordance with the standards established by the CEA and the Commission's regulations issued thereunder. NFA shall follow the same procedures with respect to recordkeeping, disclosure and tracking of fitness investigations and adverse action proceedings concerning SDs and MSPs as it must follow in cases involving other registrants.

These determinations are based upon the Congressional intent expressed in CEA Sections 4s(a), 4s(b), 8a(10), and 17(o). This Order does not, however, authorize NFA to accept or act upon requests for exemption from registration, or to render "no-action" or interpretative letters with respect to applicable registration requirements.

Nothing in this Order, or in CEA Section 8a(10) or 17(o), shall affect the Commission's authority to review the performance by NFA of Commission registration functions, to adopt and enforce regulations applicable to SDs and MSPs as Commission registrants, and to conduct on-site examinations of the operations and activities of SDs and MSPs as Commission registrants.

Issued in Washington, DC, on January 11, 2012.

**David A. Stawick,**

*Secretary of the Commission.*

## Appendices to Performance of Registration Functions by National Futures Association With Respect to Swap Dealers and Major Swap Participants—Commission Voting Summary and Statements of Commissioners

**Note:** The following appendices will not appear in the Code of Federal Regulations

### Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

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**BILLING CODE P**

<sup>15</sup> See, e.g., 49 FR 39593 (Oct. 9, 1984) (regarding the registration records of futures commission merchants, commodity pool operators and commodity trading advisors), and 75 FR 55310 (Sep. 10, 2010) (regarding the registration records of retail foreign exchange dealers).