

consideration the implementation of the monitoring and mitigation measures, NMFS finds, specific for both the Year 1 and Year 2 IHAs, that the total marine mammal take from the Corps' activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS authorizes is below one third of the estimated stock abundance for all but one species (in fact, take of individuals is less than two percent of the abundance of four of the five affected stocks, see Tables 7 and 8). The estimated instances of take as percentages of stock abundance shown in the Tables 7 and 8 are if we assume all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs will count them as separate takes if they cannot be individually identified. More importantly, due to their behavior in the area, some individuals will likely be taken on multiple days, resulting in a lower number of individuals taken than the predicted number of instances in Tables 7 and 8.

There is no current estimate of abundance available for this harbor seals (Carretta *et al.*, 2021). In 1999, aerial surveys of harbor seals in Oregon and Washington were conducted by the National Marine Mammal Laboratory (NMLL) and the Oregon and Washington Departments of Fish and Wildlife (ODFW and WDFD) during the pupping season. After applying a correction factor to account for seals missed during aerial surveys (Huber *et al.*, 2001), they estimated that the population size of the Oregon/Washington Coast Stock of harbor seals was 24,732 (CV = 0.12) in 1999.

Historical and current trends of harbor seal abundance in Oregon and Washington are unknown. Based on the analyses of Jeffries *et al.* (2003) and Brown *et al.* (2005), both the Washington and Oregon portions of this stock were reported as reaching carrying capacity. While the authorized instances of take for harbor seals equates to 37.57 percent of the 1999 abundance estimate in Year 1 and 21.24 percent of this abundance in Year 2, harbor seals are not known to make extensive migrations and are known to display strong fidelity to haul out sites (Pitcher and Calkins, 1979; Pitcher and McAllister, 1981). Therefore, we presume that some of the harbor seals present in the action area will be repeatedly taken and actual number of individuals exposed to Level A and Level B harassment will be much lower. Further, we calculated take estimates of harbor seals assuming the maximum seasonal abundance of individuals were present in Tillamook Bay during each action day; however, work may occur during other times of the year when harbor seal abundance is estimated to be lower, and thus the actual number of individuals exposed to Level A and Level B harassment will be lower. Lastly, take will occur in a small portion of Tillamook Bay and it is unlikely that a third of the stock will be in these waters during the short duration of the Corps' activities.

Based on the analysis contained herein of the Corps' activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds, for both the Year 1 and Year 2 IHAs, that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure

ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from the Corps' activities. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must evaluate our action (*i.e.*, the issuance of two IHAs) and alternatives with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that this action qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued two IHAs to the Corps' for the potential harassment of small numbers of five marine mammal species incidental to conducting repairs of the Tillamook South Jetty in Tillamook Bay, Oregon, that includes the previously explained mentioned mitigation, monitoring and reporting requirements.

Dated: August 12, 2022.

Kimberly Damon-Randall,

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

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COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038-0085: Rule 50.50 End-User Notification of Non-Cleared Swap

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is announcing an opportunity for public comment on the proposed renewal of a collection of

certain information by the agency. Under the Paperwork Reduction Act ("PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the renewal of the reporting requirement that is embedded in the final rule adopting the end-user exception to the Commission's swap clearing requirement.

DATES: Comments must be submitted on or before October 17, 2022.

ADDRESSES: You may submit comments, identified by "Rule 50.50 End-User Notification of Non-Cleared Swap, OMB Control No. 3038-0085," by any of the following methods:

- The CFTC's website, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT:

Megan Wallace, Senior Special Counsel, (202) 418-5150, mwallace@cftc.gov; Daniel O'Connell, Special Counsel, (202) 418-5583, doconnell@cftc.gov; each of the Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget ("OMB") for each collection of information they conduct or sponsor. "Collection of Information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information,

before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed extension of the currently approved collection of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.¹

Title: Rule 50.50 End-User Notification of Non-Cleared Swap (OMB Control No. 3038-0085). This is a request for an extension of a currently approved information collection.

Abstract: CFTC Rule 50.50 specifies the requirements for eligible end-users who may elect the end-user exception from the Commission's swap clearing requirement, as provided under section 2(h)(7) of the Commodity Exchange Act ("CEA"). Rule 50.50 requires the counterparties to report certain information to a swap data repository registered with the Commission, or to the Commission directly, if one or more counterparties elects the end-user exception. The rule establishes a reporting requirement for end-users that is critical to ensuring compliance with the Commission's clearing requirement under section 2(h)(1) of the CEA and is necessary in order for Commission staff to prevent abuse of the end-user exception. In addition, this collection relates to information that the Commission needs to monitor elections of the end-user exception and to assess market risks.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

You should submit only information that you wish to make available

publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.²

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission is revising its estimate of the burden for this collection for eligible end-users electing the end-user exception under CFTC Rule 50.50. The Commission is decreasing the estimated number of respondents from 1,600 to 1,200 based on an observed decrease in the number of entities electing the exception. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 1,200.

Estimated Average Burden Hours per Respondent: 0.58 hours.

Estimated Total Annual Burden Hours: 696 hours.

Frequency of Collection: On occasion; annually.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: August 15, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

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COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038-0102: Clearing Exemption for Certain Swaps Entered Into by Cooperatives

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

¹ 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8(b)(3)(vi).

² 17 CFR 145.9.