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ORMAT Technologies, Inc., based in Nevada, is a geothermal power plant developer. ORMAT has filed an EIS Preparation Notice (EISPN) related to the Ulupalakua Geothermal Project (UGP) located on Ulupalakua Ranch and State-owned lands adjacent to Ulupalakua Ranch on the southern tip of Maui. The UGP received Department of Energy (DOE) funding for this project. According to the action area described in the EISPN for Ulupalakua Geothermal Mining Lease, it is likely that only portions of the currently operational "Geothermal Resource Subzone" (GRS) overlap proposed critical habitat. The extent to which the project may affect critical habitat is therefore uncertain. Furthermore, as described in the June 11, 2012, proposed rule (77 FR 34464), Ulupalakua Ranch lands are identified for potential exclusion from critical habitat due to the existing management of the land. For the reasons discussed above for the LWP, it is most likely that the UGP will avoid impacts that would amount to adverse modification of critical habitat for the Maui Nui species, even absent a designation. This is due to the limited overlap of the project with the proposed critical habitat area, and the expected management of these projects as described by the PEIS. According to the PEIS, the DOE intends to avoid impacts of renewable energy projects on listed species and habitats even absent critical habitat designation. The DEA therefore expects that the effects of critical habitat will be limited to incremental administrative effort as part of a future formal section 7 consultation on this project.

To calculate administrative costs, we multiplied the expected number of consultations in each unit by estimated per-consultation administrative costs. As all three energy projects have entered the permitting process, the analysis assumes that each project would be required to consult the Service if and when critical habitat is finalized (in 2013). Overall, the DEA finds that total present value impacts to energy projects in areas proposed for critical habitat designation amount to \$10,000 over the next 10 years (or \$1,000 on an annualized basis). Impacts on energy projects in areas identified for potential exclusion are expected to be \$5,000 (present value). The relatively low level of impact on energy projects reflects two factors: (1) The limited number of future projects identified within or affecting the proposed critical habitat area; and

(2) the likely substantial level of conservation incorporated into future energy projects even absent a Maui Nui critical habitat designation.

As the number of renewable energy development projects is growing in Hawaii, additional businesses may be subject to consultation if and when we finalize Maui Nui critical habitat. As described above, however, we expect the estimated \$1,000 incremental cost to be a small fraction of annual revenues for these businesses. The field of renewable energy development within the areas proposed as critical habitat for the 135 Maui Nui species is evolving, and uncertainty exists concerning the scope of companies that may engage in these activities. Therefore, the relative percentage of the small business entities engaged in these activities is uncertain and speculative. However, the costs that these two identified companies would incur represent less than 0.1 percent of annual revenues, which we do not consider to be a significant economic impact.

In summary, we have considered whether this proposed designation, if finalized as proposed, will result in a significant economic impact on a substantial number of small entities and the energy industry. Information for this analysis was gathered from the SBA, stakeholders, and Service files. We determined that 0.1 percent of the small entities may be affected if and when this final rule becomes effective (IEc 2012, p. A-5), and we do not consider this to be a substantial number of small entities. Furthermore, we determined that the economic impacts to small businesses are estimated at less than 2 percent of annual revenues for development businesses and less than 0.1 percent of annual revenues for energy businesses (IEc 2012, p. A-8), which we do not consider to be significant economic impacts. Therefore, we are certifying that the designation of critical habitat for the 135 Maui Nui species will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

*Energy Supply, Distribution, or Use—  
Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration.

In Chapter 4 of the DEA, renewable energy projects, including wind and geothermal developments, that are planned within the timeframe of the analysis are expected to be subject to section 7 consultation considering potential effects on proposed critical habitat for the Maui Nui species. This analysis concludes that impacts of a critical habitat designation on these activities would be most likely limited to additional administrative costs of section 7 consultation. Consequently, reductions in oil and natural gas production are not anticipated and administrative consultation costs (\$900 per consultation) are not anticipated to reduce energy production or increase the cost of energy production or distribution in the United States in excess of 1 percent. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

#### Authors

The primary authors of this notice are the staff members of the Pacific Islands Fish and Wildlife Office, Pacific Region, U.S. Fish and Wildlife Service.

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 23, 2013.

**Michael J. Bean,**

*Acting Principal Deputy Assistant Secretary  
for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 121210694-3087-01]

RIN 0648-XC392

#### Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes to implement an annual catch limit (ACL), harvest

guideline (HG), and associated annual reference points for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2013, through December 31, 2013. This rule is proposed according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed 2013 maximum HG for Pacific sardine is 66,495 metric tons (mt). The proposed initial overall commercial fishing HG, that is to be allocated across the three allocation periods for sardine management, is 57,495 mt. This amount would be divided across the three seasonal allocation periods for the directed fishery the following way: January 1–June 30—19,123 mt; July 1–September 14—22,998 mt; and September 15–December 31—13,374 mt with an incidental set-aside of 1,000 mt for each of the three periods. This rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

**DATES:** Comments must be received by March 4, 2013.

**ADDRESSES:** You may submit comments on this document identified by NOAA–NMFS–2013–0005 by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov)

- **Mail:** Submit written comments to Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

- **Fax:** (562) 980–4047

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the report “Assessment of Pacific Sardine Stock for U.S.

Management in 2013” and the Environmental Assessment/Regulatory Impact Review for this action may be obtained from the Southwest Regional Office (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:**

Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

**SUPPLEMENTARY INFORMATION:** During public meetings each year, the estimated biomass for Pacific sardine is presented to the Pacific Fishery Management Council’s (Council) Coastal Pelagic Species (CPS) Management Team (Team), the Council’s CPS Advisory Subpanel (Subpanel) and the Council’s Scientific and Statistical Committee (SSC), and the biomass and the status of the fisheries are reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL), available biological catch (ABC), annual catch limit (ACL) and harvest guideline (HG), along with recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to the National Marine Fisheries Service (NMFS).

The purpose of this proposed rule is to implement the ACL, HG and other annual catch reference points for 2013, including the OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific sardine fishery based on the annual specification framework in the FMP. This framework includes a harvest control rule that determines the maximum HG, the primary management target for the fishery, for the current fishing season. The HG is based, in large part, on the current estimate of stock biomass. The harvest control rule in the CPS FMP is  $HG = [(Biomass - Cutoff) * Fraction * Distribution]$  with the parameters described as follows:

1. **Biomass.** The estimated stock biomass of Pacific sardine age one and above for the 2012 management season is 659,539 mt.

2. **Cutoff.** This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. **Distribution.** The portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent and is based on the average historical larval distribution obtained from

scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

4. **Fraction.** The harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested.

At the November 2012 Council meeting, the Council adopted the 2013 Stock Assessment of the Pacific sardine resource completed by NMFS Southwest Fisheries Science Center and the resulting Pacific sardine biomass estimate of 659,539 mt. Based on recommendations from its SSC and other advisory bodies, the Council recommended and NMFS is proposing, an OFL of 103,284 mt, ABC of 94,281 mt, an ACL of 94,281 mt (equal to the ABC) and a maximum HG (HGs under the CPS FMP are operationally similar to annual catch targets (ACT)) of 66,495 metric tons (mt) for the 2013 Pacific sardine fishing year. Due to an approximately 33 percent decrease in the biomass estimate from 2012, the result of the HG formula is approximately 40,000 mt less than the 2012 HG. As described above, annual biomass estimates are a parameter of the various harvest control rules, therefore as estimated biomass decreases or increases from one year to the next, the resulting allowable catch levels, such as the HG, will necessarily decrease or increase too. These catch specifications are based on the most recent stock assessment and the control rules established in the CPS FMP.

The Council also recommended, and NMFS is proposing, that 57,495 mt be used as the initial overall commercial fishing HG to be allocated across the three allocation periods for sardine management. This number has been reduced from the maximum HG of 66,495 mt by 9,000 mt: (i) For potential harvest by the Quinault Indian Nation of up to 6,000 mt; and (ii) 3,000 mt, which is initially reserved for potential use under an exempted fishing permit(s) (EFPs). The Council also recommended and NMFS is proposing that incidental catch set asides be put in place for each allocation period. The purpose of the incidental set-aside allotments and allowance of an incidental catch-only fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, when a seasonal directed fishery is closed to reduce bycatch and allow for continued prosecution of other important CPS fisheries. These incidental set asides are allocated as shown in the following table, which also shows the adjusted directed harvest levels for each period in metric tons:

	January 1–June 30	July 1–September 14	September 15– December 31	Total
Total Seasonal Allocation .....	20,123 (35%)	22,998 (40%)	14,374 (25%)	57,495
Incidental Set Aside .....	1,000	1,000	1,000	3,000
Adjusted Directed Harvest Allocation .....	19,123	22,998	13,374	54,495

Although the 2013 HG is well below that of the ACL, additional inseason accountability measures are in place to ensure the fishery stays within the HG. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing would be closed to directed harvest and only incidental harvest would be allowed. For the remainder of the period, any incidental Pacific sardine landings would be counted against that period’s incidental set-aside. As an additional accountability measure, the proposed incidental fishery would also be constrained to a 40 percent by weight incidental catch rate when Pacific sardine are landed with other CPS so as to minimize the targeting of Pacific sardine and reduce potential discard of sardine. In the event that an incidental set-aside is projected to be attained, the incidental fishery will be closed for the remainder of the period. If the set-aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period would automatically be adjusted upward or downward accordingly to account for the discrepancy. Additionally, if during any seasonal period the directed harvest allocation is not fully attained or is exceeded, then the following period’s directed harvest total would be adjusted to account for the discrepancy.

If the total HG or these apportionment levels for Pacific sardine are reached or are expected to be reached, the Pacific sardine fishery would be closed until it re-opens either per the allocation scheme or at the beginning of the next fishing season. The NMFS Southwest Regional Administrator would publish a notice in the **Federal Register** announcing the date of any such closure.

The Council will hear proposals and comments on any potential EFPs at the March 2013 Council meeting and will make a final recommendation to NMFS on whether or not all or a portion of the 3,000 mt EFP set-aside should be allocated for use under any EFP(s). NMFS will likely make a decision on whether to issue an EFP for Pacific sardine sometime prior to the start of the second seasonal period (July 1, 2013). Any of the 3,000 mt that is not

issued to an EFP will be rolled into the third allocation period’s directed fishery. Any set-aside attributed to an EFP designed to be conducted during the closed fishing time in the second allocation period (prior to September 15), but not utilized, will roll into the third allocation period’s directed fishery. Any set-aside attributed to an EFP designed to be conducted during closed fishing times in the third allocation, but not utilized, will not be re-allocated.

In 2012 the Quinault Indian Nation requested, and NMFS approved, a 9,000 mt tribal set-aside for the exclusive right to harvest Pacific sardine in the Quinault Usual and Accustomed Fishing Area off the coast of Washington State, pursuant to the 1856 Treaty of Olympia (Treaty with the Quinault). For the 2013 fishing season the Quinault Indian Nation has again requested that NMFS provide the Quinault with a tribal set-aside. The Quinault Indian Nation as requested a 6,000 mt set-aside (3,000 mt less than was requested and approved in 2012) and NMFS is considering the request. If a set-aside is approved NMFS will likely consult with Quinault Department of Fisheries staff and Quinault Fisheries Policy representatives on or about September 1, 2013 to review Quinault catch to date, landings that have occurred in Oregon and Washington and any other relevant information in an attempt to project tribal catch for the remainder of the season. The purpose of this consultation will be to determine whether any part of the 2013 Quinault Indian Nation Pacific sardine set-aside of 6,000 mt can be moved into the non-tribal third period allocation that begins September 15, as occurred in 2012. In 2012, in part because only one Quinault vessel fished, out of the expected three, the Quinault harvested only 1,294.23 mt. For 2013, the Quinault expect that two tribal vessels will fish actively for sardine.

The NMFS Southwest Regional Administrator will publish a notice in the **Federal Register** announcing the date of any closure to either directed or incidental fishing. Additionally, to ensure the regulated community is informed of any closure NMFS will also make announcements through other means available, including fax, email,

and mail to fishermen, processors, and state fishery management agencies.

Detailed information on the fishery and the stock assessment are found in the report “Assessment of the Pacific Sardine Resource in 2012 for U.S. Management in 2013” (see **ADDRESSES**).

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the Assistant Administrator, NMFS, has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 3 of the Regulatory Flexibility Act, 5 U.S.C. § 603. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The results of the analysis are stated below. For copies of the IRFA, and instructions on how to send comments on the IRFA, please see the **ADDRESSES** section above.

The purpose of this proposed rule is to implement the 2013 annual specifications for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an OFL, ABC, ACL and HG or ACT for the Pacific sardine fishery based on the specified harvest control rules in the FMP. A specific harvest control rule is applied to the current stock biomass estimate to derive the annual HG which is used to manage the directed commercial take of Pacific sardine.

The HG is apportioned based on the following allocation scheme: 35 percent of the HG is allocated coastwide on January 1; 40 percent of the HG, plus any portion not harvested from the initial allocation is then reallocated coastwide on July 1; and on September

15 the remaining 25 percent, plus any portion not harvested from earlier allocations will be released. If the total HG or these apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery will close until either it re-opens per the allocation scheme or the beginning of the next fishing season. There is no limit on the amount of catch that any single vessel can take during an allocation period or the year; the HG and seasonal allocations are available until fully utilized by the entire CPS fleet.

The U.S. Small Business Administration defines small businesses engaged in fishing as those vessels with annual revenues of or below \$4 million. The small entities that would be affected by the proposed action are the vessels that compose the West Coast CPS small purse seine fleet. In 2012 there were approximately 96 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast; 55 vessels in the Federal CPS limited entry fishery off California (south of 39 N. lat.), and a combined 23 vessels in Oregon and Washington's state Pacific sardine fisheries. The annual per vessel revenue in 2012 for the West Coast CPS finfish fleet was well below \$4 million; therefore, all of these vessels therefore are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal effect on all of these small entities, and therefore will impact these small entities in the same manner.

The profitability of these vessels as a result of this proposed rule is based on the average Pacific sardine ex-vessel price per mt. NMFS used average Pacific sardine ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

For the 2012 fishing year approximately 105,000 mt were available for harvest by the directed fishery. Approximately 95,000 mt (21,000 in California and 74,000 mt in Oregon and Washington) of this HG were harvested during the 2012 fishing season, for an estimated ex-vessel value of \$20 million. Using these figures, the average 2012 ex-vessel price per mt of Pacific sardines was approximately \$208.

The proposed directed commercial fishing HG for the 2013 Pacific sardine fishing season (January 1, 2013 through December 31, 2013) is 57,495 (mt). This HG is approximately 47,000 mt less than the allocation for 2012. If the fleet were to take the entire 2013 HG, and assuming a coastwide average ex-vessel price per mt of \$204 (average of 2011

and 2012 ex-vessel), the potential revenue to the fleet would be approximately \$12 million. Therefore the proposed rule will decrease the effected small entities' potential profitability compared to last season, due to the lower HG this fishing season. However, although there will likely be a drop in profitability to sardine harvesting vessels based on this rule compared to last season, from 2007 through 2011 the average coastwide annual ex-vessel revenue was \$12.5 million; therefore, at current ex-vessel price per mt, the HG for 2013 should provide similar revenue to the five years preceding 2012. Furthermore, as occurred in 2012, unused sardine from the potential EFP or the release of any unused portion of the 6,000-mt set-aside for the Quinalt Indian Nation might be used to supplement the amount available to the directed fishery during the third allocation period (September 15 through December 31), thereby slightly increasing the potential revenue to the fleet.

Additionally, revenue derived from harvesting Pacific sardine is typically only one factor determining the overall revenue for a majority of the vessels that harvest Pacific sardine; as a result, the economic impact to the fleet from the proposed action cannot be viewed in isolation. From year to year, depending on market conditions and availability of fish, most CPS/sardine vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, mackerel, and in particular squid, making Pacific sardine only one component of a multi-species CPS fishery. For example, market squid have been readily available to the fishery in California over the last three years with total annual ex-vessel revenue averaging approximately \$66 million over that time, compared to an annual average ex-vessel from sardine of \$16 million over that same time period. Additionally, many sardine vessels that operate off of Oregon and Washington also fish for salmon in Alaska or squid in California during times of the year when sardine are not available.

These vessels typically rely on multiple species for profitability because abundance of sardine, like the other CPS stocks, is highly associated with ocean conditions and different times of the year, and therefore are harvested at various times and areas throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time; therefore, as abundance levels and markets fluctuate, it has necessitated

that the CPS fishery as a whole rely on a group of species for its annual revenues. Therefore, although there will be a potential reduction in sardine revenue for the small entities affected by this proposed action as compared to the previous season, it is difficult to predict exactly how this reduction will impact overall annual revenue for the fleet.

There are no significant alternatives to this proposed rule that would accomplish the stated objectives of the applicable statutes and would also minimize any significant economic impact of this proposed rule on the affected small entities. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific sardine fishery based on the harvest formula in the FMP. The harvest formula is applied to the current stock biomass estimate to determine the HG. Therefore, if the estimated biomass decreases or increases from one year to the next, the HG will necessarily decrease or increase too. Because the current stock biomass estimate decreased from 2012 to 2013, the HG also decreased. Determining the annual HG merely implements the established procedures of the FMP with the goal of continuing to provide expected net benefits to the nation, regardless of what the specific allowable harvest of Pacific sardine is determined to be for 2013.

There are no reporting, record-keeping, or other compliance requirements required by this proposed rule. Additionally, no other Federal rules duplicate, overlap or conflict with this proposed rule.

This action does not contain a collection-of-information requirement for purposes of the Paper Reduction Act.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: January 25, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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