

application. If such information is provided, the Department will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A-335 specification is being used in an A-106 application, it will require end-use certifications for imports of that specification. Normally the Department will require only the importer of record to certify to the end-use of the imported merchandise. If it later proves necessary for adequate implementation, the Department may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("Customs") purposes, the written description of the merchandise subject to this scope is dispositive.

#### Rescission of First Administrative Review

We provided interested parties with an opportunity to comment on the preliminary results. As noted above, however, we received no comments from any party. As discussed in detail in the preliminary results, because TAMSA made no entries, exports or sales of the subject merchandise to the U.S. during the POR, we determined that it was a non-shipper. In accordance with 19 CFR 351.213(d)(3) and consistent with Department practice, we are rescinding our review of TAMSA (see, e.g., *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results of 1999-2001 Administrative Review and Partial Rescission of Review*, 67 FR 68987 (November 14, 2002); see also, *Frozen Concentrated Orange Juice From Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 40913 (June 14, 2002)).

This notice also serves as a reminder to parties subject to an administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

and the terms of an APO are sanctionable violations.

This determination is issued and published pursuant to sections 751(a) and 777(i) of the Act.

Dated: December 24, 2002.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 02-33134 Filed 12-31-02; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Availability of Seats for the Channel Islands National Marine Sanctuary Advisory Council

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

**ACTION:** Notice and request for applications.

**SUMMARY:** The Channel Islands National Marine Sanctuary (CINMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Business Representative and Tourism Representative. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the Council's Charter.

**DATES:** Applications are due by January 10, 2003.

**ADDRESSES:** Application kits may be obtained from Nancy Berenson at Channel Islands National Marine Sanctuary, 115 Harbor Way, Suite 150, Santa Barbara, CA 96825. Completed applications should be sent to the same address.

**FOR FURTHER INFORMATION CONTACT:**

Michael Murray at (805) 884-1464, or [michael.murray@noaa.gov](mailto:michael.murray@noaa.gov), or visit the CINMS Web site at: <http://www.cinms.nos.noaa.gov>.

**SUPPLEMENTARY INFORMATION:** The CINMS Advisory Council was originally established in December 1998 and has a broad representation consisting of 20 members, including ten government agency representatives and ten members

from the general public. The Council functions in an advisory capacity to the Sanctuary Manager. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program. Specifically, the Council's objectives are to provide advice on: (1) Protecting natural and cultural resources, and identifying and evaluating emergent or critical issues involving Sanctuary use or resources; (2) Identifying and realizing the Sanctuary's research objectives; (3) Identifying and realizing educational opportunities to increase the public knowledge and stewardship of the Sanctuary environment; and (4) Assisting in developing an informed constituency to increase awareness and understanding of the purpose and value of the Sanctuary and the National Marine Sanctuary Program.

**Authority:** 16 U.S.C. 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 18, 2002.

**Jamison S. Hawkins,**

*Acting Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 02-33137 Filed 12-31-02; 8:45 am]

**BILLING CODE 3510-08-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 001206342-2305-03; I.D. 102802A]

**RIN 0648-ZB00**

#### Financial Assistance for Community-based Habitat Restoration Projects

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

**ACTION:** Notice of availability of funds.

**SUMMARY:** The purpose of this document is to invite the public to submit proposals for available funding to implement grass-roots habitat restoration projects that will benefit living marine resources, including anadromous fish, under the NOAA Community-based Restoration Program (CRP). This document describes the conditions under which applications (project proposals) will be accepted under the CRP, and describes criteria under which applications will be evaluated for funding consideration.

Projects funded through the CRP will be expected to have strong on-the-ground habitat restoration components that provide educational and social benefits for people and their communities in addition to long-term ecological habitat improvements for NOAA trust resources. Proposals selected for funding through this solicitation will be implemented through a project grant, cooperative agreement, or interagency transfer.

**DATES:** Applications for funding under the CRP will be accepted upon publication of this document in the **Federal Register** and must be received by or postmarked by March 3, 2003. Applications received or postmarked after that time will not be considered for funding. Applications submitted via the U.S. Postal Service must have an official postmark; private metered postmarks are not acceptable. Applications delivered by a delivery service after the postmark date will be accepted for review if the applicant can document that the application was provided to the delivery service on or prior to the specified postmark cut-off date. In any event, applications received later than 15 business days following the closing date will not be accepted. No facsimile or electronic mail applications will be accepted.

**ADDRESSES:** Send applications to Christopher D. Doley, Director, NOAA Restoration Center, National Marine Fisheries Service, 1315 East West Highway (F/HC3), Silver Spring, MD 20910-3282; ATTN: CRP Project Applications.

See **SUPPLEMENTARY INFORMATION** section under *Electronic Access* for additional information on the CRP and for application form information.

**FOR FURTHER INFORMATION CONTACT:** Robin J. Bruckner or Alison Ward at (301)713-0174, or by e-mail at [Robin.Bruckner@noaa.gov](mailto:Robin.Bruckner@noaa.gov) or [Alison.Ward@noaa.gov](mailto:Alison.Ward@noaa.gov).

#### **SUPPLEMENTARY INFORMATION**

##### **I. Program Description**

The CRP, a financial and technical Federal assistance program, promotes strong partnerships at the national, regional and local level to fund grass-roots, community-based activities that restore living marine resources and their habitats and promote stewardship and a conservation ethic for NOAA trust resources. NOAA trust resources are living marine resources that include commercial and recreational fishery resources (marine fish and shellfish and their habitats); anadromous species (fish, such as salmon and striped bass

that spawn in freshwater and then migrate to the sea); endangered and threatened marine species and their habitats; marine mammals, turtles, and their habitats; marshes, mangroves, seagrass beds, coral reefs, and other coastal habitats; and resources associated with National Marine Sanctuaries and National Estuarine Research Reserves. Habitats in the Great Lakes region are not covered by this solicitation.

The CRP's objective is to bring together citizen groups, public and nonprofit organizations, watershed groups, industry, corporations and businesses, youth conservation corps, students, landowners, academics, and local government, state, and Federal agencies to cooperatively implement habitat restoration projects. Partnerships developed at national, regional and local levels contribute funding, land, technical assistance, workforce support or other in-kind services to promote citizen participation in the improvement of locally important living marine resources, as well as develop local stewardship and monitoring activities to sustain and evaluate the success of the restoration.

The CRP recognizes the significant role that communities can play in habitat restoration, and acknowledges that habitat restoration is often best implemented through technical and monetary support provided at a community level. Community-based restoration projects supported by the CRP are successful because they have significant local backing, depend upon citizens hands-on involvement, and typically involve NOAA technical assistance or oversight. The role of NOAA in the CRP is to help identify potential restoration projects, strengthen the development and implementation of sound restoration projects and science-based monitoring of such projects within communities, and develop long-term, ongoing national and regional partnerships to support community-based restoration efforts of living marine resource habitats across a wide geographic area. For more information on the CRP, see *Electronic Access*.

##### **II. Authority**

The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661, as amended by the Reorganization Plan No. 4 of 1970, to provide grants or cooperative agreements for fisheries habitat restoration.

##### **III. Catalogue of Federal Domestic Assistance**

The CRP is described in the "Catalogue of Federal Domestic Assistance," under program number 11.463, Habitat Conservation.

##### **IV. Eligible Applicants**

Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments. Applications from Federal agencies will be considered. Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis. Although Federal agencies are eligible to apply under this solicitation, they are strongly encouraged to work with states, non-governmental organizations, national service clubs or youth corps organizations and others that are eligible to apply, rather than seeking project funding directly from the CRP.

Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this document. For applications funded through cooperative agreements, substantial involvement of the Federal government in the project may include, but is not limited to, activities such as hands-on technical or permitting assistance, monitoring the progression of the restoration through site visits, and involvement in public events to highlight restoration activities. Proposals selected for funding from a non-NOAA Federal agency will be funded through an interagency transfer.

The Department of Commerce/ National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal financial assistance programs. DOC/

NOAA encourages proposals for habitat restoration projects involving MSIs according to the criteria in this document.

#### V. Eligible Restoration Activities

NOAA is interested in funding projects that will result in on-the-ground restoration of habitat to benefit living marine resources, including anadromous fish species. Restoration is defined here as activities that contribute to the return of degraded or altered marine, estuarine, coastal and freshwater anadromous fish habitats to a close approximation of their condition prior to disturbance. Restoration may include, but is not limited to, improvement of coastal wetland tidal exchange or reestablishment of historic hydrology; dam or berm removal; improvement or reestablishment of fish passage; reef/substrate/habitat creation; establishment of riparian buffer zones and improvement of freshwater habitat features that support anadromous fishes; exclusionary fencing and planting; planting of native coastal wetland and submerged aquatic vegetation; and enhancement of feeding, spawning and growth areas essential to marine or anadromous fish. NOAA recognizes that accomplishing restoration is a multi-faceted effort involving project design, engineering services, permitting, construction, oversight and monitoring.

In general, proposed projects should clearly demonstrate anticipated benefits to habitats, such as salt marshes, seagrass beds, coral reefs, mangrove forests, and riparian habitat near rivers, streams and creeks used by anadromous fish, or where fish passage is certain to be restored to habitat formerly used by anadromous fish. Priorities for habitat restoration activities include: areas identified by NOAA Fisheries as essential fish habitat (EFH) and areas within EFH identified as Habitat Areas of Particular Concern; areas identified as critical habitat for federally or state listed marine and anadromous species; areas identified as important habitat for marine mammals and turtles; watersheds or such other areas under conservation management as special management areas under state coastal management programs; and other important commercial or recreational marine fish habitat, including degraded areas that historically were important habitat for living marine resources. To protect the Federal investment, projects on private lands need to provide assurance that the project will be maintained for its intended purpose for the life of the project. Projects must involve significant community support through an educational and/or volunteer

component tied to the restoration activities. Implementation of on-the-ground habitat restoration projects must involve community outreach and monitoring to assess project success, and may involve limited pre-implementation activities, such as engineering and design and short-term baseline studies. Proposals emphasizing a singular restoration component, such as only outreach or program coordination are discouraged, as are applications that propose to expand an organization's day-to-day activities, or that primarily seek support for administration, salaries, overhead and travel. The CRP anticipates the availability of limited funds for high quality, quantitative monitoring projects to advance the science and technology of coastal and marine habitat restoration. Proposals emphasizing science-based monitoring of existing or simultaneously proposed CRP projects are encouraged.

Although NOAA recognizes that water quality and land use issues may impact habitat restoration efforts, this initiative is intended to fund physical habitat restoration projects. The following restoration projects will not be eligible for funding: (1) Activities that constitute legally required mitigation for the adverse effects of an activity regulated or otherwise governed by state or Federal law; (2) activities that constitute restoration for natural resource damages under Federal or state law, (3) activities that are required by a separate consent decree, court order, statute or regulation, and (4) direct water quality improvement measures, including wastewater treatment plant upgrades or combined sewer outfall improvements. Funds from the CRP may be sought to enhance restoration activities beyond the scope legally required by these activities. Because funds are limited, funding land purchase agreements, conservation easements, and artificial reef projects to create habitat where it did not exist historically will be a low priority.

#### VI. Funding Availability

This solicitation announces that funding of up to \$2,000,000 is expected to be available for community-based habitat restoration in FY 2003. The NOAA Restoration Center anticipates that typical project awards will range from \$50,000 to \$200,000; NOAA will not accept proposals for under \$25,000 or proposals for over \$250,000 under this solicitation. There is no guarantee that sufficient funds will be available to make awards for all proposals. The number of awards to be made as a result of this solicitation will depend on the

number of eligible applications received, the amount of funds requested for initiating restoration projects by the applicants, the merit and ranking of the proposals, and the amount of funds made available to the CRP by Congress. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this document does not obligate NOAA to award any specific project or obligate all or any parts of any available funds.

#### VII. Matching Requirements

The overall focus of the CRP is to provide seed money to individual projects that leverage funds and other contributions from a broad public and private sector to implement locally important habitat restoration to benefit living marine resources. To this end, applicants are encouraged to demonstrate a minimum 1:1 non-Federal match for CRP funds requested to complete the proposed project. NOAA strongly encourages applicants to leverage as much investment as possible; applicants with less than 1:1 match will not be disqualified.

For non-Federal applicants, the match can come from a variety of public and private sources and can include in-kind goods and services; cash match is highly encouraged. Federal funds may not be considered matching funds. Applicants are permitted to combine contributions from additional non-Federal partners in order to meet the 1:1 match expected. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer.

#### VIII. Award Period

Generally, the CRP will make awards only to those projects where requested funding will be used to complete proposed restoration activities, with the exception of post-construction monitoring, within a period of 24 months from the approved start date of the project. If an application is selected for funding, NOAA has no obligation to provide any additional prospective funding in connection with that award in subsequent years. Any subsequent proposal to continue work on an existing project must be submitted to the competitive process for consideration and will not receive preferential treatment. Renewal of an award to increase funding or to extend the period of performance is at the total discretion of NOAA.

## IX. Electronic Access

Information on the CRP, including examples of community-based habitat restoration projects that have been funded to date, can be found on the world wide web at <http://www.nmfs.noaa.gov/habitat/restoration/community>. The standard NOAA application forms and instructions for applicants are accessible through this web site, or they can be obtained from the NOAA Restoration Center (see **ADDRESSES**). Potential applicants are invited to contact NOAA Restoration Center staff before submitting an application to discuss the applicability of project ideas to the CRP's goals and objectives, and to request an application package that contains instructions for submitting NOAA standard grants applications and supplementary instructions specific to the NOAA Community-based Restoration Program.

## X. Application Process

To submit a proposal, a complete NOAA standard grants application package should be filed in accordance with the guidelines in this document. Each application should include all specified sections as follows: Cover sheet—an applicant must use Office of Management and Budget (OMB) Standard Form 424 as the cover sheet for each project; budget detail (SF 424A and budget justification narrative); grant assurances SF424B and CD-511, and SF-LLL and CD-346 if applicable; narrative project description, and curriculum vitae or resume of primary project personnel. Budgets must include a detailed breakdown by category of cost (object class) separated into Federal and non-Federal shares as they relate to specific aspects of the project, with appropriate justification for both the Federal and non-Federal shares.

In general, applications should clearly demonstrate the broad-based benefits expected to specific habitats, and how these benefits will be achieved through the proposed restoration activities. The narrative project description should be no more than 12 double-spaced pages long, in 12-point font, and should give a clear presentation of the proposed work. It should identify the problems the project will address and describe short- and long-term objectives and goals, the methods for carrying out and monitoring the project, and the project's relevance to enhancing habitat to benefit living marine resources. The project narrative should describe the organizational structure of the applicant group, detail its qualifications, and identify proposed project staff; participants (project partners) other than

the applicant, and their contributions should be identified. Applicants should indicate if the project has been submitted for funding consideration elsewhere, whether the funds requested are Federal or non-Federal, and what amount has been requested or secured from other sources. The need for assistance should be demonstrated, and the narrative should provide assurance that all necessary environmental permits and consultations will be secured prior to the use of Federal funds for construction. Applicants should not assume prior knowledge on the part of NOAA as to the relative merits of the project described in the application.

Applications should not be bound in any manner and should be printed on one side only. Three hard copies (including one signed original) of each application are required and must be submitted to the NOAA Restoration Center (see **ADDRESSES**). Applicants may opt to submit additional hard copies (seven are needed for reviewing purposes) if it does not cause a financial hardship; an additional copy only may also be submitted electronically in either Microsoft Word or WordPerfect formats on a PC-compatible floppy disk or CD ROM. Applications for multiple projects submitted by the same applicant must be submitted in separate envelopes.

## XI. Indirect Costs

The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. Indirect costs are essentially overhead costs for basic operational functions (e.g., lights, rent, water, insurance) that are incurred for common or joint objectives and therefore cannot be identified specifically within a particular project. For this solicitation, the Federal share of the indirect costs must not exceed the lesser of either the indirect costs the applicant would be entitled to if the negotiated Federal indirect cost rate were used or 25 percent of the direct costs proposed. For those situations in which the use of the applicant's indirect cost rate would result in indirect costs greater than 25 percent of the Federal direct costs, the difference may be counted as part of the non-Federal share. A copy of the current, approved negotiated indirect cost agreement with the Federal Government should be included with the application. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

## XII. Project Selection Process

Applications will be screened by CRP staff to determine if they are eligible, complete and in accordance with instructions detailed in the standard NOAA Grants Application Package. Eligible restoration proposals will undergo a technical review, ranking, and selection process. As appropriate during this process, the NOAA Restoration Center will solicit individual technical evaluations of each project proposed and may request evaluations from other NOAA offices, the Regional Fishery Management Councils, other Federal and state agencies, such as state coastal management agencies and state fish and wildlife agencies, and private and public sector restoration experts who have knowledge of a specific applicant, program or its subject matter. Proposals also will be reviewed by NOAA regional and headquarters staff to determine how well they meet the stated aims of the CRP, and how well the proposal meets the goals of the NOAA RC.

Applications for habitat restoration projects will be evaluated by individual technical reviewers, including those mentioned in the above paragraph, according to the criteria and weights described in this solicitation. The proposals will be rated, and reviewer comments and composite project ranks will be presented to the Director of the NOAA Restoration Center (Director). The Director, in consultation with CRP staff, will consider the evaluations and may take into account the following: (a) Diversity of geographic location and habitat types to be restored; (b) diversity of applicants; (c) degree of duplication of proposed activities with other projects that are currently in effect or approved for funding by NOAA and other Federal agencies; (d) factors that may not be known by technical reviewers, including past performance of the applicant, that would affect achievement of the CRP's objectives as described in this announcement and the CRP Guidelines (65 FR 16890, March 30, 2000); and (e) the availability of funds. Hence, awards may not necessarily be made to the highest scored proposals. The Director, in consultation with CRP staff, will select the proposals to be recommended to the Grants Management Division for funding and determine the amount of funds available for each approved proposal. Unsuccessful applicants will be notified in writing that their proposal was not among those recommended for funding, and unsuccessful applications will be kept on file until the close of the following fiscal year then destroyed.

Successful applicants may be asked to modify objectives, work plans, or budgets prior to final approval of an award. The exact amount of funds to be awarded, the final scope of activities, the project duration, and specific NOAA cooperative involvement with the activities of each project will be determined in pre-award negotiations among the applicant, the NOAA Grants Office, and the NOAA CRP staff. Projects should not be initiated in expectation of Federal funding until a notice of award document is received from the NOAA Grants Office.

Successful applicants generally will be selected approximately 60 days after the close of this solicitation. The earliest date for receipt of awards will be approximately 120 days after the close of this solicitation, when all NOAA/ applicant negotiations of cooperative activities have been completed. Applicants should consider this selection and processing time in developing requested start dates for proposed restoration activities.

### XIII. Evaluation Criteria

Reviewers will assign scores to proposals ranging from 0 to 60 points based on the following four evaluation criteria and respective weights.

#### (1) *Potential of the Project to Benefit Living Marine Resources (15 points)*

Proposals will be evaluated on the extent of proposed habitat restoration activities and the type(s) of habitat(s) that will be restored. In particular, NOAA will evaluate proposals based on the amount and type of habitat proposed for restoration and the potential of the applicant to restore, protect, conserve, and enhance habitats and ecosystems vital to self-sustaining populations of living marine resources under NOAA Fisheries stewardship; whether the habitat(s) to be restored will benefit commercial, recreational, threatened or endangered species; whether the proposal addresses a priority habitat, restoration need, special consideration, or is part of a watershed or community stewardship plan; whether the effects of restoration are expected to persist; and whether the proposed project will complement or encourage other local restoration activities. Projects on permanently protected lands may be given priority consideration. Proposals for science-based monitoring of existing or simultaneously proposed CRP projects will be evaluated on the extent to which the potential results advance restoration methods, techniques, and project implementation.

#### (2) *Technical Merit and Adequacy of Project Implementation Plan (15 points)*

Proposals will be evaluated on the technical feasibility of the project from both biological and engineering perspectives, and on the qualifications and past experience of the project leaders and/or partners in designing, implementing and effectively managing and overseeing projects that benefit living marine resources, including anadromous fish species. Communities and/or organizations developing their first locally-driven restoration project may not be able to document past experience and, therefore, will be evaluated on the basis of their potential to effectively manage and oversee all project phases and on the availability of NOAA or other technical expertise to guide the project to a successful completion.

Proposals also will be evaluated on the adequacy of the implementation plan and the applicant's ability to: deliver the restoration objective stated in the proposal; demonstrate that the proposed activity will result in tangible benefits to living marine resources and will be sustainable and long-lasting; provide for long-term management of the restored resource, including adequate monitoring and a method for evaluating project success; and provide assurance that implementation of the project will meet all Federal and state environmental laws by obtaining applicable permits.

#### (3) *Community Commitment and Partnership Development (15 points)*

Proposals will be evaluated on activities proposed to involve citizens and broaden their participation in coastal habitat restoration or science-based monitoring and the depth and breadth of community support, as reflected by the diversity and strength of project partners. Community participation may include: (a) hands-on training, restoration and monitoring activities undertaken by volunteers; (b) sponsorship by local entities, either through in-kind goods and services (earth-moving services, technical expertise, conservation easements) or cash contributions; (c) public education and outreach; (d) support from state and local governments; and (e) ability to achieve long-term stewardship for restored living marine resources and to generate a community conservation ethic.

#### (4) *Cost-effectiveness and Budget Justification (15 points)*

Proposals will be evaluated on the percentage of funds that will be dedicated to all phases of project implementation including physical, on-the-ground coastal habitat restoration and/or science-based monitoring, compared to the percentage that is for

administration, salaries, overhead and travel. Applications proposing to use restoration funds to expand an organization's day-to-day activities are unlikely to obtain a high score under this criterion. To encourage on-the-ground restoration, funding for salaries must be used to support staff directly involved in accomplishing the restoration work. Proposals also will be evaluated on the need for funding and the overall leverage of NOAA funds anticipated, including the amount of cash match; the potential for, or demonstrated NOAA involvement in, the project; the ability to which the proposed project is likely to catalyze future restoration and protection of living marine resources; and the ability of the applicant to demonstrate that a significant benefit will be generated for a reasonable cost. NOAA will expect cost-sharing to leverage funding and to further encourage partnerships among government, industry, and academia.

### XIV. Allowable Costs

Funds awarded cannot necessarily pay for all the costs that the recipient might incur in the course of carrying out the project. Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are "necessary and reasonable." Allowable costs are determined by reference to the OMB Circulars A-122, "Cost Principles for Non-profit Organizations" A-21, "Cost Principles for Education Institutions" A-87, "Cost Principles for State, Local and Indian Tribal Governments" and Federal Acquisition Regulation, codified at 48 Code of Federal Regulations, subpart 31.2 "Contracts with Commercial Organizations."

### XV. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

Applications under this program are subject to the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs."

### Classification

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act [5 U.S.C. 553 (a) (2)] or by any other law for this document concerning grants, benefits, and contracts. Accordingly, a regulatory flexibility analysis is not required by the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The CRP will determine National Environmental Policy Act compliance on a project by project basis.

This action has been determined to be not significant for purposes of Executive Order 12866.

The use of the standard NOAA grants application package referred to in this notice involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD-346 have been approved by OMB under the respective control numbers 0348-0043, 0348-0044, 0348-0040, 0348-0046, and 0605-0001.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: December 27, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 02-33136 Filed 12-31-02; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER02-2170-000 and ER02-2170-001]

**Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell; Aquila, Inc.; Order Accepting for Filing and Suspending Power Sales and Purchase Agreement, Establishing Hearing Procedures, and Providing Guidance on Affiliate Sales Policy**

December 20, 2002.

1. In this order, we will accept, suspend, make effective subject to refund, and set for hearing, Aquila Inc.'s (Aquila) executed Master Power Sales and Purchase Agreement (Agreement) for the sale of electric energy to its affiliated power marketer, Aquila Merchant Services (AMS). This order establishes an evidentiary hearing to determine whether the price charged by Aquila for the affiliate sale to AMS under the Agreement addresses the Commission's affiliate abuse concerns; *i.e.*, was not below the relevant market price. This order benefits customers because it provides guidance on the Commission's affiliate sales policy and

ensures that customers are protected from affiliate abuse.

### Background

2. On June 26, 2002, Aquila filed the Agreement with the Commission for the sale of up to 70 MWh per hour of electric energy from Aquila to its affiliated power marketer, AMS, for the period June 28, 2002 through August 31, 2002.<sup>1</sup> The Agreement established the sale price as the highest of: (1) \$32.00 per MWh; (2) 110 percent of the seller's incremental cost; (3) the seller's highest hourly priced sale during the hour; or (4) an hourly price tied to the "Into Cinergy" trading hub prices for that day, as published by Megawatt Daily.<sup>2</sup> According to Aquila, this would ensure that the sale price under the Agreement would not be too low and could not result in harm to Aquila's captive ratepayers. Aquila requested an effective date of June 28, 2002.

3. On August 23, 2002, Commission staff issued a deficiency letter requesting that Aquila: (1) Provide cost support for the \$32.00 per MWh rate; (2) explain why "Into Cinergy" as published by Megawatt Daily is an appropriate index; and (3) further explain the 70 percent and 130 percent multiplier. The deficiency letter also required that the Agreement be filed as a stand-alone rate schedule.

4. During the period June 28, 2002 through August 31, 2002, Aquila went forward with the affiliate sale to AMS pursuant to the Agreement.

5. On October 22, 2002, Aquila filed its response to the deficiency letter. It explains that the \$32.00 per MWh rate was a negotiated rate floor to be utilized only during an hour when the "Into Cinergy" price, 110 percent of Aquila's incremental cost and the price in the highest priced Aquila off-system sale were all below \$32.00 in a given hour. Aquila also claims that "Into Cinergy" is the appropriate index for the Aquila system because it represents the closest liquid trading point to the market in Missouri. According to Aquila, the only other alternative, the "Into Entergy" trading hub, is not liquid and there are frequent transmission constraints between Entergy and Missouri which cause a separation of market prices. In addition, Aquila explains that the 70 percent and 130 percent multipliers

<sup>1</sup> Aquila stated that it filed the Agreement with the Commission because it involves a sale of electric energy from Aquila to an affiliated power marketer.

<sup>2</sup> Aquila stated that the sale price would be no lower than 70 percent of the "Into Cinergy" index for hours between 6 a.m. and noon and between 8 p.m. and 10 p.m.; and 130 percent of the "Into Cinergy" index for hours between noon and 8 p.m. See June 26 Transmittal at 2.

were developed as a proxy for converting the average 16-hour "Into Cinergy" trading hub market price into useful hourly prices.<sup>3</sup> Further, Aquila states that in every one of the 36 hours of the Agreement under which energy was purchased, the sales price was higher than the relevant adjusted "Into Cinergy" price.<sup>4</sup> Aquila also designates the Agreement as Aquila's FERC Rate Schedule No. 120.

### Notice of Filing

6. Notice of Aquila's June 26, 2002 filing was published in the **Federal Register**, 67 FR 45,716 (2002), with comments, interventions or protests due on or before July 17, 2002. None was filed. Notice of Aquila's October 22, 2002 filing was published in the **Federal Register**, 67 FR 67,165 (2002), with comments, interventions or protests due on or before November 12, 2002. None was filed.

### Discussion

7. A traditional public utility with market-based rate authority is prohibited from making sales to an affiliate absent prior approval from the Commission in a separate filing under section 205 of the Federal Power Act (FPA).<sup>5</sup> The Commission requires that this prohibition be included in the utility's market-based rate tariff unless the Commission has otherwise authorized the utility to transact with its affiliates.<sup>6</sup>

8. The Commission has also stated that affiliate abuse takes place when a traditional public utility and its affiliated power marketer transact in ways that result in a transfer of benefits from the traditional public utility (and its captive customers) to the affiliated power marketer (and its shareholders).<sup>7</sup> Because sales of power between an

<sup>3</sup> Aquila states that the 70 percent multiplier discounts the 16-hour "Into Cinergy" Hub price for the morning and evening hours when the typical hourly market is lower than the 16-hour average while the 130 percent multiplier applies a premium for the peak hours when the hourly market is above the average. It asserts that while it did not use a study to determine the 70 percent and 130 percent multipliers, it determined that these numbers were conservative based on the actual hourly prices in the market. See October 22 Transmittal at 3.

<sup>4</sup> Aquila states that energy was scheduled during only five percent of the hours when the Agreement was operative, which it claims demonstrates that the pricing was not favorable to the purchaser. See October 22 Transmittal at 4. Aquila attaches an after-the-fact analysis of the hourly energy prices for the "Into Cinergy" hub as reported in Megawatt Daily for the 16-hour period of 6 a.m. through 10 p.m. for June, July and August 2002. See Attachment A, October 22 Transmittal.

<sup>5</sup> 16 U.S.C. 824d (2000).

<sup>6</sup> See, e.g., AES Placerita, Inc. *et al.*, 89 FERC ¶ 61,202 at 61,613 (1999).

<sup>7</sup> See, e.g., Heartland Energy Services Inc., 68 FERC ¶ 61,223 at 62,062 (1994).