Before the
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
Washington, D.C.

In the Matter of	)	
	)	
Proposed Designation of Chumash Heritage National Marine Sanctuary	)	Docket Nos. NOAA-NOS-2021-0080/ 230807-0185
	)	

COMMENTS OF PC LANDING CORP.

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COMMENTS OF PC LANDING CORP.

PC Landing Corp. ("PC Landing"), through its undersigned counsel, respectfully submits these comments in response to the request for public comment of the National Oceanic and Atmospheric Administration ("NOAA") on the draft Environmental Impact Statement ("Draft EIS"), proposed regulations, and draft management plan for the proposed designation of the Chumash Heritage National Marine Sanctuary (the "CHNMS") in the California Central Coast.[1]

INTRODUCTION AND SUMMARY

PC Landing owns and operates the Pacific Crossing submarine cable system ("PC-1"), a major international submarine cable system connecting the United States and Japan, with a Grover Beach, California landing and two segments that traverse the proposed sanctuary's Central Coast footprint. In addition, two segments of PC-1 land in Mukilteo, Washington, and traverse the Olympic Coast National Marine Sanctuary ("OCNMS"), for which PC Landing holds a special use permit first issued in 1999.

Five major transpacific submarine cables (including PC-1) and three additional planned cables currently under development in the permitting/construction stage (the "Planned Cables"), land or will land in the California Central Coast area, with submarine cable landing stations and

[1] 88 Fed. Reg. 58123 (Aug. 25, 2023).

terrestrial backhaul infrastructure in Morro Bay, San Luis Obispo, and Grover Beach.[2] Owing to favorable physical, regulatory and environmental conditions suitable for siting submarine cables, the Central Coast region has developed into a hub for major transpacific fiber optic submarine cable systems, comprising, with the existing and Planned Cables, *34% of the capacity for high-speed U.S. transpacific connectivity, and 62% of the capacity of current and planned transpacific cables landing in California*.[3] Future cable systems with Central Coast landings beyond the existing and Planned Cables that would use the significant existing cable landing and backhaul infrastructure in the area will be necessary to add new capacity to meet increasing demand for global connectivity. Moreover, planning for further replacement capacity is critical as existing systems are retired.

While the Agency-Preferred Alternative for the sanctuary boundary allows for a narrow (approximately 10 km) corridor carved out of the Initial Boundary Alternative proposed by NOAA, every existing and Planned Cable whether landing in Morro Bay or Grover Beach, with the exception of a single cable segment, would still traverse the proposed sanctuary and be subject to the proposed sanctuary regulations.[4] In accordance with the National Marine Sanctuaries Act ("NMSA") and the National Environmental Policy Act ("NEPA"), NOAA must consider in the Draft EIS for the proposed Chumash NMS the presence of and potential impacts on (a) PC-1 and the other fiber optic submarine cables traversing and landing in the California Central Coast footprint of the proposed sanctuary, (b) the Planned Cables, (c) future systems that would otherwise traverse the proposed sanctuary in order to capitalize on the area's well-established landing and backhaul infrastructure, and (d) the economic, societal, and national

[2] *See* Exhibit 1 (Cable Geography of California Central Coast).

[3] *See* Exhibit 2 (Capacity of Central CA Coast Cables).

[4] *See* Exhibit 3 (Proposed CHNMS – Overlay of CA Central Coast Submarine Cables).

security interests they support. In addition, NOAA must consider and evaluate the indirect impacts that would arise from future systems that would route around the proposed sanctuary in favor of other, less efficient and less favorable landing sites, to avoid the significant impacts of NOAA's proposed sanctuary regulatory and management scheme. In doing so, NOAA must also consider reasonable alternatives that address those impacts, including as required by the NMSA, the use of "innovative management approaches to protect sanctuary resources or to manage compatible uses."[5]

As PC Landing shows below, contrary to the requirements of NEPA and the NMSA, the Draft EIS consideration of fiber optic submarine cables fails to document and assess, beyond mere passing references, the extensive use by submarine cables of the submerged lands within the sanctuary boundaries of the Agency-Preferred Alternative or the role of submarine cables as critical components of the nation's communications infrastructure and networks. In this regard, the Draft EIS fails to consider that the California Central Coast region is a hub for major transpacific fiber optic submarine cable systems that provide a significant portion of the high-speed bandwidth between the U.S. West Coast, Asia, and Latin America. Nor does the Draft EIS consider the substantial investment in submarine cable, cable landing, and backhaul infrastructure in the Central Coast.

In addition, the Draft EIS fails to consider or evaluate the critical importance of submarine cables to the U.S. economy and national security interests. As reflected in the Draft EIS, in preparing the Draft EIS NOAA engaged in extensive consultations with various tribal interests and U.S. governmental agencies, most significantly, the Bureau of Ocean Energy Management ("BOEM") with respect to the Morro Bay Wind Energy Area. The BOEM

[5] NMSA, Sec. 303(b)(1)(K), 16 U.S.C. § 1433(b)(1)(K).

consultation in particular informed NOAA's alternatives analysis and the proposed sanctuary boundaries of the Agency-Preferred Alternative, carving a corridor from the sanctuary boundary to accommodate wind energy transmission cables from the offshore Wind Energy Area to onshore connections. In contrast, the Draft EIS reflects that NOAA failed to consult with or seek input from other federal agencies with a direct interest in fiber optic submarine cable security and protection, such as the Federal Communications Commission ("FCC"), the Department of Homeland Security ("DHS"), or NOAA's sister agency, the National Telecommunications and Information Administration ("NTIA"), on the proposed designation of the sanctuary or the preparation of the Draft EIS.

The Draft EIS also fails to analyze and consider beyond a single dismissive sentence, the significant adverse impacts of the designation and proposed sanctuary regulations on commercial fiber optic submarine cable permitting, installation, operations, and maintenance. In addition, in proposing a blanket regulation prohibiting seabed disturbance within the sanctuary that rejects any regulatory/management alternatives, and brings within the sweep of the prohibition all activities related to fiber optic submarine cables, the Draft EIS fails to analyze or consider the extensive available evidence documenting the negligible impacts from fiber optic submarine cables on the seabed and benthic environment.

Given the foregoing, and an Agency-Preferred Alternative boundary developed to accommodate offshore power cables and Tribal sensitivities,[6] NOAA's limitation of its alternatives analysis applicable to fiber optic submarine cables exclusively to boundary-related

[6] *See* Draft EIS at xvi (sanctuary boundary delineated by Agency-Preferred Alternative carved out a portion of the initial proposed sanctuary "from roughly Cambria to south of Morro Bay" in order to address objections of the Salinan bands to naming the sanctuary "Chumash" in that area, which the Salinan consider part of their ancestral homeland, while accommodating the Chumash bands which were "unwavering in their view that the entirety of the sanctuary should be named 'Chumash Heritage'").

considerations, and its summary refusal to consider regulatory/management alternatives, is both inexplicable and arbitrary. Consequently, NOAA must consider and evaluate regulatory/management alternatives that would address the significant impact of the Agency-Preferred Alternative boundary and proposed regulations on submarine cable installation, operation, and maintenance. Finally, information set forth in the Draft EIS also raises serious questions as to whether NOAA has fully complied with all requirements under the NMSA for sanctuary designation, especially with respect to its treatment of fiber optic submarine cables.

For all these reasons, PC Landing respectfully requests that NOAA rethink its treatment and assessment of fiber optic submarine cables in the Draft EIS and consider a reasonable range of alternatives. In particular, NOAA must consider and evaluate regulatory/management alternatives that would ameliorate the significant adverse impacts that the proposed sanctuary designation would have on the permitting, installation, operation and maintenance of existing, currently planned, and future California Central Coast cables landing, or that would land, in Morro Bay and Grover Beach.

DISCUSSION

I. THE DRAFT EIS FAILS TO DOCUMENT AND ASSESS, BEYOND PASSING REFERENCES, THE EXTENSIVE USE BY SUBMARINE CABLES OF THE SUBMERGED LANDS WITHIN THE AGENCY-PREFERRED ALTERNATIVE SANCTUARY BOUNDARY.

As shown in Exhibit 1, five separate submarine cable systems currently land in the California Central Coast – three in the Morro Bay area and two in Grover Beach.[7] In addition, three separate submarine cable systems with planned landings in Grover Beach are currently

[7] Transpacific cables landing in the Morro Bay area are Southern Cross Cable Network, Japan-U.S. S1, and Asia-America Gateway Cable System. (Zayo Festoon, a U.S. domestic cable, also lands in the Morro Bay area.) Cables landing in Grover Beach are PC-1 and Pan American Crossing ("PAC").

under development and in the permitting/construction phase.[8] As shown in Exhibit 3, while the sanctuary footprint of the Agency-Preferred Alternative would exclude the Morro Bay landing sites, it would still cover the Grover Beach landing site, which is where PC-1 and PAC land, and the JUNO and Bi-Frost cable systems will land when they come online. While the Agency-Preferred Alternative allows for a narrow (approximately 10 km) corridor carved out of the Initial Boundary Alternative proposed by NOAA, as shown in Exhibit 3, *every existing fiber optic submarine cable and Planned Cable whether landing in Morro Bay or Grover Beach, with the exception of a single cable segment, would still traverse the sanctuary and be subject to the sanctuary regulations.* In addition, according to the Draft EIS, that narrow corridor would also be occupied by up to thirty wind energy transmission cables and "floating substations".[9] Combined with the corridor's narrow width, and considering the technical requirements for separation between cables, this would largely foreclose the use of that corridor for future fiber optic submarine cables, creating a de facto exclusion zone on new fiber optic cables in the corridor.

The California Central Coast region has developed into a hub for major transpacific fiber optic submarine cable systems. The cable systems landing and currently planned to land in the Central Coast, which include systems owned by, in addition to PC Landing, major telecommunication providers such as AT&T, Lumen, Verizon, and Zayo and technology companies such as Meta, Google, and Amazon, are a key part of the U.S. telecommunications and Internet ecosystem, serving as a critical gateway link between the mainland U.S. and Asia, as well as Mexico and Hawaii. Each of the cable systems are connected through backhaul

[8] The Planned Cables under development and in the permitting/construction stage that will land in Grover Beach are Bifrost, JUNO, and CAP-1.

[9] Draft EIS at 37.

networks from cable landing stations to major data centers and inland points of presence, which serve as telecommunications hubs and Internet gateways in major California population centers where carriers and other customers collocate facilities, carrying all manner of data and Internet traffic serving government, enterprises, and consumers. A high-level depiction of these hubs and their connections to the U.S. domestic communications network are shown in Exhibit 4.

The existing cable systems and Planned Cables under development and in the permitting/constructing phase that would be affected by the proposed sanctuary designation, represent an investment in submarine cable infrastructure of approximately $3.5 billion, which do not include annual operations and maintenance cost, upgrade capital expenditures, or the significant investment in backhaul infrastructure connecting Central Coast cable landing stations to inland telecommunications and Internet hubs.[10] This $3.5 billion investment represents approximately 31% of U.S. West Coast submarine cable investment,[11] and 63% of California submarine cable investment.[12] In terms of transpacific capacity for the carriage of telecommunications and Internet traffic, combined, these existing cables and planned cables account for approximately (*See* Exhibit 2):

- **34% of overall U.S. West Coast transpacific capacity**
- **62% of California transpacific capacity**
- **40% of overall U.S. West Coast transpacific capacity between the U.S. and Asia**
- **71% of California transpacific capacity between the U.S. and Asia**

[10] *See* Exhibits 5-A and 5-B (Capital Investment in Central CA Cables).

[11] *See* Exhibit 5-A.

[12] *See* Exhibit 5-B.

II. THE DRAFT EIS LIKEWISE FAILS TO DOCUMENT AND ASSESS THE ROLE OF SUBMARINE CABLES AS A CRITICAL COMPONENT OF THE NATION'S COMMUNICATIONS INFRASTRUCTURE AND NETWORKS, AND THE IMPORTANCE OF SUBMARINE CABLES TO THE U.S. ECONOMY AND NATIONAL SECURITY INTERESTS.

Submarine cables, such as PC-1, are vital to domestic and global communications and are the integral backbone of the global Internet essential to broadband communications. According to the FCC, submarine cables provide "the primary means of connectivity – voice, data and Internet" between the mainland United States and states and U.S. territories outside the mainland United States, as well as the rest of the world,[13] carrying "about 99% of transoceanic digital communications, including international voice, data and Internet communications, and financial transactions."[14]

Communications networks such as submarine cables, in general, have been designated as critical infrastructure, such that any action directly threatening these networks would raise potential national security and public interest concerns. As recognized in the USA Patriot Act, "Private business, government, and the national security apparatus increasingly depend on an interdependent network of critical physical and information infrastructures, including telecommunications."[15] As noted by DHS, the communications sector and its critical

[13] *Improving Outage Reporting for Submarine Cables and Enhanced Submarine Cable Outage Data*, Report and Order, 31 FCC Rcd 7947, ¶ 1 (2016)("FCC Cable Outage Report and Order").

[14] Congressional Research Service, Protection of Undersea Telecommunication Cables: Issues for Congress (2023), at 1 ("2023 CRS Report").

[15] *See generally* USA PATRIOT Act of 2001, § 1016, Pub. L. 107-56, 115 Stat. 274 (2001), 42 U.S.C. § 5195c. *See also* 42 U.S.C. § 5195c(e) (defining critical infrastructure as "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.").

telecommunications infrastructure are "an integral component of the U.S. economy as it underlies the operations of all businesses, public safety organizations, and government."[16]

With respect to submarine cables in particular, according to a recent Congressional Research Service report, commercial submarine cables landing in the U.S. "form the backbone of the global Internet" and "provid[e] telecommunication and Internet services for consumers, businesses, and government agencies, including military, diplomatic, and national security agencies."[17] A 2017 report prepared on behalf of the Office of the Director of National Intelligence and sponsored by the DHS Office of Intelligence and Analysis observes that submarine cables facilitate "the reach and speed of Internet and phone access critical to international trade, official government communications, and daily end user requirements."[18] Consequently, as the FCC concluded, in imposing outage reporting requirements on submarine cable systems landing in the U.S., "the operation and maintenance of the . . . undersea cables licensed in the United States are essential to the nation's economic stability, national security and other vital public interests."[19]

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[16] *See* U.S. Department of Homeland Security, National Infrastructure Plan – Communications Sector at 1, http://www.dhs.gov/xlibrary/assets/nipp_snapshot_communications.pdf ("Communications Sector Plan"); s*ee also* Cybersecurity & Infrastructure Security Agency, Homeland Security Presidential Directive 7: Critical Infrastructure Identification, Prioritization, and Protection, https://www.cisa.gov/homeland-security-presidential-directive-7 (identifying telecommunications as a critical infrastructure sector).

[17] 2023 CRS Report at 1. The 2023 CRS Report, which focuses on the protection of submarine cables and issues for Congressional consideration, observed that recent attacks and other incursions involving undersea infrastructure have "heightened awareness of the importance of undersea infrastructure, and spurred calls for increased protection of undersea cables." *Id.*

[18] Office of the Director of National Intelligence/Department of Homeland Security, Public-Private Analytic Exchange Program, Threats to Undersea Cable Communications, at Preface and 6 (2017) ("AEP Cable Report"). Quoting a former Federal Reserve Board Chief of Staff, the AEP Report notes that "When communications networks go down, the financial services sector does not grind to a halt, rather it snaps to a halt."

[19] FCC Cable Outage Report and Order, ¶ 3. *See also* 2023 CRS Report at 25 ("Undersea cables are vital to the national security and economic interests of the United States.").

The importance of broadband infrastructure, and the submarine cables that serve as "the backbone of the global Internet" could not have been made more clear than during the COVID-19 pandemic, which demonstrated how critical communications networks are to the nation's economy, described by the FCC Chairwoman as "part of everything we do," which we use to "connect with family and friends. . . . to build commercial businesses and civil society. . . . for healthcare and education. . . . to make purchases, seek out news, and get the facts we need to make decisions about our lives, our communities, and our country."[20] Indeed, throughout the pandemic, demand across broadband networks increased considerably in order to support telework, tele-education, telemedicine, and delivery of critical government and social services; and such "[i]ncreased data use by consumers, businesses, and government agencies, has increased everyday reliance on undersea cables."[21]

According to the White House, in announcing earlier this year the allocation of a $42.45 billion grant program to states around the country to fund broadband infrastructure through the Broadband Equity, Access, and Deployment ("BEAD") program created in the Bipartisan 2021 Infrastructure Investment and Jobs Act administered by NOAA's sister Department of Commerce agency, NTIA, "High-speed internet is no longer a luxury – it is necessary for Americans to do their jobs, to participate equally in school, access health care, and to stay connected with family and friends."[22] As noted by Department of Commerce Secretary Raimondo in announcing the allocation of funding among the states, "Whether it's connecting

[20] *Protecting Against National Security Threats to the Communications Supply Chain Through the Equipment Authorization Program,* Report and Order, and Further Notice of Proposed Rulemaking, ET Docket No. 21-232, et seq., FCC 22-84 (Rel. Nov. 25, 2022) (statement of FCC Chairwoman Jessica Rosenworcel).

[21] *See* 2023 CRS Report at 35.

[22] Press Release, The White House, Fact Sheet: Biden-Harris Administration Announces Over $40 Billion to Connect Everyone in America to Affordable, Reliable, High-Speed Internet (June 26, 2023).

people to the digital economy, manufacturing fiber-optic cable in America, or creating good paying jobs building Internet infrastructure in the states, the investments we're announcing will increase our competitiveness and spur economic growth across the country for years to come."[23]

In sum, local broadband infrastructure, such as those being funded by the $42 billion BEAD program and other broadband infrastructure grant programs, are critical to key economic, societal and national security interests. Connections to fiber optic submarine cables, such as those landing or that will land in the California Central Coast, which form the "backbone of the global Internet", facilitate the reach and speed of this local infrastructure, providing the telecommunications and Internet services that are critical to consumers, businesses, and government agencies, including national security interests.

III. THE DRAFT EIS CONSIDERATION OF FIBER OPTIC SUBMARINE CABLES FAILS TO MEET THE REQUIREMENTS OF NEPA, THE NMSA, AND EXECUTIVE ORDER 12866.

A. NEPA, NMSA and Executive Order 12866 Requirements.

Both NEPA and the NMSA, in connection with a sanctuary designation analysis, require NOAA to consider the potential impacts of the proposed actions and alternatives on the human environment. The NMSA, in particular, requires the NOAA sanctuary designation to include a "resource assessment that documents", in addition to several enumerated uses such as fishing, research, and minerals and energy development, "other commercial . . . uses".[24] In addition, among the factors NOAA must consider in determining whether a proposed area meets the NMSA standards for designation, are (a) "the present and potential uses of the area that depend on maintenance of the area's resources" including "commercial . . . activities", as well as (b) "the

[23] Press Release, National Telecommunications and Information Administration, Biden-Harris Administration Announces State Allocations for $42.45 Billion High-Speed Internet Grant Program as Part of Investing in America Agenda (June 26, 2023).

[24] NMSA, Sec. 304(a)(2)(B)(i), 16 U.S.C. § 1434(a)(2)(B)(i).

negative impacts produced by management restrictions on income-generating activities."[25] Executive Order 12866 (*Regulatory Planning and Review*), which the Office of Management and Budget determined applies to the proposed CHNMS designation as a significant regulatory action, similarly requires NOAA to provide an assessment of the potential costs and benefits of the proposed sanctuary.

In accordance with NEPA, the NMSA and EO 12866, the Draft EIS for the proposed CHNMS must assess and consider the presence of and potential impacts on commercial fiber optic submarine cables traversing and landing in the California Central Coast footprint of the proposed sanctuary, as well as on Planned Cables and other new systems that would traverse the proposed sanctuary in order to capitalize on the area's existing cable station and backhaul infrastructure. NOAA must likewise assess and consider the importance of that use to and potential resulting impacts of the proposed designation and Agency-Preferred Alternative on the national security and economic interests discussed above. In so doing, as NOAA acknowledges, it should also consider reasonable alternatives that address those impacts,[26] which it has not done here, and as discussed below, dismissed out of hand.[27]

[25] NMSA, Sec. 303(b)(1)(C), (H), 16 U.S.C. § 1433(b)(1)(C), (H).

[26] *See* Draft EIS at 41.

[27] *See id.* at 49-50.

B. The Draft EIS Analysis of the Extent of Use of Existing and Currently Planned Fiber Optic Submarine Cables Within the Agency-Preferred Sanctuary Boundary Fails to Comply with these Requirements.

While fiber optic cables are mentioned in the Draft EIS analysis of Socioeconomics, Human Uses, and Environmental Justice, there is no analysis on either the extent of the use or the criticality of that use. According to the Draft EIS, its generalized analysis describes "recent socioeconomic and demographic conditions" and purportedly provides an "overview of what is currently known about the uses of the natural and cultural resources" comprising the designation.[28]

However, commercial fiber optic submarine cables are merely lumped in without specific mention in the "human uses" discussion in the Draft EIS section on Socioeconomics, Human Uses, and Environmental Justice as a "right of way use" among "Infrastructure and Activities", and among "51 known permitted infrastructure and activities within the Initial Boundary Alternative."[29] The reader is referred to Appendix H for details, which merely notes in passing that "NOAA has identified 51 active permitted activities, and three permit applications in the area of the proposed sanctuary", and that "these activities include pipelines, piers, storm drain outfalls, *fiber optic cables*, and other industrial uses." Appendix H then provides a list of the particular California State Lands Commission leases for all of these activities, without a description of the use, other than to note the type of lease as "right of way use."

The deficiency in this assessment and analysis can readily be seen by contrasting it to the extensive analysis in the Draft EIS of offshore energy, and specifically wind energy. For example, the Draft EIS includes 302 mentions of "energy"; 308 mentions of "wind"; 54

[28] *See id.* at 151.

[29] See *id*. at 156.

mentions of "WEA" (i.e., "Wind Energy Area"), but makes no mention whatsoever of the telecommunications industry, the use made of fiber optic cables, or the role of fiber optic cables in the provision of communications and Internet services to U.S. businesses, governmental entities, and consumers. Of 246 mentions of "cable" in the Draft EIS, 219 involve wind energy transmission cables related to facilities that have yet to be constructed and will be located outside the proposed sanctuary under the Agency-Preferred Alternative, *with just 27 mentions of "fiber optic cable."* Similarly, the Federal Register notice for the Draft EIS includes 13 mentions of wind or WEA, and 18 mentions of transmission cables generally, with just a single mention of fiber optic submarine cables. Where fiber optic submarine cables are mentioned, in the overwhelming majority of cases it is not to assess the use made of the proposed sanctuary by existing cables and Planned Cables but merely as an analogy or example of how the regulatory treatment of fiber optic cables in other National Marine Sanctuaries can be used as a baseline for consideration of the regulatory treatment that should be applied to wind energy transmission cables.[30]

In addition, there is no mention or treatment of fiber optic cables in the draft management plan or its individual action plans. Indeed, the Draft EIS and draft management plan both tout a unique collaborative management framework that NOAA currently envisions for the sanctuary – involving substantial participation by federally and non-federally recognized local tribes and Indigenous communities in management-related issues. Yet the management framework provides for only a relatively limited participation by industry representatives as "Potential

[30] *See, e.g., Id.* at 232 ("NOAA has relied upon a fair and robust permit process to authorize the placement and continued presence of subsea cables (both research and trans-oceanic fiber-optic cables) within national marine sanctuaries. Based on its experience at other sites, NOAA believes that its authorities under the NMSA and the proposed regulations could be effectively utilized to allow fair and robust consideration of the placement and continued presence of subsea electrical transmission cables within the proposed sanctuary to connect new leases in the Morro Bay WEA to shore.").

Partners", such as submarine cable operators, which are among the most significant users of the proposed sanctuary sea space. In fact, the submarine cable industry has a longstanding collaborative relationship with and continuing investment in commercial fishing in the Central Coast region (and elsewhere in California and Oregon) dating back to at least the late 1990s. There has also been a demonstrated industry commitment to continuing as a responsible industry partner in the region. This has been recognized by the California Coastal Commission, the California State Lands Commission, as well as NOAA's National Marine Fisheries Service as essential for continued operations and new systems, but is not recognized by NOAA in the Draft EIS.

In sum, the disproportionate treatment of wind energy and unbuilt electrical transmission cables compared with the telecommunications industry and its extensive, long-standing use of the submerged lands that will be included within the boundary of the proposed sanctuary, further highlights the inadequate assessment of this infrastructure use critical to U.S. economic, societal, and national security interests, and sets the stage for the summary dismissal in the Draft EIS of the significant impacts that the sanctuary designation will have on this critical infrastructure and human use. Nowhere does the Draft EIS consider or assess the extent of current and planned fiber optic submarine cable infrastructure that is within the footprint of the proposed sanctuary as it is required to do under NEPA, the NMSA and Executive Order 12866. Nor does the Draft EIS discuss the importance of that infrastructure to government, business users, consumers, and national security interests.

IV. THE DRAFT EIS FAILS TO MEANINGFULLY ANALYZE THE ADVERSE IMPACTS OF THE DESIGNATION AND PROPOSED REGULATIONS ON SUBMARINE CABLES AND ASSOCIATED ECONOMIC, SOCIETAL AND NATIONAL SECURITY INTERESTS.

A. The Draft EIS Analysis of Impacts on Submarine Cables.

The Draft EIS states that "NOAA has considered the adverse impacts of the Agency-Preferred Alternative and finds them to be not significant while also allowing an acceptable balance between resource use and conservation of sanctuary resources."[31] However, NOAA's analysis and consideration of the impacts of the proposed sanctuary designation on submarine cables is only included in its discussion of socioeconomics, human uses, and environmental justice, as a "human use", and specifically, as a "right of way use" among the "Infrastructure and Activities" human uses, and provides no analysis of the impacts on submarine cable permitting, installation, operation, and maintenance.

The Draft EIS notes that the Initial Boundary Alternative would generally prohibit disturbance of the seabed within the proposed sanctuary. Existing permitted uses, such as existing offshore cables, would be approved through "certification" of existing authorizations from other federal or state agencies, while issuance of a new authorization would be required for a new or expanded use under the proposed regulations. Specifically, NOAA proposes to authorize new cables through a combination of Office of National Marine Sanctuary ("ONMS") authorization of other agency permits for cable construction, plus a NOAA special use permit for their continued presence. In particular, as proposed, a special use permit would be issued for activities on or in submerged lands of the proposed sanctuary, such as the "continued presence of submarine cables on or within submerged lands."[32]

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[31] Draft EIS at xvi.

[32] Draft EIS at 24-25, 163. *See also* Fed Reg Notice at 58137 ("SUP categories that are potentially relevant to known activities at the proposed CHNMS include the continued presence of commercial subsea cables . . ."). This

The Draft EIS concludes, without analysis or discussion, that NOAA "*does not consider the administrative process to seek and obtain a permit from the sanctuary to be an adverse impact*."[33] Consequently, it concluded that "any adverse impact from the Initial Boundary Alternative on human uses in the sanctuary would **be negligible**."[34]

At a minimum, this conclusion is fundamentally at odds with the conclusion NOAA draws with respect to wind energy transmission cables in its reasoning for the Agency-Preferred Alternative. In the alternatives analysis NOAA states that adoption of the Initial Boundary Alternative would result in *moderate adverse impacts* on wind energy transmission, necessitating the carve-out of a corridor for wind energy transmission cables in the Agency-Preferred Alternative boundary to address those impacts.[35] The Draft EIS ultimately found that such

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approach is explained in more detail in the Draft EIS discussion of wind energy transmission cables, which would be subject to an analogous approach (Draft EIS at 182, emphasis in original):

- For the **installation of a subsea electric transmission cable on the outer continental shelf within the proposed sanctuary**, NOAA could consider issuing an ONMS authorization of a permit issued by the USACE under section 10 of the Rivers and Harbors Act (33 U.S.C. 403), under 15 C.F.R. 922.36 and section 922.232(e) of the proposed rule.
- For **installation of cables within state waters of the proposed sanctuary**, NOAA could similarly consider authorizing a lease issued by the State Lands Commission or a coastal development permit issued by the California Coastal Commission, under 15 C.F.R. 922.36 and section 922.232(e) of the proposed rule.
- To **authorize the continued presence of the cable on or in the seabed within the proposed sanctuary**, NOAA could then consider issuing a special use permit under section 310 of the NMSA.
- To **allow any necessary maintenance and repair associated with the cable that might cause a disturbance of the submerged lands of the sanctuary**, NOAA could consider several potential options. These could include relying on the initial ONMS authorization of the USACE section 10 permit and/or state permit for the cable installation (depending on the duration of that permit and whether it included future repair and maintenance), or issuing an ONMS authorization of a separate USACE and/or state permit that is issued specifically for the maintenance and repair activity.

See also Fed Reg Notice at 581333 ("Disturbance of submerged lands during repair and maintenance of existing structures not listed as being exempted, such as . . . trans-oceanic fiber-optic telecommunications cables, would also require a permit, authorization or certification from NOAA before proceeding.")

[33] Draft EIS at 163 (emphasis added).

[34] *Id.* (emphasis in original).

[35] Draft EIS at 227 ("The Initial Boundary Alternative would also result in moderate adverse impacts associated with installing, maintaining, and operating subsea electrical transmission cables from offshore wind development leases in the Morro Bay WEA to shore.")

impacts would be avoided or greatly reduced through the proposed adoption of Alternative 2, which creates a corridor excluding wind energy transmission cables from the proposed sanctuary footprint.[36] The impacts of NOAA's proposed regulations, as will be seen below, are at least as significant if not more so, with respect to fiber optic submarine cable systems, yet NOAA has proposed no alternative that would similarly mitigate such impacts, such as the adoption of regulatory exclusions or accommodation for existing and proposed fiber optic cables.

In terms of significance and quality of impacts, NOAA states that for each use of the proposed sanctuary, it looked at "direct impact", "indirect impact," and "cumulative impact," and various factors that would inform the "degree of effect."[37] It could not be clearer that with respect to fiber optic submarine cables, this, NOAA has absolutely failed to do. Its failure in this regard constitutes a fatal flaw in its impact analysis of the proposed sanctuary designation on fiber optic submarine cables, and if adopted, would be reversable error.

B. <u>The Draft EIS Analysis of Impacts on Submarine Cables Ignores Without Analysis, the Obvious, Significant Adverse Impacts that the Sanctuary Regulatory Provisions Would Have on Submarine Cables and the Industry, and the Economic, Societal, and National Security Interests They Support</u>.

1. NOAA must consider in its impact analysis of the proposed sanctuary regulations, that those same regulations have created National Marine Sanctuaries as *de facto* submarine cable exclusion zones over the last 20 years.

NOAA's conclusion that it "does not consider the administrative process to seek and obtain a permit from the sanctuary to be an adverse impact" included no analysis or support and is belied by overwhelming evidence and its own statements to the contrary. As an initial matter, NOAA totally ignores that its sanctuary regulations have created *de facto* exclusion zones for 20

[36] *Id*.

[37] *Id.* at 61-62.

years, prohibiting rather than regulating submarine cables. According to its own data, only *three* commercial submarine cable systems have been installed in National Marine Sanctuaries, all between 1998 and 2000.[38] Aside from the three submarine cables laid in National Marine Sanctuaries between 1998 and 2000, *not a single commercial submarine cable has been installed in a then-existing National Marine Sanctuary since 2000*. This is in comparison to a total of at least 50 new submarine cable systems installed in the United States since then, about 20 on the West Coast and about 30 on the East Coast.

This is dramatically illustrated in Exhibit 6 which is a map of California fiber optic submarine cables, overlaid by the boundaries of National Marine Sanctuaries in the State. The map shows the extent to which commercial submarine cables landing in California and constructed since 2000, route around and avoid the State's National Marine Sanctuaries.[39] In fact, the only commercial submarine cables installed in National Marine Sanctuaries were all installed *prior* to the sanctuary designation of the areas where they were installed and have all since been retired.[40] This is compelling evidence of the actual impact of its proposed regulations on submarine cable systems, contrary to NOAA's assertion that it "does not consider the administrative process to seek and obtain a permit from the sanctuary to be an adverse impact."

Moreover, beyond the impacts on existing cables and the Planned Cables, the submarine cable industry's avoidance over the last 20 years of National Marine Sanctuaries, provides strong

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[38] *See* NOAA 2011 Policy and Permit Guidance for Submarine Cable Projects, Appendix A.

[39] The FOCUS cable that traverses the Channel Islands NMS is a U.S. Navy cable.

[40] All of the cables, now retired, that land in Port Arena, CA and traverse what is now the northern portion of the Greater Farallones NMS, were installed prior to the 2016 expansion of the Greater Farallones NMS, which expanded the sanctuary footprint to cover the area traversed by the cables. *See* Final Environmental Impact Statement, Cordell Bank and Gulf of the Farallones National Marine Sanctuaries Expansion (Dec. 2014). Similarly, all of the cables, now retired, that traverse what is now the western Davidson Seamount expansion of the Monterey Bay NMS, were installed prior to the 2008 expansion of the sanctuary to Davidson Seamount, which expanded the sanctuary footprint to cover the area traversed by the cables. State of Sanctuary Resources: Seamount Environment, Monterey Bay National Marine Sanctuary.

evidence that these same regulations would be an impediment to future cables that would otherwise land in the California Central Coast. The commercial submarine cable industry has consistently evaluated the feasibility of routing new critical infrastructure within National Marine Sanctuaries and as a result has assiduously avoided going through National Marine Sanctuaries, even though a route through a sanctuary may be the most efficient, environmentally favorable, and cost-effective route for a particular cable system. However, NOAA has failed to consider the associated (a) impacts on costs and efficiencies of avoiding the proposed CHNMS, especially with the existing presence of significant landing and backhaul infrastructure in the Central Coast region, and (b) the significant impacts of routing through more sensitive or physically challenging areas, and the need for construction of new landing and backhaul infrastructure to accommodate such alternative routings.

The Draft EIS thus fails to consider the potential for significant indirect physical and environmental effects resulting from the proposed designation, and the lack of regulatory exemptions or accommodations for fiber optic submarine cables. Although the Draft EIS attempted to consider wind energy infrastructure footprint needs in the analysis, no other critical infrastructure development over the last 20 years in the context of National Marine Sanctuary boundaries was examined relative to alternative sanctuary boundaries. If it had engaged in such an examination, the analysis would have evidenced, as shown in Exhibit 6, that sanctuary boundaries and the associated prohibitions result in sanctuary avoidance and intensifying infrastructure siting elsewhere. While dismissing the effects of regulatory burden out of hand, the Draft EIS did not attempt to investigate the long-term impacts of substantially changing the marine space offshore in California. The long-term impacts are not simply a regulatory burden,

but rather wide-ranging indirect physical impacts. The Draft EIS is deficient without such an analysis of these indirect effects.

At a minimum, the NEPA analysis must consider the indirect effects of precluding existing and ongoing marine uses from a broad swath of the ocean. A reasonable outcome to evaluate is, if commercial cables are routed around the new sanctuary to avoid the severe regulatory impediments, permit limitations, and costs, future cables will go elsewhere. Future cable development will be displaced to other parts of the California coast or outside of California that (a) may be less favorable to submarine cable landings or (b) do not currently have existing robust submarine cable landing infrastructure.

Two important siting criteria for commercial submarine cables in the Central Coast (and most areas globally) are favorable seabed for burial (soft bottom) and relatively less hard bottom than other areas. In addition, Central Coast landings can take advantage of existing and robust coastal infrastructure. Indeed, permitting agencies encourage the use of existing infrastructure to reduce environmental impacts. The de facto "hub" in the Central Coast developed out of both commercial and regulatory considerations. Future cables will be forced to land in areas that may have less favorable seabed conditions and also may necessitate construction of new coastal infrastructure and backhaul. These potential adverse environmental impacts of the proposed designation have not been evaluated in the Draft EIS, and the arbitrary emphasis on sanctuary boundary alternatives summarily dismissed alternatives that could provide a regulatory approach to managing these long-term indirect impacts.

2. NOAA's statements in the Draft EIS regarding the proposed regulations applicable to submarine cables demonstrates the intended impacts of those regulations on submarine cable installation, operations and maintenance.

While NOAA concludes that it does not consider the administrative process to seek and obtain a permit for the sanctuary to be an adverse impact, ONMS authorizations and special use permits to authorize new cable systems, as well as authorizations for maintenance activities for existing cable systems traversing the sanctuary, are all discretionary and can be denied or significantly conditioned. The requirement for such authorizations, can also result in significant delay, which is of particular relevance to time-critical cable maintenance and repair activities. For example, in discussing the existing permitting process in the context of wind energy transmission cables, NOAA observes that "*Sanctuary general permits, authorizations, and special use permits are only issued after necessary reviews under NEPA, NHPA, and other environmental compliance processes are completed" and through such permitting processes ONMS "would be able to review, approve, and condition specific"* proposed cables within a sanctuary, and *"would have the authority to impose mitigation measures that are necessary to protect sanctuary resources, and uses that depend on them*."[41]

Given this, as to wind energy transmission cables, NOAA concluded that its proposed regulations "would likely impose direct, localized, short-term, moderate adverse impacts on offshore wind development", in particular on the installation, maintenance, and operation of subsea electrical transmission cables that would traverse the Initial Boundary Alternative from offshore wind development leases in the Morro Bay WEA to the shoreline.[42] NOAA then finds that these impacts would be avoided or greatly reduced under the Agency-Preferred Alternative

[41] Draft EIS at 182-183.

[42] *Id.* at 183-184.

through the establishment of what would essentially be a "cable corridor" for energy transmission cables outside of the northern boundary of the sanctuary. If NOAA had conducted a similar level of analysis on fiber optic cables, it presumably would have reached the same moderate adverse impact finding with respect to those fiber optic submarine cables that currently or in the future would traverse the sanctuary. Instead, while NOAA was willing to change the sanctuary boundary to reduce this moderate adverse impact on energy transmission cables, it reached a different and arbitrary conclusion for commercial submarine cables.

> In a similar vein, NOAA also cites the effects of its proposed regulation of fiber optic submarine cables in the proposed sanctuary boundary as a *benefit* to commercial fishing, noting that the prohibition on the "disturbance of submerged lands," would "provide added protection to the benthic habitats" in the sanctuary footprint, and "would prevent a further loss and degradation of habitats, and improve the overall health of the ecosystem of the study area." In particular the Draft EIS found that "*Fiber-optic cable repair or new fiber-optic cable construction* ***would also not be allowed*** *unless authorized or permitted pursuant to the proposed regulations*."[43] Thus, the Draft EIS concluded that the prohibition on disturbing the seabed applicable to fiber optic cables "would cause long-term, **significant beneficial impacts** on commercial fishing from habitat enhancement and greatly lowered risk of use conflicts."[44] Obviously, a corollary to the posited *benefits* to commercial fishing interests from prohibitions and restrictions on submarine cable construction and repair activities, would be the *costs, impacts, and*

[43] *Id.* at 123-124. (Emphasis added.)

[44] *Id.* (Emphasis in original.)

delays of those prohibitions and restrictions on submarine cable installation, maintenance, and operations.[45]

3. An examination of NOAA's regulatory scheme applicable to submarine cables installed in National Marine Sanctuaries and the proposed CHNMS regulations demonstrate that they would have obvious and significant adverse impacts on submarine cable installation, operations and maintenance.

The impacts of the permitting process on commercial submarine cable uses and the reasons the industry has avoided National Marine Sanctuaries, can also easily be seen from a review of the proposed sanctuary regulations and 2011 Submarine Cable Policy and Guidance released by NOAA. As noted, NOAA contemplates that new cables would be authorized through a combination of ONMS authorization of an existing permit or authorization of a governmental entity and issuance of a special use permit for the continued placement of the cable in the sanctuary, while maintenance activities for existing cables would be authorized by some form of yet-to-be-determined authorization.

Under the proposed sanctuary regulations, grant of either type of permit, in addition to being discretionary, would require consideration by the ONMS Director of enumerated review criteria in Section 922.33(a)(1)-(9) of the regulations, which address detailed conditions for the permits to issue. In addition, the Director may require additional information, "as the Director deems reasonably necessary to determine *whether to issue an ONMS authorization* and what terms and conditions are reasonably necessary to protect sanctuary resources and qualities."[46]

[45] Regardless, NOAA's assertion of a long-term significant beneficial impact on commercial fishing from new sanctuary-imposed restrictions on submarine cable activities is unsubstantiated. As noted above, the submarine cable industry has a longstanding and collaborative relationship with the commercial fishing to avoid adverse impacts on commercial fishing interests from submarine cable activities.

[46] *See* 88 Fed. Reg. at 58144 (proposed Sec. 922.234(e)).

The 2011 Submarine Cable Policy and Permit Guidance includes some 24 pages on the permit process, which notes that "*If* ONMS decides to issue a permit, it will draft the permit with all necessary special and general conditions at the sanctuary in which the submarine cable is to be installed." [47] These include monitoring requirements, and some 16 enumerated conditions involving such things as installation requirements and procedures, vessel operations requirements, burial survey requirements, fishing coordination, cable repair requirements, and cable removal requirements, to name a few.[48] The Policy and Galso includes a 9-page separate appendix on Permit Application Requirements, covering numerous enumerated items, separate topics and sub-topics. A flow chart describing the decision process is included in the Policy and Guidance (*see* page 9), with the final two decisional boxes as "Issue Permit" or "Deny Permit."

The certification process for existing submarine cables laid out in the Draft EIS and Federal Register notice is similarly discretionary and will result in a significant cumulative burden on the existing cables that traverse the sanctuary footprint, which has not been considered in the Draft EIS. As shown in Exhibit 3, every existing or currently planned cable, except for one cable segment, traverse the proposed footprint of the Agency-Preferred Alternative, requiring both certification for existing presence, and some currently unspecified form of authorization for maintenance and repair. The certification process for existing cables laid out in the Federal Register notice and proposed regulations, far from merely grandfathering existing cables, is both discretionary and includes opportunities to condition the certification, as well as opportunities for public hearings and input.

[47] 2011 Submarine Cable Policy and Permit Guidance at 21.

[48] *Id.* at B-8–B-9.

For example, under proposed Section 922.234 (Certification of preexisting authorizations), cable operators would be required to notify the ONMS Director within 90 days of sanctuary designation, and upon grant of certification, the operator would be required to comply with terms and conditions imposed as a condition of the certification to achieve purposes for which the sanctuary was designated.[49] The Director may request additional information as the Director believes "is reasonably necessary to condition the exercise of the certified activity to achieve the purposes for which the [s]anctuary was designated."[50] The proposed rule also states that in considering "*whether* to issue a certification" the ONMS Director may seek views of any other person, within or outside the Federal government and may hold a public hearing as deemed appropriate. This suggests that NOAA would have the discretion to *decline* to certify the continued presence of an existing submarine cable.[51] This would be inconsistent with the NMSA, which provides that for existing uses, nothing in the certification process "shall be construed as terminating or granting to the Secretary the right to terminate any valid authorization that is in existence on the date of" the designation of any national marine sanctuary.[52]

Additionally, for new cables requiring a special use permit, the NMSA and NOAA's national marine sanctuary program regulations authorize the agency to recover a fair market value ("FMV") for use of sanctuary resources, and a limited 5-year term with discretionary

[49] *See* 88 Fed. Reg. at 58144.

[50] *Id.*

[51] *Id.* (Emphasis added.)

[52] *See* NMSA, Sec. 304(c), 16 U.S.C. § 1434(c).

renewals.[53] In 2002, NOAA established a protocol for imposing FMVs on submarine cables.[54] At that time, NOAA released a report describing the methodology by which NOAA will assess FMV for submarine cables in National Marine Sanctuaries, which concluded that an FMV at the then current (2002) range of $40,000 to $100,000 per mile for the FMV of a sanctuary permit is reasonable. The report noted that an FMV fee within that range "would be considered appropriate from the standpoint of economic valuation" and "left to the judgment of the decision makers involved to weigh any relevant policy considerations in making a final determination" noting that the FMV of a permit will change over time.[55]

In 2015, NOAA released a final fee notice establishing standard procedures for assessing special use permit fees, including the FMV fee.[56] In that notice, NOAA indicated that, rather than conducting an in-depth economic study on FMV fee categories, for submarine cables NOAA would continue to assess FMV fees on the basis of the 2002 Report, with FMV fees assessed annually and adjusted according to the consumer price index ("CPI") using the methodology set forth in the 2002 Report. This approach implies for a new cable constructed in the CHNMS using the latest available CPI from September 2023, an annual FMV fee in the range of $68,000 to $170,000 per mile. So, for example, a cable with two segments landing in Grover Beach, each traversing 30 miles in the sanctuary, *would have an annual FMV fee of about $4 million to $10.2 million,* based on the U.S. Bureau of Labor Statistics CPI Calculator

[53] *See* Draft EIS at 25. Fed Reg Notice at 58137 (noting that NMSA authorizes NOAA to assess and collect fees for the conduct of any activity under a special use permit, including "the fair market value use of sanctuary resources; for instance, for use of the seabed to protect a buried cable." *See also* 15 CFR § 922.35(b)(3) (special use permit fee may include "An amount which represents the fair market value of the use of the sanctuary resource.").

[54] Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries, 67 Fed. Reg. 55201 (Aug. 28, 2002).

[55] *Id.,* 67 Fed. Reg. at 55202.

[56] Final Notice of Fee Calculations for Special Use Permits, 80 Fed. Reg. 72415 (Nov. 19, 2015).

for September 2023 numbers, which would be expected to further escalate over time. A further issue with the FMV fee is the extent to which it represents a "double dip" for the portion of a cable both within the sanctuary boundary, and in state sovereign submerged lands subject to a lease fee from the California State Lands Commission.

Finally, in addition to the FMV fee, a separate issue related to special use permits is language in Section 310 of the NMSA limiting the permit term for any use subject to a special use permit to a period of no more than 5 years, subject to renewal. Thus, renewals, extensions or amendments (however characterized) to cover continued placement and operations of a new cable system in the CHNMS, which typically have an expected useful life of at least 25 years, would both be discretionary, as well as potentially subject to additional conditions when granted, adding uncertainty for any new cable that would traverse the proposed sanctuary, and artificial incentives to use alternative routings that avoid the proposed sanctuary.

C. NOAA Should Consult With and Seek Input From Other Federal Agencies With a Direct Interest in Submarine Cable Security and Protection on the Proposed Sanctuary Designation and Preparation of the EIS.

The Draft EIS states that NOAA's "[d]ecision on alternatives as well as adjustments" will be informed, among other things, "by government-to-government consultation and coordination with cooperating agencies."[57] While the Draft EIS reflects extensive discussion with and input from BOEM on the proposed sanctuary (with BOEM mentioned some 140 times in the Draft EIS in connection with the Morro Bay Wind Energy Area), the Draft EIS reflects no consultation

[57] Draft EIS at xvii.

with the FCC,[58] NOAA's sister agency, NTIA,[59] DHS, DOJ,[60] and other federal agencies that have significant interests in the security and protection of submarine cables.

As reported by a 2023 Congressional Research Service Report, there is "an 'urgent need' for a single federal point of contact—a lead agency—for undersea telecommunication cables to raise awareness of cables and to promote protection policies, and the challenge posed by the lack of a single federal agency serving as the lead on submarine cable matters, including coordination of permitting decisions."[61] Ironically, as reflected in the Draft EIS, NOAA has neither coordinated its proposed action here or even consulted with a single agency with direct interests in submarine cable matters.[62] Given the significant presence of submarine cables landing in the

[58] The FCC is the federal agency which grants cable landing licenses to submarine cable systems, and has primary responsibility for the regulation and security of the submarine cable industry and the telecommunications industry, more broadly.

[59] NTIA is the Department of Commerce Agency that advises the President on telecommunications and information policy issues, administers billions of dollars in grant programs that further the deployment and use of broadband in America, including a the $42.45 BEAD Program under the 2021 Jobs Act, and manages the Federal use and availability of spectrum, and ensuring, according to NTIA, that the "Internet remains an engine for continued innovation and economic growth", goals which "are critical to America's competitiveness in the 21st century global economy."

[60] DHS and DOJ, along with NTIA and several other federal agencies, are members of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (formerly known as "Team Telecom"), which focuses on the national security risks to telecommunications networks, including international submarine cable systems landing in the United States. As one example, the Team Telecom agencies routinely request the FCC to condition the grant of a cable landing license on the licensee's compliance with various security assurances formalized in Network Security Agreements or Letters of Assurance with the Team Telecom agencies, including with respect to various cables landing in the Central Coast footprint of the proposed sanctuary. *See, e.g.,* PC Landing Corp., Letter of Assurance, as amended, in ICFS File No. SCL-T/C-2009071500022 (PC-1); Pacific Carriage Limited Inc., Letter of Assurance in ICFS File No. SCL-LIC-2019080900026 (Southern Cross Cable Network); CenturyLink, Letter of Assurance in ICFS File No. ITC-T/C-201612130034 (Pan American Crossing).

[61] 2023 CRS Report at 14 (quoting report of the FCC Communications Security, Reliability, and Interoperability Committee)

[62] The Draft EIS, Appendix E.1 lists agencies, departments and tribes to which NOAA will either be sending consultation letters or an invitation to comment along with copies of the Draft EIS. Neither the FCC, NTIA, DHS, or DOJ are on this list of agencies that have been or will be consulted. The DoD, which is a cooperating agency in the preparation of the Draft EIS, is on the list in connection with activities it conducts in the proposed sanctuary footprint, including its own communication or data cables (see Draft EIS, Appendix I), "which would be broadly exempted from the proposed regulations." Draft EIS at xiii. There is no mention, however, of consultations with DoD involving commercial submarine cable systems. *See* Draft EIS, Appendix I.

Central Coast and the importance of those cables to the American economy and national security interests as discussed above, PC Landing urges NOAA to consult and seek input from these agencies before proceeding further with the Draft EIS.

V. IN PROPOSING A REGULATION THAT PROHIBITS SEABED DISTURBANCE BY SUBMARINE CABLES, THE DRAFT EIS FAILS TO ANALYZE OR CONSIDER THE EXTENSIVE AVAILABLE EVIDENCE DOCUMENTING THE LACK OF IMPACTS FROM FIBER OPTIC SUBMARINE CABLES ON THE SEABED AND BENTHIC ENVIRONMENT.

Section 922.232(a)(3) of the proposed sanctuary regulations, includes among the "prohibited activities" in the CHNMS, a broad prohibition on "Drilling into, dredging or otherwise altering the submerged lands in the Sanctuary, or constructing, placing or abandoning any structure, material or other matter on or in the submerged lands of the Sanctuary." As discussed above, absent a certification, authorization, or a special use permit, this provision, effectively bars existing cables, cable maintenance, or the construction of new cables. The Draft EIS summarily rejected, without analysis, requests from the telecommunications industry to limit or qualify this prohibition. Instead, the Draft EIS found because doing so "would not meet the purpose and need of the proposed designation, it was eliminated from detailed study."[63]

For maintenance activities, by declining to include exemptions or regulatory/management alternatives for undersea cables, NOAA states that:[64]

> Given that there can be considerable seafloor disturbance, impacts on fishing, and other threats from repair and replacement of seafloor fiber-optic cables, the proposed regulations for CHNMS do not exempt repairing and maintaining fiber-optic cables but could allow it via a sanctuary general permit, ONMS authorization, or certification, as appropriate. This approach ensures the sanctuary superintendent can review and take action to adopt mitigations for any repair and replacement activity to be approved. If fiber-optic cables were exempted in the regulations, there would

[63] *Id.* at 50.

[64] *Id.*

> be no means for the sanctuary superintendent to ensure seafloor disturbances and other impacts on sanctuary resources were minimized. Because this alternative would not meet the purpose and need of the proposed designation, it was eliminated from detailed study.

This conclusion, as well as NOAA's refusal to limit or qualify the application of the seafloor disturbance prohibition to fiber optic submarine cables, fails to account for the research from NOAA itself showing only minimal impacts to the seabed and benthic environment from submarine cable activities. For example, in terms of impacts of PC-1's installation on the seabed of the OCNMS, a 2018 Office of National Marine Sanctuaries ONMS Marine Sanctuaries Conservation Series report concluded based on the report's review of PC-1 survey data from 2000-2004, that "[i]n general terms, the physical habitat within OCNMS had returned to pre-installation conditions within five years of cable installation."[65] In addition, the report concluded that in terms of "impacts from undersea cables, benthic communities along the cable route in [OCNMS] were indistinguishable from those in control areas during the post-installation surveys."[66]

In addition, a January 2023 Condition Report on the OCNMS, prepared in connection with a proceeding by OCNMS to review its management plan, concluded that in terms of Human Activities and Stressors, submarine cables are categorized on a scale together with increased visitation and research activities.[67] Specifically, the Condition Report notes that:[68]

> The pressures on OCNMS resources associated with human activities are diverse, operate at varying scales, and differ significantly in their impact. Operating throughout the sanctuary and potentially causing the greatest impacts are accelerating changes in ocean conditions, marine debris, non-indigenous species

[65] Antrim, L., Balthis, L., & Cooksey, C., *Submarine Cables in Olympic Coast National Marine Sanctuary: History, Impact, and Management Lesson* at 42, Marine Sanctuaries Conservation Series ONMS-18-01 (2018).

[66] *Id.* at 43.

[67] See Condition Report at 3.

[68] *Id.* (Emphasis added.)

> invasions, and noise. At intermediate scales, or more prominent in specific areas, are maritime transportation, whale entanglement, military activities, and contaminants. *At even more limited scales are offshore aquaculture, submarine cables, increased visitation, and research activities*.

Also of direct relevance here as to the likely lack of impacts from the installation of fiber optic submarine cables within the footprint of the proposed sanctuary, was as an authoritative 2020 report prepared by the Monterey Bay Aquarium Research Institute ("MBARI"), on the potential impacts on the seabed and benthic environment of the Monterey Accelerated Research System ("MARS").[69] MARS is a 32-mile undersea fiber optic cable traversing the seabed in Monterey Bay, a marine environment adjacent to the proposed CHNMS, from Moss Landing to a "science node" on the continental shelf. MARS provides electrical power and high speed data connections to deep sea research instruments connected to the node and to connected hubs.[70]

The MARS report was based on an initial biological assessment in 2004, a Post-Lay Inspection and Burial Survey in 2007, and "comprehensive surveys" performed in 2008, 2010, 2015 and 2020 (13 years after the cable's 2007 installation).[71] Most significantly, the report concluded that "the MARS cable has had little detectable impact on seabed geomorphology, sediment qualities, or biological assemblages."[72] In terms of potential seabed effects, the report found that with respect to the "cable trench" associated with the cable's installation on the seafloor, sediment had filled the cable trench in deeper areas, "which is now nearly imperceptible in most locations."[73]

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[69] *See* MBARI, *Potential impacts of the Monterey Accelerated Research System (MARS) cable on the seabed and benthic faunal assemblages* (2020)("2020 MARS Report"), available at https://sanctuarysimon.org/regional_docs/monitoring_projects/100391_MBARI_MARS_2020_report.pdf.

[70] *See* Monterey Accelerated Research System (MARS), available at https://www.mbari.org/technology/monterey-accelerated-research-system-mars/.

[71] 2020 MARS Report at i.

[72] *Id.*

[73] *Id.*

The report likewise found virtually no detectable effects along the cable route with respect to benthic communities. In particular, it reported that for the first three comprehensive surveys (2008, 2010, and 2015), "local-scale variation in benthic megafaunal communities" near the MARS cable "was minor or undetectable."[74] Indeed, according to the report, the 2020 survey found that "the density of megafauna . . . was significantly greater along the cable route than the undisturbed area just 50 m away."[75]

Beyond the NOAA reports and the 2020 MARS report, even a cursory review of the public record would have surfaced a plethora of staff reports over the last 20 years by the California Coastal Commission and California State Lands Commission, supported by publicly vetted impact analyses compliant with the California Environmental Quality Act ("CEQA"), that evaluate potential impacts of seabed disturbance from submarine cable installation and maintenance, best management practices implemented by the industry, and mitigation measures (including in collaboration with commercial fishing interests), repeatedly finding no significant impacts.[76] The Draft EIS references do not cite a single impact analysis or agency staff report from the substantive public record on any of the submarine cable installations in the region that show otherwise. The unsupported overstatement in the Draft EIS concerning the impacts of submarine cable installation, operation, and maintenance on the seabed and benthic environments, or at a minimum, its failure to evaluate and assess those impacts, further

[74] *Id.* at ii.

[75] *Id.*

[76] Because submarine cables in California and most other U.S. locations qualify for a Department of the Army Permit from the Nationwide Permit Program authorized by the U.S. Army Corps of Engineers ("USACE"), there are few NEPA Environmental Assessments (EAs) prepared by the Army Corps in connection with individual submarine cable projects. Instead, as discussed below, EAs associated with the NWPs are prepared in connection with reissuance of the NWPs, which are required every five years, providing further evidence that submarine cables do not pose significant environmental impacts.

contributes to NOAA's arbitrary exclusion of potential regulatory and management alternatives to the full panoply of sanctuary regulation of fiber optic submarine cables that would traverse the proposed sanctuary under the Agency-Preferred Alternative.

VI. NOAA'S LIMITATION OF ITS ALTERNATIVES ANALYSIS APPLICABLE TO SUBMARINE CABLES TO BOUNDARY-RELATED CONSIDERATIONS, AND ITS SUMMARY REFUSAL TO CONSIDER REGULATORY/MANAGEMENT ALTERNATIVES, IS ARBITRARY AND INCONSISTENT WITH NOAA'S NEPA AND NMSA OBLIGATIONS.

The NEPA regulations require that a reasonable range of alternatives be evaluated in sufficient detail so that reviewers can accurately assess the comparative merits of each and understand why one alternative was selected over the others. In addition, among the factors NOAA must consider in determining whether a proposed area meets the NMSA standards for designation, is "the feasibility, where appropriate, of employing innovative management approaches to . . . manage compatible uses."[77]

Here NOAA has done neither. The only alternatives that NOAA considered for "detailed study" applicable to submarine cables were boundary-related, and then only incidentally. In that regard, the extent of the analysis relative to submarine cables is NOAA's assertion that "most of the cables landing at Los Osos [Morro Bay] would be excluded incidentally from the proposed sanctuary" in the Agency-Preferred Alternative.[78] This ignores the fact, as shown in Exhibit 3, that virtually every cable that lands in either Morro Bay or Grover Beach traverses the Agency-Preferred Alternative boundary, and any future cable landing at Grover Beach would traverse the sanctuary. Indeed, any future cable landing in Morro Bay could only avoid the sanctuary by being forced into a narrow corridor (approximately 10 km),

[77] NMSA, Sec. 303(b)(1)(K), 16 U.S.C. § 1433(b)(1)(K).

[78] *Id.* at 49.

between the proposed northern sanctuary boundary and the southern boundary of the Monterey Bay National Marine Sanctuary, raising efficiency, cost, and security concerns.

In addition, with up to 30 transmission cables from the Wind Energy Area and "floating substations" being likewise sandwiched into this corridor,[79] there is a significant question as to the viability of the corridor for commercial fiber optic submarine cable use that NOAA has failed to examine. Given the absence of this analysis, there also was no assessment of any alternatives to reduce or avoid the impact of the proposed sanctuary designation on current or future submarine cables that would traverse the proposed sanctuary.

The Draft EIS contained only a single, dismissive sentence on why regulatory and management alternatives for submarine cables were excluded. More is required under NEPA and the NMSA, especially given (i) the extensive current use and likely future use by submarine cables of the seabed that would be included within the sanctuary and the criticality of that use, (ii) the extensive existing upland infrastructure that supports Central Coast cables, (iii) NOAA's failure to consider and evaluate the significant adverse impacts of the proposed sanctuary regulatory regime on submarine cables, and (iv) the lack of evidence of significant impacts on the benthic environment from submarine cables.

Finally, NOAA determined that the "communications and data cables" of the DoD, such as those operated by the U.S. Navy, "would be broadly exempted from the proposed regulations."[80] This determination was made without analysis or explanation in the Draft EIS, including the analysis that supported the exemption for DoD cables, and the extent to which such

[79] *Id.* at 37.

[80] *Id.* at xiii.

analysis would be applicable to the Central Coast submarine cables that traverse the same proposed sanctuary footprint.

The NEPA regulations envision that NOAA would have provided a better, more reasoned explanation for its proposed decision, which raises the specter under NEPA as to whether limiting its alternatives analysis to boundary-related considerations, and excluding all regulatory alternatives applicable to submarine cables, constituted a "reasonable" alternatives analysis. Rather, NOAA's decision to summarily screen out and fail to consider regulatory and other management alternatives applicable to fiber optic submarine cables is a hallmark of arbitrary decision making. Indeed, even if potential regulatory and management alternatives applicable to submarine cables were determined by NOAA not to constitute a "reasonable alternative" appropriate for detailed evaluation in the Draft EIS, NEPA regulations would still contemplate that a more reasoned explanation for this determination be provided than what was contained in the Draft EIS,[81] further contributing to the arbitrary nature of NOAA's proposed action here.

VII. INFORMATION SET FORTH IN THE DRAFT EIS RAISES QUESTIONS REGARDING WHETHER NOAA HAS FULLY COMPLIED WITH ALL REQUIREMENTS UNDER THE NMSA APPLICABLE TO A SANCTUARY DESIGNATION DETERMINATION, ESPECIALLY WITH RESPECT TO FIBER OPTIC SUBMARINE CABLES.

Sections 304(a)(2)(E) & (F) of the NMSA require that NOAA include as part of the draft designation documents for the CHNMS and be made available for public review and comment information (1) setting forth the basis for the determination that the marine environment in question meets the standards for sanctuary designation contained in Section 303(a), and (2) assessing the factors identified in Section 303(b)(1) that are required to be considered in making

[81] *See, e.g.,* 40 C.F.R. § 1502.14(a).

this determination.[82] In relevant part, Section 303(a) authorizes NOAA to designate any discrete area of the marine environment as a National Marine Sanctuary upon making certain specified determinations, including that: (1) the area is of special national significance due to (i) its conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational or aesthetic qualities, (ii) the communities of living marine resources harbored therein, or (iii) its resource or human-use values; (2) existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area; and (3) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.[83] For purposes of the conclusion that the area meets the standards for determination set forth above, Section 303(b) mandates that NOAA consider a broad range of enumerated factors, including "the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development" and "the socioeconomic effects of sanctuary designation."[84]

NOAA reports that the basis for its determination that the Agency-Preferred Alternative for the CHNMS meets the statutory designation standards, along with its assessment of the specific factors required to make such a determination, are set forth throughout the Draft EIS (but particularly in Chapters 2 and 3 and Appendix E.1). PC Landing believes that at least with respect to fiber optic submarine cables, the relevant information contained in the Draft EIS indicates that NOAA fell well short of compliance with the applicable NMSA statutory requirements.

[82] 16 U.S.C. §§ 1434(2)(E) & (F).

[83] 16 U.S.C. §§ 1433(a)(2), (3) & (5).

[84] 16 U.S.C. §§ 1433(b)(1)(H) & (I).

A. The Draft EIS Fails to Adequately Consider the Impacts and Effects of the Proposed Designation on Fiber Optic Submarine Cables.

As discussed throughout these comments, the Draft EIS failed to adequately assess the extensive use by fiber optic submarine cables of submerged lands within the proposed sanctuary boundaries, the numerous public benefits associated with the operations of fiber optic submarine cables, and the adverse impacts the sanctuary designation as currently proposed would have on the submarine cables operating and planned for near term deployment within the footprint of the proposed sanctuary, including the significant direct investment in submarine cable and upland supporting infrastructure, and the significant percentage of transpacific capacity represented by these cable systems. The failure to conduct such an assessment on a key category of permitted activity occurring within the heart of the proposed sanctuary calls into question the adequacy of NOAA's evaluation of the totality of negative impacts produced by management restrictions on income-generating activities within the proposed sanctuary and corresponding socioeconomic effects of the designation, factors required to be fully evaluated under the NMSA when making a sanctuary designation determination.

B. The Proposed EIS Fails to Provide Sufficient Support for the Sanctuary Boundary Size as Currently Proposed.

NOAA has cited a number of "special circumstances" involving the marine environment along this portion of the California coastline in support of the proposed sanctuary designation. These include "significant offshore geological features," such as the Santa Lucia Bank, the Rodriguez Seamount and Arguello Canyon, and "special ecological qualities," such as the large biogeographic transition zone in the vicinity of Point Conception and Arguello Canyon where temperate waters from the north combine with warmer waters from the subtropics to create an area of significant biodiversity. NOAA has also highlighted the area's importance from a

maritime history perspective, as well as the fact that components of the local ecosystem are considered essential to the heritage of the Chumash and other tribal groups.

PC Landing is not objecting to NOAA's conclusion that the foregoing supports a finding of "special national significance" necessary for sanctuary designation. It also acknowledges that the size of the proposed sanctuary has been reduced from approximately 7,573 square miles under the Initial Boundary Alternative to roughly 5,553 square miles under Alternative 2 preferred by NOAA, with changes apparently based, at least in part, on the outcome of meetings with other cooperating agencies, a formal government-to-government consultation with the Santa Ynez Band of the Chumash Indians, and informational meetings held with other Chumash and Salinan bands. Notwithstanding the foregoing, the Draft EIS does not appear to contain sufficient details to determine how the specific boundaries for Alternative 2 were selected and the degree of flexibility that may have been provided as part of this process.

PC Landing asserts that some showing in this regard is contemplated under the statutory sanctuary designation standards to demonstrate that the size and nature of the proposed sanctuary accurately reflects the resources deemed to require conservation and management. Such an analysis is especially important in the present situation, where three National Marine Sanctuaries have already been designated along the Central California coast, with a fourth located entirely offshore, which collectively are over 12,000 square miles in size. If the Agency-Preferred Alternative is selected as proposed, roughly 5,553 additional square miles would be added to that total, blocking about 500 continuous miles of the California coast, bringing virtually the entire Central California coastline (save for a small corridor in the proposed CHNMS that would be set aside to support offshore wind energy development) within a National Marine Sanctuary. While such an outcome may be applauded by many, it raises concerns for others, such as (1) the

operators of fiber-optic submarine cables, who require a viable point of access to and from this part of the California coast to ensure continued operational viability necessary for the installation, operation, and maintenance of submarine cable infrastructure, and (2) governmental, business and consumer users that rely on "this critical telecommunications infrastructure essential to the nation's economic stability, national security and other vital public interests,"[85] for telecommunications and Internet access. Ideally, such an access route would not be subject to a regulatory regime containing default rules created, despite NOAA's assertions to the contrary, generally to prohibit or condition such operations.

Towards this end, comments were submitted on behalf of fiber optic submarine cable operators during the initial scoping process proposing modifications to the sanctuary boundaries to allow such cables coming ashore at two main landing area in San Luis Obispo County to at least minimize, if not avoid, the full range of proposed sanctuary regulations. These modifications would have resulted in nominal effects to those areas cited by NOAA as exhibiting the "special characteristics" necessary to support sanctuary designation. NOAA rejected these proposals out of hand without any detailed study, with the Draft EIS simply noting that it would have reduced the sanctuary to a size inconsistent with NOAA's undefined purpose and need; though of course, regulatory alternatives, even with the Agency-Preferred Alternative, would not affect the size of the sanctuary at all. Yet, even to that alternative, as set forth above, no information appears to be in the record addressing what minimum size would be consistent with NOAA's purpose and need. The statutory designation standards and other provisions in the NMSA envision, at a minimum, that a more reasoned explanation be provided by NOAA in response to the proposal. Absent an effort by NOAA to address the adverse impacts sanctuary

[85] FCC Cable Outage Report and Order, ¶ 3.

designation will have on fiber optic cable operators unable to avoid future sanctuary regulations and permitting requirements, a thorough assessment of such impacts was required under the NMSA as part of the sanctuary designation process.

C. The Draft EIS Makes No Showing Regarding the Inadequacies of, or the Need to Supplement, Existing State and Federal Authorities as Required by the NMSA.

Section 303(a)(3) of the NMSA conditions a decision by NOAA to designate a segment of the marine environment as a National Marine Sanctuary upon a determination that "existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area."[86] There has been no showing of inadequacy nor is there any need for supplementation with respect to State authority addressing marine resource conservation and management in waters of the State, nor with respect to State and Federal authorities governing the installation and operation of fiber optic submarine cables in marine waters.

1. California Marine Life Protection Act.

In 1999, the California Legislature adopted the Marine Life Protection Act (California Fish and Game Code § 2850, et seq.) pursuant to which the State of California, acting through the Department of Fish and Wildlife and local partner agencies, developed a network of marine protected areas ("MPAs") – each designated individually as a marine reserve, marine park, or marine conservation area based on the level of protection and activity restrictions – to protect and conserve marine life and its associated habitat in State waters. The State's MPA network contains a wide range of habitats commonly found in State waters, and includes estuaries, intertidal zones, rocky reefs, kelp forests, soft ocean bottoms and submarine canyons. With

[86] 16 U.S.C. § 1433(a)(3).

goals similar to those of the National Marine Sanctuary program, MPAs place varying restrictions on commercial and recreational uses and are intentionally located in strategic proximity to one another to preserve connections between marine ecosystems. The State's MPA program is reported to represent the "first statewide science-based network" of MPAs in the United States and the "largest ecologically-connected MPA network in the world."[87]

There are over seventy-five (75) State MPAs located off the Southern California and Central California coasts, with five (5) MPAs situated completely within the boundaries of the Agency-Preferred Alternative. NOAA has not cited any deficiencies in the State's MPA program, nor the need to supplement program requirements with respect to the conservation and management of natural resources in State waters. Accordingly, no finding of inadequacy exists with respect to the State's MPA program to support sanctuary designation within State waters off the Santa Barbara and San Luis Obispo County coasts.

2. Federal and State authorities applicable to fiber optic submarine cables.

As to State authorities, fiber optic submarine cables landing along the Central California coast require a coastal development permit from the California Coastal Commission ("Coastal Commission") and a submerged lands lease from the California State Lands Commission ("CSLC"). Such authorization by the CSLC is subject to environmental review under CEQA, with the Coastal Commission's permit process designated by the State as the functional equivalent of CEQA environmental review. Both State agencies assess potential impacts from climate change and sea level rise on the proposed use. The policy of the CSLC is to conduct outreach and consultation with tribal governments potentially impacted by a proposed use

[87] Information on California's MPA Program is found in Department of Fish and Wildlife Program Guidance, available at https://wildlife.ca.gov/Conservation/Marine/MPAs and https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=151949&inline.

pursuant to its Strategic Plan and Tribal Consultation Policy and to also evaluate a proposed use for consistency with its Environmental Justice Policy.[88]

As to Federal authorities, fiber optic submarine cables landing along the Central California coast require a permit from the USACE under Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act. As noted above, submarine cables in California qualify for a USACE permit under the Nationwide Permit Program ("NWP"),[89] which is further evidence that submarine cables do not pose significant environmental impacts.[90] Activities covered under NWPs require a range of other Federal and State authorizations.[91] As part of the permitting process with respect to fiber-optic submarine cables, Section 401 Certification attesting to the operation's compliance with applicable water quality standards is typically required for California cable installations.[92] The California Coastal Commission is also required to issue a consistency determination with respect to the operation's compliance with requirements under the Coastal Zone Management Act (for which the federal government has

[88] Further information on the Coastal Commission's coastal development permit requirements, application procedures, and sea level rise policy guidance are available on the Coastal Commission's website (www.coastal.ca.gov). Further information on the CSLC's Lease & Permit Application Process, Sea Level Rise Fact Sheet, Strategic Plan for 2021-2025, Tribal Consultation Policy, and Environmental Justice Policy is available on the CSLC website (www.slc.ca.gov).

[89] The USACE NWP program is renewed every 5 years, most recently in 2021. *See* USACE, 2021 NWP Permit Information, available at https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/; USACE, Factsheet, Nationwide Permit Reissuance (Jan. 2022), available at https://www.swf.usace.army.mil/Portals/47/docs/regulatory/Hot%20Topics/HQ%20NWPs%20Fact%20Sheet.pdf?ver=J4VKGcUGn0uJJl8Llvl6mA%3D%3D.

[90] Adoption of an NWP for a covered activity, such as the NWP 57 for submarine cables, requires a NEPA analysis of the activities authorized under the NWP, which determined that activities authorized for coverage thereunder will result in at most minor changes to the affected environment and will not have a significant impact on the quality of the human environment, so long as operations are conducted in compliance with the terms and conditions set forth therein. *See generally* USACE, 2021 Decision Document, NWP 57 at Secs. 2 - 6 (Jan. 4, 2021), available at https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll7/id/16848.

[91] *Id.* at 5.

[92] Pursuant to a designation agreement, this Section 401 Certification would be issued by the California Regional Water Quality Control Board if necessary.

certified California's Coastal Management Program). An Essential Fish Habitat Consultation with NOAA's National Marine Fisheries Service, a consultation under Section 106 of the National Historical Preservation Act to consider any potential impacts on historical or cultural resources, and a consultation under the Endangered Species Act to assess any potential impacts on endangered or threatened species (or critical habit relied on by these species) would also be required.

In summary, the current level of environmental review associated with the permitting of commercial fiber optic submarine cables landing along the Central California coast is already extensive. NOAA cited no deficiencies with this permitting program as developed and implemented by State and Federal authorities. As discussed previously herein, numerous studies have also documented the absence of environmental risks and impacts from fiber optic cable operations on ocean resources. Accordingly, there is no need to supplement existing Federal and State authorities shown to be adequately addressing fiber optic submarine cable operations, and this should not serve as a basis for any sanctuary designation determination.

CONCLUSION

As PC Landing has shown, consideration of fiber optic submarine cables in the Draft EIS is patently deficient, and fails to document and assess, beyond mere passing references, the extensive use by submarine cables of the submerged lands within the sanctuary boundaries of the Agency-Preferred Alternative, the role of submarine cables as critical components of the nation's communications infrastructure and network, and their continuing critical importance to the U.S. economy and national security interests. NOAA arbitrarily limits its alternatives analysis to boundary-related alternatives, while dismissing out of hand any regulatory/management alternatives to the blanket prohibition on submarine cable activities under the proposed sanctuary regulations. However the proposed permitting and authorization regime, with issuance,

conditions and timing subject to NOAA's discretion, will have severe and direct adverse impacts on the installation, operation, and maintenance of submarine cables, and the economic, societal, and national security interests they support. At the same time, NOAA ignores and fails to evaluate the indirect impacts from future coastal-dependent uses, including submarine cables that will be forced to land in areas with less favorable seabed conditions, and that will also necessitate construction of new cable landing infrastructure and backhaul in place of the robust existing landing and backhaul infrastructure already in place in the Central Coast. Finally, beyond a summary assertion, NOAA provides no evidence to support the contention that submarine cables significantly impact the seabed and benthic environment, while ignoring extensive evidence to the contrary.

NOAA's limitation of its alternatives analysis applicable to fiber optic submarine cables exclusively to boundary-related considerations, and its summary refusal to consider regulatory/management alternatives, is both inexplicable and arbitrary. Instead, NOAA must consider and evaluate regulatory/management alternatives that would address the significant impact of the Agency-Preferred Alternative boundary and proposed sanctuary regulations on submarine cable installation, operation, and maintenance, including the indirect environmental effects from future cable systems that will be forced, in essence, to route around the sanctuary. Finally, information set forth in the Draft EIS also raises serious questions as to whether NOAA has fully complied with all requirements under the NMSA for sanctuary designation, especially with respect to its treatment of fiber optic submarine cables.

For all these reasons, PC Landing respectfully requests that NOAA rethink its treatment and assessment of fiber optic submarine cables in the Draft EIS and consider a reasonable range of alternatives. In particular, NOAA must consider and evaluate regulatory/management

alternatives, that would ameliorate the significant adverse impacts that the proposed sanctuary designation would have on the permitting, installation, operation and maintenance of existing fiber optic submarine cables and Planned Cables landing in Morro Bay and Grover Beach, and future cables that would otherwise land in the California Central Coast but for the proposed sanctuary designation and regulations.

Respectfully submitted,

PC LANDING CORP.

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Dated: October 25, 2023

Exhibit 1

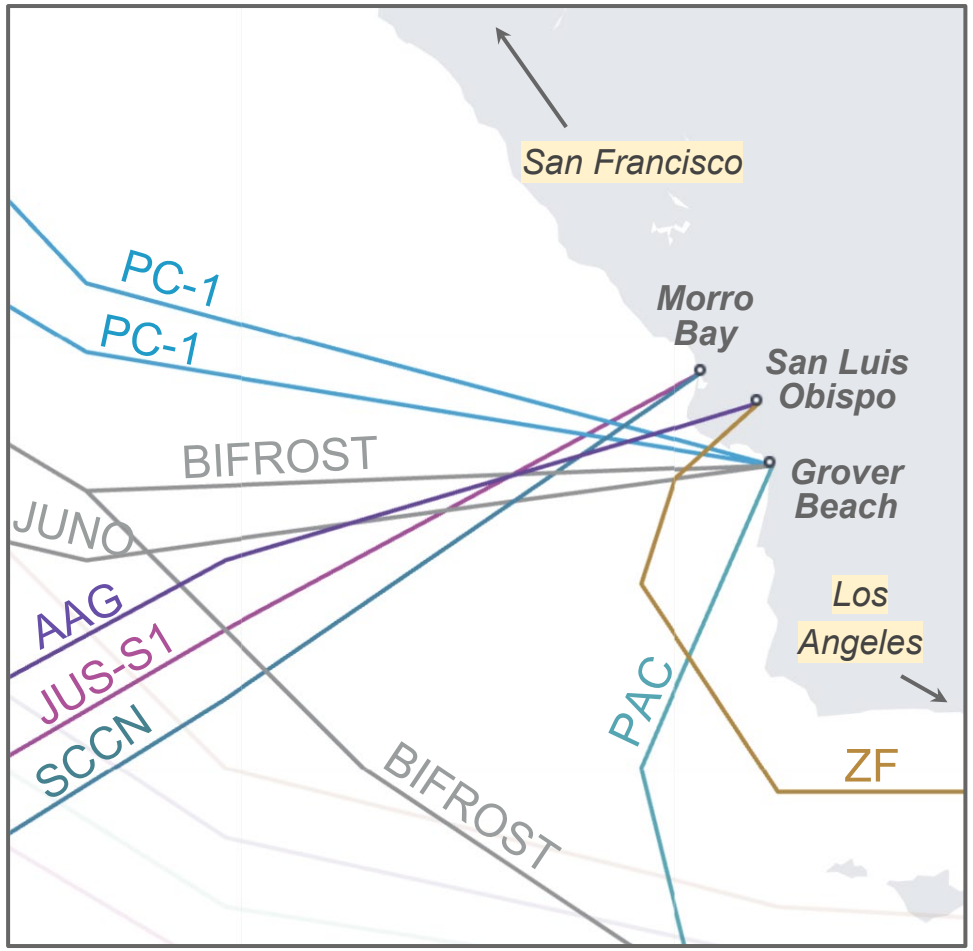
Cable Geography of California Central Coast

In-Service Cables:

- **Pacific Crossing-1 (PC-1)** — 1999 — U.S. West Coast - Japan
- **Pan-American Crossing (PAC)** — 2000 — U.S. West Coast - Latin America
- **Southern Cross Cable Network (SCCN)** — 2000 — U.S. West Coast - Hawaii, Oceania
- **Japan-U.S. S1 (JUS-S1)** — 2001 — U.S. West Coast - Hawaii
- **Asia-America Gateway (AAG)** — 2009 — U.S. West Coast - Hawaii, Guam, Asia
- **Zayo Festoon (ZF, former Global West)** — 2015 — U.S. Domestic

Planned Cables (in permitting/construction phase):

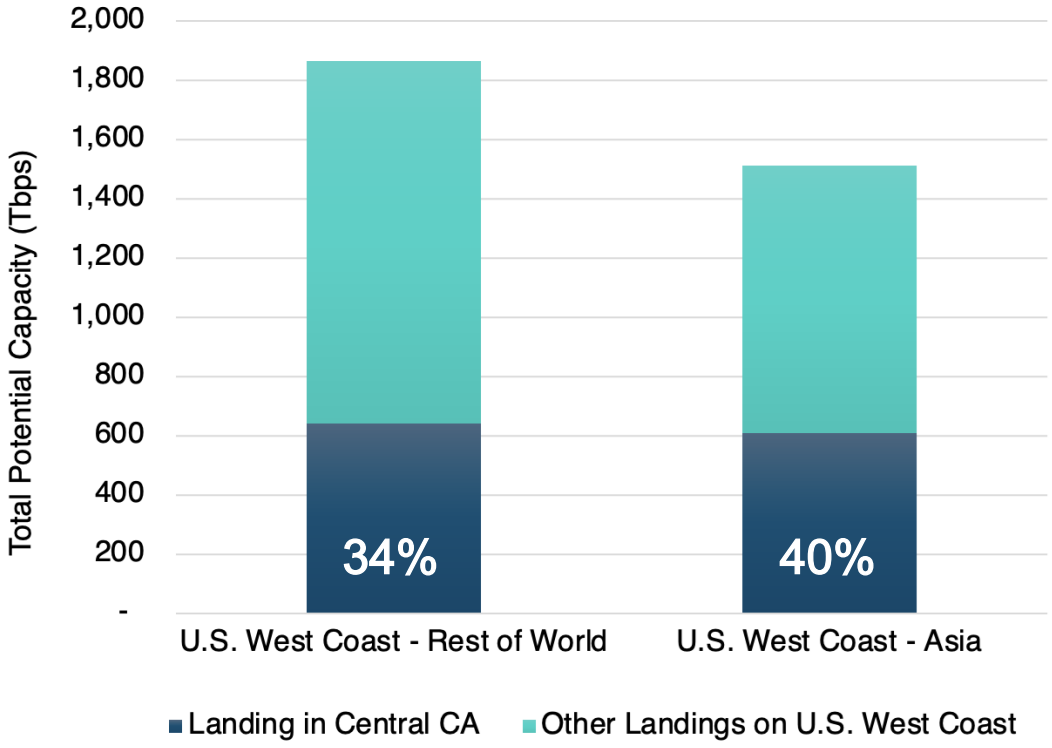
- **Bifrost** — 2024 — U.S. West Coast - Guam, Asia
- **JUNO** — 2024 — U.S. West Coast - Japan
- **CAP-1** — tbd — U.S. West Coast - Philippines



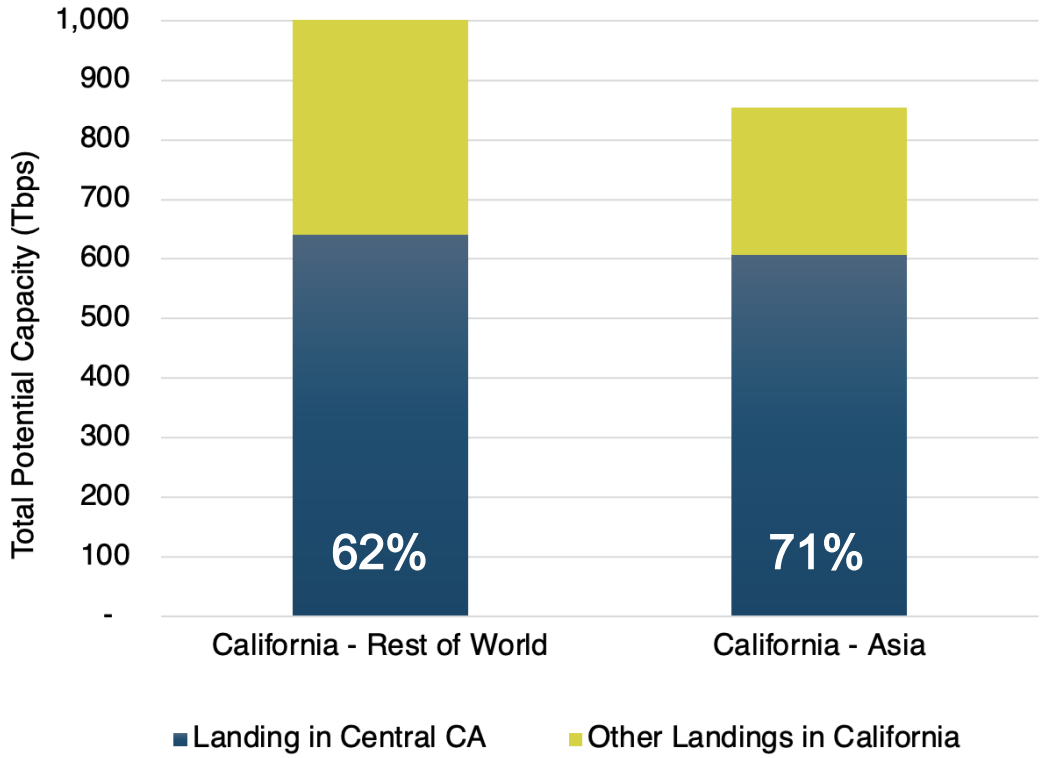
Notes: Cable routes are stylized. CAP-1 not shown.

Capacity of CA Central Coast Cables

Central CA Cables' Share of Total U.S. West Coast Cable Capacity, 2023

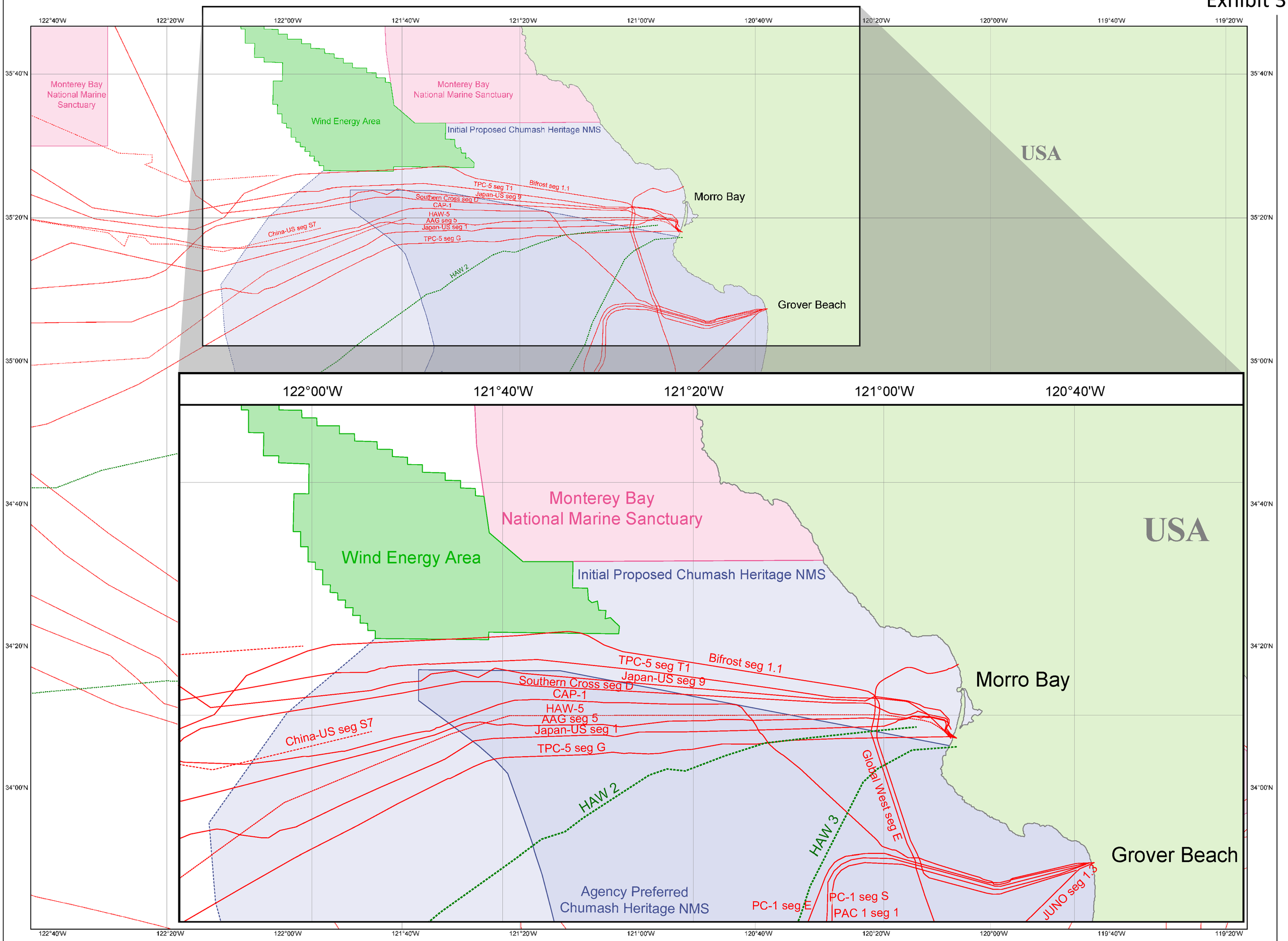


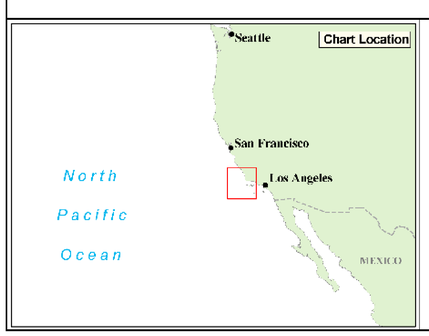
Central CA Cables' Share of Total California Capacity, 2023



Notes: Includes both in-service cables and planned cables in the permitting and construction phase. Capacity is based on industry data on system design capacity and reported upgrades.

Exhibit 3





LEGEND

- Fibre Optic Cable
- Out of Service Fibre Optic Cable
- Out of Service Coax Cable
- Agency Perferred Chumash Heritage NMS
- Initial Proposed Chumash Heritage NMS
- Exsisting NMS
- Wind Energy Area

Cables in Proposed NMS

AAG seg 5
Bifrost seg 1.1 (under construction)
CAP-1
China-US seg S7 (out of service)
Global West seg E
HAW 2 (out of service)
HAW 3 (out of service)
HAW-5 (out of service)
Japan-US seg 1
Japan-US seg 9
JUNO seg 1.3
PAC 1 seg 1
PC-1 seg E
PC-1 seg S
Southern Cross seg D
TPC-5 seg G
TPC-5 seg T1

NATURAL SCALE 1 : 300,000 at 38°00' N

0 10 20 30 40
Kilometres

SPHEROID & DATUM : WGS84

PROJECTION : MERCATOR

Notes:

This chart is intended for general reference only and NOT FOR NAVIGATION PURPOSES.

Please be aware that other cables may exist in addition to those shown on this chart.

SOUNDINGS IN FATHOMS
AT MEAN LOW WATER

CHART HISTORY

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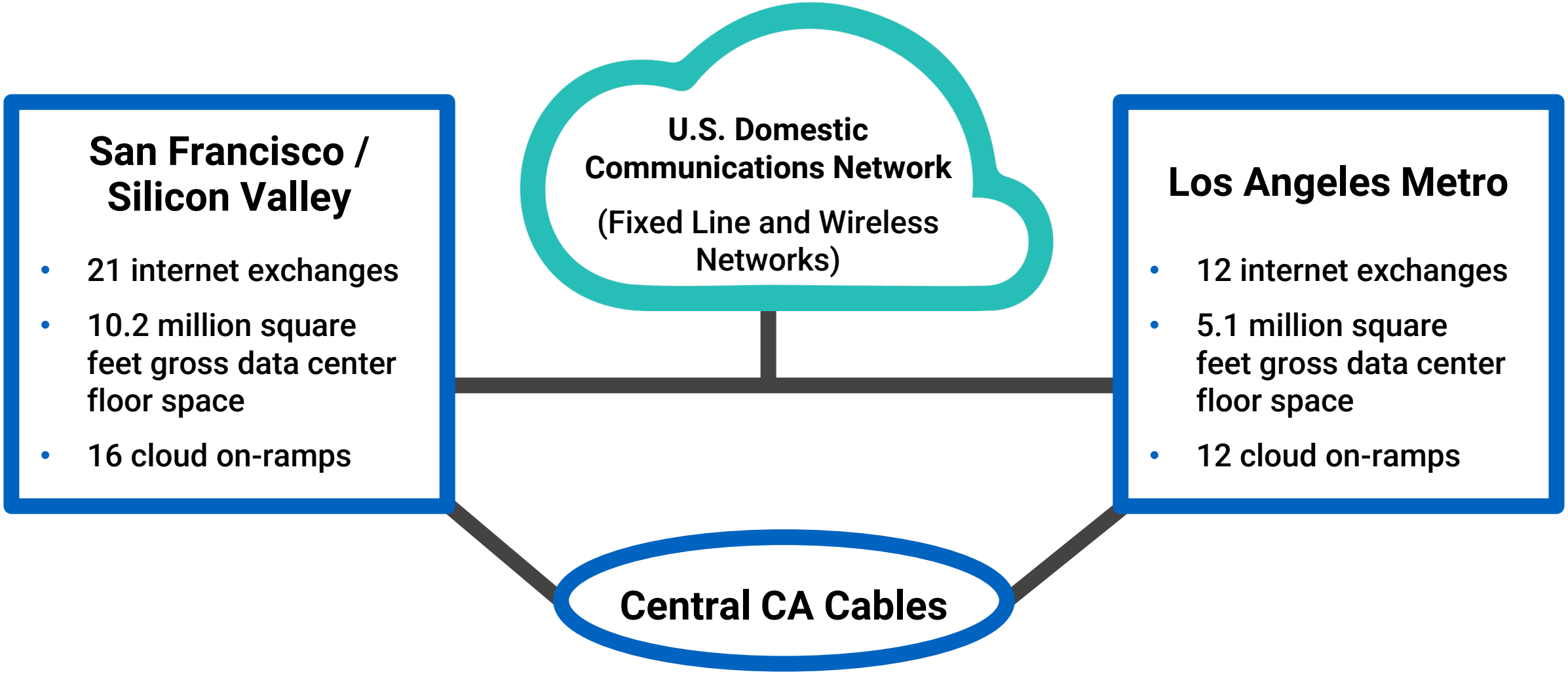
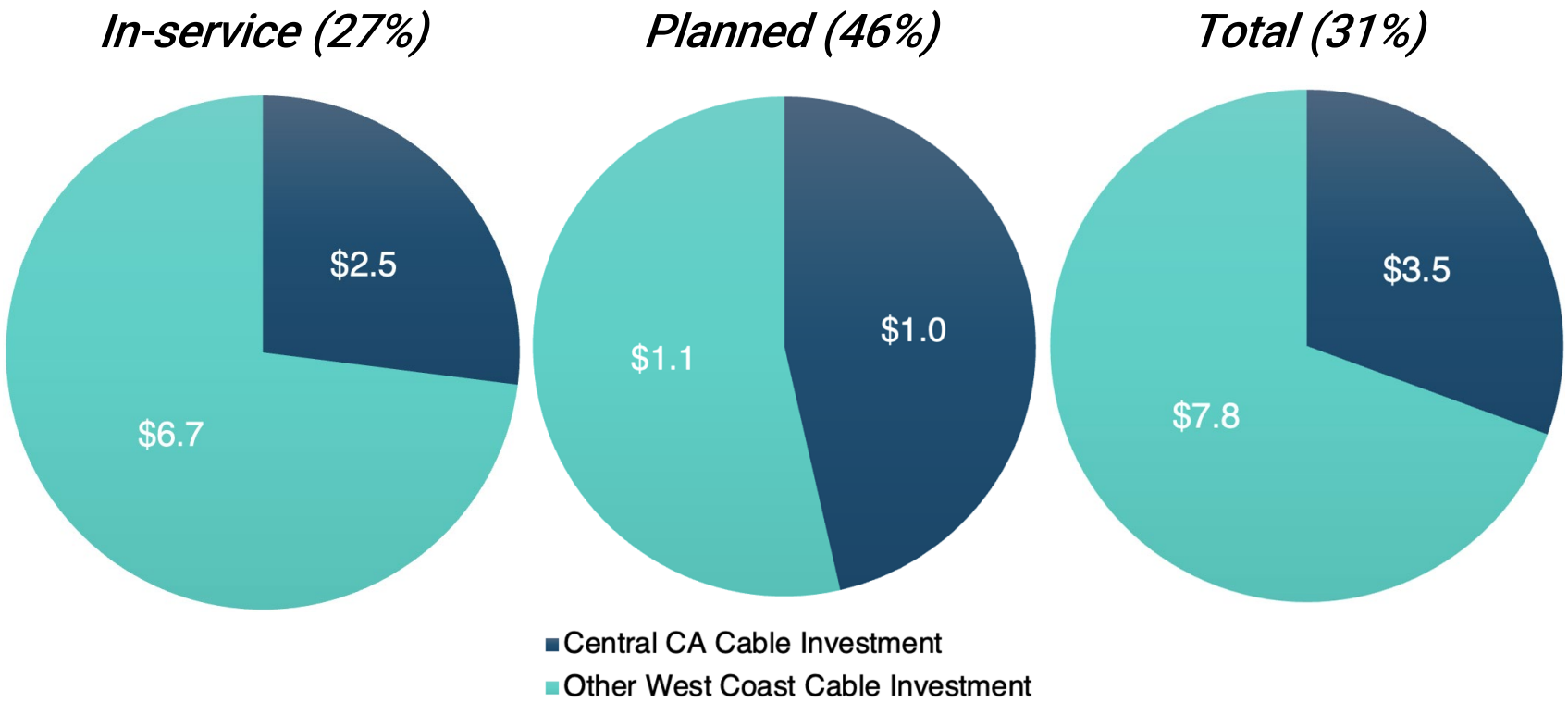
Proposed Chumash Heritage National Marine Sanctuary

Central CA Cables – Connections to Inland Hubs



Capital Investment in CA Central Coast Cables

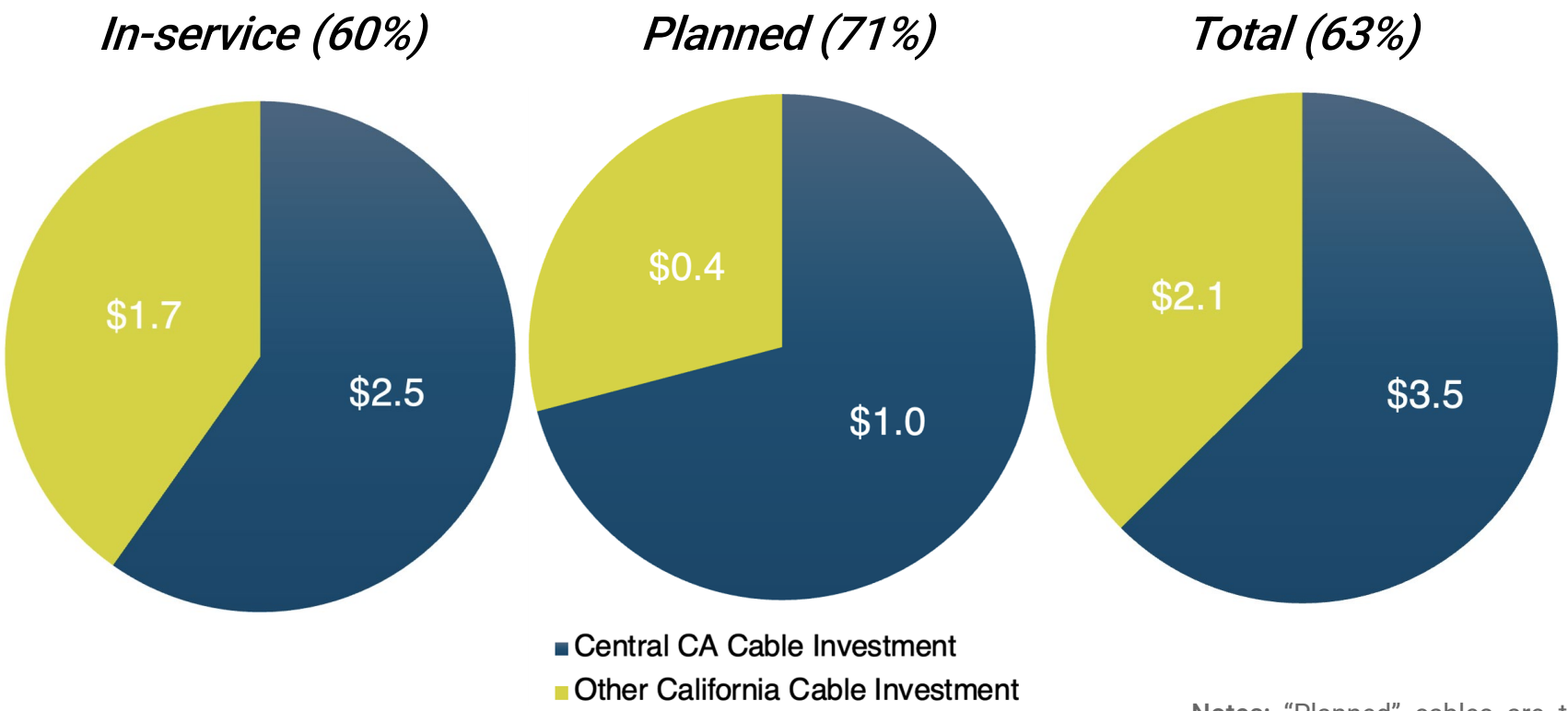
CA Central Coast Share of U.S. West Coast Cable Investment ($bn, 2023)



Notes: "Planned" cables are those in the permitting and construction phase. Investment reflects the initial construction cost and does not include annual operations and maintenance costs or upgrade capex.

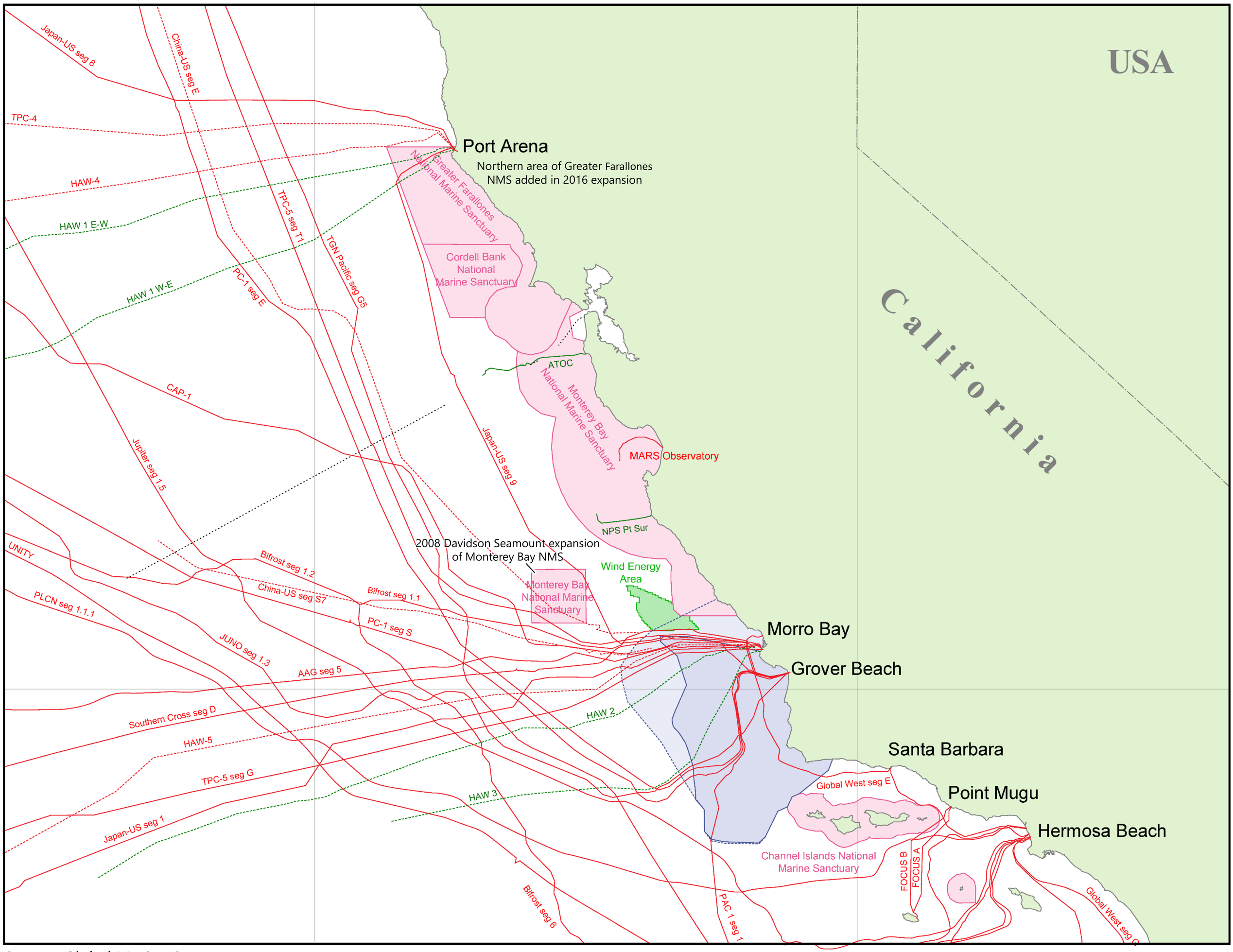
Capital Investment in CA Central Coast Cables

CA Central Coast Share of California Cable Investment ($bn, 2023)



Notes: "Planned" cables are those in the permitting and construction phase. Investment reflects the initial construction cost and does not include annual operations and maintenance costs or upgrade capex.

CA National Marine Sanctuaries and Submarine Cable Routing



Source: Global Marine Systems