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

In the Matter of	)	
	)	
Proposed Designation of Chumash Heritage National Marine Sanctuary	)	Docket No. 230807-0185
	)	
	)	

COMMENTS OF META PLATFORMS, INC.

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Meta Platforms, Inc. ("Meta"), 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 "Chumash NMS") in the California Central Coast.[1]

INTRODUCTION AND SUMMARY

Meta appreciates the opportunity to comment on the proposed designation of the Chumash NMS. As a company wholly committed to protecting the environment,[2] Meta recognizes the importance of sanctuary designations to protect areas of the marine environment with special significance due to their conservation, ecological, historical, scientific, cultural,

[1] *See Proposed Chuman National Marine Sanctuary*, 88 Fed. Reg. 58123 (Aug. 25, 2023) (amending 15 CFR part 922 by adding new subpart V) ("Notice Of Proposed Rulemaking").

[2] Meta has maintained net zero GHG emissions in its global operations since 2020, and has set a goal to reach net zero emissions across its value chain in 2030. These goals are a key factor in Meta's infrastructure deployments, including its data centers, which are supported by 100% renewable energy, and the cable systems that connect them. *See* Meta 2023 Sustainability Report, available at https://sustainability.fb.com/2023-sustainability-report/.

archeological, and educational qualities and respects the benefits that the proposed Chumash NMS designation could bring to those resources.

At the same time, Meta is committed to its core mission of empowering people to build community and bringing the world closer together. To this end, Meta has invested heavily in submarine fiber optic cable systems that connect people around the world via cables laid on the ocean floor, and in the cable landings, where these subsea cables terminate. One such cable landing is located in the City of Grover Beach in San Luis Obispo County, within the boundaries of the proposed Chumash NMS. The Grover Beach cable landing development will be the terminus for up to four trans-Pacific submarine fiber optic cables that Meta – in consortia with other partners – has been working to develop over the last several years. These submarine fiber optic cables, which have a negligible and transient impact on the marine environment, not only facilitate important international communication routes, they spur further investment in connected terrestrial facilities in California and across the United States, creating jobs, further stimulating the economy and helping to further the nation's goal of ubiquitous broadband.

Submarine fiber optic cables are a fundamental component of Meta's infrastructure, as they provide high-speed, low-latency bandwidth capacity that enable people, companies and institutions to communicate across oceans and between continents in near real time. These cables are a part of the global telecommunications infrastructure that carries 99% of the world's international information exchange, including voice, video, data and online gaming. The downstream economic benefits of submarine fiber optic cables landing in California for both the state and the country are remarkable.

As currently proposed, the Draft EIS fails to evaluate the extensive use of submarine fiber optic cables within the proposed Chumash NMS boundaries and the role these cables serve

for the world's information exchange, particularly for this location along the California central coast, which serves as a hub for major transpacific cable systems. It is imperative that NOAA consider in greater detail the extent of current and planned submarine fiber optic cables within the proposed sanctuary boundary. The Draft EIS is conclusory in its treatment of existing and planned subsea fiber optic cables, dismissing the significant impacts the proposed Chumash NMS regulations could have on such critical infrastructure. It also fails to address and consider the vast extent of existing federal and state regulations governing the siting, installation, and ongoing operation, including maintenance and repair of subsea fiber optic cables.

By not adequately considering the impacts of the proposed Chumash NMS on submarine fiber optic cables in the Draft DEIS, NOAA published draft regulations for the Chumash NMS that would subject submarine fiber optic cable systems to uncertain and unpredictable discretionary review processes. Meta is particularly concerned that the draft Chumash regulations unduly restrict and condition cable maintenance and repair. The regulations also appear to subject Meta and other cable operators to undefined and potentially astronomical special use permit fees. This lack of certainty not only potentially prevents Meta and its partners from being able to invest in new cable systems and potentially even proceed with planned deployments, it could also inhibit their ability to maintain and repair existing submarine fiber optic cables, in contravention of federal rules and existing international treaties.

Moreover, it appears that NOAA lacks a rational basis for imposing this level of additional review on submarine fiber optic cables within the Chumash NMS while excepting other types of activities that likely have a far greater impact on the marine environment that the sanctuary purports to protect. These proposed regulations do not account for extensive evidence in the record that demonstrates that the *de minimis* environmental impact of submarine cables is

outweighed by the economic, societal and governmental benefits they provide. The proposed regulations also conflict with FCC regulations and treaties that exist to ensure that subsea cable owners can maintain and immediately repair any damage to submarine cables to restore communication and protect national security.

Thus, while Meta supports NOAA's goal to protect resources located within the proposed Chumash NMS, it urges NOAA to rethink its treatment of subsea fiber optic cables in the Draft EIS and based on the record created in this proceeding, modify the proposed regulations to ensure that submarine fiber optic cable systems are not subject to unnecessary, duplicative and subjective discretionary federal review. Meta agrees with other commenters that NOAA review of existing and future subsea fiber optic cables is arguably unnecessary given the existing federal and state regulatory regime governing the siting of this critical infrastructure, however, Meta also recognizes NOAA's obligations for the protection of sanctuary resources and qualities. With this in mind, Meta encourages NOAA to address the deficiencies in the Draft EIS and revise the draft Chumash NMS regulations to achieve the following:

1. *Existing submarine fiber optic cables*: allow the ongoing presence and operation, including maintenance and repair through NOAA certification. Meta proposes a specific certification process for existing submarine fiber optic cables within the Chumash NMS that is expedited, clear and objective without public comment or hearing, and that would authorize future maintenance and repair of existing cables without further NOAA review. This certification process would apply to subsea fiber optic cables "existing" as of the effective date of the Chumash NMS, meaning cables physically installed or otherwise having all federal, state, and local permits for construction.

2. *Future submarine fiber optic cables*: allow the siting, installation, ongoing presence and operation, including maintenance and repair, through NOAA authorization. Meta proposes a specific NOAA authorization process for new submarine fiber optic cables within the Chumash NMS that is expedited, clear and objective without public comment or hearing, and that would cover future maintenance and repair of such cables without further NOAA review. NOAA

would use its Section 304(d) consultation authority to ensure that the federal permits, like the USACE authorization, would recover repair and maintenance for the life of the cable. This would apply to subsea fiber optic cables not existing as of the effective date of the Chumash NSM.

Meta acknowledges that these proposals may vary from NOAA's current practices or programmatic precedent, and may require some further analysis to address jurisdictional questions. That said, given the significant importance of, and investment in, submarine fiber optic cable systems within the proposed Chumash NMS boundaries, it is imperative that NOAA not use the "status quo" for this critical infrastructure. Meta and other comments on the record help provide NOAA with potential pathways to reconsidering the treatment of submarine fiber optic cables in the Draft EIS. Big picture, from Meta's perspective, rather than reconsidering NOAA's treatment of submarine fiber optic cables on a programmatic level, NOAA can do so within this rulemaking specific to the Chumash NMS and its site specific considerations. The Final EIS would then in turn support a revised regulatory framework for submarine fiber optic cables within the proposed Chumash NMS. To that end, Meta supports the designation of the Chumash NMS but offers a redline of the draft Chumash NMS regulations for NOAA's review and consideration. See Appendix 1 (Proposed Redline). The goal of Meta's revisions is to retain adequate protections for sanctuary resources while balancing the interests of fiber optic cable sanctuary users.

DISCUSSION

I. THE DRAFT EIS FAILS TO RECOGNIZE THE IMPORTANT PURPOSE OF EXISTING SUBMARINE FIBER OPTIC CABLE SYSTEMS WITHIN THE PROPOSED CHUMASH NMS AND THE SIGNIFICANT INVESTMENT BY META AND OTHERS.

Submarine fiber optic cable systems play a critical role in keeping people connected, sharing information, and supporting the U.S. digital economy. Construction of those cables also

encourages new construction of coastal terrestrial fiber routes that connect the cables to inland data centers. Those terrestrial fiber routes can then be used by local telecommunications companies to also provide connectivity to the surrounding coastal communities. In many cases, the coastal fiber routes would not be constructed (or would be constructed at a later date) if not for the cable owners' investment.

The existing and proposed submarine fiber optic cable projects have played, and will continue to play, an important role in economic and community development for Grover Beach and the surrounding area. These cables are essential to high-quality, reliable international voice, data and internet traffic. Submarine fiber optic cables provide higher-quality, more reliable, more secure, and less expensive communications than satellites provide. Submarine fiber optic cables also play a critical role in ensuring that the United States can communicate domestically and with the rest of the world, and supports U.S.-based commerce abroad.

Meta has made substantial investments in its Grover Beach subsea telecommunications cable landing development and the connecting submarine fiber optic cables. Meta is the majority owner of two of those submarine cables. The Bay to Bay Express system, connecting Grover Beach to the Philippines, has already been permitted and installed on the seafloor and crosses through the proposed sanctuary boundaries. The Bifrost system will connect Grover Beach to Oregon, Guam, Mexico, Indonesia, the Philippines and Singapore. The Bifrost system has all of the federal and state permits required for construction and is only awaiting approval from the FCC for its cable landing license. A third in-flight trans-Pacific system, Seren Juno, owned by another party will also utilize the Grover Beach landing development and connect to Japan. Meta will also then use the Grover Beach landing for a future subsea cable. See Figure 1 (Cable Map).

Not only have Meta and its partners invested significant time and resources in the Grover Beach cable landing development and connecting subsea cables, the project owners will be paying hundreds of thousands of dollars a year to the City of Grover Beach and the State of California for the underlying rights required for the installation and operation of the landing facilities and submarine fiber optic cables. The submarine networks landing at Grover Beach interconnect to inland terrestrial networks, spurring additional investment and creating opportunities to bring high-speed internet to previously unserved communities consistent with the Biden Administration's goal to connect everyone in the U.S. to affordable, reliable, high-speed internet. And beyond Grover Beach, the North American Submarine Cable Association ("NASCA") states that of its 20 plus members, up to potentially 8 submarine fiber cable systems could be impacted. Each of those systems involves years of permitting and many millions of dollars of investment.

II. EXISTING DATA AND REGULATORY MECHANISMS SUPPORT NOAA REVISING THE DRAFT EIS AND DRAFT CHUMASH NMS REGULATIONS TO EASE THE REGULATORY BURDEN ON EXISTING AND FUTURE SUBMARINE FIBER OPTIC CABLES WITHIN THE CHUMASH NMS.

A. Submarine fiber optic cables have minimal environmental impact.

The construction and operation of submarine fiber optic cables has only *de minimis* environmental impacts and can be completed in the Chumash NMS in ways that protect sanctuary resources and qualities.[3] There is existing data to demonstrate that cables can be

[3] *See UNEP-WCMC-ICPC 2009 Report*, *Submarine Cables and the Oceans: Connecting the World*, at p. 54 ("the weight of evidence shows that the environmental impact of fibre-optic cables is neutral to minor."); *United Nations First Global Integrated Marine Assessment, World Ocean Assessment I* (2016), Chapter 19, Section 1.4 ("A large body of knowledge already exists about the construction and operation of submarine communication cables, including how to survey environmentally acceptable routes and allow for the submarine geology."); *United Nations Secretary General Report on Oceans and the Law of the Sea* (2015), at p. 17 ("Submarine cables themselves are considered to have a low-carbon footprint and a small relative impact on the environment"); *Monterey Bay Aquarium Research Institute 2020 Report*

constructed and operated, including maintenance and repair, with very little environmental impact. The 2009 UNEP-WCMC Report 'Submarine Cables and the Oceans: Connecting the World' provides an objective, factual description of the submarine cable industry and the interaction of submarine telecommunications with the marine environment.[4] Since the UNEP-WCMC milestone report, approximately 25 other peer review university and research institution studies have been completed on various aspects of submarine cables in the marine environment, including leaching studies, seabed recovery studies, marine mammal and shark studies, and EMF. The cumulative result of these studies echoes the UNEP-WCMC Report that modern submarine cables have a benign or neutral impact in the marine environment.[5]

B. Resources of importance to marine sanctuaries are already protected under existing federal and California regulatory frameworks governing submarine fiber optic cables.

The required federal and state of California permitting required for a submarine fiber optic cables ensure that resources of importance to the Chumash NMS are considered and accounted for already in other permitting processes that consider the potential environmental, social, community, and cultural impacts of a proposed cable. The route survey and selection process required during permitting ensures avoidance of features that may either complicate the

on Potential Impacts of MARS, at p. i ("We conclude that the MARS cable has had little detectable impact on seabed geomorphology, sediment qualities, or biological assemblages."); *See also Initial Study/Mitigated Negative Declaration for Grover Beach Subsea Fiber Optic Cables Project*, California State Lands Commission (April 2020).

[4] https://resources.unep-wcmc.org/products/WCMC_RT059. *See supra* fn. 3.

[5] Many are listed in the Endnotes section (i)-(viii) of: https://www.un.org/depts/los/biodiversity/prepcom_files/ICC_Submarine_Cables_&_BBNJ_August_2016.pdf.

installation or pose a long-term risk, so invariably the final route is adjusted to find the most benign areas of seabed with least environmental resource potential.[6]

USACE plays a large role in authorizing submarine fiber optic cables under Section 10 of Rivers and Harbors Act and Section 404 of the Clean Water Act (CWA). Moreover, USACE must engage NOAA as a consulting agency when the project may affect a species listed under the Endangered Species Act ("ESA") or designated critical habitat ("Section 7 ESA consultation"). In addition, USACE must consult with NOAA when a project may affect essential fish habitat ("EFH consultation"). With the designation of the Chumash NMS, USACE would also be obligated to engage NOAA in Section 304(d) consultation under the NMSA when a project may likely destroy, cause loss of or injure a sanctuary resource. These interagency consultations provide NOAA the ability to review a proposed cable and recommend conditions of approval to ensure that federal resources, including sanctuary resources, are protected for the life of the cable.

In addition to NOAA's involvement in the USACE permitting, the California Coastal Commission ("CCC") serves as the lead agency under California Environmental Quality Act ("CEQA") to analyze the environment affects associated with proposed submarine fiber optic cables as well as performing federal consistency review under the Coastal Zone Management Act ("CZMA"). As NOAA is aware, CZMA seeks to protect coastal zone resources and balance competing uses of those resources, giving full consideration to aesthetic, cultural and historic, ecological, recreational, and other values as well as the needs for compatible economic development. Together, USACE and CCC address in their respective permit reviews the

[6] Fugro, *Bifrost Subsea Cable Network, Volume – Segment 1.1 BU5 Mexico-BMH Groer Beach, Book 1, Survey Report*, November 2022.

proposed Chumash NMS resources and qualities, and may even impose conditions reasonably necessary to protect those resources and qualities.

Further, these are just two of the environmental reviews that are addressed during a submarine fiber optic cable permitting project in California. The entire permitting regime for submarine fiber optic cables is rigorous and involves USACE and CCC as well as California State Lands Commission (for the Coastal Development Permit), California State Lands Commission (for the State Waters Lease), California Department of Parks and Recreation (for the Easement and Special Use Permit), Regional Water Quality Board (for CWA Section 401 water quality certification, and local city or county development permits. Appendix A of the *RTI Infrastructure, Inc. Eureka Subsea Fiber Optic Cables Project Mitigated Negative Declaration* (February 2021) contains an abridged list of major federal and state laws, regulations, and policies that applied to a California submarine fiber topic. See Attachment 1 (Eureka MND, Appendix A).

Every submarine fiber optic cable existing or proposed within the Chumash NMS has, or will have to, obtain the authorizations as described above. This complex regulatory framework ensures that cable installations are only approved after environmental and natural resources are fully considered and understood, and permitting authorities are satisfied that any environmental impact will be benign. There must be a way NOAA can work within the existing federal and California regulatory frameworks to achieve its objectives for the Chumash NMS while considering the interest of submarine fiber optic cable owners and operators.

C. Existing permitting processes ensure that all relevant agencies and stakeholders are involved in the approval of submarine fiber optic cables.

The permitting framework for submarine fiber optic cables in California is robust and intensive, as discussed above. It also involves considerable opportunities for participation by

interested parties including without limitation, consulting agencies, tribes, stakeholders, and the public. The permitting of submarine fiber optic cables in California involves multiple public processes before a cable goes into the water. Adding another layer of public process and permitting through NOAA for a submarine fiber optic cable special use permit would not result in additional benefits to the environment or sanctuary resources and would instead only burden an already complex regulatory process, which would be contrary to Congress' intent when adopting the special use permit process.[7]

In short, the Draft EIS does not even attempt to resolve these issues or complexities raised in Sections I.A-C as it should under NMSA and NEPA. NOAA needs to consider not only the direct impacts on existing and future cable systems within the proposed Chumash NMS boundaries, it must consider 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. Unfortunately, NOAA has fallen short in doing so. Meta encourages NOAA to more robustly address these direct and indirect impacts, and in doing so, 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." [8] The following section proposes new processes that Meta urges NOAA to consider as

[7] When amending the National Marine Sanctuaries Act in 1988 to adopt special use permits for certain commercial activities, Congress intended to remedy an "already difficult management issue" by adopting a process providing "a more responsive management tool." 100th Congress, 2nd Section, Rept. 100-739, Part 1, Legislative Report on the National Marine Sanctuaries Program Authorization Act of 1988, at pp. 16, 21.
[8] NMSA, Sec. 303(b)(1)(K), 16 U.S.C. § 1433(b)(1)(K).

innovative management approaches for submarine fiber optic cables within the proposed Chumash boundaries.

III. META ENCOURAGES NOAA TO REVISE THE DRAFT CHUMASH NMS REGULATIONS TO SPECIFICALLY ADDRESS SUBMARINE FIBER OPTIC CABLES WITHIN THE PROPOSED BOUNDARIES.

Meta appreciates the opportunity to provide specific comments on the draft regulations for the proposed Chumash NMS. Again, to reiterate, Meta urges NOAA to reconsider the treatment of submarine fiber optic cables within the Chumash NMS boundaries. Meta believes it is possible to tailor a solution by using an approach NOAA has used for other sanctuaries when creating sanctuary-specific regulations. The Chumash NMS is located in an area of the California central coast that once designated, will have considerable cumulative impacts to ocean users, like Meta and other cable operators, given the extent of existing federal and California protected waters and coastlines. Unless NOAA reconsiders its management policies for the Chumash NMS and the corresponding draft regulations related to these subsea cables, NOAA seems to be creating, maybe intentionally or unintentionally, a bar on all future subsea fiber optic cable landings off most of the California coast to the detriment of necessary communication routes.

To avoid this potentially drastic outcome, Meta proposes a Chumash Submarine Fiber Optic Cable Overlay Zone to regulate existing and future subsea fiber optic cables within the proposed sanctuary boundaries. Meta offers this as an innovative management approach for this critical geographic area of ocean and coastline for transpacific cable systems. This overlay zone would govern the NOAA review processes for submarine fiber optic cables within the proposed boundaries only. *See* proposed 922.235 in Appendix 1 (Proposed Redline).

A. The certification process for pre-existing rights in draft 15 CFR § 922.234 should be streamlined, and based on clear and objective criteria for submarine fiber optic cables within the proposed sanctuary boundaries.

NOAA proposes a certification process for pre-existing rights in draft 15 CRF 922.234 that goes above and beyond the scope of the NOAA's general certification review process set out in Part 922, subpart A (15 CFR 922.10) without justifying the need for the increased level of scrutiny and discretion. As proposed, the Chumash NMS certification process would introduce unacceptable uncertainty, delay, and cost for holders of existing rights of access. Meta maintains that for purposes of certification, an "existing" submarine fiber optic cable is one that has received permits by federal, state, and local authorities with competent jurisdiction to authorize the construction, whether are not the cable is physically installed or operating, at the time of the effective date of the Chumash NMS designation.

As discussed throughout these comments and others submitted into the docket, submarine fiber optic cables in California are subjected to *multiple* levels of review to authorize the construction and operation of these cables. See Attachment 1 (Eureka MND, Appendix A). Owners and operators of such cables must have certainty about ongoing operations, including maintenance and repair, and predictability of process. The proposed regulations in 15 CFR 922.234 introduces what appears to be a subjective, discretionary review process for a pre-existing right without any rational basis or explanation. The mere fact that NOAA cannot discontinue the pre-existing right per the draft regulations is not at all adequate to assure a clear and objective certification process for pre-existing rights. As drafted, NOAA has considerable discretionary authority and could condition an existing cable such that it effectively prohibits ongoing operations. Further, there is no basis for NOAA to require public comment and public hearing for a certification of a pre-existing right that has already undergone several rounds of public review and comment to obtain the necessary federal, state, and local approvals,

authorizations, and permit for the cable construction and operation. To impose such a requirement is simply arbitrary and unnecessary to protect sanctuary resources and qualities.

Request: Meta encourages NOAA to revise the draft regulations to provide a clear and objective certification process specific to existing submarine fiber optic cable systems. NOAA can accomplish this goal without negatively impacting sanctuary resources and the environment. To this end, Meta proposes specific certification regulations for submarine fiber optic cables in the proposed Chumash Submarine Fiber Optic Cable Overlay Zone, 922.235(c). *See* Appendix 1 (Proposed Redline).

B. The ongoing presence, maintenance, and repair of certified, existing submarine cables should not require further NOAA review.

Meta and its partners must have ready access to submarine fiber optic cables within the proposed Chumash NMS and terminating at Grover Beach for routine maintenance and in the event of an outage. Not only is this critical to providing service to the customers that these cables support, maintenance of these lines is required by federal law and international treaties. Moreover, unlike other exempt activities in the proposed regulations,[9] submarine fiber optic cables have a neutral to benign impact on the marine environment.[10]

i. The draft Chumash NMS regulations conflicts with other federal regulations, including the primary regulator, Federal Communications Commission, and the Draft EIS fails to reconcile this fact.

The Federal Communications Commission ("FCC") functions as the primary regulator (under the Cable Landing License Act of 1921) and is responsible for licensing all international

[9] NOAA proposes to except certain maintenance and repair activities for certain oil and gas activities which have far greater potential to disturb submerged lands during maintenance and repair.

[10] *See supra* fn. 3.

submarine cables landing in the United States (although as noted throughout these comments, numerous federal, state, and local government agencies issue licenses, easements, and permits governing installation and construction activities associated with submarine cables landing in the United States).

Submarine cable licensees must immediately report to the FCC when submarine cable outages occur and communications over those facilities are disrupted. A licensee is obligated to report to the FCC within 4 hours of learning of the outage and then again when those lines are repaired.[11] Per the FCC in adopting the reporting requirements: "both the cables and the services provided over them must be protected."[12] The FCC licensee has an obligation to quickly respond to repair damaged cables. As drafted, the Chumash NMS regulations appear to require NOAA review, likely a special use permit, for any maintenance or repair of existing submarine cable systems, which would prevent responsive action and allow an FCC licensee to remain in compliance. This an incredibly problematic conflict and one NOAA must solve. Again, Meta does not have all the answers for how to solve this conflict but believes the NOAA has the tools if it has the willingness to use innovative management approaches for the Chumash NMS and balance the policy interests at play.

Further, ongoing maintenance and repair is already contemplated for, or could be included within, previously-approved federal, state, or local approvals, permits, and authorizations that NOAA relies upon for certification. NOAA should continue to rely on those prior approvals to allow for necessary ongoing maintenance and repair activities. It is reasonable to use the certification process not only to recognize existing subsea fiber optic

[11] See 47 CFR 4.15.

[12] Report and Order, *Improving Outage Reporting for Submarine Cable Outage Data*, 31 FCC Rcd 7947 (rel. Jul. 12, 2016) at ¶ 14.

cables but to acknowledge the presence, including ongoing repair and maintenance, of such cables. In other words, under Meta's proposed approach, NOAA gets one opportunity – through certification – to review the impact of an existing cable over the course of its lifetime. And that review, should not impose greater burdens on the existing cable than those already imposed by the federal, state, and local authorities granting authorization for the activity.

ii. The Draft EIS and draft regulations do not justify the different treatment of certain activities within proposed Chumash NMS boundaries.

NOAA proposes to impose an additional level of subjective and discretionary federal review for existing and future submarine fiber optic cables within the Chumash NMS when it has not for other types of activities. Specifically, Meta is particularly concerned that the proposed regulations except and allow certain activities like (1) continued oil and gas production at existing reservoirs from Platform Irene and Platform Heritage; (2) dredge material disposal sites authorized by the U.S. Environmental Protection Agency in consultation with U.S. Army Corps of Engineers ("USACE"); (3) ongoing maintenance and repair of oil and gas pipelines to shore from Platform Irene or Platform Heritage; (4) construction, maintenance and repair of navigational aids, docks, piers, and jetties; (5) maintenance dredging for harbors; and (6) drilling and maintenance of well related to oil and gas production within existing reservoirs under production. Such an approach appears arbitrary and not supported by evidence given that the installation and ongoing operation, maintenance and repair of submarine fiber optic cables has the same or less environmental impact that the excepted activities listed above.

In particular, Meta points to NOAA's allowance for the maintenance and repair of existing oil and gas production facilities at the Platform Irene or Platform Heritage. NOAA would not require authorization or special use permitting for such activities under 15 CFR 922.232(a)(1) and 922.232(a)(2)(i)(H). NOAA has failed to justify in the Draft EIS why it may

offer such treatment to these types of activities while imposing more rigorous review for the ongoing maintenance and repair of submarine fiber optic cables, particularly when considering the benign environmental impacts of such repairs.[13]

Further, NOAA has previously excepted certain activities from prohibition on sanctuary-by-sanctuary basis, so it does have the ability to do so. There are several examples at existing sanctuaries where certain types of activities, including commercial activities, have been excepted. NOAA can look to the existing regulations for the Hawaiian Island Humpback Whale national marine sanctuary where cable installation and repair is not prohibited or restricted, as well as the Monterey Bay (see 15 CFR 922.132(a)(4)(v)), Florida Keys (see 15 CFR 922.163(4) exceptions), and Thunder Bay (see 15 CFR 922.193(a)(3)(iii)), where a broad range of commercial activities are exempted from prohibition. Again, NOAA has not justified in the Draft EIS why certain activities, like oil and gas facilities, which have a significantly higher impact than submarine fiber optic cables, appear to receive lesser scrutiny than do fiber optic cables.

iii. The draft Chumash NMS regulations needlessly jeopardize repair of critical infrastructure.

Submarine fiber optic cables are robust, compact (no more than a few inches in diameter), and designed specifically for the high pressure of the subsea environment. While the risk of damage to submarine fiber optic cables is generally low, damage can happen from natural hazards and other ocean users. In such instances, timely repairs are critical, and maintenance providers and cable ships must be prepared to respond quickly, with vessels on stand-by with qualified personnel and appropriate equipment. In the rare event that a submarine fiber optic cable malfunctions or breaks, Meta must locate the accident, hoist up the damaged portion, and

[13] *See supra* fn. 3.

replace it with a new segment of cable. Typically, a submarine fiber optic cable repair takes 1-2 weeks. Throughout this period, Meta works to ensure that its repair process is minimally intrusive on the marine ecosystem, including by monitoring marine mammals in the area to avoid collisions, entanglements, or potential sound impacts.

Damage to submarine fiber optic cables can pose significant risks to U.S. national security and the U.S. economy given the U.S. Government's interest in maintaining a robust, reliable and resilient communications network, and the dollar-value of commerce conducted using submarine fiber optic cables. By not addressing the issue of operation, maintenance and repair activities, the draft regulations jeopardize critical infrastructure and the industries and interests that rely on it.

Request: Meta encourages NOAA to revise the draft regulations to except maintenance and repair of certified submarine fiber optic cables from prohibitions in 15 CFR 922.232(a). Meta proposes a redline of draft 15 CFR 922.232(a)(2)(i)(I) and 922.232(a)(3)(viii) to allow for maintenance and repair of existing certified cables without further NOAA review. See Appendix 1 (Proposed Redline).

C. It is appropriate for NOAA to reconsider prior interpretations and use ONMS authorizations for new submarine fiber optic cables in the Chumash NMS instead of special use permits if NOAA will not except or use certification for new cables.

In 2006, NOAA opined that the presence of submarine fiber optic cables in NMSs required a special use permit and that submarine fiber optic cables were one of the use categories requiring increased review because they were commercial in nature and involved intrusive

activities such as trenching.[14] Since then, NOAA published its 2011 permitting guidance for submarine cables in NMSs that indicated that NOAA could use the ONMS authorization process to review such uses instead of the special use permit process. Specifically,

> "Most cable projects will require a permit from the U.S. Army Corps of Engineers (ACOE) pursuant to the ACOE's authority under Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act. If the ONMS decides to authorize another agency's permit (rather than issue a sanctuary permit), a permit from the ACOE would be a likely vehicle through which the ONMS could authorize cable projects in cases where a permit or a special use permit is not available." [15]

A comparison of NOAA NMS regulations reveals that NOAA treats submarine fiber optic cables inconsistently without clear reason. It also affords other types of infrastructure greater flexibility without clear reason. This proposed designation offers an opportunity for NOAA to consider new data and evidence and adopt findings to justify treating submarine fiber optic cables within the proposed Chumash NMS that may vary from NOAA's programmatic precedent. NOAA has the ability through this proceeding to adopt findings explaining why special use review is not needed for the Chumash NMS based on sanctuary-specific facts and considerations. Meta encourages this alternative rather than suggesting that NOAA reconsider its proposed sanctuary boundaries.

As discussed above, NOAA already plays a key role in the federal permitting of submarine fiber optic cables as a consulting agency to the USACE. If designated, USACE must engage NOAA in Section 304(d) consultation to ensure that potential impacts to sanctuary resources are avoided and minimized to acceptable thresholds. This consultation provides a

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[14] *See Final Notice of Applicability of Special Use Permit Requirements to Certain Categories of Activities Conducted Within the National Marine Sanctuary* System, 71 Fed. Reg. 4898 (2006).

[15] *See NOAA Final Policy and Permit Guidance for Submarine Cable Projects*, 15 Fed. Reg. 922 (2011).

vehicle for ONMS to give input on appropriate conditions or permit terms without needing to undertake a subsequent, or concurrent, special use permit review.

Bottom line, NOAA through its Section 304(d) authority has the ability to ensure that federal permits for submarine fiber optic cable activity, like the USACE authorization, include conditions reasonably necessary to protect the sanctuary's resources and qualities and cover ongoing maintenance and repair for the life of the cable. Granted, this may change how NOAA and USACE currently work together, and beneficially, it could result in an improved process for critical cable infrastructure in a particularly important area of the California coast for transpacific landing sites. Given these opportunities for better coordination, it is not clear how the special use permit process adds anything to the existing regulatory framework except time, cost, risk, uncertainty, and unnecessary overlapping regulatory oversight.

Request: Meta encourages NOAA to use rely on its authorization authority for new submarine fiber optic cables within the Chumash NMS. It is appropriate to consider the treatment of submarine fiber optic cables on a sanctuary-specific basis, relying on the record and the evidence before it, instead of simply relying on outdated programmatic precedent. Meta proposes its redlines in draft 15 CFR 922.232(h) for specific authorization regulations for submarine fiber optic cables in proposed Chumash Submarine Fiber Optic Cable Overlay Zone, 922.235(d). See Appendix 1 (Proposed Redline).

D. The adoption of a Chumash Submarine Fiber Optic Cable Overlay Zone allows NOAA to use its innovative management measures to tailor regulations to address the balance between protection of sanctuary resources and the existing and planned critical subsea fiber optic cable infrastructure within the proposed sanctuary boundaries.

Meta urges NOAA to consider the demands of today's information exchange, locally, nationally, and globally when consider the final regulations for the Chumash NMS. NOAA has the discretion and authority to adopt sanctuary-specific regulations that address NOAA's review

of future submarine fiber optic cables while factoring in the existing federal and California regulatory regimes. This is an opportunity to collaborate with USACE, the CCA, the tribes, and other stakeholders to craft a framework for managing the Chumash NMS that balance collective interests without detrimental impacts to sanctuary resources.

IV. IF NOAA WILL NOT EXERCISE ITS CERTIFICATION AND ONMS AUTHORITY WITH SANCTUARY-SPECIFIC REGULATIONS, A SEPARATE RULEMAKING IS NECESSARY TO ADDRESS SPECIAL USE PERMITS FOR SUBMARINE FIBER OPTIC CABLES IN NMS ON A PROGRAMMATIC LEVEL.

If NOAA will not reconsider how it treats submarine fiber optic cables within the proposed boundaries of the Chumash NMS, Meta urges NOAA to engage in separate rulemaking to address a special use permit process specific for submarine fiber optic cables on a programmatic level for the Chumash NMS and other designated sanctuaries. Particularly important to Meta is limiting the overlaying federal regulatory review, minimizing permitting timelines, and more narrowly prescribing permit fees.

A new rulemaking process is needed address the various concerns with NOAA's current special use permit review process and offers the vehicle for developing a new special use permit review specific for submarine fiber optic cables. A more streamlined special use permit review process is needed to eliminate redundant federal regulatory review processes, tighten permitting timelines, and ensure that fiber optic system operators may access submarine fiber optic cable facilities immediately to address cable faults.[16] In addition, given the significant time that has

[16] Meta and other subsea cable system owners have invested substantial resources in the Grover Beach cable landing development and associated submarine fiber optic cable infrastructure. An overly restrictive regulatory regime could effectively force these entities to abandon their substantial investments, in violation of the Fifth Amendment of the U.S. Constitution and Article I, Section 19 of the California Constitution.

passed since NOAA last considered the fair market value assessment for submarine fiber optic cable permit fees,[17] a rulemaking is needed to consider whether the "comparable transaction" valuation methodology remains well-suited to fiber deployments and if so, how recent comparable transactions compare to prior valuations. The "wide variation in transactions data"[18] identified by NOAA in 2002, and the lack of frequency and transparency concerning recent fair market value assessments for marine sanctuaries, make it nearly impossible to predict the actual costs associated with NOAA's special use permit process for submarine fiber optic cables.

Further, given the enormous investment already required to permit, install, and maintain subsea fiber optic cables, and the critically important role that such cable networks play in modern society, it is appropriate for NOAA to consider through the requested rulemaking the possibility of eliminating or substantially reducing the fair market value assessment for subsea fiber optic cables. Notably, in recent guidance issued by the Federal Highway Administration ("FHWA") concerning highway rights-of-way use by clean energy and connectivity projects, including broadband, the FWHA opined that such projects should qualify for an exception to FWHA's governing fair market value requirement, given the significant public policy benefits afforded by such uses.[19]

[17] NOAA last considered how to assess fair market value for a submarine fiber optic cable special use permit in marine sanctuaries in 2002.

[18] At that time, NOAA decided that any value within a range of $40,000 to $100,000 per mile would be appropriate.

[19] *See* Memorandum, *State DOTs Leveraging Alternative Uses of the Hight Right-of-Way Guidance*, issued by the Federal Highway Administration on April 22, 2021.

Similarly, NOAA may recognize the significant public policy benefits of submarine fiber optic cables when reconsidering permitting fees for those cables. Another option would be to cap permit fees by applying an inflation index, such as the Gross Domestic Product Price Index, to the prior fair market value range. The FCC used a similar approach when it allowed rate-of-return carriers filing their own rates to convert to price cap regulation and when it decided to regulate the prices of high-capacity data circuits sold by carriers to large business customers.[20] Use of an established inflation index to place a reasonable ceiling on fair market value assessments would help to ensure that NOAA is fairly compensated while simultaneously establishing a fair, predictable cost structure for submarine fiber optic cable systems.

Accordingly, if NOAA is unwilling to adopt certification and the existing ONMS authorization process for submarine fiber optic cables in the Chumash NMS, we encourage NOAA to convene a separate rulemaking process (before finalizing the Chumash designation) to address required improvements to the special use permit process applicable to submarine fiber optic cables.

V. PRESERVATION OF ADDITIONAL ISSUES FOR THE RECORD

It is necessary to preserve for the record issues we believe may be at issue if a viable solution is not achieved to address the issues presented above. Therefore, for purposes of the administrative record, we raise the following:

A. Arbitrary and capricious treatment of submarine fiber optic cables

NOAA's treatment of subsea fiber optic cables is arbitrary and capricious. NOAA has thus far disregarded multiple attempts by stakeholders to address this arbitrary treatment. NOAA

[20] *See, e.g., Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 07-171*, Order, 23 FCC Rcd 5294 (2008) at 5299-5301, paras. 11-14.

states that subsea fiber optic cables can result in "considerable seafloor disturbance, impacts on fishing, and other threats from repair and replacement."[21] Evidence in the record contradicts NOAA's statements. Environmental impacts associated with certain excepted activities, like oil and gas activities, are much more substantial than the benign environmental impact associated with submarine fiber optic cables. Meta provides additional evidence into the record to support this fact.

B. Conflicts with Other Law

By proposing to fully regulate submarine fiber optic cables under a special use permit process, NOAA is unnecessarily and arbitrarily intruding into existing state, federal and international regulatory frameworks. Under the NMSA, the Secretary of Commerce must find that existing state and federal authorities are inadequate or should be supplemented to protect the resources at issue and that designation of an area as an NMS will facilitate such objectives.[22] In doing so, the Secretary must consider the existing state and federal regulatory and management authorities applicable to the area. As explained above, submarine fiber optic cables undergo a significant environmental impact review as part of local, state, and federal processes.[23] These processes ensure that cables cannot be laid down until all of their environmental impacts have been considered and minimized, or mitigated.

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[21] DEIS, Section 3.9.4.

[22] 16 U.S.C. 1433.

[23] To mention only a few, submarine fiber optic cables are subject to the Coastal Zone Management Act, the Endangered Species Act, the Fisheries Conservation and Management Act (Magnuson-Stevens), the Marine Mammal Protection Act, the Migratory Bird Treaty Act, the Rivers and Harbors Act, the National Environmental Policy Act, and the National Historic Preservation Act.

Further, international treaties have recognized the importance of submarine cables protecting cables from damage, dating back to 1884. These treaty obligations are now regarded as customary international law, in particular by the United States. Treaty obligations require coastal states to prevent willful or negligent damage to cables, "have due regard to cables or pipelines already in position," and to not impede the laying or maintenance of such cables or pipelines.[24] Appendix A of the DEIS recognized but ignored concerns expressed in public comments that NOAA's treatment of submarine fiber optic cables would be contrary to international law because the freedom to install and maintain submarine cables is well-established by treaty and customary international law. Neither the DEIS nor the Draft Management Plan or draft regulations explain how the proposed designation is consistent with international law. By subjecting any submarine fiber optic cables activities to the special use permit process, NOAA is ignoring the existing local, state, and federal frameworks and international law in order to provide little to no benefit to sanctuary resources, and does not explain why additional regulation and permitting processes are necessary.

C. Deficient Draft EIS and Draft Management Plan

NOAA developed a DEIS, draft sanctuary regulations, and a draft management plan for the Chumash NMS that ignored extensive evidence in the administrative record regarding the infrastructure and economic importance of submarine fiber optic cables and their minimum environmental impacts, and instead relied on mischaracterizations and erroneous assertions about

[24] United Nations Convention on the Law of the Sea (UNCLOS), Dec. 10, 1982, 1833 U.N.T.S. 397 1833 U.N.T.S. 397 (entered into force on November 16, 1994 arts. 58(1) at art. 79(2) ((providing that "[s]ubject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines, the coastal State may not impede the laying or maintenance of such cables or pipelines").

those cables. Meta looks to other aligned commenters who raise comments on the Draft EIS and express agreement with such comments. In particular, NOAA asserts in its Notice of Proposed Rulemaking that submarine telecommunications cable repair activities can cause "considerable seafloor disturbance, impacts on fishing, and other threats" despite significant evidence in the record to the contrary (Notice at 58133).[25] Similarly, the Draft EIS ignored several comments provided by representatives of the submarine fiber optic cables or instead simply brushed them aside with summary conclusions despite substantial technical and scientific evidence supporting the benign impact of submarine fiber optic cables on marine resources.[26] As a result, NOAA failed to recognize that submarine fiber optic cables are fully compatible with the NMSA's resources preservation goals in designating marine sanctuaries.

D. Inadequate consideration of socioeconomic and cumulative impacts.

NOAA failed to consider the negative impacts and socioeconomic efforts of its proposed regulations of submarine fiber optic cables as required under NMSA Section 433(b)(H)&(I). As demonstrated above and in previous public comments from other stakeholders, the burden imposed on submarine fiber optic cables as a result of the draft regulations will negatively impact the state and the country's communications infrastructure. NOAA's proposed designation will likely result in the clustering of submarine fiber optic cables and landings in a few, heavily populated locations, increasing the risk of concurrent damage to multiple cable systems associated with a single event and the amount of repair activities required to bring each system back online.

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[25] *See* UNEP-WCMC-ICPC Report from 2009, U.N. Secretary General's UNCLOS Report 2015, U.N World Ocean Assessment from 2016. *See also* NASCA's comments submitted into the record.

[26] *See supra* fn. 3.

Further, NOAA's analysis to date does not contemplate the cumulative impacts to submarine fiber optic cables when designating the Chumash NMS. Once in place, large swaths of the California coastline will be in federal protection given the existing marine sanctuaries, essential fish habitat, and other constraint overlays for other commercial activities. This will effectively become a "no go" zone significantly impacting future routing for subsea cables. NOAA failed to address how its proposed regulations would significantly impact the redundancy of cable infrastructure and the economic, societal, and national security interests it supports.

E. Arbitrary Preferred Boundaries

NOAA has not sufficiently explained why it selected the combination of Alternative 2 and Sub-alternative 5b as its Preferred Alternative. In its Notice of Proposed Rulemaking, NOAA explained it "considered which boundary alternatives NOAA could effectively manage while allowing for compatible uses and providing increased protection and conservation for sanctuary resources." However, NOAA did not explain how this goal could not have been accomplished under other alternatives.

F. Interference with Contractual Relationships

The U.S. and California Constitutions prohibit any law, including agency actions, that impairs upon the "Obligation of Contracts."[27] Through its infrastructure, Meta serves multiple public and private entities under binding contracts. Under the Contracts Clause, NOAA's actions in disrupting existing contractual relationships must be reasonable and advance a significant and legitimate public purpose. NOAA has not justified its intrusion into those contractual relationships.

[27] U.S. Const. Art. I, Sec. 10; Cal. Const., Art

CONCLUSION

In closing, we appreciate NOAA's consideration of these comments and Meta's ideas to reach a workable solution for both submarine fiber optic cable infrastructure and the protection of the sanctuary resources. Please let us know if we can provide additional information to inform the consideration of the proposed revisions to the regulations or discuss these comments further. Thank you again for your consideration.

Respectfully submitted,

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Appendix 1

Proposed Redline

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

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

2. Amend § 922.1 by revising paragraph (a)(2) to read as follows:

§ 922.1
Purposes and applicability of the regulations.

(a) * * *

(2) To implement the designations of the national marine sanctuaries, for which specific regulations appear in subpart F through subsequent subparts of this part, by regulating activities affecting them, consistent with their respective terms of designation, in order to protect, restore, preserve, manage, and thereby ensure the health, integrity, and continued availability of the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological, and aesthetic resources and qualities of these areas.

* * * * *

3. Revise § 922.4 to read as follows:

§ 922.4 Boundaries.

Subpart F and subsequent subparts of this part set forth the boundaries for all national marine sanctuaries.

4. Revise § 922.6 to read as follows:

§ 922.6 Prohibited or otherwise regulated activities.

Subpart F and subsequent subparts of this part set forth site-specific regulations applicable to the activities specified therein.

5. Amend § 922.30 by:

a. Revising paragraph (a)(2);

b. Removing the word “and” at the end of paragraph (b)(5);

c. Removing the period at the end of paragraph (b)(6) and adding “; and” in its place; and

d. Adding paragraph (b)(7).

The addition reads as follows:

§ 922.30 National Marine Sanctuary general permits.

(a) * * *

(2) The permit procedures and criteria for all national marine sanctuaries in which the proposed activity is to take place in accordance with relevant site-specific regulations appearing in subpart F and subsequent subparts of this part.

(b) * * *

(7) Native American cultural or ceremonial activities—activities within Chumash Heritage National Marine Sanctuary that will promote or enhance local Native American cultural or ceremonial activities; or will promote or enhance education and training related to local Native American cultural or ceremonial activities.

6. Amend § 922.36 by revising paragraphs (a) and (b)(1)(ii) to read as follows:

§ 922.36 National Marine Sanctuary authorizations.

(a) *Authority to issue authorizations.* The Director may authorize a person to conduct an activity otherwise prohibited by subparts L through P, or subparts R through V, of this part, if such activity is specifically allowed by any valid Federal, State, or local lease, permit, license, approval, or other authorization (hereafter called "agency approval") issued after the effective date of sanctuary designation or expansion, provided the applicant complies with the provisions of this section. Such an authorization by the Office of National Marine Sanctuaries (ONMS) is hereafter referred to as an "ONMS authorization."

(b) * * *

(1) * * *

(ii) Notification must be sent to the Director, Office of National Marine Sanctuaries, to the attention of the relevant Sanctuary Superintendent(s) at the address specified in subparts L through P, or subpart R through V, of this part as appropriate.

* * * * *

7. Amend § 922.37 by revising paragraph (a)(2) to read as follows:

§ 922.37 Appeals of permitting decisions.

(a) * * *

(2) An applicant or a holder of a National Marine Sanctuary permit issued pursuant to § 922.30 or pursuant to site-specific regulations appearing in subparts F through V of this part;

* * * * *

8. Add subpart V to read as follows:

Subpart V—Chumash Heritage National Marine Sanctuary

§ 922.230 Boundary.

Chumash Heritage National Marine Sanctuary (CHNMS) consists of an area of approximately 5,617 square miles (mi^2) (4,242 square nautical miles (nmi^2)) of coastal and ocean waters along the central coast of California and the submerged lands thereunder. The northern boundary would commence at Hazard Canyon Reef within Montaña de Oro State Park at the mean high water line (MHWL) and extend for 134 miles south along the MHWL through the remainder of the San Luis Obispo County coast, excluding the private marina at Diablo Canyon Power Plant and Port San Luis (at the port's boundary for International Regulations for Preventing Collisions at Sea (COLREGS) demarcation line (33 CFR 80.1130)), and then further south and east to include the coast of western Santa Barbara County to approximately two miles east of Dos Pueblos Canyon along the Gaviota Coast near the township of Naples. The boundary then shifts due south offshore to the State waters line, then to the west along the State waters line to

approximately 3 nmi offshore of Gaviota Creek, then in a southwest direction along the western end of Channel Islands National Marine Sanctuary, southward to include Rodriguez Seamount and shifting to the northwest in an arc reaching approximately 47 miles due west of Purisima Point and another arc reaching a distance approximately 54 miles due west of Morro Rock, then approximately 2.5 miles to the north, then approximately 15 miles due east, and finally to the southeast approximately 39 miles to the point of origin at MHWL at Hazard Canyon Reef.

§ 922.231 Definitions.

In addition to the definitions found in § 922.11, the following terms are defined for purposes of this subpart:

Beneficial use of dredged material means the use of dredged material removed from the public harbor adjacent to the Sanctuary (Port San Luis) that is determined by the Director to be suitable as a resource for habitat protection or restoration purposes. Beneficial use of dredged material is not disposal of dredged material.

Rodriguez Seamount Management Zone means the area bounded by geodetic lines connecting a heptagon generally centered on the top of the Rodriguez Seamount, and consists of approximately 570 mi^2 (430 nmi^2) of ocean waters and the submerged lands thereunder. The northeast corner of this zone is located approximately 27 miles southwest of Point Conception off the coast of Santa Barbara County. Exact coordinates for the Rodriguez Seamount Management Zone boundary are provided in appendix B to this subpart.

§ 922.232 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (e) and paragraph (g) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing, or producing oil, gas, or minerals within the Sanctuary, except for continued oil and gas production, which includes well abandonment, of existing reservoirs under production prior to the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) from Platform Irene and Platform Heritage.

(2)(i) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter, except:

(A) Fish, fish parts, chumming materials, or bait used in or resulting from lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activities within the Sanctuary;

(B) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification)

approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(D) For a vessel less than 300 GRT, or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA;

(E) Vessel engine or generator exhaust;

(F) Beyond 3 nautical miles from shore, sewage and non-clean graywater as defined by section 312 of the FWPCA generated incidental to vessel use by a U.S. Coast Guard vessel without sufficient holding tank capacity and without a Type I or II marine sanitation device; and beyond 12 nautical miles from shore, ammunition, pyrotechnics, or other materials directly related to training for search and rescue and live ammunition activities conducted by U.S. Coast Guard vessels and aircraft;

(G) Dredged material deposited at disposal sites within the Sanctuary authorized by the U.S. Environmental Protection Agency (EPA), in consultation with the U.S. Army Corps of Engineers, prior to the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]); or

(H) Discharges incidental and necessary to oil and gas production within or into existing reservoirs under production prior to the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) from Platform Irene or Platform Heritage, including well abandonment (ii) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(iii) Discharging or depositing from beyond the boundary of the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except material or other matter listed in paragraphs (a)(2)(i)(A) through (F) and (a)(2)(ii) of this section.

(3) Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary, except as incidental and necessary to:

(i) Conduct lawful fishing activities or lawful kelp harvesting;

(ii) Anchor a vessel;

(iii) Install or maintain an authorized navigational aid;

(iv) Repair, replace, or rehabilitate an existing dock, pier, breakwater, or jetty;

(v) Conduct maintenance dredging of entrance channels for harbors in existence prior to the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]); ~~or,~~

(vi) Drill, maintain, or abandon a well necessary for purposes related to oil and gas production within or into existing reservoirs under production prior to the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) from Platform Irene or Platform Heritage; or~~.~~

(vii) Conduct maintenance and repair of submarine fiber optic cables in existence prior to the effective date of the Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]).

(viii) The exceptions listed in paragraphs (a)(3)(ii) through (vii) of this section do not apply in the Rodriguez Seamount Management Zone, the boundary of which is defined in appendix B to this subpart.

(4) Moving, removing, or injuring, or attempting to move, remove, or injure, a Sanctuary historical resource; or possessing or attempting to possess a Sanctuary historical resource, except as necessary for valid law enforcement purposes. This prohibition does not apply to, moving, removing, or injury resulting incidentally from lawful kelp harvesting or lawful fishing activities.

(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.,* Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.,* Migratory Bird Treaty Act, as amended (MBTA), 16 U.S.C. 703 *et seq.,* or any regulation promulgated under the MMPA, ESA, or MBTA.

(6) Possessing within the Sanctuary (regardless of where taken, moved, or removed from), any marine mammal, sea turtle, or bird, except as authorized by the MMPA, ESA, MBTA, by any regulation promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

(7) Deserting a vessel aground, at anchor, or adrift in the Sanctuary or leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.

(8) Attracting any white shark within the Sanctuary.

(9)(i) Moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting, or otherwise injuring, or attempting to move, remove, take, collect, catch, harvest,

disturb, break, cut, or otherwise injure, any Sanctuary resource located more than 1,500 ft. below the sea surface within the Rodriguez Seamount Management Zone, as defined in appendix B to this subpart. This prohibition does not apply to lawful fishing, which is regulated pursuant to 50 CFR part 660.

(ii) Possessing any Sanctuary resource, the source of which is more than 1,500 ft. below the sea surface within the Rodriguez Seamount Management Zone, except as necessary for valid law enforcement purposes. This prohibition does not apply to possession of fish resulting from lawful fishing, which is regulated pursuant to 50 CFR part 660.

(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(11) Interfering with, obstructing, delaying, or preventing an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraphs (a)(2) through (7) and (9) of this section do not apply to an activity necessary to respond to an emergency threatening life, property, or the environment.

(c)(1) The prohibitions in paragraphs (a)(2) through (7) and (9) and (10) of this section do not apply to existing activities carried out or approved by the Department of Defense that were conducted prior to the effective date of this designation ([EFFECTIVE DATE OF FINAL RULE]), as specifically identified in section 4.9 or appendix I to the final environmental impact statement for Chumash Heritage National Marine Sanctuary (for availability, see *https://sanctuaries.noaa.gov/chumash-heritage/*). New activities may be exempted from the prohibitions in paragraphs (a)(2) through (7) and (9) and (10) of this section by the Director after consultation between the Director and the Department of Defense. All Department of Defense activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the Department of Defense shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if practicable, restore or replace the Sanctuary resource or quality.

(d) The prohibitions in paragraphs (a)(2) through (9) of this section do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary general permit issued pursuant to subpart D of this part and § 922.233, or a special use permit issued pursuant to subpart D of this part.

(e) The prohibitions in paragraphs (a)(2) through (9) of this section, and paragraph (a)(10) of this section regarding any introduced species of shellfish that NOAA and the State of California have determined is non-invasive and will not cause significant adverse effects to Sanctuary resources

or qualities, and that is cultivated in State waters as part of commercial shellfish aquaculture activities, do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with § 922.36, the Director notifies the applicant and authorizing agency that the Director does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals, and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date of Sanctuary designation.

(f)(1) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary general permit under subpart D of this part and § 922.233, or an ONMS authorization or special use permit under subpart D of this part authorizing, or otherwise approve:

(i) The exploration for, development, or production of oil, gas, or minerals within the Sanctuary;

(ii) The discharge of untreated or primary-treated sewage within the Sanctuary (except by certification, pursuant to §§ 922.10 and 922.234, of valid authorizations in existence prior to the effective date of designation ([EFFECTIVE DATE OF FINAL RULE]) and issued by other authorities of competent jurisdiction); or

(iii) The disposal of dredged material within the Sanctuary other than at sites authorized by the U.S. Environmental Protection Agency prior to the effective date of designation ([EFFECTIVE DATE OF FINAL RULE]). For the purposes of this subpart, the disposal of dredged material does not include the beneficial use of dredged material, as defined at § 922.231, related to dredging activity at Port San Luis.

(2) Any purported authorizations issued by other authorities within the Sanctuary shall be invalid for those activities listed in paragraphs (f)(1)(i)-(iii).

(g) A person may conduct an activity prohibited by paragraphs (a)(2) through (10) of this section within the Sanctuary if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, or right of subsistence use or of access that is in existence on the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) and within the sanctuary designated area and complies with § 922.10, provided that the holder of the lease, permit, license, or right of subsistence use or of access complies with the certification procedures for CHNMS as outlined in § 922.234 or 922.235 as may be applicable.

(h) The prohibitions in paragraphs (a)(2) through (9) of this section do not apply to any submarine fiber optic cable activity authorized by any lease, permit, license, or other authorization issued after ([EFFECTIVE DATE OF FINAL RULE]), and issued by any Federal, State, or local authority of competent jurisdiction, provided the applicant complies with 922.36

and 922.235. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

§ 922.233 Permit and authorization procedures.

(a) A person may conduct an activity prohibited by § 922.232(a)(2) through (9), if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a sanctuary general permit, special use permit, or authorization issued under this section and subpart D of this part.

(b) Applications for permits or authorizations should be addressed to the West Coast Regional Office, Office of National Marine Sanctuaries; ATTN: Superintendent, Chumash Heritage National Marine Sanctuary, 99 Pacific Street, Suite 100F, Monterey, CA 93940.

NEW SECTION

Meta proposes a Chumash Submarine Fiber Optic Cable Overlay Zone to regulate existing and future subsea fiber optic cables within the sanctuary boundaries. This overlay zone would govern the certification, authorization, and if necessary, the special use permit reviews. Meta took this approach rather than proposing wholesale revisions to draft 922.234 and proposing a new section for ONMS authorizations specific to subsea cables in the Chumash sanctuary boundaries. Instead, Meta proposes a narrowly tailored approach with the creation of the Chumash Submarine Fiber Optic Cable Overlay Zone.

922.235, Chumash Submarine Fiber Optic Cable Overlay Zone

(a) ***Purpose***. The purpose of the Submarine Fiber Optic Cable Overlay Zone is to govern the installation, construction, and operation, including maintenance and repair of submarine fiber optic cable activity within the sanctuary. It recognizes that submarine fiber optic cable activities are subject to robust federal, state, and local review and existing regulations that work in conjunction with NOAA's regulations to avoid and minimize adverse impacts to sanctuary resources and qualities. The regulations in this section supplement, and where noted, supersede the regulations in subpart D.

(b) ***Boundaries.*** The Submarine Fiber Optic Cable Overlay Zone applies to the entirety of the sanctuary boundary, as provided in Appendix A of Subpart V of Part 922.

(c) ***Certification process for submarine fiber optic cable activity.*** This section applies to certifications for submarine fiber optic cables in existence on the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) and within the sanctuary designated area, and supersedes subpart D and 922.234 unless otherwise noted.

(1) To obtain a certification of a submarine fiber optic cable activity that is specifically authorized by a valid Federal, State, or local lease, permit, license, or right of subsistence use or access in existence on the effective date of Sanctuary designation ([EFFECTIVE DATE OF

FINAL RULE]) and within the sanctuary designated area, pursuant to 922.232(g), the holder of such authorization, permit, or right shall:

(i) Notify the Director, in writing, within 90 days of the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) of the existence and location of such authorization or right and request certification of such authorization or right; and

(ii) Comply with any condition in the certification the Director deems reasonably necessary to protect sanctuary resources and qualities as long as such conditions are reasonably consistent with those conditions imposed by the authorization, permit, or right the Director relies upon for certification.

(2) The holder shall address the requests for certification as provided in 922.234(b).

(3) A holder requesting certification of an authorization or right described in § 922.232(g) may continue to conduct the activity without being in violation of Sanctuary prohibitions pending the Director's issuance of the certification.

(4) Within 30 days of receipt of the certification request, the Director may request additional information from the holder as the Director deems reasonably necessary to consider whether to impose conditions to protect sanctuary resources and qualities consistent with those conditions imposed by the authorization, permit, or right the Director relies upon for certification. The Director must receive information requested within 45 days of the date of the Director's request for information or such additional time as otherwise agreed by the Director.

(5) Within 90 days of receiving the certification request, the Director shall issue the certification to the holder and the issuing agency. If the Director fails to issue the certification within 90 days, the certification shall be considered issued, consistent with the conditions imposed by the authorization, permit, or right included in the certification request.

(6) The Director may amend, suspend, or revoke any certification under this section only if the authorization, permit or right relied upon for the certification has been amended, suspended, or revoked. Any such action shall be forwarded in writing to both the certification holder and the issuing agency, and shall set forth reason(s) for the action taken.

(7) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.37.

(d) ***ONMS authorizations for submarine fiber optic cables.*** This section applies to authorizations for submarine fiber optic cables in the sanctuary in existence after the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) and within the sanctuary designated area, and supersedes subpart D unless otherwise noted.

(1) To obtain authorization of a submarine fiber optic cable activity that is specifically authorized by a valid Federal, State, or local lease, permit, license, or right of subsistence use or access in existence after the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) and within the sanctuary designated area, pursuant to 922.232(h), the holder of such authorization, permit, or right shall:

(i) Provide notice to the Director as required by 922.36(b)(1).

(ii) Comply with any condition in the authorization the Director deems reasonably necessary to protect sanctuary resources and qualities as long as such conditions are reasonably consistent with those conditions imposed by the authorization, permit, or right the Director relies upon for authorization.

(2) Within 30 days of receipt of the authorization request, the Director must request additional information from the holder as the Director deems reasonably necessary to consider whether to impose conditions to protect sanctuary resources and qualities consistent with those conditions imposed by the authorization, permit, or right the Director relies upon for certification and consistent with, to the extent applicable, the Director's comments and recommendations per the Section 304(d) consultation process. The Director must receive information requested within 45 days of the date of the Director's request for information or such additional time as otherwise agreed by the Director.

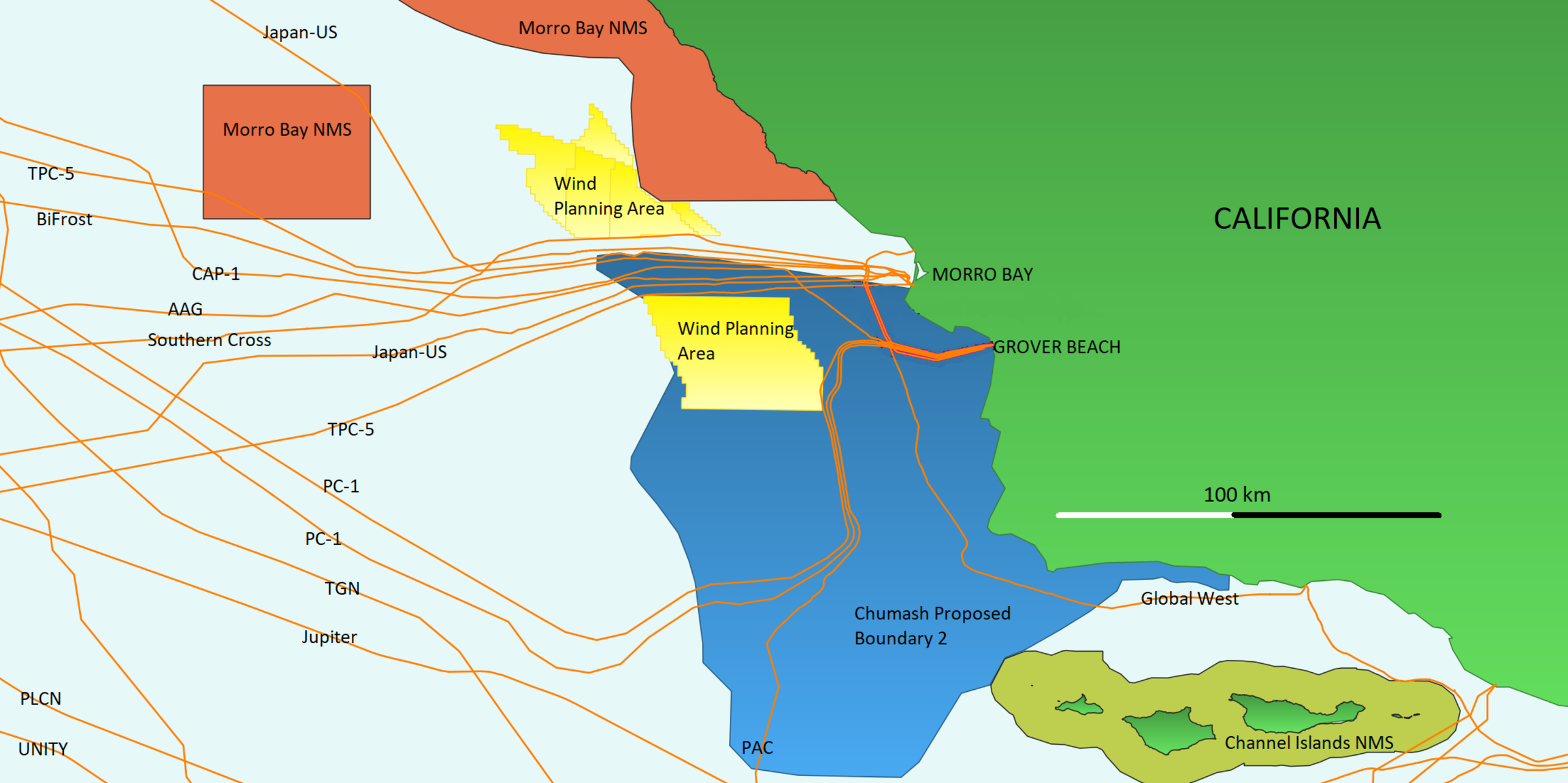
(3) The Director shall issue the ONMS authorization within 45 days of receiving copies of the final authorization, permit, or right the Director relies upon for authorization. If the Director fails to issue the authorization within 45 days, the authorization shall be considered issued, consistent with the conditions imposed by the authorization, permit, or right relied upon for the ONMS authorization.

(6) The Director may amend, suspend, or revoke the ONMS authorization under this section only if the authorization, permit or right relied upon for the ONMS authorization has been amended, suspended, or revoked. Any such action shall be forwarded in writing to both the certification holder and the issuing agency, and shall set forth reason(s) for the action taken.

(7) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.37.

Figure 1

Chumash NMS Cable Map


Japan-US
Morro Bay NMS
Morro Bay NMS
TPC-5
BiFrost
Wind
Planning Area
CALIFORNIA
CAP-1
AAG
Southern Cross
Japan-US
MORRO BAY
Wind Planning
Area
GROVER BEACH
TPC-5
PC-1
PC-1
TGN
Jupiter
100 km
Global West
Chumash Proposed
Boundary 2
PLCN
UNITY
PAC
Channel Islands NMS