



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of National Marine Sanctuaries | West Coast Region
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June 14, 2024

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California Coastal Commission
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Dear Ashley Reineman and Cassidy Teufel:

The purpose of this letter is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456 and its implementing regulations (15 CFR part 930, subpart C), related to the proposed designation of Chumash Heritage National Marine Sanctuary (CHNMS), including the proposed sanctuary regulations and management plan actions. Pursuant to the requirements of 15 CFR Part 930, subpart C, the National Oceanic and Atmospheric Administration (NOAA) submits for your review the following consistency determination for the proposed designation of CHNMS located off the central coast of California.

Summary and Finding

NOAA proposes to designate an area off the central California coast as a national marine sanctuary. The proposed designation would provide for comprehensive and coordinated conservation and management of the nationally significant natural, historical and cultural resources of this area, while enhancing public awareness and appreciation, and facilitating public and private uses including recreation and tourism, as authorized and directed by the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 et seq.). NOAA published proposed regulations, a draft sanctuary management plan, and draft environmental impact statement (EIS) prepared under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) in the Federal Register on August 24, 2023.

For the reasons described below, NOAA finds the proposed action would be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the California Coastal Management Program (CCMP).

Olympic Coast
National Marine Sanctuary
115 E. Railroad Avenue
Suite 301
Port Angeles, WA 98362

Cordell Bank
National Marine Sanctuary
P.O. Box 159
Olema, CA 94950

Greater Farallones
National Marine Sanctuary
The Presidio
991 Marine Drive
San Francisco, CA 94129

Monterey Bay
National Marine Sanctuary
99 Pacific Street
Suite 455A
Monterey, CA 93940

Channel Islands
National Marine Sanctuary
University of California Santa Barbara
Ocean Science Bldg 514, MC 6155
Santa Barbara, CA 93106



Description of the Proposed Action

The NMSA is the organic legislation governing NOAA's Office of National Marine Sanctuaries (ONMS). The NMSA authorizes the Secretary of Commerce to designate as a national marine sanctuary any discrete area of the marine and Great Lakes environment with special national significance due to its conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities. 16 U.S.C. 1433(a). In addition to designating and managing these special places, the NMSA provides additional purposes and policies that guide how NOAA manages these areas, including guidance to:

- Provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities (16 U.S.C. 1431 (b)(2));
- Enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archeological resources of the National Marine Sanctuary System (16 U.S.C. 1431 (b)(4));
- Support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas (16 U.S.C. 1431 (b)(5));
- Facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities (16 U.S.C. 1431 (b)(6));
- Develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas (16 U.S.C. 1431 (b)(7)).

In July 2015, a broad community consortium led by the Northern Chumash Tribal Council submitted a nomination to NOAA through the ONMS Sanctuary Nomination Process (79 FR 33851), asking NOAA to consider designating an area off the central California coast as a national marine sanctuary. NOAA issued a Notice of Intent to begin the designation process for the proposed sanctuary in November 2021 (86 FR 62512). The California Coastal Commission submitted a letter during the public scoping process (NOAA-NOS-2021-0080-3455) and stated, "we look forward to working closely with NOAA staff at the appropriate time to help ensure that the review process is completed as quickly and efficiently as possible. National marine sanctuary status for this area would also appear to be complementary with applicable policies of California's Coastal Management Program, including those focused on protecting marine and coastal habitats, water quality, public recreational access, fisheries, and archeological and visual resources. Should the current proposal move forward, then we are prepared to fully support the effort by reviewing the proposed designation in an objective and thorough manner and working collaboratively with NOAA to ensure that the designation of the Sanctuary is consistent with the relevant policies of California's Coastal Management Program."

The principal purpose of this proposed action is to increase protection of the ecological, historical, and cultural qualities of the central California coastal marine environment. The proposed designation would provide conservation and comprehensive ecosystem-based management to address threats to the nationally-significant biological, cultural, and historical resources of the proposed sanctuary. By implementing a management plan approach that includes a variety of actions, the sanctuary would: 1) develop coordinated and collaborative marine science, education and outreach, and cultural heritage programs to assist in managing the area's nationally-significant resources; 2) respond to interest for a community-based, ecosystem-based management regime to address threats to the natural environment, wildlife, and cultural resources of the area; and 3) highlight the many diverse human activities, cultural connections, and maritime heritage values of the area, from the various Tribes and Indigenous communities to existing activities in the area.

On August 24, 2023, NOAA released for public comment a draft sanctuary management plan, notice of proposed rulemaking (including proposed regulations and terms of designation), and an accompanying draft EIS for the proposed Chumash Heritage National Marine Sanctuary (CHNMS). The documents are accessible at <https://sanctuaries.noaa.gov/chumash-heritage/>.

The proposed action analyzed in the draft EIS is to designate a new sanctuary in the coastal and offshore waters of central California, with terms of designation, regulations, and a sanctuary management plan. For the purposes of the draft EIS, the scope of the study area and impact analysis is generally defined as the human uses of the environment, as well as the natural environment, within the boundaries of the proposed action and alternatives. In some resource areas, the study area is necessarily larger than the proposed sanctuary area because there is potential for impacts to occur beyond the proposed boundary. The study area is generally the waters along and offshore the central coast of California from Cambria to Naples and offshore between 3 to 70 miles, as defined by the Initial Boundary Alternative and Sub-Alternative 5a and Sub-Alternative 5b, as described in Chapter 3 of the draft EIS. While the draft EIS and proposed rule identified an Agency-Preferred Alternative, the final boundaries for the proposed sanctuary could be any boundary configuration within the geographic scope of the alternatives analyzed in the draft EIS. **Therefore, this consistency determination applies to the entire study area, including all alternatives and any boundary alternative that is qualitatively within the scope and spectrum of alternatives assessed in the draft EIS.** See Chapter 3 of the draft EIS for descriptions of each boundary alternative and sub-alternative.

The proposed sanctuary regulations would prohibit the following activities, subject to specified exceptions and exemptions:

- Oil, gas, and minerals exploration,¹ development, and production, except for continued oil and gas production at Platform Irene and at Platform Heritage;
- Discharges within or into the sanctuary, with some exceptions;
- Cruise ship discharges, with limited exceptions;

¹ Exploration for oil and gas resources would include disturbing the seabed by drilling an exploration well, as well as high energy seismic testing conducted for the purpose of locating potential oil and gas reserves.

- Discharging or depositing from beyond the boundary of the sanctuary any material or other matter that enters the sanctuary and injures a sanctuary resource or quality, with some exceptions;
- Disturbing the seabed, with some exceptions;
- Disturbing a historical resource, with limited exceptions;
- Taking or possessing a marine mammal, sea turtle, or bird, with limited exceptions;
- Deserting a vessel;
- Attracting a white shark;
- Disturbing resources deeper than 1,500 feet within the Rodriguez Seamount Management Zone, other than from lawful fishing activities, with limited exceptions;
- Introducing or otherwise releasing an introduced species, with limited exceptions; and
- Interfering with an enforcement investigation or action.

The draft sanctuary management plan describes non-regulatory actions in 11 action plans: Indigenous Cultural Heritage; Climate Change; Maritime Heritage; Offshore Energy; Water Quality; Blue Economy; Wildlife Disturbance; Education and Outreach; Resource Protection; Research and Monitoring; and Operations and Administration. Each action plan provides background information on resource management issues and an overview of the direction the proposed sanctuary would take to address management needs. The goals for each action plan are summarized, and the strategies describe how the goals would be accomplished for a particular issue or program area.

Depending on which boundary is selected for sanctuary designation, the proposed management plan may be modified, as needed, to address only those issues within the sanctuary boundaries. In addition, the final rule may include regulatory modifications that are a logical outgrowth of the proposed rule and that do not constitute a substantial change to the proposed action relevant to environmental concerns. As such, **this consistency determination applies to the draft management plan and any modifications as established in the final management plan as described above. In addition, this consistency determination applies to the proposed rule and any regulatory modifications, as established in the final rule, that are a logical outgrowth of the proposed rule and the impacts of which are qualitatively within the scope and spectrum of the alternatives impacts analysis in the draft EIS.**

Summary of Environmental Analysis and Evaluation of Coastal Effects

As required under NEPA, NOAA prepared a draft EIS that analyzes the potential impacts of the proposed sanctuary designation on the human environment, and considers a range of boundary alternatives for the proposed sanctuary designation. The draft EIS describes in detail the proposed sanctuary's environment, resources, regulations, and evaluates how implementing the proposed sanctuary boundaries, regulations, and management plan could affect the human environment. See draft EIS Chapter 4, Affected Environment and Environmental Consequences, and Chapter 5, Conclusion, for analyses of impacts of the action alternatives on these resources.

For the Initial Boundary Alternative and all action alternatives, there would be beneficial impacts associated with implementation of proposed sanctuary regulations (e.g., prohibitions against seabed disturbance, certain vessel discharges, and new offshore oil and gas development) that provide added resource protection in the issue areas of physical resources, biological resources, commercial fishing and aquaculture, cultural heritage and maritime heritage resources, and Department of Defense and homeland security activities. Some of the action alternatives would result in reduced beneficial impacts when compared to the Initial Boundary Alternative due to their reduced sanctuary size. No significant adverse impacts to any resource area are expected to result from the proposed action and the incremental impact of the proposed action in combination with ongoing resource protection, research, and stewardship programs, and ongoing or future commercial and industrial activities in the region, would be negligible (draft EIS Section 4.10).

Evaluation of Relevant Enforceable Policies of California’s Coastal Management Program

NOAA contacted Cassidy Teufel on April 19, 2023 to request a meeting and list of the California Coastal Management Program’s enforceable policies that may be relevant to the proposed action. NOAA staff had a call with Alexis Barrera on May 4, 2023, which resulted in a list of the following relevant enforceable policies for the proposed action: California Coastal Act sections 30220, 30230, 30231, 30232, 30232 (a, b), 30234.5, 30240, 30244, 30251, and 30262. On February 23, 2024, Cassidy Teufel suggested the addition of the following policies on coastal access to the list: California Coastal Act sections 30210, 30211, and 30214. NOAA’s evaluation of the relevant enforceable policies is presented below.

Article 2: Public Access

Policy: **Section 30210 – Access; recreational opportunities; posting.** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Effect: NOAA’s proposed action is fully consistent with this enforceable policy because designating the sanctuary would not adversely affect existing or future public access to the shoreline, as there are no proposed regulatory prohibitions or restrictions on public access (draft EIS Section 4.6) or programmatic plans to limit any coastal access. The sanctuary could span 100 to 150 miles of coastline in San Luis Obispo and Santa Barbara counties which offer many public coastal access points. Between San Luis Obispo County and Santa Barbara County, there are at least 13 state parks, numerous smaller local parks, and other smaller coastal accessways such as access easements all providing coastal access (draft EIS Section 4.6). Additionally, there are at least 11 public boat launches or access locations that provide access into the sanctuary (draft EIS Section 4.6).

Signage specific to sanctuary access points would be explored once the sanctuary is designated. Growing sanctuary awareness through collaboration with partners and developing an overall “NOAA presence” is a goal of the Education and Outreach and Operations and Administration action plans in the management plan. Upon sanctuary designation, staff would evaluate infrastructure and operations requirements, including signage needs, for which the estimated operating budget takes into account (draft management plan Activity OA-2.1, Appendix B).

Additionally, staff would undertake creating and installing coastal signage and develop a 5-year plan for signage and other physical outreach tools (draft management plan Activity EO-2.2).

Policy: **Section 30211 – Development not to interfere with access.** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Effect: NOAA's sanctuary designation would not adversely affect public access to the shoreline, as there are no proposed prohibitions against public access and no development is being proposed as part of the sanctuary designation (draft EIS Section 4.6, draft EIS Chapter 2). Ocean access would remain unchanged by this proposed action. Further, ONMS jurisdiction is limited to coastal and ocean waters beginning at the mean high water line; therefore, ONMS does not have the authority to regulate land-based development or activities that could interfere with the public's access to the ocean, such as the off-roading area in Oceano Dunes State Vehicular Recreation Area.

Policy: **Section 30214 (a), (b), and (c) – Implementation of public access policies; legislative intent.**

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Effect: As described above, NOAA’s proposed sanctuary regulations would not prohibit public access and therefore designating the sanctuary would not regulate public access in any circumstance. Instead, non-regulatory management tools would be used to educate and encourage the sustainable use of sanctuary resources and promote sustainable recreation (draft EIS Chapter 3; draft management plan Blue Economy Action Plan). For example, the draft management plan’s Wildlife Disturbance Action Plan would develop education and outreach materials and programs to teach the public about wildlife behavior, needs, and ways to avoid and minimize disturbance.

The need for additional sustainable tourism and recreation programs and messaging regarding sustainable practices during recreation and tourism activities would be evaluated following designation. Goals of sanctuary management include raising public awareness of tourism and recreation impacts on the ocean and striving to cultivate a generation of ocean stewards (see Blue Economy Action Plan Activity BE-1.1 and Strategy BE-2 in the draft management plan).

Aesthetic values of the coastline would be enhanced through public stewardship activities such as creek and beach cleanups in partnership with cooperating organizations, and assessing and reducing debris, particularly plastic, in or entering the sanctuary. Additionally, regulations on discharges and new offshore oil and gas development would improve water quality and keep ocean views clear of any new oil and gas platforms (draft management plan Blue Economy Action Plan, Activity BE-2.2; Water Quality Action Plan, Strategy WQ-2, Strategy WQ-3, and Strategy WQ-5; EIS Chapter 3).

Article 3: Recreation

Policy: **Section 30220 – Protection of certain water-oriented activities.** Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Effect: NOAA’s proposed sanctuary regulations are intended to support and enhance recreational opportunities in the area by protecting aesthetic and ecological qualities of the area under all boundary alternatives. Furthermore, there are no proposed sanctuary regulations that would prohibit lawful recreational activities; for example, neither fishing nor motorized personal watercraft use would be prohibited (draft EIS Section 3.9.7). Section 4.6 of the draft EIS concludes that NOAA’s proposed action would provide benefits to recreation and tourism by adding protection to the natural resources that contribute to the area’s value as a recreation-tourist destination, while not restricting activities in the coastal zone such as boating, fishing, surfing, kayaking, wildlife viewing, and coastal access.

Section 4.8 of the draft EIS concludes that the proposed sanctuary regulations prohibiting discharges of material into the sanctuary would result in short-term minor adverse impacts on marine transportation. Current state and federal regulations limit different types of discharges into the waters of the proposed sanctuary, so the addition of the proposed sanctuary regulations would represent an incremental increase in restrictions on vessel discharges. The proposed vessel discharge regulations include enumerated exceptions, including for fish, fish parts, chumming materials or bait used during lawful fishing activities, and certain vessel effluent and operating discharges. Other proposed sanctuary regulations that would have minor adverse impacts on marine transportation include the prohibition on deserting/abandoning vessels and the prohibition on introduced species.

Additionally, non-regulatory management approaches would be used to facilitate, highlight, and further value these water-oriented recreational activities. As described in the draft management plan's Blue Economy Action Plan, NOAA seeks to enhance sustainable tourism and recreation in order to support a viable coastal economy, while protecting sanctuary resources and supporting the broader community.

Article 4: Marine Environment

Policy: **Section 30230 – Marine resources; maintenance.** Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Effect: The proposed action of designating this area as a national marine sanctuary is fully consistent with this enforceable policy because designation would enhance the protection, knowledge, and awareness of this special area while facilitating multiple uses under all boundary alternatives (draft EIS Section 2.1). Per the NMSA, NOAA designates a sanctuary in part to maintain and protect the natural biological communities, and where appropriate, restore and enhance natural habitats, populations, and ecological processes (draft EIS Section 1.1.1). The proposed sanctuary regulations are designed to protect the sanctuary area and species, for example by prohibiting seabed disturbance and discharges of oil and other pollutants in the sanctuary subject to enumerated exceptions; offering special protections around the Rodriguez Seamount, an important and biodiverse offshore geologic feature; and prohibiting the take or possession of marine mammals, seabirds, or sea turtles, except by federal authorization or permit (draft EIS Section 3.2.2).

Minor physical or acoustic disturbance, including temporary displacement of marine species, could result from NOAA or its partners conducting research, monitoring, or resource protection activities to implement the proposed sanctuary management plan. NOAA would avoid or minimize disturbance of living marine resources by implementing best management practices and mitigation measures when conducting routine field activities (draft EIS Section 4.3.3, Appendix C). Due to these operational protocols and the low intensity and frequency of NOAA's planned activities within the sanctuary, the likelihood of disturbance of marine resources through conducting sanctuary management activities would be very low and any adverse impacts would be temporary (draft EIS sections 4.2.3 and 4.3.3).

Overall, the regulatory framework of the CCMP would be enhanced by proposed sanctuary regulations that are intended to protect the marine environment, including coastlines. Section 4.3 of the draft EIS concludes that the proposed action would provide benefits to biological resources in the area. Research activities in the proposed sanctuary would be coordinated and supported to provide the information necessary to better manage and protect the area's resources. The proposed action plans in the draft management plan would make use of research results and develop materials and projects to increase public awareness of the value and need for protection and wise management of these marine resources.

Policy: **Section 30231 – Biological productivity; water quality.** The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain

optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of groundwater supplies and substantial interference with surface water flow, encouraging wastewater reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Effect: NOAA's proposed sanctuary regulations would prohibit depositing or discharging material and other matter within the sanctuary boundary, and from beyond the boundary of the sanctuary if such matter subsequently enters the sanctuary and injures resources or qualities (15 CFR § 922.232(a)(2)(i) and (ii), subject to enumerated exceptions. These proposed regulations would bolster existing authorities and reduce the amount of discharges from vessels, new oil and gas facilities, or other activities in the study area. Therefore, the proposed sanctuary regulations would ultimately limit the amount of pollutants such as oil, sewage, and other hazardous materials from entering the ocean environment and injuring sanctuary resources. These regulations would provide direct, indirect, and long-term benefits on water quality, biological productivity, and public access (draft EIS sections 4.2, 4.3, and 4.6). The non-regulatory management measures outlined in the draft management plan's Water Quality Action Plan would bolster these regulations by placing a strong focus on working collaboratively with partners and stakeholders, and promoting public stewardship in adjacent watersheds to ensure water quality entering the sanctuary meets California and sanctuary standards.

In addition, Monterey Bay National Marine Sanctuary, managed by NOAA just north of the proposed CHNMS, has previously entered into a Memorandum of Agreement (MOA) with the State of California, U.S. Environmental Protection Agency, and local governments regarding sanctuary regulations relating to water quality within State waters. The agreement addresses integration and coordination of research and monitoring efforts and has supported the development of a comprehensive water quality protection program. Similar agreements could be arranged for the proposed CHNMS regarding a Water Quality MOA as described in Activity WQ-2.5 of the draft management plan.

Policy: **Section 30232 – Oil and hazardous substance spills.** Protection against the spillage of crude oil, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Effect: NOAA's proposed sanctuary regulations would protect against oil and hazardous substance spills by prohibiting: 1) oil and gas exploration, development, and production, except continued oil and gas production of existing reservoirs under production prior to the effective date of sanctuary designation, as well as 2) prohibiting discharges within or into the sanctuary, or from beyond the sanctuary boundary any material or other matter that enters and injures sanctuary resource or quality, subject to enumerated exceptions.

New oil and gas development would be prohibited due to concerns of potential accidents such as oil spills, disturbance to the submerged lands during construction, and other discharges that occur during normal operation (e.g., discharge of produced water). Such activities could severely disrupt and threaten the natural and aesthetic qualities of the area and thus be inconsistent with the purposes of the sanctuary. Importantly, only new oil and gas development would be

prohibited; oil and gas production pursuant to a valid lease in effect at the time of sanctuary designation would be allowed to continue. See the draft management plan's Offshore Energy Action Plan for how NOAA plans to responsibly manage offshore energy activities, conduct necessary research and monitoring, and coordinate with other agencies and affected stakeholders, for example by supporting joint agency cooperation and review of new development and decommissioning (strategies OE-1, OE-2, and OE-3).

Further, the proposed discharge regulations would establish more comprehensive water quality protection across the geographic range proposed for sanctuary protection and would bolster existing authorities. This would reduce the amount of discharges from vessels, new oil and gas facilities, or other activities with the potential for oil and hazardous substance spills (see water quality subsections of draft EIS sections 4.2 and 4.3.3).

The draft management plan's Resource Protection Action Plan prioritizes oil spill response readiness and other hazardous spill contingency plans, and also outlines plans to monitor vessel traffic to further reduce the likelihood of oil or hazardous substance spills.

Policy: Section 30233 (a) and (b) – Diking, filling or dredging; continued movement of sediment and nutrients.

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:
 - (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
 - (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
 - (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
 - (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
 - (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
 - (6) Restoration purposes.
 - (7) Nature study, aquaculture, or similar resource dependent activities.

- (b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems.

Effect: NOAA's proposed sanctuary regulations include prohibiting discharges, which would extend to dredged material except dredged material deposited at sites authorized by the U.S. Environmental Protection Agency prior to the effective date of the sanctuary designation. Depending on NOAA's final boundary selection, this regulatory exception could apply to the existing Morro Bay dredge disposal sites. The proposed sanctuary regulations would allow NOAA to issue a permit for beneficial use of dredged material removed from public harbors adjacent to the sanctuary (see 15 CFR § 922.232(f)(1)(iii)), such as dredged material removed from Port San Luis that is suitable as a resource for habitat protection or restoration purposes. Drilling into, dredging, or otherwise altering the submerged land of the sanctuary is also prohibited, with some exceptions (draft EIS Table 3-1). These proposed sanctuary regulations would complement and bolster existing federal and California authorities and would have direct beneficial impacts on sanctuary resources under any boundary alternative.

Policy: **Section 30234.5 – Economic, commercial, and recreational importance of fishing.** The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

Effect: NOAA recognizes the valuable commercial fishing grounds and recreational fishing opportunities found within the area being considered for sanctuary designation (see draft EIS sections 4.4 and 4.6). With designation of the sanctuary, NOAA would not directly regulate lawful fishing activities. When NOAA consulted with the Pacific Fishery Management Council (PFMC) pursuant to Section 304(a)(5) of the NMSA, the PFMC notified NOAA that it had determined that additional fishing regulations were not necessary at this time to implement the proposed sanctuary. NOAA accepts the PFMC's response relative to the proposed designation of CHNMS. Therefore, the proposed action, under any alternative assessed in the draft EIS, is not expected to cause significant adverse impacts on commercial or recreational fishing resources or cause significant economic loss to commercial or recreational fisheries (draft EIS sections 4.4 and 4.6). In support of commercial and recreational fishing, direct protection of sanctuary resources through proposed federal regulations (draft EIS Section 3.2) are expected to provide direct or indirect, long-term beneficial impacts on ecosystem and habitat upon which healthy commercial and recreational fisheries depend under all boundary alternatives (draft EIS Section 4.4). Although, some minor to moderate adverse impacts may occur due to implementation of sanctuary regulations regarding discharges, vessel abandonment, and introduced species. The relevant proposed regulatory prohibitions that would benefit commercial and recreational fishery resources and their potential impacts on commercial and recreational fishing are described in detail in draft EIS sections 4.4.3 and 4.6.3.

Article 5: Land Resources

Policy: **Section 30240 – Environmentally sensitive habitat areas; adjacent developments.**

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Effect: All of NOAA's sanctuary boundary alternatives would primarily encompass marine habitats in ocean and coastal waters with all shoreward boundaries ending at the mean high water line. As such, the sanctuary would largely contain marine habitats, but may also cover some intertidal terrestrial habitats within the coastal interface such as marine mammal haul out and shorebird nesting areas. The proposed action is fully consistent with this enforceable policy because NOAA intends to protect sanctuary resources, including sensitive habitat areas in the coastal zone and throughout the sanctuary, from the impacts of coastal development via its proposed regulations prohibiting seabed disturbance and discharges or deposits from beyond the boundary of the sanctuary that subsequently enter the sanctuary and may harm a sanctuary resource or quality. As stated in the draft EIS, NOAA would coordinate with existing coastal management authorities regarding protection of environmentally sensitive habitat areas and to address impacts from several proposed construction and decommissioning projects (draft EIS Section 4.10, Table 4-10) that have the potential to harm sanctuary resources.

Activities that are otherwise prohibited by sanctuary regulations could be authorized by the ONMS authorization process. This process would allow ONMS to impose terms and conditions on the activity that it deems reasonably necessary in order to protect sanctuary resources and qualities, for example permitted development near seabird nesting areas or marine mammal haul out areas (draft EIS Section 3.2.2). Additionally, sanctuary research, resource protection, education, and management activities are expected to be harmonized and coordinated with the activities of other agencies and jurisdictions, and would continue to be protective and supportive of sustainable conservation of these habitats.

Policy: **Section 30244 – Archaeological or paleontological resources.** Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Effect: NOAA's proposed sanctuary regulations would provide additional protection and beneficial impacts to the sanctuary's seafloor, historical, cultural, and maritime heritage resources, both within and beyond the limit of the State of California's jurisdiction and under all boundary alternatives (see draft EIS Section 2.2.1 and Section 4.5) Archaeological sites and other cultural resources, such as shipwrecks and Native American artifacts, are already afforded protections under state and federal law, including the National Historic Preservation Act (54 U.S.C. § 300101 *et seq.*). The proposed sanctuary regulations would supplement existing protections by applying to activities conducted by federal, state, and private citizens and would protect all shipwrecks and other cultural underwater resources within sanctuary boundaries from injury or salvage, regardless of whether they are eligible or listed on the State Register of Historic Places and National Register of Historic Places. The draft management plan's Maritime Heritage Action Plan outlines how NOAA would identify, protect, and raise awareness of the proposed sanctuary's maritime, historical, and archaeological resources.

Article 6: Development

Policy: **Section 30251 – Scenic and visual qualities.** The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Effect: No coastal development of a sanctuary office or a visitor center is planned at this time. None of the boundary alternatives would cause adverse impacts on visual resources. If new construction or development of a visitor center or sanctuary office is proposed onshore adjacent to the proposed sanctuary area in the future, it would be subject to a separate review and permitting process. Since no location has been identified for such a facility, it was not addressed in the draft EIS (draft EIS Section 4.1.5).

Article 7: Industrial Development

Policy: **Section 30262 – Oil and gas development.**

(a) New or expanded oil and gas development shall not be considered a coastal-dependent industrial facility for the purposes of Section 30260, and may be permitted only if found consistent with all applicable provisions of this division and if all of the following conditions are met:

- (1) The development is performed safely and consistent with the geologic conditions of the well site.
- (2) Activities related to that development are consolidated, to the maximum extent feasible and legally permissible, unless consolidation will have adverse environmental consequences and will not significantly reduce the number of producing wells, support facilities, or sites required to produce the reservoir economically and with minimal environmental impacts.
- (3) The development will not cause or contribute to subsidence hazards unless it is determined that adequate measures will be undertaken to prevent damage from such subsidence.
- (4) All oilfield brines are reinjected into oil-producing zones unless the Geologic Energy Management Division of the Department of Conservation determines to do so would adversely affect production of the reservoirs and unless injection into other subsurface zones will reduce environmental risks. Exceptions to reinjections will be granted consistent with the California Ocean Plan of the State Water Resources Control Board and where adequate provision is made for the elimination of petroleum odors and water quality problems.
- (5) (A) All oil produced offshore California shall be transported onshore by pipeline only. The pipelines used to transport this oil shall utilize the best achievable technology

to ensure maximum protection of public health and safety and of the integrity and productivity of terrestrial and marine ecosystems.

(B) Once oil produced offshore California is onshore, it shall be transported to processing and refining facilities by pipeline.

(C) The following guidelines shall be used when applying subparagraphs (A) and (B):

(i) "Best achievable technology," means the technology that provides the greatest degree of protection taking into consideration both of the following:

(I) Processes that are being developed, or could feasibly be developed, anywhere in the world, given overall reasonable expenditures on research and development.

(II) Processes that are currently in use anywhere in the world. This clause is not intended to create any conflicting or duplicative regulation of pipelines, including those governing the transportation of oil produced from onshore reserves.

(ii) "Oil" refers to crude oil before it is refined into products, including gasoline, bunker fuel, lubricants, and asphalt. Crude oil that is upgraded in quality through residue reduction or other means shall be transported as provided in subparagraphs (A) and (B).

(iii) Subparagraphs (A) and (B) shall apply only to new or expanded oil extraction operations. "New extraction operations" means production of offshore oil from leases that did not exist or had never produced oil, as of January 1, 2003, or from platforms, drilling islands, subsea completions, or onshore drilling sites, that did not exist as of January 1, 2003. "Expanded oil extraction" means an increase in the geographic extent of existing leases or units, including lease boundary adjustments, or an increase in the number of well heads, on or after January 1, 2003.

(iv) For new or expanded oil extraction operations subject to clause (iii), if the crude oil is so highly viscous that pipelining is determined to be an infeasible mode of transportation, or where there is no feasible access to a pipeline, shipment of crude oil may be permitted over land by other modes of transportation, including trains or trucks, which meet all applicable rules and regulations, excluding any waterborne mode of transport.

(6) If a state of emergency is declared by the Governor for an emergency that disrupts the transportation of oil by pipeline, oil may be transported by a waterborne vessel, if authorized by permit, in the same manner as required by emergency permits that are issued pursuant to Section 30624.

(7) In addition to all other measures that will maximize the protection of marine habitat and environmental quality, when an offshore well is abandoned, the best achievable technology shall be used.

(b) Repair and maintenance of an existing oil and gas facility may be permitted in accordance with Section 30260 only if it does not result in expansion of capacity of the oil and gas facility, and if all applicable conditions of subdivision (a) are met.

(c) Where appropriate, monitoring programs to record land surface and near-shore ocean floor movements shall be initiated in locations of new large-scale fluid extraction on land or near shore before operations begin and shall continue until surface conditions have stabilized. Costs of monitoring and mitigation programs shall be borne by liquid and gas extraction operators.

(d) Nothing in this section shall affect the activities of any state agency that is responsible for regulating the extraction, production, or transport of oil and gas.

Effect: NOAA's proposed sanctuary regulations would prohibit exploring for, developing, or producing oil or gas under all boundary alternatives other than continued production of oil or gas under leases that predate sanctuary designation. Thus, the only exception would be for continued oil and gas production of existing reservoirs at Platform Irene and at Platform Heritage, including well abandonment, because NOAA lacks the authority to terminate valid leases, permits, licenses, or rights of subsistence use or access that exist at the time of sanctuary designation. However, NOAA could regulate the exercise of those leases, permits, licenses, and rights consistent with the purposes for which the sanctuary is designated (16 U.S.C. § 1434(c)). See above under **Section 30232** for more discussion of how the proposed action is consistent with this enforceable policy to the maximum extent practicable. Leasing of new areas for development within the sanctuary would be prohibited and could not be permitted.

Consistency Determination

As required by 15 CFR 930.39, this consistency determination is based on a review of the potential effects of the proposed action on California's coastal uses and resources and the CCMP's enforceable policies. NOAA has evaluated the proposed action and determined that it is consistent to the maximum extent practicable with the enforceable policies of the CCMP. The proposed action has many reinforcing objectives that complement the CCMP's enforceable policies. As such, NOAA requests your concurrence with our consistency determination.

Specifically, this determination is based on the following:


- NOAA's proposed action would improve understanding, management, and protection of sanctuary resources;
- NOAA's proposed action would have beneficial impacts on physical resources, biological resources, commercial fishing, cultural and maritime heritage, and socioeconomic uses of the proposed sanctuary area;
- NOAA's proposed action would not have any significant adverse effect on the operations of recreational, research, or commercial users of the proposed sanctuary;

- ONMS-led field activities would be low in intensity and frequency and NOAA would implement self-imposed best management practices and mitigation measures when conducting routine field activities, therefore any adverse impacts from conducting routine research, monitoring, education, or resource protection actions would be avoided as much as possible, and if they did occur, would be negligible or minor; and
- NOAA’s analysis found that no significant adverse impacts to any resource area are expected to result from the proposed action and the incremental impact of the proposed action in combination with ongoing resource protection, research, and stewardship programs, and ongoing or future commercial and industrial activities in the region, would be negligible (draft EIS Section 4.10).

Pursuant to 15 CFR 930.41, the California Coastal Commission has 60 days to complete its review of this consistency determination and to provide concurrence, subject to a right of extension up to 15 days upon notice to NOAA. If no response is received within this timeframe, state concurrence with this action will be conclusively presumed.

NOAA appreciates your cooperation in completing this process in a timely manner. If you have questions, or if we can assist you during your review period, please contact Laura Ingulsrud, NOAA ONMS West Coast Regional Policy Analyst, at laura.ingulsrud@noaa.gov.

Sincerely,



William J. Douros
Regional Director

cc: Jules Kelly, Environmental Scientist, Energy, Ocean Resources, and Federal Consistency Division, California Coastal Commission

Joseph Street, Manager, Energy, Ocean Resources, and Federal Consistency Division, California Coastal Commission

Link: [*Chumash Heritage National Marine Sanctuary Draft Environmental Impact Statement*](#)
[*Chumash Heritage National Marine Sanctuary Draft Management Plan*](#)
[*Chumash Heritage National Marine Sanctuary Proposed Rule*](#)