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# Th9b

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## STAFF REPORT: REGULAR CALENDAR

**Consistency Determination No.** CD-0005-24

**Federal Agency:** National Oceanic and Atmospheric Administration

**Location:** Between approximately 4,400 and 7,600 square miles of ocean waters and submerged lands off the coast of San Luis Obispo and Santa Barbara Counties.

**Project Description:** Designation of the Chumash Heritage National Marine Sanctuary, draft management plan, and draft regulations.

**Staff Recommendation:** Concurrence

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## SUMMARY OF STAFF RECOMMENDATION

The National Oceanic and Atmospheric Administration (NOAA) has submitted a Consistency Determination for the designation of the Chumash Heritage National Marine Sanctuary (CHNMS or Sanctuary) located off the central coast of California, its draft management plan, and proposed draft set of regulations. Pursuant to the Coastal Zone Management Act of 1972 (CZMA), a federal sanctuary designation that would have an effect on California's coastal zone must be found consistent with the affected state's federally-approved coastal management program (16 U.S.C. 1451 *et seq.*). The purpose of the proposed action is to protect and support the conservation and continued study of cultural and biological resources within the ocean and submerged lands off the central California coast.

The vast biodiversity and cultural significance of the area proposed for designation is well-documented in NOAA's Draft Environmental Impact Statement (DEIS), as well as by the Commission's marine management and preservation work over the last forty-eight years. In keeping with the Coastal Act, the purpose of the Sanctuary designation is to protect coastal uses and resources through a comprehensive management plan and regulations that serve to minimize disruption to the region's productive and biologically diverse ecosystem. Not only is the CHNMS the first tribally led Marine Sanctuary nomination, it will also be the first Sanctuary to be established in California in over 30 years. NOAA states that the CHNMS nomination was based on a proposal from roughly four decades ago by state and local leaders for a sanctuary in this region.

NOAA has found that the CHNMS designation would enhance public appreciation and awareness of the area while facilitating both private and public uses. In its Consistency Determination (attached as [Exhibit 1](#)), NOAA considered the potential effects of the designation on the area's physical, biological, and cultural environment, and on coastal uses including public access, recreation and fishing. Based on this evaluation, NOAA determined that designation of any of the five proposed boundary alternatives (plus two sub-alternatives) as a national marine sanctuary, including the proposed regulations and draft management plan, would be consistent with the enforceable policies of the California Coastal Management Program (CCMP).

NOAA's DEIS concluded that no significant adverse impacts would occur under any action alternative and long-term beneficial impacts would be anticipated if the proposed action is implemented. The Initial Boundary Alternative (IBA), most similar to the original sanctuary proposal put forward in the nomination package, would encompass up to approximately 7,600 square miles of ocean; the other alternatives evaluated by NOAA propose to exclude certain areas, and would result in a smaller sanctuary designation, down to approximately 4,400 square miles for the "Combined Smallest" alternative that would exclude coastal and offshore waters north of approximately Port San Luis. The DEIS identified an "Agency-Preferred Alternative" that would include the "Gaviota Coast Extension" (Sub-Alternative 5a) but exclude an area of ocean centered on Morro Bay ("Cropped Bank to Coast" boundary, Alt. 2) to allow for a seafloor electrical cable corridor to the Morro Bay Wind Energy Area. However, NOAA states that all boundary alternatives remain under consideration for the final designation, that it is closely considering the over 100,000 public comments received on its draft designation documents, and that, at this stage in the review process, it would be "pre-decisional" to identify a specific proposed boundary in its consistency determination. NOAA's proposed regulations for the Sanctuary, a draft management plan, and DEIS were published in the Federal Register on August 25, 2023. NOAA expects to publish a final EIS in September that would identify a final proposal and management plan and be followed approximately 30 days later with a final rule concluding the designation process. As such, NOAA's consistency determination, and the scope of the Commission's review, includes evaluation of the consistency of all boundary alternatives currently under consideration with the enforceable policies of the CCMP.

As described in NOAA's CD and DEIS, the sanctuary designation, including its management plan and proposed regulations would result in long-term, significant

benefits to the marine resources and habitats within the sanctuary boundary, and would complement existing conservation efforts such as the state's marine protected area network as well as federally-designated essential fish habitat. The proposed sanctuary regulations would improve water quality protections and benefit marine species and ecosystems through prohibition or restriction of certain harmful activities within the sanctuary, including: (a) discharges of pollutants (sewage, bilge water, graywater, debris, etc.); (b) new oil, gas or mineral exploration, development or production; (c) non-fishing activities causing benthic disturbance; (d) vessel desertion/abandonment; and (e) introduction of non-native/introduced species. Similarly, regulations restricting bottom disturbance and the removal of historical or archaeological materials would enhance protection of cultural resources within the Sanctuary. The draft management plan includes eleven subsidiary "action plans" outlining strategies for resource protection, research, and education that would complement the regulations and help realize core goals of the sanctuary designation.

The proposed Sanctuary designation, management plan and regulatory changes would not regulate or adversely affect commercial and recreational fishing activities or recreational and public access opportunities within the proposed Sanctuary and would be consistent with the public access and recreation, and commercial and recreational fishing policies of the CCMP.

Therefore, Commission staff recommends that the Commission **concur** with Consistency Determination **CD-0005-24** and find NOAA's designation of the Chumash Heritage National Marine Sanctuary consistent with the enforceable policies of California's Coastal Management Program. The motion and resolution are on **Page 5** of this report.

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### **EXHIBITS**

[Exhibit 1 – NOAA’s Consistency Determination for the Proposed Designation of Chumash Heritage National Marine Sanctuary](#)

[Exhibit 2 – Comment Letters Received During Tribal Consultation](#)

### **PROPOSED DESIGNATION DOCUMENTS**

[Chumash Heritage National Marine Sanctuary Draft Environmental Impact Statement](#)

[Chumash Heritage National Marine Sanctuary Draft Management Plan](#)

[Chumash Heritage National Marine Sanctuary Proposed Rule](#)

## I. FEDERAL AGENCY'S CONSISTENCY DETERMINATION

The National Oceanic and Atmospheric Administration (NOAA) has determined that 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).

## II. MOTION AND RESOLUTION

### Motion:

I move that the Commission **concur** with Consistency Determination CD-0005-24 on the grounds that the project described therein would be fully consistent, and thus consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).

### Staff Recommendation:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence with NOAA's determination of consistency. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

### Resolution:

The Commission hereby **concurs** with Consistency Determination No. CD-0005-24 on the grounds that the project would be fully consistent, and thus consistent to the maximum extent practicable, with the enforceable policies of the CCMP.

### III. COASTAL ZONE MANAGEMENT ACT (CZMA) AUTHORITY

#### Standard of Review

The Commission's federal consistency review is guided by provisions of the federal Coastal Zone Management Act (CZMA) and by the approved California Coastal Management Program (CCMP), as described below. The CZMA (16 U.S.C. § 1451-1464) requires that federal agency activities affecting coastal resources be "carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs." *Id.* at § 1456(c)(1)(A).

As stated in California's federally-approved Coastal Management Program (CCMP):

The California Coastal Management Program is a combination of Federal, State, and local planning and regulatory authorities for controlling the uses of land air and water resources along the coast. For the purposes of meeting CZMA requirements, the management program for the main coastline segment described in this document is the major component of a two-segment program, San Francisco Bay being the smaller segment. ... The California Coastal Management Program for the main segment of the State's coastline includes the ... California Coastal Act of 1976.

Furthermore, page 14 of the CCMP states:

Section 30008 of the Coastal Act states that, "This division the California Coastal Act shall constitute California's coastal zone management program within the coastal zone for purposes of the Federal Coastal Zone Management Act of 1972". However, the CCMP is not necessarily limited to the Coastal Act itself because Section 30009 of the Act provides that, "This division shall be liberally construed to accomplish its purposes and objectives." It is clear that one of the purposes and objectives of Section 30008 is to declare the Legislature's intention that California's coastal management program satisfy the CZMA requirements for a state coastal management program. Any interpretation of Section 30008 that would preclude any component either necessary for program approval or advantageous to the implementation of the program from being included as part of the CCMP (e.g., Coastal Commission regulations, national interest statement, supporting legislation, etc.) would be in violation of Section 30009.

#### Consistent to the Maximum Extent Practicable

The implementing regulations for the CZMA ("federal consistency regulations"), at 15 C.F.R. § 930.32(a)(1), define the phrase "consistent to the maximum extent practicable" to mean:

... fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

This standard allows a federal activity that is not fully consistent with the enforceable policies of the CCMP to proceed, if full consistency with the enforceable policies of the CCMP is “prohibited [by] existing Federal law applicable to the Federal agency’s operations”.<sup>1</sup> NOAA did not state in its consistency determination ([Exhibit 1](#)) that full consistency with the enforceable policies of the CCMP would be prohibited by existing Federal law. Since NOAA has raised no issue of practicability, as so defined, the standard before the Commission is full consistency with the enforceable policies of the CCMP, which are the policies of Chapter 3 of the Coastal Act (Cal. Pub. Res. Code §§ 30200-30265.5).

## **IV. FINDINGS AND DECLARATIONS**

### **A. HISTORICAL SUMMARY AND BACKGROUND**

Fifty years ago, on October 23, 1972, President Richard Nixon signed the National Marine Sanctuaries Act, initiating a transformative era of ocean conservation in the United States by establishing the National Marine Sanctuary System. Today, this system comprises 15 national marine sanctuaries and two marine national monuments, collectively safeguarding over 620,000 square miles of ocean and Great Lakes waters. These sanctuaries foster connections among people and communities through scientific research, education, and responsible stewardship. With a parallel mission of ocean resource conservation, the California Coastal Act of 1976 also focuses on protection and management of coastal resources, including water quality, biological productivity, scenic beauty, and recreational access. Designation of a California marine environment with special national significance complements the Coastal Act’s emphasis on safeguarding marine and cultural resources and sensitive ocean habitats.

In previous actions the Commission has consistently supported the protection of the California coast and adjacent waters through the approval of State Marine Reserves and Marine Conservation Areas; through conditions attached to permits as well as actions on federal consistency activities that might otherwise adversely affect the quality of our offshore waters (e.g., sewer outfall facilities); and, by consistently supporting those uses and endeavors which offer educational and research opportunities to develop a better knowledge of the central coast’s marine resources. Consistent with NOAA’s proposed designation, the CCMP also aims to protect, enhance, and restore coastal environmental quality and resources through education and public awareness. The Commission also played a major supporting role in the designation of the Monterey Bay, Greater Farallones-Cordell Bank, and Channel Islands National Marine Sanctuaries, and was a principal motivator in supporting the creation of the Elkhorn Slough National Estuarine Research Reserve. Finally, the Commission is on record supporting a total prohibition of outer continental shelf (OCS) related petroleum extraction activities, including no new OCS lease sales in California’s coastal waters.

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<sup>1</sup>15 CFR Section 930.32.

## Proposed Designation

In July 2015, a diverse community coalition, spearheaded by the Northern Chumash Tribal Council, proposed a nomination to NOAA to evaluate the designation of a region along the central California coastline as a national marine sanctuary. The nomination requested NOAA's protection of this region of national significance due to its vital cultural and biological resources. The nomination also highlighted the opportunity for NOAA to enhance ongoing local and state initiatives aimed at researching, interpreting, and conserving the area's distinct cultural and biological assets. The proposed Chumash Heritage National Marine Sanctuary (CHNMS or Sanctuary) and some portions of the proposed area have been recommended for national marine sanctuary designation for more than 40 years.

The nominated region includes some of the earliest recorded human settlements in North America, where indigenous peoples including Chumash and Salinan bands maintain profound cultural ties to central California. Historical records and research indicate that the present-day coastline of San Luis Obispo and Santa Barbara counties supported numerous settlement sites and villages of various tribes and indigenous communities. These coastal locations harbor culturally valuable artifacts and remnants that hold immense value for indigenous peoples. Additionally, submerged continental shelf areas and unexplored ancient shorelines from lower stands of sea level likely hold archaeological and cultural resources dating back thousands of years, which are of vast importance to local tribes and tribal groups and should be recognized and preserved in a culturally appropriate way.

Similar to the other California National Marine Sanctuaries (Greater Farallones, Cordell Bank, Monterey Bay, and Channel Islands), the productive and diverse environment of the proposed CHNMS is host to a multitude of biological resources. As described in NOAA's Draft Environmental Impact Statement (DEIS), the proposed sanctuary area is

... an important and vibrant ecological transition zone with high biological productivity that supports dense aggregations of marine life, including nationally significant biodiversity of seabirds, marine mammals, invertebrates and fishes. It serves as a "headwaters" for upwelling that nourishes important ecosystems down current of the proposed sanctuary. (DEIS, p. ix).

The Sanctuary area, and the central coast more broadly, is one of the most diverse marine ecosystems in the world, with numerous habitat types and a wide variety of wildlife species, including 40 species of marine mammals, four species of sea turtles, 400 species of fishes, and numerous seabirds, invertebrates, algae and plants. In addition to widespread kelp forests, rocky and soft bottom seafloor and intertidal habitats, the proposed Sanctuary area has "[s]pecial ecological qualities ... shaped by significant offshore geologic features (e.g., Rodriguez Seamount, Santa Lucia Bank, and Arguello Canyon)" (DEIS, p. 5). Due to their physical complexity and diversity of habitats, these high-relief, deep-sea features are considered to be "hot spots" of productivity and biodiversity. NOAA has identified a number of ongoing and emerging threats to biological resources in the proposed Sanctuary area, including "direct and



indirect impacts from offshore energy development, pollution from offshore and onshore sources, increased vessel traffic and transportation, increased coastal development, and other stressors to the ecosystem that compromise its resiliency -- especially acute and cumulative impacts from climate change” (DEIS, p. ix).

On November 10, 2021, NOAA issued a Notice of Intent to conduct scoping and prepare a Draft Environmental Impact Statement (DEIS) for the proposed Chumash Heritage National Marine Sanctuary. On August 25, 2023, NOAA published a proposed rule<sup>2</sup> which includes the proposed terms of designation and regulations and announced the availability of the DEIS<sup>3</sup> and draft management plan,<sup>4</sup> in accordance with the National Marine Sanctuaries Act (NMSA) and the National Environmental Policy Act (NEPA). In these released documents, NOAA revealed its proposed Boundary Alternatives that could be chosen for the final rule and designation.

Through comprehensive ecosystem-based management, the Sanctuary is designed to address threats through a management plan approach that would include a variety of actions: 1) manage and protect nationally-significant natural resources, physical features and habitats, and cultural and historical resources through a regulatory and nonregulatory framework; 2) document, characterize, monitor, study, and conserve these resources; 3) provide interpretation of their natural, cultural, historical, and educational value to the public; 4) promote public stewardship and responsible use of these resources for various purposes to the extent compatible with the Sanctuary’s principal goal of resource protection; 5) develop a coordinated, community-based, ecosystem-based management regime with partner federal agencies, state and local governments, and Indigenous tribes and tribal organizations; and 6) develop and carry out an innovative collaborative management structure to involve Indigenous communities, including federally recognized tribes and other tribal groups and organizations, in important management programs and initiatives of the Sanctuary.

## **B. PROPOSED BOUNDARY ALTERNATIVES**

The project area is located offshore of the central coast of California between two existing National Marine Sanctuaries - Monterey Bay (MBNMS) to the north and Channel Islands (CINMS) to the south. NOAA has not proposed a single set of boundaries for the new Sanctuary in its Consistency Determination ([Exhibit 1](#)) and instead has requested that the Commission concur that the designation of any of five boundary alternatives and two sub-alternatives, as described below, would be consistent with the enforceable policies of the CCMP. In its July 18, 2024 response to a Commission staff request for further explanation of why the Commission is being asked to consider all boundary alternatives rather than a single proposal, NOAA stated:

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<sup>2</sup>Available at: <https://www.federalregister.gov/documents/2023/08/25/2023-18271/proposed-chumash-heritage-national-marine-sanctuary>.

<sup>3</sup>The draft environmental impact statement (DEIS) is available through the link above and also at: <https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/chumash/2023-proposed-chumash-heritage-nms-deis.pdf>.

<sup>4</sup>Available at: <https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/chumash/2023-proposed-chumash-heritage-nms-draft-management-plan.pdf>.

Under the National Environmental Policy Act (NEPA), Administrative Procedure Act (APA), and National Marine Sanctuaries Act (NMSA), federal decision-making on this action will not be complete until after completion of all necessary process steps, including consideration of the public comments received. The proposed sanctuary designation differs from instances where a federal agency may simply put forward a proposed action and a no-action alternative; in this particular instance, NOAA is closely considering and giving serious weight to a range of boundary alternatives for the proposed sanctuary designation.

NOAA also cited the large number of public comments received during the NEPA review process, the need to consider these comments carefully, and its desire to receive substantive input from state and federal resource agencies (including the Commission) prior to making a final decision on the Sanctuary boundary.

As noted above, NOAA's consistency determination concluded that each of the boundary alternatives presented in the DEIS would be consistent with the CCMP. As stated in the consistency determination (see page 5, [Exhibit 1](#)):

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).

In other words, while NOAA concluded that the larger alternatives would provide additional benefits to marine resources, the smaller alternatives would still also provide benefits and be consistent with the relevant enforceable policies of the CCMP.

### **Overview of Boundary Alternatives<sup>5</sup>**

As shown below, there are five proposed boundary alternatives and two sub-alternatives that could be added to some of the five proposed boundaries. The proposed boundary alternatives do not include the Morro Bay WEA that the Commission concurred with in CD-0004-22<sup>6</sup> but could include the waters between the Morro Bay WEA and the California coast if NOAA were to designate the Initial Boundary

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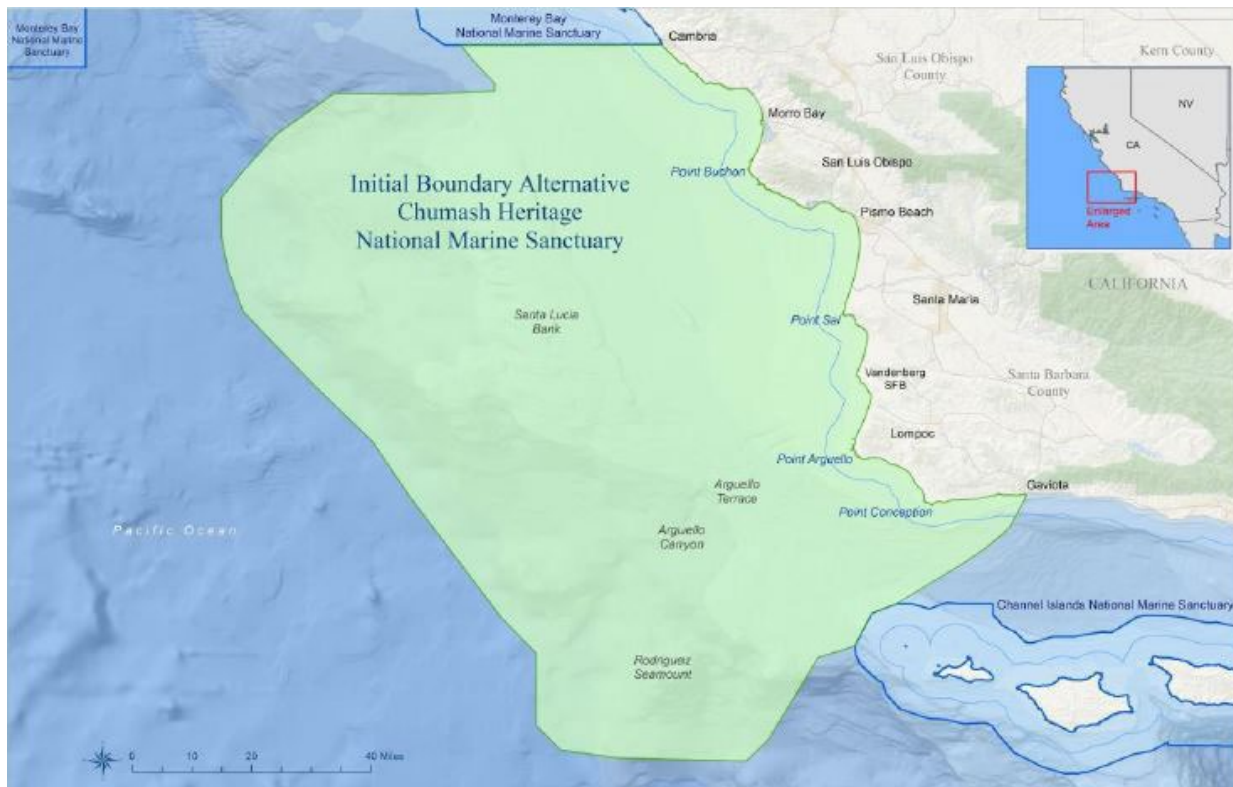
<sup>5</sup>For more detailed information on the proposed boundary alternatives, visit:

<https://sanctuaries.noaa.gov/chumash-heritage/>.

<sup>6</sup><https://documents.coastal.ca.gov/assets/upcoming-projects/offshore-wind/W7a-6-2022-AdoptedFindings.pdf>.

Alternative or Alternative 1. The five boundary alternatives are: (1) the **Initial Boundary Alternative**, (2) **Alternative 1 “Bank to Coast,”** (3) **Alternative 2; “Cropped Bank to Coast,”** (4) **Alternative 3, “Diablo to Gaviota Creek,”** and (5) **Alternative 4, “Combined Smallest.”** The two sub-alternatives could be added to some of the five main boundary alternatives as explained below. None of the alternatives would overlap the Morro Bay Wind Energy Area (WEA).

### Initial Boundary Alternative



The Sanctuary boundary submitted to NOAA by the Northern Chumash Tribal Council on July 17, 2015, proposed a Sanctuary boundary connecting the Monterey Bay NMS and Channel Islands NMS, and extending approximately 80 miles offshore to include the waters and seabed west of Santa Lucia Bank. NOAA refined this boundary so that it would not overlap with the Morro Bay WEA<sup>7</sup> and to better align with the western boundary of CINMS. The adjusted, originally proposed boundary became known as the “Initial Boundary Alternative” (IBA) and would encompass approximately 7,600 square miles.

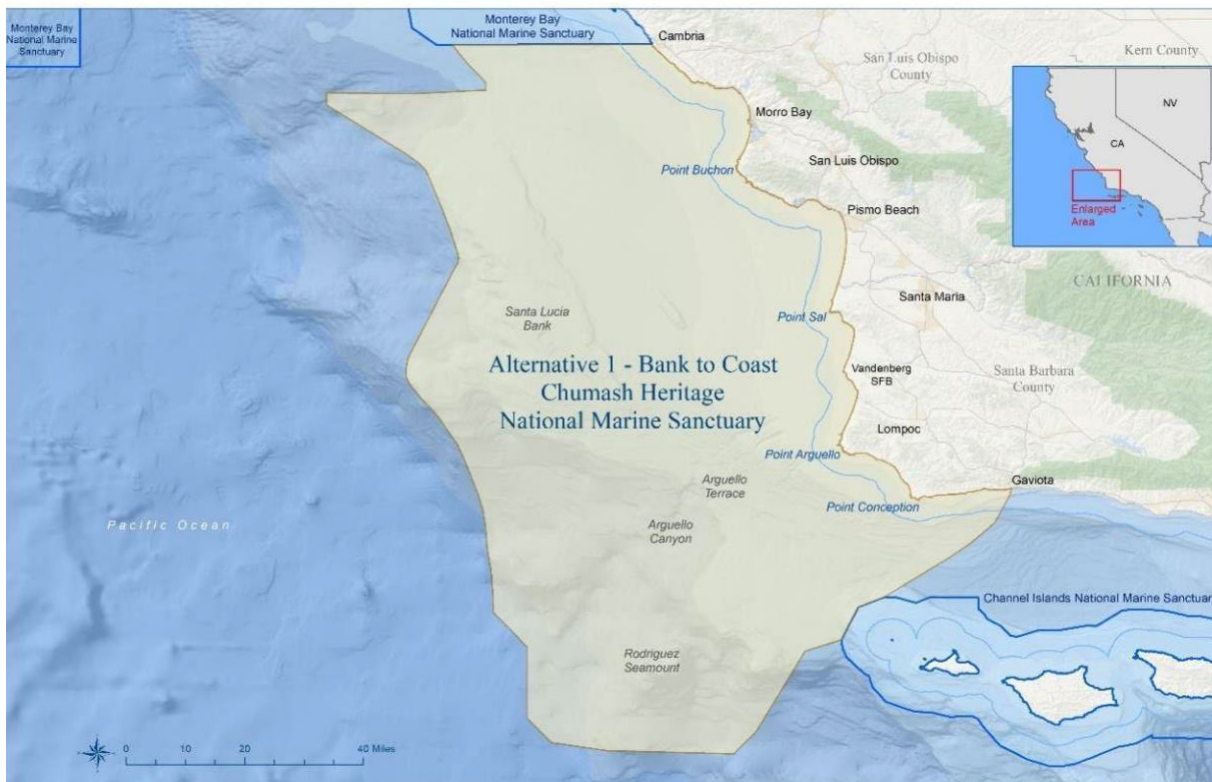
The proposed IBA, and all proposed alternatives would not encompass the Morro Bay Estuary unless it were added as a sub-alternative to the IBA or Alternative 1 (see Sub-Alternative 5a, below). The figure below depicts the Sanctuary boundary as proposed

<sup>7</sup>See BOEM's call for information to conduct leasing for wind power in the Federal Register (Vol. 86, No. 143, July 29, 2021), available at: <https://www.govinfo.gov/content/pkg/FR-2021-07-29/pdf/2021-16134.pdf>.

near the outlet of the Morro Bay estuary shown as the “Estero-Morro Bay COLREGS Demarcation Line.”



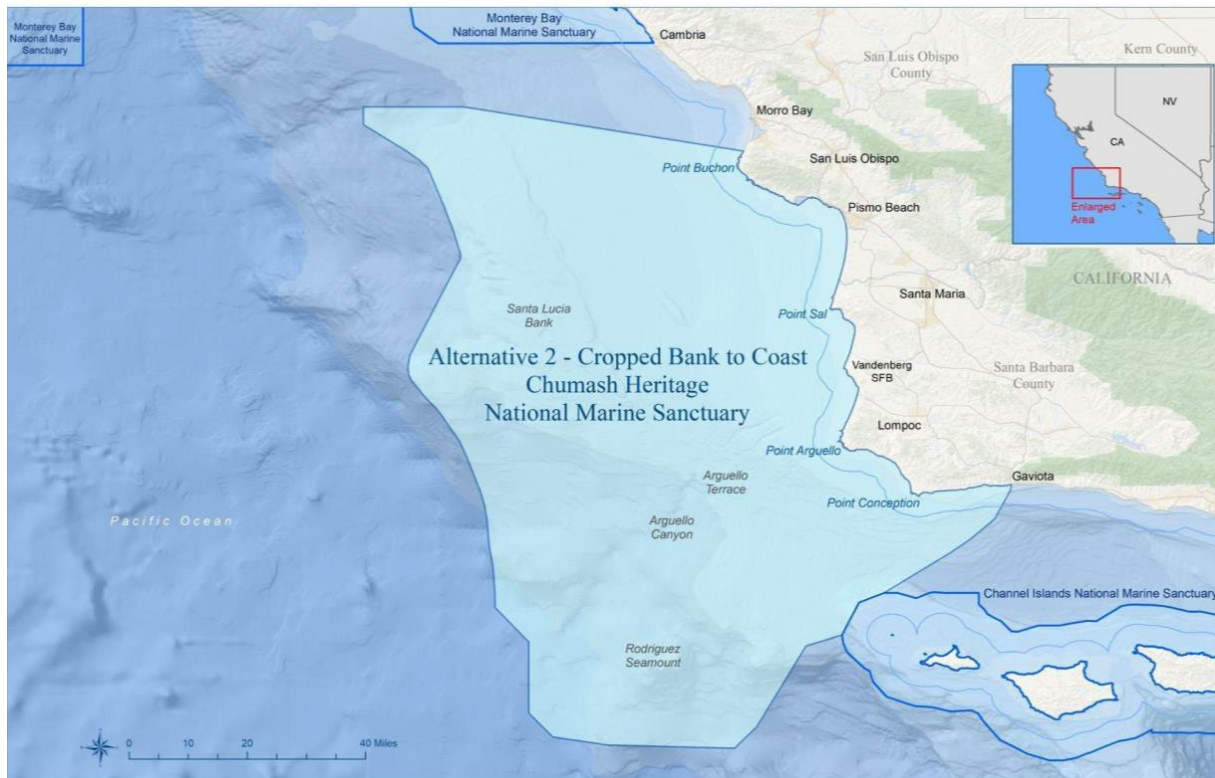
**Alternative 1 “Bank to Coast”**



Alternative 1 would truncate the western portion of the initial boundary alternative by shifting the western boundary east to near the escarpment at the edge of Santa Lucia Bank, reducing the size of the proposed Sanctuary by about 1,500 square miles (see Table 3-2 below). This would exclude most deepwater portions of the Santa Lucia Bank

and reduce the total area of the Sanctuary to 6,098 square miles. Full inclusion of the Santa Lucia Bank is a prominent aspect of the initial boundary alternative. The Santa Lucia Bank and its escarpment rises to within approximately 1,300 feet of the ocean surface and the productive waters here support a high diversity of fish, invertebrates, and marine mammals. The western-most and deepest portions of the escarpment and abyssal plain west of the bank would be excluded due to scoping comments received that “the proposed Sanctuary size is unnecessarily large for purposes of Sanctuary resource protection or the ecosystem elements that are nationally significant, and strays from the original intent and purpose of the Sanctuary to concentrate on ecosystem features that have been historically important to tribes and Indigenous communities,” (DEIS p. 35). Under the Bank to Coast alternative, the southern boundary “would still include Santa Lucia Bank, much of Arguello Canyon, and Rodriguez Seamount,” (DEIS p. 36) This alternative would leave that excluded area more available to seabed or other oil and gas disturbance from exploration or production. In other words, the minimization of seabed disturbances by the proposed action would be reduced in scope. The Santa Lucia Bank is approximately 37 miles long and 12 miles wide, reaching water depths of approximately 1,600-feet deep.

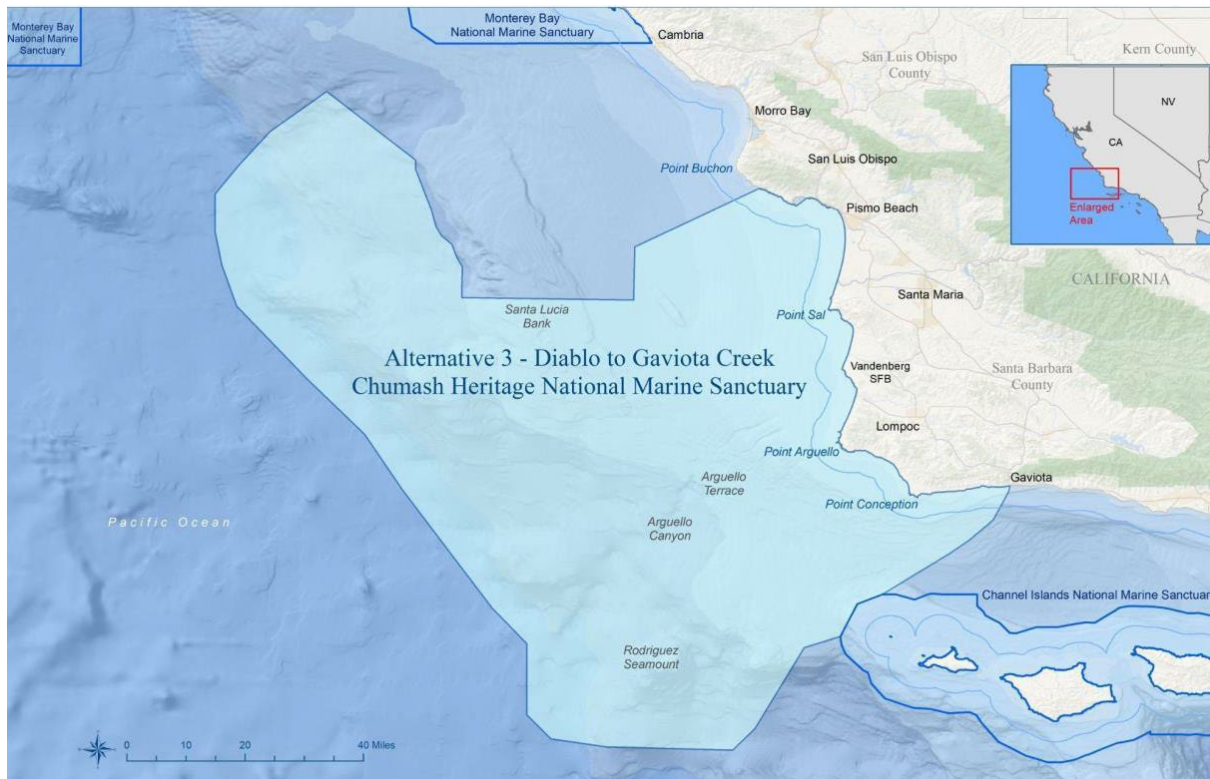
## Alternative 2 “Cropped Bank to Coast”



Alternative 2 similarly excludes most deep-water areas west of Santa Lucia Bank, and also excludes the northernmost portion of the Initial Boundary Alternative from Cambria to the northern portion of Montana de Oro State Park at Hazard Canyon Reef, leaving a gap between the CHNMS and the southern boundary of MBNMS. This gap was intended to provide a corridor for electrical transmission cables associated with future offshore wind energy development in the Morro Bay Wind Energy Area (WEA) to

connect to shore without passing through the Sanctuary. NOAA states that, “[this] boundary includes adjustments in response to scoping comments, cooperating agency comments, and comments from the Santa Ynez Band of Chumash Indians through government-to-government consultation, as well as input received from other tribal groups” (DEIS p. 37). This alternative also removes from the Sanctuary the Morro Bay Harbor dredged material disposal site and all or portions of two state MPAs: Cambria SMCA, and White Rock SMCA. Alternative 2 covers approximately 5,553 square miles.

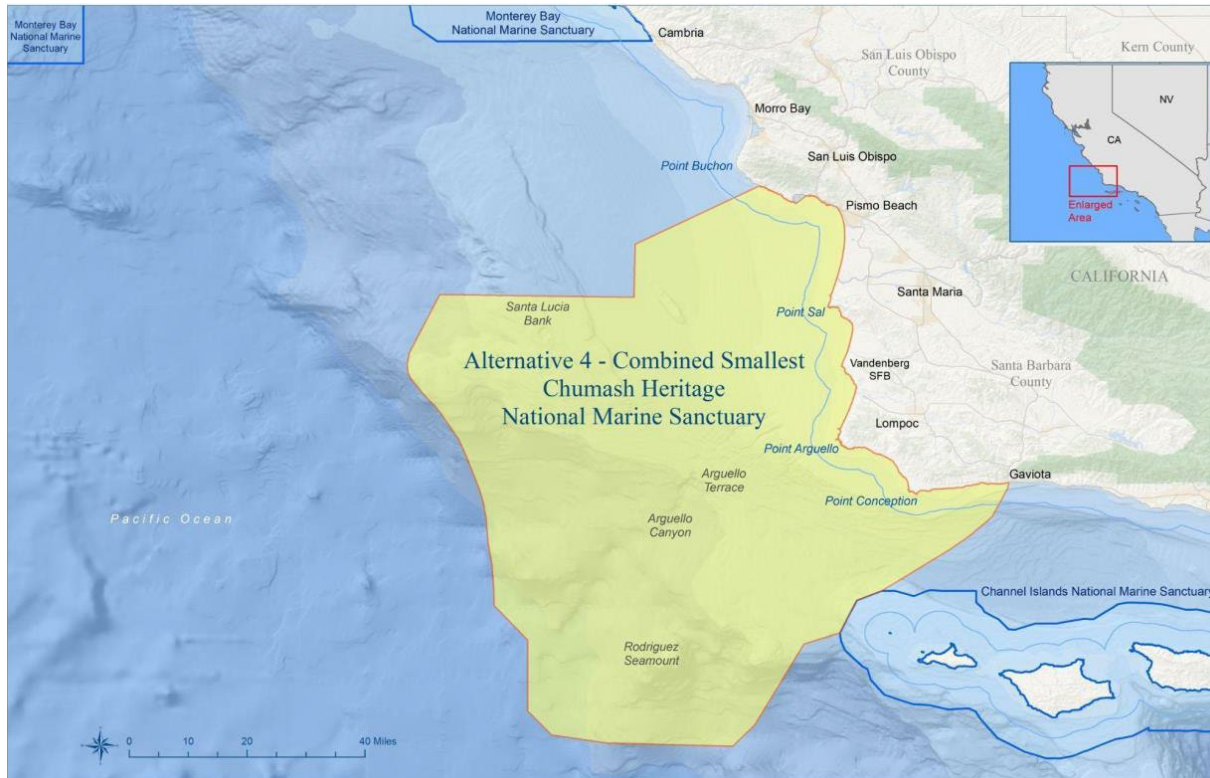
### Alternative 3 “Diablo to Gaviota Creek”



Alternative 3 extends the width of the excluded area (the “gap”) from Cambria to near the marina at Diablo Canyon Power Plant, in order to reserve areas outside the Sanctuary boundary for power cables to connect to shore at either Morro Bay or Diablo Canyon. Alternative 3 also excludes a large offshore area off of Point Buchon (the “Diablo Canyon Call Area”) to accommodate the potential future development of an offshore WEA outside of Sanctuary boundaries, but includes the deep-water area west of Santa Lucia Bank that is excluded from Alternative 2. Alternative 3 covers approximately 5,952 miles.<sup>2</sup>

### Alternative 4 “Combined Smallest”

Alternative 4 combines the excluded areas from Alternatives 1, 2 and 3, and with a total area of 4,476 square miles, it is the smallest of the proposed boundary alternatives but would still include an extensive area of ocean space and be the second largest Sanctuary offshore of California, significantly larger than both the existing Channel Islands National Marine Sanctuary (~1,500 sq. miles) and Greater Farallones National Marine Sanctuary (~3,300 sq. miles).

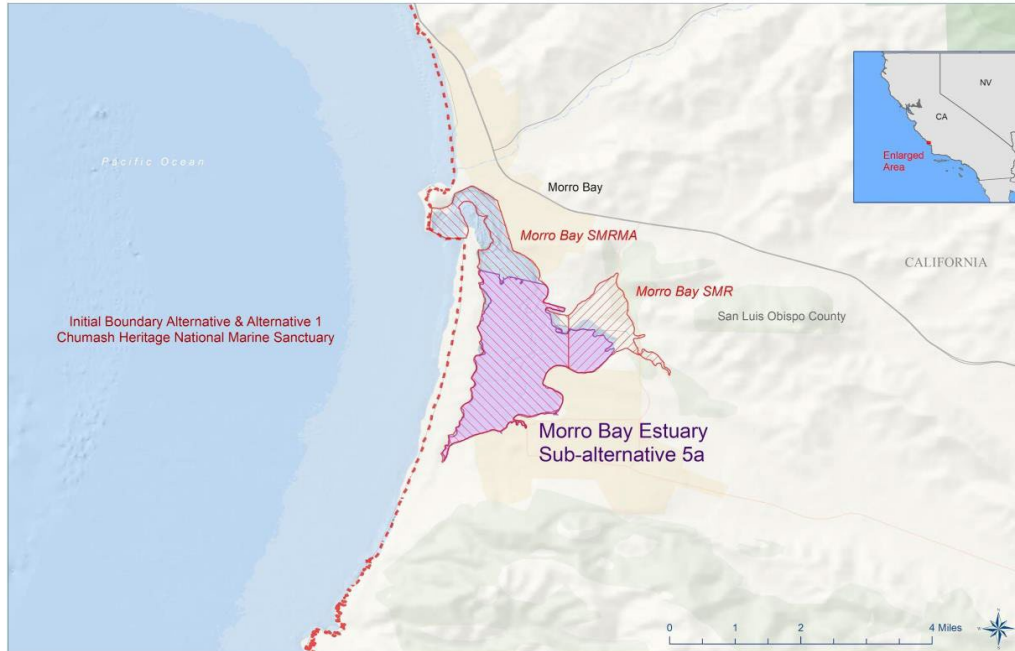


### Sub-Alternatives

As explained in section 3.7 of DEIS, NOAA is also considering two “sub-alternative” boundary options, “**Sub-Alternative 5a (Morro Bay Estuary)**” and “**Sub-Alternative 5b (Gaviota Coast Extension)**,” that could be added to an action alternative (e.g., the IBA, Alt. 1, 2, 3, or 4) to designate a slightly larger Sanctuary area and protect biologically and culturally significant ocean areas at the edges of the primary Sanctuary area. These sub-alternatives are not mutually exclusive, as they encompass different geographical areas; both sub-alternatives could be simultaneously added to the Initial Boundary Alternative or Alternative 1. However, due to its location, the Morro Bay Estuary sub-alternative would not apply to Alternatives 2, 3 or 4.

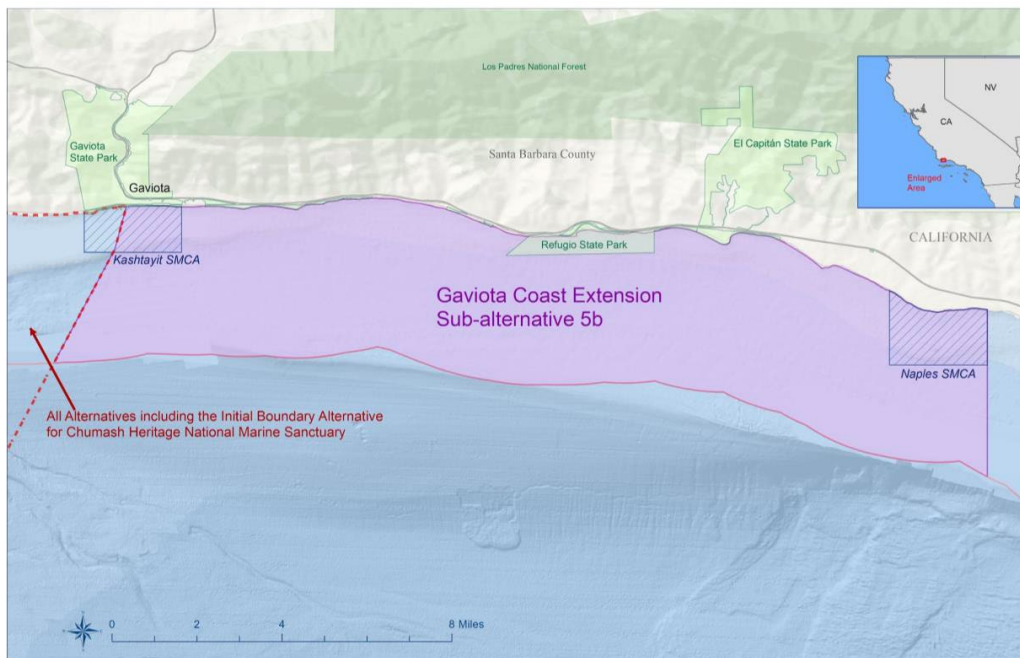
### Sub-Alternative 5a “Morro Bay Estuary”

Sub-alternative 5a includes the tidally-influenced areas of the Morro Bay estuary (see figure, below) and could be added to either the Initial Boundary Alternative and Alternative 1, which include the open ocean areas adjacent to Morro Bay. NOAA proposes one specific additional regulation for this sub-alternative which would provide a regulatory exception to allow for the cultivation of an introduced shellfish species in the estuary, reflecting existing commercial aquaculture operations within Morro Bay estuary.



**Sub-Alternative 5b “Gaviota Coast Extension”**

The Gaviota Coast Extension includes 18 miles of mainland coast and would include an additional 64 square miles of ocean and seafloor habitats between Gaviota Creek to the township of Naples, including two State Marine Conservation Areas and waters offshore of three state beaches. Additionally, the Gaviota Coast Extension would protect submerged cultural resources associated with the numerous large Chumash villages known to have been present along this coastline. This sub-alternative would be contiguous with and could be added to any of the primary alternatives.





**Comparison Table**

NOAA’s DEIS provides a direct comparison of the spatial scale of the various proposed boundary alternatives in Table 3.2 (p. 46):

**Table 3-2.** Comparison statistics for Initial Boundary Alternative and other action alternatives.

	Initial Boundary Alternative	Alt. 1, Bank to Coast	Alt. 2, Cropped Bank to Coast	Alt. 3, Diablo to Gaviota Creek	Alt. 4, Combined Smallest	Sub-alt. 5a, Morro Bay Estuary*	Sub-alt. 5b, Gaviota Coast Extension**
Total Size	7,573 mi <sup>2</sup> [5,718 nmi <sup>2</sup> ]	6,098 mi <sup>2</sup> [4,605 nmi <sup>2</sup> ]	5,553 mi <sup>2</sup> [4,194 nmi <sup>2</sup> ]	5,952 mi <sup>2</sup> [4,494 nmi <sup>2</sup> ]	4,476 mi <sup>2</sup> [3,380 nmi <sup>2</sup> ]	2.5 mi <sup>2</sup> [1.9 nmi <sup>2</sup> ]	64 mi <sup>2</sup> [48 nmi <sup>2</sup> ]
Total Mi of Shoreline with Offshore Rocks	202 mi	202 mi	144 mi	117 mi	117 mi	12 mi	18 mi
Total Mi of Mainland Shoreline	152 mi	152 mi	115 mi	99 mi	99 mi	11 mi	18 mi
Max Water Depth	13,374 ft	11,580 ft	11,580 ft	13,374 ft	11,580 ft	24 ft	480 ft
Max Distance from Shore	78 mi (1) [68 nmi]	66 mi (2) [51 nmi]	66 mi (2) [51 nmi]	78 mi (1) [68 nmi]	66 mi (2) [51 nmi]	--	3.5 mi [3.0 nmi]

\* Sub-Alternative 5a could be added to the Initial Boundary Alternative or to Alternative 1.

\*\* Sub-Alternative 5b could be added to the Initial Boundary Alternative or any of the other action alternatives.

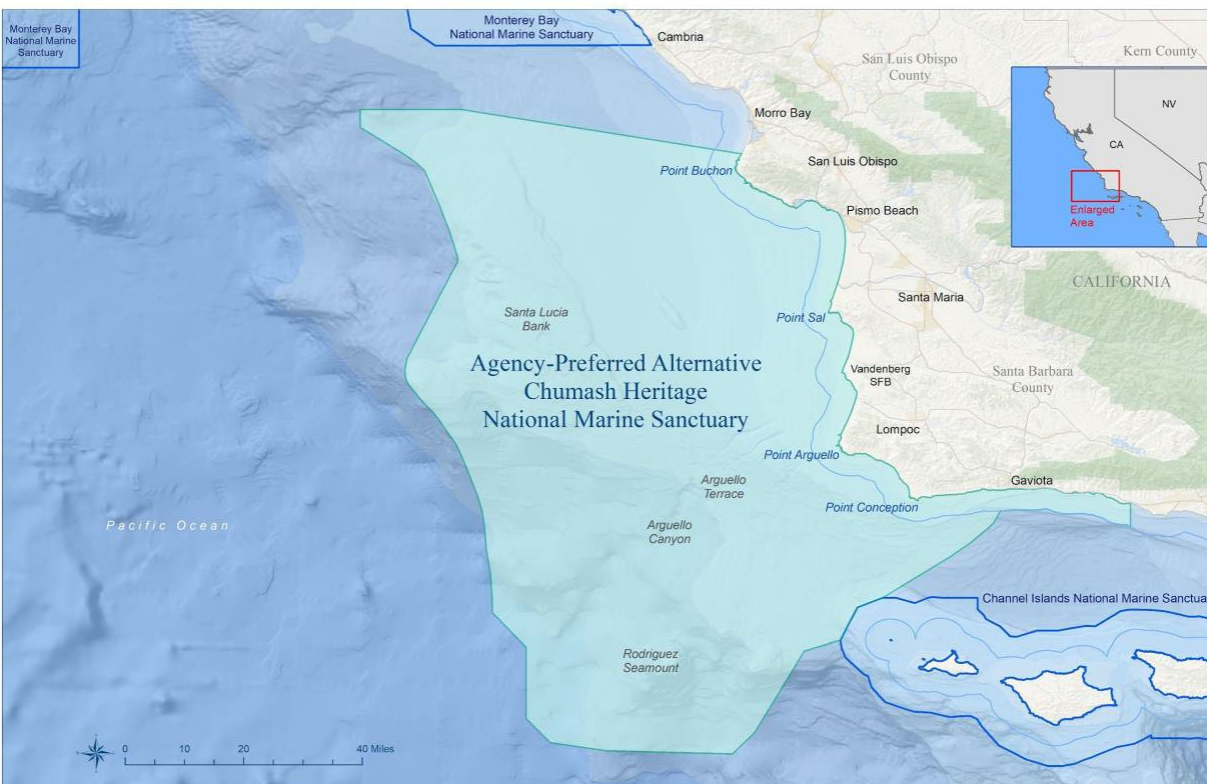
**Notes:** (1) Estero Bay WSW to western boundary; (2) Between Shell and Pismo Beaches WSW to western boundary.

**Agency-Preferred Alternative**

Although NOAA’s consistency determination does not specify which of the alternatives would be selected to move forward, its DEIS introduces an “Agency-Preferred Alternative” that combines the Cropped Bank to Coast alternative (Alternative 2) and the Gaviota Coast Extension sub-alternative. Like Alternative 2, the Agency-Preferred Alternative would exclude 545 square miles of ocean area (the “gap”) between Cambria and Hazard Canyon Reef (precluding continuity between CHNMS and MBNMS to the north), as well as the deep-water areas west of Santa Lucia Bank included in the IBA.

In its DEIS, NOAA explains its preference for this alternative over others, including the significantly larger IBA and Alternative 1:

NOAA’s choice of Alternative 2 rather than Alternative 1 to be part of the Agency-Preferred Alternative centers on two principal concerns with designating a sanctuary



from Montaña de Oro north to Cambria. The first has to do with potential laying of subsea electrical transmission cables that may occur as part of potential future offshore wind development in federal waters off of the central coast. NOAA has relied upon a fair and robust permit process to authorize the placement and continued presence of subsea cables (both research and trans-oceanic fiber-optic cables) within national marine sanctuaries. Based on its experience at other sites, NOAA believes that its authorities under the NMSA and the proposed regulations could be effectively utilized to allow fair and robust consideration of the placement and continued presence of subsea electrical transmission cables within the proposed sanctuary to connect new leases in the Morro Bay WEA to shore (see Section 4.7.3). However, NOAA is concerned about the amount of seabed disturbance and potential ongoing impact on biological resources that could result from the construction, maintenance, and continued operation of between 20–30 cables, as well as potential floating substations, in this one corridor between the Morro Bay WEA and shore. That level of anticipated disturbance would likely be unprecedented within a national marine sanctuary. It is possible that as planning advances for cable routes, a developer may seek to route a subsea electrical transmission cable from the Morro Bay WEA to another location that would require routing through the proposed sanctuary boundaries under the Agency-Preferred Alternative. In that potential future scenario, NOAA would be prepared to rely upon its fair and robust permit process to review, and if deemed acceptable, allow a subsea cable through the sanctuary.

The second consideration for NOAA's choosing Alternative 2 as part of the Agency-Preferred Alternative had to do with conflicts that have arisen regarding the name for

the portion of the new national marine sanctuary from roughly Cambria to south of Morro Bay, in particular the waters off Morro Rock. The Salinan bands commented during the scoping process and informational meetings to object to naming the sanctuary “Chumash” in that area which they identify as being part of their ancestral homeland. Chumash bands have also considered this section of coast part of their ancestral homeland. The Xolon Salinan expressed support for a sanctuary in this area, provided it had a different name. Chumash bands were unwavering in their view that the entirety of the sanctuary should be named “Chumash Heritage.” As explained in Chapter 3, NOAA evaluated but is not pursuing with this sanctuary designation other ideas to adjust the boundary of Alternative 1 to accommodate issues raised by the Salinan and to address the potential impacts from the number of subsea cables that are anticipated to transit the area.

The DEIS also addressed the exclusion of the areas west of Santa Lucia Bank, stating that “[i]ncluding the deeper water portions west of the Santa Lucia Bank within the proposed Sanctuary boundaries would create an extra management burden at the time of designation without hosting clearly significant natural or submerged maritime heritage resources in that area, or without significant threats to those resources at this time. If new information becomes available in the future about significant resources or threats for which a national marine Sanctuary would offer suitable protection, NOAA could consider adding some or all of that area to the Sanctuary at a future date” (DEIS p. 231).

The Agency-Preferred Alternative generated significant attention during NOAA’s DEIS process and NOAA received more than 110,500 comments including oral and written submissions, campaign letters, and petition signatures. The large majority of these comments advocated for the largest possible Sanctuary, extending from Cambria to Gaviota with no gap, which would protect the largest area of marine habitats and cultural resource sites, with many voicing opposition to the preferred alternative identified by NOAA. Other comments supported a phased designation approach starting with a smaller initial boundary, but with an eventual expansion northward to close the gap between the MBNMS. In particular, representatives of the offshore wind industry expressed significant concern with designation of the Sanctuary between their lease areas and shore and appeared to be unsatisfied with NOAA’s references to a permitting process that could be used to allow subsea electrical transmission cables to be installed and operated through the Sanctuary.

In its consistency determination and subsequent communications with Commission staff, NOAA has consistently stated that, although the DEIS identified a preferred alternative consistent with NEPA, each of the identified alternatives remains under consideration. In a response to Commission staff questions dated July 18, 2024, NOAA staff stated,

The proposed sanctuary designation differs from instances where a federal agency may simply put forward a proposed action and a no-action alternative; in this particular instance, NOAA is closely considering and giving serious weight to a

range of boundary alternatives for the proposed sanctuary designation. NOAA received a significant amount of public comment; 2,292 separate oral and written public comment submissions, that totaled more than 110,500 comments including campaign letters and petition signatures, on the draft designation documents and has been giving careful consideration to the input provided. At the final designation phase, NOAA can identify a preferred alternative that lies within the geographic and regulatory scope of any of the draft EIS alternatives, in accordance with NEPA, and is a logical outgrowth of the proposed rule, in accordance with APA. As such, the preferred alternative presented in the draft EIS and proposed rule does not necessarily reflect NOAA's final action and it would be predecisional to identify a final boundary at this stage of the process.

NOAA anticipates that a final EIS will be published in September 2024 that identifies a final preferred alternative and provides responses to public comment, to be followed in October 2024 by publication of a final rule, record of decision, and final management plan.

As noted above, NOAA's consistency determination assessed each of the boundary alternatives considered in the DEIS (IBA, Alternatives 1-4, Sub-alternatives 5a and 5b, Agency-Preferred Alternative). As such, the scope of the Commission's review also includes all of the alternatives discussed above.

## **C. DESIGNATION TERMS AND PROPOSED REGULATIONS**

### **Proposed Rule and Designation Terms**

Section 304(a)(4) of the NMSA requires that the terms of a Sanctuary designation include the proposed geographic area of the Sanctuary; the characteristics of the area that give it conservation, ecological, research, recreational, historical, educational, or aesthetic value; and the types of activities subject to regulation by the Secretary of Commerce to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made.

### **Regulations (See Proposed Rule<sup>8</sup>)**

NOAA published a proposed rule on August 25, 2023, which included the proposed terms of designation and regulations, in accordance with the National Marine Sanctuaries Act (NMSA) and the National Environmental Policy Act (NEPA). The following activities would be regulated within the Sanctuary, subject to specified exceptions and exemptions as specified in greater detail in the proposed rule<sup>8</sup>:

1. Prohibition on exploring for, developing, or producing oil, gas, or minerals. To reduce the risk of offshore spills from oil and gas development in the area, this regulation would prohibit exploration, development, and production of offshore oil and gas resources within the sanctuary. Continued oil and gas production of

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<sup>8</sup>Available at: <https://www.federalregister.gov/documents/2023/08/25/2023-18271/proposed-chumash-heritage-national-marine-sanctuary>.

existing reservoirs under production prior to the effective date of sanctuary designation from Platform Irene (as part of the Point Pedernales Unit development) and Platform Heritage (as part of the Santa Ynez Unit development), including well abandonment, and including transportation in pipelines of product to shore, would be allowed to continue after sanctuary designation until those fields are exhausted and/ or the developer ends operation. This regulation would prevent development of new reservoirs from these existing platforms.

2. Prohibition on discharges. Prohibition on any discharge within or into the sanctuary; discharge from beyond the sanctuary boundary that subsequently enters and injures sanctuary resources; and discharges from cruise ships.
3. Prohibition on drilling into or altering the submerged lands. NOAA proposes to prohibit activities that would drill into, dredge, or otherwise alter or disturb the submerged lands of the sanctuary. This prohibition would include constructing, placing or abandoning any structure, material, or other matter on the submerged lands.
4. Prohibition on possessing, moving, removing, or injuring or attempting to possess, move, remove, or injure a sanctuary historical resource.
5. Prohibition on taking any marine mammal, sea turtle or bird within or above the sanctuary.
6. Prohibition on possessing within the sanctuary (regardless of where taken, moved, or removed from) any marine mammal, sea turtle, or bird. This is a companion regulation to the preceding prohibition restricting a person's ability to possess any marine mammal, sea turtle, or bird within the sanctuary.
7. Prohibition on 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. Prohibition on attracting any white shark within the sanctuary.
9. Prohibition on moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting or otherwise injuring a sanctuary resource located below 1,500 ft. water depth within the Rodriguez Seamount Management Zone; Prohibition on possessing any sanctuary resource, the source of which is below 1,500 ft. water depth with the Rodriguez Seamount Management Zone.
10. Prohibition on introducing or otherwise releasing from within or into the sanctuary an introduced species, except striped bass released during catch and release fishing activity.
11. Prohibition on interfering with, obstructing, or preventing an investigation, search, or other enforcement activity.

### **Office of National Marine Sanctuaries (ONMS) Authority**

Pursuant to Code of Federal Regulations (CFR), title 15, section 922.36 , NOAA, through the ONMS, would have the authority to consider allowing an activity otherwise prohibited by proposed section 922.232 in title 15 of the CFR for the CHNMS if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary

designation. This "ONMS authorization authority" would apply to most of the proposed prohibitions as outlined in § 922.232(e) and as limited in § 922.232(f). NOAA would be prohibited from issuing an ONMS authorization for new oil, gas, or mineral development, and could not issue an ONMS authorization that would interfere with an investigation or other enforcement action.

NOAA's proposed regulations for the general permit process would allow for some prohibited activities under certain conditions if a national marine Sanctuary general permit is issued pursuant to 15 C.F.R. 922 subpart D and the site-specific regulations proposed for this Sanctuary are met. For this action, NOAA is also proposing a new general permit category for undertakings that will promote or enhance local Native American ceremonial or cultural activities and trainings related to those cultural activities.

### **Management Plan**

National Marine Sanctuaries administered by NOAA require management plans. NOAA published a draft management plan for the Sanctuary on August 24, 2023, including eleven subsidiary "action plans" outlining strategies for resource protection, research, and education that are intended to guide the Office of National Marine Sanctuaries over the next five to ten years. Each action plan contains strategies and activities designed to achieve core goals of the Sanctuary designation. NOAA states in its consistency determination ([Exhibit 1](#)) that each of the 11 action plans would apply to the Initial Boundary Alternative (IBA) and Alternatives 1, 2, 3, and 4 (and Sub-Alternatives 5a and 5b, if included). Depending on which boundary alternative is selected, the proposed management plan may be modified, if needed, to focus on the resources and issues within the geographic areas selected for Sanctuary designation. In its CD, NOAA states that, "there could be slight differences in details of how the strategies are executed, the priority in which they are pursued, and slight variation in potential partnerships." However, the purpose of the action plans would not change, and none would be removed under any boundary alternative.

### **Action Plans<sup>9</sup>**

1. Indigenous Cultural Heritage Action Plan
2. Climate Change Action Plan
3. Maritime Heritage Action Plan
4. Offshore Energy Action Plan
5. Water Quality Action Plan
6. Blue Economy Action Plan
7. Wildlife Disturbance Action Plan
8. Education and Outreach Action Plan
9. Resource Protection Action Plan
10. Research and Monitoring Action Plan
11. Operations and Administration Action Plan

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<sup>9</sup>Available at: <https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/chumash/2023-proposed-chumash-heritage-nms-draft-management-plan.pdf>.

## D. CULTURAL RESOURCES

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Coastal Act Section 30244 states that reasonable mitigation measures shall be required where development would adversely impact identified archaeological resources. These resources may be sacred lands, traditional cultural places and resources, and archaeological sites that the Commission is tasked with protecting pursuant to the Coastal Act.

The Commission acknowledges Tribal sovereignty and understands that California's Tribes have long served as stewards of important coastal resources. The Tribes possess unique and valuable knowledge and practices for conserving and managing these resources in a sustainable manner, and in a manner consistent with the spirit and intent of the Coastal Act. The Commission's Tribal Consultation Policy recognizes the importance of State efforts to protect Tribal Cultural Resources and improve communication and coordination with Tribes. It establishes a tribal consultation process that is fully consistent with, and complementary to the nature of, the Commission's goals, policies (including Section 30244), and mission statement.

### **Tribal Outreach and Consultation**

As stated in the DEIS, the Tribes that expressed interest in the proposed Sanctuary included the Barbareño/Ventureño Band of Mission Indians, the Coastal Band of the Chumash Nation, the Wishtoyo Chumash Foundation, the Barbareño Chumash Tribal Council, the Chumash Maritime Association, the Northern Chumash Tribal Council, the Northern Chumash Bear Clan, the Santa Ynez Band of Chumash Indians, and the yak tit'yu tit'yu yak tithini Northern Chumash Tribe.

On March 8, 2024, the Native American Heritage Commission provided to Commission staff a Native American Contact List<sup>10</sup> for the Monterey, San Luis Obispo, Santa Barbara, and Ventura Counties. On April 8, 2024, Commission staff sent outreach letters inviting consultation to the Amah Mutsun Tribal Band, Amah Mutsun Tribal Band of Mission San Juan Bautista, Costanoan Ohlone Rumsen-Mutsen Tribe, Costanoan Rumsen Carmel Tribe, Esselen Tribe of Monterey County, Indian Canyon Mutsun Band of Costanoan, KaKoon Ta Ruk Band of Ohlone-Costanoan Indians of the Big Sur Rancheria, Ohlone/Costanoan-Esselen Nation, Rumsen Am:a Tur:ataj Ohlone, Salinan Tribe of Monterey, San Luis Obispo Counties, Tule River Indian Tribe, Wuksachi Indian

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<sup>10</sup>Although a number of Tribes have expressed to Commission staff significant frustration with these lists and the NAHC's process of developing them, Commission staff does not have the authority or expertise to develop separate lists or to chose which Tribes to include or exclude from outreach efforts once NAHC has provided a contact list. However, Commission staff strongly encourages continued dialogue between the Tribes and NAHC to help resolve this issue.

Tribe/Eshom Valley Band, Xolon-Salinan Tribe, Barbareño/Ventureño Band of Mission Indians, Chumash Council of Bakersfield, Coastal Band of the Chumash Nation, Northern Chumash Tribal Council, Santa Ynez Band of Chumash Indians. yak titʻu titʻu yak tilhini – Northern Chumash Tribe, Barbareño Band of Chumash Indians.

On May 1, 2024, Commission staff consulted with the Northern Chumash Tribal Council and learned about its involvement in the Sanctuary designation process. Chairwoman Violet Sage Walker expressed her desire to see the process conclude and shared that the Northern Chumash Tribal Council had sent a recent request to NOAA to adopt a “phased approach” to the Sanctuary designation whereby NOAA could initially select one of the smaller alternative boundaries considered in its DEIS and then expand to one of the larger alternatives at a later date. This approach was articulated further in a joint position statement advocating for a smaller initial Sanctuary and later expansion that was released by the Northern Chumash Tribal Council and lessees of the offshore Morro Bay WEA (Equinor, Golden State Wind and Invenergy). The Northern Chumash Tribal Council’s position on the Sanctuary designation is included in [Exhibit 2](#).

Commission staff consulted with the Salinan Tribe of Monterey and San Luis Obispo Counties on June 7, 2024. The Tribe voiced concerns about the proposed name of the Sanctuary and shared their final public comments on NOAA’s DEIS with Commission staff. The Tribe expressed that it would not support the Initial Boundary Alternative or alternatives that include a gap (such as Alt. 2, 3, 4, or the agency-preferred alternative) if the Sanctuary would have the name, “Chumash Heritage,” as this name would not recognize the presence of Salinan tribes throughout San Luis Obispo County. The Salinan Tribe of Monterey and San Luis Obispo Counties’ position on the Sanctuary designation is included in [Exhibit 2](#).

On July 15, 2024, Commission staff contacted the tribes on the NAHC list that had not responded to Commission staff’s initial outreach on March 8, 2024. The Amah Mutsun Tribal Band replied that the Sanctuary is outside of their traditional territory and had no comments. On July 15, 2024, the yak titʻu titʻu yak tilhini Northern Chumash Tribe and Santa Ynez Band of Chumash Indians responded and requested to consult.

Commission staff consulted with the yak titʻu titʻu yak tilhini Northern Chumash Tribe on July 18, 2024. Tribal representatives explained that they have been supporters of the Sanctuary designation since the beginning but are not in favor of the agency-preferred alternative which would include the gap between the Monterey Bay National Marine Sanctuary (MBNMS) and the proposed CHNMS. Concerns were raised for the cultural resource sites that would not be protected if NOAA selects the agency-preferred alternative.

Commission staff consulted with the Santa Ynez Band of Chumash Indians on July 18, 2024. During that meeting the Tribe expressed their support for a contiguous boundary between the MBNMS and the proposed CHNMS but expressed that they would also be supportive of the agency-preferred alternative if chosen by NOAA. The Tribe expressed



support for the co-management strategy as outlined in NOAA's draft Management Plan and opposition towards an alternative Sanctuary name.

The Ohlone Sisters of the Costanoan Rumsen Carmel Tribe responded to Commission staff on July 15th, requesting consultation; however, consultation was not scheduled prior to publication of the staff report.

On July 15, 2024, the Xolon Salinan Tribe provided the comment letter they had submitted to NOAA dated October 11, 2023, and explained that their concerns about the proposed Sanctuary had not changed since 2015. The Tribe's October letter stated that inclusion of a gap would not be the best solution but that they did agree with Alternative 2. The Xolon Salinan Tribe's position on the Sanctuary designation is included in [Exhibit 2](#).

Commission staff alerted NOAA to the tribal concerns regarding the proposed name of the Sanctuary and received a response from NOAA on July 19, 2024, which stated:

During both public scoping on the proposed sanctuary and through public comment on draft designation documents, NOAA heard widespread support for the name "Chumash Heritage." However, separately, NOAA staff have engaged with several Salinan bands and have heard first-hand their strong opposition to the proposed sanctuary's name. Several name suggestions were submitted during comment periods by Salinan and some Chumash bands, most often with an intent to avoid applying "Chumash" heritage in waters also important to Salinan Peoples. NOAA has been very understanding and remains sensitive to this issue. In the draft EIS (page 54), NOAA acknowledged that NOAA could designate the sanctuary with a name of geographic or other significance, although from comments received from the full range of Indigenous groups it appears apparent to NOAA that name preference disagreements would remain. NOAA also stated in the draft EIS (page 54) that another option that relates to name sensitivity could be to designate CHNMS with a boundary that does not include areas from Los Osos north to Cambria (i.e., Alternative 2, 3 or 4), and, if so, also consider a southward expansion of the Monterey Bay National Marine Sanctuary by way of a separate future action. Overall, the important input received and these boundary/name considerations are informing NOAA's preparation of final designation documents. NOAA anticipates that ongoing Tribal and Indigenous community engagement will be critical, and has included in the management plan a proposed framework for Indigenous collaborative co-stewardship. Any consideration by NOAA of additional waters to be evaluated for future sanctuary status would be supported by appropriate involvement and engagement with local Tribes and Indigenous groups. If a name reevaluation is determined to be appropriate, NOAA envisions the process could occur with input and guidance from the Sanctuary Advisory Council and its envisioned Indigenous Cultures Advisory Panel, likely during the first management plan review process for the sanctuary.

As stated in the Management Plan:

NOAA intends to create a collaborative management structure for the sanctuary to provide for the respectful and meaningful involvement of local representatives and partners from multiple tribes and Indigenous communities. Although final details and agreements for such a management structure may take time to evolve and formally solidify, ONMS is committed to thoughtfully using a variety of inclusive approaches to work closely with tribes and Indigenous community members in support of mutual interests and improved sanctuary management. As this new sanctuary emerges and staff begin formative work, respectful and dedicated efforts will be required by all involved to build partnerships and trust over time between ONMS, tribes, and local Indigenous communities. ONMS is committed to this long-term effort.

### **Protection of Archaeological and Cultural Resources**

As reflected in NOAA's proposed designation and regulations, the DEIS, and its consistency determination, a primary motivating factor for designation of the CHNMS is to "provide for comprehensive and coordinated conservation and management of the nationally significant ... historical and cultural resources of this area." (Consistency Determination, p. 1, [Exhibit 1](#)). Protection of the archaeological and cultural resources within the final Sanctuary boundaries would be achieved largely through carrying out the management plan once the Sanctuary is designated and through enforcement of the regulations – for example, a prohibition on possessing, moving, removing or injuring historical resources within the Sanctuary. NOAA is also proposing a new permit category for undertakings that will promote or enhance local Native American ceremonial or cultural activities. Furthermore, under the Resource Protection Action Plan, NOAA aims to collaborate with tribes, Indigenous communities, and social scientists to better understand and document traditional knowledge, culturally significant species, and the threats faced by these resources due to climate change and other factors. As stated in the consistency determination,

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.

Additionally, the Indigenous Cultural Heritage Action Plan included in the draft management plan would seek to create management structure for the Sanctuary involving local tribes and Indigenous communities, and includes strategies to identify and protect cultural resources within the Sanctuary, and to incorporate Indigenous knowledge into Sanctuary management and educational programs. Specifically, the Indigenous Cultural Heritage Action Plan proposes to:

- Work with tribal and Indigenous communities to adopt an organizational framework for tribal and Indigenous participation and collaborative management, including developing necessary agreements, policies, and procedures to implement the framework;
- Identify Indigenous cultural resources and integrate Indigenous knowledge, including through identifying priorities for cultural resources surveys and developing guidelines for data collection, analyzing threats and trends for known submerged resources and sacred sites, working with tribes to gather, share and apply traditional knowledge, and supporting tribes in conducting cultural landscape characterization;
- Provide protection for Indigenous cultural resources within the sanctuary, for example by developing cultural resource training for enforcement officers, best practices and guidance for avoiding disturbance to submerged cultural resources, and conducting timely and meaningful tribal consultation during decision-making;
- Collaborate with Indigenous communities on education programs, including direct guidance from tribal communities in developing Sanctuary public outreach and education materials and developing a Sanctuary internship program for students from Indigenous communities;
- Provide ongoing Indigenous cultural training to sanctuary staff, volunteers, and advisory council members, using training topics, materials and approaches developed in partnership with tribes and Indigenous communities, and by increasing tribal presence within Sanctuary staff and partner organizations.

As described in **Section B**, above, the five Sanctuary boundary alternatives (and two sub-alternatives) differ in their geographic extent, and thus in the specific ocean and seafloor areas they would protect. However, the specific protections and resource benefits of Sanctuary designation – flowing from implementation of the proposed regulations and management plan – would be substantially similar regardless of the boundary alternative selected, and in all cases, adverse resource impacts stemming from the Sanctuary designation would be avoided. Thus, each of the proposed boundary alternatives would be consistent with Coastal Act Section 30244.

NOAA is not proposing any development that would adversely impact archaeological resources that the Commission is tasked with protecting pursuant to Section 30244 the Coastal Act. The proposed Sanctuary designation, regulations and management plan would provide additional protection to underwater cultural resources and put in place a framework for tribal stewardship of Sanctuary resources, and as such are consistent

with the archaeological and cultural resources policy of the CCMP (Coastal Act Section 30244).

## **E. MARINE RESOURCES AND WATER QUALITY**

Section 30230 of the Coastal Act states:

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.

Section 30231 of the Coastal Act states:

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 ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Designation of the proposed Sanctuary and implementation of the draft management plan and proposed regulations would substantially improve marine resource and water quality protection, consistent with Coastal Act sections 30230 and 30231. The designation would expand the existing network of marine sanctuaries offshore of California, providing protection for much of the area of coastal ocean between the existing Monterey Bay and Channel Islands National Marine Sanctuaries. The proposed designation would strengthen both state and federal coastal management goals and enhance protection of one of the world's most naturally diverse biological and cultural ecosystems (Collins, 2015).

The area of ocean, shoreline, and continental shelf habitats proposed for designation include an array of kelp forests and rocky reefs, subtidal seagrass beds and sandy beaches, seamounts, deep seafloor environments, and vast areas of pelagic habitat, all sustaining productive and diverse populations of algae, plant, fish, invertebrate, seabird, and marine mammal species.<sup>11</sup> Rodriguez Seamount is considered a relatively rare feature by scientists as it was once above sea level but is now fully submerged with

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<sup>11</sup>NOAA Fisheries (NMFS). 2024. California Current Regional Ecosystem. Available at: <https://www.fisheries.noaa.gov/west-coast/ecosystems/california-current-regional-ecosystem#:~:text=The%20California%20Current%20Regional%20Ecosystem,fishing%2C%20tourism%2C%20and%20shipping>.

large assemblages of unique sponges and corals living thousands of feet deep in the dark.<sup>12</sup>

The near-threatened Black-footed albatross (*Phoebastria nigripes*), thrives as a surface-seizing forager of fish produced by rich upwelling at the continental shelf. Species such as these would receive further protection against the threat of oil spills, plastic debris from deserted vessels, and heavy metal contamination. The designation would complement existing protections in the area as it would overlap critical habitat for three federally-listed species (humpback whale, black abalone and leatherback sea turtle), and would encompass several state Marine Protected Areas (MPAs) and four designated essential fish habitat areas necessary to the life cycle of federally-managed fisheries species. A primary goal of the Sanctuary designation and its management plan is the protection of significant geologic features, including Santa Lucia Bank, Rodriguez Seamount, and Arguello Canyon, and the high levels of biological productivity these features support (e.g., DEIS, p. 10, 69-70; Resource Protection Action Plan strategy RP-1). The Climate Change Action Plan and Research Monitoring and Action Plan have a shared goal of protecting the Sanctuary's ecosystem function and resilience through applied research to understand the long-term trajectory of ocean conditions within the CHNMS. In adopting the proposed management plan, NOAA would make use of science and research to develop projects that increase public awareness of the CHNMS and need to manage its resources by addressing critical and emerging threats at the national scale.

### **Marine Resources**

In evaluating consistency with the CCMP's marine resources policies, NOAA states in its consistency determination that:

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).

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<sup>12</sup>NOAA Office of National Marine Sanctuaries. 2024. Deep-sea Habitats in National Marine Sanctuaries of the West Coast. Available at: <https://sanctuaries.noaa.gov/about/deep-sea-habitats-in-nms-of-the-west-coast.html>.

Overall, the regulatory framework of the CCMP would be enhanced by proposed sanctuary regulations that are intended to protect the marine environment, including coastlines.

More specifically, the August 2023 DEIS and Proposed Rule describe and evaluate several new regulations that are likely to yield direct or indirect benefits to marine biological marine resources. The DEIS states:

Implementing the proposed sanctuary regulations outlined in Section 3.2.2 would protect marine habitats and species due to prohibitions on certain activities that would otherwise degrade habitats used by marine species or directly harm marine species, such as: (1) alteration of or construction on the seabed; (2) certain discharges into the sanctuary; (3) taking or possessing any marine mammal, sea turtle, or seabird except as authorized by other federal statutes; (4) attracting any white shark; (5) deserting a vessel (see Section 4.4.3 for more discussion on the benefits of this prohibition); and (6) introducing an introduced species. Implementing these prohibitions would provide direct resource protection benefits by protecting important biological habitat for living resources in the proposed area and reducing direct disturbance of living resources ...

Marine species that make their home or forage within benthic habitats and sediment benefit from compliance with these regulatory prohibitions because of the avoidance of injury, habitat disturbance, or destruction. Additionally, many ecosystem engineers like kelp or seagrass would benefit from limited seafloor disturbance and continue to provide bottom-up ecosystem effects on other species. Some ecosystems would benefit from additional protections outlined in Section 3.2.2, most notably Rodriguez Seamount. NOAA Fisheries, through EFH conservation actions under the MSA, has already prohibited bottom trawling on and around Rodriguez Seamount. Additional protections provided to the seamount by the proposed sanctuary regulations would protect the high biodiversity and deep-sea habitat on the seamount. Long life histories and slow growth of deep-sea resources mean direct adverse impacts have long recovery times in these habitats; so additional protections for resources 1,500 feet below sea level (roughly 750 ft above the top of the seamount) would add critical additional risk mitigation for these sensitive resources.

Beyond just habitat protection, white sharks, a species protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and by the state of California, would also be protected ... through the proposed regulatory prohibition on attracting any white shark (defined to include conducting any activity that lures or may lure a shark by using food, bait, chum, dyes, decoys, acoustics, or any other means except the mere presence of human beings). These populations likely experience connectivity with populations in other nearby national marine sanctuaries and warrant similar protections and rules to limit behavioral alteration and training of individuals to vessels. Attraction of white sharks is an issue that has been controlled through the sanctuary permit process at other

west coast national marine sanctuaries (i.e., GFNMS, MBNMS, and CINMS) and should be replicated here given the species' current recovery status and unknown population structure. Prohibition of attracting white sharks would limit the species training to cue on vessels and limit unregulated ecotourism or poaching that could negatively impact and harass individuals.

Some historical resources function in the marine environment as structures that provide valuable three-dimensional habitat for marine life. Therefore, efforts to minimize or avoid disturbance of historical resources within the sanctuary (see Section 4.5) not only protect these important resources, but also reduce the likelihood of adverse impacts on marine biota using these sites as habitat. In addition, conducting a climate vulnerability assessment as part of the Climate Change Action Plan would provide sanctuary managers with tools to identify those living resources at greatest risk from a changing climate and better data to inform direct resource protection interventions.

The DEIS further explains the indirect benefits expected to result from implementation of the draft management plan:

As part of the proposed sanctuary management plan, NOAA's implementing research and monitoring programs would provide sanctuary managers with information to guide decisions related to management of sanctuary resources, resulting in enhanced resource protection of marine species and their habitat. Specifically, supporting, promoting, and coordinating scientific research, characterization, and long-term monitoring in the proposed sanctuary would increase understanding of the structure, function, resilience, and status of the resources the proposed sanctuary would manage. An increased knowledge of the processes, dynamics, and responses of these systems to both human-induced and natural changes would improve long-term management of these resources and their habitats in the sanctuary. In addition, under the Initial Boundary Alternative, implementing resource protection and emergency response activities to remove hazards and introduced species from the waters of the sanctuary, would reduce or avoid disturbance of important habitats, reduce risk of collisions with or entanglement of marine species, and mitigate any adverse impacts from hazardous spills on living marine species in the sanctuary. Some additional specific benefits include:

- Developing management action plans on topics of emerging concern (e.g., climate change) and ongoing management efforts (e.g., research and monitoring).
- Facilitating the recovery of ESA-listed species.
- Limiting release and spread of introduced species via proposed regulatory prohibitions and via management actions to remove such species.
- Developing best management practices to mitigate impacts on sanctuary resources.
- Working with partners to further ecosystem-based management approaches.

Some of the proposed management plan's goals are to increase understanding of Sanctuary resources, to maintain and improve the status of Sanctuary resources, and to maintain or increase efforts to reduce threats to Sanctuary resources. As detailed in the action plans for Climate Change, Research and Monitoring, and others, the proposed Sanctuary management plan would focus on addressing emergent environmental concerns in the Sanctuary (e.g., marine debris, ship strikes, installation of offshore wind energy infrastructure) as well as expanding work in ongoing priority areas (e.g., wildlife entanglement, invasive species, ocean noise). The action plans propose various strategies and activities to help further these goals, for example:

- Evaluating impacts and vulnerability of resources to climate change.
- Assessing and facilitating local and regional ecosystem connectivity.
- Collaborating with fishery management agency partners to further ecosystem-based management approaches and advance understanding and management of fish aggregation sites.
- Continuing research on seabird ecology, habitat use, and contaminant loads as well as risk from offshore wind implementation.
- Expanding outreach programs to improve compliance with speed seasonal management areas for local cetaceans.
- Monitoring the sources and levels of noise producing activities and appropriate mitigation in the sanctuary.
- Monitoring, mitigating spread, and removing introduced species.
- Continuing research on habitat uses by living resources in the sanctuary and ecosystem service impacts of sanctuary management activities.

... All of these activities are intended to provide beneficial impacts on the sanctuary's living marine resources and/or biological habitat, or to address ongoing impacts of climate change.

NOAA also evaluated the potential for adverse impacts to marine resources resulting from the Sanctuary designation and implementation of the proposed regulations. As discussed in the DEIS, these effects are expected to be minor, and would be avoided or minimized through the use of project-specific protective measures:

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. These activities could include vessel use, scuba diving, deploying buoys and research or monitoring equipment, sampling organisms, removing materials (e.g., marine debris), deploying uncrewed underwater systems, deploying uncrewed aerial systems, deploying active acoustic equipment and towed instrument arrays, and seabird, fish and whale tagging studies. NOAA would avoid or minimize disturbance of living marine resources by:

- Posting a dedicated marine mammal observer during vessel operations to avoid collisions with marine mammals.



- Maintaining safe distances from any observed large whales and other protected species.
- Postponing deployment of equipment when marine species that could be potentially entangled are present.
- Supervising deployed instruments or instrument cables while they are deployed to minimize risk of collision or entanglement with marine species.
- Ensuring all NOAA divers are trained and follow NOAA protocols to avoid harming or otherwise disturbing habitat or living marine resources.

If living marine resources were present in close proximity to any equipment or an activity's location, NOAA anticipates that any disturbance of the individual would be brief due to the short period of time NOAA-led activities would occur at a single location. Any avoidance would be localized and temporary, animals are expected to return to the area quickly after the vessel leaves the area, and abandonment of habitat is not expected. NOAA would follow protocols to minimize the risk of vessel strike or entanglement, or other direct disturbance, of living marine species during vessel operations and other equipment used to support sanctuary research, monitoring, and resource protection activities. Therefore, no population-level impacts on living marine resources would be expected due to NOAA-led activities.

The DEIS also proposes additional avoidance and minimization measures for the protection of marine wildlife and listed species that would be implemented during research and Sanctuary management activities (e.g., vessel, ROV and aircraft operation, buoy and monitoring equipment deployment), consistent with NMFS and USFWS requirements. The proposed avoidance and minimization measures are as follows:

- Following standing orders for vessel speed, operations around marine mammals, and nighttime operations.
- Posting at least one dedicated lookout for ESA and MMPA protected species during all vessel operations.
- Vessel operators remaining vigilant at helm controls and ready to take action immediately to avoid an animal.
- Slow deployment and constant supervision of equipment to minimize risks and avoid interaction with protected species.
- Using soft substrate areas for vessel anchoring and securing scientific equipment, avoiding hard substrate areas (potential abalone habitat).
- Securing NOAA authorization for any uncrewed aerial systems.
- Where direct take is involved, such as in whale-tagging operations, ensure that appropriate permits have been obtained from NOAA Fisheries or USFWS pursuant to ESA and MMPA.

Future proposed NOAA field actions would be subject to the NEPA and environmental compliance process at the time they are undertaken, including any

applicable NEPA reviews and statutory consultations (and any additional mitigation measures arising out of those consultations, as applicable).

Additionally, future development and/or federal agency activities stemming from the proposed management plan with the with the potential to affect resources within the state coastal zone would be subject to separate coastal development permit and/or federal consistency review by the Commission.

The combination of proposed protective regulations and management plan goals and actions described above would enhance marine resources and help sustain biological productivity and optimum populations of marine organisms within the designated Sanctuary area. Moreover, the protected pelagic and seafloor habitats contained within the Sanctuary will provide refugia for marine organisms, sustaining and enhancing populations in surrounding, less protected areas.

### **Water Quality**

The discharge of liquid (e.g., sewage, vessel wash down, bilge water, graywater, oil, hazardous materials) and solid wastes (debris) from vessels in the proposed Sanctuary has the potential to negatively affect both biological resources and water quality inside the Sanctuary as well as in surrounding waters outside of the Sanctuary's borders. Potential impacts from vessel discharges include release of invasive species and parasites in ballast water and untreated sewage, eutrophication and promotion of plankton blooms from nutrient laden discharges and release of harmful chemicals, paints, oils and non-biodegradable pollutants in deck wash down water.

Several of the proposed Sanctuary regulations, including prohibitions or restrictions on new oil and gas exploration, development and production, discharges from cruise ships and other sources within or entering the Sanctuary, vessel abandonment, and the introduction or release of non-native, introduced species, would increase water quality protections in the Sanctuary. As stated in NOAA's DEIS, "[t]his would reduce the amount of discharges from vessels, new oil and gas facilities, or other activities occurring in the proposed sanctuary boundaries, providing **direct and indirect, long-term, moderate beneficial impacts** on water quality. These benefits would be both **localized and extend beyond the proposed boundaries**, to the extent that such prevented discharges and deposits could have been carried by currents, animals, vessels, etc. outside those proposed boundaries and because NOAA would also regulate discharges outside the sanctuary that enter the sanctuary and injure sanctuary resources" [emphasis in original].

Similarly, NOAA's consistency determination states:

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.

The proposed action aims to enhance protection for habitats, the ecosystem, and various organisms within the Sanctuary. By prohibiting vessel abandonment in the Sanctuary, vessel owners would be incentivized to remove their vessels before they break apart, sink, or spill their contents, consistent with the requirement of Coastal Act Section 30231 to maintain, and where feasible restore, optimum populations of marine organisms for the protection of human health. This proactive approach complies with Section 30231 as it would minimize adverse effects of harmful discharges into surrounding coastal waters. Consequently, the proposed action directly and indirectly benefits biological resources by preventing vessels from becoming threats to the marine environment consistent with Section 30230 and 30231 of the Coastal Act.

### **Conclusion**

Although the five Sanctuary boundary alternatives (and two sub-alternatives) differ in their geographic extent (Section B, above), and thus in the specific ocean and seafloor areas they would protect, the specific protections and resource benefits of Sanctuary designation – flowing from implementation of the proposed regulations and management plan – would be substantially similar regardless of the boundary alternative selected, and in all cases, adverse resource impacts stemming from the Sanctuary designation would be avoided. Larger boundary alternatives, such as the IBA and Alternative 1, would protect more extensive areas of pelagic and seafloor habitat, and are thus likely to provide greater benefits to marine resources. However, under all boundary alternatives, the vast area that would be protected is expected to result in significant enhancement of the marine biological resources protected by Sections 30230 and 30231.

Based on the above analysis, the Commission finds that the proposed Sanctuary designation, management plan and regulations will substantially enhance water quality and marine resource protection within the Sanctuary area and will eliminate or reduce the occurrence of a number of activities that would be inconsistent with the goals and objectives of the CHNMS. The Commission therefore agrees with NOAA that the regulatory additions and revisions described above are consistent with the marine resource and water quality policies of the CCMP (Coastal Act Sections 30230 and 30231).

## F. OIL SPILLS

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, 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.

As stated by NOAA in its consistency determination,

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.

The beneficial effects of the restrictions on new oil and gas development and pollutant discharges contained in the proposed regulations would apply to each of the five boundary alternatives and two sub-alternatives presented in NOAA's consistency determination.

The Commission supports NOAA's analysis and determination that the proposed Sanctuary designation and management plan would be consistent with Section 30232 of the California Coastal Management Program.

## **G. DREDGING AND FILLING OF COASTAL WATERS**

Section 30233 of the Coastal Act states, in part:

(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 such purposes to appropriate beaches or into suitable shore current systems.

As stated by NOAA in its consistency determination:

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.

Importantly, the proposed regulations allow for discretionary permitting of the beneficial reuse of dredged sediment within the Sanctuary – including, for example, the nearshore or surf zone placement of sand for beach nourishment or habitat restoration – and thus is consistent with the provisions of Section 30233(b) encouraging the use of suitable sandy dredged sediments for the replenishment of beaches and/or the nearshore littoral cell. Should any future dredge or fill project come forward within the Sanctuary boundaries, that would be reviewed for consistency with Section 30233(a) as a separate action by the Commission.

The Commission supports NOAA's analysis and determination that the proposed Sanctuary designation, management plan, and regulations would be consistent with Section 30233 of the California Coastal Management Program. Further, this finding of consistency applies to each of the boundary alternatives presented in NOAA's consistency determination.

## **H. PUBLIC ACCESS AND RECREATION**

Section 30210 of the Coastal Act states:

In carrying out the requirements 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.

Section 30211 of the Coastal Act states:

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.

Section 30214 of the Coastal Act states, in relevant part:

(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...

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Depending on the boundary alternative selected, the proposed Sanctuary would extend 100 to 150 miles along the coast of San Luis Obispo and Santa Barbara counties, an area that is heavily used for coastal access and water-oriented recreation. As summarized in the Draft EIS, the coast adjacent to the Sanctuary supports 13 state parks and beaches, 11 public boat launches, and numerous local parks, beaches, and accessways that would provide public access to the sanctuary. NOAA's consistency determination asserts that the Sanctuary designation, draft management plan and proposed regulations are fully consistent with the coastal access and recreation policies of the CCMP and would avoid all adverse effects to existing or future public access and recreation:

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 ...

...

NOAA's proposed sanctuary regulations would not prohibit public access and therefore designating the sanctuary would not regulate public access in any circumstance.

...

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.

Rather, NOAA proposes to use the Sanctuary designation to enhance public understanding and appreciation of the natural and cultural resources within the Sanctuary area through education, outreach and other initiatives included in the draft management plan. As stated in the consistency determination:

[s]ignage 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) ...

... 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).

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.

Moreover, the proposed regulations restricting marine discharges (i.e., of untreated sewage and graywater, oil/hydrocarbons and debris) within or into the Sanctuary would improve water quality and directly benefit water-oriented recreational activities.

As described above, the proposed Sanctuary designation would not interfere with or restrict coastal public access and recreation, and the draft management plan proposes multiple programs to promote public education and appreciation of the Sanctuary's resources. Many of the recreational activities occurring within the Sanctuary's boundaries are focused on the Sanctuary's marine resources and wildlife (e.g., whale watching, birding, wildlife viewing) and would be likely to benefit from the increased numbers, diversity and health of marine resources that would result from the proposed regulations aimed at ecosystem and wildlife protection.

As described in **Section B**, above, the five Sanctuary boundary alternatives (and two sub-alternatives) differ in their geographic extent, and thus in the specific ocean and seafloor areas they would protect. However, the specific protections and resource benefits of designation – flowing from implementation of the proposed regulations and management plan – would be substantially similar regardless of the boundary alternative selected, and in all cases, adverse impacts to public access and recreation stemming from the Sanctuary designation would be avoided. While the larger boundary alternatives (e.g., IBA, Alt. 1) would likely yield greater benefits for public access and recreation, all of the considered alternatives would improve public access and recreational opportunities along the central coast.

For these reasons, the Commission supports NOAA's analysis and determination that the proposed Sanctuary designation and management plan would be consistent with the public access and recreation policies of the California Coastal Management Program (Sections 30210, 30211, 30214, and 30220 of the Coastal Act).

## I. FISHING

Section 30234.5 of the Coastal Act states:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

Commercial and recreational fishing are important components of the regional economy in San Luis Obispo and Santa Barbara counties. As detailed in NOAA's DEIS, between 2000 and 2020 approximately 118 million pounds of fish were harvested from the ocean area spanned by the Initial Boundary Alternative and Sub-alternative 5a, with a value of approximately \$92 million. Nonetheless, fisheries in this area – particularly the groundfish fishery – have historically experienced overfishing and population declines, and are currently subject to fishing regulations aimed at rebuilding fish stocks and protecting essential fish habitat (EFH).<sup>13</sup> The proposed Sanctuary would contain all or part of four groundfish EFH Conservation Areas -- Point Conception, East San Lucia Bank Big Sur Coast/Port San Luis and Southern California – protecting rocky reef and other sensitive benthic habitat. The Sanctuary would also encompass all or part of seven state Marine Protected Areas (MPAs) established in part as refugia to help rebuild and maintain healthy populations of fish species. Strategy CC-1 in the Climate Change Action Plan has a goal to ensure climate resilience of Sanctuary resources and communities via management strategies aimed at increasing future climate resilience while simultaneously incorporating input from Indigenous communities. Addressing climate change impacts will be beneficial for fisheries management along the California current where poleward fishing fleets may be unequally affected by climate change (Samhuri et al. 2024).

In its consistency determination, NOAA indicates that that the Sanctuary designation and implementation of the management plan and Proposed Rule would not result in any new, direct regulation of fishing activities, and concludes that the proposed changes would have a largely beneficial impact on fishing and will therefore be consistent with the fishing policies of the CCMP:

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).

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<sup>13</sup>The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq.) defines and designates essential fish habitat (EFH) as those waters and substrate necessary for fish any aspect of the fish life cycle including spawning, foraging, growth to maturity, breeding.

The Code of Federal Regulations states that, “lawful fishing means fishing authorized by a tribal, State or Federal entity with jurisdiction over the activity” (15 CFR Part 922 Subpart A). As discussed in the Draft EIS, implementation of the management plan and associated “action plans” would directly and indirectly enhance commercial and recreational fisheries:

- Blue Economy Action Plan: e.g., enhance visitation to local restaurants serving locally harvested fish.
- Climate Change Action Plan: e.g., enhance ecosystem function and resilience for fish resources.
- Water Quality Action Plan: e.g., promote healthy water quality conditions of the proposed sanctuary thereby enhancing healthy fish resources.
- Resource Protection Action Plan: e.g., collaborations on fishery management issues in support of sustainable fisheries and enhanced enforcement through partnerships.
- Research and Monitoring Action Plan: e.g., enhanced management of fishery resources by fishery managers through collaborative research and monitoring activities.
- Education and Research Action Plan: e.g., increased stewardship and heightened awareness of fishery resources.

Similarly, the proposed Sanctuary regulations are expected to benefit commercial and recreational fisheries in several ways, including through the prohibition or restriction of certain activities within the Sanctuary, including: (a) discharges of pollutants (sewage, vessel wash down, oily bilge water, graywater, etc.); (b) new oil, gas or mineral exploration, development or production; (c) non-fishing activities causing benthic disturbance; (d) vessel desertion/abandonment; and (e) introduction of non-native/introduced species (other than striped bass). The proposed regulations are anticipated to improve water quality, fish habitats, and ecosystem health, directly and indirectly benefiting fish stocks and thus fishing activities.

Although the proposed regulations would not directly regulate fishing activities, the proposed regulations could have minor adverse effects on lawful commercial fishing, based on other proposed prohibitions that could incidentally apply to fishing activities. For example, the prohibition on discharges would require vessels within the Sanctuary to store sewage and other waste for disposal onshore or outside Sanctuary boundaries, which may lead to increased costs for fishing operations. However, NOAA considers any adverse impacts from the proposed regulations to be minor and outweighed by the benefits discussed above.

As described in **Section B**, above, the five Sanctuary boundary alternatives (and two sub-alternatives) differ in their geographic extent, and thus in the specific ocean and seafloor areas they would protect. While the larger boundary alternatives (e.g., IBA, Alt. 1) would provide more extensive protection for commercial and recreational fish species, each of the alternatives would significantly enhance existing levels of

protection. The specific resource protections and benefits to fishing of Sanctuary designation – flowing from implementation of the proposed regulations and management plan – would be substantially similar regardless of the boundary alternative selected, and in all cases, the Sanctuary designation would recognize and protect the economic, commercial and recreational importance of fishing.

In conclusion, neither the proposed Sanctuary designation nor the proposed regulations prohibit or significantly limit commercial or recreational fishing activity within the Sanctuary. Instead, the Sanctuary and its proposed regulatory language would establish that lawful fishing activity is exempt from regulation (as described under the regulations for seabed and benthic habitat protection), include provisions that enhance the quality of fishing activity (as described under the regulations on vessel discharges within the Sanctuary), support existing laws that regulate fishing (as described under the regulations on taking or possessing marine mammals, sea turtles or seabirds within the Sanctuary) or result in less than significant adverse impacts to commercial and recreational fishing (vessel discharge regulations). Based on these considerations, the Commission concurs with NOAA's determination that proposed Sanctuary designation, management plan and regulations are consistent with the commercial and recreational fishing policy of the CCMP (Section 30234.5 of the Coastal Act).

## V. APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

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