

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 922**

[Docket No. 240829–0230]

RIN 0648–BL31

**Chumash Heritage National Marine Sanctuary**

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA is designating Chumash Heritage National Marine Sanctuary (CHNMS) in the waters along and offshore of the coast of central California to recognize the national significance of the area's ecological, historical, archaeological, and cultural resources and to manage this special place as part of the National Marine Sanctuary System. The sanctuary boundary encompasses 4,543 square miles (mi<sup>2</sup>) (3,431 square nautical miles (nmi<sup>2</sup>)) of submerged lands and marine waters from approximately two miles southeast of the marina at Diablo Canyon Power Plant in San Luis Obispo County to Naples along the Gaviota Coast in Santa Barbara County. NOAA is establishing the terms of designation for CHNMS and the regulations to implement the national marine sanctuary designation. NOAA has also published a final environmental impact statement (final EIS), final management plan, and Record of Decision.

**DATES:** *Effective Date:* Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress, beginning on the date on which this Federal rulemaking is published, which is October 16, 2024. During that same review period, the Governor of the State of California may certify to the Secretary of Commerce that the designation or any of its terms are unacceptable, in which case the designation or the unacceptable term will not take effect in State waters of the sanctuary. The public can track days of Congressional session at the following website: <https://www.congress.gov/days-in-session>. NOAA will publish an announcement of the effective date of the final regulations in the **Federal Register**.

**ADDRESSES:** Copies of the final EIS and management plan described in this rule and the Record of Decision (ROD), and additional background materials are available at: <https://sanctuaries.noaa.gov/chumash-heritage/>.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****I. Introduction***A. Background*

The National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce (Secretary) to designate and protect as national marine sanctuaries areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or esthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to ONMS.

NOAA is designating CHNMS in the waters along and offshore of the coast of central California to recognize the national significance of the area's ecological, historical, archaeological, and cultural resources and to manage this special place as part of the National Marine Sanctuary System. The sanctuary boundary will encompass 4,543 mi<sup>2</sup> (3,431 nmi<sup>2</sup>) of submerged lands and marine waters from approximately two miles southeast of the Diablo Canyon marina in San Luis Obispo County to Naples along the Gaviota Coast in Santa Barbara County. This boundary reflects NOAA's Final Preferred Alternative, which is described in the final environmental impact statement (final EIS) as Alternative 4 (Combined Smallest) and Sub-Alternative 5b (Gaviota Coast Extension), plus a small area (151 mi<sup>2</sup>, 114 nmi<sup>2</sup>) in the center of the Santa Lucia Bank analyzed as part of the Initial Boundary Alternative, thereby creating a straight line across the northern section of the new sanctuary. NOAA has also included in the final management plan a framework to provide collaborative co-stewardship with the local Tribes and Indigenous communities<sup>1</sup> in this area for CHNMS.

<sup>1</sup> This rule uses "Tribes and Indigenous communities" and other related phrases to refer broadly to federally recognized Tribes, Native American Tribes that are not federally recognized, and other Indigenous groups and organizations. When appropriate to reference the federally recognized Tribe in this area, the Santa Ynez Band of Chumash Indians, the rule specifically names

The specific area being designated as a national marine sanctuary includes the coastline of central California from approximately two miles southeast of Diablo Canyon marina, south along the San Luis Obispo County coast and a portion of Santa Barbara County to approximately two miles south of Dos Pueblos Creek near the township of Naples along the Gaviota Coast. Roughly 116 miles of the mainland coast (132 miles if including the shoreline of offshore rocks and islands) are part of the sanctuary designation. The sanctuary's boundaries also include the State waters off the Gaviota coast, the offshore marine waters from the western end of Channel Islands National Marine Sanctuary (CINMS), and northwards, including about half of the Santa Lucia Bank, to approximately 55 miles west of the Santa Maria River mouth, and then east and then north to the point of origin at south of the Diablo Canyon marina. This area out to approximately 60 miles (51 nmi) from shore includes numerous offshore features such as the Santa Lucia Bank, portions of its escarpment, Rodriguez Seamount, Arguello Canyon, and other offshore features and resources. Coastal watersheds drain into this area via multiple outlets, including the Santa Maria and Santa Ynez river mouths and several other coastal streams and rivers. Strong coastal winds drive seasonal upwelling which fuels the area's high biological productivity, supporting dense aggregations of marine life. Specifically, winds offshore of Point Arguello/Point Conception initiate a powerful upwelling process that nourishes other nearby productive ecosystems, such as those located within CINMS. The presence of a biogeographic transition zone around Point Conception, where temperate waters from the north meet waters from the subtropics, creates an area of nationally-significant biodiversity in sea birds, marine mammals, invertebrates, and fishes.

For more than 10,000 years, the productive and diverse ecosystems in the region have been essential to the way of life of Indigenous Peoples in the region, in particular the Chumash, one of the few ocean-going bands among the First Peoples of the Pacific Coast. Tribal connections to the region include traditional and ancestral homelands, customary uses of marine resources for food and cultural connections, and

that Tribe. When appropriate to reference federally recognized Tribes more broadly, the EIS uses the terms "federally recognized Tribe(s)" or "federally recognized Tribal Nation(s)." As such, use of the term "Tribe" or "Tribal" is not intended to refer only to federally recognized Tribes unless otherwise specified.

stewardship of resources and ecosystems within ancestral waters. Coastal landscapes and seascapes, including viewsheds, are integral and sacred elements of Native American cultural connections to the region. Additionally, during the last glacial maximum, the region's coastline extended beyond the present-day coast to include now-submerged areas that were likely inhabited by ancestors of California Tribes before the last sea level rise. As ocean-going Indigenous peoples on the California coast, the Chumash traveled to sea, to the Channel Islands, and along the coast in traditional redwood plank canoes called "tomols." Coastal Chumash traditionally harvested an array of marine resources such as abalone and other shellfish, *Olivella* shells, fish, kelp and other seaweeds, and marine mammals. Today, Chumash Peoples undertake ocean voyages in tomol canoes to honor their ancestors' crossings to the offshore islands and to continue to honor ceremonial sites within their historic areas.

The marine environment of the sanctuary has provided and continues to provide a special sense of place to its changing coastal communities and visitors because of its historical, archaeological, cultural, aesthetic, and biological resources. The Indigenous peoples along this coast were the first people living in present-day California to have contact with Europeans when Spanish explorers arrived on the Pacific Coast in the mid-1500s. Subsequent waves of Spanish, Mexican, English, Russian, and American explorers and settlers traveled to this region over the next 300 years. The region was shaped by development of a mission system from San Diego to San Francisco, the California gold rush in the mid-1800s, ranching for cattle and the hide/tallow trade, military training and operations, a coastal and offshore oil boom, and, more recently, coastal and offshore renewable energy development. Maritime shipping has been prominent in this portion of California, with treacherous weather and currents leading to over 200 reported ship and aircraft wrecks; at least 20 prominent shipwrecks alone have been found in the area between Point Conception and Point Sal. Two shipwrecks that lie within the sanctuary—the *Yankee Blade* and the *McCulloch*—have been listed on the National Register of Historic Places; the *Montebello*, also on the National Register, lies to the north of the sanctuary's boundaries.

Coastal tourism, recreational activities, and commercial fishing are prominent components of the coastal and marine economy in this region,

particularly in San Luis Obispo County. Coastal and offshore energy and military activities are more prominent in the portion of this region along the Santa Barbara County coastline. Public access to the sanctuary, in particular through State and local parks, is available along the coastline of both counties, as well as from public harbors in Morro Bay, Port San Luis and Santa Barbara. Private land holdings in both counties and a large military base in Santa Barbara County limit access as well as human use and exploitation of natural habitats. Marine research is a small but growing sector of the ocean uses in this area.

#### B. Need for Action

The NMSA authorizes the Secretary to designate national marine sanctuaries to meet the purposes and policies of the NMSA, which are available at 16 U.S.C. 1431(b), including:

- To identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to manage these areas as the National Marine Sanctuary System;
- To provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;
- To facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;
- To develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American Tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas; and,
- To create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques.

The nationally significant natural resources, physical features and habitats, and the cultural and historical resources within the sanctuary warrant long-term protection and management to reduce threats that would adversely affect their historical, cultural, archaeological, ecological, recreational, and educational value. For example, many threatened or endangered species, such as blue whales, snowy plovers, black abalone, white sharks, and leatherback sea turtles, rely on habitats, physical features, or prey found in the

sanctuary. This area also contains hundreds of known or suspected shipwrecks of historical importance, including several on the National Register of Historic Places. Moreover, this region and its abundant resources have been home to coastal, ocean-going Indigenous Peoples for tens of thousands of years, and submerged village sites may exist along paleoshorelines in the submerged lands of the sanctuary. Various levels of human development and activity can cause harm to these natural, cultural and historical resources from: new offshore energy development; decommissioning and removal of coastal and offshore industrial facilities; sound, discharges and whale strikes from vessel traffic; plastics, marine debris and pollutants from coastal runoff; and most of all, acute and cumulative impacts of climate change.

Accordingly, NOAA is designating this area as a national marine sanctuary to: (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, the federally recognized Tribe, and other Indigenous organizations; and (6) develop and carry out an innovative collaborative management structure to involve Indigenous communities, including federally recognized Tribes, other Indigenous groups and organizations, and individuals and communities with knowledge of Indigenous culture, history, and environment, in important management programs and initiatives of the sanctuary.

Designating a new national marine sanctuary along the coast of central California allows NOAA to complement and supplement existing Federal and State resource management programs, policies, and regulations. For instance, discharge regulations to establish more comprehensive water quality protection across the geographic range for sanctuary protection under NMSA will bolster existing authorities under the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*). NOAA has well-regarded and

successful programs to conduct outreach, education, and communication that will recognize and promote this area's nationally-significant natural, historical, and cultural properties. NOAA can assist the region's scientific expertise and technological resources to enhance ongoing research, and provide a hub for the coordination of these activities. Through its focus on various initiatives benefiting the marine and coastal economy, NOAA's designation of the area as a national marine sanctuary enhances and facilitates public stewardship of natural, historical, and cultural resources. Lastly, designating this national marine sanctuary provides expanded conservation of key resources within the California Current Large Marine Ecosystem, and creates a collaborative framework to involve Indigenous communities in region-wide management.

### C. Designation Process

#### 1. Notice of Intent To Designate a National Marine Sanctuary

In July 2015, a broad community consortium led by the Northern Chumash Tribal Council submitted a nomination through the Sanctuary Nomination Process. The nomination identified opportunities for NOAA to expand upon existing local and State efforts to study, interpret, and manage the area's unique cultural and biological resources. The nomination also highlighted the maritime history and cultural heritage of Chumash Peoples, who, along with other Indigenous communities, have deep cultural connections to this area of central California. NOAA completed its review of the nomination and, on October 5, 2015, added the area to the inventory of successful nominations eligible for designation. All nominations submitted to NOAA can be found at: <https://www.nominate.noaa.gov/nominations>.

On November 10, 2021, NOAA began the sanctuary designation process for the proposed CHNMS by publishing a notice of intent (86 FR 62512) to prepare a draft EIS as well as other pertinent designation materials such as a draft management plan, terms of designation, and a proposed rule, as required by NMSA and the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). The notice of intent also announced NOAA's intent to fulfill its responsibilities under the requirements of the National Historic Preservation Act (NHPA; 54 U.S.C. 300101 *et seq.*) and Executive Order 13175.

Following the notice of intent, NOAA conducted three virtual public meetings,

hearing oral comments from 100 participants, and received thousands of written comments during an 83-day public comment period. The majority of comments supported the goals of sanctuary designation, including protecting the cultural heritage of Chumash Tribal communities and protecting the coastal California ecosystem's health and resilience. Many commenters also noted the importance of managing the area to promote recreation and tourism to support the local economy, to foster education and research programs, and to establish a shared management approach with Indigenous communities. Commenters also voiced concerns about overlapping existing and potential uses of the area such as fishing and offshore energy development. Overall, comments covered a diversity of other topics including views on: the proposed boundary and name for the proposed sanctuary; alternatives to consider for the boundary and name for the proposed sanctuary; activities that should be regulated; what non-regulatory programs the proposed sanctuary should have; and different ways to structure collaborative or co-management with Native American Tribes. More detail about the scoping comments is contained in the final EIS, section 3.11 and Appendix B.

#### 2. Public Comment on Draft Designation Materials

After the close of the public scoping process, NOAA engaged in an 18-month process to evaluate the comments received; to determine which activities might require regulations, which should best be addressed through non-regulatory actions of the management plan, and which warranted no action; and to assess the potential environmental impacts of sanctuary designation on the natural and human environment. NOAA held public meetings and workshops to gain information on certain areas, such as research and monitoring, wildlife disturbance, recreation and tourism, education, and water quality. NOAA held formal government-to-government consultation meetings with the one federally recognized Tribe in the region, the Santa Ynez Band of Chumash Indians (SYBCI), and also held engagement meetings with other non-federally recognized Tribes and Indigenous organizations in the region. Three documents were released for public comment on August 25, 2023—

a draft management plan,<sup>2</sup> a proposed rule with terms of designation and proposed regulations (88 FR 58123), and a draft environmental impact statement.<sup>3</sup> The Department of Defense (DoD), the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE) and SYBCI served as cooperating agencies in reviewing and assisting with their expertise in development of the draft EIS. NOAA held three public workshops in September 2023 (two in-person and one virtual) to present the recommended actions, explain its analysis, and answer questions, and it held three public comment meetings in September and October 2023 (two in-person and one virtual) to receive oral public comments on the draft designation materials. The public comment period closed on October 25, 2023; comments were received orally at public meetings, in writing, via email, and through the comment portal [regulations.gov](https://www.regulations.gov) (docket #NOAA-NOS-2021-0080). On request, NOAA also conducted meetings with several stakeholder groups following the close of the public comment period for the express and limited purpose of receiving clarifications, primarily on technical issues, regarding the public comments submitted by the groups. Meeting summaries are available on the public rulemaking docket at [regulations.gov](https://www.regulations.gov) (docket #NOAA-NOS-2021-0080).

In total, NOAA received 2,292 separate oral and written public comment submissions, that totaled more than 110,500 comments including campaign letters and petition signatures. NOAA reviewed all comments, organizing them into nearly 500 separate, substantive issues that each received a written response (see Appendix A of the final EIS, Response to Comments and section V of this final rule). The comments and NOAA's responses to those comments have guided development of the final terms of designation and regulations as outlined in this final rule, the final management plan, and the final EIS. Each of those documents are outlined in sections below, including a discussion of the Final Preferred Alternative.

#### 3. Development of Terms of Designation and Regulations

Section 304(a)(4) of the NMSA requires that the terms of designation

<sup>2</sup> <https://nms-sanctuaries.blob.core.windows.net/sanctuaries-prod/media/chumash/2023-proposed-chumash-heritage-nms-draft-management-plan.pdf>.

<sup>3</sup> <https://nms-sanctuaries.blob.core.windows.net/sanctuaries-prod/media/chumash/2023-proposed-chumash-heritage-nms-deis.pdf>.

include the geographic area included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities that would be subject to regulation by the Secretary 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.

The purpose and need for the sanctuary provide the overarching basis for developing the regulations. NOAA developed this rulemaking and the sanctuary terms of designation based on information received during public scoping comments, cooperating agency review, and government-to-government consultation with Tribal Nations under Executive Order 13175, as well as feedback from interagency coordination, comments received through the public comment process on the draft designation materials, from analysis of issues and potential impacts as explained in the final EIS, and internal staff analysis and expertise.

Comments from the scoping and the public review processes from Tribal representatives, representatives of other Indigenous groups, governmental agencies, users such as the fishing industry and offshore wind energy, telecommunications and oil and gas industries, other interested organizations, and the public addressed the need for regulations and exemptions for certain activities. NOAA consulted with the Pacific Fishery Management Council as required under NMSA section 304(a)(5). NOAA also considered existing regulations for other west coast national marine sanctuaries, including Monterey Bay, Greater Farallones, Channel Islands, and Olympic Coast national marine sanctuaries, and developed terms of designation and a set of regulations that are generally consistent with other sanctuary provisions in similar resource areas. In developing the regulations, NOAA evaluated resource sensitivity, industry practices, and feasibility of implementing certain regulations, to balance resource protection regulations with existing and future compatible activities that may occur in the sanctuary.

Following publication of the proposed rule, in consideration of public comments and further review, NOAA made changes to the terms of designation and the regulations which are described in detail in section III of this final rule. NOAA provides a detailed discussion of the final regulations in section IV, subsection A

through I, of this rule. The text of the final regulations are presented at the end of this rule.

#### 4. Development of Final Management Plan and Framework for Tribal Collaborative Co-Stewardship

When designating a national marine sanctuary, NOAA also develops and presents a management plan that describes the management activities and initiatives that it proposes to conduct. The final management plan for the designation of CHNMS describes actions that NOAA will take to manage the sanctuary, summarized in 12 action plans, such as research and monitoring, education and outreach, sanctuary resource protection, and sanctuary operations, as well as practical programs to address certain issue areas, such as climate change, offshore energy, water quality, and wildlife disturbance. NOAA has developed the final management plan for the Final Preferred Alternative it is designating.

In addition to engaging in government-to-government consultation with the federally recognized SYBCI, as described in section VI Classification below, NOAA has conducted meetings with non-federally recognized Tribes and Indigenous organizations along the central California coast, including the Northern Chumash Tribal Council, yak tityu tityu yak tiłhini Northern Chumash Tribe, Coastal Band of the Chumash Nation, Xolon Salinan Tribe, Salinan Tribe of Monterey and San Luis Obispo Counties, Wishtoyo Chumash Foundation, and Barbareño/Ventureño Band of Mission Indians. After the draft designation materials were released, NOAA also met with many of these same organizations as part of consultations conducted under Section 106 of the National Historic Preservation Act, in which some of these organizations participated as additional consulting parties. Close, deliberate collaboration between NOAA and these Indigenous organizations has been an essential element of this sanctuary designation process. NOAA has incorporated input from federally recognized Indian Tribes and all interested Indigenous community entities throughout the sanctuary designation process, as well as toward sanctuary management after designation. The final management plan includes an Indigenous Cultural Heritage Action Plan that describes how sanctuary management would involve Tribal and Indigenous perspectives and collaboration in a number of specific sanctuary management actions.

Additionally, NOAA is including in the final management plan a framework

for collaborative co-stewardship of the new sanctuary with federally recognized Native American Tribes and non-federally recognized Indigenous groups. A detailed explanation of that framework and an outline of opportunities for Tribal and Indigenous community collaboration in management of the sanctuary are found in the introduction to the final management plan. In summary, the framework, revised based on the public comments, has built upon extensive input from representatives from the SYBCI and non-federally recognized Indigenous organizations in this coastal area. NOAA envisions relying on government-to-government consultation with federally recognized Tribes; an Intergovernmental Policy Council involving federally recognized Tribes and the State of California; and a Sanctuary Advisory Council (to be established after designation) that has one or more voting seats for federally recognized Tribes and one or more voting seats to represent the knowledge, history, and culture of Indigenous communities more broadly. NOAA also intends to work with the Sanctuary Advisory Council, after sanctuary designation, on the establishment of an Indigenous Cultures Advisory Panel as a working group of the Sanctuary Advisory Council. The Indigenous Cultures Advisory Panel will provide advice to the Sanctuary Advisory Council, with coordination and communication with other groups as appropriate, about cultural issues important to these coastal Tribes and Indigenous groups. NOAA also envisions a role for one or more non-profit foundations to support joint projects between NOAA and federally recognized Tribes and/or non-federally recognized Indigenous groups.

The following substantive changes were made to the draft management plan, as reflected in the final management plan and described in more detail in EIS Section 3.2.3:

- The Framework for Indigenous Collaborative Co-Stewardship in the Introduction was revised to clarify collaborative management roles and responsibilities;
- Nearly all action plans were enhanced with new or clarified activities, or potential partners, based on public comments; and
- A Boundary Adjustment Action Plan was added that calls for a process to consider, analyze, and support future decision-making on possible expansion of the boundary of the sanctuary, or expansion of Monterey Bay National Marine Sanctuary (MBNMS), or designation of a new sanctuary, to

protect resources to the north (up to the MBNMS boundary), offshore (west of CHNMS), and within Morro Bay Estuary. Strategy RP-7 regarding consideration of expanded conservation in Morro Bay Estuary, was removed from the Resource Protection Action Plan and integrated into the Boundary Adjustment Action Plan.

Implementation of this action plan would not in and of itself result in an expansion of the sanctuary boundaries, but rather would set the stage for NOAA to gather information to ultimately decide if pursuing such a change is warranted. Any subsequent boundary adjustments would be guided by Section 304 of the NMSA and would require a separate public process under the NMSA and NEPA.

#### 5. Final Environmental Impact Statement

In accordance with NEPA (42 U.S.C. 4321 *et seq.*) and the NMSA (16 U.S.C. 1434), NOAA has released a final EIS for the national marine sanctuary designation in advance of the publication of this final rule. The final EIS (<https://sanctuaries.noaa.gov/chumash-heritage>) has been revised based on public comment and interagency consultation. The final EIS describes the purpose and need for the proposed action of designating a national marine sanctuary in the coastal and offshore waters of central California—the purpose of this regulatory action—and evaluates the potential environmental consequences of the designation of a national marine sanctuary; identifies a range of alternatives, including the preferred alternative; includes a comparison of the beneficial and adverse impacts among alternatives; and provides an assessment of resources and uses in the area.

The final EIS analyzed the Initial Boundary Alternative (7,573 mi<sup>2</sup>; 5,718 nmi<sup>2</sup>; 152 miles of mainland coast), which generally represented the boundary identified in the original nomination and in the notice of intent (86 FR 62512) but with some adjustments described in section 3.2 of the final EIS, and four alternatives that are smaller than the Initial Boundary Alternative, including:

- Alternative 1, Bank to Coast, which focused management from the Santa Lucia Bank to the coast (6,098 mi<sup>2</sup>; 4,605 nmi<sup>2</sup>; 152 miles of mainland coast);
- Alternative 2, Cropped Bank to Coast (5,553 mi<sup>2</sup>; 4,194 nmi<sup>2</sup>; 115 miles of mainland coast), largely copied Alternative 1, however it excluded the waters from Cambria to Hazard Canyon

Reef, which would be the most direct path to onshore points of interconnection at Morro Bay for the installation of subsea electrical transmission lines from the Morro Bay WEA;

- Alternative 3, Diablo to Gaviota Creek, excluded more (relative to Alternative 2) northern waters that BOEM had identified for potential offshore wind development by removing the Diablo Canyon Call Area from the boundaries of the proposed sanctuary, and focused management on the area from the Diablo Canyon Call Area and nuclear power plant south to Gaviota Creek (5,804 mi<sup>2</sup>; 4,382 nmi<sup>2</sup>; 98 miles of mainland coast), but it included offshore waters west of the Santa Lucia Bank (based on public comment, the boundary for Alternative 3 was adjusted slightly smaller nearshore, south of Diablo Canyon Power Plant (DCPP), to ensure its original intent could be achieved; see Section III.B for more information);

- Alternative 4, Combined Smallest, excluded both the western and northern offshore areas focusing management on the smallest area (4,328 mi<sup>2</sup>; 3,268 nmi<sup>2</sup>; 98 miles of mainland coast) (based on public comment, the boundary for Alternative 4 was adjusted slightly smaller nearshore, south of DCPP, to ensure its original intent could be achieved; see Section III.B for more information).

The final EIS also analyzed two small expansion areas:

- Sub-Alternative 5a, Morro Bay Estuary (2.5 mi<sup>2</sup>; 1.9 nmi<sup>2</sup>; 11 miles of mainland coast), would include the tidally-influenced portions of Morro Bay Estuary and could be added to the Initial Boundary Alternative or Alternative 1 (but would not be added to alternatives 2–4);
- Sub-Alternative 5b, Gaviota Coast Extension (64 mi<sup>2</sup>; 48 nmi<sup>2</sup>; 18 miles of mainland coast), would include in the proposed sanctuary the State waters from Gaviota Creek to the township of Naples, a potential addition to any of the action alternatives.

The final EIS also included a “No Action Alternative” in which NOAA would not designate the area as a national marine sanctuary. NOAA also identified a Final Preferred Alternative in the final EIS (see Section 5.4.9 in the final EIS and subsection 6 below). NOAA indicated in the proposed rule and the draft EIS (*e.g.*, sections 3.1.1 and 3.9.2) that, based on public comments received on the draft designation documents and NOAA’s experience administering the National Marine Sanctuary System, pursuant to NEPA and the Administrative Procedure Act,

NOAA may choose to select a new alternative in the final rule and final EIS that is within the geographic and regulatory scope of these alternatives considered in the draft EIS, and that is a logical outgrowth of the proposed rule.

The final EIS evaluated and considered the potential impacts of implementing the final regulations and conducting the various management programs and initiatives described in the final management plan.

The final EIS focused on eight issue areas: physical resources; biological resources; commercial fishing and aquaculture; cultural heritage and maritime heritage resources; socioeconomics, human uses, and environmental justice; offshore energy; marine transportation; and homeland security and Department of Defense (DoD) activities.

NOAA has provided a section in the final EIS (see Section 1.5) to outline the substantive changes it made between the draft and the final EIS. A brief summary of some of those changes include:

- Changing the preferred alternative;
- Minor changes to the boundary for Alternative 3 and Alternative 4 south of Diablo Canyon Nuclear Power Plant to ensure the intent behind those alternatives can be met;
- Excluding the small harbor area at Vandenberg Space Force Base;
- Clarifying regulations to reflect that oil and gas leaseholders are excepted from certain regulations, regardless of whether they are producing oil and gas at the time of sanctuary designation, to align with the scope of oil and gas rights under existing leases or lease units;
- Changes to streamline and clarify the certification process;
- Pulling together into one section in Chapter 4.6 the information about submarine fiber optic cables that had been distributed throughout the draft EIS; and
- Changes to various appendices to the EIS, including the addition of Appendix A, Response to Comments.

#### 6. Final Preferred Alternative

In accordance with NEPA (42 U.S.C. 4321 *et seq.*) and based on public comments on the draft designation materials and further review, NOAA has revised its Agency-Preferred Alternative from the draft EIS and has selected its Final Preferred Alternative as Alternative 4, plus Sub-Alternative 5b, plus a small area analyzed as part of the Initial Boundary Alternative in the center of the Santa Lucia Bank, thereby creating a straight line across the northern section of the new sanctuary (see Figure 5–1a in the final EIS). The

Final Preferred Alternative covers 4,543 mi<sup>2</sup> of coastal and ocean waters, and spans 116 miles of California coast off the counties of San Luis Obispo and Santa Barbara. The sanctuary spans a maximum distance of 60 miles from shore, and reaches a maximum depth of 11,580 feet below sea level. Describing the boundary in a clockwise fashion, the Final Preferred Alternative starts along the coast two miles southeast of the breakwater for the Diablo Canyon Power Plant marina, then runs south along the mean high water line through San Luis Obispo County and northern and western Santa Barbara County to the eastern end of the Naples Marine Conservation Area on the Gaviota Coast. Along this stretch, the harbor areas at Port San Luis and Vandenberg Space Force Base near Point Arguello are excluded from the sanctuary. Offshore, the boundary extends from the western edge of Channel Islands National Marine Sanctuary, around important features like Rodriguez Seamount, most of Arguello Canyon, and about half of the Santa Lucia Bank and part of its escarpment. At a point approximately 55 miles offshore of the Santa Maria River mouth, the boundary extends east 43 miles, then due north for 12 miles to the point of origin south of the Diablo Canyon Power Plant marina.

NOAA has evaluated the adverse and beneficial impacts from the Initial Boundary Alternative, as well as the various alternatives that considered smaller and larger boundaries. This evaluation has included careful review of over 110,000 comments submitted on the draft designation materials (see final EIS Appendix A, Response to Comments). The Final Preferred Alternative provides significant beneficial impacts on cultural heritage and maritime heritage resources through inclusion of Sub-Alternative 5b along the Gaviota Coast. It provides other beneficial but less-than-significant impacts in nearly all resource areas, such as: physical resources; biological resources; commercial fishing and aquaculture; cultural heritage and maritime heritage resources; socioeconomic, human uses, and environmental justice; and DoD and homeland security activities, largely through sanctuary regulations that would limit the scale and scope of offshore development activities and other human uses that could harm natural, historical, and cultural resources. NOAA has considered the adverse impacts of the Final Preferred Alternative and finds them to be an acceptable balance between resource use and conservation of sanctuary

resources. This alternative has no significant adverse impacts and the least amount of adverse but less-than-significant impacts on development of offshore renewable energy, and telecommunications and submarine fiber optic cables, as well as on marine transportation (compared to the Initial Boundary Alternative and all other action alternatives).

NOAA has reconsidered offshore wind industry concerns regarding the sanctuary in the particular context of the Morro Bay leases, in conjunction with existing infrastructure and competing uses of the proposed sanctuary area (see Figure 5–2 in the final EIS), and in light of the purposes and policies of the NMSA and Administration priorities. Adopting the Final Preferred Alternative allows offshore wind developers to complete siting and permitting for subsea electrical transmission cables from the three Morro Bay offshore wind leases to landing sites at both Morro Bay and Diablo Canyon without having to route cables through the new sanctuary. The Final Preferred Alternative is the most manageable boundary at this time and will allow NOAA to focus on numerous core activities outlined in the management plan without the need to focus resources on myriad permitting issues related to offshore wind development. This avoids any perception of risk that a sanctuary permit review of proposed cables could delay or otherwise interfere with development of these renewable energy projects. Additionally, accommodating cable routes to landing sites at both Morro Bay and Diablo Canyon would allow space for the cable routes to make siting adjustments (“micro siting”) to avoid sensitive resources or certain seafloor features or hazards. See also the discussion in subsection B to this section of the final rule and response to Comment BO–1 in Appendix A for additional explanation of NOAA’s identification of the Final Preferred Alternative.

As explained further in subsection III.F of the final rule, NOAA anticipates initiating a process, “Phase 2,” to consider establishing additional sanctuary protection 5–7 years after designation consistent with NOAA’s timeline for the first management plan review process, which is also a reasonable period of time for developers to obtain permits and easements from other agencies for subsea electrical transmission cables. This Phase 2 process would commence no later than January 2032 and would inform NOAA’s consideration of future options for sanctuary protection of this area (see

also the Boundary Adjustment Action Plan in the final management plan). Any future sanctuary designation or expansion could then recognize any existing cables or other permitted structures as existing structures via a sanctuary certification process.

Including the Gaviota Coast extension within the Final Preferred Alternative would provide additional protection of important coastal resources. It would include waters off three popular State beaches and parks—Gaviota, Refugio, and El Capitán—and would ensure that Kashtayit and Naples State Marine Conservation Areas are entirely within the sanctuary. It would include beaches, kelp forests, and rocky and soft substrate reefs. As discussed in Section 4.5 of the final EIS, that portion of the Gaviota Coast was home to numerous, large Chumash villages at the time of European first contact. Ensuring conservation of these resources is an important benefit to including this sub-alternative in the Final Preferred Alternative. The continued presence and use of offshore structures and development in this area, such as pipelines and cables related to the Santa Ynez Unit oil and gas development, could be accommodated via the certification process included in the regulations. Repair, replacement, or removal of the structures necessary for existing oil and gas production could be considered via an ONMS authorization process.

In identifying the Final Preferred Alternative, NOAA considered which boundary alternative would be most manageable while simultaneously maximizing the principal purposes for the proposed sanctuary. The Final Agency-Preferred Alternative includes numerous coastal, nearshore, and offshore living resources and habitats of national significance, including a large portion of the Santa Lucia Bank, most of Arguello Canyon and all of the Rodriguez Seamount. The Final Preferred Alternative allows NOAA to focus its management on some of the key areas historically important to the SYBCI and other Chumash bands and natural resources important to their heritage.

The draft EIS and the proposed rule provided notice to the public that, based on public comments received on the draft designation materials and NOAA’s experience administering the national marine sanctuary program, pursuant to NEPA and the Administrative Procedure Act, NOAA may choose to identify an alternative in the final rule and final EIS that is within the geographic and regulatory scope of the alternatives considered in the draft EIS and that is

a logical outgrowth of the proposed rule. Alternative 4 and Sub-Alternative 5b, plus the small additional area in the center of the Santa Lucia Bank (and part of the Initial Boundary Alternative), and impacts associated with these alternatives, are thoroughly discussed in the draft EIS and summarized in the proposed rule. NOAA received public comments on these Alternatives that it carefully considered in identifying the Final Preferred Alternative.

## II. Terms of Designation for Chumash Heritage National Marine Sanctuary

Section 304(a)(4) of NMSA as amended, 16 U.S.C. 1434(a)(4), requires that the terms of designation be described at the time a new sanctuary is designated, including the geographic area to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value, and the types of activities that will be subject to regulation to protect those characteristics.

The following represents the terms of designation:

### Preamble

Under the authority of the NMSA, approximately 4,500 mi<sup>2</sup> (3,400 nmi<sup>2</sup>) of the coast of central California's San Luis Obispo and Santa Barbara counties are hereby designated as a National Marine Sanctuary for the purpose of providing long-term protection and management of the ecological, cultural, and historical resources and the conservation, recreational, scientific, educational, and aesthetic qualities of the area.

### Article I: Effect of Designation

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the ecological, cultural, and historical resources and the conservation, recreational, scientific, educational, and aesthetic qualities of Chumash Heritage National Marine Sanctuary (the "Sanctuary"). Section 1 of article IV of these terms of designation lists those activities that may have to be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. Listing an activity does not necessarily mean that it will be regulated. However, if an activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of article IV is amended by the same procedures by which the original Sanctuary designation was made.

### Article II: Description of the Area

Chumash Heritage National Marine Sanctuary covers approximately 4,500 mi<sup>2</sup> (3,400 nmi<sup>2</sup>) in central California. The Sanctuary's shoreline is approximately 116 miles long along the mainland, and 132 miles long when also counting the shoreline of offshore rocks and islands. The boundary begins at the mean high water line approximately two miles southeast of Diablo Canyon marina in San Luis Obispo County, and extends to the south along the mean high water line to approximately two miles east of Dos Pueblos Canyon near the township of Naples along the Gaviota Coast, in Santa Barbara County. The boundary then shifts due south offshore to the State waters line, then to the west along the State waters line to approximately the outfall of Gaviota Creek, then in a southwest direction along the western end of Channel Islands National Marine Sanctuary, southward to include Rodriguez Seamount and shifting to the northwest in an arc reaching approximately 60 miles due west of Purisima Point and, at a distance approximately 55 miles west of the Santa Maria River mouth, it turns due east for 43 miles then due north for 12 miles to the point of origin at mean high water line at the coastline approximately two miles southeast of the Diablo Canyon marina. Port San Luis and the small harbor area at Vandenberg Space Force Base are not included in the Sanctuary. The Sanctuary includes offshore waters and seafloor features such as Rodriguez Seamount, Arguello Canyon, and large portions of the Santa Lucia Bank. The boundary coordinates are defined by regulation (see 15 CFR 922.230 and appendix A to 15 CFR part 922, subpart V).

### Article III: Special Characteristics of the Area

For well over 10,000 years, First Peoples along North America have resided on the coast and in inland valleys adjacent to central California. Caves and other village sites at the nearby Channel Islands indicate occupation in this region as much as 13,000 years before present. At that time, due to glaciation at northern latitudes, the sea level was as much as 10 miles offshore from the present coastline. Paleoshorelines may exist in this area that could provide further evidence of early human occupation. The Native Americans who live in this coastal area today, the Chumash and Salinan, can trace generations of family lineages in this region, that, when coupled with other historical accounts

and archaeological data, show this coast and ocean area have supported their people, cultures, and heritage for thousands of years.

The special characteristics of the coast east of Point Conception, consisting of a south-facing coast with a channel sheltered by offshore islands, allowed Chumash to develop and make use of the plank canoe, called a "tomol," for fishing and trade with other Chumash groups. Chumash villages north of Point Conception could not as easily make use of the plank canoe in the rougher waters, but relied on the abundance of shellfish in this area and reed canoes, also used by Salinans. Between the Santa Maria River through the Gaviota Coast, 14 Chumash villages existed at the time of contact with Europeans, nearly 500 years ago. The largest Chumash village on the California coast at that time was "Mikiw," located on the west bluff of Dos Pueblos Canyon. Numerous sites exist further north along the Sanctuary's coast, many on private lands and undisclosed. Most of the inhabited sites were located at the mouths of rivers or along the seashore where there was an abundance of food. The range of sites documented along or near the Sanctuary's coast includes rock art, shrines, village sites, camp sites, cemeteries, organic remains, evidence of trade systems, and evidence of various forms of subsistence, including hunting, fishing, and extraction.

Serial use and development along this coastline, beginning with Indigenous Peoples, then Spanish exploration and occupation, Russian fur trading, ranching and the trade for hides and tallow, discovery of gold, commercial fishing, and onshore and offshore oil and gas development have all had a hand in shaping this region's coast and human use of resources. All of these uses have been dependent on marine transportation, and as a result over 200 ship and aircraft wrecks are recorded in this area, including several of national significance such as the *Yankee Blade*. Commercial fishing for numerous abundant fish stocks and commercial fishermen are also part of the rich maritime heritage in the central coast region.

The natural resources of the ocean have been a principal element of most of the human occupation and exploitation of the region. Strong and persistent coastal winds drive upwelling, an oceanographic process critical to the highly productive marine ecosystem. Large kelp forests, vast sandy beaches, rocky shorelines, shallow and deep reefs, and coastal wetlands are interconnected, co-dependent biological communities



prominent in this region. Important, large-scale features include the Santa Lucia Bank, a highly productive, approximately 1,000-square mile area about half of which is within the Sanctuary, and thriving deep sea communities at Rodriguez Seamount and in Arguello Canyon. These productive waters complement other protected portions of the California Current by serving as critical foraging habitat for huge populations of shearwaters from New Zealand, humpback whales born offshore of Central America, leatherback sea turtles that migrate from and back to Indonesian islands, and albatross from Hawaii. More sedentary, local species depend on healthy communities in the Sanctuary, including the endangered snowy plover and black abalone, and commercially-important fish species like Dungeness crab, sablefish, spot prawn, squid, salmon, and lingcod. An estimated 33 species of marine mammals are found in the area, 18 of which can be seen on a regular basis. The Sanctuary is considered a seabird hot spot, with a higher richness of bird species than other sanctuaries offshore California. At least 400 species of fish have been documented in the area, which is also a higher richness of species than in nearby areas, likely because the Sanctuary includes warmer waters south and east of the ecological transition zone around Point Conception—Point Arguello and colder waters to the north.

The nationally significant ecological transition zone in the area around Point Conception—Point Arguello, where species more common in sub-tropical waters to the south meet with species more common in colder temperate waters to the north, is a central feature of the Sanctuary. The northern range of many warmer water species and the southern range of many colder water species meet in the area between Point Conception and Point Arguello. Increasing ocean temperatures and other impacts from climate change intensify the need to study biogeographic shifts in this area and affirm the importance of protecting the habitats on which these species depend.

Rodriguez Seamount, 45 mi southwest of Point Conception, formed 10–12 million years ago through volcanic activity. It rises more than a mile above the seafloor to a relatively shallow depth of around 2,000 ft. below sea level. Scientists consider it to be relatively rare in that it may once have been an island, rising to possibly 200 ft. above sea level; due to sea level rise and seafloor subsidence, the seamount is now fully submerged. From its time as

an island, it has remnants of sandy beach features and from its time as a seamount, it has large coral and sponge colonies. Preliminary studies indicate a high percentage of invertebrate species as well as fish species found on Rodriguez Seamount that are not found on other nearby seamounts. Some surveys have uncovered substantial aggregations of coral colonies, with large individuals likely decades old, indicating a low level of disturbance to date. A special management zone for Rodriguez Seamount has been designated by Sanctuary regulations to allow for special protection in the water column 500 ft. above the seamount and to complement regulations adopted separately under the Magnuson-Stevens Fishery Conservation and Management Act to protect benthic habitats.

The area contains dramatic coastlines consisting of rocky shorelines, large bluffs, and sweeping sandy beaches. Other than an approximately 10-mile stretch of urban development along the coast from Port San Luis through Oceano, most of the 116 miles of Sanctuary coastline is undeveloped due to State and county park ownership, a large stretch owned by the U.S. Government as a military installation, and private landholdings of large and small ranches or dispersed single-family dwellings. This lack of development creates a sense of wildness and highly-valued aesthetics of a natural coastal setting worthy of national marine sanctuary designation.

#### Article IV: Scope of Regulations

##### Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, as may be necessary to ensure the protection and effective management of the ecological, cultural, historical, conservation, recreational, scientific, educational, or aesthetic resources or qualities of the area:

- a. Exploring for, developing, or producing oil, gas, or minerals (*e.g.*, clay, stone, sand, metalliferous ores, gravel, non-metalliferous ores, or any other solid material or other physical matter of commercial value) within the Sanctuary;
- b. Discharging or depositing, from within or into the boundary of the Sanctuary, or from beyond the boundary of the Sanctuary, any material or other matter;
- c. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying, attracting, possessing, or causing the loss of, or attempting to take, remove, move, catch,

collect, harvest, feed, injure, destroy, attract, or cause the loss of, a marine mammal, sea turtle, bird, historical resource, or other Sanctuary resource;

d. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;

e. Flying a motorized aircraft above the Sanctuary;

f. Operating a vessel (*i.e.*, water craft of any description) within the Sanctuary;

g. Aquaculture or kelp harvesting within the Sanctuary;

h. Introducing or otherwise releasing from within or into the Sanctuary an introduced species; and,

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

Listing an activity here means the Secretary of Commerce can regulate the activity, after complying with all applicable regulatory laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b). No term of designation issued under the authority of the NMSA may take effect in California State waters within the Sanctuary if the Governor of California certifies to the Secretary of Commerce that such term of designation is unacceptable within the review period specified in the NMSA.

##### Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities, including those not listed in section 1, are subject to immediate temporary regulation, including prohibition.

#### Article V: Effect on Leases, Permits, Licenses, and Rights

Pursuant to section 304(c)(1) of the NMSA, no valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce or designee as a result of this designation or as a result of any Sanctuary regulation if such authorization or right was in existence on the effective date of this designation.



The Secretary of Commerce or designee, however, may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) The exploration for, development of, or production of oil, gas, or minerals within the Sanctuary; (2) the discharge of primary-treated sewage except for regulation, pursuant to section 304(c)(1) of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction; or (3) the disposal of dredged material within the Sanctuary other than at sites authorized by the U.S. Environmental Protection Agency prior to the effective date of designation. The disposal of dredged material does not include the beneficial use of dredged material. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article IV does not authorize the direct regulation of lawful fishing activities (commercial and recreational) within the Sanctuary, such as setting catch quotas, establishing spatial closures for fishing, or setting fishing seasons. However, all activities listed in article IV could apply to a person engaged in the act of fishing, such as, but not limited to, vessel operations, wildlife disturbance, discharges, introduction of an introduced species, or disturbance of cultural or historical resources. Aquaculture and kelp harvesting, by contrast, are subject to direct regulation under these terms of designation. Fishing in the Sanctuary may be regulated by other Federal or State authorities of competent jurisdiction, and designation of the Sanctuary shall have no effect on any fishery management regulation, permit, or license issued thereunder.

#### **Article VI: Alteration of This Designation**

The terms of designation, as defined under section 304(a)(4) of the NMSA, may be modified only by the same procedures by which the original designation is made, including public hearings, consultations with interested Federal, State, Tribal, regional, and local authorities and agencies, review by the appropriate congressional committees, and approval by the Secretary of Commerce, or his or her designee.

[End of terms of designation]

### **III. Changes From Proposed to Final Rule**

Based on public comments received between August 25 and October 25, 2023, NOAA's responses to those comments, internal deliberations, interagency consultations, and Tribal consultation, NOAA has made the following changes to the proposed rule and, where appropriate, corresponding changes to the final EIS and management plan.

#### *A. Sanctuary Boundary and Preferred Alternative*

NOAA has revised its Agency-Preferred Alternative from the draft EIS and now identifies its Final Preferred Alternative as Alternative 4, plus Sub-Alternative 5b, plus a small area analyzed as part of the Initial Boundary Alternative in the center of the Santa Lucia Bank, thereby creating a straight line across the northern section of the new sanctuary (see Figure 5–1a in the final EIS). The reasons for selecting this as the Final Preferred Alternative are discussed in detail in Section I, subsection C.6 of this final rule, Section 5.4.9 in the final EIS, and in various responses to comments, in particular response to Comment BO–1 (see Appendix A of the final EIS).

#### *B. Changes to Boundaries for Alternatives 3 and 4, and Exclusion of the Harbor Area at Vandenberg Space Force Base*

An original primary purpose of Alternative 3 (and Alternative 4, which is a composite smallest boundary that omits the ocean areas excluded from either Alternative 1 or 3) was to exclude areas from the sanctuary identified or potentially necessary for offshore wind development, specifically an additional potential wind energy area (WEA) in Federal waters and corridors to allow subsea electrical transmission cables to connect to both Morro Bay and Diablo Canyon grid connections without passing through the sanctuary. Following public comment on the draft designation materials, pursuant to NEPA, minor alterations were made to the nearshore boundary of Alternative 3 (and Alternative 4) to ensure the intent of this alternative could be met. Concerns that drove this change include consideration of the following clarifying information received in public comments: the need for access to the Diablo Canyon grid connections and necessary landing site sufficient to allow for gentle turns (rather than sharp angles) for cables; the ability to cross existing submarine fiber optic cables at

roughly right angles; regulatory challenges routing cables through the special marine protected areas in State waters; space to make minor siting adjustments (“micro siting”) to cable routes to avoid sensitive resources or certain seafloor features or hazards; and space to achieve the offshore wind industry's intent for the distance between cables to be at least three times the water depth, in line with recommendations of the International Cable Protection Committee. The resulting changes to the boundary include shifting the boundary that first intercepts the coast in the north one mile to the southeast so that it originates now about two miles southeast of the Diablo Canyon marina breakwater. The boundary also is shifted due south from this coastal point and then due west to create more space in which cables could be planned and permitted without needing to pass through the sanctuary. This same shift was made for Alternative 4. In both alternatives, these shifts reduce the potential size of the sanctuary by 148 square miles, and reduce the total distance along the coast by one mile. These changes are consistent with the intent of these Alternatives and with the purposes and goals of the draft designation materials. See maps in Chapter 3 of the final EIS, and see sections 3.5 and 3.6 of the final EIS for more information on why these boundary adjustments constitute minor variations qualitatively within the geographic and regulatory scope of alternatives assessed in the draft EIS.

NOAA also intended to exclude from the sanctuary the waters of all harbors, which typically host and require activities that can be inconsistent with sanctuary regulations. Morro Bay, the private marina at Diablo Cove and Port San Luis were all excluded in boundary alternatives. NOAA inadvertently failed to exclude the military harbor area at Vandenberg Space Force Base from sanctuary alternatives. The exclusion area would be roughly 0.1 square miles, and would be defined by the breakwater at the harbor area, and a line 0.1 mile due east, and then turning due north until it intercepts the MHWL at the coast. NOAA is excluding this small area from the final sanctuary boundary. This is a technical correction that is consistent with the purposes and goals of the draft designation materials. See maps in Chapter 3 of the final EIS, and see Section 3.2.1 of the final EIS, footnote 3, for more information.

#### *C. Terms of Designation*

NOAA made changes to the final terms of designation based on public comment and responses to those

comments, changes to other designation materials to ensure consistency, and its final actions on this designation. First NOAA modified Article II to describe the area being designated in conformance with the Final Preferred Alternative (rather than the Agency-Preferred Alternative from the draft phase). NOAA made changes to Article III to more accurately describe the Indigenous communities' historical uses of the area, including the number and general area of known or suspected historical village sites. In that section, NOAA has also clarified that about half of the Santa Lucia Bank will be in the final boundary, rather than nearly all of it as described in the proposed rule. In Article V, NOAA is removing a clause that could create confusion regarding its limitation on future permit decisions, and in particular removing unnecessary language about permitting existing oil and gas activities. In this section of the Terms of Designation in the proposed rule, NOAA had inadvertently included language from the regulations describing existing oil and gas activities that would not require a permit. However, Article V mandates that certain activities can not receive a permit for any reason, and one of those activities is oil, gas or mineral development, new or existing. The language explaining what activity constitutes existing oil and gas development, that would be exempt from permitting, is irrelevant in this section and has been removed. Were that language included in the final rule, it would imply NOAA intends to issue permits for existing oil and gas production, and it does not; rather, it is excepting existing oil and gas production from sanctuary permitting. Note, however, that construction, repair, replacement, or removal of existing oil and gas infrastructure that would disturb the submerged lands or potentially lead to discharges would still require an ONMS authorization or other approval. Lastly, NOAA is adding clarification in this section that NOAA's use of the term "fishing" means both commercial and recreational fishing.

#### D. Final Regulations

NOAA's intent with designation of this sanctuary has been to allow existing oil and gas production to continue after sanctuary designation. Based on public comments and interagency discussion, NOAA is clarifying the exception to the prohibition on oil, gas and mineral exploration, development, and production (922.232(a)(1)) to reflect that leaseholders can continue to develop oil and gas resources as allowed under existing leases and lease units. The language in the proposed rule had

limited this exception to production from reservoirs under production from Platforms Irene and Heritage at the time of sanctuary designation. The revised language will now read: "(1) Exploring for, developing, or producing oil, gas, or minerals within the Sanctuary, except for oil and gas production, which includes well abandonment, pursuant to leases or lease units in effect upon the effective date of Sanctuary designation". This change ensures that any reservoir that was temporarily shut in at the time of designation, or any reservoir not yet developed but within a lease or lease unit in effect on the date of Sanctuary designation could still be developed pursuant to such lease or lease unit and meet this exception to the regulatory prohibition on oil, gas or mineral development in the sanctuary.

NOAA has also made a technical clarifying revision to 15 CFR 922.232(a)(2)(iii) to more accurately describe the nature of exceptions to this regulation. This change is a minor conforming amendment consistent with the intent, purposes, and policies of the proposed rule.

Because the prohibition on discharges within or into the sanctuary (922.232(a)(2)(i)) has similar language to allow through regulatory exception discharges into reservoirs that are incidental and necessary to oil and gas production, NOAA revised the exception to this discharge prohibition to now read: "H. Discharges incidental and necessary to oil and gas production within or into reservoirs contained within existing leases or lease units in effect on the effective date of Sanctuary designation from Platform Irene or Platform Heritage, including well abandonment". 15 CFR 922.232(a)(2)(i)(H). This clarification ensures sanctuary designation will not require oil and gas developers to seek sanctuary approval for discharges into reservoirs incidental and necessary to oil and gas development allowed under existing leases or lease units. Discharges from platforms or pipelines into the sanctuary are not covered by this exception and would require sanctuary review and approval; existing, permitted discharges at the time of sanctuary designation can be certified as an existing activity.

The prohibition on disturbance of the submerged lands of the sanctuary (922.232(a)(3)) also has an exception to describe existing oil and gas development. Consistent with other exceptions, NOAA revised the exception to allow for drilling, maintaining, or abandoning a well necessary for purposes related to oil and gas production pursuant to existing

leases or lease units in effect on the effective date of Sanctuary designation from Platform Irene or Platform Heritage. 15 CFR 922.232(a)(3)(vi). These changes reflect technical corrections and clarifications, based on discussions with the expert agency (Department of the Interior) that are consistent with the proposed rule and that reflect the intended scope of the proposed rule.

In response to public comment and to implement technical and procedural corrections and clarifications consistent with the purposes of the proposed rule, NOAA made changes to the Certification Process (922.234) to allow existing, permitted activities in effect at the time the sanctuary is designated. These changes include clarifying that applicants/permit holders have 120 days after the effective date of sanctuary designation to notify NOAA regarding any Federal-, State- or locally-issued lease, permit, license, approval, other authorization or right of subsistence use or access. NOAA also clarified that when considering imposing any conditions on a certification, the ONMS Director may seek and consider the views of other persons or entities, but will not hold a public hearing. NOAA added a clause to clarify that the ONMS Director can amend, suspend or revoke the certification when the underlying permit is amended, suspended or revoked, but NOAA also removed language that allowed an already-issued certification to be reopened at any time. While these revisions constitute changes from certification procedures at some other sanctuary sites, they have been made in response to site-specific needs and concerns, including the anticipated number of certification requests. NOAA will coordinate with the Federal, State or local agency that issued an underlying permit should concerns arise in the future about an existing activity.

Based on interagency coordination, NOAA is including a section of the regulations describing two memorandums of agreement NOAA will enter into for interagency coordination to address regulatory or statutory issues—introduced species aquaculture projects and the Sunken Military Craft Act. See Section IV, subsection H of this final rule for a description of these memoranda of agreement. This addition is a clarification of intended agency procedures on coordination and constitutes a minor technical and procedural update that is consistent with the purposes and policies of the proposed rule.

### *E. Finalizing the Name for the Sanctuary*

The draft designation materials indicated that the name for the sanctuary was not yet final and would depend on the final boundary selected, among other factors. NOAA's assessment has shown it is reasonably and historically accurate to consider the final boundary identified for this sanctuary, extending from just south of Diablo Canyon in the north through most of the Gaviota Coast, as lying along the coastline that has historically been considered the ancestral lands of Chumash Peoples. Given the extensive public comment in support of the name "Chumash Heritage," and given that this boundary is least likely to overlap with ancestral lands and waters of Salinan Peoples, NOAA is designating this sanctuary with the name "Chumash Heritage National Marine Sanctuary."

### *F. Phase 2 for Considering Sanctuary Conservation in This Region*

NOAA is adding this section to the final rule to express the importance of and its commitment to "Phase 2," to evaluate and consider establishing additional sanctuary protection 5–7 years after designation consistent with NOAA's timeline for the first sanctuary management plan review process. As noted elsewhere, the selection of the Final Preferred Alternative, while providing significant beneficial impacts for marine conservation, is the boundary least likely to create potential regulatory uncertainty perceived by offshore wind developers because they are not expected to require sanctuary permits for subsea electrical transmission cables to shore. NOAA anticipates initiating the review process to consider expanding sanctuary protections 5 to 7 years after designation consistent with NOAA's timeline for the first management plan review process. This timeframe would provide a reasonable amount of time for offshore wind developers to obtain permits and easements from other agencies to develop their subsea electrical transmission cables, and possibly install some of those cables. NOAA has included a Boundary Adjustment Action Plan in the final management plan that envisions commencing, in January 2032, formal consideration of expanding sanctuary conservation for resources north of the current boundary up to the MBNMS boundary, west of the current boundary to include areas within the Initial Boundary Alternative, and into Morro Bay Estuary. Sanctuary conservation in the future, if warranted, could involve expanding CHNMS

boundaries, shifting the boundaries for MBNMS, or designating a new sanctuary, or some combination of these. A future designation or expansion would require a separate public process under the NMSA and NEPA.

NOAA acknowledges that some important studies may need to begin soon after CHNMS designation to help collect information on the nationally-significant resources in these areas, the potential threats to those resources, and the appropriateness of a national marine sanctuary to address those threats. As resources are available, NOAA will begin those studies and characterizations.

This approach allows NOAA to work more closely with the Salinan and northern Chumash Tribes and Indigenous communities, and other interested parties, on various conservation options for the resources in this region. NOAA considers these steps and other potential actions to be part of "Phase 2 Sanctuary Conservation" for this region.

## **IV. Summary of Final Regulations**

### *A. Adding New Subpart V*

NOAA is amending 15 CFR part 922 by adding a new subpart (subpart V) that contains site-specific regulations for the sanctuary. This subpart includes the boundary, contains definitions of common terms used in the new subpart, identifies prohibited activities and exceptions, and establishes procedures for certification of existing uses and permitting otherwise prohibited activities.

### *B. Sanctuary Boundary*

NOAA's designation of Chumash Heritage National Marine Sanctuary consists of an area of approximately 4,500 square miles (mi<sup>2</sup>) (3,400 square nautical miles (nmi<sup>2</sup>) of coastal and ocean waters along the central coast of California and the submerged lands thereunder. The northern boundary commences approximately two miles southeast of the Diablo Canyon marina at the mean high water line (MHWL) and extends for 116 miles south along the MHWL through the remainder of San Luis Obispo County coast, excluding Port San Luis (at the port's boundary for International Regulations for Preventing Collisions at Sea (COLREGS) demarcation line (33 CFR 80.1130), and then further south and east to include the coast of western Santa Barbara County, excluding the small harbor area at Vandenberg Space Force Base (as defined by the existing breakwater to a point 0.1 mile due east of the end of the breakwater and then

due north to the MHWL at the shoreline), to approximately two miles east of Dos Pueblos Canyon along the Gaviota Coast near the township of Naples. The boundary then shifts due south offshore to the State waters line, to the west along the State waters line to approximately Gaviota Creek, then in a southwest direction along the western end of CINMS, southward to include Rodriguez Seamount and shifting to the northwest in an arc reaching approximately 60 miles due west of Purisima Point and, at a distance approximately 55 miles west of the Santa Maria River, it turns due east for 43 miles and then due north for 12 miles to the point of origin at MHWL at the coastline approximately two miles southeast of Diablo Canyon marina.<sup>4</sup>

### *C. Definitions*

This rule incorporates and adopts common terms defined in the national regulations at 15 CFR 922.11. In addition, NOAA is including two site-specific definitions.

NOAA is defining "beneficial use of dredged material" to distinguish between suitable dredge material that is discharged into the sanctuary for the purpose of protecting or restoring habitat of the sanctuary, which could be permitted, versus disposal of dredge material at a new disposal site within the sanctuary for purposes other than habitat protection or restoration, which would not be permissible. Dredged material eligible for this definition can come from a public harbor adjacent to the sanctuary, which is Port San Luis. Beneficial use of dredged material is not disposal of dredged material.

NOAA is defining the "Rodriguez Seamount Management Zone" to define the special marine area immediately on top of, around, and adjacent to the Rodriguez Seamount. This definition is necessary because NOAA is including a regulation that specifically prohibits the collection, or other injury, of any sanctuary resource below 1,500 ft. water depth in this area from any activity other than from lawful fishing. This corresponds to the water depth about 500 ft. above the very top of the seamount. Existing fishing regulations, separately established under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), already restrict bottom trawling in much of the Rodriguez Seamount Management Zone. This special area,

<sup>4</sup> The boundary would initiate approximately two miles southeast of the breakwater at the private marina at Diablo Canyon Power Plant at MHWL. The detailed legal boundary description is included in § 922.230 and the coordinates are located in 15 CFR part 922, subpart V, appendix A.

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

#### D. Prohibited and Regulated Activities

NOAA is supplementing and complementing existing management of this area by adopting the following regulations in § 922.232 to protect sanctuary resources and qualities.

##### 1. Prohibition on Exploring for, Developing, or Producing Oil, Gas, or Minerals

The central California coast has hosted oil and gas development for over 100 years and the area being designated as a national marine sanctuary has hosted oil and gas development for nearly 40 years. There have been oil spills from platforms and pipelines in this area, and spills from onshore development and onshore pipeline transportation, all of which have caused significant environmental harm.

Additional information about these spill incidents is contained in section 4.7 of the final EIS. NOAA is prohibiting exploration, development, and production of offshore oil and gas resources within the sanctuary to reduce the risk of offshore spills from oil and gas development in the area. Oil and gas production pursuant to existing leases and lease units in effect on the effective date of sanctuary designation, specifically 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 leases and lease units are terminated.

Constructing and operating offshore platforms and pipelines also can cause direct impacts on natural, historical, and cultural resources, particularly from disturbance to the seafloor and benthic species. Those impacts would also be prevented because this regulation would not allow new oil and gas exploration, development, or production. Any construction, repair, replacement, or removal of existing oil and gas infrastructure that would disturb the

submerged lands or potentially lead to discharges would require an ONMS authorization or other approval.

Most if not all of the platforms and pipelines within the sanctuary are likely to be decommissioned and removed within 10 years of sanctuary designation.<sup>5</sup> The prohibition on new oil and gas development would not preclude the removal of these structures and restoration, if necessary, or any damage caused by removal, although a sanctuary permit, authorization, or other approval would be required in order to allow disturbance to the submerged lands during decommissioning, removal, and restoration activities. If any structures were proposed to be left behind after facilities removal, NOAA would need to approve that structure through a sanctuary permit or authorization. NOAA would be integrally involved in the planning and conduct of such decommissioning, removal, and restoration activities for structures within the sanctuary.

This prohibition would also not allow for development, including exploratory activities, of any seafloor minerals. While seafloor mining has not been proposed in this area, this regulation would ensure that the disturbance to benthic habitat and species likely to result from seafloor mining would not occur in the sanctuary.

##### 2. Prohibition on Discharges

This prohibition on discharges (NOAA uses “discharge” in this rule to refer to both “discharge and deposit” as used in the regulation) has three main elements: 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. Each is explained in separate paragraphs below. All three sub-elements of this prohibition are consistent with discharge prohibitions in adjacent national marine sanctuaries.

The prohibition on discharges within or into the sanctuary is in recognition that various substances can be discharged from vessels or from infrastructure or individuals along the shoreline that can harm sanctuary resources or quality. The discharge regulations bolster existing authorities such as the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*) that provide some, yet incomplete, protection of resources from the adverse effects of discharges. Establishing a cohesive regulatory framework across nearshore and

offshore waters of the sanctuary will provide value to boaters and others using sanctuary waters. Section 4.2.1 of the final EIS contains a detailed discussion of water quality and discharges that constitute key sources of water pollution in the area, and a brief summary of key points is provided here. While sewage is largely well-regulated from onshore facilities, and while the EPA has established a No Discharge Zone within three miles of the California coastline, NOAA’s prohibition will complement this regulatory framework and apply throughout the entire geographic region of the sanctuary; it will also provide additional enforcement authority to protect sanctuary resources. Moreover, NOAA will commit staff time towards education and outreach to help promote compliance with this important regulation. Furthermore, the prohibition would extend throughout the sanctuary to ensure discharge of sewage from vessels does not cause acute or cumulative impacts on natural resources or water quality.

Oil discharged from vessels or from shore can cause acute toxicity in organisms, and can foul feathers of seabirds, leading to illness or death. Discharging other debris from vessels, by accident or on purpose, can lead to long-term impacts on resources. A chronic accumulation of plastics in marine ecosystems, for instance, can lead to an accumulation of plastic in marine organisms including those that are eventually ingested by humans.

NOAA is including some exceptions for this prohibition consistent with those exceptions at adjacent sanctuaries. For instance, NOAA is excepting discharge of fish, fish parts, chumming materials, or bait used in and resulting from lawful fishing activities within the sanctuary. NOAA is also excepting discharge of sewage waste from a vessel that has been treated by a Type I or Type II marine sanitation device, as these systems provide effective treatment for sewage as to mitigate any impact their discharge can have on marine resources. Normal vessel operations can also involve washing down the deck or the anchor, which is excepted provided the wash down qualifies as “clean” per the definition at 15 CFR 922.11. There are also normal discharges from operating motorized vessels that are excepted, such as clean vessel engine cooling water, clean vessel generator water, and clean bilge water, as well as exhaust from an engine or generator. Provided that these discharges are clean, they may be discharged within or into the sanctuary. The more common threat to sanctuary

<sup>5</sup> Final Programmatic EIS for Oil and Gas Decommissioning Activities on the Pacific OCS (BSEE & BOEM, 2023)

resources can come from oily bilge water, soiled by oil that drips or leaks into an engine compartment. Oily bilge water may not be discharged into the sanctuary under this prohibition, and would have to be disposed of at onshore pumpout stations. NOAA will coordinate with harbor masters to ensure existing onshore pumpout facilities remain operable, and, if necessary, to explore if other facilities are needed.

NOAA is excepting the disposal of dredged material within the sanctuary at disposal sites approved by the EPA prior to designation. The sanctuary boundaries do not include the two known EPA-approved dredge disposal sites used for Morro Bay dredging. NOAA is not aware of any other such sites within the sanctuary. Nonetheless, this exception would allow an agency to demonstrate, after sanctuary designation, that a disposal site approved by the EPA existed prior to sanctuary designation.

Within the sanctuary, NOAA will also consider allowing via permit the beneficial use of material removed from dredging Port San Luis, specifically to protect or restore habitat such as a sandy beach. The beneficial use of dredged material for habitat protection or restoration purposes is different from the disposal, or discarding, of dredged material. A proposed project involving the beneficial use of dredged material from Port San Luis may be eligible for approval by NOAA if the project demonstrates a sanctuary habitat protection or restoration purpose and if the permit requirements and criteria are met.

NOAA is excepting routine discharges from U.S. Coast Guard operations, which is consistent with NOAA's approach at two other national marine sanctuaries offshore California, Cordell Bank and Greater Farallones National Marine Sanctuaries. One part of the exception would allow U.S. Coast Guard vessels that lack sufficient holding tank capacity and lack a Type I or II marine sanitation device to discharge sewage and non-clean graywater beyond 3 nmi from shore. A second part of the exception would allow discharge of ammunition, pyrotechnics, and other material directly related to training from beyond 12 nmi from shore from U.S. Coast Guard vessels and aircraft conducting training activities for search and rescue and live ammunition fire in the sanctuary. NOAA recognizes that these exceptions are necessary to ensure existing U.S. Coast Guard patrols, operations, and training can be maintained in the new sanctuary. U.S. Coast Guard patrol vessels provide a tremendous benefit to NOAA by

assisting with enforcement of national marine sanctuary regulations. Moreover, the U.S. Coast Guard is an essential element of marine safety to all mariners operating offshore in central California, and they also provide enforcement of other Federal laws, conduct drug smuggling interdiction activities, and protect the homeland. ONMS has developed plans with U.S. Coast Guard District 11 leadership through informal discussions and NMSA section 304(d) consultation to limit discharges into other west coast national marine sanctuaries and anticipates similar approaches could be explored for U.S. Coast Guard operations in the sanctuary. Therefore, NOAA considers the discharge exception for U.S. Coast Guard vessels appropriate.

Finally, NOAA is including an exception that would allow discharges incidental and necessary to normal oil and gas production activities from Platforms Irene and Heritage into reservoirs of existing leases and lease units in effect at the time of sanctuary designation. These could include drill mud to maintain well pressure and control during drilling as well as other materials necessary to force oil and gas products from one part of the reservoir into producing wells. The last step in the life of an oil and gas well is to abandon the well, with the operator pumping cement into the well to prevent release of hydrocarbons in the future; this activity would be part of the exception. Use of the depleted reservoirs for injection or storage of any material not considered incidental and necessary to normal oil and gas production would not be covered by the exception but could be considered via permit processes.

Discharges from beyond the boundary of the sanctuary would also be prohibited when those discharges subsequently enter the sanctuary and harm a sanctuary resource or quality. An example of this could be a spill from an onshore oil pipeline that flows down a creek, enters the sanctuary at the MHWL, and injures seabirds, fish, algae, or the sanctuary seafloor or other habitat. Unlike a discharge directly within or into the sanctuary, for a discharge to violate this prohibition, the discharge must injure a sanctuary resource or quality. This prohibition could also be applied to a spill or other discharge that originated from the marine environment and subsequently entered the sanctuary and injured a sanctuary resource or quality. The same exceptions that are included for the sub-element prohibiting discharge directly within or into the sanctuary would also apply for a discharge from beyond the

boundary, except for the exception for dredge disposal and the exception for discharges incidental and necessary to oil and gas production. NOAA intends that dredge disposal discharges beyond the boundary of the sanctuary need to be designed in such a manner that they do not enter the sanctuary and injure sanctuary resources or qualities.

The third sub-element of this discharge regulation would prohibit discharge from cruise ships. Across most national marine sanctuaries, NOAA has applied consistent regulations that allow for fewer exceptions for cruise ship discharges than for other vessel discharges within or into sanctuaries because cruise ships can generate very large volumes of waste or other discharges. Even if treated, the volume of sewage and graywater, for instance, on a cruise ship of more than 2,000 passengers can reach several million gallons a day. Sewage discharge may contain bacteria or viruses that can cause disease in humans and wildlife, and can cause excessive growth and decomposition of oxygen-depleting plant life, resulting in harm or death to organisms. Section 4.2.1 of the final EIS provides additional detail on these sorts of discharges. The only exceptions for cruise ships discharging within CHNMS would be for clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clear bilge water, or anchor wash; in essence, discharges directly linked to propelling and operating the vessel itself.

### 3. Prohibition on Drilling Into or Altering the Submerged Lands

The seabed is a large and important habitat in the ecosystem within the sanctuary, and NOAA is prohibiting 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. This is a common regulatory prohibition that NOAA has applied to most national marine sanctuaries. The purpose is to prevent activities that cause harm to habitat and species on or near the seafloor, such as drilling into or dredging into the seafloor. The regulation includes exceptions for certain activities including disturbance during the conduct of lawful fishing activities, kelp harvesting, or anchoring a vessel. NOAA is also excepting from this prohibition the installation of an aid to navigation, as well as the repair, replacement, or other maintenance on existing structures, specifically docks, piers,

breakwaters, or jetties. Also, NOAA is including an exception for maintenance dredging of the entrance channels for Port San Luis in existence at the time the sanctuary is designated. Vandenberg Space Force Base periodically conducts dredging near its coastal loading dock, within and adjacent to the small harbor excluded from the sanctuary, and typically relies on onshore disposal of the sand. Future dredging disturbance beyond the harbor exclusion, thus within the sanctuary, would be exempted with the general exemption for existing Department of Defense activities as well as via this exception for harbor maintenance dredging. NOAA has also included an exception to allow for drilling, maintaining, and abandoning wells incidental and necessary to normal oil and gas production activities pursuant to existing leases or lease units in effect at the time of sanctuary designation from Platforms Irene or Heritage.

For these exceptions, NOAA has considered both the anticipated level of disturbance to the submerged lands and the purpose of the specified activities, most of which are related to maritime safety. The proposed exceptions are intended to further the policy of the NMSA to facilitate public and private uses of sanctuary resources to the extent compatible with the primary objective of resource protection. However, in order to conserve and protect populations of coral and sponge colonies, NOAA will not apply any of these exceptions within the Rodriguez Seamount Management Zone. The only exception that would apply within the Rodriguez Seamount Management Zone is the exception for seabed disturbance conducted during lawful fishing activity as regulated under the MSA. Note, however, that most of the Rodriguez Seamount Management Zone has been designated by the Pacific Fishery Management Council as groundfish essential fish habitat under the MSA, and areas in and around the zone are currently closed to bottom trawling under regulations at 50 CFR part 660, subpart C.

Certain currently proposed or contemplated future activities could result in disturbance to the submerged lands in the area proposed for sanctuary designation. Procedures described below in the section on General Permits, Authorizations, Certifications, and Special Use Permits could be used to allow such an activity that is otherwise prohibited, provided that the applicable criteria and requirements are met and that any permit conditions can be satisfied by developers. Examples of such activities that would be prohibited

by the seabed disturbance regulation unless a sanctuary general permit, ONMS authorization, or certification were issued include construction and operation of subsea electrical transmission cables from wind development in Federal waters beyond the sanctuary, or construction and operation of wind platforms in State waters near Vandenberg Space Force Base. Disturbance of submerged lands during repair and maintenance of existing structures not listed as being exempted, such as oil pipelines to shore from Platform Irene, or trans-oceanic fiber optic telecommunications cables, would also require a permit, authorization, or certification from NOAA before proceeding.

With respect to subsea electrical transmission cables, BOEM cannot issue leases, rights of way, or easements for wind development within national marine sanctuaries per the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1337(p)(10). As discussed in the final EIS, if, despite the boundaries selected for CHNMS, offshore wind developers require cable routing through the new sanctuary, NOAA intends to coordinate with BOEM on potential integration of NMSA authorities and BOEM's OCSLA authorities. NOAA has well-tested procedures to review and allow scientific collection, site assessment, and characterization activities through a sanctuary general permit for research purposes under 15 CFR part 922, subpart D, and 15 CFR 922.233 of this rule. NOAA is revising its 2011 Policy and Permitting Guidelines for Submarine Cables<sup>6</sup> and should be releasing those in advance of any permit needs for subsea electrical transmission cables in this region, should developers propose cable routes within CHNMS (see Section IV.H.4 of this final rule preamble for more information). Wind developers and the public will have a chance to comment on those guidelines. Otherwise, NOAA's selection of the Final Preferred Alternative provides the best opportunity to reduce the permitting needs and the risks offshore wind developers perceive with the sanctuary permit process.

NOAA acknowledges that the telecommunications industry has already made a large investment in submarine fiber optic cables in the area, with more cables being possible in the future. The following most likely permitting approach would be relevant to telecommunications cables that may

be proposed or presently lie within the final sanctuary boundary. The following would also be relevant to any other type of submarine cable that may be proposed within the final sanctuary boundary. Sanctuary general permits, authorizations, and special use permits are only issued after satisfaction of permit review criteria and necessary reviews under NEPA, NHPA, and other environmental compliance processes are completed.

- For existing submarine cables within the sanctuary, NOAA could issue a certification of the existing Federal-, State- or locally-issued permit. If that underlying permit allows for repair and maintenance, or subsequent removal, NOAA can certify the permitted activity(ies) and avoid further permit review unless the underlying project or permit significantly changes.

- For the installation of a submarine cable on the outer continental shelf within the sanctuary, NOAA could issue an ONMS authorization of a permit issued by the U.S. Army Corps of Engineers (USACE) under section 10 of the Rivers and Harbors Act (33 U.S.C. 403), under 15 CFR 922.36 and 922.232(e) of this rule. NOAA is also evaluating whether there may be additional valid Federal, State, or local permits, licenses, or approvals that may also be authorized in this context.

- For installation of cables within State waters of the sanctuary, NOAA could similarly consider authorizing, under 15 CFR 922.36 and 922.232(e) of this rule, a lease issued by the State Lands Commission or a coastal development permit issued by the California Coastal Commission.

- Because historically USACE permits have had a limited time period and not applied to the entire lifetime of a cable project, NOAA has relied on the special use permit under section 310 of the NMSA to authorize the continued presence of the cable on or in the seabed within the sanctuary. However, as described in Section IV.H.4 of this final rule preamble, NOAA issued a **Federal Register** Notice on August 16, 2024 (89 FR 66689) date that modified the SUP category for the continued presence of commercial subsea cables in the following way: for a two-year period beginning on August 16, 2024, the SUP category does not apply to sanctuaries designated after August 16, 2024, including Chumash Heritage National Marine Sanctuary. In other words, for the duration specified in the notice (and subject to extension), the continued presence of commercial subsea cables in Chumash Heritage National Marine Sanctuary is not subject to the

<sup>6</sup> [https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/archive/library/pdfs/subcable\\_final\\_guidance\\_2011.pdf](https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/archive/library/pdfs/subcable_final_guidance_2011.pdf).

requirements of section 310 of the NMSA.

- To allow any necessary maintenance and repair associated with a cable that might cause a disturbance of the submerged lands of the sanctuary, NOAA could rely on the initial ONMS authorization of the USACE section 10 permit and/or State permit for the cable installation depending on whether it included future repair and maintenance. Alternatively, NOAA could issue an ONMS authorization of a separate USACE and/or State permit that is issued specifically for the maintenance and repair activity. As a third option for repair and maintenance of cables that pre-existed the sanctuary designation, NOAA could rely on its certification of the underlying permit if that permit authorized repair to and maintenance of the cable.

NOAA has coordinated with USACE regarding this approach in Federal waters, and intends to continue that coordination throughout the designation process and as plans for cabling in the area are developed. Regular coordination with State agencies has occurred in the past and NOAA would conduct specific coordination meetings related to submarine cable permitting as necessary. In sum, NOAA's final regulations contain several permitting mechanisms that provide NOAA with flexibility in its approach to any individual permitting request (see also section H of this preamble below and section 3.2.2 of the final EIS).

Decommissioning and removal activities that would disturb the sanctuary seabed, such as oil and gas platform removal, would require a permit, authorization, or certification from NOAA before proceeding. Further, NOAA has already commented, or could comment in the future as appropriate, to Federal, State, and local agencies leading regulatory review of these actions; also, some of these examples have been discussed with BOEM and BSEE, as cooperating agencies under NEPA for this designation, given the relevance to their authorities.

#### 4. Prohibition on Possessing, Moving, Removing, or Injuring or Attempting To Possess, Move, Remove, or Injure a Sanctuary Historical Resource

NOAA is prohibiting possessing, moving, removing, or injuring, or attempting to possess, move, remove, or injure a sanctuary historical resource, as defined at 15 CFR 922.11. This prohibition reduces the risk of direct harm to sanctuary historical and cultural resources. "Moving" and "injuring" include any changes to the position or State of historical resources,

as well as covering, uncovering, moving, or taking artifacts from a shipwreck, even if the artifacts are not located directly on a shipwreck. Sanctuary historical resources include cultural and archaeological resources and artifacts. This sanctuary prohibition would apply within both State and Federal waters of the sanctuary and is necessary to ensure conservation of historical resources on the more than 100 ship and aircraft wrecks thought to exist in the sanctuary, as well as other known or unknown historical resources, such as resources that may be associated with submerged Native settlements.

#### 5. Prohibition on Taking Any Marine Mammal, Sea Turtle or Bird Within or Above the Sanctuary

This prohibition ensures conservation of important populations of marine mammals, sea turtles, and birds that are found in or above the sanctuary. The regulation would not apply should a person be authorized to take a marine mammal, sea turtle, or bird by NOAA or the U.S. Fish and Wildlife Service pursuant to the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), or the Migratory Bird Treaty Act (MBTA). The term "take" including "taking" is defined in the national sanctuary regulations at 15 CFR 922.11.

#### 6. Prohibition on Possessing Within the Sanctuary (Regardless of Where Taken, Moved, or Removed From) Any Marine Mammal, Sea Turtle, or Bird

This regulation is a companion to the preceding prohibition and would restrict a person's ability to possess any marine mammal, sea turtle, or bird within the sanctuary, except as allowed by the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

#### 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

Other adjacent national marine sanctuaries, similar to the proposed CHNMS, have considerable boating traffic along the coast and from local harbors. NOAA responds to dozens of vessel sinkings, groundings, and discharges each year in some of these national marine sanctuaries, many with significant response and restoration costs and damage to sanctuary resources. Along with responding to those incidents, NOAA has adopted this regulation as a means to prevent a vessel's sinking, grounding, or other incident, given that prevention is much

less expensive than responding to incidents and can optimally prevent impacts and damage to sanctuary resources as well as to private property. NOAA is prohibiting deserting a vessel aground within the sanctuary for the same reasons. In the definition of the term "deserting" in the national sanctuary regulations at 15 CFR 922.11, NOAA has clarified conditions that constitute deserting a vessel. Finally, with this proposed regulation NOAA is prohibiting leaving harmful matter aboard a grounded or deserted vessel in the sanctuary; the intent is to minimize additional damage to sanctuary resources. The sanctuary regulations at 15 CFR 922.11 also define "harmful matter."

#### 8. Prohibition on Attracting Any White Shark Within the Sanctuary

White sharks function as a key species in coastal ecosystems in three broad areas in the world, with California and Baja California forming one of those population centers. Several different areas within the sanctuary have important populations of adult and sub-adult white sharks, and may offer linkage to other white shark aggregation areas in CINMS, MBNMS, and Greater Farallones National Marine Sanctuary (GFNMS). Including this regulation provides similar levels of protection to these central California white shark aggregation sites within CHNMS by preventing harm or behavioral disturbance to white sharks. The regulation applies the definition of "attract" in the national sanctuary regulations at 15 CFR 922.11. The prohibition against attracting white sharks is intended to address harassment and disturbance related to human interaction from research activities directed at white sharks or shark diving programs known generally as adventure tourism, or from recreational boaters who may approach a white shark. NOAA has concluded these activities can degrade the natural environment, impacting the species as a whole, or adversely impacting individual sharks from repeated encounters with humans and boats. A similar prohibition against attracting great white sharks was promulgated for MBNMS in 1996 and GFNMS in 2008, and, at those sanctuaries, NOAA has not observed the inadvertent attraction of white sharks from lawful fishing activities. NOAA would have the ability to issue permits for activities that involve attracting a white shark if the permit procedures and requirements are met, as described below.



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 Within the Rodriguez Seamount Management Zone

NOAA is adopting a regulatory framework for Rodriguez Seamount that is similar to its approach for Davidson Seamount in MBNMS. With the CHNMS regulations, NOAA is creating the Rodriguez Seamount Management Zone to ensure conservation of diverse and rare resources found on the seamount, including coral and sponges and other invertebrates, or living in the water column immediately above it. The seamount has seafloor features that suggest it may have been exposed above sea level millions of years ago, and its uncommon geomorphologic and benthic habitat features could be damaged without further protection. The top of the seamount is at approximately 2,000 ft. water depth, so under the regulation there will be a buffer of 500 ft. above the top of the seamount to protect organisms that migrate above the seamount diurnally.

This prohibition does not apply to lawful fishing activity that is regulated under the MSA and its implementing regulations. NOAA, through conservation actions under the MSA, has prohibited bottom trawling on and around Rodriguez Seamount since June 2006. Additional protections provided to the seamount by the sanctuary regulations would protect the high biodiversity and deep-sea habitat on the seamount. Long life histories and slow growth of deep-sea communities mean that these habitats have long recovery times following injuries and adverse impacts; additional protections for resources 1,500 ft. below sea level (roughly 500 ft. above the top of the seamount) will add critical additional risk mitigation for these sensitive resources.

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

NOAA is prohibiting introducing or otherwise releasing an introduced species, as that term is defined in the national sanctuary regulations at 15 CFR 922.11, into the sanctuary. NOAA has

adopted the same introduced species regulation at other national marine sanctuaries offshore of California to prohibit the release of an introduced species into the sanctuary. Releases and subsequent spreading of introduced species have devastated marine ecosystems across the globe; most notably the alga *Sargassum horneri* has become a disruptive introduced species at nearby CINMS and has the potential to cause ecological and economic harm. This and other introduced species are potentially spread by vessels and have proliferated in the Santa Barbara Channel. Removing or otherwise eradicating introduced species once they have established local populations is extremely difficult; hence, preventative and deterrence measures offer added benefits against the harms caused from introducing such species within national marine sanctuaries. The exemption for catch and release of striped bass recognizes the State of California has size limits for striped bass, an introduced but now established species harvested by recreational fishermen. Releasing a striped bass will not be a violation of this prohibition.

11. Prohibition on Interfering With, Obstructing, or Preventing an Investigation, Search, or Other Enforcement Activity

NOAA adopts a regulation, similar to regulations at other local national marine sanctuaries, to prohibit interfering with various sanctuary enforcement activities. This regulation will assist in NOAA's enforcement of the sanctuary regulations and strengthen sanctuary management.

*E. Exemption for Emergencies*

The prohibitions for CHNMS would not apply to any activity necessary to respond to emergencies that threaten life, property, or the environment. However, this exemption for emergencies does not apply to the prohibitions on the development of oil, gas, or minerals; attracting a white shark; introducing an introduced species; or interfering with an investigation or other enforcement activity.

*F. Department of Defense Exemption*

NOAA is establishing a broad exemption to allow existing activities carried out or approved by the various branches of the Department of Defense (DoD) as specifically identified in Chapter 4.9 or Appendix I to the final EIS. NOAA has coordinated with the DoD to include in Appendix I to the final EIS a list of the existing activities that occur in or immediately adjacent to

the sanctuary that would qualify for this exemption.

The area overlaps with the Point Mugu sea range and is adjacent to Vandenberg Space Force Base, which conducts both military missions from the base as well as hosting commercial space launches. All launches from the base or within the proposed sanctuary that are carried out or approved by DoD would be included in this exemption. With respect to commercial and civil launches from the base and associated activities, DoD has informed NOAA that:

- DoD approval is required for these activities.
- DoD conducts NEPA reviews for these activities. Other Federal agencies, such as the Federal Aviation Administration and/or the U.S. Coast Guard, may be cooperating agencies for purposes of these NEPA reviews.
- DoD also conducts all required natural and cultural resource consultations for these activities.
- Civil partners and commercial providers conducting these activities are required to comply with DoD best management practices.

NOAA advises that based on public comments received, additional coordination with DoD, and NOAA's experience administering the National Marine Sanctuary System, pursuant to NEPA and the Administrative Procedure Act, final EIS Appendix I reflects minor changes to the list of exempted activities based on DoD's administrative record of environmental compliance for the exempted activities. These minor conforming changes were made to ensure that the list of exempted activities in Appendix I reflects the most current information as to the existing activities that DoD carries out or approves and includes references to the environmental compliance materials that DoD provided. As such, these minor changes are consistent with the purposes of the proposed rule and do not alter the no adverse impacts conclusion in final EIS Section 4.9.

New DoD activities that would not otherwise be prohibited by the CHNMS regulations would not require an amendment to the list of exempted activities. For those new DoD activities that would otherwise be prohibited by the CHNMS regulations, NOAA has included in the regulations a process whereby the ONMS Director, upon consultation with the appropriate counterpart at the DoD, can also exempt such new activities carried out by the DoD. An activity is considered to be a new activity, and not covered by the exemption for existing DoD activities, if the activity is new or modified in any

way (including change in location, frequency, duration, or technology used) from the activities described or listed in section 4.9 or Appendix I, and the activity is likely to cause adverse effects on sanctuary resources or qualities that are substantially greater or different in kind than the effects of the activities described or listed in section 4.9 or Appendix I.

A new activity that is not covered by the exemption for existing DoD activities could be conducted if a sanctuary general permit or ONMS authorization, as applicable, were issued for the proposed activity. In addition, NOAA commits to working with the DoD to consider exempting new activities from the CHNMS regulatory prohibitions through subsequent rulemaking procedures, for instance in subsequent management plan and regulatory review processes for CHNMS. Any changes to the list of exempted DoD activities could only occur after compliance with all applicable laws, such as the Administrative Procedure Act and NEPA, as necessary, and after public notice and comment, as applicable.

NOAA is willing to work with the DoD to create a mechanism whereby new activities that are likely to injure sanctuary resources, and thereby also require section 304(d) consultation, could be handled in a single, consolidated review.

This final regulation also contains language common to regulations for other national marine sanctuaries about obligations of the DoD in the event an incident results in threatened or actual destruction, loss of, or injury to a sanctuary resource or quality. NOAA recognizes that this broad exemption is necessary to ensure military readiness for the DoD to conduct existing training, operations, and military readiness activities in the area proposed to be designated as a national marine sanctuary. The United States military has been able to maintain readiness and conduct training and other operations in other national marine sanctuaries based on similar broad exemptions.

#### G. Emergency Regulations

NOAA is not including any sanctuary-specific regulation to allow for development of emergency regulations to address urgent threats to sanctuary resources. Rather, the emergency regulation provision included in the regulations of general applicability, which apply to all national marine sanctuaries (see 15 CFR 922.7), would also apply to CHNMS. Emergency regulations are used when there is an imminent risk to sanctuary resources

and a temporary regulation or prohibition is necessary to prevent or minimize the destruction or loss of those resources, or otherwise minimize the imminent risk of such destruction, loss, or injury.

#### H. General Permits, Certifications, Authorizations, Special Use Permits, Memorandums of Agreement

##### 1. Sanctuary General Permits

NOAA is including authority to issue sanctuary general permits to allow certain activities that would otherwise violate prohibitions in the sanctuary's regulations. This language would not allow issuance of a sanctuary general permit for oil, gas, or mineral exploration, development, or production; introducing an introduced species; or interfering with an investigation or other enforcement activity; or as further limited in § 922.232(f) of the proposed regulations. National marine sanctuary program-wide regulations describe, at 15 CFR 922.30, different purposes for which a sanctuary general permit could be issued, three of which would apply to this proposed sanctuary: "Research—activities that constitute scientific research or scientific monitoring of a national marine sanctuary resource or quality," "Education—activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resource or quality," and "Management—activities that assist in managing a national marine sanctuary."

NOAA is adding to the list at § 922.30, an additional purpose specific to CHNMS for which a sanctuary general permit could be issued: "Native American cultural or ceremonial activities—activities within Chumash Heritage National Marine Sanctuary that will promote or enhance local Native American cultural or ceremonial activities; or will promote or enhance education and training related to local Native American cultural or ceremonial activities." NOAA has adopted this general permit category to address a need identified during scoping. Specifically, NOAA received a scoping comment letter stating that Indigenous peoples should be allowed to conduct the following cultural activities in the proposed sanctuary, subject to all other applicable law: collecting culturally-significant resources including bones, feathers, shells, animals, and plants; burials of cremated remains in biodegradable receptacles; survey and other work at submerged Indigenous living sites, like villages or caves,

including collecting artifacts like stone bowls or pestles. ONMS may be able to allow some of these activities to occur within the proposed sanctuary under existing authorities and the current general permit categories at § 922.30 (e.g., a research or education permit may be appropriate to authorize survey activities at submerged Indigenous living sites). However, ONMS is including this additional general permit category for CHNMS to ensure that activities to promote or enhance Native American cultural or ceremonial activities may be allowed to occur within the sanctuary, consistent with the purpose and need of the designation. The permit category will be recipient neutral; *i.e.*, any person, as that term is defined in 15 CFR 922.11, would be able to apply for a permit under the proposed category. However, permits may only be issued for those activities that will promote or enhance local Native American cultural or ceremonial activities or education and training related to such activities. NOAA has determined that this permit category would further the purposes and policies of the NMSA by facilitating uses of sanctuary resources compatible with the primary objective of resource protection, and by enhancing public awareness, understanding, appreciation, and wise and sustainable use of the historical, cultural, and archaeological resources of the proposed sanctuary.

The regulations will require compliance with 15 CFR part 922, subpart D, in the national regulations for permit application processes, review procedures, amendments, and other permitting stipulations. These national permitting regulations include a list of factors NOAA considers in deciding whether or not to issue the permit, such as whether the activity must be conducted within the sanctuary, or whether the activity will be compatible with the primary objective of protection of sanctuary resources and qualities. NOAA will be able to impose specific terms and conditions through a permit as appropriate.

##### 2. Certifications

Under 16 U.S.C. 1434(c), NOAA may not terminate any valid lease, permit, license or right of subsistence use or access ("permit or right") that is in existence on the date of designation of a sanctuary. However, NOAA may regulate the exercise of such permit or right consistent with the purposes for which the sanctuary is designated. Pre-existing activities specifically authorized by a valid Federal, State, or local lease, permit, license, or rights of subsistence use or access might be

occurring within CHNMS that would otherwise be prohibited by sanctuary regulations. Therefore, NOAA has included § 922.234 to describe the process by which it could certify an existing valid lease, permit, license, or right of subsistence use or access within the sanctuary boundaries, consistent with 16 U.S.C. 1434(c) and 15 CFR 922.10. In compliance with the NMSA, the regulations at § 922.234 State that certification is the process by which such activities existing prior to the designation of the sanctuary that violate sanctuary prohibitions may be allowed to continue. NOAA may, however, further regulate the exercise of such activities by applying additional terms and conditions as a condition of the certification to achieve the purposes for which the sanctuary would be designated. Requests for certifying permitted existing uses would have to be received by NOAA within 120 days of the effective date of the designation. As referenced in the proposed rule preamble, NOAA further clarifies that pre-existing structures on the submerged lands of the sanctuary, including pipelines, cables, and oil and gas structures, are subject to the certification requirements.

### 3. ONMS Authorizations

Pursuant to § 922.36 in the national regulations and § 922.232(e) in the CHNMS regulations, NOAA will have the authority to consider allowing an activity otherwise prohibited by § 922.232 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” will apply to most of the proposed prohibitions as outlined in § 922.232(e) and as limited in § 922.232(f). However, NOAA could not issue an authorization to allow for exploration, development, or production of oil, gas, or minerals, or for interfering with an investigation or other enforcement action. In general, an ONMS authorization could not be issued to allow for an introduction of an introduced species; however, NOAA proposes a process by which an ONMS authorization for aquaculture projects raising an introduced species approved by the State of California could be issued after making certain findings. NOAA has previously adopted a memorandum of agreement (MOA) with the State of California for considering aquaculture projects raising an introduced species in State waters of MBNMS and intends to update that MOA to address future aquaculture

projects raising an introduced species that may be proposed within CHNMS.

### 4. Special Use Permits

NOAA has the authority under the NMSA to issue special use permits (SUPs) at national marine sanctuaries, as established by section 310 of the NMSA (16 U.S.C. 1441) and by 15 CFR 922.31. SUPs can be used to authorize specific activities in a sanctuary if such authorization is necessary to establish conditions of access to, and use of, any sanctuary resource or to promote public use and understanding of a sanctuary resource. Section 310 of the NMSA establishes four requirements for SUPs: (1) activities must be compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources; (2) SUPs shall not authorize the conduct of any activity for a period of more than five years unless otherwise renewed; (3) activities carried out under the SUP must be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and (4) permittees are required to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the SUP and to agree to hold the United States harmless against such claims. The NMSA authorizes NOAA to assess and collect fees for the conduct of any activity under an SUP, including costs incurred, or expected to be incurred, in issuing the permit and the fair market value use of sanctuary resources; for instance, for use of the seabed to protect a buried cable from anchor damage. Implementing regulations at 15 CFR 922.35 provide additional detail on assessment of fees for SUPs. Like with sanctuary general permits, NOAA can place conditions on SUPs specific to the activity being permitted.

The activities that may qualify for a SUP are set forth in the **Federal Register** (78 FR 25957 (May 3, 2013); 82 FR 42298 (Sept. 7, 2017)). Categories of SUPs may be changed or added to through public notice, and no SUP may be issued for any category of activity unless ONMS has published a notice in the **Federal Register** that such category of activity is subject to the requirements of section 310 of the NMSA. NOAA is not proposing any new SUP category as part of the designation of CHNMS.

However, as memorialized in a **Federal Register** Notice issued on August 16, 2024 date (89 FR 66689), NOAA modified the SUP category for the continued presence of commercial subsea cables in the following way: for a two-year period beginning on August

16, 2024 date, the SUP category does not apply to sanctuaries designated after August 16, 2024 date. In other words, via this notice, NOAA informed the public that for the duration specified in the notice, the continued presence of commercial subsea cables in sanctuaries designated after August 16, 2024 date is not subject to the requirements of Section 310 of the NMSA. The duration specified in the notice may be further extended via subsequent **Federal Register** Notices. The purpose of this modification is to afford NOAA adequate time to evaluate the need for updating this SUP category, to publish any proposed updates to the category and/or to implement guidance for the category, to consider and respond to public comment, and to finalize any updates to the category. NOAA will publish **Federal Register** Notices of any such subsequent proposed or final updates. See the Notice (89 FR 66689) for more information. (Need to update based on content of FRN).

As further described in the August 16, 2024 date **Federal Register** Notice, the modification of the SUP category for the continued presence of commercial subsea cables was effective immediately, however, at the time of modification, NOAA also initiated a request for public comments on its evaluation of this SUP category generally. Any comments received pursuant to that request will be considered and addressed when NOAA publishes any proposed updates to the SUP category and/or to implementing guidance for the category. See 89 FR 66689 for additional information.

SUP categories that are potentially relevant to known activities at the proposed CHNMS include the discharge of cremated human remains, and discharges from fireworks displays.

### 5. Memoranda of Agreement

NOAA is including a section of the regulations describing two memoranda of agreement it will enter into for interagency coordination to address regulatory or statutory issues—introduced species aquaculture projects and the Sunken Military Craft Act. Regarding introduced species, NOAA has previously established an agreement to coordinate with State agencies on review of aquaculture projects that could include introduced species into MBNMS and GFNMS. NOAA would revise and update that to include CHNMS. This regulation also acknowledges that sunken military craft in CHNMS will continue to be administered by the respective Secretary concerned pursuant to the Sunken Military Craft Act. NOAA will enter into

a Memorandum of Agreement with the appropriate agencies regarding collaboration on implementing the Sunken Military Craft Act. The ONMS Director will request approval from the respective Secretary concerned for any terms and conditions of ONMS authorizations that may involve sunken military craft in CHNMS.

#### I. Other Conforming Amendments

The general regulations in 15 CFR part 922, subpart A, for general information and 15 CFR part 922, subpart D, for National Marine Sanctuary permitting are also amended so that the regulations are accurate and up-to-date. The modified sections to conform to adding a new sanctuary are:

- Section 922.1 Purposes and applicability of the regulations
- Section 922.4 Boundaries
- Section 922.5 Allowed activities
- Section 922.6 Prohibited or otherwise regulated activities
- Section 922.30 National Marine Sanctuary general permits
- Section 922.36 National Marine Sanctuary authorizations
- Section 922.37 Appeals of permitting decisions

#### V. Response to Comments

This final rule includes NOAA's responses to some comments from Appendix A of the final EIS. These comments and responses are included in this preamble because they address the significant issues raised in public comments on the proposed rule and offer additional information about why certain changes were made to the rule, the terms of designation, the regulations, or the management plan. The final rule retains the numbering/naming of the comment from Appendix A so readers can track the comments that have been included in this preamble and more efficiently find other related comments/responses in Appendix A that have not been included in this preamble. As such, cross-references have been retained here for completeness. For a full scope of all of the comments received on the draft designation documents, including the draft EIS and the draft management plan, and their responses, please review Appendix A of the final EIS.

1. *Comment GN-1*: An overwhelming majority of comments (>98%) voiced support for the proposed sanctuary, its goals and objectives, and the proposed regulations. Commenters encouraged NOAA to proceed with the sanctuary designation process due to the importance of resources in the study area and the need to provide additional protection of these resources.

*Response*: NOAA agrees with the view that this sanctuary area contains nationally significant natural, historical, and cultural resources worthy of protection. Numerous opportunities exist to collaborate on the management of this area with a diversity of Native American Tribes and Indigenous organizations. The new sanctuary would help both the State and Federal governments achieve their biodiversity conservation goals that have been established. The sanctuary would promote various forms of engagement with and use of the sanctuary and its resources (e.g., cultural activities, fishing, recreation, and research), while establishing additional regulations and non-regulatory programs to conserve the area's nationally-significant resources. It would help promote mitigation and adaptations in response to climate change, from establishing conservation actions, to promoting "blue carbon" ecosystem components, such as kelp forests and whale populations.<sup>7</sup> NOAA, working in collaboration with partners, would bring outreach activities, education programs, and research and monitoring to aid our understanding of the area and promote co-stewardship.

2. *Comment GN-2*: General opposition to the overall sanctuary process was expressed for a variety of reasons, including the potential that it could lead to additional regulations or potentially restricted access.

*Response*: NOAA has followed a very deliberate public process for designation of the new sanctuary. The process is consistent with NOAA's contemporary practice for designating other national marine sanctuaries and consistent with the provisions of the NMSA, in particular Section 304 (Procedures for Designation and Implementation), 16 U.S.C. 1434. Preceding the designation process, NOAA conducted an extensive public review at the five-year interval for the original nomination of the sanctuary; the proposed designation process began in November, 2021 with publication of the Notice of Intent (NOI) to conduct scoping and prepare an EIS, which provided for additional opportunity for public input during the scoping phase. NOAA received more than 14,300 comments and 22,000 comments, respectively, in these two public processes, nearly all in favor of designation and additional protections. Many of the comments formed the basis of alternatives and regulations proposed for designation. NOAA continued this highly public process with various

public workshops preceding the release of the draft designation documents. More than 110,000 comments were received on the draft designation materials. NOAA has diligently reviewed, considered, and responded to the issues raised in those comments throughout this appendix.

The designation materials include the rule, the final EIS and the final management plan. These materials have been revised through the extensive public process outlined above. Only the regulations that are necessary to address threats to sanctuary resources are included in the designation. See also the Regulations and Permitting section of comments and responses. Regarding concerns about restricted access, NOAA's sanctuary regulations impose no limits on public access to sanctuary waters (see response to Comment SE-8), and will encourage responsible use and enjoyment of the sanctuary (see, for example, the management plan's Blue Economy Action Plan).

3. *Comment GN-6*: There is a concern that once NOAA is given control, nothing can stop it from imposing more restrictions like eliminating recreational uses that belong to everyone. No specific human uses should be banned. Most of what NOAA says it will allow can be done right now, without giving NOAA control of the oceans and beaches that belong to everyone.

*Response*: NOAA has only developed regulations for the sanctuary to restrict or eliminate human activities that can harm sanctuary resources. Any limits on recreation or other activities would be to reduce harm to resources, such as discharge of untreated sewage from a recreational vessel. Sensible exceptions are included in the regulations for activities that on their face could be prohibited, but for which NOAA has concluded they could nonetheless continue, such as exceptions to the submerged lands disturbance regulation for anchoring a vessel. The proposed exceptions are intended to facilitate public and private uses of sanctuary resources to the extent compatible with the primary objective of resource protection. Any future change in these regulations would require that NOAA conduct a public review process that mirrors the extensive process it has undertaken for this initial designation of the sanctuary.

4. *Comment BO-1*: NOAA should close the gap created between Cambria and Montaña de Oro, including the waters off Morro Rock, by designating the final sanctuary with the Initial Boundary Alternative or Alternative 1 rather than the Agency-Preferred Alternative. Many reasons were given

<sup>7</sup> <https://www.fisheries.noaa.gov/feature-story/whales-and-carbon-sequestration-can-whales-store-carbon>.

including the area's important ecological characteristics and connectivity to other sanctuaries, sacred significance to Indigenous communities, and the importance for NOAA to have regulatory oversight for offshore wind and other types of uses or development and overall resource protection in this area.

*Response:* NOAA acknowledges that a final sanctuary boundary that originates at the southern end of MBNMS (at Cambria) and extends southward, "closing the gap," as achieved by the Initial Boundary Alternative or Alternative 1, would protect important ecological characteristics, historical resources, and sacred Indigenous heritage resources in that area. However, as discussed in detail in Section 5.4.9 in the final EIS, NOAA has included a Final Preferred Alternative with the coastal boundary and offshore waters of Alternative 4, plus Sub-Alternative 5b, plus a small area to more fully protect the Santa Lucia Bank that had been part of the Initial Boundary Alternative (see Figure 5–1 in Section 5.4.9 of the final EIS). This alternative has been identified after thorough consideration of public and Indigenous community comments, NOAA's responses to those comments, Administration priorities, and consultation among Federal agencies.

The reasons for further reducing the final sanctuary boundary at this time center around clarifying information provided by the three Morro Bay offshore wind energy lease holders during the public comment period, and NOAA's consideration of this information in light of renewable energy and conservation goals, the purposes and policies of the NMSA, and the purpose and need of the proposed sanctuary. NOAA also considered public comments supporting offshore wind energy development, as well as the State of California's support for sanctuary designation and the State's goal for transitioning to 100% clean energy. In public comments, the leaseholders identified a need to develop between 15–24 subsea electrical transmission cables between offshore leases and two landing sites at Morro Bay and Diablo Canyon grid connections. Presently they estimate landing roughly half of the cables at each grid connection. The three leaseholders' current design requirements may mean they will seek access to a portion of the seabed between 30–45 miles wide, narrowing as cables approach land and shallower water. Their comments on the draft EIS note that subsea electrical transmission cables need broad gradual bends (rather

than sharp turns) and need to cross other cables at largely 90-degree angles. With these parameters, all of the boundaries analyzed in the EIS for CHNMS would be expected to require cable routing from the Morro Bay leases through the sanctuary to shore, except for Alternative 4. While the draft EIS anticipated the leaseholders may need to route cables to DCP and that NOAA could rely on its permitting process to review such cable placement, the lease holders expressed persistent concerns. Several of the Morro Bay leaseholders expressed persistent concerns with the NOAA permit process for subsea cables and whether or not, in the end, they would be able to obtain permit approvals from NOAA to construct 15–24 subsea electrical transmission cables within the sanctuary from the offshore leases to onshore grid connections. They also expressed concerns that existing sanctuary permitting procedures could jeopardize their ability to obtain financing for their development, and they sought to avoid the introduction of any permitting risk that NOAA might be unable in the future to approve one, several or all permit requests for cables in the sanctuary.

In considering an area for designation, the NMSA requires NOAA to, "enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment . . ." 16 U.S.C. 1431(b)(4), and to evaluate, among other factors, the manageability of the area, the negative impacts produced by management restrictions on resources development, and socioeconomic effects of sanctuary designation. 16 U.S.C. 1433(b). At this final designation phase, NOAA has reconsidered offshore wind industry concerns regarding the sanctuary in the particular context of the Morro Bay leases, in conjunction with existing infrastructure and competing uses of the proposed sanctuary area, and in light of the purposes and policies of the NMSA as referenced above, including any potential, negative impacts produced by Sanctuary management restrictions on resources development, as well as the sustainable use of the marine resources to support renewable energy, climate change mitigation, and conservation goals. NOAA has identified this adjusted boundary, which would further the purpose and need of the sanctuary designation while also supporting renewable energy goals of the Administration and the State of California through allowing offshore wind developers to complete siting and permitting for subsea electrical transmission cables from the three

Morro Bay offshore wind leases to landing sites at both Morro Bay and Diablo Canyon without having to route cables through the new sanctuary, given their permitting uncertainty concerns as described above. The Final Preferred Alternative would be the most manageable boundary at this time and would allow the new sanctuary to focus on numerous core activities outlined in the management plan without the need to focus resources on myriad permitting issues related to offshore wind development. If NOAA decides to adopt sanctuary protections at a later time for additional areas (see the final management plan's Boundary Adjustment Action Plan), such a process would be informed by an improved, more certain understanding of offshore wind development in this area.

The Final Preferred Alternative meets the purposes and need for the designation as described in Chapter 2 of the final EIS, and it meets the designation standards identified in Section 303 of the NMSA. NOAA also acknowledges and affirms its commitment to respecting Indigenous Knowledge and promoting co-stewardship in this area while advancing climate and conservation goals. This final sanctuary boundary would allow protection of nationally-significant natural, ecological, historical, and cultural resources along 116 miles of the California coast, out to nearly 60 miles from shore and a maximum depth of 11,580 feet. The total area within the Final Preferred Alternative is 4,543 square miles, making it one of the largest national marine sanctuaries in the National Marine Sanctuary System, if the Final Preferred Alternative is selected.

The draft EIS and the proposed rule provided notice to the public that, based on public comments received on the draft designation documents and NOAA's experience administering the National Marine Sanctuary System, pursuant to NEPA and the Administrative Procedure Act, NOAA may choose to identify an alternative in the final rule and final EIS that is within the geographic and regulatory scope of the alternatives considered in the draft EIS. Alternatives 4 and 5b along with the small, additional area included over the Santa Lucia Bank (analyzed in the Initial Boundary Alternative), and impacts associated with these alternatives, are thoroughly discussed in the draft EIS. NOAA received public comments on these alternatives that it carefully considered in identifying the Final Preferred Alternative. As explained in Section 3.6 of the final EIS, the minor variation in the boundary for

Alternative 4 south of DCPD is also within the scope of alternatives discussed in the draft EIS and does not result in environmental impacts not previously considered. The Final Preferred Alternative is thus within the geographic and regulatory scope of the alternatives considered in the draft EIS. Based on this information, NOAA has determined that there are no substantial changes to the proposed action that are relevant to environmental concerns, nor are there significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. As such, preparation of a supplemental EIS is not required.

NOAA considers the Final Preferred Alternative to be Phase 1 for establishing national marine sanctuary protection for this important coastline and these nationally-significant resources. At the first management plan review process beginning on or before January 2032, NOAA commits to evaluating and considering the need for and suitability of several potential boundary adjustments to protect additional areas, including moving the CHNMS boundary to the southern end of MBNMS. Resources worthy of and requiring sanctuary protection would be assessed at that time and the appropriateness of expanding the sanctuary would be evaluated. Any subsequent boundary adjustments would be guided by Section 304 of the NMSA and would require a separate public process under the NMSA and NEPA. A “Boundary Adjustment Action Plan” has been added to the final management plan.

5. *Comment BO-4*: NOAA should protect the waters from Morro Rock north because, as it has noted for other sections of the proposed sanctuary, this area includes numerous State parks—Morro Bay, Estero Bluffs, Harmony Headland—as well as other State conservation areas, such as Morro Strand State Beach Campground, Cayucos State Beach and White State Marine Conservation Area, all of which could benefit from adjacent sanctuary protection. By protecting adjacent areas, a larger overall protected zone is created, each side supporting the other.

*Response*: NOAA will consider future protection of this area as part of the Phase 2 process, which will inform NOAA’s consideration of future options for sanctuary protection of this area (see Boundary Adjustment Action Plan under EIS Section 3.2.3 and Section 5.4.9 for more information on Phase 2). As contemplated in the new “Boundary Adjustment Action Plan”, NOAA anticipates conducting studies about

resources that may warrant sanctuary protection prior to 2032, when it will formally initiate a process to consider adjusting the sanctuary’s boundary.

6. *Comment BO-5*: NOAA should not close the gap at this time, rather create a sanctuary expansion action plan to consider expanding the sanctuary over that area in the future, after offshore cables are built and can be certified by NOAA as an acceptable, existing use.

*Response*: NOAA agrees with the premise of the comment and has included a new “Boundary Adjustment Action Plan” in the final management plan for the sanctuary.

7. *Comment BO-6*: NOAA should include the Gaviota Coast Extension (Sub-Alternative 5b) in the final sanctuary boundary because of important biological and cultural resources, and the value that area holds for coastal recreation.

*Response*: The boundary for the Final Preferred Alternative includes the Gaviota Coast Extension (Sub-Alternative 5b). The EIS recognizes that there are important resources in this area that would benefit from sanctuary protection, such as biological resources, cultural resources, and coastal recreation.

8. *Comment BO-7*: NOAA should include Morro Bay Estuary (Sub-Alternative 5a) in the final sanctuary boundary as it is important to Indigenous communities and is an important part of the overall ecosystem.

*Response*: At this time, NOAA is not including the estuary within the sanctuary and will consider if future sanctuary protection of the estuary is warranted as part of the new “Boundary Adjustment Action Plan.” NOAA is open to considering a future boundary expansion to include the Morro Bay Estuary through a separate process under Section 304 of the NMSA.

9. *Comment BO-9*: Any final boundary needs to include the deep water portions removed by Alternatives 1, 2 and 4, because that area is a newly-discovered ecological hotspot, is important to bird species, and may hold important seafloor habitats not yet discovered.

*Response*: NOAA considered the inclusion of these areas in the Initial Boundary Alternative. The Final Preferred Alternative for the sanctuary does not include the area west of the Santa Lucia Bank, beyond approximately 65 miles from shore. NOAA fully considered existing resource information for this area. The public comments did not provide substantial new information about why that area should be included in the final sanctuary boundary relative to the

reasons NOAA provided for excluding it in Section 5.4.9 in the draft EIS. NOAA still has concerns about the extra management burden without existing evidence regarding clearly nationally-significant natural or maritime heritage resources in the area. Data are also unclear as to the threats to resources found in this area and NOAA lacks information that would support why a sanctuary designation is the proper management tool to protect these resources. As outlined in the new “Boundary Adjustment Action Plan” in the final management plan, if new data demonstrate that significant living marine, submerged maritime heritage and/or cultural resources in this area would benefit from sanctuary protections, NOAA could consider a boundary expansion in the future. See also the response to Comment BR-5.

10. *Comment BO-14*: NOAA should create an exclusion zone for the existing harbor area off Vandenberg Space Force Base (VSFB) so that the military’s current harbor-related activities are not within the sanctuary.

*Response*: NOAA’s intent is to exclude existing coastal harbors from the boundaries of the sanctuary in recognition that there can be numerous activities and structures necessary within a harbor that may otherwise be inconsistent with a national marine sanctuary and are best managed by local authorities. The Initial Boundary Alternative in the draft EIS excluded three harbors—Morro Bay, the private marina at Diablo Canyon Power Plant and all of Port San Luis, and should have also excluded an area that contains the existing harbor activities at VSFB. The analysis of all alternatives in the final EIS and the boundary for the Final Preferred Alternative excludes this small area from the sanctuary (see final EIS Figure 3-3). This is a technical correction that is consistent with the purposes and goals of the draft designation materials. This change is also a minor variation of the boundary alternatives previously presented, the impacts of which are encompassed in the scope of alternatives in the draft EIS, and is thus qualitatively within the spectrum of alternatives assessed in the draft EIS. Based on this information, NOAA has determined that there are no substantial changes to the proposed action that are relevant to environmental concerns, nor are there significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. As such, preparation of a supplemental EIS is not required for this minor change. See final EIS Section 4.9 for more information.

11. *Comment BO-16*: NOAA should reconsider an alternative that it rejected that would have created buffer zones around the harbors and along their shorelines so that harbor-related activities would not occur within the sanctuary.

*Response*: As explained in the draft EIS, NOAA considered but eliminated from detailed study the request for large exclusion zones around the two main public harbors in the study area—Morro Bay and Port San Luis (see EIS Section 3.9.6). None of the facts have changed related to consideration of exclusion areas for those harbors. In the Final Preferred Alternative, NOAA is excluding all waters and the submerged lands that fall within the two existing harbors along this stretch of coast (Port San Luis and Vandenberg Space Force Base). Note the waters off Morro Bay Harbor and Diablo Canyon Power Plant marina are not part of the Final Preferred Alternative. Activities that occur within the harbors are not affected by sanctuary regulations (with limited exceptions—*e.g.*, the “enter and injure” element of the discharge regulation could be relevant if, for instance, a hazardous discharge originated within a harbor and flowed beyond the harbor into the sanctuary and injured resources). Further, all existing dredge material disposal sites authorized by the USEPA are being excepted by regulation (see 15 CFR 922.232(a)(2)(i)(G)); presently NOAA is only aware of dredge material disposal sites offshore Morro Bay that would meet this regulatory exception; but as noted above, the waters off Morro Bay Harbor are not included in the Final Preferred Alternative. Other regulations have exceptions for activities that are often commonplace in a sanctuary near a harbor, such as: maintenance dredging of harbor entrance channels; anchoring a vessel; installing or maintaining an authorized navigational aid; discharging fish or fish parts during the conduct of lawful fishing activities. NOAA believes that the final boundary and the regulations, with appropriate exceptions, accommodate existing harbor activities and this alternative is not necessary. See also response to Comment BO-27.

12. *Comment BO-17*: NOAA should exclude the entire area of the State tidelands granted to Port San Luis Harbor District (along the shoreline from Point San Luis to approximately South Palisades Park in Shell Beach to three miles offshore). The Harbor District has authority for uses of the submerged lands within this area and applying sanctuary regulations would create an unnecessary redundancy.

*Response*: NOAA has already excluded from the sanctuary a very large area within (shoreward of) the COLREGS line for Port San Luis, approximately 1.6 square miles under the Initial Boundary Alternative, alternatives 1–4, and the Final Preferred Alternative. No specific plans or development proposals have been provided to NOAA to indicate that the sanctuary’s overlapping State tidelands granted to Port San Luis Harbor District would create conflicts. The State of California has granted certain State tidelands to various locally-organized harbor districts for the purposes of creating public access for commercial or recreational activities through harbor facilities. The State’s mandate for use of these areas is not concentrated on resource conservation, research and monitoring, education and outreach and the other various mandates Congress has established for the National Marine Sanctuary System. Thus, the regulations and other sanctuary management programs that NOAA could pursue in these waters are not redundant with the purpose of the waters and State tidelands granted to Port San Luis Harbor District by the State. See also response to Comment BO-27.

13. *Comment BO-18*: NOAA should designate the final boundary for the sanctuary with an exclusion zone along the coast of Pismo Beach, out to two miles offshore.

*Response*: NOAA considered but did not conduct a detailed analysis of this alternative because there was inadequate justification as to why a separate, special exclusion area was needed for the coastal waters and submerged lands off the city of Pismo Beach. In the absence of such justification, this broad exclusion would not meet the purpose and need of the sanctuary (see EIS Section 3.9.6). Note that NOAA has included a regulatory exception for any disturbance of the submerged lands that might occur due to repair and maintenance of any existing pier or dock in the sanctuary (see 15 CFR 922.232(a)(3)(iv)), so any repair and maintenance of the Pismo Pier would not require a permit review by the sanctuary. Many national marine sanctuaries include the waters and submerged lands offshore of coastal cities and have developed numerous successful collaborative programs with those local governments. For example, the Water Quality Action Plan for CHNMS includes strategies, modeled off similar successful programs in Monterey Bay National Marine Sanctuary (MBNMS), that showcase collaboration with cities and other municipalities to help ensure healthy and safe marine

water quality for public enjoyment and for marine species such as those caught by recreational fishermen. See also response to Comment BO-27.

14. *Comment BO-20*: NOAA should designate a new “Alternative 6” limited to the shoreline boundary of Alternative 4 but only extending offshore to 120 ft water depth, deep enough to include the likely location of paleoshorelines to concentrate the new sanctuary on coastal features important to local Indigenous Peoples.

*Response*: NOAA is not adopting this suggestion in the final sanctuary action because “Alternative 6” would not meet the purpose and need of designating a new sanctuary. The purpose and need includes not just protection and conservation of cultural heritage features, but also protection of ecological and ecosystem resources of the area. Note however that the Final Preferred Alternative adopts a portion of the request from this comment—the shoreline boundary is Alternative 4 (with a minor modification described in Section 3.5.1 of the final EIS), with the addition of the shoreline of Sub-Alternative 5b.

15. *Comment BO-22*: The proposed sanctuary boundary is too large. Just because cultural artifacts may exist somewhere within its broad borders does not seem to be a good use of taxpayer money. Significant cultural sites should first be identified and studied to determine if special protections are warranted, then a small sanctuary could be proposed to protect those unique and culturally historic sites.

*Response*: NOAA disagrees with the premise of the comment. The purposes of the sanctuary include much more than conservation of individual, submerged cultural sites. The EIS identifies other purposes, including conservation of nationally-significant ecological resources, protecting important physical oceanographic processes, promoting multiple uses of the sanctuary, conserving and studying historical shipwrecks, and creating a framework for ecosystem-based and community-based conservation. Nonetheless the Final Preferred Alternative does adopt largely the “Combined Smallest” boundary, with several small additions included.

16. *Comment BO-27*: Special boundary exclusions should be minimized, as they will distract from NOAA’s ability to manage the whole of the ecosystem and result in adjacent development that can harm sanctuary resources.

*Response*: Largely, NOAA agrees with the comment. Numerous small, special



exclusions within a sanctuary for different purposes and needs could create significant challenges managing the ecosystem as a whole and could complicate enforcement. This practice generally is avoided in national marine sanctuaries. To aid overall management, the Final Preferred Alternative does not have small inclusion or exclusion areas that were recommended in other comments, other than the existing coastal harbors, as has been the practice for many other national marine sanctuaries. These areas are excluded in recognition that there can be numerous activities and structures necessary within a harbor that may otherwise be inconsistent with a national marine sanctuary and are best managed by local authorities.

17. *Comment PN-2*: NOAA should provide more justification for the sanctuary designation, including: specific requests and documentation of the benefits of the sanctuary to the Federal government; documentation of consistency with designation criteria; and justification for the national significance of resources throughout the geographic extent of the sanctuary.

*Response*: NOAA documented the anticipated beneficial impacts of the proposed sanctuary on the appropriate resources and sectors in Chapter 4 of the EIS. Regarding documentation of the designation criteria, NOAA has determined that the sanctuary would effectively manage and conserve nationally-significant biological, ecological, physical, cultural, etc. resources consistent with NOAA's mandate under the NMSA. In particular, Chapter 2 of the EIS describes the national significance of the resources in the sanctuary area, with reference to the national significance criteria that NOAA applied in considering the nomination of CHNMS. Further discussion of the nationally significant resources in the Initial Boundary Alternative (in other words, the full geographic extent of the area considered for sanctuary designation) is contained throughout Chapter 4. NOAA's documentation of the affected environment demonstrates the presence and importance of nationally-significant resources throughout the Initial Boundary Alternative. As explained in the EIS, an assessment and basis for why the proposed sanctuary meets the designation standards and factors is discussed throughout the EIS; in particular, see chapters 2 and 3 and Appendix E.1.

While current technical/scientific/cultural surveys do not permit the level of mapping detail requested by one commenter at this time, it is also not

necessary to generate this information and not required by the NMSA or NEPA. NOAA has extensively demonstrated the national significance of resources throughout the area. The entirety of the area supports ecosystem connectivity necessary for the health of the biological resources, and NOAA has learned from Tribes and Indigenous groups about the cultural significance throughout the area.

18. *Comment RP-1*: Stronger regulations should be adopted, including restrictions on fishing, speed limits for ships, designating areas to be avoided, regulation of recreational activities, imposing a requirement to decommission and dismantle all offshore energy platforms and turbines, and removing exceptions for existing oil and gas production. Providing exceptions or exemptions would increase the risk of damage to the marine environment. The proposed regulations are not strong enough to meet the purposes of the NMSA or the need for the proposed sanctuary, and activities which could be harmful to the sanctuary should not be granted permits.

*Response*: Under the NMSA, a purpose and policy of sanctuaries is to "facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities." 16 U.S.C. 1431(b)(6). NOAA believes that the regulations effectively balance resource protection goals while allowing for compatible uses in the sanctuary, and therefore, the regulations meet the purpose and need of the sanctuary. Once designated, NOAA will monitor and evaluate threats to sanctuary resources and consider, where appropriate, the need to propose additional regulatory actions. The management plan identifies many non-regulatory, programmatic measures (e.g., voluntary vessel speed reduction) whereby NOAA would address threats to sanctuary resources. See topic-specific comments and responses (e.g., fishing, oil, and gas) for additional details regarding specific regulations. Regarding decommissioning of oil and gas platforms, NOAA's regulations would accommodate the processes and requirements of the State and of the Bureau of Safety and Environmental Enforcement (BSEE) (see response to Comment OG-15). Although the regulations prohibit abandoning structures on the submerged lands of the sanctuary, as well as other activities that could occur during and after decommissioning, NOAA could issue permits, authorizations, or certifications

(as appropriate) to enable the removal and/or disposal, in a manner compatible with the sanctuary's purposes, of structures related to oil and gas development. Regarding OSW turbines, BOEM, BSEE, or California State requirements may govern decommissioning and removal, and NOAA would also, in reviewing any permit proposals for such structures, consider terms and conditions reasonably necessary to protect sanctuary resources (see responses to Comments RP-2 and RP-11).

See Section 3.9.7 of the final EIS for NOAA's explanation on why the regulations do not address issues regarding fishing restrictions, vessel speed limits, designating areas to be avoided, and regulation of recreational activities.

19. *Comment RP-5*: The proposed regulations would duplicate other Federal and State laws (e.g., Clean Water Act, CEQA) and duplicate authorities of other councils and government agencies (e.g., California Coastal Commission, California State Lands Commission, USACE). These overlapping authorities are burdensome, difficult for members of the public to understand, and a waste of governmental resources. Rather than adding layers of regulation, NOAA needs to coordinate and collaborate within the existing regulatory system. In addition, existing regulations are already enforced by the California Department of Fish and Wildlife (CDFW) and Pacific Fisheries Management Council (PFMC).

*Response*: In developing sanctuary regulations, NOAA carefully considers the role that existing State and Federal laws and authorities play with relation to the sanctuary's purpose, including those listed in Appendix F of the EIS. NOAA is guided by the NMSA, which in Section 301(b)(2) states that one purpose of national marine sanctuaries is "to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities." 16 U.S.C. 1431(b)(2). Through successful coordinated management of CINMS, MBNMS, and Greater Farallones National Marine Sanctuary (GFNMS), NOAA has decades of experience implementing and refining sanctuary regulations that harmonize with and augment California State laws and jurisdictions, as well as Federal laws and authorities. Further, the proposed regulations are largely modeled off of and consistent with regulations for other California national marine sanctuaries.

NOAA looks forward to continued partnership with State and Federal agencies to leverage resources and achieve greater resource management effectiveness and efficiencies. NOAA does not consider sanctuary regulations to be overly burdensome, and has provided several logical exceptions and permitting options to allow the continuation of activities that are compatible with the sanctuary's goals. Non-regulatory programs at CHNMS will be a central focus of how NOAA manages the new sanctuary, for instance various education and outreach initiatives to help the public understand and support the protections put in place for the new sanctuary (see the Education and Outreach Action Plan in the final management plan). Also, see responses to comments GN-2 (opposition to sanctuary), GN-11, and WQ-9 (duplicative regulations), and final EIS Section 2.2.1. Final EIS Section 2.2.1 provides a detailed discussion of why a comprehensive management approach offered by national marine sanctuary designation is needed to protect the resources of this area, including specific examples of the sanctuary regulatory and non-regulatory programs that could help fill existing gaps in protection and management.

20. *Comment RP-6*: Shipwrecks do not need additional protections.

*Response*: NOAA believes that providing supplemental, coordinated management (consistent with the NMSA) of historical resources, including shipwrecks, will provide more comprehensive protection for these nationally-significant maritime heritage resources. Protection of shipwrecks under complementary statutes (e.g., NMSA and Sunken Military Craft Act) and programs are not mutually exclusive. Also, the State of California's protection of shipwrecks only extends to 3 nautical miles (nmi) from shore, while the Federal protection provided by sanctuary regulations (see 15 CFR 922.232(a)(4) extends much further offshore, up to 59 miles (depending on the boundary alternative). See also Section 4.5.3 of the final EIS, which provides a detailed discussion of the beneficial impacts that sanctuary designation would provide for maritime heritage resources, stemming from additional regulatory protection to prevent harm to these resources, as well as improved coordination, research and monitoring, and enhancing community collaboration.

21. *Comment RP-7*: The proposed prohibition on drilling into or altering submerged lands should be removed.

*Response*: The seabed protection regulation (15 CFR 922.232(a)(3)) will

provide core protection to the sanctuary's submerged lands. It is central to addressing known and future threats to sanctuary resources and thus to meeting the resource protection and management needs of the sanctuary. NOAA provides important exceptions to this prohibition, such as for conducting lawful fishing activities or kelp harvesting, anchoring a vessel, dredging entrance channels for existing harbors, and maintaining an existing dock, pier, breakwater or jetty. For other activities, with some exceptions, that might disturb the seabed, NOAA may issue a permit to allow the activity to occur. For more information about sanctuary permits, see Section 3.2.2 of the final EIS and regulations at 15 CFR 922 Subpart D. See also responses to Comments OG-13 and OG-14.

22. *Comment OG-1*: The final regulations and management plan must permanently prohibit any and all oil and gas development or mining, current or in the future. The sanctuary should require cancellation of existing leases, and hasten decommissioning of existing platforms, pipelines, and other infrastructure. Continued oil and gas activities risk harmful oil spills and harm endangered species. No permits or authorizations for any oil and gas or mining should ever be allowed in the new sanctuary.

*Response*: NOAA lacks authority to terminate valid leases, permits, licenses, or rights of subsistence use or access that exist at the time of sanctuary designation, although NOAA may regulate the exercise of those leases, permits, licenses, and rights consistent with the purposes for which the sanctuary is designated. See 16 U.S.C. 1434(c). Final sanctuary regulations do not prohibit oil and gas development pursuant to leases in effect at the time of sanctuary designation. Oil and gas operators have rights to that development, as set forth in lease agreements pursuant to OCSLA.

Sanctuary regulations will, however, otherwise prohibit new oil and gas exploration, production, or development after sanctuary designation. Likewise, the regulations will prohibit exploring for, producing, or developing minerals in the sanctuary, and thus no mining in the sanctuary would be allowed. Furthermore, the regulations will provide that NOAA cannot issue permits or authorizations that would allow for any further exceptions to the prohibition on exploring for, producing, or developing oil, gas, or minerals in the sanctuary (see 15 CFR 922.232(f)).

23. *Comment OG-2*: Any platforms that are no longer producing at the time

the sanctuary is designated, regardless of the reason, should be decommissioned, not restarted. For instance, Exxon is working to restart offshore oil platforms that are outside all alternative boundaries, but the infrastructure (i.e., pipelines) is located within the boundaries of Sub-Alternative-5b (Gaviota Coast Extension). The sanctuary should evaluate the safety of restarting this shut down pipeline within its boundaries, in particular because operators of those platforms have had spills in the past and there is risk of spills in the future.

*Response*: NOAA will coordinate with operators and BSEE and any State agencies as appropriate to ensure development from an existing oil and gas platform that may recommence after sanctuary designation does so in a manner that minimizes the risk of oil spills or any other potential impact on sanctuary resources. See also response to Comment OG-1.

24. *Comment OG-3*: NOAA's final rule needs to make clear that exploration for oil and gas reserves includes any high energy seismic testing and is thus prohibited.

*Response*: NOAA has always considered exploration for oil and gas reserves to include high energy seismic survey testing from equipment towed behind a vessel or operated autonomously from a vessel or from shore for the purpose of locating oil and gas reserves in the submerged lands. That activity would be prohibited in the sanctuary. However, other seismic survey work would not be prohibited if its purpose was for identifying other geological features such as a fault. Thus, the purpose for the survey work matters. Note however that any high energy survey work for purposes other than exploration for oil and gas reserves might be a violation of the sanctuary's regulations if that activity might take, harm or otherwise disturb a marine mammal, sea turtle or bird (see 15 CFR 922.232(a)(5)).

25. *Comment OG-4*: The final sanctuary regulations should ban any and all oil-related pipelines that could be proposed to cross the sanctuary borders.

*Response*: Any new oil or gas pipeline, except within the limited exception described in the response to Comment OG-1, would be prohibited within sanctuary boundaries and could not be permitted. The prohibition on oil and gas development (15 CFR 922.232(a)(1)) extends to ancillary facilities related to exploration or development of hydrocarbons within the sanctuary. NOAA does not consider this prohibition to apply per se to

abandonment, decommissioning or removal of existing pipelines, which can be permitted. Nor does this prohibition extend to disturbance of the seabed due to repair and maintenance of existing pipelines, for which the proposed sanctuary regulations would allow NOAA to issue a permit.

26. *Comment OG-8*: NOAA's proposed regulations impermissibly terminate the development potential of the Santa Ynez Unit leases by limiting existing oil and gas development to reservoirs under development at the time of designation. The leaseholder has a right to develop any reservoir within that lease area and the regulations need to be changed to reflect this. If NOAA is concerned about seafloor penetrations, it could limit development to only those seafloor penetrations at the time of designation.

*Response*: Leases (and lease units) issued to Exxon to develop the Santa Ynez Unit (and Freeport-McMoRan to operate the Point Pedernales project) allow development of any reservoir or geological formation within the boundary of the lease (or lease unit). Therefore, NOAA has amended the proposed language for the exception to the general prohibition on oil and gas development to remove the term "existing reservoirs under production prior to the effective date of Sanctuary designation" and replaced it with "existing leases or lease units in effect on the effective date of Sanctuary designation" (see 15 CFR 922.232(a)(1)). Accordingly, production can continue pursuant to any lease or lease unit in effect at the time of designation through this exception to the prohibition on oil and gas development.

27. *Comment OG-14*: The regulatory exceptions for certain oil and gas activities should be expanded to include platform abandonment and decommissioning. Discharges during decommissioning and removal would be analogous to those that occur during regular oil and gas operations, which have an exception. No rationale is provided why this should require permits when other activities are excepted. Both BSEE and California State Lands Commission leases assert a lessee has a right to abandonment and decommissioning.

*Response*: As stated in responses to other comments, NOAA is granting an exception to allow existing oil and gas activities including discharges or drilling into reservoirs far below the seabed. Discharges or drilling within or into such reservoirs are not expected to cause any direct impact on living marine resources. Conversely, discharges within or into the sanctuary

waters, or disturbance directly onto or in the upper layers of the submerged lands could harm such sanctuary resources, and thus are activities that NOAA believes are important to regulate in order to further the purposes of the sanctuary. Therefore, NOAA is not providing an exception for those discharges or disturbances to the submerged lands. Abandonment, decommissioning, and removal activities for oil and gas platforms and pipelines could have discharges within or into sanctuary waters and disturbance directly onto or in the upper layers of the submerged lands, activities for which NOAA is consistently exercising regulatory control and not allowing via regulatory exception. New discharges that have not been permitted at the time of sanctuary designation, including those which may be necessary during abandonment, decommissioning, and removal activities or from routine oil and gas production activities, would require a sanctuary general permit or ONMS authorization. Like other Federal and State agencies, NOAA is interested in seeing these facilities ultimately removed and their past development sites restored. It is important that NOAA has the ability to review those activities within the sanctuary to ensure potential impacts on sanctuary resources are avoided or feasibly mitigated. See also response to Comment OG-12.

28. *Comment OG-20*: NOAA should require full removal of all oil and gas development platforms, other infrastructure such as pipelines and cables, and any remaining residue, like shell mounds and debris, as required by lease agreements and Federal law.

*Response*: As stated in revised Section 4.7.1 of the final EIS, NOAA understands that the baseline position of Federal and State agencies responsible for decommissioning and removal of facilities for oil and gas development is to require full removal. NOAA has no objections to this as the baseline assumption. NOAA also anticipates that alternatives to full removal for all facilities will be analyzed once specific plans for facilities are completed. See also response to OG-21.

29. *Comment OW-1*: All aspects of offshore wind development are incompatible with a national marine sanctuary and the regulations and management plan need to clearly explain that such development is inherently incompatible with a national marine sanctuary. These are industrial facilities, like oil and gas platforms and pipelines, that can harm myriad sanctuary resources in diverse ways

during construction, operation, and removal. There has been no research on adverse impacts and no proof of safe installation and operation methods.

*Response*: NOAA's final designation materials (response to comments, final EIS, final management plan) for the sanctuary do not make any policy statements that offshore wind development is inherently incompatible with the sanctuary. Any decision about whether a particular offshore wind development project is compatible with the sanctuary will be made on a case-by-case basis, as needed, for a particular proposed project or permit reviews. For instance, in anticipation of sanctuary designation, NOAA is participating in the review with other State and Federal agencies of the CADEMO offshore floating wind project, in State waters off Vandenberg Space Force Base. Based on that review and consultation with agency partners, if the sanctuary is designated, NOAA will make a final decision on the compatibility of that project's offshore wind platforms and subsea electrical transmission cables to shore. Depending on the final boundary for the sanctuary and the design of cable routes to shore, NOAA may also request to serve as a cooperating agency with BOEM when it initiates environmental review of the construction and operation plan(s) for the wind farm leases off Morro Bay. Participating and coordinating in these review processes will allow NOAA to ensure that any potential impacts on sanctuary resources are well understood and effectively mitigated.

There is precedent for NOAA approval of submarine cables (mostly fiber optic cables) that are within a national marine sanctuary or that pass through a sanctuary. The final designation materials make clear that NOAA believes subsea electrical transmission cables, like submarine fiber optic cables in this and other sanctuaries, can be compatible with a sanctuary and can be approved subject to sufficient environmental review, mitigation, and consultation with partner agencies and provided an applicant satisfies permit review criteria.

30. *Comment OW-3*: Offshore floating wind platforms within the sanctuary are incompatible with a sanctuary and can not be permitted. However, the subsea electrical transmission cables that bring power to shore from wind farms beyond the sanctuary boundary are possibly compatible and could be approved provided NOAA exercises control over the siting, environmental review, and permitting of those cables for portions within the sanctuary.

*Response:* The final EIS indicates that future development of a large wind farm within Federal waters of the area proposed for sanctuary designation is not reasonably foreseeable, and is in fact highly unlikely. Upon sanctuary designation, such development in Federal waters would likely be excluded. The Outer Continental Shelf Lands Act (OCSLA) prohibits BOEM from leasing areas within sanctuary waters (see EIS Section 4.7.3). NOAA does not have authority under the NMSA to provide a leasing mechanism to allow offshore wind platforms within a national marine sanctuary.

The State of California retains authority to issue leases for wind platforms in State waters of the sanctuary. As noted in responses to comments OW-1 and OW-33, NOAA is participating in the environmental review for the CADEMO project in State waters where four offshore floating wind platforms are proposed. That review process will provide NOAA appropriate, project-specific information and the opportunity to coordinate with State agency partners on the appropriate action for that proposal.

NOAA concurs with the comment that subsea electrical transmission cables transporting power to shore from wind farms beyond the sanctuary, where such cables pass through the sanctuary, can be permitted and can be considered compatible with the sanctuary subject to proper siting, environmental review, and collaboration with partner agencies and provided an applicant satisfies permit review criteria.

31. *Comment OW-14:* The Agency-Preferred Alternative does not provide an adequate space to allow for subsea electrical transmission cable construction that avoids the need for a sanctuary permit. Moreover, the industry standard for the distance between cables is three times (3x) water depth. So with the new industry projection of up to 24 subsea electrical transmission cables, the exclusion area must be vastly larger than allowed in the Agency-Preferred Alternative.

*Response:* NOAA understands that the offshore wind industry has a goal to plan and route cables from the three Morro Bay wind leases to shore and not pass through a national marine sanctuary, to avoid seeking a permit from NOAA. NOAA concurs that the draft Agency-Preferred Alternative would not exclude enough space to achieve industry's objective to avoid passing any cables through the sanctuary, given clarifying comments received in this rulemaking about the number of cables, distance needed

between cables, need to plan for broad curves in subsea cables rather than sharp turns, space to plan crossing other cables at right angles, and shoreside landing sites. Other comments suggest that the boundary alternative proposed by American Clean Power would exclude enough space to achieve the objective of avoiding sanctuary waters. The three leaseholders have since acknowledged that the American Clean Power alternative would not exclude enough space, and they instead believe NOAA should adopt Alternative 4 to achieve the goal of maximizing flexibility in cable routing to avoid this or other national marine sanctuaries.

NOAA has identified the Final Preferred Alternative for reasons explained in more detail in Section 5.4.9 of the final EIS, in part to allow the offshore wind industry to achieve its goals with respect to the Morro Bay leases. If in the future, offshore wind developers propose subsea electrical transmission cables to pass through this or another sanctuary, NOAA is confident that it has an adequate permit process to review, consider, and ultimately approve, as appropriate, subsea electrical transmission cables. See also the response to Comments OW-1, BO-1, and BO-11.

32. *Comment OW-16:* The regulatory approach for offshore wind-related cable installation, repair, maintenance, operations and removal articulated in the draft EIS is not clear, well-defined, or timely. The lack of clarity in the permitting option(s) presents complications for subsea electrical transmission cables, and would add an additional layer of uncertainty for offshore wind projects. Since submarine cables can be built and operated consistent with the protection of sanctuary resources, it is important to maintain regulatory flexibility and ensure a reasonable regulatory pathway exists for studying, installing, and operating submarine cables within the sanctuary. NOAA needs to better explain the permitting process and requirements for offshore energy transmission cables in the sanctuary, including the terms and conditions, standards for evaluating permits, and mitigation measures. Reliance on the special use permit, which can only be issued for five years, creates uncertainty for offshore wind development.

*Response:* Responses to numerous comments in this rulemaking provide additional detail that indicate NOAA's willingness to permit submarine cables—both subsea electrical transmission cables and submarine fiber optic cables—upon satisfaction of permit review criteria and

environmental review, and that it has a fair and robust process for considering and approving such permits. In 2011, NOAA published a document providing policy and permitting guidance for submarine cables within national marine sanctuaries (hereafter "cable permitting guidelines"; NOAA 2011). That document provides considerable detail about how a developer can apply for a permit, what permit is required for different types of cables based on their purpose, and what can be expected regarding potential standard conditions, monitoring expectations, and other requirements. While the original impetus for that document centered around submarine fiber optic cables, the cable permitting guidelines are written to generally apply to any submarine cable project proposed within a national marine sanctuary. As described in sections 4.7.1 and 4.7.3 of the final EIS, at this time NOAA's cable permitting guidelines indicate that an ONMS authorization of a USACE permit to install a subsea electrical transmission cable would be the most likely and appropriate permitting approach. NOAA's current cable permitting guidelines contemplate that NOAA has the discretion to issue a special use permit to authorize the continued presence of the cable on or in the seabed within the sanctuary, however, NOAA has modified the special use permit category for such cables so that it does not apply to sanctuaries designated after August 16, 2024, as described below.

In 2024, NOAA plans to update the cable permitting guidelines in an action, subject to public review and comment, separate from this sanctuary designation. NOAA announced this commitment in a **Federal Register** Notice on August 16, 2024 (89 FR 66689). With this notice, NOAA also announced that the special use permit category for the continued presence of commercial subsea cables is modified such that, for a two-year period, it does not apply to sanctuaries designated after August 16, 2024, including CHNMS. During this timeframe, the continued presence of subsea cables in CHNMS will not be subject to special use permit requirements. The temporary suspension affords NOAA time to re-evaluate the need for updating the special use permit category, publish any proposed updates to the category and/or implement guidance for the category, consider and respond to public comment, and finalize any updates to the category. NOAA will publish **Federal Register** Notices for any subsequent updates (see final EIS Chapter 3, Section 3.2.2). During this

temporary suspension, NOAA will not have discretion to require or issue special use permits for submarine cables in newly designated sanctuaries.

The CHNMS regulations on disturbance of the submerged lands are modeled off, and largely consistent with, the comparable regulations for other sanctuaries offshore California. NOAA considers it preferable to provide consistent, system-wide cable permitting clarifications and guidance through the separate action described above, rather than alter the CHNMS regulations through this CHNMS-specific designation.

As addressed in responses to Comments BO-1, OW-8, OW-10, OW-14 and others, NOAA is nonetheless identifying a Final Preferred Alternative that would adjust the CHNMS boundary to largely eliminate the need for any of the developers of wind leases offshore Morro Bay to route a cable through and seek a permit from NOAA.

33. *Comment OW-21:* The regulatory prohibition on developing oil, gas or minerals needs to be clear that it would not restrict development of “green hydrogen.” Specifically, the regulations should exempt development of green hydrogen and its transport to shore via pipelines through the sanctuary.

*Response:* The final CHNMS regulations prohibit the exploration and development of oil and gas specifically, as well as “minerals.” NOAA does not consider “green hydrogen” to be oil, gas, or minerals. The sanctuary regulations are not intended to create an absolute prohibition on offshore development of hydrogen. At present, NOAA is not aware of any proposal to produce hydrogen offshore and transport it through the sanctuary, and thus any potential impact from the sanctuary designation on this activity would be purely speculative. If, in the future, a specific hydrogen project were proposed, NOAA would need to study the potential impacts on sanctuary resources from development and transport of hydrogen within the sanctuary. To the extent that construction and placement of structures used in hydrogen development would involve disturbance to or placing a structure on the submerged lands of the sanctuary, the sanctuary regulations would prohibit such activities except in accordance with valid permits. If the production of hydrogen occurs beyond the boundary of the sanctuary, NOAA may need to conduct a separate consultation with the Federal approving agency under Section 304(d) of the NMSA.

34. *Comment OW-26:* The exceptions for disturbance to the submerged lands

should have specific, additional exceptions for anchoring an offshore wind platform, as is granted for anchoring a vessel.

*Response:* The exception for anchoring a vessel included in the prohibition on disturbing the submerged lands applies to a vessel, as defined by the national program regulations to include watercraft capable of being used as a means of transportation, which would not include an offshore wind platform (see 15 CFR 922.11). The basic intent behind this exception recognizes most boat anchors are not large enough to cause damage to the submerged lands (except in sensitive habitats), are deployed temporarily and retrieved regularly, and are so frequently used in a sanctuary as to make the requirement to obtain a permit unmanageable. However, NOAA’s understanding is that the size of anchors necessary to stabilize a large offshore floating wind platform is massive, many thousands of times larger than an anchor for a standard vessel. Anchors for offshore floating wind platforms are expected to be deployed permanently and removed only at the end of the life of the platform. Agency approval of installation of anchors for wind platforms would require environmental review as part of a larger project. If platforms outside of the sanctuary require anchors placed within the sanctuary, NOAA could consider location, placement and impact of anchors through the overall project’s environmental review and agency consultation, and as appropriate, could approve placement of anchors on the submerged lands via an ONMS authorization of an underlying permit, likely a USACE permit.

35. *Comment OW-34:* NOAA should treat all offshore wind projects the same, whether they be in State waters or Federal waters. Since the Agency-Preferred Alternative cuts out a large area to allow cables to be built outside of the sanctuary, and the original boundary at the time of the Notice of Intent was adjusted to avoid overlap with the Morro Bay Wind Energy Area, NOAA needs to carve out the CADEMO project or exempt it from regulatory oversight to ensure it is treating all projects consistently.

*Response:* The Notice of Intent removed a portion of the marine waters included in the CHNMS nomination because BOEM had already initiated the leasing process to develop the Morro Bay Wind Energy Area prior to NOAA’s initiation of the designation process for CHNMS. BOEM lacks authority to issue offshore wind development leases within a sanctuary and the Federal

government determined it would offer greater certainty for potential lease bidders if the overlapping area was excluded from the proposed sanctuary boundary. NOAA is not aware of any analogous restriction on the California State Lands Commission’s authority to grant a lease within a National Marine Sanctuary. Thus, a similar exclusion for CADEMO is unnecessary.

An additional consideration is that the offshore wind development projects in Federal waters off Morro Bay are far ahead of CADEMO, which still is in the conceptual phase, lacking leases from the State for development. Also, in Section 4.7.3 of the final EIS, NOAA explained four potential development scenarios for CADEMO involving State leasing and permitting, three of which lead to no adverse impact from the sanctuary designation on development of this project in State waters. Given these facts and given the State itself has not requested that NOAA provide any special boundary or regulatory exception for this singular development project, NOAA is not adopting the particular requests made by CADEMO that it be given special regulatory exceptions or boundary exclusions for developing its project. NOAA will participate in the environmental review for the CADEMO project. That review process will provide NOAA appropriate, project-specific information and the opportunity to coordinate with State agency partners on the appropriate action for that proposal. See responses to Comments OW-33 and OW-35 for more information about NOAA’s decision making process related to the CADEMO project.

36. *Comment FC-1:* Both the EIS and the management plan fail to properly recognize and describe the importance of submarine fiber optic cables in the sanctuary, including the vital role this industry plays in the telecommunications system, wider economy, and security. These telecommunication systems represent essential, critical infrastructure that are the backbone of the global digital ecosystem and global economy.

*Response:* NOAA considered submarine fiber optic cables in the draft EIS, but to aid review and understanding of these cables, NOAA has added a new subsection on submarine fiber optic cables to the EIS Land Use discussion in Section 4.6.1 (Socioeconomics, Human Uses and Environmental Justice). Some of the descriptive information noted in the comment is included in that new subsection, as well as details about the number of fiber optic cables, their landing sites in the sanctuary, and

points of origin. Future planned fiber optic cables are also described.

No specific stand-alone section regarding submarine fiber optic cables has been added to the final management plan. However, a new strategy has been added to the Offshore Energy Action Plan regarding improving information about various permitting processes, and the telecommunications industry and reference to submarine fiber optic cables are included there (see Strategy OE-3). The final management plan also includes a new activity to improve coordination among agencies and users of the seabed. NOAA acknowledges that the telecommunications industry needs to be a part of that process (see Activity OE-4.4). The telecommunications industry is also noted as a critical participant in a new Blue Economy activity, Activity BE-3.4.

37. *Comment FC-3*: The draft documents do not adequately satisfy NEPA, NMSA, or E.O. 12866 requirements in their assessment of fiber optic cables because they do not clearly explain how the sanctuary may impact cables. The proposed regulations would have significant adverse impacts on multiple existing and proposed commercial submarine fiber optic cables. For example, there are submarine fiber optic cables planned for development at Grover Beach, which is inside the Agency-Preferred Alternative and should be acknowledged. The Agency-Preferred Alternative and proposed regulations do not adequately consider the impacts on fiber optic cable installation, permitting, operation, and maintenance. NOAA did not consider a reasonable range of alternatives in the draft EIS and should have considered other boundary or regulatory alternatives, including more fully considering the alternative of excluding or exempting fiber optic cables. The final EIS must assess direct, indirect, and cumulative impacts on fiber optic cables.

*Response*: Per response to Comment FC-1, while NOAA considered submarine fiber optic cables throughout its analysis, it has added a new discussion in EIS Section 4.6.1 to consolidate information about fiber optic cables in the study area. The potential impacts on fiber optic cables are more clearly described in final EIS sections 4.6.3 through 4.6.9. In summary, NOAA has clarified that neither the Initial Boundary Alternative nor any other alternative would have a significant adverse impact on fiber optic cables within the sanctuary because there are permit mechanisms that can allow submarine fiber optic cable installation, maintenance, and

operation. The sanctuary regulations prohibit disturbance of the submerged lands; however, new fiber optic cable construction could be allowed if permitted through the ONMS authorization process. This process ensures seafloor disturbances and other impacts on sanctuary resources are minimized. ONMS has experience successfully permitting fiber optic cables via these approval mechanisms through several national marine sanctuaries. For example, ONMS has approved construction of fiber optic cables within other national marine sanctuaries by authorizing a USACE permit.

The EIS meets or exceeds NEPA requirements to consider a reasonable range of alternatives. During scoping of the EIS, NOAA considered the telecommunication industry's request that cables either be excluded via boundaries or via exceptions in regulations, but did not accept the requests. That consideration was outlined in the draft EIS (Section 3.9.4), and NOAA has added additional clarifications to that analysis in the final EIS. Some of the alternative boundary configurations would achieve some of the exclusion sought by the telecommunications companies (see Alternative 3 and 4 in particular) but NOAA did not include in its alternative analysis a boundary option that would exclude all fiber optic cables, as any such boundary would have been too small to meet the purpose and need for the sanctuary. NEPA does not require NOAA to consider an infinite range of all possible alternatives, but rather, only those alternatives that are feasible and meet the purpose and need of the proposed action. In final EIS section 3.9.4, NOAA also explained that it rejected the alternative of providing a regulatory exception for fiber optic cables to ensure NOAA could review proposed seabed disturbance and provide appropriate mitigation measures to minimize impact on sanctuary resources. While NOAA has identified several regulatory exceptions to the prohibition on disturbance of the submerged lands, most of these regulatory exceptions are directly related to maritime safety and have an anticipated low or de minimis level of disturbance to the submerged lands.

38. *Comment FC-6*: The likely wind energy development in the corridor created at Morro Bay by the Agency-Preferred Alternative would "foreclose" that area for future fiber optic cables.

*Response*: NOAA acknowledges the seafloor across the area offshore Morro Bay and including the entire Santa Lucia Bank is a complicated space with

diverse uses competing for space, including commercial fishing, Department of Defense activities, existing and potentially new submarine fiber optic cables, and new subsea electrical transmission cables to bring electricity from offshore leases to shore. Different users see competition for space differently. The Final Preferred Alternative, if designated, allows for a large area "outside" of CHNMS where offshore wind developers and telecommunications companies can coordinate their development plans with each other and with other Federal agencies (such as BOEM) and State agencies (such as the CEC and CCC).

39. *Comment FC-9*: NOAA has not justified in the EIS why certain activities, which have a significantly higher impact than submarine fiber optic cables, appear to receive less scrutiny than fiber optic cables. NOAA proposes to impose an additional level of subjective and discretionary Federal review for existing and future submarine fiber optic cables within the sanctuary when it has not done so for other types of activities such as: (1) continued oil and gas production at existing reservoirs from Platform Irene and Platform Heritage; (2) dredge material disposal sites authorized by the USEPA in consultation with USACE; (3) ongoing maintenance and repair of oil and gas pipelines to shore from Platform Irene or Platform Heritage; (4) construction, maintenance and repair of navigational aids, docks, piers, and jetties; (5) maintenance dredging for harbors; and (6) drilling and maintenance of well related to oil and gas production within existing reservoirs under production.

*Response*: The sanctuary regulations largely provide for equal treatment of existing activities that may violate sanctuary regulations, pursuant to NMSA section 304(c). First, they "grandfather in" all existing activities that would otherwise be prohibited by allowing operators with leases, licenses, permits, or other approvals issued by a State or Federal agency to seek a certification after sanctuary designation. This would apply to telecommunication companies with structures—submarine fiber optic cables—on the submerged lands of the sanctuary, or oil and gas companies with platforms or pipelines on the submerged lands. It would also apply to existing discharges from oil and gas facilities, or coastal nuclear power plants. Second, the sanctuary regulations do not prohibit continued operation of fiber optic cables nor continued production of oil and gas from a federally-issued lease. NOAA does include an exception from its

regulation of prohibited activities to allow oil and gas production under leases in effect on the date of sanctuary designation, and certain discharges into subsea formations and seabed disturbances necessary and incidental to such continued oil and gas production. These activities are already extensively regulated by partner Federal agencies—in particular, BSEE and BOEM—who have, and apply, technical expertise highly specialized to those activities. Also, excepted activities necessary and incidental to existing oil and gas production, such as discharges or injections into a reservoir necessary for existing oil and gas production, while technically within the sanctuary, generally happen far below the biologically active portions of the submerged lands. Thus, with respect to both fiber optic cables and existing oil and gas production, the sanctuary regulations do not prohibit ongoing operations but do ensure that there will be regulations appropriate to address potential impacts of specific activities, with regulations tailored to the activity based in part on the need for sanctuary regulations to complement and supplement existing regulatory oversight to protect sanctuary resources. Third, repair of existing submarine cables is treated the same as repair of existing oil and gas pipelines—both require approval by NOAA to the extent that they would disturb submerged lands, and/or cause a discharge of material. Fourth, final sanctuary regulations allow developers for most types of activities to seek permits for new development that would otherwise be prohibited. This would apply, for instance, to a telecommunication company proposing a new submarine fiber optic cable or a local utility proposing a new desalination plant. However, the regulations do not allow NOAA to approve any permit or otherwise authorize certain incompatible activities, such as new oil, gas or mineral development, or new discharges of untreated or primary-treated sewage within the sanctuary.

NOAA does provide exceptions to the prohibition on disturbing the submerged lands for maintenance dredging of harbor mouths or for repair of a harbor jetty or breakwater, because these are typically public facilities or activities necessary to promote or allow public navigation or public access to the ocean.

40. *Comment FC-11*: NOAA proposes a certification process for pre-existing rights in 15 CFR 922.234 that goes above and beyond the scope of NOAA's general certification review process set out in Part 922, subpart A (15 CFR 922.10) without justifying the need for

the increased level of scrutiny and discretion. As drafted, NOAA has considerable discretionary authority and could condition an existing cable so that it effectively prohibits ongoing operations. Furthermore, there is no basis for NOAA to require public comment and a hearing for certification of a use that has already gone through public review and comment.

*Response*: NOAA believes that the proposed sanctuary certification process does not reflect an increased level of scrutiny and discretion relative to the general certification regulations (15 CFR 922.10), but merely provides more details. The certification process outlined for CHNMS (15 CFR 922.234) necessarily provides process details because the regulations for certifications applicable to all national marine sanctuaries (15 CFR 922.10) are general in nature and contain virtually no detail about how the process will be conducted. Conversely, the sanctuary regulations provide relatively fewer details about the sanctuary general permit process or the ONMS authorization process because the national program regulations contain considerable details about how those review processes will be conducted (see 15 CFR part 922 subpart D).

NOAA has amended the timeline for certifications to clarify confusion in different parts of the proposed regulations and draft management plan. Section 15 CFR 922.234(a)(1) has been revised to allow a party to seek a certification within 120 days (rather than 90 days) of the effective date of sanctuary designation. The final sanctuary regulations also include other modifications to the certification process to provide some of the adjustments sought by industry. For example, Section 922.234(e) has been modified to remove the authority to hold a hearing; Section 922.234(g) has been revised to narrow the conditions for amending or revoking a certification after issuance; and, Section 922.234(h) has been removed because it was open-ended and unnecessary given the revisions to (g). These amendments are consistent with the issues, policies, and purposes discussed in the proposed rule, and constitute procedural updates and technical corrections and clarifications. The purpose of the amendments is to respond to concerns received in public comment and ensure the CHNMS certification process is consistent with NMSA § 304(c). The NMSA does allow NOAA to impose reasonable conditions on the exercise of a preexisting lease, permit, license, or right consistent with the purpose of the

sanctuary. See final EIS Section 3.2.2 for revised regulations.

NOAA further clarifies that denial, revocation, amendment, or suspension of a certification does not mean that NOAA is terminating the underlying permit or right. Rather, it means that a person exercising a pre-existing permit or right within the sanctuary in a manner that does not comply with the certification regulations or the terms and conditions of an issued certification, where the activity is otherwise prohibited by the sanctuary regulations, could be subject to an enforcement action pursuant to Section 307 of the National Marine Sanctuaries Act.

41. *Comment FC-18*: Some fiber optic cable operators are opposed to NOAA's use of the ONMS authorization process and permitting regime for fiber optic cables, citing concerns about uncertainty, delay, and disproportionate financial cost. Several alternative models—"innovative management approaches"—were suggested, including choosing very small, discrete boundaries for the sanctuary or only requiring sanctuary permit review in highly sensitive, special areas.

*Response*: One of the suggested "innovative management approaches"—shrinking the sanctuary to have small, discrete boundaries surrounding only the most highly special areas—was considered during the NOI phase and not accepted, as outlined in EIS Section 3.9.4 and addressed in response to Comment FC-5. The second suggestion, to only require a sanctuary permit when a cable is proposed to pass through certain highly sensitive areas, would require detailed study to identify the precise location of those areas at the time of designation. NOAA lacks certainty it could identify all of those areas at this time. Nonetheless, it has created a special management zone around Rodriguez Seamount with special regulations that would offer additional limitations on any development activity, including laying a submarine fiber optic cable in that area. Having a formal role for the sanctuary, along with partners, when new cable permits are being considered ensures any other special areas containing important living, historical, or cultural sanctuary resources are identified and impacts on them are mitigated. See also response to comment FC-15 regarding NOAA's consistent treatment of submarine cables with respect to the regulatory prohibition on seabed disturbance.

42. *Comment FC-19*: NOAA should rely on its authorization process for new submarine fiber optic cables, rather than



issuance of a special use permit. NOAA should use the CHNMS rulemaking to clarify it has the flexibility to rely solely on the ONMS authorization process rather than the special use permit process. It is appropriate to consider the treatment of submarine fiber optic cables on a sanctuary-specific basis, relying on the record and the evidence before it, instead of simply relying on outdated, past programmatic precedent.

*Response:* NOAA's current process, as outlined in its 2011 policy and permitting guidelines for submarine cables, relies on ONMS authorizations for construction of new cables and special use permits to allow the continued presence of a new structure (a cable) on or in the submerged lands of the sanctuary. The response to Comment FC-10 and the policy and permitting guidelines explain the purpose for the special use permit. NOAA will be revising this document and the fair market value assessment for cables in a sanctuary in 2024 and changes could be made at that time as suggested by the comment.

43. *Comment FC-20:* The sanctuary should model its regulatory regimes after other national marine sanctuaries; for example, Hawaiian Islands Humpback Whale National Marine Sanctuary does not prohibit cable installation or repair. Also, sanctuaries such as Monterey Bay (15 CFR 922.132) and Florida Keys (15 CFR 922.163 exceptions) have issue-specific exceptions for a broad range of commercial activities.

*Response:* The regulations at a national marine sanctuary are designed and implemented to address the specific threats a sanctuary faces, and are only those regulations that are necessary to achieve the purpose and need for the sanctuary. Hawaiian Islands Humpback Whale National Marine Sanctuary does not prohibit cable installation or repair because it does not have a regulation prohibiting disturbance of or placing a structure on the submerged lands. Conserving the humpback whales around the Hawaiian Islands has not required that sanctuary to include a prohibition on disturbance of the submerged lands. By contrast, protecting the submerged lands of CHNMS is necessary to achieve the purpose and need for the sanctuary, which include protection and management of both benthic and pelagic sanctuary resources. Further, the subsections cited in the comment for MBNMS and FKNMS are consistent with how NOAA has developed the regulations and exceptions for CHNMS—customized regulations and exceptions to address the threats facing

a sanctuary and necessary to achieve the purpose and need for the sanctuary. While NOAA has identified several regulatory exceptions to the prohibition on disturbance of the submerged lands, most of these regulatory exceptions are directly related to maritime safety and have an anticipated low or de minimis level of disturbance to the submerged lands. Thus, NOAA is modeling the regulatory regime for CHNMS consistent with the prior designations of other national marine sanctuaries.

44. *Comment DE-1:* NOAA should address effects of the proposed sanctuary on coastal development such as desalination projects, including possible offshore subsea freshwater production systems. Such an assessment is particularly relevant for Alternative 5b—Gaviota Coast extension, and should address infrastructure needed, cables, and water pipelines.

*Response:* NOAA recognizes that the County of San Luis Obispo is in the early stages of planning for desalination to address water supply issues and that there are concepts for floating desalination facilities offshore of Vandenberg Space Force Base, both (potentially) located within the sanctuary boundary. The timeline for a county desalination plant is far into the future, and it could be as much as another decade before developers are ready to seek permits. As such, potential impacts on a possible desalination project are not reasonably foreseeable for the purposes of NEPA review; NOAA could not reasonably assess impacts of sanctuary designation on desalination projects that do not exist or do not have set design plans. However, ONMS recognizes the interest and likelihood of developing desalination facilities in the future, and understands there is some interest in the Gaviota Coast area with regard to possible offshore subsurface technologies. In response, Activity WQ-2.7 was added to the Water Quality Action Plan to address future desalination projects. See response to Comment MP-73.

45. *Comment AC-5:* Establishing the biggest possible boundary will bolster climate resilience. The habitat diversity, including kelp forests, seagrass beds, and wetlands in and adjacent to the proposed area is a powerful contributor to climate resilience and helps to buffer vulnerable coastal communities from coastal erosion and harmful climate impacts. A disturbed ocean and near shore environment will leave a non-natural barren ecosystem causing local heating and die-off of ocean species. Leaving the California coast and near shore environment in a natural State will decrease the effect of climate

change by allowing the ocean to absorb much of the excess heat and some of the CO<sub>2</sub> emissions caused by climate change.

*Response:* NOAA analyzes the beneficial impacts of the sanctuary on biological resources (see sections 4.3.3–4.3.8) and climate change (see sections 4.2.3–4.2.8) in the final EIS, including positive direct and indirect impacts. Section 4.2.3 specifically notes that beneficial impacts on climate change would result from any increase in the uptake of atmospheric contaminants such as carbon dioxide due to increased biological productivity resulting from protections under the sanctuary. Text has been added to Section 4.2.3 of the final EIS to note potential climate benefits related to protection of habitat and marine sediments in the sanctuary. For more discussion on NOAA's Final Preferred Alternative boundary, see response to Comment BO-1.

46. *Comment BR-5:* The final EIS should better explain the ecological significance of the deep offshore area west of the Santa Lucia Bank that would be excluded under the Agency-Preferred Alternative. This area contains significant populations of marine mammals and seabirds. Further, NOAA should acknowledge this area needs further exploration and likely contains important geological and biological deep-sea features. If this area is left unprotected, harmful extractive practices and operations may occur, leading to negative impacts on marine life.

*Response:* NOAA considered this ecological significance and has provided additional information on biological resources for the area west of Santa Lucia Bank in Section 4.3 of the final EIS. Seabird data provided by Tammy Russell shows high biodiversity west of Santa Lucia Bank, and there are two ESA-listed seabirds (Hawaiian Petrel and Short Tailed Albatross) known to use the area. Numerous offshore foraging marine mammals also frequent this area. However, because benthic subsurface research and exploration has primarily focused on the Santa Lucia Bank itself, with limited data existing for the deeper waters west of it, further exploration is needed to ultimately support some of the characterizations made in the comment. Consistent with the applicable NEPA regulations, the EIS applied "reliable existing data and resources"; NOAA was not required to, and did not, undertake new scientific or technical research to further inform resource and threat evaluations. 40 CFR 1502.23. The draft (and final) EIS recognized significant beneficial conservation impacts expected from the

Initial Boundary Alternative, with Alternative 4 providing less benefits due to its smaller spatial domain. NOAA's decision to exclude waters west of Santa Lucia Bank in the Final Preferred Alternative is based in part on considerations of manageability (large size, far distance from shore), the absence of any planned extractive activities in this area, uncertainties about resource threat levels (for seabirds, marine mammals, and benthic habitats), and questions about the need for protective regulations at this time. Given these uncertainties, NOAA has added a new Boundary Adjustment Action Plan in the final management plan that calls for further evaluation of these waters for possible future inclusion within the sanctuary. These provisions call for a biogeographic study of living, cultural, and maritime heritage resources in this area to inform future decision-making regarding possible inclusion of additional areas into the sanctuary. See also response to Comment BO-9.

47. *Comment BR-8*: Under the Agency-Preferred Alternative, a 10–15 mile wide unprotected gap would create a huge barrier to the migration of many species up and down the coast. The population impact of this corridor must be assessed for all these species in order for this to be fully evaluated. The gap may become an area of concentrated offshore development, as a result of development activities desiring to avoid sanctuary permitting and mitigation. Offshore wind platforms and transmission cables pose a threat to the migration of multiple species of whales and other marine mammals along the central coast.

*Response*: NOAA acknowledges that numerous species will use this area to move along the coast, and between coastal and offshore waters; however, many of these species already use this area as a migration corridor without sanctuary protection. The full extent of how future offshore wind development might affect animals that move through this area will need further study (see response to Comment BR-9). While the Final Preferred Alternative does not “close the gap” at this time, Strategy BA-1 in the Boundary Adjustment Action Plan would evaluate and consider the need for a future boundary expansion to include waters north of the sanctuary. Activity BA-1.2 in particular would track ongoing research and new studies that advance understanding of offshore wind energy development impacts, including effects on migrating species such as whales and other marine mammals. Also see response to Comment BO-1.

48. *Comment BR-11*: There is a desire to see fish populations healthy and protected from seafloor disturbance, mineral mining, discharges, and oil. Look at global data as proof that protected areas help fish populations. Discuss evidence on the success of California's Marine Protected Area (MPA) network for fish stocks<sup>8</sup>—particularly CINMS and MBNMS fish stock increases as well as commercial and recreational fished species. Research shows that these protected areas have a positive influence on biodiversity far beyond their boundaries.

*Response*: Seafloor disturbance, mineral mining, discharges, and oil impacts are all strongly addressed through the sanctuary's regulatory prohibitions provided by NOAA's Final Preferred Alternative. The EIS finds that many ecosystem benefits to fish populations are expected from designation of the sanctuary (see EIS sections 4.3.3–4.3.8 and 4.4.3–4.4.8), but it is beyond the scope of this EIS to analyze the performance of California's MPA network (see response to Comment PN-1). Regarding special MPAs that limit or prohibit fishing, NOAA concurs that ecological benefits have been shown to result, both within and beyond their boundaries. However, as explained in the responses to comments FA-8 and FA-9, NOAA is not implementing fishing regulations under the NMSA within the sanctuary. The terms of designation and the regulations for the sanctuary do not allow NOAA to directly regulate lawful fishing activities under the NMSA in the sanctuary (note that some CHNMS regulations would apply to a vessel operator during the conduct of a fishing activity, for example discharges from a vessel). As explained in the response to Comment FA-20, NOAA has selected a final sanctuary boundary that overlaps with four State MPAs, thus providing additional sanctuary protections (e.g., seafloor, water quality) and programmatic support to those existing protected areas.

49. *Comment BR-20*: NOAA should establish the special management zone for the Rodriguez Seamount in the final regulations and include strong and permanent regulations to protect the Rodriguez Seamount because it provides a critical habitat for an extremely diverse and abundant array of marine life. The Rodriguez Seamount is an important underwater feature with diverse, nationally significant biological communities, yet it also requires a more

thorough characterization and exploration. NOAA should adopt the proposed regulations for Rodriguez Seamount, as they will protect this area from the threat of deep-sea mining due to the recently discovered manganese oxide ores.

*Response*: NOAA agrees with this comment and is including Rodriguez Seamount in the boundary for the Final Preferred Alternative, including the special management zone around the seamount and the special regulations within it. Specific, further characterization and monitoring are also included in the Research and Monitoring Action Plan (see Activity RM-3.5).

50. *Comment BR-23*: NOAA should keep the proposed prohibition on introducing or otherwise releasing an introduced species into the sanctuary, and there should be no exception for striped bass. With the exception, striped sea bass will be released into the environment. This will most likely damage the habitat and the wildlife. Fishers and fish markets will be affected by this and prices will rise.

*Response*: NOAA is keeping the prohibition related to introduced species, including the exception for striped bass released during catch and release fishing activity. Striped bass exceptions for catch and release fishing exist in other California national marine sanctuaries with limited ecological impact on local communities because striped bass are already an established introduced species. This exception refers to fishing for the striped bass that are already established in the area; not releasing new striped bass. It is protected as a lawful fishing activity in California; however, catch and release of striped bass in the sanctuary is assumed to be low.

51. *Comment BR-26*: The proposed sanctuary regulations prohibit the attraction of white sharks via chumming. Without the ability to chum for white sharks, research becomes too difficult to continue. Regulators may want to prohibit the development of a cage diving industry, but that should not hinder research. In fact, the few studies that have been published regarding provisioning (chumming) and its impact on white sharks have shown that it does not have a negative impact on the sharks.

*Response*: Discharge and white shark attraction regulations are meant to protect sanctuary resources from activities of the general public; both for the safety of the resource and for people. A proposed research activity that would violate these regulations would need to receive a sanctuary permit in order to

<sup>8</sup> <https://montereybayfisheriestrust.org/stories/2019/9/19/cowcod-declared-rebuilt>.

proceed. White shark researchers have been able to conduct their work safely in other west coast sanctuaries for years, and ONMS staff have been collaborating with shark researchers to support and permit work within reasonable limits. NOAA respectfully disagrees with the comment that these regulations would inhibit research, as white shark research has been permitted and is currently active in three of the five west coast sanctuaries.

52. *Comment FA-1*: The coastal communities of Morro Bay and Port San Luis/Avila derive significant economic and societal benefits from the fishing industry that has operated in the study area for many years. Ex-vessel revenues do not reflect the true economic impact of our fishermen's actions. Some economists conservatively estimate a multiplier of at least 4x measures the true economic impact on the local economy.

*Response*: NOAA understands and appreciates the important economic and societal benefits derived from the fishing industry, beyond ex-vessel revenues, and the industry's dependence upon a healthy marine ecosystem and productive fishing grounds. NOAA has determined that the sanctuary designation will not cause significant adverse impacts on the fishing industry, as assessed in the final EIS (see sections 4.4 and 4.6) and the Regulatory Flexibility Act certification in the final rule preamble, and NOAA has not included any direct sanctuary regulation of lawful fishing activities through this action.

53. *Comment FA-5*: The proposed sanctuary poses a significant threat to the future of fishermen culture and it will disrupt the current delicate balance between man and the ocean in the area identified for sanctuary designation. Despite claims, existing marine protected sanctuaries show no scientifically proven benefits to the ocean.

*Response*: NOAA respects and values the rich fishing community culture and productive commercial fishing grounds found along the sanctuary's coast, and intends to support community-based resource protection and conservation actions to help support productive fisheries. Regarding the expectation that the sanctuary will not benefit the ocean, the final EIS for this designation reaches different findings, identifying significant beneficial impacts on the sanctuary ecosystem and marine habitats, upon which commercial fishing depends. This includes prohibitions on oil/gas exploration and harmful discharges resulting in better water quality with fewer toxins, and a

prohibition against introduced species limiting the potential for adverse competition between introduced and native species. Furthermore, condition reports from existing west coast national marine sanctuaries regularly identify healthy marine resources managed within a sanctuary due to actions (regulatory and non-regulatory) by sanctuary staff and partners.

54. *Comment FA-9*: NOAA should clarify that it will not create fishing regulations, including closures, for this sanctuary. This applies to commercial and recreational fishing. Federal and State professional fisheries management agencies, not sanctuary managers, have both the expertise as well as legal mandates to make such fisheries management and regulation decisions. The continued coordination with, and deference to, the PFMC and California Fish and Game Commission regarding the management of fisheries within the sanctuary is important. NOAA should not exclude, restrict, or preempt local fishermen. The public has the right to fish in California waters under the navigable easement and section 25 article I of the California Constitution.

*Response*: As stated in response to comments FA-7 and F-8, NOAA is not implementing any fishing regulations as part of the CHNMS designation. In general, NOAA considers both the NMSA and Magnuson-Stevens Fishery Conservation and Management Act as authority for regulating fishing activities in national marine sanctuaries. NOAA examines the need for fishing regulations in each sanctuary on a case-by-case basis, and relies on either or both of those Acts to determine the most appropriate regulatory approach to meet the stated goals and objectives of a sanctuary. The process for developing fishing regulations in national marine sanctuaries is codified in the NMSA at Section 304(a)(5) (16 U.S.C. 1434(a)(5)). The terms of designation and the regulations for CHNMS do not allow NOAA to directly regulate lawful fishing activities under the NMSA in the sanctuary (note that some CHNMS regulations would apply to a vessel operator during the conduct of a fishing activity, for example discharges from a vessel). If an issue involving fishing arises in the future in CHNMS, NOAA will work with the affected stakeholders and the appropriate State or Federal fishery management entity to find solutions. If an issue still persists after those consultations and considerations, and NOAA believes a sanctuary regulation is needed that could directly regulate fishing activity, it would need to amend the terms of designation through a rulemaking process, including

an analysis of potential impacts via an environmental impact statement and otherwise comply with Section 304 of the NMSA. Also, see response to Comment FA-10.

55. *Comment FA-22*: ONMS must clarify it will not support the authority for a Tribe to create new marine protected areas that would exclude fishing, and to do so would be contrary to other sections of the designation proposal that State "no fishing regulations are proposed."

*Response*: NOAA is not delegating its authority within the sanctuary in a way that would allow creation of fishing regulations or other regulatory actions under the NMSA by other groups, organizations, or agencies.

56. *Comment MT-5*: NOAA should alter the Proposed Terms of Designation, Scope of Regulations Article IV, Section 1 (f), to exempt from regulation various vessel transits within designated shipping lanes and future lawful transits. This language is based on that of the 2023 Terms of Designation for CINMS contained in its management plan regarding vessel transits. For CHNMS, the recommended change would be: "f. Operating a vessel (*i.e.*, water craft of any description) within the Sanctuary; except vessels traveling within Port Access Routes designated by the Coast Guard, and other lawful transits;"

*Response*: NOAA is not adopting this suggested altered language for the final Terms of Designation for the sanctuary because it believes that it is important to have authority in the future to regulate vessel operation within the sanctuary, whether inside or outside of Port Access Routes.

57. *Comment MT-6*: From the discussion in the draft EIS, normal operation of heavy lift vessels is not precluded from the discharge prohibition; without the use of heavy lift vessels that can intake and discharge local sea water as ballast, oil and gas platform removal and decommissioning will not be possible. NOAA should add an exception for discharges incidental and necessary to decommissioning operations, analogous to the exception for discharges incidental and necessary to ongoing oil and gas production.

*Response*: Discharges of ballast water, as part of future decommissioning activities, would require a sanctuary general permit or ONMS authorization. NOAA is not adding an exception for discharges incidental and necessary to decommissioning operations, because it is important that NOAA has the ability to ensure potential impacts on sanctuary resources are avoided or feasibly mitigated. For more discussion on oil

and gas facility decommissioning discharges, see response to Comment OG–14.

58. *Comment MU–1*: Will there be any limitations on military or aerospace activities in the sanctuary framework, or is there greater freedom or outright exemptions for military and aerospace?

*Response*: The sanctuary regulations exempt from most of the regulatory prohibitions certain existing activities carried out or approved by DoD that were conducted prior to the effective date of designation (see final EIS Section 4.9 and Appendix I), consistent with practices in other national marine sanctuaries and as described in CHNMS regulations at 15 CFR 922.232(c)(1). NOAA is also retaining the authority for the ONMS Director to review future new or modified DoD activities to determine if they warrant an exemption. In 15 CFR 922.232(c)(2), the regulations explain how DoD will respond to, mitigate, and if practicable, restore damage to sanctuary resources from DoD activities.

59. *Comment SS–1*: NOAA should ensure the authority to regulate vessel speed is written into the terms of designation. NOAA should impose vessel speed restrictions including implementing time and area closures, speed reduction zones, and a 10-knot speed limit to reduce injuries to whales, sea turtles, and other marine species, to minimize ship air and noise pollution, and to reduce the risk of vessel collision. Voluntary incentives in the Blue Whales and Blue Skies program would be insufficient. Implementing a mandatory vessel speed restriction in CHNMS would also set an important precedent along the west coast, leading the way for other sanctuaries and State-managed reserves to implement similar restrictions in the future.

*Response*: The terms of designation gives NOAA authority to manage vessel speed, if warranted in the future. At this time, NOAA is not adopting any of the regulatory suggestions in this comment. The four sanctuaries in California have been attempting to minimize or eliminate whale ship strikes via voluntary speed limits, avoidance areas, and other conservation measures. NOAA will expand those measures to CHNMS. ONMS has worked with USCG, NOAA Fisheries, and the shipping industry to identify and implement actions to date. If in the future NOAA determines that it is necessary to pursue a mandatory, regulatory solution (such as through the process outlined in Activity RP–6.3 in the Resource Protection Action Plan), NOAA will conduct a separate regulatory process and give

consideration to a regional, multi-sanctuary approach.

60. *Comment SS–3*: NOAA should expand its voluntary vessel speed reduction zones from other sanctuaries to CHNMS. This would allow it to implement strategies on a coastwide, system basis, from Point Arena through the Channel Islands. An additional strategy NOAA could take is to establish a California-wide national marine sanctuary advisory group to collaborate on vessel-focused efforts and recommendations, including protection of marine mammals and navigation. Research on ship strikes shows that this new sanctuary would provide opportunities to decrease mortality of migrating blue, humpback, and fin whales due to ship strikes.

*Response*: Activity WD–3.2 in the sanctuary management plan’s Wildlife Disturbance Action Plan aims to take similar action through the Sanctuary Advisory Council. The idea of a California-wide national marine sanctuary advisory group could be addressed by the Sanctuary Advisory Councils of all California national marine sanctuaries, including CHNMS. In addition, Activity RP–6.3 in the Resource Protection Action Plan has been edited in the final management plan to guide coordination at a regional level on reducing ship strikes in national marine sanctuaries in California, as outlined in Activity WD–3.2. If voluntary vessel speed reduction efforts are determined to be insufficient, Activity RP–6.3 directs evaluation of potential mandatory measures to reduce ship strikes. Also see response to Comment SS–1.

61. *Comment WQ–1*: NOAA should develop a Water Quality Needs Assessment to understand the water quality issues, sources, and impacts.

*Response*: NOAA agrees. The first strategy in the Water Quality Action Plan (Strategy WQ–1.1) addresses this very request—developing a water quality needs assessment.

62. *Comment WQ–2*: The enter and injure discharge prohibitions are too strict. All existing legal uses should be allowed to continue. The existing regulatory process is sufficient; another layer of permitting is unnecessary.

*Response*: The CHNMS discharge regulation (15 CFR 922.232(a)(2)), which includes a sub-element prohibition on any discharge from beyond the sanctuary boundary that subsequently enters and injures sanctuary resources<sup>9</sup>

<sup>9</sup> See 15 CFR 922.11 for “Sanctuary resource” definition: [https://www.ecfr.gov/current/title-15/part-922#p-922.11\(Sanctuary%20resource\)](https://www.ecfr.gov/current/title-15/part-922#p-922.11(Sanctuary%20resource)).

or qualities<sup>10</sup> (15 CFR 922.232(a)(2)(iii)), is consistent with discharge prohibitions at many national marine sanctuaries, including others along the California coast. For a discharge to violate this sub-element of the regulation, a discharge that has already occurred must be found to have injured a sanctuary resource or quality. For example, this prohibition could be applied to an oil or hazardous substance spill that originates from outside the sanctuary boundary and then subsequently enters the sanctuary and injures a sanctuary resource or quality. NOAA has a long history of implementing the discharge regulation, including the enter-and-injure element, finding it to provide appropriately high standards of sanctuary resource protection balanced with reasonable exceptions and permit options that allow for the continued responsible use and enjoyment of sanctuary waters. NOAA also finds that the sanctuary discharge regulation augments protections provided by other jurisdictions and laws; see also response to Comment RP–5.

63. *Comment WQ–3*: NOAA should provide additional discharge exceptions for large ocean-going vessels, e.g., anti-fouling hull coating leachate, bilgewater, cathodic protection, controllable pitch propeller and thruster hydraulic fluid and other oil to sea interfaces including lubrication discharges, etc; or NOAA should reference the USEPA Vessel General Permit and allow (as an exception to the general prohibition provisions of this proposed rule) any discharges where compliant with the provisions of the Vessel General Permit, which cannot otherwise be minimized or eliminated during transit through the sanctuary.

*Response*: Based on experience at several national marine sanctuaries, NOAA considers the discharge regulation requirements and exceptions (15 CFR 922.232(a)(2)(i) and (ii)) to be reasonable for large ocean-going vessels transiting through the area. The proposed CHNMS requirements match those in place at adjacent national marine sanctuaries (MBNMS and CINMS), frequently transited by ocean-going vessels. Additionally, ocean-going vessels are expected to spend less time within the Final Preferred Alternative’s boundary, which is closer to the shore than the Initial Boundary Alternative (See response to Comment BO–1 for details on NOAA’s identification of the boundary for the Final Preferred

<sup>10</sup> See 15 CFR 922.11 for “Sanctuary quality” definition: [https://www.ecfr.gov/current/title-15/part-922#p-922.11\(Sanctuary%20quality\)](https://www.ecfr.gov/current/title-15/part-922#p-922.11(Sanctuary%20quality)).

Alternative). NOAA also expects that ocean-going vessels are likely to remain largely outside the Final Preferred Alternative in anticipation of the USCG implementing recommendations from its final Pacific Coast Port Access Route Study, which proposes a shift of coastal vessel traffic lanes and corridors further offshore to become fairways, mostly beyond sanctuary boundaries. Future vessel traffic patterns will be evaluated and considered as part of implementing the final management plan's Boundary Adjustment Action Plan.

64. *Comment WQ-9*: There is concern that sanctuary regulations might result in duplicative regulation inconsistent with the Clean Water Act. NOAA should align language in the regulations with the non-regulatory, collaborative policy approach expressed in the proposed management plan. NOAA should amend § 922.232(a)(2)(iii) of the proposed rule to clarify that this prohibition does not extend to discharges upstream or outside of the sanctuary that are done pursuant to a Federal or State permit, including, but not limited to, a permit issued under NPDES. Without such clarity, this language creates a potential "double jeopardy" situation. NOAA should clarify language in § 922.234 of the proposed rule such that the certification process directly applies to permits for discharges that occur outside the sanctuary.

*Response*: The "enter-and-injure" clause of the sanctuary's discharge regulation (15 CFR 922.232(a)(2)(iii)) is intended to address abnormal conditions such as the failure of a specific system or facility, hazardous material spills, or other emergency situations where a known material from a known source is discharged "upstream of" or beyond sanctuary boundaries and subsequently enters the sanctuary and injures a sanctuary resource or quality. The injury and the source of the discharge would need to be documented for it to violate the sanctuary regulation. Such a discharge, for instance, that violates State law or regulation could at the same time also violate Federal law or regulation. If NOAA were to become aware, in the future, of a proposed or existing discharge beyond the boundary of the sanctuary that is permitted or otherwise approved and that could enter and injure a sanctuary resource or quality, it will work with the agency responsible for the underlying permit and the permit applicant/holder to find ways to mitigate that impact. In the event a discharge permitted by another entity enters and injures a sanctuary resource or quality, NOAA would also retain the ability to respond to this as a

violation of the enter-and-injure prohibition.

NOAA acknowledges that § 922.232(a)(2)(iii) introduces an additional source of potential liability for dischargers, but this is not inconsistent with the Clean Water Act. The Clean Water Act is intended to broadly protect "the Nation's waters," 33 U.S.C. 1251(a), whereas the NMSA protects areas of "special national significance" where existing Federal and State authorities are inadequate or should be supplemented to accomplish coordinated and comprehensive coordination and management, 16 U.S.C. 1433(a)(2)–(3). The commenter points to the Clean Water Act's "permit shield" provision at 33 U.S.C. 1342(k). But that provision, by its own plain terms, provides only that compliance with a NPDES permit is deemed compliance with certain specific provisions of the Clean Water Act; it is not a blanket insulation from all forms of potential liability.

Thus, NOAA is not amending the proposed regulatory language for 15 CFR 922.232(a)(2)(iii). See also response to Comment WQ-2.

65. *Comment WQ-11*: The proposed discharge prohibition exempts USCG vessels, but not vessels engaged in lawful fishing activities. The same discharge exception that is provided to USCG vessels should be provided for lawful fishing activities. The proposed discharge regulations that apply to even the smallest of craft and minimal negative impacts will constructively limit the public's use of sanctuary waters. Enforcement of these regulations are commonly so impractical the expectation is that they will not be enforced. Establishing rules putting people on the wrong side of the law, that are not expected to be enforced, is simply bad public policy. It puts people at risk of being cited on the basis of their appearance or any other subjective quality.

*Response*: NOAA has sought to implement regulations and various non-regulatory programs for CHNMS that strive to protect water quality by limiting sewage and other waste and pollutants discharged into the ocean, potentially harming sanctuary resources. It has further sought to implement regulations that are consistent across other sanctuaries on the west coast, especially adjacent to CHNMS. NOAA seeks to collaborate with local and State agencies, harbor masters, and most importantly boaters who use the sanctuary to find the best ways to operate on the ocean without harming resources. Activity WQ-2.6 in the management plan calls for NOAA to

work with local harbors to ensure adequate sewage pumpout facilities exist and are operable within harbors for boaters to use. Current Federal law prohibits discharge of untreated sewage from a vessel within three miles of shore, thereby placing a requirement on boaters to comply with these discharge prohibitions. The sanctuary regulations extend that existing requirement throughout the sanctuary, and establish an exception from the discharge prohibitions for clean effluent generated incidental to vessel use by a Type I or II Marine Sanitation Device (for vessels less than 300 gross registered tons (GRT) and for vessels 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the sanctuary). Alternatively, vessels with holding tanks can store waste for discharge at onshore pumpout facilities or when beyond the sanctuary boundary. NOAA hopes that compliance will be widespread, but disagrees with the comment that non-enforcement is to be expected in cases of noncompliance.

The exception for USCG vessels operating beyond 3 nautical miles from shore is consistent with a similar exception requested by USCG and granted by NOAA for GFNMS and Cordell Bank National Marine Sanctuary (CBNMS). NOAA has developed plans with USCG District 11 leadership through informal discussions to limit discharges into other west coast national marine sanctuaries and anticipates similar approaches could be explored for USCG operations in the proposed sanctuary. If a USCG vessel has a Type I or Type II MSD, it must use that within the sanctuary prior to discharging sewage. NOAA included the exception for USCG vessels without adequate treatment or storage because of the importance of having USCG vessels able to patrol and carry out critical safety and national security operations in the sanctuary. USCG patrol vessels provide a tremendous benefit to NOAA by assisting with enforcement of national marine sanctuary regulations. See EIS sections 4.4 and 4.6 for additional details related to expected impacts on vessels engaged in lawful activities (commercial and recreational, respectively).

66. *Comment WQ-17*: NOAA should impose regulations to control harmful discharges from cruise ships and require clean water release.

*Response*: NOAA included a prohibition on discharges from cruise ships in the sanctuary regulations (see 15 CFR 922.232(a)(2)(ii)). Across most national marine sanctuaries, NOAA has applied consistent regulations that

allow for fewer exceptions for cruise ship discharges than for other vessel discharges within or into sanctuaries because cruise ships can generate very large volumes of waste or other discharges and because it is feasible for cruise ships to pass through the proposed sanctuary without discharging. The only exceptions for cruise ships discharging within the proposed sanctuary would be for clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash; in essence, these discharges are directly linked to propelling and operating the vessel itself.

67. *Comment SN-1*: The new sanctuary should have a name that is more inclusive of all Tribes and Indigenous communities in the region. Suggestions included: an English or Indigenous name based on local geographical features (such as “Estero-Gaviota”, or “Lisamu-Lesamo”); Indigenous word or phrase of general support (such as “Kiyis’kamin”, a Chumash phrase for “our ocean”); use both Chumash and Salinan in the sanctuary’s name (such as “Chumash and Salinan Heritage”); or use a broadly descriptive name reflecting Tribal involvement (such as “Central Coast Indigenous Heritage”, “Pacific Coast Tribal Heritage”, “Indigenous Peoples Heritage” and “California First Peoples”).

*Response*: For the reasons outlined in response to Comment BO-1, with NOAA’s Final Preferred Alternative covering the shoreline that has largely been considered an ancestral area to Chumash bands, NOAA is selecting the name “Chumash Heritage National Marine Sanctuary.” As explained in responses to Comments BO-1 through BO-4, NOAA will be initiating a process to consider expanding the sanctuary in the future to include the coast between the current boundary and Cambria, and thus potentially including an area of significance ancestrally to both the Salinan and Chumash. That potential future action could trigger a need to re-evaluate the name for the sanctuary. Other potential future actions that would require separate processes under the NMSA and NEPA could include extending Monterey Bay National Marine Sanctuary south to avoid changing the CHNMS name, or designating an independent sanctuary with its own new name.

68. *Comment TI-1*: NOAA has proposed an Indigenous focused project in a region characterized by rampant neo-Indianism, a movement resting on inaccurate claims of

Indigenous ancestry and affiliation. As such, NOAA should ensure the Indigenous people they work with for the sanctuary possess and can provide documented lineal descendancy as certified evidence of legitimate ancestral precontact ties to the California central coast. NOAA should also trust evidence provided of fraudulent representation of some Tribal groups. NOAA should work with Tribes, and/or the California Native Heritage Commission, to co-develop vetting criteria and a Tribal review process. If NOAA does not get involved they will perpetuate the erasure of true Native voices that has gone on since colonization and missionization, and contribute to ongoing colonial settler violence. The role of protecting Chumash land and water should be given to those who are authentically Chumash.

*Response*: Under the NMSA, national marine sanctuaries are designated and managed to protect nationally significant “conservation, recreational, ecological, historical, scientific, educational, cultural, archeological, or esthetic qualities,” 16 U.S.C. 1431(a)(2), and NOAA has demonstrated the nationally significant cultural qualities of the CHNMS area throughout the rule, management plan, and EIS. As is customary for national marine sanctuaries, NOAA intends to use an inclusive approach to consult with the federally recognized Santa Ynez Band of Chumash Indians and engage with other local Indigenous groups, and has clarified this approach in the Introduction section of the management plan. NOAA’s inclusive approach is guided by Section 301(b)(7) of the NMSA, which states that one of the intended purposes of national marine sanctuaries is “to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American Tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas.” 16 U.S.C. 1431(b)(7).

NoAA has sought to meaningfully consult and engage with local Tribes and Indigenous communities of the central coast of California throughout the sanctuary designation process, informing the partnership approach described in the management plan’s Indigenous Collaborative Co-Stewardship structure and future cultural programs. At the same time, NOAA understands there are continued disagreements concerning Tribal affiliation, legitimacy, and Indigenous

identity, and about who should and should not speak for Chumash people, interests, or groups. Comments received on the proposed rule objected to Tribal “authenticity,” and alternatively objected to anyone questioning Tribal authenticity (see Comment TI-5). NOAA has not made, and does not intend to make, determinations regarding the “authenticity” of any individual or group’s asserted affiliation with the Chumash people; rather, NOAA recognizes the unique government-to-government relationship between the United States and the SYBCI, the only federally recognized Tribe in the region, and in addition broadly invites non-federally recognized local Tribes and Indigenous groups to participate in sanctuary stewardship and programs in a way that can appropriately elevate Indigenous voices. In this manner, NOAA seeks to provide opportunities for the Indigenous peoples of the central coast to share their culture and wisdom publicly as they would like it to be shared.

NoAA expects that many groups throughout the diverse communities of the California central coast will continue to be interested in seeing and helping the sanctuary succeed. NOAA understands this diversity of local groups to include those involved with Chumash history, heritage, education, cultural practices, and more. NOAA has revised the Introduction section of the final management plan to State it does not have the authority to adjudicate claims of authenticity or disputes between groups with claims of Tribal ancestry, and NOAA declines to do so. NOAA has focused on developing a management plan that takes into account the deep connection and history of Indigenous Peoples to the sanctuary’s coastal areas.

NoAA also intends to conduct required Tribal consultations, work with interested local Tribes and Indigenous groups through coordination and engagement processes as appropriate, and, as a starting point, through formation of an Indigenous Cultures Advisory Panel and the various other means reflected in the proposed Indigenous Collaborative Co-Stewardship framework presented in the management plan.

69. *Comment TI-8*: NOAA’s proposed collaborative management framework is not inclusive enough of a broad range of Tribal perspectives, and it should be amended. All Tribes, both federally recognized and non-federally recognized, should have equal representation in advisory and consultation roles, to be empowered and given the same advisory capacity and

input opportunities as proposed for federally recognized Tribes. Responsible representatives of local Tribes should be invited to participate in all facets of the proposed sanctuary. Additionally, because the proposed sanctuary will include State waters, and because California's Native American Heritage Council lists many non-federally recognized Chumash and Salinan Tribes that are also recognized by the State, those Tribes should be consulted and included as part of collaborative sanctuary management. It is unacceptable for sanctuary designation to cause any California Tribes to lose consultation and policy input rights currently recognized by the State of California.

*Response:* NOAA recognizes the unique government-to-government relationship between the United States and federally recognized Tribes, including the SYBCI. There are several types of advisory roles offered by NOAA in the proposed Indigenous Collaborative Co-Stewardship Framework presented in the management plan. While one element, the Intergovernmental Policy Council, is limited to federally recognized governmental entities (federally recognized Tribes from the area and the State of California), all of the other management advisory opportunities, as well as joint project partnerships with non-profit foundations, can be pursued by non-federally recognized Tribes and Indigenous community groups and representatives. NOAA does not determine for the State of California with whom it will consult, and will not impede or eliminate any consultation or policy input rights currently offered to non-federally recognized Tribes by the State of California, a key sanctuary management partner. Additionally, NOAA envisions the creation of an Indigenous Cultures Advisory Panel to bring together individuals possessing knowledge or understanding of the local Indigenous culture, history, and environment to develop and provide essential advice supporting sanctuary management (see also response to Comment TI-12). NOAA invites and encourages interested individuals to pursue these opportunities and join in evaluating it over the early years of the sanctuary's implementation, with the understanding that modifications can be considered and adjustments made as those involved experience the process and provide feedback on the approach being used. See the final management plan for more information about formation of the ICAP.

70. *Comment TI-12:* NOAA should establish a separate Tribal Advisory

Council to enhance collaborative management with the Indigenous community. Other Federal agencies have adopted similar Tribal advisory councils and NOAA could look to them for guidance. NOAA can use specific laws and precedence to justify its establishment.

*Response:* NOAA agrees about the importance of finding effective ways to collaborate in co-stewardship of the sanctuary. However, rather than forming a Tribal advisory council, NOAA believes that the Indigenous Cultures Advisory Panel (ICAP) proposed in the draft management plan would most effectively guide the sanctuary's handling of the various ways co-stewardship will be needed for CHNMS—such as uplifting Indigenous voices, integrating traditional ecological knowledge into sanctuary management, and drawing upon a wide range of Indigenous cultural perspectives. NOAA encourages interested individuals to inquire about ICAP participation following a future announcement of the group's formation through the SAC, and will seek input from participating ICAP members to help evaluate it over the early years of the sanctuary's implementation. As participants provide feedback, modifications can be considered and adjustments made.

71. *Comment TI-28:* NOAA should not grant, give, cede or return area (or ocean) to Chumash or other Indigenous Tribes by giving them primary management authority for making regulations and equal decision-making authority over the sanctuary area and its resources. Reasons cited included: Chumash involvement is not vital; Chumash should not have greater management influence or authority than other community members or groups; Chumash are not qualified to make management decisions; lack of a fair basis for giving a very small hereditarily-defined group preferential influence in decision making over a public land and waters.

*Response:* NOAA's Office of National Marine Sanctuaries has no jurisdiction over lands, and no legal ability to give away, delegate, or cede its Congressionally granted authority to manage marine and ocean resources inside national marine sanctuaries to any other entity. As described in the Indigenous Collaborative Co-Stewardship Framework section of the management plan's Introduction, NOAA will retain and use its regulatory and management authority pursuant to the NMSA for protection of resources within the sanctuary, while conducting required Tribal consultations and collaborating closely with Tribes and

Indigenous communities as well as other local interests through the Sanctuary Advisory Council and Indigenous Cultures Advisory Panel. NOAA provides these engagement opportunities for all parties within the purposes and policies of NMSA. Under its trust responsibilities to federally recognized Tribes, NOAA will also consult with, and work collaboratively and in co-stewardship with, the Santa Ynez Band of Chumash Indians. NOAA disagrees that Tribal and Indigenous community involvement is not vital for helping the sanctuary to succeed, or that the different types of experience that Tribes and Indigenous groups bring is not relevant to inform and guide NOAA's management decisions. To the contrary, NOAA firmly believes that the unique Indigenous Knowledge Tribes and Indigenous community members have of this coastal area is essential for the long term stewardship of the sanctuary.<sup>11</sup>

72. *Comment TI-31:* NOAA should have meaningful consultation with Indigenous people. Indigenous people should be involved in: sanctuary planning, decision-making processes regarding sacred site protection, developing and implementing educational programs, environmental restoration, habitat protection, and NOAA regulatory actions (e.g., possible permitting related to offshore wind energy).

*Response:* NOAA agrees that Indigenous Peoples with relevant knowledge of the sanctuary area should be respectfully and appropriately invited to meaningfully contribute to the types of activities commenters mentioned, and has done so throughout the sanctuary designation process. NOAA's proposed Indigenous Collaborative Co-Stewardship Framework, as described in the management plan's Introduction section, provides several types of opportunities to support this engagement, including legally required consultation and a variety of collaborative forums to foster working in partnership.

73. *Comment SA-1:* A variety of specific seats on the Sanctuary Advisory Council were suggested in different comments. One or more seats were requested for: Indigenous communities; offshore wind industry; oil and gas industry; harbors and marinas; Port San Luis Harbor District; recreational boaters and fishermen; conservation; science

<sup>11</sup> See 2021 Executive Office of the President memorandum on Indigenous Ecological Knowledge and Federal Decision Making: <https://www.whitehouse.gov/wp-content/uploads/2021/11/111521-OSTP-CEQ-ITEK-Memo.pdf>.



(including ocean and marine biology); education (including colleges and universities); marine transportation; agriculture; commercial and recreational interests; youth community members; Department of Defense; BOEM; USGS; and multiple NOAA offices.

*Response:* NOAA will consider these suggestions upon development of the Charter for the Sanctuary Advisory Council. Under section 315(c) of the NMSA, 16 U.S.C. 1445a(c), and ONMS policy, there is a limit of 15 voting seats on advisory councils for sanctuaries designated after November 4, 1992. Additionally, NOAA also intends to establish non-voting seats on the advisory council to allow additional government agencies to participate. Sanctuary Advisory Councils, with the concurrence of the sanctuary superintendent, may also establish Working Groups that can bring additional constituents and stakeholders into the process of developing sanctuary management recommendations. Development, establishment, and start-up of the new advisory council is expected to take place shortly after sanctuary designation. See also response to Comment TI–12 regarding NOAA’s plan to also establish an Indigenous Cultures Advisory Panel.

74. *Comment SA–4:* Tribes need a deciding vote and voice to be true collaborators, or else sanctuary advisory council seats will be superficial only with no deep substance.

*Response:* NOAA disagrees that a “deciding vote” is necessary for meaningful engagement in collaborative co-stewardship of the sanctuary. NOAA expects that representatives from local Tribes and Indigenous communities can play a very meaningful and impactful role in supporting collaborative co-stewardship of the sanctuary through government-to-government consultation, participation on the Indigenous Cultures Advisory Panel, or seats on the Sanctuary Advisory Council. The same is true for collaborative opportunities through the Intergovernmental Policy Council and joint project partnerships with participating non-profit foundations.

75. *Comment SA–11:* NOAA should provide for an adaptive, flexible approach to sanctuary management (including review and processing of permit, certification, and authorization requests) that includes opportunities for management plan reviews and timely processing of permitting and other requests pertaining to sanctuary access.

*Response:* NOAA agrees. As required by the NMSA, national marine sanctuaries conduct periodic management plan reviews, informed by

condition reports, monitoring data, community and advisory council input, and many other sources of information. Management plan review processes will invite public, advisory council, and Tribal community input and participation. NOAA also intends to handle sanctuary permitting responsibilities in a thoughtful and timely manner. Responses to comments in the Permitting section provide additional information about NOAA’s management flexibility.

## VI. Classification

### A. National Marine Sanctuaries Act

NOAA has determined that the designation of Chumash Heritage National Marine Sanctuary (CHNMS) will not have a negative impact on the National Marine Sanctuary System and that sufficient resources exist to effectively implement sanctuary management plans and to update site characterizations. The NMSA section 304(f) finding is available on the CHNMS website at: <https://sanctuaries.noaa.gov/chumash-heritage/>. In addition, NOAA consulted with the Pacific Fishery Management Council (PFMC) as required in accordance with NMSA section 304(a)(5). Through this consultation, NOAA provided the PFMC with the opportunity to recommend any fishing regulations it deemed necessary to implement the proposed sanctuary designation, and participated in two public meetings with the PFMC in September 2022 and November 2022 as the Council deliberated on this issue. At its hearing on November 6, 2022, the PFMC decided not to recommend any fishing regulations to implement the proposed designation but expressed a willingness to reconsider in the future should new information about the need for fishing regulations arise. The PFMC documented this decision in a letter to NOAA dated December 1, 2022. NOAA accepted the PFMC’s response relative to the proposed designation of CHNMS and the final regulations reflect concurrence with the PFMC’s determination.

### B. National Environmental Policy Act

As described in section I above, NOAA prepared a final EIS to evaluate the impacts of designating a national marine sanctuary, which considered alternatives for national marine sanctuary designation along and offshore of the coast of central California. Copies of the final EIS, final management plan, and Record of Decision (ROD) for this action are available at the address and website

listed in the **ADDRESSES** section of this final rule.

### C. Executive Order 12866: Regulatory Impact

The Office of Management and Budget (OMB) has determined this final rule is significant action under Executive Order 12866, “Regulatory Planning and Review,” 58 FR 190 (Oct 4, 1993), as supplemented and reaffirmed E.O. 14094, “Modernizing Regulatory Review,” 88 FR 21879 (April 11, 2023). Based upon the information provided in NOAA’s accompanying Cost-Benefit Analysis (final EIS appendix D), this final rule would not meet the criteria for a significant regulatory action as defined in section 3(f)(1) of E.O. 12866, as supplemented and reaffirmed by E.O. 14094. This means the estimated annual effect is less than \$200 million, and the action would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. Therefore, NOAA did not prepare the full regulatory impact analysis under E.O. 12866.

### D. Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132 because NOAA supplements and complements Federal, State, and local laws under the NMSA rather than supersedes or conflicts with them. NOAA has coordinated with State partners in the development of this final rule. NOAA has aimed for consistent regulations throughout sanctuary waters including those within State and Federal jurisdiction.

### E. Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175 of November 6, 2000, Federal departments and agencies are charged with engaging in regular and meaningful consultation and collaboration with officials of federally recognized Tribal Nations on the development of Federal policies that have Tribal implications. The Executive Order identifies fundamental principles guiding agencies in formulating or implementing policies that have Tribal implications, including working with federally recognized Tribal Nations on a government-to-government basis to address issues concerning Indian Tribal self-government, Tribal trust resources,

and Indian Tribal treaty and other rights, recognizing the right of Indian Tribes to self-government, and supporting Tribal sovereignty and self-determination. NOAA implements Executive Order 13175 through the NOAA Administrative Order (NAO) 218–8 (Policy on Government-to-Government Consultation with federally recognized Indian Tribes and Alaska Native Corporations), and the NOAA Tribal Consultation Handbook. Under these policies and procedures, NOAA offers affected federally recognized Tribal Nations government-to-government consultation at the earliest practicable time it can reasonably anticipate that a proposed policy or initiative may have Tribal implications.

NOAA identified the SYBCI as the only federally recognized Tribe in the area of CHNMS. To date, six formal consultation meetings have been conducted, on January 27, 2022, April 14, 2022, August 12, 2022, September 1, 2022, December 19, 2022, and May 30, 2024, as well as one informational meeting with NOAA leadership on April 28, 2022. Outside of consultation meetings, staff-level communications and coordination between NOAA and SYBCI has been frequent. In the course of this consultation, NOAA shared relevant portions of the draft EIS, draft management plan, and final EIS with the SYBCI, and has incorporated comments received and information exchanged to revise and update designation materials. NOAA's government-to-government consultation with the SYBCI for the purpose of designating the new national marine sanctuary will conclude upon sanctuary designation. In concluding consultation, NOAA will follow its policies under NAO 218–8 and the NOAA Tribal Consultation Handbook.

#### F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a rulemaking, unless the agency certifies, pursuant to 5 U.S.C. 605, that the action will not have significant economic impact on a substantial number of small entities. The RFA requires agencies to consider, but not necessarily minimize, the effects of rules on small entities. The goal of the RFA is to inform the agency and public of expected economic effects of the action and to ensure the agency considers alternatives that minimize the expected economic effects on small entities while meeting applicable goals and objectives.

Pursuant to section 605(b) of the RFA, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) at the proposed rule phase (88 FR 58123) that this action, would not have a significant economic impact on a substantial number of small entities. The purpose, context, and statutory basis for this action is described above and not repeated here. The analysis below discusses the potential effects of the Chumash Heritage National Marine Sanctuary designation and serves as the factual basis for the certification. The analysis below has been updated to explain why the selection of the Final Preferred Alternative, which is smaller than the area NOAA analyzed in the proposed rule, leads NOAA to expect that fewer vessels will operate in CHNMS than reported in the proposed rule. Although NOAA has made minor changes to the regulations from the proposed rule to the final rule, none of the changes alter the initial determination that this rule will not have a significant impact on a substantial number of small entities. NOAA also did not receive any comments on the certification or conclusions. Therefore, the determination that this rule will not have a significant economic impact on a substantial number of small entities remains unchanged. In summary, with this rulemaking, small businesses (commercial fishing, for-hire charter operations) are not expected to experience significant impacts. The extent of costs imposed on businesses would be \$172 for those seeking a general sanctuary permit.

#### I. Description of Small Entities to Which the Initial Boundary Alternative Would Apply

NOAA has identified commercial and for-hire fishing vessels and the non-consumptive recreational industry, which includes for-hire operations such as wildlife viewing, as small entities impacted by the Initial Boundary Alternative. Each relevant small business category is based on the most recent size standards published by the U.S. Small Business Administration (SBA) (2022). Size standards are based upon the average annual receipts (all revenue) or the average employment of a firm. The commercial size standard is \$25.0 million for finfish fishing (North American Industry Classification System [NAICS] code—114111), \$14.0 million for shellfish fishing (NAICS code—114112), and \$11.5 million for other marine fishing (NAICS code—114119). Water-based scenic and

sightseeing transportation operations (NAICS code—487210), such as for-hire recreational fishing operations and dive/snorkeling for-hire operations, have size standards of \$14.0 million. All businesses within the industries analyzed here are small businesses, which include commercial and recreational fishing and non-consumptive recreational businesses. There are other businesses that operate within the study area; however, they are not considered small businesses (*e.g.*, cruise ships). These large entities are discussed in the Cost-Benefit Analysis (final EIS appendix D).

All commercial fishing and for-hire fishing vessel count data presented in this section are derived from California Department of Fish and Wildlife (CDFW) data. NOAA calculated the potential number of vessels that may be impacted by the rule—as implemented in the draft EIS Agency-Preferred Alternative (Alternative 2 and Gaviota Coast Extension (Sub-Alternative 5b))—based on the number of vessels reporting activity, from 2016–2020, within the CDFW statistical areas that best align with the draft EIS Agency-Preferred Alternative boundary. The area affected by the Final Preferred Alternative boundary is smaller than the area NOAA analyzed in the 2023 proposed rule. As such, NOAA expects fewer vessels will operate in CHNMS than reported in the proposed rule. Statistical areas were included in the analysis if their center is located within the draft EIS Agency-Preferred Alternative boundary. In total, 53 statistical areas were included in the area analyzed—meaning if a fishing vessel landed at least one pound of commercial fish species within one of the 53 statistical areas within the study period, that vessel was considered in this analysis. Further information, including maps of the statistical areas included may be found in Eynon, 2023. Estimates of the number of vessels that operate within the draft EIS Agency-Preferred Alternative boundaries are provided below. Data for non-consumptive industries are not publicly available, so information was collected from personal communication with NOAA staff.

#### i. Commercial Fishing

All commercial fishing vessels were determined to be small businesses based on the SBA size standards. On average (2016–2020), 250.6 vessels landed at least one pound of marine life within the area analyzed each year and 3,057.6 commercial fishing vessels operated within the State (CDFW, 2020a, 2021, 2020b, 2019, 2018, 2017).

## ii. For-Hire Recreational Fishing

For-hire recreational fishing includes both charter boats and headboats. Charter boats are fishing vessels that are typically hired to take up to six anglers on a fishing trip. In general, charter boats charge on a per-trip basis. Headboats usually operate on a schedule and may provide several trips in a single day, taking multiple fishing parties per trip and charging on a per-person basis. Headboats are usually larger and able to accommodate more anglers than a charter boat. All recreational fishing operations were determined to be small businesses. From 2016 through 2020, there was an annual average of 18.8 for-hire recreational fishing vessels operating within the draft EIS Agency-Preferred Alternative boundaries annually and 532 vessels on average each year operating within the State (CDFW, 2020c, 2021, 2020b, 2019, 2018, 2017).

## iii. Non-Consumptive Recreation Industry

Businesses considered to operate in the non-consumptive recreation industry include dive and snorkel operations, rental equipment operations, wildlife viewing operations, and other businesses that either utilize or whose customers utilize, but do not take, sanctuary resources.

There are several harbors within the study area that support non-consumptive recreation businesses. Santa Barbara, Morro Bay, and Avila Beach all have been identified to have operations that use the harbors. Across these three harbors, NOAA identified nine operations that are likely to use the sanctuary's waters to support their operations for whale watching and other wildlife viewing (NOAA personal communication). All of these businesses were determined to be small businesses. No operations visiting the sanctuary for white shark tours were identified.

## II. Analysis of Small Entities

This regulatory action would establish new reporting and recordkeeping requirements for small entities that apply for sanctuary general permits, certifications, or authorizations (see 15 CFR part 922 and the description in part III, section H above). As a result of this action, only a minimal increase in the number of permits (approximately 5–15 permits per year) is expected, and these requirements would have a minimal impact on small entities because few operators in the area would need to apply for a permit in order to continue their activities. Minimal reporting and recordkeeping requirements are

expected because lawful commercial and recreational fishing and recreational activities would be allowed to continue in the sanctuary without a permit (with certain exceptions discussed below). An operator would be required to obtain a permit only if they wish to conduct activities that would be prohibited in the sanctuary; for example, if a research operation or commercial activity was likely to result in damage to the seabed, a permit would be required unless an exception or exemption applies.

As discussed below, in section G., the public reporting burden for ONMS general permits is estimated to average three responses with an average of 1.5 hours per response, to include application submission, a cruise or flight log (or some other form of activity report), and a final summary report after the activity is complete. The only expected costs are related to permitting. The total cost estimate for reporting a permit is \$171.68 based on an hourly rate of \$38.15 (see Paperwork Reduction Act OMB control number (0648–0141<sup>12</sup>)). This rule does not propose to directly regulate commercial fishing or recreational fishing. The rule is not likely to impact commercial fishermen's operations or profits within the statistical areas corresponding to the sanctuary designation because lawful fishing will continue to be allowed in the sanctuary, and NOAA has not included any direct sanctuary regulation of lawful fishing activities through this action. Although vessels would not be permitted to discharge (with an exception for discharges associated with lawful fishing activities) within the sanctuary boundary, they are still permitted to discharge outside of sanctuary boundaries. As discussed in the supporting final EIS (sections 4.4.3 and 4.6), this regulation will not have a significant adverse impact on vessels. Vessels may plan to discharge sewage outside of the sanctuary or use appropriate facilities near shore. Additionally, vessels are unlikely to be impacted by the seabed disturbance prohibition given the exceptions for anchoring and lawful fishing activities. If in the uncommon event a vessel could not avoid a prohibited seabed disturbance or avoid a prohibited discharge within the sanctuary, the

small business could seek a permit from NOAA.

It is also likely that increased name recognition, marketing, and outreach of the sanctuary would result in increased demand for the services offered by small businesses that utilize sanctuary resources. This is described in more detail in the economic review of the potential impacts; see Appendix D of the final EIS.

As described above, NOAA does not expect a significant reduction in profits, as the only expected costs are for permitting (\$172 per permit). No duplicative, overlapping, or conflicting Federal rules have been identified for this rule. Therefore, NOAA has concluded that the rule would not have a significant impact on a substantial number of small entities operating in the area of the sanctuary due to the minimal permitting costs. Therefore, a Final Regulatory Flexibility Analysis is not required and none was prepared.

## G. Paperwork Reduction Act

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

NOAA has an OMB control number (0648–0141) for the collection of public information related to the processing of ONMS permits across the National Marine Sanctuary System. NOAA's proposal to create a national marine sanctuary along the coast of central California would likely result in a minimal increase in the number of requests for ONMS general permits, special use permits, certifications, and authorizations because this action proposes to add those approval types for this sanctuary. A large increase in the number of permit requests would require a change to the reporting burden certified for OMB control number 0648–0141. While not expected, if such permit requests do increase, a revision to this control number for the processing of permits would be requested.

In the most recent Information Collection Request revision and approval for national marine sanctuary permits (dated November 30, 2021), NOAA reported approximately 424 national marine sanctuary permitting actions each year, including applications for all types of ONMS permits, requests for permit

<sup>12</sup> Many of the permit applicants are from academic institutions; thus, ONMS' information collection renewal uses the Bureau of Labor Statistics (BLS) Occupational Employment and Wages (May 2020) for "Life, Physical, and Social Science Occupations." For this group, BLS estimated a mean hourly wage of \$38.15 (<https://www.bls.gov/oes/current/oes190000.htm>).

amendments, and the conduct of administrative appeals. Of this amount, CHNMS is expected to add 5 to 15 permit requests per year. The public reporting burden for national marine sanctuaries general permits is estimated to average three responses with an average of 1.5 hours per response, to include application submission, a cruise or flight log (or some other form of activity report), and a final summary report after the activity is complete. Therefore, the total annual burden hours would be expected to increase by approximately 22.5 to 67.5 hours.

NOAA determined that these regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act. NOAA solicited comments on this determination in the proposed rule, and no public comments were received. NOAA is also requesting a revision and extension of its approved information collection request, outside of this rulemaking, for national marine sanctuary permits to include the additional estimated permit numbers, which will apply to CHNMS.

#### *H. National Historic Preservation Act*

Section 106 of the National Historic Preservation Act (NHPA, 54 U.S.C. 306108) requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to the undertaking. "Historic property" means any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and material remains that are related to and located within such properties, including properties of traditional religious and cultural importance to an Indigenous nation or Tribe or Native Hawaiian organization. 36 CFR 800.16(l).

The regulations implementing section 106 of the NHPA (36 CFR part 800) establish a process requiring Federal agencies to: (i) determine whether the undertaking is a type of activity that could affect historic properties, (ii) identify historic properties in the area of potential effects, (iii) assess potential adverse effects, and (iv) resolve adverse effects. The regulations require that Federal agencies consult with States, Tribes, and other interested parties when making their effect determinations.

NOAA has determined that the designation of a national marine sanctuary and related rulemaking for sanctuary-specific regulations meet the definition of an undertaking as defined at § 800.16(y).

In fulfilling its responsibilities under section 106 of the NHPA, NOAA sought to identify potential consulting parties and sought public input on the identification of historic properties within the proposed area of potential effect through its 2023 notice of proposed rulemaking. NOAA identified consulting parties, in addition to the State Historic Preservation Officer (SHPO), and assessed the effects of the undertaking on historic properties in consultations with those parties.

In August 2023, NOAA initiated NHPA Section 106 consultation with the federally recognized Santa Ynez Band of Chumash Indians. In addition, NOAA also sent letters inviting eleven non-federally recognized Tribes, Indigenous groups, and culture-serving organizations to engage in consultation under NHPA Section 106. Six interested parties accepted NOAA's invitation to discuss the consultation, and to address other questions related to the designation, and meetings were conducted in October and November of 2023. In August 2024, NOAA shared draft findings with all consulting parties to invite their views on NOAA's identification of historic properties and finding of no historic properties affected. Subsequently, pursuant to 36 CFR 800.4(d)(l), NOAA issued a Finding of No Historic Properties Affected for this undertaking, which is available in Appendix E of the final EIS, for a 30-day public inspection and consulting party review period. NOAA received no objections to the Finding and consultation was accordingly concluded.

#### *I. Sunken Military Craft Act*

The Sunken Military Craft Act of 2004 (SMCA; Pub. L. 108–375, Title XIV, sections 1401 to 1408; 10 U.S.C. 113 note) preserves and protects from unauthorized disturbance all sunken military craft that are owned by the United States Government, as well as foreign sunken military craft that lie within United States waters, as defined in the SMCA. Thousands of U.S. sunken military craft lie in waters around the world, many accessible to looters, treasure hunters, and others who may cause damage to them. These craft, and their associated contents, represent a collection of non-renewable and significant historical resources that often serve as maritime graves, carry unexploded ordnance, and contain oil

and other hazardous materials. By protecting sunken military craft, the SMCA helps reduce the potential for irreversible harm to these nationally important historical and cultural resources.

There are seven known U.S. Navy destroyers that ran aground and sunk near Point Honda in 1923 within CHNMS. CHNMS may also include sunken military craft that have yet to be discovered. Sunken military craft fall under the jurisdiction of a number of Federal agencies such as the U.S. Navy and the U.S. Coast Guard. The USCGC *McCulloch* is an example of a known sunken military craft in CHNMS that is under the jurisdiction of the U.S. Coast Guard, per the SMCA.

The Secretaries of the various military branches, including the Department of the Navy and the U.S. Coast Guard, in the case of a Coast Guard vessel, the Secretary of the Department in which the Coast Guard is operating, administer the SMCA. The Secretary concerned is solely responsible for authorizing disturbance of sunken military craft under the SMCA, specifically for archaeological, historical, or educational purposes, and will consult with NOAA when considering permitting such activities. The Secretary concerned is also responsible for determinations of sunken military craft status and ownership, publicly disclosing the location of sunken military craft, and for determining eligibility and nominating sunken military craft as historic properties to the National Register of Historic Places. Any agreements with foreign sovereigns regarding sunken military craft in U.S. waters under the SMCA are negotiated by the Secretary of Defense, the Secretary of State, and the Secretary of the Navy, according to authorities vested in each by the SMCA. The Secretary concerned, or his or her designee, and NOAA will ensure coordination and foster collaboration on any research, monitoring, and educational activities pertaining to sunken military craft located within the sanctuary system. The Director will request approval from the Secretary concerned for any terms and conditions of CHNMS authorizations that may involve sunken military craft.

#### *J. Coastal Zone Management Act (CZMA)*

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies to consult with a State's coastal program on potential Federal agency activities that affect any land or water use or natural resource of the coastal zone. Because the sanctuary lies partially

within State waters, NOAA provided copies of the draft EIS to the California Coastal Commission and requested that the State identify any enforceable policies of its coastal management program applicable to the proposed action. In compliance with the CZMA, NOAA prepared a consistency determination, and on June 14, 2024 submitted it to the State of California. NOAA subsequently participated in a public California Coastal Commission hearing on the Consistency Determination on August 8, 2024. On August 9, 2024 the State of California issued a letter of concurrence to NOAA.

*K. Executive Orders 12898 and 14096: Environmental Justice*

Executive Order 12898 and Executive Order 14096 direct Federal agencies to identify and address disproportionately high and adverse effects of their actions on human health and the environment of communities with environmental justice concerns. Additionally, Federal agencies are directed to better protect overburdened communities from pollution and environmental harms; strengthen engagement with communities and mobilize Federal agencies to confront existing and legacy barriers and injustices; promote the latest science, data, and research, including on cumulative impacts; increase accountability and transparency in Federal environmental justice policy; and honor and build on the foundation of ongoing environmental justice work. The designation of national marine sanctuaries by NOAA helps to ensure the enhancement of environmental quality for all populations in the United States. The sanctuary designation would not result in disproportionate negative impacts on any communities with environmental justice concerns. In addition, many of the potential impacts from designating the sanctuary would result in long-term or permanent beneficial impacts by protecting sanctuary resources, which may have a positive impact on communities by providing employment and educational opportunities, and potentially result in improved ecosystem services.

**List of Subjects in 15 CFR Part 922**

Administrative practice and procedure, Coastal zone, Cultural resources, Historic preservation, Marine protected areas, Marine resources, National marine sanctuaries, Recreation and recreation areas, Reporting and

recordkeeping requirements, Shipwrecks.

**Nicole R. LeBoeuf,**

*Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.*

For the reasons set forth above, NOAA is amending 15 CFR part 922 as follows:

**PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS**

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

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

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

**§ 922.1 Purposes and applicability of the regulations.**

(a) \* \* \*

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

\* \* \* \* \*

■ 3. Revise § 922.4 to read as follows:

**§ 922.4 Boundaries.**

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

■ 4. Revise § 922.6 to read as follows:

**§ 922.6 Prohibited or otherwise regulated activities.**

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

■ 5. Amend § 922.30 by:

- a. Revising paragraph (a)(2);
- b. Removing the word “and” at the end of paragraph (b)(5);
- c. Removing the period at the end of paragraph (b)(6) and adding “; and” in its place; and
- d. Adding paragraph (b)(7).

The addition reads as follows:

**§ 922.30 National Marine Sanctuary general permits.**

(a) \* \* \*

(2) The permit procedures and criteria for all national marine sanctuaries in

which the proposed activity is to take place in accordance with relevant site-specific regulations appearing in subpart F and subsequent subparts of this part.

(b) \* \* \*

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

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

**§ 922.36 National Marine Sanctuary authorizations.**

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

(b) \* \* \*

(1) \* \* \*

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

\* \* \* \* \*

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

**§ 922.37 Appeals of permitting decisions.**

(a) \* \* \*

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

\* \* \* \* \*

■ 8. Add subpart V to read as follows:

**Subpart V—Chumash Heritage National Marine Sanctuary**

Sec.

922.230 Boundary.

922.231 Definitions.

922.232 Prohibited or otherwise regulated activities.

922.233 Permit procedures.

922.234 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or other rights to conduct a prohibited activity.

922.235 Memoranda of Agreement with partner agencies.

Appendix A to Subpart V of Part 922—  
Chumash Heritage National Marine Sanctuary Boundary Description and Coordinates

Appendix B to Subpart V of Part 922—  
Coordinates for Rodriguez Seamount Management Zone

#### § 922.230 Boundary.

Chumash Heritage National Marine Sanctuary covers 4,543 mi<sup>2</sup> (3,431 nmi<sup>2</sup>) of coastal and ocean waters and the submerged lands thereunder, spanning 116 miles along the central California coast off the counties of San Luis Obispo and Santa Barbara. The sanctuary spans a maximum distance of 60 miles from shore, and reaches a maximum depth of 11,580 feet below sea level. Describing the boundary in a clockwise fashion, the Final Preferred Alternative starts along the coast approximately two miles southeast of the breakwater for the Diablo Canyon Power Plant marina, then runs south along the mean high water line through San Luis Obispo County and northern and western Santa Barbara County to the eastern end of the Naples Marine Conservation Area on the Gaviota Coast. Along this stretch, the harbor areas at Port San Luis and Vandenberg Space Force Base near Point Arguello are excluded from the sanctuary. Offshore, the boundary extends from the western edge of Channel Islands National Marine Sanctuary, around important features like Rodriguez Seamount, most of Arguello Canyon, and about half of the Santa Lucia Bank and part of its escarpment. At a point approximately 55 miles offshore of the Santa Maria River mouth, the boundary extends east 43 miles, then due north for 12 miles to the point of origin south of the Diablo Canyon Power Plant marina. This narrative boundary description is provided to facilitate public understanding, but please refer to the formal boundary description and the precise boundary coordinates in Appendix A to this subpart.

#### § 922.231 Definitions.

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

*Beneficial use of dredged material* means the use of dredged material removed from the public harbor adjacent to the Sanctuary (Port San Luis) that is determined by the Director to be suitable as a resource for habitat protection or restoration purposes.

Beneficial use of dredged material is not disposal of dredged material.

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

#### § 922.232 Prohibited or otherwise regulated activities.

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

(1) Exploring for, developing, or producing oil, gas, or minerals within the Sanctuary, except for oil and gas production, which includes well abandonment, pursuant to existing leases or lease units in effect on the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]).

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

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

(B) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

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

(D) For a vessel less than 300 GRT, or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary,

clean graywater as defined by section 312 of the FWPCA;

(E) Vessel engine or generator exhaust;

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

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

(H) Discharges incidental and necessary to oil and gas production within or into reservoirs contained within existing leases or lease units in effect on the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) from Platform Irene or Platform Heritage, including well abandonment.

(ii) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

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

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

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

(ii) Anchor a vessel;

(iii) Install or maintain an authorized navigational aid;

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

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

(vi) Drill, maintain, or abandon a well necessary for purposes related to oil and gas production pursuant to existing leases or lease units in effect on the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) from Platform Irene or Platform Heritage.

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

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

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

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

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

(8) Attracting any white shark within the Sanctuary.

(9)(i) Moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting, or otherwise injuring, or attempting to move, remove, take, collect, catch, harvest, disturb, break, cut, or otherwise injure, any Sanctuary resource located more than 1,500 ft. below the sea surface within the Rodriguez Seamount Management Zone, as defined in appendix B to this subpart. This prohibition does not apply to lawful fishing, which is regulated pursuant to 50 CFR part 660.

(ii) Possessing any Sanctuary resource, the source of which is more than 1,500 ft. below the sea surface within the Rodriguez Seamount Management Zone, except as necessary

for valid law enforcement purposes.

This prohibition does not apply to possession of fish resulting from lawful fishing, which is regulated pursuant to 50 CFR part 660.

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

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

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

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

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

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

(e) The prohibitions in paragraphs (a)(2) through (9) of this section, and paragraph (a)(10) of this section regarding any introduced species of shellfish that NOAA and the State of California have determined is non-invasive and will not cause significant adverse effects to Sanctuary resources or qualities, and that is cultivated in State waters as part of commercial shellfish aquaculture activities, do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with § 922.36, the Director notifies the applicant and authorizing agency that the Director does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals, and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date of Sanctuary designation.

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

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

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

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

(2) Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

(g) A person may conduct an activity prohibited by paragraphs (a)(2) through (10) of this section within the Sanctuary



if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, or right of subsistence use or of access that is in existence on the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) and within the sanctuary designated area and complies with § 922.10, provided that the holder of the lease, permit, license, or right of subsistence use or of access complies with the certification procedures for CHNMS as outlined in § 922.234.

**§ 922.233 Permit procedures.**

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

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

**§ 922.234 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or other rights to conduct a prohibited activity.**

(a) To obtain a certification of an activity that is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, other authorization or right of subsistence use or access (hereafter in this subsection “permit or right”) in existence on the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) and within the sanctuary designated area, pursuant to §§ 922.10 and 922.232(g), the holder of such permit or right shall:

(1) Notify the Director, in writing, within 120 days of the effective date of Sanctuary designation ([EFFECTIVE DATE OF FINAL RULE]) of the existence and location of such permit or right and requests certification of such permit or right; and

(2) Comply with any terms and conditions on the exercise of such permit or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(3) Address any requests for certifications to: West Coast Regional Office, Office of National Marine Sanctuaries; ATTN: Superintendent, Chumash Heritage National Marine Sanctuary, 99 Pacific Street, Suite 100F, Monterey, CA 93940, or send by electronic means as defined in the

instructions for the ONMS permit application. A copy of the permit or right must accompany the request.

(b) A holder requesting certification of a permit or right described in § 922.232(g) may continue to conduct the activity without being in violation of Sanctuary prohibitions pending the Director’s review of and decision regarding the holder’s certification request, provided the holder is otherwise in compliance with this section.

(c) The Director may request additional information from the holder requesting certification as the Director deems reasonably necessary to condition appropriately the exercise of the certified permit or right to achieve the purposes for which the Sanctuary was designated. The Director must receive the information requested within 45 days of the date of the Director’s request for information. Failure to provide the requested information within this time frame may be grounds for denial by the Director of the certification request.

(d) In considering whether to impose appropriate conditions when issuing a certification, the Director may seek and consider the views of any other person or entity.

(e) Upon completion of review of the permit or right and information received with respect thereto, the Director shall communicate, in writing, any decision to impose appropriate conditions on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified permit, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(f) The Director may amend, suspend, or revoke any certification issued under this section whenever continued operation would otherwise be inconsistent with any terms or conditions of the certification, or whenever the underlying permit or right on which the certification was issued has been amended, suspended or revoked. Any such action shall be forwarded in writing to both the certification holder and the agency that issued the underlying permit or right, and shall set forth reason(s) for the action taken.

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

(h) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

(i) It is unlawful for any person to violate any terms and conditions in a certification issued under this section.

**§ 922.235 Memoranda of Agreement with partner agencies.**

(a) *Introduced species aquaculture projects.* (1) NOAA would describe in a Memorandum of Agreement (MOA) with the State of California how NOAA will coordinate review of any proposed introduction of non-invasive introduced species from a proposed commercial shellfish aquaculture activity in State waters when considering an authorization under § 922.232(e).

(2) The MOA would specify how the process of § 922.36 in subpart D will be administered within State waters within the sanctuary in coordination with State permit and lease programs as administered by the California Fish and Game Commission, the Department of Fish and Wildlife and the California Coastal Commission.

(b) *Sunken military craft.* Sunken military craft are administered by the respective Secretary concerned pursuant to the Sunken Military Craft Act. The Director will enter into a MOA regarding collaboration with other Federal agencies charged with implementing the Sunken Military Craft Act that may address aspects of managing and protecting sunken military craft. The Director will request approval from the Secretary concerned for any terms and conditions of ONMS authorizations that may involve sunken military craft.

**Appendix A to Subpart V of Part 922—  
Chumash Heritage National Marine  
Sanctuary Formal Boundary  
Description and Coordinates**

The northern boundary of the sanctuary begins at Point 1 approximately 36 nautical miles (41 statute miles) WSW of Point Buchon. From Point 1 the sanctuary boundary continues east to Point 2 and then north towards Point 3 until it intersects the shoreline as defined by the mean high water (MHW) tidal datum approximately 2 nautical miles (2.3 statute miles) southeast of the entrance to the harbor at the Diablo Canyon Power Plant. From this intersection the sanctuary boundary follows the shoreline southeast past Point San Luis until it intersects the line segment formed between Point 4 and Point 5 on the southern end of the southwest breakwater of Port San Luis in San Luis Obispo Bay. From this intersection the sanctuary boundary continues northeast towards Point 5 until it intersects the shoreline at Fossil Point on the northeast side of Port San Luis. From this intersection the sanctuary boundary follows the shoreline southeast past Pismo Beach and then south past Point Sal and around Point Arguello until it intersects the line segment formed between Point 6 and Point 7 on the eastern end of the breakwater just southeast of the

Point Arguello Coast Guard Rescue Station. From this intersection the sanctuary boundary continues east to Point 7 and then north towards Point 8 until it intersects the shoreline. From this intersection the sanctuary boundary continues to follow the shoreline southeast past Point Conception and then east along the Gaviota Coast until it intersects the line segment formed between Point 9 and Point 10 approximately 1.7 nautical miles (2.0 statute miles) east of Dos Pueblos Canyon near the township of Naples

in Santa Barbara County. From this intersection the sanctuary boundary continues offshore south to Point 10 and turns west and continues, approximating the 3 nautical mile State Seaward Boundary, passing through each successive point in numerical order to Point 119. From Point 119 the sanctuary boundary continues southwest passing through each successive point in numerical order to Point 129. From Point 129 the sanctuary boundary continues west along its southern extent to Point 130 and then

Point 131 passing to the south of Arguello Canyon and Rodriguez Seamount. From Point 131 the sanctuary boundary continues roughly north for approximately 76 nautical miles (87.5 statute miles) along its western extent passing through each successive point in numerical order while passing Santa Lucia Bank to the west until it ends at Point 154.

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID	Latitude	Longitude
1	35.01394	- 121.58238
2	35.01394	- 120.82173
3*	35.19306	- 120.82173
4*	35.15602	- 120.74984
5*	35.17425	- 120.72509
6*	34.55436	- 120.60823
7	34.55436	- 120.60643
8*	34.55696	- 120.60643
9*	34.43590	- 119.93333
10	34.37859	- 119.93333
11	34.38126	- 119.93822
12	34.38391	- 119.94270
13	34.38362	- 119.94657
14	34.38354	- 119.95046
15	34.38358	- 119.95292
16	34.38367	- 119.95496
17	34.38381	- 119.95698
18	34.38401	- 119.95900
19	34.38451	- 119.96257
20	34.38575	- 119.96946
21	34.38677	- 119.97406
22	34.38730	- 119.97601
23	34.38794	- 119.97815
24	34.38872	- 119.98047
25	34.38958	- 119.98274
26	34.39053	- 119.98497
27	34.39154	- 119.98716
28	34.39263	- 119.98928
29	34.39379	- 119.99136
30	34.39491	- 119.99319
31	34.39621	- 119.99514
32	34.39713	- 119.99731
33	34.39823	- 119.99962
34	34.39930	- 120.00168
35	34.40055	- 120.00386
36	34.40107	- 120.00625
37	34.40173	- 120.00882
38	34.40261	- 120.01178
39	34.40339	- 120.01409
40	34.40425	- 120.01636
41	34.40527	- 120.01878
42	34.40628	- 120.02094
43	34.40744	- 120.02320
44	34.40752	- 120.02641
45	34.40774	- 120.02956
46	34.40806	- 120.03246
47	34.40855	- 120.03569
48	34.40907	- 120.03855
49	34.40971	- 120.04137
50	34.41040	- 120.04394
51	34.41126	- 120.04667
52	34.41100	- 120.04870
53	34.41077	- 120.05096
54	34.41062	- 120.05323
55	34.41054	- 120.05528
56	34.41052	- 120.05733
57	34.41056	- 120.05961
58	34.41068	- 120.06188
59	34.41084	- 120.06392
60	34.41046	- 120.06679
61	34.41021	- 120.06927

Point ID	Latitude	Longitude
62	34.41004	-120.07175
63	34.40997	-120.07424
64	34.40990	-120.07984
65	34.41002	-120.08369
66	34.40991	-120.08666
67	34.40991	-120.08964
68	34.41011	-120.09353
69	34.41051	-120.09739
70	34.41088	-120.09987
71	34.41138	-120.10255
72	34.41203	-120.10677
73	34.41251	-120.10941
74	34.41331	-120.11288
75	34.41452	-120.11729
76	34.41509	-120.11919
77	34.41571	-120.12107
78	34.41639	-120.12292
79	34.41711	-120.12474
80	34.41802	-120.12733
81	34.41937	-120.13068
82	34.42030	-120.13314
83	34.42183	-120.13678
84	34.42266	-120.14015
85	34.42285	-120.14124
86	34.42227	-120.14365
87	34.42173	-120.14631
88	34.42126	-120.14922
89	34.42091	-120.15216
90	34.42039	-120.15458
91	34.41992	-120.15725
92	34.41942	-120.16108
93	34.41913	-120.16493
94	34.41904	-120.16857
95	34.41913	-120.17221
96	34.41941	-120.17583
97	34.41986	-120.17943
98	34.41968	-120.18174
99	34.41957	-120.18378
100	34.41952	-120.18583
101	34.41952	-120.18788
102	34.41961	-120.19038
103	34.41978	-120.19288
104	34.42001	-120.19513
105	34.42034	-120.19763
106	34.42014	-120.20103
107	34.42010	-120.20468
108	34.42062	-120.21923
109	34.41994	-120.22203
110	34.41933	-120.22509
111	34.41885	-120.22818
112	34.41849	-120.23141
113	34.41819	-120.23501
114	34.41806	-120.23821
115	34.41788	-120.24012
116	34.41768	-120.24279
117	34.41758	-120.24551
118	34.41758	-120.24801
119	34.41735	-120.25140
120	34.38689	-120.26775
121	34.33744	-120.32691
122	34.30480	-120.37560
123	34.27979	-120.41671
124	34.20486	-120.53987
125	34.18182	-120.60041
126	34.10208	-120.64208
127	34.07464	-120.73023
128	33.87643	-120.85081
129	33.82377	-120.90550
130	33.83184	-121.21320
131	33.85137	-121.34958
132	33.91005	-121.40902
133	34.08467	-121.40925
134	34.16932	-121.49111
135	34.21050	-121.49220

Point ID	Latitude	Longitude
136	34.26897	- 121.49681
137	34.32128	- 121.50604
138	34.37975	- 121.51066
139	34.41821	- 121.51681
140	34.45284	- 121.52704
141	34.54049	- 121.56178
142	34.57950	- 121.57941
143	34.59446	- 121.59010
144	34.64285	- 121.62378
145	34.65978	- 121.63763
146	34.67836	- 121.65637
147	34.69012	- 121.66652
148	34.70722	- 121.68042
149	34.72486	- 121.69538
150	34.74143	- 121.70340
151	34.76227	- 121.70500
152	34.78952	- 121.69966
153	34.89914	- 121.64260
154	35.01394	- 121.58238

Note 1 to appendix A: The coordinates in the table marked with an asterisk (\*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

**Appendix B to Subpart V of Part 922—  
Coordinates for Rodriguez Seamount  
Management Zone Within the  
Sanctuary**

Coordinates listed in this table are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID	Longitude	Latitude
1	- 120.75816	34.02873
2	- 120.85081	33.87643
3	- 120.90550	33.82377
4	- 121.21320	33.83184
5	- 121.25782	33.83812
6	- 121.25937	34.13926
7	- 120.75892	34.14264
8	- 120.75816	34.02873

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