

Alliance of Communities for Sustainable Fisheries

256 Figueroa Street #1, Monterey, CA 93940

(831) 239-1219

www.alliancefisheries.org

Mr. John Armor
Director
Office of National Marine Sanctuaries
NOAA
1305 East-West Highway, 11th Floor
Silver Spring, MD 20910

January 31, 2022

RE: Document #NOAA-NOS-2021-0080- 0001~ Notice of Intent – Proposed Chumash Heritage National Marine Sanctuary

Dear Director Armor,

The Alliance of Communities for Sustainable Fisheries (ACSF) is a 501(c)(3) not-for-profit educational organization founded in 2002 for the purposes of connecting fishermen with their communities and to represent fishing interests in state and federal processes. The ACSF is a regional organization with commercial fishing leader representatives from Monterey, Moss Landing, Santa Cruz, Morro Bay and Pillar Point harbors and Port San Luis on our Board of Directors. Port communities and several recreational fishing organizations also have representatives on our Board, as does the California Wetfish Producers Association. Thus, the ACSF represents a large cross-section of fishing and community interests for the Central Coast of California.

The ACSF has had extensive experience with the Monterey Bay and Channel Islands NMS's.

Please accept the following comments about the proposed Chumash Heritage National Marine Sanctuary (CHNMS):

NOAA's proposed CHNMS designation is built on untrue and incorrect assertions and violates NOAA's own guidelines and its Administrative designation process

For the CHNMS designation, NOAA is using an administrative designation process, as compared to the traditional Congressional process, which was established by NOAA in 2014 under 15 C.F.R. Part 922, Subpart B. The administrative designation process is based on, in large part, the important premise of consensus community support where all key interest groups are on board with the proposal. The administrative designation mechanism is used, as opposed to the Congressional process, for proposals that are lacking in controversy or potential negative impacts on affected interest group or sector, as has occurred in the past with some sanctuary proposals that necessitated extensive political review and resolution through legislation. The nomination process is now intended to be "bottom up" as opposed to a "top down" process. See 15 CFR § 922.10(c)(7). To date, this process has been used for more discrete sites of

importance in the nation; it has not yet been used for a proposal of this size, bordering on an urbanized coastline.

Since 2014, NOAA has continued to emphasize how the new approach depended on community stakeholder support in its guidance and subsequent explanations of the regulations after promulgation.

The new process has resulted in the designation of two new sanctuaries, the Mallows Bay-Potomac River National Marine Sanctuary in 2019, and the Wisconsin Shipwreck Coast National Marine Sanctuary in 2021. The Mallows Bay Sanctuary was the first to be designated and its designation was a success in large part thanks to the early and active involvement support from a diverse group of stakeholder groups, including industry. In October 2021, NOAA declined the nomination for the Michigan Shipwreck Coast National Marine Sanctuary because the nomination faced opposition from significant players. NOAA explained that the nomination “[fell] short of the requirement demonstrating broad-based community support . . . based in particular on the positions of the Bay Mills Indian Community, the Sault Ste. Marie Tribe of Chippewa Indians, and the State of Michigan, all of whom have indicated objections to the nomination.”

Since 2014, five sanctuary nominations also have been declined under the 2014 regulations. Of these, four were declined based on a lack of broad-based community support. In a 2014 letter declining the nomination of the proposed Eubaleana Oculina National Marine Sanctuary, the Office of National Marine Sanctuaries explained that “organizations or industries that depend on the resources in a nominated area (such as divers, fishermen, and boaters) should be represented in the nomination.” Similarly, in a 2018 letter declining the nomination for Southern California Offshore Banks National Marine Sanctuary, the Office of National Marine Sanctuaries explained that while NOAA is not looking for “unanimous support . . . from those that may use or be interested” in the Offshore Banks, a nomination adequately meeting criterion #7 should include “users” of the nominated area (i.e., “surfers, divers and the U.S. Navy, along with researchers”). Additionally, in an April 27, 2018 letter to the San Diego Fishermen’s Working Group, also explaining why the Southern California Offshore Banks NMS nomination was rejected, West Coast NMS Regional Director William Douros explained,

“NOAA’s primary concern about the nomination as submitted was that it did not adequately meet the requirements for management consideration #7, which indicates a national marine sanctuary nomination must demonstrate support for the proposed sanctuary concept from a breadth of community interests. When NOAA considers this aspect of a nomination, we are looking for representative support from a diverse cross section of the community.”

Thus, in practice, NOAA considers broad community support to be critical to the nomination and designation process. Moreover, NOAA’s experience with the Wisconsin and Michigan Shipwreck Coast National Marine Sanctuaries suggests that strong opposition from a major stakeholder can halt a nomination or designation process.

The Office of National Marine Sanctuaries provides this definition about the level of community support needed to advance a NMS nomination to the designation process:

“There is community-based support for the nomination expressed by a broad range of interests, such as: individuals or locally-based groups (e.g., friends of group, chamber of commerce); local, tribal, state, or national elected officials; or topic-based stakeholder groups, at the local,

regional or national level (e.g., a local chapter of an environmental organization, a regionally-based fishing group, a national-level recreation or tourism organization, academia or science-based group, or an industry association)."

We will show that NOAA's CHNMS proposed designation does not meet this definition by falsely asserting "broad community support" for the designation while disregarding documented broad community opposition from key industries.

In its federal register notice, NOAA paints an inaccurate, false narrative regarding the level of local support for the designation. To quote,

"The nomination has been endorsed by a diverse coalition of organizations and individuals at tribal, local, state, regional, and national levels including elected officials, businesses, recreational users, conservation groups, fishing associations, tourism companies, museums, historical societies, and education groups."

The ACSF maintains that this statement and management consideration does not truthfully describe the landscape of support and opposition. We also note that the great majority of the approximately thirteen thousand supportive comments came from national "click here to support the CHNMS" campaigns from several ENGOs, and are not representative of *local* support. Further, upon examining a large number of supporting comments made during the re-nomination process, it is striking how many people are not aware of existing strong protections, and/or believe that NMS's bring benefits they can't actually provide.

The ACSF does not claim that there is no support for a new NMS, but we do maintain that it is not the "breadth of community interests" nor is it from a "diverse cross section of the community".

Consider the large number and variety of diverse community interests that are on record OPPOSING the NMS designation:

Elected Officials:

- California State Assemblyman Jordan Cunningham
- Grover Beach Mayor John Shoals (now former Mayor)
- Former Pismo Beach Mayor Shelly Higginbotham
- Former Morro Bay Mayors Janice Peters, Bill Yates, Cathy Novak, and Rodger Anderson
- The late California Assemblyman Katcho Achadjian

Agencies:

- City of Morro Bay
- Port San Luis Harbor District
- Morro Bay Harbor Advisory Committee
- San Luis Obispo County Board of Supervisors
- City of Pismo Beach

Organizations:

- Morro Bay Chamber of Commerce

- San Luis Obispo Chamber of Commerce
- Coalition of Agriculture, Labor, and Business, San Luis Obispo County
- Coalition of Agriculture, Labor, and Business, Santa Barbara County
- San Luis Obispo County Farm Bureau
- Shippers-Growers Association of Santa Barbara and San Luis Obispo Counties
- Central Coast Water Quality Preservation, Inc
- Pacific Coast Federation of Fishermen's Associations—the largest commercial fishing organization on the west coast
- Recreational Fishing Alliance—the largest recreational fishing organization in the US
- Alliance of Communities for Sustainable Fisheries—a 501-c-3 organization representing commercial and recreational fishing for six Central Coast port communities who would be directly affected by a CHNMS designation
- Ventura County Commercial Fishermen's Association
- Point Conception Groundfish Association
- Morro Bay Commercial Fishermen's Organization
- Port San Luis Commercial Fishermen's Association
- Monterey Commercial Fishermen's Association
- Moss Landing Commercial Fishermen's Association
- Commercial Fishermen of Santa Barbara
- Southern California Trawler's Association
- Morro Bay Community Quota Fund
- Central Coast Women for Fisheries
- Western Fishboat Owners Association,
- American Albacore Fishing Association,
- San Diego Fishermen's Working Group,
- California Wetfish Producers Association
- California Salmon Council
- California Sea Cucumber Divers Association
- Arroyo Grande Sportsman's Club
- San Luis Obispo County Cattlemen's Association
- Forest Preservation Society
- Friends of Oceano Dunes—claiming 28,000 members
- Blue Ribbon Coalition/Share Trails
- California Marine Affairs and Navigation Conference—representing all CA ports, including the very largest
- California Association of Harbormasters and Port Captains—a professional organization comprised of mostly public small craft harbors

This list makes evident that several key stakeholder groups including local governments, the commercial and recreational fishing industries, the Agriculture industry, Chambers of Commerce representing Business and Tourism, elected officials, and recreational users, oppose the CHNMS's designation.

The ACSF submits that the NOAA claim that management consideration #7 has been met does not pass the straight-face test. The lineup of interests who oppose the CHNMS are many and diverse, and often directly contrary to the list of support contained in the federal register notice. We wonder, who are the "fishing associations" mentioned?

The reason for this unified opposition from both commercial and recreational fishing industry organizations and their leadership stems from an acquired lack of trust in the NMS program. There are many examples where Sanctuaries, contrary to promises made, have used their stature and “sanctuary” name to influence other agencies to regulate, to our detriment. (See: “Bait and Switch? Fishermen’s Difficult Relationship with the Monterey Sanctuary” at www.alliancefisheries.org, under “Reports”). We wonder, considering the overwhelming opposition to this NMS from local, regional, and national commercial fishing organizations, why is NOAA portraying *support* in its federal register announcement?

Likewise, to many public members, the sanctuary name means more than Congress intended, creating unrealistic expectations for sanctuaries to be no-take zones and prohibit other human uses. Even though the NMS Act requires a balance of multiple-use opportunities with protections when scientifically justified, our experience with sanctuary management is that it clearly leans towards protections. At this very time, the state of California is considering recommendations to give Sanctuaries even more regulatory authority over fisheries, and the Center for Biological Diversity is demanding that NOAA prohibit all fishing gears that use rope *inside NMS’s*.

The Office of National Marine Sanctuaries would be wise to step back and work hard to reestablish trust in the key stakeholder group that are US fishermen. Without trust being rebuilt NOAA, will see fierce resistance to any new ocean NMS’s.

The evidence is clear that while a statement can be made that the region is divided, if anything, broad, diverse OPPOSITION outweighs support.

NOAA must not advance this designation.

NOAA fails to make a case for the designation in other ways

NOAA also asserts the CHNMS needs an @ seven thousand square miles to meet the primary stated objective of acknowledging the heritage of local Native American tribes. However, it offers no rational why the proposed NMS is so large and how the size relates to its size. We also point out that other state and federal laws can provide protection from any identified ancient tribal sites,

Any ancient tribal sites that might be located underwater would have to be in less than 130 meters depth, the lowest sea level during the last 15,000 years, according to general agreement among scientists, who reported a rapid increase thereafter until about year 6,000 BP in response to large scale melting ((Bloom 1971; Flint 1971:324-328; Fairbridge 1976). There is, therefore, no justification for extending the CHNMS out to great depths for cultural purposes. While the ACSF does not believe a NMS designation is needed at all, we further believe that a seaward boundary at @ 40 fathoms would be highly likely to include any surviving ancient sites, should the CHNMS be designated.

Further, the ACSF wonders what “tribal co-management with NOAA”, a phrase being widely used to describe tribal ambitions for the NMS, actually means under the law. We know of no legal authority stipulated in the National Marine Sanctuaries Act that would allow for co-equal management. We also note that the Northern Band of Chumash is not federally-recognized, so a government-to-government relationship would not exist. For our primary concern of fisheries

regulation, co-management must not provide any legal authorities to manage fisheries, including creating or advocating for areas protected nominally for other purposes such as a habitat or tribal heritage. A CHNMS designation must not create a path for new MPA's or any other role for tribal regulation of fisheries. The Magnuson-Stevens Fishery Conservation and Management Act and state Fish and Wildlife laws provide the scientific and public process to conserve fish and habitats.

NOAA asserts that distinct threats to resources exist, for which a new NMS will provide protections.

Quoting NOAA,

"The 2015 nomination described in detail a number of adverse impacts from current or future uses and activities that threaten the proposed area's natural and cultural resources. Threats from climate change and oil/gas exploration, exemplified by the May 2015 ExxonMobil pipeline rupture, are of concern due to potential adverse effects to ecological resources, as well as to Chumash coastal and submerged sacred sites. Further, this region of the California coast has witnessed an increase in other offshore industrial activities and proposed development being funneled into the area between CINMS and MBNMS. Potentially impactful activities include harmful discharges, such as untreated agricultural irrigation from the Central Valley, existing sewage outfalls and waste water treatment, once-through cooling from the Diablo Canyon nuclear power plant, and seismic surveys. Proposed offshore industrial activities, such as wave and wind energy installations, and pressures associated with human population growth are additional threats. The nomination also explicitly calls out the emerging impacts from climate change."

The ACSF submits that NMS designation will have zero or very little effect on these threats. Existing federal and state laws address these threats. One example: there have been many oil and sewage spills, some quite large, in the MBNMS since its designation. NMS designation has not prevented them. One sewage spill of @ two-million gallons originated close to the MBNMS's offices.

Of particular note are the references to offshore industrial development and climate change. NOAA and CHNMS supporters act like there are no ocean protections for the region and it will take NMS designation to save us from these many threats. This is patently untrue.

Regarding industrial development, by far, the greatest threat to proposed NMS resources and other ocean space users may be offshore wind development. Cumulative, long-term effects are unknown, yet, the first action NMS officials took in announcing a designation process was to reduce the size proposed by the Chumash by seventy-five square miles to accommodate a future Wind Energy Area that will include 300-350 massive floating wind turbines. Further, NMS officials decline to rule out permitting these industrial projects inside a NMS. We conclude that the NOAA and the NMS program are not serious about providing protection in the CHNMS from potentially the greatest threat to the ocean environment and fishery resources. Asserting that NMS designation is needed to address these threats is unfounded.

Regarding climate change, an argument has been made that fast-tracking OSW, notwithstanding its massive industrial development—contributes to reducing CO₂, but at the potentially high cost of a host of environmental and socioeconomic risks and impacts. NMS

designation will not reduce climate change impacts such as ocean acidification, sea level rise, and/or species migration.

NOAA and the Administration claim that NMS designation is needed is because a NMS is a Marine Protected Area (MPA). Note that 28 prominent marine scientists wrote in a December 10, 2020 open letter to Congress: *“Conservation of marine ecosystems in the U.S. waters is challenged by a rapidly changing climate, **but the proposed marine protected areas will not solve climate-related impacts on biodiversity, instead they will decrease flexibility of the fishery management system to adapt to climate change.**”*

On this point the ACSF agrees with the Biden Administration’s inclusion of NMS’s into the definition of “conserve” for biodiversity protection, but not because of a NMS’s MPA status. Rather, it is because of a single regulation that many NMS’s have adopted, to ban oil and gas development. We believe this is sufficient to add to measures conserving biodiversity.

Just because a NMS is a MPA does not mean that it has any authorities or tools to significantly address Climate Change causes or impacts. For example, consider the large dead zone that forms in the Gulf of Mexico every year. The dead zone is created by excess nutrient pollution from agricultural areas – mainly related to fertilizers washed into the Gulf through the Mississippi River and other inland waterways. An MPA in the area to protect that environment would have no effect on the biodiversity of the ocean in that region.

The ACSF could continue with other examples as to how the criteria and management considerations needed to justify NMS designation have not been met. We refer to our letter submitted to NOAA on June 12, 2020, commenting on continuing the advancement of the nomination.

Overall, we believe that the NOAA has violated its own guidelines in advancing the CHNMS nomination and should withdraw it from the designation process.

Considerations should the CHNMS designation proceed

The ACSF recognizes that NOAA may have the power to disregard legitimate concerns from the local communities. We wonder why NOAA and various elected officials would want to force a NMS upon a community that, at minimum, is quite divided? With key industries opposing? Why would NOAA want the region’s first taste of NMS management be its dismissal of local concerns?

Should NOAA approve this NMS designation regardless of substantial local opposition and in violation of its own administrative process, the ACSF believes that the following list of actions should be incorporated into the designation document, future regulations, and management plan:

- Conduct a poll to ascertain that the name “Chumash Heritage NMS” has support from *all* the region’s Native American tribes.
- The designation document and subsequent management plan should center on interpreting coastal California Native American culture.

- In the event that NOAA does not explicitly prohibit offshore wind development inside its boundary (as described further below), then the seaward boundary of the NMS should follow the forty-fathom curve from its northern to southern boundary. Such a boundary would be likely to include most, if not all, ancient tribal sites.
- If the NMS commits to inviolate language prohibiting offshore wind development, then the boundary should follow the fathom curve of the most westward portion of the BOEM-proposed Diablo Canyon Call Area. Additionally, the northern-most boundary should be set a minimum of five miles south and away from the MB376 Wind Energy Area.
- Through designation document language, make it clear that the cultural, heritage, and economic value of commercial fishing in Central Coast communities are *resources* of the NMS also to be protected, preserved and promoted with other sanctuary resources.
- The ACSF sees no cultural, resource, or threat justification sufficient to approve the size of the CHNMS as proposed in the Notice of Intent.
- Create designation document language stronger and more detailed than exists in the Monterey NMS that prohibits a Sanctuary role in fisheries management and issues that pertain to fisheries. The Sanctuary should play no role through direct or indirect regulation, or in advocacy to the public, public agencies, or to legislators, for any policies that affect fisheries, unless such action has the unanimous support of the regional commercial fishing organizations. This includes any tribal co-management structure that might be an outcome of NMS designation. We are aware that California's draft "30X30" plan to conserve biodiversity includes a recommendation to add to NMS's regulatory authority to manage resources, including fisheries. It also appears that one Native American tribe may desire to create fishery regulations and spatial closures. In light of NOAA officials' claims on the record that the NMS "will not manage fisheries", fishermen request and expect that these officials will go on record rejecting these recommendations as inappropriate.
- Any "Sanctuary Advisory Council" (SAC) that may be created should be organized under local jurisdictions, objectively and independently from NMS management. The NMS should formally accept advice from such an independent council of local community stakeholders. In the event that such a locally organized SAC can't be legally recognized, then the SAC charter, which governs SAC representation, agendas, and communication, should be created by consensus among local jurisdictions and stakeholders, not by the NMS program.
- However the SAC is developed, the council should have at least 50% of the voting members made up of local resource-dependent stakeholders, including commercial and recreational fishermen, harbor managers, recreational users, farmers, and ranchers. In this way the intent found in the National Marine Sanctuaries Act, of balancing multiple use opportunities with protections when scientifically justified, will be manifest.

All SAC agendas, meetings, and policy decisions should be transparent and open for public comment and review. Agendas and all supporting materials should be publicly available at least five days in advance of any meeting.

- The NMS should be prohibited from having any role in authorizing, permitting, or commenting on, harbor dredging or dredged material disposal projects. NMS boundaries should be set at a minimum five-mile radius away from all harbor structures. All existing dredged material disposal sites must be grandfathered.
- Create designation document language and regulations that prohibit offshore wind development and associated infrastructure from being allowed inside the CHNMS boundary, to the full extent the law allows. There should be no method of permitting future offshore wind turbines, similar to permanent bans on oil and gas development in other NMS's. Boundary changes to accommodate new wind farm areas or aquaculture should also be prohibited. Should any undersea cables running from the Morro Bay Wind Energy Area pass through a potential future NMS, it must be properly buried and demonstrate no electromagnetic disturbance. Concrete blankets should be considered to avoid exposure and to avoid disturbance to the local fisheries from deep trenching thru hard bottom. A monitoring plan for the cables should be established.

The ACSF believes that the Department of Defense may also have concerns about OSW expansion beyond the MB376 area.

- Department of Defense exclusions and exemptions will account for past, current, and future military operations inside of the CHNMS, should it be designated.
- A plan to monitor for and protect against invasive species being introduced into the sanctuary should be made, with special attention to any use of foreign-flagged vessels for offshore wind construction and operations.
- Metrics, with inside-outside control sites, must be provided so that improvements or degradation of sanctuary qualities can be determined through scientific evaluation by independent scientists or institutions, on a regular basis.
- NMS should support research for monitoring all impacts to the sanctuary resources related to Offshore Wind. These studies may include using ROV's to monitor the cables, and may also include studies of noise, electromagnetic fields, sediment movement, O₂ and phosphorus levels, temperature, current, wind velocity, and wave height changes related to OSW. Special attention should be given to any alteration of ocean upwelling. Studies should also monitor impacts to marine life behavior and changes in migration patterns from the wind farms and undersea cables.
- If OSW development is found to cause significant impacts to commercial fisheries in the sanctuary, the Sanctuary should act on the fishermen's behalf consistent with their charter to protect, preserve, and promote commercial fishing and prevent environmental harm.

In summary, the ACSF believes that NOAA has failed to justify the CHNMS designation in multiple management considerations, chief among them a clear lack of diverse community/stakeholder support. NOAA must halt the designation process. In the event that NOAA disregards its failures and continues with the designation, the ACSF offers concrete recommendations about its management.

Thank you for considering recommendations from the Alliance of Communities for Sustainable Fisheries.



Alan Alward

Co-Chair

4alliancefisheries@gmail.com



Frank Emerson

Co-Chair

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US Secretary of Commerce
Council on Environmental Quality
US Representative Salud Carbajal
US Representative Jimmy Panetta
Pacific Fishery Management Council
ACSF Board of Directors