



Environmental Compliance Consultation Letters for Chumash Heritage National Marine Sanctuary Proposed Designation Process

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December 8, 2021

Mr. Paul Michael
NOAA Sanctuaries West Coast Regional Office
99 Pacific Street, Building 100F
Monterey, CA 93940

RE: Chumash Heritage National Marine Sanctuary (“CHNMS”)
Request for Government-To-Government Consultation (“Consultation”)
By: Santa Ynez Band of Chumash Indians (“Chumash” or “Tribe”)

Dear Mr. Michael:

The Santa Ynez Band of Chumash Indians, as the only federally recognized Chumash Tribe, hereby requests Consultation as to the CHNMS.

We appreciate the opportunity to provide input in the initial stages of the CHNMS designation process. A new vision of the process to designate, co-manage and implement the proposed CHNMS is warranted today. While “consultation” is a necessary first step with regards to the proposed CHNMS designation, Tribal stewardship for this site requires a more collaborative, co-management approach that combines Chumash, federal and State governments. This is consistent with a recent external review by the National Academy of Public Administration (2021: 66-67) who recommend that the sanctuary program “increase engagement with indigenous” communities associated with sites.

The obligation that federal agencies consult with Tribes regarding undertakings that impact tribal interests is based in various statutes, implementing regulations, and Executive Orders. The Department of Commerce has developed guidelines for consultation in accordance with President Clinton’s Executive Order (E.O.) No. 13175, “Consultation and Coordination with Indian Tribal Governments” (November 6, 2000) and President Obama’s November 5, 2009, “Tribal Consultation” Memorandum. The Department of Commerce revised its Tribal Consultation Policy after engaging in extensive consultation with tribal officials for a period of several months in 2012. On January 26, 2021, President Biden signed a Presidential Memorandum directing the head of each federal agency to develop a detailed plan of action to implement Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which calls for regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications.ⁱ

There are other federal guidance documents that NOAA and the National Marine Sanctuaries Office has participated in that are worth noting.ⁱⁱ In accordance with Section 5(a) of Executive Order 13175: Consultation and Coordination with Indian Tribal Governments, the Advisory Council on Historic Preservation (ACHP), in March 2021, submitted to the Office of Management and Budget (OMB) a plan outlining its process for ensuring meaningful and timely input from tribal officials in the development of regulatory policies that have tribal implications. Based on a Tribal Cultural Landscape (TCL) approach, a

“Guidance Document” (*Guide*) was produced by federal agencies and partners to strengthen consultation with Tribes more effectively and appropriately in advance of any proposed federal policy and associated undertakings (ACHP 2021). The project, *Characterizing Tribal Cultural Landscapes*, was comprised of a team from the Bureau of Ocean Energy Management’s (BOEM) Pacific Outer Continental Shelf (POCS) Regional Office, the National Oceanic and Atmospheric Administration’s (NOAA) National Marine Protected Areas (MPA) Center and NOAA’s Office of National Marine Sanctuaries (ONMS). The *Guide* describes a means for tribes and other indigenous communities to relate their interests and concepts of landscape (or in this case seascapes) to federal agencies and other land and water management entities.

The TCL concept is rooted in a collaborative initiative related to offshore renewable energy development, but it is relevant to include here given the proposed offshore wind energy associated with the site area, and the proposed designation of the CHNMS. The *Guide* (ACHP 2021) includes the following priority principles to foster consultation:

- Indigenous determination of research needs and priorities;
- Indigenous articulation of the ways research should proceed;
- Training of indigenous researchers and extending opportunities for indigenous peoples;
- Discussion of culturally appropriate ethics, and ongoing development of culturally sympathetic methods;
- Increased collaboration among tribes;
- Tribal development and dissemination of literature on research;
- Continued self-reflection, evaluation and critique of the community of indigenous researchers;
- Education of the wider research and government community, including scientific, academic and policy communities regarding principles 1-7 above; and
- Accountability to and outcomes for tribes.

The *Guide* (ACHP 2021) also emphasizes the following principles:

- Properly engage with tribal and indigenous communities prior to the proposal of activities that may impact tribal resources and areas;
- Involve tribal and indigenous communities in the identification of their own significant resources and areas of use; and
- Clarify tribal interests in specific planning areas.

The policy commits the ACHP (2021) to:

- Be guided by principles of respect for Indian tribes and their sovereign authority.
- Operate on the basis of government-to-government relations with Indian tribes. The ACHP acknowledges that Federal-tribal consultation is a bilateral process of discussion and cooperation between sovereigns.
- Recognize that it has a trust responsibility to federally recognized Indian tribes and views this trust responsibility as encompassing all aspects of historic resources including intangible values. The ACHP shall be guided by principles of respect for the trust relationship between the Federal Government and federally recognized Indian tribes. The ACHP will ensure that its actions, in carrying out its responsibilities under the Act, are consistent with the protection of tribal rights arising from treaties, statutes, and Executive orders.

- Consult with tribal leaders, and, as appropriate, their representatives including Tribal Historic Preservation Officers, in its consideration and development of policies, procedures, or programs that might affect the rights, cultural resources, or lands of federally recognized Indian tribes.

Consultation should commemorate the thousands of years the Chumash Tribes have inhabited this coastal region. We also believe that recent federal initiatives support a government-to-government collaboration and co-management approach that includes the Chumash, State, and federal agencies for a future CHNMS designation. A more collaborative, co-management approach to the proposed designation, planning, and future management of CHNMS is supported by recent federal statutes and regulations. Moreover, the scholarly literature of the past twenty years on co-management shows that there are benefits to a more formal, collaborative co-management approach, including:

- improved management due to incorporation of better data and local ecological knowledge;
- more appropriate rules and regulations that can respond rapidly to changing conditions; and,
- more effective and efficient enforcement due to increased legitimacy of the co-management structures.

Scholars show that successful co-management can increase equitable and fair use of resources; and can contribute to the empowerment and development of marginalized communities. Taken together, the potential benefits make a compelling argument in favor of co-management between the Chumash, California, and federal agencies with respect to the proposed CHNMS.

The term “collaborative co-management” connotes a stronger partnership where there is a sharing of authority and responsibility. The NMSP has established Sanctuary Advisory Councils and other advisory bodies that support and contribute to sanctuary management and planning. As sovereign entities the Chumash political status should be acknowledged in decision-making and planning at all levels of future CHNMS designation, planning and management. The federal government should involve Chumash Tribal participants in decision-making bodies, forums, and protocols that can support co-management of the CHNMS. Collaborative co-management of the proposed designation and potential management and planning of the CHNMS is consistent with existing Executive Orders set forth by Presidents Clinton and Obama and the President’s Biden recent memorandum that prioritizes consultation and collaboration between federal agencies and Tribes in future regulatory policies.

Generally, the sanctuary program’s goal to protect marine life should include two dimensions: a political dimension (government-to-government relationships between the Chumash, federal and state governments), where ultimate authority and accountability for action resides, both within and among formal and informal mechanisms; and an analytical, active dimension (co-management), where analysis of pressure and threats to coastal and marine ecosystems are addressed and responded to in government action. For a co-managed CHNMS, it is important to promote greater integration of policy and management processes that combine Tribal, federal, and State management approaches through formal strategic and collaborative planning tools. Scientific and TEK can support a more integrative, adaptive, and ecosystem-based approach to sanctuary governance; the future designation and Draft Management Plan for the CHNMS should be founded on principles of comprehensive and integrated approaches to marine ecosystem-based planning and management that combine Tribal and scientific knowledge and management systems.

We offer several recommendations to strengthen a collaborative, co-management relationship between the Chumash, state, and federal agencies for the designation process and potential planning of a future CHNMS Management Plan:

- Ensure tribal co-authorship of language in all formal agreements between the NMSP and the Chumash with respect to the future of the CHNMS. Tribal authorship should take place in future planning and policymaking to ensure that Tribal perspectives, preferences, and confidentiality are appropriately captured.
- Establish protocols for integrating aspects of Tribal stewardship. The NMSP should establish and codify appropriate policies, best practices, and protocols at the collaborative levels of governance that emphasize the integration and acknowledgement of Tribal stewardship at all levels of CHNMS management.
- Establish protections and protocols for Tribal decision-making and authority around knowledge and data. This should include the establishment of policies with Tribal participants for knowledge requests, use, sharing, and mobilization within the collaboratives. These protocols should facilitate Tribal participation and information sharing in collaboratives and beyond, creating an atmosphere of consent. The NMSP should understand that Tribes may not consent to the sharing of their knowledge and data that has been passed down and safeguarded for generations. Similarly, acknowledge the diversity of Tribal science and knowledge, how it differs from non-Tribal science, and the ways in which TEK can be better protected.

We recommend that given our common interests and joint authorities that are associated with the proposed CHNMS, federal agencies, the Chumash and the state of California should consider the creation of an Intergovernmental Policy Council (IPC) similar to the one created for the Olympic NMS in 2007. The Olympic NMS IPC's goals include:

- protecting the safety and health of coastal residents,
- enhancing the social and economic vitality of coastal communities, and
- improving the understanding and management of marine resources

Since its inception, the IPC has laid the groundwork for successful government-to-government collaboration. The IPC focuses on the following activities:

- participating in the required review of the sanctuary's management plan
- identifying research priorities, including the development of a five-year Ocean Ecosystem Monitoring and Research Initiative
- establishing initial priorities for a transition to ecosystem-based management, and
- seeking stable and long-term funding to support operation of the IPC.

Based on a review of the academic and scholarly literature on co-management and sanctuary management, we also make the following recommendations to the NOAA to consider during this initial phase of the designation process:

- On May 20, 2021, President Biden signed an Executive Order, entitled “Climate-Related Financial Risk” (Climate Risk EO), that sets the stage for the federal government, including its financial regulatory agencies, to begin to incorporate climate-risk and other environmental, social and governance strategies. Climate-change adaptation focuses on conducting and translating research to minimize the dire impacts of anthropogenic climate change, including threats to biodiversity and human welfare. One adaptation strategy is to focus conservation on “climate-change refugia” (that is, areas relatively buffered from contemporary climate change over time that enable persistence of valued physical, ecological, and sociocultural resources) (Morelli et al. 2020). It is

important to consider the proposed CHNMS as one regulatory tool that can provide climate-change refugia for marine life. A national marine sanctuary designation does not necessarily provide for marine life protection that prevents over-fishing and other large-scale impacts and threats from marine overuse. We recommend a careful review of the level of protection to marine life that can be provided by the proposed CHNMS. There are designated California marine protected areas (MPAs) within the site. There are a significantly important quality habitats offshore, including the Santa Lucia Bank, Rodriguez Seamount, and Arguello Canyon, and nearshore marine areas that include extensive kelp forests. A vast majority of these quality habitat areas remain unprotected. In addition, a diverse arrange of coastal wetlands that serve as nursery grounds for fish and invertebrate species and other marine areas are used by threatened and endangered species. Few of these areas are protected from over-use. We recommend a careful review of the role of these MPAs in supporting the priority management goals of the NMSA, and whether additional protective measures and/or marine zoning strategies (such as no-take MPAs) and tools should be considered under a co-management strategic framework that combines the Chumash, California, the NMSP and other relevant federal agencies. External reviews of the NMSP note that a clear legal authority should be considered for the designation document that will allow the establishment of no-take marine zones (National Academy of Public Administration 2021: 51), and the development of marine zoning strategies to offset impacts to marine life from climate disturbance.

- The NMSA prioritizes the protection of marine life in accordance with an ecosystem-based approach. The NMSA seeks to “maintain natural biological communities ... and [to] protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes” (16 U.S.C. §§1431(b)(3)). Scholarship shows that the use of TEK can strengthen ecosystem-based planning for marine areas. There exist a range of planning tools and policy instruments that should be considered under a co-management and collaborative approach to Sanctuary planning, and we support a strategies and partnerships that can clearly integrate scientific knowledge with TEK.
- The NMSA requires that marine resource use in sanctuary waters be “compatible” with the goal of marine life protection (16 U.S.C. § 1431(b)(6)). Compatible use is a quite different approach to resource use; it requires that any use can take place if it does not threaten the marine life of a sanctuary (Farody 2006). A compatible use criterion for marine governance prioritizes the protection of sensitive natural and cultural areas. We recommend that future marine resource use should be carefully considered in terms of this compatible use value that has yet been clearly defined by the NMSA. For example, an activity’s compatibility may depend on the following issues and concerns:
 - The activity maintains the natural biological communities in the national marine sanctuaries, and protects, and, where appropriate, restores and enhances natural habitats, populations, and ecological processes.
 - The activity enhances public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archaeological resources.
 - The activity supports, promotes, and coordinates scientific research on, and long-term monitoring of, the resources of marine areas.
- No single marine resource use or activity, such as commercial and recreational fishing, should be considered and managed in isolation from other marine activities within a designated national marine sanctuary. As co-managers, we should also recognize that the synergistic and cumulative impacts from human use of marine ecosystems, including the impacts of land-use activity, such as

farming and urban development, and climate disturbance impact coastal and marine systems. We recommend that programmatic and ecosystem-based planning tools be developed and used, such as the creation of an Ocean Health Index and marine spatial planning (MSP), so that the synergistic and cumulative impacts from human use of the site area can be evaluated over time. This should also include careful assessment of the relationship that exists between the site area and the associated MBNMS and CINMS.

- We support a credible and reliable monitoring program be created by NOAA for the CHNMS and its partners to assess water quality from land-uses on the coastal and marine area (as developed by the Monterey Bay NMS).
- The CHNMS should develop a set of common and accessible performance metrics to monitor and evaluate progress, communicate that progress to the public and stakeholders, and to compare to domestic and international counterparts (National Academy of Public Administration 2021: 51). Some illustrative examples of what may be included in a matrix to assess performance and the goals of marine life protection include:
 - Amount of area protected
 - Types of activities restricted
 - Number of species the Sanctuary is taking action to protect
 - Estimated whale strikes avoided
 - Amount of ocean floor mapped
 - Number of external partners
 - Number of educational activities or projects conducted
 - System economic valuation
 - Site visitation data
- There may be existing and future marine uses of the site area that warrant careful evaluation and study, including offshore wind energy development, aquaculture, deep seabed mining, marine vessel traffic, and other marine uses. For example, there is increasing evidence of the threats and impacts of marine noise and ship strikes from large container ships on marine mammals and other marine life in the region (Redfern et al. 2019). We recommend a careful evaluation and assessment of present and future uses of the site area in a designation document in terms of their cultural and ecological effects on the site. In particular, the range of threats to marine mammals from marine noise from marine vessels should be carefully evaluated in present and future environmental assessments associated with site. In some cases, the marine and coastal areas used by marine mammals will warrant further protection and buffer areas should be created to ensure these species, including sea birds and haul out areas for pinnipeds, are provided additional support. Marine noise from vessel activities and the use of sonar technology are examples of under-evaluated impacts to marine life and should be explored further for this site area's designation document and Management Plan. The additional threat of vessel strikes should be carefully considered in environmental assessments. Collision with ships is a key mortality factor for large whales, many of which are endangered. An increase in the rate of detected collisions between whales and ships in the past few decades corresponds to an increase in the number, size, and speed of ships over the same time period. These types of studies have been completed for the Channel Islands NMS (Redfern et al. 2019), and a number of creative planning tools and advisory bodies have been created to begin to address the impacts. We recommend a similar effort should be developed for this site. Without intervention the problem is expected to be exacerbated as already important levels of oceanic shipping continue to rise.

The Tribe looks forward to further Consultations with NOAA on the CHNMS. Please call me or Sam Cohen, Government Affairs and Legal Officer (cell: 805-245-9083, scohen@sybmi.org) if we can provide you with any additional assistance.

Sincerely,



Kenneth Kahn,
Tribal Chairman

References

- Advisory Council on Historic Preservation (2021). *Consultation Procedures Pursuant to E.O. 13175: Consultation and Coordination with Indian Tribal Governments* (April 26).
- Coglianesi, C. (1997). Assessing Consensus: The Promise and Performance of Negotiated Rulemaking, *Duke Law Journal* 46: 1255-1349.
Available at: <https://scholarship.law.duke.edu/dlj/vol46/iss6/1>
- Eitner, M. (2014). Meaningful Consultation with Tribal Governments: A Uniform Standard to Guarantee That Federal Agencies Properly Consider Their Concerns. *University of Colorado Law Review* 85, 3: 867-900. Available at: http://lawreview.colorado.edu/wp-content/uploads/2014/01/12.-85.3-Eitner_Final_Web.pdf
- Farady, S.E. (2006). "Compatible Use" Within National Marine Sanctuaries: Determining Meaningful Implementation, *Ocean & Coastal L.J.* 12: 1-14. Available at: <http://digitalcommons.maine.law.maine.edu/oclj/vol12/iss1/2>
- Morelli, T.L., W. Cameron, A. Barrows, R. Ramirez, J.M. Cartwright, D.D. David Ackerly, T.D Eaves, J.L. Ebersole, M.A. Krawchuk, among others (2020) Climate-change refugia: biodiversity in the slow lane. *Frontiers in Ecology and the Environment* 18, 5: 228-234. Available at: <https://doi.org/10.1002/fee.2189>
- National Academy of Public Administration (2021). *An External Review of the National Marine Sanctuary System*. A Report by a Panel of the National Academy of Public Administration for the National Marine Sanctuary System. Washington, DC. March.
- Northern Chumash Tribal Council (2015). *Chumash Heritage National Marine Sanctuary Nomination*. Submitted to NOAA. (June).
- Patlis, J., D. Baur, T. Lindley, A. Murphy, P. Hampton (2014). The National Marine Sanctuary System: The Once and Future Promise of Comprehensive Ocean Governance. *Environmental Law Reporter* 44: 10931-10959.
- Redfern, J.V., T.J. Moore, E.A. Becker, et al. (2019). Evaluating stakeholder-derived strategies to reduce the risk of ships striking whales. *Divers Distrib.* 25:1575– 1585. Available at: <https://doi.org/10.1111/ddi.12958>

ⁱ NOAA 13175 Policy (dated November 12, 2013) entitled *NOAA Procedures for Government-to-Government Consultation with Federally Recognized Indian Tribes and Alaska Native Corporations* provides a general overview and outline for consultation with Tribes. According to the DAO 218-8, “consultation refers to an accountable process ensuring meaningful and timely input from tribal officials on Department policies that have tribal implications.” The DAO further states that “policies that have tribal implications refers to regulations, legislative comments, or proposed legislation and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.” Consultation is an open and free exchange of information and opinions between governments that can lead to mutual understanding. Effective consultation requires Federal representatives to understand the historical circumstances of the Tribes in relationship to the U.S. government, including relevant treaties, agreements, or statutes, as well as any past conflicts between the Tribe and the Federal government. A consultation process is a formal means of communication between NOAA and the government of a Federally-recognized Tribe and is understood by both NOAA and that Tribe to be a government-to-government meeting. Consultation reflects the United States’ recognition of the sovereignty of Federally-recognized Tribes and implements the government-to-government relationship between the sovereigns.

In response to the Administration’s E.O., NOAA is revising and updating its existing NOAA policies and guidance documents, which facilitate NOAA’s implementation of E.O. 13175: (1) NOAA Procedures for Government-to-Government Consultation With Federally Recognized Indian Tribes and Alaska Native Corporations (Draft Handbook); (2) NOAA Administrative Order 218-8, Policy on Government-to-Government Consultation with Federally Recognized Indian Tribes and Alaska Native Corporations (see last page of Draft Handbook); and (3) a traditional ecological knowledge (TEK) guidance currently titled NOAA Fisheries and National Ocean Service Guidance and Best Practices for Engaging and Incorporating Traditional Ecological Knowledge in Decision-Making. On January 26, 2021, the White House issued a Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (Appendix C), which reaffirmed the policy and requirements of the 2009 Presidential Memorandum. As part of this effort, NOAA initiated a process to review and update its existing Handbook. NOAA plans to hold web-based public comments on a revision of the Handbook in January 2021.



UNITED STATES DEPARTMENT OF COMMERCE
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January 26, 2022

Kenneth Kahn, Chairman
Santa Ynez Band of Chumash Indians
P.O. Box 517
Santa Ynez, CA 93460

Dear Chairman Kahn:

Thank you for your letter, dated December 8, 2021, expressing interest in the Santa Ynez Band of Chumash Indians engaging in Government-to-Government consultation with NOAA on the designation of Chumash Heritage National Marine Sanctuary (CHNMS). Your letter was thorough, well-researched and offered many constructive ideas and approaches as we advance the designation for CHNMS. NOAA's Office of National Marine Sanctuaries (ONMS) appreciates your interest in consultation and your initial input during the public scoping phase of the CHNMS sanctuary designation, and acknowledges and accepts your request to enter into formal consultation. Moreover, we are pleased to learn about your desire for meaningful collaborative management on this sanctuary's designation and ongoing management.

ONMS endeavors to develop a collaborative management plan that is aligned with the governing principles and documents outlined in your letter, including Executive Order 13175, the Biden Administration's priorities, and guidance from NOAA's Tribal Cultural Landscape approach. Our office concurs that there are many potential benefits of collaborative management for the proposed sanctuary, and we look forward to forging a plan with ongoing tribal stewardship and Chumash cultural heritage explicitly integrated.

Again, we greatly appreciate your thoughtful input on the proposed sanctuary. We look forward to meeting with Mr. Sam Cohen (January 27, 2022) to further discuss the Tribe's interests and to develop a collaborative approach recognizing the Santa Ynez Band's integral role in this national marine sanctuary proposal and ongoing stewardship. Please feel welcome to reach out to me (william.douros@noaa.gov) with any questions regarding this letter or consultation as this designation process progresses.

Respectfully,

William Douros
Regional Director

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August 24, 2023

Joseph Brandt, Assistant Field Supervisor
Central Coast Division
Ventura Fish and Wildlife Office
2493 Portola Road Suite B
Ventura, CA 93003-7726

Dear Supervisor Brandt:

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) is contacting you to initiate informal consultation under Section 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. § 1536(a)(2), and implementing regulations at 50 C.F.R. part 402, for the proposed designation of Chumash Heritage National Marine Sanctuary (CHNMS). On August 24, 2023, ONMS released for public comment a draft management plan, notice of proposed rulemaking, and an accompanying draft environmental impact statement (EIS). The documents are available for public comment until October 25, 2023, at <https://sanctuaries.noaa.gov/chumash-heritage/>. As described in the enclosed draft EIS, NOAA's preferred boundary alternative consists of Alternative 2, Cropped Bank to Coast, combined with Sub-alternative 5b, Gaviota Coast Extension (see EIS Section 5.4.9). NOAA is also proposing a set of proposed regulations (see EIS Section 3.2.2 as well as the notice of proposed rulemaking for the full text of the proposed regulations).

Impacts on listed species and critical habitat

To support this request for informal Section 7 consultation, the enclosed draft EIS provides the following information (Sections 3.4, 3.7, 4.3, Appendix C, Appendix E.4, Appendix G):

- A description of the action, including mitigation measures (Chapter 3, Section 4.3, Appendix C);
- The purpose and need of the proposed action (Chapter 2);
- A description of the action area, including maps (sections 3.4, 3.7, 4.3);
- A description of any listed species or designated critical habitat that may be affected by the action (Section 4.3.1, Appendix G);
- A description of habitat requirements, occurrence patterns, and federal status for each of the listed species (Section 4.3.1, Appendix G);
- An analysis of the potential routes of effect to any listed species or designated critical habitat (sections 4.3.3, 4.3.5, 4.3.8, Appendix G); and
- Cumulative effects analysis (Section 4.10).

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NOAA used the USFWS ECOS IPaC tool to identify any ESA-listed species, critical habitat, or migratory birds that may be present in the action area. NOAA evaluated the species' habitat requirements, habitat availability within the action area, and the components of the proposed action and determined that 38 listed species and designated critical habitat for six species under USFWS jurisdiction may occur in the action area and may be affected by the proposed action. NOAA believes implementation of the Initial Boundary Alternative or other action alternatives identified in the draft EIS is not likely to adversely affect any species listed as threatened or endangered, or habitats critical to such species, under the ESA. Further, there are several dozen species or distinct population segments (DPS)/evolutionarily significant units (ESU) that, while present on the U.S. West Coast, are not expected to occur in the study area or that proposed sanctuary activities would not affect. Appendix G of the draft EIS provides the names of those species not expected to occur in the study area.

In sections 4.3.3–4.3.8 of the enclosed draft EIS, NOAA analyzed the potential for beneficial or adverse impacts on the 38 listed species identified in Table G.1-1 (see Appendix G.1) and designated critical habitat for six species identified in Table G.1-2 (see Appendix G.1) under USFWS jurisdiction from NOAA or partners conducting research, monitoring, or resource protection activities to implement the proposed sanctuary regulations and management plan. The specific categories of routine field activities conducted by ONMS staff and partners that may affect these species or critical habitat are: vessel use, scuba diving, deploying buoys and research or monitoring equipment, sampling organisms, removing materials (e.g., marine debris), deploying uncrewed underwater systems, deploying uncrewed aerial systems, deploying active acoustic equipment and towed instrument arrays, and seabird, fish, and marine mammal tagging studies.

NOAA's analysis concludes that any impacts resulting from the designation of the proposed CHNMS would be beneficial, insignificant, or discountable for the following reasons:

- Regulatory prohibitions on taking or possessing any marine mammal, sea turtle, or bird, with limited exception, and attracting any white shark within the Sanctuary – these species would benefit from the reduction in risk of disturbance or take through implementation of these prohibitions.
- Regulation protecting the submerged lands (seabed) – seafloor habitats would benefit from the significant reduction in area that could be developed for future offshore oil and gas development and from sanctuary management and the application of the proposed regulations to areas with the potential for additional offshore wind energy development. In addition, the decommissioning and removal of offshore oil and gas facilities could have reduced impacts on ESA-listed species and critical habitat based on potential mitigation measures imposed by the sanctuary.
- Resource Protection – response to sanctuary resource emergencies, including landslides, oil spills, and marine mammal entanglements, would augment existing efforts, or be “first-time” programs, and thus also provide beneficial impacts on ESA-listed species and critical habitat within the proposed sanctuary and adjacent region.
- Noise and disturbances from sanctuary operational activities would be of limited duration, management activities would strive to reduce disturbance, and implementation of best management practices, including BMPs specific to protected species (see

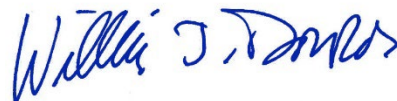
Appendix C), would minimize potential impacts. ONMS research that may impact protected resources or habitat would be conducted in accordance with any applicable new or existing USFWS and NOAA Fisheries permits and with additional protective measures from any permits ONMS would issue to its own science staff, or standing orders to supplement protective measures in cases where there is increased risk to protected resources and habitats. Any associated potential impacts on ESA-listed species or critical habitat would be insignificant or discountable. In addition, future proposed NOAA field actions would be subject to the NEPA and environmental compliance process at the time they are undertaken, including any applicable NEPA reviews and statutory consultations (and any additional mitigation measures arising out of those consultations, as applicable).

Therefore, NOAA determined that the proposed action of designating a portion of the central California coast and offshore waters as a new national marine sanctuary **may affect, but is not likely to adversely affect** listed species and their designated critical habitat. ONMS requests your concurrence with our determinations pursuant to Section 7 of the ESA of 1973 and the consultation procedures at 50 C.F.R. Part 402. NOAA certifies that the best scientific and commercial data available was used in order to prepare the draft EIS and this accompanying request for informal consultation.

Conclusion

ONMS appreciates your cooperation in completing this informal Section 7 consultation in a timely manner. ONMS will continue to coordinate with USFWS via email to provide any requested information or to answer any questions related to this consultation request. Contact Laura Ingulsrud, ONMS West Coast Regional Policy Analyst, at laura.ingulsrud@noaa.gov with any questions.

Sincerely,



William J. Douros
Regional Director

cc: Paul Souza, Regional Director, USFWS Pacific Southwest Region
Steve Henry, Field Supervisor, Ventura Fish and Wildlife Office

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



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Ventura Fish And Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003-7726
Phone: (805) 644-1766 Fax: (805) 644-3958
Email Address: FW8VenturaSection7@FWS.Gov

In Reply Refer To:
Project Code: 2023-0114719
Project Name: CHNMS Designation

August 09, 2023

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed list identifies species listed as threatened and endangered, species proposed for listing as threatened or endangered, designated and proposed critical habitat, and species that are candidates for listing that may occur within the boundary of the area you have indicated using the U.S. Fish and Wildlife Service's (Service) Information Planning and Conservation System (IPaC). The species list fulfills the requirements under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.). Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the species list should be verified after 90 days. We recommend that verification be completed by visiting the IPaC website at regular intervals during project planning and implementation for updates to species lists following the same process you used to receive the enclosed list. Please include the Consultation Tracking Number in the header of this letter with any correspondence about the species list.

Due to staff shortages and excessive workload, we are unable to provide an official list more specific to your area. Numerous other sources of information are available for you to narrow the list to the habitats and conditions of the site in which you are interested. For example, we recommend conducting a biological site assessment or surveys for plants and animals that could help refine the list.

If a Federal agency is involved in the project, that agency has the responsibility to review its proposed activities and determine whether any listed species may be affected. If the project is a major construction project*, the Federal agency has the responsibility to prepare a biological assessment to make a determination of the effects of the action on the listed species or critical habitat. If the Federal agency determines that a listed species or critical habitat is likely to be adversely affected, it should request, in writing through our office, formal consultation pursuant to section 7 of the Act. Informal consultation may be used to exchange information and resolve conflicts with respect to threatened or endangered species or their critical habitat prior to a

written request for formal consultation. During this review process, the Federal agency may engage in planning efforts but may not make any irreversible commitment of resources. Such a commitment could constitute a violation of section 7(d) of the Act.

Federal agencies are required to confer with the Service, pursuant to section 7(a)(4) of the Act, when an agency action is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat (50 CFR 402.10(a)). A request for formal conference must be in writing and should include the same information that would be provided for a request for formal consultation. Conferences can also include discussions between the Service and the Federal agency to identify and resolve potential conflicts between an action and proposed species or proposed critical habitat early in the decision-making process. The Service recommends ways to minimize or avoid adverse effects of the action. These recommendations are advisory because the jeopardy prohibition of section 7(a)(2) of the Act does not apply until the species is listed or the proposed critical habitat is designated. The conference process fulfills the need to inform Federal agencies of possible steps that an agency might take at an early stage to adjust its actions to avoid jeopardizing a proposed species.

When a proposed species or proposed critical habitat may be affected by an action, the lead Federal agency may elect to enter into formal conference with the Service even if the action is not likely to jeopardize or result in the destruction or adverse modification of proposed critical habitat. If the proposed species is listed or the proposed critical habitat is designated after completion of the conference, the Federal agency may ask the Service, in writing, to confirm the conference as a formal consultation. If the Service reviews the proposed action and finds that no significant changes in the action as planned or in the information used during the conference have occurred, the Service will confirm the conference as a formal consultation on the project and no further section 7 consultation will be necessary. Use of the formal conference process in this manner can prevent delays in the event the proposed species is listed or the proposed critical habitat is designated during project development or implementation.

Candidate species are those species presently under review by the Service for consideration for Federal listing. Candidate species should be considered in the planning process because they may become listed or proposed for listing prior to project completion. Preparation of a biological assessment, as described in section 7(c) of the Act, is not required for candidate species. If early evaluation of your project indicates that it is likely to affect a candidate species, you may wish to request technical assistance from this office.

Only listed species receive protection under the Act. However, sensitive species should be considered in the planning process in the event they become listed or proposed for listing prior to project completion. We recommend that you review information in the California Department of Fish and Wildlife's Natural Diversity Data Base. You can contact the California Department of Fish and Wildlife at (916) 324-3812 for information on other sensitive species that may occur in this area.

[*A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the

human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

Note: IPaC has provided all available attachments because this project is in multiple field office jurisdictions.

Attachment(s):

- Official Species List
- USFWS National Wildlife Refuges and Fish Hatcheries
- Migratory Birds
- Marine Mammals
- Wetlands

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Ventura Fish And Wildlife Office

2493 Portola Road, Suite B
Ventura, CA 93003-7726
(805) 644-1766

This project's location is within the jurisdiction of multiple offices. However, only one species list document will be provided for all offices. The species and critical habitats in this document reflect the aggregation of those that fall in each of the affiliated office's jurisdiction. Other offices affiliated with the project:

Carlsbad Fish And Wildlife Office

2177 Salk Avenue - Suite 250
Carlsbad, CA 92008-7385
(760) 431-9440

PROJECT SUMMARY

Project Code: 2023-0114719
Project Name: CHNMS Designation
Project Type: Species Habitat Preservation/Restoration/Creation
Project Description: NOAA is proposing to designate a national marine sanctuary in waters along and offshore of central California.

Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@34.68930105,-121.25340149409003,14z>



Counties: San Luis Obispo and Santa Barbara counties, California

ENDANGERED SPECIES ACT SPECIES

There is a total of 37 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

MAMMALS

NAME	STATUS
Giant Kangaroo Rat <i>Dipodomys ingens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6051	Endangered
Morro Bay Kangaroo Rat <i>Dipodomys heermanni morroensis</i> There is final critical habitat for this species. Your location overlaps the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6367	Endangered
San Joaquin Kit Fox <i>Vulpes macrotis mutica</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2873	Endangered
Southern Sea Otter <i>Enhydra lutris nereis</i> No critical habitat has been designated for this species. <i>This species is also protected by the Marine Mammal Protection Act, and may have additional consultation requirements.</i> Species profile: https://ecos.fws.gov/ecp/species/8560	Threatened

BIRDS

NAME	STATUS
California Clapper Rail <i>Rallus longirostris obsoletus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/4240	Endangered
California Condor <i>Gymnogyps californianus</i> Population: U.S.A. only, except where listed as an experimental population There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/8193	Endangered
California Least Tern <i>Sterna antillarum browni</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/8104	Endangered
Hawaiian Petrel <i>Pterodroma sandwichensis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6746	Endangered
Least Bell's Vireo <i>Vireo bellii pusillus</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5945	Endangered
Marbled Murrelet <i>Brachyramphus marmoratus</i> Population: U.S.A. (CA, OR, WA) There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/4467	Threatened
Short-tailed Albatross <i>Phoebastria (=Diomedea) albatrus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/433	Endangered
Southwestern Willow Flycatcher <i>Empidonax traillii extimus</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6749	Endangered
Western Snowy Plover <i>Charadrius nivosus nivosus</i> Population: Pacific Coast population DPS-U.S.A. (CA, OR, WA), Mexico (within 50 miles of Pacific coast) There is final critical habitat for this species. Your location overlaps the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/8035	Threatened
Yellow-billed Cuckoo <i>Coccyzus americanus</i> Population: Western U.S. DPS There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/3911	Threatened

AMPHIBIANS

NAME	STATUS
California Red-legged Frog <i>Rana draytonii</i> There is final critical habitat for this species. Your location overlaps the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/2891	Threatened
California Tiger Salamander <i>Ambystoma californiense</i> Population: U.S.A. (Central CA DPS) There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/2076	Threatened
Foothill Yellow-legged Frog <i>Rana boylei</i> Population: South Coast Distinct Population Segment (South Coast DPS) No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5133	Proposed Endangered

FISHES

NAME	STATUS
Tidewater Goby <i>Eucyclogobius newberryi</i> There is final critical habitat for this species. Your location overlaps the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/57	Endangered
Unarmored Threespine Stickleback <i>Gasterosteus aculeatus williamsoni</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7002	Endangered

SNAILS

NAME	STATUS
Morro Shoulderband (=banded Dune) Snail <i>Helminthoglypta walkeriana</i> There is final critical habitat for this species. Your location overlaps the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/2309	Threatened

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

CRUSTACEANS

NAME	STATUS
Vernal Pool Fairy Shrimp <i>Branchinecta lynchi</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/498	Threatened

FLOWERING PLANTS

NAME	STATUS
Beach Layia <i>Layia carnosa</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6728	Threatened
California Jewelflower <i>Caulanthus californicus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/4599	Endangered
California Seablite <i>Suaeda californica</i> Population: No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6310	Endangered
Chorro Creek Bog Thistle <i>Cirsium fontinale</i> var. <i>obispoense</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5991	Endangered
Contra Costa Goldfields <i>Lasthenia conjugens</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/7058	Endangered
Gambel's Watercress <i>Rorippa gambellii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/4201	Endangered
Gaviota Tarplant <i>Deinandra increscens</i> ssp. <i>villosa</i> There is final critical habitat for this species. Your location overlaps the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/4218	Endangered
Indian Knob Mountainbalm <i>Eriodictyon altissimum</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1261	Endangered
La Graciosa Thistle <i>Cirsium loncholepis</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6547	Endangered
Lompoc Yerba Santa <i>Eriodictyon capitatum</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/364	Endangered
Marsh Sandwort <i>Arenaria paludicola</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2229	Endangered
Morro Manzanita <i>Arctostaphylos morroensis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2934	Threatened
Pismo Clarkia <i>Clarkia speciosa</i> ssp. <i>immaculata</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5936	Endangered

NAME	STATUS
Salt Marsh Bird's-beak <i>Cordylanthus maritimus</i> ssp. <i>maritimus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6447	Endangered
Spreading Navarretia <i>Navarretia fossalis</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/1334	Threatened

CRITICAL HABITATS

There are 6 critical habitats wholly or partially within your project area under this office's jurisdiction.

NAME	STATUS
California Red-legged Frog <i>Rana draytonii</i> https://ecos.fws.gov/ecp/species/2891#crithab	Final
Gaviota Tarplant <i>Deinandra increscens</i> ssp. <i>villosa</i> https://ecos.fws.gov/ecp/species/4218#crithab	Final
Morro Bay Kangaroo Rat <i>Dipodomys heermanni morroensis</i> https://ecos.fws.gov/ecp/species/6367#crithab	Final
Morro Shoulderband (=banded Dune) Snail <i>Helminthoglypta walkeriana</i> https://ecos.fws.gov/ecp/species/2309#crithab	Final
Tidewater Goby <i>Eucyclogobius newberryi</i> https://ecos.fws.gov/ecp/species/57#crithab	Final
Western Snowy Plover <i>Charadrius nivosus nivosus</i> https://ecos.fws.gov/ecp/species/8035#crithab	Final

USFWS NATIONAL WILDLIFE REFUGE LANDS AND FISH HATCHERIES

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

The following FWS National Wildlife Refuge Lands and Fish Hatcheries lie fully or partially within your project area:

FACILITY NAME	ACRES
GUADALUPE-NIPOMO DUNES NATIONAL WILDLIFE REFUGE https://www.fws.gov/refuges/profiles/index.cfm?id=81673	2,501,423

MIGRATORY BIRDS

Certain birds are protected under the Migratory Bird Treaty Act¹ and the Bald and Golden Eagle Protection Act².

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats should follow appropriate regulations and consider implementing appropriate conservation measures, as described [below](#).

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1. The [Migratory Birds Treaty Act](#) of 1918.
 2. The [Bald and Golden Eagle Protection Act](#) of 1940.
 3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

The birds listed below are birds of particular concern either because they occur on the [USFWS Birds of Conservation Concern \(BCC\) list](#) or warrant special attention in your project location. To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ [below](#). This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see exact locations of where birders and the general public have sighted birds in and around your project area, visit the [E-bird data mapping tool](#) (Tip: enter your location, desired date range and a species on your list). For projects that occur off the Atlantic Coast, additional maps and models detailing the relative occurrence and abundance of bird species on your list are available. Links to additional information about Atlantic Coast birds, and other important information about your migratory bird list, including how to properly interpret and use your migratory bird report, can be found [below](#).

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, click on the PROBABILITY OF PRESENCE SUMMARY at the top of your list to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
Allen's Hummingbird <i>Selasphorus sasin</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9637	Breeds Feb 1 to Jul 15
Bald Eagle <i>Haliaeetus leucocephalus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.	Breeds Jan 1 to Aug 31
Belding's Savannah Sparrow <i>Passerculus sandwichensis beldingi</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA https://ecos.fws.gov/ecp/species/8	Breeds Apr 1 to Aug 15

NAME	BREEDING SEASON
<p>Black Oystercatcher <i>Haematopus bachmani</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9591</p>	Breeds Apr 15 to Oct 31
<p>Black Scoter <i>Melanitta nigra</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds elsewhere
<p>Black Skimmer <i>Rynchops niger</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/5234</p>	Breeds May 20 to Sep 15
<p>Black Swift <i>Cypseloides niger</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/8878</p>	Breeds Jun 15 to Sep 10
<p>Black Tern <i>Chlidonias niger</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/3093</p>	Breeds May 15 to Aug 20
<p>Black Turnstone <i>Arenaria melanocephala</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds elsewhere
<p>Black-chinned Sparrow <i>Spizella atrogularis</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9447</p>	Breeds Apr 15 to Jul 31
<p>Black-footed Albatross <i>Phoebastria nigripes</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/8033</p>	Breeds elsewhere
<p>Black-legged Kittiwake <i>Rissa tridactyla</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds elsewhere
<p>Black-vented Shearwater <i>Puffinus opisthomelas</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds elsewhere

NAME	BREEDING SEASON
<p>Brown Pelican <i>Pelecanus occidentalis</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds Jan 15 to Sep 30
<p>Bullock's Oriole <i>Icterus bullockii</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA</p>	Breeds Mar 21 to Jul 25
<p>California Gull <i>Larus californicus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds Mar 1 to Jul 31
<p>California Thrasher <i>Toxostoma redivivum</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds Jan 1 to Jul 31
<p>Cassin's Finch <i>Carpodacus cassinii</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9462</p>	Breeds May 15 to Jul 15
<p>Clark's Grebe <i>Aechmophorus clarkii</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds Jun 1 to Aug 31
<p>Common Loon <i>gavia immer</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities. https://ecos.fws.gov/ecp/species/4464</p>	Breeds Apr 15 to Oct 31
<p>Common Murre <i>Uria aalge</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds Apr 15 to Aug 15
<p>Common Yellowthroat <i>Geothlypis trichas sinuosa</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA https://ecos.fws.gov/ecp/species/2084</p>	Breeds May 20 to Jul 31
<p>Double-crested Cormorant <i>phalacrocorax auritus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities. https://ecos.fws.gov/ecp/species/3478</p>	Breeds Apr 20 to Aug 31

NAME	BREEDING SEASON
<p>Golden Eagle <i>Aquila chrysaetos</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities. https://ecos.fws.gov/ecp/species/1680</p>	Breeds Jan 1 to Aug 31
<p>Lawrence's Goldfinch <i>Carduelis lawrencei</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9464</p>	Breeds Mar 20 to Sep 20
<p>Laysan Albatross <i>Phoebastria immutabilis</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds elsewhere
<p>Long-eared Owl <i>asio otus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/3631</p>	Breeds Mar 1 to Jul 15
<p>Long-tailed Duck <i>Clangula hyemalis</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities. https://ecos.fws.gov/ecp/species/7238</p>	Breeds elsewhere
<p>Manx Shearwater <i>Puffinus puffinus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds Apr 15 to Oct 31
<p>Marbled Godwit <i>Limosa fedoa</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9481</p>	Breeds elsewhere
<p>Mountain Plover <i>Charadrius montanus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/3638</p>	Breeds elsewhere
<p>Nuttall's Woodpecker <i>Picoides nuttallii</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA https://ecos.fws.gov/ecp/species/9410</p>	Breeds Apr 1 to Jul 20
<p>Oak Titmouse <i>Baeolophus inornatus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9656</p>	Breeds Mar 15 to Jul 15

NAME	BREEDING SEASON
<p>Olive-sided Flycatcher <i>Contopus cooperi</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/3914</p>	Breeds May 20 to Aug 31
<p>Pink-footed Shearwater <i>Puffinus creatopus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds elsewhere
<p>Pomarine Jaeger <i>Stercorarius pomarinus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds elsewhere
<p>Red Phalarope <i>Phalaropus fulicarius</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds elsewhere
<p>Red-breasted Merganser <i>Mergus serrator</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds elsewhere
<p>Red-necked Phalarope <i>Phalaropus lobatus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds elsewhere
<p>Red-throated Loon <i>Gavia stellata</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds elsewhere
<p>Ring-billed Gull <i>Larus delawarensis</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds elsewhere
<p>Royal Tern <i>Thalasseus maximus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds Apr 15 to Aug 31
<p>Scripps's Murrelet <i>Synthliboramphus scrippsi</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds Feb 20 to Jul 31

NAME	BREEDING SEASON
<p>Short-billed Dowitcher <i>Limnodromus griseus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9480</p>	Breeds elsewhere
<p>South Polar Skua <i>Stercorarius maccormicki</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds elsewhere
<p>Surf Scoter <i>Melanitta perspicillata</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds elsewhere
<p>Tricolored Blackbird <i>Agelaius tricolor</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/3910</p>	Breeds Mar 15 to Aug 10
<p>Western Grebe <i>aechmophorus occidentalis</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/6743</p>	Breeds Jun 1 to Aug 31
<p>White-winged Scoter <i>Melanitta fusca</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds elsewhere
<p>Willet <i>Tringa semipalmata</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds elsewhere
<p>Wilson's Storm-petrel <i>Oceanites oceanicus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.</p>	Breeds elsewhere
<p>Wrentit <i>Chamaea fasciata</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds Mar 15 to Aug 10
<p>Yellow-billed Magpie <i>Pica nuttalli</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9726</p>	Breeds Apr 1 to Jul 31

PROBABILITY OF PRESENCE SUMMARY

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read and understand the FAQ "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is $0.25/0.25 = 1$; at week 20 it is $0.05/0.25 = 0.2$.
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

Breeding Season (■)

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

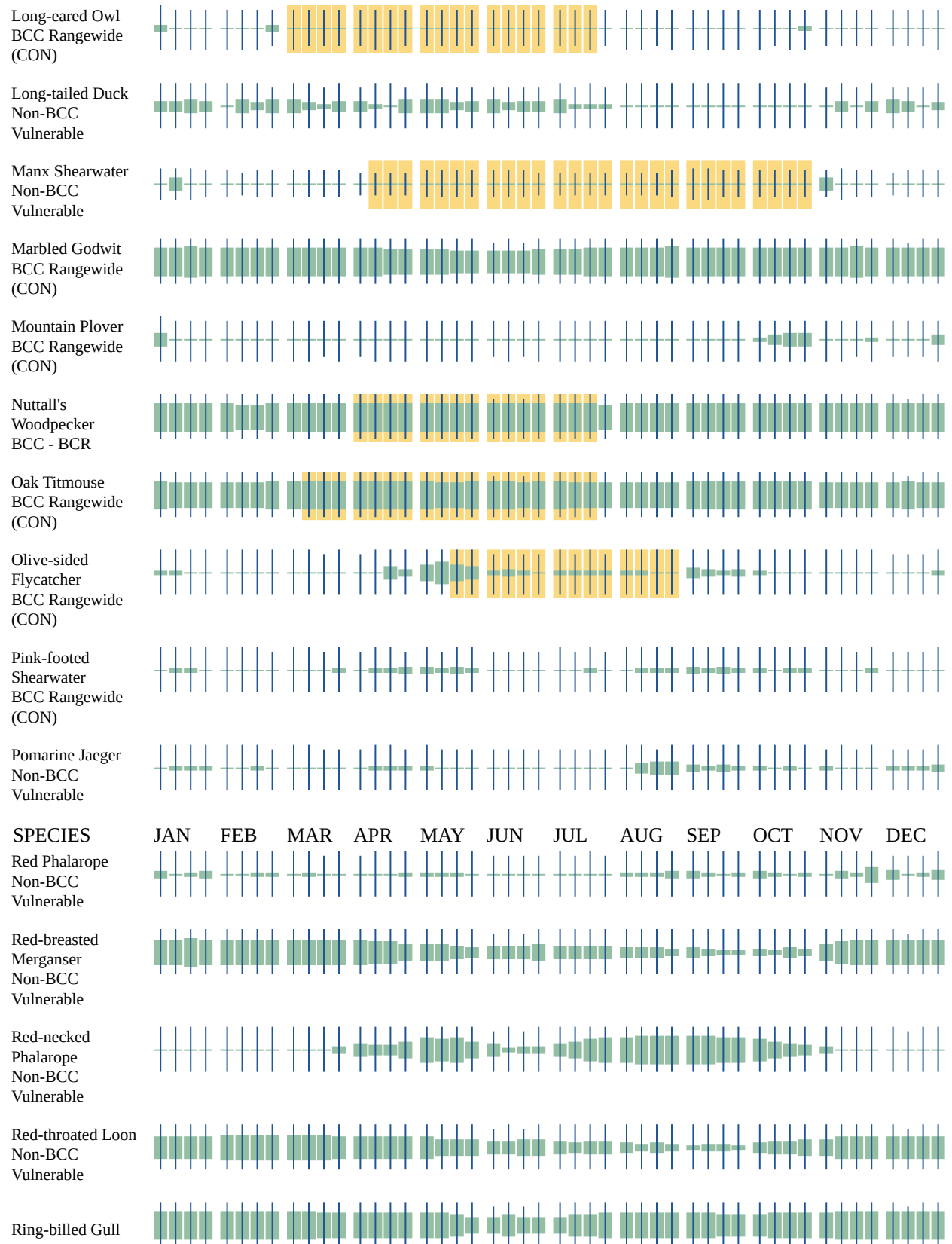
Survey Effort (|)

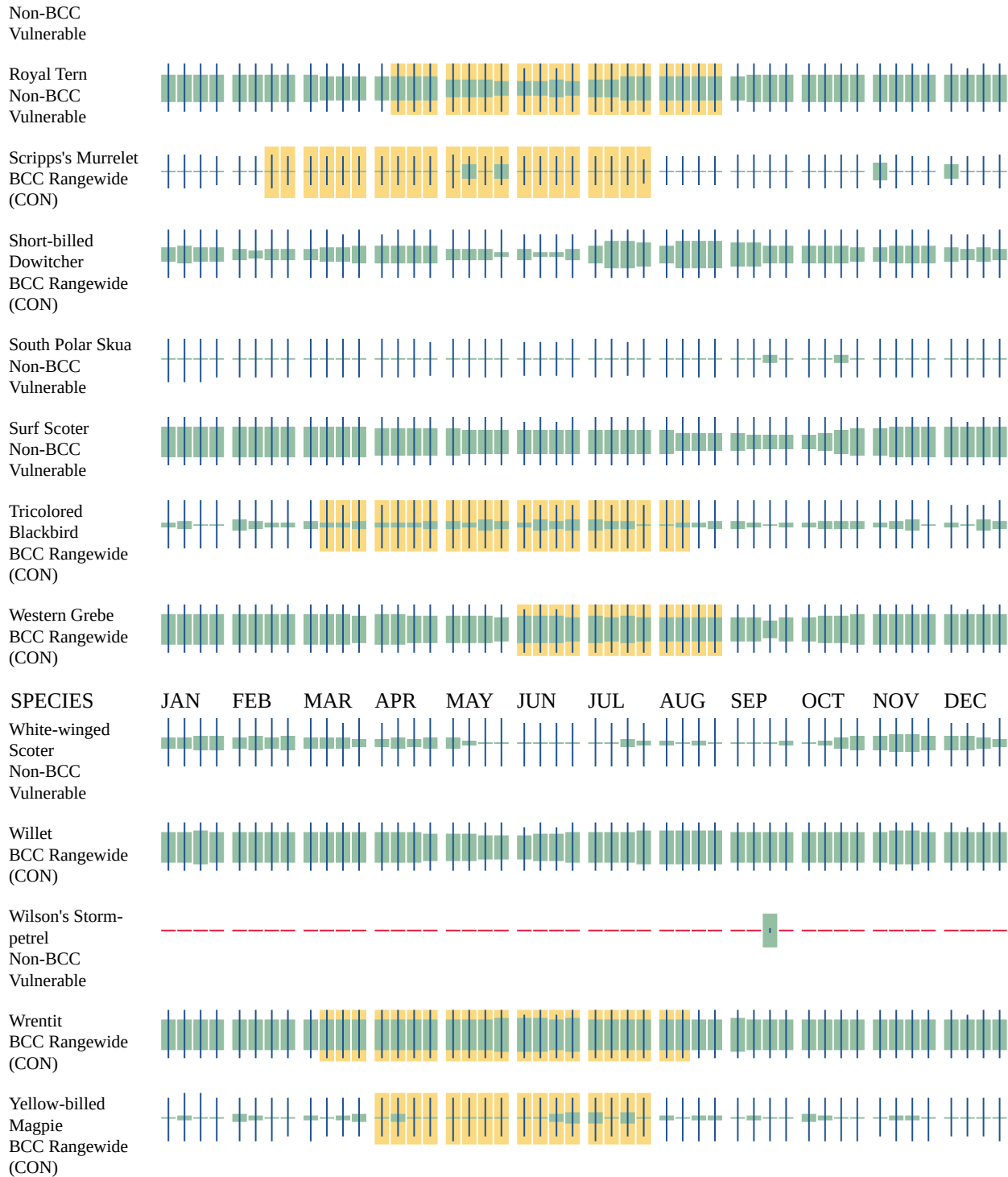
Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

No Data (—)

A week is marked as having no data if there were no survey events for that week.

Survey Timeframe





Additional information can be found using the following links:

- Birds of Conservation Concern <https://www.fws.gov/program/migratory-birds/species>
- Measures for avoiding and minimizing impacts to birds <https://www.fws.gov/library/collections/avoiding-and-minimizing-incident-take-migratory-birds>

- Nationwide conservation measures for birds <https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf>

MIGRATORY BIRDS FAQ

Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.

[Nationwide Conservation Measures](#) describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. [Additional measures](#) or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

What does IPaC use to generate the list of migratory birds that potentially occur in my specified location?

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [Rapid Avian Information Locator \(RAIL\) Tool](#).

What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and how to interpret them, go the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

How do I know if a bird is breeding, wintering or migrating in my area?

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may query your location using the [RAIL Tool](#) and look

at the range maps provided for birds in your area at the bottom of the profiles provided for each bird in your results. If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your project area, there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

What are the levels of concern for migratory birds?

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are [Birds of Conservation Concern](#) (BCC) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the [Eagle Act](#) requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

Details about birds that are potentially affected by offshore projects

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the [NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#) project webpage.

Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the [Diving Bird Study](#) and the [nanotag studies](#) or contact [Caleb Spiegel](#) or [Pam Loring](#).

What if I have eagles on my list?

If your project has the potential to disturb or kill eagles, you may need to [obtain a permit](#) to avoid violating the Eagle Act should such impacts occur.

Proper Interpretation and Use of Your Migratory Bird Report

The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated, and see options for identifying what other birds may be in your project area, please see the FAQ "What does IPaC use to generate the migratory birds potentially occurring in my specified location". Please be

aware this report provides the "probability of presence" of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please also look carefully at the survey effort (indicated by the black vertical bar) and for the existence of the "no data" indicator (a red horizontal bar). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list helps you know what to look for to confirm presence, and helps guide you in knowing when to implement conservation measures to avoid or minimize potential impacts from your project activities, should presence be confirmed. To learn more about conservation measures, visit the FAQ "Tell me about conservation measures I can implement to avoid or minimize impacts to migratory birds" at the bottom of your migratory bird trust resources page.

MARINE MAMMALS

Marine mammals are protected under the [Marine Mammal Protection Act](#). Some are also protected under the Endangered Species Act¹ and the Convention on International Trade in Endangered Species of Wild Fauna and Flora².

The responsibilities for the protection, conservation, and management of marine mammals are shared by the U.S. Fish and Wildlife Service [responsible for otters, walruses, polar bears, manatees, and dugongs] and NOAA Fisheries³ [responsible for seals, sea lions, whales, dolphins, and porpoises]. Marine mammals under the responsibility of NOAA Fisheries are **not** shown on this list; for additional information on those species please visit the [Marine Mammals](#) page of the NOAA Fisheries website.

The Marine Mammal Protection Act prohibits the take of marine mammals and further coordination may be necessary for project evaluation. Please contact the U.S. Fish and Wildlife Service Field Office shown.

-
1. The [Endangered Species Act](#) (ESA) of 1973.
 2. The [Convention on International Trade in Endangered Species of Wild Fauna and Flora](#) (CITES) is a treaty to ensure that international trade in plants and animals does not threaten their survival in the wild.
 3. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

NAME

Southern Sea Otter *Enhydra lutris nereis*

Species profile: <https://ecos.fws.gov/ecp/species/8560>

WETLANDS

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

Please note that the NWI data being shown may be out of date. We are currently working to update our NWI data set. We recommend you verify these results with a site visit to determine the actual extent of wetlands on site.

ESTUARINE AND MARINE WETLAND

- [M2USP](#)
- [M2ABM](#)
- [M2RSP](#)
- [M2RS/ABN](#)
- [E2RSN](#)
- [M2RSN](#)
- [M2ABN](#)
- [E2US/ABN](#)
- [E2EM1P](#)
- [E2EM1N](#)
- [M2US/ABN](#)
- [M2USN](#)
- [E2RSNr](#)
- [E2USN](#)
- [E2ABM](#)
- [M2RSPr](#)
- [E2USP](#)
- [E2AB/USN](#)
- [M2RSNr](#)
- [E2USM](#)

RIVERINE

- [R4SBA](#)
- [R4SBJ](#)
- [R4SBC](#)

ESTUARINE AND MARINE DEEPWATER

- [M1UBL](#)
 - [M1UBLx](#)
-

- [E1UBLx](#)
- [E1UBL](#)
- [M1ABL](#)

FRESHWATER FORESTED/SHRUB WETLAND

- [PSSA](#)
- [PSSC](#)

FRESHWATER EMERGENT WETLAND

- [PEM1B](#)
-

IPAC USER CONTACT INFORMATION

Agency: National Oceanic and Atmospheric Administration

Name: Sarah Stein

Address: 1305 East-West Hwy

City: Silver Spring

State: MD

Zip: 20910

Email: sarah.stein@noaa.gov

Phone: 2405330678



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of National Marine Sanctuaries | West Coast Region
99 Pacific Street, Bldg 100, Suite F
Monterey, CA 93940

August 24, 2023

Jennifer Quan, Regional Administrator
Protected Resources Division
NOAA Fisheries West Coast Regional Office
501 West Ocean Boulevard, Suite 4200
Long Beach, CA 90802

Dear Administrator Quan:

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) is contacting you to initiate informal consultation under Section 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. § 1536(a)(2), and implementing regulations at 50 C.F.R. part 402, for the proposed designation of Chumash Heritage National Marine Sanctuary (CHNMS). On August 24, 2023, ONMS released for public comment a draft management plan, notice of proposed rulemaking, and an accompanying draft environmental impact statement (EIS). The documents are available for public comment until October 25, 2023, at <https://sanctuaries.noaa.gov/chumash-heritage/>. As described in the enclosed draft EIS, NOAA's preferred boundary alternative consists of Alternative 2, Cropped Bank to Coast, combined with Sub-alternative 5b, Gaviota Coast Extension (see EIS Section 5.4.9). NOAA is also proposing a set of proposed regulations (see EIS Section 3.2.2 as well as the notice of proposed rulemaking for the full text of the proposed regulations).

Impacts on listed species and critical habitat

To support this request for informal Section 7 consultation, the enclosed draft EIS provides the following information (sections 3.4, 3.7, 4.3, Appendix C, Appendix E.4, Appendix G):

- A description of the action, including mitigation measures (Chapter 3, Section 4.3, Appendix C);
- The purpose and need of the proposed action (Chapter 2);
- A description of the action area, including maps (sections 3.4, 3.7, 4.3);
- A description of any listed species or designated critical habitat that may be affected by the action (Section 4.3.1, Appendix G);
- A description of habitat requirements, occurrence patterns, and federal status for each of the listed species (Section 4.3.1, Appendix G);
- An analysis of the potential routes of effect to any listed species or designated critical habitat (sections 4.3.3, 4.3.5, 4.3.8, Appendix G); and
- Cumulative effects analysis (Section 4.10).

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

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

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

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

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



The NOAA Fisheries Threatened and Endangered Species Directory was used to identify any ESA-listed species or critical habitat that may be present in the action area. Species's habitat requirements, habitat availability within the action area, and the components of the proposed action were evaluated and it was determined that 22 listed species and designated critical habitat for three species under NOAA Fisheries jurisdiction may occur in the action area and may be affected by the proposed action. NOAA believes implementation of the Initial Boundary Alternative or other action alternatives identified in the draft EIS is not likely to adversely affect any species listed as threatened or endangered, or habitats critical to such species, under the ESA. Further, there are several dozen species or distinct population segments (DPS)/evolutionarily significant units (ESU) that, while present on the U.S. West Coast, are not expected to occur in the study area or that proposed sanctuary activities would not affect. Appendix G of the draft EIS provides the names of those species not expected to occur in the study area.

In sections 4.3.3–4.3.8 of the draft EIS, NOAA analyzed the potential for beneficial or adverse impacts on the 22 listed species identified in Table G.3-1 (see Appendix G.3) and designated critical habitat for three species identified in Table G.3-2 (see Appendix G.3) under NOAA Fisheries jurisdiction from NOAA or partners conducting research, monitoring, or resource protection activities to implement the proposed sanctuary regulations and management plan. The specific categories of routine field activities conducted by ONMS staff and partners that may affect these species or critical habitat are: vessel use, scuba diving, deploying buoys and research or monitoring equipment, sampling organisms, removing materials (e.g., marine debris), deploying uncrewed underwater systems, deploying uncrewed aerial systems, deploying active acoustic equipment and towed instrument arrays, and seabird, fish, and marine mammal tagging studies.

NOAA's analysis concludes that any impacts resulting from the designation of the proposed CHNMS would be beneficial, insignificant, or discountable for the following reasons:

- Regulatory prohibitions on taking or possessing any marine mammal, sea turtle, or bird, with limited exception, and attracting any white shark within the Sanctuary – these species would benefit from the reduction in risk of disturbance or take through implementation of these prohibitions.
- Regulation protecting the submerged lands (seabed) – seafloor habitats would benefit from the significant reduction in area that could be developed for future offshore oil and gas development and from sanctuary management and the application of the proposed regulations to areas with the potential for additional offshore wind energy development. In addition, the decommissioning and removal of offshore oil and gas facilities could have reduced impacts on ESA-listed species and critical habitat based on potential mitigation measures imposed by the sanctuary.
- Resource Protection Action Plan – whales transiting the proposed sanctuary, including ESA-listed whale species, would experience beneficial impacts from implementation of the newly-expanded Area to be Avoided (ATBA) at Channel Islands National Marine Sanctuary (CINMS) and into the proposed CHNMS, as well as voluntary vessel speed reduction programs that currently exist on either side of the proposed sanctuary designed

to reduce the risk of fatal ship strikes, and could be expanded into the proposed sanctuary in the future.

- Outreach Programs – initiatives such as “Finding Hal” (a CINMS program) would similarly generate more scientific information on, identify suitable habitat for, and support potential out-planting of ESA-protected abalone species.
- Resource Protection – response to sanctuary resource emergencies, including landslides, oil spills, and marine mammal entanglements, would augment existing efforts, or be “first-time” programs, and thus also provide beneficial impacts on ESA-listed species and critical habitat within the proposed sanctuary and adjacent region.
- Noise and disturbances from sanctuary operational activities would be of limited duration, management activities would strive to reduce disturbance, and implementation of best management practices, including BMPs specific to protected species, (see Appendix C) would minimize potential impacts. ONMS research that may impact protected resources or habitat would be conducted in accordance with any applicable new or existing NOAA Fisheries and USFWS permits and with additional protective measures from any permits ONMS would issue to its own science staff, or standing orders to supplement protective measures in cases where there is increased risk to protected resources and habitats. Any associated potential impacts on ESA-listed species or critical habitat would be insignificant or discountable. In addition, future proposed NOAA field actions would be subject to the NEPA and environmental compliance process at the time they are undertaken, including any applicable NEPA reviews and statutory consultations (and any additional mitigation measures arising out of those consultations, as applicable).

Therefore, NOAA determined that the proposed action of designating a portion of the central California coast and offshore waters as a new national marine sanctuary **may affect, but is not likely to adversely affect** listed species and their designated critical habitat. ONMS requests your concurrence with our determinations pursuant to Section 7 of the ESA of 1973 and the consultation procedures at 50 C.F.R. Part 402. ONMS certifies that the best scientific and commercial data available was used in order to prepare the draft EIS and this accompanying request for informal consultation.

Impacts on Essential Fish Habitat

NOAA also evaluated the potential impacts of the proposed action on Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC). The draft EIS provides the following information related to this analysis (Section 4.3, Appendix C, Appendix E.7, Appendix G; see also Figure 4.4-3):

- A description of the action, including mitigation measures (Chapter 3, Section 4.3, Appendix C);
- A description of EFH and HAPC found in the sanctuary (Section 4.3.1, Appendix G, see also Figure 4.4-3); and

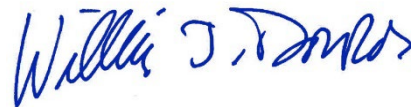
- An analysis of the potential impacts on EFH and HAPC from implementing the proposed action of designating a new sanctuary, which will eventually include routine field activities conducted by NOAA (Section 4.3, Appendix G).

The study area overlaps with EFH and HAPC for various federally-managed fish species within the Pacific Coast Groundfish, Coastal Pelagic Species, and Highly Migratory Species Fishery Management Plans. Among these, HAPC found within the study area include eelgrass/seagrass, canopy kelp, rocky reefs, and a network of federal and state marine reserves and marine conservation areas. ONMS routine field activities within the proposed CHNMS may affect designated EFH or HAPC. However, ONMS expects that ONMS-led on-water activities would have no more than minimal adverse effects on EFH and HAPC. ONMS looks forward to coordinating with NOAA Fisheries on the most appropriate path forward with regard to EFH consultation.

Conclusion

ONMS appreciates your cooperation in completing this informal Section 7 consultation and EFH consultation in a timely manner. ONMS will continue to coordinate with NOAA Fisheries via email to provide any requested information or to answer any questions related to this consultation request. Contact Laura Ingulsrud, ONMS West Coast Regional Policy Analyst, at laura.ingulsrud@noaa.gov with any questions.

Sincerely,



William J. Douros
Regional Director

cc: Chris Yates, Assistant Regional Administrator, Protected Resources Division, NOAA Fisheries West Coast Regional Office

Lisa Van Atta, Assistant Regional Administrator, California Coastal Office, NOAA Fisheries West Coast Regional Office

Rosalie del Rosario, West Coast Region Endangered Species Act Section 7 Consultations Coordinator, NOAA Fisheries West Coast Regional Office

Eric Chavez, Essential Fish Habitat Coordinator, NOAA Fisheries West Coast Regional Office

Eric Shott, Endangered Species Act Section 7 Coordinator, California Coastal Office, NOAA Fisheries West Coast Regional Office

Rob Clapp, Endangered Species Act Section 7 Contact for Pacific Ocean (within U.S. Exclusive Economic Zone), NOAA Fisheries West Coast Regional Office

Brian Meux, Acting Branch Chief, San Francisco Bay Branch, NOAA Fisheries West Coast Regional Office

Sara Azat, Fish Biologist, NOAA Fisheries West Coast Regional Office

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



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of National Marine Sanctuaries | West Coast Region
99 Pacific Street, Bldg 100, Suite F
Monterey, CA 93940

August 24, 2023

Kenneth Kahn
Chairman
Santa Ynez Band of Chumash Indians
P.O. Box 517
Santa Ynez, CA 93460

Dear Chairman Kahn:

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) appreciates your collaboration on the proposed Chumash Heritage National Marine Sanctuary (CHNMS) designation through our previously established and ongoing government-to-government consultation with the Santa Ynez Band of Chumash Indians (SYBCI) for the designation process in accordance with Executive Order (E.O.) 13175, “Consultation and Coordination with Indian Tribal Governments.” In addition, we appreciate SYBCI input through the Cooperating Agency Agreement on the environmental impact statement (EIS) for the proposed sanctuary.

At this time, NOAA is contacting the SYBCI to initiate National Historic Preservation Act (NHPA) Section 106 consultation for the proposed CHNMS designation. Our government-to-government consultation remains open; thereby, this letter is both a statement of consultation pursuant to NHPA Section 106 as well as an offer to continue the E.O. 13175 consultation. On August 24, 2023, NOAA released for public comment a draft management plan, notice of proposed rulemaking, and an accompanying draft EIS. A public comment period for these documents is open until October 25, 2023; the documents can be found at <https://sanctuaries.noaa.gov/chumash-heritage/>. As described in the draft EIS, NOAA’s preferred boundary alternative consists of Alternative 2, Cropped Bank to Coast, combined with Sub-alternative 5b, Gaviota Coast Extension (see draft EIS Section 5.4.9). NOAA is also proposing a set of proposed regulations (see draft EIS Section 3.2.2 as well as the notice of proposed rulemaking for the full text of the proposed regulations).

As you are aware, on November 10, 2021, NOAA published a Notice of Intent (NOI) to initiate scoping to consider the nomination of CHNMS for designation as a national marine sanctuary. NOAA has received considerable input regarding the proposed designation including several thousand written comments in support of the proposed sanctuary. The NOI also announced NOAA’s intent to fulfill its responsibilities under the requirements of the NHPA (54 U.S.C. 300101 *et seq.*). Pursuant to the NHPA, in consultation with the SYBCI and the State Historic Preservation Officer, and through the public comment process, NOAA will identify other consulting parties, identify historic properties, and assess any effects of the proposed action.

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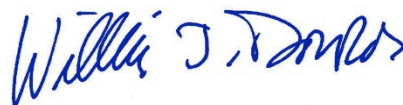


NOAA has prepared the draft designation documents using input gathered through public scoping, following an in-depth environmental analysis including consideration of ongoing and emerging threats to the marine ecosystem, and by incorporating input from SYBCI's Cooperating Agency review and government-to-government consultation meetings. Specifically, the draft EIS evaluates the impacts to the physical, biological, historical, cultural, and economic environment under several alternatives that would further the existing management under the requirements of the NHPA. A list of historic properties and historically reported vessel losses in the proposed CHNMS can be found in Section 4.5.1 of the draft EIS. We greatly appreciate the expertise and information you have already shared regarding the draft EIS, through your Cooperating Agency review and the government-to-government consultation meetings. At this time, as a consulting party on this proposed action, we invite you to please review these relevant sections of the draft EIS and to provide any additional information you may have related to historic properties within the proposed sanctuary.

Following public comment and gathering of additional information provided by the consulting parties, NOAA will assess whether there are historic properties that may be affected by the proposed action. If there are historic properties that may be affected by the proposed sanctuary designation, NOAA will assess adverse effects, if any, and submit an effects finding to the consulting parties. If NOAA reaches a "No Adverse Effects" finding, the consulting parties will be provided with a 30-day review period before NOAA publishes the finding concurrent with the final designation documents. Alternatively, if NOAA determines that there are historic properties which may be adversely affected by the undertaking, we would notify consulting parties and work with them to avoid, minimize, or mitigate adverse effects on historic properties before finalizing the proposed sanctuary designation.

If you have any information to provide related to this NHPA Section 106 consultation or any questions, please contact Mike Murray at michael.murray@noaa.gov. We value your assistance and look forward to ongoing collaboration. Thank you for your continued partnership with NOAA.

Sincerely,



William J. Douros
Regional Director

cc: Sam Cohen, Government Affairs and Legal Officer, Santa Ynez Band of Chumash Indians
Nakia Zavalla, Cultural Director, Santa Ynez Band of Chumash Indians
Eva Pagaling, Tribal Marine Consultant, Santa Ynez Band of Chumash Indians
Devin Rhinerson, PACE LLC



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of National Marine Sanctuaries | West Coast Region
99 Pacific Street, Bldg 100, Suite F
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August 24, 2023

Julianne Polanco
California Office of Historic Preservation
1725 23rd Street, Suite 100
Sacramento, CA 95816

Dear Commissioner Polanco:

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) is proposing to designate Chumash Heritage National Marine Sanctuary (CHNMS) in waters along and offshore of the central California coast encompassing approximately 5,600 square miles. On August 24, 2023, NOAA released for public comment a draft management plan, notice of proposed rulemaking, and an accompanying draft environmental impact statement (EIS). A public comment period for these documents is open until October 25, 2023; the documents can be found, at <https://sanctuaries.noaa.gov/chumash-heritage/>. As described in the draft EIS, NOAA's preferred boundary alternative consists of Alternative 2, Cropped Bank to Coast, combined with Sub-alternative 5b, Gaviota Coast Extension (see draft EIS Section 5.4.9). NOAA is also proposing a set of proposed regulations (see draft EIS Section 3.2.2 as well as the notice of proposed rulemaking for the full text of the proposed regulations).

The proposed sanctuary area contains unique and diverse ecosystems essential to the heritage of the Chumash and other Indigenous peoples in the region. The marine environment provides a special sense of place to coastal communities and visitors because of the significant historic, archaeological, cultural, aesthetic, and biological resources found there. Through this proposed action, NOAA seeks to balance sanctuary resource protection with allowing and managing compatible uses. Our management approach will apply the best available science and community input to address current and emerging threats to the ecosystem and cultural heritage of the central California coast.

On November 10, 2021, NOAA published a Notice of Intent (NOI) to initiate scoping to consider the nomination of CHNMS for designation as a national marine sanctuary. NOAA has received considerable input regarding the proposed designation including several thousand written comments in support of the proposed sanctuary. The NOI 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.*). Due to the nationally-significant tribal and Indigenous cultural heritage in this area and pursuant to Section 106 of the NHPA, at this time, NOAA would like to initiate NHPA section 106 consultation with the California Office of Historic Preservation. Pursuant to NHPA, in consultation with your office and the Tribal Historic

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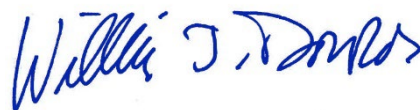
Preservation Officer and through the public comment process, NOAA will identify other consulting parties, identify historic properties, and assess any effects of the proposed action.

Thus far, NOAA has prepared the draft designation documents using input gathered through public scoping, following an in-depth environmental analysis including consideration of ongoing and emerging threats to the marine ecosystem. The Santa Ynez Band of Chumash Indians (SYBCI) is one of the cooperating agencies for the NEPA review, and NOAA has conducted formal government-to-government consultation with SYBCI throughout the proposed sanctuary designation process. The draft EIS specifically evaluates the impacts to the physical, biological, historical, cultural, and economic environment under several boundary alternatives and a set of proposed regulations that would further the existing management under the requirements of the NHPA. A list of historic properties and historically reported vessel losses in the proposed CHNMS can be found in Section 4.5.1 of the draft EIS. As a consulting party on this proposed action, we invite you to please review these relevant sections of the draft EIS and to provide any additional information you may have related to historic properties within the proposed sanctuary.

Following public comment and gathering of additional information provided by the consulting parties, NOAA will assess whether there are historic properties that may be affected by the proposed action. If there are historic properties that may be affected by the proposed sanctuary designation, NOAA will assess adverse effects, if any, and submit an effects finding to the consulting parties. If NOAA reaches a “No Adverse Effects” finding, the consulting parties will be provided with a 30-day review period before NOAA publishes the finding concurrent with the final designation documents. Alternatively, if NOAA determines that historic properties could be affected, we would continue the consultation and work toward resolution with consulting parties before finalizing the proposed sanctuary designation.

If you have any information to provide related to this NHPA Section 106 consultation or any questions, please contact Mike Murray at michael.murray@noaa.gov. We value your assistance and look forward to continued collaboration with the State of California. Thank you for your attention to this matter.

Sincerely,



William J. Douros
Regional Director



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of National Marine Sanctuaries | West Coast Region
99 Pacific Street, Bldg 100, Suite F
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August 16, 2022

Merrick Burden, Executive Director
Pacific Fishery Management Council
7700 NE Ambassador Pl, Suite 101
Portland, OR 97220-1384

RE: Consultation with PFMC on Chumash Heritage National Marine Sanctuary Designation

Dear Mr. Burden:

In November 2021 the National Oceanic and Atmospheric Administration (NOAA) initiated a process to designate Chumash Heritage National Marine Sanctuary (CHNMS). The first step in the process is to seek comment from the public and agencies regarding issues NOAA should be considering when designating the new sanctuary. The Pacific Fishery Management Council (Council) was sent notice of this. Our records indicate no written position was taken by the Council or staff. I followed this up with a phone call to Council staff to confirm the Council would not be providing any comment on this early scoping process. On March 9, 2022 I made the annual Office of National Marine Sanctuaries (ONMS) West Coast Region (WCR) status presentation to the Council. My oral presentation and written materials described our having initiated the process for designating CHNMS. No comments were provided at that time by individual Council members or the Council as a whole regarding any need for NOAA to consider fishing regulations or related issues as part of the CHNMS designation.

I raise this history because a provision of the National Marine Sanctuaries Act, Section 304(a)(5), explains the process that should be followed with regard to fishing regulations in a sanctuary. In effect, that section provides the opportunity for a fishery management council to draft any fishing regulations that the council deems necessary to implement the proposed sanctuary designation. NOAA's past practice has been to alert fishery management councils at the start of a new designation, as we did in November 2021. If ONMS believed fishing regulations were needed, we would notify a fishery management council and ask that they consider the request. Absent an affirmative statement by a fishery management council of its intent to impose new regulations, or absent ONMS's itself requesting fishing regulations, NOAA has assumed no fishing regulations would be anticipated for a new national marine sanctuary. NOAA has recently determined that Section 304(a)(5) affirmatively requires that a fishery management council be given the opportunity to draft and adopt any fishing regulations to help NOAA manage the new national marine sanctuary.

Regulations at 15 CFR 922.22(b) outline a process that provides a fishery management council 120 days within which to make recommendations about fishing regulations. Our prior outreach to the Council indicates that the Council does not believe fishing regulations are necessary to implement the sanctuary designation. However, I am writing to ask if this interpretation is

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correct or, alternatively, to affirm the Council has an opportunity to draft fishing regulations consistent with 15 CFR 922.22(b) and Section 304(a)(5) of the National Marine Sanctuaries Act. Please advise if you believe fishing regulations are necessary, or not. Note that any decision at this time by the Council to not impose any fishing regulations does not preclude the Council from choosing to draft and adopt fishing regulations that aid management of the sanctuary in the future.

I am happy to speak with you or the Council as a whole if you believe we should interpret differently the Council's position on the need for fishing regulations, as allowed for under 304(a)(5) and 15 CFR 922.22(b), with regard to CHNMS designation.

Respectfully,



William J. Douros
Regional Director

Attachment: Text of Section 304(a)(5) of the National Marine Sanctuaries Act and 15 CFR 922.22(b)

cc: Marc Gorelnik, Chair Pacific Fishery Management Council

Attachment A:

Text of Section 304(a)(5) from the National Marine Sanctuaries Act

SEC. 304 [16 U.S.C. 1434] PROCEDURES FOR DESIGNATION AND IMPLEMENTATION

a. SANCTUARY PROPOSAL –

- (5) FISHING REGULATIONS – The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council’s action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

Text of 15 CFR 922.22(b)

§ 922.22 Development of designation materials.

- (b) If a proposed Sanctuary includes waters within the exclusive economic zone, the Secretary shall notify the appropriate Regional Fishery Management Council(s) which shall have one hundred and twenty (120) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishery regulations and to submit them to the Secretary. In preparing its recommendations and draft regulations, the Council(s) shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed Sanctuary designation. Fishery activities not proposed for regulation under section 304(a)(5) of the Act may be listed in the draft Sanctuary designation document as potentially subject to regulation, without following the procedures specified in section 304(a)(5) of the Act. If the Secretary subsequently determines that regulation of any such fishery activity is necessary, then the procedures specified in section 304(a)(5) of the Act shall be followed.



Pacific Fishery Management Council

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Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299 | www.pcouncil.org
Marc Gorelnik, Chair | Merrick J. Burden, Executive Director

August 25, 2022

Mr. William J. Douros, Regional Director
Office of National Marine Sanctuaries
West Coast Regional Office
99 Pacific Street, Bldg. 100, Suite F
Monterey, CA 93940

RE: Consultation with Pacific Fishery Management Council on Chumash Heritage National Marine Sanctuary Designation

Dear Mr. Douros,

Thank you for your letter dated August 16, 2022 concerning consultation on the proposed Chumash Heritage National Marine Sanctuary (Chumash Sanctuary). We greatly appreciate the constructive working relationship between the Office of National Marine Sanctuaries (Sanctuaries) and the Pacific Fishery Management Council (Pacific Council), and we look forward to continuing this constructive relationship into the future.

Your letter inquires as to whether the Pacific Council believes that fishing regulations are necessary to implement the proposed Sanctuary designation, and references a process outlined in Federal regulations which provides 120 days for a Fishery Management Council to make recommendations concerning fishing. Your letter also references interaction between you and your office and the Pacific Council regarding the proposed Chumash Sanctuary designation and notes that the Pacific Council has not provided any comments on the proposed Chumash Sanctuary designation to date.

We are appreciative of your efforts and willingness to participate in the Pacific Council process, and we have found our interactions regarding the proposed Chumash Sanctuary designation to be quite informative. Prior to receipt of your August 16 letter, the question facing the Council had been whether the proposed Chumash Sanctuary should be put in place. A review of our records indicates that the Pacific Council had not been asked to provide recommendations concerning fisheries within the proposed Chumash Sanctuary. While we are aware that the question of fishing regulations within the Chumash Sanctuary area would come before the Council, we had been operating with the understanding that this question was not yet ripe for Council consideration.

Your August 16 letter indicates that the Sanctuaries would like the Pacific Council to consider fishing regulations within the proposed Chumash Sanctuary area. Therefore, this letter transmits the Pacific Council's understanding that the 120-day period for providing recommendations regarding fishing within the proposed Chumash Sanctuary area has started, effective August 16.

The Council will consider this request at our September 2022 Council meeting, and should the Council elect to consider specific regulations, I anticipate those regulations would be considered and recommended at our November 2022 meeting.

To help ensure an effective and well-informed process, I would be appreciative if you could attend our September and November meetings to speak to your August 16 letter and to answer questions the Council may have. We are scheduled to take up this matter the morning of Friday, September 9, 2022.

Should you have any questions regarding our planned course of action and our request for your engagement with the Council at our September and November meetings, please do not hesitate to contact me.

Thank you,

A handwritten signature in black ink, appearing to read "Merrick Burden", is centered on the page. The signature is fluid and cursive, with a prominent loop at the end.

Merrick Burden
Executive Director

MJB:acl



Pacific Fishery Management Council

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Marc Gorelnik, Chair | Merrick J. Burden, Executive Director

December 1, 2022

Mr. William J. Douros, Regional Director
Office of National Marine Sanctuaries
West Coast Regional Office
99 Pacific Street, Bldg. 100, Suite F
Monterey, California 93940

Re: Consultation with Pacific Fishery Management Council on Chumash Heritage National Marine Sanctuary Designation

Dear Mr. Douros:

Thank you for attending the recent Pacific Fishery Management Council (Council) meeting in Garden Grove, California, to discuss the proposed Chumash Heritage National Marine Sanctuary (Chumash Sanctuary). We appreciate the constructive working relationship between the Office of National Marine Sanctuaries (ONMS) and the Council and have found the recent dialog concerning the proposed designation of the Chumash Sanctuary to be particularly helpful.

Your letter dated August 16, 2022, described the opportunity for the Council to develop and propose any fishing regulations the Council perceives as necessary to implement the proposed Chumash Sanctuary. The Council considered this opportunity at its November 2022 meeting, providing an opportunity for public input on the need for additional regulations. After a review of existing fishing regulations, including those designed for habitat and ecosystem protections, and hearing from the ONMS and the public, the Council determined that additional fishing regulations are not warranted at this time. Should additional information arise which may warrant additional fishing regulations within the Chumash Sanctuary (or other Sanctuary waters), the Council understands that it could consider additional fishing regulations at that time, as part of a future Council process.

In addition to fishing regulations, the Council also considered the prospect of ancillary regulations that could impact fishing activity within the Chumash Sanctuary. We would appreciate being kept informed of any such regulations (e.g., bottom contact prohibitions, vessel discharge rules, bait restrictions, etc.) that may be put in place to conserve Sanctuary resources.

Finally, the Council understands that additional documentation concerning the proposed Chumash Sanctuary designation will be forthcoming in early 2023. We look forward to considering these documents and providing input as appropriate.

Please let me know if you have any follow up questions or need anything else from the Council at this time. Thank you again.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Gorelnik". The signature is written in a cursive, flowing style.

Marc Gorelnik
Chairman

KFG:rdd

Cc: Pacific Council Members
Ms. Laura Ingulsrud