



January 31, 2022

Submitted via: <http://www.regulations.gov>

John Armor, Director
Office of National Marine Sanctuaries, National Ocean Service
Paul Michel, Regional Policy Coordinator
NOAA Sanctuaries West Coast Regional Office
National Oceanic and Atmospheric Administration
99 Pacific Street, Building 100F
Monterey, CA 93940

Re: NOAA–NOS–2021–0080
Notice of Intent to Conduct Scoping and Prepare an Environmental Impact Statement for
the Proposed Chumash Heritage National Marine Sanctuary
86 Fed. Reg. 62,512 (Nov. 10, 2021)

Dear Mr. Armor and Mr. Michel:

The National Ocean Industries Association (“NOIA”) appreciates the opportunity to provide comments on the above-referenced Notice of Intent (“NOI”) of the National Oceanic and Atmospheric Administration (“NOAA”) for the potential designation of a Chumash Heritage National Marine Sanctuary offshore central California. An almost 50-year-old organization, NOIA represents all segments of the offshore energy industry. This includes leasing and development of traditional fossil fuels such as oil and gas, and important new opportunities like offshore wind and carbon capture and sequestration. Further, our members include not just energy developers, but also the businesses large and small that do the work of building, supplying, and maintaining these projects. In other words, we represent thousands of blue-collar and white-collar employees across the nation, stretching from New England to the Gulf Coast to the West Coast. In fact, NOIA members have been critical in building out not only the pioneering wind turbines off the coasts of Northern Europe, but also the limited yet growing number of turbines in U.S. waters.

NOIA’s principal concern with the proposed Chumash designation is preserving the maximum availability of areas offshore California for energy development and supporting infrastructure compatible with environmental protection. Offshore wind projects in particular are vital to the economic growth of this country and efforts to meet climate goals for the 21st century and beyond. According to a recent report co-sponsored by NOIA, the market for wind energy—including off the California coastline—is currently estimated at over \$120 billion¹ off America’s coasts.. As detailed in that report, in the Morro Bay area alone, forecasted potential lease sales may raise as much as \$212.5 million in auction revenue and yield as much as 3.5 gigawatts

¹ See American Clean Power Association, et al., *Federal Revenue and Economic Impacts from BOEM Offshore Wind Leasing* (December 2021), <https://cleanpower.org/resources/federal-revenue-and-economic-impacts-from-boem-offshore-wind-leasing/>.



(GW) of wind power. Additional capacity is available elsewhere offshore California and the remainder of the West Coast. There exists an incredible opportunity to seize upon the strong momentum at both the state and federal levels for West Coast wind power generation.

NOIA members are stewards of the lands and water on which they operate, and enthusiastically support the goals of the National Marine Sanctuaries Act to protect and preserve important marine resources. For example, we were proud to work with the government on the recent expansion of the Flower Garden Banks sanctuary, which resulted in a further protected space in the Gulf of Mexico which still allows for reasonable energy development. NOIA and its members are concerned, however, that designation of a Chumash sanctuary as contemplated in the NOI would create significant uncertainty for vital offshore energy development and interfere with realization of state and federal energy goals. Successful energy projects rely on sufficient access and acreage not only for platforms, wells, or turbines, but also for cables, pipelines, and associated infrastructure necessary to bring production to shore where it can be utilized and integrated into the electric grid.

Magnifying these concerns is the sheer geographic size of the Chumash proposal. Indeed, the NOI omits that the Chumash proposal would result in *the largest protected ocean area in the continental United States*. The proposed exclusion for the latest Morro Bay Wind Energy Area (“WEA”) is also insufficient as it would be surrounded by the proposed sanctuary and the existing Monterey Bay sanctuary.

To address these concerns, NOAA should reassess the purpose and need for a Chumash sanctuary of this size considering the panoply of existing federal, state, and local protections in the area. Similarly, NOAA should defer any designation until there is more certainty on impacts to existing and potential energy production, such as pending development of the Morrow Bay WEA. At a minimum, any Chumash sanctuary designation must expressly *not* prohibit necessary facilities for offshore energy production and transportation, both from existing oil and gas leases and from future wind leases or other future beneficial use such as carbon capture and sequestration. NOAA, the Bureau of Ocean Energy Management (“BOEM”), and any other relevant federal and state agencies should consult and ensure that any environmental impact review takes a “hard look” to ensure that boundaries do not result in burdensome impacts to energy development and other end users. NOIA may supplement these comments as warranted, including in response to any actually proposed Chumash sanctuary designation or associated Draft Environmental Impact Statement, or to any BOEM proposed actions in the area.

FEDERAL AND STATE LEADERS SUPPORT OFFSHORE WIND

This is a vital time for the United States’ climate and energy future. President Joseph R. Biden came into office with a promise to reduce the carbon intensity of the American economy and meet our country’s goals to avert the worst potential impacts of climate change. As part of this, in the President’s first days in office he signed an Executive Order in which he declared a goal of



“doubling offshore wind by 2030.”² Secretary of the Interior Deb Haaland has been equally vocal, recently saying, “The demand for offshore wind energy has never been greater. Recent technological advances, falling costs, and tremendous economic potential make offshore wind a promising avenue for diversifying our national energy portfolio, creating good-paying union jobs, and tackling climate change”³

We have witnessed similarly strong support at the state level. BOEM’s recent offshore wind Call for Information for Morro Bay cogently captures California renewable energy efforts. *See* 86 Fed. Reg. 40,869 (July 29, 2021). California has adopted a Renewable Portfolio Standard, greenhouse gas reduction policies, and a cap-and-trade program to accelerate renewable energy development. California’s targets include use of 100% zero-emission energy sources for its electricity by 2045 and reduction in GHG emissions by 40% from 1990 levels by 2030 and 80% by 2050. Rapidly advancing floating turbine technology in the deep coastal waters offshore California offers substantial untapped renewable energy capacity toward meeting those goals. In September 2021, California Governor Gavin Newsom signed Assembly Bill 525 into law, which directs California to establish specific 2030 and 2045 goals and a strategic plan for offshore wind production. BOEM is also moving forward with a future lease sale in the Morro Bay WEA. We also, of course, saw bipartisan support for 2021’s Infrastructure Investment and Jobs Act, a bill which directed the Department of the Interior to move expeditiously to set a regulatory framework for carbon capture and sequestration on the Outer Continental Shelf. Quite simply, neither the goals set by President Biden and Secretary Haaland, nor those set by state and regional leaders, can be realistically met without West Coast leasing and development of offshore wind. There is clear local and national support for offshore wind in this region and an economic opportunity ready to be seized.

OFFSHORE ENERGY CAN BE REALIZED FAIRLY AND RESPONSIBLY

As reflected in BOEM’s National Environmental Policy Act (“NEPA”) documents for offshore energy leasing, plans, and permits, offshore energy development results in minimal negative impacts. We have every reason to believe this basic conclusion will hold true offshore California for new offshore wind projects and for continued oil and gas production. For example, while there has been no shortage of focus on subjects like marine mammal protection, we remain proud of the notable coordination between developers, their contractors, and the environmental community.⁴ Wind projects in the deeper waters offshore California likely will use even less of the seabed than in other offshore regions due to installation of floating rather than fixed-bottom turbine technology. Indeed, offshore wind development can actually serve to promote the goals of the proposed Chumash designation. Offshore energy development is not a contributor to the NOI’s indicated threats to natural or tribal resources in the proposed Chumash area.

² <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>

³ <https://www.doi.gov/pressreleases/secretary-haaland-highlights-tremendous-offshore-wind-opportunities-virginia-governor>

⁴ <https://www.nrdc.org/experts/francine-kershaw/landmark-offshore-wind-agreement-protects-right-whales>



Regarding viewshed issues, it has become clear that even fixed-bottom projects can be accomplished without impacting onshore communities. For example, BOEM has concluded for the Vineyard Wind project that even on a day with excellent visibility “offshore wind projects would appear relatively small to an observer, appearing to be less than 0.1 inch (0.25 centimeter) tall on the horizon.”⁵ Floating turbines far off the shore of California are likely to be nearly invisible to the naked eye. Regardless of project design, we expect that any local concerns with project visibility offshore California—including in the latest Morro Bay WEA located approximately 20 miles from shore—similarly can be alleviated, particularly given that by the time a wind project there is underway we will likely have significantly more experience with U.S. offshore wind construction and operations.

Likewise, decades of experience have shown that multiple end-users, such as recreational and commercial fishing and energy development, can readily co-exist. Similar to Gulf of Mexico oil and gas platforms, Pacific oil and gas platforms and offshore wind turbine foundations can serve as artificial habitats benefitting fisheries and the fishing community given a well-known “reefing” effect, which has been found to be particularly beneficial for reef fish offshore California.⁶ Mitigation measures such as proper layout, adequate surveys, and active coordination will further minimize potential impacts from offshore wind. Our members already are conducting such steps for first-mover projects.⁷ Even before securing a lease, we have member companies drafting plans⁸ for best practices to work with local communities, such as a designated point of contact for fishermen.

We agree with these upfront efforts to deconflict development of offshore energy and other offshore activities. However, it is critical to note that the areas open to energy production have already been pared back and represent only a tiny fraction of the Outer Continental Shelf. In short, BOEM is already limiting energy resources and investible opportunities to accommodate the fishing community as well as the U.S. Department of Defense. The proposed sanctuary designation by statute would not impede continued fishing or military readiness activities, unlike its potential interference with other activities, and therefore NOIA’s concerns should be given greater weight. These waters are also a public resource—America’s federal waters—that can and should be shared in a way that allows diverse stakeholders to compatibly thrive, and that continues to preserve the region for future generations.

THE PROPOSED CHUMASH SANCTUARY’S GEOGRAPHIC PARAMETERS ARE ILL-DEFINED

The pure size of the proposed Chumash sanctuary increases NOAA’s burden to justify that designation. The NOI describes the proposal as encompassing “approximately 7,000 square

⁵ <https://www.boem.gov/sites/default/files/documents/renewable-energy/Vineyard-Wind-1-Supplement-to-EIS.pdf>

⁶ Claisse, J.T.; Pondella, D.J.; Love, M.; Zahn, L.A.; Williams, C.M.; Williams, J.P.; Bull, A.S. Oil platforms off California are among the most productive marine fish habitats globally. *Proc. Natl. Acad. Sci. USA* 2014, 111, 15462–15467.

⁷ <https://www.vineyardwind.com/fisheries-science>

⁸ https://www.enbw.com/media/enbw_us/docs/fisheries-outreach.pdf



miles.” 86 Fed. Reg. at 62,513. But the NOI provides no context to comprehend this proposed expanse. As noted above, the proposal would create the largest-ever national marine sanctuary in the continental U.S. It would be nearly the size of the State of New Jersey. It also would exceed the size of other already-existing national marine sanctuaries in the same region, including Channel Islands (1,470 square miles), Gulf of the Farallones (3,295 square miles), and Monterey Bay (6,094 square miles). The breadth of the proposal becomes even more problematic when considering the surrounding area already covered by these other existing national marine sanctuaries. Moreover, the proposed designation would subsume 156 miles of coastline, an area encompassing nearly the entire central California coastline and nearly 20% of California’s total coastline.

The sheer breadth of this proposed designation correspondingly introduces significant uncertainty for existing and would-be energy developers in the region. While important marine resources within this area should be respected and preserved as practicable, simply cordoning off such a gigantic area is imprudent absent detailed justification for the need for this level of protection, and adequate consideration of alternatives.

Moreover, apart from its size, the proposed designation lacks specificity on its precise boundaries. This shortcoming is particularly concerning to the north where proposed boundaries abut the Morro Bay WEA and could impede sound siting of export cables to shore, as well as to the south where the maps published to date abut existing oil and gas facilities and operations. Existing users of these areas have a keen interest in knowing the exact locations and understanding the reasoning for the proposed sanctuary’s boundaries. If there are more specific coordinates for the edges of the designation available, NOAA—working alongside other federal and state agency partners—should clearly and promptly make them public. Specifically, among other changes, NOAA should consider moving the proposed southern half of the sanctuary boundary northward and westward to avoid unnecessary conflict with existing users.

ANY CHUMASH SANCTUARY DESIGNATION MUST EXPRESSLY RESERVE FLEXIBILITY FOR OFFSHORE ENERGY PRODUCTION AND TRANSMISSION

To date, while NOAA has expressed optimism about harmonizing a Chumash sanctuary with other marine activities including future offshore wind, NOAA has not yet provided detailed explanation or commitments necessary to ensure this result. In public meetings on its Chumash proposal, NOAA has generally expressed that the agency “can issue permits to allow certain activities,” but has not indicated what those activities might be. Adding to the uncertainty, NOAA has stated that most of its work in national marine sanctuaries is “non-regulatory” and that NOAA instead “helps other agencies tackle a problem.” The resulting regulatory ambiguity is a recipe for later disagreements and potential litigation surrounding other uses of the sanctuary area if designated—including uses such as offshore wind which to date have not been proposed or permitted within a marine sanctuary. Such energy uses may include, among other things, mooring of floating wind turbines, routing of subsea cables and pipelines to shore, vessel traffic related to energy development and production, and placement of other supporting infrastructure. To preempt such conflicts, NOAA in conjunction with BOEM and any other relevant agencies



should clarify and resolve these issues *prior* to undertaking any Chumash sanctuary designation, and should consider adjusting boundaries to the sanctuary as may be needed to facilitate existing and future offshore energy.

As NOAA knows, a national marine sanctuary designation is no mere label, but a major legal step that prioritizes preservation and casts a broad reach in doing so. The goals of marine sanctuaries include to “[f]acilitate to the extent compatible *with the primary objective of resource protection*, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities[.]” 15 C.F.R. § 922.2(b)(5) (emphasis added). A “sanctuary resource” is broadly defined to mean “any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed” 15 C.F.R. § 922.3; *see also* 16 U.S.C § 1432. Moreover, “take or taking” within national marine sanctuaries includes “any other marine mammal, sea turtle, or seabird.” 15 C.F.R. § 922.3. To be sure, disturbance of seabirds is a frequently alleged violation in the Monterey Bay marine sanctuary adjacent to the current Chumash proposal. *See* <https://montereybay.noaa.gov/resourcepro/enforce.html>.

General regulations and sanctuary-specific regulations provide little comfort that other uses will be allowed within a designated Chumash sanctuary. *See* 15 C.F.R. §§ 922.42, 922.43. The regulations condition or prohibit certain activities, and are silent on others. Obtaining a special use permit for an otherwise regulated or prohibited activity can be very complex and onerous. *See* 16 U.S.C. § 1441; 15 C.F.R. § 922.48. For example, special use permits are commonly required for “commercial submarine cables” in the Monterey Bay marine sanctuary, or any other activity “otherwise altering the submerged lands of the Sanctuary”; otherwise such activities are prohibited.⁹ *See* 15 C.F.R. § 922.132(a)(4). Such permits may have numerous and stringent terms, and are capped at five years absent renewal—unhelpful for a project with a much greater lifespan, like most offshore energy facilities. 16 U.S.C. § 1441(c)(2). Even “pre-existing authorizations or rights” may be heavily conditioned via certification after sanctuary designation (though they cannot be terminated altogether on that basis). 15 C.F.R. § 922.47. Thus, uncertainty may linger even for lease awards or plan or permit approvals issued prior to sanctuary designation. Proceeding with activities without needed authorizations risks permit revocation and substantial civil penalties. 16 U.S.C. §§ 1337, 1441(e).

Notwithstanding that the Chumash NOI appears to contemplate other desired uses of the proposed sanctuary area, the NOI does not sufficiently address them, whether or how NOAA believes other regulators will be integral to this process, or even set out a pre-designation NOAA or interagency process to resolve these issues. That portends possible interagency disagreements down the line for future proposed uses in a Chumash sanctuary. NOAA must clearly specify the mechanism(s) for granting or protecting easements or other authorizations for energy

⁹ https://montereybay.noaa.gov/resourcepro/permit/permits_need.html



infrastructure, and explain how permitting authority and roles will be structured in the wake of any Chumash sanctuary designation—and NOAA should do so prior to any such designation.

For example, the proposed exclusion for the “Morro Bay 399 Area” is insufficient for multiple reasons. First, that area may remain in a state of flux; two extensions have already been proposed since the first Morro Bay Call in 2018. Second, the latest Morro Bay WEA only covers 376 square miles. Additional extensions or new areas for wind leasing offshore California likely also will be required to meet national and state goals. Indeed, BOEM’s Morro Bay Area Identification Memo (November 12, 2021) reported that “[s]everal companies noted in their submissions that, while they were nominating a specific area, they would be interested in any area that BOEM offered to lease offshore California.” Third, any awarded wind leases within the Morro Bay WEA will require offshore substations and electric cables to shore, which may face substantially greater complications and regulatory uncertainty where necessarily routed within the bounds of the same marine sanctuary. The proposed boundaries would most certainly require cable routing from the Morro Bay WEA through a sanctuary, yet it is not clear what the legal authority NOAA has in the authorization of offshore wind farms and related equipment, e.g., transmission cables, an authority vested with BOEM. At the same time, BOEM may lack authority to site such facilities within a national marine sanctuary. Even if this legal conundrum can be solved eventually, in the interim it will raise concerns that could hinder development of the Morro Bay WEA.

Separately, though the Chumash NOI properly does not (and cannot) abrogate existing federal offshore oil and gas leases or operations, the NOI is silent on whether a designation would preclude surface and subsea activities to service those existing leases. The Supreme Court has held that federal oil and gas leases are legal contracts and the government has the obligation to honor the terms of the lease. The government may otherwise be found in breach of contract. Activities such as addition of wells near existing platforms, and repair or replacement of pipelines, are critical to continued successful operation of these existing leases. Operators thus need additional information and assurance that such activities may continue following any Chumash sanctuary designation.

At base, NOAA must make clear that any designation will allow—or at a bare minimum, not prohibit or separately regulate—facilities or activities needed for offshore energy development and transmission. At a minimum, any Chumash sanctuary regulations and management plan must allow for energy development from existing and future facilities inside and outside of the Morro Bay WEA, including allowing transportation rights of way or easements to shore. Additionally, the NOI should clarify that any designation will not limit BOEM’s authority to authorize offshore carbon capture and sequestration projects. These clarifications may be included in a sanctuary designation itself, or in a concurrently proposed sanctuary-specific regulation or management plan. For example, regulations specific to the neighboring Channel Islands marine sanctuary allow “the laying of pipeline pursuant to exploring for, developing, or producing hydrocarbons.” 15 C.F.R. § 922.72(a)(1). And as noted above, the Monterey Bay sanctuary allows for “commercial submarine cables.” Any Chumash sanctuary designation should feature similar, if not clearer, regulatory provisions. Such clarity would work hand-in-



glove with boundary adjustments to the proposed area so as to avoid as many of these potential overlaps as possible in the first place. And of course, a Chumash sanctuary should not be designated as a vehicle intended to principally preclude domestic energy activities offshore California. Failure to provide these regulatory assurances upfront will introduce new risks for existing and would-be energy developers in the region, and could render already-challenging federal and state energy goals nearly impossible to meet.

CONCLUSION

NOIA supports the need to protect important marine resources offshore California. But the current Chumash sanctuary proposal raises substantial questions regarding whether it will effectively achieve meaningful benefits beyond existing protections. Equally important, NOAA must carefully consider the opportunity cost potentially resulting from unnecessary restrictions on domestic energy activities, whether it be on domestic energy security, efforts to sequester greenhouse gases, or on meeting ambitious offshore wind goals set by the Biden Administration. To avoid uncertainty or disputes post-designation, and to sufficiently incentivize continued domestic energy growth, NOAA's designation and any implementing regulations must expressly provide that such activities—including transmission to shore—are compatible with and not precluded by any designated Chumash sanctuary.

Very respectfully,

A handwritten signature in black ink, appearing to read "Erik Milito".

Erik Milito
President
National Ocean Industries Association

//Submitted Electronically