



VIA FEDERAL E-RULEMAKING PORTAL

Paul Michel
Regional Policy Coordinator
99 Pacific Street, Suite 100F
Monterey, CA 93940

October 25, 2023

RE: Comments of the Morro Bay Leaseholders on Proposed Designation of Chumash Heritage National Marine Sanctuary, NOAA-NOS-2021-0080

Dear Mr. Michel:

Equinor Wind US LLC, Golden State Wind LLC, and Invenergy California Offshore LLC (known as Even Keel Wind), Leaseholders of Lease Areas OCS-P 0563, OCS-P 0564, and OCS-P 0565 (together, the Leaseholders) in the Morro Bay Wind Energy Area (Lease Areas), respectively, appreciate the opportunity to provide comment on the proposed designation of the Chumash Heritage National Marine Sanctuary (CHNMS or Sanctuary) by the National Oceanic and Atmospheric Administration Office of National Marine Sanctuary (NOAA ONMS).

The Leaseholders acknowledge the effort, time, and thoughtfulness of NOAA ONMS in development of the proposed CHNMS Draft Environmental Impact Statement (DEIS), Draft Management Plan, and Notice of Proposed Rulemaking, which reflect the agency's efforts to balance multiple uses, stakeholder requests for conservation, and other considerations in the Central Coast of California.

Offshore wind renewable energy generation in the Lease Areas is compatible with and complementary to the NOAA ONMS mission through CHNMS to promote marine conservation and reduce the impacts of climate change. The DEIS, however, details an Agency-Preferred Alternative¹ that would increase technical and regulatory risk in a manner that could impede development of offshore wind on the Central California Coast. Specifically, the Agency-Preferred Alternative excludes direct access to the Diablo Canyon point of interconnection and does not provide sufficient space to undertake responsible cable routing, threatening full utilization of the Lease Areas' generation potential. Under the Agency-Preferred Alternative, permitting, installing, operating, and maintaining offshore wind electric cables interconnecting to Diablo Canyon would require crossing through the CHNMS and entail approvals under an untested permitting pathway subject to renewals every five years. This framework would subject Leaseholders to an unacceptable level of

¹ NOAA's Agency-Preferred Alternative consists of Alternative 2, Cropped Bank to Coast, and Sub-Alternative 5b, Gaviota Coast Extension (DEIS, Section 5.4.9).

regulatory, economic, and management risk at a time when getting more renewable energy online in California is of the utmost importance.

In light of these risks, the Leaseholders jointly present through this comment letter a set of proposed solutions intended to enable access to both the Morro Bay and Diablo Canyon points of interconnection and establish a clear path to site, permit, install, operate, and maintain export cables in an environmentally responsible manner. Our joint letter addresses the following:

- The compatibility of offshore wind with the goals for designating CHNMS.
- Leaseholders' stake in the proposed CHNMS.
- Deficiencies with the Agency-Preferred Alternative.
- Requested adjustments to CHNMS presented in the Agency-Preferred Alternative.
- Opportunities for future expansion of the CHNMS.
- Pathways to regulatory certainty for offshore wind activities that overlap with the CHNMS.
- Recommended refinements to the proposed regulations.
- Suggested revisions to the Draft Management Plan.

Our comments on these issues arise out of our collective commitments to responsible offshore wind development, environmental stewardship, and as neighbors of the future CHNMS committed to fighting climate change, which is one of the most significant threats to the marine resources the CHNMS seeks to protect. These recommendations are intended as potential solutions that will support coexistence of the CHNMS and offshore wind in Central California.

I. Offshore Wind Is Compatible with the Goals for Designating CHNMS

Offshore wind energy development provides many energy, economic and climate benefits that NOAA should consider in conjunction with the preservation and resource benefits that a marine sanctuary provides. Both offshore wind energy and sanctuary goals can co-exist together with clear permitting and maintenance processes for wind energy transmission export cables articulated in the DEIS and Draft Management Plan. Both the state and federal governments have established ambitious climate and clean energy goals that need to be considered when developing and approving a new national marine sanctuary and associated management plan.

The Biden Administration's Offshore Wind Goals

"The Departments of Interior (DOI), Energy (DOE), and Commerce (DOC) announced a shared goal to deploy 30 gigawatts (GW) of offshore wind in the United States by 2030, while protecting biodiversity and promoting ocean co-use. Meeting this target will trigger more than \$12 billion per year in capital investment in projects on both U.S. coasts, create tens of thousands of good-paying, union jobs, with more than 44,000 workers employed in offshore wind by 2030 and nearly 33,000 additional jobs in communities supported by

offshore wind activity. It will also generate enough power to meet the demand of more than 10 million American homes for a year and avoid 78 million metric tons of CO₂ emissions.”²

California’s own goals for offshore wind energy development of 5 GW by 2030 and 25 GW by 2045 provide strong support for the Biden Administration goals and show consistency across state and federal policy.³ When considering approval of a new marine sanctuary NOAA should take a balanced approach that considers the variety of state and federal goals that we believe can coexist and be synergistic between both sanctuary conservation and protection goals and wind energy and climate goals.

Offshore Wind’s Benefits in Meeting California’s Energy and Climate Goals

The 100 Percent Clean Energy Act of 2018 established as a policy of the state that eligible renewable energy resources and zero-carbon resources supply 100% of retail sales of electricity to California end-use customers and 100% of electricity procured to serve all state agencies by December 31, 2045.⁴

As declared by the California Legislature in Assembly Bill 525,⁵ offshore wind energy development has the following benefits that can help the state reach its climate and 100 Percent Clean Energy Act goals:

- Deployed at scale, the development of offshore wind energy can provide economic and environmental benefits to the state and the nation.
- Offshore wind energy can advance California’s progress toward its statutory renewable energy and climate mandates.
- The 2021 SB 100 Joint Agency Report issued pursuant to Section 454.53 of the Public Utilities Code conducted portfolio modeling that selected at least 10 GW of offshore wind energy developments to achieve the state’s climate goals, finding a total reduction in total resource costs by an estimated one billion dollars (\$1,000,000,000).
- Diversity in energy resources and technologies lowers overall costs. Offshore wind can add resource and technology diversity to the state’s energy portfolio.
- Offshore wind energy development presents an opportunity to attract investment capital and to realize community economic development and workforce development benefits in California, including the development and preservation of a skilled and

² Biden Administration Jumpstarts Offshore Wind Energy Projects to Create Jobs (Mar. 29, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/29/fact-sheet-biden-administration-jumpstarts-offshore-wind-energy-projects-to-create-jobs/>.

³ California Joins White House Partnership on Offshore Wind Energy (Feb. 22, 2023), <https://www.gov.ca.gov/2023/02/22/california-joins-white-house-partnership-on-offshore-wind-energy/#:~:text=With%20this%20new%20federal%20Partnership,and%2025%20GW%20by%202045.>

⁴ Senate Bill 100 (De León, Chapter 312, Statutes 2018).

⁵ Assembly Bill 525 (Chiu, Chapter 281, Statues 2021).

trained construction workforce to carry out projects, long-term job creation, and development of an offshore wind energy supply chain.

- Offshore wind energy can contribute to a diverse, secure, reliable, and affordable renewable energy resource portfolio to serve the electricity needs of California ratepayers and improve air quality, particularly in disadvantaged communities.
- Offshore wind energy development can provide clean air benefits to inland communities that experience increased impacts from poor air quality.
- Investment in offshore wind energy development can offer career pathways and workforce training in clean energy development. Offshore wind energy will provide additional blue collar industrial work opportunities and support apprenticeship opportunities for a diverse labor pool and provide those opportunities to local communities experiencing high unemployment through prioritization of local hiring first.

II. The Leaseholders Have a Significant Stake in the Proposed CHNMS

The Bureau of Ocean Energy Management (BOEM) granted each of the Leaseholders an exclusive right to explore development of offshore wind in their respective Outer Continental Shelf (OCS) Lease Areas following a December 2022 auction.⁶ The auction entailed \$425,600,000 in total initial investment by the Leaseholders.⁷ BOEM had designated the Lease Areas following a multi-year wind energy area identification process which began with issuance of a Call for Information and Nominations in 2018, and was informed by public comment, input from state and federal agencies, and comments from federally recognized and non-federally recognized Tribes.⁸ The Lease Areas are located within the Morro Bay Wind Energy Area, approximately 20 miles from the closest point to shore. The Leaseholders' Lease Agreements with BOEM became effective on June 1, 2023.

This process was the result of years of effort and resources expended by the Administration and the State of California, all with the goal to site renewable energy offshore Morro Bay, California to help fight climate change. The goals of the proposed CHNMS and offshore wind are compatible. When fully developed, the Lease Areas have the potential to host up to 6 gigawatts or more of clean offshore wind energy capacity. As reference, this is enough clean energy to power approximately 4.5 million homes. Together, these projects will contribute to the Biden Administration's goal of deploying 30 GW of offshore wind energy capacity by 2030 and 15 GW of floating offshore wind capacity by 2035 while advancing environmental justice, protecting biodiversity, and promoting ocean co-use.⁹ Full development of the Lease Areas will also play a critical role in reaching California's goal to

⁶ BOEM, California Activities, <https://www.boem.gov/renewable-energy/state-activities/california>.

⁷ *Id.*

⁸ Commercial Leasing for Wind Power Development on the Outer Continental Shelf (OCS) Offshore California—Call for Information and Nominations, 83 Fed. Reg. 53096 (Oct. 19, 2018).

⁹ Biden Administration Jumpstarts Offshore Wind Energy Projects to Create Jobs (Mar. 29, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/29/fact-sheet-biden-administration-jumpstarts-offshore-wind-energy-projects-to-create-jobs/>.

achieve a 100 percent carbon-free electric system by 2045 as mandated by Senate Bill 100.¹⁰ Simultaneously, we recognize and applaud the Biden Administration's goal of conserving 30 percent of U.S. lands, waters, and ocean by 2030.

The Lease Areas were identified based on proximity to the Diablo Canyon Nuclear Power Plant and the retired Morro Bay Power Plant, which provide opportunities to connect offshore wind generated electricity to the grid based on existing available transmission capacity. As part of its 2021-2022 Transmission Planning process, the California Independent System Operator (CAISO) conducted a study on system requirements for integrating 6,700 MW of offshore wind from Central Coast offshore wind energy areas.¹¹ The study found that integrating this quantity of energy would necessitate interconnection at both the Diablo Canyon 500 kV substation and to a newly constructed 500 kV Morro Bay Substation.¹² To unlock the full potential of the Morro Bay lease areas, shoreside access to both Diablo Canyon and Morro Bay points-of-interconnection is essential and represents the most expedient path to developing California offshore wind energy at scale in the next 10 years.

As described in the AB 525 *Preliminary Assessment of Economic Benefits of Offshore Wind*,¹³ the state recognizes that offshore wind will have economic benefits associated with seaport and waterfront development and improvements, workforce, supply chain, manufacturing, installation, operation, and maintenance of the systems as well as multiplier effects from increased economic activities in different sectors of the economy. All this increased economic activity will require upfront investment from the Leaseholders, the offshore industry at large, ports, and manufacturers as well as utilizing state and federal resources.¹⁴

The Leaseholders have a substantial interest in the proposed CHNMS designation due to its potential impacts on our ability to access those critical points of interconnection. Offshore wind projects require the use of submarine export cables to connect a project to shore to deliver the renewable energy generated by the project to the grid. The proposed CHNMS is located between the Lease Areas and the shoreline. The Lease Agreement each Leaseholder holds with BOEM grants the exclusive right and privilege to explore development of offshore wind in the Lease Area, including development of wind turbine generators, associated resource assessment activities, offshore substation platforms, inter-

¹⁰ Senate Bill 100 (De León, Chapter 312, Statutes 2018).

¹¹ CAISO, 2021-2022 Transmission Plan 221 (Mar. 17, 2022), <https://www.caiso.com/InitiativeDocuments/ISOBoardApproved-2021-2022TransmissionPlan.pdf>.

¹² *Id.*

¹³ Cal. Energy Commission, Preliminary Assessment of Economic Benefits of Offshore Wind: Related to Seaport Investments and Workforce Development (Feb. 2023), <https://www.energy.ca.gov/publications/2022/preliminary-assessment-economic-benefits-offshore-wind-related-seaport#:~:text=This%20report%20is%20the%20second,a%20wide%20variety%20of%20stakeholders.>

¹⁴ As detailed in **Appendix A** of this letter, the Leaseholders request the cost-benefit section in the DEIS include discussion and estimate of cost impacts to offshore wind energy development for potential permitting of wind energy transmission export cables through the proposed Sanctuary.

array cables, and subsea export cables. The Lease Agreements also grant the right to one or more project easement(s) “for the purposes of installing gathering, transmission, and distribution cables, pipelines, and appurtenances on the OCS as necessary for full enjoyment of the lease[s].”¹⁵

The goals of developing renewable energy and expanding marine conservation along the Central Coast are complementary and we urge NOAA ONMS to work closely with BOEM to find a viable path forward that provides regulatory clarity to advance both initiatives effectively.

III. Deficiencies in the Agency-Preferred Alternative

NOAA ONMS’s Agency-Preferred Alternative for the proposed CHNMS would stretch along 134 miles of coastline from Montaña de Oro State Park in San Luis Obispo County to Naples, California, along the Gaviota Coast in Santa Barbara County and would encompass 5,617 square miles. The Agency-Preferred Alternative excludes an area that could serve as a corridor for development associated with offshore wind energy production (specifically subsea electrical transmission cables and substations from the Morro Bay Wind Energy Area to shore).¹⁶

Importantly, the area outside of the Agency-Preferred Alternative does not include Diablo Canyon. As has been recognized since the Morro Bay Wind Energy Area was first proposed, the most likely points of interconnection with the grid are at Morro Bay and Diablo Canyon. This is supported by California Independent System Operator (CAISO)¹⁷, the Department of Energy National Renewable Energy Laboratory (NREL)¹⁸, and the Administration itself¹⁹. It is critical to the success of offshore wind deployment in Central California that Leaseholders have optionality for interconnecting to the grid as envisioned when the Wind Energy Area was designated by this Administration. Uncertainty in the ability to do so will imperil the ability to build out the Morro Bay Wind Energy Area.

Regarding subsea electrical transmission cables, the DEIS indicates that there could be up to 30 cables connecting the Morro Bay Lease Areas to shore.²⁰ The Leaseholders estimate that each Lease Area is anticipated to utilize approximately five to eight submarine export

¹⁵ BOEM Lease Agreement, Section 6: Associated Project Easement(s), 3.

¹⁶ <https://sanctuaries.noaa.gov/chumash-heritage/>

¹⁷ <http://www.caiso.com/InitiativeDocuments/Revised-Draft-2022-2023-Transmission-Plan.pdf>, pp. 102-103.

¹⁸ <https://www.nrel.gov/docs/fy22osti/82341.pdf>, p. xvi.

¹⁹ Commercial Leasing for Wind Power Development on the Outer Continental Shelf (OCS) Offshore California—Call for Information and Nominations (Call) 83 Fed. Reg. 53099, Oct. 19 2018. See also Central California Area Identification Memo (Nov. 11, 2021) (“BOEM and California state agencies gathered data and information along the entire California coast beginning in 2017 with a special emphasis on areas off Central California because of commercial interest, existing transmission infrastructure, and wind energy resources.”).

²⁰ NOAA, Proposed Chumash Heritage National Marine Sanctuary Draft Environmental Impact Statement 37 (Aug. 2023), available at <https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/chumash/2023-proposed-chumash-heritage-nms-deis.pdf> [hereinafter “DEIS”].

cables to connect offshore wind generated electricity to the onshore grid, resulting in up to 24 total export cables for the Lease Areas. The number of cables per Lease Area, however, will ultimately depend upon each project's total capacity and technology readiness, among other considerations.

Given the large number of export cables currently anticipated, the area left open in the Agency-Preferred Alternative does not provide sufficient space to accommodate those export cables given technical requirements and potential constraints. The Sanctuary boundary must provide ample space to accommodate route adjustments and micro siting to sufficiently avoid impacts to marine resources and users. The Agency-Preferred Alternative could unnecessarily constrain the space for the Leaseholders to site the cables could create less flexibility to avoid marine resource and other impacts.

At this very preliminary stage of development, flexibility in submarine cable route selection is critical to selecting the lowest-impact submarine cable routes. Submarine cable routing involves an extensive, iterative process of site selection and refinement based on data collection, cable requirements, engineering constraints, and agency and stakeholder input. Technical requirements that must be accounted for in the design, siting, and routing of submarine cables include:

- **Cable spacing** - Adequate spacing amongst submarine cables is needed to repair and recover cables without compromising neighboring cables or other existing infrastructure. Industry standards recommend three times the water depth for submarine cable spacing.²¹ While narrower spacing is possible it requires detailed, site-specific examination and increased risk tolerance. Given the water depths surrounding the Lease Areas, significant space is needed to accommodate the large number of export cables anticipated.
- **Cable crossings** - In the Central California Coast, there are two major submarine fiber optic cable landing locations, including just south of Morro Bay and Grover Beach. There are at least 14 submarine fiber optic cable systems that are either in-service, out-of-service, or planned that land at these two locations. Export cable routes from the Lease Areas will have to abide by the International Cable Protection Committee guidelines as much as possible with respect to cable crossings. This will include crossing as close to 90 degrees as possible.²²
- **Engineering considerations** - Numerous submarine cable engineering considerations must be considered when designing and routing submarine cables such as maximum bending radii of cables, marine geology, and geohazards.

²¹ ICPC Recommendation No. 2, Recommended Routing and Reporting Criteria for Cables in Proximity to Others, International Cable Protection Committee (ICPC), 2014

²² International Cable Protection Committee (ICPC) Recommendation No. 3, Criteria to be Applied to Proposed Crossings of Submarine Cables and/or Pipelines, International Cable Protection Committee (ICPC), 2014

Leaseholders have undertaken an early assessment of existing data and identified a variety of potential constraints within the area excluded from the Sanctuary boundary in the Agency-Preferred Alternative that will require further consideration through the forthcoming cable routing process. Examples include, but are not limited to, existing designations (e.g., State Marine Protected Areas, Chemical Munitions Dumping Area), sensitive resources (e.g., deep sea corals, artificial reefs), and existing infrastructure (e.g., fiber optic cables). It is imperative that Leaseholders can retain flexibility in siting submarine cables to minimize impacts to resources, existing uses, and marine users of the area while also considering technical considerations.

IV. An Adjustment to the Agency-Preferred Alternative is Necessary to Accommodate Technical Requirements and Resource Protection

As discussed above, it is critical to the success of offshore wind and responsible development along the Central Coast that Leaseholders have shoreside access to reach *both* Morro Bay and Diablo Canyon to connect offshore wind-generated electricity to the onshore grid. It is equally important to have adequate sea space to accommodate the technical requirements of submarine cables and the need for route adjustments to facilitate responsible siting and routing of cables that avoid sensitive resources and user conflicts.

To accommodate these needs, Leaseholders respectfully request NOAA adjust the northern boundary of the Agency-Preferred Alternative to the south with the understanding that, in concert with this boundary adjustment, as detailed below, the Leaseholders support potential opportunities for future expansion of the Sanctuary once there is more certainty as to the precise location and future operational needs of the submarine cables. Conceptually, this revised boundary could be similar to the boundary shown on the map provided by ACP in comments on the Notice of Intent for designation of CHNMS, as shown below in Figure 1.



Figure 1. CHNMS Map previously proposed in ACP letter to NOAA during the NOI process. See ACP letter to NOAA dated October 31, 2022.

V. With an Adjustment to the Agency-Preferred Alternative, a Future CHNMS Expansion Should Be Considered

The Leaseholders recognize that many stakeholders desire the CHNMS to establish contiguous protection of the ocean along more than one-half of the California coastline. If an adjusted area for siting cables is provided at the beginning of this process, as described above, the Leaseholders would endorse the development of a process whereby a future expansion of the CHNMS could be achieved in a way that balances conservation with the successful, safe, and reliable operation and maintenance of established offshore wind infrastructure. Toward these ends, NOAA could include a concept in the final CHNMS Management Plan that would set forth a process by which the Sanctuary Advisory Council could explore an expansion of the CHNMS.

To implement this concept, we recommend that NOAA consider following the Flower Garden Banks National Marine Sanctuary (FGBNMS) model, in which NOAA included in the FGBNMS's management plan a Sanctuary Expansion Action Plan (SEAP), which set forth a framework for NOAA, the Sanctuary Advisory Committee, and other ocean users to explore the potential expansion of the sanctuary.²³ By utilizing this framework for the CHNMS, NOAA can thoughtfully balance the interests of all ocean users and the CHNMS conservation priorities at a time when more is known about the placement of offshore wind facilities and offshore wind's interactions with the ocean environment.

The SEAP process for FGNMS was a significant success. It included a close review of the public record, feedback from commercial and recreational interests previously opposed to the expansion, and a multiple-use, data-driven approach. Using this phased approach, NOAA reached consensus support and secured an expansion of the FGNMS in a way that balanced conservation and the needs of multiple users of that sanctuary.

NOAA could use this successful experience as a model for exploring a later modification of the CHNMS boundary, which could include a future expansion to the north towards MBNMS. By utilizing this framework, NOAA and all key stakeholders can thoughtfully consider the interests of all ocean users and the critical role of offshore wind in California's ability to meet its renewable energy goals.

Process Used to Expand Flower Garden Banks National Marine Sanctuary

The process for the expansion of the FGBNMS began with recommendations in public comments on the review of the 2007 Management Plan, which strongly supported expansion of FGBNMS. Based on this public support, the SAC, which included a member from the oil and gas industry due to the extensive oil and gas infrastructure in the area, formed a Boundary Expansion Working Group (BEWG). The BEWG held public workshops and briefings for multiple stakeholders to explore potential expansion areas. Included in this analysis were assessments of the area's biological and/or geological significance, and/or

²³ Flower Garden Banks Final Management Plan, 3.2 at 30 (April 2012), available at <https://nmsflowergarden.blob.core.windows.net/flowergarden-prod/media/archive/doc/management/fmp2012/fmp2012.pdf> [hereinafter "FGBNMS Management Plan"].

uniqueness, structural connectivity, biological connectivity, level of perceived or known threats, and public and sanctuary priority.²⁴ Based on the recommendations of the BEWG, the SAC recommended expansion to the FGBNMS's Superintendent.²⁵

In its final 2012 Management Plan, NOAA implemented the SAC's recommendations by including a Sanctuary Expansion Action Plan (SEAP) as a discrete action.²⁶ The SEAP provided a process that was used to evaluate areas for inclusion in the sanctuary and to implement the expansion as appropriate. Pursuant to the National Environmental Policy Act (NEPA), NOAA also prepared a programmatic environmental assessment to analyze the environmental impacts associated with the proposed management plan revision and proposed rule.²⁷

As identified by the SEAP, the FGBNMS considered expansion through a public process guided by the requirements of NEPA and the National Marine Sanctuaries Act (NMSA). NOAA also entered into a cooperating agency agreement with BOEM on the development of the EIS for the potential expansion, given existing oil and gas infrastructure already located within the FGBNMS or the proposed new sanctuary boundaries.²⁸ Informal consultations with the Gulf of Mexico Fishery Management Council (GMFMC) continued during the development of the EIS. Alongside the EIS, NOAA developed site-specific regulations that encompassed the new boundaries. The final proposal was developed by sanctuary staff, SAC, and BEWG, and relied upon a data-driven approach to determine the new sanctuary boundaries.

The FGBNMS Model for the Potential Expansion of CHNMS

NOAA could rely on the process utilized in the FGBNMS for consideration of future expansion of the CHNMS. As a starting point, we recommend that NOAA consider adding a SEAP to its final Management Plan for the CHNMS. The SEAP could contain multiple strategies with activities to reach its goals, which would include, among others:

- Manage and facilitate multiple sustainable uses of CHNMS compatible with the primary purpose of resource protection.
- Minimize potential user conflicts, including with access for offshore wind energy transmission cables and associated infrastructure.
- Explore innovative management techniques, such as marine zoning, to achieve the mission of protecting sanctuary resources.
- Improve understanding of human activities and their potential impacts, direct, indirect and cumulative, to sanctuary resources and the regional environment.
- Promote conservation.

²⁴ FGBNMS Management Plan at 32-33. The BEWG also examined oil and gas infrastructure and recommendations made to include or exclude areas with existing platforms. *Id.* at 33. The BEWG anticipated that oil and gas leasing activity would continue within the new sanctuary boundaries.

²⁵ Expansion of Flower Garden Banks National Marine Sanctuary, 86 Fed. Reg. 4937 (Jan. 19, 2021). <https://www.govinfo.gov/content/pkg/FR-2021-01-19/pdf/2021-00887.pdf>

²⁶ FGBNMS Management Plan at 30.

²⁷ *Id.* at 94.

²⁸ *Id.* at 32

- Promote and coordinate partnerships with stakeholders, agencies, and organizations.
- Collaborate on scientific studies and research, including data collection and surveys.

Under this proposal, we would recommend that the SEAP commit to begin the evaluation of the expansion of CHNMS once BOEM has approved the COPs submitted by the Leaseholders for the projects in the Morro Bay Wind Energy Area.

NOAA's Potential Assumption of Authority Over Existing Offshore Wind Infrastructure Within a New Potential Boundary

Under our recommended approach whereby the Leaseholders would have additional access to Diablo Canyon outside of sanctuary boundaries, export cables from Lease Areas to shore would be sited in between the CHNMS and the MBNMS and authorized by BOEM. Should the CHNMS boundary then be expanded northward to MBNMS as proposed above, the operation and maintenance and eventual decommissioning of the cables and other infrastructure would later fall under NOAA's jurisdiction.

NOAA could certify BOEM or the U.S. Army Corps of Engineers authorizations of any existing underlying cables or infrastructure.²⁹ NOAA also would have the authority to issue a Special Use Permit for the continued presence of the submarine cables.³⁰ Maintenance and repair associated with the cable that might cause a disturbance of submerged lands might require either relying on the original ONMS authorization or issuing a new authorization for that activity. As with FGBNMS, any new areas will be subject to the regulations that are applicable to CHNMS.³¹ However, as detailed below, site-specific regulations governing the area of expansion may be necessary.

Immediate Additional Protections that Could Be Implemented Concurrent with the CHNMS Designation

We also encourage NOAA and the Biden Administration to explore other types of protections that could be applied immediately to the area between MBNMS and CHNMS that are compatible with offshore wind development. Such protections may include a potential withdrawal of this area from oil and gas leasing under Section 12(a) of Outer Continental Shelf Lands Act, 43 U.S.C. 1341(a).

²⁹ Existing activities specifically authorized by a valid lease, permit, or other approval can be certified and allowed to continue, subject to any terms and conditions consistent with the purposes for which the sanctuary is designated. 15 C.F.R. § 922.36; see Proposed Chumash Heritage National Marine Sanctuary Proposed Rule, 88 Fed. Reg. 58123, 58144 (Aug. 25, 2023); Proposed Rule, 15 CFR § 922.234.

³⁰ 16 U.S.C. 1441; 15 CFR § 922.31. The "continued presence of commercial submarine cables on or within the submerged lands of any national marine sanctuary" is an allowed category of activities eligible for a special use permit based on a previous notice published in 2017. Final Notice of Applicability of Special Use Permit Requirements to Certain Categories of Activities Conducted Within the National Marine Sanctuary System, 78 Fed. Reg. 25957 (May 3, 2013).

³¹ See 88 Fed. Reg. 58123.

VI. Regulatory Certainty Is Needed for Successful Offshore Wind Development

As highlighted in these comments, offshore wind is in the very early stages of development in California. Key decisions remain concerning technology, points of interconnection, transmission planning and other associated elements such as ports. Given the nascent nature of this industry, it is critical to the success of offshore wind in California that a clear regulatory pathway is created that allows for offshore wind related infrastructure and activities in the Sanctuary. This path should include a description of allowances for maintenance and repair activities, the requirements and standards NOAA ONMS would use in evaluating permit applications for offshore wind activities and in determining whether to renew the five-year Special Use Permit (SUP), and description of the innovative management approaches NOAA ONMS may use in ensuring compatibility of offshore wind cables within the CHNMS. As Leaseholders, we are confident that this certainty can be achieved and that the CHNMS and offshore wind can coexist.

Permitting offshore wind export cables through a national marine sanctuary is a novel issue and there are no other known instances where NOAA ONMS has permitted electric transmission cables within a national marine sanctuary. While NOAA ONMS acknowledges that trans-ocean fiber optic cable projects have been permitted through national marine sanctuaries, NOAA ONMS does not describe how substantive differences in project types translate to changes in the risk profile of the projects. NOAA ONMS acknowledges in the DEIS that offshore wind projects require greater upfront investment as compared to telecommunications cable projects and that the five-year SUP could present challenges to securing project financing.

Floating offshore wind is a new technology globally with its own set of technology and supply chain-related risks. To successfully deploy this technology and meet the Biden Administration and California's energy goals, it is essential that regulatory and permitting risk is clarified to reduce the overall risk profile of these projects. Additionally, offshore wind projects will be providing a critical resource to the State of California and will be required to meet certain requirements for safety and reliability in future agreements with off-takers. Because of the safety and reliability standards that the Leaseholders will be required to meet, ensuring that the Leaseholders have unencumbered access to the export cables at all times for maintenance and cable repairs is a necessity. Without sufficient detail on the five-year SUP and allowed uses, Leaseholders are concerned about being able to meet requirements for access during operations and maintenance, should they need to route cables through the Sanctuary. The Leaseholders will also be entering into agreements with off-takers to supply renewable energy over a period of years. Without clarity on the requirements that NOAA would use to determine if a five-year SUP would be renewed, the Leaseholders see potential risk to future offtake agreements under a scenario where renewal of a five-year SUP is not approved by NOAA.

While NOAA ONMS expresses optimism about harmonizing the CHNMS designation with construction and operation of offshore wind infrastructure within CHNMS, it has not provided the requisite detailed explanation of how it would regulate this critical infrastructure. In the DEIS, there is a high-level explanation of how a permitting pathway

may theoretically work, but the draft regulations and Draft Management Plan fail to include the type of information needed by the Leaseholders. As discussed further below, NOAA needs to be explicit about which of the available tools it will use, in what capacity it will use them (i.e., management plan and/or regulations), and its expectations for the outcome of the use of those tools.

ONMS has the statutory obligation to consider “innovative management approaches to protect sanctuary resources or to manage compatible uses.”³² In the draft documents, however, NOAA has not articulated which “innovative management approaches” it would take to ensure the compatibility of offshore wind cables within the CHNMS. We are also concerned that NOAA has not articulated a particular plan of action that explicitly allows for offshore wind cables to pass through the CHNMS, let alone how such a plan of action would fit into the current regulatory framework.

Based on the numerous uncertainties as to where export cables will be routed and the fact that both Diablo Canyon and Morro Bay are important interconnection points, a clear regulatory pathway is imperative no matter the boundaries of the Sanctuary that is ultimately adopted. In crafting the final CHNMS documents, it is critically important for the Leaseholders that NOAA provide regulatory certainty in both the Management Plan and the proposed regulations on the regulatory and permitting pathways for the export cables within the CHNMS that takes into consideration the realities of developing renewable energy projects at this scale. See Section VII.

The regulatory pathway must allow for siting and operations and maintenance of export cables for at least the full 33-year operations term of the Lease Agreements. A clear plan of action and regulatory pathway would provide needed certainty not only for our projects and the stakeholders that will rely on the renewable power we will generate, but also to those with a stake in the management and resource conservation of the proposed CHNMS. In the section that follows, we provide suggestions on how NOAA may increase this much needed regulatory certainty in the Management Plan and the proposed regulations.

VII. The Proposed Regulations and Draft Management Plan

The Leaseholders urge NOAA to structure the final regulations and Management Plan to clearly address a permitting pathway for NOAA to approve offshore wind related infrastructure and activities in the Sanctuary. While we appreciate the description of the potential pathway in the DEIS, we request that NOAA document the pathway in the final CHNMS regulations in addition to the Management Plan (as discussed below). We address specific concerns about the proposed regulations below, with suggested changes (where possible) for NOAA’s consideration. It is critical for NOAA to use every tool in the toolbox to ensure that both the Sanctuary and offshore wind can co-exist by reducing any uncertainties or risks so that this source of clean energy is available to California to help reduce the impacts of climate change on Sanctuary resources.

³² 16 U.S.C. § 1433(b)(1)(K).

As noted above, NOAA did not provide a permitting pathway for its approval of offshore wind export cables through the Sanctuary in the proposed regulations or in the Draft Management Plan. Instead, it only described in the DEIS and the preamble of the proposed regulations what it “believes is the most likely permitting approach for activities associated with subsea electrical transmission cables,”³³ which could include the following:

1. **Site assessment and characterization:** ONMS would consider issuing a sanctuary general permit under the “research” provisions of NMSA for site assessment and characterization activities that must be conducted prior to cable installation.
2. **Installation of a subsea cable on the OCS:** ONMS would consider authorization of a permit issued by the Army Corps under section 10 of the Rivers and Harbors Act General permit for the installation of a subsea cable as it has in the past for fiber-optic cables.
3. **Installation of a subsea cable in state waters of a Sanctuary:** Similar to federal waters, ONMS would likely issue an authorization of a lease issued by the State Lands Commission or a coastal development permit issued by the California Coastal Commission.
4. **Continued presence of a cable on or in the seabed:** NOAA suggests that ONMS could issue a Special Use Permit under section 310 of the NMSA for continued presence.
5. **Maintenance and repair:** ONMS would likely: (1) issue authorization either of the original Army Corps section 10 permit (see above) or issue an authorization of a lease or State permit (depending on the duration of that permit and whether it included future repair and maintenance); or (2) issue an ONMS authorization of a separate Army Corps and/or State permit for maintenance and repair.³⁴

Not only does NOAA qualify its statement regarding the permitting pathway by suggesting it is only “likely,” it further conditions this “likely” pathway by stating that whether these processes would apply would depend on “the details of any individual permit or authorization [which] would be project-specific and would depend on NOAA’s consideration of the permit application for any particular project.”³⁵ Notably, NOAA does not include the standards by which it would evaluate the applications. Nor is it apparent in the proposed regulations what terms and conditions for the approvals NOAA would utilize. In the DEIS, NOAA acknowledges that there will be “substantial uncertainty over what mitigation measures, if any, ONMS may determine to be necessary to authorize the placement and continued presence of any specific subsea electrical transmission cables within the proposed sanctuary.”³⁶ As this would be the first time NOAA would review applications for

³³ 88 Fed. Reg. 58133

³⁴ 88 Fed. Reg. 58133; DEIS at 182.

³⁵ 88 Fed. Reg. 58133

³⁶ DEIS at 183.

the installation of electric cables in a Sanctuary, the Leaseholders have no precedent by which to ascertain what factors NOAA would apply to such applications.

Because of the urgent need to deploy clean sources of energy, the Leaseholders strongly recommend that NOAA set forth explicit provisions in the regulations and/or the Management Plan, particularly in the Offshore Energy Action Plan and the Research and Monitoring Plan.

A. Suggested Revisions and Comments on the Proposed Regulations

The Leaseholders urge NOAA to make every effort to revise the proposed regulations to address critical uncertainties around its approach to reviewing applications for offshore wind infrastructure within the CHNMS boundary. We provide the following specific concerns and, where feasible, suggested revisions that would facilitate the successful coexistence of the CHNMS and offshore wind.

1. General Permits

NOAA should explicitly include site assessment and characterization for offshore wind projects as a research activity allowable under a general permit.

NMSA program-wide regulations provide that a sanctuary general permit could be issued for research, which is defined as “activities that constitute scientific research or scientific monitoring of a national marine sanctuary resource or quality.”³⁷ The regulations do not, however, explicitly include commercial research, such as those activities that the Leaseholders are required to conduct to meet the requirements of the BOEM regulatory process, including review under NEPA. It is important to note that these site assessment activities, such as geotechnical surveys, are critical to developing the design of the cable routes and are required by the BOEM regulations. NOAA should carefully consult with BOEM to determine the full scope of survey work that is required under the BOEM regulatory process and provide a clear pathway in the proposed regulations for the Leaseholders to meet these site assessment requirements.

While the DEIS describes the breadth of site characterization and assessment activities, it only has a conclusory statement that this “data gathering process . . . is very standard and typically offers benefits because the research would further the understanding of the sanctuary and its resources.”³⁸ Notably, however, this explanation does not yet appear in the proposed regulations. The Draft Management Plan also does not include these types of activities in its action plans. If, as described in the DEIS, site characterization and assessment would further the understanding of the sanctuary and its resources, NOAA should add such activities to the Research and Monitoring Action Plan as well as expressly clarify that such activities qualify for a general permit in the regulations.

³⁷ 15 CFR § 922.30(b)(1).

³⁸ DEIS at 181.

NOAA should consider expanding the list of general permits in 15 CFR § 922.300 to add activities that would “otherwise further the purpose” of the CHNMS.

The proposed regulations state that the two other relevant general permit categories for the CHNMS are “education” and “management.” There is an opportunity here, however, to follow the model found in the Florida Keys National Monument Sanctuary (FKNMS) and add to the list at Section 922.300 an additional purpose specific to CHNMS for which ONMS could issue a sanctuary general permit: one that “furthers the purposes of the CHNMS to the extent compatible to the objective of resource protection.”³⁹ NOAA explicitly recognized that this provision could be relevant to subsea cables in its 2011 Policy and Permit Guidance For Submarine Cable Projects. That guidance sets forth different categories of activities eligible for a general permit and specifically calls out the FKNMS model, concluding that: “If a cable project would further one of these [FKNMS] purposes, it would be eligible for consideration within FKNMS under this [general] permit category.”⁴⁰

While ONMS suggests that it would likely be able to allow some of these activities to occur within the proposed Sanctuary under existing authorities and the current general permit categories at Section 922.30 (e.g., utilizing a research permit to authorize survey activities), NOAA should expressly include this additional general permit category for CHNMS activities to ensure that offshore wind cable installation and operations and maintenance may be allowed to occur within the proposed Sanctuary, consistent with the purpose and need of the goals of the Sanctuary.

As in the FKNMS model, adding this general permit category would further the purposes of the CHNMS, including the strategies within the Resource Protection Plan to collaborate on management efforts and establish and implement a permitting and environmental review program. As stated in our comments on the Draft Management Plan, ONMS should develop the permitting program with input from the Leaseholders.

2. Special Use Permits

NOAA suggests that developers could obtain an SUP for the continued presence of cables under the NMSA as has been done for commercial submarine telecommunications cables. NOAA has indicated that a SUP is the only available authorization for the continued presence of export cables in the Sanctuary. Having a short five-year term for the SUP conditioned upon later approval at NOAA’s broad discretion is one of the Leaseholders’ most significant concerns. The assertion that permit terms may provide for a “seamless” renewal process as long as the permittee remains in compliance is of little comfort as there are no clear terms and conditions of these potential SUPs set forth in the proposed regulations. Such uncertainty could adversely impact the ultimate ability of the projects to obtain the billions of dollars in financing that is needed for such major infrastructure projects.

³⁹ 15 CFR 922.300(6).

⁴⁰ Natl. Oceanic and Atmospheric Admin., Policy and Permit Guidance for Submarine Cable Projects 12 (2011), available at https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/archive/library/pdfs/subcable_final_guidance_2011.pdf.

To address the risks associated with the five-year term, NOAA should consider modeling a renewal of the SUP on the approach taken by the Bureau of Land Management (BLM) to renewal of grants and leases under the Federal Land Planning and Management Act (FLPMA). Under FLPMA, the BLM, as delegated by the Secretary of the Interior, is authorized to grant, issue, or renew rights-of-way over, upon, under, and through public lands.⁴¹ The BLM will determine the “terms and the conditions which should be included in the right of way.”⁴²

FLPMA’s implementing regulations provide that, assuming a grant or lease specifies the terms and conditions of a renewal, an applicant may seek renewal in advance of the expiration consistent with those renewal terms and conditions.⁴³ BLM “will renew the grant or lease if you are in compliance with the renewal terms and conditions; the other terms, conditions, and stipulations of the grant or lease; and other applicable laws and regulations.”⁴⁴

Here, the NMSA similarly provides that SUPs can be “renewed by the Director.”⁴⁵ NOAA should consider not only including specific terms and conditions for SUPs for offshore wind export cables and associated infrastructure and for renewals but setting forth in the regulations that it will renew the SUP under the same explicit conditions – that an applicant is in compliance with the renewal terms and conditions. We also recommend that NOAA ONMS articulate those terms of renewal in the Management Plan so it is clear to the Leaseholders and stakeholders what requirements would need to be met for SUP renewal.

3. Expand “Allowed Activities” to Align the Sanctuary with Offshore Wind

In the DEIS, NOAA could adopt the proposed alternative to include certain allowed uses within the Sanctuary boundaries that would not prohibit, restrict, or otherwise unnecessarily burden offshore wind cable installation and repair, as with the Hawaiian Islands Humpback Whale NMS, where certain classes of proposed military activities are explicitly designated as “allowed activities.” 15 CFR § 922.183(c). NOAA could explicitly deem offshore wind cable installation, maintenance, and repair within any CHNMS as an allowed activity, subject to appropriate guardrails designated up front. If the regulations do not provide the requisite clarity and certainty, then there is a risk they could be subject to future debate resulting in delays and increased costs.

4. Additional Requested Changes to the Proposed Regulations

NOAA has substantial flexibility under the NMSA to craft regulations for each sanctuary unit that balance the protection of marine resources and uses that are compatible with the purpose for which the Sanctuary was designated. As discussed below, offshore wind is compatible with many of the purposes of the proposed designation of this Sanctuary, as

⁴¹ 43 U.S.C. 1761.

⁴² 43 USC § 1761(b)(1).

⁴³ 43 CFR § 2807.22.

⁴⁴ *Id.*

⁴⁵ 16 U.S.C § 1441(c)(2).

reflected by numerous goals in the Management Plan, particularly those articulated in the Climate Change Action Plan, the Offshore Energy Action Plan, and the Blue Economy Plan. Indeed, one of the primary drivers for the designation of the Sanctuary is to protect marine resources from the impacts of climate change, and implementation of offshore wind is an important component of California's ability to achieve a low carbon future.

The Leaseholders suggest that NOAA include further details in the proposed regulations in Section 922.232, which details prohibited or otherwise regulated activities in the Sanctuary. These clarifications would reduce future confusion and facilitate the coexistence of offshore wind and the Sanctuary. A more fulsome accounting of offshore wind in the regulations now will ensure efficiency, reduce burdening Sanctuary resources, and allow for flexibility as this technology develops.

Prohibition on Oil and Gas Production -- Proposed 15 CFR § 922.232(a)(1).

Although offshore wind is a clean source of energy consistent with the Sanctuary's goals to reduce impacts of climate change on marine resources, activities associated with the development of offshore wind may be implicated by the proposed wording of this section intended to focus on oil and gas production. Given that oil and gas production activities may not be permitted in the Sanctuary,⁴⁶ we recommend that NOAA add some clarifications to prevent later confusion.

First, the concept of using offshore wind technology to produce green hydrogen is currently under development and could be incorporated into projects in the Morro Bay Wind Energy Area sometime in the future. Green hydrogen, which is hydrogen produced by renewable energy, is rapidly growing as an important alternative fuel source. The draft regulations prohibit "[e]xploring for, developing, or producing oil, gas, or minerals within the Sanctuary, except for continued oil and gas production," which would implicate any future green hydrogen production that may occur.⁴⁷ In addition, the proposed regulations specifically call out impacts associated with new pipeline construction, which could be necessary if this new hydrogen production technology is deployed.⁴⁸ The Leaseholders suggest excluding the production and transport of green hydrogen from this prohibition.

Second, the summary of proposed regulations states that this prohibition would also apply to "exploratory activities" and "seafloor mining," both of which are undefined.⁴⁹ The Leaseholders note that the laying of cable and other offshore wind infrastructure will have impacts on the seafloor and require extensive surveys on the subsurface of the seabed. The Leaseholders therefore request that NOAA clarify that "seafloor mining" and "exploratory activities" are only limited to the exploration for "minerals" as defined in the Outer Continental Shelf Act (OCSLA) to avoid confusion in the future.⁵⁰

⁴⁶ 15 CFR § 922.232(f)(1)(i).

⁴⁷ 15 CFR § 922.232(a)(1).

⁴⁸ 88 Fed. Reg. at 58131

⁴⁹ *Id.*

⁵⁰ 43 U.S.C. § 1331(q).

Finally, the Leaseholders suggest that NOAA clarify that the term “offshore platform” in this section applies only to traditional oil and gas offshore platforms and not floating platforms associated with offshore wind infrastructure.

Prohibition on Discharges -- Proposed 15 CFR § 922.232(a)(2).

The development of offshore wind facilities outside of the Sanctuary within the Lease Areas and installation of cables are likely to cause discharges within the Sanctuary boundaries. While the Leaseholders will seek permits and authorizations for discharges within the Sanctuary pursuant to section 922.232(g) of the proposed regulations, the Leaseholders suggest the following clarifications to this provision.

The proposed regulations state that “[d]ischarges from beyond the boundary of the sanctuary would also be prohibited when those discharges subsequently enter the sanctuary and harm a sanctuary resource or quality.”⁵¹ However, discharges associated with offshore wind development outside the Sanctuary boundary are already regulated by BOEM.⁵² The Leaseholders therefore suggest creating a specific exemption for discharges outside of the Sanctuary related to the construction, operation, and maintenance of offshore wind facilities and export cables that may ultimately cross into the Sanctuary that will already be regulated by another agency and subject to extensive monitoring efforts.

In addition, the Leaseholders request clarification on the definition of “beneficial use of dredged material.”⁵³ The improvement of Port San Luis as a port supporting offshore wind projects’ operation and maintenance is likely, as reflected in BOEM’s *California Floating Offshore Wind Regional Ports Assessment (OCS Study, 2023-010)*.⁵⁴ The development of Port San Luis could result in a significant amount of dredged material, which could be used for habitat restoration or habitat protection. NOAA should account for this development with the regulations.

Lastly, the Leaseholders suggest including offshore wind support vessels (e.g., construction vessels, cable laying vessels, anchor handling tugs, and tugboats) in proposed section 922.232(a)(2)(H)(ii), which allows for certain discharges from cruise ships in the Sanctuary. These vessels will also produce “clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, [and] anchor wash,” which are all allowed for cruise ships under the proposed regulations. This clarification would reduce the overall administrative burden on offshore wind support vessels that would cross the Sanctuary during the project’s construction, operation, and maintenance.

Prohibition on Drilling into or Altering Submerged Lands -- Proposed 15 CFR § 922.232(a)(3).

⁵¹ 88 Fed. Reg. at 58132

⁵² 43 U.S.C § 1337(p)(4).

⁵³ 15 CFR § 922.231.

⁵⁴ Available at <https://www.boem.gov/sites/default/files/documents/renewable-energy/studies/BOEM-2023-010.pdf>.

As with discharges, the Leaseholders recognize that they may need to obtain permits and authorizations for certain offshore wind-related activities that will involve the alteration of submerged lands. The Leaseholders suggest adding an exception for the alteration of submerged lands that may be caused by the operation and maintenance of submarine cables associated with offshore wind. Cables may need to be placed within the Sanctuary, and this exception would facilitate already anticipated activities. The Leaseholders also suggest adding the anchoring of offshore wind-related platforms to the exception that allows for the anchoring of vessels which may be needed to support operations and maintenance activities.⁵⁵

The regulations also contemplate requiring a permit for the repair and maintenance of infrastructure that has already been authorized for installation but that may disturb the submerged lands of the Sanctuary.⁵⁶ This will be an issue for Leaseholders if authorizations cannot be obtained in a timely manner to conduct necessary repairs and maintenance. Thus, the Leaseholders suggest also adding an exemption for the repair and maintenance of authorized offshore wind infrastructure present in CHNMS.

In addition, offshore wind development may require improvements to Port San Luis to support operations and maintenance activities. The regulations include an exemption for “maintenance dredging of the entrance channels for Port San Luis in existence at the time the Sanctuary is designated,” but does not clarify whether these channels may be deepened to support port expansion.⁵⁷ It is also unclear whether this creates a prohibition on whether new channels may be dredged. The Leaseholders suggest clarifying this exemption to allow for the expansion of existing channels to accommodate port improvements needed for offshore wind that will ultimately benefit the Central Coast economy.

Finally, the Leaseholders suggest including a carveout for research and monitoring related activities that may disturb the seafloor. The conditions do not consider the need for marine science sampling that may require seafloor anchoring, such as anchored passive acoustic monitoring or receivers for fish tagging. Creating an exemption for seafloor disturbance associated with research activities will help further the Sanctuary’s research and monitoring goals.

Prohibition on Possessing, Moving, Removing, or Injuring or Attempting to Possess, Move, Remove, or Injure a Sanctuary Historical Resource -- Proposed 15 CFR § 922.232(a)(4).

BOEM, as the lead federal agency, will be required to conduct consultation under Section 106 of the National Historic Properties Act as part of the regulatory review process for their offshore wind projects. This consultation will result in the finalization of a Programmatic Agreement or Memorandum of Agreement. The Programmatic Agreement or Memorandum of Agreement would also include protocols for inadvertent discoveries, which will reduce the potential for significant delays in the event such a property is discovered during

⁵⁵ 15 CFR §922.232(a)(3)(ii).

⁵⁶ 88 Fed. Reg. at 58133.

⁵⁷ 15 CFR §922.232(a)(3)(v).

construction. If offshore wind facilities are placed within CHNMS, NOAA ONMS will be involved in the Section 106 consultation. To ensure that there are not contradictory requirements for treatment of historic properties related to offshore wind development, the Leaseholders request that NOAA ONMS add an exemption for impacts to historic properties resulting from offshore wind facilities for which a Section 106 consultation is complete. This approach would reduce the risk of contradictory requirements and protocols governing treatment of historic properties potentially affected by the offshore wind facilities both within and outside of the Sanctuary.

Prohibition on Moving, Removing, Taking, Collecting, Catching, Harvesting, Disturbing, Breaking, Cutting or Otherwise Injuring a Sanctuary Resource – Proposed 15 CFR § 922.232(a)(9)(i).

The Leaseholders will be required to conduct extensive studies, including sampling efforts, as part of the siting process for offshore wind activities. The proposed regulations do not appear to provide exemptions for research collection or collection required as part of a regulatory process. The Leaseholders suggest including an exemption for scientific data collection required by an agency.

B. Suggested Revisions and Comments on the Draft Management Plan

The Leaseholders will be an important stakeholder in the management of the proposed CHNMS, particularly if offshore wind related infrastructure is sited within the final CHNMS boundary. The Draft Management Plan largely omits coordination with the Leaseholders, mentioning the offshore wind industry only in the Offshore Energy Action Plan, even though it acknowledges the importance of offshore wind in other Action Plans. The Leaseholders encourage NOAA to incorporate the Leaseholders in the final Management Plan in a way that better integrates coordination with the offshore wind industry around the use and management of the CHNMS. We also encourage NOAA and BOEM to more clearly explain how they will work together and with other agencies on offshore wind issues.

Sanctuary Advisory Council Representation

The Draft Management Plan proposes establishing a SAC with 15 voting seats.⁵⁸ SACs for other national marine sanctuaries are comprised of additional ocean user communities, including, among others, commercial fishermen, conservation organizations, researchers, representatives of the tourism and recreation industries, government agencies, and the energy industry.⁵⁹ The Draft Management Plan includes potentially one or more voting seats

⁵⁸ NOAA, Proposed Chumash Heritage National Marine Sanctuary Draft Management Plan 9 (Aug. 2023), <https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/chumash/2023-proposed-chumash-heritage-nms-draft-management-plan.pdf> [hereinafter “CHNMS Draft Management Plan”].

⁵⁹ See, e.g., FGBNMS Sanctuary Advisory Council, <https://flowergarden.noaa.gov/advisorycouncil/councilseats.html>; Florida Keys National Marine Sanctuary Management Plan at 220 (“The council represents user communities, including the dive industry, environmental community, boating community, commercial and recreational fishermen, the maritime heritage resources community and the research and education communities.”); Florida Keys National Marine Sanctuary Members, <https://floridakeys.noaa.gov/sac/members.html>.

for federally recognized Tribes, as well as one to three voting seats to represent the knowledge, history, and culture of the Indigenous community.⁶⁰ We applaud this inclusive goal.

We request that the final Management Plan also include additional specific seats on the SAC membership that include other key ocean users of the CHNMS area, including voting seats for each of the Leaseholders. Including offshore wind energy industry representatives on the SAC would advance the Plan's Strategy OE-1 and Activity OE-1.2, which call for workshops and public meetings within the SAC process to better understand the expectations and goals of various groups regarding offshore energy in the proposed CHNMS.⁶¹ Each of the Leaseholders are expected to construct and then operate offshore wind facilities and/or associated infrastructure surrounding or potentially within CHNMS for the next several decades; there will be no substitute for their unique and on-the-ground understanding of offshore energy as related to the sanctuary and the broader region. Given decisions made by the SAC could have substantial impacts on the offshore wind projects, each of the Leaseholders thus request a voting seat on the SAC.

Offshore Wind Development's Consistency with Sanctuary Management

Offshore wind and its many benefits are consistent with the purposes of the proposed CHNMS. While the Draft Management Plan considers the presence of offshore wind infrastructure in the CHNMS, it does not provide clarity on how offshore wind will factor into the management of the CHNMS. To increase the regulatory certainty needed for the successful development of offshore wind along the Central Coast, we urge NOAA to be far more specific in the final Management Plan about how offshore wind will coexist adjacent to and within the CHNMS boundaries and to acknowledge its consistency with many of the core principles behind the CHNMS designation. We also request inclusion as a partner on the numerous action plans that relate to –or even specifically include references to – the Leaseholder's proposed offshore wind projects. We can be valued partners in the management of the CHNMS, regardless of whether offshore wind infrastructure is ultimately sited within the CHNMS's boundaries.

We recommend that the final Management Plan depict offshore wind as an important consideration in the CHNMS's management instead of only characterizing it as a "threat" to the CHNMS.⁶² The final Management Plan should consider the development of offshore wind in adjacent waters and how offshore wind development furthers both federal and state decarbonization objectives to address climate change. The final Management Plan should also acknowledge that the offshore wind projects in the Morro Bay Wind Energy Area will be a major presence in the waters in and around the CHNMS, and that offshore wind ocean users have an essential role to play in day-to-day management and stewardship of the CHNMS. These benefits include data collected through extensive surveys, and research and monitoring activities conducted by the Leaseholders that will provide substantial

⁶⁰ CHNMS Draft Management Plan at 9.

⁶¹ CHNMS Draft Management Plan at 27.

⁶² See CHNMS Draft Management Plan at 26.

information that is currently not available. There may also be additional measures that could be implemented by the Leaseholders that would substantially benefit the management of the CHNMS, which could include, but not be limited to, the monitoring and extraction of abandoned fishing nets that imperil marine animals. The final Management Plan should discuss how offshore wind will be factored into each relevant action plan as discussed in the paragraphs below.

Partners in Action Plan

NOAA has identified a list of “Potential Partners” that will be involved in implementing the action plans. Tribal entities, academic institutions, and government entities are listed as partners for most of the action plans. However, the offshore wind industry is listed only as a potential partner for the Offshore Energy Action Plan,⁶³ even though many other action plans substantially implicate offshore wind facilities and industry stakeholders. The Leaseholders request that NOAA identify the offshore wind development community as a potential partner on the Sanctuary Expansion, Offshore Energy, Blue Economy, Wildlife Disturbance, Resource Protection, Research and Monitoring, and Operations and Administration Action Plans. The Leaseholders are critical stakeholders and NOAA can leverage our experience and knowledge to assist in advancing these action plans.

Sanctuary Expansion Action Plan

As discussed previously in our letter, similar to the approach taken in the FGBNMS, the Management Plan could include a SEAP that will describe a process that will be used to evaluate areas for inclusion in the sanctuary and to implement the expansion as appropriate. If pursued, the SEAP should include the following strategies and activities:

Strategy SE-1: Evaluate and, if appropriate, expand the sanctuary to the north towards the southern-most border of the MBNMS

- a. Activity 1.1. Convene SAC (including three leaseholders)
 - i. Create Boundary Expansion Working Group (BEWG) (including offshore wind leaseholder/s) to develop recommendations
 - ii. Conduct a public process and workshops to consider boundary expansion alternatives
 - iii. BEWG makes recommendations to SAC for sanctuary boundary expansion alternatives to be included in boundary expansion.
 - iv. SAC make recommendations to ONMS
- b. Activity 1.2: Meet with agencies involved in permit review of coastal and offshore energy projects including subsea electricity transmission cables authorized, or pending authorization, within the proposed expansion area.
- c. Activity: 1.3: Develop draft NEPA documentation to evaluate alternatives for boundary expansion

⁶³ CHNMS Draft Management Plan at 29.

- d. Activity: 1.4: Assess whether changes to the management plan are required to meet the needs of the potential additional areas and if necessary, develop a draft management plan
- e. Activity: 1.5: Develop any necessary implementing regulations
- f. Activity: 1.6: Release the draft NEPA documentation, proposed regulations, and draft management plan for public review and comment
- g. Activity: 1.6 Finalize and release the final NEPA documentation, site-specific regulations, and management plan

Offshore Energy Action Plan

The draft Offshore Energy Action Plan rightly acknowledges the role of public and private stakeholders in managing the interplay between offshore energy activities and Sanctuary resources. The Leaseholders offer the following suggestions regarding the Offshore Energy Action Plan to further develop and formalize the role of key stakeholders.

The Offshore Energy Action Plan should incorporate BOEM and Bureau of Safety and Environmental Enforcement (BSEE) more fully as federal agencies with an outsized role in the region's offshore energy development. NOAA acknowledges it has much to gain from leveraging other agencies' knowledge and interagency collaboration on scientific studies, environmental review, and monitoring and mitigation review. Strategies OE-1 through OE-4 all imply engagement with BOEM and BSEE but they hardly mention the agencies or its specific regulatory processes in which NOAA proposes to engage BOEM and BSEE. The Offshore Energy Action Plan would benefit from greater specificity regarding where NOAA envisions engaging in the BOEM permitting process for offshore wind projects, and where NOAA expects BOEM and BSEE to reciprocally engage in sanctuary processes currently under development. While we recognize that BOEM and BSEE cannot permit facilities within a sanctuary, BOEM and BSEE are the expert agencies on offshore wind facilities and can be more fully integrated into the CHNMS's management, particularly with respect to decisions related to offshore wind infrastructure. Both agencies, as well as the regulated community and other stakeholders, would benefit from a more fulsome roadmap for that collaboration, and to the extent feasible, ONMS should align its new processes and requirements with the existing BOEM and BSEE process.

The Offshore Energy Action Plan should also include a "Strategy" that designates a clear permitting pathway for offshore wind infrastructure within the CHNMS. As noted in our comments above, there is no clear permitting pathway for offshore wind. The Leaseholders encourage NOAA ONMS to develop this permitting pathway with the input of Leaseholders for inclusion in the final Management Plan (as well as the final regulations, as appropriate).

NOAA should also incorporate the offshore wind development community as partners in implementing the Offshore Energy Action Plan. While the offshore wind industry is considered a potential partner for this action plan, it is not specifically mentioned in any of the strategies. The Leaseholders suggest that the offshore wind development community has much more to contribute to Plan implementation beyond their interest in particular

project or activity outcomes. The three Central Coast leases are set to be the first floating offshore wind projects off the coast of California and will develop substantial information on how floating offshore wind infrastructure both benefits and impacts the marine environment. The Leaseholders will be conducting research and planning and are well positioned to contribute greatly to knowledge of CHNMS resources. NOAA should explicitly acknowledge our capacity to contribute to NOAA strategies and goals more broadly, particularly in Strategy OE-2, considering the vast offshore survey and study efforts that the Leaseholders will undertake in coming years, and Strategy OE-4, considering monitoring and mitigation will be central to implementing our projects.⁶⁴

Indigenous and Cultural Heritage Plan

The Indigenous and Cultural Heritage Action Plan contemplates coordinating with Tribal entities to process permitting requests and develop best practices.⁶⁵ The Leaseholders request that ONMS share with the Leaseholders any guidelines and best practices developed through Tribal consultation to assist with the scoping and planning process for cables and infrastructure. The Leaseholders also suggest that NOAA involve BOEM in developing its Indigenous and Cultural Heritage Action Plan, as BOEM would be the lead agency for the Section 106 consultation for offshore wind projects. NOAA should also closely coordinate with the State Lands Commission on this plan, as the Commission will serve as the lead state agency for the review of the offshore wind projects under the California Environmental Quality Act to reduce conflicting outcomes of these three processes.

Resource Protection Action Plan

The Resource Protection Action Plan seeks to collaborate on resource management efforts with local stakeholders but does not contemplate involving the Leaseholders who will be directly impacted by these efforts. The action plan covers many issues important to the Leaseholders including, among others, the issuance of permits, the development of permit conditions, environmental review for coastal development projects, the development of mechanisms to monitor permit compliance, and the enforcement of Sanctuary regulations.⁶⁶ The Leaseholders request that they be included in these conversations to ensure that the permitting, monitoring, and enforcement mechanisms developed for the CHNMS are both efficient and feasible for all parties involved, and align with the approach taken by BOEM, the State Lands Commission, the Coastal Commission, and other agencies that have jurisdiction over offshore wind.

The Resource Protection Action Plan should also explicitly address the development of permitting procedures for activities associated with offshore wind development. Under the DEIS and draft regulations, there is uncertainty regarding how offshore wind cables or other infrastructure will be permitted within the CHNMS. The Leaseholders suggest adding a

⁶⁴ CHNMS Draft Management Plan at 27–28.

⁶⁵ *Id.* at 15–19.

⁶⁶ *Id.* at 42–45

strategy to the Management Plan to work with the Sanctuary Advisory Council, Leaseholders, and other stakeholders to develop an offshore wind infrastructure permitting program.

The Leaseholders also request further clarity on potential enforcement partnerships and penalties mentioned in the action plan. NOAA should consider partnering with the Leaseholders for monitoring and enforcement similar to its partnership with the oil and gas industry for monitoring and surveillance in the Flower Garden Banks Resource Protection Action Plan.

Research and Monitoring Action Plan

The Research and Monitoring Action Plan states that the scientific planning for the CHNMS will rely on a blend of Indigenous and western perspectives.⁶⁷ The Leaseholders request more details in the Plan on how traditional knowledge will be factored into CHNMS decision-making.

The Research and Monitoring Plan also emphasizes the importance of research partnerships with various entities including the private sector. The Leaseholders suggest including the offshore wind industry as a partner for this action plan, particularly as the Leaseholders will conduct extensive surveys and studies within the CHNMS to ascertain the optimal placement of infrastructure (depending on its final boundary). The Leaseholders will make significant investments in site characterization and assessment to better understand the CHNMS and the potential impacts caused by offshore wind infrastructure. This information can be used to improve Sanctuary management and resource protection.

Blue Economy Action Plan

The Blue Economy Action Plan identifies tourism and recreational uses as the initial “primary Blue Economy focus” for the CHNMS.⁶⁸ Although recognizing that offshore wind-related technologies and activities will help advance the marine technology sector through the development of technologies and techniques, the Draft Management Plan does not sufficiently capture the breadth of the economic impact of this new sector to the proposed CHNMS. Offshore wind will be a major economic driver for the region as it will create high paying clean energy jobs, make significant economic contributions to the communities along the Central Coast, and may serve as a draw for tourism along the coast. A 2021 study by California Polytechnic State University estimated that one 3-gigawatt offshore wind farm would create 650 long-term jobs and 2411 construction jobs, as well as have an annual economic impact of \$262 million in San Luis Obispo and Santa Barbara Counties.⁶⁹

Offshore wind will also provide an economic benefit by mitigating impacts from climate change. NOAA itself has called out the importance of offshore wind in addressing climate

⁶⁷ *Id.* at 46–47.

⁶⁸ *Id.* at 33.

⁶⁹ Cal. Polytechnic State University, Economic Impact of Offshore Wind Farm Development on the Central Coast of California (Apr. 2021), https://reachcentralcoast.org/wp-content/uploads/Economic_Value_OSW_REACH.pdf.

change, stating in its 2022-2026 Strategic Plan that “[o]ffshore wind is a sustainable energy source that will play a crucial role in the US response to climate change and NOAA’s mission to build a climate ready nation.”⁷⁰ In fact, one of NOAA’s strategies is to “support sustainable development of offshore renewable energy.”⁷¹ Consistent with NOAA’s broader Strategic Plan, the Sanctuary’s Blue Economy Action Plan should recognize these potential economic contributions and include the offshore wind industry as a partner in the implementation of the plan.

Climate Change Action Plan

The Climate Change Action Plan has the stated goal of enhanced ecosystem function and resilience to climate change through research and monitoring, assessment and adaptation, mitigation actions, education and outreach, and Indigenous community partnerships.⁷² The Action Plan outlines several strategies NOAA intends to deploy to protect the CHNMS from climate change impacts, including research on and monitoring climate change impacts on the CHNMS and its resources. The Action Plan also stresses the need to minimize greenhouse gas emissions and contribute to natural atmospheric carbon dioxide sequestration and storage.

Offshore wind development within the Morro Bay Lease Areas is highly consistent with the Climate Change Action Plan. Fundamentally, the offshore wind generation planned in this area is a climate change mitigation effort to reduce the amount of greenhouse gas emissions produced as part of California’s energy supply. Throughout these projects’ construction, operation, and maintenance, the Leaseholders will develop substantial data about the conditions of the marine environment, and likely will be implementing adaptive management measures in compliance with its approvals.

NOAA should revise the Climate Change Action Plan to emphasize the many opportunities to partner with the Leaseholders to support the transition to carbon-free energy, supporting long term resilience of CHNMS resources through the reduction of climate change impacts. To the extent that offshore wind facilities are sited within CHNMS boundaries, NOAA and the Leaseholders could explore whether there are opportunities for research and monitoring, education, and the development of innovative technologies that would help reduce the impact of offshore wind on the marine environment.

Wildlife Disturbance Action Plan

Under the Wildlife Disturbance Action Plan, NOAA seeks to assess and mitigate disturbance of wildlife within sanctuary boundaries.⁷³ The Leaseholders should be considered a partner in this action plan, particularly regarding Strategy WD-3, which seeks to evaluate the potential impacts of offshore wind on wildlife. NOAA should seek to partner with the

⁷⁰ Building a Climate-Ready Nation, NOAA Strategic Plan 2022-2026 (at 51, https://www.noaa.gov/sites/default/files/2022-06/NOAA_FY2226_Strategic_Plan.pdf .

⁷¹ *Id.* at 55-56.

⁷² CHNMS Draft Management Plan at 19.

⁷³ *Id.* at 36–38.

Leaseholders to develop methods by which NOAA, BOEM, and the Leaseholders can work together to closely monitor the wildlife impacts from offshore wind development and operations and develop potential adaptive mitigation measures or deploy new technologies that can reduce the overall impacts on wildlife.

Thank you for the opportunity to comment on the Proposed Sanctuary. We look forward to working with you to address these comments and fulfilling our mutual goals – protection of marine resources and advancing clean energy development in the Morro Bay Wind Energy Area. Thank you for your time and attention to these comments.

Sincerely,



Tyler Studds
Chief Executive Officer
Golden State Wind



Martin Goff
Project Director, California Lease Area
OCS-P 0563
Equinor Wind US



Erin Lieberman
Executive Vice President, Environmental
Compliance and Strategy
Invenergy California Offshore LLC

APPENDIX A

Specific comments regarding DEIS Appendix D: Economic Cost-Benefit Analysis Prepared to Support Proposed Regulations.

In general, the overall cost-benefit section should include discussion and estimate of cost impacts to offshore wind energy development for potential permitting of wind energy transmission export cables through the proposed sanctuary.

- Page 315: “Threats to these natural, cultural, and historical resources include various levels of human development and activity, from offshore energy development, decommissioning and removal of coastal and offshore industrial facilities, vessel traffic, coastal runoff, and, most of all, from acute and cumulative impacts from climate change.”
 - NOAA rightly references “cumulative impacts from Climate Change” as a threat to ocean natural resources. The development of offshore wind energy can help mitigate climate impacts.
 - The OSW industry would like NOAA to clarify “offshore energy development” in the context of this sentence to refer to “offshore oil and gas energy development.”
- Page 315: “(2) document, characterize, monitor, study, and conserve these resources,”
 - Survey work conducted by offshore wind energy companies for export cables through the sanctuary can contribute vast amounts of data to assist NOAA in documenting and characterizing resources within the sanctuary.
- Page 315: “(5) develop a coordinated, community-based, ecosystem-based management regime”
 - Development of a “management regime” needs to include input from offshore wind energy developers and discussion of permitting pathways through the sanctuary for wind energy export cables to both Morro Bay and Diablo Canyon.
- Page 317: Section on “Improved Tourism and Recreational Experiences”
 - Offshore wind energy development will also contribute “positive effects to the local region vis increased national visibility and increased regional coordination”
 - New offshore wind energy development can also be utilized to encourage the public to visit and be a conduit to “implement research, education, interpretation and outreach activities associated with the proposed sanctuary.” The wind industry can partner with NOAA on tourism and educational opportunities.



- Page 319: Costs
 - Based on state and federal goals and industry needs to get offshore wind projects permitted, developed, and implemented in a timely manner, NOAA will need to act quickly to hire staff to support permitting activities for potential wind energy transmission export cables through the sanctuary.

- Page 319: *Regulation-Specific Effects of the Proposed Rule*, “prohibition on drilling into or altering submerged lands”
 - NOAA will need to provide a “specified exception” to this rule for wind energy transmission export cables that may potentially go through the sanctuary.