



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

August 16, 2022

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

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

Dear Mr. Burden:

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

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

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

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

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

Respectfully,



William J. Douros  
Regional Director

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

cc: Marc Gorelnik, Chair Pacific Fishery Management Council

Attachment A:

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

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

a. SANCTUARY PROPOSAL –

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

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Text of 15 CFR 922.22(b)

**§ 922.22 Development of designation materials.**

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