



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

Agenda Item C.4
 Attachment 3
 November 2022

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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National Marine Sanctuary
 The Presidio
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Monterey Bay
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Channel Islands
National Marine Sanctuary
 University of California Santa Barbara
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 Santa Barbara, CA 93106



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

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

Respectfully,



William J. Douros
Regional Director

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

cc: Marc Gorelnik, Chair Pacific Fishery Management Council

Attachment A:

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

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

a. SANCTUARY PROPOSAL –

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

Text of 15 CFR 922.22(b)

§ 922.22 Development of designation materials.

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



Pacific Fishery Management Council

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

August 25, 2022

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

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

Dear Mr. Douros,

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

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

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

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

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

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

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

Thank you,

A handwritten signature in black ink, appearing to read "Merrick Burden", is written over a light blue circular stamp. The signature is fluid and cursive.

Merrick Burden
Executive Director

MJB:acl



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September 27, 2022

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

Re: November 2022 Meeting of the Pacific Fishery Management Council

Dear Mr. Douros,

Thank you for participating in the September 2022 Pacific Fishery Management Council (Pacific Council or Council) meeting to discuss the matter of fishing regulations and the proposed designation of the Chumash Heritage National Marine Sanctuary (Chumash Sanctuary). By all accounts the Pacific Council found the exchange with you to be quite informative, particularly in regard to clarifying the Council's role at this early stage in the Sanctuary designation process.

Your presentation to the Council indicated that the Office of National Marine Sanctuaries (ONMS) is requesting the Council make recommendations on the need for additional fishing regulations and, if appropriate, prepare draft fishing regulations at this stage of the designation process based upon a revised interpretation of section 304(a)(5) of the National Marine Sanctuaries Act. That interpretation has led to the ONMS to request Council input at the early stages of the Sanctuary designation process, while also leaving in place the prior practice of seeking Council input and recommendations regarding fishing activity within the Sanctuary at a future date, if deemed appropriate or necessary.

During discussion of this matter the Council expressed its intention to notice the November Council meeting to make it clear that the Council will be considering the topic of fishing regulations within the proposed Chumash Sanctuary area, and whether additional fishing regulations may be necessary that are in addition to the multiple measures already in place. As you know, this matter came to the Council in September as an Informational Report rather than as an agenda item dedicated to the consideration of the Chumash Sanctuary. The Council strives for robust public process, and as such determined that clearly noticing this issue as part of the November 2022 Council meeting agenda would best serve the needs of the public and the Council's desire for transparent public process.

I anticipate the Council taking up the question of whether additional fishing regulations are necessary to implement the proposed designation of the Chumash Sanctuary at the November 2022 meeting. We will be noticing the November Council meeting accordingly.

In order to help ensure a robust and well-informed consideration of this matter, we would appreciate your participation at our November Council meeting, as well as the participation of any additional ONMS or NOAA staff you may deem appropriate. We are tentatively scheduled to take up this matter the morning of Sunday, November 6th.

Please feel free to contact me or Kerry Griffin (kerry.griffin@noaa.gov) at the Pacific Council office if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Merrick J. Burden', is written over a light-colored rectangular background.

Merrick J. Burden
Executive Director

KFG:kma

Cc: Marc Gorelnik
Brad Pettinger
Pete Hassemer
Rose Stanley
Marci Yaremko
John Ugoretz