

GROUND FISH ADVISORY SUBPANEL REPORT ON
CHUMASH HERITAGE NATIONAL MARINE SANCTUARY DESIGNATION

The Groundfish Advisory Subpanel (GAP) reviewed the proposed Chumash Heritage National Marine Sanctuary Designation documents and while there are no proposed direct fishing regulations at this time, ancillary regulations may affect current fishing activities. In addition, the GAP remains concerned about potential efforts to introduce fishing restrictions or regulations in the future.

As noted in the [Santa Ynez Band of Chumash Indians \(SYBCI\) letter to the National Oceanic and Atmospheric Administration](#) (NOAA) Office of National Marine Sanctuaries (ONMS) requesting government- to-government consultation under Executive Order (E.O.) 13175 in December 2021:

“We recommend a careful review of the role of these [Marine Protected Areas] in supporting the priority management goals of the [National Marine Sanctuaries Act], and whether additional protective measures and/or marine zoning strategies (such as no-take MPAs) and tools should be considered under a co-management strategic framework that combines the Chumash, California, the NMSP and other relevant federal agencies. External reviews of the NMSP note that **a clear legal authority should be considered for the designation document that will allow the establishment of no-take marine zones** (National Academy of Public Administration 2021: 51), and the development of marine zoning strategies to offset impacts to marine life from climate disturbance (emphasis added).”

Therefore, until the ONMS has demonstrated an actual hands-off policy with respect to fisheries, the fishing community cannot support additional Sanctuary designations. The GAP notes that ONMS has demonstrated a hands-off approach with respect to proposed industrial wind energy projects, and the difference in the treatment of fisheries and offshore wind is troubling.

However paradoxical, the GAP does not support expanding the scope of Sanctuary management on the West Coast. The [National Marine Sanctuaries Act](#) identifies “the importance of protecting special areas of its public domain” and “a Federal program which establishes areas of the marine environment which have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities as national marine sanctuaries managed the National Marine Sanctuary System will improve the conservation, understanding, management, and wise and sustainable use of marine resources; enhance public awareness, understanding, and appreciation of the marine environment; and maintain for future generations the habitat, and ecological services, of the natural assemblage of living resources that inhabit these areas.

Early established Sanctuaries like the Channel Islands National Marine Sanctuary (CINMS) promised not to manage fisheries and to leave fisheries management to the existing state and Federal authorities, such as Federal Magnuson-Stevens Fishery Conservation and Management Act and appropriate state regulations. This promise was expressly included in their Designation Document. The fishing community endorsed designation, which promised to defend traditional uses from industrial development then impacting and threatening to further detract from public access for fishing.

However, over time not only did CINMS spearhead the establishment of no-fishing areas, but sanctuary managers would eventually remove that promise not to regulate fishing and establish its own authority to do so. In addition, GAP members note other regulations common throughout the West Coast sanctuary system have constructively limited the public's use of Sanctuary waters.

For example, these include discharge regulations that apply to even the smallest of craft and minimal negative impacts. Enforcement of these are commonly so impractical the expectation is they will not be enforced. Establishing rules putting people on the wrong side of the law, that are not expected to be enforced, is simply bad public policy. It puts people at risk of being cited on the basis of their appearance or any other subjective quality. The proposed CHNMS regulations prohibit discharge, providing an exemption for U.S. Coast Guard (USCG) vessels but not for vessels engaged in lawful fishing activities. **Therefore, the GAP recommends providing an exemption for small craft similar to what is provided to the USCG in the proposed CHNMS.**

Other regulations duplicate existing ones, adding the prospect of *civil* penalties to punishments under existing law that would impose *criminal* penalties. Once again, these were cast as “tools in the tool chest,” not intended to be enforced in conjunction with the criminal, but instead, chosen between.

Today we see under Agenda Item H.2, Sanctuaries are pursuing additional fishing restrictions within the Greater Farallones and Monterey Bay NMS. And they have garnered millions of dollars from insurers for the loss of a large vessel barely within sanctuary boundaries. The additional economic risk inherent in sailing those waters is clear.

In sum, this history has fostered a fear of additional Sanctuary designation among mariners and fishermen – a dominant fraction of the users of our marine waters.

With respect to the proposed Chumash Sanctuary (CHNMS) an initial Boundary Alternative encompassed waters that would be subject to power cable installation from a proposed wind development. Subsequently, Sanctuaries removed that area from their Preferred Project, avoiding potential conflict. So, it appears Sanctuaries have implemented an actual “hands-off” practice with respect to that type of industrial development.

As for the “Special” nature of the waters of the proposed CHNMS, its designation would create an almost continuous swath of sanctuary designation covering roughly 400 nm of California's coastline, and islands – or over half. The GAP questions by what metric is this half substantially more “special” than the rest?

While the GAP recognizes designation of the CHNMS is all but assured, the GAP does not support it. However, if Sanctuaries did eventually demonstrate an actual “hands-off” policy with respect to fishing and other traditional artisanal maritime uses, modified their regulations so as not to make accepted practices and those that target common fishing practices illegal while protecting waters from industrialization (e.g., offshore wind), the GAP would consider supporting the designation.

The GAP encourages the Council to draft a quick response comment letter that addresses the GAP's concerns described in this report.

PFMC
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