



January 31, 2022

**To:** Mr. Paul Michel, NOAA Sanctuaries West Coast Region Policy Coordinator

**Subject:** Comments on the Notice of Intent To Conduct Scoping and To Prepare a Draft Environmental Impact Statement for the Proposed Chumash Heritage National Marine Sanctuary, 86 Fed. Reg. 62,512 (Nov. 10, 2021) (NOAA–NOS–2021–0080)

The Institute for Policy Integrity at New York University School of Law<sup>1</sup> (“Policy Integrity”) respectfully submits the following comments to the National Oceanic and Atmospheric Administration (“NOAA”) on its potential designation of the Chumash Heritage National Marine Sanctuary (“the Sanctuary”).<sup>2</sup> Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decision-making through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity experts regularly publish research and submit public comments related to cost-benefit analysis, the role of environmental justice in agency decisionmaking, and agency analysis under the National Environmental Policy Act.

There are many important environmental and economic benefits to marine preservation that could inform NOAA’s preparation of its draft environmental impact statement for the proposed designation. In particular, NOAA should fully consider the following benefits:

- Existing literature suggests that the Sanctuary would benefit the California economy and protect valuable “ecosystem services”<sup>3</sup> that are already being affected by climate change.
- Designation could advance environmental justice by limiting oil and gas extraction in the Sanctuary and protecting the Chumash people’s cultural artifacts from degradation.

**I. The Sanctuary Will Likely Contribute to the California Economy and Protect Valuable Ecosystem Services.**

In its Notice of Intent, NOAA requests information regarding “opportunities to benefit the ‘blue economy’ of the region, including promoting sustainable tourism and recreation,” as

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<sup>1</sup> This document does not purport to represent the views, if any, of New York University School of Law.

<sup>2</sup> Notice of Intent To Conduct Scoping and To Prepare a Draft Environmental Impact Statement for the Proposed Chumash Heritage National Marine Sanctuary, 86 Fed. Reg. 62,512 (Nov. 10, 2021).

<sup>3</sup> Broadly, ecosystem services are “the benefits people obtain from ecosystems.” Edward B. Barbier, *Progress and Challenges in Valuing Coastal and Marine Ecosystem Services*, 6 REV. ENV’T ECON. & POL’Y 1, 2 (2012) (quotation marks and citation omitted).

well as “the potential socioeconomic, cultural, and biological impacts of designation.”<sup>4</sup> The Sanctuary has the potential to make numerous contributions to the economy of the surrounding area, because protected areas both contribute to local economies and safeguard ecosystem services that provide value to local communities. NOAA should fully evaluate these positive impacts in its analysis.

Federally protected areas often enhance the economies of surrounding communities. Studies of these areas have found an association between federal conservation and economic growth in services sectors—such as tourism and recreation—as well as a concurrent decline in extractive industries, avoiding harmful “boom-and-bust” cycles associated with resource extraction that can negatively impact communities in the long term.<sup>5</sup> Studies have also found positive relationships between federally protected lands and per capita income.<sup>6</sup> Rasker et al. (2013), for instance, demonstrated that “on average, [n]on-metro counties [in the American West] have a per capita income that is \$436 higher for every 10,000 acres” of protected lands, ultimately concluding that “on average, counties with national parks, wilderness, and other forms of protected public lands benefit through increased economic performance.”<sup>7</sup> And such economic activity is not limited to terrestrial areas. One study found that visitors to the Florida Keys National Marine Sanctuary in 2019 alone spent approximately \$1.7 billion, which “translate[d] to a contribution of 19,688 total jobs” in the region.<sup>8</sup>

Designating the Sanctuary is particularly likely to generate beneficial localized economic activity due to the vitality of California’s marine economy.<sup>9</sup> In 2018, the state’s marine economy generated \$49.1 billion in gross domestic product and employed more than half a million people.<sup>10</sup> That year, 75 percent of the jobs within California’s marine economy were related to tourism and recreation,<sup>11</sup> a sector that the proposed Sanctuary would likely enhance. The Monterey area—located to the north of the proposed Sanctuary, and the site of a National Marine Sanctuary itself—is an instructive case study. There, economists have concluded that “the development of very robust tourism, research, and education sectors—based on the very ecological systems that have been under pressure for so long—has produced a much more

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<sup>4</sup> 86 Fed. Reg. at 62,515.

<sup>5</sup> Inst. for Pol’y Integrity, Comments Re: Review of Certain National Monuments Established Since 1996; Notice of Opportunity for Public Comment 6-9 (July 10, 2017)

[https://policyintegrity.org/documents/National\\_Monument\\_comments\\_July2017.pdf](https://policyintegrity.org/documents/National_Monument_comments_July2017.pdf)

<sup>6</sup> Paul Lorah & Rob Southwick, *Environmental Protection, Population Change, and Economic Development in the Rural Western United States*, 24 POPULATION AND ENVIRONMENT 255, 265 (Jan. 2003).

<sup>7</sup> Ray Rasker, Patricia H. Gude & Mark Delorey, *The Effects of Protected Federal Lands on Economic Prosperity in the Non-metropolitan West*, 43 J. REG’L ANALYSIS & POL’Y, 110, 118, 110 (2013).

<sup>8</sup> Kathryn Gazal, Ross Andrew & Robert Burns, *Economic Contributions of Visitor Spending in Ocean Recreation in the Florida Keys National Marine Sanctuary*, 14 WATER 198, 198, 204 (2022).

<sup>9</sup> In considering the “marine economy,” the relevant NOAA report evaluates “benefits derived from the oceans and Great Lakes that result in jobs and wages, and that contribute directly to the nation’s gross domestic product, or GDP.” NAT’L OCEANIC & ATMOSPHERIC ADMIN. OFFICE OF COASTAL MGMT., NOAA Report on the U.S. Marine Economy: Regional and State Profiles 1 (2021), <https://coast.noaa.gov/data/digitalcoast/pdf/econ-report-regional-state.pdf>

<sup>10</sup> *Id.* at 25.

<sup>11</sup> *Id.*

vibrant economy overall” than the area’s previous economy, which was “predominantly based on natural-resource intensive industries.”<sup>12</sup>

California’s marine ecosystems also provide valuable ecosystem services that the Sanctuary could protect. Broadly, ecosystem services include goods, services, and cultural benefits.<sup>13</sup> Coastal and marine ecosystems generally contribute to transportation, recreation, tourism, scientific research, nutrient retention and cycling, flood control, storm protection, shoreline stabilization, and species habitat.<sup>14</sup> Importantly, cultural benefits also include the benefits to individuals from appreciating an ecosystem’s existence, which “may be particularly important among [certain] indigenous communities . . . [who] see their cultural, heritage, and traditional knowledge closely intertwined with the surrounding environment.”<sup>15</sup> Here, as the nomination specifies, relevant cultural benefits include submerged ancestral villages, including the “resting places of [Chumash] ancestors . . . .”<sup>16</sup> Designating the Sanctuary and limiting oil and gas extraction would prevent the damage that these activities often cause to ecosystem services.<sup>17</sup>

The Sanctuary could also increase the resilience of California’s marine resources to the impacts of climate change. In general, climate change threatens marine ecosystem services.<sup>18</sup> And in California, climate change is already contributing to ocean warming, ocean acidification, and algal blooms.<sup>19</sup> For instance, an algal bloom contributed to the need to delay the opening of the California Dungeness crab fishery in 2015–2016.<sup>20</sup> Protecting marine areas can buffer these climate impacts.<sup>21</sup>

Federal courts have repeatedly recognized the relevance of climate vulnerability and resilience to NEPA analysis.<sup>22</sup> Agencies have previously considered these effects in their descriptions of the “affected environment,” their assessment of the cumulative effects of a federal action, or in a separate section of the environmental impact statement focused on climate change.<sup>23</sup> The Biden administration’s recent emphasis on building climate resilience and

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<sup>12</sup> Jason Scose & Judith Kildow, *Ecosystem Services and Their Economic and Social Value*, in ROUTLEDGE HANDBOOK OF OCEAN RESOURCES AND MANAGEMENT 176, 182 (Hance D. Smith et al., eds., 2015).

<sup>13</sup> Barbier, *supra* note 3, at 2.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> Northern Chumash Tribal Council, Chumash Heritage National Marine Sanctuary Nomination 1 (June 2015).

<sup>17</sup> Scose & Kildow, *supra* note 12, at 182.

<sup>18</sup> Mary Ruckelshaus et al., *Securing Ocean Benefits for Society In the Face of Climate Change*, 40 MARINE POL’Y 154, 154 (2012).

<sup>19</sup> Leila Sievanen et al., California’s Coast and Ocean Summary Report; California’s Fourth Climate Change Assessment 8, 44 (2018), [https://www.energy.ca.gov/sites/default/files/2019-11/Statewide\\_Reports-SUM-CCCA4-2018-011\\_OceanCoastSummary\\_ADA.pdf](https://www.energy.ca.gov/sites/default/files/2019-11/Statewide_Reports-SUM-CCCA4-2018-011_OceanCoastSummary_ADA.pdf)

<sup>20</sup> *Id.* at 8-9, 30-31, 44.

<sup>21</sup> Ruckelshaus, *supra* note 18, at 156.

<sup>22</sup> See, e.g., *Cent. Oregon Landwatch v. Connaughton*, 696 F. App’x 816 (9th Cir. 2017); *AquAlliance, et al., v. U.S. Bureau of Reclamation*, 287 F. Supp. 3d 969, 1028 (E.D. Cal. 2018).

<sup>23</sup> Inst. for Pol’y Integrity, Comments on the National Environmental Policy Act Implementing Regulations Revisions 33, <https://policyintegrity.org/projects/update/comments-to-ceq-on-proposed-revisions-to-nepa-regulations> (hereinafter “Pol’y Integrity NEPA Comments”) (citing Jessica Wentz, *Assessing the Impacts of Climate*

adaptive capacity underscores the importance of analyzing these impacts.<sup>24</sup> NOAA should accordingly ensure that its alternatives analysis reflects the increased climate resilience associated with designation and any associated regulations it chooses to adopt.

## **II. NOAA Should Fully Consider the Environmental Justice Implications of Different Alternatives.**

Environmental justice considerations are an important component of NEPA assessments. Courts have held that the statute requires a “hard look” at environmental justice concerns on the record, and Executive Order 12,898 requires that environmental justice considerations be incorporated into agency analysis.<sup>25</sup> The President has also specifically directed agencies to “make achieving environmental justice goals part of their missions . . . .”<sup>26</sup> Agencies can facilitate these goals by embedding environmental justice considerations into their alternatives analysis, allowing them to compare the distributional and equity impacts of various project options.<sup>27</sup> Environmental justice considerations could include impacts on tribal and Indigenous communities, as well as low-income populations and communities of color.<sup>28</sup>

Restrictions on oil and gas extraction could advance environmental justice in two ways. First, as described extensively in the Sanctuary nomination, restrictions on extractive activities would help ensure the preservation of Chumash cultural sites, including villages submerged by the ocean.<sup>29</sup> NOAA should account for these distributional effects in its draft environmental impact statement. Second, because society as a whole experiences many risks and externalities from oil and gas extraction (i.e., via oil spills and climate harms)—and these harms can disproportionately affect underserved groups—limiting extraction can have beneficial environmental impacts on minority and low-income communities.<sup>30</sup> NOAA should assess any such potential impacts.

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*Change on the Built Environment Under NEPA and State EIA Laws: A Survey of Current Practices and Recommendations for Model Protocols* (2015)).

<sup>24</sup> Exec. Order No. 13,990 § 1, 86 Fed. Reg. 7037, 7037 (Jan. 25, 2021) (establishing an Administration policy to “bolster resilience to the impacts of climate change”); Exec. Order No. 14,008 § 101, 86 Fed. Reg. 7619, 7619 (Feb. 1, 2021) (declaring the Administration’s policy to “move quickly to build resilience, both at home and abroad, against the impacts of climate change that are already manifest and will continue to intensify according to current trajectories”).

<sup>25</sup> See, e.g., *California v. Bernhardt*, 472 F. Supp. 3d 573, 621–22 (N.D. Cal. 2020) (finding NEPA’s “hard look” requirement was not met when BLM concluded there would be no significant impact on minority or low-income populations while ignoring contrary evidence in the record); Exec. Order No. 12,898 § 1-101, 59 Fed. Reg. 7629, 7629 (Feb. 16, 1994) (“[E]ach Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations . . .”).

<sup>26</sup> 86 Fed. Reg. at 7629.

<sup>27</sup> Pol’y Integrity NEPA Comments, *supra* note 25, at 42.

<sup>28</sup> White House Environmental Justice Advisory Council, Final Recommendations: Justice40 Climate and Economic Justice Screening Tool & Executive Order 12898 Revisions 77-81 (2021), <https://www.epa.gov/sites/default/files/2021-05/documents/whiteh2.pdf> (defining environmental justice and environmental justice communities).

<sup>29</sup> Northern Chumash Tribal Council, *supra* note 16, at 1, 8-9, 17.

<sup>30</sup> Scose & Kildow, *supra* note 12, at 182.

## **Conclusion**

Through designation and appropriate management approaches, NOAA could contribute to the economic welfare of communities, enhance climate resilience, advance the President's environmental justice priorities, and preserve and honor Chumash cultural heritage. The draft environmental impact statement that NOAA develops should fully assess these potential benefits.

Respectfully,

Chelsea Pardini, Economic Fellow  
Max Sarinsky, Senior Attorney  
Amanda Zerbe, Legal Fellow