

SANTA YNEZ BAND OF CHUMASH INDIANS

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Ms. Kelly Hammerle, Program Manager
Bureau of Ocean Energy Management (VAM-LD)
45600 Woodland Road
Sterling, VA 20166
<http://www.regulations.gov/docket/BOEM-2025-0015/document>

**Re: Request for Information and Comments on the Preparation of the
11th National Outer Continental Shelf Oil and Gas Leasing Program
[Docket No. BOEM-2025-0015]
AND REQUEST FOR TRIBAL CONSULTATION**

Dear Ms. Hammerle:

Thank you for the opportunity to comment on the Bureau of Ocean Energy Management's (BOEM) Request for Information (RFI) and Comments on the Preparation of the 11th National Outer Continental Shelf (OCS) Oil and Gas Leasing Program ("2025 Leasing Program"). These comments are submitted on behalf of the Santa Ynez Band of Chumash Indians (hereafter "SYBCI" or "Tribe"). Offshore oil and gas exploration, lease development and decommissioning activities are a substantial undertaking that requires Tribal engagement throughout the process. This is not just an issue of administrative due process during the permitting process for lease sales. Federally recognized Tribes are sovereign entities. As such, BOEM should have a dedicated representative at its Pacific Regional Office who should be responsible for acting as liaison between Tribes and the federal government for the 2025 Leasing Program. Having a representative at BOEM's Pacific Office dedicated to the preservation of Tribal engagement at each stage of the permitting, construction, operation and post-development phases of offshore oil and gas exploration and lease development would be beneficial to both BOEM as well as Tribes.

The ancestors of the *autochthonous* people—now known as Chumash—sustained their diverse customs, cultural beliefs, and maritime communities for thousands of years. The Chumash have one of the longest known occupations on any coastline in the Americas, beginning at least 13,000 years ago. The Chumash is considered to have the oldest seafaring economy in the Americas. To honor and respect our connections as people Indigenous to this region and place, there is a need for Tribal government consultation, collaboration and assertion of Tribally designated stewardship in the lands and coastal marine areas of the Chumash.

There are spiritual and sacred foundations to Chumash cultural heritage that should not be overlooked or underappreciated. Chumash belief and knowledge systems are based on the interactions and connections they have with the natural world. These connections are actively cultivated and reclaimed in tradition and maritime practices, such as the annual tomol (plank canoe) paddle by the "Brotherhood of the Tomol" from the mainland across the Santa Barbara Channel to Limuw (or Santa Cruz Island). The tomol crossing is dangerous. The crossing

requires collaboration and partnership that unites the many Chumash Tribes and communities. The tomol is symbolic of the restoration and cultural renewal of the Chumash maritime practice—the paddle of the tomol across the Santa Barbara Channel. This practice connects the people with the coast, sea, and islands.

Because of the region's rich cultural heritage and ecological diversity, the south-central bioregion of California is an area of international significance; the bioregion is recognized by scientists as part of one of the world's hot spots for threatened native species diversity.¹ The geographic scope of the Chumash inhabitation extended from Piedras Blancas in central California along the northeastern area of the Pacific Ocean, south around Point Conception into the Southern California Bight, and down to Malibu Point in the County of Los Angeles. One hundred and forty-eight historic Chumash village sites have been identified from Malibu to San Luis Obispo, including eleven on Santa Cruz Island, eight on Santa Rosa Island, and two on San Miguel Island. The Chumash diet consisted of over 150 types of marine fishes as well as a variety of marine mammals and shellfish, including crabs, lobsters, mussels, abalone, clams, oysters, chitons, and other gastropods. Shellfish were essential to the Chumash economy and material culture. In fact, the Chumash produced the majority of shell bead money used by Tribal people throughout California. Tribes are sovereign governments.

Tribal people are pursuing “collective continuance” that is essential to a Tribe’s “self-determination.” The Tribe is not a stakeholder in the future marine resource planning – new BOEM leases will require development of coastal and marine areas inhabited by the Chumash for thousands of years. The SYBCI is a sovereign authority. Our goal is to maintain self-governance and that requires that we sustain our cultural heritage in a context that includes dramatic impacts from climate change, changes in the political context in which decisions are made, and a recognition that there are synergistic impacts from continued multiple marine uses of the coastal and marine ecosystems (including existing offshore oil development and decommissioning activities offshore Santa Barbara and Ventura Counties and within the Santa Barbara Channel) of BOEM’s Pacific Region.

The recent designation of the Chumash Heritage National Marine Sanctuary (CHNMS) should be understood within the context of a new Federal-SYBCI relationship and partnership. This evolving relationship is based on a commitment that the Tribe has made to work as co-stewards in the development and implementation of the CHNMS Management Plan. Chumash are also active participants in the Channel Islands National Marine Sanctuary (CINMS). BOEM’s *11th National Outer Continental Shelf Oil and Gas Leasing Program* (hereafter, “2025 Lease Program”) will impact on the CINMS and CHNMS management and planning activities that are located within the Pacific Region of the OCS. Leasing areas within the national marine sanctuaries is not allowed by Federal law. Future lease sales of the OCS for oil exploration and development will take place on the border of the CINMS and the CHNMS. BOEM is responsible for managing marine energy resources associated with the OCS.

As an initial matter, the Tribe does not believe that the Secretary is required to prepare the 2025

¹ Stein, B.A., L.S. Kutner, and J.S. Adams. 2000. PRECIOUS HERITAGE: THE STATUS OF BIODIVERSITY IN THE UNITED STATES. New York: Oxford University Press. 416 p.

Leasing Program. Under the Outer Continental Shelf Lands Act (OCSLA), as amended, the BOEM within the Department of the Interior (DOI) must prepare and maintain forward-looking five-year plans—referred to by BOEM as national programs or five-year programs—to schedule proposed oil and gas lease sales on the U.S. outer continental shelf (OCS). The *10th 5-Year Leasing Program* covers 2024–2029. There are leasing sales scheduled for 2025, 2027, and 2029. Accordingly, the Secretary is not required to act pursuant to the OCSLA to re-evaluate the nation’s energy needs for another five-year period.

Legal experts say the question of whether a president can revoke a predecessor’s decision to invoke the OCSLA and withdraw areas from mineral leasing and drilling remains legally unsettled. Congress has the power to overturn withdrawals of land. Nevertheless, BOEM must comply with all applicable laws.² First, it is unlawful to lease OCS areas previously withdrawn by President Biden pursuant to OCSLA Section 12(a)—which includes the Pacific OCS Region (“Region”). Second, it is unlawful to lease any areas that are within the boundaries of a designated national marine sanctuary. The National Marine Sanctuaries Program (NMSP) manages several designated national marine sanctuaries with their Tribal and state partners. The Tribes have continued work closely as co-stewards of existing national marine sanctuaries – in particular, the process to finalize the CHNMS designation and associated Management Plan required major resources from the SYBCI and other Chumash Tribal bands for well over a decade. Third, the SYBCI recommends that BOEM exclude areas for leasing for OCS oil and gas activity within the Pacific Region that are within designated national marine sanctuary water pursuant to the OCSLA Section 18(a)(2) factors. The OCSLA balancing test under Section 18(a)(3) likewise indicates that the Pacific Region must be excluded. Fourth, there are identified ecological and culturally sensitive areas that must be excluded from leasing. Fifth, BOEM must prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA), conduct Tribal consultation, and ensure compliance with the Coastal Zone Management Act (CZMA). The marine areas under consideration in the Pacific Region have been identified by scientists as of international significance due to the region’s rich traditional cultural heritage and the diversity of coastal marine life. This letter describes why the Tribe opposes leasing new marine areas within the Pacific Region as noted in BOEM’s 2025 Lease Program.

I. Relevant Federal Laws and Policies.

A. OCSLA

OCSLA provides for the development of an OCS leasing program by which the Secretary determines the “size, timing, and location of leasing activity which he determines will best meet national energy needs” over a five-year period (43 U.S.C. § 1344(a)). In selecting lease areas, the Secretary must consider eight factors listed in Section 18(a)(2), including the ecological characteristics of the region, a balancing of developmental benefits and environmental risks, and the relative environmental sensitivity and marine productivity of the region, among others (43

² University of California Irvine Law. Briefing Report. STRENGTHENING THE GREAT BLUE WALL: THE WEST COAST RESPONSE TO OFFSHORE DRILLING. UC Newkirk Center for Science and Society and the Center for Land, Environment and Natural Resources. (October) 2018.

U.S.C. § 1344(a)(2)(A)–(H)). OCLSA further mandates consideration of environmental harms by requiring the OCS leasing program to “obtain a proper balance” of three factors (43 U.S.C. § 1344(a)(3)). The Secretary must balance “the potential for environmental damage, the potential for discovery of oil and gas, and the potential for adverse impact on the coastal zone” in selecting the timing and location of leasing (*Id.*).

Section 12(a) of the statute provides the President with the unique authority to “from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf” (43 U.S.C. § 1341(a)). This provision enables the President to determine that certain areas of the OCS must be excluded from the OCS leasing program for a set time. The President may also act under Section 12(a) to withdraw areas from the OCS leasing program indefinitely. *See* Memorandum on Modification of the Withdrawal of Areas of the United States Outer Continental Shelf from Leasing Disposition, 44 Weekly Comp. Pres. Docs. 986, 986 (July 14, 2008).

The Secretary is required to “invite and consider suggestions” from other federal agencies and the Governor of any State that may be affected by the program (43 U.S.C. § 1344(c)(1)) and consider any coastal zone management program developed by an affected coastal state (*Id.* § 1344(f)(5)). OCSLA mandates that coastal states have the right to participate in decisions concerning the OCS “to the extent consistent with the national interest” (*Id.* § 1332(4)(C)). Furthermore, in pursuit of leasing the Secretary must “conduct environmental studies and prepare any environmental impact statement” required by NEPA, 42 U.S.C. § 4332(2)(c). 43 U.S.C. § 1344(b)(3).

B. National Marine Sanctuaries Act

As noted earlier, SYBCI is a co-steward of the CHNMS, and an active member of the CINMS planning activities. Designation of a marine areas as national marine sanctuaries enable the Federal government with their partners to develop a system to conserve and manage sanctuaries, including regulating activities which may affect them (*Id.* § 1431(b)(2)). In the case of the CINMS and CHNMS Management Plans, new OCS oil and gas activity is a marine resource that is not “compatible” with the NMSA’s priority management goal of marine life protection. The NMSA was established by Congress to “maintain the natural biological communities” and to protect “natural habitats, populations, and ecological processes” (*Id.* § 1431(b)(3)). The exploration for, development, and production of oil and gas is one commonly prohibited activity in national marine sanctuaries. *See* 15 C.F.R. §§ 922.232(a)(1) (in the CHNMS), 922.72(a)(1) (in the CINMS), and 922.82(a)(1) (in the Greater Farallones NMS).

Both the CINMS and the CHNMS, designated *via* the National Marine Sanctuaries Act, 16 U.S.C. § 1433, must be excluded from the final 2025 BOEM Lease Program. The CINMS was designated as a national marine sanctuary in 1980, therefore qualifying for OCSLA Section 12(a) withdrawal under George W. Bush’s Presidential Memorandum issued on July 14, 2008. Aside from its withdrawal under OCSLA, the regulations governing sanctuary-specific activities in the CINMS also explicitly prohibit “exploring for, developing, or producing hydrocarbons” (15 C.F.R. § 922.72(a)(1)). Furthermore, “discharging or depositing from within or into the Sanctuary any material or other matter” and “discharging or depositing from beyond the boundary of the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality” are prohibited activities in and around CINMS with

no exception for new offshore oil and gas exploration, lease development, and decommissioning activities (*Id.* § 922.72(a)(3)). The regulations exempt oil and gas leases in effect prior to 1981, yet new leases are expressly prohibited. Therefore, BOEM's 2025 Lease Program may not issue new leases within the boundaries of the Federally designated CINMS.

BOEM's 2025 Lease Program must also exclude the CHNMS from new leases for OCS oil and gas activity. The CHNMS regulations in the Final Management Plan expressly prohibit "exploring for, developing, or producing oil, gas, or minerals within the Sanctuary" (*Id.* § 922.232(a)(1)). The regulations also prohibit "discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter" and "discharging or depositing from beyond the boundary of the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality" in CHNMS with no exception for new offshore oil and gas exploration, lease development and decommissioning activities (*Id.* § 922.232(a)(2)). In 2008, President George W. Bush modified previous withdrawals under Section 12(a) in 1992 and 1998 (Memorandum on Modification of the Withdrawal of Areas of the United States Outer Continental Shelf from Leasing Disposition, 44 Weekly Comp. Pres. Docs. 986, 986 (July 14, 2008)). Congress's previous failure to act is not sufficient evidence to interfere with the separation of powers expressed in the Constitution.

The prohibition on new OCS oil and gas lease sales within the CINMS and CHNMS is consistent with the purpose of the NMSA that states that the priority management goal of the sanctuary program is to "maintain the natural biological communities" and to protect "natural habitats, populations, and ecological processes" (16 U.S.C. § 1431(b)(3)). Designation of a national marine sanctuary constitutes an acknowledgement by the federal government of the marine ecosystem's conservational, recreational, ecological, or cultural significance, among other qualities (*Id.* § 1431(a)(2)). Since the passage of the NMSA, the federal government has recognized that the exploration for, development of, and production of OCS oil and gas greatly threatens the recognized value of designated national marine sanctuaries (*Id.* § 1433).

C. NEPA

NEPA requires the preparation of an EIS for "major Federal actions significantly affecting the quality of the human environment" (42 U.S.C. § 4332(C)). If a proposed federal action either "does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of [the proposed action's effects] is unknown," the federal agency must prepare an environmental assessment (EA) (*Id.* § 4336(b)(2)). If a federal agency issues "a finding of no significant impact (FONSI), it must supply a convincing statement of reasons to explain why a project's impacts are insignificant . . . to show that the agency took the requisite hard look at the consequences of its action" (*Ctr. For Biological Diversity v. Kempthorne*, 588 F.3d 701, 711 (9th Cir. 2009)) (internal quotations omitted). Alternatively, if an Environmental Assessment's evidence and analysis demonstrates that the proposed action "has a reasonably foreseeable significant effect on the quality of the human environment," then the agency must prepare an EIS (46 U.S.C. § 4336(b)(1)).

Under NEPA, an EIS must be prepared for "major Federal actions significantly affecting the quality of the human environment" (42 U.S.C. § 4332(C); *see id.* § 4336(b)(1) ("An agency shall issue an environmental impact statement with respect to a proposed agency action

requiring an environmental document that has a reasonably foreseeable significant effect on the quality of the human environment.”)). The EIS must describe, among other things, the “reasonably foreseeable environmental effects of the proposed agency action,” “any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented,” and “a reasonable range of alternatives to the proposed agency action” (*Id.*). Such analysis ensures that environmental impacts and alternative courses of action are fully explored and disclosed to the public prior to expending significant resources developing and approving any government program.

The SYBCI maintains that the 2025 Leasing Program meets the test for significance. OCS oil and gas exploration, development and decommissioning activities pose risks to marine life and may contribute to adverse impacts to water quality, marine life, cultural resources, air quality, climate change, and many other aspects of the human environment. Critically, the effects of oil spills cannot be underestimated. These potential impacts readily trigger the requirement for an EIS by BOEM to be completed. *See Klamath Siskiyou Wildlands Center*, 468 F.3d at 562 (“[A]n EIS ‘must be prepared if substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor.’”); *Idaho Sporting Congress*, 137 F.3d at 1150.

BOEM must prepare an EIS for its 2025 Leasing Program because it is a major federal action that will have “a reasonably foreseeable significant effect on the quality of the human environment” (42 U.S.C. § 4336(b)(1)). None of the statutory exceptions that would allow BOEM to avoid preparing a NEPA document apply here. The statute provides that preparation of an “environmental document” is not required if:

- (1) the proposed agency action is not a final agency action . . .;
- (2) the proposed agency action is excluded pursuant to [NEPA categorical exclusions] or another provision of law;
- (3) the preparation of such a document would clearly and fundamentally conflict with the requirements of another provision of law; or
- (4) the proposed agency action is a nondiscretionary action with respect to which such agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action.

(42 U.S.C. § 4336(a)). The 2025 Leasing Program does not fall under any of these four categories for the following reasons: First, an OCS five-year leasing program is a major federal action (and a final agency action). Second, no categorical exclusions designated by BOEM or any other agency apply here. Third, BOEM has not shown that preparing an environmental document would conflict with the requirements of any other law. Finally, the 2025 Leasing Program is not “a nondiscretionary action with respect to which [BOEM] does not have authority to take environmental factors into consideration in determining whether to take the proposed action” (42 U.S.C. § 4336(a)). OCSLA explicitly requires BOEM “to take environmental factors into consideration” in developing the program (*See* 43 U.S.C. § 1344(a) (directing the Bureau to consider environmental factors in preparing the National OCS Program)). As none of the exceptions to undergoing NEPA review apply, BOEM must prepare an EIS for the 2025 Leasing Program.

D. ESA

The coastal and marine area of the Pacific Region is recognized by the Chumash people and scientists as a bioregion rich in native species diversity. This high native species diversity is based, in part, on the long history of stewardship by Chumash people of the animals, plants and insects of the bioregion. It is also a reflection of the ecological transition or “ecotone” that exists between habitats associated with central and southern California coastal ecosystems and the oceanographic processes that influence the ecology of the bioregion. The oceanography of the marine area of the CINMS is influenced by the cooler water of the California Current large marine ecosystem (LME) and the warmer waters of the California countercurrent and the Southern California Bight. This mixing of marine waters contributes to the high diversity of marine life.

Chumash understood and adapted to a living Earth. Coastal and marine areas were more than just places for living and gathering food, they also include special ceremonial places used to celebrate solstice and other ceremonial events. Species, such as the swordfish, are more than food, but their entire body and being is valued. They have a vital role in Chumash songs, rituals, and dances.

There are several ecological concerns facing the coastal and marine areas of this region, including but not limited to pollution, water quality, ocean acidification, hypoxia, phytoplankton blooms, species and habitat loss, sea level rise, coastal erosion, oil and gas development, offshore wind/wave energy, water quality, invasive species, and risks posed by climate impacts. The European colonialization of California significantly impacted the Chumash people in numerous ways.³ Today, the ecological changes to the coastal area long inhabited by the Chumash people show that there has been a dramatic decline in the diversity of native species that coincides with the introduction of non-native invasive species in southern and central California. Industrialization, urbanization, exploitation of coastal resources, and destruction of coastal ecosystems (wetlands, dunes, scrub habitat, riparian areas, sandy beaches), among other factors, contribute to the loss of native species diversity. Human use, urban and industrial development, pollution, invasive species introduction, and climate change have synergistic impacts, resulting in a larger overall impact than the sum of their separate effects.

The plants, animals and insects of the south-central coastal bioregion are part of a Mediterranean-type floristic province that is recognized as one of the most threatened coastal and marine areas of the planet. Anthropogenic climate change exacerbates the capacity of species to adapt to changes in ecosystems that are a result of exploitation, pollution, the introduction of invasive species, habitat fragmentation, urbanization, and other activities. Today, black abalone and other marine species are considered special status species by state and federal resource agencies and have been listed as threatened or endangered with the

³ Holmes, M.S. and J.R. Johnson. 1998. THE CHUMASH AND THEIR PREDECESSORS: AN ANNOTATED BIBLIOGRAPHY. Contributions in Anthropology No. 1, Santa Barbara Museum of Natural History.

Endangered Species Act.⁴ Anthropogenic climate change and a range of other factors, such as overfishing, water pollution, marine invasive species, and habitat loss contribute to the plight of marine life offshore of California.⁵

Along coastal southern California, entire ecological communities are considered threatened or endangered. The federal government indicates that coastal sage scrub communities and several other coastal ecosystems in southern California are “endangered or threatened ecosystems.”⁶ The US Department of Interior notes that the native plants of coastal California are so vulnerable to anthropogenic climate change that two-thirds of these “endemics” could suffer more than an 80 percent reduction in geographic range by the end of the century. Fifty-five percent of the state-listed animals and 25 percent of the threatened plants depend on coastal wetlands, such as saltwater marshes, vernal pools, and sloughs. Forty-three percent of the federally listed species rely directly on wetlands for survival. The estimated loss in estuarine wetlands is from 75 to 90 percent. The estimated loss in riparian communities throughout the state is 90 to 95 percent. The estimated loss in vernal pools is 90 percent. The threats to coastal ecosystems should be understood within the broader context of anthropogenic climate change.⁷

The loss of native species diversity should be considered a threat to the Chumash cultural heritage. Tribal members have increasingly become more aware of the threats of anthropogenic climate change on traditional lands.⁸ Continued reliance of fossil fuels exacerbates the challenge of mitigating and adapting to the risks posed by climate change to natural and cultural resources. Cultural adaptation depends on the presence of relatively healthy ecosystems to maintain food and water security. Climate “refugia,” in the past, served to foster cultural resilience in the face of food and water insecurity and the competition for resources during drought, floods, fires and famine.⁹ Few climate refugia exist today – it is fair to note,

⁴ California Department of Fish and Wildlife Biogeographic Data Branch, State and Federally Listed Endangered and Threatened Animals of California, Retrieved 2024-11-02 available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109405&inline>

⁵ Mooney, H. and E. Zavaleta. 2016. ECOSYSTEMS OF CALIFORNIA: THREATS & RESPONSES SUPPLEMENT FOR DECISION MAKING. California: University of California Press; Kappel, C.V. et al. 2009. Mapping cumulative human impacts to California Current marine ecosystems, CONSERVATION LETTERS 2: 138–148.

⁶ Noss, R.F., E.T. LaRoe, and J. M. Scott. 1995. U.S. Department of the Interior Biological Report No. 28. ENDANGERED ECOSYSTEMS OF THE UNITED STATES: A PRELIMINARY ASSESSMENT OF LOSS AND DEGRADATION. National Biological Service, Washington D.C.

⁷ Myers, M.R., D.R. Cayan, S.F. Iacobellis, J.M. Melack, et al. 2017. SANTA BARBARA AREA COASTAL ECOSYSTEM VULNERABILITY ASSESSMENT. CASG-17-009.

⁸ Santa Ynez Band of Chumash Mission Indians. 2020. CHUMASH CLIMATE CHANGE VULNERABILITY ASSESSMENT. Final Report, June. This report focuses on the inland area inhabited by the Tribe. See also SYBCI. 2022. IMPACTS OF CLIMATE CHANGE ON THE SANTA YNEZ BAND OF CHUMASH INDIANS.

⁹ McGinnis, M.V. 2016. Science and Sensibility: Negotiating an Ecology of Place. The University of California Press; McGinnis, M.V. 2008. Protecting Climate Refugia Areas: The case of the Gaviota coast in southern California, ENDANGERED SPECIES UPDATE 25, 4 (June):103-109 McGinnis, M.V. 2011. Adapting to Climate Impacts in

however, that existing California marine protected areas (MPAs) and designated national marine sanctuaries serve as potential refuge areas for marine life. Overall, the continued loss of coastal ecosystems exacerbates the capacity of native species in California to adapt to the substantive changes brought on by the anthropogenic climate disturbance, including the risks and threats posed by rising seas and other coastal hazards.¹⁰

The ESA directs the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to determine which species of plants and animals are “threatened” and “endangered” and place them on the list of protected species (§§ 1533(a)(1), (c)(1)). The ESA provides a variety of protections for species listed as threatened or endangered, to ensure not only the species’ continued survival, but their ultimate recovery. Section 7 of the ESA requires federal agencies to consult with FWS and/or NMFS to ensure that their actions are “not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification” of critical habitat (16 U.S.C. § 1536(a)(2)). The consultation process is designed “to ensure compliance with the [ESA’s] substantive provisions” (*Thomas v. Peterson*, 753 F.2d 754, 764 (9th Cir. 1985)). Section 7 defines the term “agency action” as “any action authorized, funded, or carried out” by the agency (16 U.S.C. § 1536(a)(2)). The term “action” is further defined by regulation as “all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies” and includes, among other examples, “granting of licenses” (50 C.F.R. § 402.02). If an action “may affect” or is likely to adversely affect a listed species, formal consultation is required (50 C.F.R. §§ 402.14(a), 402.12(k)). Formal consultation involves preparation of a biological opinion (“BiOp”) (16 U.S.C. § 1536(b)(3)(A)). The BiOp must use the best available scientific information to evaluate the current status of the species and habitats, the effects of the action on species conservation, and cumulative effects (*Id.* § 1536(a)(2), (b)(3)(A); 50 C.F.R. §§ 402.02, 402.14(g)–(h)). Through formal consultation, FWS or NMFS prepares a biological opinion as to whether the action will cause jeopardy or destroy or adversely modify critical habitat, and if so, suggests “reasonable and prudent alternatives” to the action (16 U.S.C. § 1536(b)(3)(A)). This analysis is critical because if the wildlife agency makes a jeopardy determination at the end of the consultation process, the action simply cannot go forward as is (*Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 652 (2007)). The consultation requirement reflects “a conscious decision”; FWS and NMFS share responsibility for implementing the ESA (*See* 16 U.S.C. § 1532(15)). FWS retains jurisdiction over terrestrial species and freshwater aquatic species, while NMFS retains jurisdiction over marine species and most anadromous fish.

The Pacific Region provides habitat to numerous special status species Federally listed as

California: The Importance of Civic Science in Local Coastal Planning, COASTAL MANAGEMENT 39: 3 (April):225-241.

¹⁰ Chornesky, E.A. et al. 2015. Adapting California's Ecosystems to a Changing Climate. BIOSCIENCE 65(3): 247–262. For a detailed analysis of coastal Chumash village areas at risk from climate disturbance, see: McGinnis, M.V., D. Revell, and M. Jamieson. 2025. Threatened Chumash Coastal Heritage: An Assessment of The Severity of Coastal Hazard Exposure. A Report Produced for the Santa Ynez Band of Chumash Indians. March.

threatened or endangered under the ESA. Special status species will likely be impacted by new oil and gas lease development and associated activities, including the development of onshore support facilities (such as pipelines). These include, but are not limited to: the southern sea otter, the Guadalupe Fur Seal, the light-footed Ridgway's rail, western snowy plover, marbled murrelet, California least tern, short-tailed albatross, Hawaiian petrel, and California Ridgway's rail (under FWS jurisdiction); and black abalone, white abalone, sei whale, blue whale, fin whale, North Pacific right whale, humpback whale, sperm whale, southern California steelhead, scalloped hammerhead shark, southern green sturgeon, tidewater goby, loggerhead turtle, leatherback turtle, green turtle, and olive ridley turtle (under NMFS jurisdiction). The Pacific Region likewise includes critical habitat for many listed species. These species and habitats are part of what makes this Pacific Region unique and worthy of the multiple protections it has been awarded by Federal and State agencies.

The 2025 Leasing Program is an agency action that may affect species listed as endangered or threatened under the ESA. Therefore, consultation pursuant to Section 7(a)(2) of the ESA is required (16 U.S.C. § 1536(a)(2)). The 2025 Leasing Program is an "agency action" under the ESA because it is "authorized" by the federal government and is discretionary (*See* 16 U.S.C. § 1536(a)(2); *Karuk Tribe*, 681 F.3d at 1011). New leasing would threaten listed species with the many adverse impacts that come with offshore oil drilling, including the risk of oil spills. Accordingly, the BOEM "action" readily meets the trigger for consultation, that it "may affect" listed species. In addition, the 2025 Leasing Program threatens to destroy or adversely modify the critical habitat of these species.

E. CZMA and California Coastal Act

The CZMA provides that federal agencies carrying out such federal agency activities "shall provide a consistency determination to the relevant State agency . . . at the earliest practicable time" (*Id.* § 1456(c)(1)(C)). The CZMA requires the submission of sufficient information to the state (in this case, the CCC) to consider the effects of the proposed federal action on coastal resources and allow for a six-month review period (15 C.F.R. §§ 930.58, 930.60(a)). This consistency review process includes a determination of whether a federal action would "affect any land or water use or natural resource of the coastal zone," and whether the action is consistent with the enforceable policies of the state's approved Coastal Management Program (CMP) (16 U.S.C. § 1456(c)(1)(A)). The CMP notes the national importance of the California coast, especially for its historic, cultural, aesthetic, and conservation values.

The California Coastal Act ("Coastal Act") is important to consider by BOEM in future leasing of the Pacific Region (in accordance to Cal. Pub. Res. Code § 30008). Under the Coastal Act, the protection of the California's "natural and scenic resources is a paramount concern" and these resources must be protected to prevent further deterioration or destruction (Cal. Pub. Res. Code § 30001(b), (c)). In Chapter 3 of the Coastal Act the protection of marine resources, biological productivity, water quality, environmentally sensitive habitat areas, archaeological and paleontological resources, commercial and recreational fishing, and scenic and visual qualities is required (Cal. Pub. Res. Code §§ 30230, 30231, 30234, 30240, 30244, and 30251).

The 2025 Leasing Program is a "Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone." 16 U.S.C. §

1456(c)(1)(A). It is therefore subject to the CZMA’s consistency review process: it must be “carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.” *Id.* BOEM must provide a consistency determination to the CCC for review. *Id.* § 1456(c)(1)(C). In doing so, BOEM must submit adequate information to the CCC so that the state can consider the effects of the leasing program on coastal resources and review it for consistency with enforceable policies of the CMP, including Chapter 3 of the Coastal Act. *See* 15 C.F.R. §§ 930.58, 930.60(a); Cal. Pub. Res. Code § 30008.

II. Areas that Have Been Withdrawn Cannot Be Leased.

The SYBCI maintains that President Trump does not have the legal authority to lease OCS areas within the Pacific Region that have previously been withdrawn by President Biden pursuant to OCSLA Section 12(a), which includes Northern California, Central California, and Southern California Planning Areas, among other marine areas. The 2025 Leasing Program includes leasing that the Tribe believes is in excess of the Executive Branch’s statutory authority granted by Congress *via* OCSLA and future leasing per the 2025 Leasing Program is in violation of the Constitutional principle that supports “separation of powers”. Within the context of OCSLA, reading Section 12(a) to provide a presidential revocation power does not support Section 12’s role as a limit on the leasing powers granted under Section 8, 43 U.S.C. § 1337. Section 8 authorizes the lease of OCS land to meet the nation’s oil and gas needs, while Section 12 addresses restrictions on the use of OCS land, reserves rights for the Department of Defense, and provides the President’s withdrawal power. Allowing the President to revoke previous withdrawals does not serve as a limit on the leasing powers of Section 8, but rather expands the President’s role in leasing activity, circumventing the protective nature of the provision. Furthermore, interpreting Section 12(a) to authorize Presidential revocation of past withdrawals violates the Property Clause of the Constitution and the separation of powers doctrine. The Property Clause, U.S. Const. Art. IV, Section 3, cl. 2, grants Congress the power to dispose of and regulate all territory or property belonging to the US. As such, the President cannot regulate US territory or property without Congress’s delegation of this authority.

OCSLA Section 12(a) does not delegate revocation power for the reasons discussed above, nor has Congress acquiesced this revocation power implicitly by failing to challenge previous withdrawal modifications or revocations. Thus, President Trump’s revocation of President Biden’s withdrawal of certain areas from OCS leasing, without the delegated authority to do so, is in violation of the Property Clause and the separation of powers doctrine. Therefore, 2025 Lease Program must not include Biden’s withdrawn areas.

III. Relevant California Law and Policy.

California laws, goals and policies must be given specific consideration when deciding which areas will be included in the BOEM Leasing Program. BOEM is required to send letters to state governors requesting that they identify specific laws, goals, and policies that BOEM should consider during preparation of the five-year program (43 U.S.C. § 1344(c)(1); 30 C.F.R. § 556.202). Several California laws prohibit new leasing in the Pacific Region. For example, the California Public Resources Code Section 6245 expressly prohibits the California State Lands Commission (SLC) from entering into any new lease which authorizes the construction of oil-

and gas-related infrastructure in state waters within the Pacific OCS area (Cal. Pub. Res. Code § 6245(a)). In reviewing applications for existing lease renewals, extensions, amendments, or modifications, the law requires the Commission to consider whether the lease renewal, extension, amendment, or modification (1) is necessary to protect the marine environment or human health and safety, (2) is beneficial to the state for more than lease revenue, and (3) will impact the volume of oil and gas transported (*Id.* § 6245(c)(1)–(3)). Accordingly, this law limits the availability of infrastructure to transport oil and gas produced in the Pacific OCS Region, thereby placing it at odds with BOEM’s expansion of oil and gas production in the Region. Moreover, proposed legislation would require additional considerations, including the project’s history of oil spills, financial responsibility, and the potential impact on public resources (A.B. 1448, 2025-2026 Reg. Sess. (Cal. 2025)).

Pursuant to the CZMA, California has a federally approved coastal management program that is implemented by the California Coastal Commission (CCC). OCSLA’s regulations specifically require BOEM to ask states “to identify the relationship between any oil and gas activity and California under sections 305 and 306 of the CZMA, 16 U.S.C. 1454 and 1455” (30 C.F.R. § 556.202(c)). The CZMA requires federal government and federally permitted activities to comply with state coastal zone management programs approved under the CZMA. In 2017 during a previous leasing process, the CCC concluded that oil and gas development off California’s coast would not be consistent with California’s coastal protection laws, which include the Coastal Act and the California Coastal Sanctuary Act. The CCC also identified the 852 square miles of coastal state waters it had recently designated as a network of MPAs pursuant to the California Marine Life Protection Act of 1999. The Marine Life Protection Act of 1999 directs the state to redesign California’s system of marine protected areas (MPAs) to function as a network to increase coherence and effectiveness in protecting the state’s marine life and habitats; marine ecosystems; and marine natural heritage; as well as to improve recreational, educational and study opportunities provided by marine ecosystems subject to minimal human disturbance. Opening new OCS areas to oil and gas leasing is inconsistent with the protection of these designated MPAs.

In addition, there are four Chumash-California marine conservation areas located at Anacapa Island, Naples reef, Point Dume, and *Kashtayit* in southern California that are co-managed by the state and Chumash Tribes. These MPAs should not be impacted by future proposed OCS oil and gas activity, such as the development of pipelines to onshore support facilities.

Offshore development threatens sensitive coastal and nearshore marine areas not only with oil spills and air and water pollution, but also with the development of extensive onshore support facilities. Recent updates regarding marine pipelines in Southern California for oil involve ongoing legal and regulatory actions following the 2021 Huntington Beach oil spill, as well as the aftermath of the 2015 Refugio oil spill. These events have spurred increased scrutiny of pipeline safety, increased oversight of offshore drilling, and investigations into the causes of the spills.

IV. BOEM Should Exclude Marine Areas from the 2025 Leasing Program.

As the RFI indicates, BOEM will consider nominations for specific areas to be excluded from the OCS program. The SYBCI requests that BOEM exclude from the 11th National OCS Program all national marine sanctuaries and monuments and any area around a national marine

sanctuary or monument where discharging or depositing from oil and gas exploration and lease development from beyond the boundary of the sanctuary is likely to subsequently enter the sanctuary and injure a sanctuary resource or quality. The SYBCI further requests that BOEM exclude all other State and Federally protected areas such as MPAs and Federal Ecological Preserves. As discussed above, OCSLA Section 12(a) does not provide the President with the power to revoke the past withdrawal of areas from OCS oil and gas leasing. New oil and gas leasing is also legally prohibited in many national marine sanctuaries, including the CINMS and CHNMS. Other State and Federally protected areas, including MPAs and Ecological Preserves, should be excluded from the OCS program because their use in oil and gas production threatens the health of these marine areas already recognized for their significance and value.

V. Conclusion

Accordingly, the SYBCI urges BOEM not to proceed with the process of developing the 2025 Leasing Program. Should BOEM move forward with the 2025 Lease Program, the SYBCI maintains that Tribal consultation is mandated by federal law at each stage of the process. In addition, the SYBCI has noted in this comment letter that BOEM must comply with all applicable federal and California laws and policies, and specifically, it must exclude many marine areas from the Pacific Region from any new leasing.

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