

## Chapter 1: Introduction

The National Oceanic and Atmospheric Administration’s (NOAA’s) Office of National Marine Sanctuaries (ONMS) proposes to issue a revised management plan and revised regulations for Monterey Bay National Marine Sanctuary (MBNMS). ONMS prepared this environmental assessment (EA) and a finding of no significant impact (FONSI) in accordance with the National Environmental Policy Act (NEPA; 42 United States Code (U.S.C.) §§ 4321 *et seq.*), the Council on Environmental Quality’s (CEQ’s) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations (CFR) §§ 1500-1508), and NOAA Administrative Order (NAO) 216-6A and its Companion Manual, “Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities.”<sup>1</sup> This EA presents to the decision makers and the public an analysis of the potential environmental consequences of the proposed action and alternatives.

### 1.1 National Marine Sanctuaries Act

The National Marine Sanctuaries Act (NMSA) of 1972, as amended (16 U.S.C. §§ 1431 *et seq.*) authorizes the Secretary of Commerce to designate areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities as national marine sanctuaries. Among the purposes and policies of the NMSA are mandates to:

- Identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to manage these areas as the National Marine Sanctuary System (16 U.S.C. § 1431(b)(1));
- Provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities (16 U.S.C. § 1431(b)(2));
- Maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes (16 U.S.C. § 1431(b)(3)); and
- Develop and implement coordinated plans for the protection and management of these areas with appropriate federal agencies, state and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas (16 U.S.C. § 1431(b)(7)).

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<sup>1</sup> NOAA prepared this environmental assessment using the 1978 CEQ NEPA Regulations. NEPA reviews initiated prior to the effective date of the revised CEQ regulations may be conducted using the 1978 version of the regulations. The effective date of the 2020 CEQ NEPA Regulations was September 14, 2020. This review began on August 27, 2015 when NOAA published a notice of intent to conduct scoping and prepare an environmental analysis (80 FR 51973). Therefore, NOAA proceeded under the 1978 CEQ regulations. Citations in this document to the NEPA regulations codified at 40 C.F.R. 1500-1508 refer to the 1978 CEQ regulations.

## 1.2 Office of National Marine Sanctuaries

NOAA's Office of National Marine Sanctuaries (ONMS) serves as the trustee for a network of underwater parks encompassing more than 620,000 square miles of marine and Great Lakes waters from Washington state to the Florida Keys, and from Lake Huron to American Samoa. The network includes a system of 15 national marine sanctuaries and Papahānaumokuākea and Rose Atoll marine national monuments. ONMS manages the national marine sanctuaries pursuant to the NMSA and implementing regulations (codified at 15 CFR Part 922). ONMS cooperatively manages two marine national monuments with the U.S. Fish and Wildlife Service (USFWS) and other federal and state authorities, as codified in regulations at 50 CFR Part 404.

National marine sanctuaries are special areas set aside for long-term protection, conservation, and management and are part of our nation's legacy to future generations. They contain deep ocean habitats of resplendent marine life, kelp forests, coral reefs, whale migration corridors, deep-sea canyons, historically significant shipwrecks, and other important underwater archaeological sites. Each sanctuary is a unique place worthy of special protection. Because they serve as natural classrooms, cherished recreational spots, and places for valuable commercial activities, national marine sanctuaries represent many things to many people. ONMS works with diverse partners and stakeholders to promote responsible, sustainable ocean uses that ensure the health of our most valued ocean places. A healthy ocean is also the basis for thriving recreation, tourism, and commercial activities that drive coastal economies.

The National Marine Protected Areas (MPA) Center, established under Executive Order 13158 (May 2000), is a division of ONMS, with a mission to facilitate the effective use of science, technology, training, and information in the planning, management, and evaluation of the nation's system of MPAs. The MPA Center works in partnership with federal, state, tribal, and local governments and stakeholders to build a science-based, comprehensive national system of MPAs, and to support and enhance existing MPA programs across all levels of government.

ONMS fosters public awareness of marine resources and maritime heritage through scientific research, monitoring, exploration, education, and outreach, and works closely with its many partners and the public to protect and manage sanctuaries. ONMS is a leader in marine management through the protection of living marine resources, environmental quality, and maritime heritage, while maintaining recreational and commercial activities that are sustainable and compatible with long-term preservation.

## 1.3 Monterey Bay National Marine Sanctuary

NOAA designated Monterey Bay National Marine Sanctuary (MBNMS) in 1992 to protect and manage the conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities of the area (September 18, 1992; 57 FR 43309). Stretching from Marin to Cambria, California, the sanctuary encompasses a shoreline length of 276 miles and 6,094 square miles of ocean, extending an average distance of 30 miles from shore (Figure 1). On November 20, 2008, NOAA expanded MBNMS by 775 square miles to include the Davidson Seamount Management Zone (DSMZ; 73 FR 70488). Davidson Seamount is an undersea mountain habitat and is the first seamount to be protected within a national marine sanctuary. At its deepest point, the sanctuary reaches down 12,743 feet. The sanctuary's natural

resources include one of our nation's largest kelp forests, one of North America's largest underwater canyons, an offshore seamount, and the closest-to-shore deep ocean environment in the continental United States. The sanctuary is home to one of the most diverse marine ecosystems in the world, including 36 species of marine mammals, more than 180 species of seabirds and shorebirds, at least 525 species of fish, and an abundance of invertebrates and plants. This remarkably productive marine environment is fringed by spectacular coastal scenery, including sandy beaches, rocky cliffs, rolling hills, and steep mountains. MBNMS has an advisory council that meets bi-monthly to advise sanctuary management on issues of concern relating to management of the sanctuary. The advisory council is an advisory body representing various stakeholder and user groups.

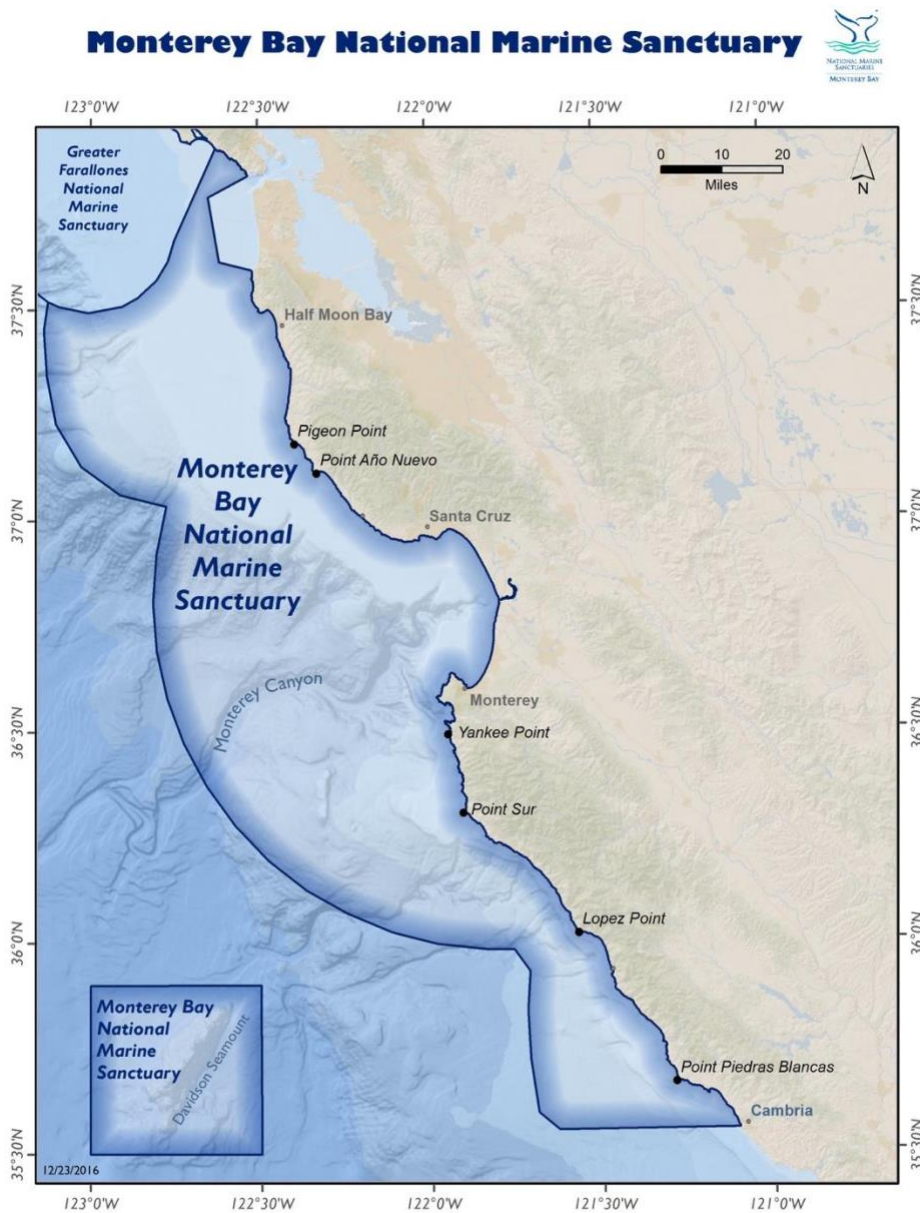


Figure 1. Map of Boundary of Monterey Bay National Marine Sanctuary

## **1.4 Management of National Marine Sanctuaries**

A sanctuary management plan is a site-specific planning and management document. Each national marine sanctuary has an individual management plan that serves as a guide for developing future budgets and implementing management activities. A sanctuary management plan describes the sanctuary's terms of designation, regulations, boundaries, staffing and budget needs, management strategies and actions, performance measures, and other information as required by Section 304(a)(2)(C) of the NMSA (16 U.S.C. § 1434(a)(2)(C)).

New challenges and opportunities emerge with time. To ensure sanctuary management keeps up with the pace of change, the NMSA requires national marine sanctuary administrators to engage in periodic review and updating of management plans to reevaluate site-specific goals and objectives, management techniques, and strategies, and to revise the management plan as necessary to fulfill the purposes and policies of the NMSA (16 U.S.C. § 1434(e)). The purpose of this management plan review is to ensure the natural and cultural resources at each site are properly conserved and protected.

Resource protection for national marine sanctuaries is carried out pursuant to the NMSA's implementing regulations, which are codified at 15 CFR Part 922, through the issuance of permits, coordination with other local, state, and federal agencies, and management plan strategies and activities related to outreach, education, research, monitoring, resource protection, and enforcement.

The NMSA regulations include prohibitions on specific kinds of activities, descriptions of boundaries, a permitting system to allow certain types of activities to be conducted within sanctuaries that would otherwise be prohibited, and definitions. Each of the 15 national marine sanctuaries has site-specific regulations found at subparts F through T. The regulations for MBNMS are found at subpart M (15 CFR §§ 922.130-34). As an outcome of the NMSA's management plan review process, NOAA may also propose revisions to the regulations for the sanctuary to ensure they meet the sanctuary goals and objectives and the purposes and policies of the NMSA.

Field operations in the sanctuary are necessary to support resource protection, research, and education objectives, as described in the sanctuary management plan. Field operations are activities on, in, or above the water supporting the NMSA's primary goal of resource protection, through direct management, research, education, and enforcement. These field activities can include vessel, aircraft, and scuba diving operations, as well as deployment of instrumentation and presence of personnel in the environment.

## **1.5 Scope of Environmental Review**

This section describes the geographic scope of this environmental review, activities within the scope of this EA, activities outside the scope of this EA, and how NOAA would evaluate future activities.

### 1.5.1 Geographic Scope of this Environmental Assessment

The geographic scope of the affected environment in Chapter 4 and analysis of environmental consequences in Chapter 5 encompass the boundaries of MBNMS and the coastal or marine areas immediately adjacent to the sanctuary. The action area for the purposes of compliance with the Endangered Species Act (ESA) is summarized in **Section 4.3.1.1**.

### 1.5.2 Activities Within the Scope of this Environmental Assessment

This EA describes the anticipated environmental impacts of implementing routine field activities, updating the sanctuary management plan, and updating sanctuary regulations over the time period until the next management plan review process occurs. These activities support the management and protection of the sanctuary's resources. The goal of this EA is to capture the broad range of activities that would occur at MBNMS with sufficient detail to provide for a meaningful analysis of potential impacts to the human environment, as required by NEPA. In some cases, limitations in available information and uncertainty regarding the timing, location, or activities to be conducted in the future prevent a full environmental analysis within this EA. In such cases, the specific project and site details would not be known until the sanctuary determines a need for such an activity and a subsequent environmental evaluation would be required. NOAA's approach to evaluation of other future activities is described in **Section 1.5.4**.

NOAA used a programmatic approach to identify and prepare a qualitative analysis of the general environmental impacts for the broad scope of actions planned to manage and operate MBNMS. Activities that are within the scope of this environmental assessment are:

**Field Operations.** Field operations include those activities required to protect and manage the resources of the sanctuary. Such activities may include operating and maintaining vessels, training staff, conducting research and resource documentation, implementing education and outreach activities, and installing and maintaining permanent moorings or other installations to protect fragile ecosystem or cultural resources.

**Implementation of Sanctuary Management Plan.** The NMSA requires each sanctuary to develop and periodically review its management plan (Sec. 304(a)(2)(C) and Sec. 304(e)). This site-specific planning and management document describes the goals, objectives, and management activities for a national marine sanctuary. Revision of a management plan constitutes a federal action, which requires ONMS to analyze the impacts to the human environment in an EA or environmental impact statement (EIS). Activities NOAA would conduct to implement the sanctuary's current or proposed revised management plan may include: research and monitoring activities, implementing education and outreach programs, resource protection programs, and incident response.

**Implementation of Proposed Changes to Sanctuary Regulations.** As part of the management plan review process, NOAA is proposing the following revisions to the MBNMS regulations to address resource protection concerns in the sanctuary: (1) adding a definition for the phrase "beneficial use of dredged material" and new regulatory language to clarify MBNMS's ability to authorize beneficial use of suitable dredged material from four public harbors adjacent to MBNMS for habitat protection or restoration purposes within MBNMS (see Section 3.4.1); (2)

modifying the prerequisite conditions for motorized personal watercraft access to the riding zone at Mavericks surf break (see Section 3.4.2); (3) reconfiguring four motorized personal watercraft zones (see Section 3.4.3); and (4) making a minor technical correction to document the list of exempted Department of Defense activities at the Davidson Seamount Management Zone (see Section 3.4.4). The anticipated environmental consequences of implementing these proposed regulatory changes are described in this EA.

**Activities Conducted by NOAA Staff Under a Superintendent’s Permit.** As part of managing each sanctuary, superintendents determine what reasonable and necessary activities are required to fulfill management responsibilities consistent with the purposes of the sanctuary management plan, the NMSA, and regulations thereunder (15 CFR Part 922). For activities that are prohibited by sanctuary regulations, but that superintendents nevertheless believe are reasonable and necessary to fulfill management responsibilities, superintendents need to apply for a sanctuary-specific general permit, referred to as the superintendent’s permit. The superintendent’s permit is issued for five years and all activities must be conducted in accordance with the NMSA and associated regulations. When ONMS receives an application for a superintendent’s permit, environmental compliance can be achieved by determining whether the activities specified within the superintendent’s permit fits within the bounds of the environmental parameters assumed within this EA. If so, NOAA can document its assessment in a brief record of environmental consideration, and support its finding using the analysis in this EA. If the activities are outside the bounds of this EA, NOAA would prepare additional environmental compliance documentation.

### 1.5.3 Activities Outside the Scope of this Environmental Assessment

Some field activities, management plan activities, and permitting activities are outside the scope of this analysis because a detailed description of the activity was not yet available at the time of issuance of the draft management plan and development of this EA. As such, NOAA did not prepare a full analysis of the environmental consequences of the following actions:

- Modifications, expansions, or new construction of MBNMS facilities;
- Implementation of memorandums of agreement or cooperative agreements with outside groups to conduct activities in the sanctuary;
- Removal of large submerged marine debris;
- Implementation of restoration or mitigation plans and activities as part of emergency response activities or natural resources damage assessments;
- Activities that require individual permits or authorizations; and
- Surveys requiring the use of active acoustics (e.g., echosounders).

Routine permitting activities include processing permit applications and authorizations for a variety of human activities in the sanctuary, monitoring permit compliance, and using MBNMS permitting authority to reduce negative impacts from introduced species, marine debris, and wildlife disturbance. NOAA evaluates all permit applications and authorizations on a case-by-case basis. For each application, NOAA evaluates all environmental compliance requirements, including compliance with NEPA and other environmental statutes (e.g., Endangered Species Act, Coastal Zone Management Act, and National Historic Preservation Act). Some activities

that require a permit or authorization may be similar to the activities described in this EA, such as a private organization requesting to conduct research within the sanctuary. The environmental documentation to support a permit or authorization decision may incorporate by reference relevant portions of this EA as appropriate.

As part of sanctuary management, NOAA conducts, permits, or authorizes several types of surveys that require the use of active acoustics (e.g., echosounders). ONMS's multibeam and other active acoustic activities are being assessed programmatically pursuant to NEPA<sup>2</sup> with those of other National Ocean Service programs, including the Office of Coast Survey who conducts the majority of multibeam surveys for the National Ocean Service. As part of that programmatic review, the National Ocean Service intends to initiate consultation under ESA Section 7 and seek an authorization for incidental take of marine mammals under the Marine Mammal Protection Act. Therefore, the impacts from such activities are not included in this EA.

When more details become available about these activities or when new activities arise, NOAA will assess whether their effects are adequately addressed in this EA. If they are not, NOAA will conduct additional environmental reviews and develop independent environmental compliance and consultation documentation, as needed.

#### 1.5.4 Evaluation of Future Activities

In some cases, future field activities are not yet known, or may change in ways that cannot yet be anticipated. Therefore, a full analysis of the environmental consequences of these activities may not be included in this EA. When conducting activities in the sanctuary, NOAA staff will take the following steps to evaluate whether an activity fits within the bounds of this environmental analysis or whether an additional, independent environmental analysis is required:

1. Determine whether a proposed project or management activity is fully consistent and bounded by the activities and locations described in this EA.
2. If so, determine whether the affected environment at that time is similar to the affected environment described in this EA. The purpose of this second consideration is to evaluate whether any changes to the environment have occurred since the publication of this EA that may affect the conclusions in the EA.
3. If the affected environment at that time is similar to the description of the affected environment in this EA, and the proposed activities and resulting consequences are fully covered and bounded by the analysis in the EA, then this EA provides environmental compliance for the proposed activity.
4. If a project is not fully consistent and bounded by the activities covered in this EA, or if the affected environment has significantly changed since publication of the EA, then NOAA will need to prepare a separate environmental analysis to fulfill its responsibilities under NEPA and other related statutes and executive orders. NOAA could use relevant portions of this EA to efficiently achieve environmental compliance.

CEQ's NEPA regulations and NOAA guidance documents describe various strategies that allow NOAA to build upon the analysis in this EA when preparing future environmental compliance

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<sup>2</sup> <https://www.federalregister.gov/d/2021-13361> 86 FR 33663 (June 25, 2021)

documentation (see NOAA's [NEPA Companion Manual](#)). These strategies include: 1) “tiering” and 2) incorporation by reference.

“**Tiering**” refers to an approach whereby federal agencies prepare a site- or project-specific analysis based on a broader, more general, NEPA analysis document. The tiered NEPA analysis would summarize and incorporate discussions from the broader assessment (i.e., this EA) and concentrate on the specific issues of the subsequent action. Agencies are encouraged to tier their EAs or EISs to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (40 CFR § 1502.20).

**Incorporation by reference** is a technique used to avoid redundancies in description or analysis within a NEPA document. To incorporate by reference, the EA or EIS would refer to the specific page numbers or section of a specific document (e.g., this EA) and provide a short summary of the information such that the reader has an understanding of the significance of the referenced material to the current analysis (40 CFR § 1502.21). CEQ's NEPA implementing regulations also note that any documents incorporated by reference must be publicly available.

## ***1.6 Public Involvement in the Management Plan Review Process***

This section describes the public involvement that occurred during the development of this EA.

### **1.6.1 Public Involvement During Scoping and Development of the Draft EA**

NOAA selected the environmental concerns to be addressed in the revised management plan and regulatory changes following a process of public scoping and issue prioritization in coordination with the MBNMS Advisory Council. Pursuant to the NMSA, sanctuary advisory councils advise and make recommendations to NOAA regarding the designation and management of national marine sanctuaries (16 U.S.C. § 1445(a)). On August 27, 2015, NOAA published a notice of public scoping for the review of the MBNMS management plan and regulations (80 FR 51973). This notice notified the public of the proposed action, announced public scoping meetings, and solicited public comments. NOAA conducted four public scoping meetings in September and October 2015 and received over 220 written and oral comments. NOAA prepared a [summary scoping report](#) in December 2015.

The MBNMS Advisory Council used this summary scoping report to provide advice to the MBNMS superintendent on the highest priority issues for inclusion in the revised management plan and regulations. Advisory council members conducted a prioritization exercise that binned issues together, which informed their feedback and recommendations on the resource issues to be addressed. The results from the prioritization exercise are [available](#). Based on this input from the MBNMS Advisory Council, NOAA developed a focused set of priority issues. NOAA presented the list of priority issues to the advisory council in April 2016. Throughout 2016 and 2017, NOAA developed a series of workshops and presentations for the advisory council to gather informed feedback on this suite of priority issues. For three of the priority issues, staff, advisory council members, stakeholders, and subject matter experts established working groups to further characterize the issues and develop strategies to address them.



Subsequently, NOAA incorporated the feedback from advisory council members and working groups into proposed action plans. The action plans contain strategies and activities to address specific priority issues identified during the scoping and prioritization phases of the management plan review process. NOAA then presented these proposed action plans to the MBNMS Advisory Council for review. The advisory council members reviewed the action plans and, after consultation with their respective constituents, provided recommendations to MBNMS. In February and April of 2018, NOAA presented the revised draft action plans to the MBNMS Advisory Council for review and comment. The advisory council reviewed the action plans and made final recommendations to sanctuary management, generally endorsing the strategies and activities as proposed by MBNMS staff and working groups. Sanctuary staff used in-house expertise, advisory council recommendations, scoping comments, and discussions with experts in the field to determine the best approach to sanctuary management moving forward.

Based on its review of scoping comments and the analysis of issues, NOAA prepared a draft EA which found that the proposed action would not have any significant impact on the human environment and therefore the preparation of an environmental impact statement (EIS) was not required pursuant to NEPA. The draft EA provided a summary of the anticipated effects of the proposed action on the human environment. NOAA found in the draft EA that none of the potential adverse or beneficial effects of the proposed action would be significant based on the context and intensity of the anticipated impacts.

### **1.6.2 Public Involvement After Publication of the Draft EA**

NOAA published a draft EA, draft management plan, and notice of proposed rulemaking for public comment on July 6, 2020 ([85 FR 40153](#)). During the public comment period from July 6 to September 4, 2020, NOAA received written comments from members of the public submitted online at regulations.gov (reference: NOAA-NOS-2020-0094), written comments from MBNMS's Research Activity Panel, and oral and written comments provided during virtual public meetings and two sanctuary advisory council meetings. NOAA hosted three virtual public meetings with 117 participants. In total, NOAA received 159 comments on the proposed rule, draft management plan, and draft EA during the public comment period.

Comments were largely supportive of the proposed regulatory changes (i.e., providing regulatory clarification and defining what is meant by beneficial use of dredged materials; changing motorized personal watercraft zones and reduction of requirements for one zone; and codifying the Department of Defense list of exempted activities in the Davidson Seamount Management Zone). Some commenters raised concerns about the use of the word “clean” in the proposed rule as a sediment standard for proposed beneficial use projects, because, based on other definitions in the MBNMS regulations, the “clean” standard would create a prohibitively high bar for use of sediment.

Comments on the draft management plan focused on the need for: wildlife and habitat protection; reducing marine debris; supporting sanctuary education programs; increasing research and monitoring in all areas of the sanctuary; addressing climate change; improving water quality; and support for MBNMS's stakeholder engagement processes. There were several comments in opposition to offshore wind energy projects.

All substantive issues raised in the comments are summarized and addressed in Appendix A to this final EA. Based on public comments received, NOAA made changes to the proposed rule, draft management plan, and draft EA, where appropriate, including updates to information where the response to comments affects the impact analysis or is relevant to sanctuary action plans in the management plan. NOAA has finalized this EA and prepared a finding of no significant impact, the new management plan, and a final set of regulations, which will be published in the Federal Register.

## 1.7 Revisions from the Draft EA to Final EA

In preparing this final EA, NOAA evaluated and considered all public and agency comments received on the notice of proposed rulemaking, draft management plan, and draft EA, which resulted in minor changes to the proposed regulatory changes and management plan. However, it did not result in any changes in the conclusions of the EA with regard to the significance of the impacts, as described in section 3.1.1. NOAA incorporated the following changes into this final EA, consistent with modifications made to the proposed action, and other clarifications requested by comments on the proposal:

- Updated summary of public involvement (section 1.6)
- Added description of revisions to NOAA's Preferred Alternative (section 3.1.1)
- Updated descriptions of alternatives based on changes to management plan and regulations (section 3.3 and section 3.4)
- Revised impacts analysis based on minor changes to management plan and regulations (section 5.3 and section 5.4)
- Added summary of and response to comments (Appendix A)
- Updated outline of Final Management Plan (Appendix B)
- Added copies of correspondence related to interagency consultations (Appendix D)

## 1.8 Related Consultations

NOAA is required to comply with several related statutes in addition to NEPA. Below describes the statutes applicable to the proposed action and NOAA's responsibilities related to each statute.

### 1.8.1 Endangered Species Act

The Endangered Species Act (ESA) of 1973 as amended (16 U.S.C. §§ 1531 *et seq.*) provides for the conservation of species that are endangered or threatened throughout all or a significant portion of their range, and the conservation of the ecosystems on which they depend. Section 7(a)(2) of the ESA states that each federal agency shall, in consultation with the Secretary of Interior and/or Commerce, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat.

**Section 4.3.1** of this EA describes the ESA-listed species and designated critical habitat that may occur within the action area, including all areas affected directly or indirectly by the proposed action and not merely the immediate area involved in the action (50 CFR § 402.02).

**Section 5.5** describes the potential impacts to each listed species. **Appendix D** provides additional information regarding NOAA’s ESA Section 7 consultation including correspondence with the USFWS and the National Marine Fisheries Service (NMFS).

On July 10, 2020, NOAA ONMS requested concurrence from NMFS that the proposed action may affect, but is not likely to adversely affect, listed species under NMFS jurisdiction. In addition, the proposed action would have no effect or would not adversely modify designated critical habitat under NMFS jurisdiction.

In a letter dated December 1, 2020 NMFS stated that the ONMS ESA request qualified for expedited review and concurrence because it met NMFS screening criteria and contained all required information on the proposed action and its potential effects to listed species and designated critical habitat. Based on their knowledge, expertise, and the materials provided, NMFS concurred with ONMS conclusions that the proposed action is not likely to adversely affect the NMFS ESA-listed species and/or designated critical habitat.

On July 10, 2020 and revised on January 8, 2021, NOAA ONMS requested concurrence from USFWS that the proposed action may affect, but is not likely to adversely affect listed species under USFWS jurisdiction. In addition, the proposed action would have no effect or would not adversely modify designated critical habitat under USFWS jurisdiction.

In a letter dated February 26, 2021, USFWS concurred with NOAA's determination that the project may affect, but is not likely to adversely affect the southern sea otter, marbled murrelet, western snowy plover, California red-legged frog, tidewater goby, and the critical habitats of the marbled murrelet, western snowy plover, California red-legged frog and tidewater goby.

## 1.8.2 Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA, 16 U.S.C. §§ 1361 *et seq.*) protects and conserves marine mammal species by placing a moratorium on harassing, hunting, capturing, or killing any marine mammal or attempting any of these. If a project proponent determines that an action could incidentally harass (“take”) marine mammals, the proponent must consult with either the USFWS or NMFS to determine if a permit to take a marine mammal is required. A recent redefinition of “take” of an MMPA-protected species occurred under the FY 2004 Defense Authorization Act (House Bill 1588), where an animal is “taken” if it is harassed, and where harassment is defined as “(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered” (16 U.S.C. § 1362(18)(B)).

**Section 4.3** of this EA describes the species covered under the MMPA that may occur within the action area. NOAA ONMS determined that the proposed action would not cause the take of any marine mammals protected under the MMPA and potential impacts to marine mammals did not rise to a level that required consultation or other further action under MMPA.

### 1.8.3 Essential Fish Habitat

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. §§ 1801 *et seq.*) fosters long-term biological and economic sustainability of the nation’s marine fisheries in U.S. federal waters out to 200 nautical miles from shore. Key objectives of the MSA are to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable supply of seafood. The essential fish habitat (EFH) provisions of the MSA require NMFS to provide recommendations to federal and state agencies for conserving and enhancing EFH for any actions that may adversely impact EFH. EFH is defined (50 CFR § 600.10) as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” Federal agencies must consult with NMFS and assess the effects of their actions on EFH.

**Section 4.3.2** of this EA describes EFH designated under the MSA that may occur within MBNMS. **Section 5.5.5** describes the potential impacts of the proposed action on designated EFH and the existing General Concurrence for the impacts of routine operational activities on EFH in the national marine sanctuaries on the West Coast. **Appendix D** includes correspondence between NMFS and ONMS regarding EFH consultation.

On July 10, 2020, NOAA ONMS requested concurrence from NMFS that the proposed action would result in no more than minimal adverse impact on EFH. NMFS reviewed the ONMS request and in a letter dated December 1, 2020 determined that the proposed revisions to the MBNMS management plan and regulations would not adversely affect EFH. NMFS also determined that the routine field activities continue to meet the criteria under 50 CFR 600.920(g)(2) and qualify for inclusion in the General Concurrence, except for the removal of large marine debris and the removal or relocation of grounded vessels.

### 1.8.4 Coastal Zone Management Act

The Coastal Zone Management Act (CZMA, 16 U.S.C. §§ 1451 *et seq.*) was enacted in 1972 to encourage coastal states, Great Lake states, and U.S. territories and commonwealths (collectively referred to as “coastal states” or “states”) to preserve, protect, develop, and where possible, to restore or enhance the resources of the nation’s coastal zone. Section 307 of the CZMA is known as the “federal consistency” provision. The federal consistency provision requires federal actions (inside or outside a state’s coastal zone) that affect any land or water use or natural resource of a state’s coastal zone, to be consistent with the enforceable policies of the state coastal management program. The term “effect on any coastal use or resource” means any reasonably foreseeable effect on any coastal use or resource resulting from the activity, including direct and indirect (cumulative and secondary) effects. The federal consistency regulations can be found at 15 CFR Part 930.

In accordance with 15 CFR Part 930, subpart C, NOAA evaluated the proposed action for potential effects on coastal resources and found that it would have no adverse effects. NOAA submitted this determination to the California Coastal Commission upon publication of the draft EA and proposed rule in July 2020. The California Coastal Commission provided comments to NOAA on the proposed rule. On August 12, 2021, NOAA provided the California Coastal Commission with a revised description of the proposed action and a summary of

changes made in response to public comment and consultations. The California Coastal Commission provided concurrence with NOAA's negative determination on September 2, 2021.

### **1.8.5 National Historic Preservation Act**

Section 106 of the National Historic Preservation Act of 1966 (NHPA) (54 U.S.C. § 306108) requires federal agencies to take into account the effects of their undertakings on historic properties in accordance with regulations issued by the Advisory Council on Historic Preservation (ACHP) at 36 CFR Part 800. The regulations require that federal agencies consult with states, tribes, and other interested parties (consulting parties) when making their effect determinations. NOAA initiated a Section 106 consultation with the California State Historic Preservation Officer (SHPO) and SHPO determined, as there were no identified projects in the management plan, there was no need for consultation. When projects do arise out of management plan implementation, NOAA will conduct Section 106 consultation at that time, as needed.

### **1.8.6 Executive Order 13175: Tribal Consultation and Collaboration**

Under Executive Order 13175 of November 6, 2000, federal departments and agencies are charged with engaging in regular and meaningful consultation and collaboration with tribal officials of federally-recognized tribes in the development of federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes. Within the boundaries and adjacent to MBNMS are no federally recognized Indian tribes pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479a.

## **1.9 Organization of Environmental Assessment**

Chapter 1 (Introduction) is a background discussion of the statutory authorities of the Office of National Marine Sanctuaries; a summary of existing sanctuary management; a description of the scope of the environmental assessment; an overview of the public involvement process for the proposed action; and an overview of the regulatory requirements and consultations that NOAA will be conducting as part of this environmental review.

Chapter 2 (Proposed Action and Purpose and Need) describes the proposed action and the purpose of and need for the proposed action.

Chapter 3 (Description of Alternatives) describes the alternatives development process; the no action alternative and two action alternatives; and the alternatives considered but eliminated from detailed evaluation. For each alternative, Chapter 3 describes the components of each alternative including implementing routine field activities, updating the sanctuary management plan, and updating sanctuary regulations.

Chapter 4 (Affected Environment) describes the existing conditions in MBNMS to provide a baseline for assessing environmental impacts that may occur under each alternative.

Chapter 5 (Environmental Consequences) provides an evaluation of potential impacts of the proposed action on the physical and biological environment, historical resources, and human uses. It also compares the relative impacts of the three alternatives.

Appendix A includes summaries of comments received on the draft management plan, draft EA, and proposed rule, and also includes NOAA's responses.

Appendix B provides a detailed list of action plans and activities proposed to implement the revised sanctuary management plan

Appendix C provides a list of proposed best management practices for ONMS field activities.

Appendix D includes additional information and documents related to interagency consultations and a list of protected species found in the sanctuary.

Appendix E lists the Department of Defense exempted activities in the Davidson Seamount Management Zone and the exchange of letters between the U.S. Air Force and NOAA.