



June 28, 2023

Chair Jane Gray and Board Members
c/o Matthew Keeling, Executive Officer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Sent via electronic submission to: centralcoast@waterboards.ca.gov

RE: Nomination – Point Sur MPAs Designation as an Area of Special Biological Significance

Dear Chair Gray and Board Members,

California Coastkeeper Alliance (CCKA) represents a network of California Waterkeeper organizations dedicated to fishable, swimmable, and drinkable waters for all Californians. Monterey Waterkeeper is a Waterkeeper organization that protects and restores fishable, swimmable, and drinkable waters within the Monterey Region and along California's Central Coast for all to enjoy. The Otter Project is a program of CCKA aimed to protect our watersheds and coastal oceans to promote the rapid recovery of the threatened southern sea otter. We appreciate the opportunity to submit this nomination to designate the Point Sur Marine Protected Areas (MPAs) as an Area of Special Biological Significance (ASBS). If designated, the Point Sur MPAs will become the first ASBS since the 1970s.

Our oceans are at a tipping point. Climate change is causing warmer waters and the most significant change in ocean chemistry in 50 million years. As a result, acidic waters off our coast are corroding the shells of marine animals and altering entire food webs.¹ Land-based nutrients discharged to the ocean are linked to ocean acidification and the loss of oxygen, creating ocean acidification and hypoxia 'hot spots' (OAH hot spots).² A recent study by the Southern California Coastal Water Research Project (SCCWRP) assessed change in habitat capacity for marine life due to excessive land-based nutrients that cause ocean acidification and oxygen loss.³ The study's findings suggest that effects of land-based nutrients not only change the ocean's chemistry but also alter habitat capacity.⁴ SCCWRP ultimately concluded that during late summer months, OAH hot spots 30 to 90 km from mainland southern California cause marine habitat compression on average of 25% but up to 60%.⁵

Meanwhile, ninety five percent of our iconic underwater kelp forests off the North Coast have been destroyed.⁶ Few protections have been put in place to mitigate these problems. Luckily, California boasts

¹ State Water Resources Control Board, Board Agenda, March 21- 22, 2023; available at www.waterboards.ca.gov/board_info/agendas/2023/mar/03_21-22_2023_agenda_links.pdf; and State Water Resources Control Board, Board Meeting Video [Starts at 1 hour and 11 minutes]; available at <https://www.youtube.com/watch?v=MIIwSixFcRs>

² Christina Frieder, Faycal Kessouri, Minna Ho, et al. Effects of urban eutrophication on pelagic habitat capacity in the Southern California Bight. *Authorea*. March 13, 2023; available at <https://www.authorea.com/users/594678/articles/629022-effects-of-urban-eutrophication-on-pelagic-habitat-capacity-in-the-southern-california-bight>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ McPherson, M.L., Finger, D.J.I., Houskeeper, H.F. et al. Large-scale shift in the structure of a kelp forest ecosystem co-occurs with an epizootic and marine heatwave. *Commun Biol* 4, 298 (2021); available at <https://www.nature.com/articles/s42003-021-01827-6>.

a network of 124 ecologically connected MPAs that safeguard the natural richness of our oceans and build the resilience of our fisheries.

MPAs are proven to serve as ocean “hope spots” when managed correctly, providing a buffer to climate change and human disturbances compared to unprotected areas. However, California’s coastal waters are regularly inundated by pollution. When it rains, the water flows through streets, storm drains, and gutters and into our waterways and ocean, carrying pollutants that make swimmers sick and harm marine life. California has committed to conserving 30 percent of its land and ocean by 2030. The state’s existing MPAs can help meet this goal, but they cannot fully function as biodiversity hot spots and climate “hope spots” when under constant threat from land-based pollution.

The Marine Life Protection Act directs the state to redesign California’s system of MPAs to function as a network in order 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.⁷ According to the Marine Managed Areas Improvement Act a “marine managed area” (MMA) is a named, discrete geographic marine or estuarine area along the California coast designated by law or administrative action, and intended to protect, conserve, or otherwise manage a variety of resources and their uses.⁸ The Public Resources Code states that one classification of MMA is a State Water Quality Protection Area (SWQPA), which is “a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality, including, but not limited to, [ASBSs] that have been designated by the State Water Resources Control Board . . .”⁹ The statute further states: “In a [SWQPA], point source waste and thermal discharges shall be prohibited or limited by special conditions.”¹⁰

To protect our coast from the threat of land-based pollution, the State Water Resources Control Board created SWQPAs.¹¹ SWQPAs, like MPAs, serve as a tool to protect and preserve marine ecosystems from human interference. While MPAs manage what activities can take place within the protected area (such as fishing or recreational diving), SWQPAs regulate the water pollution that washes off our coast and into these areas.

One type of SWQPA is an ASBS, which can offer another layer of protection for areas that support diversity in wildlife and host unique species. The California Ocean Plan requires protection of species or biological communities in ASBS and requires that waste discharges are prohibited in ASBS.¹² In addition, discharges shall be at a sufficient distance from an ASBS to assure natural water quality.¹³ The California Ocean Plan states that all ASBS are a subset of SWQPAs but does not have specific requirements for other SWQPAs that are not ASBS.¹⁴

⁷ MLPA; Fish & Game Code §§ 2850 et seq.

⁸ Marine Managed Areas Improvement Act, Cal. Pub. Resources Code §§ 36600 et. seq.

⁹ STATE WATER RESOURCES CONTROL BOARD, RESOLUTION NO. 2010-0057, MARINE PROTECTED AREAS AND STATE WATER QUALITY PROTECTION AREAS (2010); available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2010/rs2010_0057.pdf.

¹⁰ *Id.*

¹¹ State Water Resources Control Board, Ocean Plan (2019); available at https://www.waterboards.ca.gov/bacterialobjectives/docs/oceanplan2019_.pdf.

¹² STATE WATER RESOURCES CONTROL BOARD, RESOLUTION NO. 2010-0057, MARINE PROTECTED AREAS AND STATE WATER QUALITY PROTECTION AREAS (2010); available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2010/rs2010_0057.pdf.

¹³ *Id.*

¹⁴ *Id.*

Currently, only 45 of the 124 MPAs have at least some overlap with ASBS, but *all* MPAs would benefit from the additional water quality protection. In 2010, the State Water Board Adopted Resolution No. 2010-0057, which stated that “[u]pon completion of all work associated with ASBS discharges, and once all MPAs are implemented by the Department of Fish and Game and the Department of Parks and Recreation, *directs staff to work with the Regional Water Boards to develop recommendations for new SWQPAs to protect water quality in MPAs.*”¹⁵

The State Water Board has completed its ongoing work related to exceptions for current discharges to ASBS. In 2012, the State Water Board adopted Resolution NO. 2012-0012 to approve “the exceptions to the Ocean Plan prohibition against waste discharges to ASBS for discharges of storm water and nonpoint source waste.”¹⁶

The Department of Fish and Wildlife has completed the design and planning of MPAs. A draft Master Plan for MPAs was adopted by the Commission as a living document in February 2008 which guided the regional development of MPA proposals, and resulted in the completion of a science-based and stakeholder-driven, redesigned statewide network of MPAs in December 2012.¹⁷ According to the Department of Fish and Wildlife: “[c]ompleted in 2012, California’s MPA network generally reflects the integration of the science and science-based MPA design guidelines from the MLPA, the 2008 Master Plan, and SAT guidance.”¹⁸ Additionally, the 2016 Master Plan for MPAs, adopted by the Commission in August, focuses on the shift from MPA design and planning to managing California’s redesigned MPA network to meet the goals of the MLPA.¹⁹ The state has completed the two tasks identified in the 2010 State Water Board Resolution, and the state should now direct staff to work with the Regional Water Boards to develop recommendations for new SWQPAs to protect water quality in MPAs.

In 2020, the state adopted its Ocean Strategic Plan through the Ocean Protection Council. Within the Strategic Plan, the state commits to “[s]trengthen water quality protection in MPAs equivalent to at least that of Areas of Special Biological Significance or State Water Quality Protection Areas by 2023.” Additionally, the Central Coast Regional Water Board prioritized establishing the Point Sur MPAs SWQPA in its 2021 Triennial Review.²⁰

The Water Boards’ Ocean Plan allows any person to nominate areas of ocean waters for designation as SWQPA-ASBS or SWQPA-General Protections.²¹ The Ocean Plan states that nominations “shall be made to the appropriate Regional Water Board and shall include: (a) Information such as maps, reports, data, statements, and photographs to show that: (1) Candidate areas are located in ocean waters as defined in the ‘Ocean Plan’. (2) Candidate areas are intrinsically valuable or have recognized value to man for scientific study, commercial use, recreational use, or esthetic reasons. (3) Candidate areas need protection

¹⁵ *Id.*

¹⁶ STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-0012, APPROVING EXCEPTIONS TO THE CALIFORNIA OCEAN PLAN FOR SELECTED DISCHARGES INTO AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE, INCLUDING SPECIAL PROTECTIONS FOR BENEFICIAL USES, AND CERTIFYING A PROGRAM ENVIRONMENTAL IMPACT REPORT; *available at* https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2012/rs2012_0012.pdf.

¹⁷ California Department of Fish and Wildlife, Master Plan for Marine Protected Areas Website (last visited on June 27, 2023); *available at* <https://wildlife.ca.gov/Conservation/Marine/MPAs/Master-Plan>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Central Coast Regional Water Quality Control Board, Consideration of a Resolution Approving the 2021 Triennial Review of the Water Quality Control Plan for the Central Coast Basin, 4; *available at* https://www.waterboards.ca.gov/centralcoast/publications_forms/publications/basin_plan/triennial_review/docs/2021/item7_stfrpt.pdf; Triennial Review of the Water Quality Control Plan for the Central Coast Basin, 51-52 (Nov. 16, 2021); *available at*: https://www.waterboards.ca.gov/centralcoast/publications_forms/publications/basin_plan/triennial_review/docs/2021/item7_att1.pdf.

²¹ Ocean Plan, Appendix IV, (2019).

beyond that offered by waste discharge restrictions or other administrative and statutory mechanisms.”²² The nomination should also include “(b) Data and information to indicate whether the proposed designation may have a significant effect on the environment. (1) If the data or information indicate that the proposed designation will have a significant effect on the environment, the nominee must submit sufficient information and data to identify feasible changes in the designation that will mitigate or avoid the significant environmental effects.”²³

We respectfully request the Central Coast Regional Water Quality Control Board accept the enclosed Point Sur MPAs ASBS nomination and develop a Final Nomination Report to be forwarded to the State Water Board for final approval pursuant to Appendix IV of the Ocean Plan.

I. Information such as maps, reports, data, statements, and photographs.

A. The Point Sur MPAs are located in ocean waters as defined in the “Ocean Plan”.

The Point Sur MPAs, which include Point Sur State Marine Reserve (SMR) and Point Sur State Marine Conservation Area (SMCA), are located in ocean waters (See Attachment One: Point Sur MPAs Map). The Ocean Plan states that “ocean waters” are the territorial marine waters of the State as defined by California law to the extent these waters are outside of enclosed bays, estuaries, and coastal lagoons. The Point Sur MPAs are located 25 miles south of Monterey in Big Sur, along California’s Central Coast. Spanning more than five miles of shoreline from Point Sur to Cooper Point at the southern end of Andrew Molera State Park, these two MPAs protect approximately 50 square kilometers (20 square miles) of sandy seafloor, tidal flats, surfgrass, and rocky pinnacles, as well as the shallowest portions of Sur Canyon, a submarine canyon reaching depths greater than 600 feet.

The Point Sur SMR is bounded by the mean high tide line and straight lines connecting the following points in the order listed: 36° 18.400’ N. lat. 121° 54.150’ W. long.; 36° 18.400’ N. lat. 121° 56.000’ W. long.; 36° 15.000’ N. lat. 121° 52.500’ W. long.; and 36° 15.000’ N. lat. 121° 50.250’ W. long.²⁴

The Point Sur SMCA is bounded by straight lines connecting the following points in the order listed except where noted: 36° 18.400’ N. lat. 121° 56.000’ W. long.; 36° 18.400’ N. lat. 121° 57.932’ W. long.; thence southward along the three nautical mile offshore boundary to 36° 15.000’ N. lat. 121° 55.955’ W. long.; 36° 15.000’ N. lat. 121° 52.500’ W. long.; and 36° 18.400’ N. lat. 121° 56.000’ W. long.²⁵

B. The Point Sur MPAs are intrinsically valuable and have recognized value to people for scientific study, commercial use, recreational use, and esthetic reasons.

The Point Sur MPAs are located next to each other near the small Central Coast town of Big Sur. The Point Sur SMR touches the shoreline, and the Point Sur SMCA is part of the open ocean just offshore of the reserve. Together, they cover about 50 square kilometers (20 square miles) of marine habitats.²⁶

The Point Sur MPAs are intrinsically valuable as a biodiversity hot spot. Key habitats protected by the two MPAs include a large kelp forest, an offshore rocky reef, and the underwater Sur Canyon.²⁷ The Point Sur SMR also abuts the coastal lagoon at the mouth of the Big Sur River, thereby serving as a safe corridor for the migration of the anadromous South-Central California steelhead. The diverse topography

²² *Id.*

²³ *Id.*

²⁴ 14 CA ADC § 632; available at <https://wildlife.ca.gov/CCR-T14-MPAs>.

²⁵ *Id.*

²⁶ National Geographic, Case Study: Point Sur State Marine Reserve and Marine Conservation Area; available at https://media.nationalgeographic.org/assets/file/Case_Study_Point_Sur_State_Marine_Reserve_and_Marine_Conservation_Area.pdf.

²⁷ *Id.*

of the MPAs creates niches for marine invertebrates like mussels, crabs, anemones, limpets, and sea stars. Nearshore fish species such as rockfish, sculpin, bat rays, cabezon and lingcod thrive in the kelp forests, caverns, outcroppings, and overhangs created by the complex rocky reef. Marine mammals like the federally threatened southern sea otter²⁸ and harbor seals seek shelter along the shore. Farther offshore, salmon and albacore migrate along the coast.

The State of California has already deemed Point Sur as intrinsically valuable with recognized value to people for scientific study, commercial use, recreational use, and aesthetic reasons through the of the area as Marine Protected Areas under the Marine Life Protection Act (MLPA). The Point Sur SMR offers the most protection to the environment under the MLPA. Only non-commercial, non-harvesting uses of the reserve are allowed, including scientific collection, research, and monitoring. Recreational activities like kayaking, diving, surfing, snorkeling, swimming, and boating are also permitted.²⁹

Unlike the Point Sur SMR, the Point Sur SMCA does allow some commercial and recreational harvesting.³⁰ People can also conduct scientific research and the recreational activities allowed in the SMR. Additionally, commercial and recreational take of salmon and albacore tuna is allowed. This helps the local fishing and tourism industries, which employ thousands of people.³¹

Scientists often monitor the fish populations in the Point Sur MPAs as well as the nearby Big Sur River, which supports a key population of the South-Central California Coast steelhead. Scientists monitor different fish species using different techniques, for example, through diving in the rocky reef to monitor perch and rockfish populations or using sonar to track sardines and garibaldi in kelp forests. In the deep Sur Canyon area, biologists use remote-operated vehicles to study the unique organisms living in the dark, cold depths. Sur Canyon also supports krill, which in turn supports migrating gray whales, as well as non-migratory animals such as bat rays, which eat tons of krill in the Point Sur area every year. Commercial activity takes different forms at the Point Sur SMCA, including commercial salmon and albacore fishing. The salmon and albacore fisheries are two of the largest fisheries in California, employing thousands of Californians who depend on the industry.

In addition to commercial fisheries, recreation and tourism are important parts of the Central Coast economy. Millions of people from all over the world travel to the Point Sur area every year to enjoy the pristine coastal wilderness, redwood forests, mountains, creeks, and waterfalls. Snorkeling, kayaking, and scuba diving are major recreational pursuits in both MPAs. Point Sur usually does not have big waves, but some surfers still find opportunities. During the annual gray whale migration, the area is popular for whale watching, from both the shore and in commercial boats. The Point Sur SMR is directly accessible from a trail that follows Big Sur River at Andrew Molera State Park. Alternatively, you can see the MPAs from one of the many turnouts that are located along Highway 1. Views offer incredible wildlife watching opportunities. Californians bring binoculars and watch for migrating birds and marine mammals. Point Sur can be accessed by guided tours with Point Sur State Historic Park. Recreationalists schedule a guided tour to visit the Point Sur Lighthouse or Point Sur Naval Facility or travel farther south to Andrew Molera State Park to enjoy hiking trails, beach access, and camping.

²⁸ The U.S. Fish and Wildlife Service (FWS) listed the southern sea otter population as threatened under the Endangered Species Act (ESA) in 1977 and adopted a recovery plan for the population in 1982, which was updated in 2003; Marine Mammal Commission, website (last visited on June 12, 2023); available at <https://www.mmc.gov/priority-topics/species-of-concern/southern-sea-otter/>.

²⁹ National Geographic, Case Study: Point Sur State Marine Reserve and Marine Conservation Area; available at https://media.nationalgeographic.org/assets/file/Case_Study_Point_Sur_State_Marine_Reserve_and_Marine_Conservation_Area.pdf.

³⁰ *Id.*

³¹ *Id.*

The Point Sur MPAs are intrinsically valuable to local Native American Tribes. For centuries, Native American Tribes have relied on marine and coastal resources. Many Native American Tribes in California continue to regularly harvest marine resources within their ancestral territories and maintain relationships with the coast for customary uses. The Ohlone, Esselen, and Salinan people historically lived along the Point Sur stretch of coastline, leading a nomadic, hunter-gatherer existence for thousands of years. They took advantage of the abundance of marine life, harvesting rich stocks of mussels, abalone, and fish.

C. The Point Sur MPA needs protection beyond that offered by waste discharge restrictions or other administrative and statutory mechanisms.

1. *Point Sur is adjacent to El Sur Ranch, which contains two unpermitted discharge sites and conducts unpermitted agricultural activities, including grazing.*

The largest threat to the Point Sur MPAs comes from land-based runoff and two discharge sites located on the adjacent El Sur Ranch. El Sur Ranch, located on the Big Sur coast of California, has been continuously operated as a cattle ranch since 1834. The approximately 7,100 acres ranch straddles Highway 1 for 6 miles from the mouth of the Little Sur River to the mouth of the Big Sur River and Andrew Molera State Park. El Sur Ranch is recognizable to many for its rolling green cattle pastures located directly inland from the landmark Point Sur Lighthouse.³²

Both the ranch and the park originally comprised the Rancho El Sur land grant given in 1834 by Governor José Figueroa to Juan Bautista Alvarado. It has been owned by the Hill family since 1955, who operate a commercial cow-calf operation with about 450 head on the ranch (see Attachment Two). The cattle graze on natural grasslands in the mountains on the east side of Highway 1 during the winter, spring, and summer, until the pasture is no longer suitable. The cattle are then relocated to eleven fenced and irrigated fields totaling 267 acres on the west side of Highway 1.³³

El Sur Ranch has self-identified two “outfalls” and one tailwater pond that, according to the Ranch’s own map, discharge into the Point Sur SMR MPA (see Attachment Three). Attachment Three was developed as part of a water right application by the El Sur Ranch. On July 10, 1992, Water Right Application No. 30166 was filed by Mr. James Hill on behalf of El Sur Ranch. El Sur Ranch was engaged in the State Water Resources Control Board’s water right permitting process, seeking to continue longstanding diversions from two wells of up to 1,615 acre-feet per year of Big Sur River underflow. The application seeks to continue use of water for check and furrow irrigation of El Sur Ranch pastures in the same manner and utilizing the same source, methods, and varying water amounts. The original application was amended in November and December 2005, and again in October 2006. To our understanding, the two “outfalls” identified on the El Sur Ranch map are unpermitted.

Furthermore, the Central Coast does not currently have General Waste Discharge Requirements that regulate cattle grazing. Point Sur lies at the base of El Sur Ranch grazing grounds. The lack of regulation leads to unpermitted discharge of cattle waste that will result in the alteration and deterioration of Point Sur’s pristine landscape. Point Sur’s unique marine life requires further protection from grazing pollution.³⁴

Therefore, it is critical that the Central Coast Regional Water Board nominate the Point Sur MPAs as an ASBS to provide further water quality protections beyond that of a Waste Discharge Permit, which

³² El Sur Ranch, Website (last visited on June 27, 2023); available at <http://elsurranch.com/location.html>.

³³ *"In the Matter of Water Right Application No. 30166 of James J. Hill III"* (PDF). California Water Resources Control Board. Retrieved 13 February 2018.

³⁴ Hill has allowed fire services to use his ranch as a base of operations during fires. During the [Soberanes Fire](#) in 2016, a fire-retardant base operated out of the ranch.³⁴

currently does not exist for the two self-identified “outfalls” at the El Sur Ranch. If approved as an ASBS, Point Sur would retain a beautiful natural landscape and assurance that a water quality standard will be kept.

2. *Point Sur is a critical habitat for steelhead that demands water quality protection beyond that of a Waste Discharge Permit to ban any and all discharges.*

The Big Sur River is one of the few remaining critical habitats for the threatened South-Central California Coast (S-CCC) steelhead. During the above-mentioned water rights hearing(s) for the El Sur Ranch Water Rights Application, the National Marine Fisheries Services (NMFS) submitted comments of concern to the State Water Board. NMFS stated it was concerned with the status of S-CCC steelhead Distinct Population Segment (DPS) and believes that many of the population will be extirpated in the foreseeable future. During the past 30 years, S-CCC steelhead populations have declined dramatically from estimated annual runs totaling 25,000 adults to less than 500 returning adult fish. The California Department of Fish and Game (CDFG) estimated the annual abundance of steelhead in the Big Sur River to be approximately 300 adults. While this is considered far below the historical population, it remains one of the best remaining streams for S-CCC steelhead. The Big Sur River is therefore a refugia habitat critical to the long-term persistence of this species. The Big Sur steelhead population is one of the last stronghold populations for the DPS and will serve as a source population for future recovery of the species.³⁵

Additionally, CDFG submitted comments noting the critical habitat in the region. CDFG stated that the “Big Sur River provides valuable habitat for several special-status species, and is designated by the Federal Endangered Species Act as critical habitat for the federally threatened, and State Species of Special Concern, steelhead.”³⁶ While the Big Sur River is not part of the Point Sur MPA and ASBS nomination here, the river drains directly into Point Sur SMR, and thus it is critical to maintain and improve water quality at the mouth of the River to protect the critical habitat of the steelhead trout in the Big Sur River.

3. *The Point Sur MPAs are a biodiversity hot spot that needs water quality protection beyond that of a Waste Discharge Permit.*

The Point Sur MPAs are a critical biodiversity hot spot that needs water quality protection beyond a waste discharge restriction (WDR). One of the goals for Point Sur SMR is to protect diverse habitats including extensive surfgrass beds; complex rocky reefs, caverns, and pinnacles; sandy seafloor; coastal marsh and tidal flats, and kelp forests. The nearby deepwater Sur Canyon funnels cold, nutrient-rich water into the reserve through a process known as upwelling, helping to support an array of life. Surfgrass beds shelter young fish and invertebrates, such as perch, flatfish, and crabs. Nearshore rocks provide nesting sites for a variety of resident and migrating waterbirds, including western gulls, pigeon guillemots, and ash storm-petrels. Rockfish, sculpin, bat rays, cabezon and lingcod thrive in the kelp forest and rocky outcroppings.³⁷

Another goal for Point Sur SMCA is to protect the shallowest portions of Sur Canyon, an offshoot of the larger Monterey Submarine Canyon, along with sandy seafloor, rocky reef, and pinnacle habitats. Rockfish, including blue rockfish, bocaccio, and canary rockfish, are drawn to the rocky reefs that rise

³⁵ U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Letter to the State Water Resources Control Board re Big Sur River Hearing (May 19, 2011); *available at*: https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/elsur_ranch/docs/policystatement/nmfs.pdf.

³⁶ Department of Fish and Game, Policy Statement by the Department: In the Matter of State Board’s Consideration to issue a Water Rights Permit for Application No. 30166; *available at*: https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/elsur_ranch/docs/policystatement/fish_game.pdf.

³⁷ California Department of Fish and Wildlife, Point Sur State Marine Reserve; *available at* <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=96760&inline>.

from the mostly sandy seafloor, where starry skates, California halibut, and brittle stars search for prey. Gray, humpback, and blue whales migrate along this stretch of coastline from November to May.³⁸ It is important to remember that a primary purpose of the MLPA is to develop a plan and implement a program that will protect and restore marine biodiversity and ecosystems.³⁹ The MLPA recognizes that MPAs may be a tool to accomplish those purposes, but they are not the only tool.⁴⁰ Implementation of the MLPA must consider and respect other efforts, including traditional fishery management, *water quality controls*, and coastal development management, in order to avoid duplication and conflicts in the state's efforts to protect California's ocean environment.⁴¹

Water quality impacts ocean health, including the marine ecosystems designed to be protected by California's ASBS and MPAs.⁴² Both MPAs and ASBS aim to protect ecosystem health,⁴³ yet they are regulated under different regimes with disparate management practices. Though the MLPA mentions concerns regarding water quality effects on MPAs,⁴⁴ it does not provide any independent mechanism for restricting or abating sources of such pollution. Although water quality is not regulated under the MLPA, it was identified as a major stressor to avoid in the designation of MPAs.⁴⁵

According to the Department of Fish and Wildlife, during the MLPA, processing pollutant sources and entrainment/impingement from coastal power plants were not considered, both of which may influence proposed MPAs. The Department found that this was largely a result of limited time and resources rather than a lack of potential impact. The Department recommended that the potential impact of water quality on MPAs is an important element which deserves further consideration.

The state recognizes that MPAs inherently need additional water quality protections. Regulators have long recognized the negative impacts that land use activities have on coastal water quality,⁴⁶ and OPC's Strategic Plan highlights this as an area of critical need for action.⁴⁷ The consensus among agencies and water quality specialists is that pollution from land-based runoff significantly contributes to the impairment of aquatic dependent wildlife, including nearshore habitats contained in MPAs.⁴⁸

³⁸ California Department of Fish and Wildlife, Point Sur State Marine Conservation Area; *available at* <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=96765&inline>.

³⁹ California Department of Fish and Game, California Marine Life Protection Act, Master Plan for Marine Protected Areas (January 2008); *available at* <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=113006>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Fox et al., Addressing Policy Issues, *supra* note 12, at 34 (2013). Degraded water and sediment quality impact marine life, as well as community structure and function. MLPA MASTER PLAN SCIENCE ADVISORY TEAM WATER QUALITY WORK GROUP, DRAFT RECOMMENDATIONS FOR CONSIDERING WATER QUALITY AND MPAS IN THE SOUTH COAST STUDY REGION 10–11 (2008) [hereinafter WATER QUALITY WORK GROUP DRAFT RECOMMENDATIONS].

⁴³ The MLPA establishes six overall goals for California's statewide MPA network, including protection of the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems. Cal. Fish & Game Code § 2853; ASBS are ocean areas requiring protection of species or biological communities. CAL. OCEAN PLAN, *supra* note 16, at 28, app. I.

⁴⁴ See, e.g., CAL. FISH & GAME CODE §§ 2851(c), 2852(d), 2853(b)(1), (3), 2857(b)(2).

⁴⁵ The Science Advisory Team, which consists of appointed technical experts in a range of fields including marine ecology, fisheries, economics, and social sciences, provides the scientific information and technical judgment which assists CDFW with meeting the objectives of the MLPA. See Master Plan Science Advisory Team, South Coast Study Region, CAL. DEP'T OF FISH & WILDLIFE, <http://www.dfg.ca.gov/marine/mpa/scsat.asp> (last visited Feb. 6, 2018).

⁴⁶ See Ryan P. Kelly & Margaret R. Caldwell, Ten Ways States Can Combat Ocean Acidification (and Why They Should), 37 HARV. ENVTL. L. REV. 57, 87-88 (2013) (noting the failure of states to create enforceable TMDLs).

⁴⁷ See CAL. OCEAN PROTECTION COUNCIL, A VISION FOR OUR OCEAN AND COAST, FIVE-YEAR STRATEGIC PLAN 2012-2017, http://www.opc.ca.gov/webmaster/ftp/pdf/2012-strategic-plan/OPC_042412_final_opt.pdf (last visited Jan. 22, 2018).

⁴⁸ Robin Kundis Craig, Urban Runoff and Ocean Water Quality in Southern California: What Tools Does the Clean Water Act Provide? 9 CHAPMAN L. REV. 313, 314 (2006) [hereinafter, Craig, Urban Runoff]; Steven Bay et al., Water Quality Impacts of Stormwater Discharges to Santa Monica Bay 56 MAR. ENV. RES. 205-23 (2003); Megan E. Mach et al., Assessment and

4. *The Point Sur MPAs protect the Federally Threatened and Fully Protected southern sea otter by maintaining the kelp habitat that the sea otter depends upon.*

Both Point Sur MPAs are critical to maintaining the habitat of endangered and threatened species. One of the federally threatened and Fully Protected⁴⁹ species found in the Point Sur MPAs is the southern sea otter. A survey by The Otter Project in spring 2009 found 2,654 otters up and down the coast, a decrease of about 4 percent from the year before.⁵⁰ Sea otters, marine mammals once hunted for their thick, soft fur, depend on kelp forests for survival. Hundreds of sea creatures live in the kelp forest, where sea otters forage for food such as sea urchins, crabs, and abalone. On the surface, sea otters entangle themselves in its long ropes, which anchor them to the area, so they don't drift away with a current or tide. By protecting the kelp forest, the Point Sur MPAs are helping maintain an entire ecosystem: the kelp itself; the organisms that feed on it; and the predators that feed on them, such as the sea otter.

Extensive kelp beds are found around Point Sur. The kelp forests in the MPA study region were well mapped at fine-scale resolution in 1989, 1999, 2002, and 2003 based on aerial surveys by CDFG. Kelp abundance in the study region over the 4 survey years has ranged from 1.9 to 13.6 nmi²; in some years, the Central Coast study region has almost half of the total statewide kelp amount. In 2003, there were 7.2 nmi² of kelp bed in the Central Coast study region.⁵¹ However, the massive marine heat wave of 2014-2016 caused kelp forests in the Monterey area to decline by 80% between 2014 and 2021.⁵², according to a study published in March 2023 that looked at the impact of the event along much of the West Coast. The results show the long-lasting impact of even brief periods of ocean warming, which are increasing with climate change.

Non-point and point source pollution including sewage, industrial disposal, and coastal runoff contributes to kelp forest degradation.⁵³ For instance, high sedimentation from coastal run-off may bury new plant shoots.⁵⁴ Similarly, kelp may experience reduced growth rates and reproductive success in more toxic waters and sediments.⁵⁵ Therefore, it is critical that the state protect the Point Sur MPAs water quality so that kelp beds can thrive and provide a healthy habitat for the threatened sea otter.

Management of Cumulative Impacts in California's Network of Marine Protected Areas 137 OCEAN & COAST. MGMT. 1-11 (2017).

⁴⁹ The classification of Fully Protected was the State's initial effort in the 1960's to identify and provide additional protection to those animals that were rare or faced possible extinction. Lists were created for fish, amphibians, reptiles, birds and mammals. Please note that most fully protected species have also been listed as [threatened or endangered species](#) under the more recent California Endangered Species Act. Fully Protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (NCCP); California Department of Fish and Wildlife, Website (last visited on June 12, 2023); available at <https://wildlife.ca.gov/Conservation/Fully-Protected#MAMMALS>.

⁵⁰ National Geographic, Case Study: Point Sur State Marine Reserve (Last visited June 26, 2023); available at <https://education.nationalgeographic.org/resource/case-study-point-sur-state-marine-reserve/>.

⁵¹ California Department of Fish and Wildlife, Giant Kelp and Bull Kelp Enhanced Status Report; available at <https://marinespecies.wildlife.ca.gov/kelp/the-species/>.

⁵² Tom Bell et al., Kelpwatch: A new visualization and analysis tool to explore kelp canopy dynamics reveals variable response to and recovery from marine heatwaves (March 23, 2023); available at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0271477>.

⁵³ NOAA, National Marine Sanctuaries, Website: Impacts on Kelp Forests (Last visited on June 27, 2023); available at <https://sanctuaries.noaa.gov/visit/ecosystems/kelpimpacts.html>.

⁵⁴ *Id.*

⁵⁵ *Id.*

II. Data and information to indicate whether the Point Sur MPAs ASBS nomination may have a significant effect on the environment.

The State Water Board's Ocean Plan states that if the Draft Nomination Report recommends approval of the proposed designation, the Draft Nomination Report shall comply with the CEQA documentation requirements for a water quality control plan amendment in Section 3777, Title 23, California Code of Regulations. The below sections are an initial attempt to provide data and information to help inform the Central Coast Regional Water Board's CEQA documentation requirements under Section 3777.

The Point Sur MPAs ASBS nomination will not have a significant effect on the environment. A "[s]ignificant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance."⁵⁶ The Project at issue here is the designation of the Point Sur MPAs as an ASBS.

The State Water Board may designate SWQPAs (including ASBS⁵⁷) to prevent the undesirable alteration of natural water quality within MPAs. The designation of the Point Sur MPAs as an ASBS will not have an adverse impact on the environment, but rather will prevent adverse environmental impacts.

A. A brief description of the proposed project.

The proposed Project includes the nomination and designation of the Point Sur MPAs as an ASBS under the Ocean Plan. Once designated as an ASBS, waste shall not be discharged to the Point Sur MPAs.

B. An identification of any significant or potentially significant adverse environmental impacts of the proposed project.

There are no significant or potentially significant adverse environmental impacts of the proposed Project to designate the Point Sur MPAs as an ASBS.

The goal of the Point Sur ASBS designation is to prevent the undesirable alteration of natural water quality within the MPAs.

C. An analysis of reasonable alternatives to the project and mitigation measures to avoid or reduce any significant or potentially significant adverse environmental impacts.

The Central Coast Regional Water Board should make a determination that the Project will not create any potentially significant adverse environmental impacts. The California Code of Regulations states that if "the board determines that no fair argument exists that the project could result in any reasonably foreseeable significant adverse environmental impacts, the SED shall include a finding to that effect in lieu of the analysis described in subdivision (b)(3)."⁵⁸ Therefore, the Central Coast Regional Water Board should include a finding that no fair argument exists that the Project could result in any reasonably foreseeable significant adverse environmental impacts.

⁵⁶ Pub. Res. Code, § 21068, 21100(d); Cal. Code Regs. Tit. 23, § 15382.

⁵⁷ These designations may include either SWQPA-ASBS or SWQPA-GP or in combination.

⁵⁸ Cal. Code Regs. Tit. 23, § 3777(e).

D. An environmental analysis of the reasonably foreseeable methods of compliance. The environmental analysis shall include, at a minimum, all of the following:

(1) An identification of the reasonably foreseeable methods of compliance with the project.

Compliance with the Project is dictated by the state's Ocean Plan. The Ocean Plan states that: Waste shall not be discharged to areas designated as being of special biological significance.⁵⁹ Additionally, discharges shall be located a sufficient distance from such designated areas to assure maintenance of natural water quality conditions in these areas.

Current waste dischargers may be required to adopt different methods to comply with this Project, in particular to prevent any discharge of waste into the Point Sur MPAs. Reasonable methods of compliance include hauling waste to an off-site disposal location, constructing different outfalls for waste that is currently discharged into the MPAs, or preventing non-point source discharges by prohibiting livestock from grazing too close to the MPAs.

Agricultural waste is discharged from El Sur Ranch into the Point Sur MPAs through two unpermitted outfalls. Additionally, unpermitted agricultural discharges may be present. Reasonably foreseeable compliance with the Project may include storing potential discharge on-site at a sufficient distance from the MPAs. Waste could also be hauled off-site to a permitted storage or discharge location. Additionally, alternative outfalls that are a sufficient distance from the boundaries of the MPAs may be constructed.

Stormwater runoff from nearby Highway One could also result in a discharge of waste. Highway One is less than half a mile from the coastline and the Point Sur MPAs. Additionally, Highway One both crosses and runs adjacent to the Big Sur River for approximately 14 miles. Caltrans would be responsible for any stormwater runoff from Highway One that directly discharges to the MPAs. Caltrans would need to ensure discharges to the Big Sur River do not result in alternated natural background water quality at the mouth of the Big Sur River and the Big Sur MPAs.

Human waste and trash from Andrew Molera State Park is currently hauled and disposed of off-site. No additional reasonably foreseeable method of compliance is needed.

(2) An analysis of any reasonably foreseeable significant adverse environmental impacts associated with those methods of compliance;

The Central Coast Regional Water Board should find less than significant environmental impacts associated with the above-described methods of compliance for all resources, including aesthetics, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, and agricultural resources.

(3) An analysis of reasonably foreseeable alternative methods of compliance that would have less significant adverse environmental impacts; and an analysis of reasonably foreseeable mitigation measures that would minimize any unavoidable significant adverse environmental impacts of the reasonably foreseeable methods of compliance.

The reasonably foreseeable methods of compliance discussed above should not result in significant environmental impacts. Therefore, we do not propose alternative methods of compliance that would have less than significant adverse environmental impacts. Similarly, an analysis of reasonably foreseeable mitigation measures is not necessary given that no significant environmental impacts are expected.

⁵⁹ California Ocean Plan, pg. 26.

We thank the Central Coast Regional Water Board for the opportunity to submit this nomination and for your consideration of the proposal. We hope to work with you to ensure a timely and proper approval of the Point Sur MPAs ASBS.

Sincerely,

Sean Bothwell
Executive Director
California Coastkeeper Alliance

Chelsea Hsin-Feng Tu
Executive Director
Monterey Waterkeeper

Natalie Caulk
Associate Director
The Otter Project

Attachment One: Point Sur MPAs Map



Appendix Two: Cow Photos



Attachment Three: El Sur Ranch Map

