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June 29, 2016

George Clyde
Chair
Overflight Working Group
Greater Farallones National Marine Sanctuary Advisory Council
Submitted to: overflightwg@gmail.com

Re: Greater Farallones National Marine Sanctuary Advisory Council Working Group on Low Overflight Regulation Zones: Request to Comment on New or Expanded Low Overflight Regulation Zones

Dear Mr. Clyde,

The Aircraft Owners and Pilots Association (AOPA), the world's largest aviation membership association, submit the following comments in response to the proposed National Oceanic and Atmospheric Administration (NOAA) low overflight regulation zones to be located over Tomales Bay, Sonoma County coast, Marin County coast, and Devil's Slide, CA. While AOPA supports NOAA's mission to conserve and manage coastal and marine resources, we are concerned with the far-reaching effects and implications of this proposed expansion and establishment of low overflight regulations zones. Based on the concerns presented below, AOPA cannot support the proposals.

FAA's Sole Authority to Regulate Airspace

According to Article 49, Section 40103 of the US Code, the Federal Aviation Administration (FAA) has the sole authority to regulate the use of the national airspace system. In the National Parks Air Tour Management Act, Congress recognized that the FAA has sole authority to control airspace over the United States. It also recognizes that the FAA has authority to preserve and protect the environment by preventing the adverse effects of aircraft overflights. It is our belief that further expansion of these low overflight regulation zones usurps that authority and permits NOAA to regulate flight operations in the national airspace system. A pilot operating within navigable airspace in the national airspace system and in full compliance with all Federal Aviation Regulations (FAR) could be subject to NOAA enforcement action based solely on the location of his/her aircraft.

Pilots have a reasonable expectation to be familiar with applicable FARs and the operating parameters established therein. If the FAA permits other agencies to regulate airspace, to what end will pilots be expected to know, understand, and follow regulations of countless other agencies? Such an action would create a patchwork quilt of overlapping and potentially contradictory regulations from Federal, State, and local agencies. On this point, the FAA issued a December 2015 document titled "State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet." In this document it spells out why it is solely the FAA's authority to govern

airspace and why a “‘patchwork quilt’ of differing restrictions could severely limit the flexibility of FAA in controlling the airspace and flight patterns, and ensuring safety and an efficient air traffic flow.”

There simply is not enough room on aeronautical charts to list multiple flight restrictions from a variety of agencies. The purpose of an aeronautical chart is to provide situational awareness and navigation information to a pilot. Using an aeronautical chart as the sole, practical means to communicate regulatory restrictions is inappropriate and would detract from the safe use of the chart for its intended purpose. Furthermore, there is no FAR requirement for a pilot to have an aeronautical chart on board the aircraft raising the question as to how a pilot would be aware of or familiar with NOAA regulations concerning flight operations.

Outreach Opportunity

AOPA is willing to support outreach efforts on the current Advisory Circular (AC) 91-36D, “Visual Flight Rules (VFR) Flight Near Noise Sensitive Areas including Marine Sanctuaries.” AOPA has agreed to collaborate with NOAA on pilot outreach and education to “fly friendly” in accordance with the recommendations contained in the FAA’s AC 91-36D. The AC requests that pilots voluntarily avoid overflight of noise sensitive areas at less than 2,000 feet above ground level. This guidance is recommended and not regulatory or compulsory. It is AOPA’s belief that any mandate or requirement beyond these terms must be enacted by the FAA following the standard rulemaking process.

Tomales Bay Study Area

The Tomales Bay sanctuary area is already designated a noise-sensitive area with pilots requested to maintain a minimum altitude 2,000 feet above the surface of the sanctuary. This charted notification is sufficient for pilots to know they should be following the guidance in AC 91-36D. The provided proposal does not detail any justification for the new low overflight regulation zone. Furthermore, the proposal acknowledges the entire area does not need further regulation so it is unclear what is prompting this action to be so extensive. Lacking specifics, we find it difficult to effectively comment. The area depicted as a low overflight regulation zone should be minimized to the areas that are justifiable. There should not be an increase in the zone unless there is evidence that it is an impacted area.

There are vague statements made that helicopters and seaplanes “occasionally” operate in the area without discussion of how this is disruptive and what problem needs to be corrected. Aircraft should be able to fly in this area when desired. We believe AC 91-36D adequately addresses any concern and that outreach to regular operators in the area will further increase awareness.

The proposal requests feedback on designating seaplane and helicopter landing areas within this area. NOAA does not have the authority, nor the expertise, to determine appropriate landing and takeoff locations for aircraft. The identification and governance of airports should be left to the FAA and the authorities they designate. Should a regulation zone be necessary, NOAA should work with the FAA and stakeholders to designate landing areas as mitigation for the loss of airspace access.

Feedback is requested on whether restrictions should be put in place on a seasonal basis. This cannot be accommodated with the existing charting cycle so depicting a restriction would be confusing unless a note was provided stating when the restriction was in place. This depiction would require new symbology to separate it from the annual restriction. The best solution to seasonal issues is to conduct pilot education and outreach, not new charting. The charted advisory to remain above 2,000 feet AGL is already effective at increasing awareness so no further charting should be required.

Sonoma County Study Areas

AOPA is concerned with how the proposed regulation zone will affect the Sea Ranch Airport (CA51) which is located in close vicinity. The private airport has numerous based aircraft who would be effectively prohibited from flying west of the airport at traffic pattern altitudes. Pilots conducting normal operations to and from this airport fly their traffic patterns as designated by the FAA. This puts the aircraft at altitudes lower than 1,000 feet AGL and to the west of the airport, both of which would no longer be feasible with a new regulation zone. In order to safely operate in and out of the Sea Ranch Airport, pilots need to be able to fly altitudes much lower than 1,000 feet. If this proposal moves forward, AOPA respectfully requests that these FAA established procedures be maintained and language included in any proposed or final rule that would exempt flight operations within 5 NM of the airport for the purposes of taking off or landing at the airport.

The proposal states “because of high cliffs, up-winds, down-winds, fog, limited glide paths in case of engine failure and the presence of birds flying in the area, it may be unsafe for pilots to fly at low altitudes in certain parts of the study area.” AOPA strongly opposes this statement for the following reasons: (a) it is not based on any study or facts that could lead to any conclusions on whether the local weather conditions are hazardous to aviation; (b) local weather conditions are not used for justification, mitigation, nor have any bearing on permanent geographic flight restrictions; and (c) none of these considerations, except for an unusually high presence of birds, has any bearing on the proposal. Formulating a conclusion based on these non-substantiated comments that new regulation zones will not impact many pilots, and therefore should not be carefully justified, would be inappropriate and outrageous.

AOPA supports the exemption for Coast Guard helicopter flights if the low-overflight zones would adversely impact their operation should the regulation zone be enacted. AOPA also agrees that the proposed areas “are along the route typically taken by pilots while traveling up and down the coast.” Any proposal should take a careful look at the impact on aviation and should be fully justified before moved out of the study phase.

Marin County Coastal Study Areas

This proposal requests feedback on whether charting “areas that are not at high risk of disturbance” would be appropriate. Enacting and charting a regulation zone because of simplicity is inappropriate. Only the areas fully justified should be considered for rulemaking.

Devil's Slide Study Area

The proposed new low overflight regulation zone will have immediate and lasting effects on general aviation, particularly those pilots based at Half Moon Bay Airport (KHAF). This area is frequently used to transit north-south around the San Francisco International Airport (KSFO) Class B airspace. Given the frequent fog and low ceilings in the San Francisco Bay, pilots are often forced to fly at low altitudes – below 1,000 feet AGL – on the western coast in order to comply with FAA regulations and to transit north-south. The new regulation zone may prevent pilots from transiting this area altogether in cases of the weather being at standard Visual Flight Rules minimums.

Many aircraft are not capable of flying within Class B airspace due to a lack of radios so they must remain below the 2,100 foot shelf. Creating this regulation zone will complicate the airspace and force many pilots to fly above 1,000 feet AGL and below 2,100 feet MSL. This limited altitude range will funnel air traffic and increase the risk of a collision. The hazard becomes even more serious as the Class B drops to 1,500 feet MSL just north of the proposed regulation zone. Pilots' compliance with both airspace requirements simultaneously could be distracting when it comes to see-and-avoid tasks and also greatly increase their workload. Any attempt to reduce the available airspace in this area will have a substantive impact on the safety, access, and efficiency of general aviation to transit the area.

Conclusion

The Sanctuary, the Seabird Protection Network, US Fish and Wildlife Service, and others have provided significant pilot education regarding the need to avoid disturbing birds in this area. We would request to assist in further outreach efforts and avoid imposing additional regulations. AOPA does not support the proposed low overflight regulation zones and we believe they would negatively reduce airspace access unnecessarily. The FAA has the sole authority to regulate airspace so any regulation that would govern airspace should come from this agency.

Thank you for reviewing our comments on this important issue. Please feel free to contact me at 202-509-9515 if you have any questions.

Sincerely,



Rune Duke
Director, Airspace and Air Traffic

The Aircraft Owners and Pilots Association (AOPA) is a not-for-profit individual membership organization of General Aviation Pilots and Aircraft Owners. AOPA's mission is to effectively serve the interests of its members and establish, maintain and articulate positions of leadership to promote the economy, safety, utility and popularity of flight in general aviation aircraft. Representing two thirds of all pilots in the United States, AOPA is the largest civil aviation organization the world.