



421 Aviation Way  
Frederick, Maryland 21701

T. 301-695-2000  
F. 301-695-2375

[www.aopa.org](http://www.aopa.org)

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Ms. Edith Parish  
Manager, Airspace, Regulations, & ATC Procedures Group  
Federal Aviation Administration  
800 Independence Ave. SW  
Room 423  
Washington, DC 20591

Re: Notice of Proposed Rulemaking for Amendments to National Marine Sanctuary Regulations Regarding Low Overflights in Designated Zones

Ms. Parish:

The Aircraft Owners and Pilots Association (AOPA), representing more than 400,000 members nationwide, submits the following request for clarification of the Federal Aviation Administration's (FAA) position on other agencies regulatory authority of the National Airspace System. The National Oceanic and Atmospheric Administration's (NOAA) recent Notice of Proposed Rulemaking (NPRM), Amendments of National Marine Sanctuary Regulations Regarding Low Overflights in Designated Zones, has brought into question the FAA's intent to retain authority for the regulation of navigable airspace.

#### **FAA's sole authority to regulate airspace**

According to Article 49, Section 40103 of the US Code, the FAA has 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 the NOAA NPRM usurps that authority and permits NOAA to regulate flight operations in the national airspace system.

Pilots have a reasonable expectation to be familiar with Federal Aviation Regulations 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.

#### **New class of restrictive airspace established without rulemaking**

The restrictions cited by the NOAA NPRM reference existing "restricted" airspace. This airspace is not familiar to pilots and is not charted on any publicly available aeronautical chart. Indeed, no standard exists for the depiction or operating parameters of such airspace in the Federal Aviation Regulations.

At a time when pilots, industry stakeholders, and the FAA are working to reduce chart clutter and improve the readability of aeronautical charts the above mentioned NPRM would require new charting symbols, additional complexity on aeronautical charts, and extensive pilot outreach to educate airspace users to this previously unknown type of airspace.

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The NPRM includes language that appears to contradict standard regulatory process that the FAA uses to establish restricted airspace. From the NPRM, "Regulations for the Monterey Bay, Channel Islands, Gulf of the Farallones, and Olympic Coast National Marine Sanctuaries all *restrict* low altitude overflights within specified zones."

#### **Pilot notification and education**

As outlined above, NOAA is proposing to regulate flight operations within a new class of restricted airspace. How will pilots be notified of changes to the boundaries of this airspace since its promulgation does not follow standard FAA rulemaking processes? How does the FAA plan to educate pilots about the regulatory nature of flying in this new class of airspace? Because pilots are currently unaware of NOAA's presumed authority in this airspace, the main option it appears NOAA is using to educate pilots is a handshake agreement with the FAA that new charting symbology will be developed and users will be educated via the aeronautical chart. AOPA requests the FAA provide further guidance on the process by which the airspace symbology for this new type of "restricted" airspace will be created and how users will be further educated on these precedent setting changes.

#### **Summary**

AOPA seeks to clarify the FAA's position on agencies other than the FAA regulating navigable airspace and the activities that occur within. If permitted to continue, the NPRM permits an entirely new class of restrictive airspace that pilots are unaware of. Without significant charting changes, in addition to outreach and education efforts, pilots will have no way of knowing they are inadvertently violating regulations. AOPA also intends to provide written comments to NOAA on the NPRM and will share those concerns with your office. We appreciate your time and look forward to seeing your response to the concerns we have outlined above.

Sincerely,



Heidi J. Williams  
Senior Director  
Airspace and Modernization