



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL OCEANIC SERVICE**  
**Office of National Marine Sanctuaries**  
1305 East-West Highway  
Silver Spring, Maryland 20910

September 17, 2012

Dear Aviation Community Member,

When Gulf of the Farallones and Monterey Bay National Marine Sanctuaries were designated (1981 and 1992, respectively), a federal regulation by the National Oceanic and Atmospheric Administration (NOAA) was implemented to protect seabird colonies and marine mammal rookeries from aircraft disturbance. These regulations prohibit motorized flights below 1,000 feet AGL within specific zones of the sanctuaries; however the overflight prohibition zones were not depicted on aeronautical charts prior to 2012.

After extensive discussions between NOAA and Federal Aviation Administration (FAA) officials, NOAA agreed in 2010 to change the wording of the regulations to clarify that the 1,000-foot delineation is an altitude disturbance threshold for federally protected marine mammals and seabirds – not an FAA airspace restriction. In other words, flying below 1,000 feet AGL in any sanctuary overflight prohibition zone triggers a natural resource violation – not a flight rule violation.

In response to NOAA's regulatory changes (finalized in February 2012), the FAA recently updated the Los Angeles and San Francisco sectional and terminal area charts to advise pilots of NOAA's regulations and to accurately display sanctuary overflight prohibition zones along the coast. Now that the aeronautical charts accurately reflect NOAA's regulations, pilots will be held more accountable for complying with NOAA's federal overflight regulations. Below are examples of the language depicted on the updated aeronautical charts.



NOAA has created a web page on the Office of National Marine Sanctuaries' web site that describes the recent changes to several west coast sectional and terminal area charts. For a description of chart changes and the reasons behind them, go to <http://sanctuaries.noaa.gov/flight/welcome.html>.

The following resources are also available on-line or upon request:

- For a list of Frequently Asked Questions (FAQs) about central California overflight regulations, go to <http://sanctuaries.noaa.gov/flight/faqs.html>
- For a large-scale map of the central California overflight prohibition zones, go to <http://farallones.noaa.gov/eco/seabird/media/overflightregmaplg.jpg>
- For sanctuary regulatory descriptions of central California's overflight prohibition zones, go to [http://farallones.noaa.gov/manage/pdf/77FR3919\\_Overflighfinalrule.pdf](http://farallones.noaa.gov/manage/pdf/77FR3919_Overflighfinalrule.pdf)

If you have any further questions about the regulation or chart changes, or if you would like a presentation to your group about this topic, we invite you to contact us at [California.Seabird@noaa.gov](mailto:California.Seabird@noaa.gov).

Sincerely,

*Paul Michel*

Paul Michel, Superintendent

*Maria Brown*

Maria Brown, Superintendent



## **Frequently Asked Questions (FAQs)**

### **Overflight Regulations of Central California National Marine Sanctuaries**

- 1) Q. When were Central California National Marine Sanctuary overflight regulations created and by whom? Has a new rule been imposed?**
- A. The National Oceanic & Atmospheric Administration (NOAA) created federal regulations in 1981 in Gulf of the Farallones National Marine Sanctuary (GFNMS), and in 1992 in Monterey Bay National Marine Sanctuary (MBNMS) prohibiting motorized flights below 1,000 feet AGL within selected zones of the sanctuaries in order to protect special wildlife habitats from aerial disturbance. NOAA recently took action to clarify the 20+ year-old rules and explicitly allow for rebuttal by someone charged with a violation, but the basic prohibition and zones have not been changed or expanded.
- 2) Q. Do these overflight prohibitions apply to the entire Monterey Bay and Gulf of the Farallones National Marine Sanctuaries?**
- A. No. In MBNMS, the sanctuary overflight prohibitions apply only within four discrete zones. The zone boundaries have not changed since 1992. For a general map of the four zones, see [http://montereybay.noaa.gov/intro/maps/overflight1\\_lg.jpg](http://montereybay.noaa.gov/intro/maps/overflight1_lg.jpg)
- A. No. In GFNMS, the sanctuary overflight prohibitions apply only within six discrete zones within the sanctuary. The zone boundaries have not changed since 1981. For a general map of the zones, see <http://farallones.noaa.gov/eco/seabird/media/overflightregmaplg.jpg>
- 3) Q. What is the reason for the recent action to revise west coast aeronautical charts regarding national marine sanctuary overflight zones?**
- A. Overflight regulation zones established by NOAA in west coast national marine sanctuaries have not been depicted on past aeronautical charts. Recent regulatory clarifications by NOAA and subsequent charting actions by the Federal Aviation Administration (FAA) were designed to provide clear chart notices that low-altitude flight operations within designated sanctuary overflight prohibition zones are presumed to disturb federally protected wildlife species and violate NOAA natural resource regulations.
- 4) Q. Where can I get more detailed information about the aeronautical chart changes?**
- A. Find additional details about chart changes online at <http://sanctuaries.noaa.gov/flight/welcome.html> or contact the main office of MBNMS at (831) 647-4201 or the main office of GFNMS at (415) 561-6622.
- 5) Q. How can NOAA impose overflight prohibitions when the Federal Aviation Administration (FAA) is the only agency that can establish flight rules?**
- A. NOAA recognizes the FAA's authority to regulate airspace and has worked closely with the FAA to craft regulations that are explicitly linked to NOAA's statutory authority for natural resource protection. NOAA has established a minimum altitude disturbance threshold for federally protected marine mammal and seabird communities within discrete areas of the MBNMS and GFNMS. Flying motorized aircraft below the 1000-foot minimum altitude threshold in certain coastal areas of the sanctuary violates a federal wildlife disturbance prohibition – not an FAA airspace restriction. The FAA, in a 2012 letter to the Aircraft Operators and Pilots Association (AOPA), stated that it does not view NOAA's current sanctuary overflight prohibitions as airspace regulations nor as an infringement on the FAA's stated authority to regulate airspace.



**6) Q. Are there any exceptions to the overflight prohibitions in the central California sanctuaries?**

- A. Yes, MBNMS overflight prohibitions do not apply to:
- Flights conducted for valid law enforcement purposes;
  - Flight operations authorized by a valid sanctuary permit/authorization; or
  - Activities necessary to respond to emergencies threatening life, property, or the environment, such as aerial search and rescue operations or in-flight emergencies.
- A. Yes, GFNMS overflight prohibitions do not apply to:
- Flights conducted for valid law enforcement purposes;
  - Flight operations authorized by a valid sanctuary permit;
  - Activities necessary to respond to emergencies threatening life, property, or the environment, such as aerial search and rescue operations or in-flight emergencies; or
  - Flights for the purpose of transporting authorized personnel or supplies to and from the Farallon Islands.

**7) Q. If a pilot reduces altitude below 1,000 feet AGL within an overflight prohibition zone to remain compliant with VFR requirements or for other flight safety reasons, would that be considered a violation by NOAA?**

- A. When investigating suspected regulatory violations, NOAA can consider mitigating factors, such as weather conditions, emergencies, flight rules, and flight controller instructions. Such factors are evaluated on a case-by-case basis, in combination with other information unique to an incident. Shifting marine fog conditions are a common occurrence along the Central California coast. Pilots should plan ahead to avoid situations that would require descending into sanctuary overflight prohibition zones to maintain VFR.

**8) Q. Do MBNMS and GFNMS overflight prohibitions conflict with VFR and IFR approach/departure procedures?**

- A. No. In establishing the overflight prohibition zones, NOAA made a deliberate effort to avoid interference with normal airport operations, including approaches and departures. NOAA has consulted with the FAA on this issue and is not aware of any conflicts between current published airport approach/departure procedures and central California overflight prohibition zones.

**9) Q. Does the term “rebuttable presumption” in the sanctuary overflight regulation mean that a pilot is presumed to have violated the minimum altitude prohibition of an overflight zone simply because someone reported that he/she did so?**

- A. No. Use of the term “rebuttable presumption” in the regulation does not mean that a pilot is presumed guilty simply by an unsubstantiated witness accusation that he/she violated a sanctuary overflight prohibition. Before charging a pilot with violation of an overflight prohibition, NOAA will first collect evidence to substantiate such a charge. If NOAA can establish that a pilot did in fact operate a motorized aircraft below 1,000 feet AGL within any of the MBNMS or GFNMS overflight prohibition zones, then a “rebuttable presumption” will apply that the flight operations resulted in the disturbance of marine mammals or seabirds. This means that the pilot could be charged with a wildlife disturbance violation simply by the act of flying below the minimum altitude threshold. This presumption of disturbance could be overcome by contrary evidence that disturbance did not, in fact, occur (*e.g.*, evidence that no marine mammals or seabirds were present in the area at the time of the low overflight). The burden of proof that no disturbance occurred would rest upon the pilot. “Rebuttable presumption” is a legal principle that has been applied in various areas of law for centuries.

**10) Q. What evidence might NOAA use to determine the altitude of an aircraft in potential violation of a sanctuary minimum altitude prohibition?**

- A. NOAA may use a range of enforcement tools, such as aerial reconnaissance, radar, photography, fixed-point observations, and other available methods and technologies.

**11) Q. Does NOAA have evidence that sanctuary overflight prohibitions are necessary?**

- A. Yes. The administrative records establishing overflight prohibitions describe the need to protect near-shore and offshore resources from unnecessary disturbance, and explain how low-altitude



overflights can disrupt various marine mammal and seabird behavior patterns, including breeding and nesting activities. Low overflights in these areas clearly pose a risk of harmful disturbance to marine mammals and seabirds, including movement and evacuation in response to low overflights where the young (pups, chicks, eggs) are crushed during an evacuation or exposed to predation as a consequence of loss of parental protection. Additional documentation supporting the need for overflight regulations in order to reduce the risk of harmful disturbance to marine mammals and seabirds was submitted during the 2009 public comment period and can be found at <http://www.regulations.gov/#!searchResults:rpp=25;po=0;dkid=NOAA-NOS-2009-0237>.

**12) Q. Are there overflight prohibitions in other national marine sanctuaries along the west coast?**

- A. Yes. In addition to GFNMS and MBNMS, NOAA overflight prohibitions exist in areas of the Olympic Coast National Marine Sanctuary in Washington and Channel Islands National Marine Sanctuary in southern California. Minimum altitude regulations vary by sanctuary. Consult appropriate aeronautical charts covering each sanctuary for specific altitude limitations.

**13) Q. How will NOAA inform pilots about the amended regulations and chart changes?**

- A. The primary means of informing pilots about sanctuary overflight regulations are the aeronautical charts themselves – a primary source for flight planning information. The revised chart notices include a web address where pilots can obtain more detailed information. In addition, NOAA will continue to collaborate with FAA to educate pilots on the overflight regulations for sanctuaries. Such coordination may include working with local FAA aviation safety program managers to get the word out to pilot associations. Other outreach strategies include press releases, website updates, presentations to flight clubs, articles in general aviation magazines and informational posters at local airports.

**14) Q. Besides posting the overflight prohibitions on FAA aeronautical charts, what else has NOAA done to inform the flying community about central California’s sanctuary overflight regulations?**

- A. NOAA’s Office of National Marine Sanctuaries has conducted pro-active pilot outreach along the central California coast for several years. Some of these activities include:
- **Pilot Guide:** the foldable map-based insert was designed for placement in the “Blue Book” Pilot Guide to California Airports. The Guide includes a list of overflight regulations, maps of overflight prohibition zones and seabird colonies. Over 5,000 Pilot Guides have been sent to airports, pilot associations, flight schools, private pilots, private businesses, military, law enforcement officers and media. Such entities include: Vertical Challenge, Aeroadventures, Half Moon Bay and San Carlos airports, Santa Cruz Flying Club, several EAA Chapters, Ahart Aviation, California International Airshow, Specialized Helicopters, Watsonville Airport, Watsonville Pilots Association, Novato Airport and Moffett Federal Airfield.
  - **Annual Mailing:** the pilot packet includes a letter notifying pilots to the laws and regulations pertaining to seabird disturbance. Since 2009, over 1,500 letters have been sent to individual pilots and airport managers.
  - **Presentations:** since 2003 over 30 presentations have been provided to organizations such as the Santa Cruz Flying Club, the EAA (Chapters 20, 29, 106, 110UL, 119, 167, 338, 393, 639, 1264, 1268), several units of the West Valley Flying Club, Watsonville Pilots Association, Petaluma Area Pilots Association, the Ninety-Nines of Santa Rosa and Santa Clara Valley, Civil Air Patrol (Squadrons 10, 23, 80, 86, 192), Hayward Executive Airport, Sundance Flying Club, Hollister Airmen’s Association and the Half Moon Bay Pilots Association.
  - **Display Booths:** at air shows, including Pacific Coast Dream Machines (Half Moon Bay, CA), Watsonville Fly-In, Wings over Wine Country (Santa Rosa, CA), California International Air show (Salinas, CA) and Golden West EAA Fly-In (Marysville, CA).
  - **Pilot Posters:** to flight schools, airports, pilot associations, private businesses and military units throughout central California. These posters include tips for avoiding seabirds, and a summary of the overflight regulations. Over 150 posters have been distributed.
  - **Website:** the [Seabird Protection Network](#) (Network) conducts proactive outreach to pilots. The Network web page is hosted by the Gulf of the Farallones National Marine Sanctuary, and includes information on regulations that pertain to low overflights within all California sanctuary waters. In addition, each sanctuary website includes information and maps about its overflight prohibition zones.
  - **NOAA Enforcement:** personnel have issued verbal and written warnings to approximately 100 pilots in central California since 2003 for low overflight violations.



## **Agencies with Overflight Regulations In Northern and Central California Coastal Areas**

### **Gulf of the Farallones and Monterey Bay National Marine Sanctuaries**

**Prohibited or otherwise regulated activities include:** Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized... [[15 CFR §922.82 \(a\)\(11\) and §922.132 \(a\)\(6\)](#)]

*Take or taking* means: (1) For any marine mammal, sea turtle, or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct; (2) For any other marine mammal, sea turtle, or seabird, to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct. For the purposes of both (1) and (2) of this definition, this includes, but is not limited to, to collect any dead or injured marine mammal, sea turtle or seabird, or any part thereof; to restrain or detain any marine mammal, sea turtle or seabird, or any part thereof, no matter how temporarily; to tag any sea turtle, marine mammal or seabird; to operate a vessel or aircraft or to do any other act that results in the disturbance or molestation of any marine mammal, sea turtle or seabird. [[15 CFR §922.3](#)]

### **Gulf of the Farallones National Marine Sanctuary**

**Prohibited or otherwise regulated activities include:** Disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within one nautical mile of the Farallon Islands, Bolinas Lagoon, or any Area of Special Biological Significance (ASBS) as designated by the State of California, except to transport persons or supplies to or from the Islands or for enforcement purposes. Failure to maintain a minimum altitude of 1,000 feet above ground level (AGL) over such waters is presumed to disturb marine mammals or seabirds. [[15 CFR §922.82 \(a\)\(8\)](#)]

### **Monterey Bay National Marine Sanctuary**

**Prohibited or otherwise regulated activities include:** Disturbing marine mammals or seabirds by flying motorized aircraft, except as necessary for valid law enforcement purposes, at less than 1,000 feet above any of the four zones within the Sanctuary described below. Failure to maintain a minimum altitude of 1,000 feet AGL above any such zone is presumed to disturb marine mammals or seabirds. [[15 CFR §922.132 \(a\)\(6\)](#)]

**Pilots are required to remain above 1,000 feet AGL whenever flying within any of the four zones described below:**

1. From mean high water to 3 nautical miles (nmi) offshore between a line extending from Pt. Santa Cruz on a southwesterly bearing of 220° true and a line extending from 2 nmi north of Pescadero Pt. on a southwesterly bearing of 240° true;
2. From mean high water to 3 nmi offshore between a line extending from the Carmel River mouth on a westerly bearing of 270° true and a line extending due west along latitude parallel 35.55488° N off of Cambria;
3. From mean high water and within a 5 nmi seaward arc from a center point of 36.80129° N, 121.79034° W (the end of the Moss Landing ocean pier as it appeared on the most current NOAA nautical charts as of January 1, 1993); and
4. Over the Sanctuary's jurisdictional waters of Elkhorn Slough east of the Highway One bridge to Elkhorn Road.

### **California Department of Fish and Game**

“It is unlawful to fly any aircraft, including any airplane or helicopter...less than 1,000 feet above water or land over the California Sea Otter Game Refuge...except for rescue operations, in case of any emergency, or for scientific or filmmaking purposes under a permit issued by the Department after a review of potential biological impacts.” The Sea Otter Game Refuge requires pilots to fly above 1,000 feet AGL and extends inland to Highway 1, and out 3 nautical miles in designated areas. [[FGC 10501.5\(a\)](#)]

### **U.S. Fish and Wildlife Service**

**Within a wildlife refuge:** “The unauthorized operation of aircraft, including sail planes and hang gliders, at altitudes resulting in harassment of wildlife, or the unauthorized landing or take-off on a national wildlife refuge, except in an emergency, is prohibited. National wildlife refuge boundaries are delineated on updated FAA aeronautical charts.” [[50 CFR 27.34](#)]

**Not on a wildlife refuge:** “Except as otherwise authorized by the Fish and Wildlife Act of 1956 as amended, no person shall...(2) use an aircraft to harass any wildlife; or...” Definition: 19.4: Harass means to disturb, worry, molest, rally, concentrate, harry, chase, drive, herd, or torment.” [[50 CFR 19.11](#)]