

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 922****50 CFR Part 660**

RIN 0648-AT18

**Establishment of Marine Reserves and a Marine Conservation Area Within the Channel Islands National Marine Sanctuary**

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS) and National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Response to Comments.

**SUMMARY:** NOAA published a final rule on May 24, 2007 (72 FR 29208) that established marine reserves and a marine conservation area in the Channel Islands National Marine Sanctuary (Sanctuary). At that time, NOAA decided to defer action on establishing federal marine zones in state waters of the Sanctuary, pending the California Fish and Game Commission closing the gaps between the federal marine zones and the state marine zones. This notice closes the record on NOAA's decision with regard to state waters of the Sanctuary and responds to comments NOAA received on that issue.

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**SUPPLEMENTARY INFORMATION:****I. Background**

In August 2006, NOAA published proposed regulations to consider the establishment of marine reserves and marine conservation areas in the Channel Islands National Marine Sanctuary (Sanctuary). At that time, NOAA also released the related draft environmental impact statement (DEIS) for public review and comment. Between August and October of 2006, NOAA received public comment and held two hearings on the proposed rule and DEIS. Over 30,000 individuals submitted written comments and/or presented oral testimony on NOAA's proposal. The majority of these individuals supported the establishment of NOAA's Alternative 1A or Alternative 2. Alternatives 1A and 2 would have established marine zones in both federal and state waters with federal regulations overlaying the entire

zone network (i.e., from the outer boundary of the federal waters zones to the mean high water line of the Channel Islands). NOAA's preferred alternative was Alternative 1A.

During the public comment period, the State of California submitted comments on NOAA's proposal. In its October 2006 letter to NOAA, the California Department of Fish and Game (CDFG) stated it could only support Alternative 1C as described in the DEIS. Under Alternative 1C, NOAA would establish marine reserves and a marine conservation area (and their associated regulations) only in the federal waters of the Sanctuary. In subsequent consultations with state representatives and in a letter from the Secretary of Resources dated January 2, 2007, the California Resources Agency also stated that it could only support Alternative 1C at that time. As indicated in the DEIS, Alternative 1C left small gaps in protection between the offshore extent of some of the state waters marine zones established by the State of California in 2003 and the federal waters marine zones proposed by NOAA in Alternative 1C.

On March 16, 2007, the California Coastal Commission (Coastal Commission) held a public meeting on NOAA's consistency determination with California's Coastal Zone Management Plan under section 307 of the Coastal Zone Management Act (see <http://www.coastal.ca.gov/meetings/mtg-mrn7-3.html>). At that meeting, the Coastal Commission passed a motion as follows: "In the event NOAA elects not to implement Alternative 1A, NOAA will implement Alternative 1C, with the following additional provisions: Until such time as the Resources Agency and the Fish and Game Commission designate the areas in between the existing State-designated MPAs and the 3 mile limit (i.e., the "gaps" between the existing state MPAs and the federal MPAs depicted in Alternative 1c [and shown on Exhibit 9]), or the Fish and Game Commission/DFG and NOAA enter into an interagency agreement that establishes MPA protection for these "gap" areas, NOAA will expand Alternative 1C to include in its MPA designation these "gaps" between the outer boundaries of the existing state MPAs and the state-federal waters boundary (3nm from shore)." At this meeting, the CDFG representative stated that the California Fish and Game Commission (FGC) could close these gaps in protection using state laws by August 2007.

Based on the record as of May of 2007, NOAA then determined there was sufficient rationale to justify

establishing marine zones in the federal waters of the Sanctuary but decided to defer action on establishing federal marine zones in state waters of the Sanctuary, until the State had had an opportunity to close those gaps in protection. As such, NOAA published a final rule on May 24, 2007 (72 FR 29208) that established marine zones in the federal waters and asked for public input on the issue of establishing federal marine zones in the state waters of the Sanctuary. That regulation became effective on July 29, 2007.

On October 12, 2007 the FGC closed the gaps between the federal marine zones and the state marine zones in a manner consistent with the Coastal Commission's resolution and the CDFG representative's statement.<sup>1</sup>

**II. Summary of Comments and Responses**

*Comment 1:* The federal government should provide full Sanctuary jurisdiction and oversight for any marine reserves that are located within the CINMS.

*Response:* On October 12, 2007, the State of California issued regulations that extend the offshore boundaries of the marine zones in state waters to the inshore boundaries of the marine zones in federal waters (established by NOAA in May of 2007). Those regulations went into effect on December 17, 2007, thus providing protection to the area within the marine zones from shore to the inshore boundary of the federal marine zones established by NOAA in May of 2007.

Because there is no regulatory gap in protection between state and federal marine zones, NOAA has decided not to extend sanctuary marine zone regulations into the state waters of the Sanctuary at this time. NOAA and the State will continue to work collaboratively on the administration of the entire marine zone network, including monitoring, education and enforcement.

*Comment 2:* Alternative 1A, rather than Alternative 1C, best meets the Sanctuary's goals of ensuring the long-term protection of Sanctuary resources, and protecting, restoring and maintaining functional and intact

<sup>1</sup> Closing the gaps would also be consistent with the public record supporting the 2002 decision of the California Fish and Game Commission to establish marine zones in the Sanctuary.

Therefore, NOAA has, at this time, decided not to extend sanctuary regulations into the state waters of the Sanctuary because there is no regulatory gap in protection between state and federal marine zones. NOAA and the State will continue to work collaboratively on the administration of the entire marine zone network, including monitoring, education and enforcement.

portions of habitats, populations and ecological processes in the Sanctuary.

*Response:* NOAA's analysis identified that the differences among the three sub alternatives (Alternatives 1A, 1B, and 1C) are distinguished by management considerations, not ecological and socioeconomic impacts. As such, because the State of California closed the state water gaps associated with Alternative 1C, the net ecological benefits and socioeconomic impacts between Alternatives 1A (NOAA's original preferred alternative) and 1C (the State of California's recommended alternative) are the same. NOAA has determined, therefore, that Alternative 1C accomplishes the goals of the zoning network.

*Comment 3:* The FGC process to undertake a regulatory process to fill the gaps adds additional work and cost to an already overburdened agency.

*Response:* Only the FGC can determine if it has the resources to undertake a regulatory process. NOAA notes that the FGC concluded the regulatory process to fill the gaps on October 12, 2007 and the state regulations went into effect on December 17, 2007.

*Comment 4:* Overlaid federal regulations applicable network-wide would provide greater enforcement tools for both state and federal resource managers, including the authority to seek injunctive relief in cases where it is determined that there is injury, or imminent risk of injury, to a Sanctuary resource, as well as the assurance that penalties collected as a result of marine zone violations in the CINMS will be used directly to further the protection of CINMS resources. The State would lack these additional enforcement capabilities.

*Response:* In section 5.1 of the final environmental impact statement, NOAA detailed the administrative benefits of overlaying state waters with federal marine zone regulations, including enhancing enforcement and prosecution, as noted by the commenter. However, at this time, the State opposes NOAA issuance of sanctuary marine zone regulations in state waters of the Sanctuary. NOAA and the State have in the past worked collaboratively on the administration of the network, including enforcement, and will continue to do so in the future. If, for example, in the future the State determines that its enforcement capabilities could be further enhanced with complementary federal regulations in state waters, NOAA would consider a regulatory action to provide for overlaying federal marine zone regulations in state waters.

*Comment 5:* Alternative 1C creates confusion among Sanctuary users and the public, which could result in unintentional non-compliance with the existing marine zones. This also leaves the resources present in or traversing through the gaps unprotected, thereby fragmenting and decreasing the effectiveness of the existing state and soon-to-be finalized federal MPAs.

*Response:* The FGC concluded the regulatory process to fill the gaps on October 12, 2007 and the regulations went into effect December 17, 2007. NOAA is unaware of violations or non-compliance due to confusion during the time period from July 2007 to December 2007 when there were gaps between the state and federal marine zones.

*Comment 6:* Alternative 1A would align with the State's Marine Managed Areas Improvement Act (AB 1600), which directs the State to consolidate and simplify the range of MPAs within California.

*Response:* The terminology and definitions written into the Code of Federal Regulations were drafted to be as consistent as practicable with the State terms and definitions from the Marine Managed Areas Improvement Act. In addition, the combined state and federal marine zoning network remains consistent with the original geographic scope envisioned by the State and supported by NOAA in the Final Environmental Document adopted by the State in October 2002.

*Comment 7:* Alternative 1C will result in a fragmented, inefficient and piecemeal approach to the enforcement, monitoring, management, and public education efforts surrounding the Sanctuary MPAs. Implementation of Alternative 1A, on the other hand, would draw on the management and regulatory strengths of both federal and state agencies and thereby ensure that the implementation and protection of the MPA network is carried out in the most efficient, complementary and cohesive fashion.

*Response:* NOAA and the State strongly support a close, collaborative working relationship to implement the Sanctuary zoning network and to ensure that management of the network (e.g., enforcement, education and outreach, and monitoring) is implemented in a collaborative, efficient, and effective manner.

*Comment 8:* If the FGC were to alter state regulations governing state MPAs at some point in the future, the integrity of the entire network would be threatened.

*Response:* NOAA will work closely with the FGC on any future changes to the network. If the State were to alter its

regulations in a manner that, in NOAA's judgment, compromises the integrity of the network, NOAA will consider taking further action under the National Marine Sanctuaries Act to maintain the network's integrity.

*Comment 9:* If the State fails to close gaps by fall 2007, NOAA should expeditiously finalize regulations that will close the gaps by extending federal protections under the National Marine Sanctuaries Act into state waters to meet the boundaries of the state MPAs created in 2003.

*Response:* The FGC closed the gaps on October 12, 2007. The regulations became effective on December 17, 2007.

Dated: April 9, 2008.

**Daniel J. Basta,**

Director, Office of National Marine Sanctuaries.

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 26 and 301

[REG-147775-06]

RIN 1545-BH63

#### Regulations Under Section 2642(g)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations providing guidance under section 2642(g)(1). The proposed regulations describe the circumstances and procedures under which an extension of time will be granted under section 2642(g)(1). The proposed guidance affects individuals (or their estates) who failed to make a timely allocation of generation-skipping transfer (GST) exemption to a transfer, and individuals (or their estates) who failed to make a timely election under section 2632(b)(3) or (c)(5). This document also provides notice of a public hearing.

**DATES:** Written or electronic comments must be received by July 16, 2008. Outlines of topics to be discussed at the public hearing scheduled for August 5, 2008, must be received by July 15, 2008.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-147775-06), Internal Revenue Service, Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through