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 follows: In the event NOAA elects not to extend sanctuary marine zone regulations into the state 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.¹

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

¹ 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 marine zone 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 piece-meal 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 13, 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