

Regulating Fishing Activity in the SBNMS

From the Stellwagen Bank National Marine Sanctuary web site FAQs:

(<http://stellwagen.noaa.gov/about/faq.html#canregulate>)

Is fishing allowed in the sanctuary?

Yes. Both commercial and recreational fishing are allowed in the sanctuary. The NOAA Fisheries Service with the New England Fishery Management Council manages fisheries in New England waters three to 200 nautical miles from shore. Some restrictions on fishing have been put in place by NOAA Fisheries that affect fishing in sanctuary waters, including rolling closures for groundfishing, catch limits for individual species, and a large, indefinite year-round closure in the Gulf of Maine.

Can the National Marine Sanctuary Program regulate fishing activities in the sanctuary?

No. Fishing is not an activity listed as subject to regulation in the sanctuary designation document. Therefore, it cannot be regulated without amending the designation document. Further, pursuant to the National Marine Sanctuaries Act (NMSA), the relevant fishery management council would be provided the opportunity to draft the Stellwagen Bank National Marine Sanctuary fishery regulations to achieve the desired resource protection objective. Any changes to the designation document would be narrowly constructed to address only the specific resource protection objective. The input of the New England Fishery Management Council, NOAA Fisheries and fishing communities will be sought as the management plan review progresses, and especially as issues are considered that may have a bearing upon fishing activities.

Does the National Marine Sanctuary Program have authority under the NMSA to regulate fishing activities?

Yes. Section 304(a)(5) of the National Marine Sanctuaries Act (NMSA) provides authority to issue regulations as may be necessary to protect the resources and qualities for which individual sanctuaries were designated. This would include regulations for certain fishing activities if determined necessary to protect sanctuary resources or qualities. The NMSA has specific requirements as to how any sanctuary fishing regulations are to be developed. Specifically, the NMSA requires NOAA to provide the relevant fishery management councils the opportunity to prepare draft sanctuary fishing regulations. In doing so, the fishery management council is to use as guidance the national standards of the Magnuson-Stevens Fishery Conservation and Management Act to the extent the standards are consistent and compatible with the goals and objectives of the sanctuary. The scope of a sanctuary's regulatory authority is further defined in its designation document.

What is a designation document and how does it guide what activities can be regulated?

At the time of designation of a sanctuary, NOAA lists the activities that may be subject to regulation in the designation document and issues regulations addressing what activities will be regulated. Both the list of activities subject to regulation, as well as the regulations themselves can be amended as long as NOAA follows the legal and administrative processes (e.g., the NMSA, National Environmental Policy Act and Administrative Procedure Act) required. To change a designation document, NOAA must follow the applicable procedures and requirements for designating a sanctuary. This includes consulting with relevant federal and state agencies, and Congress, and providing opportunity for the public to give input. Thus, to regulate fishing activities it must follow the rigorous legal and administrative processes to change a term of designation. Further, NOAA must also provide the relevant fishery management council the opportunity to draft such sanctuary fishing regulations, as described above.