

Flower Garden Banks National Marine Sanctuary Regulations

This version of the FGBNMS regulations is the version published in the Federal Register in April 2012.

Title 15: Commerce and Foreign Trade

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

Subpart L—Flower Garden Banks National Marine Sanctuary

§ 922.120 Boundary.

The Flower Garden Banks National Marine Sanctuary (the Sanctuary) consists of three separate areas of ocean waters over and surrounding the East and West Flower Garden Banks and Stetson Bank, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles (nmi) south-southwest of Cameron, Louisiana, and encompasses 19.20 nmi². The area designated at the West Bank is located approximately 110 nmi southeast of Galveston, Texas, and encompasses 22.50 nmi². The area designated at Stetson Bank is located approximately 70 nmi southeast of Galveston, Texas, and encompasses 0.64 nmi². The three areas encompass a total of 42.34 nmi² (145.09 square kilometers). The boundary coordinates for each area are listed in appendix A to this subpart.

§ 922.121 Definitions.

Attract or attracting means the conduct of any activity that lures or may lure any animal in the Sanctuary by using food, bait, chum, dyes, decoys (e.g., surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).

Clean means not containing detectable levels of harmful matter.

Disturb or disturbing a ray or whale shark means to, or attempt to touch, handle, ride, pursue, chase away, hunt, restrain, detain (no matter how temporarily), capture, collect, or conduct any other activity that disrupts or has the potential to disrupt any ray or whale shark in the Sanctuary by any means. Notwithstanding the above, the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers) is exempted from this definition.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed at 40 C.F.R. 302.4 pursuant to 42 U.S.C. 9601(14) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

No-activity zone means the two geographic areas delineated by the Department of the Interior in stipulations for OCS lease sale 112 over and surrounding the East and West Flower Garden Banks,

and the geographic area delineated by the Department of the Interior in stipulations for OCS lease sale 171 over and surrounding Stetson Bank, as areas in which activities associated with exploration for, development of, or production of hydrocarbons are prohibited. The precise aliquot part description of these areas around the East and West Flower Garden Banks are provided in appendix B of this subpart; the no-activity zone around Stetson Bank is defined as the 52 meter isobath. These particular aliquot part descriptions for the East and West Flower Garden Banks, and the 52 meter isobath around Stetson Bank, define the geographic scope of the “no-activity zones” for purposes of the regulations in this subpart. The descriptions for the East and West Flower Garden Banks no-activity zones are based on the “1/41/41/4” system formerly used by the Department of the Interior, a method that delineates a specific portion of a block rather than the actual underlying isobath.

§ 922.122 Prohibited or otherwise regulated activities

(a) Except as specified in paragraphs (c) through (h) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing, or producing oil, gas, or minerals except outside of all no-activity zones and provided all drilling cuttings and drilling fluids are shunted to the seabed through a downpipe that terminates an appropriate distance, but no more than ten meters, from the seabed.

(2) (i) Anchoring any vessel within the Sanctuary.

(ii) Mooring any vessel within the Sanctuary, except that vessels 100 feet (30.48 meters) or less in registered length may moor to a Sanctuary mooring buoy.

(iii) Mooring a vessel in the Sanctuary without clearly displaying the blue and white International Code flag "A" (“alpha” dive flag) or the red and white “sports diver” flag whenever a SCUBA diver from that vessel is in the water and removing the “alpha” dive flag or “sports diver” flag after all SCUBA divers exit the water and return back on board the vessel, consistent with U.S. Coast Guard guidelines relating to sports diving as contained within "Special Notice to Mariners" (00-208) for the Gulf of Mexico.

(3)(i) Discharging or depositing from within or into the Sanctuary any material or other matter except:

(A) Fish, fish parts, chumming materials, or bait used in or resulting from fishing with conventional hook and line gear in the Sanctuary, provided that such discharge or deposit occurs during the conduct of such fishing within the Sanctuary;

(B) Clean effluent generated incidental to vessel use by an operable Type I or Type II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(D) Engine exhaust;

(E) In areas of the Sanctuary outside the no-activity zones, drilling cuttings and drilling fluids necessarily discharged incidental to the exploration for, development of, or production of oil or gas in those areas and in accordance with the shunting requirements of paragraph (a)(1) unless such discharge injures a Sanctuary resource or quality.

(ii) Discharging or depositing, from beyond the boundaries of the Sanctuary, any material or other

matter, except those listed in paragraphs (a)(3)(i) (A) through (D) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(4) Drilling into, dredging, or otherwise altering the seabed of the Sanctuary (except as allowed under § 922.122(c)); or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

(5) Injuring or removing, or attempting to injure or remove, any coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota, or carbonate rock within the Sanctuary.

(6) Taking any marine mammal or turtle within the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 et seq., and the Endangered Species Act, as amended, 16 U.S.C. 1531 et seq.

(7) Killing, injuring, attracting, touching, or disturbing a ray or whale shark in the Sanctuary.

Notwithstanding the above, the incidental and unintentional injury to a ray or whale shark as a result of fishing with conventional hook and line gear is exempted from this prohibition.

(8) Injuring, catching, harvesting, collecting, or feeding, or attempting to injure, catch, harvest, collect, or feed, any fish within the Sanctuary by use of bottom longlines, traps, nets, bottom trawls, or any other gear, device, equipment, or means except by use of conventional hook and line gear.

(9) Possessing within the Sanctuary (regardless of where collected, caught, harvested or removed), except for valid law enforcement purposes, any carbonate rock, coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota, or fish (except for fish caught by use of conventional hook and line gear).

(10) Possessing or using within the Sanctuary, except possessing while passing without interruption through it or for valid law enforcement purposes, any fishing gear, device, equipment or means except conventional hook and line gear.

(11) Possessing, except for valid law enforcement purposes, or using explosives or releasing electrical charges within the Sanctuary.

(b) If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director as more protective of Sanctuary resources and qualities shall govern.

(c) The prohibitions in paragraphs (a)(2)(i), (a)(4), and (a)(11) of this section do not apply to necessary activities conducted in areas of the Sanctuary outside the no-activity zones and incidental to exploration for, development of, or production of oil or gas in those areas.

(d) The prohibitions in paragraphs (a) (2) through (11) of this section do not apply to activities necessary to respond to emergencies threatening life, property, or the environment.

(e)(1) The prohibitions in paragraphs (a) (2) through (11) of this section do not apply to activities being carried out by the Department of Defense as of the effective date of Sanctuary designation (January 18, 1994). Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. The prohibitions in paragraphs (a) (2) through (11) of this section do not apply to any new activities carried out by the Department of Defense that do not have the potential for any significant adverse impacts on Sanctuary resources or qualities. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. New activities with the potential for significant adverse impacts on Sanctuary resources or qualities may be exempted from the prohibitions in paragraphs (a) (2) through (11) of this section by the Director after consultation between the Director and the Department of Defense.

If it is determined that an activity may be carried out, such activity shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by a component of the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions in paragraphs (a) (2) through (11) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to §922.48 and §922.123 or a Special Use permit issued pursuant to section 310 of the Act.

(g) The prohibitions in paragraphs (a) (2) through (11) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after January 18, 1994, provided that the applicant complies with §922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

(h) Notwithstanding paragraphs (f) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under §922.48 and §922.123 or a Special Use permit under section 10 of the Act authorizing, or otherwise approve, the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone. Any leases, permits, approvals, or other authorizations authorizing the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone and issued after the January 18, 1994 shall be invalid.

§ 922.123 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by §922.122(a)(2) through (11) if conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and §922.48.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by §922.122(a) (2) through (11), if the Director finds that the activity will: further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Director shall consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia*, make it a condition of any permit issued that any information obtained under the permit be made available to the public.

(f) The Director may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress, or results of any activity authorized by the permit.

Appendix A to Subpart L of Part 922—Flower Garden Banks National Marine Sanctuary Boundary

Coordinates

This appendix contains a second set of boundary coordinates using the geographic positions of the North American Datum of 1983 (NAD 83). FGBNMS coordinates are now provided in both North American Datum of 1927 (NAD 27) and NAD 83.

Point Latitude (N) Longitude (W)

East Flower Garden Bank: (NAD 27)

E-1 27 deg. 52' 53.82718" 93 deg. 37' 41.30310"
E-2 27 deg. 53' 34.83434" 93 deg. 38' 23.35445"
E-3 27 deg. 55' 13.64286" 93 deg. 38' 40.34368"
E-4 27 deg. 57' 30.71927" 93 deg. 38' 33.26982"
E-5 27 deg. 58' 27.66896" 93 deg. 37' 46.12447"
E-6 27 deg. 59' 01.41554" 93 deg. 35' 31.74954"
E-7 27 deg. 59' 00.50888" 93 deg. 35' 09.69198"
E-8 27 deg. 55' 22.38258" 93 deg. 34' 14.79162"
E-9 27 deg. 54' 04.05605" 93 deg. 34' 18.88720"
E-10 27 deg. 53' 26.70972" 93 deg. 35' 05.00978"
E-11 27 deg. 52' 52.06998" 93 deg. 36' 57.23078"

West Flower Garden Bank: (NAD 27)

W-1 27 deg. 49' 10.16324" 93 deg. 50' 45.27154"
W-2 27 deg. 50' 12.35976" 93 deg. 52' 10.47158"
W-3 27 deg. 51' 12.82777" 93 deg. 52' 51.63488"
W-4 27 deg. 51' 32.41145" 93 deg. 52' 50.66983"
W-5 27 deg. 52' 49.88791" 93 deg. 52' 24.77053"
W-6 27 deg. 55' 00.93450" 93 deg. 49' 43.68090"
W-7 27 deg. 54' 58.33040" 93 deg. 48' 37.54501"
W-8 27 deg. 54' 35.26067" 93 deg. 47' 10.34866"
W-9 27 deg. 54' 14.80334" 93 deg. 46' 49.28963"
W-10 27 deg. 53' 35.63704" 93 deg. 46' 51.25825"
W-11 27 deg. 52' 57.34474" 93 deg. 47' 15.26428"
W-12 27 deg. 50' 40.26361" 93 deg. 47' 22.14179"
W-13 27 deg. 49' 10.89894" 93 deg. 48' 42.72307"

Stetson Bank: (NAD 27)

S-1 28 deg. 09' 30.06738" 94 deg. 18' 31.34461"
S-2 28 deg. 10' 09.24374" 94 deg. 18' 29.57042"
S-3 28 deg. 10' 06.88036" 94 deg. 17' 23.26201"
S-4 28 deg. 09' 27.70425" 94 deg. 17' 25.04315"

East Flower Garden Bank: (NAD 83)

E-1 27 deg. 52' 54.84288" 93 deg. 37' 41.84187"
E-2 27 deg. 53' 35.80428" 93 deg. 38' 23.89520"
E-3 27 deg. 55' 14.61048" 93 deg. 38' 40.88638"
E-4 27 deg. 57' 31.68349" 93 deg. 38' 33.81421"
E-5 27 deg. 58' 28.63153" 93 deg. 37' 46.66809"
E-6 27 deg. 59' 02.37658" 93 deg. 35' 32.28918"
E-7 27 deg. 59' 01.46983" 93 deg. 35' 10.23088"
E-8 27 deg. 55' 23.34849" 93 deg. 34' 15.32560"
E-9 27 deg. 54' 05.02387" 93 deg. 34' 19.42020"
E-10 27 deg. 53' 27.67871" 93 deg. 35' 05.54379"
E-11 27 deg. 52' 53.04047" 93 deg. 36' 57.76805"

West Flower Garden Bank: (NAD 83)

W-1 27 deg. 49' 11.14452" 93 deg. 50' 45.83401"
W-2 27 deg. 50' 13.34001" 93 deg. 52' 11.03791"
W-3 27 deg. 51' 13.80672" 93 deg. 52' 52.20349"
W-4 27 deg. 51' 33.38988" 93 deg. 52' 51.23867"
W-5 27 deg. 52' 50.86415" 93 deg. 52' 25.33954"
W-6 27 deg. 55' 01.90633" 93 deg. 49' 44.24605"
W-7 27 deg. 54' 59.30189" 93 deg. 48' 38.10780"
W-8 27 deg. 54' 36.23221" 93 deg. 47' 10.90806"
W-9 27 deg. 54' 15.77527" 93 deg. 46' 49.84801"
W-10 27 deg. 53' 36.60997" 93 deg. 46' 51.81616"
W-11 27 deg. 52' 58.31880" 93 deg. 47' 15.82251"
W-12 27 deg. 50' 41.24120" 93 deg. 47' 22.69837"
W-13 27 deg. 49' 11.87936" 93 deg. 48' 43.28125"

Stetson Bank: (NAD 83)

S-1 28 deg. 09' 31.02671" 94 deg. 18' 31.98164"
S-2 28 deg. 10' 10.20196" 94 deg. 18' 30.20776"
S-3 28 deg. 10' 07.83821" 94 deg. 17' 23.89688"
S-4 28 deg. 09' 28.66320" 94 deg. 17' 25.67770"
[65 FR 81178, Dec. 22, 2000]

**Appendix B to Subpart L of Part 922—Coordinates for the Department of the Interior
Topographic Lease Stipulations for OCS Lease Sale 171**

Aliquot Part Description of Biological Stipulation Area East Garden Bank

Block A–366 Texas Leasing Map No. 7C (High Island Area East Addition South Extension)

SE1/4, SW1/4; S1/2, NE1/4, SE1/4; SE1/4, NW1/4, SE1/4; S1/2, SE1/4.

Block A–376

W1/2, NW1/4, SW1/4; SW1/4, SW1/4, SW1/4.

Block A–374

W1/2, NW1/4, NW1/4; W1/2, SW1/4, NW1/4; SE1/4, SW1/4, NW1/4; SW1/4, NE1/4, SW1/4, W1/2, SW1/4; W1/2, SE1/4, SW1/4; SE1/4, SE1/4, SW1/4.

Block A–375

E1/2; E1/2, NW1/4; E1/2, NW1/4, NW1/4; SW1/4, NW1/4, NW1/4; E1/2, SW1/4, NW1/4; NW1/4, SW1/4, NW1/4; SW1/4.

Block A–388

NE1/4; E1/2, NW1/4; E1/2, NW1/4, NW1/4; NE1/4, SW1/4, NW1/4; E1/2, NE1/4, SW1/4; NW1/4, NE1/4, SW1/4; NE1/4, NW1/4, SW1/4; NE1/4, SE1/4, SW1/4, NE1/4; NE1/4, NE1/4, SE1/4; W1/2, NE1/4, SE1/4; NW1/4,

Block A–389

NE1/4, NW1/4; NW1/4, NW1/4; SW1/4, NW1/4; NE1/4, SE1/4, NW1/4; W1/2, SE1/4, NW1/4; N1/2, NW1/4, SW1/4.

Aliquot Part Description of Biological Stipulation Area West Garden Bank

Block A–383 Texas Leasing Map No. 7C (High Island Area East Addition South Extension)

E1/2, SE1/4, SE1/4; SW1/4, SE1/4, SE1/4.

Block A–384

W1/2, SW1/4, NE1/4; SE1/4, SW1/4, NE1/4; S1/2, SE1/4, NE1/4; SE1/4, NW1/4; E1/2, SW1/4; E1/2, NW1/4, SW1/4, SW1/4, NW1/4, SW1/4; SW1/4, SW1/4; SE1/4.

Block A–385

SW1/4, SW1/4, NW1/4; NW1/4, SW1/4; NW1/4, SW1/4, SW1/4.

Block A–397

W1/2, W1/2, NW1/4; W1/2, NW1/4, SW1/4; NW1/4; SW1/4, SW1/4.

Block A–398

Entire block.

Block A–399

E1/2, SE1/4, NE1/4, NW1/4; E1/2, SE1/4, NW1/4; E1/2, NE1/4, SW1/4; SW1/4, NE1/4, SW1/4; NE1/4, SE1/4, SW1/4.

Block A–401

NE1/4, NE1/4; N1/2, NW1/4, NE1/4; NE1/4, SE1/4, NE1/4.

Block 134 Official Protraction Diagram NG15–02 (Garden Banks)