

## 15 CFR Part 222, Subpart J--Fagatele Bay National Marine Sanctuary

### Sec. 922.100 Scope of regulations.

The provisions of this subpart J apply only to the area of the Territory of American Samoa within the boundary of the Fagatele Bay National Marine Sanctuary (Sanctuary). Neither the provisions of this subpart J nor any permit issued under their authority shall be construed to relieve a person from any other requirements imposed by statute or regulation of the Territory of American Samoa or of the United States. In addition, no statute or regulation of the Territory of American Samoa shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this subpart J.

### Sec. 922.101 Boundary.

The Sanctuary is a 163-acre (0.25 sq. mi.) coastal embayment formed by a collapsed volcanic crater on the island of Tutuila, Territory of American Samoa and includes Fagatele Bay in its entirety. The landward boundary is defined by the mean high high water (MHHW) line between Fagatele Point (14 deg.22'15" S, 170 deg.46'5" W) and Steps Point (14 deg.22'44" S, 170 deg.45'27" W). The seaward boundary of the Sanctuary is defined by a straight line between Fagatele Point and Steps Point.

### Sec. 922.102 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense or to respond to an emergency threatening life, property, or the environment, or as may be permitted by the Director in accordance with Sec. 922.48 and Sec. 922.104, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

- (1)(i)(A) Gathering, taking, breaking, cutting, damaging, destroying, or possessing any invertebrate, coral, bottom formation, or marine plant.
- (B) Taking, gathering, cutting, damaging, destroying, or possessing any crown-of-thorns starfish (*Acanthaster planci*).
- (C) Possessing or using poisons, electrical charges, explosives, or similar environmentally destructive methods.
- (D) Possessing or using spearguns, including such devices known as Hawaiian slings, pole spears, arbalettes, pneumatic and spring-loaded spearguns, bows and arrows, bang sticks, or any similar taking device.
- (E) Possessing or using a seine, trammel net, or any type of fixed net.
- (ii) There shall be a rebuttable presumption that any items listed in this paragraph (a)(1) found in the possession of a person within the Sanctuary have been used, collected, or removed within or from the Sanctuary have been used, collected, or removed within or from the Sanctuary.

- (2)(i) Operating a vessel closer than 200 feet (60.96 meters) from another vessel displaying a dive flag at a speed exceeding three knots.
- (ii) Operating a vessel in a manner which causes the vessel to strike or otherwise cause damage to the natural features of the Sanctuary.
- (3) Diving or conducting diving operations from a vessel not flying in a conspicuous manner the international code flag alpha "A."
- (4) Littering, depositing, or discharging, into the waters of the Sanctuary, any material or other matter.
- (5) Disturbing the benthic community by dredging, filling, dynamiting, bottom trawling, or otherwise altering the seabed.
- (6) Removing, damaging, or tampering with any historical or cultural resource within the boundary of the Sanctuary.
- (7) Ensnaring, entrapping, or fishing for any sea turtle listed as a threatened or endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.
- (8) Except for law enforcement purposes, using or discharging explosives or weapons of any description. Distress signaling devices, necessary and proper for safe vessel operation, and knives generally used by fishermen and swimmers shall not be considered weapons for purposes of this section.
- (9) Marking, defacing, or damaging in any way, or displacing or removing or tampering with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, or other boundary markers related to the Sanctuary.
- (b) In addition to those activities prohibited or otherwise regulated under paragraph (a) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted landward of the straight line connecting Fagatele Point (14 deg.22'15" S, 170 deg.46'5" W) and Matautuloa Benchmark (14 deg.22'18" S, 170 deg.45'35" W).
  - (1) Possessing or using fishing poles, handlines, or trawls.
  - (2) Fishing commercially.

#### Sec. 922.103 Management and enforcement.

The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the management of the Sanctuary pursuant to the Act. The American Samoa Economic and Development Planning Office (EDPO) will assist NOAA in the administration of the Sanctuary, and act as the lead agency, in conformance with the Designation Document, these regulations, and the terms and provisions of any grant or cooperative agreement. NOAA may act to deputize enforcement agents of the American Samoa Government (ASG) to enforce the regulations in this subpart in accordance with existing law. If NOAA chooses to exercise this provision, a memorandum of understanding shall be executed between NOAA and the ASG or the person(s) or entity authorized to act on their behalf.

Sec. 922.104 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director, in consultation with the EDPO, in accordance with this section and Sec. 922.48, may conduct an activity otherwise prohibited by Sec. 922.102 in the Sanctuary if such activity is judged not to cause long-term or irreparable harm to the resources of the Sanctuary, and is:

- (1) Related to research involving Sanctuary resources designed to enhance understanding of the Sanctuary environment or to improve resource management decisionmaking;
- (2) Intended to further the educational value of the Sanctuary and thereby enhance understanding of the Sanctuary environmental or improve resource management decisionmaking; or
- (3) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Coordinator, Fagatele Bay National Marine Sanctuary, P.O. Box 4318, Pago Pago, AS 96799.

(c) In considering whether to grant a permit, the Director shall evaluate such matters as:

- (1) The general professional and financial responsibility of the applicant;
  - (2) The appropriateness of the methods being proposed for the purpose(s) of the activity;
  - (3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, education, or scientific information;
- and

(4) The end value of the activity.

(d) In addition to meeting the criteria in this section and Sec. 922.48, the applicant also must demonstrate to the Director that: (1) The activity shall be conducted with adequate safeguards for the environment; and

(2) The environment shall be returned to, or will regenerate to, the condition which existed before the activity occurred.

(e) The Director may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject the permit to such condition(s) as he or she deems necessary. A permit granted for research related to the Sanctuary may include, but is not limited to, the following conditions:

- (1) The Director may observe any activity permitted by this section;
- (2) any information obtained in the research site shall be made available to the public;

and

(3) The submission of one or more reports of the status of such research activity may be required.