

(5) Using a bottom trawl, specimen dredge, or similar vessel-towed bottom sampling device.

(6)(i)(A) Breaking, cutting, or similarly damaging, taking, or removing any bottom formation, marine invertebrate, or marine plant.

(B) Taking any tropical fish.

(C) Using poisons, electric charges, explosives, or similar methods to take any marine animal not otherwise prohibited to be taken.

(ii) There shall be a rebuttable presumption that any bottom formation, marine invertebrate, tropical fish, marine plant, or marine animal found in the possession of a person within the Sanctuary have been collected within or removed from the Sanctuary.

(7) Tampering with, damaging, or removing any historic or cultural resources.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

#### **§ 922.92 Permit procedures and criteria.**

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and § 922.48 may conduct the specific activity in the Sanctuary including any activity specifically prohibited under § 922.91, if such activity is

(1) Research related to the resources of the Sanctuary,

(2) To further the educational value of the Sanctuary, or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

(c) In considering whether to grant a permit, the Director shall evaluate

(1) The general professional and financial responsibility of the applicant,

(2) The appropriateness of the methods envisioned to 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,

(4) The end value of the activity, and

(5) Other matters as deemed appropriate.

(d) The Director may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any

information obtained will be made available to the public.

### **Subpart J—Fagatele Bay National Marine Sanctuary**

#### **§ 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.

#### **§ 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°22'15" S, 170°46'5" W) and Steps Point (14°22'44" S, 170°45'27" W). The seaward boundary of the Sanctuary is defined by a straight line between Fagatele Point and Steps Point.

#### **§ 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 § 922.48 and § 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.

(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°22'15" S, 170°46'5" W) and Matautuloa Benchmark (14°22'18" S, 170°45'35" W).

(1) Possessing or using fishing poles, handlines, or trawls.

(2) Fishing commercially.

#### **§ 922.103 Management and enforcement.**

The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the