

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 15 CFR Part 922

[Docket No. 100908440-1615-01]

RIN 0648-BA24

## Expansion of Fagatele Bay National Marine Sanctuary, Regulatory Changes, and Sanctuary Name Change

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is proposing to add five additional discrete geographical areas to the sanctuary and change the name of the Fagatele Bay National Marine Sanctuary (FBNMS or sanctuary) to the American Samoa National Marine Sanctuary. NOAA also proposes to amend existing sanctuary regulations and apply these regulations to activities in the sanctuary.

**DATES:** Comments must be received by January 6, 2012. Dates for public hearings are:

- (1) November 17, 4:30 p.m.—AS Community College Lecture Hall.
- (2) November 18, 9 a.m.—Auasi Village, High Chief Fonoti's Guest Fale.
- (3) November 21, 9 a.m.—Fitiuta Village, Ta'u island, Mayor's Meeting Fale.
- (4) November 21, 2 p.m.—Ofu island, Mayor's Guest Fale.

**ADDRESSES:** You may submit comments, identified by NOAA-NOS-2011-0243, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at: <http://www.regulations.gov>.

- *Mail:* Gene Brighthouse, Superintendent, Fagatele Bay National Marine Sanctuary, P.O. Box 4318, Pago Pago, American Samoa 96799.

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NOAA will accept anonymous comments (enter N/A in the required fields, if you wish to remain

anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. Copies of the draft environmental impact statement and proposed rule can be downloaded or viewed on the Internet at <http://www.regulations.gov> or at <http://fagatelebay.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Gene Brighthouse, Superintendent, Fagatele Bay National Marine Sanctuary, at (684) 633-5155 ext 264.

**SUPPLEMENTARY INFORMATION:****I. Background***A. Fagatele Bay National Marine Sanctuary*

The sanctuary was designated in 1986 in response to a proposal from the American Samoa Government to the (then) National Marine Sanctuary Program. The existing Fagatele Bay National Marine Sanctuary protects 163 acres (0.25 square miles) of bay area off the southwest coast of Tutuila Island, American Samoa. It nestles in an eroded volcanic crater. Fagatele Bay provides a home to a wide variety of animals and plants that thrive in the protected waters of the bay. The sanctuary contains many of the species native to this part of the Indo-Pacific biogeographic region. Turtles, whales, sharks and the giant clam all find refuge in this protected area. For more information on the sanctuary, visit: <http://www.fagatelebay.noaa.gov>.

*B. Purpose and Need for Additional Areas and Regulatory Changes*

The National Marine Sanctuaries Act (NMSA) requires NOAA to periodically review and evaluate the progress in implementing the management plan and goals for each national marine sanctuary. NOAA must revise management plans and regulations as necessary to fulfill the purposes and policies of the NMSA (16 U.S.C. 1434(e)) to ensure that national marine sanctuaries continue to best conserve, protect, and enhance their nationally significant living and cultural resources. NOAA puts special emphasis on the effectiveness of site-specific techniques and strategies. The FBNMS management plan was published in 1986 and has not been updated since. On a global scale, the past 25 years have been a period of tremendous advancement in marine discovery and exploration, marine conservation science, and ecosystem-based management. New tools and techniques allow for improved management and conservation, which are needed to slow the long-term decline of coral reefs throughout the

world. Recent archipelago-wide marine research efforts have led to comprehensive integrated ecosystem assessments of American Samoa's coral reefs. These studies have provided information on the relative biological value of different reefs across the territory, a critical step in determining where to focus marine resource protection efforts.

The environment within American Samoa has also changed over the past 25 years. The sudden growth of the commercial longline fishery in 2001; mass coral bleaching events in 1994, 2002, and 2003; and nonpoint source pollution from land-use practices are recent management concerns that may affect the health and resilience of American Samoa's marine ecosystems. The U.S. Coral Reef Task Force has established the conservation objective to protect "a minimum of 20% of each coral reef and associated habitat type" as no-take areas. The American Samoa Governor, like his predecessor in 2000, has committed to reaching this goal in American Samoa by setting aside 20% of the coral reef habitat within the territory for long-term protection.

Finally, Presidential Proclamation 8337 issued by President George W. Bush in 2009 states that, "[t]he Secretary of Commerce shall initiate the process to add the marine areas of the [Rose Atoll Marine National] monument to the Fagatele Bay National Marine Sanctuary in accordance with the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*)."

*C. Background*

NOAA conducted a public scoping period in February and March of 2009 (74 FR 5641) to identify issues and gauge interest within American Samoa for possible sanctuary expansion and designation of additional sanctuary units. Scoping revealed wide support for the protection of additional areas throughout the archipelago, as well as some opposition to additional sites. Specific comments received during this process are included in the draft environmental impact statement and yielded a list of four sites for consideration. Three additional sites were included for consideration based on a specific request of the Jennings family (Swains Island), input from the Secretary of Samoan Affairs (Ta'u Island), and Presidential Proclamation 8337 (Rose Atoll, also called Muliāva in Samoan). Two additional sites were included for consideration based on preliminary biogeographic information analyzed by sanctuary staff (Larsen Bay and Anuu'u).

After a list of nine potential sites was developed, the Sanctuary Advisory Council (SAC) established a Site Selection Working Group consisting of members of the SAC and of the public, assisted by sanctuary staff. The Working Group utilized criteria set forth in the NMSA to evaluate the ecological, cultural, and economic value of the areas proposed. Based on this evaluation the areas were ranked in order. These locations were then further analyzed by NOAA through a Biogeographic Assessment of the Samoan Archipelago. Since the two Ta'u sites under consideration were so close geographically, they were combined into one proposed site, as recommended by the Governor. The sites at Nu'uli Pala, Leone, and Outer Banks were considered but eliminated for various reasons described in the DEIS.

During public scoping, some expressed concern over the expansion of FBNMS into a network of sites across the territory. The primary concerns reflected in the public comments were: (1) The Territory already has a process for establishing marine protected areas (MPAs); and (2) a Federal presence would not allow for community-driven marine resource management. As a result of these concerns and NOAA's intention to respect the Samoan culture, NOAA chose each of the proposed units carefully taking into consideration the wishes of the communities as well as the criteria from the NMSA for designating a new national marine sanctuary and the results of a Biogeographic Assessment of the American Samoa Archipelago. After determining which units would be considered for inclusion, NOAA held multiple meetings with each of the communities associated with the units to foster consensus and collaboration with regard to how the unit would be managed. The development of location-specific regulations occurred through a collaborative process during community meetings between NOAA and village representatives. Issues addressed during the meetings included potential gear restrictions, fishing restrictions, and co-management of the sanctuary unit.

The proposed action presented in this document is the direct result of the SAC's recommendations that were provided to the FBNMS Superintendent and comments received during the 2009 public scoping. Several alternatives to the proposed action are analyzed in the accompanying draft environmental impact statement (DEIS).

## II. Proposed Revisions to FBNMS Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation for national marine sanctuaries include: (1) The geographic area included within the sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and (3) the types of activities subject to regulation by NOAA to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made.

To implement this action, NOAA is proposing these changes to the FBNMS terms of designation, which were most recently published in the **Federal Register** on April 26, 1986 (51 FR 15878). The proposed changes would:

1. Modify the name of the sanctuary to "American Samoa National Marine Sanctuary."
2. Modify Article 2 "Description of the Area" by describing the five additional areas.
3. Modify Article 3 "Special Characteristics of the Area" by adding additional areas of near-shore, mid-shore, deep reef, a seamount, open pelagic waters and other habitats and areas of cultural significance; and revise the description of the value of the sanctuary.
4. Modify Article 4 "Scope of Regulations" by updating Section 1 to expand the goal of the sanctuary to ensure the protection and preservation of the coral ecosystem; and revise Section 1 to include operating a vessel, moving, removing, or tampering with any sign or other sanctuary property, and introducing a non-native species in order to provide authority for sanctuary regulations.
5. Modify Article 4 "Scope of Regulations" by updating Section 2 to align the text more closely with the National Marine Sanctuaries Act.
6. Modify Article 5 "Relation to Other Regulatory Programs" by updating Section 1 to reflect a more coordinated and collaborative approach to enforcement between NOAA and the Territory of American Samoa.
7. Correct a few typographical errors throughout the terms of designation.
8. Delete Article 7 "Funding" because this language is not necessary to control the Joint Enforcement Agreements (JEA), as there is language in the JEA about how priorities are set and communicated among the enforcement partners.

The revised terms of designation would read as follows (new text in quotes and deleted text in brackets and italics):

### Revised Terms of Designation for the American Samoa National Marine Sanctuary

#### Preamble

Under the authority of the National Marine Sanctuaries Act, 16 U.S.C. 1434 [*Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92-532*] (the Act), certain waters off American Samoa are hereby designated a National Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecosystem.

#### Article 1. Effect of Designation

The designation of the [*Fagatele Bay*] "American Samoa" National Marine Sanctuary (the Sanctuary) described in Article 2[.] establishes the basis for cooperative management of the area by the Territory of American Samoa (Territory) and the National Oceanic and Atmospheric Administration (NOAA).

Within the area designated as the Sanctuary, the Act authorizes promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of the Designation lists those activities which may require regulations, but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through regulation, and additional activities may be regulated only by amending Article 4.

#### Article 2. Description of the Area

[*The Sanctuary consists of 163 acres (0.25 square miles) of bay area off the southwest coast of Tutuila Island, American Samoa.*]

"The Sanctuary consists of six distinct units:

- "*Fagatele Bay, which contains 163 acres (0.25 square miles) of bay area off the southwest coast of Tutuila Island, American Samoa.*
- "*Larsen Bay, which contains 0.46 square miles of bay area off the southwest coast of Tutuila Island, American Samoa.*
- "*The waters around part of Aunu'u Island, American Samoa that contain 5.8 square miles.*
- "*The waters around part of Ta'u Island, American Samoa that contain 14.6 square miles.*
- "*The waters around Swains Island, American Samoa that contain 53.0 square miles.*
- "*The waters around Rose Atoll, called Muliava in Samoan, which contains 13,507 square miles.*"

The precise boundaries are defined by regulation.

#### Article 3. Special Characteristics of the Area

The Sanctuary contains a unique and vast array of tropical marine organisms, including corals and a diverse tropical reef ecosystem with endangered and threatened species, such as the hawksbill and green sea turtles, and marine mammals like the Pacific bottlenose dolphin. "The Sanctuary also contains areas such as near-shore, mid-shore, deep reef, seamount, open pelagic waters and

other habitats and areas of historical and cultural significance.”

The area provides exceptional [scientific] value as a[n] “scientific,” ecological, recreational, and aesthetic resource, and “offers” unique educational and recreational experiences.

#### Article 4. Scope of Regulations

**Section 1. Activities Subject to Regulations.** In order to protect the distinctive values of the Sanctuary, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of the coral “ecosystem” and other marine values of the area:

- a. Taking or otherwise damaging natural resources.
- b. Discharging or depositing any substance.
- c. Disturbing the benthic community.
- d. Removing or otherwise harming cultural or historical resources.

“e. Operating a vessel.”

“f. Moving, removing, or tampering with any sign or other Sanctuary property.”

“g. Introducing or otherwise releasing an introduced species.”

**Section 2. Consistency with International Law.** [The regulations governing the activities listed in Section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law, including treaties and international agreements to which the United States is signatory.] “The regulations governing the activities listed in Section 1 of this article shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States, unless in accordance with generally recognized principles of international law, an agreement between the United States and the foreign state of which the person is a citizen, or an agreement between the United States and the flag state of a foreign vessel, if the person is a crewmember of the vessel.”

**Section 3. Emergency Regulations.** Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article will be proposed in accordance with the procedures specified in Article 6.

#### Article 5. Relation to Other Regulatory Programs

**Section 1. Other Programs.** (a) NOAA may adopt all regulatory programs pertaining to fishing, including any regulations promulgated by the American Samoa Government and all permits, licenses, and other authorizations issued pursuant thereto under the following conditions:

(1) No alteration or modification of any Sanctuary regulation shall become effective without the written concurrence of both the Territory and NOAA; and

“(2)” [The Territory shall be responsible for enforcing all Sanctuary regulations to ensure protection for the values of the Sanctuary. NOAA will engage in enforcement activities only if requested by the Territory or if there has been significant failure to provide adequate enforcement as determined under this Section.] “NOAA and the Territory shall be jointly responsible for enforcing Sanctuary regulations to ensure protection for the values of the Sanctuary with the Territory being the preferred enforcement entity. NOAA and the Territory will cooperatively develop Joint Enforcement Agreements (JEA) to implement enforcement and delineate NOAA and Territorial duties.”

(b) Where the Territory shall propose any alteration or modification of the regulations described in Article 4, such alteration or modification shall be submitted to NOAA for agreement and simultaneous proposal in the **Federal Register**. Such alteration or modification shall be finally adopted unless, based on the comments received on the **Federal Register** notice and after consultation with the Territory, NOAA determines that the regulations with the proposed amendments do not provide reasonable and necessary protection for the values of the Sanctuary.

[(c) Should NOAA preliminary determine that there has been significant failure to provide adequate enforcement, it shall notify the Territory of this deficiency and suggest appropriate remedial action. If, after consultation, NOAA and the Territory are unable to agree that a deficiency exists or on an appropriate remedial action, NOAA may issue a final determination in writing specifying the deficiency and the appropriate action together with the reasons therefore. No less than sixty (60) days prior to issuing a final determination that calls for NOAA to take enforcement action, NOAA shall submit the proposed determination to the Governor of American Samoa. If the Governor finds that NOAA enforcement is unnecessary to protect the values of the Sanctuary, the Governor shall inform NOAA of his objections within thirty (30) days after receipt of the proposed determinations and NOAA shall give such finding presumptive weight in making its final determination.]

“(c)” [(d)] All applicable regulatory programs will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary, unless inconsistent with any regulation implementing Article 4. The Sanctuary regulations will set forth any certification procedures.

**Section 2. Defense Activities.** The regulation of those activities listed by Article 4 shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be conducted consistent[ly] with such regulations to the maximum extent practicable. All other activities of the Department of Defense are subject to Article 4.

#### Article 6. Alteration [to] “of” this Designation

[(a)] This designation may be altered only in accordance with the same procedures by which it has been made, including public

hearings, consultation with interested Federal and Territorial agencies and the Western Pacific Regional Fishery Management Council, and approval by the Governor of American Samoa [and the President of the United States]. [End of terms of designation]

### III. Summary of Proposed Revisions to the Sanctuary Regulations

#### A. Adding Five Additional Units to the Existing Sanctuary

The proposed regulations would add the following five additional units to the sanctuary: (1) Larsen Bay, (2) Aunu’u Island, (3) Swains Island, (4) Muliāva (Rose Atoll), and (5) Ta’u Island. NOAA chose these units based on the quality and diversity of their biological resources, their scientific and cultural value, and the specific desire of the communities intimate with these marine habitats, including the government of American Samoa. The Aunu’u Island, Fagatele Bay, and Larsen Bay units are located along the southern coast of Tutuila. The remaining three units are at Ta’u Island, Muliāva, and Swains Island. All units include both shallow reef and deep waters and extend seaward from the mean high water line of the coast, with the exceptions of Muliāva (which extends seaward from the boundary of the Rose Atoll National Wildlife Refuge) and a portion of the Ta’u unit (which extends seaward from the boundary of the American Samoa National Park). This proposed action will increase the overall size of the sanctuary from 0.25 square miles to approximately 13,586 square miles, with the majority of this expansion (99%) resulting from the incorporation of the non-refuge marine areas of the Rose Atoll Marine National Monument (Muliāva unit).

All six units have intrinsic value that merits their inclusion in the National Marine Sanctuary System. Please refer to the FBNMS Web site and the draft environmental impact statement supporting this rulemaking for more information and a map depicting the location of these areas.

#### Fagatele Bay and Larsen Bay

The Fagatele Bay and Larsen Bay units are the only bays in the territory formed by collapsed craters—a unique geological and habitat feature. In addition, similarities in the fish and coral population between these two sites make them useful replicates of one another for research purposes. Preserving Larsen Bay as a complement to Fagatele Bay provides additional security for the habitats and species that occur in both bays. When they are protected in only a single location, rare

and unique habitats and species are more vulnerable to natural disasters or human disturbance. Furthermore, protecting organisms in Larsen Bay would both increase the genetic diversity of species in different microhabitats within Larsen Bay and increase the abundance of local populations, resulting in increased overall resilience of the coral reef ecosystems. In addition, the prehistoric village site at the Fagatele Bay unit may offer important archeological insights into interactions between humans and the marine environment.

#### Aunu'u Island

The Aunu'u Island unit bears cultural resource significance due to a 19th century whaling vessel lost there. It also has a unique and vibrant patch reef system, and a coral shelf that provides a continuous habitat extending down to mesophotic reefs. The Aunu'u Island unit would be divided into two zones: a Multiple Use Zone (Zone A), where limited fishing would be allowed, and a Research Zone (Zone B), where all consumptive uses would be prohibited to provide a control area as a mechanism for research activities.

#### Ta'u Island

The Ta'u unit includes a unique fish community, as well as some extraordinarily large *Porites* coral colonies and provides a buffer zone for important cultural and living resources in the nearshore habitat (a part of the National Park of American Samoa).

#### Swains Island

The Swains Island unit is the northern most emergent reef in the Territory, is isolated from the rest of the archipelago, and is comprised of unique fish and coral communities.

#### Muliāva

The Muliāva unit (Rose Atoll) is the easternmost emergent reef in the Territory, includes the Vailulu'u Seamount, and is a potentially key source of coral and fish larvae for Tutuila, the Manu'a islands, and Independent Samoa. Muliāva is also the only site with extensive pelagic habitat. In addition, the expansion of the Muliāva unit to provide sanctuary management for the Vailulu'u Seamount highlights both its physical importance as the only hydrothermally active seamount in the U.S. EEZ around the American Samoa archipelago and its biological importance due to multiple diverse and unusual faunal communities.

#### B. Changing the Name to the American Samoa National Marine Sanctuary

As a result of the proposed incorporation of five additional units across the archipelago, the current sanctuary name, Fagatele Bay National Marine Sanctuary, would no longer be appropriate. Therefore, NOAA proposes to change the name of the sanctuary to the American Samoa National Marine Sanctuary (ASNMS).

#### C. Sanctuary Regulations

Existing regulations for the sanctuary (15 CFR part 922 subpart F) would be revised as described below and would apply to activities in all units described above, except as noted below.

##### 1. Definitions

**Conventional Hook and Line Gear:** The current definition of the term conventional hook and line gear in the system-wide regulations (15 CFR 922.3) is as follows: "*Conventional hook and line gear means any fishing apparatus operated aboard a vessel and composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hind- or electrically operated, hand-held or mounted. This term does not include bottom longlines.*" NOAA is proposing to revise this definition to remove the term "operated aboard a vessel" to make it applicable where conventional hook and line fishing may occur from shore or from a vessel. Currently, the term "hook and line gear" is only used in the regulations for Flower Garden Banks National Marine Sanctuary, which is located about 100 miles offshore. Given its location, the proposed change would not in any way alter the existing prohibitions at Flower Garden Banks NMS since it is not possible to fish from shore in that sanctuary anyway. The revised definition would read as follows: "*any fishing apparatus composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand or mechanically operated, regardless of whether mounted. This term does not include longlines.*"

In order to clarify the sanctuary-wide regulations described below, the following new terms are being proposed for the definitions section: Clean, fishing, harmful matter, introduced species, live rock, stowed and not available for immediate use, and sustenance harvesting.

##### 2. Prohibited Activities: Sanctuary-Wide

The following activities would be prohibited in all areas and units of the sanctuary:

- Discharging any material within the sanctuary. There are two exceptions to this prohibition. First, an exception is made for clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, anchor wash, or vessel engine or generator exhaust. Second, in the Muliāva unit only, vessels operating within the unit would be allowed to discharge effluent from a Type I or II U.S. Coast Guard-approved Marine Sanitation Device due to the impracticability of holding waste until the vessel is out of the sanctuary in such a large protected area.

- Using or discharging explosives or weapons of any description.
- Discharging any material from outside of sanctuary waters that could enter and injure sanctuary resources, both from land- and sea-based sources.
- Exceeding three knots within 200 feet of a dive flag.
- Disturbing the benthic community by dredging, filling, dynamiting, or otherwise altering the seabed.
- Damaging, removing or displacing any signs, notices, or placards, or stakes, posts, or other boundary markers related to the sanctuary.
- Failing to clearly display the blue-and-white International Code flag alpha "A" or the standard red-and-white U.S. "diver down" flag when operating a vessel while divers or snorkelers are in the water.
- Removing, damaging, or tampering with any historical or cultural resource.
- Taking any marine mammal, sea turtle, or seabird in the sanctuary, except as authorized by other statutes. (This activity is already prohibited in territorial waters under ASCA 24.0934–0935 and in Federal waters under the Endangered Species Act and Marine Mammal Protection Act.)

- Anchoring, and the requirement to use a mooring buoy where available.
- Introducing or releasing introduced species from within or into sanctuary waters.
- Abandoning any structure, material, or other matter on or in the submerged lands of the sanctuary.
- Deserting a vessel aground, at anchor, or adrift in the sanctuary.
- Leaving harmful matter aboard an abandoned or deserted vessel in the sanctuary.

##### 3. Sanctuary-Wide Prohibited Activities, Except the Muliāva Unit

Section 304(a)(5) of the NMSA requires that NOAA consult with the appropriate Federal fishery management council on any action proposing to regulate fishing in Federal waters, from 3 miles to 200 miles offshore. NOAA is

not proposing any fishing regulations in Federal waters at this time. All areas, existing and proposed, of the sanctuary are in territorial waters except the Muliāva unit, which contains Federal waters. With the exception of the Fish and Wildlife Refuge, NOAA has the primary management responsibility regarding the management of the marine areas with respect to fishery-related activities. Fishing regulations for that area as well as the rest of the Pacific Monuments are being developed by the Western Pacific Fishery Management Council and NOAA's National Marine Fisheries Service. ONMS has deferred the preparation of any fishing regulations for the Muliāva unit until the Council completes its process. Therefore, the following activities would be prohibited in all areas of the sanctuary except the Muliāva unit:

- Possessing or using:
  - Poisons, electrical charges, explosives, or similar environmentally destructive methods of fishing or harvesting. This activity is already prohibited in territorial waters under ASCA 24.0911–0915 and in Federal waters under 50 CFR 665.104(c) and 665.127(b).
  - Any type of fixed net, including seine and trammel nets, or drift gill nets (the use of cast or throw nets would not be prohibited).
  - The use of SCUBA gear in conjunction with the use of spearguns, including Hawaiian slings, pole spears, arbalettes, pneumatic and spring-loaded spearguns, bows and arrows, and bang sticks.
  - Disturbing the benthic community by bottom trawling.
- The take of the following categories of organisms:
  - Live coral and wild rock (take is already prohibited in territorial waters less than 60 feet deep under ASCA 24.0927(a) and in Federal waters under 50 CFR 665.125(c)).
  - Other bottom formations, including precious corals and crustose coralline algae (take of precious corals is already prohibited in territorial waters less than 60 feet deep under ASCA 24.0927(a)).
  - Giant clams [*Tridacna* spp.].
  - All species of live shells except the Goldmouth Turban snail [*Turbo chrystomus*, Alili in Samoan].
  - Crown-of-Thorns Starfish [*Acanthaster planci*].

#### 4. Unit-Specific Regulations

In addition to the sanctuary-wide prohibited activities described above, this rule proposes unit-specific regulations for four (Fagatele Bay, Larsen Bay, Aunu'u Island, and Swains Island) of the six units that are proposed

to be included as part of the FBNMS. The proposed unit-specific regulations are of two types: (1) Allowable or restricted gear, and (2) allowable or restricted fishing practices (for example, sustenance harvesting). At some sites, or in some locations within a given site, all fishing is prohibited, effectively making those areas no-take zones. There are no site-specific restrictions for the Ta'u Island because NOAA determined that the sanctuary-wide regulations that would apply to these areas would be sufficient to meet the goals and objectives of the sanctuary. There are no site-specific restrictions for the Muliāva at this time, as ONMS is awaiting Council/NMFS action regarding fishing regulations in that area.

##### 1. Fagatele Bay

The proposed regulations for the Fagatele Bay unit would prohibit all take of sanctuary resources. While the FBNMS condition report (2007) rates most resources in good condition, a reduction in numbers and size of large predatory fish (*e.g.*, Maori wrasse *Cheilinus undulatus*) from fishing has caused a fair/poor rating for these living resources. Prohibiting removal of all sanctuary resources would provide the opportunity for the natural environment to be restored to a more natural state.

##### 2. Larsen Bay

The regulations for Larsen Bay would prohibit all take and the use of all fishing gear, except for fishing with hook-and-line gear. As mentioned above, preserving Larsen Bay as a complement to Fagatele Bay provides additional security for the habitats and species that occur in both bays. Hook-and-line gear would be allowed to provide the opportunity to assess fishing impacts in comparison with nearby Fagatele Bay, where all fishing would be prohibited. Allowing hook-and-line fishing only would be compatible with the NMSA's primary objective of resource protection because it is unlikely to adversely impact the resource value of the bay due to the low level of fishing activity within Larsen Bay. Annual cultural harvest events such as palolo (*Palola viridis*) and atule (*Selar crumenophthalmus*) would also be allowed in Larsen Bay after obtaining a permit from the Sanctuary Superintendent.

##### 3. Aunu'u Island

The Aunu'u Island unit would be divided into two zones, Zone A and Zone B.

Zone A would be the Multiple Use Zone, in which fishing would be allowed provided that vessel operators

make their presence known to the sanctuary or its designate in the village of Aunu'u prior to entering the sanctuary to conduct extractive activities. Zone A would provide protection of the resources within this area, and would allow for a better understanding of current use levels of the area.

Zone B would be the Research Zone, which would be designated no-take for all marine resources. The ONMS may issue permits for research activities that violate sanctuary regulations provided the applications comply with ONMS permitting procedures and criteria. Zone B would prohibit all extractive activities to provide a control area as a mechanism for research activities.

##### 4. Swains Island

Only sustenance harvesting would be allowed in the waters of the sanctuary around Swains Island. All other forms of extraction would be prohibited. This regulation would reduce consumption of sanctuary resources to a level where the natural ecosystem can maintain its integrity and provide long-term benefits (including larval dispersion to other areas of the archipelago). Sustenance harvesting would be allowed because of the remote nature of this location and the need for sustenance for the inhabitants of Swains Island.

##### 5. Enforcement

If adopted, the proposed regulations would be enforced by NOAA and other authorized agencies (*i.e.*, the U.S. Coast Guard, U.S. Department of the Interior, and American Samoa Department of Marine and Wildlife Resources) in a coordinated and comprehensive way. Enforcement actions for an infraction would be prosecuted under the appropriate statutes or regulations governing that infraction. The prohibition against catching or harvesting marine organisms would include a rebuttable presumption that any marine organism or part thereof found in the possession of a person within the protected areas has been collected from the protected areas. Violation of any of these regulations could be punishable under 15 CFR 922.45 with a civil penalty of up to \$130,000 per incident, per day. In addition, violators could be held liable for response costs and damages resulting from any destruction, loss, or injury to any sanctuary resource (15 CFR 922.46). The penalty schedule for violations in national marine sanctuaries may be found at <http://www.gc.noaa.gov/enforce-office.html>.

## 6. Permitting

If this rule is adopted as proposed, the additional areas of the sanctuary would provide researchers a valuable opportunity to discern between human-induced and natural changes in the Samoan archipelago. Researchers would be required to obtain permits to conduct activities related to research that would otherwise be prohibited by the regulations.

NOAA's sanctuary-wide regulations and the site-specific regulations for the FBNMS (15 CFR part 922) allow the ONMS Director to issue permits to conduct activities that would otherwise be prohibited by the regulations. The authority to issue permits for activities in FBNMS is delegated to the Superintendent. Requirements for filing permit applications are specified in 15 CFR 922.104 of the ONMS regulations and the Office of Management and Budget's approved application guidelines (OMB control number 0648-0141). Criteria for reviewing permit applications are also contained in the ONMS regulations at 15 CFR 922.104. In most sanctuaries, permits may be issued for activities related to scientific research, education, and management, among other categories of activities.

In complement to the existing regulations, which allow the Director to issue sanctuary permits for research, education, and salvage activities, NOAA proposes to add a category of sanctuary permit for management activities. Such a management category would allow otherwise prohibited activities that would assist in managing the sanctuary, either by NOAA or third parties. This would provide protection for the sanctuary's physical, biological, and historical resources by ensuring that no activity may cause long-term or irreparable harm to the resources of the sanctuary.

In addition, NOAA proposes to delete a redundant portion of the regulatory text pertaining to the conditions that the ONMS Director may place on a permit. Section 922.106(e) of the FBNMS regulations states that the ONMS Director may issue a permit subject to conditions "as he or she deems necessary." The remainder of the paragraph describes a few of the conditions that the ONMS Director may include for permit issuance. However, these conditions are included in the phrase "as he or she deems necessary," so removing the text does not result in any substantive change in the intent of the regulation. This is simply a technical change.

Presidential Proclamation 8337 (January 12, 2009; 74 FR 1577) states, "The prohibitions required by this proclamation shall not restrict scientific exploration or research activities by or for the Secretaries, and nothing in this proclamation shall be construed to require a permit or other authorization from the other Secretary for their respective scientific activities." In order to be consistent with this requirement and in exercising its discretion under the NMSA, NOAA proposes providing the Departments of Commerce and the Interior with an exception to the prohibitions for the conduct of scientific activities within the Muliāva unit.

Finally, NOAA currently is examining the permitting requirements now in place at all national marine sanctuaries, with the focus on the way that similar requirements might be harmonized. Potential changes to these requirements, which will not be ready for public comment for several months, could ultimately affect the permit regulations for FBNMS. Any changes to the permit requirement proposed here would only occur subsequent to separate notice and comment.

## 7. Technical Changes

The regulations at 15 CFR 922.103 and 922.104 have also been updated to reflect the change from the Economic and Development Planning Office (EDPO) to the American Samoa Department of Commerce (ASDOC). EDPO was the name of the local agency 25 years ago when the FBNMS was designated, but the agency has been renamed to ASDOC. This change is purely technical.

## IV. Classification

### A. National Marine Sanctuaries Act

Section 301(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431) provides authority for comprehensive and coordinated conservation and management of national marine sanctuaries in coordination with other resource management authorities. Section 304(a)(4) of the NMSA (16 U.S.C. 1434) requires that the procedures specified in Section 304 for designating a national marine sanctuary be followed for modifying any term of designation. This action proposes to revise the terms of designation (*e.g.*, scope of regulations) for the FBNMS, which would be retitled the ASNMS. In accordance with Section 304, the appropriate documents are being submitted to the specified Congressional committees. NOAA is also required to comply with Section 304(a)(5) of the NMSA, which requires

that NOAA consult with the appropriate Federal fishery management council on any action proposing to regulate fishing in Federal waters. As stated in the preamble above, NOAA is not proposing any fishing regulations in Federal waters at this time.

### B. National Environmental Policy Act

In accordance with Section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)), and the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4370), a DEIS has been prepared for this proposed action. The DEIS contains a statement of the purpose and need for the project, description of proposed alternatives including the no-action alternative, description of the affected environment, and evaluation and comparison of environmental consequences including cumulative impacts. Copies of the DEIS are available upon request at the address and Web site listed in the **ADDRESSES** section of this rule.

### C. Executive Order 12866: Regulatory Impact

Under Executive Order (E.O.) 12866, if the proposed regulations are "significant," as defined in Section 3(f) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget. This proposed rule has been determined to be not significant within the meaning of E.O. 12866.

### D. Executive Order 13132: Federalism Assessment

There are no federalism implications as that term is used in E.O. 13132. The changes will not preempt State law, but will simply complement existing Territory authorities. In keeping with the intent of the Order, NOAA consulted with a number of entities within the region, including the American Samoa Government and the Western Pacific Regional Fishery Management Council.

### E. Regulatory Flexibility Act

In 2010, the American Samoa Department of Marine and Wildlife Resources and the Western Pacific Fisheries Information Network (ASDMWR and WPFIN, 2010) identified 57 vessels active in the commercial fishery, with 51 identified as homeported on Tutuila and six in the Manu'a Islands. The commercial fishing operations potentially impacted by the proposed regulations typically use small boats, primarily 28 to 32 foot-long, outboard engine-powered catamarans called *alias* (pronounced ah/LEE/ahs),

and are single-day fisheries occurring in near-shore waters. Less than half of the Tutuila-based boats fall into this category: Approximately 25 of the 51 commercial fishing operations identified are near-shore commercial fishing alias. Based on information obtained from ASDMWR, NOAA believes that all six Manu’a Island boats are near-shore alias. On average, each alia consisted of a three-person crew. Applying that average crew to the total number of alias operating in American Samoa (31), a total employment of approximately 93 can be estimated. The remaining 26 commercial fishing vessels operating out of American Samoa are believed to be larger vessels fishing in offshore areas; therefore, these vessels would not be affected by this proposed action. Presidential Proclamation 8337 prohibited commercial fishing within

the waters of the Rose Atoll Marine National Monument, therefore no impact to fishing operations is expected in the Muliāva unit.

The near-shore alias target primarily bottom fish and reef fish species using hook-and-line trolling or bottomfishing. In 2009, approximately 90,000 pounds of bottom, reef, and other fish species (excluding pelagic species) were commercially landed in American Samoa. The total value of these landings was approximately \$250,000 in 2009 (Pacific Islands Fishery Science Center, 2010). Secondary economic values in sales/output, income, jobs, and tax revenues in the local economy can be estimated by applying economic multiplier impacts. A recent valuation study used a multiplier of 1.25 to estimate the full value of coastal resources in American Samoa

(Spurgeon, 2004). Applying this multiplier, the total economic value of the near shore fishery is estimated to be \$312,000 in 2009.

This represents less than 1 percent of the total commercial fishing landings and just over 2 percent of the total value of commercial fishing in American Samoa. The commercial fishing industry in American Samoa is currently dominated by pelagic species, amounting to approximately 10 million pounds, with an approximate value of \$10 million, landed annually over the past 10 years. These pelagic commercial fisheries would not be affected by the proposed regulations because the regulations would not apply to the areas where pelagic commercial fishing is conducted.

TABLE 1—AMERICAN SAMOA COMMERCIAL FISHING FLEET VESSELS AND ESTIMATED CREW

Home port	Total number of boats	Number alias boats (nearshore)	Average crew employed per alia boat	Total crew employed (nearshore)
Tutuila Island .....	51	25	3	75
Manu’a Islands .....	6	6	3	18
Total .....	57	31	3	93

In addition to this proposed action, four other alternatives were analyzed in the draft environmental impact statement. These alternatives include: No action, FBNMS management plan update only (alternative 1), incorporation of Muliāva unit (Rose Atoll Marine National Monument) only (alternative 2), and multi-village sanctuary unit expansion with buffer zones and additional regulations (alternative 4). For the no action alternative, there would be no direct adverse impacts on population, employment and total income, recreation or tourism because no new restrictions would be proposed. For alternative 1, which would only update the management plan for FBNMS as it currently exists, the activities presented in the revised management plan would be primarily administrative in nature, designed to assist sanctuary managers in being proactive and respond quickly and appropriately and safely to threats to sanctuary resources. They would most likely occur within existing facilities and would not significantly change the use of facilities or increase traffic, and would have little to no potential to significantly affect the quality of the human environment. For alternative 2, which would add the Muliāva unit to the sanctuary as a result

of Presidential Proclamation 8337, there would likely be no impact on human uses, including fishing, tourism, and recreational opportunities. Despite the rich, isolated marine environment that would be attractive to eco-tourists, the atoll would take 5 to 10 hours via boat to reach from Tutuila, and 4 to 8 hours from Ta’u, the closest island and there is currently little to no tourism occurring in that area. Since the alternative does not include any prohibition on fishing, there would be no impact on fishing operations. In addition, Presidential Proclamation 8337 prohibits commercial fishing within the boundaries of the monument and proposed sanctuary unit and Rose Atoll NWR is closed to the public. As such, there is no need for commercial fishing or wildlife tour vessels to operate within the Muliāva unit. Thus, the discharge prohibition is expected to have less than significant impact on human uses at the Muliāva unit. For alternative 4, which would create buffer zones around the multi-village sanctuary units proposed in alternative 3 (the alternative that is being proposed in this rule) as well as add regulations, there would be a less than significant impact on fisheries in American Samoa due to some additional fishing restrictions. None of these alternatives

would result in a significant impact to small businesses. A detailed analysis of the socio-economic impacts of these alternatives can be found in the draft environmental impact statement associated with this action.

Summary of Proposed Commercial Fishing Regulations and Related Potential Impact

Fagatele Bay and the research-only area adjacent to the northeast quadrant of Aunu’u Island are proposed as complete no-take zones. Additionally, only sustenance fishing would be allowed at Swains Island, thus prohibiting commercial fishing. Revenue from the commercial sale of fish caught in these proposed areas would drop to zero. Fishing in Larsen Bay would be restricted to hook and line only. Under the proposed regulations, commercial fishing would be allowed in the Larsen Bay unit (hook and line fishing only), Aunu’u in the Multiple Use Zone, and Ta’u. Commercial fishing is currently prohibited at Muliāva by Presidential Proclamation 8337, which designated the area as the Rose Atoll Marine National Monument.

The area of reef habitat was documented by the Biogeography Team of NOAA’s National Centers for Coastal Ocean Science (Kendall *et al*, 2011). The results of this research can be seen in

the table below. The total reef habitat area of the proposed no-take areas is 1 square mile, or about 3.7 percent of the reef habitat area of American Samoa, excluding Muliāva, which is currently a no-take area. Applying the 2010

estimated total economic value of the near-shore commercial fishery of \$317,235 to the percent of reef habitat of the proposed no-take areas results in the following maximum potential loss estimates:

Fagatele Bay—\$2,295.  
 Aunu'u Research Zone—\$5,403.  
 Swains Island—\$4,330.  
 The estimated maximum potential loss of the three proposed no-take areas combined is \$12,028 in 2010 dollars.<sup>1</sup>

Table 2: Reef Habitat and Associated Near Shore Commercial Fishery Economic Value, 2010

Site	Reef		Reef		Economic Value of Area (dollars)
	Reef Habitat Area (km <sup>2</sup> )	Habitat Area w/o Rose (km <sup>2</sup> )	Reef Habitat Area (percent)	Reef Habitat Area w/o Rose (percent)	
<b>Fagatele Bay NMS</b>	<b>0.51</b>	<b>0.51</b>	<b>0.7</b>	<b>0.7</b>	<b>2,295</b>
Larsen's Bay	0.96	0.96	1.3	1.3	4,266
Aunu'u Unit	0.71	0.71	1.0	1.0	3,170
<b>Aunu'u Research Zone</b>	<b>1.21</b>	<b>1.21</b>	<b>1.6</b>	<b>1.7</b>	<b>5,403</b>
Ta'u	0.83	0.83	1.1	1.2	3,714
<b>Swains Island</b>	<b>0.97</b>	<b>0.97</b>	<b>1.3</b>	<b>1.3</b>	<b>4,330</b>
Rose Atoll	0.40		0.5		
Tutuila	63.66	63.66	85.9	88.2	284,369
Manu'a	7.58	7.58	10.2	10.5	33,859
Rose	1.92		2.6		
Swains	0.97	0.97	1.3	1.3	4,330
American Samoa	74.13	72.21	100.0		317,235

American Samoa has been unable to develop a significant tourism industry

that could support charter fishing, nor is American Samoa known for producing

large game fish. Few, if any, charter boats are in operation, so no data have

<sup>1</sup> This analysis assumes that all economic value associated with a no-take area is lost. Any factor that could mitigate or off-set the level of potential

impact is not included. Thus, the estimated impacts are thought of as "maximum potential losses." NOAA's experience, based on post-regulatory

monitoring, has demonstrated that this type of estimate rarely predicts the actual ultimate impact.



been collected specifically for the charter fishing sector (WPRFMC, 2011). Because there are few charter boats in operation, this rule is likely to have minimal impact to this industry.

F. Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by the Office of Management and Budget (OMB) under control number 0648-0141. The public reporting burden for national marine sanctuary permits is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Nationwide, NOAA issues approximately 200 national marine sanctuary permits each year. Of this amount, FBNMS averages 1 to 2 permit requests per year, although no permits are currently active for activities within the FBNMS. Even though this proposed rule may result in a few additional permit applications, due to the additional units and an overall larger area under management, this rule would not appreciably change the average annual number of respondents or the reporting burden for this information requirement. Therefore, NOAA has determined that the proposed regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act.

Comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, may be sent to NOAA (see ADDRESSES) and to OMB by e-mail to OIRA\_submission@omb.eop.gov or fax to (202) 395-7285. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

V. References

A complete list of all references cited herein is available upon request (see ADDRESSES section).

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties,

Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: October 13, 2011.

Christopher Cartwright,

Chief Financial Officer for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is proposed to be amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 et seq.

2. In § 922.3, revise the definition of “conventional hook and line gear” to read as follows:

§ 922.3 Definitions.

\* \* \* \* \*

Conventional hook and line gear means any fishing apparatus composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand or mechanically operated, regardless of whether mounted. This term does not include longlines.

\* \* \* \* \*

3. Revise subpart J to read as follows:

Subpart J—American Samoa National Marine Sanctuary

Sec.

- 922.100 Scope of regulations.
922.101 Boundary.
922.102 Definitions.
922.103 Prohibited or otherwise regulated activities—Sanctuary-wide.
922.104 Prohibited or otherwise regulated activities—Sanctuary-Wide except in the Muliāva Unit.
922.105 Prohibited or otherwise regulated activities—Unit-specific.
922.106 Management and enforcement.
922.107 Permit procedures and criteria.
Appendix to Subpart J of Part 922—American Samoa National Marine Sanctuary Boundary Coordinates

Subpart J—American Samoa National Marine Sanctuary

§ 922.100 Scope of regulations.

The provisions of this subpart J apply only to the areas of the Territory of American Samoa and U.S. waters within the boundary of the American Samoa National Marine Sanctuary (Sanctuary). Neither the provisions of this subpart J nor any permit issued under its 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 comprised of six distinct units, forming a network of marine protected areas around the islands of the Territory of American Samoa. Tables containing the exact coordinates of each point described below can be found in Appendix to Subpart J—American Samoa National Marine Sanctuary Boundary Coordinates.

(a) Fagatele Bay Unit. The Fagatele Bay Unit 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 of Fagatele Bay until the point at which it intersects the seaward boundary of the Sanctuary as defined by a straight line between Fagatele Point (– 14.36527, – 170.76932) and Steps Point (– 14.37291, – 170.76056) from the point at which it intersects the MHHW line seaward.

(b) Larsen Bay Unit. The landward boundary of the Larsen Bay Unit is defined by the mean high high water (MHHW) line of Larsen Bay until the point at which it intersects the seaward boundary of the Larsen Bay Unit as defined by a straight line between Steps Point (– 14.37307, – 170.75852) and Sail Rock Point (– 14.36534, – 170.74119) from the point at which it intersects the MHHW line seaward.

(c) Aunu’u Unit. The Aunu’u Unit is comprised of two adjacent zones.

(1) Zone A. The Aunu’u Unit boundary for Zone A is defined by the coordinates provided in Table 1 and the following textual description. The Zone A boundary extends from Point 1, the northwest corner of the unit, to Point 2 along a straight line following the western boundary of the unit, which is aligned with Taugamalama Point on Tutuila. It then extends northeastward in a multi-part line along the deepest seaward edge of Nafanua Bank from Point 2 to Point 3 and then to Point 4, which lies on the southern boundary of Zone B. The boundary then follows a straight line westward towards Point 5 until it intersects the mean high high water (MHHW) line at the southern tip of Ma’ama’a Cove. The landward boundary of Zone A is defined by the mean high high water (MHHW) line from this intersection point at the southern tip of Ma’ama’a Cove to the

intersection of the MHHW line and the straight line between Point 6 and Point 7 at Salevatia Point. From this intersection point at Salevatia Point, the boundary extends straight west to Point 7.

(2) *Zone B*. The Aunu'u Unit boundary for Zone B is defined by the coordinates provided in Table 2 and the following textual description. The Zone B boundary extends from Point 1, the northeast corner of the unit, along a straight line following the eastern boundary of the unit to Point 2, which is on the southern boundary of the unit. The boundary then follows a line westward towards Point 3 until it intersects the mean high high water (MHHW) line at the southern tip of Ma'ama'a Cove Point. The landward boundary of Zone B is defined by the mean high high water (MHHW) line from this intersection point at the southern tip of Ma'ama'a Cove around the volcanic crater to the intersection of the MHHW line and the straight line between Point 4 and Point 5. From here, the boundary extends seaward straight north to Point 5. The last straight line is defined by connecting Point 5 and Point 6, along the northern boundary of the unit, which is aligned with Matuli Point on Tutuila.

(d) *Swains Island Unit*. The landward boundary of the Swains Island Unit is the mean high high water (MHHW) line. The seaward boundary of the Swains Island Unit is the territorial water boundary 3 nautical miles from the mean high high water (MHHW) line that surrounds the island.

(e) *Muliāva Unit*. The Muliāva Unit boundary is defined by the coordinates provided in Table 3 and the following textual description. The landward boundary of the Muliāva Unit is the extreme low water line. The Muliāva Unit boundary extends from Point 1, the southwest corner of the unit, to Point 2 along a straight line northward following the western boundary of the unit. From Point 2, the line extends in a straight line westward to Point 3. It then extends along a straight line northward to Point 4. From Point 4, the line extends in a straight line eastward to Point 5. From Point 5, the line extends along a straight line northward to Point 6. It then extends along a straight line eastward from Point 6 to Point 7, which is on the eastern boundary of the unit. The boundary then follows a line southward until it intersects the line of the southern boundary of the unit at Point 8, the southeastern corner of the sanctuary. The last straight line is defined by connecting Point 8 and Point 9, along the southern boundary of the unit.

(f) *Ta'u Unit*. The Ta'u Unit boundary is defined by the coordinates provided in Table 4 and the following textual description. The Ta'u Unit boundary extends from Point 1, Vaita Point, along the mean high high water (MHHW) line southward along the western coast to Point 2, Si'ufa'alele Point. From Point 2, the boundary extends offshore 0.25 miles to Point 3 to become conterminous with the offshore boundary of the National Park of American Samoa. From Point 3 the boundary continues to follow the coastline 0.25 miles offshore until it reaches Point 4, which is directly south of Si'u Point. From Point 4, the boundary extends due south to Point 5. From Point 5, the boundary extends due west along the parallel to Point 6. From Point 6, the boundary extends due north until it reaches Point 7, directly west and one mile away from Point 8, which is Point 1 also known as Vaita Point.

#### § 922.102 Definitions.

*Clean* means not containing detectable levels of harmful matter.

*Fishing* means the catching, taking, or harvesting of marine species; the attempted catching, taking, or harvesting of marine species; any other activity which can reasonably be expected to result in the catching, taking, or harvesting of marine species; or any operation at sea in support of, or in preparation for, any activity described in 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 pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act at 40 CFR 302.4.

*Introduced species* means any species (including, but not limited to, any of its biological matter capable of propagation) that is nonnative to the ecosystem(s) protected by the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

*Live rock* means any Coral, basalt rock, or other natural structure with any living organisms growing in or on the Coral, basalt rock, or structure.

*Stowed and not available for immediate use* means not readily

accessible for immediate use, *e.g.*, by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

*Sustenance harvesting* means the take of any marine species in which all catch is consumed within the Sanctuary or on Swains Island, unless prohibited by another statute such as the Endangered Species Act or Marine Mammal Protection Act.

#### § 922.103 Prohibited or otherwise regulated activities—Sanctuary-wide.

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Introducing or releasing introduced species from within or into sanctuary waters.

(2) Anchoring a vessel.

(3) Deserting a vessel aground, adrift, or at anchor.

(4) Leaving harmful matter on an abandoned or deserted vessel or structure.

(5) Operating a vessel at a speed exceeding three knots and closer than 200 feet (60.96 meters) from another vessel displaying a dive flag.

(6) Operating a vessel in a manner which causes the vessel to strike or otherwise cause damage to Sanctuary resources.

(7) Diving, snorkeling, or conducting diving or snorkeling operations from a vessel not in compliance with applicable U.S. Coast Guard navigation rules governing the display of lights and signals, and not flying in a conspicuous manner the international code flag alpha "A" or the standard red-and-white U.S. "diver down" flag.

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

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

(ii) In the Muliāva unit only, treated sewage effluent from a Type I or II U.S. Coast Guard-approved Marine Sanitation Device.

(9) Discharging or depositing from beyond the boundary of the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraph (a)(8) of this section.

(10) Disturbing the benthic community by sand mining, dredging, filling, dynamiting, or otherwise disturbing or altering the seabed.

(11) Removing, damaging, or tampering with any historical or cultural resource.

(12) Taking any marine mammal, sea turtle, or seabird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(13) 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.

(14) 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.

(15) Abandoning a structure, material, or other matter on or in the submerged lands of the Sanctuary.

(b) The prohibitions in paragraphs (a)(1) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity necessary for national defense.

(c) The prohibitions in paragraphs (a)(2) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

(d) The prohibitions in paragraphs (a)(2) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity necessary for valid law enforcement purposes in the Sanctuary.

(e) The prohibitions in paragraphs (a)(2) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.106.

(f) The prohibitions in paragraphs (a)(2) through (15) of this section do not apply to scientific activities of or for the Departments of Commerce or the Interior within the Muliāva Unit consistent with Presidential Proclamation 8337 (Proc. 8337, 74 FR 1577, 3 CFR 2010 Comp., pp. 20–24).

**§ 922.104 Prohibited or otherwise regulated activities—Sanctuary-Wide except in the Muliāva Unit.**

(a) The following activities are prohibited and thus are unlawful for

any person to conduct or to cause to be conducted within any unit of the Sanctuary except the Muliāva Unit:

(1) Gathering, taking, breaking, cutting, damaging, destroying, or possessing any giant clam [*Tridacna spp.*], crown-of-thorns starfish [*Acanthaster planci*], live coral, bottom formation including live rock and crustose coralline algae and any live shell (except Goldmouth turban [*Turbo chrysostomus*]).

(2) Possessing or using poisons, electrical charges, explosives, or similar environmentally destructive methods of fishing or harvesting.

(3) 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 while utilizing SCUBA equipment.

(4) Possessing or using a seine, trammel, drift gill net, or any type of fixed net.

(5) Disturbing the benthic community by bottom trawling.

(b) There shall be a rebuttable presumption that any items listed in paragraph (a) of this section found in the possession of a person within the Sanctuary have been used, collected, or removed within or from the Sanctuary.

**§ 922.105 Prohibited or otherwise regulated activities—Unit-specific.**

In addition to the prohibitions set forth in § 922.103 and § 922.104, the following regulations apply to activities conducted within specified Sanctuary units described in the appendix to this subpart.

(a) The following activities are prohibited in the Fagatele Bay Unit:

(1) Harvesting, catching, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, including but not limited to fishing, or attempting any of these activities.

(2) Possessing fishing gear unless such gear is stowed and not available for immediate use.

(3) Possessing any Sanctuary resource, except legally harvested fish on board a vessel.

(b) The following activities are prohibited in the Larsen Bay Unit:

(1) Harvesting, catching, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, including but not limited to fishing, or attempting any of these activities, except for fishing with conventional hook and line.

(2) Possessing fishing gear other than conventional hook and line gear on board a vessel unless such gear is

stowed and not available for immediate use.

(3) Possessing any Sanctuary resource, except legally harvested fish onboard a vessel.

(c) The following activities are prohibited in the Aunu'u Unit:

(1) In Zone A: Fishing from a vessel without providing notification to the Sanctuary Superintendent or his/her designee in the village of Aunu'u prior to each fishing trip.

(2) In Zone B: (i) Harvesting, catching, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, including but not limited to fishing, or attempting any of these activities.

(ii) Possessing fishing gear on board a vessel unless such gear is stowed and not available for immediate use.

(iii) Possessing any Sanctuary resource, except legally harvested fish on board a vessel in transit.

(d) The following activities are prohibited in the Swain's Island Unit:

(1) Harvesting, fishing, catching, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, including but not limited to fishing, or attempting any of these activities; except for the purpose of sustenance harvesting.

(2) Possessing any Sanctuary resource, except legally harvested fish onboard a vessel.

**§ 922.106 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 Department of Commerce (ASDOC) will assist NOAA in the administration of the Sanctuary, and act as the lead agency, in conformance with the terms of designation, 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, it will be reflected in a Joint Enforcement Agreement between NOAA and the ASG or the person(s) or entity authorized to act on their behalf.

**§ 922.107 Permit procedures and criteria.**

(a) Any person in possession of a valid permit issued by the Director, in consultation with the ASDOC, in accordance with this section and § 922.48, may conduct an activity otherwise prohibited by § 922.103, § 922.104, and § 922.105 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;

(3) Intended to further the management of the Sanctuary; or

(4) For salvage or recovery operations. (b) Permit applications shall be addressed to the Director, Office National Marine Sanctuaries; ATTN: Sanctuary Superintendent, American Samoa 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 § 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.

**Appendix to Subpart J of Part 922—  
American Samoa National Marine  
Sanctuary Boundary Coordinates**

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

(a) Fagatele Bay

No coordinates are needed in addition to those described in § 922.101(a).

(b) Larsen Bay

No coordinates are needed in addition to those described in § 922.101(b).

(c) Aunu'u (Zones A, B)

The Aunu'u Unit is comprised of two adjacent zones, described in § 922.101(c), for which the point coordinates are provided in following tables 1 and 2.

**TABLE 1—COORDINATES FOR THE  
AUNU'U UNIT, ZONE A**

Point ID	Latitude (south)	Longitude (west)
1	14.286 S	170.577 W
2	14.304 S	170.577 W
3	14.302 S	170.566 W
4	14.286 S	170.533 W
5	14.286 S	170.546 W
6	14.286 S	170.562 W
7	14.286 S	170.577 W

**TABLE 2—COORDINATES FOR THE  
AUNU'U UNIT, ZONE B**

Point ID	Latitude (south)	Longitude (west)
1	14.270 S	170.496 W
2	14.286 S	170.496 W
3	14.286 S	170.546 W
4	14.280 S	170.550 W
5	14.270 S	170.550 W
6	14.270 S	170.551 W

(d) Swains Island

No coordinates are needed in addition to those described in § 922.101(d).

(e) Muliāva

The Muliāva Unit boundary is defined by the coordinates provided in Table 3 and the textual description in § 922.101(e).

**TABLE 3—COORDINATES FOR THE  
MULIĀVA UNIT**

Point ID	Latitude (south)	Longitude (west)
1	15.387 S	169.012 W
2	14.271 S	169.012 W
3	14.271 S	169.121 W
4	14.150 S	169.121 W
5	14.150 S	169.012 W
6	13.698 S	169.012 W
7	13.698 S	167.283 W
8	15.387 S	167.283 W

**TABLE 3—COORDINATES FOR THE  
MULIĀVA UNIT—Continued**

Point ID	Latitude (south)	Longitude (west)
9	15.387 S	169.12 W

(f) Ta'u Unit

The Ta'u Unit boundary is defined by the coordinates provided in Table 4 and the textual description in § 922.101(f).

**TABLE 4—COORDINATES FOR THE TA'U  
UNIT**

Point ID	Latitude (south)	Longitude (west)
1	14.24889 S	169.503056 W
2	14.273056 S	169.488056 W
3	14.277222 S	169.488056 W
4	14.261111 S	169.429167 W
5	14.293889 S	169.429167 W
6	14.293889 S	169.519722 W
7	14.24889 S	169.519722 W
8	14.24889 S	169.503056 W

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