

Title 24

Chapter 10

**COMMUNITY-BASED FISHERIES MANAGEMENT PROGRAM**

(Adopted 2008)

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## **I. Community-Based Fisheries Management Program**

**24.1001 Authority.**

Pursuant to the authority granted to the Department of Marine and Wildlife Resources under A.S.C.A. § 24.0905, the following rules and regulations are set forth to govern and provide authority for the Community-based Fisheries Management Program.

**24.1002 Purpose.**

The American Samoa Islands and its surrounding waters contain historical, cultural, and natural resources that must be protected, managed, controlled and preserved for the benefit of all people of the Territory and future generations. The protection of these traditionally valuable resources will enhance and increase fish abundance and size for future catch.

- (a) To promote the protection and preservation of the American Samoa's Marine environment;
- (b) To promote the management, conservation and sustainable development of American Samoa's Coral Reefs and their supporting ecosystems;
- (c) To enhance sustainable fisheries in American Samoa;
- (d) To empower, allow and assist local Villages in all aspects of the Village Marine Protected Area management including, but not limited to designation, protection, monitoring and enforcement of the Village Marine Protected Areas; and
- (e) The institution of management programs to ensure that the Territory and its surrounding waters are safe habitats for Fish, shellfish and other marine life to exist and propagate for the continued use and enjoyment for the people of American Samoa, its future generations and visitors.

#### **24.1003 Definitions.**

The following definitions shall apply to the regulations of the Community-based Fisheries Management Program. Any definition referring to the male gender also includes the female gender.

- (1) "Barter" means the exchange or trade of Fish or Shellfish, or any Fish or Shellfish parts:
  - (a) Taken for any use;
  - (b) For other Fish, Shellfish or game or their parts; or
  - (c) For other food or for non-edible items other than money if the exchange or trade is of a noncommercial nature.
- (2) "Bleaching Agent" means any chemical-based product, solution, or liquid that may damage marine resources.
- (3) "Closed Area(s)" means an area designated by the Village Monitoring and Enforcement Committee, and the Department, where it is illegal or prohibited to take Fish or Shellfish or any marine organism;
- (4) "Closed Season" means the time during which Fish or Shellfish and any marine organism may not be Taken;
- (5) "Commercial Fishing" means any Fishing activity in which part or all of the catch is sold or marketed or for which the fisherman receives income as a result of the Fishing activity, such as payment for Fishing charter, a salary for Fishing, or cash for their portion of the catch and includes the Taking, Fishing for, or possession of Fish, Shellfish, or other Fishery resources with the intent of disposing of them for profit, or by sale, Barter, trade or in commercial channels.

- (6) "Coral" means the hard and soft corals. Hard corals are corals with hard or stony skeleton of marine creatures formed by polyps that live and grow in the Waters of American Samoa and also includes any Live Rock composed of dead coral skeleton or any living aquatic organism of the phylum Cnidaria that are capable of secreting hard skeletal parts or can incorporate stony secretions within or around their tissues e.g. hermatypic corals, black coral, precious corals, blue coral, organ pipe corals, fire corals, lace corals or other similar corals. Soft corals are members of phylum Cnidaria, Class Anthozoa, order Octocorallia that have soft fleshy tissues, attach to the sea bottom and may have a flexible skeleton. They include Alcyonaca soft corals and gorgonians.
- (7) "Cultural uses" means the Taking of Fish or Shellfish needed or used by a person where the Fish or Shellfish is normally or regularly used in cultural activities, ceremonies or traditions.
- (8) "Cyanide" means compounds that include cyanide salts, such as sodium cyanide or potassium cyanide which can be solids or in solutions, and the gas hydrogen cyanide (HCN), also known as hydrocyanic acid gases, also known as hydrocyanic acid gas.
- (9) "Cyanide Fishing" means a Fishing method using Cyanide compounds to Take Fish or Shellfish.
- (10) "Day" means a twenty-four (24) hour period beginning at one minute after midnight (12:01 a.m.) and ending at midnight, 24 hours later.
- (11) "Department" means the Department of Marine and Wildlife Resources (DMWR).
- (12) "Director" means the director of DMWR.
- (13) "Domicile" means the true and permanent home of a Person from which that Person has no present intention or plan of moving away from and to which that Person intends or plans to return to whenever that Person is away; domicile may be proved by presenting evidence acceptable to the Department or the Village Monitoring and Enforcement Committee.
- (14) "Fish" means any aquatic species of mammal, finfish, invertebrate, seaweeds, limu, or amphibian, in any state of its life cycle, found in or introduced into the Waters of American Samoa, and includes any part of such aquatic finfish, invertebrate, or amphibian, and includes but is not limited to octopi, urchins, sea cucumbers, snails, sea slugs, lobsters, crabs, shrimp, clams, sharks, rays, anemones, and those fish species of the classes Osteichthyes, Chondrichthyes, and Macroalgae occurring in the Waters of American Samoa. The term "Fish" includes all stages of development and the bodily parts of fish species.
- (15) "Fishery" means a specific area of water or Reef in which a specific Marine Resource is Taken with a specific type of Fishing Gear; additionally, the Department may designate a Fishery to include more than one specific type of Fishing Gear or Marine Resource;
- (16) "Habitat" means any natural or man-made material so configured as to create an environment that attracts, retains or is significantly used by populations of Fish, Shellfish and/or any living organism.
- (17) "Fishing" means to Take or attempt to Take Fish or Shellfish or any marine organism by any means including, but not limited to, the following:
  - (a) The use of Fishing Gear such as hook and line, spears, nets, traps, weirs, and any other device or method used to Take or attempt to Take Fish or Shellfish or any marine and aquatic organism;

- (b) Searching for catching, Taking or harvesting Fish or Shellfish or any marine and aquatic organism;
  - (c) The attempted searching for, catching, Taking, or harvesting of Fish or Shellfish or any marine and aquatic organism;
  - (d) Engaging in any other activity which can reasonably be expected to result in locating, catching, Taking or harvesting of Fish or Shellfish or any marine and aquatic organism;
  - (e) Placing and/or deploying, searching and recovery of any associated equipment such as radio beacons, buoy markers, Fish Aggregation Devices (FAD) except Department FAD's; or
  - (f) Any operation in the Waters of American Samoa in support of, or in preparation of any activity described in this definition.
- (18) "Fishing Gear" means any equipment, implement or other thing or item that can be used in the act of Fishing or Taking of Fish, including any fishing net, fishing line, float trap, hook, winch, spear, or any other device used to Take or attempt to Take Fish or Shellfish or any marine and aquatic organism.
- (19) "Fish Trap" means any portable or removable baited or unbaited Fish catching apparatus consisting of an enclosure with entrances designed to admit and retain Fish or Shellfish.
- (20) "Fish Weir" means any baited or unbaited Fish or Shellfish or any marine or aquatic organism catching apparatus consisting of a pocket, trap, and/or fixed barrier that is placed in a fixed position. This term includes any material or item used in the construction of the apparatus including any net, pole, rope, wire, mesh, branch, leaves, or other similar materials. For the purposes of these regulations, there are two types of Fish Weirs:
- (a) "Main Weir" means the central collection pocket or trap of a Fish Weir including its leader (main entrance) and any wings (side entrances);
  - (b) "Auxiliary Weir" means any secondary pocket or trap and its leader and wings that are attached to a Main Weir.
- (21) "Gleaning" means the Taking of Fish or Shellfish or any marine and aquatic organism using the hand and/or with a handheld knife or other handheld instrument.
- (22) "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.
- (23) "Legal Entity" or "Legally Recognized Entity" means any corporation, partnership, joint venture, affiliation, association, or any other entity recognized by the laws of American Samoa.
- (24) "Length of Fish" means the length from the tip of the snout of the Fish to the tip of the tail of the Fish (total length).
- (25) "Limit" means the maximum legal Take per Person per day in the area in which the Person is Fishing even though part or all of the Fish are immediately preserved; a Fish when landed and killed becomes a part of the Limit of the Person originally hooking or catching it and cannot be transferred or given to another Person for the purposes of determining a Person's Limit.

- (26) "Village Marine Protected Area" (VMPA) means any shore, shoreline, Reef or other designated marine area, that is established to serve the purpose(s) of these regulations.
- (27) "Marine Resource" means any Fish, Shellfish, marine animal, Coral, Live Rock or other living creature or marine life found in or on the salt Waters of American Samoa or found in or on a Reef.
- (28) "Mean High Water Mark" means the average level of the ocean's high tide for a particular area of shoreline or Reef.
- (29) "Mean Low Water Mark" means the average level of the ocean's low tide for a particular area of shoreline or Reef.
- (30) "Night Fishing" means the Fishing or Taking of Fish or Shellfish in the time period between one (1) hour after sunset until one (1) hour before sunrise.
- (31) "Open Season" means the time during which Fish or Shellfish may lawfully be Taken; each period of time prescribed as an open season shall be interpreted to begin at 12:01 a.m. on the first day of the stated Time Period and end at midnight of the last day of the stated Time Period unless otherwise stated in a designation of an Open Season.
- (32) "Participating Village" means a village that has agreed to participate in the Community-based Fisheries Management Program under Section 24.1004.
- (33) "Person" means an individual, corporation, company, association, partnership or any other Legally Recognized Entity.
- (34) "Persons" means more than one Person.
- (35) "Reef" means the area from the shore line at Mean High Water Mark to a point one hundred (100) yards past the point where breakers form during the lowest low tide (i.e., during spring tide) which shall contain the entire area, length, growth, and structure of any Coral including all Live Rock(s), and atolls located on or in the Reef.
- (36) "Resident" means:
- (a) A person who for the 12 consecutive months immediately preceding the time when the claim of residence is made has maintained the Person's Domicile in American Samoa and who is neither claiming residency in another state, territory, or country, nor obtaining benefits under a claim of residency in another state, territory, or country;
  - (b) A native Samoan who resides in a village;
  - (c) A Legal Entity that has its main office or headquarters in American Samoa; a natural person who does not otherwise qualify as a resident under this paragraph may not qualify as a resident by virtue of an interest in a partnership, association, joint stock company, trust, or corporation;
  - (d) A member of the military service, or United States Coast Guard, who has been stationed in American Samoa for the 12 consecutive months immediately preceding the time when the claim of residence is made;

- (e) A person who is the dependent of a resident member of the military service, or the United States Coast Guard, and who has lived in American Samoa for the 12 consecutive months immediately preceding the time when the claim of residence is made; or
  - (f) An alien who for the 12 consecutive months immediately preceding the time when the claim of residence is made has maintained the person's Domicile in American Samoa and who is neither claiming residency in another state, territory, or country, nor obtaining benefits under a claim of residency in another state, territory, or country.
- (37) "Sandmining" means the act of or actual removal of sand from the coastline or in the village marine protected area by a Person by any means or method and for any commercial use or personal use, including but not limited to removal by shovel, vehicle, ricebags, barrels, bare hands, buckets, or any mechanism or manner in which sand is removed from a Village Marine Protected Area.
- (38) "Season" means a stated period of time that occurs in yearly cycles.
- (39) "Shellfish" means any aquatic animal with a shell and also includes all species of marine and freshwater invertebrates occurring in the Waters of American Samoa. The term "Shellfish" includes all stages of development and the bodily parts of Shellfish species.
- (40) "Shellfish Trap" means any removable or portable, baited or unbaited Shellfish catching apparatus consisting of an enclosure with entrances designed to admit and retain Shellfish.
- (41) "Subsistence Fishing" means any legal Fishing activity where the catch is not sold or marketed but is shared within the family or Village for the purpose of home consumption and includes Cultural Uses.
- (42) "Subsistence Uses" means the noncommercial, customary and traditional uses of wild, renewable Marine Resources by a Resident, whose Domicile is American Samoa, such use being for the direct personal or family consumption as food or for the customary trade, Barter, or sharing for personal or family consumption; in this paragraph, "family" means persons related by blood, marriage, adoption, Samoan custom or culture, or a person living in the Resident's household on a permanent basis.
- (43) "Take"; "Taking"; "Takes" means to harass, harm, pursue, hunt, shoot, wound, kill, capture, trap or collect, or attempt to engage in any such conduct.
- (44) "Taken" means the removal, captured, killed or transferred of Fish/Shellfish or any other marine and aquatic organism.
- (45) "Time Period" means any stated measurement or amount of time, including but not limited to, hours, days, weeks, or months.
- (46) "Toxicant" means any material or chemical put, placed or introduction into the salt Waters of American Samoa by direct or indirect means that will kill, stun, or intoxicate Fish or Shellfish, or drive Fish or Shellfish from their normal or natural location.
- (47) "Underwater Breathing Device" means any mechanical, fabricated, or man-made device or apparatus, including SCUBA equipment, Hookah equipment, used by a Person to allow that Person to breathe while submerged or while partly submerged. An Underwater Breathing Device does not include a snorkel that is less than twenty (20) inches in length.

- (48) "Village" means a common association or grouping of houses, families, or people based upon traditional, recognized boundaries
- (49) "Village Monitoring and Enforcement Committee" means the individual or group of individuals from a Village who have been selected, designated and trained to monitor their Village's Marine Protected Area through Village by-laws.
- (50) "Village Policeman" means any elected or chosen policeman of a Village.
- (51) "Village Pulenu'u" means the elected or chosen mayor of a Village.
- (52) "Wastewater" means water or liquid that is discarded, discharged or released by a Person from any residence, vessel, guesthouse, house, or business, including but not limited to, sewage or the discharge from a washing machine.

#### **24.1004 Village Participation in the Community-based Fisheries Management Program.**

To participate in the Community-based Fisheries Management Program a Village must do the following:

- (a) Notify the Department of the Village's intent to participate;
- (b) Meet with the proper representatives from the Department;
- (c) Develop and implement Village by-laws for the conservation and management of the Village Marine Protected Area using the management options provided by this Community-based Fisheries Management Program or other management options recommended by the Department;
- (d) Develop a Village Fisheries Management Plan
- (e) Designate a Village Marine Protected Area that is properly within the boundaries of the Village;
- (f) Select members for a Village Monitoring and Enforcement Committee;
- (g) Mark the Village Marine Protected Area;
- (h) Sign a cooperative agreement with DMWR to work together on the program;
- (i) Receive training from the Department for the individuals of the Village Monitoring and Enforcement Committee who will monitor the Village's Marine Protected Area;
- (j) Provide Notice of the designation of the Village Marine Protected Area and Village by-laws to the public of American Samoa as required by the Administrative Procedures Act and these regulations; and
- (k) Notify the Department of the Village's intent to open, re-open, close or re-close any Village Marine Protected Area.

#### **24.1005 Designation and Marking of a Village Marine Protected Area.**



- (a) A participating Village must designate the Village Marine Protected Area that will be governed by the management methods of these regulations.
- (b) A participating Village must provide the Department with a description of the area designated as the Village Marine Protected Area.
- (c) A designated Village Marine Protected Area's boundaries must be marked in a manner reasonably obvious to inform the public that access to the area has been restricted. Marking can be accomplished by any obvious means, including, but not limited to:
  - (i) Signs;
  - (ii) Posted Notices;
  - (iii) Published Notices;
  - (iv) Anchored or secured Floats that indicate the area is a Village Marine Protected Area.
- (d) Limitations on Designating a Village Marine Protected Area:
  - (i) A Village may not designate as its Village Marine Protected Area a section, portion, or part of a Reef or reef flat that belongs to or has been traditionally controlled by another Village.
  - (ii) A Village may only designate as its Village Marine Protected Area a section, portion, part or all of a Reef that extends no more than one hundred (100) yards seaward beyond the end of the Reef at the Mean Low Water Mark.
- (e) In areas where there is an overlap of authority or control over a Reef, or where the Village boundaries of a Reef are disputed, such dispute being supported by law or fact, the Village Monitoring and Enforcement Committees for each Village may do any of the following:
  - (i) Agree on the Management of the disputed area and work together to manage the portion of disputed Reef;
  - (ii) Establish an agreed upon boundary only for the purposes of marine conservation and management. Any such agreed upon boundary would not be an admission of the actual boundary but would only exist for the purposes of the Community-based Fishery Management Program;
  - (iii) Allow the Department to manage the disputed area; or
  - (iv) If no agreement can be reached between the disputing Villages, then there shall be no authority under these regulations for any to manage the disputed area.

#### **24.1006 Village By-laws.**

- (a) Each participating Village shall, after consultation with the Department, implement the set of Village by-laws that set forth the conservation and management measures that will control the Village's Marine Protected Area.

- (b) The set of Village by-laws shall be adopted as required in A.S.C.A. § 4.1004.
- (c) The Department shall keep on file, and make available to the public upon proper written request, a copy of the Village's bylaws. Any Person may request a copy of any Village by-laws.
- (d) Each participating Village's Pulenu'u shall retain a copy of the Village by-laws.

**24.1007 Removal or Tampering with markers of a Village Marine Protected Area.**

- (a) It is a violation of these regulations for any unauthorized Person to remove, move, change, modify, destroy, hide, or submerge, or attempt to, or to cause such actions to any Village Marine Protected Area marker.
- (b) It shall be a violation of these regulations for any Person who is authorized by one Village to set out the markers of Village's Marine Protected Area to remove, move, change, modify, destroy, hide, or submerge, or attempt to, or cause such actions to any marker of any other Village's Marine Protected Area unless so authorized by that Village's Monitoring and Enforcement Committee.

**24.1008 Fishing or Taking Fish in a Village Marine Protected Area.**

- (a) The following methods of Fishing or Taking Fish or Shellfish shall be the only Approved Fishing Methods for Fishing or Taking Fish or Shellfish in any Village Marine Protected Area.
  - (i.) Fishing with a rod and reel;
  - (ii.) Fishing with a bamboo pole;
  - (iii.) Fishing with a hand line;
  - (iv.) Fishing by Gleaning;
  - (v.) Fishing with a hand thrown pole spear;
  - (vi.) Fishing with a throw net;
  - (vii.) Fishing with a Fish or Shellfish Trap;
  - (viii.) Traditional Samoan fishing methods such as the use of Lau and the enu and spear;
  - (ix.) Fishing using spear gun(s)
- (b) Any other method of Fishing or Taking Fish, other than the methods listed in subsection (a) of this section, shall be an illegal Fishing method and shall violate the provisions of the Community-based Fisheries Management Program.
- (c) Any Village may further restrict Fishing or the Taking of Fish or Shellfish on or in its designated Village Marine Protected Area by:
  - (i.) Restricting all Approved Fishing Methods for a certain period of time;
  - (ii.) Limiting the type of Approved Fishing Methods allowed to be used in a Village Marine Protected Area;
  - (iii.) Banning all forms of Fishing in the Village Marine Protected Area;
  - (iv.) Restricting the area or areas within a Village Marine Protected Area where Fishing is allowed;
  - (v.) Restricting Fishing by declaring Open Seasons when Fishing is allowed;
  - (vi.) Restricting the total number of all Fish and/or Shellfish that a Person is allowed to Take during one (1) Day or other specified Time Period(s);
  - (vii.) Restricting the total number of a species of Fish and/or Shellfish that a Person is allowed to Take during one (1) Day or other specified Time Period(s);

- (viii.) Restricting a Time Period during a Day when Fishing is allowed;
- (ix.) Restricting the type or species of Fish that may be Taken;
- (x.) Restricting the size of Fish that may be Taken by instituting size limitations requiring Taken Fish to exceed an overall Length of Fish;
- (xi.) Banning all Night Fishing;
- (xii.) Allowing only Subsistence Fishing or the Taking of Fish or Shellfish for Subsistence Uses or Cultural Uses;
- (xiii.) Instituting harvest limits that limit the total amount of Fish or Shellfish or a type of Fish or Shellfish that can be Taken from the Village Marine Protected Area;
- (xiv.) Banning all Commercial Fishing;
- (xv.) Banning the Taking of Fish or Shellfish with the aid or use of lights; and/or,
- (xvi.) Restricting or banning other activities in a Village Marine Protected Area including, but not limited to, swimming, wading, and surfing.

#### **24.1009 Prohibited Acts.**

The following Fishing methods shall be Illegal Fishing Methods and are prohibited in any and all designated Village Marine Protected Areas and no Village, whether participating or not participating in the Community-based Fisheries Management Program, may allow or permit any of the following:

- (a) Any Fishing method not listed as an Approved Fishing Method.
- (b) Any Fishing, whether commercial, non-commercial, sport, subsistence, or for Cultural Uses, by the use of explosives, poisons, a Bleaching Agent, other noxious or Toxicant substances, Cyanide Fishing, electric shocking devices, SCUBA equipment or hookah equipment when Taking or Fishing for Fish or Shellfish or harvesting other marine life, including but not limited to the use of ava niu kini for the purpose of killing, stunning, disabling, Taking, or catching Fish or Shellfish, or in any way rendering Fish or Shellfish more easily caught.
- (c) Any fisherman to carry or have in a fishermen's possession or control any explosive, poison, or other noxious or Toxicant substance in circumstances indicating an intention to use such explosive, poison, or other noxious or Toxicant substance for any of the purposes referred to in this paragraph. Any explosive, poison or other noxious or Toxicant substance found on board any Fishing Vessel, or in the possession of any Person on or in the Waters of American Samoa, unless the contrary can be proven, shall be presumed to be intended for the purpose referred to in this subsection.
- (d) The Taking or attempt to Take Fish or Shellfish with any electrical device that operates by shocking with an electrical current for the purpose of killing, stunning, disabling, Taking, or catching Fish or Shellfish, or in any way rendering Fish or Shellfish more easily caught. Any electrical shocking device found on board any Fishing Vessel, or found in the possession of any Person on or in the Waters of American Samoa, shall be presumed, unless the contrary can be proven, to be intended for the purpose referred to in this subsection.
- (e) Taking Fish by Fishing with the aid of any Self-Contained Underwater Breathing Apparatus (SCUBA) gear or any other Underwater Breathing Device except where exempted by the village and DMWR.
- (f) Using any light to attract Fish for the purpose of Fishing or Taking Fish from the period one hour before sunset until one hour after sunrise, whether the light is floating, moored, or handheld.
- (g) Taking Fish or Shellfish with the use of or aid of a bow and arrow or crossbow and bolt or arrow.

- (h) Any Sandmining in a Village's Marine Protected Area without a Sandmining permit from the Department.
- (i) The intentional dumping or discarding of any trash or garbage on the shoreline, beach or Reef of a Village Marine Protected Area.
- (j) The collection of any Fish or Shellfish or any marine organism for research unless a collection permit issued by the Department.

#### **24.1010 Damage to the Village Marine Protected Area.**

It is a violation of the provisions of this Community-based Fisheries Management Program for any Person to deliberately or intentionally cause, or allow to be caused, any damage or destruction to the marine environment of any Village Marine Protected Area. This includes, but is not limited to:

- (a) The dumping of trash or garbage into a Village Marine Protected Area, including the shoreline, beach or reef of a Village Marine Protected Area.
- (b) The discharging of pollutants or Wastewater into a Village Marine Protected Area;
- (c) The discharging of pollutants into any stream, creek, bay, river, estuary, swamp, water source, or upon the ground if there is a substantial likelihood that the pollutant will enter the Village Marine Protected Area.
- (d) The act of Sandmining.

#### **24.1011 Protection of other Marine Life in a Village Marine Protected Area.**

- (a) No living Coral or Live Rock may be Taken or removed from a Village Marine Protected Area.
- (b) No Marine Mammals or any part of a Marine Mammal may be Taken or removed from a Village Marine Protected Area.

#### **24.1012 Endangered Species.**

No Village or Village and Enforcement Monitoring Committee may allow, permit, or authorize any Person to Take or attempt to Take any species of sea turtles and other endangered species listed as an endangered species in Title 50 of the Code of Federal Regulations sections 17.11 and 17.12, as amended or modified from time to time, or any species protected by any United States federal law.

#### **24.1013 Enforcement of Violations.**

The following methods and procedures are authorized and available to enforce the provisions of this Community-based Fisheries Management Program.

- (a) The Director may deputize and otherwise authorize a Village's Pulenu'u and one Village policeman to issue citations under the Community-based Fisheries Management Program.
  - (1) All persons to be deputized or authorized under this subsection shall receive full and proper training from the Department in the issuance of citations.
  - (2) The Village shall not have any power or authority to enforce any citation issued. Only the Department may enforce and pursue any citations issued for violations of the Community-based Fisheries Management Program or the Village by-laws.
  - (3) The original and all copies citations issued by the individual(s) authorized in this subsection (a) shall be submitted to the Department the next business day after issuance of the citation.
- (b) The Department may issue citations and enforce any provision of the Community-based Fisheries Management Program and any provision of the Village by-laws.
- (c) As a method of enforcement, the Department, in its sole discretion, may:
  - (i) Issue and enforce a citation;
  - (ii) Issue a warning; or
  - (iii) Seize any or all equipment(s) relevant to the violation
  - (iv) Take no action.

**24.1014 Form of Community-based Fisheries Management Program Citation.**

The form of the citation shall be approved by the Department and copies of the form shall be stocked, ordered, provided and paid for by the Department.

**24.1015 Service of a Community-based Fisheries Management Program Citation.**

The citation must be served by personal deliver of a copy of the citation to the defendant.

**24.1016 Training of individuals to enforce Village By-laws.**

- (a) The Department shall provide all training of the individual(s) from a Village that is to monitor the Village's Marine Protected Area.
- (b) The number of individuals trained by the Department for each Village shall be only the number of persons reasonably needed to monitor the Village's Marine Protected Area.

**24.1017 Penalties.**

The following penalties may be assessed by the Department against a Person who is issued a citation by the Department for violation of the Village by-laws or a violation of these regulations:

- (a) A warning may be issued, at the discretion of the person authorized to issue citations for violations of the Village by-laws or these regulations.
- (b) Require a Person to perform up to thirty (30) hours of community service and participate in Coral Reef Classes given at the Department. Community service includes, but is not limited to, assisting Department staff and participating Villages with shoreline, beach and Marine Protected Area cleanup, installing signs for Village Marine Protected Areas and participating in Village monitoring activities.
- (c) Pursuant to A.S.C.A. § 24.312(a) the Department may fine any Person who violates any provision of Department regulations and the Person fined shall be guilty of a class B misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00) or by a prison term in excess of fifteen (15) days but not to exceed six (6) months, or by both.

<b>SECTION</b>	<b>OFFENSE</b>	<b>1<sup>ST</sup> Violation</b>	<b>2<sup>ND</sup> Violation</b>	<b>3<sup>RD</sup> Violation</b>
24.1007	(a) – (b)	100.00	200.00	300.00
24.1008	(c): i-v and xi	100.00	200.00	300.00
24.1008	(c): vi-xvi except xi	50.00	100.00	200.00
24.1009	(g) Taking fish or Shellfish with the use of or aid of a bow and arrow or crossbow and bolt or arrow	50.00	100.00	200.00
	(h) Sandmining in Village Marine Protected Area without DMWR permit	Individual: 100.00  Corporation: 200.00	Individual: 200.00  Corporation: 300.00	Individual: 300.00  Corporation: 500.00
	(i) Dumping/discarding trash on the shoreline beach or Reef of a Village Marine Protected Area	100.00	200.00	300.00
	(j) The collection of any Fish or Shellfish or any marine organism for research unless a collection permit issued by the Department	Individual: 50.00  Corporation: 100.00	Individual: 100.00  Corporation: 200.00	Individual: 200.00  Corporation: 300.00
24.1010	(a) The dumping of trash or garbage into a VMPPA, including shoreline, beach or reef of a VMPPA	100.00	200.00	300.00

	(b) The discharging of pollutants or Wastewater into a VMPPA	100.00	200.00	300.00
	(c) The discharging of pollutants into any stream, creek, bay, river, estuary, swamp, water source, or upon the ground if there is a substantial likelihood that the pollutant will enter the VMPPA	100.00	200.00	300.00
	(d) The act of Sandmining	100.00	200.00	300.00
24.1011	(a) No living Coral or Live Rock may be Taken or removed from a VMPPA	50.00	100.00	200.00
	(b) No Marine Mammals or any part of a Marine Mammal may be taken or removed from a VMPPA	25.00	50.00	100.00

**24.1018 Confiscation, seizure, and forfeiture of property.**

- (a) Property used in connection with a violation resulting in a conviction for violating any of the prohibited acts set forth in ASAC §24.1008 is subject to seizure and forfeiture.
- (b) Upon a conviction of a person in whose possession the property was found, the court having jurisdiction over the criminal offense, notwithstanding any jurisdictional limitations on the amount in controversy, may make a finding that the property was used in connection with a violation and may order such property forfeited to DMWR.
- (c) Notification of property seized under this section must be sent by certified mail to a registered owner within 14 days after seizure. If DMWR, after diligent inquiry, cannot ascertain the registered owner, the notice requirement is satisfied.
- (d) DESTRUCTION OR DISPOSITION OF PROPERTY.--All property forfeited under this section may be destroyed, used by DMWR, disposed of by gift to charitable or state institutions, or sold, with the proceeds derived from the sale deposited into the Fund to be used for law enforcement purposes.

**II. Community-Based Fisheries Management Program Village By-Laws**

**24.1019 Authority.**

Pursuant to the authority granted to the Department of Marine and Wildlife Resources under ASCA § 24.0304 and pursuant to the Authority under the Community-based Fisheries Management Program, the following Village by-laws govern and provide the manner for each Village's participation in the Community-based Fisheries Management Program.

**24.1020 Purpose.**

The by-laws provide each Village with a set of guidelines and rules to implement and utilize in the Village's participation in the Community-based Fisheries Management Program.

**24.1021 Definitions.**

The definitions as set forth in the Community-based Fisheries Management Program shall apply to the terms used in these by-laws.



#### **24.1022 Marking of a Village Marine Protected Area.**

- (a) A Village's designated Village Marine Protected Area's boundaries must be marked in a manner reasonably obvious to inform the public that access to the area has been restricted.
- (b) A Village's Marine Protected Area shall be marked by the use of one or more of the following:
  - (i) Signs;
  - (ii) Posted Notices;
  - (iii) Published Notices;
  - (iv) Anchored or secured Floats that indicate the area is a Village Marine Protected Area.
- (c) Any sign or notice marking a Village's Marine Protected Area shall be posted in both Samoan and English.

#### **24.1023 Fishing or Taking Fish in a Village Marine Protected Area.**

- (a) The following methods of Fishing or Taking Fish or Shellfish shall be the only Approved Fishing Methods for Fishing or Taking Fish or Shellfish in any Village's Marine Protected Area.
  - (i.) Fishing with a rod and reel;
  - (ii.) Fishing with a bamboo pole;
  - (iii.) Fishing with a hand line;
  - (iv.) Fishing by Gleaning;
  - (v.) Fishing with a hand thrown pole spear;
  - (vi.) Fishing with a throw net;
  - (vii.) Fishing with a Fish or Shellfish Trap;
  - (viii.) Traditional Samoan fishing methods such as the use of Lau and the enu and spear; and
  - (ix.) Fishing using spear gun(s).
- (b) Any other method of Fishing or Taking Fish, other than the methods listed in subsection (a) of this section, shall be an illegal Fishing method and shall violate the provisions of the Community-based Fisheries Management Program.
- (c) Any Village may further restrict Fishing or the Taking of Fish or Shellfish on or in its designated Village Marine Protected Area by:
  - (i.) Restricting all Approved Fishing Methods for a certain period of time;

- (ii.) Limiting the type of Approved Fishing Methods allowed to be used in a Village Marine Protected Area;
- (iii.) Banning all forms of Fishing in the Village Marine Protected Area;
- (iv.) Restricting the area or areas within a Village Marine Protected Area where Fishing is allowed;
- (v.) Restricting Fishing by declaring Open Seasons when Fishing is allowed;
- (vi.) Restricting the total number of all Fish and/or Shellfish that a Person is allowed to Take during one (1) Day or other specified Time Period(s);
- (vii.) Restricting the total number of a species of Fish and/or Shellfish that a Person is allowed to Take during one (1) Day or other specified Time Period(s);
- (viii.) Restricting a Time Period during a Day when Fishing is allowed;
- (ix.) Restricting the type or species of Fish that may be Taken;
- (x.) Restricting the size of Fish that may be Taken by instituting size limitations requiring Taken Fish to exceed an overall Length of Fish;
- (xi.) Banning all Night Fishing;
- (xii.) Allowing only Subsistence Fishing or the Taking of Fish or Shellfish for Subsistence Uses or Cultural Uses;
- (xiii.) Instituting harvest limits that limit the total amount of Fish or Shellfish or a type of Fish or Shellfish that can be Taken from the Village Marine Protected Area;
- (xiv.) Banning all Commercial Fishing;
- (xv.) Banning the Taking of Fish or Shellfish with the aid or use of lights; and/or,
- (xvi.) Restricting or banning other activities in a Village Marine Protected Area including, but not limited to, swimming, wading, and surfing.

#### **24.1024 Prohibited Acts.**

The following Fishing methods shall be Illegal Fishing Methods and are prohibited in any and all designated Village Marine Protected Areas and no Village, whether participating or not participating in the Community-based Fisheries Management Program, may allow or permit any of the following:

- (a) Any Fishing method not listed as an Approved Fishing Method.
- (b) Any Fishing, whether commercial, non-commercial, sport, subsistence, or for Cultural Uses, by the use of explosives, poisons, a Bleaching Agent, other noxious or Toxicant substances, Cyanide Fishing, electric shocking devices, SCUBA equipment or hookah equipment when Taking or Fishing for Fish or Shellfish or harvesting other marine life, including but not limited to the use

of ava niu kini for the purpose of killing, stunning, disabling, Taking, or catching Fish or Shellfish, or in any way rendering Fish or Shellfish more easily caught

- (c) Any fisherman to carry or have in a fishermen's possession or control any explosive, poison, or other noxious or Toxicant substance in circumstances indicating an intention to use such explosive, poison, or other noxious or Toxicant substance for any of the purposes referred to in this paragraph. Any explosive, poison or other noxious or Toxicant substance found on board any Fishing Vessel, or in the possession of any Person on or in the Waters of American Samoa, unless the contrary can be proven, shall be presumed to be intended for the purpose referred to in this subsection.
- (d) The Taking or attempt to Take Fish or Shellfish with any electrical device that operates by shocking with an electrical current for the purpose of killing, stunning, disabling, Taking, or catching Fish or Shellfish, or in any way rendering Fish or Shellfish more easily caught. Any electrical shocking device found on board any Fishing Vessel, or found in the possession of any Person on or in the Waters of American Samoa, shall be presumed, unless the contrary can be proven, to be intended for the purpose referred to in this subsection.
- (e) Taking Fish by Fishing with the aid of any Self-Contained Underwater Breathing Apparatus (SCUBA) gear or any other Underwater Breathing Device except where exempted by the village and DMWR.
- (f) Using any light to attract Fish for the purpose of Fishing or Taking Fish from the period one hour before sunset until one hour after sunrise, whether the light is floating, moored, or handheld.
- (g) Taking Fish or Shellfish with the use of or aid of a bow and arrow or crossbow and bolt or arrow.
- (h) Any Sand Mining in a Village's Marine Protected Area without a Sand Mining permit from the Department.
- (i) The intentional dumping or discarding of any trash or garbage on the shoreline, beach or Reef of a Village Marine Protected Area.
- (j) The collection of any Fish or Shellfish or any marine organism for research unless a collection permit issued by the Department.

#### **24.1025 Damage to the Village Marine Protected Area.**

It is a violation of the provisions of this Community-based Fisheries Management Program for any Person to deliberately or intentionally cause, or allow to be caused, any damage or destruction to the marine environment of any Village Marine Protected Area. This includes, but is not limited to:

- (a) The dumping of trash or garbage into a Village Marine Protected Area, including the shoreline, beach or reef of a Village Marine Protected Area.
- (b) The discharging of pollutants or Wastewater into a Village Marine Protected Area;
- (c) The discharging of pollutants into any stream, creek, ava, river, estuary, swamp, water source, or upon the ground if there is a substantial likelihood that the pollutant will enter the Village Marine Protected Area.

(d) The act of Sand Mining.

**24.1026 Protection of other Marine Life in a Village Marine Protected Area.**

(a) No living Coral or Live Rock may be Taken or removed from a Village Marine Protected Area.

(b) No Marine Mammals or any part of a Marine Mammal may be Taken or removed from a Village Marine Protected Area.

**24.1027 Endangered Species.**

No Person shall Take or attempt to Take any species of sea turtles and other endangered species listed as an endangered species in Title 50 of the Code of Federal Regulations sections 17.11 and 17.12, as amended or modified from time to time, or any species protected by any United States federal law.

**24.1028 Issuance of Citations – Penalties.**

(a) The Director and such department employees as the Director designates shall have the authority to issue citations for violations of these rules.

(b) Penalties upon a finding of guilty shall be as follows:

SECTION	OFFENSE	1 <sup>ST</sup> Violation	2 <sup>nd</sup> Violation	3 <sup>rd</sup> Violation
24.1023	(c): i-v and xi	100.00	200.00	300.00
24.1023	(c): vi-xvi except xi	50.00	100.00	200.00
24.1024	(a) Using any fishing method other than the approved fishing methods	100.00	200.00	300.00
	(g) Taking fish or Shellfish with the use of or aid of a bow and arrow or crossbow and bolt or arrow	50.00	100.00	200.00
	(h) Sandmining in Village Marine Protected Area without DMWR permit	Individual: 100.00  Corporation: 100.00	Individual: 200.00  Corporation: 300.00	Individual: 300.00  Corporation: 500.00

	(i) Dumping/discarding trash on the shoreline beach or Reef of a Village Marine Protected Area	100.00	200.00	300.00
24.1025	(b) Discharging of pollutants or wastewater into a Village Marine Protected Area	100.00	200.00	300.00
	(c) Discharging of pollutants into any stream, creek, aya, river, estuary, swamp, water source, or upon the ground if there is a substantial likelihood that the pollutant will enter the Village Marine Protected Area	100.00	200.00	300.00

**24.1029 Confiscation, seizure, and forfeiture of property.**

- (a) Property used in connection with a violation resulting in a conviction for violating any of the prohibited acts set forth in ASAC §24.1023 is subject to seizure and forfeiture.
- (b) Upon a conviction of a person in whose possession the property was found, the court having jurisdiction over the criminal offense, notwithstanding any jurisdictional limitations on the amount in controversy, may make a finding that the property was used in connection with a violation and may order such property forfeited to DMWR.
- (c) Notification of property seized under this section must be sent by certified mail to a registered owner within 14 days after seizure. If DMWR, after diligent inquiry, cannot ascertain the registered owner, the notice requirement is satisfied.
- (d) **DESTRUCTION OR DISPOSITION OF PROPERTY.**--All property forfeited under this section may be destroyed, used by DMWR, disposed of by gift to charitable or state institutions, or sold, with the proceeds derived from the sale deposited into the Fund to be used for law enforcement purposes.