

Chapter 03

DEPARTMENT OF MARINE AND WILDLIFE RESOURCES

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24.0301 Policy.

It is the public policy of this Territory and purpose of this chapter to preserve, protect, perpetuate and manage the marine and wildlife resources within the Territory. This chapter is to be construed so as to implement such policy and purpose to the fullest extent.

History: 1987, PL 20-12 § 1.

24.0302 Definitions.

(a) As used in this chapter unless the context clearly requires otherwise:

(1) "Dealer" means any person or business entity engaged in the business of: buying, canning, curing, or preserving fish or shell fish; or manufacturing meal, oil, flour, protein concentrate, animal food or fertilizer from fish or shellfish.

(2) "Director" means the director of marine and wildlife resources.

(3) "Drift gillnet fishing" means any gillnet that is more than half a mile in length; and that enmeshes, entraps, or entangles any fish; and that is used or intended to be used or intended to be used while attached to any point of land or the seabed irrespective of whether the net is used or intended to be used while attached to any vessel.

(4) "Fish" means those species of the classes osteichthyes, condricthyes and agnatha that shall not be fished for except as authorized by rule of the director. The term "fish" includes all stages of development and the bodily parts of fish species.

(5) "Department" means the department of marine and wildlife resources.

(6) "Shellfish" means those species of marine and fresh water invertebrates that shall not be taken except as authorized by rule of the director. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(7) "Territory" means all territorial areas, and all marine waters and fresh waters within a three-mile zone extending outward from the shoreline.

(8) "Wildlife" means all species of the animal kingdom whose members exist in a wild state, excepting "fish" and "shellfish", that shall not be taken except as authorized by rule of the director. The term "wildlife" includes all states of development and the bodily parts of wildlife species.

History: 1987, PL 20-12 § 1; 1988, PL 20-62; 1989, PL 21-20.

24.0303 Office established-Budget.

There is created within the Executive branch of the government an office of marine and wildlife resources. The head of that office is a director appointed by the Governor and confirmed by the Legislature. An office budget shall be included in the Governor's annual budget submitted to the Legislature.

History: 1987, PL 20-12 § 1.

24.0304 Powers and duties.

(a) The office has the following powers and duties:

- (1) manage, protect, preserve and perpetuate the marine and wildlife resources in the Territory;
- (2) prepare and develop a comprehensive plan or plans for the management, protection and preservation of marine and wildlife resources in the Territory;
- (3) collect, analyze, and disseminate data and information relating to the marine and wildlife resources in the Territory;
- (4) keep records necessary to monitor and regulate the commercial and recreational fisheries;
- (5) encourage and conduct studies, investigations and research relative to commercial and recreational fisheries and wildlife and natural resources;
- (6) in coordination with the local government, conduct education and training programs relating to the management and preservation of marine and wildlife resources in the Territory;
- (7) adopt and amend rules or regulations implementing and consistent with this chapter to protect, preserve and perpetuate marine and wildlife resources in the Territory;
- (8) issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings;
- (9) hold hearings relating to any aspect or matter in the administration of this chapter, and in connection therewith, compel the attendance of witnesses and the production of evidence; and
- (10) accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter.

(b) Assent to Federal Aid in Sport Fish Restoration Act-powers and duties.

The Territory of American Samoa hereby assents to the provisions of the act of the congress of the United States which was approved on August 9, 1950, known as Public Law 681-81st Congress, Chapter 658-Second Session and popularly known as the Federal Aid in Sport Fish Restoration Act. The department of marine and wildlife resources is authorized, empowered and directed to perform such acts as may be necessary to the conduct and establishment of cooperative fish restoration projects as defined in said act and rules and regulations promulgated by the secretary of the interior thereunder; and no funds accruing to the Territory of American Samoa from license fees paid by fishermen shall be diverted for any other purpose than the administration of the department of marine and wildlife resources and for the protection, propagation, preservation, and investigation of fish and game.

(c) Assent to Federal Aid in Wildlife Restoration Act-powers and duties.

The Territory of American Samoa hereby assents to the provisions of the act of the congress of the United States which was approved on September 2, 1937, known as Public Law 415, 75th Congress, First Session and popularly known as the Federal Aid in Wildlife Restoration Act. The department of marine and wildlife resources is authorized, empowered and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects as defined in said act of Congress in compliance with said act and rules and regulations promulgated by the secretary of the interior thereunder; and no moneys accruing to the Territory of American Samoa from license fees paid by hunters shall be diverted for any other purpose than the administration of the department of marine and wildlife resources.

- (b) Reservation of Rights. The Territory of American Samoa does not by the passage of sections 24.0304 (b) and (c) or by the consent therein given, surrender to the congress of the United States or any department of the government of the United States any of those rights or entitlements of the chiefs or the people which are guaranteed to them or retained by them under the following laws: 1) the Cession of Tutuila and Aunu'u, 2) the Cession of Manu'a Islands and 3) Title 48 U.S.C. Sections 1661 and 1662.

History: 1987, PL 20-12 § 1; 2001, PL 27-7.

24.0305 Dealers records.

(1) Every dealer shall make a legible record in the form of a receipt in triplicate on forms to be furnished by the department.

(2) The receipt shall show:

- (a) the weight and number of each species of fish or shellfish received;
- (b) the name of the fisherman providing the fish or shellfish;
- (c) boat name and registration number, if applicable;
- (d) the name of the dealer;
- (e) the date of receipt;
- (f) the price paid per species;
- (g) the type of fishing gear used;
- (h) whether the fish or shellfish are intended for sale in fresh, frozen or in processed form;
- (i) which fish or shellfish were taken within and outside the territorial waters; and
- (j) other statistical information as the department may require.

(3) The original signed copy of the receipt shall be delivered to the fisherman at the time of the purchase or receipt of the fish or shellfish. The duplicate copy shall be kept by the dealer or person receiving the fish or shellfish for a period of six months and shall be available for inspection at any time within that period by the department. The triplicate copy shall be delivered to the department on or before the sixteenth day of each month.

History: 1987, PL 20-12 § 1; 1988, PL 20-62.

24.0306 Fishermen's records.

Every fisherman who sells fish or shellfish taken from the waters of the Territory or brought into the Territory in fresh or frozen condition to persons not licensed to sell fish shall fill out the receipt required by section 24.0305 and shall be subject to the sales tax imposed by the government.

History: 1987, PL 20-12 § 1.

24.0307 Reports of processors.

Each fish processor shall, on or before the fifth day of each calendar month, file with the department a written report on such form as may be prescribed containing a statement of the amount of fish or shellfish received at each of its plants during the preceding calendar month. The report shall also state the amounts of fish or shellfish packed and the number and size of the containers of fish, fishery products and byproducts packed, produced or reduced at each plant during the preceding calendar month.

History: 1987, PL 20-12 § 1; 1988, PL 20-62.

24.0308 Reports by wholesalers.

Any person operating under a wholesale fish dealers license shall report to the department

on the 5th day of the month the total amount of fresh fish and shellfish, in pounds, purchased, received, or taken by him.

History: 1987, PL 20-12 § 1; 1988, PL 20-62.

24.0309 Confidentiality of records.

The receipts, reports, or other records filed with the department and the information contained therein, shall be confidential, and the records shall not be public records, and the information contained in the records shall be compiled or published as summaries, so as not to disclose the individual record or business of any person.

History: 1987, PL 20-12 § 1; 1988, PL 20-62.

24.0310 Enforcement.

(a) The director and such department employees as the director designates shall have the authority to issue citations, collect fines, impound vessels and equipment, and make arrests for violations of this chapter and any rules or regulations hereunder.

(b) Persons arrested shall be taken before the next sitting of the district court if either:

(1) the person demands an immediate appearance in court, or

(2) the person refuses to sign the citation to give his written promise to appear in court as required by law or regulation.

(c) Upon sworn information from witnesses or department employees, the district court judge shall issue process for arrest of any person charged with violation of any provision of this chapter or any regulations issued hereunder.

History: 1987, PL 20-12 § 1; 1988, PL 20-62.

24.0311 Drift gillnet fishing prohibited.

It is unlawful for:

(1) any person to engage in drift gillnet fishing within the territorial waters of American Samoa;

(2) any person to sell or offer for sale any nets to be used for drift gillnet fishing;

(3) any person to sell or offer for sale any fish taken from the territorial waters of American Samoa by drift gillnet fishing;

(4) any fish processor to process or otherwise possess any fish taken by drift gillnet fishing;

(5) any fishing vessel engaged in drift gillnet fishing or any companion to fuel or escort vessels that assist or may assist in refueling a drift gillnet vessel covered by this section to fuel or otherwise stop at any of the ports of American Samoa, except in the event of emergency;

(6) any person to sell or offer for sale fuel to any vessel engaged in drift gillnet fishing.

History: 1989, PL 21-20

24.0312 Violations and penalties.

(a) Any person who violates any provision of this chapter or of rules promulgated under this chapter shall be guilty of a class B misdemeanor. A business entity found in violation of this chapter or of rules promulgated under this chapter shall be fined not less than \$1,000 per violation except that a person who violates 24.0311 shall be fined not less than \$50,000 per violation.

(b) Any property taken or possessed in violation of any provisions of this chapter or of the

rules promulgated under this chapter including the vessel and the fish caught, may be subject to forfeiture to the government pursuant to a civil proceeding in the High Court of American Samoa with monies received from the sale thereof to be used for the purpose of policing and enforcement by the office of marine and wildlife resources.

- (c) Any person in possession of a catch that appears to have been caught in a drift gillnet and that either the local or federal inspector has reasonable grounds to believe was caught in a drift gillnet shall be presumed to have been taken from the waters of American Samoa.

History: 1987, PL 20-12 § 1; 1989, PL 21-20.