

**SAMOA**

**MARINE WILDLIFE PROTECTION  
REGULATIONS 2009**

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**PURSUANT** to section 146(2)(s) of the Lands, Surveys and Environment Act 1989, **I, TUI ATUA TUPUA TAMASESE EFI**, Head of State, acting on the advice of Cabinet **HEREBY MAKE** the following Regulations:

**DATED** at Apia this 14<sup>th</sup> day of July 2009.

signed: (Tui Atua Tupua Tamasese Efi)

**HEAD OF STATE**

**REGULATIONS**

**PART I  
PRELIMINARY**

**1. Short title and commencement-**(1) These Regulations may be cited as the Marine Wildlife Protection Regulations 2009.

(2) These Regulations shall come into effect on the date they are signed by the Head of State.

**2. Interpretation-**(1) In these Regulations, unless the context otherwise requires:

“the Act” means the Lands, Surveys and Environment Act 1989;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry of Natural Resources, Environment and Meteorology;

“the Division of Environment” means the Division of Environment of the Ministry of Natural Resources, Environment and Meteorology;

“the Fisheries Division” means the Fisheries Division of the Ministry of Agriculture;

“harass” includes the doing of any act which:

(a) causes or is likely to cause injury or distress to any marine wildlife; or

(b) disrupts significantly or is likely to disrupt significantly the normal behavioural patterns or movements of any marine wildlife.

“marine mammal” means any member of the species of the class mammalia at any stage of its lifecycle, including:

(a) all baleen whales (mysticetes);

(b) all toothed whales (odontocetes); and

(c) all dolphins,

in Samoan waters, including marine mammals which are migrating through Samoan waters;

“Minister” means the Minister of Natural Resources, Environment and Meteorology;

“Samoa waters” means all areas of Samoa’s internal waters, territorial sea, contiguous zone and exclusive economic zone as defined by the Maritime Zones Act 1999, and includes the seabed and subsoil of the territorial sea.

(2) Where any doubt arises as to whether any particular marine wildlife falls into the scope of term used in these regulations, a determination made by the Chief Executive Officer in this regard shall be conclusive of the matter.

**3. Application in the Exclusive Economic Zone** - These Regulations apply to all relevant activities by persons within the Samoa's exclusive economic zone as defined by the Maritime Zones Act 1999.

## **PART II MARINE MAMMALS**

**4. Reporting incidents involving marine mammals-(1)** Any person who accidentally captures, injures or kills a marine mammal whilst undertaking any fishing activity in Samoan waters shall report the incident as soon as practicable to:

- (a) the Division of Environment; and
- (b) the Fisheries Division.

(2) A person who is required to report an incident under subregulation (1) shall provide such information and verification of the matters reported as is required by the Division of Environment and the Fisheries Division.

(3) The Pulenuu of any village at which a marine mammal is found stranded or in distress shall report the matter as soon as practicable to the Division of Environment and the Fisheries Division, and shall take all practicable steps to ensure that the marine mammal is protected while it is alive.

**5. Offences against marine mammals-(1)** Any person who kills, injures or harms a marine mammal in Samoa's waters by:

- (a) the use of a harpoon, spear, firearm or any other instrument or thing capable of wounding or killing a marine mammal;
- (b) any deliberate act intended to kill or cause injury to the marine mammal;

(c) any act done without regard for preserving the life or safety of the marine mammal; or  
(d) any act of whatever nature which is unlawful or in breach of any condition applying by law to the activities of the person,  
commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.

(2) Any person who harasses a marine mammal which has been stranded or which is found in distress commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.

(3) Any person who takes or makes use of any part of a stranded marine mammal without first reporting the matter to the Division of Environment commits an offence and shall be liable upon conviction to a fine not exceeding 10 penalty units.

(4) Any person who:

(a) keeps a marine mammal in captivity; or

(b) takes or attempts to take a marine mammal from Samoan waters for the purpose of keeping it in captivity,

without a permit authorising the taking and keeping of the marine mammal issued under these regulations, or any other permit issued for any lawful purpose related to the conservation, health or welfare of the marine mammal, commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.

**6. Whale and dolphin watching and eco-tourism activities-**(1) Any tourism or whale watching related activity conducted for commercial, scientific or any other purpose within the vicinity of a marine mammal or a recognised marine mammal habitat must be licensed by the Division of Environment and shall be undertaken:

(a) in accordance with any condition imposed in relation to the licence;

(b) in accordance with any Guidelines approved from time to time by the Minister and published by the Division of Environment; and

- (c) so as to not affect the natural migration of marine mammals through Samoan waters or interfere with their movement and activities.
- (2) A person who does any act in breach of subregulation (1) commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.
- (3) The Guidelines approved under regulation 6(1)(b) shall be observed by all boat operators when they are in the vicinity of a marine mammal.

### **PART III TURTLES**

**7. Reporting incidents involving turtles-**(1) Any person who accidentally captures, injures or kills a marine turtle whilst undertaking any fishing activity in Samoan waters shall report the incident as soon as practicable to:

- (a) the Division of Environment; and
- (b) the Fisheries Division.

(2) A person who is required to report an incident under subregulation (1) shall provide such information and verification of the matters reported as is required by the Division of Environment and the Fisheries Division.

(3) The Pulenuu of any village at which a turtle (other than a green turtle or hawksbill turtle taken for subsistence purposes) is killed or held in captivity shall report the matter as soon as possible to the Division of Environment and the Fisheries Division, and shall take all practicable steps to ensure that any such turtle held in captivity is released or kept alive until the arrival of an officer of the Division of Environment or a Fisheries Officer.

**8. Offences against turtles-**(1) Subject to subregulation (3), any person who:

- (a) undertakes any activity related to the commercial fishing of turtles;
- (b) takes, catches or fishes for turtles in the territorial sea or the exclusive economic zone;

(c) takes, catches or fishes for turtles beyond the barrier reefs of any part of Samoa, commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.

(2) Subject to subregulation (3), any person who:

- (a) fishes for or deliberately takes any marine turtle;
  - (b) fails to release any turtle which is accidentally caught or taken;
  - (c) fails to report the accidental capture of a turtle to the Division of Environment or the Fisheries Division;
  - (d) keeps a turtle in captivity, except under the authority of a permit for scientific purposes or any other lawful purpose related to the conservation, health or welfare of that turtle;
  - (e) takes a female turtle migrating to egg laying grounds between the 1<sup>st</sup> day of November and the last day of February of each year;
  - (f) takes a female turtle while laying eggs or which is in an egg laying ground;
  - (g) disturbs any turtle eggs;
  - (h) takes or has in his or her possession any turtle eggs;
  - (i) sells or purchases any turtle eggs;
  - (j) interferes with or disturbs any turtle nest; or
  - (k) exports any turtle shell or other turtle product,
- commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.

(3) A person shall not commit an offence against subregulation (1)(b) or (c) or subregulation (2)(a) if the turtle taken, caught or fished for is:

- (a) a green turtle (*Chelonia mydas*); or
  - (b) a hawksbill turtle (*Eretmochelys imbricata*),
- to be used for subsistence purposes and taken in accordance with any requirement applying under the fisheries legislation in relation to size, closed seasons or any other matter.

**9. Turtle watching and eco-tourism activities-**(1) Any tourism or turtle watching related activity conducted for commercial, scientific or any other purpose within the vicinity

of turtles and their nesting areas must be licensed by the Division of Environment and shall be undertaken:

- (a) in accordance with any condition imposed in relation to the licence;
  - (b) in accordance with any Guidelines approved from time to time by the Minister and published by the Division of Environment; and
  - (c) so as to not affect their movement and activities.
- (2) A person who does any act or thing in breach of subregulation (1) commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.

**10. Planning requirements applying to turtle nesting areas** - Where any development requiring a development approval under any law is proposed in the vicinity of a turtle nesting area, the assessment of the development shall:

- (a) be in accordance with any guidelines relating to the protection of turtles and their nesting areas, approved from time to time by the Minister; and
- (b) otherwise take account of all potential impacts on the turtles and their nesting areas.

#### **PART IV SHARKS**

- 11. Offences against sharks-**(1) In this regulation:  
“accidentally land” means the act of taking a shark whilst fishing for any other species of fish; and  
“proper purpose” means the use of a shark as food for humans or animals, as bait for fishing or the production of any saleable or usable product.
- (2) Any person who:
- (a) commercially fishes specifically for sharks;
  - (b) fishes for or takes a shark without intending to consume it or use it for any proper purpose;
  - (c) lands any shark fin without the associated carcass;



- (d) is not licensed under the fisheries laws to take sharks as a by-catch, and who fails to release any shark accidentally landed, if the shark is alive at the time it is landed; or
  - (e) accidentally lands a shark which dies before its release, and who does not consume it or use it for any other proper purpose,
- commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.
- (3) It shall not be an offence against subregulation (1) if a shark is killed for the purpose of protecting human life.

## **PART V SPECIES WHICH MIGRATE TO SPAWN**

**12. Species to which this Part applies-**(1) This Part applies to any species of marine wildlife which migrate in schools to spawn which are determined from time to time by the Minister and notified by the Chief Executive Officer:

- (a) in a newspaper circulating within Samoa;
  - (b) by any other appropriate means determined by the Chief Executive Officer; and
  - (c) by the giving of notice to all persons licensed to fish in Samoan waters.
- (2) The Minister shall ensure that consultations have been held with the Division of Fisheries before making a determination under subregulation (1).

**13. Offences against species which migrate to spawn -**  
Any person who:

- (a) takes or fishes for any species to which this Part applies while they are aggregating to spawn;
- (b) interferes with or disturbs any species to which this Part applies during their spawning or breeding activities;
- (c) takes or fishes for any species to which this Part applies while they are migrating in schools to their spawning or breeding grounds; or

(d) undertakes any scientific research into the aggregating breeding populations of a species to which this Part applies without a licence issued or recognised under these regulations, commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.

## **PART VI SPECIES OF CONSERVATION CONCERN**

**14. Designated species of conservation concern-**(1) All endemic species of marine wildlife are species of conservation concern.

(2) The Minister may, from time to time, designate species of marine wildlife to be species of conservation concern.

(3) A decision made by the Minister under subregulation (1) shall be notified by the Chief Executive Officer:

- (a) in a newspaper circulating within Samoa;
- (b) by any other appropriate means determined by the Chief Executive Officer; and
- (c) by the giving of notice to all persons licensed to fish in Samoan waters.

**15. Management plans for species of conservation concern-**(1) When making a decision to designate a species of marine wildlife to be a species of conservation concern under regulation 14, the Minister shall approve a management plan applying to the protection and conservation of that species.

(2) A management plan approved under subregulation (1) shall make provision for any appropriate aspect of the protection and conservation of the designated species including:

- (a) restrictions or prohibitions on fishing for or taking any wildlife of the designated species, either generally or in particular locations;
- (b) restrictions or prohibitions on the use of any particular device or means of fishing for or taking the designated species;

- (c) restrictions or prohibitions on any development adversely affecting individuals or populations of the designated species, or habitat critical to the survival of the designated species;
  - (d) restrictions or prohibitions on any operation adversely affecting individuals or populations of the designated species, or habitat critical to the survival of the designated species;
  - (e) the introduction of measures deemed essential to the recovery of populations of the designated species, where that species is identified as being of conservation concern on the grounds of declined or declining population numbers;
  - (f) the introduction of measures deemed essential to the restoration of habitat critical to the designated species where that species is identified as being of conservation concern on the grounds of habitat loss or degradation;
  - (g) the designation of protected areas or reserves for the designated species;
  - (h) any reporting requirement in relation to the designated species; and
  - (i) any other matter necessary for or incidental to the protection and conservation of a designated species.
- (3) Any person who breaches any requirement, restriction or prohibition in a management plan approved under this regulation commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.

## **PART VII PERMITS AND SCIENTIFIC RESEARCH**

**16. Requirement to obtain a permit for certain activities-**(1) A permit must be obtained prior to any person undertaking any activity involving:

- (a) scientific research into any marine wildlife being -
  - (i) marine mammals;
  - (ii) turtles;

- (iii) sharks;
  - (iv) species which migrate to spawn as designated under Part V;
  - (v) other species of conservation concern as designated under Part VI; and
  - (vi) any newly discovered species of marine wildlife designated under regulation 17;
- (b) keeping in captivity any marine mammal, turtle or species of conservation concern designated under Part VI;
  - (c) the capture and display of any marine wildlife for tourism or scientific purposes;
  - (d) the taking of any part of a stranded marine mammal;
  - (e) the taking of any marine wildlife for the marine aquarium trade;
  - (f) commercial diving tours and other tourism operations affecting marine wildlife and the marine habitat;
  - (g) the export of any marine wildlife, or product of marine wildlife, as provided for by the Convention on International Trade in Endangered Species (CITES) 1973; or
  - (h) the export of any sample of marine wildlife collected during any scientific research,

**PROVIDED THAT** no permit shall authorise the use of methodologies of scientific research into marine mammals or turtles which result in the death of any member of these species.

(2) A permit, licence or authorisation issued or given under the fisheries legislation may be deemed to be sufficient authorisation for any activity under this regulation if the Chief Executive Officer considers that the conditions applying to the permit, licence or authorisation are adequate for the protection of the species of marine wildlife concerned.

(3) Where a permit, licence or authorisation has been issued or given under the fisheries legislation authorising any activity which requires a permit under this Regulation:

- (a) the Chief Executive Officer may request the Division of Fisheries for the imposition of any additional condition on the permit, licence or authorisation

to ensure the protection and conservation of the marine wildlife concerned; or

- (b) require that an additional permit be obtained under these Regulations,

if it is considered that the conditions applying to the permit, licence or authorisation issued or given under the fisheries legislation are not sufficient to ensure the conservation and protection of the relevant marine wildlife.

**17. Newly discovered species-**(1) This regulation applies to any species of marine wildlife which has been recently discovered in Samoan waters and which is designated by the Minister to be a newly discovered species.

(2) A decision made by the Minister under subregulation (1) shall be notified by the Chief Executive Officer:

- (a) in a newspaper circulating within Samoa;
  - (b) by any other appropriate means determined by the Chief Executive Officer; and
  - (c) by the giving of notice to all persons licensed to fish in Samoan waters.
- (3) Any person who:
- (a) harvests or takes any newly discovered species without a permit issued under or recognised by these Regulations; or
  - (b) undertakes any scientific research into a newly discovered species without a permit issued under or recognised by these Regulations,

commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.

**18. Authorised tagging operations-**(1) This regulation applies to any activity undertaken by the Division of Environment in which marine wildlife are tagged for the purpose of any scientific study.

(2) The Minister may impose any condition applying to tagging operations to which this regulation applies which:

- (a) limit the right to remove tags;
- (b) prohibit the sale of any tagged marine wildlife;

- (c) require the reporting of any matter upon the taking or finding a tagged marine wildlife;
  - (d) require the release and reporting of any tagged marine wildlife taken or found; or
  - (e) otherwise facilitate the scientific research being undertaken in connection with the tagging operations.
- (3) Conditions imposed under subregulation (2) shall be notified by the Chief Executive Officer:
- (a) in a newspaper circulating within Samoa;
  - (b) by any other appropriate means determined by the Chief Executive Officer;
  - (c) by the giving of notice to all persons licensed to fish in Samoan waters; and
  - (d) by the placing of any sign at any place in the vicinity of the tagging operations.
- (4) Any person who:
- (a) removes any tag from tagged marine wildlife in breach of a condition imposed under subregulation (2);
  - (b) sells any marine wildlife that is or has been tagged, and which may not be sold;
  - (c) fails to release any tagged wildlife that is caught and required to be released, if the tagged animal is alive; or
  - (d) fails to report the taking of any tagged wildlife, together with the particulars which are required to be given,
- commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.
- (5) The Pulenuu of any village at which a tagged animal is caught, stranded or found shall report the matter to the Division of Environment and the Fisheries Division as soon as practicable.

**19. General procedures applying to permits and licences-**(1) Applications for a permit or licence required under these regulations shall be made to the Chief Executive Officer

and shall contain such information as is required by the Chief Executive Officer.

(2) The fee for all licences and permits shall be \$500 and the Chief Executive officer shall have the power to:

- (a) exempt any licence or permit from the fee if the work to be undertaken is done for or for the benefit of the Division of Environment;
- (b) impose any additional fee set by the Chief Executive Officer for -
  - (i) any necessary inspection;
  - (ii) any monitoring of an approved activity; and
  - (iii) the placing of any observers in relation to an approved activity.

(3) The Minister may:

- (a) refuse an application on any ground associated with the protection and conservation of marine wildlife;
- (b) grant an application and authorise the issue of a permit or licence; and
- (c) impose any conditions on the permit or licence, including those relating to -
  - (i) the duration of a permit or licence;
  - (ii) any matter which shall result in the early termination of the permit or licence;
  - (iii) any aspect of the protection and conservation of the relevant marine wildlife; and
- (d) impose any additional conditions during the currency of a permit or licence so as to ensure the protection and conservation of marine wildlife.

**20. Offences in relation to permits and licences** - Any person who:

- (a) undertakes any activity which is required to have a permit or licence under these regulations, while no such permit has been issued or is in force;
- (b) breaches any condition imposed in relation to a permit or licence issued under these regulations;

- (c) breaches any additional condition imposed under regulation 16(3); or
  - (d) uses any methodology in scientific research or other permitted activity which leads to the death or injury of the marine wildlife,
- commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.

## **PART VIII MISCELLANEOUS**

**21. General offence provision** - Any person who breaches any requirement of these regulations for which no penalty is specifically provided commits an offence and shall be liable upon conviction to a fine not exceeding 20 penalty units.

**22. Offences in relation to the export of marine wildlife** - Any person who exports marine wildlife:

- (a) without an approval given under these regulations;  
or
  - (b) in breach of any provision or requirement of the Convention on International Trade in Endangered Species (CITES) 1973,
- commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units.

**23. Application of relevant fisheries regulations-(1)**  
These regulations supplement any regulation made under fisheries legislation protecting any part of the fisheries resource of Samoa, and do not affect the validity of any such regulation in any way.

(2) Where any act or activity gives rise to a breach of these regulations and any regulation made under the fisheries legislation, officers of the Division of Environment and the Fisheries Division may determine that proceedings shall be taken under either of the regulations, and shall collaborate in relation to the taking of the proceedings.



(3) Where proceedings have been commenced in relation to breaches arising from an act or activity under both these regulations and a regulation made under fisheries legislation, officers of the Division of Environment and the Fisheries Division shall determine which proceedings shall continue and which shall be withdrawn.

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**Issued under the authority of the Regulations Ordinance 1953.**

**Date of Commencement: 14<sup>th</sup> July 2009**

**These Regulations are administered by the Ministry of Natural Resources and Environment.**

**Copies of these Regulations can be purchased from the Office of the Clerk of the Legislative Assembly.**