

**From:** Bowman, Randal  
**To:** [Michael Weiss - NOAA Federal](#)  
**Subject:** Re: One thing in advance of call  
**Date:** Tuesday, August 15, 2017 12:54:40 PM

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Thank you - very helpful. Will also forward for a review info from FWS that went far beyond what I asked for, but states a Council closure to larger vessels pre-designation that appears to be still in effect.

On Tue, Aug 15, 2017 at 1:30 PM, Michael Weiss - NOAA Federal

<[michael.weiss@noaa.gov](mailto:michael.weiss@noaa.gov)> wrote:

Should have the answer from NMFS shortly on the NE Canyons.

As regards Rose Atoll, while there are fishing regulations, including on the use of seine and other types of nets, they do not apply to the Muliava Unit...which is the area that overlays the monument. (see below for reg text).

However, it is important to note that the rationale for not applying sanctuary fishing regulations to the Muliava Unit was b/c of the Monument restrictions and that the Fishery Management Council was in the process of codifying all the Pacific monument restrictions under the Magnuson-Act. Thus, the intent was not to duplicate. Per the attached Federal Register--

"3. Sanctuary-Wide Prohibited Activities, Except the Muliava 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 promulgating any fishing regulations in federal waters at this time. All areas of the sanctuary are in territorial waters except the Muliava unit, which contains federal waters. With the exception of the Rose Atoll National Wildlife Refuge, NOAA has the primary responsibility within the Monument 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, in accordance with the respective Presidential Proclamations from 2009."

#### REG TEXT

#### **§922.104 Prohibited or otherwise regulated activities—Sanctuary-wide except in the Muliava 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 Muliava Unit:

(1) Gathering, taking, breaking, cutting, damaging, destroying, or possessing any giant clam [*Tridacna spp.*], live coral, bottom formation including live rock and crustose coralline algae.

(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, possessing 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.

(b) 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) Fishing for bottom-dwelling species or otherwise harvesting, catching, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any bottom-dwelling species, or attempting any of these activities. Surface fishing for pelagic species, including trolling, is allowed.

(ii) Disturbing the benthic community.

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

(c) In the Muliava Unit:

(1) The prohibitions in paragraphs (a)(2) through (7) and (a)(9) through (15) of §922.103 do not apply to scientific exploration or research activities conducted by or for the Department of Commerce or the Department of the Interior.

(2) Notwithstanding the prohibition in §922.103(a)(8), the following vessels may discharge treated waste from a U.S. Coast Guard approved Type I, II, or III Marine Sanitation device 12 nautical miles seaward of the Rose Atoll National Wildlife Refuge:

(i) Vessels engaged in scientific exploration or research activities conducted by or for the Department of Commerce or the Department of the Interior; or

(ii) All other vessels engaged in scientific exploration or research activities, if authorized under a permit issued in consultation with the U.S. Fish and Wildlife Service and in accordance with §922.48 and §922.107.

On Mon, Aug 14, 2017 at 8:50 AM, Bowman, Randal <[randal\\_bowman@ios.doi.gov](mailto:randal_bowman@ios.doi.gov)> wrote:

Could you have your folks check this out? I found reference to the canyons being in th MPA system on the MPA center web site, but few details and not clear the designation is still in effect.

DRAFT:

Not mentioned in the Proclamation is that two the of the three canyons in the Monument, Lydonia and Oceanographer, have been protected by NOAA under the [Monkfish/Tilefish Management plans since ?], nor that the two canyons were added to the National System of Marine Protected Areas in 2005(?) . Executive Order 13158, which established the National System of Marine Protected Areas, requires in Section 5 that to the extent permitted by law and to the maximum extent practicable, each Federal agency, in taking any actions, shall avoid harm to the natural and cultural resources that are protected by an MPA. ***NOAA please add a sentence or two on the monkfish/tilefish plans if they are still in effect, other plans or designations if applicable and otherwise review/revise as appropriate here Thanks***

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