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Expansion of Fagatele Bay National Marine Sanctuary, Regulatory Changes, and Sanctuary Name Change; Final Rule

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 15 CFR Part 922

[Docket No. 100908440-2181-02]

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:** Final rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is adding five additional discrete geographical areas to the sanctuary and changing the name of the Fagatele Bay National Marine Sanctuary (FBNMS or sanctuary) to the National Marine Sanctuary of American Samoa (NMSAS). NOAA also is amending existing sanctuary regulations and applying these regulations to activities in the sanctuary.

**DATES:** *Effective Date:* Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the revised designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on July 26, 2012. Announcement of the effective date of the final regulations will be published in the **Federal Register**.

**ADDRESSES:** Copies of the final environmental impact statement (FEIS) described in this rule and the record of decision (ROD) as well as the final management plan are available upon request to Fagatele Bay National Marine Sanctuary, P.O. Box 4318, Pago Pago, American Samoa 96799, Attn: Gene Brighthouse, Superintendent. The FEIS and final management plan can also be viewed on the Web and downloaded at <http://fagatelebay.noaa.gov>. Copies of the FEIS, ROD, final management plan and final 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*

Fagatele Bay National Marine 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. It 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.

With this rulemaking, NOAA is renaming the sanctuary "National Marine Sanctuary of American Samoa" (NMSAS) and expanding it to contain five additional discrete units: Fagalu'a (described as Larsen Bay in the proposed rule), Swains Island, Ta'u, Aunu'u and Muliāva (Rose Atoll). 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 some 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 final environmental impact statement (FEIS) 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 (Fagalu'a and Aunu'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 FEIS.

During public scoping, some expressed concern over the expansion of FBNMS into a complex of units 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.

In October 2011, NOAA published a proposed rule (76 FR 65566), draft environmental impact statement and draft management plan and requested public comment on this proposal until January 6, 2012. Due to public requests as well as a request from the American Samoa delegate to the U.S. Congress to extend the public comment period, NOAA published an extension in the **Federal Register** on January 25, 2012 (77 FR 3646) and solicited public comment until March 9, 2012. The action presented in this document is the direct result of the SAC's recommendations that were provided to the FBNMS Superintendent, comments received during the 2009 public scoping and 2011–2012 public comment period.

Several alternatives to this action are analyzed in the accompanying FEIS.

## 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 making changes to the FBNMS terms of designation, which were previously published in the **Federal Register** on April 26, 1986 (51 FR 15878). The changes would:

1. Modify the name of the sanctuary to "National Marine Sanctuary of American Samoa."
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 will 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*] National Marine Sanctuary "of American Samoa" (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, t*] "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.
- "Fagalua/Fogama'a, 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 52.3 square miles.
- "The waters around Rose Atoll, called Muliava in Samoan, that contain

13,507.8 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 authorize the Territory to enforce federal laws.”

(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 preliminarily 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 Revisions to the Sanctuary Regulations

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

The amended regulations add the following five units to the sanctuary: (1) Fagalua/Fogama’a (described as Larsen Bay in the proposed rule), (2) Anuu’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 Fagalua/Fogama'a 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 National Park of American Samoa). This action will increase the overall size of the sanctuary from 0.25 square miles to approximately 13,581 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 final environmental impact statement supporting this rulemaking for more information and a map depicting the location of these areas.

#### Fagatele Bay and Fagalua/Fogama'a

The Fagatele Bay and Fagalua/Fogama'a 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 Fagalua/Fogama'a 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 Fagalua/Fogama'a would both increase the genetic diversity of species in different microhabitats within Fagalua/Fogama'a and increase the abundance of local populations, resulting in increased overall resilience of the coral reef ecosystems. In addition, the prehistoric village site adjacent to 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 will be divided into two zones: A Multiple Use Zone (Zone A), where fishing would be allowed, and a Research Zone (Zone B), where all consumptive uses except trolling and surface fishing 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 inclusion of the Vailulu'u Seamount in the Muliāva unit will provide sanctuary management, which 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. The Muliāva unit's seaward boundary is contiguous with the Rose Atoll National Marine Monument, except that it includes the Vailulu'u Seamount.

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

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 is changing the name of the sanctuary to the National Marine Sanctuary of American Samoa (NMSAS).

#### *C. Sanctuary Regulations*

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

##### 1. Definitions

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

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

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

- Discharging any material or other matter 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 conducting scientific exploration and research for either the Secretary of Commerce or Interior would be allowed to discharge treated effluent outside of 12 nm from the Rose Atoll National Wildlife Refuge from a Type I, II, or III 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. Other vessels conducting research or scientific exploration also would be allowed to discharge treated effluent consistent with these limitations if authorized by a permit.
  - Using or discharging explosives or weapons of any description.
  - Discharging any material from outside of sanctuary waters that enters the sanctuary and injures a sanctuary resource, 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 promulgating any fishing regulations in federal waters at this time. All areas of the sanctuary are in territorial waters except the Muliāva 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. Therefore, the following fishery-related activities are 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 is not 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.].

### 4. Unit-Specific Regulations

In addition to the sanctuary-wide prohibited activities described above, this rule promulgates unit-specific regulations for two (Fagatele Bay, and Aunu'u Island) of the six units that are proposed to be included as part of the NMSAS. The unit-specific regulations are of two types: (1) Allowable or restricted gear, and (2) allowable or restricted fishing practices. In the Fagatele Bay unit, all fishing is prohibited, effectively making that area a no-take zone. There are no site-specific restrictions for the Ta'u Island, Swains Island, and Fagalua/Fogama'a units because NOAA determined that the sanctuary-wide regulations that apply to these areas would be sufficient to meet the goals and objectives of the sanctuary. There are no site-specific fishing restrictions for the Muliāva unit at this time, as ONMS is awaiting Council/NMFS action regarding fishing regulations in that area.

#### A. Fagatele Bay

The regulations for the Fagatele Bay unit 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 will provide the opportunity for the natural environment to be restored to a more natural state.

#### B. Aunu'u Island

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

Zone A is the Multiple Use Zone, in which fishing will 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 will

provide protection of the resources within this area, and will allow for a better understanding of current use levels of the area.

Zone B is the Research Zone, where surface fishing for pelagic species, including fishing by trolling, is allowed. The ONMS may issue permits for research activities that are otherwise prohibited by sanctuary regulations provided the applications comply with ONMS permitting procedures and criteria. In Zone B, all extractive activities of bottom-dwelling species, including trawling, are prohibited to provide a control area as a mechanism for research activities.

#### C. Muliāva Unit

Due to the potential impact of vessel effluent discharges on resources of the Rose Atoll Marine National Monument, and to be consistent with the requirements of Proclamation 8337, NOAA has determined that only vessels that are engaged in scientific exploration or research activities on behalf of either the Department of Commerce or the Department of the Interior should be allowed to discharge treated effluent from a Coast Guard-approved Type I, II, or III Marine Sanitation Device (MSD). Such a discharge should only occur if the relevant agency determines that exiting the Muliāva unit to discharge would be impracticable under existing circumstances. Other vessels engaged in scientific exploration or research activities may be permitted to discharge on a case-by-case basis, which will be determined by following the permit process in 15 CFR 922.48 and 922.107 and in consultation with the Intergovernmental Governing Committee, which is comprised of ONMS, NMFS, U.S. Fish and Wildlife Service, and Government of American Samoa. Furthermore, no discharge would be allowed by any vessel within 12 nautical miles of the Rose Atoll National Wildlife Refuge.

### 5. Enforcement

The regulations will 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 will be prosecuted under the appropriate statutes or regulations governing that infraction. The prohibition against catching or harvesting marine organisms includes 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 is punishable under 15 CFR 922.45 with a civil penalty of up to \$140,000 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

The newly added areas of the sanctuary will provide researchers a valuable opportunity to discern between human-induced and natural changes in the Samoan archipelago. Researchers will 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 NMSAS (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 NMSAS is delegated to the Superintendent. Requirements for filing permit applications are specified in 15 CFR 922.104 of the ONMS regulations. 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 is adding a category of sanctuary permit for management activities. Such a management category will allow otherwise prohibited activities that would assist in managing the sanctuary, either by NOAA or third parties. This will 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 is deleting 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 NOAA's discretion under the NMSA, the Departments of Commerce and the Interior would not need a permit to conduct of scientific activities within the Muliava 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. Future changes to these requirements could ultimately affect the permit regulations for NMSAS. Any changes to the permit requirement promulgated 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 of the local agency 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. Changes From Proposed Rule to Final Rule

#### 1. Sanctuary Name

In the proposed rule (76 FR 65566), NOAA proposed to change the name of Fagatele Bay National Marine Sanctuary to American Samoa National Marine Sanctuary. This change was necessary due to the addition of five discrete units, which are separate from Fagatele Bay proper. During public comment, it was suggested that the name "American Samoa National Marine Sanctuary" implied that the new boundaries of the sanctuary encompassed the entire archipelago. In order to better reflect the new design of the sanctuary, NOAA will instead re-name the sanctuary as

"National Marine Sanctuary of American Samoa".

#### 2. Remove Prohibition on Take of Marine Plants, Crown-of-Thorn Starfish and Live Shells

During public comment, members of the public mentioned that a prohibition on taking crown-of-thorn starfish was unnecessary because these species were not targeted by any fishery be it traditional, recreational or commercial. More importantly, in the event of a crown-of-thorn starfish outbreak, which can have a high impact on coral reef ecosystems, it may be advantageous to allow take of this species as local residents try and mitigate the outbreak by removing those starfish. NOAA believes that for the reasons listed above, the prohibition on the take of crown-of-thorn starfish is unnecessary at this time and decided to remove it from the sanctuary regulations.

In addition, some comments indicated that live shells and marine plants are occasionally gathered for sustenance or cultural reasons and that since the impact on the ecosystem from such occasional gathering is minimal, it should be allowed. NOAA determined that the impact of very limited take of live shells and marine plants for those reasons would not have a negative impact on the coral reef ecosystem at this time, and therefore decided to remove that prohibition from the regulations. If it becomes apparent through monitoring that such take is having a negative impact on the resources of the sanctuary, NOAA may decide to alter the regulations in the future.

#### 3. Change to Boundaries at Swains Island Unit

The boundaries at Swains Island Unit were altered to exclude two channels that provide access to the island. The family who owns the island (the Jennings family) requested this boundary change to give them the flexibility to dredge the access channels at a future time for the purpose of health and human safety, and bringing development and tourism to the island. The rest of the sanctuary, apart from the two access channels, continues to circumvent the island to a distance of three nautical miles.

#### 4. Change to Fishing Restrictions at Swains Island Unit

In the proposed rule (76 FR 65566), NOAA proposed to prohibit all fishing other than sustenance fishing in the Swains Island Unit. After considering the public comments, NOAA determined that a prohibition on fishing

was not necessary for the Swains Island Unit because of the extremely low fishing pressure currently occurring and projected to occur in the future. Swains Island is located approximately 200 miles from the main islands of American Samoa and therefore experiences a low visitation rate. NOAA determined that at this time the sanctuary-wide regulations are sufficient to fulfill the NMSA's primary mandate of resource protection at the Swains Island Unit.

##### *5. Change to Fishing Restrictions at Fagalu/Fogama'a Unit*

In the proposed rule (76 FR 65566), NOAA proposed to prohibit all fishing other than hook-and-line fishing. NOAA received public comments indicating that many members of the community use other forms of harvesting such as cast nets, spearfishing, and other non-destructive methods for sustenance and cultural purposes. At this time, NOAA believes that the fishing pressure of such existing methods is acceptable in the context of the resource protection mandate under the NMSA and therefore it is not prohibiting fishing using those forms of harvesting.

##### *6. Change to Fishing Restrictions at Aunu'u Unit, Zone B (Research Zone)*

In the proposed rule (76 FR 65566), NOAA proposed to prohibit all forms of fishing in Zone B of the Aunu'u Unit in order to create an area devoted to scientific research on coral reef ecosystems. Many commenters pointed out that the area where Zone B is located was a highly sought-after area for recreational fishing of pelagic species, including for recreational fishing tournaments which bring in tourism benefits to the American Samoa economy. NOAA's main goal for Zone B is to remove human impacts to the coral reef and its associated species for the purpose of research. Since surface fishing (including trolling) is not believed to have a strong impact on the coral reef and bottom-dwelling species of interest to NOAA, NOAA decided to allow such fishing in Zone B. The depth of the area, the absence of spawning aggregation, and the absence of major topographic or oceanographic features indicate that there is likely to be enough vertical zoning that would allow for surface fishing to occur without having major impacts to the bottom reef ecosystem. The intensity level of such fishing is unlikely to be significant, considering the small number of tournaments a year and low fishing pressure from the local population. The tournaments, while asserting small fishing pressure, provide valued

tourism-based economic opportunities for the people of American Samoa. Although a complete fishing prohibition would have been preferable for scientific research purposes alone, NOAA believes that allowing surface fishing is a more appropriate management scheme in Zone B to prevent inhibiting the small tourism benefits that fishing tournaments bring to American Samoa. Fishing for bottom-dwelling species, including trawling, is prohibited.

##### *7. Discharge Prohibition in Muliāva Unit*

In the proposed rule (76 FR 65566), NOAA proposed to allow treated discharges from vessels equipped with a Coast Guard-approved Type I, II, or III marine sanitation device (MSD) in the Muliāva Unit. However, NOAA received input indicating that in order to remain consistent with Presidential Proclamation 8337, which established the Rose Atoll Marine National Monument, NOAA should limit discharges to vessels conducting scientific exploration and research in locations where a discharge would not injure a Monument resource. The Proclamation states that prohibitions within the Monument shall not restrict scientific exploration and research activities conducted by the Department of Commerce or Department of the Interior. Due to the potential impact of vessel discharges on Monument resources, NOAA has determined that only vessels that are engaged in scientific exploration or research activities on behalf of either the Department of Commerce or the Department of the Interior should be allowed to discharge treated effluent from a Type I, II, or III MSD. A discharge should only occur if the relevant agency determines that exiting the Muliāva unit to discharge would be impracticable under existing circumstances. Other vessels engaged in scientific exploration or research activities may be permitted to discharge on a case-by-case basis, which will be determined by following the permit process in 15 CFR 922.48 and 922.107 and in consultation with the U.S. Fish and Wildlife Service. No discharge would be allowed by any vessel within 12 nautical miles of the Rose Atoll National Wildlife Refuge.

#### **V. Responses to Public Comment**

This section contains NOAA's responses to the substantive comments received on the draft Environmental Impact Statement (EIS) and proposed rule. NOAA has summarized the comments according to the content of the statement or question put forward in

the letters, emails, and written and oral testimony at the public hearings on this action. Many commenters submitted similar questions or statements that could be addressed by one response. NOAA also made a number of changes in the Final Management Plan and Final EIS in response to public comments, not summarized in this section, which were recommended technical updates or corrections to the documents. The original comments remain available for review on [www.regulations.gov](http://www.regulations.gov) as well as at the sanctuary office.

#### *Support for Preferred Alternative*

While many of the following comments in this section capture opposition to various aspects of the proposed action submitted during the public comment period, a number of comments provided support for the process, as well as agreed with the overall approach taken by NOAA. Some commenters specifically offered support for this action, (including the Governor of American Samoa, the director of the American Samoa Department of Marine and Wildlife Resources (DMWR), the Secretary of Samoan Affairs, the manager of the American Samoa Coastal Management Program, representatives of the coral reef advisory group (CRAG) including the directors of the American Samoa EPA (AS-EPA) and American Samoa Department of Commerce (ASDOC) and the President of the American Samoa Community College (ASCC), marine scientists who have worked many years in American Samoa, as well as dozens of members of the public. During the public comment period, meetings between NOAA and village councils and Matai addressed misunderstandings and concerns expressed in numerous public comments, ultimately leading to general support for the proposed regulations and additional sanctuary units.

Reasons provided for this support include (1) the preservation of marine resources for future generations, (2) the ecological value of Fagalu/Fogama'a, (3) the need of sanctuary protection for the giant corals off of Ta'u, (4) the importance of marine protected areas to maintain healthy fish populations and improve local fisheries by allowing conservation of larger individuals, (5) the socio-economic benefits that the activities of the management plan will bring to the Samoan people by creating jobs, providing funding, supporting tourism, respecting the culture, and securing the future, (6) the value of research, educational activities and outreach to support ocean literacy, enriched students and teachers, and promote reef health, and (7) the



important efforts the sanctuary is making with regards to Climate Change, Cultural Heritage and Community Engagement, and Marine Conservation and Science. NOAA appreciates this public support. The action reflects changes to a number of regulations of the proposed action to address scientific, socioeconomic and resource protection concerns, while remaining faithful to the mission of the sanctuary program and the goals of the sanctuary.

#### *Need for Action (R1)*

*Comment:* The document does not make a reasonable justification for the proposed action as required under the NMSA and the action will not benefit the villages adjacent to the proposed sanctuary units or the people of American Samoa as a whole. The fisheries are healthy, existing laws are adequate to protect marine resources from current human activities, and local management agencies have been successful in addressing emerging concerns. Many of the proposed regulations duplicate existing territorial laws or are poorly designed and will not protect marine resources.

*Response:* Section 301(b) of the National Marine Sanctuaries Act authorizes the Secretary of Commerce to “to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance.” Based upon this authority, designation of sanctuary sites is not limited to ecosystems in poor health, but also includes well-functioning ecosystems of high biological, cultural and historic value. According to the *Biogeographic Assessment of the Samoan Archipelago*, each of the units proposed for inclusion within the expanded sanctuary have among the highest ecological values across American Samoa for species and habitat diversity, species abundance, and total coral cover. The report notes that western Ta’u (coral and fish richness) and Aunu’u (fish biomass and richness) have particularly high ecological value, while Ta’u, Swains, and the northwest, southeast and eastern tip of Tutuila are coral and fish hotspot regions.

NOAA disagrees that these areas are not in need of protection. The effects of fishing are evident when compared to unpopulated reefs of the region (see Section 3.1.2.4 of the FEIS). While reefs are resilient to natural stressors including tsunamis and crown-of-thorns starfish outbreaks, reefs already stressed by human activity, including siltation, eutrophication, polluted runoff, and increased temperatures and acidification from climate change are

less likely or take much longer to recover. Providing additional protection and management for a few high-value sites distributed across the archipelago as protection against these types of catastrophes can increase overall resilience for the reefs in American Samoa, and protect these resources for future generations.

Sanctuaries are required “to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities “(NMSA § 301–(b)(6)).” While the action includes one no-take zone (Fagatele Bay), there are numerous measures aimed at improving ecosystem health of all of the units while fostering public support, which is critical to achieve the goals of the expanded sanctuary. NOAA proposes prohibiting destructive gears and fishing practices, which will protect habitat and subsequently improve the overall ecosystem, while allowing traditional and other non-destructive fishing at all of the other units. The multiple use zone at Aunu’u is an innovative technique suggested by the community that would incorporate traditional management intended to foster community stewardship while providing for compatible uses. If successful, NOAA could consider its use at other units and in other sanctuaries. Other commenters felt that education was a better approach than asserting federal control through regulations and fines to promote reef health. The sanctuary agrees with the value of education, but believes that education and outreach combined with a variety of management techniques, including enforcement of regulations, is the best approach.

Finally, some commenters feel that the action provides no real protection at places where activity is low or other management agencies have regimes in place to protect resources (see the response to comment heading *Use Existing Management*). For example, Vailulu’u seamount, Swains Island, Rose Atoll, and the deep waters of the southern coast of Ta’u are not considered threatened by some commenters and some commenters felt that proposed regulations would add little to no protection over existing traditional management. The types and extent of the deep-water resources in many of these areas is currently unknown, although research efforts from other deep-water areas are making fascinating discoveries, which has prompted ONMS to make these once-ignored habitats a research and

conservation priority. Including deep-water and remote habitats under sanctuary designation will allow research and provide for educational activities considered important to the stewardship of our marine resources.

#### *Use Existing Management (R2)*

*Comment:* DMWR is the agency empowered to manage, protect, preserve and perpetuate the marine and wildlife resources in the territory, so this plan is a duplication of effort and a waste of money. In addition, the existing DMWR and NPAS community-focused conservation programs are accepted by the people of American Samoa. Fa’a-Samoa and Community Marine Tenure are the culturally appropriate means of management, while expansion of the sanctuary will cause the loss of local jurisdiction and disenfranchise the people from this permanent designation. Proper enforcement of existing local laws will adequately protect marine resources and overlays of existing managed areas are inefficient, confusing, and duplicative.

*Response:* This action complements efforts of DMWR, which will be a key partner in supporting the implementation of the action plans. DMWR outlined concerns and issues during the public comment period, and these have been addressed in the final document. It is important to note that this action is a joint effort of ONMS and the American Samoa Department of Commerce, which has been fully supported by the Office of Samoan Affairs, the Governor, and DMWR.

Specific rationale for incorporating each of the units is provided in Section 2.1.2.3 *Selection of New Sanctuary Units*, and includes gaps and management needs that the sanctuary intends to address. A primary purpose of expansion is to provide value-added support and collaboration to existing management efforts. The sanctuary will not take over DMWR’s responsibility within the sanctuary units, and the management regime is structured to complement, not replace or be in conflict with, existing authorities, including the DMWR, NPAS, and USFWS. An entire action plan (*Partnerships and Interagency Cooperation*) combined with numerous activities from other action plans are intended to foster collaboration for the benefit of the resources and American Samoan people. The broader geographic scope of the sanctuary provides numerous opportunities to collaborate on this and other issues (e.g., technical assistance, streamlining permitting, assisting with the Governor’s 20% no-take mandate) that are currently limited

to activities related to Fagatele Bay. Another comment suggested that the \$8 million five-year sanctuary budget be used instead to improve village management without sanctuary expansion. The *Cultural Heritage and Community Engagement Action Plan* provides opportunities and structure to directly include villages in management activities. Sanctuary collaboration with additional communities would likely not be enhanced without expansion, further emphasizing the value of a territory-wide sanctuary presence. In addition, as with all ONMS regulations that reinforce existing regulations, the NMSA provides additional compliance mechanisms and supplemental enforcement and outreach resources, improving overall protection of sanctuary resources, further described in the response to comment heading *Enforcement*.

While fostering cooperation with other agencies is important, the focus of this action must be for the benefit of the American Samoan people, who have managed their ocean resources for 3,000 years. Commenters noted the traditional land management regime, adequate existing management and regulations, village enforcement, a preference to work with local agencies, and a history of failed support from the federal government. These concerns are understandable, given a lack of knowledge from some community members regarding NOAA, although, as this action shows, NOAA has made community engagement the cornerstone of its management plan, fostering traditional Samoan stewardship through education and outreach (*Ocean Literacy Action Plan*), discovering and protecting marine cultural and ecological resources (*Marine Conservation Science, Cultural Heritage & Community Engagement, and Resource Protection and Enforcement action plans*), partnerships (*Partnerships and Interagency Cooperation Action Plan*), as well as through innovative regulations that incorporate traditional management and active community participation.

NOAA's sanctuary management plan proposes numerous activities that DMWR and other resource agencies are not engaged in. Some major examples include inventorying, assessing and providing federal protection for maritime heritage resources, and providing state-of-the-art education facilities and technologies including the Sanctuary Visitor Center of American Samoa, "Science on a Sphere,"<sup>®</sup> and the OceansLive ONMS telepresence initiative. The management plan also identifies a number of opportunities for collaboration. The management plan

includes *Activity RP&E-5.2: Assess threats to sanctuary resources posed by the Tutuila landfill facility*, which is a specific activity where the sanctuary will work directly with USGS and AS-EPA, pooling resources to accomplish this important task. The management plan also includes *Activity O&A-2.1: (Assess current status and future needs for human resources annually)*, which provides a mechanism to understand the efforts and needs of other resource agencies to direct future sanctuary efforts to complementary activities that benefit all management partners.

The Sanctuary Advisory Council has 13 voting members, with nine of these positions non-governmental members representing research, education, fishing, ocean recreation, tourism, business, as well as three community-at-large seats. The four voting government members are representatives of four territorial agencies, including the ASDOC, DMWR, ASCC, and AS-EPA. This venue, which provides regular input on sanctuary management, serves as a conduit to address the community and partner agency issues and opportunities.

There was an objection to the designation of a sanctuary unit along Ta'u's west coast that encompasses the giant corals, believing that expansion of the National Park of American Samoa at Ta'u would be more parsimonious and effective due to its existing presence and relationship with the community. NOAA believes that the marine resources at this location have global significance and require immediate and comprehensive protection and management provided by this action and the implementation of the management plan. The objection to expansion at this location has been documented in the final EIS, and rationale for the proposed designation has been provided.

#### *Sanctuary Competency (R3)*

*Comment:* The management and enforcement at Fagatele Bay has been inadequate and has not validated the ability of ONMS to monitor and protect a much larger area. After 25 years of management of the bay, fish biomass is down, most people are unaware of its existence, and there has been no management review until now and only two reports on the sanctuary status since 1985. The sanctuary should focus on improving management of the existing sanctuary unit and expanding the education, outreach, and research principles across the territory, instead of regulatory expansion to new sites.

*Response:* NOAA disagrees with those public comments questioning

competency. While the program was very small during the early years after designation, with minimal staff and a small budget, substantial progress has been made toward accomplishing the sanctuary's original four broad goals, documented in Section 1.2.3 Sanctuary Accomplishments of the Management Plan. Accomplishments are divided according to five broad topics: (a) Management, administration, and operations; (b) education/outreach; (c) research; (d) climate change; and (e) emergency response. As part of the management plan review, a new set of sanctuary goals have been developed in coordination with the Sanctuary Advisory Council (Section 1.4.2). The new goals maintain the intent of the 1984 goals while incorporating new ideas for a changing environment.

Sanctuary accomplishments are also reflected in the 2007 Condition Report which measures water, habitat, living resources, and maritime archaeological resources of the sanctuary. See: <http://sanctuaries.noaa.gov/science/condition/welcome.html>. In addition, scientific literature and monitoring reports on resources of FBNMS and American Samoa have been published since 1987 and are available at <http://fagatelebay.noaa.gov/html/publications.html>.

Enforcement at Fagatele Bay is not inadequate. Although for most of the sanctuary's history, NOAA did not have an on-island enforcement agent, NOAA OLE compensated for this by developing a Joint Enforcement Agreement (JEA) with DMWR. This JEA provides training and authorizes DMWR enforcement personnel to enforce both federal laws and regulations. The JEA specifically identifies at-sea activities to "monitor and investigate illegal takes and other violations involving all marine life within the Fagatele Bay National Marine Sanctuary". Over the past six years, there has been a single complaint about illegal fishing in the sanctuary, and NOAA OLE and DMWR partners responded to the complaint and identified the violators. As of 2012, NOAA has one special agent and one enforcement officer stationed in American Samoa. While the draft Management Plan did not provide a description of the current enforcement activities or the mechanisms that would be used for the proposed units, the final document includes a full description of sanctuary enforcement capabilities and the Joint Enforcement Agreement is in the Resource Protection and Enforcement Action Plan, as well as in Sections 3.1.5.2 and 3.2.1.3.

*Network Issue/Scientific Rationale for Boundaries (R4)*

*Comment:* The scientific validity of designating the proposed units individually and as a functioning MPA network is unproven in the document. There is no logical decision framework for assessing value of sites, or how they work in an ecological, geographic, organizational, or socioeconomic framework. MPA design principles should be used to create boundaries. Suggestions were made to exclude proposed sanctuary units and to include alternate sanctuary units for ecological and socioeconomic reasons.

*Response:* The final document removes the term “network”, as some commenters felt that the term has a specific scientific meaning that reflects direct and proven ecological connections that improve resource status inside and outside MPA boundaries. As a primary agency within the American Samoa MPA Network, ONMS supports this long-term goal to provide territory-wide resilience to overfishing and other human impacts, understanding that success requires additional science and coordination with all marine resource agencies and partners in the territory (DMWR, NPS, USFWS, ONMS, NMFS, ASDOC, CRAG, and others). This proposed action supports and is consistent with this strategy to “effectively coordinate existing and future MPAs to ensure the long-term health and sustainable use of the Territory’s coral reef resources.”

Contrary to comments received, the site selection process and boundary designation employed scientific rationale, socioeconomic information, and community engagement. The biogeographic assessment provides scientific basis for designating units (see table 1–3 in the final MP/EIS). The rationale for the rejection or inclusion of proposed sites is provided in Sections 2.1.1 and 2.1.2.3, respectively, of the EIS. Public scoping and community meetings allowed for incorporation of community desires and the public review process has provided additional information to further identify and incorporate culturally important factors into the action, such as subsistence fishing grounds. Additional scientific rationale is discussed next under comment heading *Fishing Restrictions at Research Zone*.

Commenters argued that scientific design principles, including MARXAN, the *Framework for Effective Coastal and Marine Spatial Planning*, and *Guidelines for Selecting No-Take MPAs of the American Samoa Coral Reef MPA Strategy* (Oram 2006) were not utilized

in site selection and boundary designation. The biogeographic assessment, however, provided the information to compare the ecological significance of distinct marine areas across the territory. Scientific studies noted that of the 20 distinct bioregions in American Samoa, 14 are represented in the existing MPA network discussed in Chapter 6 of the EIS. Of the six not represented, this action incorporates four, one at the Swains unit and three at the Aunu’u unit. Both of these units are also hotspots of ecological importance for coral and fish biomass and diversity. In addition, this action includes mesophotic reefs and the archipelago’s only hydrothermally active seamount, important and poorly understood habitats absent in the existing network. This habitat variety is in line with spatial and geographic diversity components of the American Samoa Marine Protected Area Network Strategy principles. The concept of “multiple redundancy” as described in the Network Strategy is achieved by including Fagalu/Fogama’a, which is similar to Fagatele Bay. Another key element of the Network Strategy is protecting reproductive potential, where discrete populations of certain species are protected to maintain higher densities, ensuring there are always viable adults across the ecoregion to safeguard the entire population. This element is primarily addressed through (1) the prohibition on the take of giant clams within all sanctuary units, which is particularly important for a sessile broadcast spawner, as well as (2) through work with DMWR to address the status of large reef predators, including the bumphead parrotfish and giant trevally. NOAA also made a substantial effort to consider sites that are culturally and socially acceptable, meeting with villages, mayors and other local stakeholders throughout the process. These efforts have been documented in Chapter 2.

Presidential Proclamation 8337 (74 FR 1577) directed the Secretary of Commerce to “initiate the process to add the marine areas of the [Rose Atoll Marine National] monument to the Fagatele Bay National Marine Sanctuary.” Sanctuary designation fulfills the directive of the proclamation. In addition, Rose Atoll is considered one of the world’s most pristine atolls, home to endangered turtles, birds and marine mammals, and meets the criteria of “special national significance.” Designation will allow for appropriation of funding for research, conservation, and education. Rose Atoll is currently a monument; however, regulations have

yet to be codified in the CFR. Adding the unit to the sanctuary system would change this. Vailulu’u seamount is the only active hydrothermal marine habitat in American Samoa, and its unique ecosystem warrants protection, while inclusion imposes little to no economic impact, as it lies within the Large Vessel Prohibited Area and no fishing regulations are being proposed for the area by this action. Value will be added to the seamount in terms of education, research, and fostering a sense of stewardship.

Commenters argued that the action will not protect coral reefs, as most units allow fishing. The proposed action includes one no-take zone at Fagatele Bay. The determination for fishing regulations was balanced by the needs for protection and the needs and support of the community, without which no-take areas are likely unenforceable. The term MPA is not synonymous with no-take. All units have regulations aimed at ecosystem protection. In addition, sanctuary designation will provide opportunities to increase monitoring that will allow for determinations as to the effectiveness of the proposed regulations.

One comment suggested extending the sanctuary to include the bank at Steps Point that is common to both Fagatele and Fagalu/Fogama’a. The proposed action does not change the boundary of the Fagalu/Fogama’a unit to incorporate this bank. The bank extends well offshore, which would be a significant change from the draft document that would require additional public comment. In addition, the paper cited in the comment as rationale to include this bank does not include compelling information for inclusion at this time. NOAA will review additional scientific and socio-economic information of this area and may consider this recommendation in the future.

*Rationale for Fishing Restrictions in the Aunu’u Research Zone (R5)*

*Comment:* The rationale for the location of the research zone is flawed based on ecological, logistical and economic conditions. What are the supporting ecological data for the location, size, and boundaries? These pelagic waters are no different than other pelagic waters within the territory. The depth and year-round rough sea conditions on the south side of Aunu’u make the site logistically unsuitable for research. Site the research zone on the north side of the island, away from prime fishing grounds. The site is a prime recreational and subsistence

fishing spot, which would financially burden fisherman (increased transit costs) and push them to operate in unsafe and unfamiliar waters. If the site is chosen, Aunu'u residents should be exempt from the no-take rule and traditional, non-destructive fishing methods should be permitted. An open-season should be established and regulations should only last long enough to allow the fish population to grow. The research zone should remain open, while still facilitating scientific data collection from this area.

*Response:* The designation of the research zone elicited diverse and extensive public comments, which NOAA considered carefully in the revision of the proposed action. NOAA stands by the decision to designate the area as a research zone over other proposed locations, with rationale for its unique qualities provided in Section 2.1.2.3 of the EIS. The one negative factor (potential for rough ocean conditions) was outweighed against numerous positive attributes. Furthermore, this designation is not a veiled way to create a no-take MPA, as alleged, but supports an integral aspect of ONMS' mission. As noted in Section 2.1.1.4, the idea of expanding the scientific goals of the sanctuary originated during public scoping, with designated research zones supported by the governor as well as within NOAA. The purpose of the research zone is to provide a control area as a mechanism for research activities that will increase the opportunity to discriminate scientifically between natural and human induced change to species populations and habitat condition. This includes controlling impacts from fishing, pollutants, anchoring and other benthic disturbances through fostering community stewardship, education and outreach, as well as through enforcement of regulations.

Upon the establishment of the research zone, NOAA will apply the activities in the sanctuary-wide Marine Conservation Science Action Plan to the area over the next 5 years. These include, among other things: Developing monitoring program protocols, assessing baseline conditions, conducting shallow-water reef habitat monitoring, and mapping and characterizing deepwater habitat.

There are few published reports on human uses in the area and a lack of available site-specific fishing data to conduct a conclusive analysis of the impacts of these fishing restrictions. The EIS relied on a few directed interviews and a socio-economic study that designated most of the area as zero to low effort for fishing, with an estimated

annual economic value of \$11,517 for subsistence and artisanal fishing for all of Aunu'u. Based on these sources, the draft EIS concluded that fishing restrictions within the research zone would have a less than significant impact to sustenance, sport, and small-scale commercial fisheries. Upon reviewing initial public comments, NOAA conducted additional discussions with DMWR, the Aunu'u community, and representatives of the sportfishing sector during the public comment period. These led to changes in the proposed action to mitigate potential impacts to these stakeholders (i.e., trolling and surface fishing will be allowed within the Aunu'u Research Zone, with catch data being shared by fishers with DMWR and the sanctuary). The allowance to target some coastal pelagic species, including rainbow runner, dog-tooth tuna and giant trevally, minimizes significant economic impacts to tourism, as well as safety issues and increased operating costs to recreational and subsistence fishers while maintaining a high level of protection for the resident species within the zone.

Through the Cultural Heritage and Community Engagement and Marine Conservation Science Action Plans, NOAA will engage with the Aunu'u community with regards to both the Multiple-Use Zone and the Research Zone. The results of research conducted in the research zone can be shared directly with the village of Aunu'u.

The safety of fisherman is of great importance to NOAA, and it is important to note that this action will not substantially displace fishermen, requiring them to fish farther offshore in unfamiliar waters. The final proposal includes only one complete no-take area, at Fagatele Bay. Regulations for the Research Zone at the Aunu'u unit have been amended for the final action to allow trolling and surface fishing. Thus, the proposed action closes 8% of the nearshore banks from the few bottomfishers that occasionally operate in these waters.

#### *General Fishing Regulations (R6)*

##### *Multiple Use Zone Rationale (R6-A)*

*Comment:* Significant fishing activities occur at Aunu'u Multiple Use Zone. The notification requirement provides no conservation benefit and is both an intrusion on centuries old fishing grounds and a burden to fishermen. Subsistence and recreational fishermen troll through this zone en route to other locations and pre-approval is not always a feasible option, especially in light of itinerary changes

caused by weather conditions which dictate fishing location. If fishermen are unable to contact the representative on this short notice, they may be forced to cease operations. The notification requirement will also cause problems for fishing charters with cruise ship passengers who have very little time at port. If this is an appropriate mechanism to conserve marine resources, why is it not proposed for Larsen or Swains?

*Response:* NOAA concurs that the waters designated as the multiple-use zone are important fishing grounds for both Aunu'u residents as well as boat-based fishers from the south shore of Tutuila. The popularity of this area for fishing warrants increased monitoring to ensure sustainable fishing practices. The Aunu'u community raised this concern during village meetings and wishes the area to remain open to fishing, while protecting it from poor fishing practices and unsustainable harvest. By working with the village to develop appropriate management measures that address this issue while providing access to fishers from other communities, NOAA has improved the conservation of the resource, respected fa'a-Samoa through the promotion of traditional stewardship, and minimized impacts to recreational, artisanal, and charter fishing operations. In addition, the seaward boundary does not incorporate the majority of the bottomfish habitat on Nafanua and Taema Banks, a primary concern of boat-based fishers from Tutuila. Furthermore, NOAA understands that weather and other conditions can alter the plans of charter and other boat-based fishing, but believes that through open discussions with NOAA, Aunu'u village and this small group of vessels, appropriate mechanisms can be developed to alleviate these concerns. Because of the proximity of residents to the multiple-use zone, this requirement is more applicable and expected to be more successful at Aunu'u than the other proposed units. If successful, and with community and partner agency cooperation, NOAA would consider proposing similar notification requirements at other units as well. It is important to note that this is not a mechanism to require approval for fishing in the area, rather a system for notification of fishing in the area, and thus allowing for better monitoring of fishing effort. Through the Partnerships and Interagency Cooperation, and Cultural Heritage and Community Engagement action plans, sanctuary managers will collaborate with DMWR and the local villages to assess the

effectiveness of all sanctuary regulations.

#### Lost Commercial Fishing Opportunities (R6–B)

*Comment:* There is not a large commercial fishery in territorial waters (most local fishermen do not target bottomfish), but the proposed regulations would inhibit the development of the American Samoa fishing fleet. Local small-scale fishery enterprises were labeled as having “\* \* \* immense possibilities” but it was indicated that time and resources were needed to develop the fisheries. Closures and commercial fishing bans around Rose, Swains, and Aunu’u will discourage this development. The 50 nm no-take around Rose Atoll will not biologically benefit highly migratory species.

*Response:* As described in the EIS, existing commercial fisheries will not be impacted by the proposed action. The existing Large Vessel Prohibited Area (LVPA) regulation (50 CFR 665.806) restricts longline vessels and purse seines larger than 50 feet in length from fishing within 50 nautical miles of the islands. All of the proposed units are within the LVPA. NOAA is not proposing any fishing restrictions within the boundaries of the Rose Atoll Marine National Monument. Commercial fishing restrictions in this area were imposed in 2009 by Presidential Proclamation 8337.

In light of concerns raised for both subsistence and small-scale commercial fishers, the proposed action has been modified with regards to numerous fishing restrictions. This includes removing the prohibition on the take of live shells, allowing for trolling and surface fishing in the Aunu’u research zone, removing the sustenance-only fishing requirement for Swains, and removing unit-specific gear restrictions (hook-and-line only) at Fagalua/Fogama’a. No proposed regulation prohibits fishers from selling legally caught catch.

The original purpose to protect live shells was due to concern for the shell trade, but as there is no trade at this time, the regulation and the issue will be monitored by sanctuary staff as part of education and outreach efforts. The rationale for allowing trolling and surface fishing at the Aunu’u research zone was presented in the comment heading rationale for *Fishing Restrictions at Research Zone*.

NOAA removed the restriction on taking fish out of the Swains Island unit after being informed that it is a cultural tradition to share fish caught in these waters with family and friends on

Tutuila and the Manu’a islands. The low level of fishing, relatively high biomass of large reef species at Swain’s, and large pelagic zone provided a basis to drop the restriction. The isolation of the area from larval recruits remains an issue of concern that NOAA will address through research and monitoring.

After community consultations with the Vaitogi, Futiga and Ili’ili villages during the public comment period, it was determined that the communities were against the restriction for only hook-and-line fishing in Fagalua/Fogama’a, and pressed for the allowance of non-destructive traditional fishing methods, including fishing for octopus, spear fishing without scuba, and gleaning (*i.e.*, harvesting by hand from the reef at low tide). As the intention of the draft proposed action was never to limit non-destructive, culturally-important fishing, NOAA agreed to modify this regulation.

While NOAA has reduced the number of fishing-specific regulations in the proposed action, NOAA remains confident that the various action plans and enforcement of the remaining regulations will allow for achievement of the sanctuary’s revised goals and objectives.

#### Impact of Expansion on Population (R7) Fishing Restrictions vs. Benefits (R7–A)

*Comment:* Sanctuary designation could lead to stricter fishing regulations in the future, eventually turning units into no-take zones. The anchoring prohibition is a supported measure, but traditional, non-destructive fishing methods should not be restricted (although other commenters stated that the hook-and-line only restriction is necessary to protect benthic habitats) and the sharing of fish caught at Swains Island with families who live elsewhere in the territory should remain allowed, as people depend on subsistence fishing to feed their families during difficult economic times. The economic impact analysis of the expansion may be misleading if fishing vessels were not taken into consideration when developing the boundaries. People are also concerned about losing access to land.

*Response:* NOAA considers the socioeconomic impact of its regulations an important issue and has attempted throughout the alternative development process to minimize impacts to subsistence and artisanal (*i.e.*, small-scale commercial) fishers. This includes rejecting sites that could have a greater adverse impact than the units ultimately chosen (see Ch 2 of the FEIS for sites not

selected), as well as designating sanctuary boundaries and regulations that allow for subsistence use while still protecting ecologically important areas. Changes to the draft proposed action that allow fishing at Fagalua/Fogama’a, Swains, and Aunu’u are discussed in response to comment heading *Lost Commercial Fishing Opportunities* in the Response to Comment Appendix A of the FEIS. These changes underscore that NOAA does not intend to restrict traditional access rights, does not plan to unilaterally create no-take zones, and has no regulations related to land use. Overall, subsistence fishers will not be restricted from harvesting the resources of the reef, particularly at locations where it most frequently occurs. The only species currently being harvested that will be protected under this rule is the giant clam, the harvest of which is more important culturally than economically. The restriction would protect locations across the territory for a species frequently overfished on reefs around the world, and is not common on American Samoan reefs. In addition this prohibition would protect other reef resources, since the harvest of giant clams requires breaking apart the reef (see Section 5.5.4.1 of the EIS for a thorough analysis). Subsistence fishing will remain permissible at all sanctuary units with the exception of Fagatele Bay, which would be completely no-take. These restrictions are expected to result in only minor economic impacts. The artisanal fishery economic value, estimated at \$11,572 in the EIS, is based on a conservative estimate (*i.e.*, likely higher than anticipated) for the entire action, across all proposed units.

#### Flexibility and Rationale of Fishing Regulations (R7–B)

*Comment:* While resources should be protected, fishing should still be allowed, with flexibility in designing regulations, including sunset clauses as the resources improve, especially to help adapt to the effect of climate change. The prohibition on the take of large reef fish should be included in the preferred alternative. Take of corals should be allowed by scientific permit. Prohibiting nets and harvest of giant clams and live shells is in opposition to NPS regulations. Crown-of-Thorns Sea Stars should not be protected. The prohibition on live shells is not well described. A reason for the exception of the goldmouth tuban is not provided.

*Response:* As described in above responses, traditional and sustainable fishing practices that do not impact the benthic habitat are predominantly allowed throughout the proposed sanctuary units. Increased monitoring

and data collection will provide necessary information to assess the condition of fishery resources. None of the proposed regulations have sunset clauses, as these prohibitions (e.g., gear that impacts the coral habitat) are designed to protect the ecosystem as a whole and not focus on increasing the abundance of specific resources. Nevertheless, regulations can always be amended if they are not effective or are no longer needed. The Sanctuary Advisory Council is designed to consider issues such as these on a regular basis, particularly during the five-year management review process. The proposed action does not include a prohibition on the take of large reef species, a proposal first developed by DMWR. Instead, the sanctuary will support the efforts of DMWR either through their process or in consultation through the sanctuary process. Regarding the scientific take of coral, the sanctuary has a scientific permit category, which could allow the permitted take of coral. The prohibitions on the use of nets and the harvest of giant clams do not conflict with National Park Service regulations, as the sanctuary does not overlap the National Park of American Samoa. The prohibitions on the take of crown-of-thorns sea stars and live shells (goldmouth tuban is a live shell) have been removed from the proposed action, based on a noted lack of threat. NOAA will address these issues through appropriate education and outreach.

#### Management (R8)

##### Sanctuary Management, Regulations and Access (R8-A)

*Comment:* A number of comments offered ideas for management of the sanctuary or questioned how the proposed management plan would achieve the sanctuary's goals. Suggestions included providing stipends or subsidies to stop destructive fishing practices, expanding research to include studies on water quality, fishing practices and fish stocks, clarifying public access and subsistence use within sanctuary units and adjacent lands, and developing clear plans that justify the regulations within the research zone, the purchase of an 85–100 foot research vessel, and the protection of cultural resources. Some comments acknowledged that the sanctuary has a socio-economic value and the proposed strategies and activities will help conserve resources for the future, providing future benefits and affording current uses.

*Response:* The management plan contains eight action plans (Chapter 4)

that encompass a broad range of topics designed to directly address current priority resource management issues and guide management of the sanctuary over the next five to ten years. Members of the public and NOAA identified the list of issues addressed in each action plan. A number of the suggestions offered during the public comment period are related to currently proposed strategies and activities. While NOAA cannot legally provide stipends or subsidies as incentive to stop fishing activities currently illegal under territorial or federal law, dynamiting and other destructive fishing practices are antithetical to traditional practices and these issues can be addressed under *Activity CH&CE-2.4: Develop and implement a program to formalize community involvement in sanctuary stewardship within 3 years.*

The management plan identifies numerous research areas important to pursue in order to fulfill the goals and objectives of the sanctuary. Monitoring land-based sources of pollution is included under Strategy RP&E-5, and is specifically related to water quality. The issue is described as a specific resource threat noting the need for collaboration with territorial and federal partners on water quality monitoring at all sanctuary units. Analysis of impacts to land-based discharges is discussed in Section 5.5.2. As the sanctuary regulations follow AS-EPA regulations, if violations occur in sanctuary waters, collaboration between NOAA and AS-EPA would be a first step. In regards to management initiatives, NOAA looks forward to working with the AS-EPA, NPS and other partners to address land-based sources of pollution and their impact on water quality. Activities within the Marine Conservation Science Action Plan include developing a Sanctuary Science Plan (MCS-1.2) and conducting socioeconomic studies on local resource use, management and traditional knowledge (MCS-2.5) capture other suggestions provided by the public. To address questions about the management and protection of cultural resources, a new activity *CH&CE 4-6 Develop a maritime heritage and cultural resource protection plan within 5 years* has been added to the final management plan. In addition, maritime heritage is not just about shipwrecks, but also culture, which is thoroughly addressed throughout the Cultural Heritage and Community Engagement Action Plan. The known locations of maritime heritage resources have been detailed in this document, based on available published reports.

As to the purchase of a research vessel, as part of the development of a

science and management program, NOAA developed a thorough Small Boat Requirements Study (FY2006–FY2015) and a draft Mission Requirements for a New Vessel. Analyses provided within these plans, based on expected requirements, demonstrate the need for a vessel in the 85–100 foot range, based upon distance to potential sanctuary units, possible sea states, time-on-station, and operational capabilities. The potential cost of the vessel is based upon new construction of a vessel specifically designed to meet mission requirements and the needs of our partners (as opposed to trying to find a vessel on GSA and retrofitting it to try and make it viable to serve these needs).

Land access to sanctuary units is a sensitive issue in American Samoa because of the land tenure system. The MP/EIS does not provide an analysis of land use, including sanctuary access, as the NMSA does not include jurisdiction or management over the land. Due to the nature of the resources protected, the sanctuary mandate also does not require immediate analysis of land access to sanctuaries, as access to sanctuary units can be by sea. However, NOAA will further consider access issues once it has made a decision on which, if any, additional areas are to be incorporated within the sanctuary. The CH&CE Action Plan is set up to provide for culturally appropriate discussion on this topic at the appropriate time.

##### Community Outreach and Education (R8-B)

*Comment:* Many comments were enthusiastic about past and proposed sanctuary education workshops and other outreach activities. Many noted the value of the sanctuary as a teaching mechanism to support positive change in Samoan communities. Comments also suggested outreach and education initiatives for the sanctuary, including combining NPAS and NOAA visitor centers and other services, providing scholarships that will empower the local people to improve stewardship of their waters, focusing on an open dialog and ongoing workshops with the community to increase knowledge of marine resources in the territory, and community involvement and outreach mechanisms that will promote benefits of the sanctuary to the villages. Comments noted that sanctuary information should be provided in Samoan as well.

*Response:* NOAA is pleased with the comments supporting the sanctuary's educational activities. As described in the management plan, particularly the Ocean Literacy Action Plan, NOAA will continue to offer formal and informal

educational opportunities for teachers, students, and the community. Plans include activities ranging from conducting outreach to American Samoan communities, to developing formal education materials for local grades K–12, and providing student leadership and internship opportunities. In addition, the Cultural Heritage and Community Engagement Action Plan includes other activities relevant to educating and empowering local communities: Training local volunteers as naturalists (Activity CH&CE–2.2), formalizing community involvement in sanctuary stewardship (Activity CH&CE–2.4), and providing hands-on training in maritime archeology (see Activity CH&CE–4.5). NOAA also looks forward to continued partnership with the American Samoa Coastal Management Program in implementing the management plan, including on public education issues such as ocean literacy. As noted in Activity Partnerships and Interagency Coordination-1.4, NOAA plans to work with the American Samoa Coastal Management Program staff to annually assess additional opportunities to collaborate towards mutual goals.

The current visitor's center plans are quite far along, and the National Park of American Samoa is already moving forward with its visitor's center. Due to the imminent completion of NOAA's visitor's center and the scheduling of the Park's visitors center, it is not possible to combine the existing and currently planned centers. However, NOAA is open to investigating future opportunities to improve the efficiency of the center's operations.

NOAA is not planning to provide funding to villages as part of the proposed project. In terms of scholarships, Section 1.2.3 describes available local and national opportunities both established and supported by NOAA and ASDOC. NOAA has added to Strategy OL–4 an activity describing plans to continue these opportunities. NOAA also provides national scholarships to qualified students (see "Student Opportunities" of <http://www.education.noaa.gov/>).

Informative brochures describing sanctuary resources have been translated into Samoan. The need for further dissemination of literature in Samoan and distribution of these materials to reach communities without internet access is recognized. To improve communication, the Ocean Literacy Action Plan's Activity OL–2.1 includes plans to conduct sanctuary outreach through television, radio and print media, as well as to develop a

regular press release provided in English and Samoan to raise sanctuary awareness among media, decision makers and the public. NOAA acknowledges the importance of providing information in the Samoan language and sanctuary staff have and will continue to provide education and outreach information in Samoan and English when feasible.

#### Volunteers (R8–C)

*Comment:* NOAA's plan emphasizes volunteering. While internships and volunteers are good for short-term accomplishments, long-term goals will not be achieved by this approach. NOAA should pay volunteers, especially given the poor local economic situation and the \$8 million requested to execute the management plan. NOAA's plan to develop a structured volunteer program is not an adequate means for engaging the local community. NOAA should assess whether the volunteer program is culturally appropriate as it is patterned after the Channel Islands National Marine Sanctuary where social conditions are entirely different.

*Response:* NOAA does not plan to achieve long-term sanctuary goals by relying on interns and volunteers. Rather, the Operations Action Plan indicates the need to increase staff support either through permanent positions or contract services, depending on a variety of factors described therein (see Strategy O&A–2). NOAA will make every effort to hire qualified personnel from within and around sanctuary units. Regarding interns and volunteers, Activity O&A–2.1 acknowledges that they can serve as alternative capacity building measures, and as such will also be considered in annual capacity building assessments. NOAA places great value on its volunteers and will investigate the possibility of developing paid volunteer positions. NOAA's plan does not indicate that the volunteer program would be patterned after that at the Channel Islands National Marine Sanctuary. Rather, it notes the Channel Islands case as an example of how volunteers can provide significant additional human resource capacity. However, in developing the sanctuary volunteer program NOAA may adapt aspects of successful volunteer programs across the national marine sanctuary system as relevant and culturally appropriate. Together the Cultural Heritage and Community Engagement Action Plan and Activity MCS–3.4 provide the public with opportunities to get involved in sanctuary management, education &

outreach, resource protection and research.

#### Sanctuary Advisory Council/Traditional Management (R8–D)

*Comment:* NOAA's sanctuary advisory council membership does not accommodate the fa'amatai chief system, which, combined with Community Marine Tenure, is the traditional structure that should be harnessed in management. ONMS should grasp this unique opportunity to be truly a culturally-based national marine sanctuary program.

*Response:* NOAA agrees that the sanctuary presents a unique opportunity to incorporate local American Samoan culture into the national marine sanctuary system. While the sanctuary advisory council is not designed to incorporate the fa'amatai chief system, NOAA is confident that the council can accommodate this system, and has throughout the management plan update process. The importance of fa'a-Samoa and Community Marine Tenure is a cornerstone of the management plan and is incorporated throughout the MP/EIS. The first activity listed in the management plan, *Activity CH&CE–1.1: Support development of an advisory council working group on Samoan cultural heritage within 2 years*, is intended to address this specific public desire. A standing working group focused on incorporating traditional management provides both a venue to incorporate traditional community management efforts of Manu'a (e.g., Taisamasama, Muliāva, and Ku ulaula ole Fe'e) and of the villages of Vaitogi, Futiga, and Ili'ili (e.g., Fogama'a and Fagalua), as well as that of the chief system and Community Marine Tenure. This working group is an ideal forum to consider traditional management within a modern society. In addition, the Sanctuary Advisory Council is always a venue for chiefs to raise or address issues for sanctuary consideration. Chiefs may request an opportunity to be included on a council meeting agenda or present their case during public comments. The Sanctuary Advisory Council will continue to embrace traditional management.

#### Permitting (R8–E)

*Comment:* NMSA permit requirements should be in place for all federal agencies at all sanctuary units. Current language appears to provide USDOC and USDOJ with an open exception to restriction for scientific activities at Rose Atoll. The administrative burden on permitting is not analyzed.



*Response:* Presidential Proclamation 8337 states that “\* \* \* nothing in this proclamation shall be construed to require a permit or other authorization from the other Secretary for their respective scientific activities.” This action conforms to the language of the Proclamation.

*Comment:* NOAA should create maps of overlapping authority to help permittees and agencies determine what permits and authorities must be followed in a given circumstance.

*Response:* NOAA is not responsible for determining when or where a given activity outside of a sanctuary requires permits from another agency, but NOAA will collaborate with other permitting agencies in the Territory to minimize any possible confusion.

*Comment:* NOAA should focus on streamlining its process to fit the existing permitting structure of DMWR and NPS.

*Response:* Sanctuary permits are required in all sanctuaries for conducting activities otherwise prohibited by sanctuary regulations. NOAA has an existing permitting structure that is better tailored to tracking sanctuary permits than systems used by other agencies. More information can be found within *Strategy O&A-5: Track and, where necessary, permit activities occurring within the sanctuary.*

#### Federal Budget Limitations on Executing Management Plan (R8–F)

*Comment:* Given current federal budget issues, there will likely not be enough money to manage an expanded sanctuary or fund all of the activities listed. The document does not address how the sanctuary will continue to provide monitoring, enforcement, education, outreach, research and other activities in the event of budget shortfalls. The sanctuary should drop activities that are unattainable within a realistic budget.

*Response:* As explained in the introduction to the action plans (see *Estimated Cost of Management Plan Implementation*), estimated action plan costs help drive the ONMS annual funding allocation process, and in turn the budgetary reality drives what is attainable within each action plan. NOAA recognizes that resource limitations and necessary program and partner developments may limit implementation of all of the activities in the management plan. NOAA will continue to work with the Office of Management and Budget and Congress in developing supporting justifications when preparing budget submissions. The management plan articulates the

full suite of potential sanctuary actions for the next 5 to 10 years. However, the sanctuary’s budget may not allow for implementation of every planned activity. Activity O&A-1.4 (*Identify external funding opportunities*) explains that given that the federal budget is not always sufficient to fully implement all planned sanctuary activities, sanctuary staff will pursue alternative means of funding as necessary and appropriate.

#### Enforcement (R9)

*Comment:* Considering the enforcement at Fagatele Bay is inadequate, how does the sanctuary propose to monitor and protect a much larger area? For instance, the remote location of Swains Island makes it difficult and expensive to enforce. Do the benefits gained by protecting Swains Island outweigh the cost of enforcement? Will the sanctuary be effective if enforcement cannot be achieved? Details of DMWR’s role in enforcement of sanctuary waters should be described in the document. In addition, the proposed fine amount (\$140,000) is too steep for the people of American Samoa. The DMP should provide a breakdown of fines for different types of violations. Since there is not a federal court in American Samoa, there could be undue burden on the accused if they are required to travel to the mainland to appear in court.

*Response:* NOAA is aware of the challenges related to enforcing regulations in remote locations, but does not agree that enforcement at Fagatele Bay has been inadequate. Enforcement officers, like any police force, cannot be everywhere all of the time. The utilization of limited resources is a management decision determined by available information, technology, and circumstances that change over time. The management plan includes *Strategy RP&E-7 Protect Sanctuary Resources by Achieving Compliance with Applicable Laws*, which outlines plans to provide sanctuary enforcement, including in remote sanctuary units. NOAA’s enforcement plans include developing enforcement agreements with partners, creating an enforcement task force, and investigating remote enforcement technology.

The American Samoa Environmental Protection Agency highlighted a critical concern for resource protection. While regulations in the territory are quite comprehensive, there is a lack of political and public will to enforce most environmental regulations. While sanctuary education and outreach materials are designed to help users understand regulations, the power of sanctuary regulations is held in the

ability to prosecute offenders with a suite of fines and other penalties that offers a strong deterrent to potential violators. The penalty of \$140,000 is a maximum monetary penalty for any violation as specified in the NMSA. The actual penalties levied for NMSA violations vary based upon the severity of the incident and other case-specific factors. NOAA’s Office of the General Counsel Enforcement Section has established a penalty policy that provides guidance for the assessment of civil administrative penalties and permit sanctions under the statutes and regulations enforced by NOAA. The penalty policy is publicly available and can be accessed through this link: [http://www.gc.noaa.gov/documents/031611\\_penalty\\_policy.pdf](http://www.gc.noaa.gov/documents/031611_penalty_policy.pdf). A full description of the enforcement protocol has been added to the final document to provide a clear understanding for the public.

NOAA believes in the value of providing protection and associated enforcement efforts in remote areas, such as those at Swains Island and Muliāva, as has been demonstrated at Papahānaumokuākea and the other remote and large Pacific Marine National Monuments. *Activity RP&E-7.3: Investigate the feasibility of using remote enforcement technologies and make determinations within 3 years* demonstrates the sanctuary’s understanding for a variety of approaches to this issue. The new vessel, described under Activity O&A-4.1 indicates that NOAA plans to provide a vessel platform that could possibly be used for enforcement as well as research, monitoring, outreach and education, and emergency response. In addition, *Activity P&IC-3.1 Enhance communication and cooperation with federal agencies* notes plans to work with the U.S. Coast Guard for surveillance of remote proposed sanctuary units at Rose Atoll, Vailulu’u, Swains, and Ta’u. NOAA will collaborate on enforcement with other agencies that have concurrent jurisdiction via enforcement agreements and via the planned enforcement task force. NOAA’s proposal also includes working with communities to foster sanctuary stewardship via interpretive enforcement, which would encourage vigilance and reporting (see Activity CH&CE-2.4).

NOAA’s plan addresses funding and staffing for all proposed activities. The estimated annual costs of implementing NOAA’s plan are provided in Table 4-1. This table does not reflect funding for implementing the Joint Enforcement Agreement between NOAA Office of Law Enforcement and DMWR as this is



derived from the NOAA OLE budget and not part of the sanctuary budget. NOAA does not currently plan to include enforcement staff among sanctuary personnel, but NOAA has addressed general plans for evaluating and meeting all sanctuary staffing needs in the Operations and Administration Action Plan (Section 4.4).

#### *Process (R10)*

##### Community Involvement (R10-A)

*Comment:* The overall consultation process failed to fully engage and gain the trust of the village councils, affected communities and families. This includes the absence of a proper agreement between the Aunu'u village council and NOAA, specifically regarding the proposed zones around Aunu'u. Similar concerns were expressed by chiefs of Manu'a with regards to the Ta'u Island unit and the chief representing the family that owns the land adjacent to Fagalua/Fogama'a Bay. Public meetings were not held in the appropriate villages or at inconvenient times, limiting the participation of those most affected. In addition, many of the villagers believed the process to speak only with the high chief or village mayor was inappropriate, as one high chief does not necessarily represent the whole village and each family has their own chief. Fishermen as a group were not consulted with regards to fishing restrictions. The process of designating MPAs is necessarily slow in order to obtain local community buy-in.

*Response:* NOAA believes that the initial negative public comments were predominantly related to information awareness, as many of the public comments related to concerns not related to the management plan review, including multiple letters that expressed worry about NOAA taking control of ancestral lands. The consultation process for the development of the DMP/DEIS was led by the Office of Samoan Affairs (OSA) and adhered to culturally appropriate protocols regarding community involvement and the village meeting processes. In a January 2011 letter, then Secretary of Samoan Affairs Tufele F. Li'amatua commended NOAA "on the process that Fagatele Bay National Marine Sanctuary has used to solicit village input for the review of its management plan and possible expansion of the sanctuary in American Samoa".

While NOAA conducted at least 26 community meetings between February 2009 and April 2011 related to the Management Plan Review ONMS, many of the public remain uninformed.

Representative Eni Faleomavaega, aware of these concerns, held a town hall meeting on January 11, 2012 in Utulei that drew more than 100 people. Representative Faleomavaega outlined public concerns raised at this meeting in a letter to Dr. Jane Lubchenco on March 6, 2012, summarized in the comment above. NOAA made a great effort to address misunderstandings and public concerns with the villages during the extended public comment period (January 6-March 9, 2012), holding an additional six meetings, in which the Office of Samoan Affairs played a significant role in arranging and assisting in those meetings. As of the end of the public comment period, villages of Aunu'u, Vaitogi, Ili'ili, Futiga, and the Manu'a Islands had provided public comment in support of inclusion of the proposed site associated with their village. Extensive details of these community interactions are provided in Section 2.1.2.5 of the Management Plan. Concerns of the communities were considered very seriously by NOAA as is evident from numerous changes in the proposed action, outlined in the executive summary and Section 2.3 of the final Management Plan.

##### Fa'a-Samoa (R10-B)

*Comment:* The sanctuary's Guiding Principle #1, consistency with fa'a-Samoa, was not followed, as the village councils of Ta'u, Vaitogi, Aunu'u and the representative from Swains do not support the creation of these units. The draft management plan and EIS have many shortcomings, including incorporation of the traditional governance structure and subsistence fishing rights. Samoans have a communal sense of ownership over resources and have managed them traditionally for thousands of years. This federal program is not respecting the culture.

*Response:* Rather than calling for specific activities pertaining to the traditional governance structure, NOAA states on the first page of the proposal that fa'a-Samoa is the cultural context for all sanctuary activities and functions. As such, NOAA's intent is that the entire proposal be implemented in a culturally appropriate manner that is respectful of fa'a-Samoa and by extension, fa'amatai—the traditional chiefly system. ASDOC and the Office of Samoan Affairs are critical territorial partners in helping NOAA navigate the traditional governance structure as NOAA plans and implements sanctuary activities. The Cultural Heritage and Community Engagement Action Plan is the primary driver of incorporating

traditional governance structure into sanctuary management, although most of the action plans include specific strategies and activities that promote and incorporate fa'a-Samoa.

Specific examples of traditional governance, including Customary Marine Tenure, are incorporated in both the final rule and the management plan. The management plan includes Activity CH&CE-2.4 involving communities in sanctuary stewardship via interpretive enforcement, as a means to achieve compliance with regulations through stakeholder trust and buy-in. A regulation for the multiple use zone at the Aunu'u Island unit requires notification to a village representative/sanctuary designee by anyone accessing and harvesting marine resources, as is customary under Customary Marine Tenure in Samoa.

NOAA has also received official letters from the former and current Secretaries of Samoan Affairs, commending the overall review process with regards to gathering public input and following Samoan protocols. In the more recent letter, Lefti Pese stated " \* \* \* you have clearly followed our traditional protocols and successfully incorporated Fa'asamoa into your process." As the arbiter of culturally correct processes in American Samoa, OSA, under the leadership of two different Secretaries, clearly supports NOAA's efforts to incorporate fa'a-Samoa.

Regarding NOAA implementing *fa'a-Samoa* and the stakeholder consultation process, as well as incorporating traditional governance and protecting subsistence fishing rights, please see responses under the header "Use Existing Management," "Management," "General Fishing Regulations," "Process—Community Involvement," "Process—Public Comment Period" and "Process—Scoping."

##### Public Comment Period (R10-C)

*Comment:* The public comment period was inadequate and rushed by the federal government. There were only two meetings on Tutuila, with no meeting in Utulei or general meeting for fishermen. Meetings occurred during the palolo harvest, with a comment period that occurs during the busy Thanksgiving-Christmas-New Year time period. There was poor advertising prior to the meetings, which were held during work hours, thus many stakeholders could not attend. Those who attended the meetings were poorly informed, only recently hearing about the proposal, with no time to read and understand the details. The final MP/EIS should include detailed information

about the public consultation process, including: Dates, meeting notes, attendees count.

*Response:* NOAA published a Notice of Availability of the draft Management Plan/EIS on October 21, 2011 that began the 77-day public comment period that ended on January 6, 2012. At that time, sanctuary staff made the document available for download on its official Web site, as well as on CD and in hard copies from the office or sent by mail if requested. Copies of the document were also placed in libraries in American Samoa. Announcements of the proposed rule and draft management plan were made in the **Federal Register**, as well as numerous announcements in the Samoa News and on local radio programs. NOAA extended the public comment period an additional 63 days to March 9, 2012, with a total comment period of 140 days. During this time, NOAA conducted six additional village meetings to answer questions about the action and obtain direct public feedback (see Process—Community Involvement). As requested, the final Management Plan includes detailed information about the public consultation process, including dates, issues discussed and participants. Notes from these meetings are available on the sanctuary's Web site.

#### Scoping (R10–D)

*Comment:* The 2009 scoping meetings were inadequate. Due to poor advertising, most of the public was unaware of the sanctuary's plan to expand and very few people attended the meetings. Most of the public scoping comments were ignored.

*Response:* NOAA made a substantial effort to maximize public involvement in the scoping process, and utilized public input to shape the management plan revision. This process was conducted with full transparency. On January 30, 2009 NOAA published a Notice of Intent (NOI) in the **Federal Register** outlining the process to initiate "a review of the Fagatele Bay National Marine Sanctuary (FBNMS) management plan, to evaluate substantive progress toward implementing the goals for the Sanctuary, to initiate discussions on possible site expansion, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA." The NOI included the dates and times for three public scoping meetings in February, as well as a deadline of March 26, 2009, to submit "comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to the Sanctuary's

management plan and regulations, and possible site expansion." In addition, the FBNMS and co-manager American Samoa-Department of Commerce prepared a list and brief description of preliminary priority topics to assist the public in focusing their comments. These were (a) Improved Partnerships, (b) Characterization and Monitoring, (c) Spill Prevention, Contingency Planning and Response, (d) Climate Change, (e) Ocean Literacy, (f) Marine Debris, and (g) Site Expansion. The public scoping period ran for 56 days, with comments accepted at the scheduled meetings, or mailed, faxed or emailed to the sanctuary office. NOAA advertised public scoping hearings through print, radio, and electronic media. A summary of the issues raised during public scoping was uploaded to the Fagatele Bay NMS Web site on April 30, 2009. Because the three public meetings on February 10th, 11th, and 12th occurred on Tutuila (west side, east side, and center of island), sanctuary staff also held public meetings at the high school on Ta'u (14 November 2009) and at the mayor's guest fale on Ofu (16 November 2009), where the management plan review was discussed in addition to the issue of the Rose Atoll Marine National Monument.

#### Regulation Development (R10–E)

*Comment:* Proposed regulations should be fully described to the public and then subject to consultation and approval from stakeholders. This is important because changing regulations that are against the wish of the community will be difficult. The sanctuary should work with the communities or this will become a "paper park."

*Response:* These concerns were discussed in village meetings during the extended public comment period. NOAA worked directly with the communities to revise site-specific regulations to achieve both the goal of resource protection and community support. Descriptions of these regulatory changes are discussed in the final EIS as well as in Response to Comments under the heading Rationale for *Fishing Restrictions in the Research Zone and General Fishing Regulations*.

#### Agency Cooperation (R10–F)

*Comment:* The expansion plans have not been fully developed in collaboration with local resource agencies, causing unnecessary conflict and confusion. The existing programs (DMWR and NPAS) have been ignored, which has damaged local partnerships. The proposed unit at Aunu'u went against the agreement with DMWR to

not include sites under consideration for the territorial MPA process. Consultations with DOI (NPS and USFWS) should be conducted for any proposed expansion at Ta'u and Rose Atoll or changes to permit, discharge, or fishing regulations within the Marine National Monument. This lack of cooperation has negatively affected the MPA programs at DMWR and NPAS. EO 12866 requires NOAA to harmonize actions with local government and state agencies and seek out involvement of interested parties prior to issuing a notice of proposal. NOAA did not do this.

*Response:* NOAA disagrees with the assertion that it has not provided proper communication with other groups regarding its plans to establish new marine protected areas. During the process of releasing the draft management plan, DEIS and proposed rule for public comment, NOAA clearly articulated its proposal to these groups and the public-at-large. Further, whereas NOAA was legally required to provide a minimum of 45 days for public review of and comment upon its proposal, NOAA provided a public review and comment period of 140 days to ensure ample time for the public and other interested entities to provide feedback on the proposal. In addition, the sanctuary advisory council includes four government voting members from the ASDOC, DMWR, ASCC, and AS-EPA. NPAS holds a non-voting seat on the SAC. The SAC met regularly since the start of the management plan review process, and has established three working groups to focus on three key aspects of the review: (1) Site selection; (2) education/outreach; and (3) research and monitoring. The site selection working group was integral in developing the final list of proposed new units, while the education and research and monitoring groups provided much input into their respective action plans. DMWR and NPAS staff actively participated in the working groups.

NOAA also participated in three interagency meetings (11 August 2009, 13 August 2009, 5 April 2010) with the director of the DMWR, discussing among other issues, site expansion at Aunu'u, Larsen, Ta'u, Swains and Rose. Emphasis was placed on interagency collaboration, particularly at Aunu'u. In addition to these meetings, sanctuary staff offered the director and staff of DMWR the opportunity to participate in village meetings (described under Process—Community Involvement). NOAA also conducted interagency meetings with the USFWS regarding Rose Atoll and the NPAS regarding the

proposed sanctuary unit at Ta'u. A thorough timeline of territorial and other federal agency involvement has been developed and incorporated into Chapter 2 of the final Management Plan.

While the Partnerships and Interagency Cooperation Action Plan describes strategies to facilitate cooperation and coordination of management activities, it is premature to provide detailed analysis or prescriptions of how NOAA will implement future collaborations with other federal agencies. Agreements formalizing future collaborations must be agreed upon mutually by NOAA and partner agencies. It would not be appropriate at this time for NOAA to provide any details regarding exactly how future collaborations will be implemented. Nevertheless, NOAA has a well-established history of collaboration with federal, state and territorial agencies, including DOI agencies, across its national marine sanctuaries. In addition, sanctuary and park staff have a well-established history of collaborative efforts in terms of research and education.

#### Legal (R11)

##### Territory Right of Self-Governance (R11–A)

*Comment:* NOAA does not have the authority to propose regulations within territorial waters, as the action violates 48 U.S.C. 1661(b)<sup>1</sup> and the territory's right at self-governance (ASCA Title 24 Ch. 03) pertaining to the authority of DMWR to "manage, protect, preserve and perpetuate" marine resources in the territory. This issue also relates to any regulatory proposal for Swains Island per 48 U.S.C. 1662.<sup>2</sup> This violation applies for Proclamation 8337 as well. In addition, the legislature of AS expressly reserved the rights and entitlements of the chiefs in the Deeds of Cession {ASCA 24.0304(d)<sup>3</sup>}. This

<sup>1</sup> 48 U.S.C. 1661 Islands of Eastern Samoa (b) Public land laws; revenue—The existing laws of the United States relative to public lands shall not apply to such lands in the said islands of eastern Samoa; but the Congress of the United States shall enact special laws for their management and disposition: Provided, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the said islands of eastern Samoa for educational and other public purposes.

<sup>2</sup> 48 U.S.C. 1662—The sovereignty of the United States over American Samoa is extended over Swains Island, which is made a part of American Samoa and placed under the jurisdiction of the administrative and judicial authorities of the government established therein by the United States.

<sup>3</sup> ASCA 24 Ch.3 24.0304(d) Reservation of Rights. The Territory of American Samoa does not by the

was violated as the legislature was not consulted. Lack of consultation is also in violation of EO 13132. The forefathers of American Samoa agreed for American Samoans to have full ownership of their land, shores, and natural resources in the Deed of Cession.

*Response:* NOAA has great respect for American Samoa's right to self-governance and for the right of American Samoans to use their family lands in traditional ways without interference from the federal government. For that reason, NOAA has expended a significant amount of effort and resources in consulting with officials of the American Samoa government, the Office of Samoan Affairs, Matai and local representatives, and the public. NOAA's goal throughout the management plan review process has been to create a management structure for the sanctuary that complements and enhances the work of the Territory and local communities in protecting natural resources while also being sensitive to and respectful of American Samoa's unique and rich culture.

The National Marine Sanctuaries Act, first passed by Congress in 1972 and reauthorized by Congress six times (most recently in 2000), provides NOAA with the authority to designate marine areas as national marine sanctuaries and to issue regulations regarding the management of national marine sanctuaries. NOAA's authority is consistent with the limitations set forth in the Ratification Act of 1929, 48 U.S.C. 1661, because that statute applies only to the then-"existing laws of the United States relative to public lands." The National Marine Sanctuaries Act is a conservation law, not a public lands law. This is demonstrated by the fact that the Act relates to marine areas, not lands, and also by its codification in Title 16 (Conservation) of the U.S. Code rather than Title 43 (Public Lands).

Additionally, the National Marine Sanctuaries Act was not law at the time of the passage of the Ratification Act, and therefore is outside the scope of that statute. As a result, NOAA's proposal is also consistent with the reservation of rights set forth in ASCA 24.0304(d). Importantly, nothing in the proposal affects American Samoa's right to self-

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.

governance, DMWR's authority to manage marine resources in the Territory, or the ownership rights of American Samoans with respect to their lands.

With regard to EO 13132, NOAA consulted and coordinated extensively with the American Samoa government, including the Governor's office, ASDOC, DMWR, AS-EPA, and the Office of Samoan Affairs (see Section 2.1.2.4). NOAA also met with Matai and local representatives and held several public meetings. Furthermore, the proposed regulations will not preempt American Samoa law, but will simply complement existing Territory authorities.

Consequently, NOAA has satisfied any obligations it may have under EO 13132. A consistency determination was provided by the American Samoa Coastal Management Program, which maintains responsibility for issuing Land Use Permits, and through the Project Notification and Review System (PNRS) Board, includes consistency with the Department of Marine and Wildlife Resources. In addition, since the onset of this management plan review, ONMS has worked with the Governor of American Samoa and, through the Office of Samoa Affairs, the villages adjacent to the current and proposed new sanctuary units.

##### EO 12866 and Monument Designation (R11–B)

*Comment:* NOAA avoids the review process of EO 12866 by minimizing the economic impact on local fisherman through the claim that since Proclamation 8337 already banned commercial fishing at Rose Atoll, the sanctuary overlay would therefore not have an impact. WPFMC provided catch data showing 1,893,003 lbs (2001–2008) were harvested from this area and NOAA does not account for this loss. The people of Manu'a, with the majority support of indigenous fisherman, are working to ask President Obama to reevaluate the designation of Rose as a MNM and to have WPFMC implement a management plan. NOAA also fails to meet the burden of the Regulatory Philosophy stating "compelling needs" to promulgate regulations. EO 12866 requires NOAA to harmonize actions with local government and state agencies, not preempt them as the proposed rules suggest. EO 12866 requires that the agency should seek out involvement of interested parties prior to issuing a notice of proposal. NOAA did not do this.

*Response:* As this action is separate from Proclamation 8337, which went into effect on January 6, 2009, the EIS does not analyze the socioeconomic

impacts of the closure of the waters around Rose Atoll to commercial fishing based in the Proclamation. The impacts, as determined by WPFMC, are included under cumulative impacts (Chapter 6). Any future action taken by WPFMC regarding Rose Atoll MNM is beyond the scope of this FEIS. Chapter 1, Purpose and Need, of the FEIS articulates the reasons why these regulations are being promulgated. At every stage of this process, including well before the publication of the proposed rule, NOAA has consulted with other agencies (state and Federal) and interested parties. A detailed description of this consultation process can be found in Chapter 2 of the FEIS, which speaks to the extensive outreach conducted by NOAA which includes sanctuary advisory council, scoping and other public meetings as well as review and comment by the public on various documents and the DEIS.

#### NPAS Regulatory Conflict (R11–C)

*Comment:* Prohibitions within park boundaries is contrary to 16 U.S.C. 410q–2(b).

*Response:* As the proposed action does not include an overlay of park boundaries, proposed regulations are not in conflict with NPAS regulations.

#### NEPA Consultation (R11–D)

*Comment:* The Management Plan Review and proposed expansion does not meet burden of communication with partners per NEPA. This caused confusion and burdened the NPS.

*Response:* NOAA disagrees with the assertion that it has not provided proper communication with other groups regarding its plans to establish new marine protected areas. See response to comment heading *Process—Agency Cooperation* for details on the level of inter-agency consultation that was conducted.

#### NMSA Cost Requirement (R11–E)

*Comment:* The proposal did not fully comply with NMSA [16 U.S.C. 1434(a)(2)] requirement to provide an annual cost of designation. The DMP/DEIS only provides 5 year cost, with no budget breakdown of costs to the Federal government. NOAA must prepare and publish a resource assessment about present and potential uses of the area per NMSA (16 U.S.C. 1433).

*Response:* An annual breakdown of costs by Action Plan is provided in Table 4.1 of the Management Plan. The \$8 million figure cited in the summary of the management plan is the estimate required to fully implement the

Management Plan, in its entirety, over the five years.

#### Socioeconomic Issues (R12)

##### Adequacy of Socioeconomic Analysis (R12–A)

*Comment:* A thorough socioeconomic analysis on a village-by-village basis is lacking in this document. This analysis needs to use relevant studies to determine the quantitative impacts to displaced commercial, recreational, and subsistence fisherman, including further transit costs; increased fishing pressure in other locations; and increased reliance on imported seafood; decreased catch; fishing ground congestion; and loss of traditional fishing. The draft Management Plan does not show that the MPA network was designed with the most reliable available socio-economic data to reduce impacts to users. NOAA should provide data and justification that the overall impact would be beneficial for “expansion of sanctuary units will have no impact on commercial, subsistence or recreational fisheries.”

*Response:* NOAA relied on all relevant and available information in the analysis. NOAA did not conduct its socioeconomic analysis on a village-by-village basis because such information was not available—nearshore artisanal and small-scale fishery data is consolidated over large areas (e.g., Tutuila’s south shore), and subsistence fishing catch and effort data are not available. Accordingly, NOAA’s analysis was conducted examining impacts to each proposed unit of the sanctuary.

Information relied upon is cited in FEIS (Chapter 3, Affected Environment). The analysis in the FEIS was limited by the availability of relevant data. Much of the data that were available (number of registered fishing vessels, number of recreational fishermen, etc.) were often obtained through interviews with agency employees and stakeholder groups. Nearshore fishing effort was obtained through recently published DMWR and NOAA Fisheries documents and relevant peer-reviewed literature.

No economic analysis was conducted for the American Samoa federally-permitted longline fishery or other potential commercial fisheries within the boundaries of the Monument. This action is separate from the Proclamation 8337, which prohibits commercial fishing within the Rose Atoll Marine National Monument. The current action proposes no fishing regulations within the Muliāva unit or in any federal waters. Fishing regulations that implement the requirements of the

Proclamation will be undertaken by separate action, which will allow the opportunity for public comment at a later date.

NOAA believes that adverse impacts related to fishing will be modest. NOAA went to great effort to minimize impacts to subsistence, artisanal, and recreational fishing that do not damage sanctuary resources. Allowances for non-destructive, traditional fishing methods have been made at all units except for Fagatele Bay, where the community endorsed a no-take zone. Trolling and surface fishing is now allowed at the Aunu’u Research zone so that local harvest and the burgeoning tourism-related recreational and charter fishing businesses are not impacted by this action, while still maintaining appropriate resource protection and monitoring measures. Prohibitions on the use of destructive gears, the take of corals and other bottom formations, and giant clams are warranted to protect the coral reef habitat for long-term sustainability, while posing minimal socioeconomic impacts. Because of these changes to the proposed action, many concerns previously raised in regard to fishery-related impacts are no longer relevant. The estimated total annual revenue loss from fishing regulations established in this rule is \$11,572. This figure is likely high, as it was predicated on restrictions set forth in the proposed rule. As discussed above, changes made from the proposed rule have eased restrictions, making actual losses lower.

Indeed, these modest impacts are more than offset by socioeconomic benefits to American Samoa, achieved through the implementation of the management plan and the hiring of additional staff discussed in the EIS. While these benefits will be realized in American Samoa, the EIS does not dismiss negative impacts from the regulations due to benefits of the implementation of the management plan, as impacts and benefits may not affect the same people. Nevertheless, the FEIS does determine that the total socioeconomic effect is beneficial to the whole of American Samoa.

#### No Public Support Due to Socioeconomic Impacts (R12–B)

*Comment:* The public is not interested in resource protection if people will lose their fishing rights, and create additional food security and health concerns (i.e., increased risk for diabetes through decreased access to locally-available protein).

*Response:* NOAA has received a number of public comments in support of this action, in addition to multiple

letters of support from the Governor of American Samoa, indicating that a portion of the public is in favor of this action. Changes to the proposed action alleviate impacts to subsistence, artisanal and recreational fishers, as described above. NOAA concludes that the socio-economic impacts of the final document are substantially less than those expressed in the October 2011 draft and will have little impact on food security for the people of American Samoa.

EO 12866 and Environmental Justice (R12–C)

*Comment:* EO 12866 and Environmental Justice determinations are not substantiated with facts and citations. Regulations must impose the “least burden on society.” As no-take and subsistence regulations are proposed, they would be providing a burden on families to find new fishing grounds. Women and children would not get the jobs described in document, but subsistence fishing impacts would affect them disproportionately. Regulations should be amended to allow indigenous fishing and protect these rights from commercial interests.

*Response:* NOAA maintains that this action does not disproportionately impact specific sectors of the population. Indeed, additional access to areas for subsistence fishing is afforded under the final rule. See Lost Commercial Fishing Opportunities, Impact of Expansion on Population—Fishing Restrictions vs. Benefits—and other responses to socioeconomic issues for an explanation of how the final proposed action imposes the “Least burden on society.”

Tourism (R12–D)

*Comment:* The tourism benefits claimed in the draft Management Plan/EIS are not justified. The establishment of Fagatele Bay NMS, Rose Atoll MNM, and Marianas Trench MNM has not resulted in increased boat-based tourism in those areas. There are no facilities for recreational scuba diving or other necessary infrastructure to support tourism, so the designation will likely not benefit tourism. There are no details on tourism plans contained in the document. Tourism thrives in the Florida Keys Sanctuary because of the sanctuary’s efforts to preserve the physical and economic health of the region.

*Response:* NOAA believes that the creation of an expanded sanctuary in American Samoa will benefit the tourism industry. Sanctuary efforts are intended to preserve the health of these significant marine resources, including

the giant corals of Ta’u, the unique reefs at Aunu’u, and the isolated and vibrant ecosystem at Swains Island. Under the sanctuary program, these spectacular resources will gain national and international attention. For example, one commenter noted that Jean Michel Cousteau planned visit to Swains Island drew much public interest, indicating Swains can be a tourism resource. Once designated as a sanctuary, NOAA will work with American Samoa’s tourism industry, helping the local government and businesses promote these natural assets.

*Misconceptions (R13)*

*Comment:* The management plan and proposed expansion is politically and financially driven, trying to secure new NOAA jobs for non-Samoans and reaching the 20% no-take goal for U.S. reefs where political backlash will not happen. The expansion will consolidate marine resource management power with the federal government and ASDOC, instead of with the villages and the DMWR. Long-established fishing grounds are being taken from the families that own them.

*Response:* The purpose of the NMSA is not to take over management authority from local or other federal agencies, but rather to complement existing management, provide added value to these efforts including resources and expertise, and work in collaboration with these agencies.

Consistent with this statutory mandate, NOAA seeks to complement existing efforts protecting these marine resources. This goal is underscored by the collaborative efforts that have been undertaken throughout the 25-year history of the Fagatele Bay sanctuary.

1. The DMWR has participated in sanctuary-sponsored research projects,
2. DMWR conducts monthly enforcement activities in Fagatele Bay through a Joint Enforcement Agreement between DMWR and NOAA OLE. The conditions of this agreement are expected to be reviewed in light of the expanded sanctuary,
3. The DMWR has collaborated with the Sanctuary to support an annual boating safety refresher course,
4. The Sanctuary collaborated with the AS–EPA to develop water quality monitoring protocols in Fagatele Bay,
5. The National Park of American Samoa, the American Samoa Community College, DMWR, and other local agencies and organizations have collaborated with the sanctuary on research on humpback whales, outreach and education activities,
6. The development and maintenance of the Fagatele Bay Trail that connect

Fagatele to Fagalua/Fogama’a Bay was a significant collaboration with local agencies and the people of Taputimu, Futiga and Vaitogi villages that makes Fagatele Bay accessible to the public and to island visitors,

7. The Sanctuary Advisory Council (SAC) consists of 13 voting members, who represent four territorial government agencies (DMWR, ASCC, AS–EPA, and ASDOC) as well as nine non-government positions from the community. The SAC meets regularly to provide advice and recommendations to the sanctuary superintendent on protection and management of the sanctuary.

*Larsen Bay Is Fogama’a (R14)*

*Comment:* The bay is called Fogama’a by the Vaitogi people, not Larsen Bay. NOAA has already taken steps of control by renaming the bay Larsen Bay.

*Response:* The name of the proposed unit has been changed to Fagalua/Fogama’a to indicate the cultural significance of this bay to the villages of Vaitogi, Futiga, and ili’ili.

*Access to Land and Sanctuary (R15)*

*Comment:* Coastal areas around Vaitogi are dangerous (over 20 people have lost their lives), but Larsen Bay is safe to fish and swim. The designation of Larsen as a sanctuary will prohibit the use of family lands, and access to the beach and ocean where villagers like to swim and hike.

*Response:* The NMSA does not provide NOAA with the authority to limit access to family lands, and NOAA has not suggested that it plans to affect the use of family lands in any way. In fact, the proposal does not restrict access to or recreational use of any of the sanctuary units.

*Swains Island Concerns (R16)*

*Comment:* There has been no assessment for a harbor on Swains Island. Suggest the Sanctuary change boundary from “all areas around Swains Island” to “All areas around Swains Island located north of 11.020’ S Latitude.”

*Response:* NOAA has redrawn the boundaries of the Swains Island unit to exclude the existing channels and a small buffer zone around the channels to minimize socioeconomic impacts related to future maintenance and improvements. This change provides flexibility to dredge the access channels at a future time for the purpose of health and human safety, and bringing development and tourism to the island. Any maintenance or construction would require efforts to minimize water quality

and other habitat related issues within the surrounding sanctuary.

## VI. 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 is revising the terms of designation (e.g., scope of regulations) for the FBNMS, which would be retitled the NMSAS. 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 promulgating 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 FEIS has been prepared for this action. The FEIS 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 FEIS are available upon request at the address and Web site listed in the **ADDRESSES** section of this rule.

### C. Executive Order 12866: Regulatory Impact

This 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 accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the certification or the level of economic impact of this rule. As a result, a final regulatory flexibility analysis was not prepared.

### 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.

No comments were received on the collection-for-information requirement promulgated in the permitting section of the sanctuary regulations. 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.

## VII. 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: July 13, 2012.

**David M. Kennedy,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons set forth above, 15 CFR part 922 is 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. Revise subpart J to read as follows:

### Subpart J—National Marine Sanctuary of American Samoa

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—National Marine Sanctuary of American Samoa

#### § 922.100 Scope of regulations.

The provisions of this subpart J apply only to the waters of the United States and the Territory of American Samoa that are located within the boundary of the National Marine Sanctuary of American Samoa (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—National Marine Sanctuary of American Samoa 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 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 mean high high water line seaward.

(b) *Fagalua/Fogama'a Unit*. The landward boundary of the Fagalua/Fogama'a Unit is defined by the mean high high water line of Fagalua/Fogama'a until the point at which it intersects the seaward boundary of the Fagalua/Fogama'a 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 mean high high water line seaward.

(c) *Aunu'u Unit*. The Anu'u Unit is comprised of two adjacent zones.

(1) *Zone A*. The Anu'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, southward 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 line at the southern tip of Ma'ama'a Cove. The landward boundary of Zone A is defined by the mean high high water line from this intersection point at the southern tip of Ma'ama'a Cove to the intersection of the mean

high high water 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, which has the exact same coordinates as Point 1.

(2) *Zone B*. The Anu'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, southward along a straight line following the eastern boundary of the unit to Point 2, which is on the southern boundary of the unit. The southern boundary then follows a line westward towards Point 3 until it intersects the mean high high water 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 line from this intersection point at the southern tip of Ma'ama'a Cove around the volcanic crater to the intersection of the mean high high water line and the straight line between Point 4 and Point 5. From here, the boundary extends seaward straight north to Point 5. The northern border, 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. Point 6 has the exact same coordinates as Point 1.

(d) *Swains Island Unit*. The Swains Island Unit boundary is defined by the coordinates provided in Table 3 and the following textual description. The landward boundary of the Swains Island Unit is the mean high high water line. The seaward boundary of the Swains Island Unit is the territorial water boundary 3 nautical miles from the mean high high water line that surrounds the island. Within that area surrounding the island, there are two areas excluded from the sanctuary boundaries. The first excluded area extends from Point 1 along the mean high high water line northward along the western coast of the island to Point 2. From Point 2, the boundary extends offshore in a line perpendicular to the coast to Point 3. From Point 3, the boundary extends south-southwest to Point 4, and from Point 4 the boundary extends south-southeast to Point 5. From there, the boundary extends landward in a straight line to Point 6. The second excluded area extends from Point 7 along the mean high high water line northeastward along the southeastern coast to Point 8. From Point 8, the boundary extends offshore in a perpendicular line to the coast to Point 9. From Point 9, the boundary extends south-southwest to Point 10.

From there, the boundary extends landward in a straight line to Point 11.

(e) *Muliava Unit*. The Muliava Unit boundary is defined by the coordinates provided in Table 4 and the following textual description. The landward boundary of the Muliava Unit is the extreme low water line, which adjoins the boundary of the Rose Atoll National Wildlife Refuge. The Muliava Unit seaward 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 straight line southward until it intersects the line of the southern boundary of the unit at Point 8, the southeastern corner of the unit. The last straight line is defined by connecting Point 8 and Point 9, which has the exact same coordinates as Point 1, along the southern boundary of the unit.

(f) *Ta'u Unit*. The Ta'u Unit boundary is defined by the coordinates provided in Table 5 and the following textual description. The Ta'u Unit boundary extends from Point 1, Vaita Point, along the mean high high water 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 to Point 6, forming the southern border of the unit. From Point 6, the boundary extends due north until it reaches Point 7, directly west and one mile offshore from Point 8, which is Point 1, also known as Vaita Point.

#### § 922.102 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

*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 at 40 CFR 302.4 pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act.

*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).

**§ 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 the sanctuary.

(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 when closer than 200 feet (60.96 meters) of 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 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.

(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 and § 922.105(c).

(10) 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 922.107.

**§ 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.*], 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 Muliāva 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.

**§ 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 territorial agency, in conformance with the terms of designation, these regulations, and the terms and provisions of any grant or cooperative agreement.

**§ 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) Fagalua/Fogama'a

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

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

**TABLE 3—COORDINATES FOR THE  
SWAINS ISLAND UNIT**

| Point ID | Latitude (south) | Longitude (west) |
|----------|------------------|------------------|
| 1        | 11.058639        | 171.08865        |
| 2        | 11.051669        | 171.089494       |
| 3        | 11.048561        | 171.092686       |
| 4        | 11.054867        | 171.094453       |
| 5        | 11.060239        | 171.092825       |
| 6        | 11.058639        | 171.08865        |
| 7        | 11.063967        | 171.075989       |
| 8        | 11.058622        | 171.068617       |
| 9        | 11.062167        | 171.066222       |
| 10       | 11.067414        | 171.073639       |
| 11       | 11.063967        | 171.075989       |

(e) Muliāva

The Muliāva Unit boundary is defined by the coordinates provided in Table 4 and the textual description in § 922.101(e).

**TABLE 4—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        |
| 9        | 15.387 S         | 169.12           |

(f) Ta'u Unit

The Ta'u Unit boundary is defined by the coordinates provided in Table 5 and the textual description in § 922.101(f).

TABLE 5—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     |

TABLE 5—COORDINATES FOR THE TA'U UNIT—Continued

| Point ID | Latitude (south) | Longitude (west) |
|----------|------------------|------------------|
| 7 .....  | 14.24889 S       | 169.519722 W     |
| 8 .....  | 14.24889 S       | 169.503056 W     |

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