

**Western
Pacific
Regional
Fishery
Management
Council**

December 29, 2011

Gene Brighthouse
Sanctuary Superintendent
Fagatele Bay National Marine Sanctuary
P.O. Box 4318
Pago Pago, American Samoa 96799

Dear Ms. Brighthouse:

In this letter, the Western Pacific Regional Fishery Management Council (Council) provides comments on the proposed expansion of the Fagatele Bay National Marine Sanctuary (FBNMS) as outlined in the Draft Management Plan (DMP)/Draft Environmental Impact Statement (DEIS). The Council provides these comments from a fisheries management perspective pursuant to our authority under the Magnuson-Stevens Fishery Conservation and Management Act to manage fisheries seaward of the Territory of American Samoa as well as an organization with extensive experience in working with the government and people of American Samoa since 1976. In 2009, NOAA implemented the Council's Fishery Ecosystem Plan (FEP) for Fisheries of American Samoa, which includes management measures for bottomfish, coral reef, and crustacean fisheries as well as identifies essential fish habitat and habitat areas of particular concern associated with managed species. Also in 2009, NOAA also approved the FEP for Pacific Pelagic Fisheries of the Western Pacific Region (PFEP), which contains management measures and regulations for the American Samoa-based longline fishery, established earlier under the Pelagics Fishery Management Plan.

Five-year reviews are required by the National Marine Sanctuaries Act (NMSA). Although, this is first review of the plan in its 27-year history, the Council commends FBNMS for undertaking the process to review its management plan.

While we understand timing issues relating to public comment periods, we believe the public comment period should have been extended at least another 30 days, as the comment deadline of January 6, 2012, is a poor choice given the time constraints of the holiday season.

I. Council Position

Based on our review of the DMP/DEIS, the Council supports Alternative 1 (Update Sanctuary Management Plan) without the management permit as it is unclear as to what this would achieve while adding more federal regulatory complexity and enforcement burden on local partners. Any research activities conducted in the Territory of American Samoa will require

a permit from the Department of Marine and Wildlife Resources. FBNMS should streamline their permitting process under the existing framework in order to minimize regulatory complexities.

The Council does not support the proposed action to incorporate additional sanctuary units for the following reasons:

- 1) The scientific rationale supporting the expansion is inconsistent and unsubstantiated;
- 2) The current federal budget and enforcement capabilities are inadequate to support an expanded sanctuary;
- 3) Overlaying proposed sanctuary units where existing management measures are place provides no added conservation values but instead creates confusion among the regulated community and tension among the agencies, which negates the goal of fostering partnership and interagency cooperation;
- 4) Additional sanctuary units would reduce the currently limited fishing grounds, displace fishermen to potentially more dangerous fishing areas, and likely hamper both commercial and non-commercial fisheries development; and
- 5) Expansion of the sanctuary system and the scope of “sanctuary resources” have no clear fit with the matai system, which has successfully served to manage nearshore resources for thousands of years in the islands now known as American Samoa.

II. Overarching Comments

1) Federal Tail Wagging the Territory Dog?

The proposed action by FBNMS is to modify existing regulations as they pertain to Fagatele Bay, expand the sanctuary by adding five new units, and promulgate new regulations related to the five new sites. The DMP/DEIS states at Section 1.4.1 that: “Developing a science- and culturally-based network of sanctuary units addresses a number of needs important to the Office of National Marine Sanctuaries (ONMS)...”.

As stated, the proposed expansion addresses needs important to ONMS; however, we question whether the proposed expansion addresses the needs of the American Samoa people or their resources. For example, the DMP/DEIS does not provide a cost- benefit analysis that clearly distinguishes the conservation and socio-economic benefits of the proposed expansion. The terse qualitative discussion in the DMP/DEIS, which is often contradictory, does not identify immediate, near-term, or long-term benefits of the proposed action.

The DMP/DEIS states that the purpose of the action is “to best fulfill the overarching goal of the sanctuary: to protect sanctuary resources.” This statement appears to lack sensitivity towards the fact that indigenous Samoans have cared for and managed their natural resources in the Samoa Archipelago for over 3,000 years. Moreover, nearshore marine resources are resources of the American Samoa people, not a federal agency. Furthermore, it should be clearly noted in the Executive Summary of the DMP/DEIS that, pursuant to the NMSA, it is unlawful for any person to destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary (16 U.S.C. 1436(1)). Again, marine resources in Samoa have been carefully managed under the matai system for thousands of years; however, the DMP/DEIS

does not articulate how the federal overlay of sanctuary sites, whereby everything within those sites are considered “sanctuary resources,” will fit within the Samoan matai system in terms of resource access and use.

2) Expansionist Philosophy of the Office of National Marine Sanctuaries

The proposed action appears to be another example of the expansionist philosophy of ONMS, the Washington, D.C.-based, parent federal agency of FBNMS, to expand its jurisdiction under a veil of protection. We say this because the DMP/DEIS fails to provide a clear need for expansion. For example, Section 1.4.1 (Need for Action) of the DMP/DEIS states that the sudden growth of the commercial longline fishery in 2001 is a recent management concern that may affect the health and resilience of American Samoa’s marine ecosystems. This is alarmist and inaccurate. The DMP/DEIS fails to acknowledge that, in fact, the American Samoa longline fishery is stringently managed¹ under the PFEP including spatial restrictions² and participation has decreased substantially since 2001 due to a number of factors. Furthermore, this fishery does not target nearshore fish stocks and should not be implicated as a threat to American Samoa’s marine ecosystems.

Examples of ONMS’ expansionist regime are common within this program, including Channel Islands NMS, Monterey Bay NMS, and Hawaiian Islands Humpback Whale NMS. The Council is unaware of any National Marine Sanctuary that has included a sunset provision regarding any of its designations nor relinquished any areas under its jurisdiction. In other words, once the area is designated, ONMS applies the “lock it up and toss the key” approach and then seeks to further expand. Furthermore, the Council questions whether or not these ONMS expansions are consistent with the NMSA to identify and designate areas of the marine environment that are of special national significance. Is there really a management need to include the Vailulu’u seamount within sanctuary or is this another example of a surreptitious land grab by ONMS? The DMP/DEIS fails to describe the consistency between the proposed expansion and the ‘Findings’ and ‘Purposes and Policies’ of the NMSA.

3) Why Expand a Failed Management Regime to Additional Areas?

Since 1984, when the FBNMS was established, the fishing pressure on coral reef ecosystems in American Samoa have not increased significantly yet the primary management measures related to the proposed actions are related to fishing. The DMP/DEIS mentions that overfishing is occurring in Fagatele Bay due to decline of some fish stocks there (pages 15,16, 112, 123, 157). However, the study referenced in the DMP/DEIS is unable to answer the question whether overfishing is indeed the cause of the fish stock decline. Overfishing occurs when the current rate of fishing mortality (F) is higher than the fishing mortality at maximum sustainable yield (F_{msy}). The DMP/DEIS and the cited references did not look at fishing mortality

¹ In 2009, the American Samoa longline fishery received a score of 93 % when assessed against the UN FAO Code of Conduct for Responsible Fisheries.

² PFEP regulations include a 50 nm/50 ft large vessel prohibited area, whereby all vessels greater than 50 ft are prohibited from fishing for pelagic management unit species within 50 nm of Tutuila, Manua, Rose Atoll, and Swains Island.

rates. The closest reference used in the DMP/DEIS that may have information on levels of fishing is by Zeller et al. 2006. However, this study failed to take into consideration fishing effort and merely used the proxy of increasing human population number as a substitute for fish demand, assuming that there is close correlation between population and fish demand.

The status of Fagatele Bay was based on the intermittent long-term monitoring conducted by Birkeland et al.³ that utilized the belt transect method deployed at various depths. Abundance and later on biomass data were used to determine the temporal trend in fish populations. However, the methodology and personnel used in these surveys changed over time. The DMP/DEIS uses this abundance data to conclude that overfishing has been occurring in the bay.

This conclusion in the DMP/DEIS highlights a fundamental contradiction in the document, which lauds the success of Fagatele Bay as a NMS and then states that there are signs of overfishing. If this is the case, FBNMS was clearly not a success, as it failed to protect the fish populations in the sanctuary. Nonetheless, even with this obvious contradiction, FBNMS is proposing to expand, in light of an evident failure.

4) Coral Reef Fish Stocks around American Samoa are Stable

Birkeland et al.^{4,5}, Fenner et al.⁶, and Green et al.⁷ looked at the long-term trend in fish abundance within Fagatele Bay, Larsen's Bay, and Sita Bay and found that trends in abundance in all three sites were broadly similar, i.e. populations of some species increased simultaneously while those of others decreased. For example, an island-wide increase in the parrotfish population occurred primarily due to a ban on SCUBA spearfishing. Birkeland et al. do not mention overfishing as an issue, but attribute declines in fish abundance to habitat degradation. The report also described the limitations of the surveys, namely, differences in methodology over the years, inter-observation bias, inconsistent periods when the surveys were conducted, and lack of replication. In summary, abundance information alone cannot be used as a proxy for fishing

³ Birkeland, C. E., R.H. Randall, R.C. Wass, B. Smith, and S. Wilkins. 1987. Biological Resource Assessment of the Fagatele Bay National Marine Sanctuary. NOAA Technical Memorandum Number 3.

⁴ Birkeland, C., Randall, R., Green, A., Smith, B., and Wilkins, S. 2003. Changes in the coral reef communities of Fagatele Bay NMS and Tutuila Island (American Samoa), 1982-1995. Fagatele Bay. National Marine Sanctuary Science Series. Pago Pago, AS. p. 237. (684KB).

⁵ Birkeland, C., A. Green, C. Mundy, and K. Miller. 2004. Long term monitoring of Fagatele Bay National Marine Sanctuary and Tutuila Island (American Samoa) 1985 to 2001: summary of surveys conducted in 1998 and 2001. Prepared for NOAA's Office of National Marine Sanctuaries and the American Samoa Department of Commerce, Environment Division. 158 pp.

⁶ Fenner, D., A. Green, C. Birkeland, C. Squair, and B. Carroll. 2008. Long term monitoring of Fagatele Bay National Marine Sanctuary, Tutuila Island, American Samoa: results of surveys conducted in 2007/8, including a re-survey of the historic Aua Transect. Prepared for NOAA's Office of National Marine Sanctuaries and the American Samoa Department of Commerce, Environment Division. 58 pp.

⁷ Green, A.L., C.E. Birkeland, and R.H. Randall. 1999. Twenty Years of Disturbance and Change in Fagatele Bay National Marine Sanctuary, American Samoa. Pacific Science. Vol. 53, no. 4: 376-400.

mortality. The overall health of the coral reef fisheries in American Samoa has been assessed to be to stable based on trends in catch per unit effort, biomass, abundance, and fishing mortality.⁸

5) US Coral Reef Task Force's 20% Goal

The DMP/DEIS fails to describe and analyze how sanctuary expansion will protect or enhance the coral reef ecosystem of American Samoa, yet it mentions the US Coral Reef Task Force's goal of establishing no-take areas in 20% of coral reef habitats as a principal initiative related to this proposal. The goal of establishing a network of marine protected areas (MPAs) to achieve a goal of 20% no-take may be practicable for large marine coastal areas found in the continental United States; however, it is likely inappropriate for small islands that have limited fishable areas (i.e. productive habitat) and inappropriate for places that have strong customary tenure systems such as the matai system.

6) No Take Areas and Displaced Fishing Effort

Establishing a no-take area off Aunu'u under the guise of "research zone" is disingenuous, not only because it's a clever way to name a no-take MPA, but because the DMP/DEIS lacks a clear research plan for this area. Furthermore, the DMP/DEIS states (pg. 336) that "no-take zones, in conjunction with other actions, can allow ecosystems to achieve a natural balance." The theory that restricting human use will achieve ecosystem balance has been discredited for many years. What's clear is that the Aunu'u no-take area will further reduce available fishable areas for fishermen. A recent mapping study conducted by the Department of Marine and Wildlife Resources (DMWR) showed significant fishing activities around Aunu'u Island (Sabater pers. comm.). This is an important fishing ground for bottom fishermen when Tapu Tapu is not accessible. Fishery data collected by DMWR showed annual landings⁹ of fish taken from the vicinity of Aunu'u ranging from 4,871 to 462,263 lbs caught by bottomfishing, spearfishing, and mixed bottomfishing and trolling methods. This information shows the contribution of Aunu'u as a critical fishing ground for the Territory. Restricting fishing access will displace fishing effort into smaller areas, which can in turn increase fishing pressure in other areas, reduce catches, increase operational costs and increase fishermen risk at sea. Other than a few cursory statements, the DMP/DEIS fails to analyze, in any meaningful way, the direct, indirect, and cumulative impacts of the proposed sanctuary units effect on the existing and future fisheries management regime of American Samoa. An in-depth analysis should be conducted on how the proposed action will be integrated with DMWR's community-based and no-take MPA programs. Furthermore, restricting fishing in some areas can displace fishing to area more dangerous such as those exposed to strong wind, waves, currents, and cliffs. A recent study conducted by the National Institute for Occupational Safety and Health on Guam indicated that there was a statistically significant increase in the rate of fishermen drowning due to their

⁸ Sabater, M., and R. Tulafono. 2011. American Samoa Fishery Ecosystem Report. Western Pacific Regional Fishery Management Council. Honolulu, HI. ISBN:1-934061-49-02.

⁹ Catch landing data was summarized from the Boat based Creel Survey Program. The total annual landings are from raw data only and were not expanded to cover spatial and temporal periods not covered by the survey.

displacement from traditional sheltered fishing grounds (designated as MPAs) to more exposed waters.¹⁰

7) Current Fiscal Situation

Since its establishment, the FBNMS has centered its accomplishments on education and outreach. The Council recognizes ONMS strong role in promoting marine conservation and stewardship. However, effective promotion of marine conservation does not necessitate site expansion. Given the small number of people that comprise FBNMS staff, expanding sites would provide major challenges in meeting effective outreach goals unless significant additional funding is provided to this sanctuary. Moreover, the DMP/DEIS suggests that one potential reason for fishery depletion in FBNMS could be due to a lack of effective education (pg. 337). With the current continuing resolutions and cutbacks, additional funding is unlikely to be available. The DMP/DEIS fails to clearly articulate how the sanctuary program will support the education and outreach programs necessary to effectively manage the proposed sites. Furthermore, the DMP/DEIS does not discuss the enforcement burden the new sites would have on the NOAA Office of Law Enforcement (OLE), which currently has only a handful of agents in the entire US Pacific Islands Region, no enforcement assets in American Samoa, and a dwindling budget.

8) Larval Connectivity between Sanctuary Units and American Samoa Archipelago

The Biogeographic Assessment (BA) cited in the DMP/DEIS is used as a basis for recommending new sites for possible inclusion into the sanctuary system. The BA is a comprehensive document, and the Council applauds the authors for the expanding the knowledge basis related to the region and processing useful information to other resource management agencies. A major premise for the site expansion is that a network of protected areas would enhance fish stocks. However, the DMP/DEIS fails to emphasize the limited connectivity between the different island areas, particularly Swains Island and Rose Atoll. Due to their size, Swains Island and Rose Atoll have very little to contribute as a larval source. Their isolation also limits their function as a “source and sink,” and they are, therefore, likely to be self-seeding in terms of recruitment. To a lesser extent, Tutuila is likely also self-seeding but can act as a source to the neighboring islands of Independent Samoa. As indicated in the BA, twenty percent of larvae originating from Manu'a are retained and the rest are exported north and southwestward, which are probably lost in the open-ocean. The reality is that connectivity between small island areas is limited. Therefore, the argument for the added value of additional sites in the existing MPA network to enhance fishery resources is highly questionable. Moreover, Swains Island and Rose Atoll have not been fished (or on very minor levels) for decades; therefore, the benefit, if at all, of these areas as larval sources for Tutuila should be currently realized. In other words, the no-action alternative and the preferred alternative will not have any difference in terms of benefits to larvae connectivity nor stock recruitment because Swains Island and Rose Atoll are not subject to fishing, nor have they been for many years.

¹⁰ Lucas, D.M. & J.L. Lincoln. 2010. The impact of marine preserve areas on the safety of fishermen on Guam. Western Pacific Regional Fishery Management Council, Honolulu, Hawaii, 19 pp. available at <http://www.wpcouncil.org/news/Press/2011/NIOSH%20Report%20on%20Guam%20Fishermen%20Safety.pdf>

A near shore circulation study funded by the Council conducted in the coastal areas of Tutuila and Aunuu islands showed a dominant tidally driven circulation where potential larval dispersal is only localized¹¹. Residual currents are generally eastward with an eddy generated in the western end of Tutuila. Interestingly, the residual current in the northwestern side of Aunuu (facing Auasi) is virtually 0 m/s. Based on the preliminary results, any larvae spawned in Aunuu will have no dispersal support from the currents around the island and will solely rely on active swimming for dispersal. This adds weight to the argument that no additional larval gains can be achieved by establishing Aunuu Island as a “no-take” area.

9) Partnership and Inter-agency Collaboration

The DMP/DEIS emphasizes partnerships and inter-agency coordination. While an important goal, this has not been occurring. The DMP/DEIS showcases the ONMS and American Samoa Department of Commerce partnership, but fails to mention the conflicts with existing programs and concerns by other federal and local agencies about the proposed additional sites. The National Parks of American Samoa has expressed concerns with the Tau site; Fish and Wildlife Service, on the refuge overlay in Rose Atoll; and DMWR, with the Aunu'u site. To further expand on this issue of partnerships, DMWR has two existing programs that address protected areas (Community Based Fishery Management Program and No-Take MPA Program). The DMP/DEIS alternatives that include additional sites in the sanctuary system appear in competition or in conflict with these local DMWR programs. For example, prior to the onset of FBNMS proposal for incorporating additional sites, DMWR had been working with the village of Aunu'u to participate in DMWR's programs. It is our understanding that this initiative was derailed due to community confusion over the potential inclusion of the area within the sanctuary. Moreover, Section 4.7 of the DMP/DEIS (Action Plans – Partnerships and Interagency Cooperation) only mentions DMWR as a partner with respect to sanctuary monitoring enforcement. As the mandate of DMWR is to manage, protect, preserve, and perpetuate the marine and wildlife resources in the American Samoa, it seems egregious to list DMWR as a partner only for monitoring and enforcement. Given DMWR's mandate and the proposed goals of the FBNMS, clearly these agencies should be working more closely for the benefit of the conservation and management of marine resources.

III. Specific Comments

Executive Summary

Page ES-3, Paragraph 1: name change from Fagatele Bay National Marine Sanctuary to American Samoa National Marine Sanctuary. This name is misleading and has connotations that the whole territory is a sanctuary. All of the existing sanctuaries are either site or species specific. If ONMS is to push for a name change it should be to National Marine Sanctuaries of American Samoa, similar to National Parks of American Samoa.

Introduction and Overview

Page 7, Paragraph 2: This paragraph discusses the public scoping process. Later on Page 37, paragraph 1, it was stated that there was “wide support” for designation of additional areas (page

¹¹ Wiles, P., Sabater, M., Jacob, L. 2011. Current Surveys between Potential Marine Managed Areas in American Samoa. Western Pacific Regional Fishery Management Council. Honolulu, HI. ISBN:1-934061-56-5.

37, paragraph 1). Based on recent public hearings and online comments, it is clear that there was not wide support for additional sanctuary sites and there are statements that neighboring villages were not properly consulted prior to the release of the DMP/DEIS. The Final DMP/DEIS should describe in detail its public consultation process.

Page 16, last bullet: long-term monitoring showed signs of overfishing in Fagatele Bay. The survey method used is not suited to determine if overfishing is occurring. Assuming that there is a grain of truth about this assumption/observation, it would indicate that the sanctuary management of the small bay was not sufficient to curb fishing impacts. This then questions the rationale of expanding to other areas, thereby replicating the deficiencies on a wider scale.

Page 21, last paragraph: The claim that there is a narrow understanding of threats and management of reefs throughout the Territory based on a survey of 121 individuals is not robust. For a population of 60,000 (assuming that the target audience is uniformly distributed across scales), interviews of at least 380 individuals are needed to be 95% confident that the results are statistically valid. The interviews were conducted only in Tutuila and did not account for the people in Manu'a. To generalize the results that there is a lack of awareness is misleading. Moreover, it is condescending and demeaning to suggest that the people of American Samoa; that are Polynesians by cultural lineage; who have lived in this archipelago for over 3,000 years; and have a substantial traditional ecological knowledge of reefs, reef fish and fisheries have a narrow understanding of the threats to coral reefs based on a limited survey conducted in the most urban environment in the Territory.

Page 21, last paragraph: Fagatele Bay is indeed a unique habitat due to the narrowness of the reef shelf of the bay. However, threats and management are no different from the other areas around the island. The scale of the island does not create vastly different management challenges. FBNMS could conduct education, outreach and conservation awareness to other areas using Fagatele Bay as an example without physically expanding to other areas.

Page 24, last paragraph: Creating a network of MPAs hinges on having a large seascape to manage and different ecosystems distant from each other with a certain level of connectivity. The seascape of American Samoa is small compared to the European model cited and contradicts function number 1 (limiting overall displacement of resource users by decreasing the size of individual sites while leaving adjacent sites open). In addition, the Biogeographic Assessment showed that there is little connectivity between the different islands.

Page 29, first paragraph: Designating the "research zone" of Aunu'u Island as no-take is biased against fishing. It controls only fishing and treats fishing as the sole perturbation affecting the reef community. In reality, many factors contribute to resource conditions, and individual effects are difficult to isolate. For example, in the DMP/DEIS significant emphasis is placed on climate change impacts as noted elsewhere in the Pacific¹², devastating declines in coral cover caused parallel declines in fish biodiversity and abundance both in areas open to fishing and in no-take marine reserves. In essence if climate change causes wide-scale damage to hermatypic corals, fish within a reserve may suffer just as equally as those outside of it. To imply that sanctuary

¹² Jones, J.P. M.I. McCormick, M. Srinivasan & J.V. Eagle. 2004. Coral decline threatens fish biodiversity in marine reserves.

designation offers any protection from such macro events is not only wrong, but disingenuous. Furthermore, residents of American Samoa will need to be able to adapt to climate change, therefore flexibility in fishing areas should be maintained, and not locked up.

Page 35, Aunu'u Island section: Zone A is designated as a multiple use zone and minimal fishing regulations are applied, so it is not clear why there would be a need to request permission to enter the zone. The indigenous people of American Samoa have free access to their waters. Requiring permission from a federal entity deviates from the cultural sensitivity aspect that FBNMS is trying to project.

Alternative Including the Proposed Action

Page 60, Table 2-2: Duplicating local regulations within the sanctuary may be rational to avoid confusion in terms of the regulations. However, it has to be made clear to the public that the penalties from violations within the sanctuary units will be higher and the violation will be evaluated by a different process. This would create precedence that incurring a violation in a non-sanctuary area is better than receiving a violation within the sanctuary. The local fishery management agency will be placed to an unnecessary disadvantage and corralled into increasing their prosecution standards on par with the federal standard. Additional resources would be needed for the local government to enforce such standards and such funding is limited.

Page 62 Swains Island Section: Restricting the fishing to pure subsistence and requiring that fish harvested be consumed on-site would be in conflict with the current fishing practice of the Swains Island residents. Normally when the American Samoa Government vessel, M/V *Sili*, delivers goods to Swains, the residents gather fish for their families who are living in Tutuila. Having this "consume on-site" regulation would disallow their cultural practice of sharing fish with their family members living elsewhere.

Affected Environment

Page 73, Table 2-4: Enforcement of the regulation within the sanctuary relies heavily on the community and the MOU with NOAA-OLE and DMWR. FBNMS should ensure that its definition of partnership provides mutual benefits to both parties, instead of creating disproportionate burdens on the other agencies.

Page 123, last paragraph: overfishing affecting water quality. It is quite intriguing how overfishing can have compounding effects resulting in poor water quality. Filter feeders (trophic groups that may have a direct influence on water quality) are not a major functional group in the American Samoa benthic and reef fish community. Planktivores (such as damselfishes and fusiliers) are abundant in the reef fish community and are not primary targets in the reef fishery.

Page 144, paragraph 3: It is not true that subsistence catches are not being documented in American Samoa. DMWR's Shore-based Creel Survey program documents the noncommercial portion of the catches, which can be considered as the subsistence catch.

Page 155, section 3.2.1.1— The DMP/DEIS is inconsistent in its assessment on the status of Fagatele Bay. Some section states that the marine community within the bay is in good

condition, yet other sections claim overfishing is occurring. This section says a small number of boats fishing; in previous sections imply a decline in biomass due to overfishing. Information should be consistently used throughout the document.

Action Plans

Page 205, section 4.2.2.1: The term “current baseline” is an oxymoron. The current conditions at the proposed sanctuary units are already in a dynamic state. Using current conditions as baseline is problematic since they may not reflect the dynamic nature of the system and any change could be misinterpreted as a problem when it may simply be within the range of natural variation.

Page 209: There is a fine line between partnership and piggy-backing. FBNMS should clearly define the so-called partnership and clearly delineate each partner contribution and achievements. Each party should not claim accomplishments of the other as its own.

Page 210: Activity MCS-2.1: The survey methodology was not consistent over time. Unless significant standardization is done to account for the method differences, the long-term data results will not be reliable.

Page 210: Activity MCS-2.2: If the protocol described in this section is consistent with the previous survey, the results will not be comparable.

Page 211: Activity MCS-2.5: DMWR has an existing program to document catch and effort information that is more robust than a sporadic interview survey. FBNMS should just focus on local perception and traditional knowledge. The Council notes that this work has been done in this field by NOAA Fisheries Pacific Islands Fisheries Science Center’s Human Dimensions Research Program.

Pages 225-233: It is well emphasized throughout the document and particularly in this section that FBNMS does not have the funding and human resources to carry out all of the activities in the action plan. It then begs the question: does the action plan drive the funding need or the reality of funding should drive what is attainable within the action plan? It is practical to be realistic on what can be achieved and drop the activities that are not attainable. Internship and volunteers are good for short-term accomplishments, but the long-term goals will not be achieved by this approach.

Page 262, Activity RP&E-7.1: The Joint Enforcement Agreement (JEA) between NOAA OLE and DMWR is primarily to enforce the rules and regulations prescribed in Magnuson-Stevens Act, Endangered Species Act, Marine Mammals Protection Act, Lacey Act Amendments and NMSA. The current MOU between DMWR and NOAA OLE includes regular patrol of the existing sanctuary site. The Council is concerned that additional sanctuary sites would increase the burden on the enforcement agencies and lessen their ability to monitor and implement primary enforcement statutes. Any additional enforcement responsibilities should be compensated with additional resources to adequately carry out the objectives.

Environmental Consequences

Page 296, first paragraph and bullet points: Impact to fisheries did not include potential impact to fishery development and to the safety of fishermen, which is National Standard 10 under the MSA. Displacement of fishermen should also be considered in the analysis because it will entail additional cost when transiting farther to other fishing grounds. Closing an area would also result in increased fishing pressure in other locations. When fishermen do not have access to an alternate fishing areas, resultant impacts are likely to occur such as localized depletion, permanent economic losses, and increased reliance on imported seafood. These transfer effects should be accounted for in the socio-economic analysis of the alternatives. Cultural impacts should also be analyzed such as loss of traditional practices and knowledge.

Page 307, section 5.2.2 subsection Fisheries: Population of groupers and snappers are naturally low across the different areas in Tutuila. Fagatele Bay is no different. Tutuila is dominated by mostly herbivores. Snappers and groupers make up a smaller fraction of the total reef fish landing. Low biomass does not necessarily mean overfishing is occurring. Unless fishery data is used in the analysis, such statements are merely speculation and unsubstantiated.

Page 323, section 5.5.1.1: The distance by which Fagatele Bay and Larsen Bays are located absolutely cannot result in an increase in genetic biodiversity. Genetic differentiation occurs when species are geographically isolated over an evolutionary time period. The scientific basis for the impact on this section is fundamentally flawed. In addition, using genetic diversity and microhabitat in one sentence in its current usage is a scientific parody.

Page 325, first paragraph: The Council does not believe that imposing a management permit will result in minimal administrative burden. Currently, each agency mentioned has its own permitting system. Adding one more creates additional bureaucratic layer and will deter activities in the area due to burdensome permit applications. Unless a single permit agreed upon by all parties is enforced, an additional sanctuary permitting system is redundant. This also contradicts President Barack Obama's executive order to reduce duplication.

Page 325, last paragraph: It is ironic that FBNMS is using tourism as a justification for the expansion whereby (based on the numerous online public comment submissions), the office could not even maintain the trail to access the bay. In the past 30 years, FBNMS did not result in the development of boat-based tourism, therefore the proposed action will most likely not develop tourism in an expanded scale. American Samoa may have experienced an increase in cruise ship visitations in the recent year but that does not fully justify any site expansions. This same argument was used in the establishment of the Rose Atoll Marine National Monument as well as the Marianas Trench Marine National Monument, yet the promised visitor's centers have yet to be constructed.

Page 326, section 5.5.1.3: Scientific understanding has nothing to do with additional sanctuary sites. The numerous scientific researches being conducted on the island are topic driven, independent on whether the site is a sanctuary or not. Most of the chartered vessels for research work are from local projects and projects from universities.

Page 336, first paragraph: Location of catch and fishing effort information is captured by the DMWR Boat and Shore-based Creel Survey Program. The Council understands that this information was not made available to FBNMS due to escalating trust issues and conflict between the two parties.

Page 337, first paragraph: It was claimed in several sections of the DMP/DEIS that Fagatele Bay has a healthy fish population. However, the Biogeographic Assessment showed that bioregion 2 is not a biological hotspot for fish biomass. The DMP/DEIS also mentioned that there is little fishing occurring in the bay. In the accomplishment section, it states Fagatele Bay was a success, but then it admits failed in its objective to protect biodiversity citing fishing as the root cause of fish stock declines in the bay, whereas Birkeland et al. 2003 concluded that decline was due to habitat degradation. As noted earlier, there is no consistency in the way information is handled in the DMP/DEIS.

Page 339, paragraph 2: There are two types of bottomfishing that occurs in American Samoa: those that catch deep water snappers and groupers (deep complex) and those that capture shallow water reef fish species (shallow complex). Bottomfishing mostly occurs in areas with steep bathymetric contour. The 30-100m bathymetric contour in which the shallow complex occurs is within the sanctuary border. The shallow complex is a major component of the bottomfish catch¹³. Despite the low fishing effort, bottomfishing constitutes the largest nearshore fishing in the Territory averaging 40,000 lbs per year compared to reef fishing at 29,000 lbs.

Page 341, tourism and recreation section: Closing an area off even if the fishing effort is low is an argument that negatively impacts potential future users. This deprives future access and fishery development. Conversely, it can also be argued that there is no need to permanently restrict access since current fishing effort is negligible.

Page 342, section 5.5.4.3: The socio-economic impact analysis assumes that fishing effort is equally distributed across space and time. In reality this is not the case. Review of the fishing ground mapping information by DMWR showed patterns in spatial distribution of fishing effort. Aunu'u was identified as one area for bottomfishing. Analysis of the catch landing data stratified by fishing method (spear, bottomfish, and mixed bottomfishing and trolling) limited to areas around the waters of Aunu'u showed an average landing of 59,134 lbs (raw landing information only – not expanded to period when surveys were not conducted) generating a value of \$69,418. Using the same adjustment factor as Spurgeon (2004), the potential economic loss would be \$86,773. Therefore, the economic loss brought about by the actions described in the DMP/DEIS is severely underestimated because the initial assumption does not apply.

Page 354: The DMP/DEIS states that a complete no-take area from 0-50 nm around Muliava would have a less than significant impact as there would be closer areas open to fishing. The DMP/DEIS does not define its criteria for determining “significance,” but a complete ban, from 0- 50 nm, on fishing within the Rose Atoll MNM would restrict Manu'a fishermen from non-commercial fishing in this area for pelagic resources. Such a restriction will not have any biological benefit to highly migratory and pan-pacific stock such as tunas, but it would preclude

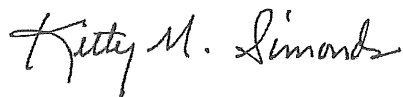
¹³ 2009 Bottomfish Fishery Report. Department of Marine and Wildlife Resources. Pago-Pago, American Samoa 96799

Manu'a fishermen from fishing in their ancestral waters, which does have socio-cultural impacts that were not addressed in the DMP/DEIS.

IV. Conclusion

Thank you for your consideration of our comments. We urge that the ONMS strongly consider revising its proposed action to only include Alternative 1 without the management permit action given the: additional federal regulatory complexity and enforcement burden to implement a permitting process; overwhelming concerns of the American Samoa community; lack of scientific rationale supporting the expansion; the planned expansion has a potential conflict with the Council's fishery development goals; lack of enforcement mandate and capabilities; and the current federal fiscal situation making most of the actions described as unrealistic.

Sincerely,

A handwritten signature in black ink that reads "Kitty M. Simonds". The signature is written in a cursive, flowing style.

Kitty M. Simonds
Executive Director

Cc: Dr. Jane Lubchenco, NOAA Administrator
Dr. Eric Schwaab, NMFS Asst. Administrator for Fisheries
Hon. Faleomavaega Eni Hunkin, American Samoa Congressman