

2.7 MARINE PLANNING

2.7.1 Introduction

Marine planning is a science-based management tool being utilized regionally, nationally, and globally to identify and address issues of multiple human uses, ecosystem health and cumulative impacts in the coastal and ocean environment. The Council's efforts to formalize incorporation of marine planning in its actions began in response to Executive Order (EO) 13547, Stewardship of the Ocean, Our Coasts, and the Great Lakes. EO 13158, Marine Protected Areas (MPAs), proposes that agencies strengthen the management, protection, and conservation of existing MPAs, develop a national system of MPAs representing diverse ecosystems, and avoid causing harm to MPAs through federal activities. MPAs, or marine managed areas (MMAs) are one tool used in fisheries management and marine planning.

At its 165th meeting in March 2016, in Honolulu, Hawaii, the Council approved the following objective for the FEPs: Consider the Implications of Spatial Management Arrangements in Council Decision-making. The following sub-objectives apply:

- a. Identify and prioritize research that examines the positive and negative consequences of areas that restrict or prohibit fishing to fisheries, fishery ecosystems, and fishermen, such as the Bottomfish Fishing Restricted Areas, military installations, NWHI restrictions, and Marine Life Conservation Districts;
- b. Establish effective spatially based fishing zones;
- c. Consider modifying or removing spatial-based fishing restrictions that are no longer necessary or effective in meeting their management objectives; and
- d. As needed, periodically evaluate the management effectiveness of existing spatial-based fishing zones in Federal waters.

To monitor implementation of this objective, this annual report includes the Council's spatially based fishing restrictions or MMAs, the goals associated with those, and the most recent evaluation. Council research needs are identified and prioritized through the Five-Year Research Priorities and other processes and are not tracked in this report.

To meet the EFH and National Environmental Policy Act (NEPA) mandates, this annual SAFE report tracks activities that occur in the ocean that are of interest to the Council, and incidents or facilities that may contribute to cumulative impact. NMFS is responsible for NEPA compliance, and the Council must assess the environmental effects of ocean activities for the FEP's EFH cumulative impacts section. These are redundant efforts; therefore, this report can provide material or suggest resources to meet both mandates.

2.7.2 Response to Previous Council Recommendations

There are no standing Council recommendations indicating review deadlines for American Samoa MMAs.

At its 147th meeting in March 2010, the Council recommended a no-take area from 0-12 nautical miles around Rose Atoll Marine National Monument (MNM) with the Council to review the no-take regulations after three years. The most recent review took place in 2013, with the

subsequent review previously scheduled for 2016. PIRO received no requests for non-commercial permits to fish within the Rose Atoll MNM. Further, inquiries in American Samoa showed that there was no indication that the 12 nm closure around Rose Atoll MNM has been limiting fishing. Thus, there is no interest to fish within the monument boundaries. The Pelagics Plan Team deferred decision on Rose Atoll in May 2017 until after the Administration reviews to make any decision on the monument provisions. At its 172nd meeting in March 2018, the Council requested that NOAA and USFWS provide a report to the Council at its following meeting to review resultant benefits to fish populations, protected species, and coral reef, deep-slope, and pelagic ecosystems from the establishment of the Rose MNM. USFWS presented this report to the Council at its 173rd meeting in June 2018, from which no recommendations were generated. No further action was taken on the Rose Atoll MNM.

At its 162nd meeting in March 2015, the Council recommended a regulatory amendment for the temporary exemption to the Large Vessel Protected Area (LVPA) by American Samoa longline limited entry permitted vessels greater than 50 ft. in length. The Council would review the LVPA exemption on an annual basis with regards, but not limited to; catch rates of fishery participants; small vessel participation; and fisheries development initiatives. In 2016, NMFS published a final rule that allowed large, federally-permitted U.S. longline vessels to fish in specific areas of the LVPA (81 FR 5619, February 3, 2016). In July 2016, American Samoa sued NMFS and the Council in the Hawaii Federal District Court, claiming that NMFS did not consider the 1900 and 2904 Deeds of Cession with respect to the protection of the cultural fishing rights of the people of American Samoa. In March 2017, the Hawaii Federal District Court deemed the final rule invalid and ordered NMFS to vacate the LVPA exemption rule (82 FR 43908, September 20, 2017).

At its 173rd meeting in June 2018, regarding the LVPA applicable to the American Samoa limited entry vessels, the Council recognized the LVPA rule has led to disagreement within the American Samoa fishing community and was the subject of litigation. The Council noted that last year's court decision requires the consideration and protection of American Samoa cultural fishing. To this end, the Council requested PIFSC conduct research on American Samoa cultural fishing practices to facilitate understanding and potential impacts of opening some restricted fishing areas within the U.S. EEZ for American Samoa vessels that primarily target albacore. PIFSC presented the results of this research at the Council's 172nd meeting in March 2018, which indicate that all fishing in American Samoa has cultural importance, whether commercial longline, commercial alia vessels, troll or other fishing sectors, because catch from all locally-based fishing sectors flows into the American Samoa community for cultural purposes. The Council also recommended a regulatory amendment to provide a four-year exemption for vessels permitted under the American Samoa longline limited entry program to fish within the LVPA seaward of 12 nm around Tutuila, 12 nmi around Manua, 12 nm around Swains, and 2 nmi around the offshore banks, and recommended annual monitoring of the American Samoa longline and troll catch rates, small vessel participation, and local fisheries development.

NMFS appealed Hawaii Federal District Court's 2017 decision that invalidated the 2016 LVPA reduction to the U.S. Ninth Circuit Court of Appeals. Oral arguments were in February 2020 in Honolulu, Hawaii, and the decision was reversed in a September 2020 ruling.

At its 184th meeting in December 2020, the Council directed staff to monitor the fishing operation and fishery performance of the American Samoa longline and alia fisheries and report

back to the Council at its September 2021 meeting. Based on this performance review, the Council may reconsider its 2017 LVPA modification action at that meeting.

2.7.3 Marine Managed Areas established under the FEPs

Council-established MMAs are compiled in Table 43 from 50 CFR § 665, Western Pacific Fisheries, the *Federal Register*, and Council amendment documents. Geodesic areas were calculated in square kilometers in ArcGIS 10.2. All regulated fishing areas and large MMAs, including Rose Atoll Marine National Monument, are shown in Figure 1.

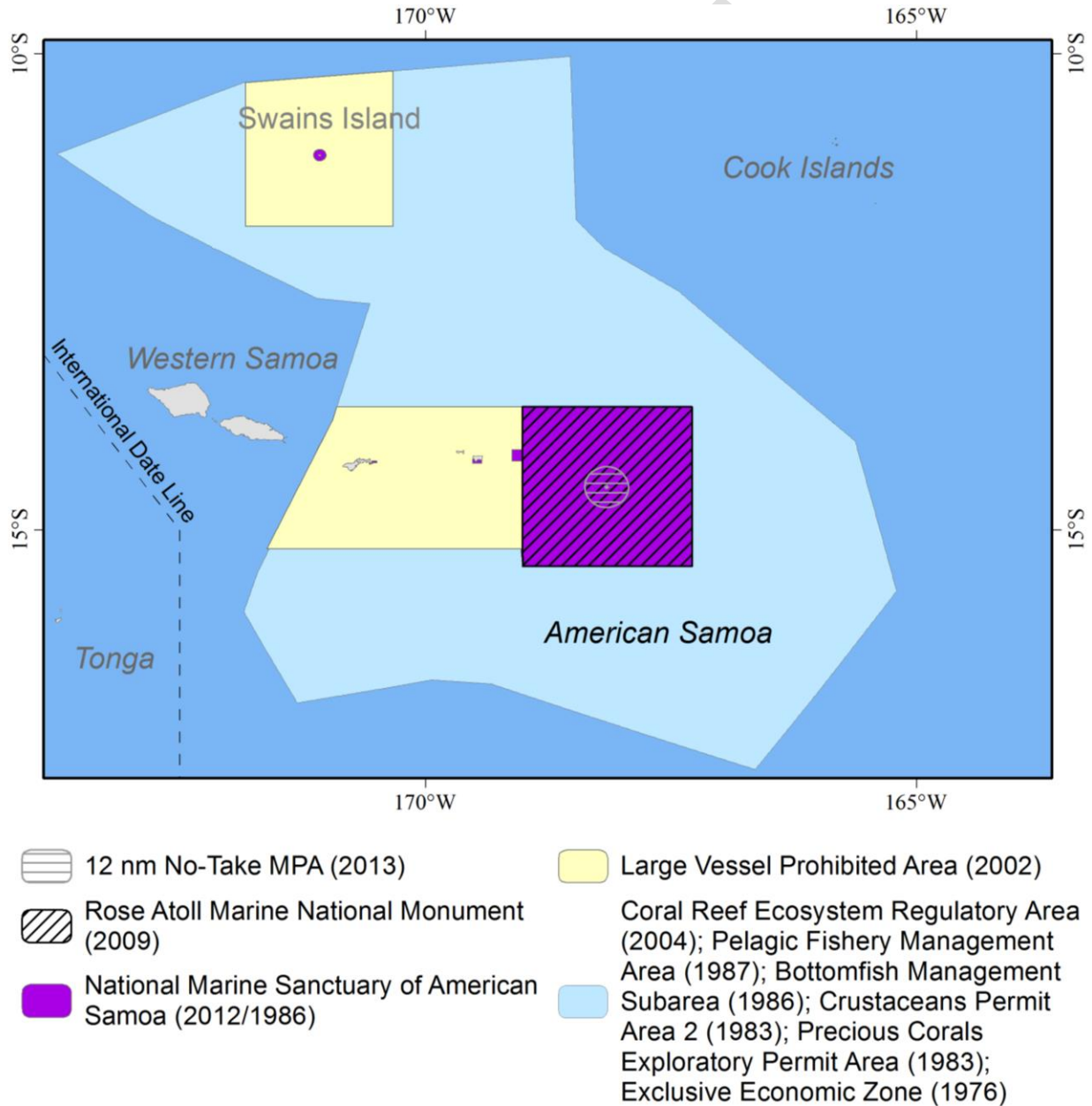


Figure 1. Regulated fishing areas of American Samoa

Table 1. MMAs established under FEPs from [50 CFR § 665](#)

Name	FEP	Island	50 CFR / FR / Amendment Reference	Marine (km ²) Area	Fishing Restriction	Goals	Most Recent Evaluation	Review Deadline
Large Vessel Prohibited Area	Pelagic (American Samoa)	Tutuila, Manu'a, and Rose Atoll	665.806 (b)(1) 81 FR 5619 82 FR 43908	74,857.32	Vessels \geq 50 ft. prohibited	Prevent gear conflict with smaller alia vessels; longline vessels >50 ft. exempted from 12 to 50 nm to improve the viability of the American Samoa longline fishery and achieve optimum yield from the fishery while preventing overfishing	Jan 29, 2016	-
Large Vessel Prohibited Area	Pelagic (American Samoa)	Swains Island	665.806 (b)(2) 81 FR 5619 82 FR 43908 Pelagic FEP	28,352.17	Vessels \geq 50 ft. prohibited	Prevent gear conflict with smaller alia vessels; longline vessels over 50 ft. exempted between 12 and 50 nm due to improve the viability of the American Samoa longline fishery and achieve optimum yield from the fishery while preventing overfishing	Jan 29, 2016	-
Rose Atoll No-Take MPA/Rose Atoll Marine National Monument	American Samoa Archipelago/ Pelagic	Rose Atoll	665.99 and 665.799(a)(2) 69 FR 8336 Coral Reef Ecosystem FMP 78 FR 32996 American Samoa FEP Am. 3	-	All Take Prohibited	Minimize adverse human impacts on coral reef resources; commercial fishing prohibited within 12 nm	June 3, 2013	June 3, 2016

2.7.4 Fishing Activities and Facilities

There are no aquaculture activities currently occurring in the offshore waters of American Samoa.

2.7.5 Non-Fishing Activities and Facilities

There are no alternative energy facilities or military training and testing activities currently occurring in the Federal or territorial waters of American Samoa. The Plan Team will add to this section as new facilities are proposed and/or built.

2.7.6 Additional Considerations

2.7.6.1 Fish Aggregating Devices (FADs)

There are usually five FADs active in the waters around American Samoa in recent years: four around Tutuila and one near Manua. In 2020, however, only one fish aggregating device (FAD) was still deployed, FAD B (Figure 2). Three other FADs have been lost in the past two years, FADs A, C, and E; however, there are plans to deploy FADs C, G, E, and J in the near future. American Samoa recently received three new FADs sent from New Zealand to replace the lost FADs, though the shipment was delayed due to complications associated with COVID-19 shipping restrictions in Australia and New Zealand. The American Samoa DMWR recently resurveyed the three potential FAD sites around Tutuila and noticed some discrepancies in the depth.

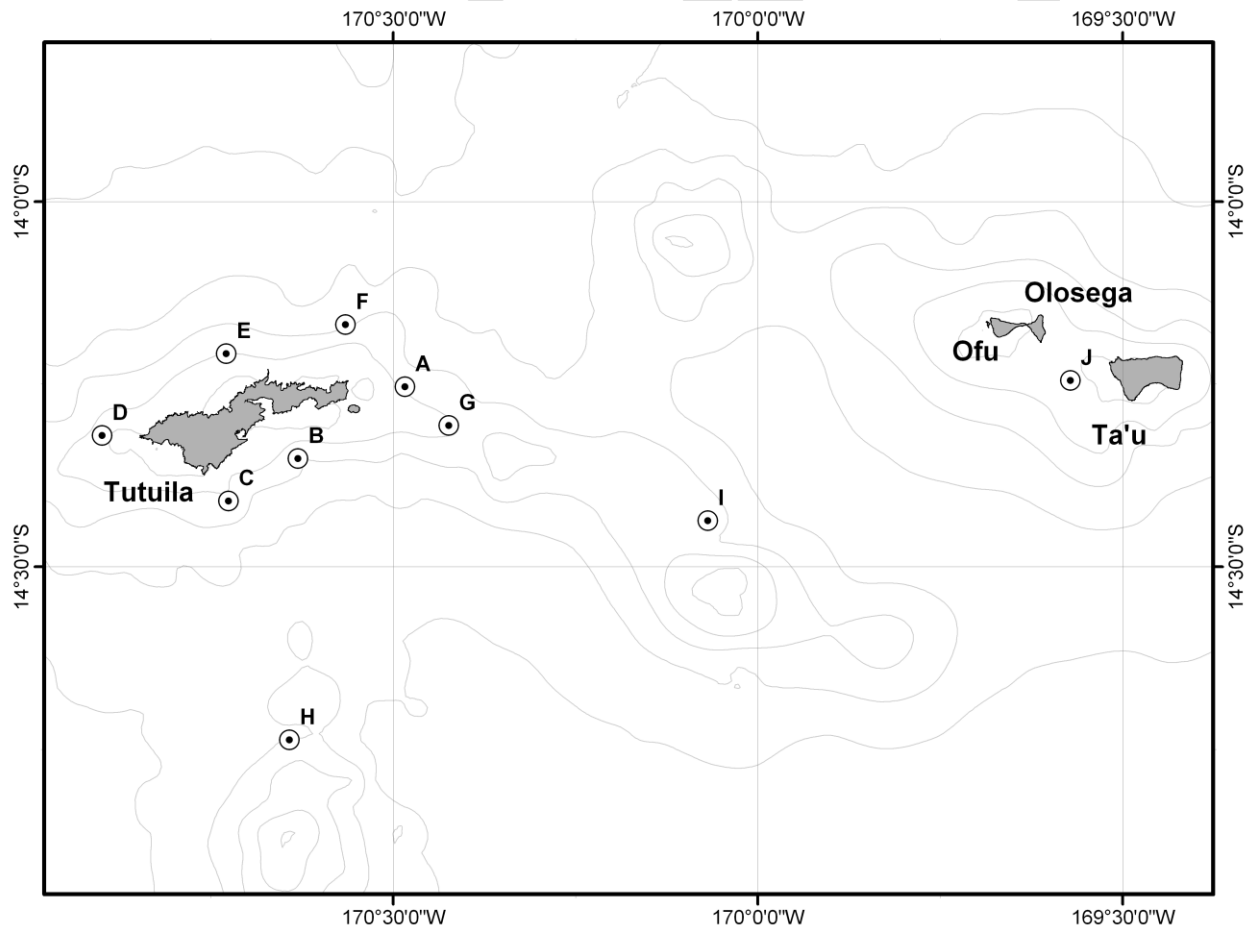


Figure 2. Present or planned locations of FADs in deep water around American Samoa (Source: DMWR)

2.7.6.2 Critical Habitat for the Threatened Indo-Pacific Corals

On November 27, 2020, NMFS published a proposed rule in the Federal Register (85 FR 76262) to designate critical habitat for the seven threatened corals in U.S. waters in the Indo-Pacific pursuant to section 4 of the ESA. Six of these corals occur around American Samoa: *Acropora globiceps*, *Acropora jacquelineae*, *Acropora retusa*, *Acropora speciosa*, *Euphyllia paradivisa*, and *Isopora crateriformis*. Specific occupied areas containing physical features essential to the conservation of these coral species are being proposed for designation as critical habitat. The purpose of designating critical habitat is to identify the areas that are essential to the species' recovery to help focus conservation efforts. If the proposal is finalized, the designation of the critical habitat would provide significant regulatory protection by ensuring that the Federal government considers the effects of its actions in accordance with section 7(a)(2) of the ESA and avoids or modifies those actions that are likely to destroy or adversely modify critical habitat. Thus, if the proposed rule is finalized, NMFS would re-initiate consultation under Section 7 of the ESA to determine the impact of American Samoa fishing activities on critical habitat and any necessary management measures.

The American Samoa DMWR has expressed reservations regarding the proposed critical habitat designations around the territory. The proposed map of critical habitat around American Samoa suggests that most of the coral reef habitat is critical habitat for the six ESA-listed corals, with which DMWR disagrees based on the known distribution of these coral species.

2.7.6.3 American Samoa Spatial Planning Tools

In June 2018, President Trump signed the EO 13840 *Regarding the Ocean Policy to Advance Economic, Security, and Environmental Interests of the United States*, which established a policy focused on public access to marine data and information and requires federal agencies to 1) coordinate activities regarding ocean-related matters and 2) facilitate the coordination and collaboration of ocean-related matters with governments and ocean stakeholders. To that end, the [American Samoa Coastal and Marine Spatial Planning Data Portal](#) was created by [Marine Cadastre](#) to share information and data for coastal and marine spatial planning in American Samoa.

DRAFT