# FAGATELE BAY NATIONAL MARINE SANCTUARY
# SANCTUARY ADVISORY COUNCIL
# CHARTER

## ESTABLISHMENT AND AUTHORITY

Section 315 of the National Marine Sanctuaries Act (NMSA or Act; 16 U.S.C. § 1431 *et seq.*) authorizes the Secretary of Commerce to establish sanctuary advisory councils to provide advice to the Secretary of Commerce regarding the designation and management of national marine sanctuaries. This authority has been delegated to the Director of the Office of National Marine Sanctuaries (director). The director hereby establishes the Fagatele Bay National Marine Sanctuary Advisory Council (council).

The director will consult with the Director of the American Samoa Government Department of Commerce (ASDOC) on the establishment and operation of the council.

This charter provides background on the Office of National Marine Sanctuaries (ONMS) and the Fagatele Bay National Marine Sanctuary, and describes the objectives and roles of the council's activities, procedural requirements regarding the appointment of council members and officers, requirements for the conduct of council members and meetings, and other requirements. All council activities must be conducted pursuant tc this charter.

## SANCTUARY ADVISORY COUNCIL POLICY STATEMENT

The ONMS regards the involvement of communities and the development of a stewardship ethic as vitally important to successfully protect sanctuary resources. One key way to achieve this involvement is the formation of sanctuary advisory councils.

Sanctuary advisory councils bring members of a diverse community together to provide advice to the sanctuary superintendent (authority delegated from the Secretary of Commerce and the Under Secretary for Oceans and Atmosphere) on the management and protection of the sanctuary, or to assist the ONMS in guiding a proposed site through the designation process.

The ONMS is committed to the full support, utilization, and enhancement of councils at all sanctuaries. In order for councils to achieve their full potential, the ONMS within the limits of available resources will:

- Provide sufficient support to allow councils to operate efficiently and effectively at each site;

- Provide support and guidance from the national office to help councils operate efficiently and at a basic level of consistency across the system;

- Promote coordination and communication among councils and among sanctuary staff that work closely with councils;

- Develop training programs appropriate to council officers and members, and sanctuary superintendents and staff; and

- Conduct an annual meeting for council chairs, council coordinators and other appropriate ONMS staff to promote information exchange, networking and cross-pollination between councils.

FBNMS is the only Sanctuary located in a Territory where the dominant culture is not Western. The FBNMS Council should embrace the local cultural ethics so that the programs and direction of FBNMS will fully reflect the needs of the local people while at the same time satisfying the mandates of the ONMS.

## OFFICE OF NATIONAL MARINE SANCTUARIES

A national marine sanctuary is an area of the marine or Great Lakes environment of special national, and sometimes international, significance warranting protection and management under the NMSA. As steward of coastal and ocean resources, the National Oceanic and Atmospheric Administration (NOAA) protects and manages sanctuaries through the ONMS.

Vision of the ONMS:

The Office of National Marine Sanctuaries is a world-class system of sanctuaries that protects the nation's natural and cultural marine resources for this and future generations and provides both national and international leadership for marine conservation.

Mission of the ONMS:

Identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of the National Marine Sanctuary System for this and future generations throughout the nation.

Goals of the ONMS:

- Identify, designate, and manage sanctuaries to maintain the natural biological communities in sanctuaries and to protect and, where appropriate, restore and

enhance natural habitats, populations, and ecological processes, through innovative, coordinated, and community-based measures and techniques.

- Build and strengthen the nation-wide system of marine sanctuaries, maintain and enhance the role of the system in larger marine protected area networks, and help provide both national and international leadership for marine protected area management and marine resource stewardship.

- Enhance nation-wide public awareness, understanding, and appreciation of marine and Great Lakes ecosystems and maritime heritage resources through outreach, education, and interpretation efforts.

- Investigate and enhance the understanding of ecosystem processes through continued scientific research, monitoring, and characterization to support ecosystem-based management in sanctuaries and throughout U.S. waters.

- Facilitate human use in sanctuaries to the extent such uses are compatible with the primary mandate of resource protection, through innovative public participation and interagency cooperative arrangements.

- Work with the international community to strengthen global protection of marine resources, investigate and employ appropriate new management approaches, and disseminate ONMS experience and techniques.

- Build, maintain, and enhance an operational capability and infrastructure that efficiently and effectively support the attainment of the ONMS mission and goals.

## FAGATELE BAY NATIONAL MARINE SANCTUARY

Fagatele Bay National Marine Sanctuary (FBNMS or Sanctuary) was designated in 1986 and is the smallest (at 163 acres) and most remote of the fourteen sites in the national marine sanctuary program. The designation process resulted in a co-management agreement with the American Samoa Government, so that local administration would be through the then Economic Development Planning Office (EDPO), now the Department of Commerce (ASDOC). A Coordinator was selected who reported directly to the Director of EDPO, and acted as a liaison with the ONMS. That relationship has changed only in that the ASDOC Coordinator became a federal manager, and is an employee of NOAA. However, the manager still acts as liaison between the American Samoa Government (ASG) and ONMS, and continues to consult with the Director of the ASDOC. The office works closely with the local ASDOC as part of their Resource Management Division.

Located on Tutuila, the largest island of American Samoa, FBNMS extends from Steps Point, the southernmost point of the island, to Fagatele Point on the island's southwestern shore. Fagatele Bay is a complex ecosystem dominated by an exceptionally high diversity of Indo-Pacific coral reefs. The bay provides habitats for numerous species of tropical fish, invertebrates, and algae. During parts of the year, Fagatele's sheltered waters are a haven for threatened and endangered species such as humpback whales, and hawksbill and green turtles. The steep slopes surrounding Fagatele contain some of America's rare paleo-tropical rainforests.

## COUNCIL OBJECTIVES AND ROLES

1. The purpose of the council, in accordance with the NMSA, is to provide advice and recommendations to the sanctuary superintendent regarding the protection and management of the Fagatele Bay National Marine Sanctuary.

2. The council shall draw on the expertise of its members and other sources in order to provide advice.

3. Council members shall serve as liaisons between their constituents and/or communities and the Sanctuary, keeping the sanctuary staff informed of issues and concerns, as well as performing outreach to their respective communities on the Sanctuary's behalf.

4. The council may serve as a forum for consultation and deliberation among its members and as a source of advice to the superintendent. Such advice shall fairly represent the collective and individual views of the council members. In formulating such advice, the Council members shall recall that the primary objective of the sanctuary and the NMSA is resource protection, and how that objective can be achieved within the context of American Samoa.

5. The council is established to provide advice and recommendations to the sanctuary superintendent regarding the management of FBNMS. This does not constitute authority to perform operational or management functions, or to make decisions on behalf of the sanctuary.

## MEMBERS, ALTERNATES, AND OFFICERS

1. The Council shall consist of no more than 11 voting members, who shall be appointed by the director, in consultation with the ASDOC Director, from among persons employed by federal, state, local agencies, or with the private sector with expertise in management of natural resources, representatives of local user groups, conservation and other public interest organizations, scientific and educational

organizations, and members of the public interested in the protection and multiple use management of Sanctuary resources. The membership is designed to balance points of view, geographic diversity, and advisory functions the Council will perform.

2. The sanctuary manager may sit on the council as a nonvoting member and shall work with the chair in scheduling each meeting and approving the agenda to ensure that topics of discussion are relevant to the sanctuary. Council meetings may not be conducted in the absence of the sanctuary superintendent or his/her designee.

3. To ensure relevant information exchange among national marine sanctuaries and national marine research reserves, the Pacific Regional Director shall sit on the council as a non-voting member.

4. A non-governmental, non-voting student seat represents the youth and young adult segment of the community, defined as ages 14-25. The student member shall be appointed for a term of two years, and may compete for reappointment unless the individual will exceed the age limit during the additional term. This seat is governed by the same application, nomination and appointment procedures as non-governmental voting seats on the council, and is also subject to the same grounds for removal.

   The individual filling the student seat must:
   - Be a minimum of 14 years of age when they apply;
   - Attend a school (including home schools) in the area affected by the sanctuary;
   - Have proven ability to communicate and network with other students within their school (and/or other home schooled students) and in other schools within their community;
   - Possess an interest in sanctuary resource protection and management;
   - Have experience and/or knowledge regarding public uses and activities in the sanctuary;
   - Be able to travel to and attend council meetings and retreats (youth or parent provides transportation); and
   - Provide written recommendation from one or more teachers;

Once selected, ONMS staff will contact the student to provide:
- Written permission from parent/guardian (if under 18);
- Written permission from school administration to attend council meetings and retreats (only if council meetings or retreats require a student to miss school); and
- The school may also require their own paperwork if for example, the student has to miss school.

If under 18, a chaperone (teacher/parent/guardian) is encouraged to attend each meeting with the student and stay for the duration of the meeting.

5. By virtue of the shared functional responsibilities of federal, state, and local jurisdictions in the implementation of sanctuary related management, each of the following government entities shall be requested to designate one individual to serve on the council. The following government agencies shall sit on the council as non-voting members:

   - National Park Service (non-voting)

6. There are two categories of seats for which voting members are appointed. The following procedures shall govern the application, nomination, and appointment of council voting members.

   (a) (i) Governmental (4 members). By virtue of the shared functional responsibilities of federal, state, and local jurisdictions in the implementation of sanctuary-related management, each of the following government entities shall be requested to designate one individual to serve on the council.

   - American Samoa's Department of Commerce Resource Division (voting)
   - American Samoa Department of Marine and Wildlife Resources (voting)
   - American Samoa Community College/Sea Grant (voting)
   - American Samoa Environmental Protection Agency (voting)

   (ii) Governmental members are appointed by their agencies and are not subject to term limitations or the competitive application process.

   (iii) An alternate (from the same government entity) of a governmental council member may attend a council meeting on occasion if the chair and sanctuary superintendent are notified in advance of any meeting at which an alternate will represent the council member, including the name, address, and position of the individual designated. An alternate may not name another alternate.

   (iv) If a government entity decides no longer to participate as a member of the council, or fails to attend three consecutive council meetings without reasonable justification and is formally removed by the director, the sanctuary superintendent, with the approval of the director, shall invite another appropriate government entity to replace that agency on the council.

   (v) If it is found that a governmental member of the council has violated one or more of the terms of this charter, the sanctuary superintendent may recommend to the director that the appropriate agency be notified and requested to replace the

designee. The sanctuary superintendent may consult with the council prior to taking such action.

(b)(i) Non-governmental (7 members). All non-governmental members are voting members. A representative-of each of the following activities, which are integrally affected by the management goals of the Sanctuary, shall-be selected:

- Research
- Education
- Commercial Fishing
- Ocean Recreation or Ocean Centered Eco-tourism
- Community-at-large (3 seats)
    - Representative from the East side of Tutuila
    - Representative from the West side of Tutuila
    - Representative from the Manua Islands

The non-governmental members are appointed for a term of three years, and may compete for reappointment. If necessary, subsequent terms of appointment may be changed to provide for balanced (staggered) expiration dates. Should a non-governmental seat become vacant, the alternate may complete the term or the vacated position could be advertised and a replacement appointed as specified below. The newly appointed member shall serve for a full term beginning on the date of his/her swearing-in by the sanctuary superintendent, and the ASDOC Director.

(ii) Members serve at the discretion of the director. The sanctuary superintendent, in consultation with the ASDOC Director, may recommend to the director the removal of a non-governmental member of the Council on any of the following grounds if that member:

- Is convicted of any felony offense;
- Is found to have violated any of the following laws or regulations promulgated thereunder: the National Marine Sanctuaries Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, or another environmental law for which NOAA or another federal agency has jurisdictional responsibility;
- Is found to have violated territorial environmental laws or regulations promulgated thereunder in American Samoa;
- Is found to have violated national or territorial laws or regulations in American Samoa protecting cultural resources;
- Is determined to have abused his or her position as a member of the council (including but not limited to use of council information for personal gain; use of council position to advance a personal agenda or harm another member of the

council or of the community; misrepresentation of, or spreading misinformation about the council or the sanctuary; and refusal to recuse himself or herself if so requested by the sanctuary superintendent and/or chair in a matter in which the member has a conflict of interest);

- Has a change to the professional affiliation(s) and/or personal circumstances that make up a significant portion of that member's qualifications for being a member of the council;
- Misses three consecutive meetings without reasonable justification;
- Disrupts on more than one occasion council meetings in a manner that interferes with the council conducting its business; or
- Violates any term of this Charter.

The sanctuary superintendent may consult with the council prior to taking such an action.

7. As each non-governmental seat becomes vacant and the process for selection of a new member (described under Appointments) is conducted, the sanctuary superintendent, who may consult with ASDOC, shall recommend to the director the member and an alternate from among the top three candidates resulting from the review process. The alternate shall have all the rights of the member at such times the alternate is officially substituting for the member. The member shall notify the chair and the sanctuary superintendent before an alternate officially attends a meeting. The alternate may also be appointed to complete a primary member's term if that member resigns or is removed. The alternate may not name another alternate.

8. (a) Council Officer Elections and Terms
The council shall elect one member to serve as chair, one member to serve as vice-chair. The vice-chair shall act as chair in the absence of the chair. Terms of the chair and vice-chair are two years, except that the initial term of the vice-chair is one year. The chair and vice-chair may serve a maximum of two consecutive terms (four years) if reelected. The council may elect one member to serve as council secretary. The term of the council secretary is one year. The council secretary may serve consecutive terms if reelected.

A chair, vice-chair, or secretary may leave his/her term to run for another council officer position if desired. If the chair, vice-chair, or secretary is elected to a new position, the council shall nominate and elect a new representative for the vacated position. Council members, including non-voting members, may nominate individuals for the council officer positions. Election for all positions is by majority vote of all council members, including the non-voting members (except the superintendent or their designee), and votes shall be made by written ballot. Alternates may nominate and vote during an election only when the alternate is

filling the seat in the absence of the primary member. Members who will not be present at the time of the election may submit their vote in writing (by e-mail is acceptable) to the sanctuary superintendent prior to the meeting. Following the first election, elections for chair and vice-chair shall be held in alternate years.

If a council officer resigns, the council should hold an election at the next regularly scheduled council meeting. If the newly elected individual feels comfortable they may begin serving in their position immediately upon being elected, otherwise they may begin serving at the next meeting. If the chair resigns, the vice chair acts on their behalf until the new chair assumes their position. If the vice chair resigns, the secretary acts on their behalf until the new vice chair assumes their position. If the secretary resigns, the position may remain vacant until the new secretary assumes their position.

(b) Roles of Council Officers
(i) Chair: The chair schedules and sets agendas for all council meetings with the approval of the sanctuary superintendent, presides over all meetings of the full council and ensures that meetings are run according to accepted meeting practices, signs all correspondence and documents authorized by the council, and generally represents the council's interests and concerns to the public. The chair also continues to fulfill the general roles that all council members fill, including representing the interests of their constituents.

(ii) Vice-Chair: The vice-chair serves as chair in the absence of the chair and assists as necessary in performing executive duties of the council. The vice-chair also continues to fulfill the general roles that all council members fill, including representing the interests of their constituents.

(iii) Council Secretary: The council secretary assists sanctuary staff in performing administrative duties (recording minutes, tracking action items, drafting correspondence, preparing the annual council report, etc.) as directed by the chair or vice-chair. The secretary also continues to fulfill the general roles that all council members fill, including representing the interests of their constituents.

## APPOINTMENTS

Public notice shall be provided as to the vacancy of constituent group seat(s) and at-large representatives. Applications for ensuing terms for vacant seats shall be submitted to the sanctuary superintendent directly. Copies of all applications and nominations for each seat will be submitted by the sanctuary superintendent to the preliminary review panel to obtain recommendations on selections. Any council member that has a conflict of interest (financial, personal, self nomination, etc.) shall

recuse him/herself from making a selection for the vacant seat. Selection from among those recommended by the council or from among other applicants or nominees shall be made by the sanctuary superintendent with the approval of the director. In all cases, submission of written statements of particular interest, qualifications, and experience shall be requested. Guidelines for applying shall be supplied at the appropriate time.

## ADMINISTRATION

1. Members of the Council shall serve without pay except that each member may receive travel expenses including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of Title 5, .S.C., for travel to and from official council meetings. No members of working groups (defined below) may receive travel expenses for working group activities or meetings. Travel expenses for governmental members of the council may be provided by their own agencies.

2. The ONMS may make available such staff, information, administrative services, or assistance as the Sanctuary Manager determines are reasonably required to enable the Council and its subcommittees/working groups to carry out their functions.

## OPERATION

1. Meetings

(a) Meetings are held at the call of the chair and the sanctuary superintendent.

(b) Decisions (e.g. recommendations) made by the council shall be made by majority vote of those present, provided there is a quorum (more than half of the voting members). A recorded vote may be requested by the chair or sanctuary superintendent.

(c) Each meeting shall be open to the public.

(d) Interested persons shall be permitted to present oral or written statements on items on the agenda, or other pertinent topics.

(e) Emergency meetings may be held at the call of the chair or presiding officer and the sanctuary superintendent.

(f) Timely notice of each council meeting, including the time, place, and agenda of each meeting, shall be provided to the local media and additional notice may be given by such other means as will result in appropriate publicity to interested groups. This requirement shall not apply to workshops scheduled by the council to address strategic planning, administration, or specialized technical issues. The council may not vote at

any meeting for which the above public notice has not been issued. The council may not vote on any agenda item for which notice was not provided.

(g) The council shall meet as frequently as necessary, not to exceed once per month (the meetings should be in different months, but do not have to be precisely 30 days apart) for voting meetings, but at least once every six months. The council meeting place may be rotated among various locations adjacent to the sanctuary site and meeting sites shall be chosen to accommodate anticipated public attendance and be reasonably accessible to those interested in attending.

(h) Minutes of each meeting shall be kept by a person specified by the sanctuary superintendent and contain a summary of attendees and matters discussed; such minutes shall be available to the public.

(i) Council meetings shall be conducted in English. Should a council member require translation during meetings, the sanctuary superintendent may provide a translator. If a council member requires that written materials be provided in Samoan, the sanctuary superintendent may provide that service to the extent practicable.

2. Procedures for Providing Advice: The following procedures shall be used to provide advice:

(a) The council may provide advice on a relevant issue or topic to the sanctuary superintendent. Requests for information, assistance, or advice from the ASDOC, ONMS, other NOAA offices, or other agencies shall be made in writing (by e-mail is acceptable) and be coordinated through the sanctuary superintendent.

(b) Any matter that a council member wishes to raise to the attention of the Sanctuary shall be brought to the attention of either the sanctuary superintendent or the council chair so that it might be placed on the agenda as a discussion topic. The sanctuary superintendent and the council chair shall discuss topics for the agenda. The sanctuary superintendent approves a topic to be placed on the agenda.

(c) The council shall provide advice directly to the sanctuary superintendent via a written recommendation or a motion passed by the council and reflected in the minutes. Draft recommendations and verbal discussions shall be considered by the sanctuary superintendent as additional background information and shall be included in the minutes.

(d) Any written or oral advice, correspondence or information the council wishes to offer or express beyond the sanctuary superintendent shall be voted on and approved by the council prior to sending. Because the council was established specifically to provide advice to the Secretary, and operates through the sanctuary superintendent, the

sanctuary superintendent must also approve advice, correspondence, or information that goes outside the sanctuary prior to sending.

(e) The council shall base its advice on a vote of the council with negative votes and abstentions noted or on consensus reached during discussion and minority opinions noted. A quorum shall be present when the vote is taken or a discussion to reach consensus is conducted.

(f) Any information or advice resulting from discussions in subcommittees or working groups that is requested by the council shall be presented to and considered by the full council and as appropriate incorporated into the council's recommendation to the sanctuary superintendent. If the council does not incorporate information or advice of a subcommittee or working group, it shall inform the sanctuary superintendent and explain in its advice or information the reasons for not incorporating the subcommittee's or working group's advice or information.

3. Conduct of Individual Members

(a) Council members may not use or allow the use of, for other than official purposes, information obtained through or in connection with their council affiliation that has not been made available to the general public.

(b) When speaking to the public or writing about any matter regarding the sanctuary in a document for distribution beyond council membership, the sanctuary superintendent, or sanctuary staff, a member shall clearly distinguish those recommendations, opinions, or positions officially adopted by the council as a body from those he or she may have as an individual. In no case shall a member represent individual opinions as those of the council, the sanctuary superintendent, sanctuary staff, NOAA, or ASG.

(c) Any council member that has an interest (financial, personal or business interest) in any matter before the council or a subcommittee or working group shall identify such interest prior to discussion and voting on such matter. No member shall cast a vote on any matter that would provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under federal law. An affected member who may not vote on a matter may participate in council deliberations relating to the decision after notifying the council of the voting recusal and identifying the interest that would be affected. These same guidelines apply to members of working groups who are not members of the council.

(d) All council members are expected to conduct themselves in a civil fashion, showing courtesy and respect to other council members, sanctuary staff and any other individuals present at the meeting.

4. Conduct of the Council as a Body

Any correspondence or other written documents that are intended to speak for the council as a body shall be coordinated with, and approved by, the chair and the sanctuary superintendent prior to sending. The following disclaimer shall be placed in all documents originating from the council: "The council is an advisory body to the sanctuary superintendent. The opinions and findings of this publication do not necessarily reflect the position of the Fagatele Bay National Marine Sanctuary, the National Oceanic and Atmospheric Administration or the American Samoa Government."

5. Council Letterhead

The council shall, with the assistance and approval of the sanctuary superintendent, design and use its own letterhead. All correspondence from the chair or other members of the council, or the council as a body, shall be on this letterhead. The council shall not use official NOAA letterhead for any correspondence or other purpose.

6. Subcommittees and Working Groups

(a) Subcommittees: The chair, in consultation with the council as a whole and with the concurrence of the sanctuary superintendent, may establish such subcommittees as necessary to fulfill the council's duties. Subcommittees shall be composed solely of members of the council; at the superintendent's discretion, alternates may also serve on subcommittees. The subcommittees may be chaired by a primary member of the council. Subcommittees shall be recognized as official subunits of the council. Subcommittees are subject to all requirements of this charter. No members of subcommittees, including members who are also members of the council, may receive travel expenses for subcommittee meetings or other activities.

(b) Working Groups: The chair, in consultation with the council as a whole and with the concurrence of the sanctuary superintendent, may establish working groups for specific purposes or topics that need focused attention that cannot be accomplished by a subcommittee. Their work will be limited to the functional areas and discrete issues relating to individual sanctuaries. Working groups may be composed of members of the council and persons outside the council. Working groups shall be chaired by a primary member of the council and shall function under the purview of the council. At the sanctuary superintendent's discretion and if the full council approves, an alternate member may chair a working group; that alternate shall function under the purview of the council. Working groups established by the council to address specific issues shall disband once the final advice on the particular matter is submitted to the council. No members of working groups, including members who are also members of the council, may receive travel expenses for working group meetings or other activities.

## OTHER TERMS OF THIS CHARTER

1. The council shall operate pursuant to the terms of this charter.

2. This charter shall remain in effect for a period of five years from the date of signature.

3. Six months prior to the expiration of this charter, the need for the council will be evaluated by the ONMS, with input from council members, to determine whether to renew the charter.

4. Revisions to the charter may be made as determined necessary by the ONMS with input from the council.

Daniel J. Basta
Director, Office of National Marine Sanctuaries

12/8/09
Date