

PROPOSED HUDSON CANYON NATIONAL MARINE SANCTUARY ADVISORY COUNCIL CHARTER

ESTABLISHMENT AND AUTHORITY

Pursuant to the National Marine Sanctuaries Act § 315,¹ the Secretary of Commerce, through the director of the Office of National Marine Sanctuaries (director), hereby establishes the proposed Hudson Canyon National Marine Sanctuary Advisory Council (advisory council). The advisory council is governed by the act and shall operate pursuant to the terms of this charter and the National Marine Sanctuary Advisory Council Implementation Handbook (handbook).

SANCTUARY ADVISORY COUNCIL POLICY STATEMENT

ONMS regards community involvement and stewardship as vitally important in carrying out its mission. Advisory councils facilitate this involvement by bringing diverse representatives of the community together to assist ONMS in guiding a proposed site through the sanctuary designation process.

The resources ONMS manages differ in size, species, depth, color, culture, and countless other ways. This rich diversity is part of our natural heritage, a gift to be discovered, appreciated and protected. Whether a natural ecosystem or a human community, diversity creates strength and resilience. By recruiting for and representing the equally remarkable diversity of advisory council members, ONMS can leverage new creativity, knowledge, and experiences to achieve its vision of a thriving sanctuary system that protects our nation's underwater treasures and inspires momentum for a healthy ocean.

ADVISORY COUNCIL ROLES

The advisory council is authorized to advise and make recommendations to NOAA regarding the designation and management of national marine sanctuaries. Accordingly, any council advice, recommendations, or comments, if implemented, must be part of or related to existing or potential management measures that could be authorized under the National Marine Sanctuaries Act.

Advisory council members serve as liaisons between their constituents and ONMS. The advisory council shall draw on the expertise of its members to provide advice and recommendations to NOAA regarding the protection and management of the proposed Hudson Canyon National Marine Sanctuary. This advice shall fairly represent the collective and individual views of the advisory council members.

Nothing in this charter constitutes authority to perform operational or management functions, or to make decisions on behalf of the sanctuary, the National Oceanic and Atmospheric Administration (NOAA), or the Department of Commerce.

¹ 16 U.S.C. § 1445a (2012).

Advisory council members shall not reference or otherwise use their advisory council membership in connection with public statements made in their personal capacities unless they also include a disclaimer that the views expressed in the statement are their own and do not represent the views of ONMS, NOAA, or the Department of Commerce.

Advisory council members and alternates may not use their official council title or positions to directly benefit other roles in which they serve. Members and alternates may not use their affiliation with the council for personal profit, or to attempt to influence an issue by invoking their council affiliation outside the context of the council itself. Advisory council members and alternates are not NOAA employees or affiliates and may not perform functions of NOAA employees or affiliates.

The following ethics classifications govern advisory council members and alternates:

- Federal employees appointed to an advisory council are performing their duties on the advisory council in their official capacities as full-time federal employees, and the ethics laws and regulations that apply to them while serving on the council are the same that apply to them in the course of their federal duties.
- Employees of state agencies who occupy a position reserved for that particular state agency are serving in their capacity as state officials, representing the state. They would be subject to the rules that govern employees of that particular state/agency because they would be serving on behalf of the state. With respect to federal ethics rules, they would be subject to rules against misusing government resources.
- State employees serving on advisory councils in their personal capacity would be representing a stakeholder other than that particular state, and would have to do so pursuant to whichever ethics/outside activity rules apply to them in that particular situation. They would be subject to rules regarding the misuse of government resources.
- Other appointed advisory council members representing stakeholders and not employed by a state or the government would be considered to be representatives of the various stakeholder groups, and would be subject to rules regarding the misuse of government resources.

ADVISORY COUNCIL MEMBERSHIP

The advisory council shall consist of no more than 15 voting members. Members shall be selected by the director from groups representing the diverse perspectives surrounding sanctuary resources, including federal, state, or local agency employees with expertise in natural resources management; local user-group representatives; 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.

SEAT CATEGORIES

Non-voting seats. There are two categories of seats for which non-voting members are appointed or selected. These categories are as follows:

1. Governmental. By virtue of the shared interest of federal, state, and local jurisdictions in the implementation of proposed 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:
 - NOAA Fisheries
 - New England Fishery Management Council
 - Mid-Atlantic Fishery Management Council
 - South-Atlantic Fishery Management Council
 - U.S. Coast Guard
 - U.S. Department of Interior/Bureau of Ocean Energy Management
 - U.S. Department of Navy
 - State of New York
 - State of New Jersey
 - State of Rhode Island

Non-voting governmental members are appointed by their agencies and are not subject to term limitations or the competitive application process.

- i. An alternate (from the same government entity) of a governmental council member may attend a council meeting on occasion if the chair and the NOAA official 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.
- ii. If a government entity decides to no longer 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 NOAA official, with the approval of the director, may invite another appropriate government entity to replace that agency on the council.
- iii. If it is found that a governmental member of the council has violated one or more of the terms of this charter, the NOAA official may recommend to the director that the appropriate agency be notified and requested to replace the designee. The NOAA official may consult with the council prior to taking such action.
- iv. Governmental members are subject to the same grounds for removal as non-governmental members.

2. Recognizing the cultural significance of this area to Indigenous Nations and Tribes, NOAA welcomes the participation of such interested Nations and Tribes on the council. This could involve multiple Nations and Tribes. Participation on the council does not take the place of government-to-government consultation nor does it serve as the only opportunity for engagement between NOAA and Indigenous Nations and Tribes.

Voting seats. There is one category of seats for which voting members are appointed. The following procedures shall govern the application, nomination, and appointment of council voting members:

1. Non-governmental (15). A representative and alternate of each of the following activities or groups, which are integrally affected by ONMS sanctuary management goals, shall serve on the proposed sanctuary:
 - Commercial Fishing (2)
 - Recreational Fishing (2)
 - Tourism/Recreation (1)
 - Conservation (2)
 - Science/Research (1)
 - Business and Economic Development (1)
 - Marine Industry (2)
 - Education/Outreach (2)
 - Citizen At-Large (2)

These members are appointed for a term of three years, and may compete for reappointment (subject to the ONMS nongovernmental seat term limits policy described in the handbook). Should a non-governmental seat become vacant during the member's scheduled term, the alternate may complete the term, or the vacated position could be advertised to replace the member. The newly appointed member shall serve for a full term, beginning on the swearing-in date.

ALTERNATES

Each primary nongovernmental seat shall have one alternate. An alternate should attend and participate in advisory council meetings and other activities just as any other member, except that the alternate shall not vote unless the primary seat representative is absent. While primary members accept the responsibility of attending advisory council meetings, an alternate ensures that the seat constituents' voice is heard by voting when the primary member is absent.

ADVISORY COUNCIL OFFICERS

The advisory council shall elect one member to serve as chair, one member to serve as vice chair. The chair and vice chair serve two-year terms and may serve a maximum of two consecutive terms if reelected. The handbook provides guidance on the roles of each officer position.

ADVISORY COUNCIL MEMBER REMOVAL

As indicated in the handbook, advisory council members serve at the discretion of the director. The NOAA representative for the proposed site may recommend removal of a member who violates any term of this charter or any of the proscribed activities in the handbook, including absence from three consecutive meetings without reasonable justification.

ADMINISTRATION

Members of the advisory council serve without pay, except that each member may receive travel expenses (including per diem in lieu of subsistence) for travel to and from official advisory council meetings, meetings of subcommittees of which they are members, and meetings of working groups of which they are members.² Similarly, working group members who are not advisory council members shall serve without pay, except that they may receive working group meeting travel expenses (including per diem in lieu of subsistence).³

All reimbursement of travel expense requests are at the discretion of the NOAA representative and dependent upon financial considerations and constraints. Travel expenses for governmental members may be provided by their own agencies. No alternates may receive travel expenses for council meetings unless they are filling the seat in the absence of the primary member. All travel expenses are governed by federal travel regulations.

ONMS may make available any staff, information, administrative services, or assistance that the NOAA representative determines reasonably required to enable the advisory council and its subunits to function.

OPERATION

The advisory council's success depends on its members' consistent attendance and participation at meetings, as well as their constituent outreach. Members should recognize this responsibility (and its corresponding rewards) before applying for and accepting any advisory council seat.

In addition to attending meetings and engaging with constituents, advisory council members must also be familiar with the processes and regulations governing the sanctuary, including the provisions of this charter and all sections of the handbook. The following paragraphs provide an outline of the advisory council's primary activities, but members should consult the handbook for detailed guidance.

Full advisory council meetings. Advisory council meetings are held at the call of the chair and NOAA representative. Full advisory council meetings shall be held at least once every six months, but no more than once in any calendar month. Each meeting shall be open to the public, and the public shall be timely notified of the meeting time, place, and agenda. Failure to

² 5 U.S.C. §§ 5702–5703 (2012).

³ Id.

provide adequate public notice of each agenda item precludes the advisory council from taking any action on that item. Advisory councils shall also make each meeting's minutes available to the public. Workshops addressing strategic planning, administration, or specialized technical issues are exempt from these public notice and participation requirements.

Any matter that an advisory council member wishes to bring to ONMS's attention shall be brought to either the NOAA representative or the chair so that it can be added to a future meeting agenda. The NOAA representative and the chair discuss agenda topics, but the NOAA representative must ultimately approve all topics placed on the agenda.

Advisory councils shall offer advice following either a formal vote (noting any opposing votes and abstentions), or consensus of the members (noting any minority opinions). In either case, a quorum of more than half of the advisory council's voting members must participate.

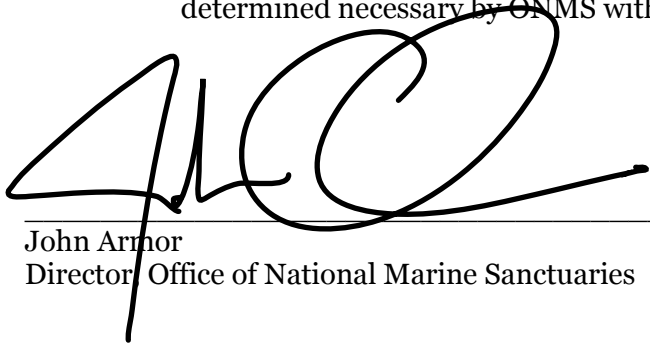
Any correspondence or other written documents from the advisory council as a body shall be coordinated with, and approved by, the chair and NOAA representative prior to sending. Any written or verbal advice, correspondence or information the council wishes to offer or express as a body must be voted on and approved by both the council and ONMS prior to sending and must be on council letterhead with the appropriate disclaimer. All documents and communications originating from the council shall include the following disclaimer: *The advisory council is an advisory body to the ONMS director. The opinions and findings of this publication do not necessarily reflect the position of the proposed Hudson Canyon National Marine Sanctuary and the National Oceanic and Atmospheric Administration.*

There may be some instances in which a council conveys official communications to other federal agencies, to Congress, or to other external parties. Under the NMSA and ONMS policy, the council may not provide advice, recommendations, or comments to entities beyond ONMS without the approval of ONMS, as applicable. ONMS, at its discretion, may approve the transmittal of council advice or comments to agencies or other third parties beyond DOC, NOAA, or ONMS. Any advice, correspondence, or information the council wishes to offer or express beyond the ONMS director shall be voted on and approved by the council. ONMS may convey the council advice, recommendations, or comments to the third party or may authorize the council to transmit the comments directly to the third party after providing it to ONMS. For comments conveyed to any legislature, including Congress or a state legislature, ONMS will work with the NOAA Office of Legislative and Intergovernmental Affairs to transmit the comments through official channels. ONMS should consult legal counsel before sharing any information that is potentially proprietary, potentially contains personally identifiable information, or is otherwise sensitive or potentially controversial.

Subunits. The chair, in consultation with the advisory council as a whole and with the concurrence of the NOAA representative, may establish subcommittees or working groups as necessary. A subunit may not submit its findings and recommendations directly to ONMS, but the advisory council may choose to take action on the findings or recommendations, including adopting them and/or transmitting them to the ONMS.

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 three years from the date of signature or until the area is either designated as a national marine sanctuary or a final decision is made not to designate.
3. Six months prior to the expiration of this charter, the need for the council will be evaluated by ONMS, with input from council members, to determine whether to renew the charter.
4. Revisions to the charter may be made once the sanctuary is established or as determined necessary by ONMS with input from the council.



John Armor
Director, Office of National Marine Sanctuaries

12/2/22

Date