




UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Silver Spring, Maryland 20910

November 13, 2003

MEMORANDUM FOR: Daniel J. Basta, Director
National Marine Sanctuary Program

FROM: Robert P. Smith, Reserve Coordinator
Northwestern Hawaiian Islands Coral Reef
Ecosystem Reserve 

SUBJECT: Technical Amendments to Charter for NWHI Reserve
and Proposed Sanctuary Advisory Council

Reference is made to the subject NWHI Advisory Council Charter which expires on December 5, 2003. In order to keep the NWHI Charter current, I am requesting some technical revisions, and your signature on the revised charter.

The technical revisions are shown on the attached mark-up of the current charter, and can be described as follows:

Technical Revisions to NWHI Advisory Council Charter

- All pages numbered for ease of reading.
- Page 1: "Approximately 70 percent..." and "most extensive" phrases omitted to more accurately reflect extent of NWHI coral reefs.
- Page 7: The word "Regional" deleted from WESPAC title per NOAA General Counsel.
- Page 14: Under item 6(a), the phrase "including members who are also members of the Council," should be deleted.
- Page 15: Delete the word "Acting" before the word Director.

Thank you for the opportunity to suggest these technical changes to our charter. Please note that the revised document should be signed by you no later than December 5, 2003.

Enclosure

Cc:
Elizabeth Moore
Karen Brubeck
Moani Pai



**NORTHWESTERN HAWAIIAN ISLANDS CORAL REEF ECOSYSTEM
RESERVE AND PROPOSED SANCTUARY
ADVISORY COUNCIL CHARTER**

INTRODUCTION

A significant portion of U.S. coral reefs are in the Northwestern Hawaiian Islands. The 3.5 million acres of coral reefs around the remote, mostly uninhabited Northwestern Hawaiian Islands are spectacular and almost undisturbed by humans. The 1200 mile stretch of coral islands, seamounts, banks and shoals includes unquestionably some of the healthiest coral reefs in the U.S. and provides an amazing geological record of volcanic and erosive powers that have shaped this area. This vast area supports a dynamic habitat that has more than 7,000 marine species, of which approximately half are unique to the Hawaiian Island chain. The incredibly diverse species of coral, fish birds, marine mammals, and other flora and fauna include the endangered Hawaiian monk seal and the threatened green sea turtle. In addition, the cultural significance of this area to native Hawaiians as well as linkages to early Polynesian culture are resources worthy of protection and greater understanding and appreciation.

On December 4, 2000, Executive Order 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the seaward extent of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent it extends beyond Hawaii State waters and submerged lands. The Reserve will be managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and Executive Order. The Secretary recently initiated the process to designate the Reserve as a National Marine Sanctuary.

In designating the Reserve, the Secretary of Commerce was directed to establish a Coral Reef Ecosystem Reserve Council to provide advice and recommendations on the development of the Reserve Operations

Plan and the designation and management of a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary.

MANAGEMENT PRINCIPLES OF THE RESERVE

The Secretary of Commerce, or his or her designee (hereafter "Secretary") is directed to manage the Reserve, and any national marine sanctuary subsequently established by the Secretary, in accordance with the following management principles.

- The principal purpose of the Reserve is the long-term conservation and protection of the coral reef ecosystem and related marine resources and species of the Northwestern Hawaiian Islands in their natural character.
- The Reserve shall be managed using a precautionary approach with resource protection favored when faced with a lack of information regarding any given activity, to the extent not contrary to law.
- Culturally significant, non-commercial subsistence, cultural, and religious uses by Native Hawaiians should be allowed within the Reserve, consistent with applicable law and the long-term conservation and protection of the coral reef ecosystem and related marine resources and species of the Reserve.
- The Reserve shall be managed using, when appropriate, geographical zoning and innovative management techniques, to ensure that the Reserve Resources are protected from degradation or harm.
- To the extent consistent with the primary purpose of the Reserve, the Reserve shall be managed to support, promote and coordinate appropriate scientific research, assessment, and long-term monitoring of Reserve resources, and the impacts or threats thereto from human and other activities, to help better understand, protect and conserve these resources for future generations.
- To the extent consistent with the primary purpose of the Reserve, the Reserve shall be managed to enhance public awareness,

understanding and appreciation of Reserve resources, and the impacts or threats thereto from human and other activities.

- The Reserve shall be managed to further restoration and remediation of degraded or injured Reserve resources.
- The Reserve shall be managed to facilitate coordinated management among federal and state agencies and other entities, as appropriate, to provide comprehensive (looking beyond jurisdictional boundaries) conservation of the coral reef ecosystem and related marine resources and species throughout the Northwestern Hawaiian Islands, consistent with applicable authorities and these Management Principles.

These management principles will apply to the development of any management plan for a proposed sanctuary.

NATIONAL MARINE SANCTUARY SYSTEM SANCTUARY ADVISORY COUNCIL POLICY STATEMENT

The Office of National Marine Sanctuaries (ONMS) regards the involvement of communities and the development of a stewardship ethic as vitally important to successfully conserve sanctuary resources. One key way to achieve this involvement is the formation of Sanctuary Advisory Councils under section 315 of the NMSA.

Sanctuary Advisory Councils include members from the community to provide advice and recommendations to the Sanctuary Manager on the management and protection of a sanctuary, or to 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 will:

- At each site, provide sufficient support to allow Councils to operate efficiently and effectively;

- 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; and
- Develop training programs appropriate to Council officers and members, and Sanctuary Managers and staff.

These policies shall also apply to the Reserve Council.

ESTABLISHMENT AND AUTHORITY

The President established the Reserve pursuant to the National Marine Sanctuaries Amendments Act of 2000, Pub.L. 106-513. The Council is established pursuant to section 315 of the National Marine Sanctuaries Act (NMSA or Act; 16 U.S.C. § 1445a), which authorizes the Secretary of Commerce to establish Advisory Councils to provide advice to the Secretary of Commerce regarding the designation and management of National Marine Sanctuaries, and in this instance the development of the Reserve Operations Plan. This authority has been delegated to the Director of the ONMS (Director). The Director hereby establishes the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Council (Council).

This Charter describes the objectives and roles of the Council's activities, procedural requirements on 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 to this Charter.

OBJECTIVES AND ROLES

1. The Council, in accordance with the Act, Executive Order, and this Charter, shall provide advice and recommendations to ONMS regarding the development of the management plan for the Reserve, and the designation and management of a proposed Northwestern Hawaiian Islands National Marine Sanctuary (Sanctuary) by the Secretary.

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 Reserve or Proposed Sanctuary, keeping NOAA informed of issues and concerns, as well as performing outreach to their respective communities on behalf of the Reserve or Proposed Sanctuary.

4. The Council may serve as a forum for consultation and deliberation among its members and as a source of consensus advice to NOAA. Such consensus advice shall fairly represent the collective and individual views of the Council members. In formulating such consensus advice, the Council members shall recall the Management Principles of the Executive Order, and that the primary objective of the National Marine Sanctuaries Act is resource protection.

5. The Council is established to provide advice to NOAA regarding the development of the Reserve Operations Plan and the designation and management of a Sanctuary. This does not constitute authority to perform operational or management functions, or to make decisions on behalf of NOAA or the Department of Commerce.

MEMBERS, ALTERNATES, AND OFFICERS

1. The Council shall consist of no more than fifteen voting members, who shall be appointed by the Director from among the following:

- Three Native Hawaiian representatives, including one Native Hawaiian elder, with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.
- Three representatives from the non-Federal science community with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:
 - A. Marine mammal science
 - B. Coral reef ecology.
 - C. Native marine flora and fauna of the Hawaiian Islands.
 - D. Oceanography.
 - E. Any other scientific discipline the Secretary determines to be appropriate.
- Three representatives from non-governmental wildlife/marine life, environmental, and/or conservation organizations.
- One representative from the commercial fishing industry that conducts activities in the Northwestern Hawaiian Islands.
- One representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands.
- One representative from the ocean-related tourism industry.
- One representative from the non-Federal community with experience in education and outreach regarding marine conservation issues.
- One citizen-at-large representative.

The membership is designed to be balanced in terms of points of view represented, geographic diversity, and advisory functions the Council will perform.

2. A NOAA representative shall sit on the Council as a non-voting 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 proposed Sanctuary. Council meetings may not be conducted in the absence of the NOAA representative or his/her designee.

3. To ensure coordination and relevant information exchange with the State of Hawaii, a representative from the State of Hawaii, as appointed by the Governor, shall sit on the Council as a voting member.

4. To ensure relevant information exchange between the Reserve and Proposed Sanctuary and the Hawaiian Islands Humpback Whale National Marine Sanctuary, the Manager of that Sanctuary shall sit on the Council as a non-voting member.

5. To ensure coordination and relevant information exchange, one representative from the Department of the Interior, Department of State, National Marine Fisheries Service, U.S. Coast Guard, Department of Defense, National Science Foundation, Marine Mammal Commission, and the Western Pacific Regional Fishery Management Council shall sit on the Council as non-voting members.

6. Members are appointed for a term of three years, and may compete for re-appointment. The initial terms of appointment to the Council will be staggered with one-half of the members appointed for a term of two years, the other half for three years. Should a seat become vacant, the vacated position shall 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 NOAA representative.

7. Members serve at the discretion of the Director. The NOAA representative may recommend to the Director the removal of a

member of the Council if that member has violated one or more terms of the Charter or on any the following grounds:

- Is convicted of a felony offense.
- Is found to have violated 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 other environmental laws for which NOAA has jurisdictional responsibility.
- 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 personal agendas or harm other members of the Council or of the community; misrepresentation of, or spreading misinformation about the Council or the Reserve or Proposed Sanctuary; and refusal to recuse himself or herself if so requested by the NOAA representative and/or Chair in matters in which the member has a conflict of interest).
- Has a change to the professional affiliation(s) and/or personal circumstances that comprise a significant portion of that member's qualifications for being a member of the Council.
- Misses three consecutive meetings without reasonable justification.
- Is disruptive at Council meetings in such a manner that interferes with the Council conducting its business; or
- Violates any term of this Charter.

The NOAA representative may consult with the Council prior to taking such an action.

8. As each member seat becomes vacant and the process for selection of a new member (described under Appointments) is conducted, the NOAA representative 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 Chair and the NOAA representative shall be notified by the member before an alternate officially attends a meeting.

(a) Council Officer Elections and Terms

The Council shall elect one member to serve as Chair, one member to serve as Vice-Chair, and one member to serve as Council Secretary. The Vice-Chair shall act as Chair in the absence of the Chair. The term of the Council Secretary is one year. The Council Secretary may serve consecutive terms if reelected. 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. A Chair or Vice-Chair may leave his/her term to run for another Council officer position if desired. If the Chair or Vice-Chair is elected to a new position, the Council shall nominate and elect a new representative for the vacated position. Only voting members may serve as officers of the Council.

Election for all positions is by majority vote of all Council members, including the non-voting members, and votes shall be made by written ballot. Members who will not be present at the time of the election may submit their vote in writing to the NOAA representative prior to the meeting. Following the first election, elections for Chair and Vice-Chair shall be held in alternate years.

(b) Roles of Council Officers:

(i) Chair: The Chair schedules and sets agendas for all Council meetings with the approval of the NOAA representative, 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.

(ii) Vice-Chair: The Vice-Chair shall serve as Chair in the absence of the Chair and shall assist as necessary in performing executive duties of the Council.

(iii) Council Secretary: The Council Secretary assists proposed Sanctuary staff in performing administrative duties as directed by the Chair or Vice-Chair.

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 NOAA representative directly. Copies of all applications and nominations for each seat may be submitted by the NOAA representative to Council members, for review and screening. Any Council member who 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 NOAA representative 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, U.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 NOAA representative determines are reasonably required to enable the Council and its subcommittees or working groups to carry out their functions.

OPERATION

1. Meetings

- (a) Meetings are held at the call of the Chair and the NOAA representative.
- (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 the NOAA representative.
- (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 NOAA representative.
- (f) Timely notice of each Council meeting (including emergency meetings, when possible), 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.
- (g) The Council shall meet as frequently as necessary, not to exceed once per month for voting meetings, but at least once every six months. The Council meeting place may be rotated among various locations adjacent to the proposed Sanctuary 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 NOAA representative and contain a summary of attendees and matters discussed; such minutes shall be available to the public.

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 NOAA representative. Requests for information, assistance, or advice from the ONMS, other NOAA offices, or other agencies shall be made in writing and be coordinated through the NOAA representative.

(b) Any matter that a Council member wishes to raise to the attention of NOAA shall be brought to the attention of either the NOAA representative or the Council Chair so that it might be placed on the agenda as a discussion topic. The NOAA representative and the Council Chair shall discuss topics for the agenda and agree that a topic is an appropriate proposed Sanctuary issue before it may be placed on the agenda.

(c) The Council shall provide advice directly to the NOAA representative via a written recommendation or a motion passed by the Council and reflected in the minutes. Draft recommendations and verbal discussions shall not be considered official advice from the Council, but may be considered as background information.

(d) Any advice or correspondence that the Council wishes to offer or express beyond the NOAA representative shall be voted on and approved by the Council. Because the Council was established specifically to provide advice to the NOAA representative, the NOAA representative must also approve advice or correspondence that is intended for parties other than the NOAA representative.

(e) The Council shall base its advice on a vote of the Council with negative votes and abstentions noted, or on a general consensus reached during discussions, with minority opinions noted. A quorum shall be present when the vote is taken or general consensus reached.

(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 incorporated into the Council's recommendation to the NOAA representative. If the Council does not incorporate information or advice of a subcommittee or working group, it shall inform the NOAA representative and explain in its advice 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 Council 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 proposed Sanctuary in a document for distribution beyond Council membership, the NOAA representative, or proposed 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 NOAA representative, proposed Sanctuary staff, or NOAA.

(c) Any Council member who 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.

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 NOAA representative. The following disclaimer shall be placed in all documents originating from the Council: "The Council is an advisory body to the NOAA representative. The opinions and findings of this publication do not necessarily reflect the position of the Office of National Marine Sanctuaries, National Oceanic and Atmospheric Administration, or Department of Commerce."

5. Council Letterhead

The Council shall, with the assistance and approval of the NOAA representative, 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 Council and the NOAA representative may establish such subcommittees as necessary to fulfill its duties. Subcommittees shall be composed solely of members of the Council and shall be recognized as official sub-units of the Council. Subcommittees are subject to all requirements of this Charter. No members of subcommittees may receive travel expenses for subcommittee meetings or other activities.

(b) Working Groups: Working groups may be established by the Council and the NOAA representative for specific purposes or topics that need focused attention that cannot be accomplished by a subcommittee. Working groups may be composed of members of the Council and persons outside the Council. Working groups shall be chaired by a member of the Council and 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

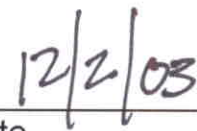
groups, including members who are also members of the Council, may receive travel expenses for working group meetings or other activities.

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 three years from the date of signature.
3. Once any proposed Sanctuary is designated and becomes operational, the structure of the Council will be evaluated by the ONMS, to determine whether and how to revise 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



Date