

FLORIDA KEYS NATIONAL MARINE SANCTUARY ADVISORY COUNCIL

DRAFT CHARTER

ESTABLISHMENT AND AUTHORITY

Pursuant to the National Marine Sanctuaries Act § 315,21 the Secretary of Commerce, through the director of the Office of National Marine Sanctuaries (director), hereby renews Florida Keys 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).

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, or to provide ONMS with advice on the management and protection of established sanctuaries.

The resources ONMS manages differ in size, species, depth, color, culture, and in 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.

FLORIDA KEYS NATIONAL MARINE SANCTUARY

U.S. Congress, recognizing the importance of the Florida Keys ecosystem and the degradation of the ecosystem due to direct and indirect physical impacts, passed the FKNMSPA in 1990 (P.L. 101-605) designating Florida Keys National Marine Sanctuary. President George H.W. Bush signed the Act into law November 16, 1990. The purpose of the Act is to protect the marine resources of the Florida Keys, to educate and interpret for the public the Florida Keys marine environment, and to manage the sanctuary's human uses consistent with the policy of the FKNMSPA to protect and preserve living and other resources of the Florida Keys marine environment.

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, must affect the planning or management of Florida Keys National Marine Sanctuary or the management and protection of sanctuary resources, and (ii) 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 the sanctuary superintendent regarding the protection and management of Florida Keys National Marine Sanctuary. This advice shall fairly represent the collective and individual views of the advisory council members. In formulating advice, the advisory council shall remember that the primary objective of the National Marine Sanctuaries Act and ONMS is resource protection.

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.

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. No member or alternate (when the member is absent) shall cast a vote or be part of a consensus on any matter that would provide a direct financial benefit to that member or alternate or otherwise give the appearance of a conflict of interest. An advisory council member or alternate with a competing interest must disclose the conflict of interest before the advisory council discusses and votes on the matter.

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.
- Council members and alternates are expected to be familiar with the processes and regulations governing the sanctuary and to keep themselves informed of sanctuary-related events and issues. Expectations include regular meeting attendance and familiarity with the

council charter and the current version of the ONMS *National Advisory Council Implementation Handbook*.

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

ADVISORY COUNCIL MEMBERSHIP

The Florida Keys National Marine Sanctuary advisory council consists of 36 total members: 20 voting members, and 16 nonvoting local, state, and federal government members. The FKNMS advisory council is the oldest council in the sanctuary system, and as such, is larger than most. This membership was allowed to continue when the NMSA amendments of 1992 would have otherwise limited councils to 15 voting members. The FKNMS advisory council may not exceed its current membership of 36.

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

Sanctuary superintendent. Because the advisory council ultimately provides advice to the sanctuary superintendent, the superintendent does not hold an official seat. However, the superintendent shall sit on the advisory council in a neutral, nonvoting capacity. The superintendent (or designee) must be present at each advisory council meeting or the advisory council cannot meet. Additionally, the superintendent shall work with the chair in scheduling each meeting and approving the agenda to ensure each topic is relevant to the sanctuary. The superintendent may also participate in advisory council discussions by providing factual information and official ONMS opinions. However, the sanctuary superintendent shall not provide personal opinions on advisory council issues.

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

- ***Governmental.*** By virtue of the shared functional responsibilities of federal, state, and local jurisdictions in the sanctuary's management, and to ensure relevant information exchange and consistent management, the advisory council shall ask the following government entities to designate one representative each to sit on the advisory council: Monroe County.

If a government entity voluntarily decides to stop participating as an advisory council member, or if the director formally removes the entity from the advisory council, the sanctuary superintendent, with approval of the director, shall invite another appropriate government entity as a replacement.

- ***Nongovernmental.*** Representatives of each of the following activities or groups, which are

integrally affected by ONMS sanctuary management goals, shall also serve on the advisory council:

- Boating Industry
- Citizen at Large - Upper Keys
- Citizen at Large - Middle Keys
- Citizen at Large - Lower Keys
- Conservation and Environment (2 seats)
- Diving - Upper Keys
- Diving - Lower Keys
- Education and Outreach
- Fishing - Charter Fishing Flats Guide
- Fishing - Charter Sports Fishing
- Fishing - Commercial - Marine/Tropical
- Fishing - Commercial - Shell/Scale
- Fishing - Recreational
- Research and Monitoring
- South Florida Ecosystem Restoration
- Submerged Cultural Resources
- Tourism - Upper Keys
- Tourism - Lower Keys

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). If necessary, subsequent terms of appointment may be changed to provide for staggered expiration dates. Should a nongovernmental 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.

Nonvoting seats. Other than the Monroe County representative listed above, the remaining municipal, state, and federal government seats are to be nonvoting.

- **Governmental.** By virtue of the shared functional responsibilities of federal, state, and local jurisdictions of sanctuary management, and to ensure relevant information exchange and consistent management, the following government entities shall be asked to designate one representative each to sit on the council:

- Florida Department of Environmental Protection
 - Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement
 - Florida Fish and Wildlife Conservation Commission, Division of Marine Fisheries Management/Fish and Wildlife Research Institute
 - NOAA Fisheries Service
 - NOAA Office of General Counsel
 - NOAA Office of Law Enforcement
- National Park Service
- U.S. Coast Guard
- U.S. Environmental Protection Agency
- U.S. Fish and Wildlife Service
- U.S. Navy
- Islamorada, Village of Islands
- City of Key Colony Beach
- City of Key West
- City of Layton
- City of Marathon

If a government entity voluntarily decides to stop participating as an advisory council member, or if the director formally removes the entity from the advisory council, the sanctuary superintendent, with approval of the director, shall invite another appropriate government entity as a replacement.

ADVISORY COUNCIL OFFICERS

The advisory council shall elect one member to serve as chair, one member to serve as vice chair, [and one member to serve as secretary]. The chair and vice chair serve two-year terms and may serve a maximum of two consecutive terms if reelected. [The secretary serves a [one-year / two-year] term, and may serve consecutive terms if reelected.] The handbook provides guidance on election procedures and the roles of each officer position. In addition to their specific duties outlined in the handbook, each of these advisory council officers is expected to continue fulfilling the general roles of all advisory council members, including representing constituents.

ADVISORY COUNCIL MEMBER REMOVAL

As indicated in the handbook, advisory council members serve at the discretion of the director. The sanctuary superintendent 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 [insert #] consecutive meetings without reasonable justification.

As a governmental seat, the Elected County Official member or alternate are subject to the same appointment and removal procedures for non-voting governmental seats. If the Elected County Official member or alternate has been found to have violated one or more of the terms of this charter, the sanctuary superintendent may recommend to the director the appropriate agency be notified and requested to replace the designee. The sanctuary superintendent may consult with the council prior to taking such an action.

Governmental members and alternates are subject to the same grounds for removal as nongovernmental members. If it is found that a governmental member or alternate 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.

APPOINTMENTS

Public notice shall be provided as to the vacancy of constituent group and at-large seats and positions. Applications for vacant seats shall be submitted to the sanctuary superintendent or their designee (e.g., advisory council coordinator or other appropriate site staff), as defined in the annual *Federal Register* notice and web-posting for a particular recruitment. Copies of all applications will be submitted to a preliminary review panel comprised of the State Cooperative management point of contact, the chair, the vice chair, and the past chair to obtain recommendations on selections. Any panel member that has a conflict of interest (financial, personal, self-nomination, etc.) shall recuse themselves from making a recommendation for that seat. Selection from among those recommended by the panel, or from among other applicants, shall be made by the sanctuary superintendent with the approval of the director. The sanctuary superintendent may choose to re-advertise the vacant seat(s) if adequate candidates are not identified after the first recruitment process.

As the Elected County Official seat becomes vacant, the governmental body shall select a name for both the member and alternate and submit them to the sanctuary superintendent for appointment by the director. An alternate may not name another alternate.

ADMINISTRATION

ONMS may make available any staff, information, administrative services, or assistance that the sanctuary superintendent 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 sanctuary superintendent. 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 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 notes available to the public. Workshops addressing strategic planning, administration, or specialized technical issues are exempt from these public notice and participation requirements, as are working group and subcommittee meetings. Interested persons shall be permitted to present oral or written statements on items on the agenda, or other pertinent topics.

Any matter that an advisory council member wishes to bring to ONMS's attention shall be brought to either the sanctuary superintendent or the chair so that it can be added to a future meeting agenda. The superintendent and the chair discuss agenda topics, but the superintendent 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. For purposes of a quorum, an alternate member shall assume the rights and privileges of the member in the member's absence. 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 meeting notes. Draft recommendations and verbal discussions shall not be considered official advice from the council but may be considered by the sanctuary superintendent as additional background information and shall be included in the meeting notes.

Any correspondence or other written documents from the advisory council as a body shall be coordinated with, and approved by, the chair and superintendent 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 the sanctuary superintendent 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 council is an advisory body to the sanctuary superintendent. The opinions and findings of this publication do not necessarily reflect the position of Florida Keys National Marine Sanctuary, Office of National Marine Sanctuaries, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Florida Department of Environmental Protection or the Florida Fish and Wildlife Conservation Commission.”*

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 the ONMS director or the site superintendent, as applicable. The ONMS director or site superintendent may, at their discretion, 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. The ONMS director or site superintendent 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 the ONMS director or superintendent. 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 (PII), 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 sanctuary superintendent, may establish subcommittees or working groups as necessary. A subunit may not submit its findings and recommendations directly to the superintendent or ONMS, but the advisory council may choose to take action on the findings or recommendations, including adopting them and/or transmitting them to the superintendent.

- **Subcommittees:** Subcommittees shall be composed solely of members of the council; at the superintendent's discretion, alternates may also serve on subcommittees. The subcommittee must be chaired by a member of the council. Subcommittees shall be recognized as official subunits of the council. No members or alternates of subcommittees may receive travel expenses for subcommittee meetings or other activities.
- **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 functional areas and discrete issues relating to individual sanctuaries. Working groups may be composed of members and alternates 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. At the

sanctuary superintendent's discretion and if the full council approves, an alternate 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 or alternates who are also members of the council, may receive travel expenses for working group meetings or other activities.

OTHER TERMS

The charter shall remain in effect for five years from the date of signature. Six months prior to expiration, ONMS, with input from the advisory council members, will determine whether to renew the charter based on the ongoing need for the advisory council.

ONMS may revise the charter or handbook as it deems necessary, with input from the advisory council.

John Armor
Director, Office of National Marine Sanctuaries

Date