HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY ADVISORY COUNCIL CHARTER

INTRODUCTION

A marine sanctuary is an area of the marine or Great Lakes environment of special national, and sometimes international, significance warranting protection and management by the Federal government. As steward of coastal and ocean resources, the National Oceanic and Atmospheric Administration (NOAA) protects and manages Sanctuaries through the National Marine Sanctuary Program (NMSP). The mission of the NMSP is to comprehensively protect and manage marine or Great Lakes areas of special national significance to protect their ecological and cultural integrity for the benefit of current and future generations. NOAA uses ecologically sound principles of resource conservation, and develops and implements stewardship, education, and research programs that foster public understanding, support, and participation. Use of sanctuary resources must be consistent with the primary objective of the program, which is resource protection.

The goals of the NMSP are:

- to enhance resource protection through comprehensive and coordinated conservation and management tailored to the specific resources that complements existing regulatory authorities;
- to support, promote, and coordinate scientific research on, and monitoring of, Sanctuary resources to improve management decision-making in the Sanctuary;
- to enhance public awareness, understanding, and wise use of the marine environment; and
- to facilitate, to the extent compatible with the primary objective of resource protection, multiple uses of the Sanctuary not prohibited pursuant to other authorities.

The Hawaiian Islands Humpback Whale National Marine Sanctuary (Sanctuary) was designated by an Act of Congress (Title II, Subtitle C, Public Law 102-587, Hawaiian Islands National Marine Sanctuary Act or Act) to recognize the importance of Hawai`i's nearshore waters which serve as the winter breeding, calving and nursing habitat essential to the long-term survival and recovery of the North Pacific stock of the endangered humpback whale (*Megaptera novaeangliae*). The Sanctuary, working in partnership with the State of Hawai`i, its governments and citizens, will function to provide the protection needed to ensure that the whales and their habitat are safe from harm and harassment while continuing to meet the needs of marine users of an island state.

The Act established the Sanctuary for the following purposes:

- to protect the North Pacific population of humpback whales and their habitat within the Sanctuary;
- to educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment;
- to manage human uses of the Sanctuary consistent with the National Marine Sanctuaries Act (NMSA), as amended; and
- to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

NATIONAL MARINE SANCTUARY PROGRAM SANCTUARY ADVISORY COUNCIL POLICY STATEMENT

The National Marine Sanctuary Program (NMSP) 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 to provide advice to the Sanctuary Manager (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 NMSP in guiding a proposed site through the designation process.

The NMSP is committed to the full support, utilization, and enhancement of Councils at all Sanctuaries. In order for Councils to achieve their full potential, the NMSP 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.

ESTABLISHMENT AND AUTHORITY

Section 315 of the NMSA (16 U.S.C. § 1445a) 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 National Marine Sanctuary Program (Director). The Director hereby establishes the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory 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 DUTIES

1. The Council, in accordance with the Act, shall provide advice to the Sanctuary Manager and State Co-Manager regarding the management of the Hawaiian Islands Humpback Whale National Marine Sanctuary.

2. The Council is established to provide advice to the Sanctuary Manager and the State Co-Manager regarding the on-going management of the Hawaiian Islands Humpback Whale National Marine Sanctuary. This does not constitute either authority to perform operational or management functions, or to make decisions on behalf of the Sanctuary.

3. The Council shall draw on the expertise of its members and other sources in order to provide advice and recommendations.

4. The Council may serve as a forum for consultation and deliberation among its members and as a source of advice to the Sanctuary Manager, and the State Co-Manager. 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 that the primary objective of the Sanctuary and the Act is resource protection.

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

SCOPE OF RESPONSIBILITIES

The Council may provide advice and recommendations to the Sanctuary Manager and State Co-Manager on the management of the Sanctuary as follows:

1. Resource protection. The Council may advise on the effectiveness of interagency agreements, permit review and coordination, and on the effectiveness of the Sanctuary regulations in providing adequate resource protection.

2. Research. The Council may advise on priority research and monitoring needs, proposals, and reports.

3. Education. The Council may advise on enhancing public awareness, understanding, and wise use of the marine environment and on the development of an informed constituency.

4. General Administration. The Council may advise, at the request of the Sanctuary Manager, on proposal(s) for activities within and outside of, but affecting the Sanctuary. It may also advise on planning for the use, development, and maintenance of Sanctuary lands, buildings and equipment.

5. Program Modifications. Council advice may also be sought in the process to identify other resources of national significance which may be considered for future inclusion in the Sanctuary; the review of any new regulations or modification of existing regulations developed pursuant thereto or for any other purpose based on new findings or future needs; and for necessary modifications to the management plan.

MEMBERS, ALTERNATES AND OFFICERS

1. The Council shall consist of no more than twenty-four (24) voting members who shall be appointed by the Director, in consultation with the Governor or his/her designee, from among persons employed by Federal, State or Local government agencies with expertise in management of natural resources, members of the Western Pacific Fishery Management Council, representatives of native Hawaiian groups, local user groups, representatives from adjacent counties, 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 be balanced in terms of interests represented, geographic representation, and advisory functions the Council will perform.

2. The Sanctuary Manager and State Co-Manager are non-voting members and shall work with the Chair in scheduling each meeting and approving the agenda to ensure that discussion topics are relevant to the Sanctuary. Council meetings may not be conducted in the absence of the Sanctuary Manager or his/her designee.

3. The following procedures shall govern the application, nomination and appointment of Council voting members.

(a) (i) Government (9 members). By virtue of the shared functional responsibilities of Federal and State 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 and to represent the specific functional area of expertise noted below:

State of Hawai`i (6)

- Office of Planning (marine and coastal coordination and planning)
- Department of Health (water quality management and monitoring)
- Department of Land and Natural Resources (aquatic resources, marine conservation areas, boating, enforcement)
- Department of Business, Economic Development and Tourism (marine recreation, development and tourism)
- Department of Transportation - Harbors Division (shipping, harbors and harbor expansion)
- Office of Hawaiian Affairs (native Hawaiian issues)

Federal (3):

- U.S. Army Corps of Engineers (water quality, dredge disposal & alteration of seabed)
- U.S. Coast Guard (oil spills, enforcement)
- Western Pacific Regional Fisheries Management Council (fisheries management)

(b) (i) Non-government (15 members). A representative of each of the following interest groups or activities, which are integrally affected by the management goals of the Sanctuary, will be selected:

- County-specific representatives[1] (4)
- Native Hawaiian (1)
- Research (1)
- Education (1)
- Conservation (1)
- Whale watching (1)
- Business/Commerce (1)
- Ocean recreation (1)
- Fishing (1)
- Tourism (1)
- Citizen-at-large (1)
- Commercial shipping (1)

NOTE: NOAA recognizes that all of the non-government user/interest groups are comprised of many different individuals and organizations, each representing specific interests. The selected representative of each group will be encouraged to make concerted efforts to identify, contact and coordinate with all the diverse organizations and individuals comprising the respective group.

[1] County-specific representatives: Each of the four counties (Kauai, Honolulu, Maui, and Hawaii) will have a non-governmental individual to represent the concerns of that county. This individual may establish a county-specific working group and coordinate and consolidate the various views and concerns of the citizens of that particular county and present them to the Council. The county groups shall include the county governments and involve the expertise of the individual county Coastal Zone Managers

4. The following shall be designated as non-voting members on the Council:

- Fagatele Bay National Marine Sanctuary Manager
- Hawaiian Islands Humpback Whale National Marine Sanctuary Manager
- National Marine Fisheries Service, Pacific Islands Area Office (protected species)
- National Marine Fisheries Service, Office of Law Enforcement
- Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve
- State of Hawai`i Co-Manager
- U.S. Navy

5.(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. Election for all positions shall be made by majority vote of all Council members, including non-voting members. Votes shall be made by written ballot. Elections shall be held at a regular meeting or conducted through a mail/e-mail submission of ballots. Members who will not be present at the time of the election may submit their vote in writing to the Sanctuary Manager prior to the election. All officers are granted the same voting rights as other Council members.

The term of all officers (Chair, Vice-Chair, and Secretary) is two years. Officers will be allowed to serve no more than three consecutive terms. 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.

(b) Roles of Council Officers

(i) Chair: The Chair schedules and sets agendas for all Council meetings in consultation with and approval of the Sanctuary Manager; calls to order, presides, and adjourns all meetings of the full Council; and ensures that meetings are conducted in accordance with the current Robert's Rules of Order, except as may be inconsistent with the provisions of this Charter; signs all correspondence and documents authorized by the Council; and generally represents the Council's positions, interests and concerns to the public.

(ii) Vice Chair: The Vice Chair acts as the Chair in the absence of the Chair and assists as necessary in performing executive duties of the Council.

(iii) Council Secretary: The Council Secretary shall be responsible for taking the official attendance at each Council meeting; assisting in taking and reviewing minutes of each Council meeting; recording official votes as necessary; and assisting Sanctuary staff in performing other administrative duties as directed by the Chair or Vice-Chair.

6. Alternates

(a) An alternate (from the same government entity) of a government Council member may attend and participate in a Council meeting if the Chair and Sanctuary Manager are notified at least 24 hours in advance of any meeting at which an alternate will represent the government Council member. Such notice shall include the name, address, and position of the individual designated. An alternate may not name another alternate.

(b) As each new non-governmental seat becomes vacant and the process for selection of new members is conducted, the Sanctuary Manager will identify an alternate for each candidate the Manager recommends to the Director to fill the seat. The alternate will have all the rights of the member at such times the alternate is officially substituting for the member. The Chair and the Sanctuary Manager must be notified by the member that his/her alternate will attend a meeting at least 24 hours prior to such meeting.

7. Removal of Members

(a) If it is found that a governmental member of the Council has violated one or more of the terms of this Charter, the Sanctuary Manager may recommend to the Director that the appropriate agency be notified and requested to replace the designee. The Sanctuary Manager may consult with the Council prior to taking such action.

(b) (ii) Non-governmental members serve at the discretion of the Director. The Sanctuary Manager 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 has jurisdictional responsibility;
- Is determined to have abused his or her position as a member of the SAC (including but not limited to use of SAC information for personal gain; use of SAC position to advance a personal agenda or harm another member of the SAC 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 Manager 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 comprise a significant portion of that member's qualifications for being a member of the SAC;
- Misses a consecutive number of meetings (as defined by this Charter) 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 Manager may consult with the Council prior to taking such an action.

TERMS AND APPOINTMENTS

Non-governmental members shall be appointed for a term of two years, and may compete for re-appointment. Terms are staggered to establish continuity within the Council. Should a non-governmental seat become vacant prior to the expiration of the member's term, his or her alternate shall assume the seat for the remainder of the member's term.

As each non-governmental seat becomes vacant at the end of an incumbent member's term and the process for selection of a new member is conducted, the Sanctuary Manager shall recommend to the Director the member and an alternate from among the top three candidates resulting from the review process, or from other applicants at the Sanctuary Manager's discretion.

Public notice shall be provided as to the vacancy of constituent group seat(s) and at-large representatives. Applications by individuals, and nominations from constituent groups, for ensuing terms for constituent group seats shall be submitted to the Sanctuary Manager. Applications for ensuing terms for the at-large position, likewise, shall be submitted to the Sanctuary Manager. In all cases, submission of written applications stating particular interest, qualifications and experience shall be requested. Guidelines for applying will be supplied at the appropriate time.

The Sanctuary Manager may consult with Council members during his or her screening of the applications. Any Council member that has a conflict of interest (financial, personal, self nomination, etc.) shall notify the Sanctuary Manager of such conflict and excuse him/herself from such consultation. The Sanctuary Manager, in consultation with the Governor or his/her designee, and with concurrence of the Director, will select two candidates for each vacant seat, identifying one to fill the seat and another to serve as an alternate for that seat. The Sanctuary Manager will forward his or her selection to the Director for final approval.

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 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 NMSP 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 and working groups to carry out their functions.

OPERATION

1. Conduct of Individual Members

(a) No Council member may use or allow the use of, for other than official purposes, information obtained through or in connection with his or her 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 the Advisory Council membership, Sanctuary Manager 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 Managers, Sanctuary staff, NOAA or the Department of Commerce.

(c) Any Council member that has an interest (financial, personal, or business) in any matter before the Council, its Subcommittees or Working Groups must 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 member's interest that would be affected. These same guidelines apply to members of working groups who are not members of the Council.

2. Conduct of the Council as a Body

(a) All communications that are intended to speak for the Council as a body must be coordinated with, and approved by, the Chair. All communications must pertain to Sanctuary business.

(b) The Council may provide advice on the Sanctuary to the Sanctuary Manager and State Co-Manager. Any advice, correspondence or information that the Council wishes to offer or express or otherwise extend to others beyond the Sanctuary Manager must be provided to and approved by the Sanctuary Manager prior to the Council action.

(c) Any correspondence, press releases, informational releases, news articles, or other written documents that are intended to speak for the Council as a body must be coordinated and approved by the Chair and Sanctuary Manager. The following disclaimer must be placed in documents originating from the Council: "The Council is solely an advisory body. These opinions and findings do not necessarily reflect the position of the Hawaiian Islands Humpback Whale National Marine Sanctuary and/or the National Oceanic and Atmospheric Administration."

3. Council Letterhead

The Council shall, with the assistance and approval of the Sanctuary Manager, design and use its own letterhead. All approved, official correspondence from the Chair or other members of the Council, or the Council as a body, shall be upon this letterhead. The Council shall not use official NOAA letterhead for any correspondence or other purpose.

4. Subcommittees and Working Groups

(a) Subcommittees: The Council and the Sanctuary Manager 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.

(b) Working Groups: Working groups may be established by the Council and the Sanctuary Manager for specific purposes or topics that need more focused attention that cannot be accomplished by a subcommittee (e.g., County-specific representation). Working groups may be composed of members of the Council, alternate members, 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 short-term specific issues shall disband once their advice or final recommendation on the particular matter is submitted to the Council. Working groups shall provide a general report to the Chair of the status of requested recommendations at each meeting of the Council. Working groups will provide their recommendations to the Council only.

5. Quorum and Meetings

(a) The Council quorum shall constitute more than half of the voting members.

(b) Meetings are held at the call of the Chair, with the approval of the Sanctuary Manager. All voting members, or their authorized alternates (if the members are not present), may vote.

(c) Decisions and recommendations made by the Council are advisory only and shall be made by vote of members present, provided that there is a quorum. Individual votes and abstentions shall be recorded in the minutes by roll call vote if requested by a member of the Council.

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

(e) Members of the public in attendance shall be permitted to present oral or written statements at an appropriate time as noted on the Council agenda.

(f) Emergency meetings may be held at the call of the Chair, with the approval of the Sanctuary Manager.

(g) Timely notice of each meeting, including the time, place, and agenda, shall be published in at least one local newspaper of general circulation within the vicinity of the Sanctuary, and additional notice may be given by such other means as will result in appropriate notice to interested groups and the general public. 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.

(h) The Council shall meet as frequently as necessary, not to exceed once per month, but at least once every six months. The Council meeting place may be rotated among various locations adjacent to the Sanctuary and meeting sites shall be chosen to accommodate anticipated public attendance and be reasonably accessible to those interested in attending.

(i) Minutes of each meeting shall be kept by a person specified by the Sanctuary Manager and contain a summary of attendees and matters discussed. Such minutes shall be available to the public.

(j) A yearly report shall be prepared by Sanctuary staff in cooperation with the Council Secretary, summarizing issues addressed and actions taken during the previous year.

(k) All meetings will be held in accordance with the current Robert's Rules of Order. When the provisions of this Charter are silent, the current Robert's Rules of Order shall govern. Robert's Rules of Order may be set aside as the Sanctuary Manager determines necessary in order to facilitate or expedite Council business.

6. 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 Manager and the Sanctuary Co-Manager. Requests for information, assistance, or advice from the National Marine Sanctuary Program or other NOAA offices shall be made in writing and will be coordinated through, and approved by the Sanctuary Manager.

(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 Manager or the Council Chair so that it might be placed on the agenda as a discussion topic. The Sanctuary Manager and the Council Chair shall discuss topics for the agenda and agree that a topic is an appropriate Sanctuary issue before it may be placed on the agenda.

(c) The Council shall provide advice directly to the Sanctuary Manager via a formal written recommendation. Draft recommendations and verbal discussions will not be considered official advice from the Council, but may be considered as background information.

(d) Any written or oral advice or correspondence that the Council wishes to offer or express beyond the Sanctuary Manager and State Co-Manager shall be voted on and approved by the Council. Because the Council was established specifically to provide advice to the Secretary, and operates through the Sanctuary Manager, the Sanctuary Manager must also approve advice or correspondence that goes outside the Sanctuary.

(e) The Council shall base their recommendations on a vote of the Council with negative votes and abstentions noted, or on a general consensus reached during discussions, with minority opinions and views noted.

(f) Any information or recommendations resulting from discussions in subcommittees or working groups that is requested by the Council shall be presented to and approved by the full Council prior to being submitted to the Sanctuary Manager and the State Co-Manager. If the Council does not incorporate information or advice of a subcommittee or working group, it shall inform the Sanctuary Manager and explain in its advice or information the reasons for not incorporating the subcommittee's or working group's advice or information.

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 the Director's signature.

3. Six months prior to the expiration of this Charter, the need for the Council will be evaluated by the NMSP to determine whether to renew the Charter.

4. Revisions to the Charter may be made as determined necessary by the NMSP with input from the Council.

Daniel J. Basta
Director, National Marine Sanctuary Program

10/16/02
Date