

**PROPOSED LAKE ONTARIO NATIONAL MARINE SANCTUARY
ADVISORY COUNCIL
CHARTER**

ESTABLISHMENT AND AUTHORITY

Section 315 of the National Marine Sanctuaries Act (NMSA or Act; 16 U.S.C. Sections 1431 - 1445c) authorizes the Secretary of Commerce to establish sanctuary advisory councils to provide advice to the Secretary of Commerce regarding the designation and management of national marine sanctuaries. This authority has been delegated to the Director of the National Oceanic and Atmospheric Administration's (NOAA) Office of National Marine Sanctuaries (director). The director hereby establishes the Proposed Lake Ontario National Marine Sanctuary Advisory Council (council) to provide guidance to NOAA during the sanctuary's designation process.

This Charter provides background on the Office of National Marine Sanctuaries (ONMS) and the Proposed Lake Ontario National Marine Sanctuary (or sanctuary), and describes the objectives and roles of the council's activities, procedural requirements regarding the appointment of council members and officers, requirements for the conduct of council members and meetings, and other requirements. All council activities must be conducted pursuant to this Charter.

SANCTUARY ADVISORY COUNCIL POLICY STATEMENT

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

Sanctuary advisory councils bring diverse community members together to provide advice to NOAA on the management of the sanctuary, or, as in this case, to assist ONMS in guiding a proposed site through the designation process.

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

- Provide sufficient support for councils to operate efficiently and effectively;
- Provide support and guidance to help councils operate efficiently and consistently 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, members, and NOAA staff.

OFFICE OF NATIONAL MARINE SANCTUARIES

A national marine sanctuary is an area of the marine or Great Lakes environment of special significance warranting protection and management under the NMSA. As a steward of coastal and ocean resources, NOAA protects and manages the National Marine Sanctuary System through ONMS.

The National Marine Sanctuary System is a network of national marine sanctuaries and marine national monuments, currently encompassing more than 600,000 square miles of ocean and Great Lakes waters. ONMS seeks to protect the extraordinary scenic beauty, biodiversity, historical connections, and economic productivity of these areas so they may continue to serve as the basis for thriving recreation, tourism, and commercial activities that drive coastal economies. Through both directed management actions and partnerships, ONMS helps ensure a healthier ocean, now and for future generations.

PROPOSED LAKE ONTARIO NATIONAL MARINE SANCTUARY

On April 17, 2019, NOAA initiated the designation process for the Proposed Lake Ontario National Marine Sanctuary to protect maritime heritage resources located in eastern Lake Ontario.

The area being considered for designation as a national marine sanctuary is a region in eastern Lake Ontario that includes approximately 1,700 square miles of lake waters and bottomlands adjacent to Jefferson, Wayne, Oswego, and Cayuga counties in the state of New York. The area contains 21 known shipwrecks and one military aircraft representing events spanning more than 200 years of our nation's history. Based on historical records, an additional 47 shipwrecks and two aircraft are also likely located there.

The area being considered for designation also includes a separate area surrounding the HMS *Ontario*, which is both the oldest confirmed shipwreck (1780) and the only fully-intact British warship discovered in the Great Lakes.

Through sanctuary designation, NOAA would also develop educational programs focused on Great Lakes maritime heritage; conduct research to further identify, document, and interpret the area's maritime heritage resources; and promote recreational use of the resources consistent with their protection.

COUNCIL ROLES

The council, in accordance with the NMSA, shall provide advice and recommendations to NOAA regarding the Proposed Lake Ontario National Marine Sanctuary. In addition to other topics, the council may provide advice to NOAA regarding the sanctuary's designation documents; proposed boundary alternatives for the sanctuary; maritime heritage resources in the sanctuary; mechanisms for protecting sanctuary resources against existing and future threats; and the development of the proposed sanctuary's management plan.

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

2. Council members shall serve as liaisons between their constituents and/or communities and the proposed sanctuary, keeping NOAA staff informed of issues and concerns, as well as providing information to their respective communities on the sanctuary's behalf.
3. The council may serve as a forum for consultation and deliberation among its members and as a source of advice to NOAA. Such advice shall fairly represent the collective and individual views of the council members.
4. The council is established to provide advice and recommendations to NOAA regarding the management of the Proposed Lake Ontario National Marine Sanctuary. Nothing in this charter constitutes authority to perform operational or management functions, or to make decisions on behalf of the proposed sanctuary, NOAA, or the Department of Commerce.
5. The council may develop an annual work plan, in consultation with and approved by NOAA, to establish an agenda for specific issues and projects the council intends to address.

MEMBERS, ALTERNATES, AND OFFICERS

1. The council shall consist of no more than 15 voting members, who shall be appointed by the director from among representatives of local user groups, conservation and other public interest organizations, scientific and educational organizations, members of the public interested in the management of sanctuary resources, and persons employed by federal, state, or local agencies with expertise in maritime heritage resource management. The membership is designed to be balanced in terms of points of view represented, geographic diversity, and advisory functions the council will perform.
2. There are two categories of seats for which non-voting members are appointed or selected. Non-voting members do not vote, except for council officer positions.
 - a. One NOAA official will be designated by the director to sit on the council as a non-voting member. He/she shall work with the chair in scheduling each meeting and approving the agenda to ensure each topic of discussion is relevant to the proposed sanctuary. Council meetings may not be conducted in the absence of the NOAA official or his/her designee.
 - b. Governmental Seats - 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:

United States Coast Guard
State of New York
Port of Oswego Authority
Cayuga County
Jefferson County
Oswego County
Wayne County
City of Oswego
 - c. 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.

3. 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:

a. Non-governmental Seats (15). A representative and alternate of each of the following activities affected by the management goals of the proposed sanctuary:

Divers/Dive Clubs/Shipwreck Exploration (2)

Education (2)

Maritime History and Interpretation (2)

Tourism (1)

Economic Development (2)

Recreational Fishing (2)

Recreational Boating (1)

Shoreline Property Owner (1)

Citizen At-Large (2)

b. Non-governmental member terms:

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

ii. The exact end date of a member's term is determined by the next scheduled recruitment period that takes place after a member serves their full term.

iii. The council membership recruitment process shall take place on a rolling basis, as seats become vacant or terms are completed. If qualified, the same individual may apply for another seat on the council once they are term-limited on their present seat. A yearly notice for recruitment, which provides contact information, location to send applications, and seat availability, will be placed in the Federal Register.

iv. Members are limited to three consecutive terms on the council in the same seat, unless the director has granted a waiver to this limit. The director will consider waivers to this limit on a case-by-case basis and in a manner provided by the ONMS policy.

v. The newly appointed member shall serve for a full term beginning on the date of his/her swearing-in by the NOAA official.

vi. See ONMS complete term limits policy, and waivers to that policy, in the National Marine Sanctuary Advisory Council Implementation Handbook, Appendix 19 "Policy to Limit Consecutive Term Limits Non-governmental Council Members".

c. Members serve at the discretion of the director. The NOAA official may recommend to the director the removal of a non-governmental member of the council on any of the following grounds if that member:

i. Is convicted of any felony offense;

ii. Is found to have violated any of the following laws or regulations promulgated thereunder: the National Marine Sanctuaries Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, or another environmental law for which NOAA or another federal agency has jurisdictional responsibility;

iii. Is found to have violated state environmental laws or regulations;

iv. Is found to have violated national or state laws or regulations protecting cultural resources;

v. Is determined to have abused his or her position as a member of the council (including but not limited to use of council information for personal gain; use of council position to advance a personal agenda or harm another member of the council or of the community; misrepresentation of, or spreading misinformation about the council or the sanctuary; and refusal to recuse himself or herself if so requested by the NOAA official and/or chair in a matter in which the member has a conflict of interest);

vi. 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;

vii. Misses three consecutive meetings without reasonable justification;

viii. Disrupts on more than one occasion council meetings in a manner that interferes with the council conducting its business; or

ix. Violates any term of this charter.

NOAA may consult with the council prior to taking such an action.

d. As each non-governmental seat becomes vacant and the process for selection of a new member is conducted, the NOAA official 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 official shall be notified by the member before an alternate officially attends a meeting. The alternate may also be appointed, without going through a competitive process, to complete a primary member's term if that member resigns or is removed. An alternate may not name another alternate.

4. Members accept the responsibility of attending council meetings. The NOAA official will not designate alternates to serve in their place or to represent them in meetings or at other council activities.

5. Council Officer Elections and Terms:

a. The council shall elect one member to serve as chair, and one member to serve as vice-chair. The vice-chair shall act as chair in the absence of the chair. Terms of the chair and vice-chair are two years. The chair and vice-chair may serve a maximum of two consecutive terms 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. Council members, including non-voting members, may nominate individuals for the council officer positions (except the NOAA official and/or their designee). Any primary member of the council, including government seats and non-voting seats (with the exception of the NOAA official) may be nominated and elected as a council officer. Election for all positions is by majority vote of all council members (except the NOAA official and/or their designees), 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 official prior to the meeting.

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

In extraordinary circumstances, if both council officers resign at the same time, the council can agree to allow another council member to serve as interim chair until the new officers are elected; new officers should be elected at the next scheduled council meeting.

b. Roles of Council Officers:

i. Chair: The chair schedules and sets agendas for all council meetings with the approval of the NOAA official, presides over all meetings of the full council and ensures that

meetings are run according to accepted meeting practices, signs all correspondence and documents authorized by the council, and generally represents the council's interests and concerns to the public. The chair also continues to fulfill the general roles that all council members fill, including representing the interests of their constituents.

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

APPOINTMENTS

Recruitment and appointment of non-governmental council members shall follow the process outlined in the ONMS Sanctuary Advisory Council Implementation Handbook (Part 11, section C.2, Selection of Non-Governmental Members). 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 official directly. Copies of all applications and nominations for each seat will be submitted by the NOAA official to a preliminary review panel to obtain recommendations on selections. The review panel may be composed of federal, state, and local agency officials. Selection from among those recommended by the panel, or from among other applicants or nominees, shall be made by the NOAA official and are approved and appointed by the director. The NOAA official may choose to re-advertise the vacant seat(s) if adequate candidates are not available after the first recruitment process. 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. Reimbursement is at the discretion of the NOAA official and dependent upon budgetary considerations and constraints. No members of working groups or subcommittees (defined below) may receive travel expenses for their group activities or meetings, in accordance with the ONMS Sanctuary Advisory Council Implementation Handbook (currently Part 11, section B.6, Council Subunits). Travel expenses for governmental members of the council may be provided by their own agencies.

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

OPERATION

1. Meetings

a. Meetings are held at the call of the chair and the NOAA official.

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 official. In a member's absence,

an alternate member shall assume the rights and privileges of the member for the purposes of a quorum.

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 official.

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

g. The council shall meet as frequently as necessary, not to exceed once per month (the meetings should be in different months, but do not have to be precisely 30 days apart) for voting meetings, but at least once every six months. The council meeting place may be rotated among various locations adjacent to the 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 official 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 official. Requests for information, assistance, or advice from ONMS, other NOAA offices, or other agencies shall be made in writing and be coordinated through the NOAA official.

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

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

d. Any advice, correspondence, or information the council wishes to offer or express beyond the NOAA official shall be voted on and approved by the council prior to sending. Because the council was established specifically to provide advice to the Secretary, and operates

through the NOAA official, the NOAA official must also approve any advice, correspondence or information prior to sending outside the agency.

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

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

3. Conduct of Individual Members

a. Council members are expected to be familiar with the processes and regulations proposed for 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 ONMS Advisory Council Implementation Handbook.

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 official, or NOAA 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 official, NOAA staff, or NOAA.

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

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

e. Any sanctuary advisory council member that has entered into a professional relationship (i.e. contractual, financial, service, business, etc.) with the proposed sanctuary, NOAA, or another council member, shall provide written detail and notice to the NOAA official within 30 days of the establishment of that relationship. Written notice of said relationship shall be provided to all council members by the NOAA official within 30 days of either 1) receipt of such written notice from a council member, or 2) establishment of a professional relationship

by a council member with the sanctuary. The establishment of such a professional relationship shall be recorded in the public record of the council at the end of the minutes of the next council meeting following said notice. The NOAA official, also shall forward the written detail and notice to the director. The director shall review and determine if the council official should be disqualified from further service.

4. Conduct of the Council as a Body

a. 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 official prior to sending.

b. The following disclaimer shall be placed in all documents and communications originating from the council: "*The council is an advisory body to the NOAA official. The opinions and findings of this publication do not necessarily reflect the position of the Proposed Lake Ontario National Marine Sanctuary and the National Oceanic and Atmospheric Administration.*"

5. Council Letterhead

The council shall, with the assistance and approval of the NOAA official, 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 or DOC letterhead for any correspondence or other purpose.

6. Subcommittees and Working Groups

a. Subcommittees: The chair, in consultation with the council as a whole and with the concurrence of the NOAA official may establish such subcommittees as necessary to fulfill the council's duties. Subcommittees shall be composed solely of members of the council; at the NOAA official's discretion, alternates may also serve on subcommittees. The subcommittee must be chaired by a voting member of the council. Subcommittees shall be recognized as official subunits of the council. Subcommittees are subject to all requirements of this charter.

b. Working Groups: The chair, in consultation with the council as a whole and with the concurrence of the ONMS, 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 voting 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.

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.

Dated:

John

Director, Office of National Marine Sanctuaries