BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: January 19, 2011 Division: Growth Management

Bulk Item: Yes ___ No X Department: Planning & Env. Resources

Staff Contact Person: Richard Jones/289-2805

AGENDA ITEM WORDING: Discussion and further direction to staff regarding drafting an ordinance addressing anchoring impacts, in association with the Florida Fish and Wildlife Conservation Commission (FWC) Pilot Program on anchoring and mooring, 1) designating managed anchoring zones in specific geographic locations in Keys' waters (Sunset Cove, Boca Chica basin, and Key West harbor) within which regulations would be implemented, including: 2) eight regulatory elements recommended by staff.

ITEM BACKGROUND: At the September 21, 2011 BOCC meeting the Board gave direction to staff to begin drafting an anchoring ordinance to 1) designate Sunset Cove, Boca Chica basin, and Key West Harbor as managed anchoring areas, including 2) requiring an annual USCG Auxiliary VSC, 3) prohibiting At Risk vessels as tagged by FWC, 4) prohibiting floating structures, and 5) requiring proof of pumpout; and 6) developing additional anchoring regulations for the partnering cities of Key West and Marathon. Subsequent to the September BOCC meeting, the Marine and Port Advisory Committee met on October 5, 2011 to discuss the Pilot Program regulatory elements approved by the BOCC and recommended holding the prohibition of At Risk tagged vessels in abeyance until the results of the pumpout and VSC elements are evaluated, and reconsidered whether or not the prohibition of floating structures should be included in the draft ordinance. Staff went back to the MPAC at its November 30, 2011 meeting to get clarity on the specific regulatory elements previously approved by the BOCC. At that meeting the MPAC recommended not to include Key West Harbor as a managed anchoring area, not to include the prohibition of At Risk tagged vessels, but did approve the remaining regulatory elements. Staff anticipates discussing the above items with the Board at the January 19, 2011 BOCC meeting and asking for additional direction for a draft anchoring ordinance.

PREVIOUS RELEVANT BOCC ACTION:
October 2009- direction to submit a Letter of Interest to FWC indicating Monroe County's intention to participate in the Pilot Program.
February 2010- approval of ILA's with Key West and Marathon to partner in Pilot Program
March 2011- staff presentation updating BOCC on status of Pilot Program
August 2011- staff presentation on stakeholder workshops, recommendations for addressing anchoring issues, and discussion of the Pilot Program timeline for ordinance development and approval
September 2011- direction to staff to draft an anchoring ordinance

---

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS: Approval of direction to staff for elements to be included in ordinance

---

TOTAL COST: n/a **INDIRECT COST:** _____ **BUDGETED:** Yes ___ No ___
DIFFERENTIAL OF LOCAL PREFERENCE: _____
COST TO COUNTY: _____ **SOURCE OF FUNDS:** _____
REVENUE PRODUCING: Yes ___ No ____ **AMOUNT PER MONTH** ____ **Year** ____
APPROVED BY: County Atty ____ OMB/Purchasing ____ Risk Management _____
DOCUMENTATION: Included X Not Required _____

DISPOSITION: _____ **AGENDA ITEM #** _____

Recommendations for Anchoring Ordinance							
Elements	**Recommendations**					**Enforcement**	
	Staff 10/21/2011	BOCC 10/21/2011	MPAC 11/30/2011	Staff 1/19/2012	BOCC 1/19/2012	FWC Agreement to Enforce	MCSO Agreement to Enforce
Managed Anchoring Zones						(Enforcement to be determined after ordinance adoption)	
Sunset Cove	X	X	X	X			
Boca Chica basin	X	X	X	X			
Key West harbor		X	NO	X			
Regulations within Zones							
Require USCG Aux VSC decal	X	X	X	X			
Prohibit At Risk tagged vessels	X	X	NO	NO			
Criteria from At Risk Program: (these items are an alternative to including the FWC At Risk Program in the ordinance)							
1) Improper anchor light (citable)			n/a	NO *			
2) Vessel is neglected, not maintained or is not able to be used for navigation			n/a	X			
3) Does not meet registration requirements (citable)			n/a	NO *			
4) Vessel is barnacle laden			n/a	NO			
5) Vessel interior exposed to weather			n/a	NO			
6) Vessel is listing			n/a	X			
7) Vessel is aground			n/a	X			
8) Vessel in danger of breaking its mooring			n/a	X			
9) Vessel is sinking			n/a	X			
10) Other			n/a	NO			
Prohibit floating structures	X	X	X **	X ***			
Require proof of pumpout	X	X	X	X			

* These conditions/criteria are already citable violations under state law. They are not necessary to adopt into this ordinance.

** The MPAC recommended approving a prohibition on floating structures with an exception for licensed comm. operations permitted or pending permitting by DEP.

*** Staff recommends the prohibition on floating structures, with no exception for commercially operating floating structures, whether permitted by DEP or otherwise.

MEMORANDUM
MONROE COUNTY GROWTH MANAGEMENT DIVISION
We strive to be caring, professional and fair

To: Board of County Commissioners

From: Richard Jones, Marine Resources Senior Administrator

Date: December 29, 2011

RE: Anchoring ordinance for FWC Pilot Program

The purpose of this memo is to provide information regarding the development of a County anchoring ordinance in association with the Florida Fish & Wildlife Conservation Commission (FWC) Pilot Program for anchoring and mooring.

Background:

At the September 21, 2011 BOCC meeting the Board considered the staff recommendation for a draft anchoring ordinance, including:

1- Designating 'managed anchoring zones' at Sunset Cove and Boca Chica Basin
2- Requiring an annual USCG Auxiliary Vessel Safety Check (VSC)
3- Prohibiting At Risk vessels as tagged by FWC
4- Prohibiting floating structures
5- Requiring proof of pumping out

The Board heard input from staff and the public then approved the above regulations, including Key West Harbor as a third managed anchoring area. Staff indicated that it would start drafting an anchoring ordinance, and mentioned that the Marine and Port Advisory Committee (MPAC) has a meeting scheduled for October 5th, and that the MPAC would continue to evaluate and comment to the draft regulatory elements to be included in an ordinance.

At the October 5, 2011 MPAC meeting the committee and the public provided comment to the various regulatory elements approved by the BOCC. Several MPAC members voiced their concern for including a prohibition on At Risk vessels (as tagged by FWC) in an ordinance, pointing out that the program is non-regulatory and allows for subjective determinations by FWC officers. The MPAC also discussed the floating structure issue and indicated concern for prohibiting floating structures until additional information could be provided by staff.

Input from FWC:

Over the last several months staff has communicated with FWC Pilot Program staff regarding the feasibility of various regulatory elements and has been advised that FWC does not support the At Risk Program itself being included in a draft ordinance because

of the non-regulatory nature of the program. As an alternative, FWC suggests that the County review the various conditions that may trigger a vessel being tagged as At Risk, and consider including in a draft ordinance any of those conditions. Conditions that trigger an At Risk notice, and are known to precede a derelict vessel condition, include:

1- Improper anchor light (citable)
2- Vessel is being neglected, not maintained, or is not able to be used for navigation as intended.
3- Vessel does not meet registration requirements (citable)
4- Vessel is barnacle laden.
5- Vessel interior is exposed to the weather.
6- Vessel is listing.
7- Vessel is aground.
8- Vessel is in danger of breaking its mooring
9- Vessel is sinking
10- Other (whatever the officer thinks attention is necessary for)

FWC staff has also communicated with County staff regarding regulating anchoring over privately owned submerged lands. This is an issue that will need to be addressed if managed anchoring zones are established in areas which include private bay bottom.

Additional Input on Anchoring Ordinance Development:

Due to the conflict between the BOCC direction and the subsequent MPAC direction on the regulatory elements to be included in a draft ordinance (and recent advice from FWC regarding the At Risk vessel program), staff went back to the MPAC at its November 30, 2011 meeting to further discuss the issues and have the MPAC provide clear recommendations to the BOCC on the items previously approved by the BOCC. Staff provided additional information to the MPAC regarding floating structures in the Keys. Also, the MPAC heard a request (initially sent to Mayor Rice) from Edwin Scales, representing the Fury Management, Inc., to exclude (from any anchoring ordinance rules) operations, vessels and structures which are licensed or permitted by the State of Florida.

The MPAC made the following recommendations to the BOCC:

1- **Denied** a motion to have managed anchoring zones at Sunset Cove, Boca Chica Basin, and Key West Harbor.
2- **Approved** a motion to have managed anchoring zones at Sunset Cove and Boca Chica basin.
3- **Approved** a motion to prohibit floating structures with an exception for legally established commercial enterprises with necessary state approvals (or pending approvals).
4- **Approved** a motion requiring vessels to display a current USCG Auxiliary VSC decal.
5- **Approved** a motion to deny the inclusion of the prohibition of At Risk tagged vessels.
6- **Approved** a motion to have staff review the At Risk vessel program criteria (conditions), and consider what criteria may be appropriate for inclusion in the ordinance
7- **Approved** a motion to require vessels to show proof of pumping out.

Synopsis:

Various recommendations have previously been provided by staff, the MPAC and the BOCC for managed anchoring zones, and the regulations to be implemented within those zones. A compilation of those recommendations has been provided in the attached matrix (titled *Recommendations for Anchoring Ordinance*), with the last column providing for the recommendations of the BOCC on January 19, 2012.

Each of the three areas (Sunset Cove, Boca Chica basin, and Key West harbor), recommended by the Board at the September 21, 2011 BOCC meeting as managed anchoring zones, are anchorages with documented impacts. The greatest numbers of boats and associated impacts occur in Boca Chica basin and Key West harbor. And recent communications with FWC have indicated some reluctance to including Sunset Cove in a draft ordinance due to the sheer distance to the closest mooring field. Of the three anchorages Boca Chica basin has the longest history of discussion with the Board, including the approval Resolution 078-2008 directing staff to address issues of derelict and abandoned vessels.

The inclusion of a prohibition on At Risk tagged vessels has received much comment and concern. FWC has considered the inclusion of that regulation, and has recently advised against such inclusion. As an alternative, FWC suggests considering the actual vessel 'conditions' rather than the At Risk program itself for inclusion in the anchoring ordinance. These conditions (i.e. criteria) are included in the attached matrix for BOCC consideration.

A prohibition on floating structures has also received much comment, both from the public and the MPAC. The MPAC at its November 30, 2011 received detailed information from staff (see attached *Information Regarding Floating Structures*) regarding the specific floating structures documented in the various anchorages. At that meeting the MPAC also heard a request regarding the Fury operations (which recently operated over sovereign submerged lands in the Key West harbor area) and a request to exempt that operation, or other operations which may be permitted by the state. The Board may further consider the issues associated with floating structures, and whether or not it wants to continue in the direction of prohibiting floating structures. Also, because floating structures are not considered vessels by the State, the County does currently have the authority to regulate floating structures, and can consider such regulations outside of the Pilot Program at any time in the future.

The remaining two regulatory items being considered, requiring pumpouts and USCG Auxiliary VSC decals, have received very positive feedback from the public and the MPAC. Staff has received little opposition to either of those potential regulatory elements. The USCG Auxiliary has indicated that they are capable of providing the necessary safety checks. In regard to requiring proof of pumpout, staff anticipates having suitable vessel pumpout services available to a managed anchoring zone prior to implementation of any proof of pumpout requirement.

County of Monroe
Growth Management Division

Marine Resources Office
Suite #420
2798 Overseas Highway
Marathon FL 33050
Voice: (305) 289-2805
FAX: (305) 289-2536

Board of County Commissioners
Mayor Heather Carruthers, Dist. 3
Mayor Pro Tem David Rice, Dist. 4
Kim Wigington, Dist. 1
George Neugent, Dist. 2
Sylvia J. Murphy, Dist. 5

We strive to be caring, professional and fair

November 14, 2011

Major Jack Daugherty
FWC Boating & Waterways Section
620 South Meridian Street
Tallahassee, Florida 32399

Chief Lou Caputo
Monroe County Sheriffs Office
5525 College Rd. KW 33040

Major Daugherty and Chief Caputo:

As you are aware, Monroe County is developing draft anchoring regulations in association with the FWC Pilot Program on Anchoring and Mooring. Anchoring regulations being considered are consistent with the objectives of the Pilot Program and are intended to address documented anchoring impacts in various areas of the Florida Keys.

At the September 21, 2011 BOCC meeting, the BOCC provided direction for staff to draft an anchoring ordinance which would provide for 'managed anchoring zones' to occur in the three locations indicated below. Managed anchoring zones would be established for the purpose of protecting the marine environment, enhancing navigational safety, and deterring improperly stored, abandoned, or derelict vessels.

- Sunset Cove on the bayside of Key Largo
- Boca Chica basin on the oceanside between Stock Island and Boca Chica Key
- Key West Harbor (general area around Wisteria Island and Fleming Key)

Regulations which would be applied within the three managed anchoring zones may include:

1) **Require vessels to display a USCG Auxiliary Vessel Safety Check (VSC) decal.** This voluntary inspection program is designed primarily to ensure compliance with existing USCG requirements for safety equipment and MSD. By displaying a current VSC decal there is a level of assurance that the vessel meets existing federal regulations.

2) Either one of the following options to address vessels at risk of becoming derelict:
   a- **Prohibit 'At Risk' vessels as tagged by FWC.** This is an FWC inspection program that informs owners (via tagging) if there are vessel condition issues that need to be addressed to avoid the potential of the vessel becoming derelict. The program encourages coordination between the vessel owner and FWC with the goal of bringing the vessel into compliance, and avoiding having the situation escalate into a derelict vessel investigation. This inspection program looks at different criteria than the USCG VSC program and complements that program by collectively providing a comprehensive inspection of the vessel from both the condition and safety regulations standpoints.
   b- **Prohibit vessels exhibiting conditions known to precede derelict vessel condition, including:**
      1- Vessel is being neglected, not maintained or is not able to be used for navigation as intended.
      2- Vessel is barnacle laden
      3- Vessel interior is exposed to the weather
      4- Vessel is listing
      5- Vessel is aground
      6- Vessel is in danger of breaking its mooring
      7- Vessel is sinking
3) **Prohibit floating structures.** Floating structures are not vessels and are not registered. Floating structures are often used as storage platforms, are not typically in the act of navigation, and are often used to store fuel and other hazardous materials. Local governments currently have the authority to regulate floating structures
4) **Provide proof of pumpout.** Monroe County anticipates providing vessel pumpout service to all three managed anchoring zones. Optimally, the service would provide stickers for vessels to display indicating compliance with NDZ regulations and routine pumpout. This regulatory element may alleviate the need for enforcement officers to board the vessel to check for MSD compliance.

The County understands that the FWC At Risk Vessel Program and the USCG Vessel Safety Check program are not associated with enforcement, within the programs themselves. County staff has recommended to the BOCC, based on public input in the upper keys, that the County utilize these existing inspection programs towards the goal of reducing or eliminating derelict vessels by incorporating the programs into the Pilot Program ordinance for Monroe County.

Penalties for violation of the above described regulations may include (note: the draft ordinance will stipulate that the violator should first receive a warning, with a time period for compliance prior to issuance of a citation or eviction):

1) Citations may be issued pursuant to F.S.327.74 (uniform boating citations) by any law enforcement agency authorized to issue such citations. The civil penalty for any such infraction is $50.00, except as otherwise provided in this section.
2) The County has the authority to have vessels or floating structures, which are determined to be in violation, removed from the anchorage. The County shall attempt to provide reasonable notice to those vessel or floating structure owners. If the County is unable to contact or identify the owner

of those vessels or floating structure, due to the lack of identifying marks on the vessel or floating structure, the County may remove and impound those vessels or floating structures and/or dispose of them as provided in F.S. 705.103

I am aware that the Monroe County Sheriffs Office has been in communication with FWC Boating & Waterways Section regarding joint enforcement of an anchoring ordinance for Monroe County. Will your respective offices provide enforcement (in coordination with other municipal law enforcement officers) of the County's anchoring ordinance (pending evaluation and approval by FWC and adoption by the BOCC)? Please comment specifically to enforcement of the four regulatory elements:

1) Require vessels to display a USCG Auxiliary Vessel Safety Check (VSC) decal?
2) Prohibit 'At Risk' vessels as tagged by FWC, **or** vessels exhibiting specific at risk conditions?
3) Prohibit floating structures?
4) Provide proof of pumpout?

Also, I would suggest that as we continue to proceed with the Pilot Program over the next several months that we have a workshop with both of your offices and staff of Monroe County, as well as Key West and Marathon, to further discuss proposed regulatory regimes, enforcement capabilities and the plan for joint enforcement.

The Marine Resources Office will be crafting a draft anchoring ordinance. Regulatory elements (as described above), proposed for inclusion in the draft ordinance, will go before the Marine & Port Advisory Committee on November 30th for the Committee's final recommendations. It is anticipated that those recommendations will then go before the Board of County Commissioners in January 2012, in consideration of additional direction for a draft anchoring ordinance. Upon approval by the BOCC, an ordinance will be transmitted to FWC for evaluation. Upon evaluation and approval of the FWC, the BOCC will hold a public hearing for adoption of the final ordinance.

Sincerely,

Richard Jones
Senior Administrator

Cc: Capt. Tom Shipp, FWC
Capt. Pat Langley, FWC
Major Alfredo Escanio, FWC
Monroe County Board of County Commissioners
Roman Gastesi, Monroe County Administrator
Debbie Frederick, Monroe County Deputy Administrator
Christine Hurley, Monroe County Growth Management Division Director
Monroe County Marine & Port Advisory Committee

Florida Fish and Wildlife Conservation Commission

Commissioners
Kathy Barco
Chairman
Jacksonville

Kenneth W. Wright
Vice Chairman
Winter Park

Ronald M. Bergeron
Fort Lauderdale

Richard A. Corbett
Tampa

Charles W. Roberts III
Tallahassee

Dwight Stephenson
Delray Beach

Brian S. Yablonski
Tallahassee

Executive Staff
Nick Wiley
Executive Director

Greg Holder
Assistant Executive Director

Karen Ventimiglia
Chief of Staff

Division of Law Enforcement
Colonel Jim Brown
Director

(850) 488-6251
(850) 921-5786 FAX

Wildlife Alert
888-404-3922

Managing fish and wildlife resources for their long-term well-being and the benefit of people.

620 South Meridian Street
Tallahassee, Florida
32399-1600
Voice: (850) 488-4676

Hearing/speech-impaired:
(800) 955-8771 (T)
(800) 955-8770 (V)

MyFWC.com

December 29, 2011

Attn: Rich Jones
Marine Resources Office
2798 Overseas Highway
Marathon, FL 33050

Dear Mr. Jones:

I am writing in response to your letter dated November 14, 2011. The letter was requesting confirmation that Florida Fish and Wildlife Conservation Commission(FWC) Division of Law Enforcement(DLE) Officers would be providing enforcement of anchoring ordinances that are being drafted as part of the Anchoring and Mooring Pilot Program. You asked for enforcement confirmation specifically addressing the four regulatory elements of your ordinance. I understand those elements are still being developed and have changed, as have the areas which will be designated "managed anchoring zones", since your letter requesting confirmation was sent.

FWC DLE is committed to assisting in the enforcement any ordinance that is approved by the FWC Commission as part of the Anchoring and Mooring Pilot Program. It is difficult to specifically address enforcement of individual parts/areas of ordinance language that is still in development. This enforcement will include coordination with any law enforcement entity that has enforcement authority.

The Division's enforcement philosophy is to initially focus heavily on education. As with any new law or regulation it is imperative that our officers make every effort to educate the public and consider all of the circumstances prior to making the decision to document a violation. Our coordination with other law enforcement agencies would include covering this topic. We have planned on having meetings with local law enforcement in each participant area as their ordinances are approved.

Thank you for your continued efforts in making the Anchoring and Mooring Pilot Program a success.

Sincerely,

Major Jack Daugherty
Boating and Waterways Section Leader

cc: LTC Wiwi
LTC Adams
Major Escanio
Captain Shipp
EmilyNorton

Information Regarding Floating Structures

10/7/2011

Background

Floating structures are a concern that has been discussed by County staff and the Marine & Port Advisory Committee (MPAC) over the last year in regard to anchoring issues and the FWC Pilot Program for anchoring and mooring.

The State definition of 'floating structure' (F.S. 327.02) is:

(10) "Floating structure" means a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term "floating structure" includes, but is not limited to, each entity used as a residence, place of business or office with public access, hotel or motel, restaurant or lounge, clubhouse, meeting facility, storage or parking facility, mining platform, dredge, dragline, or similar facility or entity represented as such. Floating structures are expressly excluded from the definition of the term "vessel" provided in this section. Incidental movement upon water or resting partially or entirely on the bottom shall not, in and of itself, preclude an entity from classification as a floating structure

Monroe County is presently drafting regulatory language addressing floating structures located in the three 'managed anchoring zones' agreed upon by the BOCC for inclusion in a draft anchoring ordinance in association with the FWC Pilot Program.

Characteristics of Floating Structures

Most floating structures in Keys waters do not appear to be occupied, but rather are stored upon the public waters and typically used for storing items (including fuel and other hazardous materials) that may not be properly secured or contained. Often floating structures are rafted up to a larger, primary boat that is used as a liveaboard. Those floating structures often provide additional storage space for the primary vessel, are in disrepair, and are not seaworthy or capable of navigation. Because floating structures are not registered, there are typically no identifiers on the structure that could be used to contact the owner or account for the structure.

Recent Anchoring/Mooring Studies:

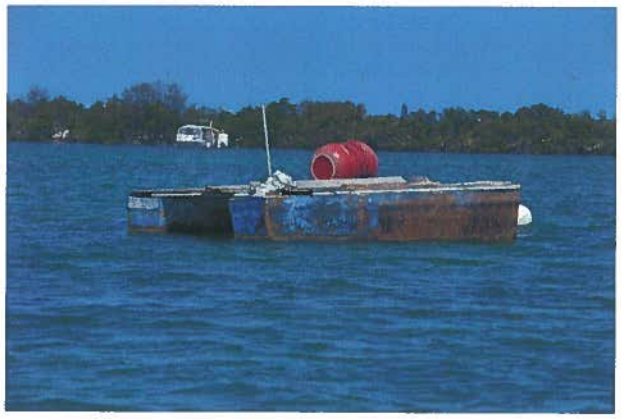
The Vessel Mooring Study-Final Project Report prepared by Terramar Environmental Services (May 17, 2011) indicates that of the 78 boats (avg. over 12 months) anchored in Boca Chica basin approximately six (7%) were floating platforms (i.e. floating structures). The photos below are of five floating structures anchored in that area during the March 2010 survey (in photos 3 and 4 the floating structure is seen rafted to the left of the primary vessel).

1

2

3

4



5

The Key West Mooring Field Study/Final Report prepared by Sandra Walters Consulting (April 8, 2011) indicates that of the 113 boats (avg. over 12 months) anchored within a mile of the Key West mooring field, approximately four (3.5%) were floating structures. All of those were located east of the mooring field (not being considered for a 'managed anchoring area'). No floating structures were identified on the west side of Fleming Key.

A recent survey of boats in Sunset Cove (bayside of Key Largo) by FWC enforcement staff indicated no floating structures in that area.

A privately conducted survey (provided to Monroe County) in the vicinity of Wisteria Island in March, 2010 indicated 106 boats, of which 4 were determined to be floating structures. The photos below indicate the floating structures are commercial uses.

Monroe County staff is coordinating with the Florida DEP in regard to the issue of floating structures and permanent moorings. Over the last year DEP has begun to address commercially owned/operated floating structures in the Key West area which are moored on sovereign submerged lands. County staff will continue to coordinate with DEP regarding the issue of floating structures as the County develops and implements regulations in association with the FWC Pilot Program.