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2012 OCT 30 AM 9:34
CLERK OF COUNTY COURTS
MONROE COUNTY, FLORIDA

ORDINANCE NO. 036 - 2012

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING CHAPTER 26 OF THE MONROE COUNTY CODE (WATERWAYS) TO PROVIDE FOR "ARTICLE V ANCHORING AND MOORING RESTRICTED AREAS"; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR FILING AND AN EFFECTIVE DATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EXPIRATION DATE.

WHEREAS, in 1992 the Monroe County Department of Marine Resources prepared *The Boating Impacts Management Plan Final Report* which documented liveaboard vessel impacts associated with unmanaged anchorages throughout the Keys; and

WHEREAS, in 2002 the Monroe County Department of Marine Resources prepared a *Keys-Wide Mooring Field System Preliminary Planning Document* which included an evaluation of anchorages throughout the Keys including Boca Chica Harbor, Cow Key Channel, and Key West Harbor (i.e. Wisteria Island/Fleming Key area) and recognized the need to address negative boating impacts associated with those unmanaged anchorages; and

WHEREAS, in 2008 the Monroe County Marine Resources Office prepared the *Development of a Boating Management Plan for the Boca Chica Harbor Area* which evaluated a variety of boating impacts in that anchorage area and provided options for managing anchoring activity, but recognized the lack of authority (at that time) provided to the County to regulate vessels other than liveaboard vessels; and

WHEREAS, in 2009 the Florida Legislature directed the Florida Fish & Wildlife Conservation Commission (FWC), in consultation with the Florida Department of Environmental Protection, to establish a Pilot Program to explore potential options for regulating the anchoring or mooring of non-liveaboard vessels outside the marked boundaries of public mooring fields (327.4105 F.S.); and

47 **WHEREAS**, the goals of the Pilot Program are to encourage the establishment of
48 additional public mooring fields and to develop and test policies and regulatory regimes
49 that: promote the establishment and use of mooring fields, promote public access to
50 waters of the state, enhance navigational safety, protect maritime infrastructure, protect
51 marine environment, and deter improperly stored, abandoned or derelict vessels; and
52

53 **WHEREAS**, in November 2009 Monroe County sent a Letter of Interest to FWC to
54 participate in the Pilot Program in partnership with the Cities of Marathon and Key West,
55 each of which operate public mooring fields; and
56

57 **WHEREAS**, the Monroe County Board of County Commissioners entered into Inter-
58 local Agreements with the Cities of Marathon and Key West on February 17, 2010
59 providing for coordinated partnerships in the FWC Pilot Program; and
60

61 **WHEREAS**, the Monroe County Marine Resources Office retained consultants to
62 complete vessel surveys inside and outside of public mooring fields at Key West and
63 Marathon and in the anchorage at Boca Chica basin, and conducted stakeholder
64 workshops to take public input on anchoring and mooring issues and potential regulatory
65 regimes, in accordance with the criteria of the FWC Pilot Program; and
66

67 **WHEREAS**, FWC staff evaluated Monroe County's vessel surveys, considered public
68 input provided at stakeholder workshops, and provided a recommendation to the FWC to
69 approve Monroe County for participation in the Pilot Program; and
70

71 **WHEREAS**, at its February 2011 meeting the FWC approved Monroe County as one of
72 five local governments in the state to participate in the Pilot Program, including St.
73 Petersburg, Sarasota, St. Augustine and Martin County; and
74

75 **WHEREAS**, the Monroe County Marine and Port Advisory Committee and the Monroe
76 County Board of County Commissioners held numerous public meetings from 2009 to
77 the present to discuss, and take public input on FWC Pilot Program objectives, anchoring
78 impacts in unmanaged Keys anchorages, and viable solutions to address those anchoring
79 impacts; and
80

81 **WHEREAS**, the Monroe County Board of County Commissioners provided direction at
82 its September 21, 2011 meeting for staff to draft an anchoring ordinance to provide for
83 managed anchoring zones with accompanying regulations, and to coordinate with the
84 Cities of Marathon and Key West for the inclusion of ordinance language providing for
85 anchoring regulations in association with their respective mooring fields; and
86

87 **WHEREAS**, at the September 21, 2011 Monroe County Board of County
88 Commissioners meeting the Board received a request from a representative of Wisteria
89 Island to have Key West harbor included as a managed anchoring zone, and the Board
90 approved the inclusion of that area as a managed anchoring zone; and
91

92 **WHEREAS**, the Monroe County Board of County Commissioners provided additional
93 direction at its January 19, 2012 meeting for the anchoring ordinance to provide for four
94 managed anchoring zones, and revised the regulations for development to be applied
95 within those zones; and
96

97 **WHEREAS**, the Monroe County Board of County Commissioners at its April 18, 2012
98 meeting accepted a request by the City of Marathon to include the greater Boot Key
99 Harbor area as a fifth managed anchoring zone, heard concerns from the Navy, and
100 directed staff to include a prohibition on vessels within managed anchoring zones that
101 exhibit conditions known to precede a derelict vessel condition, eliminate floating
102 structures language and eliminate USCG Auxiliary Vessel Safety Check language
103 pending a recommendation from the USCG; and
104

105 **WHEREAS**, the Monroe County Board of County Commissioners at its May 16, 2012
106 meeting accepted a request by Naval Air Station Key West to make areas of Boca Chica
107 basin, encompassed by the Navy Accident Potential Zone and baybottom, a no anchoring
108 zone to ensure the safety and security of the public; and
109

110 **WHEREAS**, the Monroe County Board of County Commissioners has indicated that the
111 anchoring ordinance should not be over-reaching and not overburden transient boaters;
112 and
113

114 **WHEREAS**, it is the intention of the Monroe County Board of County Commissioners to
115 optimize the incentive for vessel owners, who contribute to Boating Improvement Funds
116 through vessel registration fees and contribute to DEP Clean Vessel Act Program funds
117 through marine fuel taxes, to properly pumpout and comply with existing sewage
118 discharge regulations within the federal No Discharge Zone in the Keys, by providing
119 free pumpout service to vessels located in managed anchoring zones and which are
120 served by the County pumpout program; and
121

122 **WHEREAS**, Monroe County staff is negotiating a contract with the National Marine
123 Waste Foundation to provide free pumpout service to vessels anchored in unincorporated
124 areas of the Florida Keys and to provide for a registration process, with accompanying
125 participation stickers or tags to be displayed on vessels indicating proof of regular
126 pumpouts; and
127

128 **WHEREAS**, because the anchoring ordinance is a test program the Monroe County
129 Board of County Commissioners desires that vessel owners be provided warnings by
130 enforcement officers prior to the issuance of citations, to allow every opportunity for the
131 vessel owner to comply with the described regulations; and
132

133 **WHEREAS**, the anchoring ordinance shall provide for the regulation of both liveaboard
134 and non-liveaboard vessels; and
135

136 **WHEREAS**, the Monroe County Board of County Commissioners encourages FWC to
137 fully implement the agency's At Risk Program in designated managed anchoring zones as

138 a tool to identify vessels which exhibit conditions known to precede a derelict vessel
139 condition; and

140

141 **WHEREAS**, the regulations established in the anchoring ordinance are consistent with
142 the municipal codes of the City of Marathon and the City of Key West; and

143

144 **WHEREAS**, the Monroe County Board of County Commissioners will transmit the
145 approved anchoring ordinance to FWC for consideration and approval prior to adoption
146 of the ordinance by the Board of County Commissioners;

147

148

149

150 **NOW, THEREFORE, BE IT ORDAINED BY THE MONROE COUNTY BOARD**
151 **OF COUNTY COMMISSIONERS:**

152

153 **Section 1.** Chapter 26 of the Monroe County Code is amended as follows:

154

155

Chapter 26
WATERWAYS

156

157

158

ARTICLE V
ANCHORING AND MOORING RESTRICTED AREAS

159

160

161 Sec. 26-100. Purpose. It is the purpose of this section of this Code to provide for
162 anchoring and mooring restricted areas where unmanaged anchoring and/or mooring and
163 associated environmental and navigational impacts exist. These areas and restrictions are
164 created in accordance with F.S. § 327.4105, and by approval of the Florida Fish and
165 Wildlife Conservation Commission which has been directed by the Florida State
166 Legislature to establish a Pilot Program to explore potential options for regulating the
167 anchoring or mooring of non-liveaboard vessels outside the marked boundaries of public
168 mooring fields. These restrictions are deemed to be necessary to protect the public
169 health, safety and welfare. These restrictions also include the regulation of liveaboard
170 vessels and floating structures, as provided for in F.S. § 327.60(3).

171

172 Sec. 26-101. Definitions.

173

174 *Proof of pumpout* means an acceptable form of proof that a vessel has had its vessel
175 sewage legally pumped out, or disposed of (in the case of a Porta-Potti or other portable
176 toilet). Acceptable forms of proof include a pumpout registration sticker or tag issued by
177 the City of Key West, City of Marathon or Monroe County pumpout programs indicating
178 that the vessel receives routine pumpouts, or a pumpout receipt from a pumpout facility
179 (including portable toilet dump stations) or pumpout vessel within the past ten (10) days.

180

181 *Derelict Vessel* means any vessel, as defined in F.S. § 327.02, that is left, stored, or
182 abandoned:

183

184

(a) In a wrecked, junked, or substantially dismantled condition upon any public
waters of this state.

185 (b) At any port in this state without the consent of the agency having jurisdiction
186 thereof.

187 (c) Docked or grounded at or beached upon the property of another without the
188 consent of the owner of the property
189

190 Sec. 26-102. Anchoring and Mooring Restricted Areas.
191

192 (a) *Managed Anchoring Zones.* Managed Anchoring Zones are established for the
193 purpose of protecting the marine environment, enhancing navigational safety, and
194 deterring improperly stored, abandoned, or derelict vessels. Managed Anchoring
195 Zones are created as a tool to regulate anchoring activity in currently unmanaged
196 anchorages.
197

198 (1) Managed Anchoring Zones shall be established in the following described
199 geographic areas. Maps delineating the Managed Anchoring Zones are
200 attached hereto as Attachment A, and are incorporated herein by reference and
201 will be made available in the Marine Resources Office.
202

203 a. Boca Chica Basin: To include the body of water occurring between Stock
204 Island and Boca Chica Key (excluding the Navy Accident Potential Zone
205 (APZ), restricted areas, and bay bottom) south of U.S. Highway 1, west of
206 the western edge of the arc of the NAS Key West Accident Potential Zone
207 (APZ), west of a line intersecting the APZ at 24° 34.10' N 81° 43.35' W
208 and running south to 24° 33.63' N 81° 43.35' W, south of a line running
209 east-west from 24° 33.63' N 81° 43.35' W to 24° 33.63' N 81° 43.15' W,
210 west of the western edge of Boca Chica Channel running southwest from
211 24° 33.63' N 81° 43.15' W to 24° 33.45' N 81° 43.24' W, north of latitude
212 24° 33.45' N (approximately at the location of Boca Chica Channel
213 marker 7), east of a line running north-northwest from 24° 33.45' N 81°
214 43.38' W to 24° 33.82' N 81° 43.46' W and continuing along the Stock
215 Island shoreline.

216 b. Key West Harbor: To include the body of water occurring west of
217 Fleming Key and Key West (excluding Navy restricted areas), south of a
218 line running east-west at latitude 24 ° 35.19' N, east of a line running from
219 the northwest tip of Pearl Bank to the north side of Tank Island (Sunset
220 Key), and north of a line running east-west at latitude 24° 33.84' N.

221 c. Cow Key Channel: To include the body of water occurring between Key
222 West and Stock Island, south of U.S. Highway 1, and north of a line
223 running east-west at latitude 24° 33.44' N (approximately at the location
224 of Cow Key Channel marker 5).

225 d. Boot Key Harbor: To include the area of Boot Key Harbor (excluding the
226 permitted public mooring field and No-Anchoring Buffer Zone) occurring
227 south of the Vaca Key shoreline, east of Boot Key Harbor main channel
228 entrance marker 7 located at position 24° 42.13' N 81° 06.84' W, north of
229 the Boot Key shoreline, and west of the far eastern side of Boot Key
230 Harbor at position 24° 42.54' N 81° 04.99' W, and including the entirety
231 of Sisters Creek south to marker 4 at the entrance of Sisters Creek, and

232 including the area occurring from Sisters Creek marker 4 at position 24°
233 41.35' N 81° 05.26' W running east to the shoreline of Vaca Key at
234 position 24° 41.43' N 81° 04.93' W and running north along the shoreline
235 of Vaca Key and continuing to the west along the shoreline of Sombrero
236 Beach.
237

238 (2) The following regulations shall apply within Managed Anchoring Zones:
239

- 240 a. Prohibition of vessels exhibiting pre-derelict vessel conditions. Vessels
241 determined to exhibit conditions known to precede a derelict vessel
242 condition are prohibited, including:
243 1) Vessel is not able to be used for navigation.
244 2) Vessel is listing.
245 3) Vessel is aground.
246 4) Vessel is in danger of breaking its mooring.
247 5) Vessel is sinking.
248 6) Vessel is dragging anchor.
249 7) Vessel has broken its mooring and has been secured for the protection
250 of the health, safety and welfare of the citizens.
- 251 b. Prohibition of derelict vessels. Vessels determined to be derelict in
252 accordance with F.S. § 823.11 are prohibited.
- 253 c. Proof of pumpout required. Vessels anchored or moored for more than ten
254 (10) consecutive days, and which are required to have a marine sanitation
255 device in accordance with F.S. § 327.53, must provide proof of pumpout.
256 Vessel owners may utilize a pumpout service which may be provided by
257 the City of Key West, City of Marathon, Monroe County pumpout
258 programs, or other authorized vessel pumpout facility or vendor. The
259 municipal and County pumpout services are structured to provide ongoing
260 pumpouts for vessels located within managed anchoring zones, and may
261 provide a registration process by which vessel owners sign up for regular
262 pumpouts at a frequency based on anticipated need, with a minimum of
263 one pumpout per month. A monthly, color coded, registration sticker or
264 tag may be provided which vessel owners may display on their vessel,
265 indicating participation in the municipal or County pumpout program, and
266 which will be considered proof of pumpout. The municipal and/or County
267 pumpout programs shall maintain registration documentation and pumpout
268 logs throughout the duration of the Pilot Program, which shall be available
269 for review by any law enforcement officer. If a vessel owner utilizes
270 another vessel pumpout provider the vessel owner is required to maintain
271 documentation and pumpout logs to demonstrate use of pumpout to FWC,
272 MCSO or other law enforcement officers.
273

- 274 (b) *No-Anchoring Buffer Zones*. No-Anchoring Buffer Zones are established outside
275 of, and immediately adjacent to, permitted public mooring fields for the purpose
276 of protecting maritime infrastructure, enhancing navigational safety and
277 promoting public access and the use of public mooring fields.
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(1) No-Anchoring Buffer Zones shall be established in the following described geographic areas. Maps delineating the No Anchoring Zones are attached hereto as Attachment B, and are incorporated herein by reference and will be made available in the Marine Resources Office.

- a. Boot Key Harbor: To include a fifty foot (50') wide area immediately adjacent to, and outside of, the perimeter of the east and west mooring fields and the leased anchoring area.
- b. Seaplane Basin: To include the area of Garrison Bight known as the Seaplane Basin occurring north of the Key West shoreline, east of the Fleming Key shoreline, south of a line running east-west 50' north of the Garrison Bight mooring field boundary markers C and D, and west of Sigsbee Park.
- c. Boca Chica Basin: To include the body of water occurring between Stock Island and Boca Chica Key (excluding Navy restricted areas) south of U.S. Highway 1, east of the western edge of the arc of the NAS Key West APZ, east of a line intersecting the Navy APZ at 24° 34.10' N 81° 43.35' W and running south to 24° 33.63' N 81° 43.35' W, north of a line running east-west from 24° 33.63' N 81° 43.35' W to 24° 33.63' N 81° 43.15' W, and west of the western edge of Boca Chica Channel and the Navy restricted area (which includes Boca Chica Channel and the Navy mooring field basin).

(2) The following regulations shall apply within No-Anchoring Buffer Zones:

No anchoring or mooring of any kind (vessels or floating structures) except for vessels mooring within established permitted public mooring fields by permission of the mooring field owner or manager, vessels within a leased anchoring area associated with a mooring field, commercial vessels (e.g. barges) engaged in marine related work, military operations, vessels anchored for the purpose of fishing or other recreational activities (but not overnight), or in the case of an emergency (e.g. weather, mechanical, medical) causing the need for a vessel to temporarily anchor.

Sec. 26-103. Enforcement. Regulations described in this Article may be enforced by law enforcement officers of the City of Marathon or City of Key West (within their areas of jurisdiction), Monroe County, or FWC or any other law enforcement officer.

Sec. 26-104. Penalties.

- (a) Any person cited for a violation of this article shall be charged with a noncriminal infraction. A written warning shall be issued to provide the vessel owner 30 days for corrective action or removal of the vessel. If corrective action or removal is not accomplished, a Uniform Boating Citation may be issued for violations of this ordinance pursuant to F.S. § 327.74 by any law enforcement agency authorized to issue such citations. Vessel owners will be provided thirty (30) days between issuance of citations. Fines associated with citations are established as follows:

- 326 (1) First offense- \$50
327 (2) Second offense- \$100
328 (3) Third offense- \$250
329 (4) Fourth or subsequent offenses- \$250 and FWC will request that the owner
330 remove the vessel from the Managed Anchoring Zone or No-Anchoring
331 Buffer Zone
332

333 (b) Any person who fails to properly respond to a Uniform Boating Citation issued
334 for a violation of this article shall, in addition to the charge relating to the
335 violation of the boating laws of this County, be charged with the offense of failing
336 to respond to such citation and upon conviction be guilty of a misdemeanor of the
337 second degree punishable as provided in F.S. § 775.082 and F.S. § 775.083.
338

339 (c) If a law enforcement officer determines that a vessel is derelict, the violation shall
340 be processed in accordance with F.S. § 823.11
341

342 (d) Allowance shall be provided for vessels in need of safe harbor due to severe
343 weather conditions or temporary mechanical issues which may otherwise prohibit
344 a vessel from safely departing a managed anchoring zone.
345

346 Sec. 26-105. Exemptions. The following exemptions are provided:
347

348 (a) Vessels equipped with only incinerating or composting toilets are not required to
349 provide proof of pumpout, as those types of toilets are not designed to be pumped
350 out. However, effluent from those toilets is not allowed to be disposed of in the
351 waters of the No Discharge Zone within the Florida Keys.
352

353 (b) Stored vessels are not required to provide proof of pumpout.
354
355

356 **Section 2.** Severability. If any section, paragraph, subdivision, clause, sentence or
357 provision of this ordinance shall be adjudged by any court of competent jurisdiction to be
358 invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this
359 ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision,
360 clause, sentence, or provision immediately involved in the controversy in which such
361 judgment or decree shall be rendered.
362

363 **Section 3.** Repeal of Inconsistent Provisions. All ordinances or parts of ordinance in
364 conflict with this ordinance are hereby repealed to the extent of said conflict. The repeal
365 of an ordinance herein shall not repeal the repealing clause of such ordinance or revive
366 any ordinance which has been repealed thereby.
367

368 **Section 4.** Filing and Effective Date. This ordinance shall be filed in the Office of
369 the Secretary of the State of Florida and shall become effective as provided by law.
370

371 **Section 5.** Codification. The provisions of this ordinance shall be included and
372 incorporated into the Code of Ordinances of Monroe County, Florida and shall be
373 numbered to conform with the uniform numbering system of the Code.

374
375 **Section 6.** Expiration Date. The FWC Pilot Program is scheduled to expire on July
376 1, 2014, unless extended by the Florida State Legislature. This ordinance shall expire or
377 be extended concurrently with the FWC Pilot Program.

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383 **PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County,
384 Florida at a regular meeting held on the 17th day of October, 2012.

385
386 Mayor David Rice Yes
387 Mayor *pro tem* Kim Wigington Yes
388 Commissioner George Neugent Yes
389 Commissioner Heather Carruthers Yes
390 Commissioner Sylvia Murphy Yes

391
392

393 **MONROE COUNTY BOARD OF COUNTY COMMISSIONERS**

394

395 Attest: DANNY L. KOLHAGE, CLERK

396

397 By *Daniel C. DeSantis*
398 Deputy Clerk

By *DR*
Mayor David Rice

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

Susan M. Grimsley
SUSAN M. GRIMSLEY
ASSISTANT COUNTY ATTORNEY
DATE *September 27, 2012*

STATE OF FLORIDA
COUNTY OF MONROE

This Copy is a True Copy of the
Original on File in this Office. Witness
my hand and Official Seal.

This *16th* day of *Nov*

A.D., 20 *12*
DANNY L. KOLHAGE

Daniel C. DeSantis
Clerk Circuit Court
By _____ D.C.

Attachment A- Maps of Managed Anchoring Zones

Boca Chica Harbor



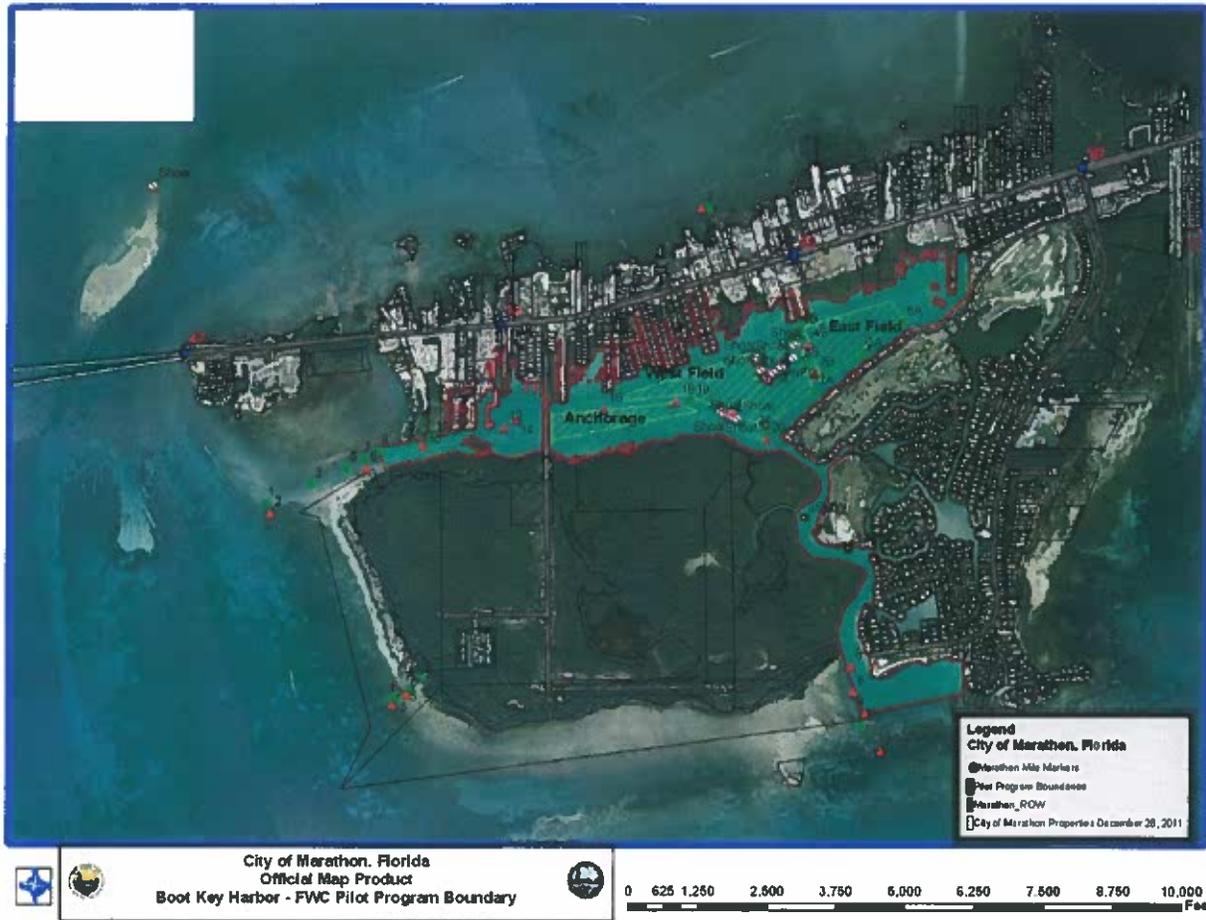
Key West Harbor



Cow Key Channel



Boot Key Harbor



Attachment B- Maps of No Anchoring Buffer Zones

Boot Key Harbor



Key West Mooring Field/Seaplane Basin



Boca Chica Basin

