



Boating Advisory Council

Embassy Suites
Palm Beach Gardens, Florida
October 27, 2016

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

The meeting was called to order at 8:35 am. Pledge of Allegiance was led by Chairman Brown.

II. ADMINISTRATIVE ITEMS

A) Boating Advisory Council (BAC) Members – Roll Call

Present

Colonel Curtis Brown (Chair) – Florida Fish and Wildlife Conservation Commission (FWC)
DLE Director
Spencer Anderson – US Power Squadrons
Robert Atkins – Boating Public
Rebecca Bragg – Canoe/Kayak Enthusiasts
David Childs – Water-Related Environmental Groups
Mark Crosley – Florida Inland Navigation District (FIND)
Phillip Dur – Boating Public
David Hankla – Manatee Protection Interests
Joseph Lyshon – Marine Manufacturers
Todd Rebol – Boating Public
William Richardson – Department of Environmental Protection (DEP)
Christopher Shaffner – Commercial Vessel Owners/Operators
Michael Shuler – Scuba Diving Industry
Robert Spaeth – Commercial Fishing Industry
Hans Wilson – Marine Industries

Absent

Stephen Danzig – Marine Special Events
William Griswold – US Coast Guard (USCG) Auxiliary
Senator Charles Dean, Sr. – Senate
Representative Ray Pilon – House of Representatives

Chairman Brown welcomed newly appointed member Hankla to the BAC. He asked both Dur and Hankla to introduce themselves to those present. Chairman Brown informed the BAC that Todd Rebol was recently appointed to Career Source Florida, Inc. and would no longer be on the BAC. He expressed his appreciation for Rebol and his service to BAC.

B) Audience – Introductions

Trent Anthony, Brack Barker, Bonnie Basham, Gwen Beatty, Ralph Caruso, Chuck Collins, Lauren Jackson, Rich Jones, Peggy Mathews, Michele Miller, April Price, Gary Sisco, John Sprague, Tommy Thompson, and Bruce Wright

C) FWC Staff – Introductions

Regional Director Tom Reinert, Major Richard Moore, Major Rob Rowe, Captain Gary Klein, Captain Thomas Shipp, Lieutenant Mike Haney, Lieutenant Seth Wagner, Precious Boatwright, Brenda Collins, Jessica Crawford, Brandy Elliott, Kipp Frohlich, Phil Horning, Ryan Moreau, Brian Rehwinkel, and Bill Sargent

D) Meeting minutes from April 7, 2016 were reviewed.

MOTION: Bragg moved to approve the minutes.

SECOND: Shuler

DISCUSSION: None

VOTE: Unanimously approved

E) Special Recognition

Chairman Brown informed BAC that Major Moore was retiring in March 2017. He commended Major Moore on his years of service to the FWC and his impact nationally on boating laws.

Captain Shipp presented Florida's 2016 Boating Educator of the Year. The chosen educator is someone who goes above and beyond their regular duties in order to make outstanding contributions to boating education. This year Coach Ernie Martin was chosen. Coach Martin teaches the Outdoor Life class each semester at Crestview High School and within this course, he includes a number of outdoor skills, conservation, and boating safety elements. The safety oriented program developed by him has successfully educated over 1,500 students during the past 10 years. Coach Martin is one of a very few teachers in Northwest Florida who teach this type of class. It has been so successful that over 99 percent of the students passed the Florida Boater Education course and received their Florida Safe Boater ID cards. Coach Martin invites guest lectures from FWC, commercial boating operators, military personnel, and emergency responders to provide a balanced and well-rounded understanding of the boating, hunting, and fishing environments.

Major Moore presented Florida's 2016 Boating Officer of the Year. Officer Jarrod Molnar was selected. He has worked with the FWC for five years and is assigned to Okaloosa County. In 2015, Officer Molnar responded to 10 calls for service due to swimmers in distress or missing. He rescued 27 people from the water due to currents or tidal conditions. As a field training officer, Officer Molnar has assisted in training new FWC officers in the area. Along with the needed skills and training, he provides in-depth instruction on BUI investigation and proper report writing. One of Officer Molnar's greatest strengths is his continuing commitment to keeping Florida waters safe by enforcing BUI laws. He is a certified breath test operator and made 13 BUI arrests in 2015. Officer Molnar also cited a number of underage individuals for possession of alcohol. He has a strong desire and a passion for boating safety enforcement and education, primarily accomplishing this through contact with the public while on patrol. Officer Molnar has documented 786 hours of vessel patrol, issued 82 uniform boating citations, and 153 written warnings. He was selected as the Regional Boating Officer of the Year by the Southern Region Association of Boating Law Administrators, which made him eligible for consideration for the national award. In September, at the National Association of State Boating Law Administrators' (NASBLA) annual conference, Officer Molnar was selected as the National Boating Law Enforcement Officer of the Year.

Questions or Comments

Dur: What fraction of those operating a boat under the influence are apprehended? *Response* – Major Moore: The challenge of identifying an impaired operator is much greater than finding an impaired driver on the highway. Dur: Proportionally, wouldn't you agree you have far less coverage with law enforcement for BUIs than your land-based brethren have detecting alcoholic behavior on the road? *Response* – Major Moore: There is no doubt that's the case.

III. UNFINISHED BUSINESS/UPDATES

A) All Aboard Florida (AAF) Update presented by April Price.

AAF is experiencing financial set-backs. Their government issued bonds aren't selling. Palm Beach and Indian River counties challenged the bonds issued to them prior to receiving the

environmental impact study. Due to the financial impacts, they are going to have to consider alternative routes not previously considered. Those considerations will weigh favorably for the marine industry association and the proposed routes in Fort Lauderdale, Saint Lucie, and Loxahatchee.

Questions or Comments

Shaffner: Is the barge and crane working on the Loxahatchee River a part of the work for AAF?

Response – Price: I'm not aware of that. Crosley: I was wondering the same thing. There hadn't been a notice. I don't believe it is. We'll ask around and see if we can get some information. Price: This is the first I've heard of it. We'll find out. Unnamed public: Fortress Investment Group, the hedge fund that owns AAF, is looking to sell it. The biggest customer right now is Chicago South Shore.

ACTION ITEM: Updates will be provided to BAC at a future meeting.

B) Non-Motorized Boat Working Group (NMBWG) Update presented by Becky Bragg.

The NMBWG is planning to submit a report to the BAC by the spring meeting. FWC staff will draft the report with input from the NMBWG members. The next meeting will discuss user pay/user benefit. The group is meeting with governmental reps with interest in blue ways and tourism, sailing, rowing, surf-cutters, canoe and kayaks, paddleboard enthusiasts, and commercial paddling entities.

ACTION ITEM: Updates will be provided to BAC at a future meeting.

C) NASBLA Conference Brief presented by Major Richard Moore.

The primary action item done was to make changes to the standards for boating education for online courses. NASBLA adjusted their policy to allow the online course to use time requirements or improve the level of interactivity. January 2017, a new law will come into effect that requires verification of hull ID numbers on boats when they're registered. This law will be implemented by Florida Department of Highway Safety and Motor Vehicles. If we fail to comply, it could jeopardize our eligibility for federal boating safety grant funds

The National Boating Safety Advisory Council (NBSAC) added a new five-year recreational boating program strategic plan. It is available on the USCG website. There is a national recreational boating survey done through the USCG. Initially, it was done every two years. They are now looking at doing it every two to three years. This survey is important at a state level because it helps us measure participation of motorized and non-motorized boats. The following resolutions were passed by NBSAC:

- Encourage the USCG to work on alternate options for nighttime and daytime signaling devices in lieu of flares due to the inability or limited methods of disposal of pyrotechnic devices
- Encourage the USCG to update the fire extinguisher regulations

Questions or Comments

- Bragg: Is the survey voluntary? *Response* – Major Moore: It is a random phone survey.
- *Unnamed Council member:* What tools are you lacking to surveil pontoon boat operations that are utilized by other states? *Response* – Major Moore: Our careless operation law was changed. That change removed the violation to have part of your body outside the boat. Wilson: Will there be some form of public service announcement to inform the public regarding dangers of bow-riding? *Response* – Major Moore: That's a great suggestion and one we will take up.

- Wilson: Is NASBLA leading the way with modifying the timing requirements for online testing? *Response* – Major Moore: NASBLA is trying to follow best practices among the industry as testing evolves.
- *Unnamed Council member*: What is the recommended method of flair disposal on a state and national level? *Response* – Major Moore: There are some incinerators you can take them to. Captain Shipp: There are some dumps and landfills with hazards waste areas that you can take them to. Major Moore: Call your local collection facility to find out if they accept them there.
- Hankla: What's the administrative code reference to careless operation? *Response* – Major Moore: Our state law is s.327.33, F.S. Hankla: Have you looked at what flexibility you do have if someone is dangling their legs outside a vessel? *Response* – Major Moore: We gave that deep, long and thoughtful consideration as we were developing the training for over 1000 officers and partner agencies. There was clear legislative intent that an individual allowing their child to ride with their legs hanging over the bow of the boat would not be considered in violation. *Unnamed audience*: We've heard rumors that the bill sponsor was planning to fix the boater safety component. There are a few aspect of the bill we would like to address – law enforcement ability to stop, issuance of stickers, and the number of stops in some areas. We're going to fix that bill and make sure we don't cut our kids up. Major Moore: Should there be a change to a single year/color type scenario, we've already looked into that and that's something we can implement.
- Shaffner: Could you give us some examples of the HIN number verifications? *Response* – Major Moore: It can be as simple as a pencil tracing to vessel inspections. It hasn't been decided how it will be handled in Florida. Shaffner: What's driving that? *Response* – Major Moore: The USCG is changing its data collection on boats. They've created new classification to match changes to vessels and want to ensure they are getting accurate information in the national database.

ACTION ITEM: Updates will be provided to BAC at a future meeting.

D) Derelict Vessel Grants Update presented by Captain Gary Klein

Key highlights:

- Total statewide derelict vessel count: 398
 - 158 of those present hazards to navigation
- Open to all city, county and state governmental entities, Water Management Districts and Inland Navigation Districts
- Total of \$1,400,000 appropriated by Legislature this year
- Two tiers: Bulk Removal and Rapid Removal
- Bulk Removal was allotted \$1,200,000 and Rapid Removal was allotted \$200,000
- Application deadline is October 27, 2016
- FWC requested derelict vessel removal funding in 2016 LBR
- Legislature appropriated 1.4 million for derelict vessel removal
- FWC conducted a public meeting on rule development for DV grant process
- FWC Boating and Waterways created guidelines for new DV grant
- FWC Boating and Waterways developed rule for new DV grants
- FWC Boating and Waterways advertised and initiated application process for new DV grants
- Currently in the process of receiving applications

Questions or Comments

- Crosley: Great to see the state is initiating a derelict vessel program. I would like to remind everyone that FIND will match funds for the 12 districts of our county for their 25%. Captain Klein: We have asked as part of our legislative budget request for additional funding, as of now this is not a reoccurring funding source.
- Crosley: Does the FWC provide people to go around and identify derelict vessels? *Response* – Captain Klein: In order for the boats to be eligible they must be entered into our database. We are available as a resource for governments who can conduct each aspect up to the request for funds. Phil Horning and Lieutenant Darrin Riley provide training to law enforcement agencies on the identification and procedure for handling derelict vessels.
- Wilson: Was there any action to get reimbursement from the owner or their insurance for the boat in Palm Beach? *Response* – Captain Klein: FWC and the county of Palm Beach have asked for restitution through the court. Shaffner: There needs to be teeth put into this program to recover money used. The money spent on the Palm Beach boat was a huge chunk (1/3 of the funds) that will not be available for other boat removal. This is an important program that needs to continue.
- Crosley: Is there any discussion or ability to extend the application deadline due to the hurricane? *Response* – Major Rowe: We have taken it under consideration for the affected counties. Atkins: Hopefully, there's someone out there working to make this a line item in the budget instead of a single year fund. Childs: What are the shortcomings of the bill and how can we better ensure we don't have to wait for the boat to sink before dealing with it? Mathews (Public): What are you doing with the remaining funds? *Response* – Captain Klein: We are going to do everything we can to use it; however, it is use it or lose it.

ACTION ITEM: Updates will be provided to BAC at a future meeting.

E) HB 703 Implementation Update presented by Captain Tom Shipp

Key highlights:

- The goal of the training was to ensure that all sworn personnel were educated on the recent changes to Florida's boating laws related to HB 703
- Officers were familiarized with HB 703 and made aware of the amendments to Sections 327.33 and 327.70, F.S.
- Officers were given guidance on conducting vessel stops, inspecting vessels and issuing safety inspection decals
- In order for this decal to be valid, it must be placed on the forward half of the port side of the vessel above the waterline; if displayed on a registered vessel, it must be within 6 inches of the vessel's registration decal
- Proper display of this decal does not eliminate a law enforcement officer's ability to conduct a vessel stop for any lawful purpose and subsequently re-inspect safety equipment compliance
- Boats **that do not display** a safety inspection decal
 - No change, LEO has discretion for safety inspection stops
- Boats **that properly display** a safety inspection decal
 - Reasonable suspicion for safety equipment violations
 - Any law violation observed
 - Reason to believe there is participation in a highly regulated activity
 - Conducting safety equipment inspections after stopping for any other lawful purpose

Questions or Comments

Spaeth: You can stop someone for any fishing activity regardless of the safety decal? *Response – Captain Shipp: Yes, we can stop you for any highly regulated activity. Unnamed Council member: Once I have the sticker and I'm just joy-riding, you can't stop the boat? Response – Captain Shipp: No. We cannot stop it for a boating safety check. Unnamed Council member: For the life of the boat? Is there a time frame? Response – Captain Shipp: Yes. No. Dur: Does the USCG auxiliary safety decal work for this? Response – Captain Shipp: No. It must be issued by a law enforcement officer. Dur: If the USCG recognizes it so should the state. Crosley: BAC should recommend that the law recognize the USCG auxiliary safety decal.*

ACTION ITEM: Updates will be provided to BAC at a future meeting.

IV. NEW BUSINESS/INFORMATION ITEMS

A) Legislative Issue: Boating Education Law presented by Major Richard Moore.

Key highlights:

- The proposed change to the temporary certificate:
 - Would allow it to be offered online
 - Would change the expiration from 12 months to 90 days
 - Would change the Florida statute
- Allow current online boating educators to offer the test at market prices.
 - Currently charge up to \$3
 - Vendors said it would be \$8 – 10 if offered online
- Over 200,000 paper certificates issued last year
- Will not move forward with the change to statute due to increase in price
- We are exploring other options which do not require a change to the statute

Questions or Comments

- Shaffner: If this can move forward, will there be a limit to the number of times they can take it before they have to take the permanent test? *Response – Major Moore: Originally, the proposal had it at one 90 day test. It was determined it would be better not to go that route at this time.*
- Hankla: So you're bound by the \$3 cap? *Response – Major Moore: Yes.*
- Mathews (Public): Calkamay is very interested in offering the test online and that discussion is ongoing.

ACTION ITEM: Updates will be provided to BAC at a future meeting.

B) Critical Wildlife Area (CWA) Proposal presented by Kipp Frohlich.

This presentation created heavy discussion around a plethora of concerns for and against and suggestions in lieu of establishing a CWA such as the rights of animals, visitors to Florida, habitat sustainability, casting zones, restoration funds, rights of Floridians, education, signage, effectiveness of designations, use of videos for patrol and verification of need, public comments and notice.

Key highlights:

- What are CWAs
 - A conservation tool for FWC
 - To Protect wildlife from disturbance
 - During critical times such as nesting or migration
 - Established under Rule 68A-19.005

- Landowner concurrence
- Significant concentration of wildlife
- Distinct, manageable area
- Subject to disturbance
- No restrictions where signage is not posted
- Why are CWAs needed
 - Bird populations have decline as much as 80%
 - A number of species are listed as state threatened
 - Some are listed as Federally threatened
 - Scientific studies shows that people harm birds by approaching too closely
 - Keeping people a safe distance from the bird colonies will help improve their long term survival
- Research on Disturbance
 - Bird species flush at different distances
 - Birds may react differently at different sites
 - Birds may have different responses to people, boats, or dogs
 - Some birds may become more tolerant to some activities over time, but some buffer is necessary to reduce impacts
- Currently 20 CWAs
 - Five existing will be re-established:
 - St. George Causeway
 - Alafia Banks
 - Myakka River
 - Rookery Island
 - Nassau sound/birds Island
 - Ten new:
 - Lanark Reef
 - Flag Island
 - Withlacoochee Caves
 - Dot-Dash
 - Roberts Bay
 - Pine Island sound
 - Estero Bay
 - Port Orange
 - BC49
 - Stick Marsh
- Summary of Public Engagement
 - 14 public workshops were held in July and August
 - Several meetings in September and October with stakeholders
 - Over 350 comments received
 - All proposed CWAs received at least one comment
 - General comments most numerous

Questions or Comments

- Hans Wilson asked Mr. Frohlich to pick an area/island and walk them through on how the plan was developed. Port Orange was chosen as the example because it has problematic navigation issues and boating access. Port Orange is a new establishment. It is owned by FIND. The birds present are pelicans, snowy egret, cormorants, great egret, white ibis, great blue heron, American oystercatcher. It consists of 1.86 acres uplands and 1.88 acres of water. Changes from original proposal were to move north buffer to match existing signage ~25 feet off north shoreline and modified the proposal based on input from FIND to avoid ICW right of way on the east side of the island. Changed to seasonal closure due to lack of supporting data. The justification for Critical Wildlife Area is the brown pelican. It is a Species of Special Concern, however during the 2010 status review it did not meet the criteria for listing as a Threatened species, although it was noted that the species has declined outside of Florida, and threats still exist. The Species Action Plan for the brown pelican includes protection of nesting sites to maintain stable populations and prevent re-listing the species in the future. American oystercatchers, a state listed species with documented declines, use the less vegetated portions of the islands for nesting. Although the recommended buffer distance for this species is 300 feet, the location of the island next to the ICW makes this buffer too large for safe navigation and it has been modified for protection and navigation. Brown pelicans roost on the island year round, and management and protection of spoil islands that serve as both breeding and foraging/roosting is an action identified in the Species Action Plan. Although not state listed, snowy egrets, great egrets, and great blue herons are all identified as Species of Greatest Conservation Need, and actions to protect the brown pelican and the American oystercatcher will also protect these species.
- Crosley: Thanks for the presentation. It was very informative. I was not impressed by the public notification process. We found out about it late. There were some concerns (maintaining the bird habitat, ICW and boat ramps) with the original proposals and Kipp worked with us to address those in the revised proposal.
- Sprague (Public): A big concern is the impact to fishing around the island. What is a reasonable distance? How are you recognizing the public comment of those who visit Florida to fish in these areas? How do we deal with the long-term locking out of the public? We need to create a design for the people, animals, and habitat.
- Wilson: The concern I have is defining which island qualifies versus which doesn't. I would like to see FWC do a more quantitative evaluation and present that to the public and the Commission.
- Shaffner: I am not a fan of limiting access to anything on the water, but I am a conservationist too. Is there a step-down (lesser) plan from this proposal that could be implemented which would allow us to identify environmental sensitive areas making them known to the public? The public could then choose whether to abide by those requests. *Response* – Frohlich: There are a lot of educational opportunities. We have been engaged in several. We use some advisory language in some areas mainly beach situations. Our plan is easier to enforce. The point is not to right a citation, but to educate. We use broad-base and site-specific education plans. The buffer is an educational tool in itself. The signs provide a clear message.
- Basham (Public): Who's responsible for putting (paying for) the signs in the water? Your division or Boating and Waterways? *Response* – Frohlich: The division of Habitat and Species

Conservation will be responsible for the signs, but we will work closely with Boating and Waterways.

- Bragg: What is the biggest group(s) causing the problems creating the need for CWAs?
Response – Frohlich: There really isn't one group (i.e. bird watchers, fisherman, and recreational users).

ACTION ITEM/MOTION: None

C) Anchoring and Mooring Recommendations presented by Major Moore.

Major Moore provided the history on the creation of the program

Key highlights:

- Created in 2009
- Ran for five years two sites on east coast, two on west coast, and Monroe county per mandate
- FWC provided results to legislators on the five sites (St. Augustine, Stuart/Martin counties, Monroe county, City of Sarasota, and city of St. Petersburg)
 - Each had to have a public mooring
- There were significant delays in the implementation of local ordinances at two of the locations which hindered the ability to gather solid information
 - Requested a three year extension in 2014
- Currently ends July 1, 2017
- Report due to legislature January 1, 2017

Recommendations:

- Promote the establishment and use of public mooring fields by creating an allowance for a minimum wake, slow speed buffer **BAC agreed with addition of changes**
 - Change to recommendation proposed by BAC
 - no restricted area created within federal navigational channels
 - create incentives for local governments
- Quantify the use of local mooring fields **BAC agreed**
- *Break in recording on 3rd recommendation – please fill in* **BAC agreed**
- If local authority has ability to restrict anchoring, they are to have availability of public mooring fields; requirement for consultation with affected municipalities, FWC, DEP, FIND, USCG, and associations or other organizations representing vessel owners/operators **BAC agreed with addition of changes**
 - Change to recommendation proposed by BAC
 - Stay away from stating a cost, use fair market value and provide examples only when asked
 - Provide exemption when mooring field full
- Promote public access to waters of the state, enhance navigational safety and protect maritime infrastructure in keeping with this we are proposing two types of anchoring limited areas statewide **BAC agreed to the first type; did not agree with the second type**
 - Change to recommendation proposed by BAC
 - Change footage or make it where available
 - Tweak wording
- Derelict Vessel Recommendations (received a high level of support) **BAC agreed**
 - Allow/establish a system which places a hold on vessel title which has been deemed derelict
 - Limit who can renew a boat registration
 - If vessel registration is expired beyond a certain time increased penalty if derelict
 - Change to derelict vessel owner notification procedures

- Protecting the marine environment by prohibiting vessels with floating structures from being moored to unauthorized moorings

V. MEMBER ITEMS

All the member items were addressed in the agenda.

VI. COUNCIL ROUNDTABLE

Crosley reminded everyone FIND's grants program was opening in January.

VII. PUBLIC COMMENT

Sprague thanked BAC for their process and allowing the public to speak.

Chairman Brown thanked the public for attending, the Boating Safety staff for putting the meeting together, Legislative Affairs, and Legal.

Meeting was adjourned unanimously at 4:06 pm.

Next meeting will be held May 18, 2017, in Tallahassee, Florida.