Agenda Item 5 C – Monroe County Ordinance
September, 2012

ORDINANCE NO. ______-2012
Approved by Monroe County BOCC 7-26-2012

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 Sunset Cove, 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

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

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

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

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

WHEREAS, during the stakeholder workshops residents in the Sunset Cove area
requested that the adjacent anchorage area be included in any potential regulations; and

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

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

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

WHEREAS, the Monroe County Board of County Commissioners provided direction at
its September 21, 2011 meeting for staff to draft an anchoring ordinance to provide for
managed anchoring zones with accompanying regulations, and to coordinate with the
Cities of Marathon and Key West for the inclusion of ordinance language providing for
anchoring regulations in association with their respective mooring fields; and
WHEREAS, at the September 21, 2011 Monroe County Board of County Commissioners meeting the Board received a request from a representative of Wisteria Island to have Key West harbor included as a managed anchoring zone, and the Board approved the inclusion of that area as a managed anchoring zone; and

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

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

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

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

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

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

WHEREAS, because the anchoring ordinance is a test program the Monroe County Board of County Commissioners desires that vessel owners be provided warnings by enforcement officers prior to the issuance of citations, to allow every opportunity for the vessel owner to comply with the described regulations; and
WHEREAS, the anchoring ordinance shall provide for the regulation of both liveaboard and non-liveaboard vessels; and

WHEREAS, the Monroe County Board of County Commissioners encourages FWC to fully implement the agency’s At Risk Program in designated managed anchoring zones as a tool to identify vessels which exhibit conditions known to precede a derelict vessel condition; and

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

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

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

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

Chapter 26
WATERWAYS

ARTICLE V
ANCHORING AND MOORING RESTRICTED AREAS

Sec. 26-100. Purpose. It is the purpose of this section of this Code to provide for anchoring and mooring restricted areas where unmanaged anchoring and/or mooring and associated environmental and navigational impacts exist. These areas and restrictions are created in accordance with F.S. § 327.4105, and by approval of the Florida Fish and Wildlife Conservation Commission which has been directed by the Florida State Legislature 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. These restrictions are deemed to be necessary to protect the public health, safety and welfare. These restrictions also include the regulation of liveaboard vessels and floating structures, as provided for in F.S. § 327.60(3).


Proof of pumpout means an acceptable form of proof that a vessel has had its vessel sewage legally pumped out, or disposed of (in the case of a Porta-Potti or other portable toilet). Acceptable forms of proof include a pumpout registration sticker or tag issued by the City of Key West, City of Marathon or Monroe County pumpout programs indicating that the vessel receives routine pumpouts, or a pumpout receipt from a pumpout facility (including portable toilet dump stations) or pumpout vessel within the past ten (10) days.
Derelict Vessel means any vessel, as defined in F.S. § 327.02, that is left, stored, or abandoned:

(a) In a wrecked, junked, or substantially dismantled condition upon any public waters of this state.
(b) At any port in this state without the consent of the agency having jurisdiction thereof.
(c) Docked or grounded at or beached upon the property of another without the consent of the owner of the property.

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

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

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

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

b. Sunset Cove: To include the body of water in Buttonwood Sound occurring southeast of the Intracoastal waterway and bounded by the Key Largo shoreline.

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

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

e. Boot Key Harbor: To include the area of Boot Key Harbor (excluding the
permitted public mooring field and No-Anchoring Buffer Zone) occurring
south of the Vaca Key shoreline, east of Boot Key Harbor main channel
entrance marker 7 located at position 24° 42.13’ N 81° 06.84’ W, north of
the Boot Key shoreline, and west of the far eastern side of Boot Key
Harbor at position 24° 42.54’ N 81° 04.99’ W, and including the entirety
of Sisters Creek south to marker 4 at the entrance of Sisters Creek, and
including the area occurring from Sisters Creek marker 4 at position 24°
41.35’ N 81° 05.26’ W running east to the shoreline of Vaca Key at
position 24° 41.43’ N 81° 04.93’ W and running north along the shoreline
of Vaca Key and continuing to the west along the shoreline of Sombrero
Beach.

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

a. Prohibition of vessels exhibiting pre-derelict vessel conditions. Vessels
determined to exhibit conditions known to precede a derelict vessel
condition are prohibited, including:
1) Vessel is not able to be used for navigation.
2) Vessel is listing.
3) Vessel is aground.
4) Vessel is in danger of breaking its mooring.
5) Vessel is sinking.
6) Vessel is dragging anchor.
7) Vessel has broken its mooring and has been secured for the protection
of the health, safety and welfare of the citizens.

b. Prohibition of derelict vessels. Vessels determined to be derelict in
accordance with F.S. § 823.11 are prohibited.

c. Proof of pumpout required. Vessels anchored or moored for more than ten
(10) consecutive days, and which are required to have a marine sanitation
device in accordance with F.S. § 327.53, must provide proof of pumpout.
Vessel owners may utilize a pumpout service which may be provided by
the City of Key West, City of Marathon, Monroe County pumpout
programs, or other authorized vessel pumpout facility or vendor. The
municipal and County pumpout services are structured to provide ongoing
pumpouts for vessels located within managed anchoring zones, and may
provide a registration process by which vessel owners sign up for regular
pumpouts at a frequency based on anticipated need, with a minimum of
one pumpout per month. A monthly, color coded, registration sticker or
tag may be provided which vessel owners may display on their vessel,
indicating participation in the municipal or County pumpout program, and
which will be considered proof of pumpout. The municipal and/or County
pumpout programs shall maintain registration documentation and pumpout
logs throughout the duration of the Pilot Program, which shall be available
for review by any law enforcement officer. If a vessel owner utilizes
another vessel pumpout provider the vessel owner is required to maintain
documentation and pumpout logs to demonstrate use of pumpout to FWC,
MCSO or other law enforcement officers.

(b) No-anchoring Buffer Zones. No-anchoring Buffer Zones are established outside
of, and immediately adjacent to, permitted public mooring fields for the purpose
of protecting maritime infrastructure, enhancing navigational safety and
promoting public access and the use of public mooring fields.

(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:

1. First offense- $50
2. Second offense- $100
3. Third offense- $250
4. Fourth or subsequent offenses- $250 and FWC will request that the owner remove the vessel from the Managed Anchoring Zone or No-Anchoring Buffer Zone

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

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

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

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

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

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

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

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

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

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

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

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County,
Florida at a regular meeting held on the ____ day of _____________, 2012.

Mayor ________________________________
Mayor pro tem ________________________________
Commissioner ________________________________
Commissioner ________________________________
Commissioner ________________________________

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

Attest: DANNY L. KOLHAGE, CLERK

By ________________________________          By ________________________________
Deputy Clerk