



Anchoring and Mooring Pilot Program

Proposed Report of Findings and Recommendations

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**Florida Fish and Wildlife Conservation Commission
Division of Law Enforcement
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Executive Summary

The Florida Fish and Wildlife Conservation Commission (FWC), in consultation with the Department of Environmental Protection (DEP), was directed by Florida's Legislature in 2009 to establish a pilot program to explore potential options for regulating the anchoring or mooring of vessels (other than live-aboard vessels) outside the marked boundaries of public mooring fields. This Legislative action was codified in Section 327.4105, Florida Statutes (F.S.), and has since become widely referred to as the "Anchoring and Mooring Pilot Program."

The issue of regulating the anchoring of vessels on state waters has been one of much contention for decades. Local governments face legitimate needs to resolve issues with improperly stored, abandoned, and derelict boats. They must also deal with homeowners who dislike vessels anchored in close proximity to their residences and property damage resulting from vessels breaking loose during weather events. These are complex issues for local governments that want to regulate anchoring but have no legal means to do so outside of properly permitted mooring fields. Boaters want to anchor wherever they choose and where may be convenient and inexpensive for them. They often want to stay for extended periods of time, but governments often need to protect health, safety, and welfare by managing anchoring through regulation.

In an effort to seek resolution of the policy debate over how much authority should appropriately be granted to local governments with respect to vessels anchoring within their jurisdictions, the Legislature created Section 327.4105, Florida Statutes, in 2009. This law established a pilot program to further explore options for local governments to regulate the anchoring of vessels outside public mooring fields. FWC, in consultation with DEP, was tasked with selecting five locations for inclusion in the pilot program to test different anchoring and mooring policies, working with the local governments from those five locations as they developed anchoring ordinances, coordinating the review of the ordinances with the greater boating public and interest groups, monitoring progress as the ordinances were implemented, and reporting findings and recommendations to Florida's Executive and Legislative branches by January 1, 2014. At the request of FWC and following the submission of the 2014 report, the Legislature extended the pilot program an additional three years, to July 1, 2017 in order to collect more data. The Legislature further required FWC to submit additional findings and recommendations by January 1, 2017. This report serves that purpose.

Five locations were selected by FWC for inclusion in the pilot program per the statutory requirements. Those locations are as follows:

- 1) City of St. Augustine
- 2) City of St. Petersburg
- 3) City of Sarasota

- 4) Monroe County in partnership with the cities of Marathon and Key West
- 5) Martin County in partnership with the City of Stuart

Each of the local governments encountered challenges as they worked to develop their ordinance. Public involvement in the ordinance development process was significant, and included individual boaters from all over the nation and boating interest groups from the local, state, and national level. FWC staff provided technical assistance.

As a result of the pilot program, new mooring fields were created in some of the locations approved to participate in the pilot program. The manner in which vessels are used in the selected locations has been evaluated and ordinances targeting the goals of the pilot program have been approved and adopted. In all five locations, the provisions of the ordinances were implemented and enforced through a variety of methods. Public opinion about the effectiveness of the pilot program and the individual ordinances has been solicited and analyzed.

FWC conducted two public opinion surveys, which show that the regulations in some pilot program locations have been received more favorably than others, but there is little means of identifying what makes acceptance vary from site to site. Perception of effectiveness among the public also varies widely.

FWC staff met with boating and local government stakeholders to discuss the program findings to date, the challenges which have affected progress of the pilot program and to solicit input on the appropriate recommendations to make to the Governor and Legislature.

The requested extension provided the time necessary to more fully evaluate each of the pilot program locations and assess effectiveness through continued data collection and public input opportunities as well as additional site visits and interviews. A summary of the recommendations from FWC, which also includes unresolved issues for which there are no recommendations, follows:

Recommendations related to promoting the establishment and use of public mooring fields

- Protect further safety of mooring field users – Provide an allowance for a 300-foot buffer extending beyond mooring field boundaries, within which anchoring is prohibited.
- Authority to regulate the anchoring of vessels on State waters should be retained by the State. If, however, the Legislature chooses to grant such authority to local governments, local governments must make available permitted public mooring fields of adequate capacity within a reasonable distance to any anchoring restricted area, and at a reasonable cost. Furthermore, local governments should not be allowed to restrict all anchoring within the area authorized for them to regulate, and an exemption should be created to provide relief should mooring field capacity be met.

- If the State chooses to grant such authority to local governments, it should be granted to counties only.
- Quantify the economic benefits of moorings fields.
- Document the environmental benefits of mooring fields.

Recommendations related to promoting public access to the waters of this state, enhancing navigational safety, and protecting maritime infrastructure

- Anchoring Limited Area - Establish a universal, statewide prohibition against allowing an anchored vessel to come within 150 feet of any marina, boat ramp or other vessel launching and loading facility, with some safe harbor exceptions (such as bad weather conditions, government-owned vessels, commercial fishing vessels, and active recreational fishing vessels).

Recommendations related to the prevention of derelict vessels

- Place a “hold” on titles of vessels deemed derelict when requested by an investigating law enforcement agency.
- Limit who may renew a vessel registration to only the owner(s) of record or a person in possession of a power of attorney from the owner.
- Increase penalties for repeat violations of expired vessel registrations – When using or storing a vessel on State waters, and the vessel registration is expired by six months or more, increase the penalty to a 2nd degree misdemeanor for second or subsequent violations (current law is a non-criminal infraction no matter how many times the owner is cited).
- Waive the requirement for the owner of a derelict vessel to be notified via certified mail, but only in the circumstance where the owner has received face-to-face notification by a law enforcement officer. An exception/waiver should be created for a vessel that has become derelict as a result of a declared natural disaster or a state of emergency.
- Add an “inoperability” condition for a vessel to be designated at risk of becoming derelict:
For sailing vessels – there is no working steering system and the rigging and sail(s) are not present and working, or the vessel is not equipped with a functioning motor.
For all other vessels – the vessel is not equipped with a functioning motor, controls, and a steering system.

Recommendations related to protecting the marine environment

- Prohibit a vessel or floating structure from being moored to unauthorized moorings. A penalty is recommended – the first violation would result in a non-criminal infraction; the second and subsequent violations would result in a second degree misdemeanor. An exception should apply to private moorings

lawfully owned by an adjacent upland riparian landowner or to private moorings placed on privately owned bottomland.

Unresolved issues for which there are no recommendations

Stored vessels, inoperable vessels that are anchored or unlawfully moored and used as residences, marine sanitation concerns, and setbacks from shorelines or private docks are unresolved issues at this time:

- **Stored Vessels** – there are concerns that long-term storage of vessels at anchor on State waters, which are left unattended for long periods of time, could become derelict in the future. If that happens, it can result in costs to the State, local governments, or other organizations for removal and clean-up. Developing a recommendation for a statewide law to address this issue has not been determined at this time; however, several of the above recommendations would serve as reasonable and effective remedies to many of the problems associated with long-term storage of vessels: 300 foot buffer around mooring fields; creating anchoring limited areas; increase penalties for repeat violations of expired vessel registrations; add an “inoperability” condition for a vessel to be designated at risk of becoming derelict; and prohibit a vessel or floating structure from being moored to unauthorized moorings.
- **Inoperable vessels being used as residences** – many local governments have concerns related to inoperable vessels that are stored on State waters and used as residences. Those concerns include marine sanitation issues, the potential of those vessels becoming derelict, the potential for those vessels causing property damage, etc. Some of those vessels, particularly those that are incapable of navigation, may be better addressed through clarifying statutory authority already granted to local governments in s. 327.60(2)(f), F.S. *Local regulations; limitations*, which provides local governments the authority to regulate live-aboard vessels outside the marked boundaries of permitted mooring fields.
- **Marine sanitation issues** – many marinas on Florida’s waterways offer pump-out services, but there are considerable expanses of State waters where these services are limited. While local efforts to require proof of pump-out have demonstrated varying levels of success throughout the pilot program, attempting to enact such a requirement on a statewide basis would be costly and extremely difficult to implement; however, this topic warrants further consideration in the future, perhaps resulting in enhancements to Florida’s maritime sanitation law and/or further expansion of pump-out services around the State.
- **Setbacks from shorelines and private docks** – the establishment of setbacks, within which anchoring is limited, from private property along the shoreline of waters of the State, has been on ongoing discussion throughout the timeframe of the pilot program. While there has been much discussion about this issue, there is still no consensus to establishing a statewide setback that would be practical in every setting in Florida. There also has been no

consensus to giving local governments the authority to establish such a setback on State waters within their jurisdiction.

Origins of the Anchoring and Mooring Pilot Program

The anchoring and mooring of vessels has created conflicts related to the use and enjoyment of Florida's vast waterways for many years. These issues include, but are not limited to:

- the locations where anchored vessels accumulate,
- unattended vessels,
- anchored vessels which are dragging anchor or not showing proper lighting,
- vessels which are not maintained properly,
- vessels which become derelict,
- interpretation of state laws leading to inconsistent regulation of anchoring on state waters and confusion among the boating community, and
- questions about local government authority to regulate anchoring.

In response to stakeholder concerns about anchoring issues, the FWC Commissioners asked staff to conduct research to better understand these issues and report their findings at a subsequent meeting. At the FWC Commission meeting in December 2006, staff made a presentation and was asked to explore possible solutions.

FWC staff presented this issue to the Florida Boating Advisory Council (BAC) at its meeting in April 2007 in an effort to seek advice from this legislatively-created advisory body. The BAC recommended that FWC request that the Legislature clarify local and state authority to regulate vessels.

In June 2007, staff presented findings and recommendations to the FWC Commission. Previously identified anchoring issues were reported to be exacerbated as a result of increased cost of boat access, demands for access seemed to have exceeded supply, the effects of the storms in 2004–2005, continued growth in the number of registered vessels in Florida, limited funding to remove derelict vessels, challenges with interpreting local government authority, and a lack of comprehensive planning for Florida waters.

The FWC Commission was provided two potential recommendations:

- 1) Request that the Legislature develop a model anchoring/mooring ordinance that local governments could adopt. If the Legislature approved allowing local governments more authority to regulate anchoring by establishing model ordinance language for local governments to adopt, this could be a reasonable means of ensuring uniformity and consistency statewide.
- 2) Request that the Legislature clarify both state and local authority to regulate vessels. The premise would be to address the issues of unregulated anchoring, waterway management, and local government authority.

The FWC Commission instructed staff to move forward with recommendation #2 and pursue legislative approval for statutory changes during the 2009 Legislative Session.

Public Input

Six public workshops were held around the state in an effort to gather input from the boating public, local government officials, and other interested individuals and groups. These meetings provided the opportunity to properly vet the issue with stakeholders and the public, better define related issues and concerns, and to better identify potential solutions relating to anchoring and mooring. Including those participating in the BAC meeting, a total of approximately 273 individuals attended the meetings and were given the opportunity to provide input.

The following is a list of the most common concerns expressed by the stakeholders and other interested persons involved in the meetings:

- Boating access – Fears were expressed that boat storage and access to state waters was diminishing, resulting in availability to only a select few who could afford it.
- Over-regulation – Some boaters felt there was too much regulation by some local governments, causing inconsistencies from one jurisdiction to another. Many of the examples stemmed from local government anchoring restrictions that exceeded authority granted by state law. An example was when local government restricted vessels from anchoring outside established mooring fields in waters under concurrent state and local jurisdiction.
- Inconsistent/confusing statutes and rules – Local government officials and state agencies authorized to establish boating restricted areas were having some difficulty interpreting the extent of their authority. The most prevalent example described related to who had the authority to post regulatory signage and for what purposes.
- Pollution and nuisances from anchored/moored vessels, to include aesthetics, noise, and discharge of waste.
- Derelict vessels – Many thought that unregulated anchoring contributed to the likelihood of some vessels becoming derelict.
- Resource protection – Certain government entities had requested additional statutory authority to allow for the regulation of boats in order to protect corals, sea grasses, and other marine-related natural resources.

During the meetings, both regulatory and non-regulatory ideas for resolving the issues were identified and listed. These ideas obtained from the attendees were used to develop a scope of work for a project to review the statutory basis for vessel management on Florida waters. FWC intended to consult with an outside entity with subject matter expertise to conduct a legal review and provide staff with policy recommendations. Upon realizing that the University of Florida, College of Law, was already engaged in research into anchoring on Florida waters, FWC staff enlisted their assistance for this project.

Legal Review and Policy Recommendations

Because many of the identified issues were either shared by or solely within the statutory purview of FWC or DEP, an interagency work group was formed. This work group met on several occasions to provide guidance and direction to the University of Florida, College of Law, as they finalized the policy recommendations.

A team consisting of DEP and FWC legal staff was created and tasked with helping to draft proposed legislative language which was eventually brought to stakeholders and interested parties for consideration and input.

The University of Florida (UF) review involved an analysis of issues related to regulating anchoring and mooring in state waters, local authority for vessel management and the establishment of boating restricted areas, and the clarification of certain boating statutes (Chapter 327, F.S.). To assist with the analysis, a detailed legislative history was conducted along with a thorough review of boating law administration in other states.

The University of Florida project resulted in the following sixteen policy recommendations:

- 1) The general policy of the state should be the promotion of consistency and uniformity in the regulation of vessels and navigation, while recognizing local circumstances.
- 2) The state should explicitly regulate vessels and navigation and return authority to local governments on a case by case basis based upon statutory guidance that is designed to promote uniformity and consistency.
- 3) The state should impose a statewide limit on the storage of vessels on lands underlying navigable waters of sufficient duration to avoid undue interference with navigation, a protected right under the public trust doctrine.
- 4) Any such statewide storage duration limitation should be based upon data and analysis designed to ensure that mooring and anchoring by cruising vessels is not unduly infringed and should include a “safe harbor” provision.
- 5) The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) should be charged with the establishment and administration of vessel storage limitations on lands underlying navigable waters.
- 6) Local governments should be permitted to further limit vessel storage, including anchoring, for good cause upon review and approval by the Board of Trustees and in consultation with other resource agencies.
- 7) Local governments and state resource agencies should be permitted to seek the establishment of boating restricted areas for good cause upon review and approval by FWC, in consultation with other resource agencies and other local governments, as appropriate.
- 8) In addition to navigation and safety, good cause should include aquatic resource protection and, where warranted by local conditions, upland riparian property and riparian resource protection. Good cause should not include the consideration of compatibility with non-water-dependent riparian land uses.
- 9) Good cause for local regulation of vessel storage on the water stricter than state limitations and the establishment of boating restricted areas should be

determined based on adequate data analysis and only after adequate public participation.

- 10) Local governments seeking authority to further regulate vessel storage and create boating restricted areas should be required to adopt surface water use policies in their comprehensive plan. Boating restricted areas should be consistent with adopted surface water use policies but should not be considered land development regulations for purposes of Chapter 163, F.S.
- 11) All boating restricted areas should be delineated using a spatially explicit, uniform maritime boundary description methodology and made generally available through a geographic information systems database maintained by the state and linked to global positioning systems technology.
- 12) Obsolete, unnecessary and confusing definitions contained in Chapter 327, F.S., should be removed or clarified. Where terms are used only once, or only in the context of a specific section or provision, consideration should be given to defining these terms in their statutory context.
- 13) The statutory recitation of the federal safety equipment preemption should be clarified to avoid confusion and ensure consistency.
- 14) The statutory authorization to create a general permit process for new mooring fields should be either repealed or amended to increase the current size limitation of 50,000 square feet, which is insufficient to safely accommodate the swing radius of more than a few vessels and has resulted in strained interpretations of the extent to which sovereign submerged lands are preempted.
- 15) The current signage exemption provided for inland lakes and canals should be repealed because it lacks an adequate policy justification to distinguish these water bodies from those along the coast and creates additional uncertainty about local regulatory authority.
- 16) The current statutory language providing that vessels “operated” on the waters of the state must be titled, those “using” the waters of the state shall be registered within 30 days of purchase and those that are “used” on the waters of the state must display a registration number should be clarified.

Public Vetting of the Recommendations

Publicly advertised stakeholder meetings were scheduled and held for the purpose of vetting the policy recommendations and seeking guidance on which, if any, recommendations should be considered for the 2009 Legislative Session. The meetings were held and attended as follows:

- Orlando, April 5, 2008, Anchoring and Mooring Public Meeting - 49 attendees
- Tallahassee, April 11, 2008, Florida Boating Advisory Council Meeting - 9 attendees
- Orlando, July 16, 2008, Marine Industries Association of Florida Legislative Summit - 40 attendees

The 98 attendees at these meetings included legislators, representatives of the marine industry, boating groups, homeowners, transient boaters, representatives of federal, state, county and municipal governments, the Inland Navigation Districts, and environmental consultants. Annotated recommendations were received at each meeting and recorded.

Further Staff Action

Because of the broad scope of the recommendations and based on public input, staff initially concentrated on all or part of recommendations 1, 3, 4, 8, 11, 12, 15 and 16. Recommendations 3, 4, and 8 were later modified and recommendation 12 was later dropped from consideration due to likelihood of confusion with all of the other potential changes. In addition, language was also drafted to address a ruling from the Second District Court of Appeals which, in effect, required FWC to review and approve all boating restricted areas created by local governments. *Collier County Bd. of County Comm'rs v. Fish and Wildlife Conservation Comm'n*, 993 So. 2d 69 (Fla. 2d DCA 2008) - overturned a Final Order of the FWC Commission granting a permit to post waterway markers in the Naples Bay area. The Court ruled that the boating restricted area signage requested was inconsistent with criteria established in rule 68D-23.105, F.A.C. The court also affirmed that the FWC has the responsibility to ensure that boating restricted areas promulgated by local governments be approved by FWC. The effect of this ruling caused FWC to review and approve all boating restricted areas created by local governments.

Staff rationale for taking up specific recommendations is as follows:

- Recommendation 1: *The general policy of the state should be the promotion of consistency and uniformity in the regulation of vessels and navigation, while recognizing local circumstances.*

Stakeholder input had revealed a myriad of illegally posted regulatory areas throughout the State. At the time, Chapter 327, F.S., did not explicitly state the intent of consistency and uniformity, and clarifying legislative intent was considered important in this instance. During public meetings, stakeholders and the interested public generally agreed with this principle.

- Recommendation 3: *The state should impose a statewide limit on the storage of vessels on lands underlying navigable waters of sufficient duration to avoid undue interference with navigation, a protected right under the public trust doctrine.*
- Recommendation 4: *Any such statewide storage duration limitation should be based upon data and analysis designed to ensure that mooring and anchoring by cruising vessels is not unduly infringed and should include a "safe harbor" provision.*
- Recommendation 8: *In addition to navigation and safety, good cause should include aquatic resource protection and, where warranted by local conditions, upland riparian property and riparian resource protection. Good cause should not include the consideration of compatibility with non-water-dependent riparian land uses.*

In 2008, DEP explored their capability to provide some flexibility for local governments to further regulate vessel anchoring within their jurisdictions and to establish regulated areas for the protection of seagrass. Regulatory changes which would allow this flexibility were never implemented.

Consideration was given to the possibility of creating a “length of stay” provision into law to allow vessels to anchor for specified maximum time limits. Some stakeholders commented that the suggested term “storage of vessels” should be broken down to distinguish between unattended stored vessels, attended stored vessels, occasionally attended stored vessels, cruising vessels or transient vessels (some preference was offered for the term “transient” instead of “cruising”), and abandoned and derelict vessels. One option might be to establish a “bright line” length of stay limit due to the difficulty in separating these forms of storage and the ability to enforce them should different rules apply to each. One stakeholder suggested that if there was a statewide limit, consideration should be given to a “sojourner’s permit,” which would allow extended term cruising. Another stakeholder suggested that the statewide length of stay, if any, should be six months, which would effectively encompass the entire Florida cruising season. The work group agreed that segregating different vessels based on their uses and/or actions while navigating would add confusion and that it would be better to find a standard consensus. Several boating groups were concerned that the legislative action was premature until staff completed its research and an effort to reach consensus had occurred.

- Recommendation 11: *All boating restricted areas should be delineated using a spatially explicit, uniform maritime boundary description methodology and made generally available through a geographic information systems database maintained by the State and linked to global positioning systems technology.*

This recommendation would serve to standardize the way boating restricted areas are delineated. At the time, local governments were inconsistent in the way they established boating restricted areas, including the way zone boundaries were delineated, and in the data they submitted for waterway marker permits. Law enforcement issues would arise when having to explain established boundaries of a regulatory area to a court. A uniform system of describing the boundaries and regulatory zones would assist local governments with establishing zones as part of their uniform waterway marker permit process. There appeared to be broad support for this recommendation among stakeholders. In 2009, this recommendation was resolved through legislative changes to Section 327.46, F.S. and subsequent rule making by FWC in 68D-21 and 68D-23, Florida Administrative Code (F.A.C.).

- Recommendation 15: *The current signage exemption provided for inland lakes and canals should be repealed because it lacks an adequate policy justification to distinguish these water bodies from those along the coast and creates additional uncertainty about local regulatory authority.*

During the 2005 Legislative Session, an exemption was placed into Section 327.40, F.S., (HB 331; Chapter 2005-217, Laws of Florida) to allow a specific provision for the creation of boating restricted areas within inland lakes and associated canals. This provision led to a different standard for the creation and marking of restricted areas in these locations as compared to coastal water bodies, thus leading to some confusion about local regulatory authority. Most stakeholders supported this recommendation (a change to the 2004 legislation) in order to have all waters of the state regulated in a consistent manner.

- Recommendation 16: *The current statutory language providing that vessels “operated” on the waters of the state must be titled, those “using” the waters of the state shall be registered within 30 days of purchase and those that are “used” on the waters of the state must display a registration number should be clarified.*

This recommendation identified inconsistencies in the use of terms in Chapter 328, F.S. The registration laws at that time required vessels “used” on the waters of the state to be currently registered. In other words, those stored and not being “operated” could not be required to hold a current registration. This contributed to difficulties when attempting to identify owners of vessels left unattended and/or in a derelict condition. The terms “used” and “using” were used repeatedly throughout the vessel registration statutes. Stakeholders generally supported this recommendation. In 2009, this recommendation was resolved through legislative changes to Chapter 328, F.S.

In April 2008, the work group and legal team worked to reach a consensus on draft legislative language to recommend to the FWC Commission as part of the agency’s legislative package, and prepared to take that language to the public through a series of meetings on the following dates and locations:

- September 8, 2008, Clearwater, Anchoring/Mooring/Vessel Management Draft Language Public Meeting—79 Attendees
- October 1, 2008, Miami, Anchoring/Mooring/Vessel Management Draft Language Public Meeting—19 Attendees
- October 28, 2008, Port Canaveral, Anchoring/Mooring/Vessel Management Draft Language Public Meeting –35 Attendees
- November 6, 2008, Tallahassee, Florida Boating Advisory Meeting - 16 Attendees

Based on input received from the 149 attendees of the public meetings and that which resulted from electronic communication with more than 700 additional interested individuals, a draft recommendation was prepared for presentation to the FWC Commission.

The FWC Commission’s Proposal for the 2009 Legislative Session

Staff presented a draft recommendation at the December 2008 FWC Commission meeting. The FWC Commission approved this draft following additional public input but further directed staff to revise the language in a manner which would direct the FWC Commission to establish a number of pilot projects to explore options to regulate anchoring and mooring. This revised draft was submitted to the Legislature in 2009 for consideration.

Overview of the Anchoring and Mooring Pilot Program

In 2009, Section 327.4105, F.S., was enacted by Florida's Legislature, creating the Anchoring and Mooring Pilot Program. Except for those participating in this program, local governments are prohibited from enacting, continuing in effect, or enforcing any regulation of the anchoring of vessels other than live-aboard vessels outside the marked boundaries of permitted mooring fields (Section 327.60(2)(f), F.S.).

Overview of Section 327.4105, F.S.

The law directs FWC, in consultation with DEP, to establish a pilot program to explore potential options for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields in five locations around the state. The law clearly states that 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:

- 1) Promote the establishment and use of public mooring fields.
- 2) Promote public access to the waters of this state.
- 3) Enhance navigational safety.
- 4) Protect maritime infrastructure.
- 5) Protect the marine environment.
- 6) Deter improperly stored, abandoned, or derelict vessels.

FWC was required to submit a report on the pilot program findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2014 (Section 327.4105(5), F.S.). The pilot program and all ordinances adopted under the program would have expired on July 1, 2014; however, it was reenacted and extended by the Legislature with a new expiration date of July 1, 2017, and a requirement for an updated report to be submitted by January 1, 2017 (Section 327.4105(6), F.S.).

Local government interest in participation

Several local governments in various locations initially indicated interest in participating in the program. Those local governments included: Escambia County, City of St. Petersburg, City of Gulfport, City of Bradenton Beach, City of Sarasota, City of Ft. Myers, Monroe County and the cities of Key West and Marathon, City of Miami, City of Miami Beach, City of West Palm Beach, City of Riviera Beach, Martin County/City of Stuart, City of South Daytona, City of Port Orange, and the City of St. Augustine. Each was either associated with a properly permitted mooring field or was at some step in the process of attempting to install one. Each of the potential participant governments were expected to gather monthly vessel counts and other

related data for one year and submit a completed questionnaire in order to be considered.

Site visits were made by FWC staff at each of the potential program participant locations provided they had evidence that a mooring field would be in place during the timeframe of the pilot program and had begun collection of the required vessel data. Those site visits were used to confirm the information provided in the questionnaire and to assess the infrastructure in the area.

Monthly monitoring of vessels

To gauge the relative number of anchored or moored vessels within each pilot program candidate location and to help set baselines for later trend analyses, candidates were asked to monitor vessels anchoring or mooring within approximately one mile of their existing or proposed mooring field(s). Monitoring began in February 2010, and was conducted by local government staff at one-month intervals for a twelve-month period. The data collected was given consideration as the FWC Commission selected the participants from the field of interested candidates.

As part of this monitoring effort, the candidates were required to count and categorize the vessels anchored or moored within their jurisdictions. Vessels were to be categorized as a vessel in long-term storage, a stationary live-aboard vessel, or a transient cruiser in navigation. For purposes of this monitoring and to aid in the consistency of the monthly collections, the following definitions were used to distinguish each category:

- A vessel categorized as one in storage is anchored or moored while not in use. These vessels can be used frequently for day trips or for extended voyages. However, between voyages they are left unattended at anchor or on a mooring to be stored until the next use.
- A vessel categorized as a stationary live-aboard is primarily used as a residence or domicile. While these vessels can be capable of embarking on a voyage, their function at the current time is to serve as housing accommodations for local residents.
- A vessel categorized as a transient cruiser is in the process of navigating from one location to another. These vessels might temporarily stop in a location for an extended visit. The occupants usually stay on board overnight. These vessels are usually kept ready to continue their voyage on to other locations or back to their home port.

Once the participants were selected, each was asked to continue the monthly monitoring throughout the entire duration of the pilot program. The intent of the continued monitoring is to document possible changes in the numbers and types of vessels occurring within each location as changes occur relative to mooring field use and the implementation of the local government ordinances. Detailed information about the results of the monthly monitoring of vessels for each participating area is presented in Appendix D.

Selection of participants by the FWC Commission

Staff presented site information to the BAC on multiple occasions and asked for recommendations on which sites would best serve as candidates for participation in the pilot program. The recommendations of the BAC were presented to the FWC Commission over multiple meetings, and the FWC Commission selected each of the five participant sites prior to the statutory July 1, 2011, deadline. The participants selected were: the City of St. Augustine, the City of St. Petersburg, the City of Sarasota, Monroe County in partnership with the Cities of Marathon and Key West, and Martin County in partnership with the City of Stuart. The county/city partnerships were permitted due to specific jurisdictional issues related to each site.

Ordinance development

In July 2011, FWC's Boating and Waterways Section held an ordinance development workshop in Orlando for the selected participants. The topics covered at this workshop included history of the pilot program, the roles of FWC staff and participants, Sunshine Law considerations, requirements for public participation during meetings and throughout the pilot program, technical issues related to writing the ordinances, and the process required for FWC review and ultimate FWC Commission approval of ordinances. The workshop was attended by at least one representative from each participant area.

Staff members from each local participant area held individual public meetings in order to gather information on local problems, suggestions, and concerns related to the development of their local ordinances. Each participant area was responsible for the scheduling and noticing of their local input meetings. FWC notified the BAC and other interested parties of any upcoming public meetings being held by the participant areas. FWC also posted the information on a website created for keeping the public informed about the pilot program (<http://myfwc.com/boating/anchoring-mooring/>). FWC staff members attended at least one public meeting, sometimes two or three, for each participating area.

As the participating local governments developed their ordinances, FWC staff provided consultation and gathered additional information on the local problems to be targeted. When FWC received draft ordinance language, an internal assessment of the language was conducted. While striving to maintain each participant's intent, FWC provided technical assistance on the language to improve clarity, understanding, or definitions and to facilitate the accomplishment of the pilot program's goals and guidelines.

Ordinance review coordination

FWC then coordinated the review of each proposed ordinance with DEP, the U. S. Coast Guard, either the Florida Inland Navigation District or West Coast Inland Navigation District (depending upon jurisdiction), and associations or other organizations representing vessel owners or operators. These groups reviewed the ordinances, gathered information from members/affiliates, and provided comments to FWC and the specific local government. As part of this process, FWC held public meetings and offered Web-based public comment opportunities for each of the ordinances before they were submitted to the FWC Commission for approval.

FWC Commission approval of local ordinances

As the final step in the FWC ordinance approval process, staff presented a thorough overview of each local government's draft ordinance and staff recommendations based on public input and the required coordinated reviews to the FWC Commission during a public meeting. Commissioners heard comments from each local government and received public input.

Each ordinance was individually approved by the FWC Commission, and approval was sometimes contingent upon the local government making specific changes to their ordinance. Each ordinance was adopted by the participating local government in conformance with the FWC Commission's approval.

After each ordinance was approved by the FWC Commission and subsequently adopted by each area's local government(s), a meeting was held locally to brief the involved law enforcement agencies about the provisions of the ordinance, the need to educate the public about the local changes, and specifics about enforcing the ordinance provisions.

Pilot Program Participants

This section contains an overview of each of the five participants in the pilot program. Each overview will describe the mooring field associated with the location(s), explain the process used by the local government to gather public input and develop their ordinance, the approval process by the FWC Commission, an overview of their ordinance, how the public has been made aware of their ordinance, how it has been enforced, and any specific findings from the area to date. The participants will be listed in order based on when their ordinance was approved by FWC, and the text of each individual ordinance, as adopted, is provided in Appendix C.

City of St. Augustine

Public mooring fields

The City of St. Augustine's public moorings include three separate mooring fields. The San Marcos field is on the northwest side of the Bridge of Lions in the Intracoastal Waterway, and the Menendez field is on the southwest side of the bridge. Both are close to the City's public marina. The third mooring field is located in Salt Run. This mooring field is further away from the downtown area, has fewer nearby amenities, and is primarily used for vessels being stored on the water. The three fields were installed October 2010, and have a combined capacity of 163 vessels.

Ordinance development and adoption

During the development of their ordinance, St. Augustine held two public meetings to gather public input. Their proposed ordinance was then presented at a City Council meeting open to the public.

FWC staff conducted a public meeting and posted the proposed ordinance online to collect public comment. This public meeting was held in Tallahassee and was primarily attended by representatives of various boating interest groups. This meeting was an opportunity for representatives of St. Augustine to answer questions related to their ordinance. A total of 152 written comments were received as a result of the meeting and online posting. All comments were provided to the FWC Commission prior to St. Augustine's ordinance being considered for approval.

Since many of the written comments addressed more than one topic, the following breakdown of responses totals more than 152.

- 35 were not in support of the pilot program in general.
- 20 were not in support of the St. Augustine ordinance as a whole.
- 59 were directed toward not supporting the 10 day time restriction. Of these comments, 10 suggested extending the time to 30 days, and 7 suggested a variety of different time extensions.
- 5 supported the time restriction.

- 6 did not support the Medallion Program; however, 5 were in support of the Medallion Program.
- 6 did not like the setback distances.
- 8 were supportive of the pilot program in general.
- 20 were supportive of the ordinance in general.
- 31 contained comments/questions which were either off the topic of the pilot program, the result of apparent misinformation or misreading of the ordinance language, or were otherwise not able to be categorized as either supportive or opposed to any specific component of the ordinance.

St. Augustine was the first pilot program participant to initiate ordinance development and, therefore, seemed to face considerably higher numbers of negative pilot program-related comments than did the other participants.

In November 2011, the FWC Commission approved the City of St. Augustine's ordinance with a contingency. The time restriction for an occupied vessel originally proposed by St. Augustine was 10 consecutive days within 30 consecutive days. That time restriction was changed to not more than 30 consecutive days in any 45 consecutive day period.

The final St. Augustine ordinance was adopted by the City Council in December 2011.

Overview of the ordinance

The ordinance adopted by the City of St. Augustine can be categorized into 5 general areas.

- Definitions
- Setbacks - Distance Buffers
- Time Restriction
- Medallion Program
- Enforcement/Penalties

Definitions

Since several terms not otherwise defined in law were necessary to allow St. Augustine to address some of their local issues, the city created definitions to support the ordinance language. These terms were developed in order to define and add clarity to the ordinance while helping to avoid unintended consequences. These terms include;

Occupied means boarding and remaining on a vessel for recreational activities consuming twelve (12) or more consecutive hours in any twenty-four (24) consecutive hour period of time; for the preparation, service and consumption of meals or for sleeping; for a period of time in excess of that required for the completion of maintenance or repair activities; or for securing or protecting the vessel in a time of emergency or severe weather.

Stored vessel shall mean any vessel not under the direct supervision and control of a person capable of operating the vessel and promptly moving the vessel from the locations designated in subsections (j)(2)(3)(4) and (5) herein.

Setbacks – Distance Buffers

The city chose to establish setbacks, or distance buffers, within which anchoring was restricted. The setbacks were implemented in order to enhance navigational safety, improve public access to shore-based infrastructure and navigation channels, and to protect both the marine environment and marine infrastructure. Setback distances were established as follows:

San Sebastian River - 50 foot buffer. There are some narrow places in the river where any anchored vessel would be very close to the edge of the navigation channel. This buffer is intended to help prevent collisions in these locations. The distance of 50 feet from the navigation channel was selected so only the very narrow portions would be affected, not the entire river.

City mooring field - 100 foot buffer. The City chose this as a means to protect both marine infrastructure and vessels using the mooring field. Prior to the mooring field being installed, it was common for anchored vessels to drag anchor and collide with other vessels in the area. Keeping anchored vessels at least 100 feet away from the mooring field was suggested as a way to minimize these risks.

Shellfish area - 500 foot buffer. During the ordinance development process, the Department of Agriculture and Consumer Services (DACS) commented that this distance would be appropriate in the event of a worst case scenario where an anchored vessel had a sewage spill in the area. Such a spill could result in closing of the commercial shellfish harvesting area.

Marine structures - 50 foot buffer. In order to protect marine infrastructure, including private or public docks, ramps, seawalls, etc., and to promote public access to and use of these structures, this buffer was selected.

Time Restriction

Time restrictions on anchoring were established by the ordinance and were only applicable to “occupied” vessels. St. Augustine reported that most recreational and transient vessels using the water in their jurisdiction stayed on area waters no longer than three to seven days. The city’s intent was to promote the use of the public mooring fields while ensuring that vessel owners visiting for short terms would not be affected. The ordinance restricted anchoring of occupied vessels in the area to no more than 30 consecutive days in any 45 consecutive day period. There is a safe harbor provision in the ordinance that allowed a vessel to stay beyond the 30 consecutive days to complete needed repairs (not long-term rebuilds of a vessel) and provide protection from storms.

Medallion Program

To help prevent improperly stored, abandoned, and derelict vessels, the City established the “Medallion Program” to apply only to vessels stored on the water in the City’s jurisdiction. The ordinance requires that a vessel owner must ensure their

vessel gets underway twice a year and navigate it to the city marina. Marina employees then confirm the vessel arrived under its own power, record the vessel owner's contact information, and provide a sticker documenting compliance with this provision. This encourages vessel owners to stay more aware of their vessel's condition and active with its maintenance. It also provides the added benefit that marina staff can maintain current owner contact information in case the vessel becomes an issue.

Enforcement and Penalties

The St. Augustine ordinance was posted online and the public was informed of the new ordinance through press releases and informational pamphlets developed by city staff. The pamphlets were available at the city marina and were also handed out to boaters in the area by staff members and local law enforcement officers. The St. Augustine ordinance is primarily enforced by the city's Police Department. The enforcement policy was to place great emphasis on educating boaters about the new pilot program and the associated ordinance.

The St. Augustine ordinance established a progressive fine schedule for continued/repeated violations, as follows:

- First offense: \$100
- Second offense: \$250
- Third or subsequent offense: \$500

Targeting pilot program goals

The City of St. Augustine targeted the goals of the pilot program as follows:

Promote the establishment and use of public mooring fields

St. Augustine created their mooring fields in an effort to qualify for the anchoring and mooring pilot program.

St. Augustine's prohibition of anchoring occupied vessels outside a designated mooring field for more than 30 consecutive days in any period of 45 consecutive days promotes the use of their public mooring fields. Their ordinance requires that any vessel remaining in the area after 30 consecutive days must either relocate to a mooring field or to a location outside of the municipal boundaries of the city. When a vessel was moved either into the mooring field or outside of the city's jurisdiction for a day or more, the 30 day clock starts over.

Develop and test policies and regulatory regimes that:

- Promote public access to the waters of this state

St. Augustine created a 50 foot setback distance from marine structures to help promote public access to the waters of the state. The marine structures were private or public docks, ramps, seawalls, etc. St. Augustine had some commercial vessels that would use public docks for extended periods of time, limiting their use for the general public. When local regulations prevented this long-term dock use, those vessels would then anchor right next to the

docks/ramps but remain close enough for occupants to step off of the vessels onto the docks. This provision in their ordinance was aimed at ensuring that the general public would be able to use the docks and gain greater access to the water.

- Enhance navigational safety

St. Augustine had two parts of their ordinance listed as being designed to enhance navigational safety. In the San Sebastian River, they established a 50 foot buffer distance outside the navigation channel to prevent collisions or close calls with anchored vessels in the narrow parts of the river. They also established a 100 foot buffer around their mooring fields. The distance is suggested by the U.S. Coast Guard as an appropriate distance to maximize navigation safety around a mooring field.

- Protect maritime infrastructure

St. Augustine chose to establish a 50 foot buffer around maritime infrastructure and a 100 foot buffer around their mooring fields in an attempt to protect marine or maritime infrastructure. These buffers were intended to help minimize the likelihood of situations where an anchored vessel swings into infrastructure or another vessel or drags anchor, resulting in a potential collision with infrastructure or moored vessels.

- Protect the marine environment

St. Augustine established a 500 foot no anchoring buffer around a designated shellfish harvesting area. The Florida Department of Agriculture and Consumer Services suggested this distance would be appropriate to avoid an event where a nearby anchored vessel had a sewage spill and could force the closure of the shellfish harvesting area.

- Deter improperly stored, abandoned, or derelict vessels

St. Augustine established two provisions within their ordinance aimed at accomplishing this goal. The first, their “Medallion Program,” applies only to stored vessels. Any vessel stored on the waters within their jurisdiction is required to get underway twice each year and navigate to the city marina under its own power. A marina staff member then confirms the vessel arrived under its own power, records the vessel owner’s contact information, and provides a sticker used to document compliance with the ordinance. This encourages vessel owners to stay more aware of their vessel’s condition and active with its maintenance. It also provides the additional benefit that marina staff can maintain current owner contact information in case the vessel becomes an issue in the future.

The second way St. Augustine’s ordinance targeted this goal is by creating an anchoring time restriction which only applies to occupied vessels. This provision requires that any occupied vessel anchored on waters within the city’s jurisdiction for more than 30 consecutive days in any 45 consecutive day period must either move out of the jurisdiction for at least one day or move to

one of the mooring fields. St. Augustine reports that the vessels in their jurisdiction receive more regular attention which helps to prevent them from becoming derelict.

Findings

FWC staff conducted a site visit with City officials on August 10, 2016, to ascertain which elements of the Pilot Program worked best in their jurisdiction.

St. Augustine's ordinance has been in place longer than any of the other participating local governments.

The city has reported that most vessels visiting St. Augustine stay in the area from 3 to 7 days, and there is nothing to suggest that the provisions within the ordinance affecting occupied vessels had any impact on cruising or visiting vessels. St. Augustine officials have seen an increase in the length of time transient vessels stay in the area. This increase in length of stay has positively contributed to the local economy. The city believes the mooring field has contributed to a change whereby St. Augustine is becoming more of a destination and not simply a pass-through port. The city also credits the pilot program with allowing more vessels to occupy the waters safely. Increased access in the Salt Run area, particularly around Lighthouse boat ramp, has provided a new opportunity for other user groups such as ecological tours, sailing classes and stand-up paddle boards, to utilize the previously cluttered area.

St. Augustine reported there were 3 to 5 vessels that may have been affected by the limitations placed on occupied vessels in their ordinance, but they found it challenging to prove a vessel was "occupied" for the 30 consecutive days. These vessels were reported to be receiving regular attention by their owners.

St. Augustine installed their mooring fields while going through the participant selection process. Since installing the mooring fields, data shows that the mooring fields are being used more than during the same month in the previous year. There presently is a waiting list during the peak periods of spring and fall.

Mooring fields are regularly located in well protected areas, which are often already being used as anchorages. In St. Augustine, for instance, approximately 60-70% of available waters suitable for anchoring are now mooring fields. This scenario frequently results in displacement of the anchored vessels because the owners would rather anchor in state waters and not incur the costs associated with a mooring field. Displacement occurred in St. Augustine when their mooring fields were installed; soon after implementation 8 to 12 vessels left the area and moved south of the State Road 312 Bridge, out of the city's jurisdiction. City staff reported that many of these vessels were not being maintained very well. Since then, 2 or 3 have moved back into the city's jurisdiction and are in compliance with the ordinance. The number and impact of the other vessels on those neighboring cities and counties, who are not able to regulate the anchoring of vessels, remains difficult to evaluate. In the aftermath of Hurricane Matthew in October 2016, the St. Augustine mooring field had 21 vessels break loose out of approximately 40 vessels that were moored. Of those breaking loose, only 4 were due to mooring failure. The remaining 17 were due to failures of the boats' attachments to the mooring balls. It should be noted that the moorings are only designed to withstand the effects of a category 1 hurricane; Hurricane Matthew was a category 3 hurricane.

The Medallion Program is viewed by city officials as a very effective mechanism to prevent derelict vessels in their jurisdiction. The Medallion Program provides for current owner contact information to be kept up-to-date in case the vessel becomes an issue for any reason. This has had the added benefit, during 3 instances in St. Augustine, when stored vessels broke loose from their anchor and marina staff was able to immediately contact the owners to take control of their property, thereby protecting maritime infrastructure. The city credits the Medallion program with decreasing its costs associated with derelict vessel removal to nothing for several years. The Medallion program requires stored vessels within city limits to prove operability every six months. This was viewed as essential to ensuring vessels do not deteriorate to a condition where they cannot be relocated, if necessary, in the face of an approaching storm.

St. Augustine's ordinance prohibits the anchoring of a vessel closer than 50 feet from the defined boundaries of the San Sebastian River channel. The city issued a non-criminal citation to an individual who was anchored in violation of this prohibition. The violator challenged his citation in county court, the Seventh Judicial Circuit for St. Johns County, Florida, and on June 7, 2012, was ordered by the Court to comply with the city's ordinance. On July 12, 2012, the violator filed an appeal with the Circuit Court, which was dismissed for being filed untimely. Following that effort, the violator filed pro se an "Action for Declaratory [sic] Judgment and Summons" with the United States District Court for the Middle District of Florida related to the City of St. Augustine's ordinance and the pilot program generally. The city prevailed on the merits in the state case and also prevailed in the federal case based on a procedural denial that the state court had already decided the issue in question on the merits.

City of St. Petersburg

Public mooring field

The City of St. Petersburg mooring field is located in the North Yacht Basin, locally known as the Vinoy Yacht Basin, near the downtown area. The mooring field is part of the city's Municipal Marina. The mooring field was installed in January 2012, and has a current capacity of 13 vessels. The city's permit allows for an additional 13 moorings at some time in the future.

Ordinance development and adoption

During the development of their ordinance, St. Petersburg held two public input meetings, gave presentations at the City Council's Public Services and Infrastructure Committee meetings, and presented the proposed ordinance at a City Council meeting. Each meeting was open to the public.

FWC staff also held a public meeting and posted the proposed ordinance online in order to collect additional public comment. This public meeting was held in Tallahassee and was primarily attended by representatives of various boating interest groups. Representatives of St. Petersburg were in attendance and answered questions related to their proposed ordinance. A total of 39 written comments were received as a result of the meeting and online posting. All comments were provided to the FWC Commission prior to St. Petersburg's ordinance being considered for approval.

Since many of the written comments addressed more than one topic, the following breakdown of responses totals more than 39.

- 3 were not in support of the pilot program in general.
- 12 were not in support of the St. Petersburg ordinance as a whole.
- 2 were directed toward not supporting the 72 hour time restriction in Bayboro Harbor, 3 suggested moving the time to 7 days, 1 suggested 30 days.
- 6 were against specific anchoring restrictions or prohibitions in the ordinance, 1 suggested limiting the setback distance to 75 feet.
- 3 were supportive of specific anchoring restrictions or prohibitions in the ordinance.
- 1 was negative towards the mooring field itself.
- 7 were supportive of the pilot program and the ordinances developed in general.
- 1 wanted free moorings.
- 1 was not in favor of the portion of the ordinance that addressed live-aboard vessels and floating structures, which is not a component of the pilot program.
- 7 contained comments/questions which were either off the topic of the pilot program, the result of apparent misinformation or misreading of the ordinance language, or were otherwise not able to be categorized as either supportive or opposed to any specific component of the ordinance.

In May 2012, the FWC Commission approved the City of St. Petersburg's ordinance with a contingency. The anchoring restriction originally proposed in Bayboro Harbor,

which prohibited anchoring in excess of 72 hours within a 30 day period, was changed to 10 days within a 30 day period.

The final ordinance was adopted by the City of St. Petersburg in June 2012, and it was the second ordinance adopted as part of the pilot program.

Overview of the ordinance

The ordinance adopted by the City of St. Petersburg can be categorized into 3 general segments.

- Definitions
- Anchoring Restrictions and Prohibitions
- Steps for Enforcement and Penalties

Definitions

Since several terms not otherwise defined in law were necessary to allow St. Petersburg to address some of their local issues, the city created definitions to support the ordinance language. These terms were developed in order to define and add clarity to the ordinance while helping to avoid unintended consequences. “Person Officially Designated” is used in the definitions below and means any person lawfully appointed by the city to assist in enforcement of the ordinance. These terms include;

Anchoring means the use of a heavy device fastened to a line or chain to hold a vessel in a particular place for a limited period of time.

Hazardous vessel means a vessel in danger of becoming derelict because the vessel displays one or more of the following indicators:

- 1) is unable to operate or navigate without the assistance of another vessel;
- 2) displays excessive marine growth (e.g., prevents proper use of vessel, visible barnacles);
- 3) has its interior exposed to the weather;
- 4) is taking on water without the ability to dewater;
- 5) is leaking contaminants into the water;
- 6) is in violation of Section 327.53, F.S.; or
- 7) is in danger of breaking loose from its anchor due to an inadequate anchor or due to rotted or chaffing anchor lines (e.g., anchor too small for boat size, wrong type of anchor for boat).

Special event means a designation by the Person Officially Designated to allow temporary anchoring of a vessel in a designated location due to a city special event.

Anchoring Restrictions and Prohibitions

The St. Petersburg ordinance had a variety of anchoring restrictions or prohibitions. The ordinance primarily protected limited areas within the city’s jurisdiction. The only parts which were applicable throughout the city’s jurisdiction were a prohibition of anchoring which constituted a navigational hazard or interfered with another vessel and a prohibition of hazardous vessels. The first prohibition is a simple reiteration of Section 327.44, F.S., interference with navigation. The prohibition of hazardous

vessels would only apply after a notice of violation, which is a warning that provides a reasonable time to correct the problem.

Like the Medallion Program in St. Augustine, the definition and prohibition of a “hazardous vessel” was an attempt to achieve the pilot program goal to prevent improperly stored, abandoned, or derelict vessels. This definition tried to identify indicators that show a vessel was not being used or properly maintained. Using the listed indicators, law enforcement officers or the Person Officially Designated could intervene and contact a vessel owner to prevent the vessel’s continued decline.

The other anchoring restrictions or prohibitions were limited in their application. There were three ways the limitations were used: location, time, and distance of setbacks. Setbacks are buffers within which anchoring is limited in order to promote, enhance, or protect navigational safety, public access, the marine environment and marine infrastructure in accordance with the goals of the pilot program. Under the St. Petersburg ordinance, no anchoring is allowed within 200 feet of public or private marinas and public boat ramps. This allows easier access and safer navigation for vessels entering or leaving these areas. No anchoring is allowed in the working Port of St. Petersburg or within the South and Central Yacht Basins. Each of these areas represents limited navigation space and considerable marine infrastructure.

Anchoring in Bayboro Harbor is limited to 10 days within a 30 day period. This harbor is a small anchorage cove in downtown St. Petersburg which is traditionally used by vessel owners to anchor their vessels in storage for long periods of time. This part of the ordinance was an attempt to allow more vessels to access the area by rotating through for a short time rather than only allowing a few vessels to monopolize the very limited space.

Except for the hazardous vessel prohibition, there is language that allows exemptions from some or all of the other restrictions for vessels claiming safe harbor or during a special event.

Steps for Enforcement and Penalties

The St. Petersburg ordinance was posted online and the public was informed of the new ordinance through press releases and informational pamphlets developed by city staff. The pamphlets were available at the city marina and were also handed out to boaters in the area by staff members and local law enforcement officers.

The St. Petersburg ordinance is primarily enforced by the city police department. The enforcement policy is primarily focused on educating boaters about the pilot program and the local ordinance.

The St. Petersburg ordinance was the first to require warnings be used as part of their enforcement philosophy. Their “Notice of Violation” is a written warning which provides a reasonable time to correct a violation. “Reasonable time” is described as not less than three days or more than thirty days. If a vessel owner does not correct the violation within the specified timeframe, a “Notice to Appear” can be issued, which includes a financial penalty from \$150 up to \$500. The financial penalties increase if the violation is not corrected and the vessel owner receives notices to appear for

continued non-compliance. There is also a provision for a vessel to be impounded, which can occur if any of the following conditions are present:

- A vessel unreasonably/unnecessarily constitutes a navigation hazard or interferes with another vessel.
- The owner of a vessel deemed to be a hazardous vessel (see definition) does not correct the problem within the timeframe as specified in the Notice of Violation.
- A vessel owner continues to be in violation after being issued multiple Notices to Appear.

Targeting pilot program goals

The City of St. Petersburg targeted the goals of the pilot program as follows:

Promote the establishment and use of public mooring fields

St. Petersburg created their mooring field in an effort to qualify for the anchoring and mooring pilot program.

The St. Petersburg ordinance was not directly designed to promote the establishment or use of their mooring field; however, there was a variety of anchoring prohibitions or restrictions which may have inadvertently limited anchoring options in the downtown area and, by extension, promoted the use of their mooring field.

Develop and test policies and regulatory regimes that:

- Promote public access to the waters of this state

St. Petersburg prohibited anchoring within 200 feet of public or private marinas and public boat ramps. This measure was intended to improve access for vessels entering or leaving these areas. The ordinance also contains an anchoring restriction in Bayboro Harbor designed to promote access to the water. Bayboro Harbor is a small anchorage cove in downtown St. Petersburg traditionally used by vessel owners to store their vessels at anchor for long periods of time. The time limitation for anchoring in Bayboro Harbor of 10 days within a 30 day period is an attempt to prevent long term storage, which limits access and use of the area for others. This provision allows more vessels to access the area by rotating them through for a relatively short time rather than only allowing a few vessels to monopolize the limited space.

- Enhance navigational safety

St. Petersburg enhanced navigational safety through the use of setback distances and anchoring prohibitions. No anchoring is allowed within 200 feet of public/private marinas or public boat ramps. This measure is intended to increase navigation safety for vessels entering or leaving these areas. No anchoring is allowed in the working Port of St. Petersburg or within the South and Central Yacht Basins due to limitations on adequate space to safely navigate in the vicinity of considerable marine infrastructure.

- Protect maritime infrastructure
The prohibition against anchoring in the working Port of St. Petersburg or within the South and Central Yacht Basins is partially intended to protect the marine infrastructure in those areas.

Defining the term “hazardous vessel” to include “in danger of breaking loose from its anchor due to an inadequate anchor or due to rotted or chaffing anchor lines (e.g., anchor too small for boat size, wrong type of anchor for boat)” was an attempt by the city to protect maritime infrastructure in the area from vessels which may break loose and cause damage.

- Protect the marine environment

By defining the term “hazardous vessel” to also include “leaking contaminants into the water,” the city also took steps to protect the local marine environment.

- Deter improperly stored, abandoned, or derelict vessels

The St. Petersburg ordinance has a city-wide prohibition of hazardous vessels. This prohibition is an attempt to achieve the pilot program goal of deterring improperly stored, abandoned, or derelict vessels. The hazardous vessel indicators were created to help identify vessels not being used or maintained, to inform owners of the problems, and to encourage that the problems be corrected. The indicators and process created as a result of the ordinance allow law enforcement officers to intervene and minimize the likelihood a problem vessel will become derelict.

Findings

FWC staff conducted a site visit with city officials on August 18, 2016, to ascertain which elements of the Pilot Program worked best in their jurisdiction.

St. Petersburg installed their mooring field during the ordinance development process.

In the city’s progress report, dated August 2013, the city reported, “In 2012, the North Yacht Basin Mooring Field provided safe and secure mooring to 234 users. This was an average of 19.5 users per month during 2012. So far in 2013, the mooring field has been utilized 210 times for an average of 30 users per month.” In 2016, the city reported that before the establishment of the mooring field, the basin contained 19 boats, 17 of which were in a marked state of disrepair. Now all 13 mooring buoys are occupied by higher quality transient vessels. St. Petersburg officials were convinced that their participation in the pilot program has created a large economic benefit to the community at large. In addition, the area is more aesthetic with well-maintained vessels arranged in an orderly fashion. Thefts have decreased in the basin as well.

Mooring fields are regularly located in well-protected areas, which are often already being used as anchorages. This scenario frequently results in displacement of those vessels because the owners would rather anchor in state waters and not incur the

costs associated with a mooring field. Displacement occurred in St. Petersburg when their mooring field was installed and as their ordinance was nearing adoption or soon after implementation. The city described they have seen a dramatic reduction in the number of stored vessels, many of which met the description of a hazardous vessel. Some of the vessel owners repaired their vessels, other vessels were removed from the water by their owners and were disposed of, while other vessels were moved out of the city's jurisdiction. City staff reported that many of these vessels were not being maintained very well. The number and impact of the other vessels on those neighboring cities and counties, who are not able to regulate the anchoring of vessels, remains difficult to evaluate.

Several long-term stored vessels have moved to Big Bayou, a protected anchorage within the City of St. Petersburg's jurisdiction. Some transient or visiting vessels are anchoring outside the Vinoy Basin, just off the city pier. Many others relocated to Gulfport, on the north end of Boca Ciega Bay. In 2016, city officials noted that prior to the pilot program, the city typically averaged 80-90 stored vessels whereas presently the average has been reduced to 15-20 at any given time. Occasionally, vessels new to the area are found anchored in the marina yacht basins where anchoring is restricted. Once the vessel owners were advised of the anchoring restrictions, they have all come into compliance. The city reports that this has allowed for the continued protection of maritime infrastructure and enhanced navigational safety in these limited operating spaces. It has also continued to allow the local area youth groups and sailing organizations to utilize these areas. In 2016, the usage of the basins and Bayboro for youth sailing programs has continued to increase.

The city also reports that although there have been a variety of ordinance violations, they have yet to issue a notice to appear to any vessel owner. St. Petersburg enforcement personnel advised that the difficulties they encountered enforcing local ordinances would not be comparable if the violations were of state statutes. This was primarily due to the local State Attorney's Office being unwilling to issue a *capias* or warrant for failure to pay a local ordinance. Another legal issue that the City of St. Petersburg believes is problematic is the definition of "liveaboard vessels" and "stored vessels." The City of St. Petersburg officer also requested that the state marine sanitation law be amended to prohibit the ability to use portable toilets on vessels. City officials also believed any statewide law dealing with anchoring and mooring issues should incorporate some aspect of an operability standard within the concept of at-risk vessels.

City of Sarasota

Public mooring fields

The City of Sarasota has two mooring fields in their jurisdiction. The primary field, known as the Bayfront mooring field, is located near downtown Sarasota and is managed by the Marina Jack marina. In 2013, the city had the capacity for 35 vessels but was in the process of completing the second of three phases of their build-out plan. At that time, the city anticipated capacity would be 70 vessels by the end of 2013. At the conclusion of the third phase, their plan called for a total capacity of 109 vessels at the Bayfront mooring field. As of August 2016, the City of Sarasota had 110 potential moorings with 60 completed moorings and associated anchoring hardware in place for additional moorings when demand calls for it.

Unrelated to the pilot program is the Sailing Squadron mooring field located north of the John Ringling Causeway near the Mote Marine Laboratory. This mooring field was an active field before the pilot program was initiated. In the past, there have been as many as 120 vessels moored in this area, primarily using unpermitted (illegal) mooring systems. This mooring field's capacity was reduced to 38 in accordance with their permit.

Ordinance development and adoption

During the development of their ordinance, Sarasota held a public input meeting and also presented the ordinance at a public meeting before their City Commission.

FWC staff also conducted a public meeting and posted the proposed ordinance online in order to collect additional public comment. This public meeting was held in Tallahassee and was primarily attended by representatives of various boating interest groups. Representatives from Sarasota were in attendance and answered questions related to their ordinance. A total of 12 written comments were received as a result of the meeting and online posting. All comments were provided to the FWC Commission prior to Sarasota's ordinance being considered for approval.

Since many of the written comments addressed more than one topic, the following breakdown of responses totals more than 12.

- 1 was not in support and 1 was in support of the pilot program in general
- 3 were not in support of the buffers or distance proposed, 1 of which suggested limiting the setback distance to 50-75 feet.
- 4 were supportive of the ordinance, particularly the 150 foot buffer and required movement of vessels in order to prevent derelicts.
- 1 did not support the 90 day time restriction.
- 4 were against the enforcement process, 2 of which were directed toward the 90 day time restriction in the ordinance.
- 1 was negative towards the mooring field itself.
- 1 was a suggestion to include a pump out requirement.
- 1 comment could not be categorized. It appeared to be a misreading of the ordinance language.

In June 2012, the FWC Commission approved the City of Sarasota's ordinance with the contingency that the ordinance would not be enforced until the first phase of their mooring field construction was complete and available for use by the public. Sarasota's ordinance was the third ordinance approved by the FWC Commission as part of the pilot program.

Sarasota adopted the final ordinance in July 2012; however, enforcement did not begin until September 2012, when mooring field construction was completed and moorings were available for use.

Overview of the ordinance

The ordinance adopted by the City of Sarasota can be categorized into 4 general segments.

- Time Restriction
- Setback
- Exceptions to Anchoring and Mooring Prohibitions
- Enforcement and Penalties

Time Restriction

The primary time restriction is applicable to all vessels anchoring within the city's jurisdiction and allows a vessel to anchor for 90 days in the same location. After 90 days, the vessel is required to be moved to a properly permitted mooring field or to a location outside of the city's jurisdiction. If during the 90 days the vessel is moved to another site or location for at least 72 hours, it can return to its original anchoring location and the 90 day clock begins again. Basically, this means that as long as at least once every three months a vessel navigated to another location and is gone for at least three days before returning, it can repeat this process indefinitely. There is also a time restriction preventing the dinghy of an anchored or moored vessel from anchoring, mooring, or tying off to city property, including beaches, for longer than 12 continuous hours.

Setback

The setback distance provision is applicable to all vessels anchoring for longer than 12 hours anywhere within the city's jurisdiction. This 12 hour time period is intended to avoid unintended consequences for vessels anchoring for short time periods in the pursuit of other waterborne activities, such as fishing. The setback distance chosen was 150 feet from any waterfront property or properly permitted mooring field, as measured from the natural shoreline, sea wall, or the mooring field boundary, and was intended to protect maritime infrastructure.

Exceptions to Anchoring and Mooring Prohibitions

There were also some exemptions contained in Sarasota's anchoring ordinance. If the mooring field is full, the 90 day time restriction is suspended until space is available in the mooring field. The time and setback distance provisions can be suspended by the City Commission for participants in boat shows, races, parades, or other public events. There is also a safe harbor clause making provisions for temporary mechanical breakdowns and subsequent repairs to be made within 5 days or for

instances of imminent or existing extreme weather conditions until weather conditions improve.

Enforcement and Penalties

Sarasota's ordinance was posted online and the public was informed of the new ordinance through press releases and informational pamphlets developed by city staff. The pamphlets were available at the city marina and were also handed out to boaters in the area by staff members and local law enforcement officers.

The Sarasota ordinance is primarily enforced by the City's Police Department. The enforcement policy places great emphasis on educating boaters about the pilot program and the city's ordinance.

The enforcement and penalties of the ordinance allow non-criminal violation citations, with a fine not to exceed \$500, to be given or mailed to the owner or occupant of a vessel in violation. There is also a provision which specifies that enforcement of the 90 day time restriction and the setback distance requires multiple visual observations during each applicable time restriction. The ordinance allows these visual observations to be made by law enforcement officers, employees or agents of the city, or private citizens. If the observations were made and reported by private citizens, they must make an affidavit to substantiate the observations.

Targeting pilot program goals

The City of Sarasota targeted the goals of the pilot program as follows:

Promote the establishment and use of public mooring fields

Sarasota created their Bayfront mooring field in an effort to qualify for the anchoring and mooring pilot program.

The city completed the second phase build-out of their Bayfront mooring field. At that time, the city anticipated capacity would be 70 vessels by the end of 2013. The third phase increased the size of the field to 110 potential moorings and 60 fully completed moorings.

Sarasota's provision to allow a vessel to only anchor for 90 days in the same location, after which the vessel is required to be moved to a properly permitted mooring field or to a location outside of the city's jurisdiction also encourages vessels to use the mooring fields.

Develop and test policies and regulatory regimes that:

- Promote public access to the waters of this state

The City of Sarasota did not report any portion of their ordinance as supporting this portion of the program goals.

- Enhance navigational safety

The City of Sarasota did not report any portion of their ordinance as supporting this portion of the program goals.

- Protect maritime infrastructure

Sarasota chose the setback distance of 150 feet from any waterfront property or properly permitted mooring field, as measured from the natural shoreline, sea wall, or the mooring field boundary, as an attempt to protect maritime infrastructure.

- Protect the marine environment

The City of Sarasota did not report any portion of their ordinance as supporting this portion of the program goals.

- Deter improperly stored, abandoned, or derelict vessels

Sarasota uses a time restriction applicable to all vessels within their jurisdiction to encourage the maintenance of a vessel's ability to navigate. The ordinance allows a vessel to anchor for 90 days in the same location. If during the 90 days the vessel is navigated to another site or location for at least 72 hours, it can return to its original anchoring location. This provision requires that anchored vessels (particularly those stored on local waters) get underway at least once every three months or move to a mooring field.

Findings

FWC staff conducted a site visit with city officials on August 17, 2016, to ascertain which elements of the Pilot Program worked best in their jurisdiction.

The City of Sarasota installed the Bayfront mooring field during the ordinance development process. As of the date of the site visit in 2016, the Bayfront mooring field contained 60 completed moorings with an additional 50 structural pilings (110 total) installed and ready for mooring hardware, when the need arises.

As a result of only 38 permitted moorings being available at the Sailing Squadron, which historically held over twice that number of unpermitted moorings, several of the vessels have been reported to have moved to docks in Bradenton or to be anchoring in Selby Gardens, a shallow area south of the Bayfront mooring field. Some of the vessels displaced by the installation of the Bayfront mooring field have also started anchoring in this area. The city reports they are concerned about adverse environmental impacts in this area resulting from anchor drag, keel damage to water bottom, and vessels grounding at low tide. The city was able to clean out all the illegal moorings, lines and engine blocks that were causing vessel entanglements and environmental issues. The city would like to see a buffer greater than the 150 feet setback that presently exists. In addition, city officials described how vessels traveling within the nearby local entry channel create wakes for the transient boaters located in the northern portion of the mooring field. The wakes have not impacted boating safety in a measurable way, such as citations, warnings, reportable boating accidents or injury reports, which meets the substantial competent evidence threshold for a boating restricted area anticipated by Section 327.46 (1)(c), F.S. At this juncture, however, quality of life has been impacted resulting in dissatisfied customers, broken

glasses and spilled dinners. The City of Sarasota would like an ability to obtain boating speed restricted areas around mooring fields to alleviate these concerns.

A local law enforcement officer has reported that he continually needs to educate vessel owners who are new to the area about the ordinance and its provisions. He describes gaining voluntary compliance and not needing to warn or cite someone after explaining the ordinance. Furthermore, in the 2016 site visit, he described the mooring field as much more family friendly with less associated crime than it was previously as an unregulated anchorage.

Poorly maintained vessels have decreased in Sarasota since implementation of their ordinance, and the local officer said he has not worked a derelict vessel case since the fields were installed and their ordinance took effect. For example, he reported keeping track of a specific vessel of concern and found that it was moved on day 89. While this may be a successful example of deterring improperly stored, abandoned, or derelict vessels, it represents a significant time investment on the part of the officer to ensure compliance.

The city has reported that the build-out of the Bayfront mooring field and the resulting displacement of vessels resulted in a decrease of vessels within the city's jurisdiction that show indicators commonly seen by those on the pathway to becoming derelict. The city also describes a reduction in the number of vessels breaking anchor and coming to rest on the shoreline near their Bayfront mooring field (as shown in the photo below).



The city also believes vessels in the area are receiving greater attention to maintenance issues by their owners as a result of the requirement to get underway at least once every 90 days.

Monroe County and the cities of Marathon and Key West

Public mooring fields

There are two mooring fields in Monroe County associated with the pilot program. In Marathon, the Boot Key Harbor mooring field has a capacity for 226 vessels. This mooring field only allows use by full-time, live-aboard vessels and does not allow vessels to be stored on the water in the mooring field. The Key West mooring field is located between Fleming Key and Sigsbee Park. This mooring field does allow storage of vessels, and it has a total capacity of 149 vessels.

Ordinance development and adoption

During the development of their ordinance, Monroe County held three public meetings in early June 2011, specifically for discussion of the pilot program. The meetings were held in Key Largo, Marathon and Key West on consecutive days. Many other public meetings involving the Board of County Commissioners and city officials were also held in the area over the next several months as the complimentary county and city ordinances were developed and vetted with the public.

The ordinance development in Monroe County was longer than in some of the other areas due to the extended input by the public and County Commissioners in the long series of public meetings. This ordinance went through a variety of revisions, each of which was discussed with FWC staff.

FWC staff also held a public meeting and posted the proposed ordinance online in order to gather additional public comment. This public meeting was held in Tallahassee and was primarily attended by representatives of various boating interest groups. This was an opportunity for representatives of Monroe County to answer questions related to their ordinance. A total of 43 written comments were received as a result of the meeting and online posting. All comments were provided to the FWC Commission prior to Monroe County's ordinance being considered for approval.

Since many of the written comments addressed more than one topic, the following breakdown of responses totals more than 43.

- 8 were in support of the pilot program and 5 were not.
- 6 were in support of the ordinance in general and 4 were not.
- 5 were directed at not supporting the proposed Sunset Cove managed anchoring zone.
- 7 were not supportive of the no anchoring zones, there was 1 suggestion to allow vessels currently in those areas to be allowed to stay.
- 4 did not like the size of the Seaplane Basin no anchoring zone. The size of this zone was decreased by Monroe County as a result of public input.
- 3 were in support of the pump out requirements and 5 were not.
- 1 response was for and 1 against the Key West managed anchoring zone.

- 1 response supported the pre-derelict conditions.
- 12 could not be categorized. These comments were either off the topic of the pilot program, the result of apparent misinformation or misreading of the ordinance language, or were otherwise not able to be classified.

In September 2012, the FWC Commission approved Monroe County’s ordinance with the contingency that the Sunset Cove Managed Anchorage Zone provision be removed from the ordinance due to its great distance from the nearest associated mooring field (approximately 45 to 50 miles away).

The final Monroe County ordinance was adopted by the county in October 2012, and enforcement began the following year in the Key West area after informational signs were installed. The same ordinance was adopted by the City of Marathon in July 2013, and enforcement began in August 2013 in the Marathon area after informational signs were installed.

Overview of the ordinance

The Monroe County ordinance can be categorized into five general segments.

- Definition
- Managed Anchoring Zones
- Exemptions from Proof of Pump out Requirement
- No-Anchoring Buffer Zones
- Enforcement and Penalties

Definition

The term “proof of pump out” was created to support the Monroe County ordinance language. It was particularly developed to define and add clarity to the ordinance while avoiding unintended consequences.

Proof of pump out 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 portable toilet). Acceptable forms of proof include a pump out registration sticker or tag issued by the City of Key West, City of Marathon, or Monroe County pump out programs indicating that the vessel receives routine pump outs, or a pump out receipt from a pump out facility (including portable toilet dump stations) or pump out vessel within the past ten (10) days.

Managed Anchoring Zones

Rather than enact their ordinance countywide, Monroe County limited the affected areas. They designated the areas impacted by specific location and only regulated within those areas. They developed the terms “Managed Anchoring Zones” and “No-Anchoring Buffer Zones” to distinguish what regulations would apply in specified locations.

Managed anchoring zones were established in Boca Chica Basin, Key West Harbor, Cow Key Channel, and Boot Key Harbor. They were established as a tool to regulate anchoring activity in unmanaged anchorages and to protect the marine environment,

enhance navigational safety, and deter improperly stored, abandoned or derelict vessels.

The two primary areas of regulation Monroe County explored through the pilot program were preventing vessels from becoming derelict by identifying pre-derelict conditions and requiring the pump out of toilets on vessels within the managed anchoring zones. The pre-derelict vessel conditions include when a vessel:

- 1) Is not able to be used for navigation.
- 2) Is listing.
- 3) Is aground.
- 4) Is in danger of breaking its mooring.
- 5) Is sinking.
- 6) Is dragging anchor.
- 7) Has broken its mooring and has been secured for the protection of the health, safety, and welfare of the citizens.

The ordinance prohibits vessels exhibiting these conditions from being in the managed anchoring zones. Like the Medallion Program in St. Augustine and the definition and prohibition of “hazardous vessel” in St. Petersburg, the use of pre-derelict vessel conditions is an attempt to prevent improperly stored, abandoned, or derelict vessels.

The proof of pump out requirement is applicable to vessels that are required to have a marine sanitation device and that are anchored or moored for more than 10 consecutive days within one of the managed anchoring zones. The pump out services are free to recreational vessels within these zones, and vessel owners can sign up for regular service based on individual needs. Part of this process allows for a registration tag or sticker to be provided to the vessel owner for display on their vessel as proof of pump out. At a minimum, it is required that a vessel be pumped out at least once each month. The county pump out provider maintains registration and pump out logs available for review by any law enforcement officer. If a vessel owner chooses to use a different pump out provider, they are required to maintain documentation and pump out logs to demonstrate compliance.

Exemptions from Proof of Pump out Requirement

There are exemptions provided for the proof of pump out requirement and the provisions allowing for safe harbor. Stored vessels or vessels equipped with only incinerating or composting toilets, which are not designed to be pumped out, are not required to provide proof of pump out. There is also allowance given to vessels in need of safe harbor due to severe weather or temporary mechanical issues preventing safe departure from a managed anchoring zone.

The other area of regulation applicable within the managed anchoring zones is a prohibition against derelict vessels. This is a reiteration of Section 823.11, F.S., *Abandoned and derelict vessels; removal; penalty.*

No-Anchoring Buffer Zones

No-anchoring buffer zones were established in Boot Key Harbor (50 feet around the mooring field and leased anchoring area), the Seaplane Basin, and Boca Chica Basin.

Their purpose is to protect maritime infrastructure, enhance navigational safety, promote public access to the waters of the State, and promote the use of public mooring fields. The no-anchoring zones were primarily created outside of, and adjacent to, permitted public mooring fields. In these zones, anchoring or mooring is prohibited. There is exclusion language in the ordinance to limit unintended consequences. These exclusions allow for emergency situations, fishing and other recreational activities, commercial vessels involved in marine related work, etc.

Enforcement and Penalties

The Monroe County ordinance was posted online and the public was informed of the new ordinance through press releases and informational pamphlets developed by county staff. The pamphlets were available at the city marinas and were also handed out to boaters in the area by staff members and FWC or local enforcement officers. The county also developed and placed informational signs in and around the regulated areas. Due to jurisdictional issues and limited capability of the local governments to provide on-water enforcement, the ordinance is primarily enforced by FWC. The Monroe County Sheriff's Office has begun helping with enforcement of the ordinance. The enforcement policy involves significant emphasis on educating boaters about the pilot program and the local ordinance.

Like the City of St. Petersburg, Monroe County's ordinance requires a written warning to be issued and allows a vessel owner time for corrective action or removal of the vessel. If the violation is not corrected within 30 days, a Uniform Boating Citation may be issued. This is a non-criminal infraction with a fine ranging from \$50 for a first offense up to \$250 for a third offense. If a vessel owner is not in compliance a fourth time, the fine is \$250 and the owner will be requested to remove the vessel from the managed anchoring zone or no-anchoring buffer zone.

The Monroe County ordinance has a staggered enforcement timeline between the affected areas in Key West and Marathon. Enforcement in Marathon was delayed while the city went through the process of adopting the county's ordinance.

Targeting pilot program goals

The Monroe County ordinance targeted the goals of the pilot program as follows:

Promote the establishment and use of public mooring fields

Monroe County reports that the "No-Anchoring Buffer Zones" are intended to promote the use of public mooring fields.

Develop and test policies and regulatory regimes that:

- Promote public access to the waters of this state

Monroe County reports that the "No-Anchoring Buffer Zones" are intended to promote public access.

- Enhance navigational safety

Monroe County created managed anchoring zones and no-anchoring buffer zones in an attempt to enhance navigational safety. The no-anchoring buffer zones are primarily around the mooring fields themselves in an attempt to help with navigational safety, as well as protecting the vessels in those mooring fields.

- Protect maritime infrastructure

Monroe County established a no-anchoring buffer zone in Boot Key Harbor (50 feet around the mooring field and leased anchoring area), within the Seaplane Basin, and in designated areas around the mooring field in Key West to protect maritime infrastructure.

- Protect the marine environment

Monroe County requires proof of pump out within their managed anchoring zones. This is applicable to vessels that are required to have a marine sanitation device and that are either anchored or moored for more than 10 consecutive days within one of the managed anchoring zones. The pump out services are available within these zones and provided at no charge through a registration process so vessel owners can get regular service based on their individual needs. Part of this process allows for a registration tag or sticker to be provided to the vessel owner for display on their vessel as proof of pump out. At a minimum, it is required that the vessel be pumped out at least once a month. The County pump out provider also maintains registration and pump out logs available for review by any law enforcement officer. If a vessel owner chooses to use a different pump out provider, they are required to maintain documentation and pump out logs to demonstrate compliance.

- Deter improperly stored, abandoned, or derelict vessels

Monroe County is exploring the deterrence of improperly stored, abandoned, or derelict vessels by identifying and prohibiting vessels displaying pre-derelict conditions within the managed anchoring zones. Like the Medallion Program in St. Augustine and the definition and prohibition of “hazardous vessel” in St. Petersburg, Monroe County’s adoption of the pre-derelict vessel provisions is an attempt to encourage the maintenance of vessels to prevent future degradation.

Findings

FWC staff conducted a site visit with county officials on August 30-31, 2016, to ascertain which elements of the pilot program worked best in their jurisdiction.

Enforcement began in March 2013 in the Key West area and began August 2013 in the Marathon area. Due to the volume of vessels and owners affected by the ordinance, informing the public about the ordinance and its requirements was given high priority over actual enforcement of violations. The County had concerns at the

beginning of the program over enforcement effectiveness; however, once jurisdictional issues were sorted out, the enforcement was considered satisfactory.

Compliance with the pump out requirement has been aided by the establishment of a Keys-wide pump out program established by the county. Since 2013, this program has been jointly funded by the county (\$1.471 million), grants from the Dept. of Environmental Protection (\$1.776 million), and by appropriations from the Florida Legislature (\$600,000) totaling almost \$3.85 million. As a result, recreational vessels in Monroe County may sign up for free pump outs. This program provides stickers for vessels that are registered in the program, allowing for easier enforcement as envisioned in the county ordinance.

One of the indicators of the effectiveness of the ordinance is evidenced by a lack of vessels anchored in the “no anchoring zones.” Once the “At-Risk” state law was enacted, enforcement of the county’s “Pre-Derelict Condition” ordinance diminished greatly. While the county ordinance contained a much desired operability component, it did not allow for the issuance of citations by mail to owners who were not present on the vessel, a frequent occurrence. Monroe County officials would like any state regulation that replaces the pilot program for anchored vessels to have a proof of sewage pump out, no anchorage zones and time limits enacted on stored vessels. As much as possible, Monroe County believes that regulations on anchoring should be uniform throughout the state.

The Boot Key Harbor mooring field is typically at capacity every year during the busy winter season and does not meet the entire demand for cruising boaters. The Key West mooring field is rarely at capacity. This is primarily due to the relative convenience of upland facilities at Boot Key Harbor, which are conveniently located, plentiful and in excellent condition. At the Key West site, however, the upland facilities are quite distant from the mooring field, requiring a lengthy dinghy trip across open water to access the facilities. The Key West mooring field is also relatively unprotected and exposed to wind and waves from several directions while Boot Key Harbor is well protected from adverse weather.

The Key West no-anchoring buffer zone has created an open waterbody which has allowed for access by the Key West Sailing Club that can now hold sailing events in the Sea Plane Basin where they previously could not do so.

The County expressed frustration with the perceived difficulty in obtaining permits for mooring fields over areas with seagrasses. The county questioned whether possible issue of shading by moored boats was counterbalanced or even outweighed by not having anchors and their chains scouring large circles in the same seagrasses.

Martin County/City of Stuart

Public mooring fields

The mooring field in the City of Stuart is located on the St. Lucie River, just west of the U.S. 1 NW/Federal Highway Bridge. It has been in operation well prior to the pilot program and is operated by the Sunset Bay Marina and Anchorage. This mooring field has a capacity of 69 vessels.

Ordinance development and adoption

During the development of their ordinance, Martin County/City of Stuart held 2 public meetings specifically for discussion of the pilot program in October 2011. Their ordinance had the longest ordinance development time of all ordinances created through the pilot program.

FWC staff conducted a public meeting and posted the proposed ordinance online in order to collect public comment. This public meeting was held in Tallahassee and was primarily attended by representatives of various boating interest groups. This was an opportunity for representatives of the participating local governments to respond to questions related to their ordinance. At the meeting, through written comments provided by boating organizations, and as a result of public responses from the online posting, problems with their draft ordinance were identified. As a result, FWC staff notified the local governments that their ordinance was being removed from the agenda for the FWC Commission meeting at which it was originally intended to be presented.

FWC staff attended a Martin County Commission meeting to clarify changes to their ordinance before its consideration for approval by the FWC Commission.

An updated ordinance was posted online to collect additional public comment. As a result of the online posting of the Martin County/City of Stuart ordinance, FWC staff received a total of 38 comments. The comments were almost exclusively negative toward the proposed ordinance in general, specific parts of the ordinance, and the pilot program. There was 1 response that was generally supportive of the ordinance. All comments were provided to the FWC Commission prior to Martin County's ordinance being considered for approval.

In December 2012, the FWC Commission approved Martin County's ordinance with specific contingencies. Originally, the ordinance contained provisions for restricting anchoring around a mooring field in Jensen Beach that had yet to be constructed (Indian River program area) and 300 foot setback buffers in the St. Lucie River. Approval of the Martin County/City of Stuart ordinance was contingent upon removing the Indian River program area from consideration until the associated mooring field was constructed, decreasing the buffer distances in the St. Lucie River

program areas to 150 feet, and altering proposed restrictions of anchoring between the mooring field and shoreline.

The final ordinance, which regulates anchoring within both the city and county, was adopted by the Board of County Commissioners in January 2013.

In January 2013, the county requested an amendment to their ordinance be approved by the FWC Commission. The proposed amendment intended to alter the safe harbor allowances and the enforcement of the operability demonstration requirement in all three of their program areas. The changes were technical details clarifying how and when these provisions would apply. In February 2013, the FWC Commission approved the proposed amendment. Martin County adopted the amended language in March 2013.

Overview of the ordinance

The ordinance adopted by Martin County and the City of Stuart can be categorized into six general segments.

- Definitions
- Pilot Program Areas
- Setbacks
- Operability Demonstration
- Proof of Pump Out Requirement
- Enforcement and Penalties

Definitions

The Martin/Stuart ordinance created two definitions, “maritime infrastructure” and “properly permitted mooring field,” to support their ordinance language. They also copied two definitions, “occupied” and “stored vessel,” from the St. Augustine language to support the terminology used in their ordinance. These definitions were used to define and add clarity to the ordinance while avoiding unintended consequences. The definitions are listed below.

Maritime infrastructure means seawalls, docks, and piers.

Properly permitted mooring field means that certain area designated for the mooring of vessels that has been approved as such and permitted by all applicable state and federal agencies.

Occupied means boarding and remaining on a vessel for recreational activities consuming twelve (12) or more consecutive hours in any twenty-four (24) consecutive hour period of time; for the preparation, service and consumption of meals or for sleeping; for a period of time in excess of that required for the completion of maintenance or repair activities; or for securing or protecting the vessel in a time of emergency or severe weather.

Stored vessel shall mean any vessel not under the direct supervision and control of person capable of operating the vessel and promptly moving the vessel.

Pilot Program Areas

Since Martin County was included as a pilot community in partnership with the City of Stuart due to jurisdictional issues near the mooring field in the St. Lucie River, their ordinance was written to limit the areas affected by designating the specific areas to be regulated. They used the term “Pilot Program Area” to distinguish where regulations would apply. The Pilot Program Areas were established in two general areas. The first was within the jurisdiction of the city and county, to include the North and South Fork of the St. Lucie River near the mooring field. The second was established in the Manatee Pocket area within the jurisdiction of Martin County.

The Pilot Program Areas were established as a tool to regulate anchoring activity and to promote the establishment and use of properly permitted mooring fields, protect maritime infrastructure, protect the marine environment, enhance navigational safety, and deter improperly stored, abandoned, or derelict vessels.

Setbacks

Both the city and county established a 150 foot setback from the marked boundary of any properly permitted mooring field or any maritime infrastructure in the St. Lucie River, restricting the anchoring of both occupied and stored vessels in those areas.

They also chose to prohibit anchoring of vessels between their mooring field and the adjacent eastern shoreline in order to improve navigational safety in a relatively limited space. Because trying to establish the 150 foot setback within the Manatee Pocket could have created unintended consequences due to space limitations, the ordinance prohibits anchoring of occupied or stored vessels within the Manatee Pocket except in two designated “anchor areas” described in the ordinance.

Operability Demonstration

The provision which requires demonstration of vessel operability expects that any vessel remaining in one of the program areas for more than 10 consecutive days must document, once every 6 months, that it navigated under its own power to a designated location. There are two locations designated by the county to document compliance with this requirement. One location is Sailfish Marina in Manatee Pocket and the other is Sunset Bay Marina and Anchorage.

Proof of Pump out Requirement

In order to meet the marine sanitation requirement established in the ordinance, all occupied vessels that are equipped with a Type III marine sanitation device and that have remained within a program area for more than 10 consecutive days must

demonstrate compliance by providing a receipt or proof of pump out within the previous 10 days. Service can be documented by the Martin County pump out boat or another authorized pump out facility. This means that, within any 10 day timeframe, an occupied vessel must be able to show documentation that it has been pumped out sometime within the previous 10 days.

Enforcement and Penalties

The Martin/Stuart ordinance was posted online, and the public was informed of the new ordinance through press releases and informational brochures developed by county staff. The brochures were available at the city marina and were also handed out to boaters in the area by staff members and local enforcement officers. The city installed informational signs at local boat ramps and docks to inform the public about the new ordinance.

The city's ordinance is primarily enforced by the City of Stuart's Police Department and the Martin County Sheriff's Office. The enforcement and penalties section of the ordinance involves a plan for an outreach and education program to inform boaters of the regulations and the benefits of compliance. The plan involves giving the owner of a non-compliant vessel a reasonable amount of time to come into compliance. The city and county both agreed, in the ordinance, to not enforce the section dealing with demonstration of operability until the locations to which vessels had to be navigated had been identified and publically advertised. These locations were subsequently designated. There is also a section allowing for "safe harbor" due to temporary mechanical breakdowns or imminent or existing extreme weather conditions.

If the efforts described in their ordinance are not successful in gaining voluntary compliance, the ordinance provides for enforcement in accordance with Chapter 162, F.S., and Chapter 1, Article 4, of the Martin County Code of Ordinances or Chapter 26, Article 2, of the Stuart Code of Ordinances. If compliance is not achieved, violations may be enforced by actions at law or in equity for damages and injunctive relief. If the city or county prevails in any such action, they may be entitled to an award of costs and attorney's fees. There is also a provision to allow violations to be prosecuted and punished as misdemeanors pursuant to sections 125.69 and 166.021, F.S.

The educational part of their enforcement plan began in August 2013.

Targeting pilot program goals

The Martin County ordinance targeted the goals of the pilot program as follows:

Promote the establishment and use of public mooring fields

Martin County/City of Stuart report that their setback distances in the vicinity of permitted mooring fields is intended to promote the use of public mooring fields.

Develop and test policies and regulatory regimes that:

- Promote public access to the waters of this state

Martin County/City of Stuart did not report any portion of their ordinance as supporting this portion of the program goals.

- Enhance navigational safety

Their ordinance has two provisions designed to enhance navigational safety. The first is within the city's jurisdiction where there is a specific prohibition of anchoring between the mooring field and the adjacent eastern shoreline. This is a narrow area that can be difficult to navigate when vessels anchor between the mooring field and the shoreline. The second is also due to space limitations within the Manatee Pocket area where there is a specific regulation to prohibit anchoring of vessels except in two designated anchoring areas.

- Protect maritime infrastructure

This ordinance has two provisions designed to protect maritime infrastructure. The first is the anchoring restriction in Manatee Pocket, described above. The second is the setback distance of 150 feet from the marked boundary of any properly permitted mooring field or maritime infrastructure.

- Protect the marine environment

This ordinance has a requirement aimed at protecting the marine environment. It requires that all occupied vessels, which remain within their enforcement area for more than 10 consecutive days and which are equipped with a Type III marine sanitation device, must demonstrate compliance with marine sanitation requirements. Demonstration of compliance is achieved by providing a receipt documenting service within the previous 10 days from the Martin County mobile pump out boat or by providing proof of pump out within the previous 10 days from another authorized pump out facility.

- Deter improperly stored, abandoned, or derelict vessels

This ordinance contains a provision similar to that in St. Augustine, which requires any vessel remaining in the "Pilot Program Area" for more than 10 consecutive days to demonstrate compliance with operability and safety requirements by documenting that once every 6 months the vessel has navigated, under its own power, to 1 of 32 designated locations.

Findings

FWC staff conducted a site visit with county and city officials on August 29, 2016, to ascertain which elements of the Pilot Program worked best in their jurisdiction.

The perceptions by the city and county at the time of the 2016 site visit were that the mooring field improved the quality of the boats in the area. The belief was that while

the moorings themselves were not profitable, the overall economic benefit to the community was a positive one. The mooring field is typically fully occupied from November through March.

There were no penalties attached to violating the pilot program ordinances in Martin County or the City of Stuart that were imposed by their respective enforcement officers.

The operability requirement was not enforced and no vessels were inspected or given an operability sticker. The city and county felt that since there were relatively few complaints, the program was a success.

The city and county believe that they have become more of a destination and not simply a pass-through port as a result of the Pilot Program.

According to city and county officials, it would be beneficial if state statutes limited the ability for persons to transfer at-risk vessels and cleared up the definition of “operable” and “liveaboard.”

Stakeholder Surveys

FWC conducted two public opinion surveys to gauge stakeholder perception about the effectiveness of the pilot program in general and each individual ordinance implemented through the pilot program. Efforts were made to engage a broad range of potential stakeholder communities. The surveys were conducted online through a link hosted on the FWC website, in an effort to provide easy access to as wide a participant group as possible.

The first survey was conducted from September 18 through October 7, 2013. This timing was intentionally selected late in the originally designated life of the pilot program in order to provide as much time as possible for people to become aware of and gain experience with the pilot program, however, as some of the local ordinances were implemented late in the pilot program, there was limited time for stakeholders to gain experience with those local ordinances.

The second survey was conducted from September 30 through October 9, 2016. The extension of the Pilot Program through June 30, 2017 provided 3 additional years for stakeholders to become familiar with the local ordinances and any potential affects.

Informing the public

Press releases from FWC were used to encourage local newspapers, web-based, radio, and television media to inform local residents and visiting boaters about the surveys and invite participation. National boating and cruising organizations were asked to post the invitations on their websites and distribute them to their constituents via email. Flyers were posted and distributed at each of the mooring fields and associated marinas in the participating areas. For each survey, more than 1,000 waterfront residential properties within the participating pilot program areas were selected using property appraiser records, and letters were mailed directly to residents, homeowner associations, and property management services along the waterfront within each participating area. Since the issue of anchoring and mooring is complex and involves stakeholders from a wide range of perspectives, significant effort was made to extend the reach of the survey appropriately.

Survey design

The two surveys were designed to gather demographic data about the respondents, identify their boating habits and preferences, and to gauge their perception of both the pilot program in general and the effectiveness of individual ordinances. The first survey was conducted during 2013 and consisted of 35 questions that required an average of 10 minutes to complete. Based upon information gathered during the first survey and the associated public workshops, the second survey was expanded to ask more questions about anchoring concepts and more detail about possible impacts of the individual pilot program ordinances. The second survey was conducted during

2016 and consisted of 55 questions that required an average of 15 minutes to complete. Minimizing the time required to complete the survey was accomplished through the use of filter questions so only those respondents who indicated familiarity with specific topics or locations were asked in-depth questions. Open ended questions were used to encourage participants to describe, in detail, how they were affected and what specific problems they felt should have been addressed by the ordinances but were not.

Participants who indicated they were familiar with all topics and any or all of the local government ordinances were encouraged to spend as much time as needed to provide detailed input. The topic of anchoring regulations is contentious, and each of the local participating areas have unique circumstances and needs. The survey design intended to strike a balance between maintaining a reasonable time period for completion and providing ample opportunity for detailed public input.

Survey responses

Response to the survey conducted during the fall of 2016 (9,272 complete responses) was significantly greater than response to the initial survey conducted during the fall of 2013 (2,363 complete responses). During both surveys, most response came from within Florida; however, the relative level of response from outside Florida increased significantly during the 2016 survey. During the 2013 survey, 78% of the response came from within Florida, 18% from other states and 4% from other countries, mostly from Canada. During the 2016 survey 65% of the response came from within Florida, 34% from other states and 2% from other countries, again mostly from Canada. Residents from most states across the nation participated in the surveys. During both surveys, responses from outside Florida were concentrated along the Atlantic coastal states and the Great Lakes states.

During both surveys, responses from within Florida were received from all coastal counties and most inland counties. These responses were concentrated along southeast Florida, southwest Florida and the Atlantic coastal counties. Between 25% (2016) to 33% (2013) of the Florida residents responding to the surveys reported residency in one of the five counties where a local government participating in the pilot program is located. Of the more than 1,000 residential property owners with property within jurisdiction of one of the local ordinances who received direct mail notice during both surveys, 307 responded to the 2013 survey and 205 responded to the 2016 survey.

Further analysis of the data suggests that a representative cross section of the overall stakeholder community participated in the survey.

Respondents indicating their primary residence in Florida well represented those who are likely to be affected by anchoring ordinances:

- Waterfront dwelling - 34 percent (2013), 43 percent (2016)
- Boat kept at a marina - 13 percent (2013), 10 percent (2016)
- Boat kept at anchor - 9 percent (2013), 2 percent (2016)
- Boat kept in a mooring field - 3 percent (2013), 1 percent (2016)

Most respondents during both surveys indicated they own at least 1 boat (93 percent in 2013 and 96 percent in 2016), and most of those boat owners indicated they own a boat that is likely to be affected by anchoring ordinances (87 percent in 2013 and 80 percent in 2016).

Respondents identified how they use their boat, the typical duration of trips in their boat and their preferred method of securing their boat while traveling overnight. The preferred location to secure their boat was identified as anchoring in convenient locations other than marinas, docking facilities, mooring fields, or designated anchorages. Respondents then specified the traditional distance they anchor from private property, provided information about how often and for what lengths of time they typically get their boat underway, and the general locations they have boated since January 2011.

The surveys asked about the individual pilot program areas and ordinances. During 2013, 45 percent (1,063) of the respondents indicated they were familiar with one or more pilot program areas. During 2016, 12 percent (850 people) of the respondents indicated they were familiar with one or more pilot program areas. These respondents were directed to specific questions about if and how they were affected by the pilot program, their perception of the pilot program's degree of success at reaching the statutory goals, and the effectiveness of each pilot program ordinance with which they were familiar.

Those respondents who were identified as waterfront property owners were also asked about any changes to the distances and duration vessels anchor from their property.

The script of the 2016 survey, as well as detailed charts of the results can be found in Appendix E – 2016 Public Opinion Survey and Results. The script of the 2013 survey, as well as detailed charts of the results can be found in Appendix F – 2013 Public Opinion Survey and Results.

FWC Recommendations

December 31, 2013, FWC submitted a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the findings to-date from the Anchoring/Mooring Pilot Program (pilot program), along with FWC's recommendations. FWC recommended continuation of the pilot program for three additional years to allow a more thorough and complete assessment of what works, and what does not work, relative to the local anchoring regulations being tested. This was based on the fact that delays in ordinance implementation and the lack of ability at that time to establish, with some degree of certainty, which components of the various ordinances accomplished the intended goals established in Section 327.4105(1), Florida Statutes (F.S.), and which did not.¹ In essence, the testing was not complete.

During the 2014 Legislative Session, Section 327.4105, F.S., *Pilot program for regulation of mooring vessels outside of public mooring fields*, was amended to extend the pilot program to July 1, 2017, and to require FWC to submit a report on program findings and recommendations by January 1, 2017. Furthermore, the law requires that all local ordinances adopted per the pilot program will sunset concurrently with the pilot program (July 1, 2017), and shall be inoperative and unenforceable thereafter.

FWC has engaged key stakeholders to explore and discuss possible legislative solutions and identify points of consensus. The following recommendations, categorized by pilot program goals in Section 327.4105(1), F.S., reflect the lessons learned from the individual pilot program participating governments, public responses to surveys directly related to this topic, and additional input from key stakeholders.

Recommendations related to promoting the establishment and use of public mooring fields

- ***Further protect safety of mooring field users*** – To further enhance the value of mooring fields to boaters, there is a need to provide additional safety precautions in the immediate vicinity of public mooring fields. This recommendation would provide an allowance for a 300-foot buffer extending beyond mooring field boundaries, within which anchoring is prohibited. The no-anchoring buffer would enhance the safety of vessels using the mooring field by reducing the likelihood that nearby anchored vessels, which may break loose and drag anchor, will impact and cause damage to moored vessels. This protection could be accomplished either through a universal, statewide prohibition – a concept that is preferred by some pilot program participants and many stakeholders – or by revising Section 327.60,

¹ Two of the pilot program participants, Martin County/City of Stuart and Monroe County/cities of Marathon and Key West, only had their ordinances in effect for three to six months when the initial report was due. The others had been in effect from 13 to 21 months.

F.S., *Local regulations; limitations*, to allow local governments to prohibit anchoring within a 300 foot buffer around public mooring fields.

- ***Authority to regulate the anchoring of vessels should be retained by the State. Should the State choose to grant such authority to local governments, public mooring fields must be available*** – Should authority be granted for local governments to lawfully restrict anchoring of vessels on waters of the State, permitted public mooring fields of adequate capacity and at a reasonable cost must be available within a reasonable distance to any anchoring restricted areas? Local governments, however, should not be allowed to restrict all anchoring within the area authorized for them to regulate, and an exemption should be created to provide relief should mooring field capacity be met. Based on discussions with pilot program participants and stakeholders, a distance of ten miles may be considered a “reasonable distance,” and costs for using mooring fields should be consistent with comparable market rates.
- ***Authority to regulate the anchoring of vessels should be retained by the State. Should the State choose to grant such authority to local governments, it should be granted to counties only*** – In order to minimize confusion among boaters and to avoid the likelihood of a patchwork of anchoring restrictions and regulated areas, any authority granted for the creation of local anchoring restrictions encompassing all or specific waterways areas within any county or municipal jurisdictions should be granted to county governments only. There should be a requirement for consultation and cooperation with any and all affected municipalities, FWC, Department of Environmental Protection, U.S. Coast Guard, the applicable Inland Navigation District, and associations or other organizations representing vessel owners or operators.
- ***Quantify the economic benefits of mooring fields*** – Pilot program participants consistently agreed that their communities have experienced economic benefits as a result of their mooring field(s). In order to further encourage other local governments to establish mooring fields, it would be beneficial to quantitatively demonstrate the economic benefits to Florida communities, such as benefits to local businesses, reductions in derelict vessels, etc. Research should be conducted so local governments can be better prepared with economic benefit information as they explore whether mooring fields are appropriate solutions for local needs.
- ***Document the environmental benefits of mooring fields*** – The effects of mooring fields on seagrasses and other portions of the marine environment are inadequately substantiated in the various waterway types in Florida. Mooring field proponents claim that seagrass areas are substantially better off when boats occupy the water on an engineered mooring system as compared to boats being secured to the bottom by anchoring (due to anchor dragging, scouring, etc.). Opponents contend that shading from moored boats is detrimental to seagrasses. Proponents further argue that water quality is likely to improve because moored boats typically have easy access to sewage pump-outs. Opponents contend that more boats on the water equates to diminished water quality. Research should be conducted to adequately identify the environmental pros and cons associated with mooring fields in Florida’s various marine environments.

Recommendations related to promoting public access to the waters of this state, enhancing navigational safety, and protecting maritime infrastructure

The ability of persons to gain access to and enjoy the benefits of Florida's waterways should be protected. When anchored boats are within close proximity to locations where boats are being loaded, unloaded or navigated in close quarters, the anchored boats may serve as impediments to safe and enjoyable access to the water. Anchored boats, particularly those being stored unattended on the water, when left in close proximity to maritime infrastructure, may serve as a threat to the integrity of that infrastructure in the event they drag anchor or break free. The following recommendation is intended to improve safe access to, and use of, State waters:

- ***Create anchoring limited areas*** – Establish universal, statewide prohibition against allowing an anchored vessel to come within 150 feet of any marina, boat ramp or other vessel launching and loading facility.

Exceptions should be created that mirror some of those listed in Section 327.4108, F.S., *Vessels at risk of becoming derelict on waters of this state*. These include when there is unreasonable risk of harm due to weather conditions, vessels owned by government entities, construction or dredging vessels on an active job site, vessels engaged in commercial fishing, and vessels engaged in recreational fishing when persons onboard are actively tending hook and line fishing gear or nets. These exceptions must not be construed to allow for violation of the provisions of Section 327.44, F.S., *Interference with navigation*.

Recommendations related to the prevention of derelict vessels

In August 2015, FWC hosted a series of public meetings and participant surveys related to identifying potential ways to improve Florida laws aimed at preventing or removing derelict vessels on State waters. This effort resulted in a series of recommendations which garnered broad public support.

One of those recommendations directly supported the creation of Section 327.4107, F.S., *Vessels at risk of becoming derelict on waters of this state*, during the 2016 Legislative Session. Adoption of several of the remaining recommendations would serve as valuable tools in future efforts to rid Florida waters of derelict vessels. Those recommendations follow:

- ***Place a “hold” on titles of vessels deemed derelict*** – To ensure that innocent parties are not placed in a compromising position when the owner of a derelict vessel attempts to sell the vessel to avoid prosecution or vessel removal obligations, this recommendation proposes statutory authorization for the Department of Highway Safety and Motor Vehicles to place a “hold” on the title of a vessel deemed derelict when requested by an investigating law enforcement agency. A provision would be made for the title “hold” to be released upon direction from a court or when a responsible party comes forward to take possession of the vessel and remove it from the waters of the State.

- ***Limit who may renew a vessel registration*** – To protect the previous owner of a vessel who has sold the vessel to a person who subsequently fails to transfer title, this recommendation limits who may renew a vessel registration to only the owner(s) of record or a person in possession of a power of attorney from the owner.
- ***Increased penalties for repeat violations of expired vessel registration*** – To ensure that vessels that are neglected by their owners receive necessary attention, this recommendation creates enhanced penalties for using or storing a vessel on State waters when the vessel registration is expired by six months or more. Under this recommendation, the second and any subsequent time an owner is cited for having a registration expired more than six months, the penalty would be a second degree misdemeanor, which would require mandatory appearance in court or at a formal hearing. The current penalty is a non-criminal infraction, no matter how many times the owner is cited. This recommendation mirrors current motor vehicle law.
- ***Alternate means of derelict vessel owner notification*** – To reduce redundant administrative processes, this recommendation waives the statutory requirement in Section 705.103, F.S., *Procedures for abandoned or lost property*, for the owner of a derelict vessel to be notified via certified mail, but only in the circumstance where the owner has received face-to-face notification by a law enforcement officer. This notification must be documented in writing and would be in the form of a citation/notice to appear for violating Florida’s derelict vessel laws.

An exception/waiver should be created for a vessel that has become derelict as a result of a declared natural disaster or a state of emergency. The exception/waiver should last for a time period of 60 days following the declaration. This is intended to allow sufficient time for vessel owners and insurance companies to take action to deal with damaged boats. It would also minimize the likelihood that citations would be issued while reasonable efforts to correct problems are being made by responsible parties.

- ***Additional condition for vessel at risk of becoming derelict*** – To further deter the number of vessels stored on State waters that are neglected and are incapable of effective navigation, this recommendation adds a condition to Section 327.4107, F.S., *Vessels at risk of becoming derelict on waters of this state*. This law currently prohibits the anchoring or mooring of vessels on State waters that are at risk of becoming derelict and specifies four conditions that indicate the vessel is neglected or poorly maintained. This recommendation adds another condition that would indicate that a vessel is incapable of effective navigation when the owner or operator cannot demonstrate an effective means of propulsion for the purpose of safe navigation. The recommendation would require a vessel owner or operator to demonstrate, within 72 hours of notification by a law enforcement officer, that:
 - For sailing vessels – there is a working steering system and the rigging and sail(s) are present and in working order, or the vessel is equipped with a functioning motor. These conditions demonstrate that the vessel is capable of safe and effective navigation.

- For all other vessels – the vessel is equipped with a functioning motor, controls, and a steering system. These conditions demonstrate that the vessel is capable of safe and effective navigation.

Recommendations related to protecting the marine environment

- ***Prohibit a vessel or floating structure from being moored to unauthorized moorings*** – This recommendation would establish a prohibition for any vessel or floating structure to tie off, anchor or moor to any unpermitted or unlawful objects on or affixed to the water body bottom. This would further deter proliferation of unlawful moorings (such as those affixed to the water body bottom by use of cast iron engine blocks, concrete weights, debris piles, or debris fields). It would also support efforts to remove this litter from State waters. A penalty is also recommended – the first violation would result in a non-criminal infraction; second and subsequent violations would result in a second degree misdemeanor.

An exception should apply to private moorings lawfully owned by an adjacent upland riparian landowner or to private moorings placed on privately owned bottomland.

Unresolved issues for which there are no recommendations

The participating local governments in the pilot program actively attempted to address problems associated with stored vessels, inoperable vessels that are anchored or unlawfully moored and used as residences, marine sanitation concerns, and setbacks from shorelines or private docks. The following are intended to serve as discussion on those unresolved issues:

- ***Stored vessels*** – Many local governments would argue that the long-term storage of vessels at anchor on State waters has not been sufficiently addressed through statewide public policy. While many of the vessels stored on the water at anchor receive some level of regular attention by their owner(s) or a responsible party, there are particular concerns over those that are left unattended for long periods. Those concerns typically revolve around the likelihood that these vessels will become derelict in the future, which usually results in costs to the State, local governments, and other organizations for removal and clean-up. In some cases, these vessels are not adequately secured, which results in them dragging anchor or breaking free and increasing risk to other vessels and/or maritime property and infrastructure in the area.

Several of the participating local governments attempted to create tools within their pilot ordinances aimed at resolving issues related to stored boats. Two – Monroe County/cities of Marathon and Key West and St. Petersburg – enacted prohibitions against allowing a vessel to remain on the water in their jurisdiction if there were conditions that indicate an inability to effectively be navigated. This is of particular importance in the event of an impending storm. The City of St. Augustine required vessels stored on their jurisdictional waters to demonstrate operability twice annually by navigating to the city marina to receive a decal, which served to verify operability. Martin County/City of Stuart also required

demonstration of operability for vessels remaining in the program area for more than ten consecutive days.

Although a requirement to navigate to a designated point to receive a decal worked well for the City of St. Augustine, a similar requirement established by statewide law would be very challenging to implement. Therefore, the FWC is not recommending a statewide policy requiring such. Instead, several of the recommendations above, if implemented together and used collectively, would serve as a basis for what FWC believes to be reasonable and effective remedies to many of the problems associated with long-term storage of vessels on State waters. Those specific recommendations include:

- ***Further protect safety of mooring field users***
- ***Create an anchoring limited area***
- ***Increased penalty for repeat violations of expired vessel registration***
- ***Additional condition for vessel at risk of becoming derelict***
- ***Prohibit a vessel or floating structure from being moored to unauthorized moorings***

In the event that some or all of these statewide recommendations are implemented, the issues associated with the long-term storage of vessels on waters of the State should continue to be monitored and assessed to determine if the policies are sufficient.

- ***Inoperable vessels being used as residences*** – Vessels being used as residences and anchored or unlawfully moored on waters of the State were identified as areas of concern for several of the participating local governments. This is of particular concern when those vessels are inoperable, and when it is unclear if those vessels fall within the statutory definition for “live-aboard vessel,” as defined in Section 327.02, F.S., *Definitions*. That definition states in part:

“Live-aboard vessel” means:

- (a) A vessel used solely as a residence and not for navigation;
- (b) A vessel represented as a place of business of a professional or other commercial enterprise; or
- (c) A vessel for which a declaration of domicile has been filed pursuant to Section 222.17.

A commercial fishing boat is expressly excluded from the term “live-aboard vessel.”

There is no recommendation to specifically address solutions to the issues related to vessels that are stored on State waters and used as residences. Some of those vessels, particularly those that are inoperable and incapable of navigation, may be better addressed through the statutory authority already granted to local governments in Section 327.60(2)(f), F.S. *Local regulations; limitations*, which provides local governments the authority to regulate live-aboard vessels outside the marked boundaries of permitted mooring fields.

It is clear there are also vessels stored on State waters that are used as residences and are used for and/or are capable of navigation. Such vessels are regulated at the State level, and there is no recommendation to alter this policy.

- ***Marine sanitation issues*** – Two of the participating local governments – Martin County/City of Stuart and Monroe County/cities of Marathon and Key West – attempted to enact further protections of the marine environment by regulating marine sanitation. This most frequently came in the form of requirements to show proof of pump-out for vessels with sleeping quarters onboard.

Florida’s requirements related to marine sanitation are found in Section 327.53, F.S., *Marine sanitation*. This law requires marine sanitation devices on vessels 26-feet or longer with berthing facilities, requires holding tanks on certain vessels and floating structures, prohibits discharge of raw sewage, and establishes penalties.

Many marinas on Florida’s waterways offer pump-out services, but there are considerable expanses of State waters where these services are limited. While local efforts to require proof of pump-out have demonstrated varying levels of success throughout the pilot program, attempting to enact such a requirement on a statewide basis would be costly and extremely difficult to implement.

Section 327.60, F.S., *Local regulations; limitations*, currently prohibits local governments from enacting or enforcing regulations, “Relating to the design, manufacture, installation or use of any marine sanitation device on any vessel.” Later in this section, it is stated that “Nothing in this section shall be construed to prohibit local governmental authorities from the enactment or enforcement of regulations which prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions...”

This language contributes to the confusion as to whether or not local governments are authorized to regulate the use of pump-out of marine sanitation devices on live-aboard vessels within their jurisdictions. Because many of the vessels being stored on waters of the State and used as residences are incapable of being used for navigation and are, in fact, “live-aboard vessels” per Section 327.02, F.S. *Definitions*, there would be a benefit to clarifying that local governments are authorized to require these vessels to have their sewage regularly pumped-out.

Even though these recommendations may not present comprehensive solutions to issues related to marine sanitation, this topic warrants further consideration in the future, perhaps resulting in enhancements to Florida’s marine sanitation law and/or further expansion of pump-out services around the State.

- ***Setbacks from shorelines and private docks*** – Much discussion has occurred throughout the timeframe of the pilot program regarding the establishment of setbacks, within which anchoring is limited, from private property along the shoreline of waters of the State. Current law has no such restrictions on State waters. Local governments get complaints from homeowners who dislike vessels anchored in close proximity to their residences, along with the potential property damage resulting from vessels breaking loose during weather events. These are

complex issues for local governments that want to regulate anchoring within their jurisdiction, but have no legal means to do so outside of properly permitted mooring fields. Boaters, on the other hand, want to continue to enjoy State waters, which are kept in the public trust, and not be confused and potentially not in compliance, with a plethora of different regulations if local governments are given the authority to regulate anchoring. They want to continue to anchor where it may be convenient and inexpensive for them with no restrictions on the length of time to anchor. With Florida having the most registered boats in the nation and millions of boating visitors, these differing views have grown through the years.

Two of the pilot communities – the cities of Sarasota and St. Augustine – authorized a setback from either the shoreline or private docks, but these efforts yielded no clear resolution.

While there has been much discussion about this issue, there is still no consensus to establishing a statewide setback that would be practical in every setting in Florida. There also has been no consensus to giving local governments the authority to establish such a setback on State waters within their jurisdiction.