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The Honorable Edward Ciampi, Chairman
Board of County Commissioners, Martin County
2401 S.E. Monterey Road
Stuart, FL 34996

March 16, 2012

Dear Chairman Ciampi:

BoatU.S. is the largest organization of recreational boat owners in the United States, with more than 500,000 members nationwide and over 100,000 members in Florida. As you may recall, we wrote you on March 6th regarding a draft Martin County/City of Stuart ordinance being developed under the Florida Pilot Mooring and Anchoring program. We understand that the county is asking the Florida Fish & Wildlife Commission to approve this draft ordinance at its May meeting. We strongly urge you to withdraw this request from the FWC agenda and ask that county/city engage with stakeholders during this time to develop a workable ordinance.

As part of the development of the Mooring and Anchoring Pilot program, Martin Count/City of Stuart participated in a public meeting this past week north of Tallahassee. We are concerned that your representatives at the meeting were not in a position to accept any of our previously suggested changes. Thus, we continue to find significant problems with the proposed ordinance. Here are specific comments regarding the draft ordinance:

1. The definition of *maritime infrastructure* is overly broad and raises concern. The draft definition states “...*includes but shall not be limited to any floating structure, houseboat, dolphin pole, dock, pier, wharf, seawall or bulkhead.*” Generally, boaters think of “maritime infrastructure” as those physical objects encountered in routine navigation such as marinas, docks, piers, and boat ramps. Floating structures and houseboats are not considered part of the maritime infrastructure. The result of including them in the definition will lead to confusion on the part of visiting boaters as to where they can anchor. We suggest limiting the definition to those item clearly recognized as such by boaters along the lines used in CFR Title 33, Sub-Part 67.01-5.
2. We are also concerned that the definition of *maritime infrastructure* could be interpreted to include mooring buoys and other floating markers such as those for slow speed zones. Given the large area of the no anchoring zones proposed, such an interpretation would be unworkable. These objects should specifically be excluded in the definition.

3. The definition of *occupied* is ill-conceived and should be revised. Placing a subjective time frame on the length of time a person is aboard and the nature of their activities will not further the goals of the pilot program. Enforcement would be impossible.
4. The proposed prohibition of anchoring within 300 feet of any “*maritime infrastructure*” is unreasonable. Based on the very broad definition noted above such a large buffer zone could amount to a de facto anchoring ban in many areas. Creating such anchoring bans is counter to both the goals and spirit of the pilot program. Should a buffer zone be needed around some marine infrastructure it should only be of a size that provides for safe passage by other boats, 75 feet being reasonable.
5. We understand there is a desire to regulate the area behind the City of Stuart mooring field which led to the creation of the 300 foot restriction. We suggest that ordinance language be developed to address this specific concern rather than taking a “broad brush” approach.
6. Any large anchoring bans will also have an impact on day users of the City/County waters. Many anglers using boats will anchor as part of their normal fishing activity. The ordinance should allow for typical recreational uses that are part of many everyday boating activities.
7. The 300 foot ban around any permitted mooring fields is excessive. These buffer zones should only provide for safety of navigation. We recommend 75 feet instead.
8. The provision specifically targeting the Indian River area which states “...*in order to protect the marine environment, anchoring and mooring is prohibited within 1,000 foot of the shoreline...*” is unacceptable. There can be no reasonable justification under any of the pilot program goals to put in place such an extensive anchoring ban. It is our understanding that the county has not secured all the necessary permits to construct the mooring field. Thus, the regulation of any anchoring in this area, while technically permissible, would be beyond the spirit and intent of the pilot project. We are not sure Martin County could qualify under the requirement to have a “properly permitted mooring field” if it has not yet received its Army Corps of Engineers permit as was represented by Martin county staff. This portion of the ordinance should be deleted.
9. We found this draft requirement particularly troubling: “*all vessels shall demonstrate compliance with operability and safety requirements by: 1) once every six months navigating, under their own power, to a designated location; and 2) successfully completing the US Coast Guard Auxiliary Vessel Safety Check annually.*” This could be read to mean that all boats, even those stopping for a

- night or two in the pilot areas, would need to check-in at a designated location. This clearly is not the intent, so any vessel check required by the ordinance should be specific to those boats that are in the area for more than six months.
10. We also question the use of the voluntary U.S. Coast Guard Auxiliary Vessel Safety Check program for enforcement purposes. We believe you cannot and should not commit a volunteer organization to enforcement within your statute without securing a written commitment/MOU from their national organization leadership as well as USCG Headquarters approval. Furthermore, federal law already requires boats to carry the required equipment (i.e. lifejackets, flares, and fire extinguisher) that make up the majority of the items reviewed during a VSC. This part of the ordinance should be substantially revised.
 11. We further note that the definition of a “designated location” is not supplied. How will the boater know where the location is or how to communicate with it?
 12. The proposed requirement for occupied vessels to either sign up for the Martin County pump-out boat service or show proof of a pump-out in the previous ten days is needless and beyond current federal or state law. Any vessel with an enclosed living space and berthing facilities is already required to have a USCG approved marine sanitation device (MSD) to comply with the Clean Water Act (CWA) and Florida Statute 327.53. Both the Federal CWA and state statute specifically prohibits the discharge of untreated sewage into the waters of the state.
 13. The vessel pump-out requirement could also have the effect of creating a no-discharge zone or NDZ within the pilot program waters. The regulation of vessel discharges and designation of NDZs by state or local political subdivision is specifically prohibited by the Clean Water Act.¹ The ordinance should be revised to align with this federal statute.
 14. We found the sections of the draft relating to enforcement to be vague and difficult for boaters to understand. The provision that enforcement not be undertaken until “...a reasonable effort shall be made....and give the owner reasonable time to achieve compliance” needs to be revised. A “reasonable effort” and a “reasonable time” can be widely interpreted depending on who is the target of enforcement. These terms should be defined with time frames. Any penalties must be spelled out in the ordinance itself rather than buried in references that would be difficult for citizens to access.

¹ 33 U.S.C. 1322 (f)

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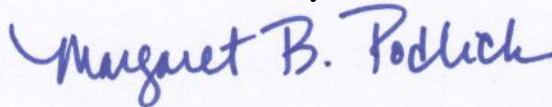
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15. The provision that designates violations of the ordinance as misdemeanors is of grave concern. *Boaters should not be subject to criminal prosecution for what amounts to a parking citation.*
16. The current proposal does not include any flexibility for bad weather or other mitigating circumstance. A specific "Safe Harbor" provision should be included which allows for the temporary anchorage of a vessel due to mechanical event or threat of severe weather. A boater should not be forced between ensuring their personal safety and complying with an arbitrary local ordinance.

Given the significant concerns we have raised, we request that Martin County/City of Stuart formally withdraw its proposed ordinance from consideration by the FWC at the Commission's May meeting.

We stand ready to work with the County/City to develop a balanced mooring and anchoring ordinance that addresses the concerns of your citizens while preserving the freedom that makes so many embrace recreational boating.

Sincerely,



Margaret B. Podlich
President

Cc: The Honorable James Christie
Mayor, City of Stuart

Ms. Krista Storey
Martin County

Mr. Paul Nicoletti
City of Stuart

Mr. Mike Durham
City of Stuart

Major Jack Dougherty
Florida Fish and Wildlife Commission

Captain Tom Shipp
Florida Fish and Wildlife Commission