

FLORIDA KEYS NATIONAL MARINE SANCTUARY ADVISORY COUNCIL

**Hawks Cay Resort Conference Center  
Duck Key, FL 33050**

**October 21, 2014**

**FINAL MINUTES**

The Florida Keys National Marine Sanctuary Advisory Council met on Tuesday, October 21, 2014 in Duck Key, Florida. Public Categories and government agencies were present as indicated:

**Council Members**

Conservation and Environment: Ken Nedimyer (Chair)  
Conservation and Environment: Chris Bergh (Vice Chair)  
Boating Industry: Bruce Popham  
Citizen at Large – Lower Keys: David Hawtof  
Citizen at Large – Middle Keys: David Vanden Bosch  
Citizen at Large – Upper Keys: David Makepeace  
Diving – Lower Keys: Don Kincaid  
Diving – Upper Keys: Rob Mitchell  
Education and Outreach: Martin Moe  
Elected County Official: George R. Neugent (absent)  
Fishing – Charter Fishing Flats Guide: Richard Grathwohl (absent)  
Fishing – Charter Sports Fishing: Steven Leopold  
Fishing – Commercial – Marine/Tropical: Ben Daughtry  
Fishing – Commercial – Shell/Scale: Jeff Cramer  
Fishing – Recreational: Jack Curlett  
Research and Monitoring: David Vaughan  
South Florida Ecosystem Restoration: Jerry Lorenz (absent)  
Submerged Cultural Resources: Corey Malcom  
Tourism – Lower Keys: Clinton Barras  
Tourism – Upper Keys: Andy Newman

**Council alternates (present)**

Boating Industry: Kenneth Reda  
Conservation and Environment: Jessica Pulfer  
Citizen at Large – Middle Keys: George Garrett  
Citizen at Large – Upper Keys: Suzy Roebling  
Diving – Lower Keys: Bob Smith  
Diving – Upper Keys: Elena Rodriguez  
Fishing – Commercial – Shell/Scale: Justin Bruland  
Research and Monitoring: Shelly Krueger  
South Florida Ecosystem Restoration: Pete Frezza  
Tourism – Lower Keys: Joe Weatherby  
Tourism – Upper Keys: Eric Handte

**Agency Representatives**

Florida Department of Environmental Protection: Joanna Walczak  
FWC Division of Law Enforcement: Capt. David Dipre  
FWC Fish and Wildlife Research Institute: John Hunt (absent)  
NOAA National Marine Fisheries Service: Heather Blough  
NOAA Office of General Counsel: Karen Raine (absent)  
NOAA Office of Law Enforcement: Kenneth Blackburn/ John O'Malley  
Dry Tortugas and Everglades National Park: Tracy Ziegler (absent)  
U.S. Coast Guard: Phil Goodman (Auxiliary)  
U.S. EPA: Pat Bradley (absent)  
U.S. Fish and Wildlife Service, National Wildlife Refuges Florida Keys: Nancy Finley  
U.S Navy: Ed Barham

## **I. CALL TO ORDER, ROLL CALL, AND MEETING MINUTES APPROVAL OF 8/19/14 DRAFT MEETING NOTES**

Chairperson Nedimyer called the meeting to order after the Pledge of Allegiance.

### **MOTION (Passed)**

A motion was made by Bruce Popham to approve the minutes from August 19, 2014. It was seconded by Chris Bergh. The minutes were approved with no changes or objections.

A motion was made by David Makepeace to approve the meeting agenda. It was seconded by Jack Curlett. There were no changes to the agenda and the motion passed.

### **Chairperson's Comments**

Chairperson Nedimyer announced that a public comment period for items on the agenda will be held just after the morning break before any actions are taken by the council. Comments for items not on the agenda will be heard during the main public comment period scheduled for after lunch.

Chairperson Nedimyer explained that the council will address four items on the work plan described in the document available today in hard copy and online. These items are: (1) permit procedures and adaptive management, (2) artificial habitats, (3) water quality and (4) fishery management and coordination. The link for this document, *Sanctuary Advisory Council Regulatory and Zoning Alternatives Development Work-Plan, Actions for Review and Recommendation*, was sent to the council in advance of this meeting, <http://floridakeys.noaa.gov/sac/othermaterials/20141021sacworkplanactions.pdf>.

Chairperson Nedimyer reminded everyone that the meeting will be taped and made available online through the efforts of Clinton Barras, FloridaKeys.com. To view the meeting, visit <http://keysnews.com/sanctuaryadvisorycouncil>.

## **II. MARINE ZONING AND REGULATORY REVIEW: ADVISORY COUNCIL WORK- PLAN ITEM ANALYSIS AND REVIEW PROCESS**

Beth Dieveney, FKNMS Deputy Superintendent for Science and Policy, gave a presentation, Marine Zoning and Regulatory Review, Update on Progress and Next Steps. Ms. Dieveney reviewed the

timeline for the steps taken in the marine zoning and regulatory review thus far. At the two most recent council meetings, the council passed recommendations to accept the recommendations from three working groups: Coral Reef Ecosystem Restoration, Shallow Water Wildlife and Habitat Protection and Ecosystem Protection: Ecological Reserves, Preservation Areas and Wildlife Protection. After all recommendations have been made by the council, the FKNMS is charged with developing a draft Environmental Impact Statement (DEIS) that includes evaluating those recommendations. The DEIS document is expected to be completed and provided for public comment in fall 2015.

### **III. MARINE ZONING AND REGULATORY REVIEW: ADVISORY COUNCIL WORK-PLAN ISSUE ANALYSIS & RECOMMENDATIONS**

Ms. Dieveney and Ms. Joanne Delaney, FKNMS permit coordinator, gave a joint presentation on the marine zoning and regulatory review work-plan issues and recommendations.

Ms. Dieveney reviewed the work-plan items the council has already taken action on. These are: study areas and boundary modifications; personal watercraft tours/fishing conflicts; vessel/boating licensing and education/ alternative funding/user fee; boater education; law enforcement and the recommendations from the Coral Reef Ecosystem Restoration, Shallow Water Wildlife and Habitat Protection, and Ecosystem Protection working groups. Ms. Dieveney and Ms. Delaney described analysis and options related to the four outstanding work-plan items: permitting procedures/adaptive management, artificial habitats, water quality and fishery management and coordination.

#### **Discussion action items** (council members)

Chairperson Nedimyer stated that he sent out four sets of “whereas” statements in advance of the meeting for consideration as part of this discussion. (These statements appear in the final motions, which may be viewed at <http://floridakeys.noaa.gov/sac/meetings.html?s=sac>.)

Vice Chair Chris Bergh made a motion that the council examine the recommendations (potential alternatives) in conjunction with the “whereas” statements one at a time. Modifications can be made based on the discussion and public comment. David Makepeace seconded the motion provided that the discussion begins with permitting procedures and that comments be taken on each item sequentially. This provision was accepted. It was agreed to move sequentially through the items and discuss each one individually.

The following comments were made on each item listed below. Chairperson Nedimyer led the discussion on each of the following items for consideration.

#### **Permit Procedures**

##### **PP-1 Create a new discharge exemption to allow dispersal of cremated human remains.**

Chairperson Nedimyer commented that this exemption is a very good idea since people who are grieving don’t need the extra work of obtaining a permit at that time. No discussion took place amongst the members on this item and no one opposed this item.

##### **PP-2 Implement a prohibition on deserting or abandoning vessels and leaving harmful matter in vessels.**

It was noted that it is important to know the definition of an abandoned vessel. Ms. Delaney clarified that the Office of National Marine Sanctuaries has a definition of abandonment and that staff will

make sure that this alternative will be consistent with the ONMS definition and existing state regulations.

The question as to whether or not PP-2 is one or two separate possible regulations—abandoning vessels and leaving harmful matter – was discussed. Superintendent Morton explained that in other sanctuaries, deserting a vessel and leaving harmful matter in a vessel are two different prohibitions and two separate issues. Ms. Delaney explained the staff are open to input as to how this could be analyzed and presented in the draft EIS. The actual writing of the regulation with more specifics won't take place until after the draft EIS. Input is welcome as to whether this should be analyzed as one or two regulations.

Captain Dipre suggested leaving the wording as one regulation, but have it read “and/or” instead of “and”. He explained that it is probably good to leave those things together because there may be a vessel that is on the edge of being derelict and is filled with harmful things as well. Having the either/or option will make the regulation easier to implement for law enforcement. Ms. Dieveney made the suggested “and/or” modification in the text for PP-2.

### **PP-3 Implement a prohibition on abandoning fishing gear.**

Jeff Cramer requested more detail of what types of fishing gear are included. The State of Florida has rules that apply to commercial fishing gear and all commercial gear is clearly marked. He wants to know if this rule would apply to recreational fishermen. With such a broad statement, the only thing he can see being targeted by this is the stone crab and lobster trap industry and they already have procedures in place regarding gear removal.

Superintendent Morton explained that this recommendation is based on past experience when the sanctuary has had a difficult time removing a derelict vessel that sank with a large amount of fishing gear on it. The sanctuary has also been hindered in its ability to remove abandoned gear that continues to fish and has had to undergo a long process to gain permission because of the rules that govern commercial gear. This proposed rule addresses gear that is left behind. Joanne Delaney explained that the sanctuary can currently take action on all gear or anything else that is abandoned under existing regulations that prohibit alteration of the seafloor and depositing or discharging material. The idea behind this change is to be explicit to make the regulation more enforceable. This suggested change originates from the terms of designation for the sanctuary and would codify this in the regulations. This action would be consistent with regulations in other sanctuaries, existing state rules and be clearly stated so that general counsel and enforcement officers can more easily make a case if abandonment occurs.

Concerns were expressed regarding the issue of abandonment. It was noted that sometimes buoys are cut off of traps by other boats, etc. and they are not abandoned. Joanne explained that they would make sure that the term abandonment is clearly defined in any the draft EIS analysis.

A brief discussion took place about beach and underwater cleanups that might take place in the sanctuary. Joanne explained that there is an existing process under state rules that requires a permit from FWC for abandoned fishing gear removal in state waters. For reef cleanups in federal waters, the sanctuary reviews the procedure and works with the group conducting the cleanup. The sanctuary works with its partners to make sure all rules that apply are followed and to facilitate organized cleanups. Some organized cleanups do require a permit and they are issued routinely. The idea behind this change would be to address the broader issue of abandoned gear, not the individual

monofilament line. Traps with tags are the items that have the special protections (and can't just be retrieved by anyone).

Suzy Roebing wondered if this proposed change would make things different or a little more regulated for the general public who leave their monofilament and baited hooks behind in the mangrove trees. Joanne noted that this was a good point and that level of detail will be part of analysis of alternatives in the draft EIS analysis.

Jeff Cramer added that he and most fishermen don't have a problem if a boat filled with gear sinks and needs to be removed from the seabed and or with organized cleanups. The reason the State of Florida doesn't let just anyone go out and remove old traps after storms is because they don't want a "free for all", especially if there is a trap that had its buoy cut off and accidentally left out there. People would take advantage and steal from the traps.

Andy Newman mentioned that a grouper or other fish that is hooked could break off and leave behind a broken line with a leader. He knows that this is getting into the details and is something that has to be vetted. Justin Bruland added that a distinction needs to be made between a cut-off trap and one that is abandoned. As a fisherman, every year his traps are dragged and have their buoys cut off by other vessels and he usually finds them. They are not abandoned and he wants to make that distinction. Chairperson Nedimyer agreed that there is a big difference between abandoned gear and trap that has its buoy cut off and that the commercial industry does a pretty good job of keeping track of their gear with FWC.

**PP-4 Clarify the discharge prohibition to address fish feeding by divers, by vessels for hire, and in general except during fishing.**

Chairperson Nedimyer pointed out that this issue will need to be discussed in great detail at a later time. Pete Frezza agrees with Ken, but pointed out that land-based fish feeding activities was not specifically mentioned in PP-4 and requested that it be added. Joanne agreed that this topic does fit here and added that the idea behind this statement was to clarify what constitutes fish feeding and to evaluate the entire range of fish feeding activities. She explained that the State of Florida has a fish feeding rule that applies only to divers. The sanctuary has a regulation in place that prohibits discharge and deposit, but not one that specifically addresses and defines fish feeding. In regards to a fish feeding/biting incident that took place in the sanctuary in Key West, the sanctuary went on record by sending a letter to the boat operator stating that the discharge of anything from the boat (not for the purposes of fishing) was prohibited. Andy Newman asked that the language be added to the rule be made to include land-based fish feeding in the recommendation so that people would know that land-based activities were being evaluated, too. Joe Weatherby agrees with Andy on that point would like to discuss this topic further.

Note: "land-based activities" was added to PP-4.

**PP-5 Implement a prohibition on large boats using mooring buoys not specifically marked "large vessel."**

Joe Weatherby stated that he works on the water in large boats and understands about the expense in the mooring situation and about not wanting large vessels to use moorings that are not designed for them. He has concerns because the ecosystem protection working group has discussed banning anchoring when moorings are not available. If large vessels can't use the moorings and are not allowed to anchor, then that is not a form of resource management he agrees with. He would rather have it say something like, "when large vessel moorings are not available, etc." Weather can also be

a limiting factor to consider. He thinks that limiting these options administratively is not a good approach. This kind of prohibition is a problem for business and in bad weather.

Chairperson Nedimyer clarified that the standard mooring buoy has a limit to the size of the vessel it can handle. Putting large vessels on them just causes more work for everyone. These kinds of details can be addressed in the draft EIS where options can be presented.

**PP-6 Update definitions and terminology to be consistent with state laws and Office of National Marine Sanctuary regulations.**

Chairperson Nedimyer commented that this involves administrative details that he doesn't think most people want or need to comment on. No discussion took place on this item.

**PP-7 Modify requirements for Tortugas North Ecological Reserves Access Permits to allow requests for permits more than thirty days prior to any given trip and allow the permit to be valid for longer than two weeks.**

Chairperson Nedimyer stated that he thinks that making it easier to get access permits accommodates people better, especially when plans change due to weather or other reasons. Joanne explained that the current restrictions in place for getting a permit to enter Tortugas North were put in place to prevent an overuse of the area initially. Since then, the sanctuary has realized that there is not that much demand for access and this rule is not really needed. Chairperson Nedimyer asked for any more comment on the permitting items and there were none.

**Adaptive Management**

**AM-1 Design and implement an adaptive management framework to complement sanctuary regulations and strengthen the ability to more rapidly and flexibly respond to threats impacting sanctuary resources.**

David Makepeace stated that there are overlapping and complimentary jurisdictions on these issues and he wonders if a statement should be included to indicate that where jurisdictions overlap in the permitting process, coordination with other agencies should take place. That would help ensure that everyone buys into the adaptive management approach.

**AM-2 Consider the following issues as triggers/criteria to drive adaptive management: restoration zones, exotic/invasive species, climate change impacts and new or intensified uses.**

Chairperson Nedimyer stated that the "restoration zones" came out of the coral restoration working group. The idea is that when an area is being restored, it might need to be closed for a certain period of time and then reopened later. If an exotic species arises and some process needs to be put in place, adaptive management will allow that to happen without major management plan or regulatory changes and effort. He added that it is important to be able to respond to species specific events and to climate change impacts as it takes place over the next 15-20 years. Since the original management plan went into place, the sanctuary has seen a lot of changes. Adaptive management will also allow the sanctuary to respond to new and intensified uses that could not be addressed because the original plan was not flexible enough.

Vice Chair Bergh mentioned that the Shallow Water Wildlife and Habitat Protection working group identified the topic of changing wildlife populations, specifically nesting/roosting patterns as something to include in an adaptive management framework. He reminded the council that Nancy Finley, National Wildlife Refuge Complex Manager, talked about this topic at the last meeting in terms of refuge management.

Note: “changing wildlife use patterns” was added to the adaptive management list in AM-2.

Bob Smith noted that all of the bullets in the adaptive management trigger list, except the first one, seem to be straightforward. He is not sure what event would trigger a “restoration zone” response. Vice Chair Chris Bergh stated that in the coral ecosystem restoration working group they discussed the possibility of having restoration zones that were closed for a period of time, except to the restoration practitioners. Once restoration was complete, the area would open up again. This does not mean a closure would take place for all restoration zones.

Ben Daughtry stated that obviously everyone has seen cold-water events that have affected fish and this summer warm-water events that have affected corals. Joanne mentioned warm water and bleaching. He wants to know what the sanctuary would do in instances, for example, of warm water coral bleaching event. He thinks there needs to be parameters around these items because if it is left wide open, it could be that the EIS will call for closure of use of the reefs if massive coral bleaching takes place.

Jeff Cramer wants to know whether adaptive management triggers are species specific. Because of the marine zone review and the big marine zones that were added at the last meeting, he has lost a little bit of faith in the SAC. He would hate to see someone on the SAC say that lobsters got hammered in this last hurricane, so let’s shut down lobster harvesting for 6 months and then extend that to a year. He doesn’t think the SAC should make that decision. Instead, fisheries issues should be decided by FWC or National Marine Fisheries Service. He is uncomfortable with the fact that these adaptive management triggers apply to any and all species and would like to see things clearly defined.

Chairperson Nedimyer noted that in 2010 there were massive die-offs of target fish due to cold water. To his knowledge, actions weren’t taken, but the fish came back to some degree on their own. Someone could have a knee jerk reaction and that would be an extreme. Jeff added that as long as he has been on the SAC, it has always stayed out of fisheries management and he sees this species specific item as fisheries management.

Martin Moe noted that these are all things that would stimulate adaptive management, but there isn’t anything here that says the types of regulations or developments that would be included in adaptive management procedures. In other words, what would adaptive management consist of under some of these things that might occur? Vice Chair Bergh stated that there may be a need for more “meat on the bones” here to describe what species, what management is triggered by which events, etc. He was also thinking about bird nesting and how some of the Wildlife Management Areas aren’t needed any more because the areas aren’t being used by birds anymore. These areas could be opened up and the new areas now being used for nesting may need to be closed during certain times of the year. He does think that specificity is needed and fisheries managers might have a huge say in the matter, if anything relates to fish species.

Chairperson Nedimyer stated that the SAC has and should make recommendations in the realm of fisheries to the superintendent. This has occurred regarding ballyhoo, sponges and other topics. The sanctuary is not in the position to regulate fisheries, but can certainly have a voice making recommendations to the councils and State of Florida. The changes need to originate from somewhere. He doesn’t think the sanctuary should be making unilateral fisheries decisions and they

are not asking to do so. Jeff has no problem making recommendations to the NMFS or the state on specific species and how they feel they should be managed, but when the council/sanctuary actually has the power to do management itself, he has a problem with it.

Chairperson Nedimyer added that the details regarding restoration zones have to be fleshed out. The intent of the working group was not to have this broad closure power. It was only to close an area that was being restored. Right now, restoration areas are completely open to everyone. From his experience, closing these areas for a while would be helpful.

David Makepeace noted that in regards to the fisheries management issue, people who are concerned should pay close attention to the language in the overlapping agency jurisdiction portion of the draft EIS. If the language does not adequately address fisheries species, then it's time to make the points about lead agencies and fisheries matters.

**AM-3 Update the emergency regulations to allow a temporary regulation to be in effect for up to six months, with one six month extension.**

Chairperson Nedimyer noted that this emergency regulation has been used to close areas in two instances. He thinks that having the option to close an area for up to six months could be helpful. Joanne noted one instance occurred when they found large ships anchoring on Tortugas bank and causing massive coral destruction. A 60 day ban on anchoring and then a 60 day extension was implemented in that case. Within that time frame, although it was almost impossible, they were able to get in a permanent regulation. Getting this regulation through in this short time frame was tough then and would be nearly impossible in this current regulatory climate. The second time a closure was put in place at White Banks because of a white band disease outbreak on *Acroporid corals*. This was done to prevent divers and snorkelers from impacting a stressed reef system. That 120 day time frame was just long enough for the coral to recover somewhat. She added that the reality is that it is impossible to get a final rule in place in that time frame, if a final or changed regulation is deemed necessary.

**Artificial Habitats**

**AH-2 (originally AH-1) Create a sub-committee to serve as a liaison between the Sanctuary Advisory Council and the research community to identify targeted research needs and funding mechanisms to appropriately assess the benefits and impacts of artificial reefs.**

Chairperson Nedimyer noted that Vice Chair Bergh pointed out the difference between a working group and a sub-committee, the latter of which is comprised of only SAC members. Ken thinks that this group should probably be a working group in order to be able to have members of the public and outside individuals that are knowledgeable on this subject. He would like to see meetings begin and a timeline developed so that the ideas can be evaluated.

Note: Ms. Dieveney changed "sub-committee" to "working group" in AH-2.

Joe Weatherby appreciates that this topic will be addressed through a working group. He doesn't think that the group has a clear definition of an artificial habitat and this term needs clarification. A case can be made that a beer can is just as much of an artificial habitat as reef balls or something else.

Note: Ms. Dieveney added the following as **AH-1 Clarify the definition of artificial habitat/reef.**

Joe wants to have some kind of mechanism to have input regarding how those experts and scientists

are selected to speak to the working group/SAC and wants to know if the working group or SAC can choose from the many experts. He would like to know who is selected as an expert and why. Depending on a person's point of view, different people are experts. Chairperson Nedimyer stated that recommending speakers that are not all from the "same camp" would be a good first charge for the working group. Joe explained that he is concerned with expert witnesses.

Superintendent Morton asked for clarification regarding whether Joe is asking the advisory council to identify members of the working group and/or if the members of the working group are going to identify experts to speak to the group. Superintendent Morton noted that the process can involve a little bit of both. Last time, when working groups were set up, the members that represented the different sectors and the working group objectives were brought before the council. He recommends that the council develop a clear charge for the working group.

Vice Chair Bergh added that a related topic is the time frame for this group. He is not sure if there is enough time for these recommendations to reach the SAC and be advanced as part of the EIS or if that will have to be a separate process. This makes a great deal of difference in the time frame.

Superintendent Morton stated that today is the wrap-up of the advisory council's input into the range of alternatives for the draft EIS. The working group can operate outside of the EIS process and there may be a separate line of recommendations that come out of it, but right now, there are permit procedures in place for artificial habitats. People can apply for permits and the sanctuary reviews the range of artificial habitats on a case by case basis and that is part of defining the agency roles. This is a subject that the council had an interest in and wanted to learn more about.

Joe Weatherby would like to talk about changing the permit procedures. As a person who has been through the permitting process, he sees the working group as defining that process by codifying timelines and roles and responsibilities to improve the process. He would like the experience to be more responsive than his last experience. He recognizes that they were breaking new ice, but still thinks that the permits and procedures in place are not well understood. He doesn't understand them well. He would like the working group to not just define an artificial reef, but he wants to know how long it takes to get a permit and where it can go and who can place it. Certainly, no one wants to see tires used or anything like that. He also wants to know who evaluates it and what the recourse is if the permit is denied or takes too long. If people are going to live with these regulations for the next 20 years, then they need to understand them better. He recognizes that there is pressure on timelines, but this topic has been discussed multiple times in the past and he would really like this discussion to be included in the draft EIS.

Andy Newman agrees with Joe. There is a need for meaningful discussion on the topic of artificial habitats. He is not interested in things like tires and things like that, but he does believe that there have been projects with meaningful historical, cultural and environmental potential and projects like these should be considered. In the past, he has not been involved in the logistics on these projects, but has been involved in the public relations operations of artificial/ship reefs since the mid-1980s. They are tremendously valuable for the destination from a tourism standpoint. Even something that goes awry such as the Spiegel Grove has tremendous public relations benefits. Thankfully, the Spiegel Grove worked out thanks to Hurricane Dennis. This topic needs to be discussed and cannot be pushed aside and it is important of the resource. NOAA even has a historic Shipwreck Trail.

Chairperson Nedimyer recommends that a working group be formed and that they meet quickly and

plan to make recommendations to the council at the February meeting. He agrees that a lot of people want to look at this again under today's circumstances and thinks a work group should be formed to do so.

Superintendent Morton wants clarification regarding what the working group will be examining, what the working group charge will be. There are a range of possible topics. For example, the working group could look at permit procedures, providing education to the public on how permits work, lining up the different agencies that are involved in permitting artificial habitats, and/or the types of fish aggregation devices that are being used legally or illegally in the sanctuary. There is a range of topics that the sanctuary can provide information on. Without knowing more about what the working group is going to tackle, the sanctuary will not hold up the entire management plan review process. Chairperson Nedimyer stated that he wasn't suggesting that the sanctuary do that and if it has to be done outside of the draft EIS process, then that's okay. He does think a working group can be formed and they can revisit this topic later today.

Rob Mitchell noted that there are criteria in place right now so it is not as if there is no hope of putting out another artificial reef in the future.

**AH-3 (originally AH-2) Evaluate alternatives including establishing control site(s) on existing artificial reefs to facilitate research on the four investigations identified in the 2007 Management Plan.**

Chairperson Nedimyer added he thinks some suggestions related to AH-2 might come out of the work group.

Martin Moe thinks it would be very useful to define artificial habitats by their purpose--whether it is for fishing enhancement, tourist attraction, restoration purposes or for aquaculture. Then the permitting process could take into account the different purposes. Chairperson Nedimyer stated that this is a good point and would be something he would like to see as an outcome of the working group.

**Break**

**WQ-1 Implement regulation of gray-water discharges from cruise ships similar to other National Marine Sanctuaries.**

Chairperson Nedimyer explained that the next major item to discuss is water quality and of the 15 water quality topics that were identified, only one identified potential regulatory action. This regulation would prohibit gray-water discharges from cruise ships.

Martin Moe waited until this topic to mention that he is very interested in the problems with various chemicals that enter our water systems and are effective at low concentrations at affecting larvae development and successful settlement of invertebrates. He recently became aware of a problem that is nation-wide dealing with "crumb" rubber, which is made of ground up tires. These ground-up bits are used in playgrounds and athletic fields. One of the problems arising from this is that there are over 30 chemicals in tires, a lot of which are endocrine disruptors and are toxic in small quantities. Soccer players have been known to have their health affected. In thinking about the Keys, he wonders how much tire dust washes down into the nearshore waters during rains. As a result, what tire chemicals and other industrial chemicals are getting into nearshore waters and what are their impacts? It's easy to ignore, but it is important to do the research to find out these answers. Since

water quality is being considered, he wants to keep this topic on the “front burner” so to speak.

Chairperson Nedimyer thanked Martin for his comments. He asked if there were any other comments on the water quality motion and there were none.

### **Fisheries Management Coordination**

#### **(Update Coordination Agreement and Engage with Fishery Management Bodies)**

#### **FMC-1 As appropriate, provide recommendations to the fishery management bodies to increase coordination, consistency, and local input regarding fisheries in the Florida Keys.**

Chairperson Nedimyer stated that the sanctuary or SAC could provide such a recommendation. No comments from members were offered. Superintendent Morton confirmed that informing fisheries councils is something that they have been doing on an issue by issue basis.

#### **FMC-2 Update the 1997 Protocol for Cooperative Fisheries Management as needed to implement changes in FKNMS fishing regulations.**

Superintendent Morton explained that this protocol is an agreement that was put in place in 1997 when the original sanctuary regulations were implemented. Coordination needs to continue today between the Gulf and South Atlantic Fisheries Management councils, National marine Fisheries Service, Florida Fish and Wildlife Conservation Commission and sanctuary as to how fish regulations are identified, developed, and implemented. The document describes a process agreement that is followed to some extent by some agencies. Right now, it is the process that the sanctuary follows and is consistent with the National Marine Sanctuaries Act and Magnuson-Stevenson Fisheries Act in coordination with the State of Florida. The protocol is an agreement that was identified in the original SAC work plan to be updated as needed.

Jeff Cramer thinks that there are better bodies with more scientists, resources and knowledge than the SAC or sanctuary to handle fisheries issues. There are major stressors out there that could be addressed such as global warming, ocean acidification. He would like to see the group address those things and let the fisheries managers manage the fisheries. Chairperson Nedimyer added to the defense of the SAC, the council has done a good job dealing with certain fisheries issues such as the sponge issue and the result was local fishermen benefitted while still protecting the resources.

Vice Chair Bergh recalled that in the public scoping period the number one recommendation that the SAC members and everyone else heard concerned coordination on fisheries issues. These public scoping comments were compiled in the public scoping document. Similar comments were heard again by the ecosystem protection working group. These are things that fishermen were asking for—better coordination, consistency of regulations and more local input. The SAC is just serving that back out as something the stakeholders in the community asked for and he sees no harm in doing so.

Superintendent Morton noted that update of this Protocol was requested by FWC as the state agency identified in the Protocol no longer exists. At a minimum, the state agency referenced in the Protocol needs to be updated. Other items in the Protocol will be reviewed and may be updated if needed as part of this process.

### **Public Comment**

Julie Dick, Everglades Law Center for Last Stand

- Ms. Dick stated that a letter was sent to all council members requesting that they support a prohibition on the discharge of gray-water from vessels within sanctuary waters. U.S. EPA estimates that a one-week cruise ship with 3,000 passengers would generate one million gallons of gray-water. Gray-water includes water from the ship's galley, from laundry, showers and contains oil, grease, pesticides and food waste. They are also seeing recently a trend toward micro-beads of plastic in products and these are not filtered out by the filtration system and end up in the water. Several other sanctuaries have prohibitions on gray-water and it is appropriate for the Florida Keys to follow suit and implement a prohibition here. Cruise ships are a constant pressure on the water quality in the Keys. Sensitive marine resources are definitely impacted and this simple measure could make a difference. On behalf of Last stand, she requests that the SAC make that recommendation to the agency to prohibit gray-water discharges from cruise ships.

#### Richard Houde Key West Charter Boat Association

- Captain Houde introduced himself. He is a 30-year charter boat fisherman in Key West. He wants to make points specific to points made so far this morning. In regards to the adaptive management that has been mentioned, from his point of view he honestly thinks it sounds like a way of circumventing this process here. While a quick response is desired, the whole idea because the sanctuary/council is dealing with a big area and such important things, input is needed and time is needed to consider the options. So, any kind of adaptive management that is in place needs to have a very finite time. Something can't be implemented quickly without making sure it can be undone in a short amount of time without going through the entire process. Otherwise, the process is being circumvented.
- Captain Houde stated that earlier the idea of extending the emergency 60 day closure to 6 months was mentioned. If it was possible to put rules in place within 60-120 days in the two instances that occurred, then there is no reason to extend the emergency rule to 6 months with another 6 month extension. Obviously, it takes a lot of effort, but in the two instances the sanctuary was able to get the rules in place. There is no need to break it if it's not broken.

#### Richard Gomez, President of Key West Charter Boat Association

- Captain Gomez introduced himself and announced that the Charter Boat Association hired David Paul Horan to represent them at this meeting. He requested that some of the members' comment time and any time necessary be given to Mr. Horan. He needs about 8-10 minutes. The charter boat association spent a lot of money to get him here and he needs time to speak. The members also request that before everyone meets in rooms like this with three minute restraints that a representative from each fishing group—the charter for hire group, commercial fishing group and recreational fishing group--that are not members of the board be allowed to meet with your board to discuss any future plans for these sanctuary rules in the hope that we can work together to preserve our habitat and fishery without pitting them against each other and yourselves. This would give them a chance to negotiate an amicable arrangement for all fishing groups. For the people who thought it was funny that the association hired a lawyer, we feel it is quite necessary because we of the way we have been beaten down in the past and continue to be beaten down. He thanked everyone.

#### David Paul Horan, Representing Key West Charter Boat Association

- Mr. Horan noted that his comments were specific to the action item having to do with fisheries regulation. Sometimes, it is important to look back a little bit to see where one has come from in order to determine where one is going. One of the advantages of being at his

age is remembering going to Dante Fascell to ask him about what to do about the freighters hitting the reef because they are trying to stay out of the Gulfstream. He asked if there was anything that can be done to keep them from running into the reef since they were outside of the State of Florida waters. Dante Fascell said that he would get some legislation drafted and the drafted legislation came out as the Florida Keys National Marine Sanctuary. They asked for a fly swatter and got an atomic weapon and were really afraid of what was going to happen with the sanctuary got passed with the powers that were in the sanctuary regulations/plan. Then, they looked at the plan and saw that 65% was inside the state and the state should have some say over it and they do. The only problem is that the sanctuary is not playing like the state does have a say. They feared some things that they now see coming into place. Fishery regulation is one of those things. The sanctuary does not have fishery regulation. Fishery regulation is exclusively under the Magnuson Fishery Act and the Florida Marine Fisheries Commission has jurisdiction in state boundaries. Now, the sanctuary is catching on to the fact in the 1997-98 document some specific things were put forward as to the protocol that was supposed to be used for putting fishery regulations in place within the sanctuary. Protocols answered who was the primary agency and what procedures were agreed to. Now, people realize they have some problems because the document needs to be changed. In 1997-98, there were no marine zones in place and it couldn't be said that the sanctuary is just putting in zones, not really doing fishery regulation. But, fishery regulation is what is being done and when we are told that we can't fish large areas of the Florida Keys because it is zoned and the recreational and commercial fishermen can't go in there, then that is fishery regulation. Don't play like it is not. When the council looked at all these people and listened to their input, they saw fear, rage, and frustration. Mr. Horan recalled that when he was standing next to Billy Causey looking at the maps with the large closed areas, Billy remarked that this was embarrassing because those maps that showed the large closed areas were now in the public view. He added that Billy said this was really embarrassing for the staff because those zoning maps were not supposed to be rolled out for another two years. That tells you that the decision had been made and was to be implemented slowly to keep public opposition to a minimum.

- Mr. Horan noted that maybe that was the spark that ignited today's meeting. Plans were changed and now everyone faces marine zoning and it is going to hurt all of us—fishermen, divers and tourism. Virginia Panico, Chairman of the Federation of Chambers, which represents 2500 businesses that are saying not to close any more of the Florida Keys areas to commercial and recreational fishing. Closing will affect the economy and the consequences of this are not even being contemplated. Two questions emerge: how and why? How this will be done is fairly easy question and is a legal question. On page 6 in the handout is a document for protocol for fishery management. People are now waking up to the fact that they can't use this document because they have problems with it. That document was before marine zones were put in place and the Magnuson Act was put in place. Congress said this act applies to federal waters beyond state boundaries. Within state territorial boundaries, jurisdiction belongs to the Florida Marine Fisheries Commission. It was agreed on p. 109 that the Florida Marine Fisheries Commission will serve as the lead agency, not the sanctuary, in developing ongoing marine fishery regulations for the sanctuary. All rule-making was to be done under Chapter 370.025 Florida Statutes. The specific procedures were described under Florida Administrative Procedures Act under Chapter 120. That's what it says in the document that NOAA signed off on. It's clear that the sanctuary has gotten off on the wrong tangent and is doing something that should not be doing. How can the sanctuary go forward

with fishery management when it hasn't done what it was supposed to do? Finally, the question is why are these actions being taken? There is absolutely no scientific justification. Experts might exist, but I hire experts all the time in my profession that tell me what I want to tell me. That is exactly what has been done here. Experts are being selected to tell people what they want to hear or what the group of people who have made the decision in advance want people to hear. There are some great people on this board. He knows a lot of them, but probably a majority of this board has already taken the pledge to vote for closures. Grouper are highly regulated. Goliath grouper are already eating everything in sight. Mangrove and yellowtail snapper are healthy, not overfished. Everyone knows that. Mackerel are consistent. Lobster and stone crab catches are still up there, so why close off large areas to all fishing? Is it that you feel there are not enough regulations already? Well, there are enough regulations in place. Stop all of this now.

Caroline McLaughlin, National Park Conservation Association (NPCA)

- Ms. McLaughlin made a few comments specific to the agenda items this morning. In terms of adaptive management, the NPCA supports the need to establish some kind of frame work for adaptive management. Adaptive management is really important because it gives decision-makers flexibility in the face of unanticipated conditions. When some type of emergency situation arises, people who make the decisions and are tasked with protecting the natural resources have the capability to put in protections that are needed based on these circumstances. So while she thinks it is important to flesh out the actions and issues to be included under this framework, it is also important that people making decisions still have that flexibility to respond to different types of situations.
- In terms of water quality, they support the idea of prohibiting gray-water discharges from cruise ships within sanctuary waters especially considering pollutants present in this type of water the impacts these pollutants have. This type of prohibition would also make sanctuary regulations more consistent with those in other sanctuaries.
- In terms of cooperative fishery management, they definitely encourage collaboration between the SAC and the South Florida Fishery management committee. This kind of dialogue and exchange of information between the two bodies is really useful for making decisions that are effective and exchanging information on these situations.
- Along those lines, the NPCA also feels that this kind of collaboration and dialogue should be extended to other protected areas in the region, specifically Biscayne National Park and the sanctuary considering they are both undergoing their planning process now. Dialogue and collaboration between the national park and sanctuary would be really helpful and beneficial

Greg Eklund, Islamorada Charter Fishermen

- Captain Eklund introduced himself. He is a charter fisherman from Islamorada and would like to comment on the proposals discussed related to fisheries management. He wants to reiterate what Richard (Gomez) said that the rules for fisheries management were established in 1997-98 and now the sanctuary is asking that the rules be changed after the fact. Federal and state fisheries management is in place and both are regulated by Magnuson-Stevens and that the way the game should be played.

Virginia Panico, President of Florida Keys Federation of Chambers of Commerce, Key West Chamber of Commerce

- Ms. Panico introduced herself. She is president of the Federation of Chambers of Commerce

and also has a resolution from the Key West Chamber of Commerce. For the sake of time, she won't read each resolution, but every council member has received individual resolutions from each of the chambers and she will make certain that resolutions from all 5 Keys chambers as well as the Federation of Chambers become part of the public record. Ms. Panico read the resolution from the Florida Keys Federation of Chambers, A Resolution Opposing the Biscayne National Park Supplemental Draft of the General Management Plan, Alternative #6.

WHEREAS, Florida's abundance of quality fisheries, fresh and saltwater habitats, climate and tourism opportunities for anglers make it the No. 1 destination for anglers and the Fishing Capital of the World; and

WHEREAS, the Florida Keys Federation of Chambers Of Commerce, representing its Chamber members and their over 2,250 members, is strongly interested in protecting national reef and fish resources; and

WHEREAS, the Magnuson Fishery Conservation and Management Act (18 U.S.C.A. 1801et.seq.) vests exclusive federal fishery management in the regional fishery management councils that must follow the national standards for fishery management plans (16 U.S.C. 1851); and

WHEREAS, the attempt by the Florida Keys National Marine Sanctuary and National Park Service to institute fishery management plans/regulations is not authorized by Congress; and

WHEREAS, the National Park Service's supplemental draft of the General Management Plan preferred Alternative #6 for Biscayne National Park constitutes (*ultra vires*) regulation and strikes through the heart of Florida's viable and sustainable recreational fishing destination; and

WHEREAS, Alternative #6 would severely restrict area recreational fishing and diving by creating an expansive Special Recreation Zone the size of Manhattan Island (14,585 acres of Florida waters), and would set a bad precedent; and

WHEREAS, Alternative #6 would prevent anchoring as well as harvesting grouper in the zone, and would limit fishing gear to hook and line with few exceptions; and

WHEREAS, Alternative #6 would limit access to the zone by requiring purchase of a special license and by limiting the number of licenses issued to no more than 500 (430 private anglers and 70 fishing guides), which FWC would issue through a lottery system open to anyone; and WHEREAS, Alternative #6 would put additional burdens on recreational and commercial fishermen and government agencies by requiring the submission of mandatory monthly logbooks detailing all catches; and

WHEREAS, recreational and commercial fishing brings billions of dollars to Florida, supporting more than 75,000 jobs in Florida, and limiting fishing access to federal fishery resources in the park will have a severe detrimental effect on area businesses, loss of jobs and tourism; and

WHEREAS, Alternative #6 would restrict fair and reasonable enjoyment of our national resources, and limiting fishing in the Biscayne National Park will create excessive fishing pressures on other areas in the vicinity; and

WHEREAS, the cumulative impact of restricted areas within adjacent areas such as the Florida Keys National Marine Sanctuary and Everglades National Park has not been studied and is being done without consideration of the best scientific information available; and

WHEREAS, using indicators based on a particular fish species to manage and entire ecosystem is a flawed strategy; and

WHEREAS, scientific evidence supports that coral death is linked to rising water

temperature, not fishing pressure; and  
NOW, THEREFORE, BE IT RESOLVED that Florida Keys Federation of Chambers of  
Commerce believes in order to protect the reefs and fish resources, the Biscayne National  
Park and Florida Keys National Marine Sanctuary should work closely with the South  
Atlantic Fishery Management Council and Florida Fish and Wildlife Conservation  
Commission to properly manage federal fishery resources rather than institute the proposed  
Special Recreation Zone in Alternative #6.  
Ms. Panico thanked everyone.

### **Discussion** (council members)

David Hawtof commented that he thinks the sanctuary made a big mistake a while back when they showed a variety of maps containing ideas of where closures might take place. These maps made it look like the sanctuary was interested in closing a large area, but that wasn't really true. Those maps contained only ideas being suggested. After the committee meetings, it seems that only a very small amount of the sanctuary is being suggested for closure. He was a volunteer scientist for 20 years for Fish and Wildlife Conservation Commission. At one point, they were counting lobsters in Biscayne National Park and this involved 5 people doing 5 or 6 dives a day, totally about 125 dives for the period of time. While they were catching lobsters, they also counted fish. In all of those dives, they only saw two legal-sized fish and one was a yellowtail. There weren't a lot of fish to be caught. About the closure of Biscayne and limiting licenses in Biscayne National Park, they are liable to catch those last two legal fish that we saw.

David added that Biscayne National Park also hired a PhD scientist to do an official fish count. David spoke with the scientist who told him that there are not many legal fish. Scientists also conducted a creel count in Biscayne Bay and looked at the fish people were catching. They found very few legal fish being caught up there. Lots of people like to fish in Biscayne Bay and they are taking yellowtail snapper that are only 6 inches long. He wanted to say something because there have been several scientific articles written since the sanctuary was formed and most of them have to do with decreasing numbers of fish in different categories, not so much yellowtail, but there seem to be fewer grouper. David spoke to commercial fishermen that were close to his age and they used to catch large grouper in Hawk's channel. They didn't even need to go to the reef, just a few hundred yards off shore and not that many fish are seen out there today. The push is to catch during the spawning aggregation because so many more can be caught at that time. So, before the last fish is caught, hopefully, this organization will join with the groups that control fishing regulations.

David Makepeace commented that in listening to the speakers, especially those concerned about the fisheries management items that are on the list, he doesn't interpret those the way that they did, so he has no problem moving forward with these items. The good news is that if their interpretation that the intention of this is closer to reality that he believes it is, then there is another bite at this apple when the EIS comes forward. That being said, if no one else has any additions or changes based on the comments of the speakers, he would like the council to consider moving forward and voting on these items if that is the next step after all discussion is over.

Steve Leopold stated that five or six years ago, he supported the sanctuary becoming involved in fisheries management issues. He has supported this along the way when the SAC has explored fisheries management issues and helped in the past, but he thinks it has gone too far lately, maybe even a few steps too far. His original experience was working on the issue related to ballyhoo. It was

really more of a user conflict issue than a fisheries issue. As fishermen, they appreciated the SAC's help very much. Recently, though, it seems things have changed a lot. A group of people are evaluating science and discussing spawning closures. Those topics need to be left to the professional fisheries managers. It's hard for him to support something as broad as this, which includes this group discussing science and spawning closures and people making decisions that affect user groups greatly, but that really don't have the capacity to make those decisions. He feels that while there are a lot of brilliant people, others will automatically vote on the environmental side without really knowing because they always vote that way. He respects that, but he has a hard time supporting this group discussing spawning closures, fish aggregations and he thinks things have been taken a step too far.

Justin Bruland commented on the lines drawn on maps. At the last council meeting, he asked for a map with the recommendations made thus far and he has yet to see such a map today and is not sure why. Superintendent Morton explained that anything that has been proposed by a working group was provided to the council. This document handed out today has all materials put forth by the working groups and discussed by the advisory council with the exception of things that may have been added to the resolutions by the council, which adopted these recommendations unanimously. As part of the draft EIS, maps will be produced showing the different alternatives. These maps haven't been developed yet, but will appear in the draft EIS.

David Vanden Bosch sought clarification on the charge of the council. It is his understanding that the charge of the council is to evaluate what was done, to make recommendations that may or may not improve things and then pass those recommendations up to the people who do have the authority, including the fisheries management people. The authorities will look at what is recommended and consider the resources and uses. At this point, everything is just a recommendation and is not law. The council is only asking that these ideas be considered. To the people who are pushing on the fish thing, council members are not lawmakers and are only doing what they were asked to do.

Martin Moe stated that it is true that the sanctuary is not involved in fishery management. Fishery management is the purview of national and state fishery agencies that manage fish stocks. The sanctuary is charged with environmental conservation and management and the two concepts are joined. A healthy fishery can't exist without a healthy environment and a healthy environment is not possible without protections of the ecology and ecosystems that make up the marine environment. It's evident that the ecosystems of the Florida Keys have suffered greatly over the past 20-30 years. If this decline is not addressed and not reversed, the health of fisheries will continue to decline as it has been. The council's charge is based on the protection of this environment and if there are areas that are not touched by the "hand of man" and allowed to develop normally, they can serve to propagate and protect the natural resources. This is environmental management and that is the business the sanctuary is in.

Jeff Cramer commented on the fisheries issue. He grew up working on charter boats and knows the top charter captains on the water who fish at the reef. They say that the snapper and grouper fisheries are healthy and the science says that, too. Gag grouper might be an exception, but they are mostly on the west coast. He just finds that the fisheries are healthy. He agrees with a lot of what Martin said, but a 25 mile square closed area is a huge area. Do they know where such an area is going to go if they decide it is a good idea? Are they going to ask the fishermen where it is going to go or are they just going to put it on the map? That could really affect his fishery and fishermen if that happened. At the meetings, there were many more people against it than for it. He finds it ironic that most of the area in the protected zone would be mostly grass and sand. On the other hand, people are talking about

putting a huge 200 foot huge ship on the sand bottom and that would permanently affect the bottom and alter the seafloor around it and attract invasive species such as lionfish and orange cup coral. This action would be done because it promotes tourism and helps diving. Fishermen are the most affected by the grass and sand, which in his opinion is in much better shape than the reefs. There is far less impact from recreational diving and fishing going on in the sand flats. It's taking place mostly at the reefs. These large 25 mile square areas are still being looked at and are not out of the picture. It is stated that they are still considering these large areas. He wants to know where they are going to go if they come into existence. He wonders if they will just appear as "mystery" maps or will they involve the fishermen in the decision.

Superintendent Morton wanted to clarify that there are no mystery maps or secret maps. Everything has been done in the open. Any maps that have come out have not been sanctuary proposals. No maps have been created by the sanctuary at this time. The advisory council sets the limits for and guides this process. As part of the process, the draft EIS will consider the recommendations and conduct economic and environmental analyses. This is done in accordance with the National Environmental Policy Act and other federal laws/protocols. Rule-making doesn't take place until public comment is received on the range of alternatives put forward by the council and described in the draft EIS recommendations.

Jeff Cramer clarified that he called some maps "mystery" maps because he and other people on the coral work group didn't recognize where the maps came from. He is concerned about having input on large zones in the future. Superintendent Morton explained that the next step involves having the staff and agencies analyze the range of recommendations. Everything is carefully analyzed in the draft EIS. Depending on the outcome of the analyses, some alternatives may be rejected and if so, the reasons will be given. All of this occurs prior to rule-making and involves working with partner agencies.

Steve Leopold agrees with Martin as far as being aware of fisheries in the sanctuary. He wants to know, though, if there is any way to limit or provide a boundary as to what the sanctuary council deals with in terms of fisheries management. He feels uncomfortable with a few things decided at the working group level. Some things were unanimously voted against, yet these items are still moving forward. He is concerned about this re-exploring of the same ideas. That's why he thinks a line needs to be drawn in terms of fisheries management, although he is not sure if and how it can be done.

Chairperson Nedimyer stated that he himself is not certain. In general, fisheries management is not the council's focus. He added that fishing during spawning season is not well supported by most fishermen. It is a recommendation, not a decision. Fisheries managers know where the council stands on this issue. Steve Leopold agrees with not fishing during the spawn, but he doesn't think this decision belongs to the SAC. Ken pointed out that at least the fisheries managers know where the council stands. Steve reiterated that if this group makes a recommendation to close an area to accomplish a spawning closure, then the council is making a fisheries decision and doesn't have the knowledge to make such a decision. Steve brought up the situation with Alligator Light. There were 3 votes against 13 in the vote and it wasn't fully discussed. Three votes keep this option alive. He wants to know at what point is an idea discarded. Chairperson Nedimyer stated that the recommendation will be evaluated in the EIS and will come before the SAC at a later time. If the SAC doesn't approve it, it won't go forward. It also needs to be approved by fisheries councils.

David Makepeace suggested that the council vote on these items. Chairperson Nedimyer called for any further discussion specific to these items. He would like to take each of the four motions and vote

on it if there are no objections. There were no objections.

### **MOTION Permitting and Adaptive Management (Passed)**

#### **Permitting and Adaptive Management**

Under this category, there were 7 permit procedure potential alternatives and 3 for adaptive management. The motion and the changes in the wording adopted at the meeting are provided (in red) on the screen for all to view. Chairperson Nedimyer reminded everyone of the broad motion to vote on these and the other items. A roll call vote was taken. Eighteen council members were present all voted in favor of accepting this motion. Motion passed unanimously.

To view this motion, visit

<http://floridakeys.noaa.gov/sac/othermaterials/20141021ppamsacmotion.pdf>.

### **MOTION Artificial Habitat (Passed)**

Chairperson noted that the subcommittee was changed to a working group to address artificial habitats.

A roll call vote was taken. Eighteen council members were present all voted in favor of accepting this motion. Motion passed unanimously.

To view this motion, visit, <http://floridakeys.noaa.gov/sac/othermaterials/20141021ahsacmotion.pdf>.

### **MOTION Water Quality (Passed)**

No edits were made to this motion to evaluate gray-water discharge from cruise ships. A roll call vote was taken. Eighteen council members were present and all voted in favor of this motion. Motion passed unanimously.

To view this motion, visit <http://floridakeys.noaa.gov/sac/othermaterials/20141021wqsacmotion.pdf>.

### **MOTION Fisheries Management (Passed)**

A roll call vote was taken. Eighteen council members were present—16 votes were in favor and two votes were opposed. Motion passed.

To view this motion, visit <http://floridakeys.noaa.gov/sac/othermaterials/20141021fmcsacmotion.pdf>.

Chairperson Nedimyer asked Jeff Cramer and Steve Leopold to articulate briefly why they were opposed for the record. Jeff explained that he thinks the arrangement with the fisheries agencies is working well now and wants to see that continue as is. Steve stated that he thinks the wording is too broad. He would support it if it were written somewhat differently. He thinks that there should be coordination, but it is a level of coordination. Chairperson Nedimyer explained that he asked them to provide this information so that sanctuary staff understands the objections and can take them into consideration in the draft EIS. Superintendent Morton thanked Steve and Jeff for addressing that because that will help staff. He encourages people to read the protocol in the document. Following that protocol would actually trip up the fisheries management agencies and that is what triggered the actions on this issue.

Chairperson Nedimyer postponed Superintendent Morton's 15 minute presentation until after lunch and announced that public comment for items not on the agenda will follow this presentation.

## Lunch

### IV. MARINE ZONING AND REGULATORY REVIEW NEXT STEPS

FKNMS Superintendent Sean Morton gave a presentation on next steps in the Marine Zoning and Regulatory Review. To view this presentation, visit <http://floridakeys.noaa.gov/sac/othermaterials/20141021nextsteps.pdf>.

Superintendent Morton stated that a milestone had been reached and acknowledged the hard work put into the last two years as part of the marine zoning and regulatory review. He thanked everyone for all of their input and the thousands of hours that have been put into this process so far by working group and advisory council members. He added that it's really been about the advisory council starting this process. Most agencies don't have an advisory council and don't hold 69 meetings to receive input before developing the draft EIS (as was done in this process). Typically, an agency would begin this process with the release of a draft EIS for public comment on ideas that were generated by the agency.

The sanctuary follows the National Environmental Policy Act (NEPA). Rule-making is the last step and rules can go through NOAA, FDEP, FWC, depending on the nature of the rule. The NEPA requires evaluation of the environmental impacts and coordination with appropriate agencies. The act sets forth how to seek public input and coordination with other federal laws. Prior to any rules being formulated, a range of alternatives will be presented for consideration in the draft EIS; these alternatives will be informed by the recommendations made by the council/working groups. The staff will evaluate the feasibility of potential alternatives, the economic and environmental benefits/impacts and present those results in the draft EIS, which will probably not be released before the summer of 2015. Impacts of what management actions are being proposed in other areas must also be considered in the draft EIS analyses. Fishery management councils and the FWC Fisheries Commission can weigh in on rule-making. The council will participate and provide input on all alternatives before any changes in regulations are made. Because of the timeline for the process, no new rules would even be proposed until 2016. To find out more about NEPA, visit [www.nepa.noaa.gov](http://www.nepa.noaa.gov) and [www.nepa.gov](http://www.nepa.gov). This is the same process that has been followed in the past to implement regulations in the past.

Nancy Finley, Florida Keys National Wildlife Complex Refuge Manager, added that the FWS is part of the marine zoning process and will be developing alternatives for their backcountry management plan in the Lower Keys. FWS/refuges will be introducing concepts of alternatives for the draft EIS consistent with what she brought before the council previously. The *Backcountry Management Plan*, which is a step-down plan from their larger plan document, *Lower Florida Keys Refuges Comprehensive Conservation Plan*, has been in place since the early 1990s.

Superintendent Morton stated that at future council meetings such as the one coming up in February will address such topics as artificial reefs and scientific studies.

### V. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

Daniel Padron, Florida Keys Commercial Fishermen's Association

- Mr. Padron is a commercial fisherman and is director of the Florida Keys Commercial Fishermen's Association. He was present at the very first meeting that the sanctuary held

discussing closures. Since that time, he hasn't heard the first person speak at any meeting in favor of closures and is wondering why these meetings continue. He requested an economic impact statement surveys on any closed areas that are in place and on any ones that are proposed. In Key West where he fishes, there has been a huge area closed zone for years and frankly the corals are worse there than they are outside. He would like to know the loss of revenues from stone crab and lobster harvest from that area for the past 15 years because of the closure. Closed zones don't solve the water quality issue. Western Sambo is the flagship of closed zones. It has been there forever and it's terrible. The fish aren't any bigger—there are no more lobsters or crabs there.

- Mr. Padron added that as far as adaptive management and making decisions quicker if there are coral die-offs and diseases, he doesn't see how responding faster will solve coral bleaching or anything. If the action is to shut down fishing, it will only hurt the people who use that reef every day. If the water temperature is too cold, that can't be fixed. Mother Nature can't be controlled. Volunteers spent a lot of time and effort providing their opinions in working groups, but they feel as if their opinions are not being heard and that is not right. The feedback provided by the fishermen is not making its way back to the SAC. He feels that the opinion of fishermen hasn't mattered and neither has the opinion of the people who were put in charge by the council to listen and bring information to the council.
- Mr. Padron stated that he is frankly tired of hearing how fishing was 30, 40, 50 years ago. He hears it all the time how fishing for grouper was great off the beach. The size limit then was 12 inches and there are 12 inch groupers everywhere nowadays. As far as Biscayne National Park, there are hundreds of thousands of pounds of fish taken out of there every single year. For somebody to say that there were only two fish seen and only a few lobsters. He feels that is very silly and it is terrifying that someone with that attitude is sitting in this room and making decisions about his livelihood. Another thing he is tired of is people coming into his town and his county and telling him that more rules and restrictions are needed. He lives here, works here and has raised his family here. He is tired and wants people to stop listening to specific user groups that don't have any ties and frankly their agendas are with their specific user groups. He thanked everyone.

Richard Houde, Key West Charter Boat Association

- Captain Houde has been fishing in Key West for 30 years and is the captain of a charter six pack boat. He fishes on the reef between American and Cosgrove Shoals. There are many shallow reefs along there, some prohibit fishing and diving. Some allow fishing and diving. Some allow diving, but not fishing. There are no reefs that just allow fishing, but not diving. This demonstrates a long-term bias on the part of the sanctuary that there is no place where people can fish, but not dive. Therefore, the effects of one activity can't really be compared with the other because the effect of 20 years of bias makes for bad science. He thinks that some reefs should be set aside just for fishing so that the effects of fishing can be seen. He moved down here to be a diver and has been diving since 1974, so he is not anti-diving. Both activities have their effects on the reefs. If fishermen are going to be barred out of places and regulated, then good science is needed to do that and without good controls that allow only fishing, then the science is bad and shouldn't be used to affect people's lives and livelihoods.
- Captain Houde also mentioned the "mystery" map that showed a proposed closure around western dry rocks, past the bar. It is his understanding that this proposal is to protect spawning fish, specifically mutton and gray snapper. He is all for that, but it is his understanding that mutton snapper fish stocks are not stressed, which means that this would

be trying to fix something that is not broken. Rather than close the area down for a year to protect fish that are spawning for a month or two, he asks, "Wouldn't it make a lot more sense to limit the bag limits?" Currently, mutton snapper bag limits are 10 per person. He doesn't want to kill 10 mutton snappers for every person on his boat. Speaking as a recreational fisherman in his boat, he would have no objections to reducing the bag limits to 5 per person and 2 per person during the spawn. A lot of people have seen the cities of boats out there. Many people come down from elsewhere and 4 or 5 people go out and catch 10 per person. If the bag limit is reduced to two per person, it takes the incentive out of it because of the expense in bringing a boat down here and other expenses. That would reduce the mortality rate when they have the greatest pressure on them. That is a great area for fishermen. To shut down the area makes no sense. There are only certain areas within the range for a half day fishing trip and that is one of them. If charter fishermen don't catch fish, they won't stay in business. He doesn't think that the sanctuary should be in the business of fisheries management, but he wouldn't object if the sanctuary recommended to the people who are in charge to reduce the bag limits for these fish before any areas are taken away. Once an area is taken away, people won't get it back. Western Sambo was supposed to exist for a limited time. He is not sure what that is, but there is no intention of giving back this area. So, before an area is closed off, try to reduce the bag limits to see how that helps, especially since the fish are not distressed according to the fisheries data collected by NOAA.

Craig Jiovani, Key West Charter Boat Association (KWCBA)

- Captain Jiovani stated that next month he will have been in the Florida Keys for 34 years. He is originally from Detroit, Michigan. His family used to come down in the winter time and he set his goal on becoming a fisherman here in high school. He has had his own business here for 31 years this June and is one of the "old" timers on charter boat row. He has seen a lot of changes over the years. The charter boat association would like to see the common sense stressed more. Association members have had to educate themselves over the years. They have had to police themselves because they realized that if they don't protect the resources, this business won't be around for themselves and for the young people who may want to fish. They have self-regulated on a lot of issues such as billfish and bag limits in the association. Members have gone along with these self-imposed regulations and have done a good job policing themselves. He knows there is a lot of science, but in 34 years, he has never had a scientist approach him on the dock asking him his opinion or questions. He does allow surveys done by the State of Florida when they ask where they fish, etc. He thinks that is done for tourism as much as for fishing. Believe him, he and other charter fishermen have a great deal of experience and know what is going on with regards to the fisheries. They put in about 200 days on the water a year and along with the commercial fishermen, they have a great deal of experience with what is going on with the fisheries and what has declined and increased. They don't feel as if their input is being considered in the process of making these decisions.
- Captain Jiovani stated that he was president of the Key West Charter Boat Association when the original sanctuary zones were put into place. A lot of people making their living fishing and diving here and without those resources, people can't make a living. That includes tourism, which itself depends on the resource, too. At that time when the zones were created, as fishermen, they felt it was a bonanza for the dive/snorkel industry. Fishermen were shut out of areas, but the divers weren't. The fishermen feel as if they are losing more and more all the time. The KWCBA president mentioned today that they hired an attorney to represent

them. It may seem funny to some, but as an industry, they feel threatened and feel that that their livelihoods could be eliminated in a few short years. There are only certain fishing areas that are within the range and without those areas, they can't make a living. They want to work with the sanctuary and protect the environment. But, things need to be done in a balanced way. He knows that the council is not setting law, but from what he has seen, almost everything that is advised eventually becomes law down the road. He asks that the council be very cautious on what to consider when making these recommendations because the recommendations can really affect a lot of people.

Rich Gomez, President Key West Charter Boat Association

- Mr. Gomez has spoken at many of these meetings. Rich and some of the other guys have stated what he was going to reiterate, so he will pass on his time to David Horan again. He feels as if he is before the mosquito board and he is a mosquito being swatted.

Greg Eklund, Islamorada Charter

- Captain Eklund is a charter fisherman in Islamorada. He appreciates that everyone here on the council is a volunteer who is here to protect the resource and make some changes so this continues to be a good place to go and make a living. One of the things that concerns him after being around working group meetings during the past year is that so much of people's resources, constituents' time and their efforts made at public meetings are not making it "up the chain" so to speak. For example, in the documents with the changes proposed to SPAs, the changes to Alligator are still kept as recommendations to the SAC even though only 3 of 13 working group members voted to keep them. Public comment is negative on this particular area of the sanctuary and people who cared about this came to the working group meetings and explained why it was something they didn't want. The working group members obviously by a vote decided it was something they didn't want and yet it is still going to the sanctuary for the EIS. He is talking about EP-6. Another example is the proposed SPA addition at Tennessee reef. Again, 2 of the 13 working group members voted to keep it and it is still on the documents going for the EIS. He is wondering where the failure is along the chain. The public is giving up just as much of their time. He is not fishing today and he wants to know why everyone is taking all this time and energy if things are not still going up the chain. If anyone can answer that question...
- Captain Eklund spoke about another environmental protection zone being proposed, EP-7. This is proposed to exclude trapping efforts along the reef between Alligator Light and Calusa can. This is an area of reef that has a bunch of rocks that runs from 8 feet to 35 feet of water. On the inside there is sand, then rocks and on the outside there is sand. Trap fishermen historically don't drop their traps on the rocks because they don't get them back. So, so they have no problem with this rule. It's going to hurt the commercial, recreational, and charter fishermen, though. This is a huge area, a long stretch of reef—3.5 miles long. This closure affects Upper Matecumbe, Lower Matecumbe, Bud-n-Mary's charter fleet, Calusa Cove charter fleet. People who live in Lower Matecumbe can no longer fish the top of the reef anymore because this area is a no-anchor area. So, now people wouldn't be allowed to fish for yellowtails or mangroves that are healthy or groupers that are open half the year. None of this makes any sense. To the trap guys, it is a concession. They had to give up something to keep something. To the fishing community, it's bad because a huge area that Islamorada would normally have is closed down. He proposes that this area not be created and that the sanctuary listen to people. A ton of public comment has already been heard. He wants to

know how the public comment is going to be incorporated into this draft. In these instances, people have already said they don't want these changes and yet the changes are going forward anyway. So, he wants to know, "How does that work?" He wants to hear the answer. Chairperson Nedimyer explained that they are trying not to have a long discussion on this topic right now. Captain Eklund would like to have a discussion with the sanctuary and the fishing community of Islamorada. He would like to set up a town event. Superintendent Morton agreed that if they set something up, the sanctuary will attend. Captain Eklund proposes that what the council says doesn't necessarily agree with them and they don't necessarily agree with the council, but there must be a happy medium so that people can live and work here. He wants to know how to make this happen.

Julie Dick, Everglades Law Center on behalf of Last Stand and Florida Keys Environmental Fund

- Ms. Dick made a brief point regarding the recommendations from the SAC that are in draft form. She noted that there are a lot of great recommendations, but the organizations she represents are concerned that money/funding sources have not been identified to pay for these projects. She encourages identification of funding sources, interagency collaboration and private public partnerships to fund these projects.
- Ms. Dick stated that there is a well-established decline in resources in the sanctuary and many scientific studies and thousands of scientists have established the benefits of marine zoning, of having ecological reserves in protected areas. The Tortugas Ecological Reserve studies showed increased abundance and size within the reserve and throughout the region for multiple species. Just as with land zoning, marine zoning is a way of designating certain areas for certain activities. Not all activities are compatible in the same area and selecting areas for ecosystem recovery is an important aspect of supporting ongoing recreational opportunities and a thriving ecosystem for decades to come. The objectives of the SAC called for protection of large contiguous diverse, interconnected habitat required for the full life cycle of the species, including nursery, juvenile, adult and spawning habitat. One of the goals call for this type of protection of zone in each of the regions of the Florida Keys. At the last SAC meeting, that recommendation and those similar to that were included and approved by this group to be evaluated. They hope to see this reflected strongly in the EIS.
- Ms. Dick would also like to address deep injection wells. She thinks this issue is a huge concern in terms of water quality in the sanctuary. They are seeing proposals to use shallow water injection wells for a treatment facility designed to treat up to one million gallons of water per day. Even if they are processing 800,000 gallons per day, it is well established that this water is going to migrate outward into the nearshore areas and will cause water quality problems. Even though the water is treated to advanced wastewater standards, nitrogen is still ten times the level considered healthy for a nearshore environment and phosphorus could be up to a 100 times of what is considered healthy. In addition, any pharmaceuticals and anything else that is in the waste stream and is not filtered out will enter the nearshore waters. They hope that this is a concern to the sanctuary and that the SAC will take a stand on this and request the use of deepwell injection for disposal of wastewater. She thanked everyone.

David Paul Horan, Esq. Representing Key West Charter Boat Association

- Mr. Horan stated that there has got to be a lead agency. "Who is the horse that is pulling that fisheries management cart that y'all are coming in on right now?" There is an inconvenient truth that in 1997-98 there was an agreed protocol between the National Ocean Service National Marine Fisheries, Florida Marine Fisheries Commission and the Secretary of

Commerce. He stated that he is going to read two sentences and that is going to be verbatim and that obviously some people don't really understand them and need to read them over. These sentences are on p. 109 of that big document with 115 pages. "The FMFC (Florida Marine Fisheries Commission) shall serve generally as the lead agency for purposes of initiating, developing and implementing ongoing marine fisheries regulations for the Keys sanctuary in accordance with this protocol and the procedures established therein." Here is another quote. "The Florida Marine Fisheries Commission will ensure opportunities for full public participation in the developing or modifying fishery rules for the sanctuary and in governor and cabinet proceedings to approve FMFC rules." He asked, "Is there anybody who doesn't understand that plain English?" The council/sanctuary is not the lead agency. They are and the council is supposed to be listening to somebody who has all that expertise on fishery populations and optimum sustained yield and what the fisheries resources were established for under the Magnuson Act. The sanctuary is not supposed to be the lead agency and that is what they are doing and it's wrong.

Caroline McLaughlin, National Park Conservation Association

- Ms. McLaughlin stated that her organization represents 363,500 members nationwide and over 18,000 members in Florida alone. They support the use of marine protected areas and marine reserves as an effective tool to manage resources in the sanctuary. She thanked sanctuary staff, ecosystem protection working group members and all members of the SAC members for all their hard work and effort in coming up with recommendations to manage different types of ecosystems in the sanctuary. Marine protected areas and marine reserves, when they are based in strong science and when they are designed, managed, and enforced properly have the ability to strongly protect resources. This is not new science and these are not new ideas. Marine reserves have been tested throughout the world for decades. There is research done by thousands of scientists supporting their ability to work. The Tortugas Ecological Reserve report from NOAA and DEP in 2012 shows an increase in size and abundance of mutton snapper, yellowtail snapper, red and black and grouper, not only within the reserve, but outside reserve in the general area. Marine protected areas and marine reserves are a form of ecosystem based management. When ecosystem based management is combined with more traditional tools of fisheries management, this results in more effective ways to manage marine resources. Again, marine protected areas should be seen as ecosystem-based management. They give the ability to protect different types of habitat needed to support and protect species throughout their life cycles. A long term view is needed here. In order to protect the resources for future generations to make sure they are still here in decades to come, to make sure the resources can support the economy of the Florida Keys years from now, action needs to be taken.

Tom Hill, Key Largo Fisheries

- Mr. Hill is very concerned about water quality and one of the key things that are not touched on in these meetings is the amount of wastewater coming out of Dade and Broward Counties. He read that there are 71 trillion gallons of wastewater a year coming out these counties and being dumped into the Atlantic Ocean. Some of this wastewater seeps southward. This is something that really needs to be addressed and the council/sanctuary should really be concerned about this because it is affecting everything that they are trying to protect.
- Mr. Hill stated it is really important that this group, this agency, figure out how to educate the public that is coming down every year utilizing the sanctuary, so that these people are not

destroying the sanctuary. All of the sudden during lobster mini-season, this becomes a disaster area that is totally destroyed.

- Mr. Hill added that thirdly, law enforcement is important, although he doesn't know where the funds are coming from. He stated that "we can't protect what we have and we're now asking for more". When he was a child and asked for more, his mother said he couldn't have more until he took care of what he had. And that is not being done in the Keys. Economic impact in the Florida Keys is tremendous. When trying to save the environment, everything that is touched is just like a child's mobile, if it is touched at one end, it will affect the other side. So, everything that is touched will affect something else and the economic impact in the Florida Keys is tremendous. It's not just going to affect the commercial fishermen, not just the divers, but will affect every restaurant, every hotel, every mom and pop, t-shirt company. Whatever decisions are made, it is really, really important that all of this is taken into consideration because the decision will affect everyone's lives in the Florida Keys. He thanked everyone.

## **Break**

### **VI. UPDATES ON RECENT ENDANGERED SPECIES ACT ACTIONS**

Heather Blough, Special Assistant to the Regional Administrator, NOAA Fisheries Southeast Region, provided a presentation on the final coral listing, *Acropora* recovery plan and proposed listing for Nassau grouper. To view this presentation, visit <http://floridakeys.noaa.gov/sac/othermaterials/20141021esaupdates.pdf>.

Ms. Blough explained that NOAA Fisheries has taken several Endangered Species Act (ESA) actions since the council last met in August. She provided a summary of these actions and their potential impacts. The comment period is open on the proposed Nassau grouper rule. In August, they announced the listing of 20 reef-building coral species as threatened--15 species were Indo-Pacific and five were Caribbean. The threatened status of elkhorn and staghorn corals was maintained. The final determination was different from the original proposal, which was in response to a petition from the Center for Biological Diversity. The main difference between threatened and endangered category is that endangered species are in immediate danger of extinction and threatened species are in danger of extinction in the foreseeable future, which in this case was defined as 100 years. New information that improved the understanding of the species status, habitat and vulnerability contributed to the final determinations.

Threats to the newly listed corals including climate related impacts, but eliminating the local stressors should help improve the resilience of the species. The prohibition on "take" under the ESA applies only to endangered, not threatened species. With the *Acroporids*, a 4d "take" prohibition rule was put into place using a collaborative process and did carve out exceptions for the sanctuary and other agencies for restoration and research purposes. If any take prohibitions are warranted for the new corals, a similar process will be used.

Ms. Blough reviewed the *Acropora* Recovery Plan, which was done through a 19-member coral recovery team and sets forth the criteria used to measure progress in recovery. Recovery criteria are population-based and threat-based in nature. A suite of recovery actions were also identified in the plan. The final plan is expected to be released in March 2015.

Nassau grouper are proposed to be listed as threatened. The threatened finding was based on the

finding that current regulatory mechanisms and law enforcement are inadequate to protect Nassau grouper spawning aggregations. The foreseeable future is defined at 30 years. Spawning aggregations were used as a proxy for population status and spawning aggregations have been greatly reduced over the years as has the size and age of fish at these sites. The public comment period ends on December 31, 2014. NOAA Fisheries is currently soliciting information on spawning aggregations and threats to the species. A final rule is expected in September 2015. NOAA's ESA website has much more information.

Vice Chair Bergh wants to know whether the protections that will be offered as a result of the sanctuary marine zone and regulatory review will be considered by NOAA Fisheries when determining whether or not no trap zones are needed for the five newly listed coral species in sanctuary waters. Ms. Blough stated that it is a really good question. It is too early to say exactly how it will work, but they are definitely interested in coordinating with the sanctuary on this matter. At this time, the take prohibitions are not in place and that is what ultimately led to the closures for the Acroporids. These are different corals, so no assumptions can be made, but it is important to consider the potential effects. Superintendent Morton mentioned that they have been discussing this and are waiting for the final rule. Over the past two years, the sanctuary has made sure that anything potentially listed was already part of the conversation for the working groups. Whatever happens moving forward would be at the end of the EIS phase for the sanctuary, if there are proposed regulations, NOAA National Marine Fisheries Service will evaluate how those regulations might impact the species and changes might be made accordingly. For example, management changes might be needed to address protected species according to NOAA Fisheries. The Endangered Species Act calls for a review to determine whether any part of the sanctuary's regulatory plan will negatively affect listed species.

Suzy Roebling asked about whether critical habitat will be designated for the new species. Ms. Blough explained that critical habitats have been designated for elkhorn and staghorn corals, but not for the other coral species. Superintendent Morton explained that the trap zones were based on the biological opinion, which said that there are activities of the spiny lobster fishery management plan that have the potential to threaten these species and therefore as part of the fishery management plan, certain regulations and restrictions should be put in place to minimize the effects on these species. That action took place and identified that traps have the potential to move around and damage coral. The federal action was to put the trap zones in place. Chris Bergh added that the critical habitat for the Acroporids in the Florida Keys was hardbottom and coral reef habitat.

Ms. Blough commented on the status of the reviews being taken on queen conch and some of the other species under review. NOAA Fisheries is still looking at proposing regulations for queen conch, Caribbean electric ray and dwarf seahorse. They are also evaluating whether available information warrants a status review of yellowtail damselfish. They expect the queen conch and damselfish determinations to be out soon.

## **VII. SUPERINTENDENT'S REPORT, REGIONAL DIRECTOR'S REPORT AND AGENCY REPORT HIGHLIGHTS: DEP, FWC, NOAA NMFS Southeast Region, NOAA OGCES, NOAA OLE, NPS, USCG, USEPA, USFWS, and U.S. Navy**

### **NOAA Florida Keys National Marine Sanctuary Report, Sean Morton**

- Superintendent Morton stated that as part of the Nancy Foster research cruise, which was wrapped up in September, the sanctuary is posting information about the research conducted

on Facebook. Some of the researchers on that cruise may come before the advisory council to share the results of their studies in the future. The FWC queen conch scientists conducted conch surveys while on the cruise.

- Superintendent Morton introduced and welcomed the new NOAA Corps officer. LTjg Rosemary Abbitt. She is rotating in for Lihn Nguyen, who attended some working group meetings and whose next assignment is in Norfolk, VA., working at the Monitor National Marine Sanctuary. Rosemary will be here at SAC meeting for the next three years.
- The process to nominate new national marine sanctuaries is underway. People are encouraged to visit the website, <http://www.nominate.noaa.gov>. Two nominations are posted now. The first one of the two is from the north/ central eastern Florida, the Eubalaena Oculina National Marine Sanctuary. This is a process that is moving forward and he wanted to mention this on behalf of Billy Causey.
- Richard Grathwhol did not make it here today unfortunately to receive his recognition plaque. Richard recently stepped down from serving on the advisory council. He served on the council in the charter flats guide seat for sixteen/seventeen years. The seat was advertised and only one application was received. In January, the sanctuary may be advertising again for the alternate flats guide seat.
- Today marks a serious milestone for getting all of the advisory council ideas to the agencies. The sanctuary wanted to say “thank you” to everyone for all of their hard work with cake for everyone.
- Superintendent Morton announced that as a point of clarification, the map that shows the PWC/flats guides arrangement regarding the Key West National Wildlife Refuge that appears on the document provided today is not the correct one. It will be replaced with the correct map that appeared in the PowerPoint presentation by the guides association.

#### **National Marine Sanctuaries/Southeast Region Report, Billy Causey**

- See Superintendent Morton’s report.

#### **United States Coast Guard (USCG) Report, Phil Goodman, Auxiliary**

- Mr. Goodman stated that sector Key West recently changed how it responds to pollution incidents. Prior to this time, pollution incidents have been handled by the prevention department, which also handles vessel inspections. Now, pollution incidents will be handled by the response department and that has meant a changeover and retraining of people and also applies to the Auxiliary who are also pollution responders.
- Since the last council meeting, the USCG has responded to 17 pollution incidents. Most of these were mystery sheens and many were around Stock Island. In response, the USCG initiated an educational program on pollution prevention that has reached out to moored boats and marinas. One partially sunken boat was rectified. It was relatively quiet. No cases were federalized and there was no oil spill liability. It was relatively quiet.

Chairperson Nedimyer recognized Andy Newman. At the last council meeting in Key Largo, Andy made his concerns known regarding the extinguished light at Alligator Reef Lighthouse. Andy commended Commanding Officer John Reeves who heard him at the meeting and took quick action to have a temporary light put on the lighthouse, which is very much appreciated.

#### **FWC, Division of Law Enforcement Report, Capt. David Dipre**

- Captain Dipre stated that it has been a great quarter and the sanctuary and FWC have been

working together closely on a number of things.

- The good news is that trap robbing is down. FWC has made some cases with the state's attorney's office and now have a catalogue with about 50 suspected trap robbers listed in it. Even when they can't arrest someone because they don't see them actually robbing traps, they can ask questions and confront the person about what they were doing when activities seem suspicious. When questions are asked even though a criminal charge can't be filed, it can put a chink in their ability to trap rob--at least from that marina.
- Captain Dipre told a story about a person who is believed to be trap robbing. Deputy Willie Guerra caught him with undersized and wrung lobster tails and he was jailed in Monroe County. In jail, he told his cell mate that it was no problem because he had skipped out on the system twice before. Deputy Guerra did his homework and found out about his past. For this charge, Judge Becker gave him 1.45 million dollar bail on this individual. He will have to come up with \$145,000 to get out of jail rather than \$4,000. Captain Dipre thanked Deputy Guerra in the Monroe County Sheriff's Office for doing his homework and Judge Becker. This high bail amount would be hard to believe almost anywhere except in Monroe County. Captain Dipre thanked everyone and stressed that the area is a national marine sanctuary and everybody cares and are pushing the judicial system, state attorney's office, FWC, Sheriff's office to make sure they do their jobs. People minimize trap robbing, but now it's a much bigger deal. He thanked everyone for their support.
- FWC has made a number spearfishing cases at Sombrero and Looe Key SPAs. They have been responding to phone calls and getting out there to make the cases. Just having the spear equipment in the SPA is a violation.
- The Peter Gladding vessel is down getting its yard package done. Last time they were in the Tortugas was before the last council meeting. At that time, they didn't make fishing cases, but did pick up migrants. The Gladding crew has been helping the USCG with migrant cases lately because the vessel can operate in shallower waters. When the Peter Gladding is down, the mission changes somewhat. Instead, they work on short range missions at the reef line.
- Captain Dipre stated that he doesn't usually make an appeal to the SAC, but feels that it is important to mention "*intel*". He asked members of the council to reach out to members of the community and explain that FWC needs their help in finding out about fisheries violations. People need to make those calls to FWC. Let people know that if they report a violation, FWC won't ask them to go to court and testify about a criminal violation. FWC will make the case themselves. Impress on them how important it is to contact law enforcement. Funding is always an issue and it is most efficient for officers to go straight to where they need to be to make those cases and that can happen with community help.
- Superintendent Morton added that FWC Fish Commission is holding a meeting in Key Largo on November 20 and 21. He will be briefing the commission for about 10 minutes regarding the sanctuary process on the 20<sup>th</sup>.

#### **US Navy (USN) Report, Ed Barham, USN**

- Mr. Barham reported that the Navy conducted a coastal cleanup for the International Coastal Cleanup in September. They cleaned up debris on their Truman Annex shoreline and collected 700 lbs. of trash.
- Last week the Navy celebrated National Public Lands Day by planting native trees down on the beach at the end of old Boca Chica road as part of a community event.
- The Navy received end of the year funding that was used to remove several acres of exotic Australian pines.

- The Navy completed their annual Lower Keys marsh rabbit survey on Navy property. About 10 years ago, about a third of the total population was on Navy property and that was about 100 individuals. Population on the Navy base seems stable.
- They only had one confirmed sea turtle nest, but four suspected nests this year.
- The Navy is 239 years old this month and has been in Key West for 191 years.

#### **NOAA OLE (Office of Law Enforcement) Report, John O'Malley**

- Officer O'Malley reported that Eric Burman from North Star Seafood entered a guilty plea and paid a criminal fine of \$250,000 for conspiracy with known Chinese buyers to export undocumented live Florida lobsters without the required trip ticket. The investigation continues to look into other dealers.
- David Dreifort from the 2008 lobster casita case appeared in court in Key West for violating his probation by lobster fishing commercially in the southern district of Florida while he was prohibited to do so. He was released on \$25,000 bond and has a court date.
- A change of plea hearing was held as part of the Operation Rock Bottom marine life industry case. Charles Jamison pled guilty to violating the Lacey Act by illegally harvesting and selling live sharks from the waters of the sanctuary for interstate commerce. He did not have any shark license or shark dealer's license. He will be sentenced in December.
- A charging document charges Curtis W. Waters for a Lacey Act violation. Waters is alleged to have been harvesting marine life organisms for the aquarium industry from the sanctuary and selling them in interstate commerce without the state required dealer's license. In addition, trip tickets weren't being made so these organisms were unreported and undocumented marine life.
- In August 2014, three members of the same family, Charles, Ryan and Tyson Veach, were arrested for Lacey Act violations for illegal commercial lobster harvest and sale in 2009 based on an investigation. Last Friday, additional charges were filed last week on Charles and Tyson Veach and Super Grouper, Inc. for commercial lobster violations in 2014. That case is scheduled for trial in November.

#### **Florida Department of Environmental Protection (FDEP) Report, Joanna Walczak**

- Ms. Walczak oversees multiple resource management programs in the Florida's Southeast region, including the sanctuary, the northern Coral Reef Conservation Program and multiple aquatic preserve programs. It is the 40<sup>th</sup> anniversary of Biscayne Bay Aquatic Preserve, which consists of two separate preserves that border Biscayne National Park under one program. The south preserve includes Card Sound. The preserve has been doing some outreach in Miami regarding this anniversary and the importance of the bay. Everyone is invited to participate in the events that are part of the 40<sup>th</sup> anniversary celebration.
- Ms. Walczak reported on the progress of the DEP Coral Reef Conservation Program, which is continuing to work with their group as part of the Southeast Florida Coral Reef Initiative. Their planning process, Our Florida Reefs Community Planning Process, has two working groups focused on four counties. These stakeholders are utilizing about 10 years of data collected in the area to develop a suite of management options. This step is the beginning of a comprehensive approach to resource management. This part of the reef tract doesn't have anything really comprehensive. The program just had the first brainstorming meeting and it was a very interesting experience especially considering what she learns being here in the Keys. The issues they are dealing with on the mainland are very similar to those that are dealt with by the sanctuary and council. Billy Causey gave a great presentation on national

marine sanctuaries and people were interested in that idea. The idea of creating a UNESCO World Heritage site for the entire Florida reef tract was also mentioned. The groups are really thinking “out of the box” and she will keep the council informed about their activities.

#### **NOAA National Marine Fisheries Report, Heather Blough**

- In addition to the pending ESA actions that she mentioned earlier today, Ms. Blough announced that a proposed critical habitat designation is expected for the right whale early next year.
- The South Atlantic Fisheries Council met last month in Charleston, SC last month and approved several actions for Secretarial review during September meeting, including fixed recreational fishing season for snowy grouper and new gray triggerfish regulations that would make the minimum size limits consistent in South Atlantic and Gulf waters.
- The South Atlantic Fisheries Council is continuing to work on amendments to remove several species (black snapper, dog snapper, mahogany snapper, and schoolmaster snapper) from snapper grouper fishery management plan. They are also exploring the use of seasonal and/or area closures on spawning aggregations and have identified a candidate list of sites that will be reviewed again in March before public hearings are held later next year.
- The South Atlantic Fisheries Council has established joint review panel with Gulf Council to evaluate the cause of the spiny lobster Annual Catch Limit (ACL) overage (which occurred last year) and determine whether corrective action needed. Their first meeting is tentatively scheduled for February 5 and will be noticed at a later date.
- The next meeting of the Joint South Florida Committee is tentatively scheduled for January 2015 and will be noticed at a later date.
- The South Atlantic Fisheries Council’s Scientific and Statistical Committee will review hogfish, mutton snapper and mackerel assessments during next week in Charleston, SC.
- The Gulf Fisheries Council has proposed a rule to implement Gulf Council’s Offshore Aquaculture Fishery Management Plan. The rule is open for comment through October 27.
- The Gulf Fisheries Council is scheduled to meet next week in Mobile, AL and tentatively scheduled to approve several actions for Secretarial review, including proposals to separate management of for-hire and private components of recreational red snapper fishery and to reduce recreational red grouper bag limit. The council will also discuss management proposals being advanced by gillnet segment of Gulf group king mackerel fishery in Florida Keys.

#### **USFWS Report, Nancy Finley, Florida Keys National Wildlife Complex Refuge Manager**

- Ms. Finley reported that this year is the 50<sup>th</sup> anniversary of the Wilderness Act. Much of the area in the Key West and Great White Heron National Wildlife Refuges is designated wilderness under this act. The refuges had some beach cleanups in recognition of the act anniversary. She thanked the sanctuary for staging some girl scouts out to the Marquesas for a cleanup and other things like that.
- The Marquesas Keys have been impacted by marine debris these days. Some of the debris is derelict vessels, chugs, etc. There are about 15 abandoned vessels out there and some still have oil and debris on them and are near sea turtle nests. They are trying to make headway in cleaning these up and are meeting tomorrow with USCG about derelict vessels. She knows FWC has a backlog of derelict vessels and FWS/refuges have been working with FWC to get the vessels removed. The vessels are not only a contaminant issue, but are obstacles on the beach berm to movement by nesting sea turtles.
- FWS/refuge has contracted with the National Aquarium in Baltimore to develop alternative

monitoring methods for sea turtle program. One monitoring method will look at hawksbill turtle nesting, which takes during November through February. The idea of trail cams—motion triggered cameras, is being considered because of the difficulty of getting out to the islands during that time of year. The refuge would like to know if the Marquesas Keys are being used today for hawksbill turtle nesting. It is a historical nesting site.

- Frigate birds used to nest in the Marquesas, but have not done so in recent years. The FWS/refuge has been discussing the idea of applying for grant funds from BP oil spill money to potentially to restore the site so that it more hospitable for frigate nesting in order to attract them back. Management actions might include things such as adding nesting material and cordoning off areas to prevent disturbance, which may have contributed to the loss of original nesting colony.
- In reference to marsh rabbit populations mentioned earlier, Ms. Finley noted that marsh rabbits are doing well on Boca Chica, but not so well elsewhere in the Lower Keys.

#### **NOAA Office of General Council Report, Karen Raine**

- No report.

#### **National Park Service (NPS) Report, Tracy Ziegler, NPS**

- No report.

#### **US EPA Report, Pat Bradley, EPA Office of Research and Development**

- No report.

### **VIII. UPCOMING MEETING AND CLOSING REMARKS**

Chairperson Nedimyer stated that he discussed the artificial reef issue somewhat with Sean Morton and thinks it would be best to bring in the different agency permitting representative to present at the February meeting and then use this a launching point for forming a working group on this topic.

Review of artificial habitats can be done simultaneously, even if it is not part of the draft EIS. Superintendent Morton stated this issue can be addressed in a separate process and thinks it is a good idea to get everyone together and hear from the different agencies to see how the artificial reef process works and to develop what outcome being is sought by the working group.

Bob Smith pointed out that he doesn't think the council should feel badly when they don't have an outcome for any of the recommendations that have been made. The significant thing is recognizing the steps that were taken and he thinks that should be a formal part of the statement of recommendation. They should pay attention to that and that's what is important.

Joe Weatherby thinks the reasoning is good to wait until February, but he does like what Bob said about being part of the record. Joe feels they should say that they feel that this topic is worth considering. Chairperson Nedimyer senses an interest in the topic of artificial reefs and the sanctuary could hear what people are thinking.

Superintendent Morton pointed out that the council has already made its recommendations to the sanctuary for the EIS at the August council meeting. If the council wants to look at this topic, he has heard the message.

In closing, Chairperson Nedimyer thinks that progress is being made in the review even though it's difficult to find the middle ground sometimes. He is excited about what they can do and appreciates the hard work people have put into the working groups and SAC.

Chairperson Nedimyer confirmed that there will be no SAC meeting in December.

Vice Chair Bergh suggested that the alternative funding working group could bring its work before the council for discussion. No definite meeting was set for this working group. Rob Mitchell accepted Joe Weatherby's offer to participate on this working group.

## **IX. ADJOURN**

Chairperson Nedimyer adjourned the meeting.