

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: December 18, 2007 (X) Consent () Regular
() Ordinance () Public Hearing

Department

Submitted By: Environmental Resources Management

Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) approve a two-year Tri-Party Memorandum of Understanding (MOU) with the Wildlife Foundation of Florida, Inc. (WFF), a Florida nonprofit corporation, and the Florida Fish and Wildlife Conservation Commission (FWC) for installing mooring buoys within two (2) locations along the nearshore in 15'- 25' of water; and

B) authorize the County Administrator, or his designee, to sign all future time extensions, task assignments, and other forms associated with this MOU and necessary minor amendments that do not change the scope of work or terms and conditions of the MOU.

Summary: The execution of this MOU will provide the necessary funds for the installation of up to ten (10) mooring buoys at two (2) locations, specifically six (6) buoys at the mitigation reef area offshore of Radnor Park and 4 buoys offshore of the Breaker's Hotel. The WFF will cover the costs associated with installation and the initial two-year maintenance of these buoys. During this time, the County and the FWC will provide in-kind contributions for the permitting and oversight during buoy installation and monitoring. These buoys will create opportunities for boaters to moor their vessels and preclude the use of bottom anchors that have been responsible for causing significant reef damage. The MOU expires September 30, 2009. Countywide (SF)

Background and Justification: With approval by all parties, this Agreement will initiate a mooring buoy program in Palm Beach County. Other successful mooring buoy programs have been developed in Monroe, Dade, and Broward Counties where reefs are considered both an important ecologic and economic resource for its constituents. Several of the County's reef areas are very popular with the snorkel and shallow-water diving communities. In particular, the natural reefs offshore of the Breaker's Hotel in 15'- 20' of water and the artificial reefs offshore of Radnor Park situated in 15'- 25' of water are heavily used by the public. Based on past observations, many of the County's precious reefs are frequently damaged by the indiscriminate use of boat anchors.

Based on the heavy use of some of our reef sites, the WFF, the County and the FWC seek to initiate a Mooring Buoy Program. The WFF have the expertise to market, promote, fund-raise, and contract and cover costs associated with the buoy installation and maintenance for a period of two (2) years. The County and FWC will contribute staff time towards the development of the mooring buoys sites.

These activities include: 1) the procurement of all permits, 2) oversight during the buoy placements and 3) monitoring of the sites on a routine basis to note potential improvements to the reef communities. At the end of the two-year period, the buoy program will be evaluated, and if deemed successful, funds for long-term maintenance can be sought from additional donations, FWC grants, and/or County Vessel Registration funds.

Attachment:

1. Memorandum of Understanding

Recommended by:

Richard E. Waddy
Department Director

11/5/07
Date

Approved by:

[Signature]
County Administrator

12/4/07
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____

ADDITIONAL FTE
POSITIONS (Cumulative)

Is Item Included in Current Budget? Yes _____ No X
Budget Account No.: Fund__ Agency__ Org.____ Object____
Program Code _____

B. Recommended Sources of Funds/Summary of Fiscal Impact

There are no charges for the permits. Staff time will be used for oversight and monitoring.

C. Department Fiscal Review:

[Signature]

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Administrator Comments:

[Signature] 11-9-07
OFMB

[Signature] 11/13/07
Contract Administrator

B. Legal Sufficiency:

[Signature]
Assistant County Attorney

11/13/07 This Memorandum of Agreement complies with
for review requirements.

C. Other Department Review:

Department Director

MEMORANDUM OF UNDERSTANDING FOR ESTABLISHING A MOORING BUOY PROGRAM IN PALM BEACH COUNTY

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this ____ day of _____, 2007, by and among THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION ("FWC"), the WILDLIFE FOUNDATION OF FLORIDA, INC., a Florida nonprofit corporation ("WFF"), and PALM BEACH COUNTY ("PBC"), with reference to the following recited facts:

WHEREAS, PBC, FWC, and WFF ("THE PARTIES") are concerned with the current and long-term health of Florida's offshore reefs; and

WHEREAS, THE PARTIES recognize the damage to the reefs from indiscriminate use of boat anchors; and

WHEREAS, THE PARTIES recognize the value of mooring buoys to lessen harm done to reefs by boat anchors, by providing boaters with an alternative means to secure their boats; and

WHEREAS, THE PARTIES believe that their cooperative efforts will greatly enhance the mooring buoy program and ultimately Palm Beach County's offshore reefs; and

WHEREAS, THE PARTIES seek to coordinate efforts and develop a shared strategy for installation and long-term maintenance and monitoring of the mooring buoys and their use; and

WHEREAS, WFF has the professional staff and experience for marketing, promoting, fund-raising, and contracting for installation and maintenance/monitoring of the mooring buoys to be placed on Palm Beach County's offshore reefs; and

WHEREAS, FWC and PBC have the expertise to oversee the installation of mooring buoys and to maintain and monitor a mooring buoy program on Palm Beach County's offshore reefs;

NOW, THEREFORE, in compliance with the Law and in consideration of the mutual promises and covenants contained herein, THE PARTIES agree as follows:

I. Establishment of Palm Beach County's Mooring Buoy Program

A. THE PARTIES to this MOU agree to jointly establish Palm Beach County's Mooring Buoy Program (the "Program").

B. FWC and PBC assume full responsibility for any liability coverage and any resulting liabilities related to the mooring buoys once installed and hold the WFF

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harmless for any professional management decisions made by FWC and/or PBC related to installation locations, installation impacts, or any issues related to the choice of installation or location of the buoys. The PARTIES recognize that the WFF is merely a grantor providing grant funding and that professional management decisions related to installation, operation and ongoing maintenance are to be made by PBC and FWC.

C. PBC and FWC understand that WFF shall assist with ongoing funding of maintenance and operations for the Program as funds become available for such purposes. WFF has no existing funds to contribute to the Program, but WFF is committed to funding the Program based on donor gifts. WFF has no financial obligation to maintain the buoys, inspect the buoys, or provide any monies associated with research and monitoring of the buoys after the initial installation. WFF will continue to work with PBC and FWC on funding initiatives at its sole discretion in an effort to provide ongoing funding for the Program;

D. WFF's responsibilities include:

(1) providing funds and contracting for the Program and ensuring that all contracts and subcontracts related to this MOU and the Program include PBC and FWC as "additional insured" on all liability insurance policies related to the Program;

(2) providing ongoing financial accounting and reporting, auditing, and all state and federal reporting associated with managing of Program funds; and

(3) providing annual information on WFF's administration and distribution of funds during its fiscal year ending July 31st, no later than August 15th for WFF's general audit for compliance with State requirements.

E. PBC's responsibilities include:

(1) procuring all state and federal permits and approvals necessary for installation of the buoys;

(2) in collaboration with FWC, overseeing placement and installation of buoys;

(3) in collaboration with FWC, providing long-term monitoring of the sites where the buoys are installed to determine whether the installation of mooring buoys decreases anchor damage to the nearby reefs; and

(4) assisting FWC in development of annual status reports and reports to WFF concerning the use of Program funds;

(5) in collaboration with FWC, creating plans for and estimating the cost of installing additional mooring buoys in the future and providing the same to WFF, if additional grant funds are requested;

(6) securing funding for ongoing maintenance of the mooring buoys, should grants not be available from WFF.

F. FWC's responsibilities include:

(1) in collaboration with PBC, overseeing placement and installation of buoys;

(2) in collaboration with PBC, providing long-term monitoring of the sites where the buoys are installed to determine whether the installation of mooring buoys decreases anchor damage to the nearby reefs;

(3) in collaboration with PBC, creating plans for and estimating the cost of installing additional mooring buoys in the future and providing the same to WFF, if additional grant funds are requested; and

(4) In collaboration with PBC, providing WFF with annual status reports, projected cost reports, and reports concerning the use of Program funds.

II. Miscellaneous Provisions

1. Proprietary Material:

1.1 Each PARTY to this MOU grants a reasonable right to use the logos, images, and copyrighted or trademarked materials of the PARTY to the other PARTIES for their respective use in promotion materials, on the internet, or in correspondence; provided, however, that each PARTY will give the other PARTIES, via email or other expedient means, advance notice of intent to use the copyrighted or trademarked property, will request permission to use the same, with detailed explanations of the proposed use, and will obtain approval before using copyrighted or trademarked property. Each PARTY will have fifteen (15) business days to respond to the proposed use; failure to respond to a request to use copyrighted or trademarked property within fifteen (15) business days will be deemed approval to use the requested material.

1.2 THE PARTIES recognize that each PARTY has Trademarks, including but not limited to, artwork and other symbols associated with each PARTY that are and shall remain the property of each PARTY. Each PARTY shall take all steps reasonably necessary to protect the Trademarks of the other PARTIES to this MOU. A PARTY is authorized to use the Trademark of another PARTY to this MOU for advertising and promoting the Program during the term of this MOU provided that the PARTY owning the Trademark approves such use in advance, as provided in paragraph 1.1. THE PARTIES agree that each shall work toward an immediate resolution of any issue regarding the Trademark approval and that permission to use another PARTY'S Trademark shall not be unreasonably withheld. The limited right to use said Trademarks are non-assignable and non-transferable.

2. Term and Termination:

2.1. The term of this MOU shall begin upon execution by THE PARTIES to this MOU and conclude on September 30, 2009. Notwithstanding the foregoing, each PARTY shall have the right to terminate this MOU upon thirty (30) days prior written notice, whereupon all rights and obligations granted herein shall cease and terminate, unless expressly preserved.

2.2 This MOU may be immediately terminated by PBC, WFF or FWC upon the discovery of the insolvency of any PARTY hereto, the filing of a petition

of voluntary bankruptcy under any chapter of the bankruptcy laws of the United States, the institution of an involuntary proceeding to adjudge a PARTY hereto as a bankrupt, the appointment by a court of a receiver, trustee, or the dissolution of any PARTY hereto.

2.3 If a Party fails to fulfill its obligations under this MOU in a timely and proper manner, a PARTY not in default shall have the right to terminate this MOU by giving written notice of any deficiency and its intent to terminate. The PARTY in default shall then have thirty (30) days from receipt of notice to correct the stated deficiency. If the defaulting PARTY fails to correct the deficiency within this time and unless otherwise agreed by the PARTIES, this MOU shall terminate at the expiration of the thirty (30) day time period.

3. Indemnification and Insurance:

3.1 PBC shall indemnify, defend and hold WFF, or FWC, its employees, directors, officers, affiliated companies, agents and insurance carriers harmless from and against any and all claims, demands, damages, liability, costs, expenses (including without limitation reasonable fees for counsel of any other PARTY's choice) and causes of action asserted against, imposed upon or suffered by FWC or WFF and resulting solely from PBC's violation of the terms of this MOU. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statute Section 768.28 nor shall the same be construed to constitute agreement by PBC to indemnify the WFF or FWC for such other PARTY'S negligent, willful or intentional acts or omissions.

3.2 WFF and FWC shall indemnify, defend, and hold PBC, its employees, directors, officers, affiliated companies, agents and insurance carriers harmless from and against any and all claims, demands, damages, liabilities, costs, expenses (including without limitation reasonable fees for counsel of PBC's choice) and causes of action asserted against, imposed upon or suffered by PBC, that may arise out of or in connection with WFF's and/or FWC's obligations under, or any violation of, this MOU to the extent allowed by section 768.28, Florida Statutes. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statute Section 768.28 nor shall the same be construed to constitute agreement by WFF or FWC to indemnify PBC the for such other PARTY'S negligent, willful or intentional acts or omissions.

3.3 The protection provided by paragraphs 3.1 and 3.2 shall survive the expiration or termination of this MOU but shall not extend or enlarge any applicable statute of limitation or repose.

4 Funding Contingency: Completion of this MOU is contingent upon each of the PARTIES approving and/or securing, as applicable, its funding obligation hereunder. Notwithstanding this contingency, each PARTY shall diligently pursue the approval and procurement of its funding obligation.

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5 Headings: The headings appearing in this MOU have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the clauses to which they pertain.

6 Governing Law: This MOU shall be governed and construed in accordance with the laws for the State of Florida, both as to interpretation and performance.

7 Venue: Any and all suits for any and every breach of this MOU may be instituted and maintained in any court of competent jurisdiction in Leon County, Florida.

8 No Joint Venture/Scope of Authority: This MOU shall not create a joint venture, partnership, principal/agent, employer/employee or similar relationship between the PARTIES and under no circumstances shall a PARTY's agents or employees be considered agents or employers of any other PARTY. No PARTY is authorized to assume or create any obligations or make any contracts, agreements, representations on behalf of any other PARTY, unless specifically authorized in writing by such PARTY.

9 Force Majeure: A PARTY shall not be responsible for failing to perform any part of this MOU or for any delay in the performance of any part of this MOU resulting from any acts outside of a PARTY's control, including fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, force majeure, act of God, or enactment of regulations interfering with production or delivery, provided prompt notice is given to the other PARTIES.

10 Assignability: PBC, WFF and FWC are entering into this MOU with each other based in substantial part on the unique attributes that each PARTY offers, in view of their reputation and position in the community. Therefore, this MOU may not be assigned by any PARTY hereto.

11 Severability: The determination that any provision of this MOU is invalid or unenforceable shall not invalidate this MOU, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the PARTIES shall be construed and enforced as if the contract did not contain the particular part, term or provision held to be invalid.

12 Waiver: The failure or inability of a PARTY to enforce any rights hereunder shall be deemed a waiver of the rights or remedies that such PARTY may have regarding that specific instance only and shall not be deemed a waiver of any other breach or any subsequent breach or default of any terms and conditions. No waiver shall be effective unless in writing and signed by the PARTY making such waiver. Such waiver shall be limited to provision(s) of this MUO specifically referred to therein and shall not be deemed a waiver of any

other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

13 Jury Trial Waiver: As consideration of this MOU, the PARTIES hereby waive trial by jury in any action or proceeding brought by any PARTY against any other PARTY pertaining to any matter whatsoever arising out of or in any way connected with this Agreement.

14 Entire MOU: This MOU constitutes the entire understanding between the PARTIES hereto and cannot be altered or modified except by an MOU in writing signed by all of the PARTIES hereto. Upon its execution, this MOU shall supersede all prior negotiations, understandings and MOUs, whether oral or written, and such prior MOUs shall thereupon be null and void and without further legal effect.

15 Prohibition of Discriminatory Vendors: In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases or real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

16 Notice: All notices, demands, and other communication required or permitted to be given hereunder or by law shall be in writing and, except as otherwise expressly provided herein, deemed to have been duly given upon receipt by overnight delivery, hand delivery, facsimile transmission or certified mail, postage pre-paid to: Daniel Bourg; Wildlife Foundation of Florida; P.O. Box 11010; Tallahassee, FL 32302 Fax: 850-921-5786; Erin McDevitt; Florida Fish and Wildlife Conservation Commission; 8535 Northlake Blvd.; West Palm Beach, FL 33412, Fax: 561-625-5129; and Richard E. Walesky, Director; Department of Environmental Resources Management; 2300 N. Jog Rd., 4th floor; West Palm Beach, FL 33411-2743, Fax: 561-233-2414. Each PARTY shall inform the others in writing within five (5) days after changing the address or facsimile number where Notices are to be provided pursuant to this MOU

17 Amendments. The provisions of this MOU may not be waived, altered, amended, modified or repealed in whole or in part, except upon the written consent of all PARTIES to this MOU.

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WHEREFORE, THE PARTIES have caused this MOU to be executed by their authorized representatives on the date first written above.

ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA
FOR ITS BOARD OF COUNTY
COMMISSIONERS

BY: _____
DEPUTY CLERK

BY: _____
ADDIE L. GREENE, CHAIRPERSON

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

BY: _____
ASSISTANT COUNTY ATTORNEY

BY: Richard E. Walcott
DIRECTOR, ENVIRONMENTAL
RESOURCES MANAGEMENT

DATE

11/3/07
DATE

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION

APPROVED AS TO
TERMS AND CONDITIONS:

BY: Ken Haddad
FOR KEN HADDAD, EXECUTIVE DIRECTOR
FISH & WILDLIFE CONSERVATION
COMMISSION

Charles B. Boston
FWC ATTORNEY

WITNESS:

WILDLIFE FOUNDATION OF
FLORIDA, INC., A FLORIDA
NONPROFIT CORPORATION

Carol A. Herndon
SIGNATURE

CAROL A. Herndon
NAME (TYPE OR PRINT)

BY: Will Bradford, Treasurer
FOR CHARLES B. BOSTON,
EXECUTIVE DIRECTOR