

**Florida Keys National Marine Sanctuary Advisory Council
Final Minutes – October 17, 2000**

MEMBERS PRESENT

Wayne Blevins

John Brownlee

Virginia Cronk

Frank Decker

Jim Fryer

Richard Grathwohl

Debra Harrison

Warren Johnson

Don Kincaid

Karen Lee

Duncan Mathewson

Ken Nedimyer

George Neugent

Anita Schwessinger

Deborah Shaw

ALTERNATES PRESENT

Greg DiDomenico for Tony Iarocci

Todd Firm for Rob Bleser

Call to Order/Approval of Minutes/Adoption of Agenda

Chairman Neugent called the meeting to order at 9:07 a.m.

Warren Johnson requested the minutes from the August 2000 meeting reflect that he attended the meeting only in the afternoon. Ms. Collette stated she would make the correction. The minutes of the August 15, 2000 meeting were approved as corrected.

Debra Harrison requested a change to the agenda to add an update on the status of the Florida Keys Water Quality Improvement Act at the end of the meeting. The agenda was approved with the addition of this item.

Sponging Workshop

Mr. Causey announced that the very important issue of commercial sponging in the Florida Keys has been brought up many times to the Sanctuary staff and other resource managers, and the purpose of this workshop is to raise this issue before the Sanctuary Advisory Council, and to point out very clearly the Sanctuary's role in this issue. Following a panel of scientific experts, a panel of members of the community that have concerns about commercial sponging activities, and a panel of spongers, Mr. Causey said he will be soliciting advice from the SAC that FKNMS management can take to the Florida Fish & Wildlife Conservation Commission who manages the fishery.

Science Panel

Martin Moe presented the attached “Sponging on the Keys Grounds-- A Little Basic Information”, accompanied by a slide presentation.

John Stevely with the Florida Sea Grant Program, who has done extensive research for over 20 years on commercial sponges, presented information regarding the biology of commercial species , landing statistics and research projects, along with a slide presentation.

Mark Butler presented “Sponge-Lobster Interactions in the Florida Keys”. Mr. Butler’s presentation also included a slide presentation. Mr. Butler presented information relating to sponges as habitat for organisms such as some shrimp and juvenile lobsters, reporting that only the smallest lobsters, about 10%, use commercial sized sponges as habitat, the rest use other sponges and habitats. Mr. Butler also reviewed research which was conducted to determine the cause of a sponge die-off, and its affect on the availability of lobster. Mr. Butler also said to answer the question of whether sponging is a sustainable fishery, you need to study small controlled areas not impacted by fishing to understand population dynamics.

Mr. Causey introduced Mark Robson with the Florida Fish & Wildlife Conservation Commission.

Question & Answer Summary

The Sanctuary Advisory Council asked questions of the science panel. Following is a summary of the items discussed.

Introduction of the synthetic sponge in the 1950’s nearly eliminated the world sponge market – now there are only a few places where sponges are in demand.

Sponge survey work in 1991 covered 15 areas. The loss of sponges as habitat for juvenile lobsters does not have as great an impact as we might think if there are other crevice shelters they can utilize.

Mr. Causey stated that he felt the panel of scientists was objective and not pro-sponging – their goal is to provide basic information.

There is not enough data to establish the number and size of allowable harvested sponges in the Keys.

The rate of growth data shows that sheepswool sponge growth is approximately one inch a year. It takes several years to get to commercial size.

Sponges and any other animals’ waste are part of the natural ecosystem.

Some sponges have fairly weak swimming larval stages lasting from one to two days.

Harvesting of commercial sponges appears to influence future growth rate. Based on data on cut and hooked sponges, it took four years before they all came back to legal, commercial size.

There is not enough scientific evidence to prove that elimination of the sponge harvest would measurably improve water quality, but over harvesting affects organisms that depend on sponges.

Uses for sponges other than for tourist trinkets are home maintenance, window washing, dog grooming, ceramics, and medical industry.

The 1908 and 1910 published study on sponges by Moore said Florida sponge growth was exhausted due to heavy sponging in Key West. As a result, farming of sponges was attempted, then abandoned due to storms, etc.

Using the hook for sponging is not 100% efficient – there would be sponges left – all depending upon various factors such as water clarity. Expanding to dive/cut harvest rather than hooking would result in a more efficient harvest, but would reduce the reproductive potential of the sponges.

Public Comment

Peter Gladding stated he feels sponging should not be closed as he is having trouble finding sponges to clean his boat. We now have the technology to devastate any fishery and everything should be regulated. Thirty years ago, sponging was done when crawfish season was over so the sponges “got a break” all winter, to grow. He does not agree with the growth rate stated earlier, a yellow sponge grows from two to three inches to five or six inches in four months; they grow very fast. He said he does not think sponging should be closed, but does need a close look.

H. T. Pontin –Mr. Pontin’s comments are attached.

Kim Anaston (Center for Marine Conservation) – Ms. Anaston’s comments are attached.

Billy Causey introduced Karla Mendez, Sanctuary staff, attending to assist with interpreting for the Spanish speaking audience. Ms. Mendez conveyed the purpose of the meeting in Spanish, and reported that some people in the audience stated they were concerned that sponge fishing may be closed, and this is the way they make their living.

Jim Bellizzi stated he is against sponging. How many pounds of sponges are actually removed from our waters?--approximately 40 thousand pounds. Also, how many spongers would be affected if sponging was closed?-- there are 144 fishing licenses reporting sponging activity which equates to about 2,000 pounds per permit. This

amount could probably be a sustainable amount, but as yet, we cannot determine if that is a sustainable number.

Debra Harrison stated her concern after reading the Miami Herald article which stated Rep. Ken Sorensen was going to introduce legislation to prohibit sponging in the Florida Keys based upon the concern that we are taking organisms that in fact are the “kidneys” of Florida Keys water quality. She is concerned as to whether or not sponges do serve a critical function in terms of improving water quality.

Bill Kruczynski answered the question, stating this is a complex question and answer. Nitrogen and phosphorous are nutrients that are of concern in water quality issues. They do not go away, are not created, they are cycled. They come into the ecosystem from external sources such as the Everglades, west Florida shelf, and set the background of nitrogen and phosphorous levels here in the Keys. We have very little control over that. We add to those nutrients via our wastes. Because we don't have waste treatment practices in the Keys, we cause problems – excess nutrients causing blooms and upsetting the ecosystem. Sponges can improve water quality by participating in the cycling and recycling of nutrients within the ecosystem. However, sponges also put nutrients back into the water – we don't know how efficient they are in removing nutrients. What happens when you remove sponges through harvesting? This ecosystem as is any other ecosystem is in a dynamic equilibrium. The loss may or may not effect the recycling effects, but there would be other factors to consider such as the functioning of the ecosystem in terms of biodiversity, habitat value and other things that only sponges provide. He said he does not feel that we have the answers to the degree that sponges contribute to water quality.

Citizens Panel

Chairman Neugent recognized Representative Ken Sorenson and George Geisler, Mayor of Islamorada in the audience.

Frank Hawkins – A copy of Mr. Hawkins presentation is attached.

State Rep. Sorensen stated his concern that from all the data he has, there is clearly a problem, that the carnage has done severe damage to our reef. He will listen and will do whatever is necessary to protect the sponges.

Amy Knowles voiced her concerns over the staggering unregulated number of sponges taken – reported number, 40,000 pounds annually equals 500,000 individual sponges. How many are taken that are not reported? Anecdotal evidence suggests there is serious collateral damage associated with sponging such as poaching of protected species such as conch and turtle, widespread reports of motor oil spread of the water, being used to improve visibility, fish trapping, pollution in the form of human waste and garbage by the boats. As we continue to lose habitat and our seagrass beds and coral reefs decline, how can we sanction the removal of vital marine habitat? Research and study, yes, but at what cost to the resource?

Grady Sullivan observed that in the areas where sponges were, 20% of them were harvestable. In 1980, he began to see drastic reduction in sponges, many areas once abundant, have been completely wiped out. He feels the State of Florida has done a disservice in not regulating it. This fishery will collapse if something is not done. Another concern is the pollution generated by living on the boats for 20-30 days, is dumped overboard, the use of oil needs to be prohibited. He suggests sponging occur no closer than a half mile from shore. He states that the reports of the number of sponges harvested be doubled or tripled because it is an 80% to 90% cash business. He feels that 80% of the sponges taken are not reported – many who take them don't even have a social security card so income and take is never reported. He also suggests that a logical way to protect sponges would be to increase the size of the sponges that are allowed to be harvested.

Don DeMaria stated that if sponging could be done in a sustainable manner, fine, but what is sustainable? There is basically no regulation for sponge harvesting, no sponge license is required, unlimited amount of sponges can be taken and the number of people sponging is not controlled. If the Sanctuary ruled that live sand and live rock couldn't be taken from the Sanctuary, then sponges, which are essential fish and crustacean habitat, should also be protected. Sponges are some of the oldest multi-cellular organisms around and are important to medical research. The issue needs to be seriously considered.

Mike Ellers stated he is concerned that since a sponge contains 100 different species of organisms, when a sponge is taken from the water and beaten repeatedly with a bat, what happens to all those living species? Small lobsters prefer some commercial sponges, so when they are taken over and over again in one area, there is an impact on lobster fishery. Maybe we should consider putting a freeze on sponging and regulating what is occurring now and phasing out sponging altogether. There is no reason to make people think sponging should go on for generations.

Gary Ellis stated he is concerned about the condition of our environment in the Keys, about its preservation since we are, in fact, a Marine Sanctuary. He is in favor of catch and release but doubts that if a sponger takes one that is too small, throws it back, that it survives. He is very concerned over lack of control over methods of sponge collection. He said he feels that a proper assessment of sponging as sustainable is not possible based on the number of catches reported – because this is voluntary reporting, there is no permitting or specific licensing and there is a whole element of harvest out there that is going completely unreported. Replenishing sponges could take years. He questions where the sponging vessels are based – probably outside the Keys so he feels “tradition” should not be such a concern. There should be, however, compensation made to spongers losing their livelihood. The health of sponges is very important. He is concerned about the hard coral flats where sponges are harvested and the habitat lost. He knows of many places where there were sponges and now only a few small ones are left. Consideration needs to be given to the economic impact sponging has on real estate, recreational fishing, to the pristine natural environment we still have left.

Frank Hawkins said, to summarize, there is a serious problem here that cannot be ignored any longer. Think of the magnitude of loss to our environment when the reported take of 4.6 million sponges in ten years is not accurate – that it is probably three or four times that number. Think of distinguished scientist Martin Moe’s statement that if sponging in the Keys was eliminated, the Keys environment would improve.

Chairman Neugent recognized the need for both a short and long-term solution to the sponging issue.

Rep. Sorensen stated that he believed the comments from the citizen’s panel were all valid comments. He asked the Sanctuary Advisory Council to come up with strong recommendations for him to take to Tallahassee; he will offer a bill to retrain spongers and reimburse them for their losses, at State expense.

Question & Answer Session Summary

Wayne Blevins called to everyone’s attention that if 100 pounds of dry sponges are allowed daily –that is a semi truck full of sponges and we are losing them faster than we know. Consider that the Queen Conch while being “researched” was nearly wiped out of existence. He said he thinks at the very minimum sponging be permitted and then phased out.

Warren Johnson asked about the number of boats registered for the sponging trade in the Keys and if the FWC finds they are boarding sponge boats regarding sanitary facilities on board. Lt. Currul replied that FWC keeps track of the number of sponge boats, that boarding the sponge boats is minimal, mostly they are checking the size of the sponges; they don’t see a lot of violations in regard to marine sanitation devices (MSD). The MSD rule is in effect and that is looked at, but it is specific to the size of the boat and the living quarters.

Greg DiDomenico asked Mr. Hawkins if he would be satisfied with anything short of a ban on sponging, commenting that Mr. Hawkins has talked about a lot of alternate solutions; banning is not an alternate solution, nor is it a management scheme. Mr. Hawkins said, speaking only for himself, that he is among the first to recognize that we are dealing with human beings here and this is not a personal attack on anyone, he regards this as a very serious problem for this very precious environment. He stated he now favors a buyout program. Mr. Hawkins recommended that Ken Sorensen, or someone, introduce legislation in exchange for a permanent total ban on sponging in the Florida Keys that we would offer, for example, one dollar against every trip ticket filed in the last three years. That would be approximately a million and a half dollars. For the State of Florida to invest a million and a half dollars in helping to improve the habitat in this area by that amount would be a win-win for everybody. Mr. DiDomenico said he would hate to set a precedent and bypass traditional management schemes that have worked here in the Florida Keys, and go to a buy back which is a very popular word now in fisheries.

Debra Harrison stated she is concerned about the depletion of sponges as a result of the algae blooms in Florida Bay beginning in 1991 and what that means specifically to that area of the Florida Keys in terms of the health and viability of that resource, not necessarily in conjunction with sponging, but independent of that. She said she is concerned about the impact of discharges from C111 on sponging habitat and what that means as we are waiting for Everglades restoration to kick in. She also commented that there has been conflicting testimony here today, as to why Biscayne National Park closed its doors to sponging activity—on the one hand we heard Kim Anaston from CMC testify that it had to do with the rigorous standards in National Parks, and she also heard from Mr. Hawkins that there were specific habitat impacts and ecological impacts that caused that closure.

Duncan Mathewson indicated he wanted to open up for discussion the issue of the nature of the sponging activity itself, and the cultural differences the spongers bring to the Keys. Mr. Sullivan said that was what he was trying to point out earlier, the cultural differences, which is the people who are moving here now are different than the people who lived here 20 years ago. Some people don't like them living in their backyard—in the past no one cared if you lived on your sailboat. Mr. Sullivan said he thinks there is a lot of social issue here as well; that is why he suggested the 1/2 mile off shore limit. Chairman Neugent commented he sees user conflicts as a growing problem, and although it is an element, he thinks protection of the natural resources is the larger part of the discussion. Mr. Hawkins commented that, for him, the social issue has nothing to do with the point he is trying to make, his point only has to do with the protection of this precious environment.

Warren Johnson read from an article regarding sponging by Wayne Witzell, NOAA Fisheries, which is included in the report he handed in for the record (attached).

Debra Harrison asked the panel if they have seen a serious degradation in reduction in the numbers of sponge and other components of the environment that continues in Florida Bay in the last decade. She asked if there is a need to consider special management options based upon the very degraded state of Florida Bay currently and find some way to assure a rejuvenation of those components? Amy Knowles stated, yes, not only in Florida Bay but on the ocean side as well--there is a very noticeable difference. Gary Ellis said, in Florida Bay the sponges are gone, they are not coming back, but it is different than the ocean side, there is degradation on the ocean side, but they are almost two different environments now as far as there is no sponges there. Don Kincaid added—Florida Bay is one ecosystem and separate from the ocean front coral bottom, where the majority of sponges are being harvested. He said he thinks the impact of sponge harvest is more detrimental to that hard coral ocean frontage from the standpoint of sustaining a habitat for the bonefish fishery and just creating a good environmental condition, where in Florida Bay that was a water quality issue that killed the sponges, and he doesn't think that impacted the area he referred to as in front of the Keys.

Sponging Industry Panel

Jim Cantonis stated that without exception every trip ticket is reported. He also stated there may be a decrease in size of sponges in an area, but there are more sponges. The reason is perhaps young sponges are more efficient reproducers. Regarding the ban in Biscayne Bay, Jim was there and he stated that Gov. Lawton Chiles reprimanded Russell Nelson, head of the Florida Marine Fisheries for bringing an issue where there was no scientific evidence that stated there should be a ban on fishing in Biscayne Bay. You must divide speculation from science. Sponging has been unregulated in the Mediterranean for 3,000 years and still is an active fishery. He stated that he does not buy any sponge that is smaller than five inches, so there is self-regulation. He said he also feels that this is not a reef issue because sponges come from the bay side, not the ocean side.

Duane Hope said he sponged for the past 15 years in the Lower Keys. He has never found a baby lobster in a live sponge – beats the sponges twice and this time of year finds baby lobsters on the cleaned sponges only, never in living or dead sponges. Stated he hasn't seen fish eating sponges. Turtles eat them. Shrimp, Brittle Starfish and worms are the primary occupants of the sponges he takes. He has MSD heads, proper trip tickets, does not use motor oil, does not throw trash overboard, does not feel sponging effects water quality. There is much more damage done by big motor boats. He does not want to be bought out, he loves this way of life in our pristine environment.

Jorge Blanco stated that as a sponge buyer and sponge fisherman, he is very concerned about his associates and their livelihood. Some are not educated to pursue something else and are very worried about the tradition ending. Sponges grow very fast--in a matter of five months an area will reproduce from where they were all taken.

Mimi Stafford stated she is a sponge wholesaler, with a degree in marine biology, began sponge fishing, stone crabbing, lobstering, diving and has great respect for our pristine environment. She was at the Biscayne Bay meeting and feels that the fishermen tend to be timid and don't get involved with processes and are then left with regulations that close them out of the business. She feels that sponging should not be blamed for the damage done by all the things we have done such as pollution and fresh water problems. Sponging is inefficient. Because of the angle of light and visibility, there are many sponges left behind. Also of concern is the intolerance that seems to be growing in last few years. Diversity is important not only in our environment but with us as people - the more diversified we are, the more tolerant we are of each other, the richer we are, and the more cultural experiences we can exchange. But the more we isolate, the less tolerant we become, and that is a dangerous state.

Question & Answer Summary

Additional information was requested by the Sanctuary Advisory Council such as what areas are being harvested, how many spongers are in each area, existing regulations and license requirements, how many sponges are taken by divers and tropical fish collectors

and getting information from buyers in Miami as to how many spongers are coming to them from the Keys, and that scientific facts need to be presented in order to make an informed decision.

Following discussion regarding how to proceed, Karen Lee moved to reconvene in a special meeting in November with sponging being the sole issue on the agenda. The motion was seconded by Wayne Blevins. The date of this special meeting will be announced. Upon vote, the motion passed unanimously.

Lieutenant Bob Currul - FWC -reviewed enforcement regulations for sponging.

Public Comment

Elizabeth Blanco said many spongers make an honest living, they cannot read or write, it is all they know, the families would be hurt if sponging was banned. She added that it is against the law to buy sponges without a trip ticket so she feels the numbers are accurate.

Unfinished Business

Area to be Avoided Boundary Change – Process and Schedule

Capt. Lawrence Bowling, U.S. Coast Guard, gave an update on the project, stating that the project is more complicated due to the fact that some of the Areas to be Avoided are more than three miles offshore and thus International regulations must be changed. This means it will not be a quick process.

Ole Varmer, NOAA General Counsel, stated that a draft proposal will be prepared for the International Maritime Organization (IMO) Sub-Committee on Navigation, meeting in July 2001. The proposal will be in to them in early 2001 to give them ample time to consider it.

New Business

Consultations with Spain Regarding Their Sovereign Vessels

CDR Craig McLean, Deputy Director, National Marine Sanctuary Program, stated that the problems cannot be solved now because an element is missing which is the government of Spain – they were invited but could not attend. He reported the U.S. Government is the process of consulting with Spain when there is a vessel in the Sanctuary that salvors are looking for and could be a Spanish sovereign vessel. A court case recently ruled that Spain could exert an ownership interest in a shipwreck. This changes the way we look at abandoned shipwrecks. The reason that the United States recognizes Spain is that we give credence to the Federal property of another sovereign just as we would expect our Federal property not to be taken over by another jurisdiction other than the United States. Navy warships, for the past two hundred years that are sunk in foreign coastal waters or are in international waters, still belong to the United States

Navy. We hold that position and thus we give accords to any other nation that has that same position. In 1978, there was a case, which was also referenced in the Juno and LaGalga case that made the point that Spain did not appear which gave rise to the presumption that the wreck had been abandoned.

CDR McLean reviewed the history of the Abandoned Shipwreck Act. He also said around 1996-97, the programmatic agreement began between the State of Florida and NOAA for the administration of submerged cultural resources in the National Marine Sanctuary in the Florida Keys. As that was developed, included were references regarding the issue of sovereign vessels. Sovereign included all the possibilities – State sovereignty, Federal sovereignty and another foreign sovereignty. Shortly thereafter came the district court notice by Seahunt, the commercial entity that was exploring and searching for both the Juno and the LaGalga off the east coast of the United States. In March of 1998 Seahunt was told by the court to give notice to the U.S. and to Spain of what they were doing. Then Spain and the U.S. got involved and during the course of those proceedings, the court told the U.S. that they could not do anything short of having Spain represent itself. The district court ruled that one of the wrecks belonged to Spain and the other was deemed to be the finders. That was appealed and ultimately the disposition from the 4th circuit court was that Spain could retain its ownership. In October of 1999, Spain had an exchange of letters that referenced the programmatic agreement and Spain offered to NOAA that we could engage in consultations to further define the manner in which NOAA and Spain would cooperate, would consult and mutually participate in executing the programmatic agreement. Something to consider, would be that the salvors have their own direct contact with Spain and then proceed with their work. If there is concern about the disposition of vessels that already are under a preexisting claim or a claim that arose prior to the Sanctuary designation, that is a question that needs to be presented to Spain.

Chairman Neugent asked Mr. Causey to address the SAC as far as how he sees the role of SAC in this issue.

Mr. Causey responded that the SAC's role, as being representatives of various groups in the community, is to familiarize themselves with the issues without getting embroiled in controversy. Many people think that we have done something different than what was agreed to in the programmatic agreement, but the consultation with sovereign nations was clearly specified and required in the Abandoned Shipwreck Act. This is an information session so that the SAC can accurately relay facts back to the community.

Duncan Mathewson stated that this is a very difficult situation – we have legal problems, political problems, archeological and resource management problems. This has definitely opened up huge can of worms. Who has the burden of proof that a sunken vessel is of Spanish nationality, a royal or state vessel or is it a merchant vessel? Who will identify artifacts that are specifically Spanish and interpreting a wide scatter of artifacts over miles and miles of seabed which may be incorporated with material from other shipwrecks from other nations? Does this open the door for England, Holland, France and for all the other nations that have shipwrecks along our coastline? We have

approximately 1,000 shipwrecks along the Florida Keys. The history of our State and particularly the Florida Keys and South Florida is interwoven with the Spanish maritime cultural history of the Caribbean and the New World. The last thing we want is an enormous “PR” disaster where word gets out that Spain is backing a truck up to the museum in Tallahassee, picking up all those artifacts that have been recovered by the salvage community for over 60 years. Mr. Mathewson asked CDR McLean how would a distinction be determined between a State owned and a merchant vessel?

CDR McLean responded that the distinction is made case by case, but if it is a Spanish Naval vessel, that is a sovereign vessel. There are other characters of vessels that would be engaged in the Crown’s work that could be deemed as a national vessel as well. Burden of proof would be a science-based question, an objective analysis by the permit granting authority which would be NOAA. NOAA would look for evidence as generated by the site – findings of the commercial salvor and the archeologists employed thereby, to present what proof there is of the identity of the vessel. The alternative, as part of this consultation, is possibly Spain could be a contributor of this discussion, but it would be a scientific offering. The artifacts would be examined -- is there something of certainty that we can look at or is the site a mixed field.

Public Comment

William Vandercreek, Professor at FSU, stated that the SAC should be cognizant that the 4th circuit court opinion is not controlling upon the State of Florida or Federal or state courts within the State of Florida. There are legal and technical differences between the 4th circuit and present cases. Another court may well take a different view of what constitutes abandonment and whether the treaty of 1819 in itself constitutes abandonment of the sovereign property of the Kingdom of Spain. He hopes we will improve the dialogue with Spain. He does not feel Spain should be telling us how to manage the cultural resources of the Sanctuary or our state. He hopes Spain will reach that opinion independently. In the Juno case, lawyers from our own government went to Spain and asked them to make a claim, causing heavy criticism by the State of Virginia and North Carolina. The most important thing, as pointed out by Duncan Mathewson, is recognizing that we are not talking about an intact shipwreck. This is not the Arizona, this is not a tomb. This is a wreck that is scattered in bits and pieces over miles, buried under 10 to 30 feet of sand and would require a tremendous amount of expense and labor in order to recover the artifacts. Every day they disintegrate further and we do not have the opportunity of preserving this cultural heritage which is a very important aspect of the State of Florida. He would like to encourage the Sanctuary to continue this very valuable work on monitoring and preserving our cultural resources. He said he hopes that the Kingdom of Spain has sufficient respect for us to manage our cultural resources and will decline to interfere in our business.

State Representative Ken Sorensen stated his comments are as a citizen of Florida. The federal administration should not give control of the Florida Keys and its critical resources to the Kingdom of Spain. It appears that NOAA either wants or is willing to allow Spain to reach out and grab control of these resources that have been here under

water for 200 years and give them control over the marine salvage. Our government should protect the rights of the State of Florida and its citizens to control our own submerged lands. These vessels have been down there for 200 years, scattered for miles with tons of sand on top of them; they are not intact wrecks where we are protecting bodies of seamen - there are no remains or skeletons found. The Supreme Court has not made a decision on this. Our federal government should protect the rights of the State of Florida and its citizens to control our own submerged lands. It is ours and came to us in a treaty a long time ago. He suggests that this board not be pulled into a position that would put them in a place that would transfer these rights or encouraging or becoming a part of encouraging these rights to go to Spain. It would be a mistake.

Taffi Fisher Abt stated she is disappointed that the Spanish Ambassador is not present as she had questions for him. She said she wrote letters to the Secretary of State and all our representatives as well. She stated she hopes that the Supreme Court decides to hear and reverse the Juno case. Ms. Abt asked CDR McLean a rhetorical question - if he was intending to ask Spain to give the SAC a list of their sovereign shipwrecks that are sunk in our waters, along with their locations. At the very least they should supply us with a list of their sovereign vessels before a lot of us waste our time and money. If they don't know and are making it up as they go along, then that is just not fair. She stated she was surprised at the correspondence between NOAA, Dr. Baker, and the Ambassador. The first piece she has is dated October 5th, that the Ambassador had received a copy of the programmatic agreement that was signed in June of 1998. It all seemed to have happened prior to the Juno case which is upsetting. It seems like somebody in D.C. was urging Spain to come over and get these shipwrecks. According the Abandoned Shipwreck Act, the State, if it does not agree with NOAA, can exercise its rights of ownership on submerged cultural resources in State waters and independently determine how those resources should be salvaged or owned.

Jim Sinclair stated that he is an archeologist and has been around these folks (salvors) for about 20 years. The thing to keep in mind is that a lot of these people have put in a lot of their lives into looking for these wrecks. Who actually decides what is sovereign and who actually decides which of the wrecks are taken away from the people who salvage and put so much heart into the recovery? If the rights of these individuals is taken away, we lose the wonderful contribution they make to the history of Florida, such as the Mel Fisher Museum which is one of the biggest attractions in Key West. All of these people have a great deal to contribute to the history of Florida and to Spain and he hopes that Spain and FKNMS and NOAA will let them continue.

Tom Yerin stated he does not mind Spain claiming the wrecks – they can have all the nuts and bolts and stuff they want, but the cargo belongs to this part of the world. Spain has no claim to this. They came over plundered, murdered 12 to 15 million people– wiped out a total civilization. The United States should not stand behind a nation that is genocidal. They should not have the right to take a finding – the cargo is not necessarily theirs – much of it being “ill-gotten gains” from hundreds of years ago.

Kim Fisher stated the Florida Keys National Marine Sanctuary is not part of the 4th circuit. As a local treasure salvor, he has had an agreement with the Sanctuary and for six or seven years has put together a working plan. We should not be affected by a ruling from another circuit or Spain as Florida has a good working system. Until something comes down from the Supreme Court or the 11th circuit, he thinks we should not be affected by Spain or anyone else.

Pat Clyne said that he was at the Juno hearing, and described the courtroom scene and those in attendance, stating that this is not a local issue, this is an International issue. This didn't just happen because Spain thought it was a good idea to file a claim on a shipwreck. If that was the case, they would have done it many years ago on the Atocha, the Santa Margarita, or on the 1733 or the 1715 fleet. Why didn't they do it before? They couldn't. The reason they did it is because in 1997 they got encouragement from our government. Our Justice Department and our National Parks Service influenced Spain to file a claim in our courts in 1997. They were just as surprised as anyone else that our federal government would recommend that they file claim in our territorial waters on our shipwrecks. They won title. This whole problem has to do with an International issue known as UNESCO, who for the past three and a half years, has been trying very hard to get rid of all commercial salvage in the world. They want to give the shipwrecks to their institutionalized archeologists and back to the government.

Mr. Clyne said he feels privileged to have been with the U.S. delegation in Paris for the past three years during their meetings. What NOAA would like to do, in order for the United States to ratify the treaty, is to be able to abolish the admiralty laws of our country. We do not want to do that, so they have offered us an alternative. That is that they would put in place of admiralty law, an administrative adjunct or administrative regime who would oversee the recovery of these shipwrecks. That administrative regime would be NOAA, of course. What this says to the salvors is that we do not have any due process. In 1987 Congress gave the states title to shipwrecks in their waters. How do you give it back to Spain if Congress has already mandated that it belongs to the states? By going to Spain and telling them to file claim and set a precedent for all the Marine Sanctuaries in the country. These shipwrecks in our State waters belong to the State of Florida. Congress and the United States Government has stated this. Do not allow Spain to take our shipwrecks. We have had a wonderful relationship with NOAA, have gotten our permits, but CDR McLean stated he can not answer the question what will happen to our permits. These shipwrecks in our State waters belong to us – the State of Florida; Congress and the United States government has stated this. We were working for 32 years on Santa Margarita and Atocha and now after 32 years are we going to be sending these permits over to Spain for their permission? That is not acceptable.

In the court hearing in Virginia, the attorney for the Embassy of Spain was speaking movingly about the lost souls on the shipwreck Juno, the 451 people who had perished and that was a gravesite. He said that we as salvors should not dare go out there and work the wreck site as it was memorialized as a grave site. Pat Clyne stated there have never been human remains found. It is amazing that the very people who seem so sensitive of the gravesites of their ancestors, these very conquistadors who have

committed genocide, rape, torture, pillage and enslaved the people of South and Central America, now all of a sudden develop a sensitivity towards the very people that had caused that. We Americans do appreciate the dead. For example, in 1997, on Mel Fisher's 75th birthday, we made a bronze plaque and took out to the Atocha. It is there today and reads, in part, "...they followed their dream, but those brave but frightened souls, who on this site sacrificed their future, so that we may have knowledge of our past, we dedicate what we have learned, that our destiny to explore cannot be granted by man, it is in fact our heritage".

Tom Ryan stated Spain now says that they want to be involved. He represents a company – EURISCO – and recently they got a permit, went through the survey stage and are now at the recovery stage. A letter from Spain states that they don't object to them doing survey work, but don't want salvaging done. Maybe this is just a miscommunication, but investors are involved. Shipwrecks that have been worked on for years could now be taken away by someone else. That is not right. If Spain wants any part of a recovery, they need to put up some of the funding involved. They cannot expect us to do the work and provide the funds and then take claim. Spain should send us proof of where their ships are located now, not after we find the shipwrecks. If they want to be a part of the programmatic agreement, they need to follow the agreement, send us documentation.

John Brandon posed the question, why did the US invite Spain over here?

CDR McLean replied that NOAA did not invite Spain. Spain was invited for the purposes of consultation. The purpose of the consultation as part of the programmatic agreement – in the way that we let permits and in the way we govern access to existing sites. It recognizes the principles of sovereignty in that if we have a known or suspected sovereign vessel, we will consult with the owner of that vessel. Doing this under the principles of international law which recognizes another nation's character.

Mr. Causey stated that he suspects where everything started was that we were looking out for our rights in international waters by protecting the rights of other sovereign nations in our waters.

Chairman Neugent cautioned the SAC that this is a complicated issue; and the SAC should not be embroiled in it until we have all the facts. We need to be very careful before we wind up in the middle of something that we did not start.

Kim Fisher asked additional questions and made comments relating to legal and political issues regarding protecting the rights of the vessel. He also commented, during the 1970's the State and Federal government teamed up to get the rights to the Atocha, not for Spain, but for themselves and spent millions of tax dollars to do this. They were unsuccessful in getting some of the sites because of the admiralty courts. He asked CDR McLean, the way he read the existing 4th circuit and appellate ruling on the existing admiralty rights, as a point of clarification, they found existing admiralties that had not

been intervened on by the Kingdom of Spain; at this point, these would be considered abandoned sights? Is that correct?

CDR McLean replied that was the point he was making earlier.

Mr. Brandon also commented regarding differentiating between sovereign vessels and merchant vessels - there are very different meanings between the 20th century, when the 1903 treaty was written and the 16th and 17th century treaty where a vessel that might have been under the charter of Spain was primarily engaged in a commercial enterprise, carrying cargo and passengers. We need to come up with a clear definition of what is, in fact, a commercial and sovereign vessel as opposed to what is a merchant vessel. Shipwrecks that have been worked on for years, potentially as Spanish wrecks, were never identified. There is no definitive proof, even on wrecks in Florida, being salvaged for 30 years, and we still don't know what vessels they are. Since the salvors are doing most of the archeological work themselves, it might mean that they may not be free with their information, or getting data, for fear they might be proving something for Spain that they might take away. This will hurt our archeological and historical investigation of sites if there is a chance that wrecks being salvaged must then be handed over to someone else. You can find many books on the Atocha, but if this had come up 25 years ago, that archival research may never have seen the light of day. People would be afraid of losing their sites once found. How will the private sector work with NOAA to get these specific things addressed by the Federal government? There seems to be a lot of very gray areas such as the shipwrecks scattered – you might have one Spanish royal vessel scattered among seven or eight other vessels from other nations over miles of ocean floor. It is very difficult to determine which artifact came from which vessel.

P. T. Rampy stated as a concerned citizen and member of the Historic Shipwreck Salvage Policy Council since inception, the HSSPC worked tirelessly for a number of years with the FKNMS to create the Florida Keys National Marine Sanctuary Submerged Cultural Resources plan. The goal was to preserve the record and to add to the world's body of knowledge. An important question is that if the Spanish government gains title to these shipwrecks, are we going to lose what archeological finds there are? They don't have to adhere to our State and Federal guidelines. He asked what precipitated the change in the attitude of the Spanish government? In an excerpt from a letter from the Ambassador of Spain it says: "In any case, there is no doubt that the Spanish state may not claim title to the said treasure for the following reasons: 1) If the discovery is considered marine salvage, the owner of the ship and/or merchandise would have lost all rights because he abandoned any attempts at recovery, and 2) If the discovery is considered a discovery of a treasure in territorial waters under the jurisdiction of a state, in this case the State of Florida, the laws of this State will determine title to the treasure. In most cases extinctive prescription would act against any right possibly reclaimed by a previous owner." Mr. Rampy said he feels that the Federal government is working against the citizens of the United States by sitting down with them in court.

CDR McLean stated any concerns that he cannot address he will carry forward and will continue to develop a dialogue with Spain to get those questions answered. He represents

a renewed and optimistic look that Billy is a part of and many others at the Sanctuary are a part of - to work cooperatively with the salvage community – and to find opportunity where the Sanctuary program can build public/private partnerships in other areas and use Florida as a model to increase the opportunities for that practice. We are not here in attempt to try to extinguish through indirect means by any sort of covert contacts with Spain or otherwise to divest you of what you have. It is not possible to foretell the exact fate of every permit that is out there, but NOAA’s view at this point, is that any existing permit, based on an admiralty award, would continue on the path we are on right now with a cooperative, regulatory system where the commercial salvage industry gets what it wants and NOAA, as a steward for a public based resources, gets what it wants, which is introduction of that history to the public. Regarding the question whether Spain could provide specific pieces of information, this is what we could gain from a joint consultation. NOAA will invite Spain to engage in a consultation with the salvage community, not just NOAA talking to Spain. He said Mr. Brandon raised issues that demonstrate the potential conflict and the very legitimate need to get answers. It is heartening to hear that the relationship with the Sanctuary and the salvage community is cooperative and constructive and we want to do everything we can to sustain that. To whatever extent we can be involved in influence, NOAA will do so.

Chairman Neugent expressed that the SAC has a great deal of respect for the salvage community and submerged cultural artifacts and wants to see fairness dealt to this community. He hopes that the information CDR McLean gathers will be brought back to the SAC as soon as possible.

Debra Harrison moved that the Sanctuary Advisory Council recommend that the Sanctuary Superintendent carry to NOAA the recommendation that we do everything we can to maintain and defend the compact agreement that guides salvage activities in the Florida Keys National Marine Sanctuary. The motion was seconded by Richard Grathwohl. Upon vote, the motion carried unanimously.

Announcements

Don Kincaid reviewed and distributed copies of “Bluewater Press Releases” regarding pollution caused by large ships, and articles relating to personal watercraft.

Billy Causey announced that Brian Keller will be the new FKNMS Science Coordinator.

Mr. Causey also announced that the Thunder Bay National Marine Sanctuary has been named as the 13th National Marine Sanctuary site.

Mr. Causey also announced that the National Marine Sanctuary Manager’s meeting will be held in the Keys November 1-3, and on November 3 FKNMS will hold its 10th Anniversary celebration at the Dr. Nancy Foster Florida Keys Environmental Center at Truman Annex in Key West. The celebration will include an introduction of the Sanctuary Friends organization, and a presentation of the contents of the NOAA 30th Anniversary time capsule.

Jim Fryer announced that The Nature Conservancy is seeking a new Program Manager with applications closing November 5.

Debra Harrison gave an update on the Florida Keys Water Quality Improvement Act.

The meeting was adjourned at 5:50 PM.

Submitted by,

Sharyn Collette

Approved 12/12/00