

HARBOR BRANCH OCEANOGRAPHIC INSTITUTE

FOUNDATION

Minutes

**Meeting of the Harbor Branch Oceanographic Institute Foundation
Board of Directors
Held at the Harbor Branch Oceanographic Institute at FAU
January 31, 2019**

PRESENT: Michael Brown, Sr., Joe Duke; Dr. Joseph Ferro*; Mike O'Reilly, Chair; Marjorie Raines, Treasurer; John Papa*; William J. Stewart, Esq., Secretary/Legal Counsel; Michael Toner, Vice Chair

ALSO PRESENT: Susan Decker, Senior Governance Consultant, BoardSource*; Debbie Dutton, Director of Operations; Katha Kissman, President & CEO; Cyndi Permenter, Administrative Assistant; Dr. Jim Sullivan, Executive Director, HBOI

ABSENT: C. Amos Bussmann

*participated virtually

Welcome & Call to Order

The meeting was called to order by Chair O'Reilly at 8:30 am.

Approval of the Minutes

The motion to approve the minutes of the November 8, 2018 Board Meeting passed unanimously.

Litigation Update

Bill Stewart reported on the December 6, 2018 hearing on FAU's motion for partial summary judgment. At the outset of the meeting, Judge Sherwood Bauer, Jr. announced that, after reading the parties' written submissions, he realized he had a relationship with some of the proposed witnesses, notably that former FAU President Frank Brogan was involved in the case and likely to be a witness. Therefore he was recusing himself from the case. The hearing concluded without action.

Judge Lawrence M. Mirman has since been assigned to the case. It is the intention of HBOIF's attorneys to approach FAU's attorneys to provide together a list of proposed witnesses with the case documents to determine if this Judge might need to recuse himself as well so that no more time passes unnecessarily.

Previously, after other delays including a disagreement about ESI protocols to be used, our attorney filed a motion to compel FAU to discovery. Documents are now about to be exchanged and following document review, depositions will be scheduled.

In response to a question about a timeline, Mr. Stewart speculated that assuming there were no issues with discovery and depositions, we are likely to be well into 2020 before there is a trial date.

Generative Discussion: “Maximizing the Foundation’s Impact”

President Kissman introduced Susan Decker who had previously facilitated a Foundation Board Retreat in the spring of 2013. Led by BoardSource’s Susan Decker, the Foundation Board participated in facilitated discussions about how the Harbor Branch Oceanographic Institute Foundation (HBOIF) can best maximize its impact.

Susan Decker: “What keeps you on this board/with the organization?”

Board and Staff Members expressed feelings of connection with the Foundation’s mission to support the Harbor Branch Oceanographic Institute – historically, personally, and for what it represents to the community (e.g., love of oceanography and oceanographic research; contributing to a better Indian River Lagoon.) Great satisfaction was expressed by the longer-term board members who have seen so many positive changes over the years (e.g., appreciation for assisting Mr. Johnson and Mr. Link to realize their dreams for the Institute’s growth; appreciation for all the good people involved through the years.) Satisfaction was also expressed about fit (e.g., pleasure to be working with a nonprofit which has the opportunity and commitment for the wise allocation of money for such a good cause; pleasure to be using other for-profit and nonprofit experiences for this nonprofit in a manner which provides good and effective process.)

There were compliments to the Board team (e.g., highly functional; a great board full of intellect, integrity, and passion; HBOIF just continues to grow; HBOIF’s philanthropy is businesslike; clear heads on this Board; being involved with such a sensible, committed group.)

There were compliments to the Staff team (e.g., excellent management; very positive and collegial working relationships; good fit for talents and skills; feeling that the work is contributing to a vital mission)

Susan Decker provided some current context about the philanthropic sector and explained that the foundation world has gone through major changes in the last 18 to 24 months. There are new and different perspectives. In the past foundations simply provided grants: they would announce they had funds available in a funding round and they would ask potential donors – “what do you need money for” and then they gave it. Now foundations are serving as “conveners.” They determine the need they want to support and then they find organizations they believe can best serve the need with the investments. This provides more effectiveness with the potential for huge social return on investment of funds in a targeted way. Grant making now includes a requirement to measure results.

Do you feel the HBOIF model is poised for this?

Board Members indicated that they believed it was (e.g., HBOIF’s operations put into place by Katha Kissman have allowed the Board to have great discipline and focus to use their knowledge; HBOIF now has the ability to be nimble and both plan as well as react to funding opportunities and needs.) The recent example of the HBOIF’s funding of the Florida Center for Coastal and Human Health was cited (e.g., HBOIF was able to commit to that funding in a

relatively quick period of time.) The earlier LOBOs grant as another example. It was noted that each Board member buys into HBOIF's mission (e.g., all donors want to ascertain what has been accomplished with their funding. In HBOIF's case, there is a sole grantee and decisions are not clouded with other objectives. The ability to ascertain clear impact should be easier; this has been worked on diligently – it is a work in progress.)

Susan Decker was asked about the different types of foundations (fundraising foundations or foundations that do not do fundraising and just give) and if our kind of foundation (one that relies on a fixed endowment rather than fundraising to support its operations and grant making) is common. Susan confirmed that it is quite common for foundations to have a fixed endowment upon which it draws to make grants. She cited the Ford Foundation and Eli Lilly among many in existence. She noted that our Foundation also has the income from the Specialty License Plates which is unusual.

Katha Kissman followed up on Susan Decker's explanation to note that HBOIF, while not a foundation in the eyes of the IRS (which would require a 5% distribution of income annually), is rather a public charity operating under the principles of a foundation. Foundations regularly use part of the distribution (what HBOIF calls "spendable") for operational expenses as well as grant making. HBOIF demonstrates how it serves the public good in order to maintain its public charity status – this is accomplished by the Specialty License Plates program alone. She also clarified that the income from the Specialty License Plates was not used to support Foundation general operations; except for legislatively allowable and nominal admin fees and marketing expenses, all Specialty License Plate funds are provided for grant making in accordance with the legislatively-dictated requirements.

She elaborated on some important history to help clarify this further. As HBOIF's interim leader in 2013-2014, she provided an Organizational Analysis (OA) based on interviews with Foundation Board Members, staff at HBOI, and individuals at FAU. That OA provided recommendations to help lay the groundwork for how HBOIF would fulfill its mission going forward, through grant making and operations to support such grant making. One recommendation was to eliminate an inefficient duplication of service (and funding) then in effect by moving HBOIF out of the fundraising realm. Instead, HBOIF could use its financial strength to support the establishment of a development staff at HBOI. This was extremely desired at the time by HBOI and FAU leadership. HBOIF funded an \$890,000 grant to hire three development staff at HBOI. Within 18 months, all three were no longer employed after an investment of almost \$420,000. Today, HBOI development is just gearing up again at HBOI (without Foundation funding). If HBOIF became committed to becoming a fundraising entity to build the Endowment, said fundraising would need to be for a specific purpose(s) and built upon a clear case for specific purposes as to why we were doing fundraising as a separate entity -- both internally and externally.

She also reminded the Board of the Audit Note which documented the lifting of the restriction by the original donor, the J. S. Johnson, Sr., Charitable Trust (Charitable Trust) in 2020 (see NOTE end of agenda section). This was in regard to the restriction of not using more than 5% annually of the spendable per year and for HBOIF Board's ability to use it as it sees fit with regard to donor intent. While our current Investment Policy honors that restriction by stating that we may use up to a calculated 5% as spendable annually, this is an "up to" caveat -- there are no requirements to distribute any funds except for the requirements associated with maintaining public charity status.

Board members spoke about desire for collaboration with other foundations to achieve greater impact. Susan Decker confirmed that many foundations are seeking these out – finding like-

organizations with common giving interests to make more high-impact grants. Another Johnson legacy foundation, the Robert Wood Johnson Foundation, was mentioned for possible collaboration (e.g., the business mindset of a Robert Wood Johnson Foundation collaboration would provide a huge and powerful opportunity.) And because Florida has a unique situation with regard to water issues, these kind of partnerships, both with other foundations and the government, could be highly beneficial.

Jim Sullivan thanked the Board once again for funding [\$650,000] the Florida Center for Coastal and Human Health (FCCHH) which he believes is one of the most important recent investments that HBOIF has made. He anticipates there are huge societal outcomes possible because HBOI is building partnerships with various public and private organizations; he noted he would elaborate later in his Operations Report. He mentioned specifically talking to the three area County Commissions who will be part of the public stakeholders of the FCCHH, citing for example that providing them with scientific data and pre-knowledge before going public on HABs would improve lines of communication with counties and the public. The Center will be doing all the critical research needed, positioning itself as the expert. He agreed with the idea of partnering with other foundations. He also is committed to approaching Governor DeSantis about the need for public support for the Center going forward.

Also, the idea of developing HBOIF as a hybrid model (e.g., like the Gates Foundation where Warren Buffett invested his philanthropic funds rather than starting his own) as potentially a key opportunity for HBOIF was discussed. This could attract high net worth individuals (or family foundations) who may wish to give or bequest to HBOIF based on our mission and our good stewardship (successful investment track record and/or efficient/effective operations). It was clarified that there are no prohibitions to HBOIF becoming an active fundraising entity; just important to manage possible confusion in the public mind. In addition, as a public charity HBOIF could establish its own programmatic components; it has previously not chosen to do so due to how it has evolved and how it supports HBOI. If HBOIF did pursue active fundraising or its own programming, it would need to be around a specific purpose(s) or need(s).

On the theme of “partnership” with HBOI, Katha Kissman and Mike O’Reilly cited concern over the recent example just that week about the quote in the spring 2019 issue of FAU’s Owl Research & Innovation (Division of Research) magazine. On page 30, there is an article on the FCCHH which was funded by HBOIF. In the 4th paragraph, funding is noted as “Sullivan secured \$650,000 from the institute’s foundation to establish the Florida Center for Coastal and Human Health.” (e.g., as a donor, the lack of acknowledgement diminished the idea of HBOIF as a partner with HBOI at best and appeared disrespectful at worst.)

Katha Kissman also noted that HBOI Ocean Science Lecture presenters were not appropriately acknowledging HBOIF when referring to the Specialty License Plate funds received for projects; rather the implication put forward was “our plates” with no acknowledgement of HBOIF as the legislatively-dictated recipient who grants these funds, despite the requirement being noted in the Foundation’s Funding Letters to the Institute.

Jim Sullivan stated that he had not had the opportunity to see the Owl Research & Innovation copy in advance of publication and he could understand why HBOIF was concerned. He also said that HBOI PIs have been reminded about SLP acknowledgement and that he would remind them again.

Everyone concurred that there was a need for improved communications between HBOIF and HBOI to overcome what appears to have become FAU’s personal and unfair biases against HBOIF. Katha Kissman noted that when she started at HBOIF she had been regularly and

actively included in FAU and HBOI activities and was “in the know.” This has now diminished to the point where there is very little information flow or HBOIF involvement with HBOI at all. She explained that being aware of what goes at HBOI helps her best support, bring ideas, and present opportunities to the Board in an effective manner.

Bill Stewart noted that HBOIF started with FAU as partners which is what former FAU President Frank Brogan and the then HBOIF Board envisioned. HBOI has realized the benefit. But the idea of funding over the “pillars” has created concern – extending the “brand” called “Harbor Branch” is perceived to be a method to justify using HBOIF grant money throughout the FAU system.

Susan Decker: What outcomes do you want to achieve? Environmental outcomes? How do you measure success?

Board Members expressed that HBOIF wants to make a difference with issues through our grant making process; to give grants with outcomes that are measurable. In the past HBOIF gave multiyear grants to grow faculty and support faculty; it was then Executive Director Dr. Margaret Leinen’s goal to build the capacity of HBOI, which would in turn build its reputation. Now HBOIF hopes that by giving one- year grants, we can utilize our grant funds more strategically, for example by providing seed funds for better leveraging and to see measurable results.

Jim Sullivan acknowledged that it’s hard to see the return but told HBOIF Board that it should know that their grants have been and are currently very impactful. Impact Reports show that HBOIF has, for example with the New Faculty Hires and 20% Salary Support, attracted and retained good faculty; this is an ongoing problem area for other research institutions. Also the number of publications in peer-reviewed journals is very impressive for an Institute the size of HBOI.

It was noted that HBOIF has an opportunity to clarify what impacts it intends to be demonstrated as a result of its grant making. Funding can help ensure that the HBOI enhances and maintains its status as the expert to advise policymakers, alert the public with quality scientific data, and create political will to make needed change; whatever accomplishes that becomes the benchmark. It was clarified that HBOIF is not the Institute. But it was recognized that the Institute’s success is HBOIF’s success.

Susan Decker: Is there anything that the Institute works on that doesn’t match with HBOIF’s mission?

Jim Sullivan noted that HBOI gets about 50% of its funding from the Federal Government for projects other than what HBOIF funds.

The Board response was that HBOIF funds what it feels it should fund (e.g., If the Institute is doing other things, then good for the Institute.)

Susan Decker: Can we define “what does success look like?” So far, I’ve heard:

- **Allow the Institute to maintain its status as an expert**
- **Alert policy makers**
- **Seed money for Federal grants**
- **HBOIF is successful if the Institute is successful.**

Do you know what other oceanographic institutions are doing to define success?

While individual Board Members have had some informal exchange with the Scripps Institute of Oceanography (former HBOI Executive Director, Dr. Margaret Leinen, now serving as their leader) as well as some affiliation with other oceanographic institutes, HBOIF has had no formalized exchange or researched information; it was agreed there would be value in researching structure, giving priorities, grants policies, procedures, etc.

Susan Decker: Harbor Branch Foundation is the donor to the Institute. Who or what are you accountable too? Who or what are you accountable for?

- Donor Intent
- The fiduciary responsibility for HBOIF's assets to use them appropriately and in compliance with law and best practices.
- HBOI through the Memorandum of Understanding (MOU)

There was discussion as to how to get beyond the current lawsuit for the good of all (e.g., according to former FAU President Frank Brogan we were to work together; we should operate as if the lawsuit is not happening.) Due to the lack of communication, HBOIF may need to be more restrictive on grants to ensure intent and performance (e.g., we need better communication and find someone at FAU to communicate with; right now Jim Sullivan is the only conduit and he has stated that he feels he is "like Switzerland".)

It was noted that while it would be admirable to set aside disagreements and let the courts deal with the lawsuit, this may be naive to do so in reality. It has been hard to move forward when HBOIF is not acknowledged as a donor and is excluded from HBOI happenings and information. It was noted that leadership sets the tone (e.g., when we were no longer the operational board we became the grant making board and as such Frank Brogan knew what the partnership should and could be. When he left and the next FAU President came, there was a distinct change in tone.) This appears to have been further hardened with the current FAU leadership. The lawsuit and communications/operations are linked together. It's been increasingly difficult to do business as usual.

Susan Decker: As an outsider, it was her understanding that when the Johnson Trust restriction lifts in 2020, HBOIF could take the money and give it to someone else who might make a greater philanthropic impact. She said donors who do not feel valued will go elsewhere. She also recognized Jim Sullivan's very prickly situation.

Board members stated that they believed HBOIF is valued by those at the HBOI Institute; Board members believe HBOIF is not valued by FAU. HBOIF has delivered good governance, ensured a well-run, cost-effective operation, and granted millions of dollars in grants. Despite this, there is a lack of trust by FAU for HBOIF. However, there is high trust between our Board Members.

Bill Stewart reminded all that the Charitable Trust states the mission [donor intent]. The Endowment is governed by the Charitable Trust which was in existence long before the MOU with FAU. HBOIF and FAU have both been in existence for about the same amount of time. HBOIF is not the product of FAU and has never received funding from FAU. To the contrary, HBOIF donated assets to FAU worth millions of dollars in addition to its grants. HBOIF operates to fulfill donor intent through the MOU. He further clarified that as long as what we do is to or for

the benefit of HBOI-FAU or FAU, we have documented flexibility in operations and grant making.

There was additional discussion about future donors to HBOIF and the possible diversion of funds by FAU if they took control over the Endowment (e.g., we need a clearer understanding of Harbor Branch being the campus and all that goes on here versus the “Harbor Branch Pillar” which could easily be used to dilute funds to other aspects of the FAU system). There was also concern about FAU establishing a 49% indirect cost rate (overhead) on all grants going to FAU Division of Research for its administrative function should it get control of the Endowment. There was also discussion about Board composition needs for the future.

Susan Decker: As we move forward, what do you hope the legacy of this group is toward fulfilling the mission of HBOIF?

- HBOIF leaves a legacy clearly establishing that HBOIF is an independent entity with the sole purpose to follow donor intent by continuing to fund excellent scientific research of the Institute.
- HBOIF leaves the legacy of understanding how best to measure impact and validate impact through HBOIF funding.
- HBOIF gets back to a HBOIF-HBOI relationship like when Dr. Margaret Leinen was here. Improvement to infrastructure through our grants made sense then. What can HBOIF do for the best in the future?
- HBOIF had good governance – it set a high bar. HBOIF financially helped HBOI be viewed as the preeminent provider of scientific research.
- The HBOIF Board faced an unpleasant situation, yet was able to move forward positively to continue to fulfill its mission.
- HBOIF had the perseverance and the maturity to get through a hard situation.
- HBOIF grew its awareness and enabled more impactful long-term viability.
- The HBOIF Board has been and will continue to successfully address a number of different circumstances over time and will continue to do so in order to preserve donor intent.

Susan Decker: What are the next steps for what should happen at retreat?

- Explore collaboration with other foundations, new board members.
- Ensure improve communications between HBOI and HBOIF.
- Improve how we communicate with FAU.
- Create a better understanding of how to measure impact of HBOIF grants.
- Provide a better clarification of the implications for 2020.

The Generative Discussion ended. A follow up retreat will be scheduled. Susan Decker left the meeting with the deep thanks of the Board.

NOTE:

Seward Johnson Funds

The J. Seward Johnson, Sr. Charitable Trust Endowment Fund (the "Fund") is a donor-restricted term endowment fund established in 1994. The primary objective of the Fund is to provide a long-term flow of income to the Foundation. The Fund shall terminate on June 30, 2020, at which time the fund shall convert to a fund held by the Foundation for its exclusive long-term use, benefit or purposes. Accordingly, contributions to the Fund were recorded as temporarily restricted. The Foundation's annual expenditures from the Fund are limited to 5% of the annual average fair market value of the Fund and are recorded as net assets released from restrictions in the statements of activities. The investment income, including gains, losses, dividends and interest earned on the balance of the Fund, is included in the statements of activities as temporarily restricted.

The Seward Johnson Trust Fund for Oceanography (the "SJ Fund") is a donor-restricted fund and is not an endowment fund. The primary objective of the SJ Fund is to operate and maintain the Johnson-Sea-Link submersibles. The secondary objective of the SJ Fund is to support underwater oceanography and for other oceanographic purposes. The investment income, including gains, losses, dividends and interest, earned on the balance of the SJ Fund is included in the statements of activities as temporarily restricted. Under certain circumstances, the principal of the SJ Fund may be used at the discretion of the Foundation.

Operations Reports

HBOIF

President Kissman highlighted her written report, provided to the Board in advance of the meeting.

HBOI

HBOI's Dr. Jim Sullivan provided a PowerPoint Presentation on recent updates at the Institute and answered questions from the Board. [PowerPoint presentation on file in the Board Portal.] In particular, Sullivan provided an update on the \$650,000 Foundation grant to fund the new Florida Center for Coastal and Human Health and its progress to date.

He also noted two new grants which have been secured by two of the Foundation-funded New Faculty Hires. PI Laurent Cherubin secured a \$6M+ grant from DARPA (Defense Advanced Research Projects Agency) to investigate the behavior and unique vocalizations of groupers as a natural detection and warning system against foreign "threats". This grant was possible through the leveraging of an earlier FY15 \$330,795 Foundation grant: *Detection & Characterization of Fish Spawning Aggregations using a Novel, Persistent Presence Robotic Approach*. PI Mike Twardowski led a HBOI team to receive a \$15 million FY19 Appropriation (anticipated over two years with the strong possibility of renewal) from the Office of Naval Research. Funding for a *Persistent Maritime Surveillance* project will provide development, prototyping, research, and commercial transition for novel non-acoustic detection, tracking, localization, and identification capabilities and sensors. It was noted that both of these PIs were Foundation-funded New Faculty Hires.

Committee Reports

Audit Committee

Chair Papa provided an update on the December 12, 2018 Audit Committee Meeting. The Committee recommends to the Board to accept BDO's 5 year proposal which includes fees and a lead auditor change for the FY21 Audit, and to enter into a contract for the FY19 Audit. The motion to accept the Audit Committee's recommendation passed unanimously. Chair Papa also reported on the discussions regarding Cybersecurity and the Committee's consensus that the Foundation is protected to the extent possible and that President Kissman will continue to gather additional information for future discussion.

Finance Committee

Chair Raines reported on the Committee's review of the portfolio, market conditions, asset allocations, Specialty License Plate money market balances, and current Financials. She noted that the Endowment was recovering well from the 2nd Quarter FY19 serious downside volatility especially in the last month of the quarter.

She reported on an approximately \$700,000 draw to cover 2nd Quarter grant invoices from FAU and the Committee's agreement to cover this from a fixed income asset class that was modestly overweight. In addition the Committee agreed to immediately divest the total investment in the Advisory Research MLP & Energy Income Fund (approximately \$1,800,000) to be invested proportionally in the portfolio's three existing domestic equity index funds.

President Kissman presented the proposed FY19 Mid-Year Budget Revisions noting two major changes. The first was the impact of the elimination of a full-time SLP Marketing Coordinator. Realizing a savings of approximately 2/3rds previous salary costs. These will be used to supplement Cyndi Permenter's position to make her a full-time employee, with President Kissman and Ms. Permenter sharing the marketing responsibilities for SLP. The second was the impact of the forced relocation of **Love Your Lagoon** which resulted in both a reduction in income projections as well as expense projections. Despite this, President Kissman noted that the net proceeds will likely exceed those of last year's event to be able to fund up to ten 2019 Indian River Lagoon Graduate Research Fellows.

The motion to approve the report of the Finance Committee passed unanimously. The motion to approve the FY19 Mid-Year Budget Revisions as presented was approved unanimously.

The Grants Committee, Nominating Committee and Long Range Planning Task Force have not met since the last Board Meeting.

Adjournment

There being no further business, the meeting was adjourned at 12:35 pm.