

EXHIBIT “O”



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October 31, 2014

BY FACSIMILE (202-493-2251)

The National Boating Safety Advisory Council
and its Subcommittees
c/o U.S. Department of Transportation
West Building Ground Floor, Room W-12-140
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590-0001

***Re: Comment in Response to Docket No. USCG-2010-0164,
Department of Homeland Security***

Dear Committee and Subcommittee Members,

On behalf of Mr. Howard F. Ahmanson, Jr.,¹ we respectfully submit the following comment in response to the October 20, 2014 Notice of Federal Advisory Committee Meeting, Docket No. USCG-2010-0164, 79 Fed. Reg. 62644. We appreciate the opportunity to offer comments on the above-referenced proposal.

Introduction

It is important to regulate not merely potential, but substantial hazards to safety and navigation on waters beyond the narrow limits of a surfing, swimming or bathing area. In the

¹ An avid paddleboarder, Mr. Howard F. Ahmanson, Jr. has a keen interest in the Committee's fact-finding and ultimate recommendation on the subject of federal regulation of paddleboards. Mr. Ahmanson was born in Los Angeles in 1950. The son of an ardent sailor and yachtsman, he spent his formative years on Southern California's Harbor Island. He graduated from Occidental College in 1972 with a bachelor's degree in economics. In 1976 he was awarded a master's degree in linguistics from the University of Texas at Arlington. Most of his time is now devoted to philanthropy and, specifically, contributing to community enhancement efforts. In 1986, he married journalist Roberta Green, who partners with him on philanthropic causes. His athletic pursuits involve watersports, such as windsurfing and stand up paddleboarding. Mr. Ahmanson serves as an advisor to the Christian Community Development Association, a network of nearly 400 inner city ministries nationwide, and to the Pacific Symphony Youth Orchestra of Orange County, California.

area of watercraft safety, various tests and applications thereof have been employed in an attempt to reach this safety objective, often times proliferating confusion among the subjects targeted by the regulation and resulting in regulatory designs that actually increase hazardous conditions. This written comment is submitted to detail the United States Coast Guard's (USCG) history of watercraft regulation and to propose the best method for regulating stand-up paddleboards ("SUPs") to soundly guide the Committee's instant fact-finding, investigation, and ultimate recommendation to USCG.

SUPs should not be subjected to personal flotation device ("PFD") requirements because SUPs do not present significant hazards to safety or navigation when operated by adults on waters beyond the narrow limits of a surfing, swimming or bathing area. Rather, SUPs are better regulated, if at all, at the State and local level where the idiosyncrasies of a particular locale can be best addressed. This is the same reason why the USCG has consistently exempted surfboards and windsurf boards from regulation. Moreover, national regulation of reasonably safe watercraft provides special interest groups a greater incentive than varied state regulation does to influence nationwide standards in order to achieve the monetary goals of the group apart from any concern for safety, thereby using the guise of "safety" to effectuate an artificial market advantage to stifle the natural competition in the marketplace for aquatic sports and gear.

The History of USCG Vessel Regulation (a Roadmap)

A paddleboard, commonly referred to as a stand-up paddleboard (or "SUP") defies the historic and current definition of a "vessel" in essentially every meaningful way. Any attempt to classify a paddleboard as a "vessel" for purposes of the USCG's attempted regulation of paddleboards in navigable waters ignores both the well-established definition and the considerable USCG regulatory history on the subject, thereby exposing the real motivation for the suggested classification: to force paddleboarders, commonly referred to as stand-up paddleboarders (or SUPers) to have a personal floatation device (or PFD) accessible on the SUP itself. To provide the Committee with essential context for its instant inquiry, the following section explores USCG's unique history of regulating "vessels" and compares each of the designated "vessels" or other watercraft with SUPs.

Definition of "Vessel"

On February 13, 1995, J.A. Simatz, a U.S. Coast Guard Captain, instructed that the definition of "vessel" required reference to the following three sources: (1) Title 1 of the United States Code, Section 3 (i.e., 1 U.S.C. § 3); (2) the Supreme Court's decision in *Evansville & Bowling Green Packet C. v. Chero Cola Bottling Co.*, 271 U.S. 19, 22 (1926); and (3) five criteria developed by the Coast Guard ("USCG Vessel Criteria") (see Attachment "A"). Title 1

of the United States Code, Section 3, contains the same language today as it did when Capt. Simatz set forth the USCG Vessel Criteria, and provides the following definition:

The word “vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

Regarding the second source defining “vessel,” Capt. Simatz observed that the Supreme Court of the United States, in *Evansville*, “modified [United States Code, Title 1, Section 3’s] expansive definition by determining that the word ‘capable’ should be read ‘practically capable.’” This led the Coast Guard to promulgate the following five-pronged USCG Vessel Criteria for determining whether any given watercraft is capable of being classified as a “vessel”:

- (1) whether the watercraft is “practically capable” of carrying persons or property beyond the narrow limits of a swimming, surfing, or bathing area;
- (2) whether the useful operating range of the device *is limited by the physical endurance of its operator*;
- (3) whether the device presents a *substantial* hazard to navigation or safety not already present;
- (4) whether the *normal* objectives sought to be accomplished by the regulation of a device as a “vessel” are present; and/or
- (5) whether the operator and/or cargo would no longer be safe in the water if the device became disabled.

Capt. Simatz advised that:

Obviously, all the criteria outlined above will not be applicable to every watercraft for which there is a question of status. We must stress that there is no set formula for making vessel determinations; each determination must be made on an individual basis.

Here, most if not all of the factors above do not lend themselves to a SUP, much like its first cousin, the surfboard. The mere addition of a slender paddle in the hands of the SUPer does not change the fact that most if not all of the factors for classifying a vessel are absent when it comes to a SUP.

Stand-Up Paddle “Paddleboard”

On October 3, 2008, Mr. Jeffrey N. Hoedt, a USCG representative, addressed the inquiry of Director Paul Donheffner of the Oregon State Marine Board as to whether a “paddleboard” was considered a “vessel” subject to PFD requirements (*see* Attachment “B”). A “paddleboard” was described as “a board, similar to a surfboard” that is propelled by the person operating it

with a paddle. Applying the above-stated USCG Vessel Criteria to a “paddleboard,” Mr. Hoedt explained that (1) a “paddleboard” is “practically capable” of transportation “beyond the narrow limits of a swimming, surfing, or bathing area;” (2) the useful operating range of a “paddleboard” is “limited by the physical endurance of its operator” due to the fact that a person must manually propel the watercraft using a paddle; (3) a “paddleboard” may present “a substantial hazard to navigation or safety not already present” because a “paddleboard” is less visible than large watercraft and may be taken to a waterway where larger, more powerful and more maneuverable watercraft exist; (4) regulation of “paddleboards” would accomplish the normal objective of regulating potential hazards to navigation or safety; and (5) the “operator and/or cargo would no longer be safe” if the “paddleboard” were disabled. This abbreviated and conclusory analysis without any provided supporting rationale led to the idea that “paddleboards” are “vessels” and, thus, may be subjected to PFD regulations.

SUPs operating outside the narrow limits of a swimming, bathing or surfing area must be exempted from PFD requirements. A SUP is most categorically akin to a surfboard and a windsurf board (also known as a “sailboard”). Along the spectrum, a SUP is nestled between a surfboard and a windsurf board, situated much closer to the surfboard. None of these watercraft present significant hazards to safety or navigation, as the USCG has consistently determined that it will not regulate surfboards and, as further explained below, the USCG has exempted windsurf boards from PFD requirements for decades. Moreover, as also explained below, USCG officials have required the carry of signaling devices in addition to PFDs on vessels. PFD and signal device requirements may increase hazards to safety or navigation due to the lack of storage capacity on a SUP, the loss of balance while using various devices intended for safety, and the increased potential for losing a paddle while attempting to operate safety devices. Despite the 2008 conclusory “vessel” determination, a SUP cannot be said to present significant hazards (as opposed to potential hazards), and deference should be given to State and local regulation of SUPs and SUPers in order to address the idiosyncrasies of a given water locale.

“Float Tubes”

On February 13, 1995, Captain Simatz also addressed an inquiry as to whether a “float tube” was a “vessel” subject to PFD requirements. Accordingly, Captain Simatz offered the following definition of “float tube:”

[A] tube (typically a nylon encased rubber inner tube(s) or a hard plastic tube) that has a built in seat, with the operator’s legs sticking through the seat and dangling in the water below the tube. They often have small storage compartments for fishing or other gear. The operator, typically a fisherman, wears swim fins to manually steer and/or propel the craft, and often wears chest waders to maintain heat and stay dry. Non-motorized float tubes are propelled by the use of the swim

fins; motorized float tubes are propelled by an electric or hand pump motor, with the operator using the swim fins to steer the craft and sometimes to assist in its propulsion.

(See Attachment "A.")

Applying the USCG Vessel Criteria to "float tubes," Captain Simatz concluded that (1) "float tubes" are typically used to carry people "beyond the narrow limit of a swimming, surfing, or bathing area;" (2) the range of a non-motorized "float tube" is "limited by the physical endurance of its operator;" (3) accidents resulting from "float tube" conflict with more common watercraft were reported, indicating that "use of a float tube presents a substantial hazard to navigation or safety not present before the use of float tubes;" (4) normal regulatory objectives of "vessel" regulation may or may not be present; and/or (5) "float tube" operators would not be safe if the "float tube" became disabled. This relatively brief analysis led to the idea that "float tubes" are "vessels" and, thus, may be subjected to PFD regulations.

Operating a SUP outside the limits of a swimming, surfing or bathing area should not result in a "vessel" designation or require the use of a PFD because, unlike "float tubes," the operation of a SUP does not permit for the use of a motor that could propel a SUP through waterways used by larger watercraft beyond the limits of the SUP operator's physical endurance. Further, unlike the deflation of a "float tube," a disabled SUP is much more likely to continue to provide ample floatation in water. Because a SUP is limited by the physical endurance of the operator and a disabled SUP would continue to provide ample floatation in water, SUPers should not be required to use PFDs as the potential hazard to safety or navigation is, at most, minimal. Ultimately, the flotation inherent in the design of a SUP lends itself to greater safety for the operator and such an athletic activity is more properly regulated at the local and State level where lifeguards and similarly situated local beach or ocean officials are better equipped to address their impact upon safety than the contrastingly few Coast Guard personnel operating in the same waters.

"Argo Amphibious ATV"

On April 30, 2007, USCG representative Jeffrey N. Hoedt addressed the inquiry as to whether an "Argo Amphibious ATV" ("ATV") was considered a "vessel" subject to PFD requirements (see Attachment "C"). The ATV was described using materials prepared by the ATV manufacturer rather than defined as a class of watercraft. Applying the above-stated USCG Vessel Criteria to an ATV, Mr. Hoedt explained that (1) the ATV's motor, gas tank, and wheels, coupled with the vehicle's buoyancy, rendered it "practically capable" of transporting persons beyond the narrow limits of a swimming, surfing or bathing area; (2) the ATV's useful operating range is limited to 8 hours of operation on a full tank of gas rather than limited to the

physical endurance of the operator; (3) the ATV presents a hazard to waterway navigation as it is not as powerful or maneuverable as larger watercraft; (4) the normal objectives of reducing potential hazards to navigation or safety would be met by regulating ATVs as "vessels;" and (5) due to the inherent buoyancy of the ATV, occupants could be safe if the vehicle were disabled. This brief analysis led to the idea that ATVs are "vessels" and, thus, may be subjected to PFD regulations.

Operating a SUP outside the limits of a swimming, surfing or bathing area should not result in a "vessel" designation or require the use of a PFD because, again, unlike an ATV, the operation of a SUP does not permit for the use of a motor that could propel a SUP through waterways used by larger watercraft beyond the limits of the SUP operator's physical endurance. Off the coastline of California, for example, surfers frequently use their hands to paddle miles beyond a swimming, surfing or bathing area, and such conduct does not transform their surfboards into "vessels" that could thus be made subject to PFD regulation. Moreover, and similar to ATVs, a SUP that may become disabled would continue to provide adequate floatation to its operator. Where an ATV may present a safety hazard in any type of water, a SUP would not due to the operator's limited physical endurance. Accordingly, SUPs are better regulated at the State and local level, where the safety concerns of a particular water region are better addressed.

"Kiteboard"

The same day ATVs were determined to be "vessels," Mr. Hoedt also addressed an inquiry as to whether "kiteboards" were considered "vessels" subject to PFD requirements (*see* Attachment "D"). A "kiteboard" was described as "a board, similar to a surfboard and being propelled by a kite with a tether, with control lines, and harness attached to the rider." Applying the USCG Vessel Criteria to a "kiteboard," Mr. Hoedt concluded that (1) a "kiteboard" is "practically capable" of transportation "beyond the narrow limits of a swimming, surfing, or bathing area" due to the watercraft's utilization of wind-power and buoyancy to tow a person; (2) the useful operating range of a "kiteboard" is limited to the physical endurance of its operator; (3) a "kiteboard" presents a "substantial hazard to navigation or safety not already present" due to its ability to travel in waterways where other larger and faster watercraft are present; (4) regulation of "kiteboards" would accomplish the normal objective of promoting safety due to the potential hazard "kiteboards" present; and (5) a "kiteboard" would provide minimal safety in the water if the watercraft became disabled. This brief analysis led to the idea that "kiteboards" are "vessels" and may be subjected to PFD regulations.

The conclusion was informed by the Director of the Oregon State Marine Board's observations that "kiteboards" were new to Oregon waters, enable athletes to reach "considerable speeds" over navigable waters, and the State of Oregon had received complaints from boat

operators that “kiteboards” presented the danger for “passing boats to snag on the kite tether or steering lines.” In contrast, operating a SUP outside the limits of a swimming, surfing or bathing area does not present the same potential for snagging as a “kiteboard” because a SUP does not utilize tether and steering lines in its operation. SUP watercraft are better regulated, if at all, at the State and local level where SUP safety may need to be addressed differently depending on, among other important considerations, whether a particular State enjoys either an abundance of ocean coastline or a profusion of rivers. Indeed, while a kiteboard may present a hazard to safety or navigation equally across all types of water, a SUP may not.

“Gold Dredge”

Most recently, on May 23, 2012, Mr. Hoedt addressed the query of U.S. Coast Guard District 17 as to whether “gold dredges” were considered “vessels” subject to PFD requirements (*see* Attachment “E”). “Gold dredges” were described as watercraft “used to mine gold off the ocean floor.” Applying the USCG Vessel Criteria to a “gold dredge,” Mr. Hoedt explained that (1) a “gold dredge” is “practically capable” of transportation “beyond the narrow limits of a swimming, surfing, or bathing area due to their use of traditional hulls powers by “propulsion machinery;” (2) the “useful operating range” of a gold dredge is limited by fuel capacity rather than “physical endurance of the operator;” (3) a “gold dredge” may present “a substantial hazard to navigation or safety not already present” because of its potentially low visibility, use in waterways where larger and faster watercraft are present, and its potential to “block or obstruct navigation channels;” (4) regulation of “gold dredges” would meet the normal objective of regulating a potential hazard to navigation or safety; and (5) persons operating a “gold dredge” would no longer be safe if their “gold dredge” became disabled in “potentially extreme operating conditions in the coastal waters of Alaska.” This brief analysis led to the conclusion that “gold dredges” are “vessels” and, thus, may be subjected to PFD regulations.

District 17 informed Mr. Hoedt that it needed guidance with regard to regulating “gold dredges” due to the proliferation of such watercraft brought about by increased publicity through popular media. Further, District 17 focused on the commercial purposes of “gold dredges” rather than safety concerns as a basis for regulation. The 2008 SUP determination letter, on the other hand, did not find SUP had attracted any widespread publicity potentially influencing operators to occupy unsafe waters such as those in Alaska. That was true in 2008 and it remains true today; there is no data to sufficiently and credibly undermine these basic facts. Again, SUP safety, like windsurf and surfboard safety, is better regulated, if at all, at the State or local level, where the particular safety concerns of any given area would be better addressed.

USCG Windsurfing Regulation

SUPs should not be subject to PFD requirements for many of the same reasons that windsurf boards (sailboards) are exempt from PFD requirements. In its determination letters, USCG *never* compared the safety of SUPs with the safety of windsurf boards. This is striking given the fact that windsurf boards began receiving exemption from PFD requirements in 1973, well before USCG began issuing its vessel-determination letters in 1995, as detailed above. Moreover, SUPs are much more like surfboards and windsurf boards than they are like any of the above-described watercraft (float tubes, ATVs, kiteboards, or gold dredges).

On February 18, 1973, Windsurfing International, Inc. acquired an exemption from the PFD requirements of Title 33, Code of Regulations Section 175.15 for its product known as the "Windsurfer." The "Windsurfer" was described as "a surfboard with a triangular sail on a swivel mounted mast. There is no rudder nor any rigging or stays. The operator maneuvers the boat through the trim of the hand-held sail and distribution of body weight on the surfboard." The USCG granted the PFD exemption because the "Windsurfer" was "more a novelty craft used as a swimming toy than a vessel used or capable of being used for transportation." (See Attachment "F.") Similar to windsurf boards, it is undisputed that SUPs are used more for their novel recreational enjoyment than for any assignable utility as a mode of transportation.

The "Windsurfer" was produced in the nascent development of the sport of windsurfing. As windsurfing gained popularity, devices such as the "Windsurfer" became commonly known as windsurf boards and sailboards. By March 29, 1979, windsurfing had proliferated and the USCG published an advance notice of proposed rulemaking at 44 Federal Register 18765 soliciting comments in aid of determining whether all sailboards should be exempted from PFD requirements or whether the "Windsurfer" exemption should be revoked. Because the submitted comments indicated "that there would be no significant adverse effect on boating safety," the windsurf board continued to enjoy exempt status (*see* Attachment "F"). PFD requirements should not be imposed simply because SUP paddling has gained popularity similar to how windsurfing did; rather, NBSAC needs to sufficiently find the fact of a *significant* adverse effect on boating safety (and none exists) or else leave regulation, if at all, up to State and local authorities.

The Coast Guard considered broadening the "Windsurfer" exemption to operators of all "sailboards" and published a notice of proposed rulemaking on July 19, 1980, found at 45 Fed. Reg. 47876. Generally, two categories of comments were submitted pursuant to the notice of proposed rulemaking. In the first category, "sailboard" manufacturers and operators expressed their support for exempting all "sailboards" from PFD requirements. The second category was composed of State and local law enforcement agencies, a few "sailboard" operators, and other boat operators, who favored applying PFD carriage requirements to all "sailboards." Advocacy

for and against SUP regulation appears to be divided in a like manner; indeed, the 2008 USCG determination letter regarding SUP was in response to the Oregon State Marine Board's request for a determination. NBSAC should exercise caution in considering who is in favor of imposing PFD requirements on SUP operators because individuals and entities having a private interest in promoting PFD sales may favor regulation for monetary reasons unrelated to safety or navigation concerns. Moreover, such an individual or entity may favor regulating SUP simply for the competitive purpose that regulation of SUPs would increase costs for persons considering the purchase of a SUP, serving to diminish the subjective enjoyment of SUPing, and thereby decreasing the natural distinction the SUP industry has regardless of any concern for safety or navigation.² All such interests should be carefully examined.

The Coast Guard acknowledged that there was a difference of opinion as to whether "sailboards" may or may not be "practically capable of being used as a means for transportation on the water and thereby qualify as 'vessels' subject to regulation under the Federal Boat Safety Act of 1971." However, the Coast Guard found that the operation of a "sailboard" requires athletic skill similar to the operation of other watercraft, including surfboards, which, at the time, were not regulated under the Federal Boat Safety Act of 1971 as they were only "capable of a *limited* use as a means of noncommercial transportation on the water." Therefore, on July 27, 1981, the Coast Guard concluded that all "sailboards" were exempt from PFD carriage requirements and indicated that States were better suited to impose regulations if sufficient interest to do so existed.

Post-2008 USCG Paddleboard Regulation and Regulatory Framework

Watercraft regulation has been inconsistent and uncoordinated, resulting in a good deal of confusion. The Coast Guard's 2008 determination letter finding SUPs properly regulated as "vessels" was in direct conflict with the regulatory guideposts established in the exemption determination for sailboards. Sailboards and SUPs alike require athletic skill that limits the operator's noncommercial transportation, yet the Coast Guard only exempted sailboard operators from PFD requirements.

² For example, the American Canoe Association ("ACA") may have a greater interest in promoting the canoe industry than the SUP industry. Since the ACA is a NBSAC Member, one might reasonably infer that ACA support for regulation of SUP operators is an attempt to increase costs for potential SUP customers without a motivation for safety, thereby lessening one competitive advantage the SUP industry might enjoy over the Canoe industry. If any reasonably thorough fact-finding and investigation is to be done by this Committee, this particular area should be specifically explored.

Moreover, one branch of the USCG has instructed that SUP operators must adhere to PFD requirements, but that a SUP operator propelling the board by hand is not subject to PFD requirements. A SUP operator using a paddle likely poses less of a safety or navigation concern than either sailboard operators or SUP operators without paddles. The confusion brought about by this incongruity appears to have been one cause for the members of the 91st NBSAC Meeting to conclude that more data is needed before imposing further watercraft regulations.³ However, the lynchpin in the decision to impose PFD requirements should be concern for significant hazards to safety or navigation. Since SUPs pose no significant hazard to safety or navigation, their regulation, if any, should be left up to State and local authorities who are more familiar with idiosyncratic safety and navigation issues in their respective localities.

Eleventh District Report

In July of 2011, the Eleventh Coast Guard District Recreational Boating Safety Program ("Eleventh District") updated a brief three-page report entitled "Stand-Up Paddleboard (SUP) FAQs." (See Attachment "G.") This report was created by the Eleventh District in order to address the above-described informal 2008 memorandum that "paddleboards" are vessels under the Federal Boat Safety Act of 1971. The Eleventh District defined a stand-up paddleboard as follows:

A "SUP" as they are called in the sport, is a surfboard-like device, usually thicker and longer than a standard surfboard, where the operator stands upright and propels the board using a long paddle.

Explaining that the sport of stand-up paddle has gained popularity, the Eleventh District indicated that "paddleboards" can be found "in the surf, offshore, and on flat water lakes and rivers." Because of their usage in those areas, the Eleventh District addressed when "paddleboards" were "beyond the narrow confines of a surfing, swimming or bathing area" under the informal 2008 memo. The Eleventh District stated:

[I]f you see a SUP operating:

³ Additionally, these meetings may have lacked sufficient information for decision-making purposes due to the minimal time afforded between publication of the meeting information in the Federal Register and the deadline for public submissions. This written comment is presented to help supply information concerning SUPs and to clarify the history of USCG regulation in the watercraft area, as well as to provide some of the salient reasons against the presaged regulation of SUPs.

- A. In the surf or swimming/bathing area, leave it alone.
- B. On other waters, treat it as a kayak or other paddlecraft.

Like any paddlecraft, a SUP operating outside a surfing or swimming area is subject to the NAVRLES carriage requirements for PFDs, [visual distress signals], sound producing device, navigation lights, and accident reporting.

Elaborating on its instruction, the Eleventh District stated that, when outside surf, swimming or bathing areas, "paddleboard" operators are required to carry a PFD, a whistle, a flashlight, and, in many instances, a visual distress signal, which includes certain pyrotechnic or non-pyrotechnic flares. However, the Eleventh District instructed that none of those requirements existed if the "paddleboard" operator was paddling by hand rather than by paddle. The Eleventh District's brief three-page report did not address any quantitative data supporting the regulation of "paddleboards" in order to reduce potential hazards to water safety or navigation.

To require a SUP operator to carry a PFD, flare, whistle and flashlight might very well increase hazards to safety and navigation. Use of a SUP requires two hands to operate the paddle. How is the SUP operator supposed to use a paddle and a flashlight effectively at the same time? Is the SUP operator expected to drop the paddle entirely in order to operate a signaling device? What is a SUP operator to do if a whistle tied to a lanyard becomes entangled with the paddle? The operation of a SUP requires attention to balance. Is the SUP operator expected to risk falling off the SUP while shifting weight to reposition the paddle and search for a signaling device or PFD?

Minutes of the 91st Meeting of the NBSAC

The NBSAC conducted its 91st Meeting May 8-9, 2014. Minutes of that meeting have been recorded and reflect the NBSAC's inability to conclusively determine whether "paddleboards" need to be regulated through PFD requirements. (See Attachment "H."). Subsequent to reviewing safety alternatives for "paddleboards," NBSAC Member Mr. Rob Rippe indicated the issue was complex and NBSAC Chairman Mr. James P. Muldoon stated that the full Council of the NBSAC was not ready to act with regard to "paddleboard" regulations.

During the meeting of the Prevention Through People Subcommittee, the topic of safety equipment carriage requirements for stand-up paddleboards was discussed. NBSAC Member Mr. Tom Dogan began the meeting by examining the issues of (1) whether "a leash should be acceptable safety equipment for an SUP," (2) whether USCG's safety concerns were exaggerated, and (3) whether a "paddleboard" itself provides a greater opportunity to promote safety than a PFD. Mr. Dogan acknowledged that these issues are complicated by the current mixture of regulations based upon type of activity, such as racing, in addition to regulations

based upon type of watercraft. Despite the complexity involved, Mr. Dogan “reminded members of the USCG’s overriding objective: to have policy in place that provides for the safety of the public at large and still allow the public to enjoy their time on the water.”

The Prevention Through People Subcommittee reviewed input from various members of the public expressing that PFD requirements for “paddleboards” did not promote safety for the public at large. Petitions from 1500 people were provided to explain to the subcommittee that opposition to PFD requirements was “not a question of personal freedom or dislike of life jackets.” Rather, as indicated by Coast Guard Auxiliaries and industry experts, a leash was offered as a superior device for maintaining promoting interests in safety because it keeps the “paddleboard” operator tethered to the “paddleboard,” which is composed solely of flotation material. NBSAC Member Mr. Chris Stec questioned the use of a leash in fast-moving water and in the surf where the leash may increase potential hazards to safety. Due to the complex nature of the issues presented by the various members of the public, the subcommittee found that any rulemaking would be premature and, instead, required further investigation.

With the foregoing history in mind, the Committee should consider the following 7 substantive, independent reasons against any sufficient need for regulation of SUPs in connection with PFDs.

Discussion

While the proposed classification may seem designed to promote the general safety and well-being of SUPers or others affected by SUPers in navigable waters, the data presented is not only inconclusive on this point, but actually signals a resulting likelihood of harm. The proposed approach of attempting to “fit a square peg into a round hole” is likely to breed substantial hazards and externalities that have not been and will not be adequately considered and addressed, and which could be easily avoided by a finding of no significant need for federal regulation of SUPs. Alternatively, should the Committee nevertheless recommend PFD regulation in connection with SUPs (a recommendation it should not make), at the very least, the Committee should explore and recommend the least restrictive approach to meet whatever yet-undisclosed objective of safety or navigation it has in mind by ensuring that SUPers are *at the very least* given the option to use a leash attached to a SUP, just as a leash is attached to the SUP’s first cousin, the surfboard, thereby transforming watercraft into a PFD. As has been the USCG’s practice in rulemaking efforts, it would be important, here too, to ensure that any such regulation not create tension with State or local law or requirements relating to SUPs and SUPers, and be written narrowly to achieve the USCG’s stated goal, even if such goal is either not yet defined or presently unknown to the general public. Additionally, in light of the brief window of time that has been given to the public to address the subject, immediately followed by the Committee’s meeting to find facts and make a recommendation to the USCG on the same

subject, the specter of a rather conclusory rule-making effort is raised along with the appearance that the Committee has already decided to make the challenged classification, transforming SUPs into vessels without a requisite fuller airing of the complicated issues and data affecting the subject. Given the American Canoe Association's (ACA) prominence in suggesting and now advancing the subject before this Committee, the point must be observed that the ACA's express partnership with PFD manufacturers and dealers, as well as the ACA's affiliate manufacturers, wholesalers, and retailers of canoes come together to form a special interest lobbying to get SUPs and SUPers regulated similarly to vessel canoes, and thus obviating the market incentive that has naturally existed to distinguish SUPs from canoes: an SUPer's freedom to not wear a PFD, just like surfers and windsurfers. But, because of the rise in market share and demand for SUPs, the ACA wants to find a way to diminish market demand for SUPs by removing the substantive distinction that incentivizes many individuals to paddleboard as oppose to canoe. This Committee and the USCG should not be used as an artifice for natural competition among trade groups and aquatic sports, even if neither the Committee nor the USCG is aware of the silent market force and special lobby driving the debate.

1. Surfboard, SUP & Sailboard

When addressing the safety or navigation aspects of watercraft along a continuum, SUPs are properly viewed as nestled between the long-exempted sailboards and their unregulated predecessor, the surfboard. As United States Congressman Dana Rohrbacher of the 48th District stated:

Now that stand up paddle boarding has emerged as a major new board-riding sport, the only common sense approach is to extend to paddle board users the same federal policy on use of PFDs already applicable to sailboards and windsurfing. ... Paddle Boards are PF[Ds], and leash options coupled with low paddling speeds make SUPs even safer than sailboards and windsurfing, both of which have excellent safety records without any federal PFD requirements.

(See Attachment "I.")

Indeed, as the Coast Guard found in its 1981 decision to exempt windsurfing sailboards from PFD requirements, although windsurfing had gained popularity, it posed no significant hazard to safety or navigation. Similarly, the increase in popularity of SUPs on the water does not require imposition of PFD requirements because saddling SUPers with PFDs, flashlights, signal flare devices and whistles increases hazards to safety and navigation. Much like windsurfing sailboards and surfboards, SUPs do not have storage capacity for numerous devices. Requiring the use of these devices presents significant hazards to safety and navigation because SUPers, windsurfers and surfers cannot fluidly operate their watercraft and safety signals at the same

time, and each of these watercraft are primarily composed of the very same flotation material and design, largely rendering a PFD superfluous.

In the regulatory history of Code of Federal Regulations, Title 33, Section 175.15, the Coast Guard concluded:

The Coast Guard does not consider surfboard, swim boards, or 'boogie' boards to be vessels and has not adopted suggestions to include them in this rulemaking. ... Regarding additional specific exemptions for surfboards, inner tubes, lounge rafts, etc., the Coast Guard does not issue exemptions for watercraft that it does not consider to be vessels. ... The Coast Guard acknowledges that sailboards float, just as do surfboards, inner tubes, and motorboats meeting the level flotation requirements. However, none of these items are U.S. Coast Guard approved PFDs and, despite level flotation, such motorboats are not exempt from PFD carriage requirements. The Coast Guard has decided to formally exempt sailboards from Federal PFD carriage requirements, thus allowing each State to decide whether or not PFDs should be worn and/or carried on sailboards based on climate and navigation conditions within its boundaries.

(See Attachment "J" (58 Fed. Reg. 41602).)

The foregoing conclusion of the Coast Guard illustrates that watercraft similar to windsurfing sailboards and surfboards should not be regarded as vessels, and may be exempted from PFD regulations to enable States to decide whether or not to require PFDs for "navigation conditions within its boundaries." Because SUPs are similar to windsurfing sailboards and surfboards, SUPs should not be recognized as vessels. Furthermore, SUPs may be used in a variety of aquatic conditions and State and local authorities are best-equipped to determine whether the particular navigation conditions within its boundaries require any particular safety device to be employed, such as a PFD or leash, based upon the suitability of the safety device for the navigation conditions encountered.

2. Confusing Regulatory Framework

The exemption for windsurfing sailboards and the USCG's express unwillingness to regulate surfboards cannot be reconciled with the seeming desire to regulate SUPs, and this creates confusion for people, States and local governments as new watersports gain popularity. Windsurfing sailboards were exempted in large part due to the fact that the physical endurance of the operator limits her ability to intrude upon waters trafficked by larger vessels. SUP mobility is likewise limited by the physical endurance of the operator. When any new watersport gains popularity and water safety personnel look to the history of SUP and windsurfing sailboard regulation, they will be perplexed as to what factors to address when trying to determine whether

the new sport might pose significant hazards to safety or navigation, particularly if the suggested arbitrary classification of an SUP as a "vessel" is achieved. The confusion has already occurred. For example, the above-described Eleventh District instruction on regulating SUPs applied the wrong factor of whether a paddle used for SUPs is "machinery" necessitating the imposition of PFD requirements. As a result, the Eleventh District arrived at the incongruous conclusion that SUPs must carry PFDs and signaling devices while similar paddleboards operated by hand are not required to carry any safety device (beyond the paddleboard itself).

3. NBSAC Review

As explored above, the NBSAC has previously considered the suggestion of imposing PFD requirements on SUPs, and the NBSAC has correctly determined that data was insufficient to decide whether to exempt SUPs from PFD requirements or otherwise not regulate SUPs. Many members of the NBSAC are well-versed in the safety concerns that relate to traditional recreational watercraft such as canoes, kayaks, and motorized boats. However, the new sport of SUP is categorically different from traditional recreational water activities. NBSAC should consider the letter written by Orange County, California (U.S.) Congressman Rohrbacher, which encapsulates the idiosyncratic safety concerns for SUP. (See Attachment "I.") Congressman Rohrbacher correctly points out that State and local agencies may better address SUP safety issues by, if needed, requiring use of SUP-specific safety technologies such as leashes. NBSAC needs to seriously consider that failure to exempt SUPs from PFD requirements (or otherwise recommend that no regulation be proposed at this juncture) may very well result in a national rule that forces SUPers to use safety devices when those very devices have the ability to inhibit safe SUP operation depending on the type of water encountered from region-to-region.

4. "Safety" Trumps Free and Fair Competition

While the NBSAC must be composed of members from various recreational watersport industries in order to best understand safety and navigation issues, the NBSAC must be careful to determine whether one member's alleged safety concern is actually motivated by financial gain. Members such as the American Canoe Association (ACA) might be inclined to favor burdens upon the nascent SUP industry in order to preserve the dominant canoe market share. NBSAC must, therefore, ensure that any safety concerns of SUP proffered by a competing industry actually address the specialized safety concerns of SUP rather than the competitive motives of another market player. Moreover, the NBSAC must do its utmost to avoid even the appearance of a member's bias or impartiality. Common sense dictates the answer to this particular question: Does the canoe industry gain an advantage or benefit from the PDF regulation of SUPs? The answer is undeniably "yes," and the ACA's prominence in raising and advancing the subject of SUP regulation, separate and apart from the ACA's NBSAC membership, is itself

reason enough for the Committee to more closely investigate the underlying market forces and special interests spurring the debate.

5. *Unknown Goal of NBSAC*

The notice of advisory meeting of the NBSAC's 92nd Meeting does not state any objective or goal with respect to its instant fact-finding and investigation. Moreover, the website identified in the notice, as published in the Federal Register, does not contain any link to a document that would explain where in the agenda SUP safety or any other *purported* concern is to be addressed. The fact that there are NBSAC members that stand to directly profit from SUP regulation and the promotion and increased sales of PDFs is sufficient to give the NBSAC pause in its deliberative or fact-finding process. It is concerning that the notice in the Federal Register does not provide the basic information—its defined goal or objective—which is essential for any commenter to provide a substantive and adequately tailored comment in response to the NBSAC's notice.

6. *Tension with State and Local Laws and Authorities*

Congressman Rohrbacher's SUP letter highlights the importance of having State and local regulation of SUP, if appropriate, rather than nationwide regulation through USCG (*see* Attachment "I"). The NBSAC should consider that the proposal to regulate SUPs effectively supersedes or, at a minimum, creates tension with State laws and local authorities presently governing SUPs. Notably, such proposed regulation would have deleterious consequences as to the waterways surrounding Hawaii and California, as those regions are significantly different than those in other areas of the country; a national SUP regulation is likely to cause problems precisely because SUPs, like surfboards and windsurf boards, can be used in a variety of environments. Moreover, it would be difficult to ignore the fact that the States of Hawaii and California, which account for the vast majority of paddleboarding, do not have any representation on the NBSAC. The attached letter written by Orange County, California (U.S) Congressman Rohrbacher, who is himself an avid paddleboarder and surfer, should carry special weight in that regard. Nevertheless, the NBSAC should have done more to ensure that these States and their unique SUP interests are understood and considered as part of these proceedings.

7. *Unworkable Results*

Burdening SUPers with numerous devices under the auspices of "increased safety" will likely have the opposite effect, increasing hazards to safety and navigation. SUPers are already required to operate a SUP using a paddle held with both hands. Saddling a SUPer with a PFD alone or, as the Eleventh District has required, a PFD, flashlight, flare and whistle, introduces opportunities for danger in the operation of a SUP where none previously existed. As with a surfboard, there is no storage compartment on a SUP and, in any event, the operator would be

forced to choose between controlling the paddle or reaching for some safety device, which will likely end up in the water, as a SUP, like a surfboard, has a flat surface with edges that run into the water without any lip or other surface wall to contain items on the watercraft. Moreover, the operation of a SUP requires the operator to maintain balance, and requiring a SUPer to handle one or more safety devices increases the risk of the SUPer losing balance and falling from the SUP.

Conclusion

For all or any of the foregoing reasons, the NBSAC should begin the rulemaking procedure in order to exempt SUPs from PFD requirements. Alternative, should the NBSAC recommend regulation of SUPs (and it should not), the NBSAC's recommendation should be that SUPers be given the option of a leash affixed to the SUP and the SUP operator, where the SUP operator has the discretion to choose either.

Respectfully submitted,

ENTERPRISE COUNSEL GROUP ALC



James S. Azadian

Attachments A - J

ATTACHMENT "A"

U.S. Department
of Transportation
United States
Coast Guard



Headquarters
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: (G-OPB-2)
Phone: (202) 267-0911
FAX: (202) 267-4285

16755

NOV 18 1999

Mr. Ted Woolley
Boating Law Administrator
Division of Parks and Recreation
1594 W. North Temple, Suite 116
Box 146001
Salt Lake City, Utah 84114-6001

Dear Mr. Woolley:

This letter is in response to your inquiry regarding the exemption of kick boats and float tubes with electric motors from the numbering provisions.

As Jan Giles of our staff advised you by telephone, a motorized float tube is a vessel equipped with propulsion machinery and therefore must be numbered. Federal statute (1 U.S.C. 3) deems a "vessel" to be "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the water." As like any other vessel, float tubes are subject to the rules of the road, including lighting requirements.

While 46 U.S.C. 12303(b) gives the Coast Guard the authority to allow a State to except a vessel or class of vessels from numbering requirements, the Coast Guard's position, as stated in our August 28, 1996 letter to Idaho, is that all undocumented vessels equipped with propulsion machinery of any kind shall have a number issued by the proper issuing authority in the State in which the vessel is principally operated.

A State is eligible to receive Federal financial assistance for its recreational boating safety (RBS) program (as authorized in 46 U.S.C. Chapter 131) only as long as the State's RBS program meets the requirements set forth in 46 U.S.C. 13102(c), which includes a valid numbering system. Federal law (46 U.S.C. 12301) states:

"An undocumented vessel equipped with propulsion machinery of any kind shall have a number issued by the proper issuing authority in the State in which the vessel principally is operated." (Emphasis added)

NOV 18 1999

Please let us know if we can provide you with more information or any assistance in this matter. If you have any questions, please contact your Program Coordinator, Jan Giles, at (202) 267-0911.

Sincerely,

A handwritten signature in dark ink, appearing to read 'M. F. Holmes', with a stylized flourish at the end.

M. F. HOLMES

Captain, U. S. Coast Guard

Chief, Office of Boating Safety

By direction of the Commandant

U.S. Department
of Transportation

United States
Coast Guard



Commandant
U.S. Coast Guard

2100 Second Street SW
Washington, DC 20533-0001
Staff Symbol G NAB
Phone (202) 267-6244

16/50

FEB 13 1995

Mr. Fred Messmann
Boating Law Administrator
Nevada Department of Conservation
and Natural Resources
Division of Wildlife
P.O. Box 10678
Reno, NV 89520-0022

Dear Mr. Messmann:

This is in reference to your letter dated December 28, 1994, in which you asked whether or not the Coast Guard considers a "float tube" a vessel.

While your letter does not define what a "float tube" is, nor did it include any pictures or pamphlets of these craft, we assume that you are referring to a tube (typically a nylon encased rubber inner tube(s) or a hard plastic tube) that has a built in seat, with the operator's legs sticking through the seat and dangling in the water below the tube. They often have small storage compartments for fishing or other gear. The operator, typically a fisherman, wears swim fins to manually steer and/or propel the craft, and often wears chest waders to maintain heat and stay dry. Non-motorized float tubes are propelled by the use of the swim fins; motorized float tubes are propelled by an electric or hand pump motor, with the operator using the swim fins to steer the craft and sometimes to assist in its propulsion.

Federal statute (1 U.S.C. 3) deems a "vessel" to be "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the water." The courts have modified this expansive definition by determining that the word "capable" should be read "practically capable." Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co., 271 U.S. 19, 22, 46 S.Ct. 379, 380, 70 L.Ed. 805 (1926). In making determinations on the status of whether a watercraft is a vessel, the Coast Guard has developed several criteria to apply Evansville: (1) whether the watercraft is "practically capable" of carrying persons or property beyond the narrow limits of a swimming, surfing, or bathing area; (2) whether the useful operating range of the device is limited by the physical endurance of its operator; (3) whether the device presents a substantial hazard to navigation or safety not already present; (4) whether the normal objectives sought to be accomplished by the regulation of a device as a "vessel" are present; and/or (5) whether the operator and/or cargo would no longer be safe in the water if the device became disabled.

In applying those criteria to a float tube: (1) it has been observed that they are typically used to carry a person beyond the narrow limit of a swimming, surfing, or bathing area; (2) the range of a non-motorized float tube is limited by the physical endurance of its operator, more so than is the range of a motorized float tube; (3) waterway user conflicts between float tubers and "common" types of boaters (i.e. "speedboats", water-skiers), and accidents involving float tubes, have been reported and appear to demonstrate that the use of a float tube presents a substantial hazard to navigation or safety not

present before the use of float tubes; (4) a colorable argument can be made both for and against whether the normal objectives sought to be accomplished by the regulation of float tubes as a "vessel" are present; and/or (5) the float tube operator may no longer be safe in the water if the device became disabled.

Obviously, all the criteria outlined above will not be applicable to every watercraft for which there is a question of status. We must stress that there is no set formula for making vessel determinations; each determination must be made on an individual basis.

In response to your question of whether float tubes are vessels, we are not aware of any judicial precedent being established that would assist in this determination. Absent this, answers to the above criteria lead us to our opinion that float tubes are "vessels."

You also question which requirements would apply to float tubes if they are considered "vessels." All vessels are subject to the rules of the road, including lighting requirements. Other requirements vary for non-motorized float tubes as compared to motorized float tubes. A motorized float tube is a vessel equipped with propulsion machinery and therefore must be numbered.

With regard to PFD carriage requirements, the Coast Guard does not consider tethering a PFD as meeting the requirements for PFDs to be readily accessible (33 CFR 175.19).

Finally, you asked whether the Coast Guard considers float tubes to be "boats" for the purposes of Federal regulations applicable to boat manufacturers. For inflatable float tubes, the only manufacturer requirements that apply are the regulations covering Hull Identification Numbers and Defect Notification (manufacturer recalls).

I hope this information will assist you.

Sincerely,

J. A. Stinatz
for J. A. STINATZ

Captain, U. S. Coast Guard
Chief, Auxiliary, Boating, and
Consumer Affairs Division
Office of Navigation Safety and
Waterway Services
By direction of the Commandant

ATTACHMENT "B"

U.S. Department of
Homeland Security

United States
Coast Guard



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2100 Second Street, S.W.
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16750

OCT 3 2008

Mr. Paul Donheffner
Director, State Marine Board
PO Box 14145
Salem, OR 97309-5065

Dear Mr. Donheffner:

Thank you for your inquiry as to whether or not a "paddleboard" is considered by the U.S. Coast Guard to be a vessel.

In response to your request, my office has researched the criteria used and guidance provided in previous legal opinions regarding whether or not a specified device is a vessel under 1 U.S.C. § 3.

Based on the information available, the Coast Guard has determined that, when beyond the narrow limits of a swimming, surfing or bathing area, the device known as a "paddleboard" is a vessel under 46 U.S.C. § 2101, and therefore subject to applicable regulations administered by the U.S. Coast Guard and its Office of Auxiliary and Boating Safety, unless specifically exempted.

Thank you again for bringing this matter to our attention. If there is any additional information or clarification that I can provide, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey N. Hoedt", written over a large, stylized circular flourish.
JEFFREY N. HOEDT
Chief, Boating Safety Division
Office of Auxiliary & Boating Safety
U.S. Coast Guard

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W.
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Staff Symbol: CG-54221
Phone: (202) 372-1061
Fax: (202) 372-1932
Email: jeffrey.a.ludwig@uscg.mil

16750

MEMORANDUM

OCT 3 2008

From: CHIEF, BOATING SAFETY DIVISION
(CG-5422)

Reply to: CG-54221
Attn of: JEFF LUDWIG
(202) 372-1061

To: FILE

Subj: LEGAL DETERMINATION ON VESSEL STATUS OF PADDLEBOARD

1. The Director of the Oregon Marine Board has asked whether the Coast Guard considers a paddleboard to be a vessel for purposes of Navigation Rules, accident reporting, and safety equipment, i.e., personal flotation devices, carriage requirements (Enclosure 1). The Director reported that paddleboarding is a recent phenomenon in Oregon that started in the ocean but is migrating to inland waters. The sport involves a person standing on a board, similar to a surfboard and propelling themselves through the use of a paddle. In light of the increasing popularity of this type of activity, the State of Oregon is receiving requests from law enforcement officers on what laws/regulations apply to this device on the water. The Coast Guard has also received a request from a dealer of these types of devices in Michigan to clarify whether or not paddleboards should be considered "vessels".

2. In response to the request, we have researched the criteria used and guidance provided in previous Chief Counsel Opinions regarding whether or not a specified device was a vessel under 1 U.S.C. § 3 and used the typical criteria for preparing an analysis of this device (Enclosure 2).

3. Based on the information available, the Coast Guard has determined that, when beyond the narrow limits of a swimming, surfing or bathing area, the device known as a "paddleboard" is a vessel under 46 U.S.C. § 2101, and subject to regulations administered by the U.S. Coast Guard and its Office of Auxiliary and Boating Safety, unless specifically exempted.

#

Enclosures: (1) E-mail from Director of the Oregon Marine Board via CGD 13
(2) Parameters for determining whether a paddleboard is a vessel

Copy: CG-0941
CG-5431
CG-5413

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W.
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OCT 3 2003

MEMORANDUM

From: CHIEF, BOATING SAFETY DIVISION
(CG-5422)

Reply to: CG-54221
Attn of: JEFF LUDWIG
(202) 372-1061

To: FILE

Subj: PARAMETERS FOR DETERMINING WHETHER A "PADDLEBOARD" IS A
VESSEL

Below are the criteria adopted by the U.S. Coast Guard, utilizing case law and other references, to be used to determine if a certain device is to be considered a vessel for issues related to compliance with any applicable laws or regulations.

(1) Whether the watercraft is "practically capable" of carrying persons or property beyond the narrow limits of a swimming, surfing, or bathing area:

A paddleboard is "practically capable" of and intended to be used as a watersport activity beyond the narrow limits of a swimming, surfing, or bathing area. It combines traits of surfing and canoeing. In paddleboarding, a person stands on a large board which is stable enough to support a person standing while they paddle the device using a paddle in a manner similar to operating a canoe.

Paddleboard manufacturers depict this activity as multi-use, ranging from use as a "paddling" activity on inland waterways to a form of "surfing" in the ocean. For novices and the less thrill-seeking, using the craft to simply enjoy time on the water is becoming more popular.

(2) Whether the useful operating range of the device is limited by the physical endurance of its operator:

The operator of a paddleboard manually propels the craft through the use of a paddle. To a large extent the operating range is limited to the physical endurance of the operator, although because of its stability, the paddleboard could easily drift with the wind and water current. This potential physical endurance limitation is similar to that impacting sailboarding, canoeing, kayaking and other boating activities requiring higher levels of physical capability.

Subj: PARAMETERS FOR DETERMINING WHETHER A "PADDLEBOARD" IS A VESSEL

(3) Whether the device presents a substantial hazard to navigation or safety not already present:

Paddleboards maneuvered across a waterway to locations where other larger and faster craft travel present a substantial hazard to navigation or safety not already present. Paddleboards are not as powerful or maneuverable as larger craft, and they are not as visible. The paddleboard user faces a similar hazard as users of a sailboards and canoeists/kayakers.

There are paddleboarding competitions in coastal areas and organized paddleboard excursions on inland waterways. Paddleboard "trails" have also been established, including one on the Deschutes River in Oregon that is 60 miles long.

(4) Whether the normal objectives sought to be accomplished by the regulation of a device as a "vessel" are present:

As a potential hazard to navigation or safety, regulation of paddleboards as vessels would meet the normal objectives sought to be accomplished by the National Recreational Boating Safety Program.

(5) Whether the operator and/or cargo would no longer be safe in the water if the device became disabled.

Paddleboards would provide a minimal level of safety to operators if they became disabled. Thus, the operator may no longer be safe in the water if the operator of the device became fatigued or disabled, or if the device itself became disabled.

Conclusion.

1 U.S.C. § 3 states that "The word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." Given the answers to the questions above and the definition of the word "vessel" in the US Code, when utilized beyond the narrow limits of a swimming, surfing, or bathing area, a paddleboard is a vessel subject to regulations administered by the U.S. Coast Guard.

ATTACHMENT "C"

U.S. Department of
Homeland Security

United States
Coast Guard



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United States Coast Guard

2100 Second Street, S.W.
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16750

APR 30 2007

Mr. John Simmons
Director, Bureau of Boating and Education
Pennsylvania Fish & Boat Commission
PO Box 67000
Harrisburg, PA 17106

Dear Mr. Simmons:

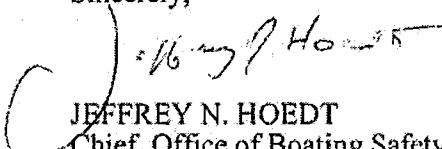
Thank you for your inquiry as to whether or not an "Argo Amphibious ATV" is considered by the U.S. Coast Guard to be a vessel.

In response to your request, my office has researched the criteria used and guidance provided in previous legal opinions regarding whether or not a specified device is a vessel under 1 U.S.C. § 3.

Based on the information available, the U.S. Coast Guard has determined that, while on the water, the device known as the Argo Amphibious ATV is a vessel under 46 U.S.C. § 2101, and therefore subject to applicable regulations administered by the U.S. Coast Guard and its Office of Boating Safety, unless specifically exempted.

Thank you again for bringing this matter to our attention. If there is any additional information or clarification that I can provide, please do not hesitate to contact me.

Sincerely,


JEFFREY N. HOEDT
Chief, Office of Boating Safety
U.S. Coast Guard

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant (CG-3PCB)
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
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Phone: (202) 372-1061
Fax: (202) 372-1932
Email: jeffrey.a.ludwig@uscg.mil

16750

MEMORANDUM

From: CHIEF, OFFICE OF BOATING SAFETY

Reply to: CG-3PCB-1
Attn of: JEFF LUDWIG
(202) 372-1061

To: FILE

Subj: LEGAL DETERMINATION ON VESSEL STATUS OF ARGO AMPHIBIOUS ATV

1. The Director of the Bureau of Boating and Education, Pennsylvania Fish and Boat Commission, has asked whether the Coast Guard considers the ARGO Amphibious ATV to be a vessel for purposes of accident reporting, vessel registration, safety equipment carriage, Navigation Rules, lighting, and manufacturer requirements (Enclosure 1).
2. In response to the request, we have researched the criteria used and guidance provided in previous Chief Counsel Opinions regarding whether or not a specified device was a vessel under 1 U.S.C. 3 and used the typical criteria for preparing an analysis of this device (Enclosure 2).
3. Based on the information available, the Coast Guard has determined that, while on the water, the device known as the Argo Amphibious ATV is a vessel under 46 U.S.C. 2101, and subject to regulations administered by the U.S. Coast Guard and its Office of Boating Safety, unless specifically exempted.

#

Enclosures: (1) E-mail from the Director of the Bureau of Boating and Education,
Pennsylvania Fish and Boat Commission
(2) Parameters for determining whether the Argo Amphibious ATV is a vessel

Copy: CG-0941; CG-3PWN; CG-3PCV

PARAMETERS FOR DETERMINING WHETHER ARGO AMPHIBIOUS ATV IS A VESSEL

Criteria adopted by the Coast Guard legal office, utilizing case law and other references, to be used to determine if a device is a vessel are shown in bold face.

(1) Whether the watercraft is “practically capable” of carrying persons or property beyond the narrow limits of a swimming, surfing, or bathing area:

The Argo Amphibious ATV is “practically capable” of and intended to transport one to eight persons across land, marshy areas and small bodies of water beyond the narrow limits of a swimming, surfing, or bathing area, and for transporting various gear, as well. The Argo Amphibious ATV is equipped with 6x6 or 8x8 wheel drives capable of land speeds up to 22 mph and floating on water with speeds up to 2.5 mph, using the tire treads to propel through the water; some models also may be equipped with an outboard motor. The Argo models have 5-7.7 gallon gas tanks, providing up to 8 hours of operation.

Argo Amphibious ATV manufacturers depict the device as transporting persons and gear across all terrains, primarily land, but crossing streams and wet marsh areas and small bodies of water. Argo Amphibious ATVs are capable of floating on the water and using the wheel treads to propel the vehicle along the surface of a waterbody; some depictions show riders wearing PFDs.

(2) Whether the useful operating range of the device is limited by the physical endurance of its operator:

Argo Amphibious ATVs float on water with speeds up to 2.5 mph, using the tire treads to propel through the water. The Argo models have 5-7.7 gallon gas tanks, providing up to 8 hours of operation beyond the narrow limits of a swimming, surfing, or bathing area.

(3) Whether the device presents a substantial hazard to navigation or safety not already present:

Any Argo Amphibious ATV maneuvered across a waterway to locations where other larger and faster craft travel will present a hazard, as the Argo Amphibious ATVs are not as powerful or maneuverable as the larger craft.

(4) Whether the normal objectives sought to be accomplished by the regulation of a device as a “vessel” are present:

As a potential hazard to navigation or safety, regulation of Argo Amphibious ATVs would meet the normal objectives sought to be accomplished by the National Recreational Boating Safety Program.

PARAMETERS FOR DETERMINING WHETHER ARGO AMPHIBIOUS ATV IS A VESSEL

(5) Whether the operator and/or cargo would no longer be safe in the water if the device became disabled:

Argo Amphibious ATVs provide a minimal level of safety to operators if they became disabled, based on the amount of inherent flotation material content, similar to a similar-sized motorboat with the same disablement. Thus, the occupants could be safe in the water if the device became disabled.

Conclusion.

1 U.S.C. 3 states that "The word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." Given the answers to the questions above and the definition of the word "vessel" in the US Code, when utilized on the water, the Argo Amphibious ATV, although primarily a land vehicle, is a vessel while on the water and is subject to regulations administered by the U.S. Coast Guard and its Office of Boating Safety.

ATTACHMENT "D"

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

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16750

APR 30 2007

Mr. Paul Donheffner
Director
State Marine Board
PO Box 14145
Salem, OR 97309-5065

Dear Mr. Donheffner:

Thank you for your inquiry as to whether or not a "kiteboard" is considered by the U.S. Coast Guard to be a vessel.

In response to your request, my office has researched the criteria used and guidance provided in previous legal opinions regarding whether or not a specified device is a vessel under 1 U.S.C. § 3.

Based on the information available, the Coast Guard has determined that, when beyond the narrow limits of a swimming, surfing or bathing area, the device known as a "kiteboard" is a vessel under 46 U.S.C. § 2101, and therefore subject to applicable regulations administered by the U.S. Coast Guard and its Office of Boating Safety, unless specifically exempted.

Thank you again for bringing this matter to our attention. If there is any additional information or clarification that I can provide, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, reading "Jeffrey N. Hoedt".

JEFFREY N. HOEDT
Chief, Office of Boating Safety
U.S. Coast Guard

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant (CG-3PCB)
United States Coast Guard

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16750

MEMORANDUM

From: CHIEF, OFFICE OF BOATING SAFETY

Reply to: CG-3PCB-1
Attn of: JEFF LUDWIG
(202) 372-1061

To: FILE

Subj: LEGAL DETERMINATION ON VESSEL STATUS OF KITEBOARD

1. The Director of the Oregon Marine Board has asked whether the Coast Guard considers a kiteboard to be a vessel for purposes of Navigation Rules, accident reporting, and safety equipment, i.e., personal flotation devices, carriage requirements (Enclosure 1). The Director reported that kiteboarding is a recent phenomenon on the Columbia River in Oregon. The sport involves a person riding on a board, similar to a surfboard and being propelled by a kite with a tether, with control lines, and harness attached to the rider. The kite propels the rider and board at considerable speeds and they are being operated on navigable waters (Columbia River). The State is receiving complaints from other boat operators about the behavior of kiteboarders, the potential for passing boats to snag on the kite tether or steering lines, and violations of the navigation rules.
2. In response to the request, we have researched the criteria used and guidance provided in previous Chief Counsel Opinions regarding whether or not a specified device was a vessel under 1 U.S.C. 3 and used the typical criteria for preparing an analysis of this device (Enclosure 2).
3. Based on the information available, the Coast Guard has determined that, when beyond the narrow limits of a swimming, surfing or bathing area, the device known as a "kiteboard" is a vessel under 46 U.S.C. 2101, and subject to regulations administered by the U.S. Coast Guard and its Office of Boating Safety, unless specifically exempted.

#

Enclosures: (1) E-mail from Director of the Oregon Marine Board via CGD 13
(2) Parameters for determining whether a kite board is a vessel

Copy: CG-0941; CG-3PWN; CG-3PCV

PARAMETERS FOR DETERMINING WHETHER KITEBOARD IS A VESSEL

Criteria adopted by the Coast Guard legal office, utilizing case law and other references, to be used to determine if a device is a vessel are shown in bold face.

(1) Whether the watercraft is "practically capable" of carrying persons or property beyond the narrow limits of a swimming, surfing, or bathing area:

A kiteboard is "practically capable" of and intended to be used as an extreme wind-powered watersport beyond the narrow limits of a swimming, surfing, or bathing area. It combines traits of surfing, sailboarding, wakeboarding and kite flying. In kiteboarding, a person is towed behind a parasail, directed by 2-4 control lines, connected to the kite by a harness/tether, and riding on a wakeboard or surfboard with foot straps. The kite provides traction and pull, while the board provides flotation and maneuverability in combination with directing the kite.

Kiteboard manufacturers depict the device as an extreme wind-powered watersport involving high speeds and aerial leaps and jumps. However, for novices and less thrill-seeking users the craft is used to simply tow oneself along the water surface.

(2) Whether the useful operating range of the device is limited by the physical endurance of its operator:

A parasail kite provides traction/tow to the person by a harness tether, with the board attached to the person by straps, providing flotation and maneuverability. Although the harness/tether relieves the user of needing great strength and endurance to hang on, distance is subject to the user's endurance to grasp the kite steering harness and maintain position on the board strapped to the user's feet. This potential physical endurance limitation is similar to that impacting sailboarding, paddle sports and other boating activities requiring higher levels of physical capability.

(3) Whether the device presents a substantial hazard to navigation or safety not already present:

Kiteboards maneuvered across a waterway to locations where other larger and faster craft travel present a substantial hazard to navigation or safety not already present, as the kiteboards are not as powerful or maneuverable as the larger craft. The kiteboard user faces a similar hazard as users of a sailboard or tow-behind in the same location.

There are kiteboarding competitions in harbors, bays and coastal areas. Kiteboards also have been used to transit from the Farallon Islands to San Francisco Bay, from Catalina to Long Beach, from Florida to Cuba, and to cross the English Channel.

PARAMETERS FOR DETERMINING WHETHER KITEBOARD IS A VESSEL

(4) Whether the normal objectives sought to be accomplished by the regulation of a device as a "vessel" are present:

As a potential hazard to navigation or safety, regulation of kiteboards as vessels would meet the normal objectives sought to be accomplished by the National Recreational Boating Safety Program.

(5) Whether the operator and/or cargo would no longer be safe in the water if the device became disabled.

Kiteboards would provide a minimal level of safety to operators if they became disabled. Thus, the operator may no longer be safe in the water if the device became disabled.

Conclusion.

1 U.S.C. 3 states that "The word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." Given the answers to the questions above and the definition of the word "vessel" in the US Code, when utilized beyond the narrow limits of a swimming, surfing, or bathing area, a kiteboard is a vessel subject to regulations administered by the U.S. Coast Guard and its Office of Boating Safety.

ATTACHMENT "E"

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: CG-BSX-21
Phone: (202) 372-1061
Fax: (202) 372-1932
Email: jeffrey.a.ludwig@uscg.mil

16750

MEMORANDUM

MAY 23 2012

From: CHIEF, BOATING SAFETY DIVISION
(CG-BSX-2)

Reply to: CG-BSX-21
Attn of: JEFF LUDWIG
(202) 372-1061

To: FILE

Subj: LEGAL DETERMINATION ON VESSEL STATUS OF GOLD DREDGES

1. US Coast Guard District 17 has asked whether the Coast Guard considers a "gold dredge" to be a vessel for purposes of compliance with laws and regulations pertaining to navigation and safety equipment carriage. D17 reports that gold dredges are a recent phenomenon in Alaska and used to mine gold off the ocean floor. They are becoming more popular due to publicity received from television shows.

2. In response to the request, we have researched the criteria used and guidance provided in previous Chief Counsel Opinions regarding whether or not a specified device was a vessel under 1 U.S.C. § 3 and used the typical criteria for preparing an analysis of this device (Enclosure 1).

3. Based on the information available, the Coast Guard has determined that devices known as "gold dredges" are vessels under 46 U.S.C. § 2101, and subject to regulations administered by the U.S. Coast Guard, unless specifically exempted.

#

Enclosures: (1) Parameters for determining whether a gold dredge is a vessel
(2) E-mail from CGD 17
(3) Pictures of examples of gold dredges

Copy: CG-0941
CG-CVC-1

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: CG-BSX-21
Phone: (202) 372-1061
Fax: (202) 372-1932
Email: jeffrey.a.ludwig@uscg.mil

16750

MEMORANDUM

From: CHIEF, BOATING SAFETY DIVISION
(CG-BSX-2)

Reply to: CG-BSX-21
Attn of: JEFF LUDWIG
(202) 372-1061

To: FILE

Subj: PARAMETERS FOR DETERMINING WHETHER A "GOLD DREDGE" IS A
VESSEL

Below are the criteria adopted by the U.S. Coast Guard, utilizing case law and other references, to be used to determine if a certain device is to be considered a vessel for issues related to compliance with any applicable laws or regulations.

(1) Whether the watercraft is "practically capable" of carrying persons or property beyond the narrow limits of a swimming, surfing, or bathing area:

Gold dredges are "practically capable" of and intended to be used beyond the narrow limits of a swimming, surfing, or bathing area. They use traditional hull types (e.g. monohull, pontoon, etc.) and are propelled by propulsion machinery, which are typically outboard motors.

(2) Whether the useful operating range of the device is limited by the physical endurance of its operator:

The useful operating range of a gold dredge is only limited by how much fuel it can carry to run its propulsion machinery.

(3) Whether the device presents a substantial hazard to navigation or safety not already present:

Gold dredges are used in locations where the operation of other larger and faster craft presents a substantial hazard to navigation or safety not otherwise present. Gold dredges may not be as powerful or maneuverable as larger craft, and may not be as visible. They also have the potential to block or obstruct navigation channels when engaged in gold dredging operations.

Subj: PARAMETERS FOR DETERMINING WHETHER A "GOLD DREDGE" IS A VESSEL

(4) Whether the normal objectives sought to be accomplished by the regulation of a device as a "vessel" are present:

As a potential hazard to navigation or safety, regulation of gold dredges as vessels would meet the normal objectives sought to be accomplished by the National Recreational Boating Safety Program.

(5) Whether the operator and/or cargo would no longer be safe in the water if the device became disabled.

Gold dredges are operated in potentially extreme operating conditions in the coastal waters of Alaska. They would provide a minimal level of safety to operators if they became disabled. Thus, the operator and any crew/passengers may no longer be safe in the water if the device became disabled.

Conclusion.

1 U.S.C. § 3 states that "The word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." Given the answers to the questions above and the definition of the word "vessel" in the US Code, a gold dredge is a vessel subject to regulations administered by the U.S. Coast Guard.

From: [Hoedt, Jeff](#)
To: [Ludwig, Jeffrey](#);
Subject: FW: Nome gold dredges
Date: Thursday, March 22, 2012 2:04:59 PM
Attachments: [navigablewatersrequirements.pdf](#)
[DSC_0239.jpg](#)
[DSC_0244.jpg](#)
[DSC_0320.jpg](#)
[DSC_0281.jpg](#)
[DSC_0275.jpg](#)
[DSC_0249.jpg](#)

Jeff:

I've held this to date and discussed it with CAPT Rizzo. Now, we need for you to take it from here. Put this craft through the test to make a determination. Keep me posted on the progress. When ready, need you to prepare a letter for the Captain's signature in response to this.

Thanks,

J

Jeffrey N. Hoedt, Chief
Boating Safety Division (CG-5422)
Office of Auxiliary and Boating Safety
(202) 372-1051

-----Original Message-----

From: Folkerts, Michael GS
Sent: Tuesday, March 13, 2012 6:25 PM
To: Hoedt, Jeff; Rizzo, Mark CAPT
Cc: Ropp, Patrick CDR; Franklin, Michael LCDR; Borg, David GS
Subject: Nome gold dredges

CAPT/Jeff:

As you may have seen on the Discovery Channel series "Bering Sea Gold", the recreational dredges in Nome, Alaska have created a concern for the Coast Guard. We are attempting to definitively confirm our assessment of these watercraft as recreational for enforcement purposes.

I've included photos of a few of the dredges we're talking about and links to the State of Alaska's Division of Mining permit process for clarification.

<http://www.visitnomealaska.com/nome-gold-dredging.html>

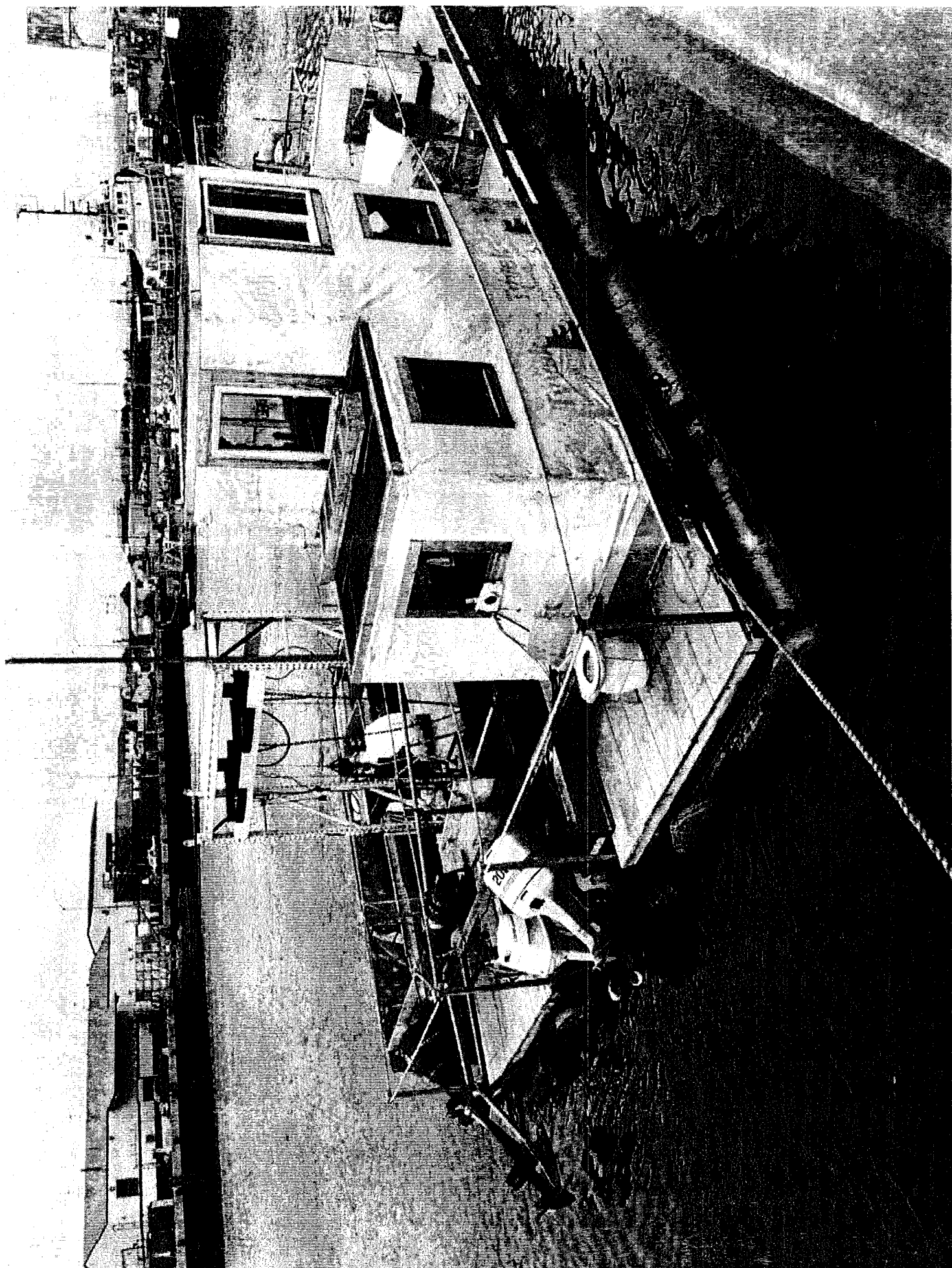
<http://dnr.alaska.gov/mlw/mining/nome/>

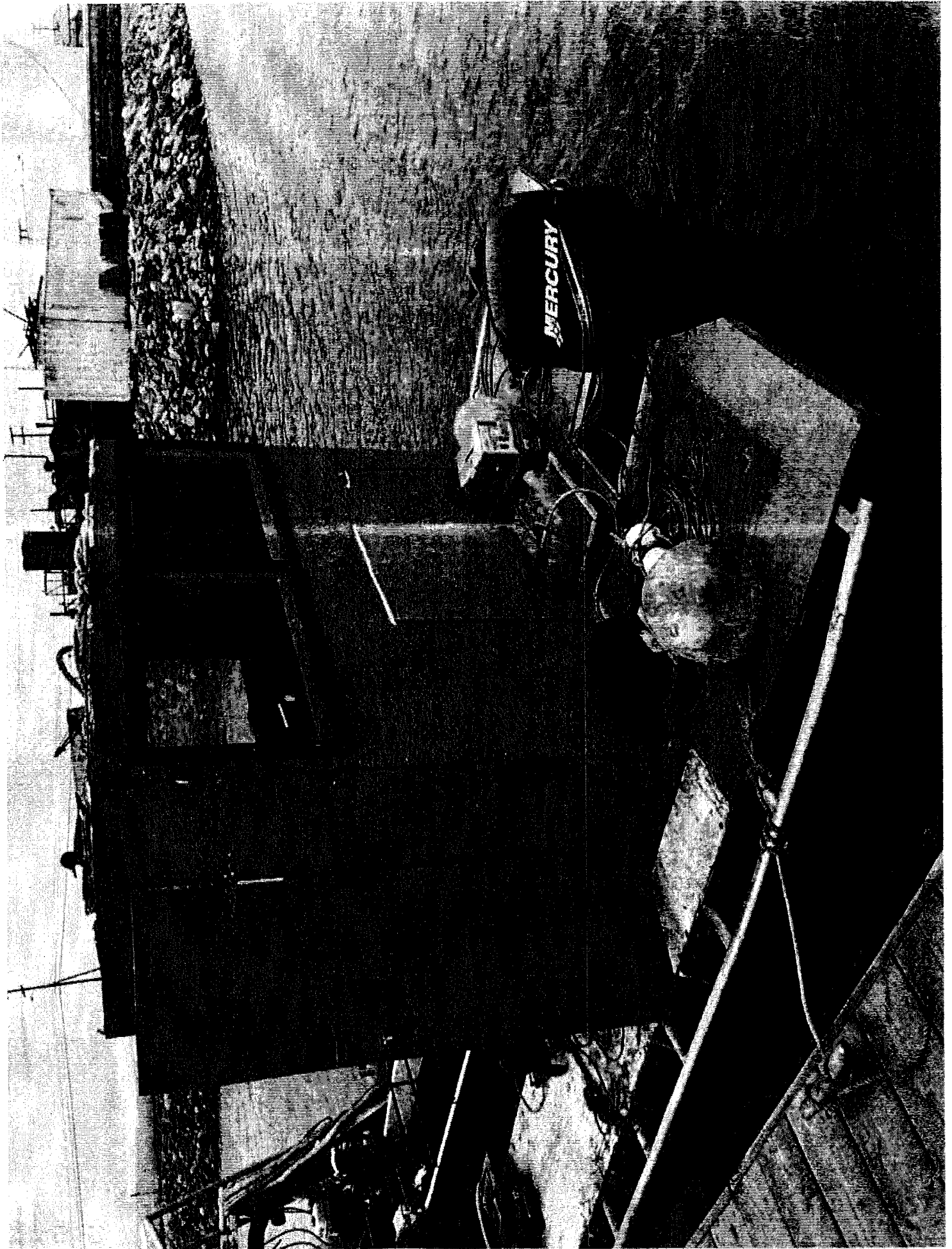
As far as we know, the recreational dredgers are working as partners (sharing costs and returns on sale of the gold they find..). At least one of the commercial dredges have paid employees and are operating as commercial.

All are operating within waters that are under joint federal and state jurisdiction.

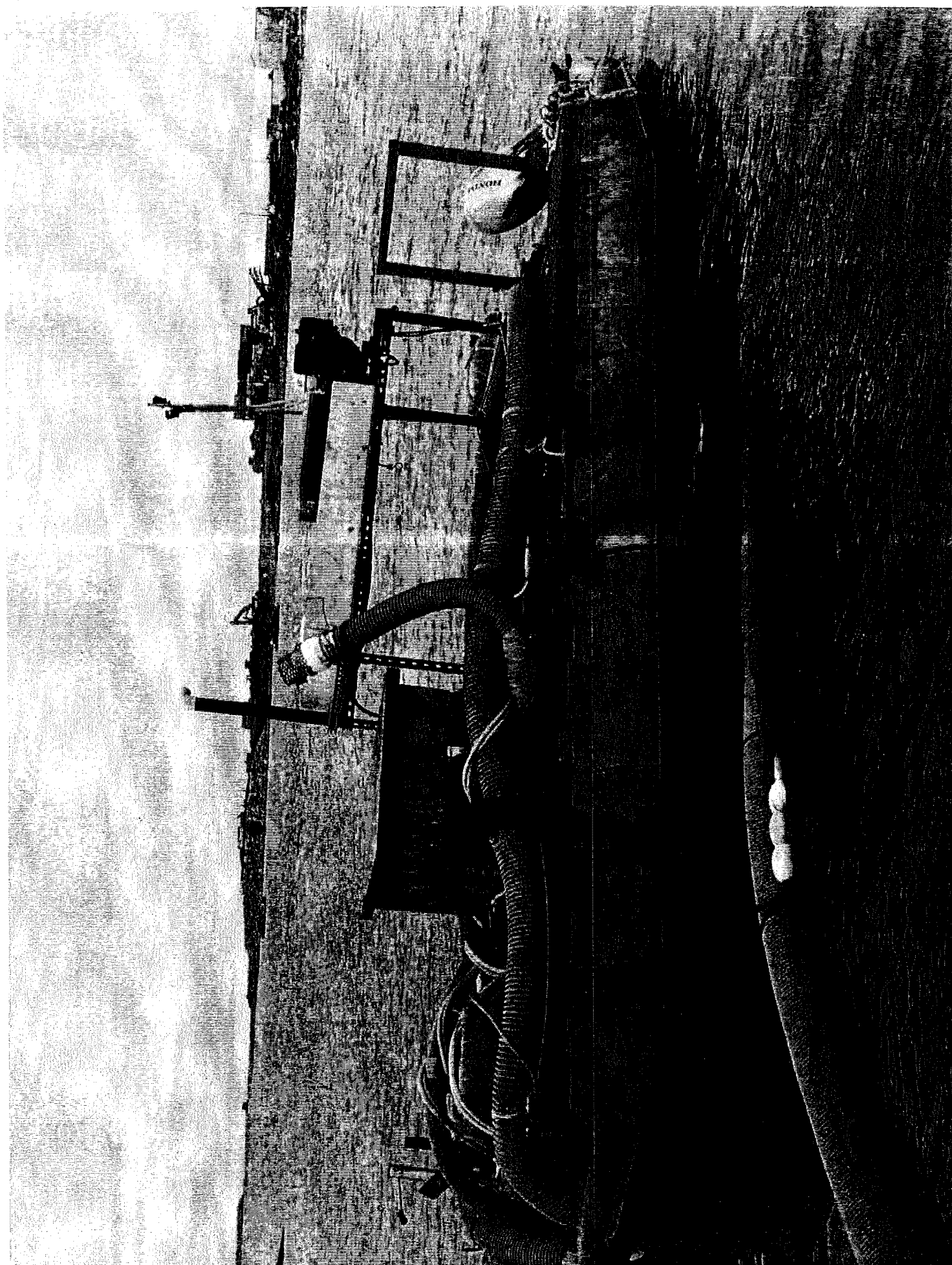
Please let me know if you need additional information for a determination.

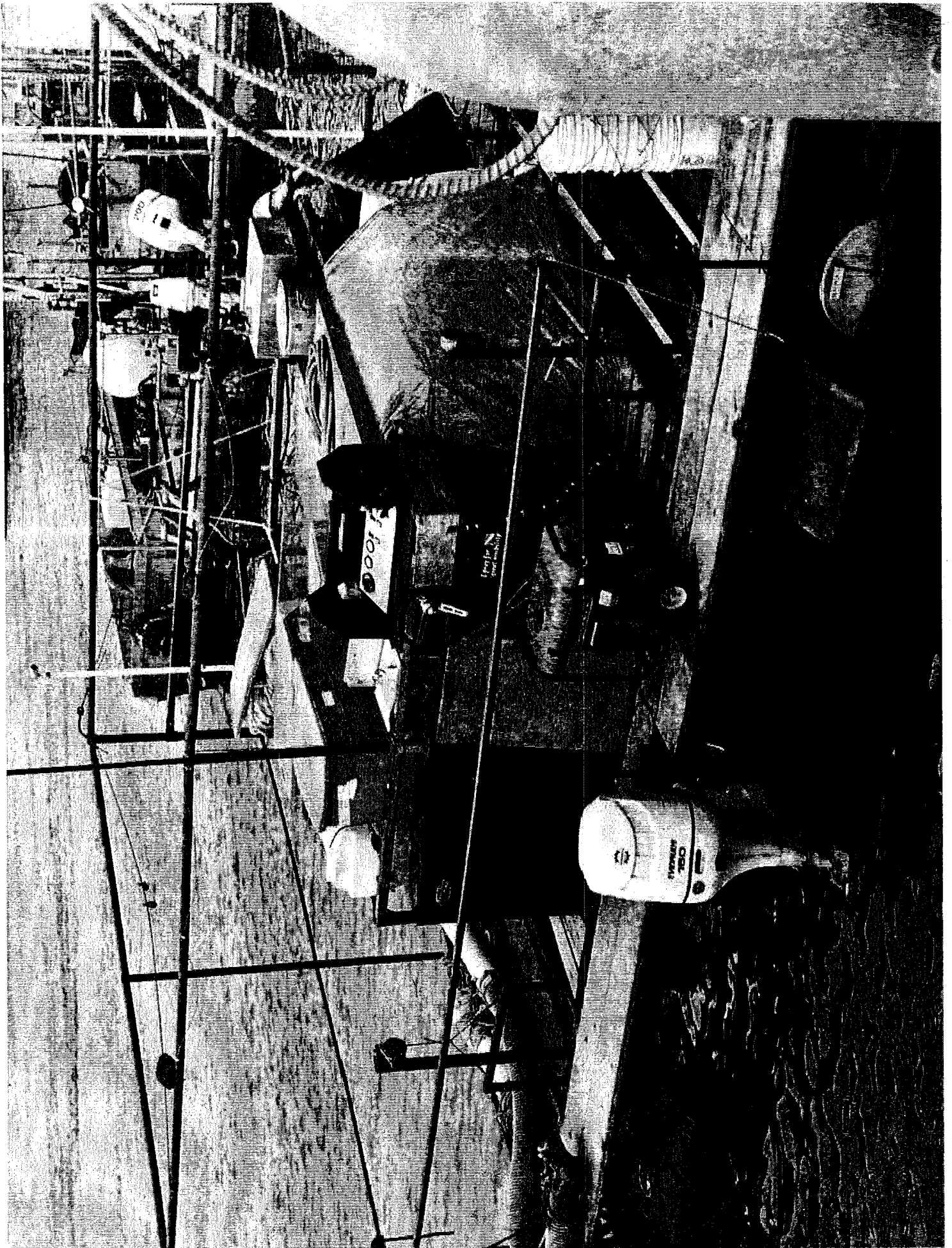
v/r
Mike Folkerts
RBSS D17

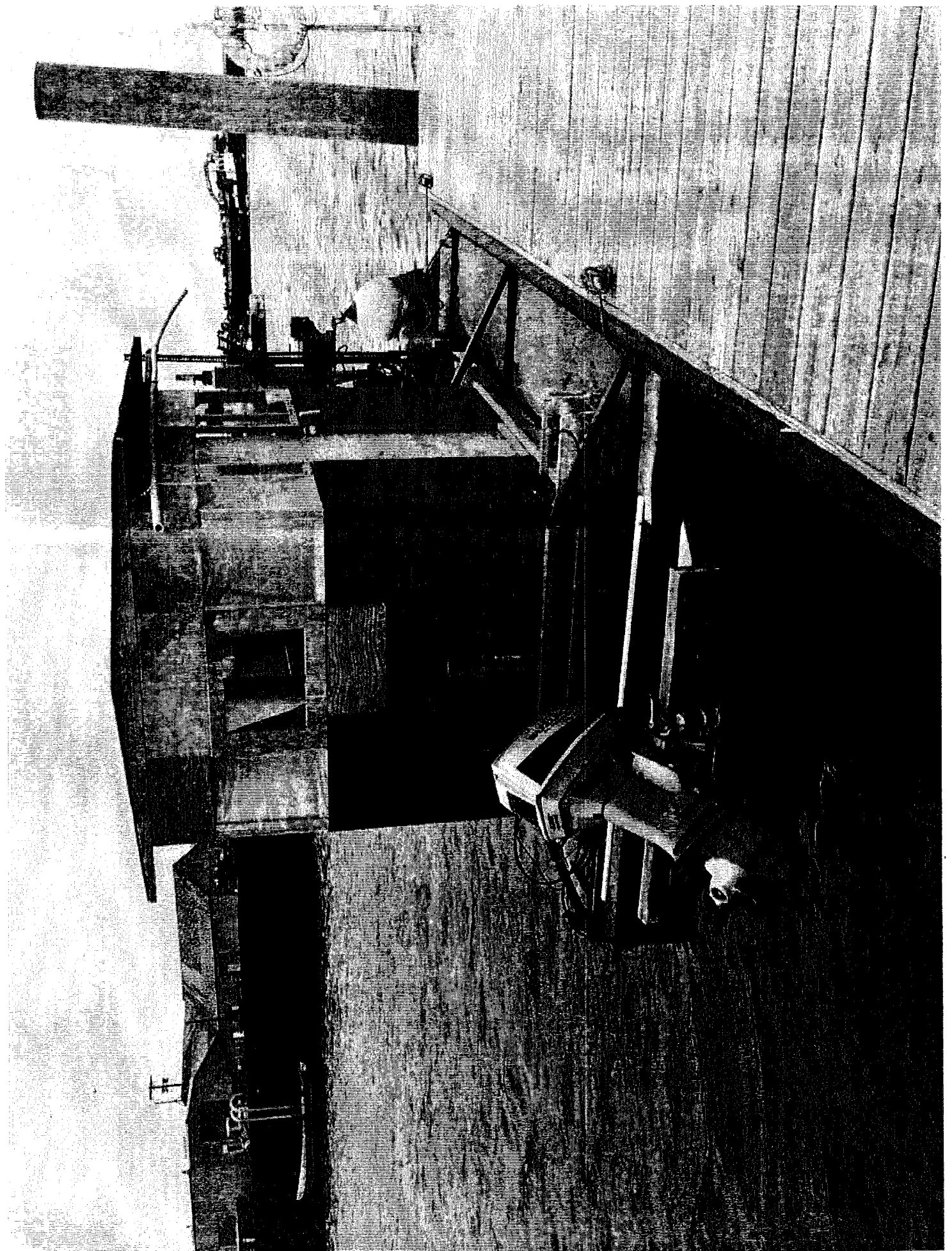












ATTACHMENT "F"



User Name: Eric G. Salbert

Date and Time: Oct 28, 2014 10:55 a.m. PDT

Job Number: 14161871

Document(1)

1. 46 FR 42288

Client/Matter: -None-

Narrowed by:

Content Type

Administrative Codes and Regula-
tions

Narrowed by

Custom: Custom

46 FR 42288

August 20, 1981
Proposed Regulations

Reporter
46 FR 42288

Federal Register > 1981 > August > August 20, 1981 > Proposed Regulations > FEDERAL REGISTER

Title: Exception From PFD Carriage Requirement for Sailboards

Action: Withdrawal of notice of proposed rulemaking.

Agency

FEDERAL REGISTER

Identifier: [CGD 78-163]

Administrative Code Citation

33 CFR Part 175

Synopsis

SUMMARY: The Coast Guard is withdrawing its proposal to exempt sailboard operators from the requirement to carry a personal flotation device. This results from a determination that sailboards should not be subject to Federal regulation. So that State and local governments may be free to regulate sailboards if the need arises, they are being exempted from a provision in the Federal Boat Safety Act of 1971 that would prohibit such action. As the Federal government will no longer be involved in the regulation of sailboards, an exemption previously granted to one sailboard manufacturer that allowed its products to be used without personal flotation devices is being terminated. These actions will allow the Coast Guard to withdraw from an area in which there was never a clearly established need for its involvement, while preserving the opportunity for such involvement at more appropriate levels of government.

Text

SUPPLEMENTARY INFORMATION: On February 18, 1973 an exemption from the requirements of § 175.15, Title 33, Code of Federal Regulations was granted to Windsurfing International, Inc., allowing a craft it marketed as "Windsurfer" to be used without a personal flotation device. The "Windsurfer" is basically a surfboard with a triangular sail on a swivel mounted mast. There is no rudder nor any rigging or stays. The operator maneuvers the boat through the trim of the hand-held sail and distribution of body weight on the surfboard. In issuing the exemption, the Coast Guard described the "Windsurfer" as "in essence * * * more a novelty craft used as a swimming toy than a vessel used or capable of being used for transportation". At that time the "Windsurfer" was relatively new to the domestic market and the terminology "sailboard" was not in use. Since the granting of the exemption to Windsurfing International, Inc., many manufacturers both foreign and domestic have manufactured surfboards with an attached free fall sail system and the term "sailboard" has come into common usage.

On March 29, 1979 the Coast Guard published an advance notice of proposed rulemaking at 44 FR 18765, soliciting comments to help it decide whether to withdraw the exemption from the Personal Flotation Device (PFD) carriage requirement issued to Windsurfing International, Inc., to extend the exemption to all other sailboard manufacturers or to develop alternative approaches. Based upon the comments received, the Coast Guard concluded that there would be no significant adverse effect on boating safety to continue to exempt operators of the "Windsurfer" from the PFD carriage requirement.

Eric G. Salbert

On July 19, 1980 the Coast Guard published a notice of proposed rulemaking at 45 FR 47876 that was directed at extending the treatment accorded to "Windsurfer" operators to the operators of all sailboards. If adopted, the proposed rule would have amended the regulations governing the carriage of PFD's to except sailboards from their coverage. The comments received on the proposed rule can generally be divided into two categories. The manufacturers of sailboards and most sailboard operators were in favor of granting an exception to all sailboards; however, State and local law enforcement agencies, a few sailboard operators, and other boat operators were generally in favor of terminating the existing exception and requiring all sailboard operators to carry PFDs.

Through the use of many thousand sailboards by both experienced and inexperienced sailboarders, it has become apparent that sailboarding has become a sport, similar to surfing or skiing, and that sailboards are not normally being used as a means for transportation. There are differences of opinion as to whether they are practically capable of being used as a means for transportation on the water and thereby qualify as "vessels" subject to regulation under the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 et seq.). The sailboarder must gain skill in balance and exhibit good dexterity to maintain the sailboard upright and moving. The sailboarder must exhibit some of the skills of a surfer, a sailor, and a skier to properly use the sailboard.

Many water sport items have evolved over the years which, although they may be capable of a limited use as a means of noncommercial transportation on the water, have not been subjected to regulation under the Federal Boat Safety Act of 1971. These water sport items include inner tubes, inflatable air mattresses, float boards, and surfboards. It has been determined by the Coast Guard that the sailboards should be treated in a manner similar to water sport items and that formal regulation of sailboards is not needed at this time. The exemption granted to Windsurfing International Inc. is therefore being terminated and the notice of proposed rulemaking concerning PFD carriage on sailboards is being withdrawn. Although the Coast Guard does not intend to regulate sailboards under the Act, it plans to continue monitoring sailboard activities to determine whether regulatory action may be needed. The Coast Guard will not hesitate to consider imposing requirements on sailboards if it is determined that problems of safety exist.

Although the Coast Guard has determined that regulation of sailboards under the Federal Boat Safety Act of 1971 is not needed at this time, it recognizes that there might be State interest in doing so. The Federal preemption provision in section 10 of the Act (46 U.S.C. 1459) prohibits States from imposing safety standards or associated equipment requirements that are not identical to those issued by the Federal government. However, States may be exempted from this prohibition under Section 9 of the Act (46 U.S.C. 1458). Such an exemption is being granted as part of this action so that States that find it necessary to regulate sailboards may be free to do so. By eliminating Federal involvement in a matter that at present may be better addressed at the State and local level, this action is in furtherance of the Administration's efforts to achieve regulatory reform.

The National Boating Safety Advisory Council has been consulted and its opinions and advice have been considered in this matter. The transcript of the meetings of the National Boating Safety Advisory Council at which this matter was discussed is available for examination in Room 4224, U.S. Coast Guard Headquarters, 2100 Second Street S.W., Washington, D.C. 20593. The minutes of the meetings are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G-BA/42), U.S. Coast Guard, Washington, D.C. 20593.

Drafting Information

The principal persons involved in drafting this document were Mr. Ray Franseen, project manager, Office of Boating, Public and Consumer Affairs, and Mr. Coleman Sachs, project attorney, Office of the Chief Counsel.

In consideration of its determination that sailboards should not be subject to Federal regulation under the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 et seq.), the Coast Guard is taking the following actions:

1. Withdrawing the notice of proposed rulemaking docketed as (CGD 78-163) published on July 17, 1980 (45 FR 47876).
2. Exempting each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of

46 FR 42288

the Pacific Islands, and any other territory or possession over which the United States has jurisdiction and their political subdivisions from that portion of section 10 of the Federal Boat Safety Act of 1971 (Public Law 92-75) that would prohibit them from establishing and enforcing regulations governing the manner in which sailboards are used, operated, or equipped owing to the absence of identical Federal regulations.

3. Terminating the grant of exemption docketed as (CGD 73-29) issued to Windsurfing International, Inc. on February 18, 1973.

(46 U.S.C. 1454, 1458; 49 CFR 1.46(n)(1))

Dated: July 27, 1981.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.
[FR Doc. 81-24348 Filed 8-19-81; 8:45 am]

BILLING CODE 4910-14-M

Contacts

FOR FURTHER INFORMATION CONTACT: Mr. Ray Franseen, Consumer Affairs and Administrative Staff, Office of Boating, Public, and Consumer Affairs, (G-BA-1), U.S. Coast Guard Headquarters Building, 2100 Second Street, S.W., Washington, D.C. 20593. Telephone 202-426-1080.

FEDERAL REGISTER

ATTACHMENT "G"

Stand-Up Paddleboard (SUP) FAQs

U.S. Coast Guard
Revised, July 2011

On OCT 3, 2008 the Coast Guard made the determination that “paddleboards,” actually Stand-Up Paddleboards (SUP) are considered “vessels” and subject to certain boating safety regulations. To clarify the issue for Eleventh District Units we've created this set of Frequently Asked Questions (FAQs).

What is a Stand-Up Paddleboard (SUP)?

A “SUP” as they are called in the sport, is a surfboard-like device, usually thicker and longer than a standard surfboard, where the operator stands upright and propels the board using a long paddle.

Where am I likely to see a SUP?

The sport has grown tremendously in recent years so you will see SUPs in the surf, offshore, and on flat water lakes and rivers.

What was the Coast Guard determination?

The Coast Guard determined that SUPs were “vessels” when operating “beyond the narrow confines of a surfing, swimming or bathing area.” A vessel, according to 1 USC 3 “includes ever description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.”

OK, but what does that mean to a boarding officer?

It means that if you see a SUP operating:

- A. In the surf or swimming/bathing area, leave it alone.
- B. On other waters, treat it as a kayak or other paddlecraft.

What boating safety regulations apply to a SUP?

Like any paddlecraft, a SUP operating outside a surfing or swimming area is subject to the NAVRLES, carriage requirements for PFDs, VDS, sound producing device, navigation lights, and accident reporting.

Stand-Up Paddleboard (SUP) FAQs

U.S. Coast Guard
Revised, July 2011

What kind of lifejackets are required on a SUP?

Just as with other boats, children (12 years old and under in California) must wear a lifejacket. Adults must have one onboard. PFSs must be Coast Guard approved and either Type I, II or III.

Note: For people 16 years old and older, who can swim and are comfortable in the water, a good choice is an inflatable lifejacket. They are less cumbersome and come in suspender style and belt-pack style.

What kind of sound producing device is required on a SUP?

As with any paddlecraft, a whistle will suffice for a sound producing device.

What about navigation lights?

As with any rowboat, kayak, or other paddlecraft, the operator of a SUP need only carry a flashlight that can be shined in enough time to avoid a collision. They are not required to have installed navigation lights.

What about Visual Distress Signals (VDS)?

For boats in California, VDS are only required when operating offshore. If an SUP is operating offshore it would be required to carry VDS under the following circumstances:

- A. If the SUP is less than 16 feet long the operator need only carry VDS if operating between sunset and sunrise.
- B. If the SUP is 16 feet or longer, the operator needs to carry both day and night VDS anytime it is underway (33 CFR 175.110 (a)).

Do SUPs have Hull ID numbers (HIN)?

No. The Coast Guard waived that manufacturer requirement.

Do SUPs have to have registration numbers?

No. States in D11 do not require registration of paddlecraft (CA, AZ, NV, UT). However, other states might.

Stand-Up Paddleboard (SUP) FAQs

U.S. Coast Guard

Revised, July 2011

What about “traditional” paddleboards that don't use a paddle but are powered by hand, kneeling or lying down like on a surfboard?

“Traditional” paddleboards have been around for about 100 years. This style of paddleboard is typically long, pointed, and does NOT use a paddle. The operator “paddles” with his/her hands like on a surfboard. These were not considered in the Coast Guard's “vessel” determination, which said, “The sport involves a person standing on a board, similar to a surfboard and propelling themselves through the use of a paddle.” Even if a traditional paddleboard had been classified as a “vessel” it would be exempt from lifejacket carriage requirements because it is powered by hand rather than “by machinery, sails, oars, paddles, poles, or another vessel.” (33 CFR 175.11)

Where can I find these regs in the Code of Federal Regulations (CFR)?

Most recreational boating requirements can be found in 33 CFR, between parts 173 and 187.

ATTACHMENT "H"

**91st Meeting
of the
National Boating Safety Advisory Council**

**Holiday Inn Arlington
Arlington, Virginia**

May 8-9, 2014

MEMBERS PRESENT:

JAMES P. MULDOON	Chairman, National Boating Organization Member
HERB ANGELL	State Member
SCOTT BREWEN	State Member
PETE CHISHOLM	Manufacturer Member
DEAN CLARKE	Public Member
TOM DOGAN	National Boating Organization Member
CECELIA DUER	National Boating Organization Member
PHIL DYSKOW	Manufacturer Member
MIKE FIELDS	State Member
JEFF JOHNSON	State Member
BRIAN KEMPF	State Member
MARCIA KULL	Manufacturer Member
DAVE MARLOW	Manufacturer Member
ERNIE MARSHBURN	National Boating Organization Member
DAN MAXIM	Public Member
ROB RIPPY	Manufacturer Member
BRUCE ROWE	Public Member
DOROTHY TAKASHINA	Manufacturer Member
TERRY WEST	State Member

MEMBERS ABSENT:

CHRIS STEC	National Boating Organization Member
------------	--------------------------------------

USCG STAFF:

CAPT JON BURTON	Director of Inspections and Compliance
CAPT TOM BOROSS	Chief, Office of Auxiliary and Boating Safety
JEFF HOEDT	Chief, Boating Safety Division, Office of Auxiliary and Boating Safety
BRANDI BALDWIN	Office of Design and Engineering Standards
VANN BURGESS	Program Operations Branch, Boating Safety Division
JOE CARRO	Program Operations Branch, Boating Safety Division
ERIC JOHNSON	Product Assurance Branch, Boating Safety Division
PHILIPPE GWET	Program Management Branch, Boating Safety Division
KURT HEINZ	Chief, Lifesaving and Fire Safety Division
HARRY HOGAN	Program Management Branch, Boating Safety Division
JOHN HUTCHISON	Program Operations Branch, Boating Safety Division

**91st Meeting
of the
National Boating Safety Advisory Council**

DONALD KERLIN	Chief, Program Management Branch, Boating Safety Division
JAKEEA KING	Program Management Branch, Boating Safety Division
JEFF LUDWIG	Program Management Branch, Boating Safety Division
CDR PETE NILES	Office of Navigation Systems
PAVLO OBORSKI	Chief, Grants Management Branch, Boating Safety Division
WAYNE STACEY	Program Operations Branch, Boating Safety Division
SUSAN TOMCZUK	Program Management Branch, Boating Safety Division
ROBERT TRAINOR	Office of Navigation Systems
RACHEL WARNER	Program Management Branch, Boating Safety Division

MEETING ATTENDEES:

JOHN ADEY	American Boat and Yacht Council (ABYC)
CAROLYN BELMORE	US Coast Guard Auxiliary
WAYNE BURDICK	Beneteau USA
VIRGIL CHAMBERS	Public
DAVE DAHMS	BLA, State of Idaho
PAM DILLON	National Association of State Boating Law Administrators
JOANNE DORVAL	METCOR
CHRIS EDMONSTON	BoatU.S.
JIM EMMONS	Water Sports Industry Association
VICTORIA FRESENKO	Department of Homeland Security Committee Management Office
BRIAN GOODWIN	American Boat and Yacht Council (ABYC)
JACK HANNA	Human Powered Watercraft Association (HPWA)
JAN WILLHITE-ISERMAN	Ashley Iserman Boating Safety Foundation
RACHEL JOHNSON	National Safe Boating Council (NSBC)
GAIL KULP	Sea Tow Foundation
BERNICE MCARDLE	Personal Flotation Device Manufacturers Association
FRED MESSMANN	National Safe Boating Council (NSBC)
MARGARET PODLICH	BoatU.S.
LORNA ROWE	Public
TRACI SILAS	Department of Homeland Security Committee Management Office
DICK SNYDER	Retired Engineer, Mercury Marine
ROXANNE STANDEFER	Canada
ERIC STOLEBERG	National Transportation Safety Board
NICOLE VASILAROS	National Marine Manufacturers Association (NMMA)
ANTHONY VIGGIANO	Autotether
MATT WEINHOLD	American Boat and Yacht Council (ABYC)

**91st Meeting
of the
National Boating Safety Advisory Council**

Thursday, May 8, 2014

**Call to Order and Introductory Remarks
Chairman James P. Muldoon**

Chairman James Muldoon called the 91st meeting of the National Boating Safety Advisory Council to order. He welcomed CAPT Jon Burton, CAPT Tom Boross, Mr. Jeff Hoedt and Mr. Jeff Ludwig, the entire NBSAC Council, and the audience, noting the importance of audience participation.

He said a new Secretary of the Department of Homeland Security, Jeh Johnson, had been sworn in last December. Mr. Johnson approved new members just after this 91st meeting was scheduled. As outgoing members had already agreed to continue to serve through this meeting, the new members would serve as observers, to be sworn in afterward. Mr. Muldoon listed the new members by name: Mr. Anthony Viggiano, Mr. Wayne Burdick, Mr. Tim Dunleavy, and Mr. Dave Dahms. He said three members were to be reappointed: Mr. Dave Marlow, Mr. Chris Stec, and Mr. Tom Dogan. Mr. Muldoon expressed great respect and gratitude toward the members, especially in light of the challenges of sequestration. He praised the expertise of all Council members, stating that their advice on boating safety matters helps the Coast Guard to save lives.

**Presentation of Awards to Outgoing Members
CAPT Jon Burton, Director of Inspections and Compliance**

CAPT Burton presented Coast Guard Public Service Commendation awards to Mr. Dave Marlow, Mr. Brian Kempf, Mr. Tom Dogan, Mr. Mike Fields, Mr. Robert Rippey, and Ms. Marcia Kull.

Mr. Muldoon called on all Council and audience members to identify themselves and as always, he reminded members to "leave your other hats at the door." He then welcomed CAPT Burton, U.S. Coast Guard Director of Inspections and Compliance, and gave a brief summary of his responsibilities and career history.

**Welcoming Remarks
CAPT Jon Burton, Director of Inspections and Compliance**

CAPT Burton introduced himself as a lifelong boater who had grown up around the Chesapeake Bay. He thanked everyone for attending this meeting, especially due to the issues with scheduling this meeting. He acknowledged the new 2014 members and thanked them for attending this meeting so they can see how NBSAC works. He said they were already working on the 2015 NBSAC membership slate to get ahead of the game.

He began his remarks by stressing the importance of the Sport Fish Restoration and Boating Trust Fund (Trust Fund) reauthorization, identifying it as the Coast Guard's number one priority for the near future. He said one draft bill was developed and was marked up in the Senate and

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nothing has yet been introduced in the House. The Coast Guard has been working closely with the U.S. Fish and Wildlife to ensure some version would be passed before the end of September when the current authorization expires. He mentioned some topics to be covered in the meeting, including emergency locator beacons, stand up paddleboards issues and the harmonized North American life jacket standards.

CAPT Burton called on everyone to help keep the Strategic Plan up to date as it is what much of the boating safety work is based on. He stated that they continually needed to look for ways to improve their processes, and to that end he is requesting the creation of a work group to examine NBSAC membership: its composition, its term limits, and its organization. Moving on to grants, he noted the decrease in funds for nonprofit organization grants and he posed the question: how can we best use the money available? He pointed out that the majority of the current funds come from fuel taxes, which have decreased. He noted that statisticians are looking at alternative methods to raise money for all trust funds that are currently based on fuel taxes. The Coast Guard now has slightly less than \$5M to allocate for nonprofit organization grants. He said the Coast Guard had just finished scoring nonprofit organization grant proposals. This year they used a different scoring method with different personnel involved to ensure that a wide range of equities scored them—two non-supervisory members from the Office of Auxiliary and Boating Safety (BSX), two from outside BSX but within the USCG, and two from outside the Coast Guard (one from FEMA and one from the U.S. Fish and Wildlife Service) that oversee grant programs in their agencies. After the scores were compiled, he would determine recipients and dollar amounts. He noted that he had previously agreed to provide his decision about how the National Recreational Boating Survey (NRBS) would be managed at this meeting, either through grants or administrative funds. Due to uncertainty about reauthorization of the Trust Fund and the fact that the 2012 survey had only just been published, he announced that he is going to postpone monies being spent on the boating survey and not perform another survey this year. He promised to re-examine the issue after reauthorization of the Trust Fund had passed. All of the funding available for the nonprofit organization grants would then be put towards the grant proposals received this year.

Recreational Boating Safety (RBS) Program Report

CAPT Tom Boross, Chief, Office of Auxiliary and Boating Safety

Mr. Muldoon introduced CAPT Boross, who assumed duties as Chief of the Office of Auxiliary and Boating Safety on July 29, 2013. He then gave a brief summary of the Captain's education and career history.

CAPT Boross thanked Mr. Muldoon, and then expressed sincere appreciation to everyone who had made a commitment to the recreational boating safety mission. He said those efforts were achieving unprecedented results. He praised the Strategic Plan's vision and insightfulness, noting that the hard data proved it was working, and that the public was listening, watching, and learning from the group. He stressed that the Coast Guard appreciated their efforts in the face of sequestration and budget cut challenges. He invited "a creative conflict of ideas and a robust analysis," which would help the Coast Guard to craft regulations, legislation, and strategic plans

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to optimize dwindling federal resources. CAPT Boross stated: "Our mission is too important to allow dysfunction to permeate amongst our ranks."

CAPT Boross went on to praise the Strategic Plan, assuring the group that the Coast Guard was using their product and that it was accomplishing great results. He mentioned a Coast Guard press release to be released soon that would announce record low casualty and fatality figures for 2013, and these figures were even more dramatic than 2012. He called on everyone in the room to continue to serve and work collaboratively. He said that the metrics by which this program was measured reflect human beings; therefore it was critical to work together to address these negative outcomes.

Before yielding the floor to Mr. Hoedt, CAPT Boross read the Conflict of Interest statement for the Federal Advisory Committee as required.

As stated in the Agenda, at this meeting we will be reviewing life jacket carriage requirements and approval issues, the Uniform Certificate of Title Act for vessels, and progress on emergency locator beacon data analysis. None of these issues is a particular matter for the purposes of the Criminal Conflict of Interest Statute.

Mr. Clarke asked for an explanation of the conflict of interest statement.

Mr. Ludwig explained that, as 19 of the 21 NBSAC members were considered to represent a class or interest group, by law they could not have a conflict of interest as everyone knows they were appointed to represent a specific interest. Coast Guard ethics attorneys reviewed the disclosures of the two public members, Mr. Clarke and Dr. Maxim, and the agenda to determine if there were any potential conflicts of interest to the public members. The Coast Guard ethics attorneys completed that review, found no conflict of interest and required that the statement be read.

Recreational Boating Safety (RBS) Program Report

Jeff Hoedt, Chief, Boating Safety Division, Office of Auxiliary and Boating Safety

Mr. Hoedt greeted old and new members. He said he would be presenting program updates; resolution updates; legislative, regulatory, and project updates; and challenges.

Mr. Hoedt named new Coast Guard personnel who would take over their positions within weeks: ADM Paul Zukunft, Commandant (CCG); VADM C.D. Michel, Deputy Commandant for Operations (CG-DCO); and RADM V.B. Atkins, Deputy to the Deputy Commandant for Operations (DCO-D). In addition, RDML Paul Thomas, who previously sponsored NBSAC when he was CAPT Thomas, is returning to Coast Guard Headquarters as the Assistant Commandant for Prevention Policy (CG-5P).

Mr. Hoedt went on to discuss boating statistics for 2013, and stated the number of registered recreational boats was 11.9 million (most registered boats are in Florida, followed by California and Minnesota). This was a decrease of 0.9% from 2012. He said they are seeing a declining

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trendline with the highest year in 2005. He acknowledged that outdoor recreation in general was having this type of declining trendline. He noted economic and weather challenges, as well as cultural changes in the U.S., as contributors. Specifically, he pointed to the decline in registered motorboats: critical because revenues for the Trust Fund are based off of this number.

Regarding safety statistics, Mr. Hoedt said he would only be covering the numbers from 2012; however, he hoped the numbers for the 2013 statistics would be released by the end of the month. The year 2012 had the lowest number of deaths on record at 651, and also a record low number of injuries at 3000. In light of the RBS Strategic Plan's goal using five-year averages, the 2012 statistics meant success with injuries and casualties, and though progress was being made on death rates, their goal had still not been achieved. He promised that the 2013 numbers would be closer to their objectives.

Moving on to Performance Report Part II, one of the Coast Guard's key measures of success, Mr. Hoedt noted remarkable activity by the states in 2013:

- 3,955,374 law enforcement/SAR hours
- 1,569,103 boardings
- 9,721 SAR cases
- 80,875 citations and 264,133 warnings
- 481,241 education certificates issued

Though these numbers were slightly down from the previous year, he acknowledged the continued hard work of all those involved.

On the subject of Operation Dry Water NASBLA's 2013 statistics showed:

- 513 agencies and 6,219 officers participated
- 290 operating under the influence arrests
- 140,000-plus boaters contacted
- Fewer alcohol-related deaths (16% as compared to 17% in 2012)

He gave kudos to all involved in the ongoing success of this effort.

Mr. Hoedt moved on to the topic of the Trust Fund for which the authorization expires on September 30, 2014. He noted that its funding scheme was complicated, and Coast Guard staff members were constantly asked to give briefings on the Hill to explain it to Congressional staffers. The Trust Fund itself is a permanent authorization—however what requires reauthorization will be the motorboat fuel tax that supports this Trust Fund and the Boating Safety program. He stressed the importance of the fuel tax dollar reauthorization. A proposal, Senate Bill 2028, has cleared the committee and awaits full Senate action, but it will likely be attached to another bill. The House will probably introduce a bill within the next couple of weeks. The focus will be on transportation because of highway revenue problems, but continuation of this Trust Fund is crucial to the boating safety budget.

He then talked about short-term expectations for funding levels, reiterating that the primary revenue source for the Trust Fund is the motorboat fuel tax. Motorboat registrations are declining. The number of registered motorboats was down 1.1% in 2013, adding up to a four-

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year trend of slight declines. The decrease in powerboating is likely to be a continuing trend, and will impact the 2015 Trust Fund amount.

Mr. Hoedt explained that sequestration directly impacted the Trust Fund as approximately \$7.7M was held back from boating safety. Congress has not taken the money away, but because the money funnels through the Highway Trust Fund, it has still been held back. The FY2013 monies that were held back, about \$6M, were given back to the Coast Guard this year. This sequestration has had a negative impact not only on state grants, but also on the national nonprofit organization grants.

Mr. Hoedt then shared updates on the five resolutions NBSAC adopted at the 90th meeting. Resolution 2012-90-01 recommended that the Coast Guard establish an emergency locator beacon (ELB) requirement and allow an exception for the carriage of DSC-enabled VHF radios between 3-20 NM in lieu of ELBs. He said the Coast Guard was conducting research and a cost-benefit analyses which would be presented in a report during this meeting. He thanked everyone who worked on that project.

He said the Coast Guard was also preparing a rulemaking project on the second resolution, 2012-90-02 Model Year Designation in Hull Identification Numbers (HINs). This recommended changing the definition of what constitutes a model year from the current regulation. Mr. Hoedt said industry had expressed concern about enforcing the current model year definition of August 1 each year. The Coast Guard published a Federal Register Request for Comments on this issue in 2012, and the broad question was should we retain current definition or amend or delete it? Based on the input the USCG has received, the rulemaking process on this NBSAC resolution has been initiated.

He said the Coast Guard had done considerable work on the third resolution, 2012-90-03, On-Water Instructor Licensing, but the current requirement for summer instructors to have a Coast Guard captain's license was a big challenge. There was a four-hour session at the 2014 International Boating and Water Safety Summit (Summit) where discussions centered on creative ways to resolve the problem. The session included staff from the Coast Guard, both the Boating Safety Division and the Commercial Vessel Compliance (CVC) office, and the Transportation Security Administration (TSA).

The fourth resolution, 2012-90-04, Scope and Frequency of the National Recreational Boating Survey (NRBS), recommended that the Coast Guard take action to reduce the scope of the NRBS. This would establish:

- Reliable estimates of exposure hours,
- The population of non-registered boats in the U. S.,
- That critical information on goals and measures within the Program's Strategic Plan be gathered, and
- That the survey be conducted less frequently than once every two years.

The fifth resolution, 2012-90-05, Terminology Update for Life Jacket Carriage Requirements, recommended that the Coast Guard update regulations found in 33 CFR 175 Subpart B by

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replacing every mention of Type I, II, III, IV and V with "U.S. Coast Guard approved" (or similar language) so that boaters would not encounter obsolete regulations when life jackets manufactured under new standards were introduced. Mr. Hoedt promised discussions on this topic during the meeting. He said the North American Consolidated Life Jacket Standard would remove life jacket "types" in unity with Canada, so there would be a new "continental" standard. He hoped that if the regulation went through that it would open up competition, which might encourage more companies to apply for approval of life jacket design and development.

Mr. Hoedt said that, since 2004, NBSAC had twice recommended that the Coast Guard seek legislative authorization to establish a uniform federal requirement for mandatory education of select boat operators. Proposals have been submitted to Congress for consideration several times, including this year, but without success. He promised that the Coast Guard would continue to work on this.

The Coast Guard Authorization Act of 2010, Section 618, changed the definition of "associated equipment" to include "emergency locator beacons." Mr. Hoedt said the Coast Guard could only regulate vessels and associated equipment by definition, which in the past excluded radios. The Authorization Act changed that. Multiple Coast Guard offices are now analyzing the potential benefits and costs of this proposal.

With regard to blended fuels or ethanol, Section 620, also in the Authorization Act, tasked the Coast Guard with presenting Congress with research completed within the past six months. The first report was completed and submitted, but though Congress had authorized \$1.0M to conduct the study, that money was not appropriated. Mr. Hoedt hoped more funds would be released so the project could proceed.

Moving on to the potential life jacket mandate, Mr. Hoedt said NBSAC gave the Coast Guard an initial resolution in 2011. The Coast Guard had conducted additional analyses and that leadership was still discussing the issue.

Mr. Hoedt then turned to NBSAC's recommendation that mandated the use of a cut-off switch to avoid propeller strikes. The Coast Guard had published an Advance Notice of Proposed Rulemaking in 2011 and received useful feedback; however, this did not provide all the information that DHS and OMB required. A study is ongoing to gather more facts, and Coast Guard leadership is currently reviewing that data.

Moving ahead to the topic of the boating accident reporting system, Mr. Hoedt referred to the 15 recommendations provided by NBSAC in 2009 for the Coast Guard's consideration. A Request for Comments was published in the Federal Register in 2011, which yielded helpful comments and showed general support for the project. The Coast Guard is now working that through the regulatory process.

Mr. Hoedt said the National Conference of Commissioners on Uniform State Laws adopted the Uniform Certificate of Title Act for Vessels last July. Two states have so far enacted it into law, and he predicted more to come soon. He posed a challenge to NBSAC: As Coast Guard's current

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vessel titling regulations are not identical to the new Model Act, should the Coast Guard amend its regulations to concur?

Mr. Hoedt said the JSI life jacket wear observation study is conducted through a grant each year. The Coast Guard has pared down the grant over the years. During a three year period in which the Coast Guard did this study in conjunction with the Corps of Engineers, the Corps of Engineers established local mandates for life jacket wear on select vessels. The latest results showed the numbers remain fairly steady, though the wear rate for adults on open motorboats has decreased slightly.

Mr. Hoedt presented a slide showing the NRBS results. A total of three surveys were conducted in 2012 and they contacted over 23,000 boat owning households. Boating trips, exposure hours and household boating participation were examined. Participation statistics were as follows:

- Recreational boating participants = 74,537,000
- Adult participants (16+) = 57,886,000
- Child Participants (15 or younger) = 15,565,000
- Sightseeing or Nature Observation = 52,365,000

Mr. Clarke remarked on a potential discrepancy between 74 million participants and only 23,000 boat owning households. Mr. Hoedt explained that only 23,000 households were surveyed—the actual number of participants is far greater.

Mr. Hoedt then showed a series of tables with more detailed 2012 survey data; boating participation of U.S. households; national statistics showing types of boats, registered and unregistered; national exposure hours by type of boat; and deaths and casualties per 100 million exposure hours focusing on five states. Four key regions are identified in the survey, with some state specific information included. Mr. Hoedt invited those interested to find out more via the survey database.

Mr. Hoedt concluded his presentation with four Challenges:

1. Should stand-up paddleboards (SUPs) be exempted from the life jacket carriage requirement or instead be required to carry/use a lanyard in lieu of being required to carry life jackets? Also, does the Council have any recommendations on clarifying the confusing life jacket requirements for various sail and paddle vessels?
2. Should the U.S. Coast Guard amend its vessel titling regulations in 33 CFR Part 187 to match the UCOTA-V (Uniform Certificate of Title Act)?
3. With FY 2016 on the horizon, it is time to start work on the next Strategic Plan of the National Recreational Boating Safety Program, especially in light of limited in-person meetings. The Coast Guard requests that the NBSAC begin work on developing the 2017-2021 Plan.
4. The Coast Guard requests a work group to provide input on NBSAC by-laws and charters and if any amendments are desired. For example, should there be term limits on membership or key leadership positions? (This is open to all NBSAC members and other interested parties.)

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Mr. Carro answered a question posed earlier about the highest BAC recorded during Operation Dry Water last year: that number was 0.243.

Mr. Hanna noted the importance of Challenge #1 pertaining to SUPs. He hoped there would be a chance to discuss the issue later.

CAPT Boross mentioned various members' call for an audit of the Trust Fund. He said the Coast Guard's solicitation for contract proposals to conduct the audit would be going out next week. Solicitations for the new audit would be in place by early June. He underscored their goal is to increase transparency, so henceforth the Trust Fund would be regularly audited.

He said the work group to be selected for consideration of changes to the NBSAC by-laws would receive copies of Coast Guard charters and by-laws for review. CAPT Boross then thanked Dr. Maxim for assisting him with the Coast Guard Auxiliary's Strategic Plan. He highlighted the importance of combining and optimizing everyone's resources in light of increased challenges. With Dr. Maxim's support, he said the Coast Guard Auxiliary's National Board had agreed to implement the RBS Strategic Plan. Eight of the 11 objectives are now integrated into the Auxiliary's Strategic Plan. In addition he hoped the RBS Strategic Plan would soon be integrated into that of the U.S. Power Squadrons—all part of "working smart" with the limited resources at hand.

CAPT Boross also thanked Ms. Rachel Johnson for helping to trademark the Wear It! campaign. He said that on May 19th, at the start of Boating Safety Week, Al Roker would be sworn in as a Coast Guard Honorary Commodore on NBC's Today Show.

Alternate Designated Federal Officer's Report

Jeff Ludwig, Office of Auxiliary and Boating Safety

Mr. Ludwig thanked everyone for showing forbearance with regard to limited meeting opportunities. He said that because Tom Guess (Virginia BLA) had to resign his membership, there was now an additional NBSAC vacancy. This vacancy announcement would be published in the Federal Register next week. There would be a total of eight vacancies, and Mr. Ludwig asked that people let him know if they were interested in joining. Because of sequestration and budget limitations, there would only be one in-person meeting per fiscal year. He hoped the next meeting would be in November 2014 (FY 2015), and every November thereafter. He reminded all attendees that registered lobbyists were not permitted to be Council members. He also informed all attendees that all the documents/handouts for the meeting would be posted on Homeport.

Call for New Business

Chairman Muldoon

Chairman Muldoon requested any new business from Council members. None were raised by Council members. He then asked the audience if anyone had any new business, and Mr. Dick Snyder recalled that in 1979 Mercury Marine introduced kill switch lanyards. The snap design

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had been very clunky and not user friendly. Over 30 years, the company had looked at many snaps and talked about the best features of each and recently came up with a new design. The new snap opens easily and will be far stronger than the old steel one, with an innovative locking feature. Mercury would be handing out samples to states and the Coast Guard in hopes of inspiring people to re-fit their boats.

Ms. Dillon had one item regarding potential authority to use voluntary consensus standards in lieu of the regulatory process. This, she hoped, might speed up many NBSAC initiatives and advance the Strategic Plan. She understood that the National Technology Transfer and Advancement Act (NTTAA) would allow federal agencies to recognize standards developed through voluntary consent.

Mr. Ludwig said the purpose of NTTAA was to encourage agencies to use standards "in lieu of inventing their own way of doing something." All standards still had to be incorporated by reference in a regulation—i.e., a regulatory process was still necessary.

Dr. Maxim offered another approach—Negotiated Rulemaking which started in the 1980s with EPA, in which they negotiated a settlement for the standard rulemaking process. He said that it seemed to work well for them; it might be an option for consideration.

CAPT Burton said that happened all the time in the commercial arena. He felt it was a good idea to adopt industry or commercial standards before the government became involved. He said one of the reasons they have advisory committees is to advise the federal agencies to adopt these standards and move this process along faster.

Members' Items

Jeff Hoedt, Office of Auxiliary and Boating Safety

Mr. Hoedt explained that members are solicited for member items prior to meetings. These are items about various boating safety issues that are brought to the Coast Guard's attention ahead of the meeting and this time is used to find out if satisfactory answers were provided.

Mr. Muldoon, Mr. Angell, Mr. Brewen, Mr. Clarke, Mr. Dogan, Ms. Duer, Mr. Fields, Mr. Johnson, Mr. Marlow, Mr. Marshburn, Dr. Maxim, Mr. Rippy, Mr. Rowe, Ms. Takashina, and Mr. West had no items.

Mr. Chisholm had three questions that were not submitted ahead of time, but he requested responses after the meeting:

- What is the current office organizational chart (names and functions)?
- Which of these positions are funded by the Trust Fund?
- Which of these positions have changed in their funding, either toward or away from the Trust Fund, and the justification for those changes?

CAPT Boross said that they had previously presented the Office's organizational chart at the Summit in Nashville, and that it was on the Office's website. Mr. Hoedt said there were 26

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federal employee positions within the Boating Safety Division at Coast Guard Headquarters. Fourteen of those positions are funded by the Trust Fund, 10 by 2% Administrative funds that oversee the grant program, and four by the \$5.5M per year allocated to overall administration of the Boating Safety Division. Four positions that are funded out of the 2% monies were recently transferred in April from the Coast Guard's operating expense (OE) funds to the 2% Administrative monies; these staffers oversee the programmatic aspects of the grant program.

Mr. Chisholm asked whether transferring those four individuals ensured they would continue on staff. Mr. Hoedt said yes.

CAPT Boross thanked Mr. Chisholm for his questions, saying they offered an opportunity to highlight the transparency and shrewd stewardship of the program. Mr. Hoedt pointed out that the \$5.5M contains a statutory limitation—it cannot be used to replace Coast Guard OE funds; the same restriction does not apply to the 2% Administrative funds over the grant program.

Mr. Dyskow recalled a “healthy discussion” 18 months ago about modifying licensing requirements for on-the-water boating and boating safety instruction. Was that topic on this meeting's agenda?

Mr. Hoedt said it was being addressed in as timely a manner as possible, though not necessarily a topic for this meeting. It had been discussed at length at the Summit.

Mr. Messmann said Mr. Dyskow's issue would come up in the forthcoming Strategic Planning Subcommittee report.

Mr. Kempf wondered about centralizing the Coast Guard Auxiliary database. What is the future for the development of a database to track students completing a boating safety course? Was the Coast Guard looking at this issue? If so, what is the time frame? Mr. Hoedt could not answer that question, but suggested Mr. Kempf speak with Dr. Maxim.

CAPT Boross said the Auxiliary has “AUXINFO and AUXDATA” but that it tracks Auxiliary courses only—the Coast Guard does not have access to a central database of general public courses. He noted that though Auxiliarists around the U.S. and its territories are conducting training, the number of courses completed was under-reported. He said the Coast Guard is understating the progress it's making with boating safety education as there is under-reporting to the state BLAs for all courses completed nationwide. A central database would help in that effort. There is neither a Coast Guard nor an Auxiliary central database at this time.

Mr. Muldoon pointed out that U.S. Sailing does have a central database.

Ms. Kull wondered about the USCG'S plans with regard to safety public service announcements. Were there any current ones? Were any planned for the future? What was the funding mechanism for both the creative side and the distribution? Was there a plan to work co-operatively with industry and other stakeholders to avoid the disruption they had in the past with the “shock ads” that had previously circulated?

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Mr. Hoedt said there was nothing in the works for awareness campaigns coming specifically from the Coast Guard; rather, they were working with the grantees and their efforts to promote safety.

Mr. Rowe stated he is still reviewing the responses provided to his items and would let the Coast Guard know if there are additional questions.

CAPT Boross pointed out that Coast Guard Headquarters public affairs office has a robust campaign to promote public service campaigns in print and social media. The USCG's current budget is limited, so it is relying on its grant recipients to circulate important safety information. NASBLA is a key partner in this endeavor. He concluded by saying that the Coast Guard is not out of the public service announcement business.

Mr. Clarke brought up the conflict of interest statement recited earlier: he felt it was somewhat nonsensical considering that it applied to only two people in the room. Many in the group belonged to the commercial sector—could that not be perceived as more of a conflict of interest when decisions and rulings were being made? Mr. Ludwig reiterated his earlier explanation—that there are two classes of membership on advisory committees: representative members and special government employees. For NBSAC's purposes, the latter were the two public members. The public members' backgrounds may not be as transparent as those of industry members, hence the need for the ethics announcement.

CAPT Boross asked if Mr. Clarke wished to recommend the topic as an item of business. Mr. Clarke said he hadn't meant to accuse anyone—he simply felt that, from an outsider's perspective, a situation where representatives discuss regulations related to their own industries might appear ripe for a conflict of interest. Might it not be a good idea to build up firewall between those representatives and any such potential perception?

CAPT Boross talked about NBSAC's structure and intent, i.e., transparency in all matters. The group welcomed corporate, regulatory, and public points of view. Mr. Clarke repeated that he highly valued input from industry experts. He was simply questioning how outsiders might view the situation.

Mr. Chisholm encouraged the Coast Guard to use social media as a powerful and inexpensive way to disseminate public service announcements.

Virtual Aids to Navigation

Robert Trainor Office of Navigation Systems

CDR Pete Niles, Office of Navigation Systems

Mr. Hoedt introduced the next topic on the agenda: the future of physical and electronic aids to navigation. He introduced Mr. Bob Trainor and CDR Pete Niles from the Coast Guard's Office of Navigation Systems.

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Mr. Trainor welcomed the group. He acknowledged that many boaters had questions about electronic navigation—was the Coast Guard planning to dispense with buoys and channel markers and replace them with electronic markers? The answer is no. This was about enhancing the existing navigation system, not getting rid of buoys. He said there were currently about 50 electronic aids to navigation in the U.S., most in the San Francisco Bay area.

He said his office was working with National Oceanic and Atmospheric Administration (NOAA) and the US Army Corps of Engineers (USACE) to enhance the country's aids to navigation (ATON) system and the safety of its waterways. Aids to navigation are critical elements of the waterways component of the marine transportation system (MTS). There are 25,000 miles of navigable waterways and 97,000 aids to navigation in the U.S. today. Half are privately owned, many in the Gulf of Mexico marking offshore oil rigs. Annually the MTS generates \$649 billion to the gross domestic product in the form of jobs and economic activity. Ninety-nine percent of all cargo enters the MTS by weight, 64% by value. The nation's economic and environmental well-being depends on it.

Mr. Trainor showed a slide to illustrate how, as ships become ever larger (deeper drafts, wider beams, higher air drafts), channel dimensions remain the same, which reduces the margin of error. He stressed that no one wanted to remove any aid to navigation that might mitigate transit risks. The responsibility for waterway safety is shared between the USCG, NOAA and the USACE—each specializing in different areas, all contributing in different ways—a coordinated effort to broadcast information to mariners in a timely, efficient manner. The Coast Guard provides the actual aids to navigation (buoys and beacons, transmitting information via mariner broadcasting systems); the USACE provides charts and booklets; and NOAA provides port systems and hydrographic surveys. He noted that infrastructure of the Automatic Identification System (AIS) is already in place, primarily designed to receive information from vessels, but with the additional ability to transmit AIS ATON information to the mariner in real time.

Mr. Trainor then talked about the three types of AIS:

1. **Virtual AIS** - puts out a signal from a base station to an area of the waterway that has no physical aid to navigation. Such is the case in the Delaware Railroad Bridge and the Delaware River, where the plan is to mark piers via AIS, so that as the ships come through they can obtain information via a virtual system.
2. **Synthetic AIS** - a signal is projected atop an existing buoy or beacon. In Alaska's Holcombe Bay, buoys 1 and 2 are often under water. In this case, if an AIS ATON signal is projected from the buoys, mariners can see them on a device, provided they have the capability to receive it.
3. **Real AIS** - a unit atop a buoy or beacon emits an actual light and AIS signal. If the buoy is off station, the AIS signal transmits from the buoy so mariners can see it on their electronic chart system. This is the most expensive type and none are deployed at present.

Using a map of the entrance of San Francisco Bay, Mr. Trainor pointed out three traffic separation schemes where virtual and synthetic AIS were employed—the virtual AIS being check-in points for the Vessel Traffic Service (VTS) system. There are no buoys at these points,

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but mariners can see on their charts where they need to check into the VTS system. Eighteen such systems are employed in the VTS in San Francisco Bay. In addition there are synthetic AIS, all which are transmitted from a base station. These have a life expectancy of about 18 months and cost \$35,000 to replace.

Regarding future capabilities, Mr. Trainor talked about an area in California where information could be provided on an overlay to an electronic chart system. He showed a visual of the four towers on the San Francisco Bay Bridge, noting that there was plenty of room under the bridge and yet there were still allisions with the bridge piers. Using a chart of the area, he demonstrated how confusion could arise because of excessive information in place. Then he showed how the same area looked on a radar screen, illustrating the disadvantage of the radar beacons (RACON) which hide targets on the other side of the bridge. He noted AIS signaling has the advantage of showing the exact locations of the bridge piers. He speculated that, if the AIS gave a reliable signal, perhaps the RACONs would no longer be needed. He concluded that the primary goal for 21st century waterways was to identify and mitigate transit risks. He repeated his earlier statement—the new technology would enhance, not replace, the old. He said waterway user input was critical: there were ongoing listening sessions around the country, and the NavCenter website would have surveys for garnering mariner input.

Mr. Clarke noticed there was nothing about recreational boats in Mr. Trainor's presentation. He felt the entire program was targeted to the commercial maritime community. He said that the Coast Guard planned to remove physical aids to navigation and replace them with virtual ones. He argued that not all recreational vessels carried electronic chart displays or even had AIS. These stakeholders were immediately disenfranchised. If operators couldn't determine the location of a major channel by means of a physical aid to navigation, they could stray into harm's way: boaters didn't need this added confusion. While Coast Guard claimed it was giving the public advance warning and invited feedback, it solicited this input via Notices of Proposed Rulemaking and the Federal Register. Mr. Clarke knew of no mariners who read either, so he didn't feel it constituted valid means of communicating with the recreational boater. He feared the program would compel boaters to buy electronic chart plotters equipped with AIS in order to safely navigate U.S. waterways.

Mr. Dogan agreed with Mr. Clarke, that recreational boaters would be disenfranchised by this new technology.

Mr. Trainor countered that no physical aids to navigation have been replaced by virtual aids. These systems are a way to augment what already exists rather than remove what is already there. He restated the need for input from all waterway users.

CDR Niles said the Coast Guard would provide dates for the listening sessions, and the survey would be available online soon.

Mr. Dogan remarked that many physical aids to navigation are off by several feet, whereas the electronic aids don't move.

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CDR Niles said he understood Mr. Clarke's concerns about the average recreational boater. CDR Niles said the next listening session would be on May 19th in Honolulu; the one after that would be on May 22nd in Virginia.

Dr. Maxim praised Mr. Trainor's presentation, and requested copies of it. He wanted to know when all this technology might take place.

The goal, said CDR Niles, was for the technology to be fully operational by 2025. He acknowledged that much work remained to be done.

Mr. Clarke mentioned he had a copy of NAVSAC Resolution 12-06 for anyone interested.

Mr. Muldoon thought that the point was to save money by removing physical navigation aids. CDR Niles recognized that current aids to navigation needed to be more efficient, but insisted that waterway enhancement was far more important than saving money. One idea would be to bring a group of users to a simulator to show them how the technology would work so the Coast Guard could move forward using fact-based decisions.

**Uniform Certificate of Title Act – Vessels
Vann Burgess, Office of Auxiliary & Boating Safety**

Mr. Burgess noted that the original Uniform Certificate of Title Act had been written for automobiles. The Uniform Law Commission then drafted the Uniform Certificate of Title Act for Vessels (UCOTA-V). He praised the drafting committee's thorough research on the Act. State observers from Department of Motor Vehicles (DMV), National Marine Manufacturer's Association, and the National Association of State Boating Law Administrators (NASBLA) were also involved in its drafting. The bill was unanimously adopted on July 11, 2013. It was now available for states to adopt into law, and Virginia has passed it.

Mr. Burgess said the principle objectives of the Act were to:

- Qualify as a state titling law that the Coast Guard will certify, making a vessel available for a preferred ships mortgage status;
- Facilitate transfers of vessel ownership;
- Deter and impede the theft of vessels by making ownership information available to both government officials and those wishing to acquiring an interest in a vessel;
- Accommodate existing financing arrangements for vessels;
- Work seamlessly with the Uniform Commercial Code, most notably Articles 2 and 9;
- Manage, as much as possible; the complications that can arise from a vessel's transition in or out of federal documentation;
- Provide clear rules on the consequences of compliance or noncompliance;
- Impose minimal to no new burdens or costs on state titling offices; and
- Protect buyers and others acquiring an interest in an undocumented vessel by requiring that its title be branded if a casualty or sinking has caused significant damage to the vessel's hull integrity.

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Mr. Burgess said UCOTA-V provides a means to certify state titling systems, making them available for preferred ships mortgage status. The bill also increases maritime security in that certified titling programs must fully participate in the Vessel Identification System (VIS) and supply all required information. It also offers more consumer protection via title branding provisions similar to those of motor vehicles.

The Uniform Law Commission has notified the Coast Guard that several additional States are considering action to adopt the bill: Alabama, Connecticut, Iowa, Louisiana, Minnesota, New York, Oklahoma, Tennessee, and Utah.

Mr. Burgess concluded his presentation by talking about the next steps, which will involve developing a regulatory project to bring the current regulations under 33 CFR 187 into agreement with UCOTA-V. He opened the floor for questions.

Mr. Clarke said he applauded the intent of this regulation but questioned its enforcement. Mr. Burgess said there would be no enforcement—it is a voluntary regulation that is self-enforcing through the parties involved.

Mr. Dogan wondered if UCOTA-V would have an impact on the Coast Guard's current system of reissuing certification of a vessel's documentation every year, which he felt was a wasteful process. Mr. Burgess said it would not. Mr. Hoedt questioned the demand for documentation if this system proved successful.

Mr. Dogan applauded this regulation's objective: to protect buyers.

Mr. Adey pointed out that a boat was far more restorable than an automobile. He wondered who would evaluate the severity of the damage, and whether a boat's salvage history could ever be dropped from its record. Mr. Burgess said it would depend on how individual states interpreted the ruling. As to the severity of the damage to a boat's hull, a marine surveyor or "other qualified person" would make that decision.

Ms Duer wondered about how boats left behind at marinas when the owners can no longer afford them or want them could be handled. How would this impact whether or not a marina owner could title or relinquish such vessels? Mr. Burgess said UCOTA-V did not address that issue.

Mr. Clarke pointed out that some people obey the rules and some are scofflaws, and felt this regulation would be vulnerable to abuse by the latter. He did not believe that insurance companies would pay for a special survey of a vessel to determine the extent of its damage. In short, he felt the regulation could be easily circumvented.

Mr. Burgess stated that it was an improvement on the current laws, which gave a person no recourse. The whole idea behind UCOTA-V was to protect the consumer. He sought guidance from the group—should they move forward with this regulation or find an alternative?

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Mr. Muldoon wondered if this regulation might increase boating safety overall. Mr. Burgess said yes, because it would help prevent damaged vessels from re-entering the market with merely cosmetic repairs.

Safety Equipment Carriage Requirements: Stand-Up Paddleboards and Other Vessels
Tom Dogan, Vice Chairman, Prevention Through People Subcommittee

Mr. Dogan said that in November 2012, the Council was tasked with recommending standard safety equipment for SUPs and other paddlecraft such as dragon boats, racing canoes, kayaks, and tubes—a large area to cover. He mentioned a letter from Mr. Hanna of the Human Powered Watercraft Association (HPWA) stating that a leash should be acceptable safety equipment for an SUP, and further commenting that the Coast Guard is “in over its head by using fear-based enforcement for the life jacket component.” He posed the question: should the board itself, which typically has positive flotation, substitute for a life jacket?

Complicating the issue was 33 CFR 175, which covers various types of paddlecraft but currently leaves gaps in the requirements. In an earlier meeting Mr. Newman, the RBS Program Manager for the 11th Coast Guard District, advised the Coast Guard to offer general guidance rather than focusing on specific types of vessels. In the current CFR, there was an exemption for racing sculls, canoes, and kayaks. If a racing exemption were to stay in place, a new concept would be needed, such as racing paddlecraft. Unfortunately, this would beg more questions about whether to deal with the purpose of the craft or activity in which the craft is involved—whether that purpose is racing, training to race, or pure recreation. Mr. Dogan reminded members of the USCG’s overriding objective: to have policy in place that provides for the safety of the public at large and still allow the public to enjoy their time on the water. Changing life jacket standards further impacts this already difficult issue.

Mr. Stec (via telephone) apologized to members that he could not be at the meeting in person. He mentioned a handout containing the next version of the current draft the Subcommittee had been working on. They had gathered all the emails and comments from a range of individuals on various sides of the issue. If the Council thought it could come to a resolution, members of the Subcommittee could draft it—if not, then at least they would continue to carry the issue forward or agree on a timeline for doing so. He asked if there were any questions at this time.

Mr. Hanna said that 1500 people had been upset enough to sign petitions to explain to the PTP Subcommittee that their opposition to the regulation of SUPs was not a question of personal freedom or dislike of life jackets. He said he personally believed in life jackets and understood the mission of safety. In the case of SUPs, however, he insisted that life jackets do not work as a safety device, and that Coast Guard Auxiliarists and industry experts have sent him letters stating that whereas a life jacket hinders a person’s ability to retrieve a board, a leash enables a person to recover a board. A regulation designed for boats—something with freeboard and therefore difficult to re-board—has been applied to something with no freeboard and entirely composed of flotation material. Those in the industry who have been selling SUPs and those who have been teaching people how to use them for seven years are using leashes as a safety device when such a device is necessary. The current regulation is so poorly applied to the sport that people in

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California think they aren't required to use a life jacket on a paddleboard. He said this has come to be because the people in the water with the paddlers and boaters were so embarrassed by the application of the regulation that they were not enforcing it. Because of this, there were no safety guidelines whatsoever. He hoped that the HPWA would be able to convene with ACA and World Paddle Association (WPA) to work on some standards. Until then, he felt that deregulation, whether temporary or permanent, would be the right way to go. This would "get the Coast Guard off the hook in a bad situation that leaves them very embarrassed."

Mr. Dogan thanked Mr. Hanna, assuring him that his opinion would be taken into consideration. Mr. Hanna added that it was not just his opinion.

Mr. Stec said that Mr. Hanna had made a good point and that leashes had validity. However, in some venues they could be dangerous.

Mr. Clarke wanted to know in what conditions wearing a leash would be extremely dangerous to the extent that the PTP Subcommittee would determine that leashes weren't an appropriate substitute for life jackets.

Mr. Stec noted that this topic had been covered in other boating Committee discussions. He pointed out that there are different types of leashes; straight and coiled. A straight leash worn on a moving water river is a death trap. There are coiled leashes that sit on your board and can be perfectly fine for flat water, but are not appropriate for a surf zone for most people due to the recoil of the board. He stressed that leashes are not a substitute for life jackets in swift moving water, and are in fact dangerous when used by anyone other than people who have been trained in what leashes are appropriate and when to wear it and when not to wear it. He hoped this answered the question of when to and when not to wear a leash.

Referring to a handout, Mr. Rowe asked if a canoe, kayak, or racing scull were being operated, wouldn't that preclude life jacket wear in a sanctioned race or training exercise? Wouldn't people then buy a "racing" paddlecraft in order to avoid having to wear a life jacket?

Mr. Dogan said the current CFRs didn't specifically address that issue. Mr. Stec agreed that not all vessels were covered in the CFR, such as fishing and racing canoes. There had been suggestions that racing sculls, racing shells and racing paddlecraft be exempted if it were a sanctioned event. Mr. Dogan also wondered about training for a race. Mr. Stec admitted it was a challenge, but if there were an exemption it should be for competitive races only.

Ms. Takashina said she had seen SUPs presented at one of the water safety summits and a Personal Flotation Device Manufacturers Association (PFDMA) demonstration. After listening to today's discussions and reading the documents, she felt it was far too early for a regulation. At this stage people engaging in this sport should be monitored and the entire situation evaluated before any decisions could be made.

As a licensed U.S. rowing judge referee, Mr. Clarke stated that the hulls of racing shells and sculls were themselves considered lifesaving equipment. He said that applied in both sanctioned

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and unsanctioned events, and noted that the current CFR was a vessel-based regulation rather than an application-based one.

Mr. Hanna said that in looking at the precise language of the CFR, if the WPA would recognize 12-and-a-half-foot and 14-foot displacement style paddleboards as racing craft, it would remove the Coast Guard from the business of interfering with sanctioned and unsanctioned races. He said Mr. Stec's comments at the Watsonville meeting showed a lack of understanding about current leash technology, and he hoped to be allowed to bring two leash manufacturers into future discussions. He stressed that coiled leashes weren't dangerous unless the user didn't understand the simple action of reaching and releasing the velcro tab. He pointed out that white water rapids were a special case that should be handled "venue by venue."

Mr. Stec thought that if a decision could be reached on what constitutes a racing paddlecraft, users of some vessels could be exempt. He looked forward to input from U.S. Rowing. As he is aware of the various discussions surrounding leash technology, he stressed that leashes could be appropriate in certain situations, but that they constituted a significant danger in a swift-moving water venue regardless of how it attaches.

Mr. Dogan asked if the Council was ready to recommend a resolution. Mr. Rippy felt they weren't ready, given the complexity of the issue.

Mr. Stec called for the Council's guidance about what constituted a racing paddleboard. He felt that might at least help in the effort to insert new language into current sections of the CFR.

Mr. Muldoon repeated that the full Council wasn't ready to take action, but that they would take it under consideration in their Subcommittee meetings.

After a short break, Mr. Muldoon showed a short film developed by the Watersports Foundation, showing the tragic effects of drunken boating.

**Progress Report on Development of Harmonized North American Life Jacket Standards
Brandi Baldwin, Office of Design and Engineering Standards**

Ms. Baldwin said she would be talking about NBSAC Resolution 2009-83-1 and providing an update on what was happening in regulatory and standards development and provisional timelines. There were also a few life jacket labeling reform questions to bring before the Council.

She began with a brief overview of the regulatory process, starting with a NPRM. Here, she explained, the Coast Guard states what it proposes to do and the possible impact of that action. This is followed by a public comment period, after which the regulatory team reviews and resolves all comments. Then a Final Rule is passed. During this regulatory process the Coast Guard must address all comments received; no change can be made to the proposed action unless the public is duly notified.

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Referring to Resolution 2009-83-1, Ms. Baldwin said that in August 2013 the Coast Guard published an NPRM to remove type codes from the approval and marking of life jackets, and their carriage requirements. The comment deadline was October 15, 2013. After intensive review of and response to the comments, a Final Rule was now "imminent." The next step would be another NPRM to propose adoption of a new and revised industry standard that would undergo another public comment period, which would hopefully lead to a final rule. In order to start this phase, the standards must be published first. Based on experience, she predicted it would take two to five years from publication of new standards to a final rule.

Ms. Baldwin talked about the consensus process. She pointed out that while the regulatory process is government driven, the standards process is industry/stakeholder driven. This can make for a slow process but an inclusive one. The steps are as follows:

- Proposal development, which is initiated by a task group or an individual
- Preliminary review phase, similar to the NPRM phase
- Resolution of comments, including any needed revisions
- Balloting for consensus, in which 50% of the Committee votes must return their votes and two-thirds of those must be positive in order for the standard to go forward
- Resolution of comments and any "no" votes
- Possible recirculation

Next she discussed the standards under development, beginning with the Harmonized Standard UL 12402, which is based on the ISO 12402 standard, the international PFD standard used for certification in Europe. She said that in the process, the Coast Guard had reorganized the Task Group, withdrawn the previous proposal, and would start with a new preliminary review after PFDMA's meeting. She expected this standard to be published in early 2015, with a goal of distributing the new devices in the 2016 boating season. Concurrent with this effort was label reform (UL 1123, 1180, 12402), which was happening in both the legacy standards and the harmonized 12402 standards. There was current consensus on the 1123 (inherently buoyant standard) proposal, the 1180 (inflatable standard) comments were under review, and the task group was reviewing the 12402 (harmonized bi-national standard) proposal. Their objective: one label format on every device.

Label reform coincided with the "Think Safe" reform. The "Think Safe" pamphlet, currently required to be attached to every PFD device sold in the U.S., was being re-worked and merged with content from Canada's Wise Choice pamphlet, resulting in a new title, "Safe Choice."

This project would conclude with two different elements:

1. New graphics-driven labels that would be new to most of the U.S. boating public.
2. Electronic delivery of the remaining safety information currently in the "Think Safe" pamphlet.

Ms. Baldwin said this process was in the proposal stage. A preliminary review was anticipated right after PFDMA. She noted that because the 12402 standard did not address throwable devices (buoyant cushions, etc.), the Standards Technical Panel (STP) must work out a standard, which was still in the proposal stage.

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Ms. Baldwin stated that their greatest accomplishment to date was merging U.S. standards with those of Canada, i.e., the harmonized standard. This included:

- CAN/ANSI/UL 12402
- CAN/ANSI/UL 9595
- CAN/ANSI/UL 1180

She said the task groups had now expanded to include more Canadian stakeholders and non-industry voices from the U.S. and Canada. All task groups would meet at PFDMA on June 11, 2014 in St. Petersburg, Florida.

Regarding provisional timelines, Ms. Baldwin said the objective was to publish a standard by Spring 2015. At that point regulatory action to adopt these standards could be started and the Coast Guard would be authorized to approve any “approvable” device, even without regulatory action. Labels would begin to change on all products, so that by mid- to late-2015, the public would start to see devices with the new labels on the market. She noted this change would not be immediate—old labels would still exist as long as those devices remained serviceable.

Once all the new regulations were in place, the standard would become mandatory and the Coast Guard would be able to approve new types of devices such as youth inflatables, Level 50 devices, etc. By 2025 or later, PFDs with the old labels would likely becoming non-serviceable because of age.

Mr. Dogan asked whether, if type standards would be removed from life jackets, would any device then be approved for any boating activity?

Ms. Baldwin said that until the approval phase for the new devices was completed, nothing would change; “We’re just using different words to say the same thing.”

Mr. Chisholm wondered if there were plans to incorporate inflatable throwable devices. Ms. Baldwin answered that the throwables task group was merging all the standards for those devices and looking at more innovative devices previously considered equivalent. Their objective was to make the standards more performance- and less prescriptive-based.

Ms. Podlich asked if approval for new devices would be handled by the Boating Safety Division or by the Office of Design and Engineering Standards. Ms. Baldwin said the latter would handle approvals for new equipment.

Ms. Podlich wondered if the Coast Guard would ever approve Level 50 devices. Ms. Baldwin answered that though her office had been active in developing requirements for Level 50s in the Harmonized standards, Canada still opposed them. She noted that the Coast Guard would much rather see people wearing a Level 50 device than no lifesaving device at all.

Ms. Podlich asked about labeling life jackets by type. Would that need to be addressed at the state legislative level? Ms. Baldwin said her office had been working closely with NASBLA on

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that issue to give them as much advance notice as possible, but they can't force the states to make changes.

Mr. Clarke questioned if Underwriters Labs was still the only place the Coast Guard used for testing life jackets. Ms. Baldwin said there were now two others: IMANA labs and Forest in Denmark.

Ms. Takashina pointed out that though there are three labs available; the other laboratories were still unable to test UL life jacket components. Ms. Baldwin said the two other laboratories were now certifying their own recreational products and working with UL to use UL's certified components.

Moving on with her presentation, Ms. Baldwin said that there were two challenges in developing the labeling standards; one on the public side, i.e., what do users see and what do they think it means? The other was on the technical side, i.e., how do manufacturers and test labs know which pictures to put on their device? She stated that they need to get the right information out to the public the first time. It was critical that the pictures, graphics, and wording on those labels made sense to the user.

Ms. Baldwin showed a slide with the icons and numbers as they look at present. She said her office had been struggling over whether or not to use the ISO graphics, which are intended to tell the user the appropriate environment in which to use the device. Levels 50 and 70 are intended for calm water situations when rescue is close at hand. Level 100s are for near shore and 150s are for offshore conditions. The issue is not necessarily with the pictures—as those replaced words for multilingual users—but whether including the numbers was confusing to the user. Were they necessary?

Ms. Kull complained that the numbers were confusing and unnecessary. She advised consulting focus groups for advice on clarifying the labels.

Ms. Baldwin commented that almost everything in the label proposal was built from the 2004 label study. Did they think the numbers would create enough confusion for North American users to sacrifice the alignment with ISO, i.e., the European community?

Mr. Clarke doesn't see these proposed labels as any more confusing than the current use of the 'Type' labels. Mr. Dogan also found the labels confusing, but felt the numbers did help to "quantify" the devices.

Ms. Takashina said that, while the previous labels (Types I, II, III etc.) might have been confusing, at least people were now used to them. Did anyone know, for example, what 15 pounds of minimum buoyancy meant? On the other hand, she considered harmonization with Europe extremely valuable.

The numbers were also confusing to Mr. Angell. He asked whether those labels were international and if so, were they talking about kilos or pounds, yards or meters?

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Mr. Rippy said this discussion highlighted the importance of educating the public. The challenge would be to disseminate the information to users. That effort must come from the industry, the Coast Guard, NASBLA, and other stakeholders, and they needed to realize it would not happen overnight.

Ms. Baldwin agreed that education and outreach were critical. She asked members to bear in mind that the word “newton” as a measurement did not appear in the label proposal.

Continuing with her presentation, Ms. Baldwin showed a slide with graphics to illustrate different devices of varying buoyancy, with a series of expanding arrows demonstrating the comparison from one device to the next. She posed the question: did the numbers printed below the arrows clarify or confuse? And what was the best way to tell users that inflatables or hybrids provide less performance when uninflated?

Mr. Dyskow felt the labels were so confusing that they might be better off starting over from square one; that the average person would not be able to make sense of them. As a boater, he did not believe he could make an informed buying decision based on the labels as they stood.

Continuing, Ms. Baldwin talked about labeling for on-water activities—personal watercraft and towed sports. Those were the only devices where a testing standard was required to limit their use, i.e., the construction of the device determined its suitability for use. She asked if labels were needed for every device or only for those that were approved or not approved? Which would create the least amount of confusion for boaters and enforcers?

Mr. Muldoon felt it was too early to answer those questions, but that the Council would take them under consideration.

Mr. Marlow felt feedback from customers was needed, not just from industry. Had consumers been consulted? Ms. Baldwin said yes.

Ms. Kulp admitted that, like others, those numbers puzzled her. Perhaps a decision tree would be a better method to help the public with their decision, such as a person’s ability to swim and their proximity to shore. That might help clarify or translate the confusion arising from the labels.

Ms. Baldwin agreed. She thought someone should develop an app with a boating safety checklist to inform consumers precisely which device they would need in any given situation. And all the outreach messages need to be developed and pushed out with the regulation.

Ms. Kulp wondered if there would be a request proposal for a grant for that.

Ms. Baldwin said that “going back to the drawing board” was not an option at this point, given their timeline. A better venue to debate these issues would be the PFDMA meeting in Tampa/St. Pete from June 8-11, 2014. She concluded.

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Ms. Takashina thanked Ms. Baldwin for all her hard work on this project over the years.

Strategic Planning Subcommittee Report
Fred Messmann, Subcommittee Chairman

Mr. Muldoon praised Mr. Messmann for committing to run the third iteration of the Strategic Plan.

Mr. Messmann welcomed the audience. He expressed pride for the Strategic Plan, and was pleased that the Coast Guard leadership appreciated everything they had accomplished. While he understood the USCG's budgetary constraints, he stressed the importance of in-person meetings to the success of the Plan and NBSAC overall.

He explained that while he had not applied for renewed membership on NBSAC, Mr. Muldoon and Mr. Hoedt had asked him to continue as the chairman of the Strategic Planning Subcommittee. He said his Subcommittee consisted of Cecilia Duer (vice chair), Marcia Kull, Brian Kempf, Dan Maxim, Rob Rippy, and Terry West.

Mr. Messmann mentioned the great participation in the past three conference calls, and urged audience members to read those minutes in order to appreciate the amount of commitment shown by Subcommittee members. He commended the Coast Guard staff for their great support of the Objective Leaders. He then called on CAPT Boross to talk about the Community of Practice (CoP) program.

CAPT Boross referred to Coast Guard budget and personnel constraints that, as the Federal deficit worsened, would continue or intensify, they needed to figure out how to best integrate and align those precious resources. With that objective in mind, the Coast Guard had established two CoPs—one for their Directors of Auxiliary and its Operations Training Operators. The other one was established with support from Mr. Burgess and Mr. Hoedt who helped establish a framework in which their nine district RBS Specialists could operate. He praised the Council for helping inform and guide Coast Guard policy and its RBS specialists. He noted the importance of water temperature, locations, and water currents in shaping recreational boating policy.

Mr. Messmann said that one Coast Guard district had incorporated the Strategic Plan into its regional directives. He thanked Coast Guard leadership and liaisons, the Objective Leaders, and the volunteers for all their support in implementing the Plan.

During recent Strategic Plan conference calls, he said there had been heavy emphasis on determining baseline measurements. With the release of the NRBS, they hoped to get a better grasp of those. They were now gearing up for the Strategic Plan 2017-2021. He called on the new NBSAC members to join that team.

Mr. Messmann discussed the Strategic Plan goals set for 2007-2011 regarding injuries, deaths, and total casualties, and used a slide to show those numbers. Regarding 2012-2016, he noted an increase in the five-year average number of deaths for 2012. With 712 recreational boating

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deaths in 2012, it was not a good year. Using a plot chart showing deaths, injuries, and total casualties, he talked about goals versus actual numbers. The number of injuries was lower than had been forecast, and therefore the casualty number goals had been met. Deaths were higher than expected, but not substantially so. He noted that they can now use the data from the national survey to compare to some of their data in the Strategic Plan. He said that the NRBS produces annual exposure hours, which should be used where available to normalize the actual target in actual numbers to improve year-to-year comparisons. No historical data would be available for exposure hours, so Mr. Messmann said the numbers and graphs told them they needed to set their goals with respect to new metrics.

He encouraged the public and implementing partners to participate in the Strategic Plan conference calls, asking them to contact Mr. Ludwig if they planned to do so. The April 2013 meeting had produced one Action Item, a question about the status of the mandatory life jacket wear resolution. The November 2013 teleconference had also produced Action Items: update the Strategic Plan, follow-up on Performance Report Part II, request for the status of the National Outreach Working Group (after speaking with Mr. Meddock, Mr. Messmann had determined there was no longer a need for that strategy, so it would be labeled complete), and provide information on the boating safety app.

He said they were still awaiting the Commandant's Instruction to replace CG-449. He requested a status report on it from Mr. Hoedt. Mr. Hoedt said the Instruction had been developed and was under review. Mr. Messmann wondered why it was taking so long. Mr. Hoedt repeated that it was under final review. Mr. Messmann asked for a provisional timeline. Mr. Hoedt replied that he couldn't commit to one because this Commandant Instruction would need to be approved up the entire Coast Guard chain, and that might take months.

Mr. Messmann said there had been a Strategic Plan Subcommittee teleconference call on March 27. No specific Action Items had resulted. Earlier he had suggested a passenger vessel BUI resolution that would have come under Ms. Duer's Objective 3, On Water Training, and Mr. Dogan had volunteered to work on it with Ms. Dillon and Mr. Stec. Mr. Stec's Committee would present that resolution tomorrow.

Mr. Messmann then called on Objective Leaders to identify one issue within their Objective that might lead to potential Action Items.

Objective 1: Safety Education Successful Course Completions

Ms. Dillon spoke about the figures used to measure the number of certificates awarded through the states based on the National Boating Education standard. Her Action Item would be to work in cooperation with the Coast Guard to find another method of capturing the number of course certificates awarded through the Coast Guard Auxiliary and U.S. Power Squadrons. At present it was challenging to acquire those numbers and have them reported directly to the states. The 2013 data showed a 10,000-certificate decline in those numbers—however, eight fewer states were reporting activities, and there were 27 states with no Auxiliary reports at all. That issue needs to be addressed.

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Mr. Johnson said that, despite their MOU with the Coast Guard Auxiliary and his close personal relationship with many Auxiliarists, he was unable to obtain information on the number of courses the Auxiliary taught in Alaska. He felt that filtering the numbers through the states was an ineffective way to gather data.

Ms. Belmore said a report for that information exists for Massachusetts that was on an open website, AUXINFO.

Mr. Messmann asked Ms. Belmore to help Ms. Dillon. Ms. Belmore agreed to do so.

Objective 2: Boating Safety Outreach

Mr. Larry Meddock was unable to attend today's meeting, so Ms. Johnson spoke on his behalf. She began with Strategy 2.1 – developing a system for measuring all media outreach efforts utilized within the Strategic Plan. She stated that after much discussion, the team had determined that while each organization should evaluate PSAs, it was not possible to develop an overall template system for measuring their effectiveness. Her Action Item/recommendation: Each organization should submit a measurement report to the Coast Guard and the Subcommittee chair no later than [a date to be determined] every calendar year. This would be separate from the Final Report.

Mr. Johnson said Alaska had spent about \$600,000 on developing social marketing campaigns over the past four years. The more money was spent, the more data were needed through baseline measures, focus group studies, and surveys to determine whether or not these efforts are working. He said they needed a way to measure whether dollars spent brought about changes in boaters' behavior.

Mr. Messmann requested a report on the issue no later than 30 days before the next meeting. Mr. Marlow would participate.

Objective 3: Advanced Boating Education

Ms. Duer said their big Action Item was to identify who was teaching all the various courses available to the public. She thanked Mr. Stacey who recently sent them an updated list of organizations involved in training. She said that Discover Boating was composing a database, and was looking for at least 1,000 youth on-water skilled-based boating education programs in their areas of service. The release date was planned for mid-May. They would be targeting six areas: marketing, youth, education, diversity, advocacy, and affordability. She felt this would be a great resource for the committee.

Objective 4: Life Jacket Wear

Ms. Takashina recapped the topics surrounding life jacket wear:

- Tracking and evaluating wear rates
- Engaging professionals to help in the education effort
- Demonstrating inflatables and encouraging people to wear the devices
- Changing and improving life jacket standards to increase wearability

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She reminded members that mandating life jacket wear had been one of the objectives, but that was on hold until further updates from the Coast Guard. They would hear more this summer from Sea Tow Foundation, via Gail Kulp, as they have been evaluating the efficacy of life jacket loaner programs. She was encouraged that new people had agreed to work on this objective. She wanted to set up a conference call to review their strategies with an eye to the future, then introduced the new team members: Jeff Johnson, Dave Dahms, Ernie Marshburn, and Gail Kulp. Holdovers included herself, Rachel Johnson, Rob Rippey, and Fred Messmann.

Objective 5: Operator Compliance—Navigation Rules

Mr. Dogan confessed he had not been able to devote much time to Objective 5. However, he said Mr. Burgess now had data on the states with mandatory rules. He hoped to obtain that data soon.

Objective 6: Boating Under the Influence

Mr. Messmann, speaking on behalf of Objective Leader Mr. Richard Moore, commended the Operation Dry Water discussion this morning. One goal was to find a new location for a targeted BUI awareness campaign. Mr. Moore had identified one, and they were now trying to obtain a nonprofit grant to conduct the campaign in the near future.

Objective 7: Manufacturer Compliance

Mr. Chisholm said he was taking over for Ms. Kull, who would be retiring from the Council. Having examined the issue, the team found that manufacturer problems were no longer a factor in boating accidents. He acknowledged Mr. Cappel and his engineering team, who had been working to ensure that manufacturers complied with federal regulations through their factory visit program and test facility. He noted that there might be changes to those because that contract was in the process of being awarded. He mentioned a manufacturing outreach effort under way to search for devices on the market that might affect boating safety. Mr. Cappel, Mr. Marhevko from NMMA, and ABYC would be helping with this effort. Looking forward, a challenge was that many of their goals were originally set up during the first Strategic Plan. Since then the industry had changed, so perhaps these goals should be reset in the next iteration of the Plan. He noted that many small builders were no longer in business. Those that had survived the economic crisis were larger, more reputable companies, which were more likely to meet flotation requirements.

Mr. Messmann invited Mr. Chisholm to be on the committee to develop the next Strategic Plan and he accepted.

Objective 8: Operator Compliance—USCG Required Safety Equipment

Mr. West said a great deal of work had been done on this strategy. He reminded members about the ABYC boating checklist app, which can be downloaded on iTunes; and a United Safe Boating Institute (USBI) study on vessel safety checks due out next month. He said their primary goal was to establish measurement gaps and baseline compliance. He admitted they had struggled with this objective partly because state data collected through the Performance Report Part II does not capture compliant boardings. By contrast, the Coast Guard and MISLE data captured all boardings—noncompliant and compliant; however this was geographically limited.

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He hoped the USBI study would help in that regard, and invited team members to assist in the effort.

Objective 9: Boating Accident Reporting

Mr. Messmann had already given his presentation on this objective.

Objective 10: Determine Participation Denominator

Dr. Maxim said they now had the NRBS data, and that much of the work over the next few months would consist of analyzing it. Referring to CAPT Burton's earlier announcement that the NRBS would be deferred for at least a year, he said it would give them the opportunity to perform more thorough data analysis. He showed slides comparing boating fatality risks compared with those of automobiles. Looking on the bright side, he joked that the chance of dying while boating is far lower than, for example, BASE jumping or hang gliding. He then invited volunteers with an "analytical bent" to join the Objective 10 team.

Objective 11: Nonprofit Organization Grants

Mr. Messmann noted that Mr. Rowe was from an industry position and as such did not apply for nonprofit organization grants.

Mr. Rowe said he had not been working on Objective 11 very long. His first task had been to ask members questions. He was still working on those answers. This morning he had received information from Ms. Dorval about on-water standards, which would affect nonprofit organization grants. He said he would be calling on Dr. Maxim and Mr. Chisholm for their help.

Mr. Messmann asked if the Coast Guard put together a work group to answer Mr. Rowe's questions, as he wants him to get a good handle on Objective 11. He hoped to do that "offline" rather than spend time on it in the meeting.

Mr. Hoedt noted that such work groups are coordinated through the Designated Federal Officer (CAPT Boross) and the Chairman. Mr. Rowe said he wished to rework some of his questions first, based on new information in hand.

Ms. Podlich observed that, for the entire decade she had attended these meetings, the boating safety community had continually tried to obtain basic information about what the nonprofit organization grants had actually done. All they asked for was a little more timely information and sharing of those grants' successes. They weren't requesting audits or grant money comparisons, just basic information.

Mr. Messmann wanted to know if Ms. Podlich could help the group with that issue. Ms. Podlich answered, "Potentially."

Concluding, Mr. Messmann asked if the Coast Guard wished to make any comments on the Strategic Plan, adding that he welcomed their guidance.

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CAPT Boross thanked Mr. Messmann for his report. He said the data Mr. Messmann had presented earlier were accurate. He pointed to the great challenge in obtaining correct and timely data from the states and territories, and praised his staff for rising to that challenge. He said that the goals of the Strategic Plan were being met based on current numbers. He stressed the Coast Guard took its responsibility of data integrity very seriously.

CAPT Burton thanked Ms. Podlich for her comments, which he had heard very clearly. He pledged that they would work hard to gather the data, improve the website, and ensure that grant products were producing more specific detail. He mentioned that the Coast Guard was in the process of developing a new Strategic Plan that for the first time would capture all of the prevention elements together. He noted there had been a series of disparate performance plans in the past, but they had never before contained everything under the one umbrella of prevention policy as they are doing in this new plan. He thanked everyone for participating in this Strategic Plan effort.

Mr. Hoedt called on members to be thinking about the next iteration of the Strategic Plan and all its objectives. He stated that he understood the concerns that had been expressed and asked for suggestions on how to meet members' expectations.

Chairman Muldoon thanked Mr. Messmann for his hard work. He inquired whether there was any more business to be addressed. Hearing none, he adjourned the meeting at 4:50pm.

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Chairman Muldoon called the meeting to order at 9:00am and thanked Mr. Marlow and the Brunswick Boat Group for the previous night's reception.

**Boats and Associated Equipment Subcommittee Report
Dave Marlow, Subcommittee Chairman**

Mr. Marlow said the Boats and Associated Equipment Subcommittee had met three times via conference calls—April 16th and October 31st of 2013 and March 13, 2014. During those meetings they had discussed open agenda items, namely the engine lanyard cut-off project, for which more data had been compiled and submitted to the Coast Guard staff for reconsideration. He reiterated that Mercury Marine was close to releasing a new version of the lanyard clip. He believed that the use of the engine cut-off lanyard remained one of the most important propeller strike mitigation devices available to boaters today. Last September the Coast Guard had announced the release of the propeller guard test procedure report intended for use by propeller guard device developers and independent third party testing entities to assess such products in a consistent and repeatable manner.

The Subcommittee reviewed a voluntary standards development grant project focusing on the potential need for a capacity discussion regarding boats above 26 feet, in light of an accident that occurred in Long Island Sound over the 2012 Fourth of July weekend. After careful investigation, they determined that capsizing and swamping for vessels greater than 26 feet was

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not a significant type of accident. However, the American Boat and Yacht Council continued to look at upper helm and bridge capacities for all boats under 20 meters. He promised to keep everyone posted on that work.

Mr. Marlow then talked about another grant project that led to the creation of a boating safety checklist. The Subcommittee had been given a tutorial of the new Coast Guard approved app, which could now be downloaded to both Apple and Android devices. This checklist was now in owners' packets for boat manufacturers and partners like the U.S. Power Squadrons. The app has been downloaded more than 5,000 times and has received encouraging feedback.

He said the Subcommittee provided a resolution to the Coast Guard on model year change, which had been approved. Since then retail, manufacturing, and enforcement communities had tightened their language. The Subcommittee would provide an updated resolution reflecting that language for the Council to vote on today.

Mr. Marlow said the group had also tackled the issue of visual distress signals. Specifically, they had discussed approval for new devices, which would entail rewriting the list of approved visual distress signals and progress regarding disposal of flares. This discussion was moved to the RTCM (Radio Technical Commission for Maritime Services), which had formed a new Subcommittee, SC-132. They will develop an approved standard and testing program, which must be in place before any new device is seen on the approved list. The Subcommittee had also challenged that group to view these devices in the same way navigation lights are approved, where the manufacturer builds to an approved standard before the device can come on the market. He hoped that under Mr. Jackson's guidance, that project would move forward swiftly.

He said the Subcommittee was also working with the Boating Safety Division to update the federal standards concerning recreational boating. Mr. Cappel's team has been doing a page-by-page review that, once complete, will come back to the BAE Subcommittee for review and feedback.

Mr. Marlow said they continued to work on ELBs. Since 2012 the Subcommittee's objective has been to define what a locator beacon is. Their resolution contains information to:

- Understand the devices,
- Understand the data,
- Illustrate the system capabilities, and
- Ensure compliance.

He said they had done a good job of defining exactly what a beacon is. They had spent a great deal of time understanding the devices and researching their capabilities and costs. Mr. Marlow thanked Mr. Clarke for his comments yesterday, which would give them an opportunity to illustrate the devices for new Subcommittee members.

Mr. Marlow said the Subcommittee had also worked on understanding the data. Today they were ready to review that information before the full Council. At the same time they had been working to illustrate the system capabilities via outreach programs. One great example of outreach was an

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article published by BoatU.S. that provided necessary information about the capabilities of the system and these devices to the common mariner. Mr. Marlow mentioned a cell phone case that turns a cell phone into a VHF radio, manufactured in Ireland. The system capabilities of the case and an app on the phone transform the cell phone into a VHF communicable device.

He said that the states and the GMDSS Task Force also offered great avenues for outreach and education, and mentioned possible future grant opportunities to spread the message about using ELBs. Mr. Marlow was excited about what the Subcommittee had accomplished, and specifically thanked Dr. Maxim, Mr. Hogan, Ms. Warner, and Mr. Ludwig for their help.

He said they would also see some of the systems' shortcomings and, given enough time, the Subcommittee might give the full Council the opportunity to review a new resolution to fix those problems.

Ms. Kull wondered if any prop guard manufacturers had taken advantage of the new test protocol. Mr. Marlow said he knew the protocol had been well received and was being used, but couldn't name any specific prop guard manufacturers that had adopted it. Ms. Kull asked: well received by whom?

Mr. Adey said the protocol had been vetted and well received by industry and stakeholders. The Coast Guard requested a provision in the grant to make available all the sensors needed to test it; any manufacturer could contact ABYC and ask to borrow it. This very simple piece of automotive technology, requiring a small magnetic device that can be placed anywhere on a boat, triangulates GPS signals and automatically downloads every piece of data required within the prop guard protocol to a thumb drive. Cost of the entire unit was about \$25,000. They were able to obtain a demo unit from the manufacturer. An iPad app gathered real time data while operating the unit, which was available from the manufacturer. At present if boaters wished to build a prop guard, they could call ABYC, borrow it, and follow the step-by-step manual downloaded onto a USB device. It was a powerful piece of equipment that would be held at ABYC, who would make it available on loan at no charge, with a \$5,000 deposit. The initial testing would take place sometime this summer. Mr. Adey said he was excited by the compactness of the unit compared with earlier iterations.

Mr. Adey said that no one had yet used the test protocol because it was so expensive to perform the test on the open market and as yet, no one had contacted them and asked to be talked through it.

Mr. Johnson said two prop guard manufacturers had contacted him wanting to use the protocol. Both manufacturers had decided to wait for the test materials to do so.

Ms. Podlich asked about an earlier comment regarding how few deaths occurred in overloaded boats. Just after Representative Israel had introduced his Boating Safety Bill in April 2014, an article appeared stating: "The Coast Guard says capsizing and falls overboard due to overloaded boats account for more than half of all boating fatalities." She wondered where that statement

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had come from, if it was to be believed, and if the Coast Guard Boating Safety Division had responded with accurate data.

Mr. Adey presumed that, given the data he had seen in the past, boats referenced were less than 26 feet. In vessels of that size, passengers typically ended up in the water due to instability, shifting of the load, or improper seating.

Ms. Podlich said that the statement had led her back to the boating statistics and she couldn't find the data.

CAPT Boross noted that Ms. Podlich's question highlighted a challenge at the Office of Auxiliary and Boating Safety. They "try to be the portal by which RBS information gets disseminated." However, many media sources wanting to obtain a Coast Guard quote would acquire it from other sources. He called on members to contact his staff in such cases to provide an accurate answer and a source to which it could be attributed.

Mr. Marlow asked Ms. Podlich to forward him that information so they could find out where it had come from.

Beginning his presentation, Mr. Ludwig said that he and Mr. Hogan would present data gathered from their analysis of the potential for ELB carriage requirements.

Prior to the 2012 NBSAC recommendation, Mr. Ludwig said the Coast Guard had been granted authority to require ELB carriage on recreational vessels operating outside 3 NM. He pointed out that an emergency locator beacon was not fully defined. Many people were aware of emergency position indicating radio beacons (EPIRBs) or personal locator beacons (PLBs), but Congress used another term. One of the challenges to moving forward was actually defining an ELB and making sure that devices falling under that definition would work within the Coast Guard search and rescue (SAR) system. Coast Guard personnel have done some preliminary data analysis to support this initiative.

He explained that, in any regulatory project, a cost-benefit analysis was required at the outset. In this case, the benefits would be lives and property saved, along with reduced SAR time, effort, and cost. The costs would include those to the mariner and potential increased false alerts.

The Coast Guard staff, working primarily with Dr. Maxim, has developed a model to calculate the costs and benefits of possible regulatory options. A large part of that involved analyzing SAR data from a single year (FY 2011), focusing on "distressed beacons" (EPIRBs and PLBs) together with Office of Search and Rescue and Subcommittee members.

Mr. Ludwig showed a slide to illustrate COSPAS-SARSAT, a complex system that works among users, satellites, and different nations involved in monitoring satellites through the numerous control centers. In the U.S., the Coast Guard, the Air Force and NOAA are involved in this effort.

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Mr. Dyskow asked a question: from a capability perspective, what was the key difference between an EPIRB and a PLB?

Mr. Ludwig answered that it was all about performance. As a maritime device EPIRBs have longer battery life. PLBs are commonly handheld, and can be used on land or water.

Mr. Johnson noted that EPIRBs come in a variety of designs—some deployed only under certain circumstances, some manually activated, some deployed once a vessel was in the water. The key difference was that the EPIRB was designed to be installed on a boat, whereas a PLB could be carried on a person. In addition, the EPIRB's signal lasts longer.

Mr. Muldoon asked about the cost difference between the two. Mr. Ludwig answered that PLBs cost about \$200, whereas EPIRBs were more expensive at about \$1000.

Continuing his discussion, Mr. Ludwig said that when the COSPAS-SARSAT system's rescue coordination centers received an initial alert, it was dispatched through the system to the appropriate agency to continue the search. These distress beacons provided near real-time recognition along with locations of distress signals. The newer ones with GPS receivers could provide precise locations of distress. These devices had to be registered with NOAA to enable quick resolution of possible false alerts. They were designed to "reduce the search in search and rescue." He pointed out that they would not eliminate the search but drastically reduce time and resources expended. The result would be money saved, but much more importantly reducing the time between an alert and a rescue resulting in lives saved. Of the 207 lives saved via these devices in the U.S. in 2011, 122 people had been rescued from the water, 14 from aviation incidents, and 71 in land situations where PLBs were used.

Referring to the article in BoatU.S. mentioned earlier, CAPT Boross stated that ELB technology had saved 35,000 lives since its inception.

Mr. Ludwig then moved on to the topic of SAR data. In FY 2011, Coast Guard staff had pulled and examined more than 20,000 SAR cases found in MISLE. They limited their analysis to recreational vessels operating at least 3 NM offshore. From this analysis, they uncovered 738 cases and 1,074 sorties. Narrowing the dataset to the recreational cases outside 3 NM had involved a great deal of effort and time because MISLE doesn't break down the list to identify recreational boating SAR cases. Mr. Ludwig then turned the presentation over to Mr. Hogan.

Mr. Hogan said that once the database of 738 cases and 1,074 sorties had been established, they had analyzed how many and what type of Coast Guard assets had responded, together with time spent. After tallying the number of lives lost, they calculated the price of these SARs, using both Coast Guard reimbursable standard rates and the \$9.1 million value of a statistical life.

Mr. Hogan then showed a table to illustrate the approximate hourly expense of these missions per asset per hour (e.g., the HC-130 aircraft costs nearly \$20,000 to run per hour). The Coast Guard tracks all the data for each SAR sortie: transit time, search time, and assist time to arrive at the full SAR time. That figure is then multiplied by the standard reimbursable government

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rates to obtain a dollar value. Using two more tables with actual cases, he demonstrated specific elements involved in each SAR—one cost \$35,447, the other \$37,958. The big difference between the two was the actual search time involved: for the first, in which an ELB was used, the search time was only 23 minutes. For the second, where a VHF/FM radio was used, the search time was 102 minutes (nearly two-thirds of the total cost of the SAR).

Cases/sorties were grouped by notification method as follows:

- Telephone – home, cell, or 911
- VHF/FM radio
- Satellite Phone
- Miscellaneous (flares, arm waving)
- Unspecified (no data available)
- ELB - EPIRBs, PLBs

Using two pie charts, Mr. Hogan explained the breakdown of those notification methods by case and by sortie. Of the 10 lives lost, they were separated by their notification method and then they were multiplied by \$9.1 million. The EPIRB and ELB categories were shown to be the most cost effective—but more importantly, no lives were lost in those categories.

Mr. Clarke wondered if their PowerPoint presentation was available on the Homeport website. Mr. Ludwig said it would be by the end of the day.

CAPT Boross pointed out that an ELB SAR case cost the Coast Guard roughly one quarter of the average SAR case, which would fall to one-tenth the cost if an EPIRB were used. In his view, these devices served the collective interests of the nation.

Mr. Clarke said that PLBs were very effective for near shore boaters. For long distant transits, he noted that BoatU.S. had an EPIRB rental program that made the devices affordable for those who don't often travel far.

Mr. Ludwig applauded Mr. Hogan for compiling and quantifying all the data for the presentation, a painstaking task. Continuing the discussion, Mr. Ludwig noted that, while the sample size had been small for EPIRB cases, the data suggested that use of EPIRBs greatly increased a person's chance of survival.

He acknowledged some items were omitted in the analysis. However, some made the case stronger for ELBs, such as:

- The value of property saved
- Rescues less than 3 NM from shore
- Non-fatal injuries
- Reduced exposure for SAR assets

While some items omitted might make the case weaker, such as:

- Cost of EPIRBs/ELBs
- Cost of false alarms

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That said, he noted that these devices were becoming less expensive as newer technology was developed.

Mr. Ludwig then turned to the subject of risks posed to the Coast Guard and other agencies during SAR missions. He pointed out that these agencies search for people in distress in all weather conditions. They put their own lives in danger, so it was vitally important to minimize that risk. In this context he talked about a collision between a Coast Guard C-130 and a USMC helicopter in October of 2009. The C-130 was on a SAR mission, some air traffic control problems arose, and seven lives were lost—five Coast Guardsman and two Marine Corps pilots.

He listed key data that were needed in order to refine the model they were working on, including:

- Exposure data (number of vessels, number of trips) for recreational boats that venture more than 3 NM offshore,
- Mishap probabilities, and
- Larger database on fatalities as a function of notification type.

Mr. Muldoon wanted to know how they had arrived at the 3 NM mile line. Mr. Ludwig answered that the demarcation had been in the authorizing legislation, which stated that they could consider ELB carriage outside of 3 NMs.

Mr. Johnson noted that in Alaska, there was no established line of demarcation to differentiate between state and Coast Guard waters. In that sense, the entire state was under the purview of the Coast Guard. So 3 NM was the limit of the state's territorial seas.

Ms. Duer wondered if "coastal waters" included the Great Lakes. Mr. Ludwig said yes.

Resuming his discussion, Mr. Ludwig said the Coast Guard hoped that the MISLE database could be improved to facilitate data searches. He felt that MISLE narratives could be enhanced, particularly for noteworthy cases. Such was also the case with BARD. In the 2012 NRBS, they noted a discrepancy between the reported carriage of EPIRBs (13.2% of boating days from the Survey) and what their data showed, i.e., that these devices were used for notification only 1.62% of the time. He noted that their findings to date were consistent with Coast Guard data on commercial fishing vessels. Fishing vessels that carry EPIRBs (and have cold-water protection where necessary) have reduced their loss of life by more than half.

Mr. Ludwig said that "wet" cases (capsizings) present special challenges for notification and location because fixed VHF radios might be compromised, affording little to no opportunity for distress communications.

He observed that behind every statistic there was a human story worth telling. In one case a person had bought a PLB, which he then needed the first time he took it offshore. Here is a quote from a letter the survivor wrote:

"Basically the price of the EPIRB is a small price to pay for your life. That and the Coast Guard saved four of us. Words cannot explain our gratitude and

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appreciation toward the U.S. Coast Guard, Sea Tow, and ACR Electronics for saving our lives. With many years' experience on the ocean we never thought we would be in this situation, but we were and I'm glad we spent the money for the EPIRB and were well prepared, because if not we would probably not be writing this letter today."

Mr. Ludwig said their initial analyses supported moving forward with a carriage requirement for ELBs. One possible angle would be to allow carriage of these devices in lieu of current Coast Guard visual distress signal carriage requirements. Additional outreach initiatives were also needed to explain the benefits of this technology to the boating public. He felt this was an extremely productive area for continued research, and reiterated that MISLE needed to be improved in order for that research to be conducted more efficiently.

He concluded by underscoring the importance of continuing their research in order to increase the sample size for cost-benefit determinations. In sum, it would be vitally important for the Coast Guard to work with its partners to publicize and promote the benefits of ELB use, and to enhance the MISLE database. He encouraged the Council to remain involved through the Boats and Associated Equipment Subcommittee.

Mr. Johnson said they were finding their "wet" cases in Alaska accounted for five of every six fatalities. Many of those involved rough water and large expanses of ocean. The boats that disappeared were often small, and therefore it was extremely difficult to spot them from the air. In Alaska they tell boaters to carry both ELBs and visual distress signals on their person. He strongly suggested that they reconsider the "in lieu of" language and instead encourage both methods as one complements the other.

Ms. Kull wondered if any research existed about how many, and what sized, boats carried EPIRBs. Mr. Ludwig said that the 2012 survey had contained the question: do you carry an EPIRB? However, it had not asked about other ELB devices. He hoped that future surveys would do so.

Mr. Chisholm remarked that because EPIRBs were required to be registered to a vessel, this data should exist somewhere. Mr. Ludwig noted that, unlike EPIRBs, personal locator beacons (PLBs) weren't registered to a boat.

Mr. Hoedt told Ms. Kull that it would be possible to delve further into the database for demographics in order to answer her earlier question, if she wished. Ms. Kull said yes, that would be useful information.

Mr. Dogan pointed out that EPIRBs were often useful for finding vessels, but not necessarily people. PLBs, on the other hand, were more often attached to a person's life jacket.

Ms. Duer asked whether in a case like Lake Erie, which is in Canada and the U.S., if the Canadian Coast Guard responded to a boat's registered EPIRB. Mr. Ludwig supposed it depended on where the signal was received. CAPT Boross said that when a Coast Guard

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coordination center receives a signal, the closest available assets—regardless of nationality—are launched or diverted.

Mr. Marlow praised the hard work that had gone into the presentation. His understanding was that, when these devices were the source of notification for a SAR case, zero lives were lost, coupled with a significant reduction in cost. The Coast Guard's research aligned with NOAA's cost-benefit analysis. The challenge now was to gather more information to make a full financial case for the Coast Guard. The Subcommittee had an opportunity to continue outreach efforts, work on the description of what was available, help people understand Rescue 21, and encourage partners like BoatU.S. and the states to become involved. Now they have two more important challenges: updating the MISLE database and encouraging compliance.

Ms. Kulp noted that ACR had a Survivor Club consisting of people who had been "saved by the beacon." She had suggested to ACR that they involve themselves with the recreational boating community by coming to the NASBLA conference and to NBSAC. She encouraged members to visit the ACR website (<http://www.acrartex.com>) to find out more.

Mr. Clarke felt this was a great opportunity for NBSAC, whose primary goal had always been zero fatalities. Use of these devices could make that a tangible reality. He stressed the vital importance of passing this information along by word of mouth, social media, and media groups.

Mr. Marlow said the Subcommittee had reviewed and approved the resolution draft. Mr. Marlow read Resolution Number 2014-91-03. Mr. Muldoon asked for a motion on the resolution which was made by Mr. Marlow; seconded by Mr. Clarke; and passed unanimously.

**Marine Information for Safety and Law Enforcement (MISLE) Database
Improvements**

WHEREAS, the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database is the Coast Guard's primary data source for all cases involving Coast Guard assets, including search and rescue cases and recreational vessel boardings involving the Coast Guard; AND

WHEREAS, Coast Guard staff spent over a year manually reviewing one fiscal year of search and rescue cases involving recreational boating, primarily because MISLE lacks the functionality to automatically distinguish between cases involving recreational boats and other types of cases; AND

WHEREAS, many cases lack complete data and include case narratives that often do a poor job of providing amplifying information that would provide the reviewer with the details necessary to form a better understanding of the circumstances involving any particular case; AND

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WHEREAS, it is critical that Coast Guard staff be able to efficiently retrieve data from MISLE so that their time may be better spent analyzing data instead of just obtaining data;

NOW, THEREFORE, BE IT RESOLVED that the National Boating Safety Advisory Council, meeting in regular session in Arlington, VA on May 9, 2014, recommends that the Coast Guard take the necessary steps to improve MISLE functionality so that cases involving recreational boats may be automatically obtained without reviewing records manually and that data entry procedures be put into place so that cases cannot be closed without critical data fields being complete and validated.

Mr. Marlow said he had one other resolution to bring before the Council. The Subcommittee had passed a resolution in 2012, involving the model year designation and hull identification number. That resolution was aimed at capturing the scenario reflected in the manufacturing community for boat manufacturers in the U.S. The current law in 33 CFR part 181 states that the model year begins on August 1st and ends on July 31st of the following year. In a production environment, this system was impractical. Because of that, boat manufacturers routinely provided boats with HINs and serialized with earlier-than-August dates as the next model year. They had tried hard to comply with the law, but it was an untenable situation. As a consequence, retailers and manufacturers from the boating community approached the enforcement community to discuss the issue, which resulted in today's resolution. The conversation with enforcement had been refined, with the goal of having the model year begin June 1st and end on July 31st of the following year. This would create a "14-month rolling window," allowing manufacturers a two-month period in which to shut down production from the previous year and prepare for the next.

Mr. Marlow then talked about another issue presented to the enforcement community: "the need to have a form of dispensation or allowance under the term of a demonstrated need." That definition had not been finalized within the Boating Safety Division, but they knew demonstrated needs existed in similar areas such as PWCs. The Subcommittee had taken the language of the present resolution and clarified it to reflect the outcome of the last several months of discussions among the industry, the retail arena, and the enforcement community. The updated resolution was before the Council today.

Mr. Muldoon asked if Mr. Marlow wished to make a motion.

Mr. Marlow said yes, and moved that the resolution be adopted. He read the new language added to the 2012 resolution:

Model year means the period beginning June 1st of any year and ending on July 31st of the following year. Each model year is designated by the year in which it ends. A manufacturer may petition for an exemption from this definition by providing a demonstrated need.

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Mr. Muldoon asked for a motion on Resolution Number 2014-91-02 which was made by Mr. Marlow; seconded by Mr. Clarke; and passed unanimously.

Model Year Designation in Hull Identification Number

WHEREAS, boat manufacturers have raised concerns that the U.S. Coast Guard enforcement of model year regulations impedes commerce; AND

WHEREAS, the current U.S. Coast Guard definition of model year defines it as the period beginning August 1 of any year and ending on July 31 of the following year. Each model year is designated by the year in which it ends; AND

WHEREAS, the U.S. Coast Guard specified its desire to receive input from the entire boating community on the topic at a meeting with National Marine Manufacturers Association (NMMA) members, and in response NMMA and the Marine Retailers Association of the Americas (MRAA) met to discuss and prepare a recommendation on the matter; AND

WHEREAS, at their June 7, 2012 meeting, NMMA and MRAA were able to reach a unanimous consensus on a path forward for model year definition and enforcement, and formally transmitted this *Model Year Enforcement Solution Recommendation* to the USCG on October 15, 2012; AND

WHEREAS, the Coast Guard announced a request for comments on September 28, 2012, asking whether it should make a change to the existing regulatory requirement to indicate a boat's model year as part of the 12-character Hull Identification Number (HIN). See "Hull Identification Numbers for Recreational Vessels" 77 Fed. Reg. 58,575; AND

WHEREAS, the U.S. HIN format is in use by the states and supported by the marine industry and it has been adopted by a number of important U.S. trading partners including the European Union, Canada, and Australia and a change to the HIN format would cause disruption for U.S. companies exporting boats to these markets; AND

WHEREAS, NMMA and MRAA have modified their previous agreement for the definition of model year and enforcement based on industry feedback and USCG feasibility, and formally transmitted this revised proposal to USCG on March 24, 2014;

NOW, THEREFORE, BE IT RESOLVED that the National Boating Safety Advisory Council, meeting in regular session in Arlington, Virginia on May 9, 2014, recommends based on information before the Council that the U. S. Coast Guard implement the revised NMMA / MRAA *Model Year Enforcement Solution*

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Recommendation in the short term as an exemption to the current definition and in the longer term as an amendment to the definition of model year.

In amending the definition of model year in accordance with the NMMA/MRAA agreement, NBSAC recommends that the U.S. Coast Guard change 33 C.F.R. 181.3 to replace the definition in the following manner:

"Model year means the period beginning June 1 of any year and ending on July 31 of the following year. Each model year is designated by the year in which it ends. A manufacturer may petition for an exemption from this definition by providing a demonstrated need."

BE IT FURTHER RESOLVED, the NBSAC supports the U.S. Coast Guard enforcement posture as articulated in Rear Admiral Lee's letter to NMMA on October 17, 2012.

Mr. Dyskow thanked Mr. Marlow and expressed his support, but felt use of the phrase 'demonstrated need' could cause some problems.

Mr. Marlow said it was clear that there would have to be extenuating circumstances associated with a demonstrated need. The previous rule offered the opportunity for boats over 30 feet, the opportunity for a new model introduction. He stated that those definitions would not be part of the demonstrated need definition that he believed the Boating Safety Division would put forward. This will really be a necessity for them to do; and he understood it would be done through a petition process. He felt very comfortable that the definition would reflect their discussions.

Ms. Vasilaros with NMMA said she appreciated the time taken by the Council to revise this issue. She said that NMMA had continued to work with MRAA (Marine Retailers Association of the Americas), and had sent a new MOA that was unanimously agreed upon to Admiral Servidio at Coast Guard that reflected the language discussed today. She hoped the Council would adopt the new language, which had been generated in consultation with industry to better reflect the needs of her sector, that of the dealers, and that of the Coast Guard; and that this would move through the regulatory process as rapidly as possible.

Prevention Through People Subcommittee Report

Tom Dogan, Vice Chairman, Prevention Through People Subcommittee

Mr. Dogan said that, since the November 2012 meeting in Watsonville, CA, the Prevention Through People Subcommittee has held three conference calls to discuss Subcommittee business. These took place on April 29th and November 13th, 2013, and April 3, 2014. He said the minutes were available on the website for these meetings.

**91st Meeting
of the
National Boating Safety Advisory Council**

He said the two major issues they had focused on for the past 18 months were on-water instructor licensing and life jacket carriage requirement for SUPs and other vessels. Yesterday's discussion about the latter clearly indicated that more work needed to be done on the subject. He encouraged both Subcommittee and other NBSAC members to review the document on life jacket carriage requirements distributed for this meeting and think about potential recommendations to address inconsistencies in the existing life jacket carriage requirements.

Mr. Dogan then turned to the issue of on-water licensing. He praised the working group devoted to this issue: Jeff Ludwig, Pam Dillon, Chris Stec, Fred Messmann, CAPT Boross, and others who had contributed. He mentioned a very productive session in Nashville at the recent IBWSS. There were experts at that meeting who gave them much-needed advice: CAPT Boross, a TSA representative, and Mr. Luke Harden, Chief of the Mariner Credentialing Program Policy Division for the U.S. Coast Guard. He said that as the current situation stood, if there was money changing hands or compensation of any sort—even to an organization to which a hands-on safety instructor might volunteer his time—it potentially violated the law. They had vetted this issue at the meeting with the BLAs in Nashville, and the reactions ranged from disbelief to indignation. Mr. Dogan stressed maintaining the status quo was unacceptable—if someone became injured, he or she might not be covered by insurance. It was imperative to develop a credentialing process for hands-on trainers.

To change this situation, Mr. Dogan and his team recognized that it would be necessary to go through the federal rulemaking process. As he understood it, there were three routes:

1. Legislative, where a congressman or the Coast Guard would advance a bill through Congress (disadvantages: it could take years, and you could lose control of the process and the results might not be what you put in);
2. Regulatory, with the disadvantage that it takes about two years and is difficult to pass; or
3. Via policy document, which would be quicker (about three months) but it involved legal review by at least two offices—the Admiral's office and DHS.

He hoped that a change could be accomplished by means of the third process.

Mr. Dogan had a resolution to present to the Council for discussion. He read from resolution.

Advancement of On-Water Skill-Based Instruction

WHEREAS, in 2012 the USCG documented 2,454 reported recreational boating accidents resulting in 4,515 casualties and \$38,011,601 in property damages; AND

WHEREAS, a review of these statistics reveal that potentially 90% or more of these reported accidents may have been prevented by an operator with increased skill in boat handling and operation; AND

WHEREAS, as a result of new and/or re-doubled efforts by numerous national nonprofit organizations to train, certify, support, and advance the availability of

**91st Meeting
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National Boating Safety Advisory Council**

instructors to teach on-water boat handling and operation courses, more on-water training courses could become available for the general public; AND

WHEREAS, NBSAC Resolution Number 2012-90-03 expressed concern about the hindrances imposed by regulations requiring a United States Coast Guard Operator of Uninspected Passenger Vessel (OUPV) License for on-water instructors who receive compensation when teaching powerboat training courses on navigable waters and such hindrances abrogate many of the interests, purposes and goals of the National Recreational Boating Safety Strategic Plan involving on-water boating safety instruction, which is a matter of continued urgency; AND

WHEREAS, as a result of Resolution Number 2012-90-03, a facilitated discussion was held as part of the International Boating and Water Safety Summit on April 17, 2014 in Nashville, TN, which identified new thinking and broader opportunity to address this issue in partnership with the USCG Commercial Vessel Compliance Division;

NOW, THEREFORE, BE IT RESOLVED THAT the National Boating Safety Advisory Council, meeting in regular session in Alexandria, Virginia on May 8, 2014, in order to further and encourage the boating safety instruction goals of the National Recreational Boating Safety Strategic Plan, recommends that the United States Coast Guard Boating Safety Division, working in partnership with the Commercial Vessel Compliance Division and subject matter experts including members of NBSAC and others, draft a policy directive to provide for recognition of a certified and properly credentialed instructor to relieve them of requirements to adhere to the numerous applicable regulations associated with the national or limited OUPV. Such relief would be applicable only when instructing within the venue and circumstances covered within this newly created policy directive.

BE IT FUTHER RESOLVED THAT this resolution will be forwarded to the Commandant of the Coast Guard and the policy draft be provided at the next NBSAC meeting.

Mr. Muldoon asked if the Subcommittee had voted on the resolution. Mr. Dogan said no.

Mr. Muldoon invited questions/comments.

Ms. Duer wondered if this was the most recent iteration of the resolution.

Ms. Dillon asked Mr. Hogan to put up the "tracked change" version of the resolution for the Council to see. A number of people had offered amendments to clarify the language this morning, and that was the version on the screen. She then went through the document and pointed out those amendments to members. There were a few questions from the Council about the edits, which Ms. Dillon explained.

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Mr. Muldoon requested a 10-minute break to give the Subcommittee time to go through the document, after which they could offer a recommendation that the full Council could consider.

Mr. Dogan moved that The Prevention Through People Subcommittee submit the Resolution for Advancement of On-Water Skill-Based Instruction to the full Council. Mr. Marshburn provided the second to the resolution and the Subcommittee approved it unanimously.

Mr. Muldoon requested confirmation that this was the latest iteration, and Mr. Dogan confirmed that it was. Mr. Muldoon requested a motion on the resolution by the full Council, provided by Mr. Marshburn with a second by Dr. Maxim.

Mr. Johnson felt that the wording “national on-water standards” was inappropriate at this time, pointing out that those had yet to be finalized. He moved to strike that wording. Dr. Maxim provided a second to this change, and Mr. Dogan had no objection to it. A full Council vote was taken and all agreed.

Mr. Brewen wished to comment on the original resolution. If someone received compensation, then under Oregon law they must be registered as a guide. As such, they are required to have a Coast Guard license. Regardless of what the Coast Guard does, it would appear that under Oregon law, a Coast Guard license would be required anyway. On the Coast Guard website, the Limited OUPV credential applies to yacht clubs, sailing schools, and so forth. He wondered if it might be possible to fix the Limited OUPV to avoid problems with state laws that reference the federal requirements.

Mr. Dogan said the Subcommittee had considered the Limited OUPV credential as a possible way to go, but he felt this resolution was flexible enough that a workable solution could be reached. At this point, their goal was to obtain an exception or a limited credential of some sort. One negative of the Limited OUPV credential was its geographical limitation—the problem being that there were several national organizations that want to be able to teach in multiple venues.

Mr. Muldoon thought that part of the original goal had been to have a national standard to which everyone would be held.

Addressing Mr. Johnson’s comment, Ms. Duer suggested changing the wording to “meeting existing or exceeding national on-water standards” to ensure that qualified individuals would be teaching these courses.

Mr. Muldoon asked for a vote on the word change and asked for the section to be reread.

Responding to Ms. Duer’s comment, Mr. Johnson pointed out that it would be a voluntary standard. The Subcommittee did not wish to be in the business of codifying it here.

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Mr. Dogan didn't have a problem with that change. He felt it didn't change the essential meaning of the motion.

Mr. Muldoon was concerned about having a variety of instructors from different places who wouldn't be able to hold to a specific standard. He requested a vote from all in favor of the change to the document.

Mr. Hoedt proposed a couple of wording changes regarding whether it should be specific to nonprofit organizations. Several further small changes were discussed. Mr. Marshburn suggested they strike 'National' in the "Now therefore be it resolved" paragraph that was seconded by Mr. Johnson. Upon further review of the wording, Mr. Marshburn then recommended they strike 'National' in the third paragraph of the resolution and in the "Now therefore be it resolved" paragraph and it was seconded by Mr. Clarke. Finally Mr. Marshburn recommended they strike 'National' & 'Non-profit' in the third paragraph and in the "Now therefore be it resolved" paragraph that was seconded by Mr. Johnson. Mr. Muldoon wondered if they were ready to pass the resolution at this point or if it should be sent back to the Subcommittee.

Mr. Chisholm said that, while it seemed there was still some minor editing to be done, he was loathe to send the document back to the Subcommittee and therefore not be able to take action as a Council until a prospective fall meeting. Mr. Marshburn echoed Mr. Chisholm's sentiments.

Regarding the motion on the floor, Mr. Clarke felt that such minor changes could be fixed if they took a few minutes now.

Mr. Dogan said that nothing was cast in stone—this just meant the process was being approved so that something could be worked out with the Coast Guard.

Mr. Muldoon called for a vote and the full Council agreed to the modifications to the resolution. Mr. Marshburn made the motion to accept the entire resolution which Dr. Maxim seconded. The resolution passed unanimously.

Mr. Dogan concluded the Prevention Through People Subcommittee report.

Swearing In of New Members, Closing Remarks

Chairman James P. Muldoon

CAPT Boross

Mr. Muldoon announced the swearing in of the new members.

Mr. Hoedt called on Mr. Marshburn, Mr. Johnson, Mr. Muldoon, Dr. Maxim, Mr. Rowe, Mr. Chisholm, Mr. Burdick, Mr. Viggiano, Mr. Dahms, Mr. Marlow, and Mr. Dogan. CAPT Boross then administered the oath of office to them.

Mr. Muldoon thanked everyone again for attending the meeting, and urged members to continue their good work despite limited in-person meetings.

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Mr. Ludwig reminded all the members to leave their name tags and turn in their signed travel vouchers before departing.

Mr. Hoedt thanked outgoing members for all their contributions to NBSAC. He welcomed and congratulated new members.

CAPT Boross expressed heartfelt thanks to everyone in the room. He underscored the importance of this morning's discussion to the future of boating safety. He noted that prior to working with this group the majority of his interaction with the recreational boating community was through his SAR missions. He called on all recreational boaters to purchase or be equipped with an EPIRB or PLB, and urged everyone in the room to educate the public about these devices. He said the proposed carriage requirement would not be mandated any time soon so he was depending on them to spread the word. He thanked all the staff who worked on the project, noting that their "informed, measurable data" had made an indisputable case. He thanked members again for their contributions and entreated them to go forth as "force multipliers" to spread the word about boating safety. He thanked everyone for participating in the meeting, for what they contributed, and what they will go forth and contribute to the recreational boating community.

Mr. Muldoon asked everyone for a round of applause for all the good work accomplished in this meeting.

Mr. Chisholm stated that Mercury endorsed National Wear Your Life Jacket to Work day, to take place the following Friday. He asked everyone to spread the message about life jacket wear.

At 11:02 Mr. Clarke made a motion to adjourn the meeting that was seconded by Mr. Dogan. Chairman Muldoon adjourned the 91st meeting of the National Boating Safety Advisory Council.

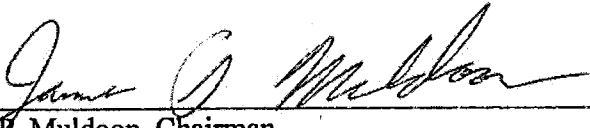
The 91st Meeting of the National Boating Safety Advisory Council is adjourned.

**91st Meeting
of the
National Boating Safety Advisory Council**

Attachments:

1. 91st Meeting Resolutions


This is to certify that the above are accurate minutes of the ninety-first meeting of the National Boating Safety Advisory Council.



James P. Muldoon, Chairman
National Boating Safety Advisory Council

8/26/14

Date



CAPT Tom Boross, Designated Federal Officer
National Boating Safety Advisory Council

13 AUG 26/14

Date

NATIONAL BOATING SAFETY ADVISORY COUNCIL

**May 9, 2014
Arlington, VA**

Resolution Number 2014-91-01

Advancement of On-Water Skill-Based Instruction

WHEREAS, in 2012 the USCG documented 2,454 reported recreational boating accidents resulting in 4,515 casualties and \$38,011,601 in property damages; **AND**

WHEREAS, a review of these statistics reveal that potentially 90% or more of these reported accidents may have been prevented by an operator with increased skill in boat handling and operation; **AND**

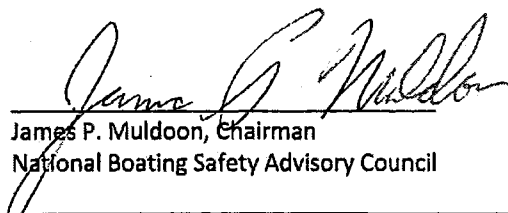
WHEREAS, as a result of new and/or re-doubled efforts by numerous organizations to train, certify, support, and advance the availability of instructors to teach on-water boat handling and operation courses, more on-water training courses could become available for the general public; **AND**

WHEREAS, NBSAC Resolution Number 2012-90-03 expressed concern about the hindrances imposed by regulations requiring a United States Coast Guard Operator of Uninspected Passenger Vessel (OUPV) License for on-water instructors who receive compensation when teaching skill-based training courses on navigable waters and such hindrances abrogate many of the intents, purposes and goals of the National Recreational Boating Safety Strategic Plan involving on-water boating safety instruction, which is a matter of continued urgency; **AND**

WHEREAS, as a result of Resolution Number 2012-90-03, a facilitated forum was held as part of the International Boating and Water Safety Summit on April 17, 2014 in Nashville, TN, which identified new thinking and broader opportunity to address this issue in partnership with the USCG Commercial Vessel Compliance Office.

NOW, THEREFORE, BE IT RESOLVED THAT the National Boating Safety Advisory Council, meeting in regular session in Arlington, Virginia on May 9, 2014, in order to further and encourage the boating safety instruction goals of the National Recreational Boating Safety Strategic Plan, recommends that the United States Coast Guard Boating Safety Division, working in partnership with the Commercial Vessel Compliance Office, TSA and subject matter experts including members of NBSAC and others, draft a policy directive to provide for recognition of a certified and properly credentialed instructor to relieve them of requirements to adhere to the numerous applicable regulations associated with the national or limited OUPV. Such relief would be applicable only when instructors are educating within the parameters of their organization instructor certifications, including curricula, venue, and circumstances covered within this newly created policy directive.

BE IT FUTHER RESOLVED THAT this resolution will be forwarded to the Commandant of the Coast Guard and the policy draft be provided at the next NBSAC meeting.


James P. Muldoon, Chairman
National Boating Safety Advisory Council

NATIONAL BOATING SAFETY ADVISORY COUNCIL

**May 9, 2014
Arlington, VA**

Resolution Number 2014-91-02

MODEL YEAR DESIGNATION IN HULL IDENTIFICATION NUMBER

WHEREAS, boat manufacturers have raised concerns that the U.S. Coast Guard enforcement of model year regulations impedes commerce; **AND**

WHEREAS, the current U.S. Coast Guard definition of model year defines it as the period beginning August 1 of any year and ending on July 31 of the following year. Each model year is designated by the year in which it ends; **AND**

WHEREAS, the U.S. Coast Guard specified its desire to receive input from the entire boating community on the topic at a meeting with National Marine Manufacturers Association (NMMA) members, and in response NMMA and the Marine Retailers Association of the Americas (MRAA) met to discuss and prepare a recommendation on the matter; **AND**

WHEREAS, at their June 7, 2012 meeting, NMMA and MRAA were able to reach a unanimous consensus on a path forward for model year definition and enforcement, and formally transmitted this *Model Year Enforcement Solution Recommendation* to the USCG on October 15, 2012; **AND**

WHEREAS, the Coast Guard announced a request for comments on September 28, 2012, asking whether it should make a change to the existing regulatory requirement to indicate a boat's model year as part of the 12-character Hull Identification Number (HIN). *See* "Hull Identification Numbers for Recreational Vessels" 77 Fed. Reg. 58,575; **AND**

WHEREAS, the U.S. HIN format is in use by the states and supported by the marine industry and it has been adopted by a number of important U.S. trading partners including the European Union, Canada, and Australia and a change to the HIN format would cause disruption for U.S. companies exporting boats to these markets; **AND**

WHEREAS, NMMA and MRAA have modified their previous agreement for the definition of model year and enforcement based on industry feedback and USCG feasibility, and formally transmitted this revised proposal to USCG on March 24, 2014;

NOW, THEREFORE, BE IT RESOLVED that the National Boating Safety Advisory Council, meeting in regular session in Arlington, Virginia on May 9, 2014, recommends based on information before the Council that the U. S. Coast Guard implement the revised NMMA / MRAA *Model Year Enforcement Solution Recommendation* in the short term as an exemption to the current definition and in the longer term as an amendment to the definition of model year.

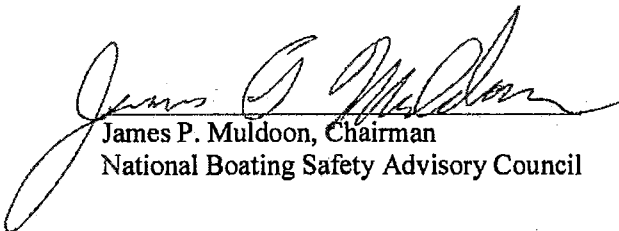
In amending the definition of model year in accordance with the NMMA/MRAA agreement, NBSAC recommends that the U.S. Coast Guard change 33 C.F.R. 181.3 to replace the definition in the following manner:

NATIONAL BOATING SAFETY ADVISORY COUNCIL

**May 9, 2014
Arlington, VA**

"Model year means the period beginning June 1 of any year and ending on July 31 of the following year. Each model year is designated by the year in which it ends. A manufacturer may petition for an exemption from this definition by providing a demonstrated need."

BE IT FURTHER RESOLVED, the NBSAC supports the U.S. Coast Guard enforcement posture as articulated in Rear Admiral Lee's letter to NMMA on October 17, 2012.



James P. Muldoon, Chairman
National Boating Safety Advisory Council

NATIONAL BOATING SAFETY ADVISORY COUNCIL

**May 9, 2014
Arlington, VA**

Resolution Number 2014-91-03

Marine Information for Safety and Law Enforcement (MISLE) Database Improvements

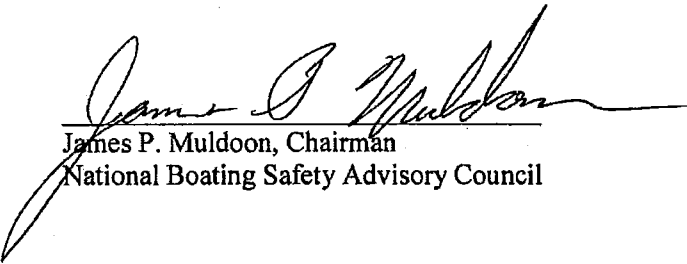
WHEREAS, the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database is the Coast Guard's primary data source for all cases involving Coast Guard assets, including search and rescue cases and recreational vessel boardings involving the Coast Guard; **AND**

WHEREAS, Coast Guard staff spent over a year manually reviewing one fiscal year of search and rescue cases involving recreational boating, primarily because MISLE lacks the functionality to automatically distinguish between cases involving recreational boats and other types of cases; **AND**

WHEREAS, many cases lack complete data and include case narratives that often do a poor job of providing amplifying information that would provide the reviewer with the details necessary to form a better understanding of the circumstances involving any particular case; **AND**

WHEREAS, it is critical that Coast Guard staff be able to efficiently retrieve data from MISLE so that their time may be better spent analyzing data instead of just obtaining data.

NOW, THEREFORE, BE IT RESOLVED that the National Boating Safety Advisory Council, meeting in regular session in Arlington, VA on May 9, 2014, recommends that the Coast Guard take the necessary steps to improve MISLE functionality so that cases involving recreational boats may be automatically obtained without reviewing records manually and that data entry procedures be put into place so that cases cannot be closed without critical data fields being complete and validated.



James P. Muldoon, Chairman
National Boating Safety Advisory Council

ATTACHMENT "I"

DANA ROHRBACHER
46th District, California

Committees:

FOREIGN AFFAIRS

Chairman, Subcommittee on
Oversight and Investigations

Subcommittee on the
Middle East and South Asia

SCIENCE, SPACE, AND TECHNOLOGY

Subcommittee on
Space and Aeronautics

Subcommittee on
Energy and Environment



Congress of the United States
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<http://rohrbacher.house.gov>

March 23, 2012

Admiral Robert J. Papp Jr.
Commandant
United States Coast Guard
2100 Second Street S.W.
Washington D.C. 20593-7000

Dear Admiral Papp:

Like thousands of my constituents, I surf, scuba dive and boat along the shoreline of the coastal cities within the 46th Congressional District, which I have the honor to serve in Congress. Anyone out on the water along our beaches these days cannot help but see that stand-up paddle-boarding is a major new ocean sport that seems here to stay. I write to request that you take appropriate action to ensure that federal regulation of stand-up paddle boards (SUP's) in navigable waters reflects common sense and serves the best interests of the United States Coast Guard as well the public using our waterways.

As you know better than anyone, the United States Coast Guard has been entrusted with multiple missions critical to homeland security, safety for all users of navigable waterways, and prevention of interruptions to navigation that would disrupt our economy and way of life. That is why we all have an interest in ensuring the brave men and women who protect and serve along our coastlines and waterways are not distracted from their mission by anomalous assignments and duties that are not essential. I hope when you consider the matter you will agree that enforcing life preserver rules for SUP's is not effective use of Coast Guard personnel and resources.

Indeed, that is why the USCG in 1981 cancelled proposed federal regulations on use of life preservers on sailboards, allowing state and local governments to decide if and when sailboarders, and later windsurfers, should be required to wear a lifejacket, or "personal flotation device" (PFD). Now that stand up paddle boarding has emerged as a major new board-riding sport, the only common sense approach is to extend to paddle board users the same federal policy on use of PFD's already applicable to sailboards and windsurfing. It would seem that if you so determine this very well may not require lengthy or unduly complicated new rule-making, just a common sense administrative determination that SUP's fall within the same class of water craft and PFD rules as sailboards and windsurfing.

Paddle boards are PFD's, and leash options coupled with low paddling speeds make SUP's even safer than sailboards and windsurfing, both of which have excellent safety records without any federal PFD requirements. Classifying SUP's as vessels subject to all other applicable safety and navigation rules is expected, but the board riding community makes a good case that PFD's actually increase risk of injury

and loss of flotation by the SUP if worn by paddlers or attached to SUP deck. The published record supporting the 1981 USCG policy of regulatory restraint on PFD requirements for board-riders (Federal Register Vol. 48, No. 161, 42288) spelled out the specific safety related reasons, as well as principles of good governance, favoring locally promulgated board riding safety rules based on local conditions.

There are reports of ad hoc communications to state marine safety officers and SUP user organizations indicating that SUP's are not covered by the sailboard and windsurfing exemption from PFD requirements. Because that would not enhance safety and raises enforcement feasibility issues, my constituents in the board-riding community hope that upon closer consideration the USCG will embrace the logic of the sailboard and windsurfing exemption as the only relevant federal policy precedent rationally and reasonably suited for adoption as a federal PFD policy for SUP's.

That enlightened policy will prevent the perverse result that would obtain if paddle, sail, and windsurfing boards with virtually identical features and safety attributes are treated differently with respect to PFD rules. Again, application of uniform federal boating safety rules to SUP's is expected, but that should include a uniform rule on local control of PFD rules for all board riders. Under the 1981 PFD rules for board-riders and subsequent rule-making by USCG, sailboards and windsurfers are subject to the same rules on internal and international navigation, casualty reporting and operator intoxication as other vessels when used in navigable waters.

It is my understanding that as with other small wave riding devices, including surfboards, when used in the surf-line along the shores where waves are breaking, wind, sail and paddle boards are outside USCG navigable waterways jurisdiction. In the surf line however all board riders are subject to local rules made by local officials accountable to the local community. The customs and protocols established by the wave rider community also play a role. This arrangement should be preserved because it works, and that is why I support restraint of federal power in favor of local rules not only for wave riders, but also for PFD rules applicable to board riders in navigable waters.

Accordingly, I am requesting a simple and timely administrative determination that SUP's fall within the PFD exemption for board riders using watercraft in the same class. The USCG and Congress have urgent work to do, and an administrative determination in this already settled matter is in the best interest of the USCG. Among other things it avoids non-essential and arguably vexatious enforcement duties. It also is just common sense for my constituents and all our fellow citizens who use the navigable waters of our nation for recreational water sports that include sail, paddle and wind boarding.

Allowing state and local governments to ensure paddle boards are treated the same as sailboards and windsurfing with regard to PFD rules will promote uniform enforcement of federal and local boating and water safety rules, for the benefit of all who depend on the navigable waters of our country for a livelihood or for recreation.

Yours sincerely,



Dana Rohrabacher
Member of Congress

ATTACHMENT "J"

Lexis Advance®

Document: 58 FR 41602

58 FR 41602

Copy Citation

VOL. 58, No. 148, Part III, Wednesday, August 4, 1993

Rules and Regulations

Reporter

58 FR 41602

Federal Register

1993

August

Wednesday, August 4, 1993

Rules and Regulations

DEPARTMENT OF TRANSPORTATION (DOT) -- United States Coast Guard (USCG)

Title: Recreational Boating Safety Equipment Requirements

Action: Final rule.

Agency

DEPARTMENT OF TRANSPORTATION (DOT) > United States Coast Guard (USCG)

Identifier: [CGD 92-045] > RIN 2115-AE26

Administrative Code Citation

33 CFR Parts 175 and 181

46 CFR Part 160

Synopsis

[41602] **SUMMARY:** The Coast Guard is changing a number of Federal requirements and exemptions for carriage of personal flotation devices (PFDs) on recreational vessels. The designs and uses of recreational vessels and safety equipment have changed since the rules were first issued or last revised, and some of the requirements and exemptions are no longer appropriate. This rule provides the recreational boating public with clearer and more appropriate requirements for carrying personal flotation devices and promotes a safer recreational boating environment. This rule also provides for necessary temporary exemptions from certain PFD carriage, labeling and information pamphlet requirements affected by this rulemaking.

Text

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Carlton Perry, Project Manager, and LT Ralph Hetzel, Project Counsel, Office of Chief Counsel.

Regulatory History

On November 9, 1992, the Coast Guard published a notice of proposed rulemaking entitled "Recreational Boating Safety Equipment Requirements" in the **Federal Register** (57 FR 53410). The 60-day comment period ended on January 8, 1993. By that time, the Coast Guard received 400 individual letters commenting on the proposal and an additional two petition-type letters bearing 110 signatures. Another 85 individual letters were received after the close of the comment period. The individual comments received by the close of the comment period came from the following categories in the numbers noted.

- 260 Recreational boating interests or owners.
- 93 Recreational boat outfitters, liveries, or guides.
- 15 Recreational boat/equipment manufacturers/dealers.
- 3 Commercial boating interests.
- 8 National recreational boating interests.
- 3 Federal government agencies.
- 18 State or local government agencies.

400

Eight comments requested that a public hearing be held to better inform the affected public, especially concerning impact on canoes, kayaks and boats under 16 feet in length. Two additional comments requested hearings be held for all boaters,

particularly for rowers and paddlers, at ten cities around the country. Two other comments requested the comment period be extended to make the proposal more available to the boating public, to allow obtaining additional statistical information from the Coast Guard, and to have more time to comment. Another comment suggested postponing the rulemaking project until further study could be conducted. Most of the written comments received came from the affected public, especially canoe and kayak enthusiasts, and the rowing/paddling racing vessel community. The Coast Guard considered the requests for public hearings but determined that, although receiving oral presentations at public hearings would increase the number of comments, it would probably not raise new issues or otherwise materially assist in drafting the final rule. For the same reasons, the Coast Guard decided that additional time for comment on its proposal would not aid the rulemaking process.

Background and Purpose

The designs and uses of vessels and safety equipment have changed since the Federal regulations for carriage of personal flotation devices (PFDs) on recreational vessels were first issued or last revised. Some of the requirements and exemptions are no longer appropriate. After a comprehensive review of recreational boating safety regulations conducted at its May 1992 meeting, the National Boating Safety Advisory Council (NBSAC) recommended a number of changes to the safety equipment carriage requirements for recreational vessels (33 CFR part 175). Prior to that meeting, the Coast Guard received additional related suggestions from the National Association of State Boating Law Administrators (NASBLA) and from the general public.

This rulemaking changes the existing regulations on PFD carriage requirements. These changes will provide the boating public with clearer and more appropriate requirements for carrying personal flotation devices, and will promote a safer recreational boating environment.

Discussion of Comments and Changes

Four comments opposed any requirement to carry extra Type IV PFDs (cushions or throwables) on commercial white water rafts. Another comment suggested requiring the same PFDs on recreational vessels, uninspected passenger vessels, and small passenger vessels.

PFD carriage requirements for commercial uninspected passenger vessels and small passenger vessels are contained in 46 CFR subchapter C, and are not the subject of this rulemaking project.

A number of comments recommended increased Coast Guard efforts in the areas of boater education and enforcement of regulations related to operation of a vessel while intoxicated.

The Coast Guard agrees and will continue to emphasize the benefits of boating safety education and enforcement of U.S. laws and regulations, including those related to operating a vessel while intoxicated.

A number of comments suggested various requirements or exemptions related to USCG approval or design restrictions of PFDs for carriage or wearing requirements.

The procedures and requirements for USCG approval of PFDs are contained in 46 CFR part 160, and are not the subject of this rulemaking. A copy of these comments has been submitted to the Coast Guard's Survival Systems Branch, which is responsible for those requirements, for consideration as a potential regulatory project. [41603]

A number of comments questioned the statistics used to support the proposed rulemaking generally, or a specific provision of the rulemaking that affected a particular boating segment, such as racing shells, whitewater canoes, or sailboards. Some comments supported the statistics used along with additional statistics, or confirmed the statistics by providing information, such as U.S. Army Corps of Engineers

(COE) statistics on boating fatalities at COE projects during 1986-1990. Others requested additional statistics related to recent research to substantiate the need for a requirement to wear PFDs. Still others were interested in statistics regarding powered vs. nonpowered vessel fatalities or fatalities for boaters who had been consuming alcohol. Additional information was requested on the 19 States requiring children to wear PFDs on boats.

The Coast Guard has reviewed its recreational boating statistical data on fatalities for the years 1988 through 1991 in view of the above concerns. There were 3,631 fatalities during that 4-year time period for all recreational boat types. Almost 23% (830) of the 4-year total number of reported fatalities involved canoes, kayaks, rowboats, inflatables, and other manually-propelled boats. The statistics indicate that about 70% (585) of the 4-year total (830) reported fatality victims on manually-propelled boats were not using a PFD, compared to about 59% for the total (3,631) for all recreational boat fatalities reported over the same 4-year time period. The statistics also indicate that of the 4-year total reported fatalities (830) involving manually-propelled boats, only 9% (78) occurred on boats known to be rented. In addition, the statistics indicate that of the 4-year total (830) reported fatalities involving manually-propelled boats, about 62% (512) of the boats known to be rented were under 16 feet in length.

Regarding alcohol involvement in boating accidents, the statistics indicate that less than 17% (603) of the total fatalities reported during the 4-year period 1988 through 1991 involved use of alcohol.

Additional information on the 19 States referred to in the NPRM regarding requirements for children under a specified age to wear PFDs may be obtained from Balistreria Consulting, Inc., 5713 Twenty-Third Street, Zephyrhills, FL 33540-4726; the telephone number is (813) 783-3996.

Specific Comments on Changes Proposed in the NPRM

Subpart A-General

Section 175.1 Applicability

Nine comments supported excepting seaplanes from applicability of Coast Guard PFD carriage requirements. No comments opposed the proposal and the Coast Guard has adopted the exception as proposed.

Section 175.3 Definitions

The Coast Guard does not consider surfboards, swim boards or "boogie" boards to be vessels and has not adopted suggestions to include them in this rulemaking. The Coast Guard agrees with the suggestion to add a definition of the term "recreational submersible", but intends to publish it in a future rulemaking project to allow time to develop a suitable definition.

Boat. No comments objected to this term and the Coast Guard has adopted the definition as proposed.

Passenger. One comment suggested redefining the term "passenger" to agree with a proposed Congressional resolution. The Coast Guard is aware of this pending legislation to change the statutory definition of the term "passenger" and has decided to delay any revision of the current published definition until such legislation is enacted.

Personal watercraft. One comment suggested revising the definition length, limiting the number of persons on board, limiting the definition to vessels "propelled by jet pump", and separating non-jet pump propelled craft. Another comment suggested deferring the final definition until after a Coast Guard sponsored NBSAC Subcommittee on Personal Watercraft Definition and Requirements formally submits its findings to the Coast Guard through the full Council.

The Coast Guard will delay making a decision on this definition until after considering the NBSAC Subcommittee on Personal Watercraft Definition and Requirements Report. The Coast Guard intends to publish this definition in a future rulemaking project.

Racing shell, rowing scull, and racing kayak. There was a suggestion to revise the definition to be more specific about racing kayaks, to include racing canoes, and to include poles as a means of propulsion. Also, carefully defining racing canoes and racing kayaks and developing a method of clearly marking racing craft was recommended.

The Coast Guard agrees that this definition should include racing canoes recognized by national or international racing associations and should include poles as a means of propulsion, and has revised the definition accordingly. The Coast Guard has decided not to redefine the term "racing kayaks" to be more specific.

Recreational vessel. One comment requested clarification of what the phrase "six or fewer passengers" means, while another suggested removing the phrase from the definition.

The key to the meaning of this phrase is in the definition of the term "passenger" which the Coast Guard uses to separate recreational from commercial operation and to determine application of operator licensing and PFD carriage requirements. Commercial PFD requirements are contained in 46 CFR 25.25. They specifically exempt vessels used or leased, rented or chartered to another for the latter's noncommercial use. Thus, the sentence, "It does not include a vessel engaged in the carrying of six or fewer passengers." clarifies the applicability of commercial or recreational PFD carriage requirements and has been retained.

Sailboard. Ten comments supported the proposed definition of a sailboard as a vessel. No comments objected to the proposed definition of sailboard as a vessel. The Coast Guard has decided to adopt this definition as proposed.

Use. No comments objected to this definition and the Coast Guard has adopted it as proposed.

Vessel. No comments objected to this definition and the Coast Guard has decided to adopt the definition of the term "vessel" as proposed.

Section 175.5 Exemption From Preemption

Exemption from preemption. Over 36 comments supported the proposed exemption to allow States discretion to set PFD requirements on specified types of boats based on local conditions. Another comment suggested expanding the proposed preemption exemption to allow States to set PFD requirements for additional types of boats on designated whitewater streams or other waterways that a State finds to be inherently dangerous. An additional 3 comments supported the proposal, if States were only allowed to set stricter requirements than Federal requirements. Another comment supported the proposal, if States adopted uniform State requirements. Yet another comment suggested that States separate canoes and kayaks from boats with mechanical propulsion when setting local PFD requirements. Over 14 comments opposed the proposal, emphasizing that only the Federal Government or Coast Guard should set these requirements [41604] because the States are too diverse. Another 4 comments opposed any changes. Over 175 comments opposed any requirement to wear PFDs on canoes and kayaks or on racing canoes, racing and rowing sculls for recreational use or competition practice.

The Coast Guard did not propose Federal requirements to wear PFDs at all times on recreational vessels. Although the exemption from preemption for States would allow a State to determine whether certain persons on certain vessels should wear PFDs under certain circumstances, including carriage requirements in the absence of a Federal requirement to carry a wearable PFD, it was not intended to encourage States to establish across-the-board wearing requirements on all watercraft at all times. The

Coast Guard believes that most objections to PFD wearing requirements were based on this misunderstanding of the proposal. At the same time, the Coast Guard may reconsider the exemption from preemption provisions in the future in response to substantiated complaints of unnecessarily burdensome State PFD wearing requirements.

The Coast Guard has decided that a reasonable balance should be struck between uniform national PFD carriage requirements and State discretion to set local PFD requirements different from the national requirements. Consideration should be given to the difference in each State's (1) difficulty of navigation on its boating waterways; (2) severity of its climate and weather conditions during its boating season; and (3) public support within a State for an increased level of safety for its boating public, including children. In setting local PFD requirements, States likely will base such requirements on perceived need, obtain public comment, allow an appropriate level of reciprocity to out-of-State transient vessels, and not attempt to reduce the applicability of Federal PFD carriage requirements.

Children. Many comments supported allowing States to set PFD wearing requirements for children as was proposed in the NPRM. Additional comments supported the proposal only for children under 6 years old. Some comments opposed allowing States to set PFD wearing requirements for children, while others suggested setting a national requirement to wear a PFD for all children, or for a specific age group.

The Coast Guard agrees that a State should be able to set PFD wearing requirements and to determine the age of applicability for children on vessels within its boundaries. It is the Coast Guard's position that it is appropriate to establish national requirements to carry PFDs on certain recreational vessels, without imposing an additional Federal requirement to wear them on those vessels. It is appropriate for an individual State to establish PFD wearing requirements, and associated carriage requirements in the absence of Federal carriage requirements, for its boaters because of the previously mentioned factors applicable to each State. However, each State is encouraged to provide appropriate reciprocity for children on out-of-State transient vessels that are in compliance with the PFD requirements of the State which issued their vessel number.

Racing shells, rowing sculls, and racing kayaks. The comments were about evenly split between support of and opposition to the proposal allowing States to set PFD wearing requirements for recreational operation of racing vessels. Some objections emphasized the difficulty that law enforcement officers would have in discerning any difference between recreational use and competition practice. Another emphasized the need for a single national requirement instead of the potential for 50 State interpretations. One additional comment suggested using a better definition of "competitive racing" and "competition practice" in the rule.

Also suggested was deferring the proposed exemption from preemption until a more complete, universal and broadly acceptable definition for these craft is developed.

The Coast Guard agrees with the comments pointing out the difficulty in discerning recreational from competition practice and the lack of a Coast Guard approved PFD suitable for wearing on this class of racing vessels without risk of overheating and chafing. Further, the Coast Guard cannot confirm recreational fatalities for this class of vessel beyond a single rowing scull fatality that occurred in Pennsylvania. There is no indication of a need for the individual States to regulate these vessels. Therefore, the Coast Guard has removed the exemption from preemption for the States to regulate this racing class of recreational vessels.

Canoes and kayaks. A number of comments supported allowing States to set PFD wearing requirements for operation of canoes and kayaks as proposed. Additional comments supported the proposed exemption if State requirements were made on an area-wide basis, while another suggested that requiring whitewater kayakers to wear a PFD while descending rivers and requiring open water kayakers to wear PFDs under Small Craft Advisory conditions would achieve the desired increased safety. A similar number of comments opposed the proposed exemption, with one specifically opposing

States setting blanket PFD wearing requirements. Several objected to either Federal or State wearing requirements for currently available PFDs on canoes or kayaks under strenuous paddling, marathon voyage or racing conditions in warm weather due to likely overheating. One comment suggested deferring the proposed exemption from preemption until a more complete, universal and broadly acceptable definition for these craft is developed. [41605]

The Coast Guard has adopted this exemption as proposed. The Coast Guard is allowing each State to set PFD wearing requirements on canoes and kayaks as it deems appropriate due to climate or weather conditions within its boundaries, specific waterway characteristics or difficulty of navigation, and other conditions, which may be specific to each State's waterways. This rule does not impose any Federal requirement on the States to establish PFD wearing requirements. At the same time, the Coast Guard may reconsider the exemption from preemption provisions in the future in response to substantiated complaints of unnecessarily burdensome State PFD wearing requirements.

Sailboards. Two comments opposed exempting sailboards from Federal PFD carriage requirements. Two other comments addressed a requirement to wear a PFD while operating a sailboard, one in favor and one opposed.

The Coast Guard has adopted this exemption as proposed. Although the Coast Guard is not setting a Federal requirement that a PFD be carried or worn while operating a sailboard, a State should be allowed to do so in consideration of climate and waterway navigation conditions within its boundaries. This rule does not impose any Federal requirements on the States to establish PFD wearing requirements. Operators of sailboards continue to be subject to Federal and State regulations regarding vessel navigation and intoxicated operation of a vessel.

Personal watercraft. Eight comments supported allowing States to set PFD wearing requirements for operation of personal watercraft as proposed, with one comment supporting Federal, State or local requirements. One comment opposed any exemption to PFD carriage requirements for personal watercraft. Another comment suggested deferring the proposed exemption from preemption until a more complete, universal and broadly acceptable definition for these craft is developed.

The Coast Guard has adopted this exemption as proposed. Personal watercraft are still subject to requirements applicable to "recreational vessels" and a State will be allowed to establish PFD wearing requirements for personal watercraft in consideration of climate and waterway navigation conditions within its boundaries. This rule does not impose any Federal requirement on the States to establish PFD wearing requirements. Although the Coast Guard is delaying selection of a national definition of "personal watercraft", a State establishing requirements for personal watercraft likely will sufficiently describe the watercraft subject to any such requirements.

Subpart B-Personal Flotation Devices

Section 175.11 Applicability

No comments opposed this section and the Coast Guard has adopted it as proposed.

Section 175.15 Personal Flotation Devices Required

Elimination of Type IV PFD as a primary device on vessels under 16 minutes. Over 100 comments supported the proposed requirement to carry a wearable PFD for each person on board a recreational vessel under 16 feet in length. Another 70 comments opposed the proposal, with three of the comments emphasizing that a Type IV PFD (cushion) is better than a wearable PFD if the wearable PFD is not worn. Eighteen of the comments requested that canoe or kayak livery and rental businesses be allowed to continue using the Type IV as a primary personal flotation device on their vessels. One of the comments also recommended granting a special exemption to allow livery and rental businesses one or two seasons to phase-in compliance. Several of the comments

indicated that replacing hundreds of PFDs costing \$ 15-\$ 60 would create a financial burden of \$ 1,000-\$ 10,000 for livery or rental businesses. Several additional comments suggested exempting various types and sizes of vessels from carrying wearable PFDs, including: Inflatables, canoes and kayaks, sailboats, vessels 10 feet in length and under, and hand-powered vessel tenders or boats used within designated harbors or anchorages. Several comments suggested a requirement to wear PFDs on boats under 16 feet in length. A number of comments suggested applying the PFD wearing requirements to boats 18 feet (vs. 16 feet) and over; treating boats over and under 16 feet the same; or opposed setting Federal requirements to use PFDs based on vessel length at all.

Other comments suggested using vessel waterline width instead of vessel length to apply the rules, or status as rented recreational vessels. Other comments opposed any national requirement to wear PFDs on recreational boats under 16 feet in length.

The Coast Guard has adopted the new PFD carriage requirement as proposed. The effective date of § 175.15(a) is May 1, 1995, in order to provide the boating public sufficient notice of the new wearable PFD requirement, allow PFD manufacturers to produce a sufficient quantity of wearable PFDs available for sale, and provide adequate opportunity for the boating public to comply. However, in consideration of the larger numbers of vessels and associated PFDs maintained by livery and rental businesses, some of which may be considered small entities, a special temporary exemption has been added to § 175.17. This will allow these businesses an additional boating season, until May 1, 1996, to phase-in compliance and reduce the annual economic impact of the new requirement on them. While it is allowing extra time for these businesses to obtain needed wearable PFDs for their vessels, the Coast Guard urges them to comply as soon as is practicable.

The separation of safety equipment carriage requirements for vessels under 16 feet in length, and vessels 16 feet in length and over has been in effect since 1973. Safety would not likely be improved by changing the separation reference point in this rulemaking. The Coast Guard also emphasizes that the new requirement to carry wearable PFDs on boats 16 feet in length and under does not prohibit boaters from also carrying Type IV PFDs voluntarily.

The Coast Guard is also mindful that current USCG approved PFD labels and PFD information pamphlets indicate that Type IV PFDs are approved for use as primary devices on recreational vessels under 16 feet in length. The Coast Guard intends to work with Underwriters Laboratories, Inc., to revise the current UL standard 1123 to reflect these changes and to initiate a regulatory project to incorporate the revised UL standard 1123 by reference for PFD information pamphlet requirements in 33 CFR 181.703 and revise the USCG approved Type IV PFD labelling requirements in 46 CFR subpart 160. In the interim, PFD manufacturers are encouraged to provide alternate PFD information pamphlets and text on Type IV PFD labels that reflect the current revised PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length. To facilitate the efforts of cooperating PFD manufacturers in providing accurate information on PFD requirements on recreational vessels, the Coast Guard has included exemptions from 33 CFR 181.703 and 46 CFR 160.048-6, 160.049-6, 160.050-6, and 160.064-4 for PFD manufacturerers. This will give them time to revise their information pamphlets and PFD labels to reflect this change in PFD carriage requirements for recreational vessels under 16 feet in length.

Vessels 16 feet in length and over. Two comments supported the proposed removal of the existing exemption for canoes and kayaks 16 feet in length and over from the requirement to carry a Type IV PFD in addition to the wearable PFDs for persons on board. Over 261 comments opposed the proposal. Many of the objections described the lack of stowage area on kayaks and the instability of a canoe as a platform for throwing a Type IV PFD to a person in the water. Many comments expressed concern over the added cost impact of hundreds to thousands of dollars that the proposed requirements could have on over 3,000 liveries, canoe rentals and outfitters to purchase enough new PFDs to equip their rental vessels. A few of the comments

incorrectly believed they must provide an additional Type IV PFD for each person in a canoe or kayak 16 feet in length and over, or that only a Type V PFD or only a Type III PFD would be allowed to meet USCG PFD carriage requirements.

The Coast Guard agrees with the comments regarding canoes and kayaks in support of retaining the existing exemption for canoes and kayaks 16 feet in length and over (currently in § 175.15(b)) as one of several exemption provisions listed in § 175.17. Further, by continuing the exemption for canoes and kayaks from the additional PFD carriage requirements for vessels 16 feet in length and over and by allowing the additional boating season for liveries and canoe rental businesses to phase-in compliance, the financial impact on these small businesses will be reduced by apportioning the costs over almost three years. Section 175.17 Exemptions (Formerly Exceptions)

The heading of this section has been revised from the term "Exceptions" to the term "Exemptions" for clarity and consistent use in this part.

Four comments supported all the proposed exemptions. One comment suggested adding additional specific exemptions from carrying wearable PFDs for surfboards, windsailers, inner [41606] tubes, lounge rafts, etc. Two comments opposed making any of the proposed changes. Two other comments suggested setting a national PFD wearing requirement for operators of personal watercraft. Other comments suggested various exemptions, such as exempting small sailing craft (sea kayaks) from carrying an extra Type IV PFD if a Type III or V PFD is being worn; exempting kayaks, catamarans and racing sailboats from carrying an extra Type IV PFD if a Type III PFD is being worn; and exempting marathon racing canoes, kayaks, and Oriental Long Boats exceeding 45 feet in length during training sessions and during competition from wearing lifejackets if the craft is carrying a readily available, throwable Type IV PFD or a Type II PFD for each occupant. Several comments suggested requiring carriage of a Type IV PFD in addition to the wearable PFDs for each person; that any Federal or State PFD wearing requirements adopt the phrase, "Unapproved devices, including inflatables, may be used."; clarifying whether the exemption also applies to shore boats and dinghies used to transport boaters to and from shore and their boats (vessel tenders); and that more effective enforcement of existing requirements to carry Type I, II, III, or IV PFDs on all boats under 16 feet in length would achieve better results.

Regarding additional specific exemptions for surfboards, inner tubes, lounge rafts, etc., the Coast Guard does not issue exemptions for watercraft that it does not consider to be vessels. Windsailers are included in the exemption for sailboards. Further, unless subject to a specific State requirement a personal watercraft is subject to the same Federal requirements as other recreational vessels of the same size.

Racing, shells, rowing, sculls, and racing kayaks. Some comments supported the exemption as proposed. Additional comments supported the proposed exemption if it only applied during competition or if it imposed a requirement to carry PFDs on racing shells. More comments suggested adding racing canoes to the exemption for racing class vessels or basing the exemption on the competitor status of the operator instead of the vessel class. A similar number of comments opposed a requirement to carry PFDs on racing shells, racing canoes, racing kayaks or rowing sculls or on a tender during competition practice. Another comment opposed limiting the exemption to only when the tender vessel is close enough to assist if needed. Many of the objecting comments discussed the lack of a safe and accessible place on these racing craft to carry a PFD or the impracticality of having a tender carrying PFDs accompany these racing craft during competition practice. They also pointed out the lack of a suitable design of wearable USCG approved PFD that would not increase the likelihood of overheating on warm days, or that would not interfere with rowing or paddling motions, or that would otherwise increase the safety of operators of these racing craft.

The Coast Guard agrees with the suggestion to include racing canoes in this exemption, along with racing kayaks and has revised the exemption, in § 175.17 and the definition in § 175.3 to reflect this. The Coast Guard also agrees with the comments opposing the

proposal because of difficulties in operating these racing craft while wearing or carrying USCG approved PFDs and for having tenders carry USCG approved PFDs for all racing craft and their occupants. Further, the Coast Guard agrees with the comments regarding difficulty discerning recreational rowing from competition practice rowing. For these reasons, the Coast Guard has retained the existing exemption for racing shells, rowing sculls, and racing kayaks, and added racing canoes, in § 175.17.

Recreational submersibles. Nine comments supported the exemption as proposed. One comment opposed exempting submersibles from surface vessel PFD carriage requirements. Another suggested requiring that PFDs be worn on submersibles. One comment dealt with adding a definition of "recreational submersible."

The Coast Guard has adopted a revised exemption and intends to develop a definition for the term "recreational submersible" in a future rulemaking project to describe these vessels that are designed to operate on the surface or submerged. The revision will not exempt recreational submersibles from all PFD carriage requirements, but will allow use of USCG approved inflatable PFDs for commercial submersibles to meet the requirements. Recreational submersibles may alternatively carry a PFD that provides a minimum of 22 pounds of buoyancy inflated, has a means of manual inflation that can be activated with one quick and positive motion, and has an inflation chamber that is free from any leaks that can be visually detected by holding the device under water. This exemption will terminate on April 30, 1995, unless sooner superseded, rescinded or otherwise terminated.

Sailboards. Eight comments supported the exemption as proposed. One additional comment stated that a sailboard is "a pretty good flotation device" in itself. Another suggested requiring that PFDs be worn on sailboards. Three opposed exempting sailboards from carrying PFDs.

The Coast Guard acknowledges that sailboards float, just as do surfboards, inner tubes, and motorboats meeting the level flotation requirements. However, none of these items are U.S. Coast Guard approved PFDs and, despite level flotation, such motorboats are not exempt from PFD carriage requirements. The Coast Guard has decided to formally exempt sailboards from Federal PFD carriage requirements, thus allowing each State to decide whether or not PFDs should be worn and/or carried on sailboards based on climate and navigation conditions within its boundaries.

Foreign competitors. Ten comments supported the exemption as proposed. One additional comment suggested requiring use of the foreign country's approved PFD instead of a blanket exemption from Coast Guard requirements. Two comments opposed exempting foreign competitors due to the unfair advantage they would have over U.S. competitors wearing PFDs.

The Coast Guard agrees with the concerns expressed and has revised the exemption to include the competitor's use of the sponsoring foreign country's accepted flotation devices.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The total effect of this rule on the economy will not result in annual costs of \$ 100 million or more, therefore, a full Regulatory Impact Analysis is not required. A Regulatory Evaluation has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**.

The Coast Guard has not compiled its own statistics on the number of vessels carrying only Type IV PFDs to meet the Federal PFD carriage requirements. However, based on the results of a national boating survey conducted by the American Red Cross under a Coast Guard grant and published in 1991, at least 60 percent of the individuals operating vessels under 16 feet in length reported wearing a PFD all or some of the time. This indicates that perhaps 40 percent of those surveyed carry either a Type IV

PFD or no PFD at all, or carry but choose not to wear a Type I, II, or III PFD. [41607]

Type IV PFDs (cushions) and Type II PFDs are available at many boating supply stores at a cost of about \$ 8.00 and \$ 6.00, respectively. A few comments emphasized that the true costs of purchasing "more comfortable to wear" Type III PFDs ranged from \$ 35 to \$ 120 at many boating supply stores. If 40 percent of the owners of the estimated 10 million vessels under 16 feet in length (51% of the estimated 19.5 million total number of recreational vessels) were each required to purchase 3 wearable Type II PFDs as a result of this rulemaking, the one-time cumulative cost to the public may be as high as \$ 72 million. Voluntary purchases of the more expensive types of PFDs would increase the total cost. The actual cost may be less. It may be that many owners will only need to purchase 1 or 2 PFDs, or that the Type II PFDs purchased will be less expensive than the Type IV PFDs and other wearable type PFDs currently allowed. Furthermore, the cost of subsequent replacement of unserviceable wearable PFDs should not exceed the current cost of replacement of Type IV PFDs. Therefore, the Coast Guard has not included a recurring cost in this analysis.

Statistics compiled by the Coast Guard for 1990 indicate that of 865 boating fatalities, there were 300 drowning fatalities where PFDs were not used, or where there were insufficient or no PFDs on board vessels under 16 feet in length, the category of vessels directly affected by this rulemaking. Economic research indicates that \$ 2.5 million per statistical life saved is a reasonable estimate of people's willingness to pay for safety. This figure is used to help quantify benefits of a rulemaking and in no way implies that the Coast Guard has actually attempted to set a value on a human life. Taking this into account, if as few as 6 of the estimated 300 drowning fatalities on vessels under 16 feet in length are prevented annually, the benefits of requiring the carriage of wearable Type I, II, or III PFDs on all recreational vessels will exceed the estimated one-time \$ 72 million cost within five years. The Coast Guard anticipates the annual saving of lives to continue indefinitely.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The overall impact of this rule will be to provide clearer and more appropriate requirements for carrying personal flotation devices on recreational vessels, leading to a safer recreational boating environment. To minimize the potential economic impact, the Coast Guard has chosen to tier the effective date of the wearable PFD carriage requirements by allowing two years for the boating public until May 1, 1995, (two boating seasons) and an additional year for boat rental and livery businesses until May 1, 1996 (three boating seasons), to comply with the requirements of § 175.15(a). It may have a one-time financial benefit as high as \$ 72 million to PFD manufacturers and retailers, some of which may be small entities. It will primarily impact individual recreational boaters, and boat rental or livery businesses, which also may be small entities, to a lesser extent. To the extent that small businesses are affected, the effect will be spread out over a two- to three-year period.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient

federalism implications to warrant the preparation of a further Federalism Assessment. This rule is intended to preempt State regulation and law on the same subject matter where they are not identical with it because recreational boating is a national activity and this rule provides uniform requirements for PFD carriage. However, portions of this rule are designed to provide for additional regulatory discretion by the States, where appropriate, because of special local conditions. Additionally, the National Association of State Boating Law Administrators (NASBLA) has been consulted regarding the exemption from preemption portion of this rule. A copy of the NPRM was provided to all NASBLA members and 18 responses were received from the States.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under sections 2.B.2(c) and (1) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule governs regulation of PFD carriage and use, and has no environmental consequences. A Categorical Exclusion Determination is available in the rulemaking docket for inspection or copying where indicated under **ADDRESSES**.

Regulations

List of Subjects

33 CFR Part 175

Marine Safety.

33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 175 and 181, and 46 CFR part 160 as follows:

Title 33, Code of Federal Regulations

PART 175- EQUIPMENT REQUIREMENTS

1. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. In § 175.1, paragraph (e) is added to read as follows:

§ 175.1 -- Applicability

* * * * *

(e) Seaplanes on the water.

3. Section 175.3 is revised to read as follows:

§ 175.3 -- Definitions.

As used in this part:

Boat means any vessel manufactured or used primarily for noncommercial use; leased, rented, or chartered to another for the latter's noncommercial use; or engaged in the carrying of six or fewer passengers.

Passenger means every person carried on board a vessel other than:

(1) The owner or his representative;

(2) The operator;

(3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any [41608] consideration, directly or indirectly, for his carriage.

Racing shell, rowing scull, racing canoe, and racing kayak means a manually propelled vessel that is recognized by national or international racing associations for use in competitive racing and one in which all occupants row, scull, or paddle, with the exception of a coxswain, if one is provided, and is not designed to carry and does not carry any equipment not solely for competitive racing.

Recreational vessel means any vessel being manufactured or operated primarily for pleasure; or leased, rented, or chartered to another for the latter's pleasure. It does not include a vessel engaged in the carrying of six or fewer passengers.

Sailboard means a sail propelled vessel with no freeboard and equipped with a swivel mounted mast not secured to a hull by guys or stays.

Use means operate, navigate, or employ.

Vessel includes every description of watercraft used or capable of being used as a means of transportation on the water.

3. A new § 175.5 is added to read as follows:

§ 175.5 -- Exemption from preemption.

The States are exempted from preemption by Federal regulations when establishing, continuing in effect, or enforcing State laws and regulations on the wearing or the carriage of personal flotation devices directly related to the following subject areas

within the jurisdictional boundaries of the State:

- (a) Children on board any vessel;
- (b) Operating a canoe or kayak;
- (c) Operating a sailboard; and
- (d) Operating a personal watercraft.

4. Section 175.11 is revised to read as follows:

§ 175.11 -- Applicability.

This subpart applies to all recreational vessels that are propelled or controlled by machinery, sails, oars, paddles, poles, or another vessel.

5. Section 175.15 is revised to read as follows:

§ 175.15 -- Personal flotation devices required.

Except as provided in § 175.17:

(a) No person may use a recreational vessel unless at least one PFD of the following types is on board for each person:

- (1) Type I PFD;
- (2) Type II PFD; or
- (3) Type III PFD.

(b) No person may use a recreational vessel 16 feet or more in length unless one Type IV PFD is on board in addition to the total number of PFD's required in paragraph (a) of this section.

6. Section 175.17 is revised to read as follows:

§ 175.17 -- Exemptions.

(a) A Type V PFD may be carried in lieu of any PFD required under § 175.15, provided:

- (1) The approval label on the Type V PFD indicates that the device is approved.
- (i) For the activity in which the vessel is being used; or
- (ii) As a substitute for a PFD of the Type required on the vessel in use;

(2) The PFD is used in accordance with any requirements on the approval label; and

(3) The PFD is used in accordance with requirements in its owner's manual, if the approval label makes reference to such a manual.

(b) Canoes and kayaks 16 feet in length and over are exempted from the requirements for carriage of the additional Type IV PFD required under § 175.15(b).

(c) Racing shells, rowing sculls, racing canoes and racing kayaks are exempted from the requirements for carriage of any Type PFD required under § 175.15.

(d) Sailboards are exempted from the requirements for carriage of any Type PFD required under § 175.15.

(e) Recreational submersibles are exempted from the requirements for carriage of any Type PFD required under § 175.15, provided the vessel carries for each person on board:

(1) A USCG approved inflatable PDG for commercial submersibles; or

(2) A flotation device that provides:

(i) A minimum of 22 pounds of buoyancy inflated;

(ii) Has a means of manual inflation that can be activated with one quick and positive motion; and

(iii) Has an inflation chamber that is free from any leaks that can be visually detected by holding the device under water.

This exemption will terminate on April 30, 1995, unless sooner superseded, rescinded or otherwise terminated.

(f) Vessels of the United States used by foreign competitors while practicing for or racing in competition are exempted from the carriage of any PFD required under § 175.15, provided the vessel carries one of the sponsoring foreign country's acceptable flotation devices for each foreign competitor on board.

(g) Prior to May 1, 1996, a Type IV PFD may be carried in lieu of any Type PFD required under § 175.15(a) for each person on the vessel, provided the recreational vessel is:

(1) Leased or rented to another for the latter's pleasure as part of a livery or rental

business; and

(2) Manually-propelled.

PART 181- MANUFACTURER REQUIREMENTS

7. Section 181.703 is amended by adding a new paragraph (c) to read as follows:

§ 181.703 -- PFD information pamphlet requirements.

* * * * *

(c) A manufacturer of personal flotation devices may deviate from UL standard 1123 required text, as required under paragraph (a) of this section, to provide an alternate PFD information pamphlet that reflects the PFD carriage requirements in § 175.15 for recreational vessels under 16 feet in length.

Title 46, Code of Federal Regulations

PART 160- LIFESAVING EQUIPMENT

8. Section 160.048-6 is amended by adding a new paragraph (c) to read as follows:

§ 160.048-6 -- Marking.

* * * * *

(c) A manufacturer of personal flotation devices may deviate from the marking requirements of paragraph (a)(1) of this section in order to display information that reflects the PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length.

9. Section 160.049-6 is amended by adding a new paragraph (c) to read as follows:

§ 160.049-6 -- Marking.

* * * * *

(c) A manufacturer of personal flotation devices may deviate from the marking requirements of paragraph (a)(1) of this section in order to display information that reflects the PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length.

10. Section 160.050-6 is amended by adding a new paragraph (c) to read as follows:

§ 160.050-6 -- Marking.

* * * * *

(c) A manufacturer of personal flotation devices may deviate from the marking requirements of paragraph (a) of this section in order to display information that reflects the PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length. [41609]

1. Section 160.064-4 is amended by adding a new paragraph (c) to read as follows:

§ 160.064-4 -- Marking.

* * * * *

(c) A manufacturer of personal flotation devices may deviate from the marking requirements of paragraph (a)(2) of this section in order to display information that reflects the PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length.

Dated: July 28, 1993.

W. J. Ecker, *Rear Admiral, Coast Guard, Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 93-18552 Filed 8-3-93; 8:45 am]

BILLING CODE 4910-14-M

Dates

EFFECTIVE DATE: This rule is effective on September 3, 1993, except for § 175.15(a) which will be effective on May 1, 1995.

Contacts

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Auxiliary, Boating, and Consumer Affairs Division, (202) 267-0979. A copy of this final rule may be obtained by calling the Coast Guard's toll-free Boating Safety Hotline, 1-800-368-5647. In

Washington, DC, call 267-0780.

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Content Type:

Terms:

Narrow by: -None-

Date and Time: Oct 31, 2014 04:07:39 p.m. EDT



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EXHIBIT “P”

BARRIERS

Why Don't Paddlers Participate in Outdoor Activities More Often?

	Kayakers (All)	Rafters	Canoers
<i>I don't have the time.</i>	56% ❶	56% ❶	55% ❶
<i>I don't want to spend the money on gear or equipment.</i>	17% ❷	19% ❷	16% ❸
<i>I'm not interested.</i>	17% ❸	17% ❸	19% ❷
<i>I'm involved in other activities such as team sports and fitness activities.</i>	14% ❹	13%	13% ❺
<i>I don't have friends to go with.</i>	13% ❺	14% ❺	11%
<i>I have too much schoolwork/work.</i>	13%	15% ❹	15% ❹
<i>I'm not in physical shape.</i>	9%	9%	6%
<i>There aren't places to participate in outdoor activities near where I live.</i>	9%	11%	8%
<i>I don't know how to get started, what to do, or where to go.</i>	9%	8%	8%
<i>I would rather spend free time watching TV/ movies, surfing the net, or playing video games.</i>	7%	9%	9%
<i>I'd rather spend time with friends.</i>	5%	8%	8%
<i>I don't like bugs or dirt.</i>	5%	5%	4%
<i>I don't enjoy exercise.</i>	4%	7%	5%
<i>My parents don't take me on outdoor activities.</i>	4%	4%	4%
<i>I'm worried I might get hurt.</i>	3%	3%	2%
<i>The outdoors are scary.</i>	2%	3%	1%

* What keeps you from participating in outdoor activities more?