

September 6, 2011

Mr. Jeff Hoedt
Chief Boating Safety Division (CG-5422)
United States Coast Guard
2100 Second Street, SW
Washington, DC 20593-0001

VIA [regulations.gov](http://www.regulations.gov)

RE: **Installation and Use of Engine Cut-Off Switches on Recreational Vessels
– Docket No. USCG-2009-0206**

Dear Mr. Hoedt:

The National Marine Manufacturers Association (“NMMA”), the nation’s leading recreational marine industry association, is pleased to provide these comments to the U. S. Coast Guard to its [advance notice of proposed rulemaking](#) on whether it should prepare a proposed rule that would require the installation and use of engine cut-off switches – also called **Emergency Stop Lanyards (ESLs)**. 76, Fed. Reg. 33,161 (June 8, 2011).

As the nation’s leading recreational marine industry association, NMMA represents nearly 1,300 boat builders, engine manufacturers, and marine accessory manufacturers (including ESL manufacturers). NMMA members collectively produce more than 80 percent of all recreational marine products made in the United States. Thirty-two percent of adult Americans, or 75 million people, participated in recreational boating in 2010. With nearly 16.67 million recreational boats in use nationwide, the recreational marine industry is a major consumer goods and services industry that contributed \$30.4 billion in new retail sales and services to the U.S. economy in 2010 and generates nearly 220,000 jobs nationwide.

The recreational boat industry is keenly interested in continuing to improve the boating experience. The U.S. Coast Guard and National Boating Safety Advisory Council (NBSAC) proposals that would require the installation of Emergency Stop Lanyards and their use by boaters on vessels so equipped are common sense steps toward improving the boating experience that merit further inquiry. NMMA has a number of comments and information that we offer to the U.S. Coast Guard to assist its decision on whether and how to go forward with a Notice of

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Proposed Rulemaking. NMMA would like to work with the U.S. Coast Guard to further develop and refine its ESL proposal.

I. Runaway Boats Are a Potential Hazard that Can be Mitigated with the Use of an Emergency Stop Lanyard

The U.S. Coast Guard has collected from the Boating Accident Report Database (BARD) the casualties that occurred in the last five years that may have been prevented by the use of an Emergency Stop Lanyard. However, missing in the USCG analysis are the unknown number of runaway boats that did not result in a casualty, but nonetheless lessened the boaters experience and may have put the boater, property, environment and others at risk. A runaway boat has the potential to cause property damage to other vessels, docks, navigation buoys, and also to the environment, when for example, sensitive coral reefs are in the path of the vessel. The USCG should also include in its analysis an estimate of these non-casualty incidents that could be avoided by the installation and wear of an ESL. For example, the repair of a coral reef in a marine sanctuary caused from a runaway-boat grounding could be extremely high. Data on the civil penalties and remediation costs incurred in grounding incidents should be readily available from the Office of National Marine Sanctuaries.

In addition, the USCG should investigate how insurance companies view the installation and use of ESL's. For example, we understand that in 2009 Travelers Insurance Company provided for discounts on boat and yacht insurance premiums for boaters that install and use certain ESL systems. Such a program suggests that the boat insurance industry has found that the use and wear of ESLs to be financially beneficial. The USCG should reach out to all marine insurance companies to assess the insurance industry's approach to ESLs.

II. Manufacturers Already Install ESLs

Boat and marine engine manufacturers have long recognized the benefits of emergency stop lanyards when worn by boaters. Personal Watercraft (PWC) is an excellent example of the installation and use of ESLs by manufacturers and boaters. NMMA knows from informal surveys of its members that most, if not all, boat and marine engine manufacturers were providing ESLs when appropriate. However, in order to obtain more empirical data, NMMA

[surveyed](#) its boat builders.¹ Sixty-one manufacturers were surveyed from August 4, 2011 – August 22, 2011. Collectively, they represent approximately half of the U.S. market in this category.² Over 4 in 5 manufacturers of powerboats less than 27 feet in length already equip the majority (over 90%) of their boats with ESL's. More than 3 in 5 manufacturers in this category support a Coast Guard mandate on ESL's for boats less than 27 feet in length. The majority (70% - 80%) of manufacturers consider ESL installation as having low to moderate cost and low to moderate retail value. More than 3 in 5 manufacturers have ESL usage language in their current boat manuals. The type of boat reported by respondents as most likely to *not* have an ESL installed by the manufacturer were cabin cruisers (33%) followed by fishing boats (15%).

This survey data demonstrates that there would be little additional burden placed on boat manufacturers with a new USCG ESL installation mandate, as put forth by the USCG. This is because NMMA and its members expect that the current ESLs in the market place would meet the American Boat & Yacht Council, Inc. (ABYC) A-33, *Emergency Engine/ Propulsion Cut-Off Devices (2009)* Standard. Manufacturers would still need additional time once the rule is final to ensure that owner manuals and collateral information for boat operators is consistent with and can cite to any new USCG mandate.

III. NMMA Supports the U.S. Coast Guard Incorporating by Reference the ABYC Standard

The USCG is considering mandating that manufacturers, distributors, and dealers installing new propulsion machinery and associated starting controls on a recreational vessel less than 26 feet in length ensure that the propulsion machinery or starting control is equipped with an engine cut-off switch (ESL) and a link. This equipment must comply with an industry standard that will be incorporated by reference in the regulation. NMMA strongly supports the USCG incorporating by reference the ABYC A-33 *Emergency Engine / Propulsion Cut-Off Devices* Standard. The ABYC standard is a preferred approach because it allows for a variety of devices, does not mandate one solution, and allows for future innovation. The ABYC standard will continue to adjust as new technology becomes available and as experience shows the need for new or different criteria. The USCG in future rulemakings will need to incorporate by reference the updated ABYC standard. The USCG should reserve the right in this rule to allow for an equivalent device to be approved by the USCG for installation, if for example, it meets the

¹ See NMMA Industry Statistics and Research, *Emergency Stop Lanyards (ESLs) on Recreational Boats* (Sept. 6, 2011) (attached).

² Based on new retail sales market shared with NMMA on a rolling twelve month basis through March, 2011 (the latest data available).

requirements of a newer version of A-33, but before the USCG has had an opportunity to update its regulation to reflect the new standard. This critical provision will ensure that USCG regulations do not become obsolete.

IV. Effective Date of any New ESL Mandate Should Provide Ample Opportunity for Manufacturer and Boater Education and Compliance

NMMA strongly recommends that the USCG provide ample opportunity for manufacturers and boaters to be educated about the new rule and to come into compliance with any new ESL installation and wear mandate. **NMMA supports the USCG proposal of requiring new boats manufactured on or after January 1 of the second year following the effective date of any final rule.** So, if the final rule is effective in 2012, compliance by manufacturers would be required by January 1, 2014. This additional time will allow manufacturers to include USCG mandate information in their owners' manuals and collateral information. USCG should also include a delay in the implementation date to allow individual states the opportunity to voluntarily adopt the new mandate and increase the effectiveness of the mandate. USCG should develop and execute an extensive boater education program on the new wear mandate.

V. Results of Recently Conducted Tests on Boater Use of ESL

NMMA worked with ABYC and BoatU.S. to test how long it takes for a boat operator to attach an ESL and to switch operators. The test report is an attachment to these comments.³ After compiling and analyzing the data and after discussions with both the operators and technicians, it is clear that for the randomly chosen vessels in this test that there are no time constraints in wearing a safety lanyard either during the start-up operation or while underway.

VI. ESL Installation and Wear Requirement Should Only Apply to Those Boats at Risk of an Operator Falling Overboard and Resulting in a Runaway Boat

An ESL is only effective as a risk mitigation device when there is a risk that the boat's operator could fall overboard and result in a runaway vessel. In the case of a cabin cruiser or vessel

³ *The National Marine Manufacturers Association / American Boat and Yacht Council / BoatU.S. Engine Cut-Off Lanyard Test Program, [Final Report](#) (Aug. 19, 2011).*

where the helm or cockpit area is sheltered, such an additional measure would offer little benefit. For these reasons, the USCG should look to the data to determine an appropriate cut-off point for an installation and wear requirement. The NMMA and its members support an ESL installation and wear requirement that would apply for mechanically propelled vessels less than 26 feet in length (approximately 6.3 million vessels) when such a requirement excludes cabin cruisers and those vessels that have a sheltered helm or cockpit area. NMMA also supports the additional exemption put forward by the USCG of only applying the ELS wear and installation mandate to boats with propulsion machinery capable of developing 115 pounds of static thrust or more. In addition, operators should not be required to wear an ESL when the motor is not running and there is no risk of a runaway boat.

VII. Where to Place the Duty to Install the ESL

The Coast Guard should carefully consider and define who will be the responsible party for installing an ESL when a blank boat is sold with no engine installed. The rule will need to have a provision that would make it clear that prior to the first retail sale – an affected boat must have an appropriate ESL installed. For example, if a blank boat is sold by a manufacturer to a boat dealer – then it should be the dealers’ responsibility to install an ESL system prior to the first retail sale of that boat. Requiring that the ESL be installed prior to the first retail sale allows the manufacturing and distribution marketing chain to decide who among them is in the best position to install the appropriate ESL system for the propulsion machinery installed in a particular boat.

In addition, the USCG should include a provision that prohibits tampering with an installed device. However, such a provision should also allow for an owner or dealer to repair or install an aftermarket ESL system that complies with the ABYC standard. The USCG is currently considering only that a boater maintain an existing system and would prohibit the operation of a recreational vessel if the engine cut-off switch has been disabled or removed, or does not function properly.

The USCG should be clear on what boats the ESL mandate on boat dealers will apply. For example, will it apply to --

- boats manufactured after the effective date of the rule and sold as new;
- boats manufactured after the effective date of the rule and sold as new or used; or
- boats of any date of manufacture sold either as new or used if a new propulsion system is being installed that would require the replacement of an ESL device?

Dealers must clearly understand that when a boat does not already have an ESL system (such as a blank boat) that the duty would therefore fall to the boat dealer to install the ESL prior to retail sale.

NMMA does not support the USCG imposing any mandate on manufacturers that existing boats and propulsion systems must be retro-fitted with compliant ESL devices. A retrofitting mandate would be extremely costly and difficult to manage. In addition, the usage requirement should only apply to those boats with installed systems. Boaters should not be required to purchase and install ESLs on their boats if they were not so equipped.

VIII. USCG Should Better Define the Boater Enforcement Scheme

Currently, the USCG enforcement scheme would allow for *in rem* (seizing of a vessel) actions, and a fine of up to \$1,000. Providing for an *in rem* action would be excessive and should not be imposed on boaters for the operation of a vessel without the wearing of a functional ESL device. Boaters would also be more likely to support this proposal if the fine were more clearly specified, for example, if the USCG established a set amount for a first, second, and third violation rather than just a blanket up to \$1,000 per violation.

IX. National Standard and Preemption Preferred

NMMA supports a single national standard for ESL installation and wear. All boat and associated equipment should be only subject to a single federal rule. This allows for manufacturers to comply with equipment mandates in the most efficient and cost effective manner. As a general matter, the states do not have the technical expertise to evaluate boat and associated equipment mandates. In addition to a single national installation mandate, NMMA supports a single national mandate for ESL wear by boaters. This mandate would therefore preempt State laws on waters subject to the jurisdiction of the United States that are not identical to any federal rule resulting from this rulemaking. National consistency on an ESL mandate will greatly improve the ability of boat educators and manufacturers to get the word out to boaters. States would not be required to enforce this mandate unless they took it upon themselves to enact the same legislation in their own state.

X. USCG Sought Data on Documenting the Number of Trips for Recreational Vessels or Recreational Vessel Use Rates by Vessel Types

The USCG asked if there are any additional sources documenting the number of trips for recreational vessels or recreational vessel use rates by vessel types. NMMA has provided the USCG access to its extensive *2010 Recreational Boating Statistical Abstract* that provides much of the information required by the USCG. Boats in the U.S. were used an average of 28 days in 2010. Boat use varied by boat size and type. Boats between 14 feet and 29 feet were on the water an average of 28 days in 2010. In addition, boats less than 14 feet were on the water an average of 22 days per year. NMMA's data is found in table 1.17k, *Boat use: Average number of days operated by boat type and size* and also breaks down use by types of boats, and regions.

XI. Summary

NMMA looks forward to working with the Coast Guard on further developing its proposal to require the installation of Emergency Stop Lanyards and their use by boaters on vessels so equipped. These common sense steps can improve the boating experience and merit further inquiry.

Sincerely,



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Chief Counsel for Public Affairs, Director of Regulatory Affairs
National Marine Manufacturers Association

Attachments:

NMMA Industry Statistics and Research, *Emergency Stop Lanyards (ESLs) on Recreational Boats* (Sept. 6, 2011).

The National Marine Manufacturers Association / American Boat and Yacht Council / BoatU.S. Engine Cut-Off Lanyard Test Program, Final Report (Aug. 19, 2011).