

November 9, 2007

Secretary Michael Chertoff
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Chertoff:

I am writing on behalf of the National Marine Manufacturers Association (NMMA) to ask for further information about recent reports that the Department of Homeland Security (DHS) and the United States Coast Guard (USCG) have plans to dramatically change the way recreational boaters can use our nation's waterways and to request a meeting to discuss these plans.

This nation has a long tradition of recognizing the fundamental public right of navigation for vessels of all kinds, including small boats, to navigate for commercial and recreational purposes on our nation's waterways. Small boats are not "threats" or "vectors," but the vessels of average Americans enjoying their right to use the public waterways to fish, sail, cruise, travel, commute to work, and conduct business. While we recognize and firmly endorse the need to protect our borders and ensure the security of important sites (such as nuclear power plants or liquefied natural gas facilities) it is imperative that we as a nation do not forget that the public has a right to use our waters. That right should not be infringed upon lightly or unnecessarily.

NMMA has a history of working closely with the U.S. Coast Guard in a number of ways including boating safety. In that spirit, we recently committed to assist DHS in promoting the America's Waterways Watch Program, thereby increasing the number of eyes and ears on the water to report suspicious activity and potential threats. Therefore, we were quite surprised by recent press reports that DHS plans to implement a security operation directed at recreational boaters.

In our past discussions with the U.S. Coast Guard, we were told that DHS wanted to require education of all boat operators. Specifically, the USCG proposed legislation to allow it to promulgate regulations for a new federal requirement that all boaters complete a boater education course and demonstrate "operator proficiency." NMMA recognizes that a boater who passes a boater safety education course will have an enriched boating experience, and urges all boaters to take a boater safety education course. NMMA supports state laws and regulations that require all boaters to complete a National Association of State Boating Law Administrators certified course so long as it is conducted in a manner that ensures that boaters will have easy access to the course, that there is reciprocity among the states, and that experienced boaters can bypass training requirements if they pass the same test offered to those who take a course. NMMA does not support the creation of a new boater's *license* or a *requirement* for on-water proficiency training or testing.

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We also understand that the Coast Guard is seeking authority to require boat operators to carry an already existing identification card, such as a state issued driver's license, to verify that the boat operator's boater education certificate was issued to the person presenting it to authorities. We were also told that DHS has determined that the Coast Guard cannot request identification from boaters during a routine vessel stop. We are surprised that the DHS feels the need for additional authority in this area. Coast Guard and Customs officials have long been recognized as having extremely broad authority to stop, board, and search vessels without any particularized suspicion of wrongdoing or a warrant. *See* 14 U.S.C. § 89(a) and 19 U.S.C. § 1581(a). These laws already allow the Coast Guard to examine documents and conduct safety inspections of a vessel at any time.

More recently, a CongressDaily article from October 19, 2007 and a USA Today article on October 30, 2007 have reported that DHS and USCG plan several changes, including efforts that would:

- Require state boater-education course curricula to include security protocols such as avoiding cruise-ship terminals and military facilities;
- Seek a new federal requirement that all boat operators carry identification so they can be added to a database of boaters stopped and interviewed in restricted areas;
- Establish additional surveillance, monitoring and information systems to better oversee recreational boats, small ferries and fishing boats;
- Screen and inspect small boats for bombs;
- Begin much more robust screening and inspection of small boats, including in particular two pilot programs for the detection of radiological and nuclear material on small boats that has already begun in Seattle and will shortly begin in San Diego.

These press reports leave unanswered a number of questions. What would be the purpose and use of a database of boaters who are found in restricted areas and who would have access to these data? Where are the restricted areas, how big are they and how will boaters know where they are? How will this data be collected? What would the penalty be for a boater's failure to have identification on hand? Will boaters be routinely subjected to requests for their identification documents when on a Sunday outing? Will boats and their occupants be subject to searches during these stops and how long will they take? Will identification be required of all occupants or only the boat operator? Will the proposed surveillance, monitoring, and information systems restrict boaters' movements on the waterways of the country? Will there be a cost to boaters or manufacturers for these systems? Will the Department seek legislation to create these new initiatives?

It is NMMA's strongly held view that plans to address small vessel security by the USCG, DHS or the states should balance national security with the needs of boaters to exercise their rights to unobstructed access to America's waterways. The test for any new small vessel security proposal should be whether it can be demonstrated to *effectively* improve security without *unreasonably* impeding the boaters' use of our nation's waterways. We look forward to future discussions with you on this important matter.

The NMMA is the nation's largest recreational marine industry association, representing nearly 1,700 boat builders, engine manufacturers, and marine accessory manufacturers. NMMA members produce an estimated 80 percent of the marine products used annually by 73 million recreational boaters in the United States. The recreational boating industry is a substantial contributor to the nation's economy with expenditures on recreational marine products and services of approximately \$39.5 billion in 2006 alone.

I ask on behalf of the recreational boating industry that you respond to these questions. I also request a meeting with DHS and Coast Guard to discuss these proposals. Please contact Cindy Squires, Esq., Chief Counsel for Public Policy and Director of Regulatory Affairs (202-737-9766; csquires@nmma.org) to schedule this meeting. We look forward to working with DHS and the Coast Guard to ensure that the safety of our shores while ensuring that Americans can retain their right to use our public waterways to use their boats to fish, sail, cruise, travel, commute to work, and conduct business.

Sincerely,

A handwritten signature in blue ink that reads "Scott B. Gudes". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Scott B. Gudes
Vice President, Government Relations

CC:

Commandant ADM Thad Allen, United States Coast Guard