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AN ASSESSMENT OF MANDATORY PFD WEAR REQUIREMENTS
National Marine Manufacturers Association • July 2004

The National Marine Manufacturers Association (NMMA) appreciates the opportunity to engage in the National Transportation Safety Board's consideration of mandatory wear of personal flotation devices (PFD). NMMA extends its gratitude to NTSB for its commitment to recreational boating safety and its willingness to hear the perspectives of various stakeholders interested in maximizing boating safety.

The National Marine Manufacturers Association is the nation's largest recreational marine industry association, representing over 1,500 boat builders, engine manufacturers, and marine accessory manufacturers, including personal flotation device manufacturers. Our members collectively produce more than 80 percent of all recreational marine products made in the United States. With nearly 13 million registered boats and almost 72 million boaters nationwide, the recreational boating industry contributes \$30 billion annually to our nation's economy.

Across the country, more and more Americans are turning to our nation's waterways for enjoyment and relaxation. Recreational boat sales are up, boat registrations have steadily increased, and trends show that Americans have renewed interest in outdoor recreation, particularly on our oceans, lakes, and rivers. Now more than ever, partnerships between industry and government are crucial to sustaining this momentum while ensuring that the American boating public can safely enjoy our waterways.

NMMA has a long tradition of supporting recreational boating safety and is proud of its many positive relationships with the U.S. Coast Guard, NTSB, National Association of State Boating Law Administrators (NASBLA), National Safe Boating Council (NSBC) and numerous other boat safety groups all committed to reducing boating accidents, injuries, and fatalities. NMMA, however, does not support state or federal efforts to require mandatory PFD use for adults for non-personal watercraft. There are four key reasons why a mandatory PFD requirement is not optimal at the present time: (1) a law by itself cannot ensure compliance; (2) available resources should be focused on increasing the public's awareness for the need to wear a PFD while boating to increase voluntary use; (3) efforts to enforce a new mandatory wear law will divert resources from other, more productive efforts, such as awareness campaigns and mandatory boater safety education which can reach a far greater proportion of boaters; and (4) several alternatives to mandatory wear, if implemented effectively, could reduce boating accidents and fatalities without the risk of turning many potential enthusiasts away from recreational boating and toward less restrictive recreational alternatives.

A COMMITMENT TO BOATING SAFETY

NMMA and its members are fully committed to making boating a safe and enjoyable outdoor recreational activity for the American public. To that end, NMMA and its members have long supported mandatory boater education, public awareness and educational campaigns about boating safety and PFD wear, stricter boating while intoxicated (BWI) laws and enforcement, mandatory PFD wear on personal watercraft (PWC), and state laws mandating wear for children under 13 while on deck of a recreational marine vessel underway. In states without laws mandating PFD wear for children under 13, NMMA fully supports the Coast Guard's final rule, published July 30, 2004, that requires children under 13 to wear a personal flotation device while on deck of a recreational marine vessel underway, which will take effect August 30, 2004. Although NMMA also supported the 2002 interim rule on mandatory wear for children under 13, we believe the final rule clarifies the application and enforcement requirements for states and the Coast Guard. NMMA is optimistic that the final rule will reach its goal of reducing "the number of children who drown because they are not wearing PFDs."¹ Marine manufacturers have also committed to a self-imposed policy that children featured in boat advertisements will be wearing a life vest.

NMMA also supported two resolutions that promote boating safety passed April 27, 2004 by the National Boating Safety Advisory Council (NBSAC).² The first resolution advises the U.S. Coast Guard to seek statutory authority to impose and enforce a requirement that boat operators prove they completed a NASBLA-approved instructional course when boating in waters under U.S. jurisdiction. The resolution springs from the 2002 National Recreational Boating Survey Report finding that 65 percent of boat operators have never taken a boating safety course.³ NMMA will support the Coast Guard in its lobbying efforts to enact the necessary legislation. The second NMMA-backed resolution requests that the Coast Guard convene "a working panel consisting of interested parties, such as PFDMA (PFD Manufacturers Association, an NMMA affiliate), boat manufacturers, retailers, state enforcement agencies, media, and boating education groups to initiate industry-wide cooperation in promotion of wear of PFDs while boating." The resolution also calls for "the implementation of the PFD Pledge for children, adults, boat manufacturers and retailers (dealers) [to] be included in all promotional efforts for boating safety" and "agreements to show PFDs in all marketing materials, point of sale information, outreach programs, and web based information." The resolution includes a measurable goal for PFD usage by boaters of 44 percent by 2007. NMMA is confident that through the collective will and cooperation of industry, government, and boating safety groups, voluntary use of PFDs can be markedly increased and lives can be saved.

BOATER EDUCATION AND INCREASING AWARENESS

Overwhelmingly, boating accidents and fatalities are linked directly to operator error and collisions. NMMA is concerned that a mandatory PFD requirement would divert attention away from the fundamental issue, which is the need for all boaters to be educated on proper boating safety prior to going out on the water. The National Recreational Boating Survey conducted by

¹ 69 Fed. Reg. 45589 (July 30, 2004).

² The National Boating Safety Advisory Council was created by a federal law in 1971 that requires the Coast Guard to consult with the Council in prescribing federal regulations, and regarding other major boating safety matters. NMMA Vice President of Government Relations Monita Fontaine is a voting board member of the Council.

³ Strategic Research Group, 2002 National Recreational Boat Survey (Columbus, OH: Strategic Research Group, Nov. 30, 2003), at iii.

Strategic Research Group (SRG), which indicated that more than 65 percent of boat operators have never taken a boat safety course, also revealed that 15 percent have not taken a safety course within the past 15 years.⁴ NMMA strongly supports boating education for all boaters and believes that states should take necessary actions to implement NASBLA-approved boating safety courses. NMMA agrees with the Coast Guard's conclusion based on its 2002 Boating Statistics Report that boat operators "need to pay attention to the capacity label on their boat and be careful not to overload small boats (less than 20 feet) with passengers and/or gear."⁵ This conclusion is based on data which showed that capsizing and falls overboard account for 56 percent of all boating fatalities.⁶ Finally, the Coast Guard has concluded that overall, "operator inattention, carelessness/reckless operation, operator inexperience, and excessive speed are the leading contributing factors of all reported accidents."⁷ Clearly, increasing wearage of personal flotation devices will reduce the impacts resulting from operator inattention, error, or recklessness. But even if the government mandates wear for all adults, boat collisions, falls overboard, and other incidents will still occur. This is a problem that can and should be addressed at its source—reducing the incidents which cause boating injuries and fatalities will consequently reduce injuries and fatalities. Simply mandating PFD wear does nothing to reduce the boating incidents which cause the tragedies.

An educated boater is a safe boater. Even as boating participation has risen dramatically over the last decade, boating-related fatalities have steadily declined. According to a NASBLA report which reviewed available data, "recreational boating safety programs nationwide have been responsible for this decrease."⁸ While approximately 700 boating fatalities in 2003 is still unacceptably high, it should be noted that boating safety course requirements are inconsistent across states, with some suffering from weak curricula and others simply challenged by a lack of resources. Pervasive under-funding due to fiscal constraints in states across the country has resulted in a lack of educational resources, such as boating handbooks, safety materials, and teaching personnel.⁹ To make boater education work more effectively, NMMA supports consistency in course requirements through a NASBLA-approved boating safety course certification program, which should be implemented in all states. NMMA also believes that sufficient levels of funding should be provided by federal, state, and local governments in order to make education work as well in all states as it has in those which have provided adequate resources.

The need to increase knowledge and awareness of new, more comfortable PFD designs is critical to increasing voluntary wear by adults. The least likely time for a boater to wear a PFD is while fishing.¹⁰ Because recreational angling is the most popular activity on the most commonly operated boat, the open motorboat, it is incumbent on those interested in increasing PFD wear, including NMMA, to develop targeted strategies that encourage this segment of the boating population to wear personal flotation devices. A common apprehension about wear is

⁴ Id.

⁵ U.S. Department of Homeland Security, U.S. Coast Guard, Boating Statistics -- 2002 (Washington, DC: United States Coast Guard, 2003).

⁶ Id at 29.

⁷ Id.

⁸ National Association of State Boating Law Administrators, Saving Lives and Preventing Accidents: An Assessment of State Recreational Boating Safety Program Needs for the 2003 Reauthorization of the Aquatic Resources (Wallop-Breaux) Trust Fund (Lexington, KY: National Association of State Boating Law Administrators), at 1.

⁹ The funding shortfalls and resource constraints for broad range of state boating safety programs including education are clearly documented in a 2003 report by NASBLA, cited above.

¹⁰ SRG at vi.

that PFDs are cumbersome and impede the ability to fish. Notably, only 6 percent of operators of open motorboats report wearing inflatable PFDs, which substantially increase comfort of use and reduce impediments to water activities like fishing. Increasing awareness of new technologies among targeted groups like recreational anglers would go a long way toward increasing PFD use and reducing accidents on the water. A study conducted by Responsive Management for BOATU.S. offers several potentially effective messages which would communicate the need for boating safety and for PFD use among hunters and anglers.¹¹

NMMA strongly believes that boater education and effective educational campaigns will be more effective in reducing boating-related fatalities than a mandatory wear law. A key success often referenced by mandatory PFD proponents is the high rate of use among personal watercraft operators, which is 97 percent according to one study.¹² The prevailing explanation in boating safety circles for the high PFD usage rates among this segment of the boating population is that wear is required by law. Certainly, the legal mandate motivates some PWC operators to don a life vest, but it should be noted that there had been broad voluntary PFD use among PWC operators before mandatory use laws were enacted. To claim that legal mandates have been an overwhelming force in changing behavior in this instance would be incorrect and would negate the crucial differences between operating a personal watercraft and a 16-foot or larger motorboat. PWC users feel a sense of personal risk and often expect to be thrown off the vessel, an expectation which motivates them to wear a PFD. This behavior is paralleled by the high rate of PFD use among canoe and kayak operators (95 percent), who feel a similar urge to don a PFD despite there being no legal requirement to do so.¹³ Like PWC operators, their proximity to the water and proclivity to take greater risks motivates them to wear a PFD. Unless those operating larger boats are persuaded through effective awareness campaigns that they, too, face risks on the water, they will likely ignore any legal requirement and simply hope they do not encounter a marine patrol officer during their outing. Because this educational campaign is necessary in a world with or without a mandatory wear requirement, it seems prudent to first expend what few resources are available to federal, state, and local law enforcement to get the word out more effectively about safety. Positive efforts are now being made by the Coast Guard with its “You’re in Command” program. Several states are on track with compelling awareness campaigns. The Personal Flotation Device Manufacturers Association also continues its strong outreach efforts to increase voluntary use. These and other efforts should be given sufficient time to work prior to any new regulation.

MANDATORY WEAR FOR ADULTS IS NOT THE ANSWER

Public Opposition

The American boating public largely opposes any effort by the government to mandate PFD wear among adults. Only 16.1 percent of more than 25,000 boat operators surveyed strongly agree and only 27.3 percent agree that mandatory PFD laws are necessary—55 percent disagreed with the idea.¹⁴ In addition, one study indicates that hunters and anglers negatively reacted to the suggestion that PFD wear should be mandatory, although “both groups were very positive

¹¹ Responsive Management, “Hunters’ and Angler’s Attitudes toward Boating Safety, the Use of Personal Flotation Devices, and the Various Messages that Communicate the Benefits of Wearing a Personal Flotation Device: Focus Group Results” (Harrisonburg, VA: Responsive Management, Nov. 2001), at ii.

¹² Philip Groff and Jennifer Ghadiali, Will it Float? Mandatory PFD Wear Legislation: A Background Research Paper (Toronto, ON: SMARTRISK, 2003), at 52.

¹³ *Id.*

¹⁴ SRG at 6.

about campaigns that endorsed hunters and anglers to wear PFDs” and that “hunting and fishing professionals and role models demonstrating PFD use could promote and increase the use of PFDs.”¹⁵ Moreover, hunters and anglers “suggested that a law requiring mandatory PFD use might be resented and even discourage PFD use.”¹⁶ Hunters specifically expressed the notion that any effort at “legal coercion” would simply motivate them to reject wearing a PFD on principle.¹⁷ It should be noted, however, that while boaters generally oppose mandatory PFD wear laws, they overwhelmingly support a broad range of efforts to improve boating safety. For example, 92 percent of boaters support more enforcement of BWI laws, 90 percent support cracking down on reckless boaters, and 74 percent support requiring boaters to pass a competency test.¹⁸ Although mandatory wear proponents point to successful behavioral changes resulting from the introduction of mandatory seatbelt and helmet laws despite public opposition, the comparison to boating is less than apt. It is important to remember that boating is an elected leisure activity, not a forced choice like driving. Mandatory helmet laws for children on bicycles are analogous to mandatory PFD wear laws for children, which have been embraced by the boating community as well as by NMMA. But there should be no expectation that boaters will simply embrace PFD wear because it becomes law, particularly if that law is demonstrated to be unenforceable. The power of closely-held beliefs of personal freedom should not be underestimated. Personal choices about acceptable levels of risk are inevitable no matter what laws exist—the focus should be on enhancing the capacity for *informed* personal choices.

Enforcement

Strong enforcement is essential to the regulatory system. A serious obstacle to any effort to legally mandate the wear of personal flotation devices is the ability to enforce such a requirement. In the best case scenario, the American boating public would need to acquiesce fully to the mandatory wear requirement and follow the law in good faith. There is no indication, and certainly no evidence, that the public will do so. In fact, available evidence points to a contrary outcome. In order to encourage the public to comply with the law, the United States Coast Guard, boating safety groups, and other relevant agencies would need to mount a serious, long-term public education campaign that the new requirement exists and that enforcement will be pursued aggressively. They would need also to demonstrate the capacity to enforce the law. Because funds are scarce, this publicity effort will likely divert resources from the overarching need to persuade recreational boaters that it is in their best interests to wear a PFD. Many boaters may feel alienated by the law, and many will react negatively to efforts to enforce it. Cooperation from boaters is paramount. Legislating mandatory wear may not simply be ineffective, it may be counterproductive, particularly if it results in increased intransigence from the very public for whom the law is intended to protect.

Moreover, without a concomitant increase in law enforcement capacity to enforce mandatory wear requirements—a daunting task considering the vast expanse of American waterways—boaters will likely dismiss the new regulation and gamble that they will not encounter local marine law enforcement or the Coast Guard. Unless Congress and states across the nation are willing to dedicate the financial and technical resources to pursue enforcement of this regulation, then currently available resources should be used to persuade the public to boat safely of their own volition, something which requires *no* enforcement.

¹⁵ Responsive Management at ii.

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 11.

¹⁸ Elaine Dickenson, “Survey Paints Boating’s Portrait,” BoatU.S. Magazine, July 2004, at 16.

RECOMMENDED ALTERNATIVES TO MANDATORY WEAR

NMMA feels strongly that effective alternatives to mandatory wear requirements exist. Indeed, many of these alternatives, if implemented correctly, likely will be more effective than any federal-level rulemaking or legislation. Some examples include:

Mandatory Boater Education. According to the Coast Guard’s 2002 Boating Statistics report, “approximately 80 percent of all reported fatalities occurred on boats where the operator had not received boater safety instruction.”¹⁹ The correlation between boating-related fatalities and inexperienced or uneducated boaters is well-documented and powerful evidence for the need to strengthen boating safety courses nationwide. NMMA believes this—not mandatory PFD wear and the resources spent to enforce it—should be the top priority for boating safety professionals, federal, state and local agencies, and industry. Nationally, states are trending towards imposing mandatory licensing and boater safety education. In 1988, for example, no states had any such requirements. Today, 38 states have mandatory boater education requirements, and five have mandatory licensing. The remaining eighteen states and territories should be encouraged to implement similar requirements.

Reducing Alcohol Consumption While Boating. Alcohol was directly involved in nearly 40 percent of boating accidents and related fatalities in 2002, according to the Coast Guard.²⁰ The dangers of drinking while boating are widely known to boat safety experts and officials. Aggravating factors associated with the marine environment, such as wind, sun, noise, vibration, and motion, mean that “only a third of the amount of alcohol that makes a person legally impaired on the road is sufficient to make a person equally impaired on the water.”²¹ Efforts to strengthen BWI laws in states and to increase enforcement would help reduce these highly preventable deaths.

Increasing Boater Awareness of Risks. As has been mentioned, operators of motorboats seem to be unaware of some of the risks associated with reckless or inexperienced boating. An observational study conducted for the Coast Guard, however, concluded that many adults increase PFD use when they perceive increased risk, such as poor visibility, rough waters, or bad weather. NMMA fully agrees with the conclusion based on this study that future educational campaigns should “feed into adult perceptions about risk.”²²

Promotion of New Technology PFDs. Changing boater perceptions about PFDs is central to the task of increasing usage. Most boaters are either unaware of or unconvinced by new, more sophisticated PFD technologies developed by industry. Despite dramatic PFD design and materials improvements, most boaters still claim that PFDs are uncomfortable, unwieldy, and unfashionable. For example, one study “found that nearly four in five recreational boaters were not even aware that new PFDs had been approved.”²³ In the best case scenario cited in the Canadian study, nearly half of recreational boaters surveyed had no knowledge of new PFD

¹⁹ USCG at 6.

²⁰ Id.

²¹ SMARTRISK at 33.

²² JSI Research and Training Institute, Inc., National PFD Wear Rate Observational Study, 2003 with Comparison Data from 1998 to 2002 (Boston, MA: JSI Research and Training Institute, 2003), at 46.

²³ SMARTRISK at 62.

designs. Simply making people aware of belt packs, inflatables, and other sophisticated PFDs, in conjunction with educating them about safety issues, would lead to increased use. But education should not be limited simply to traditional advertising media. PFDMA has worked tirelessly to increase the visibility of new, attractive, and functional PFD technologies at boat shows across the country and will continue to do so for the nearly one million boaters and prospective boaters that visit NMMA consumer boat shows each year. If similar efforts are initiated at the additional 300 non-NMMA boat shows held annually, that audience expands to nearly four million. Another potential avenue for increasing PFD awareness involves boat retailers entering into cooperative agreements with PFD manufacturers and retailers in order to feature life vests on showroom floors. PFDs designed for specific vessels, modeled on the highly successful marketing tool utilized by PWC manufacturers, may also be a valuable way to encourage more boaters to wear PFDs.

Continued Research and Development of “Wearable” PFDs. Several boat safety experts and professionals have innovative ideas for developing even more sophisticated personal flotation devices.²⁴ NMMA feels strongly that funds should be allotted to continue to improve PFD technologies in an effort to increase both their functionality and appeal to boaters.

Strong, Effective Law Enforcement of Existing Laws. NMMA supports strong, effective law enforcement to deal with the minority of boaters who do not obey the laws of the waterways. The resources currently devoted to on-water enforcement have become severely stressed in recent years. Despite the significant growth of boating participation over the past 10 years, very few jurisdictions have increased their on-water law enforcement capability to match this growth. In fact, the opposite is more common; jurisdictions have cut resources for on-water enforcement. Increasing the number of marine patrol officers nationwide would result in safer boating. Almost every jurisdiction has laws which, if enforced, would greatly reduce accidents and conflicts. Many agencies are finding enforcement of existing laws difficult due to reductions in resources. Passing additional laws without a concomitant increase in law enforcement resources is not the solution at the present time and may simply stress many already strapped jurisdictions even further.

“Learn to Swim” Programs for Children. Although the SRG Survey indicates that boaters unable to swim were “significantly more likely to have worn PFDs all or most of the time compared to boaters who know how to swim,”²⁵ increasing the number of boaters capable of swimming would likely reduce the number of drownings resulting from boaters falling overboard. Research prepared for the Canadian Safe Boating Council indicates that “intervention in boating [behavior] which could impact drowning rates include increasing swimming ability,” among other things, including increasing PFD use and decreasing alcohol consumption while boating.²⁶ NMMA supports increasing voluntary PFD use and decreasing alcohol consumption while boating as well as efforts to broaden swimming instruction. According to the World Health Organization, improving swimming ability at a young age could reduce the likelihood of drowning and water-related injuries. The report references preventative programs established by Sportsmart Canada and widespread education that “decreased the

²⁴ For example, see Chuck Husick’s article on a watch-sized buoyancy aid in the July 2004 edition of BoatU.S. Magazine.

²⁵ SRG at vii.

²⁶ SMARTRISK at 9.

incidence of water-related injuries substantially between 1989 and 1992.”²⁷ Reaching children at an early age may increase their consciousness about the dangers of reckless behavior on the water and reduce their level of risk taking later in life. Generally, water-safety skills and swimming lessons have been associated with “significant reductions in drowning fatalities.”²⁸

NMMA applauds the efforts of the National Transportation Safety Board and the U.S. Coast Guard to address the safety challenges facing recreational boaters. NMMA and its members will enthusiastically support effective safety measures that balance the rights of boaters and reduce boating accidents and related fatalities and injuries. NMMA appreciates the opportunity to submit this paper to the National Transportation Safety Board and looks forward to participating in the forum. Please contact Mathew Dunn at 202-737-9760 or mdunn@nmma.org if you require any additional information or have any questions.

Respectfully submitted,



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²⁷ United Nations, World Health Organization, Guidelines for Safe Recreational Water Environments, Vol. 1: Coastal and Fresh Waters (Geneva, Switzerland: World Health Organization, 2003).

²⁸ United Nations, World Health Organization, Facts about Drowning (Geneva, Switzerland: World Health Organization), at www.who.int/violence_injury_prevention/.