National Marine Manufacturers Association

November 25, 2011

VIA REGULATIONS.GOV

Rear Admiral James. A. Watson
U.S. Coast Guard, Director of Prevention Policy (CG-54)
2100 Second Street, SW
Washington, DC 20593-0001

RE: Recreational Vessel Propeller Strike and Carbon Monoxide Poisoning Casualty Prevention – ANPRM – Docket No. USCG-2011-0497

Dear Rear Admiral Watson:

NMMA is pleased to provide comments for the U.S. Coast Guard's (USCG) recently issued Advanced Notice of Proposed Rulemaking (ANPRM) seeking input on how best to prevent recreational boating casualties caused by propeller strikes and carbon monoxide (CO) poisoning. 76 Fed. 5334 (Aug. 26, 2011). The USCG is seeking comments on a host of specific measures including reboarding ladders and interlocks that are intended to protect recreational boaters in the water near the stern of a recreational vessel. In addition, the Coast Guard is seeking additional ideas, specific data, and other facts related to these casualties to help guide it in selecting the best course of action to guide further action on these issues.

I. Boating Is a Safe and Fun Activity

The Coast Guard and its many partners are to be commended for the excellent record of boating safety. Boating safety has steadily improved over the last 25 years resulting in most boaters having a fun and uneventful day on the water. Of the 231.5 million adults living in the United States in 2010, 32.4 percent, or 75 million people, participated in recreational boating. This is the highest proportion of participation in recreational boating since 1999, when 33.4 percent of adults went boating.[1] The 75 million boaters on the water in 2010 represent an increase of 14 percent compared to the recessionary year of 2009, during which 65.9 million participated in boating. There are nearly 13 million registered boats and nearly 16.67 million boats in the water. In 2010, the Coast Guard counted 4,604 recreational boating accidents that

[1] These numbers are from NMMA's 2010 Statistical Abstract. The U.S. Coast Guard estimates participation at a slightly higher number of 82.1 million people. The NMMA numbers are lower in that they reflect only adult participation (over 18 years of age) numbers. 76 Fed. Reg. at 53,365.

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involved 672 deaths and 3,153 injuries. According to the Coast Guard Recreational Boating Statistics, the fatality rate was 5.4 deaths per 100,000 registered recreational vessels, a decrease of 6.9% from last year's rate of 5.8 per 100,000 vessels. This is a continuation of the welcome long-term downward trend since 1987 when there were 1,036 fatalities -- a rate of 10.4 per 100,000 vessels.

II. ABYC Standards and NMMA Certification Contribute to Boating Safety

Even with these impressive statistics, it is important to continue to seek ways to better educate the public about boating safety, to help the public use safe boating practices, and to ensure that boats and associated equipment are designed and constructed with safety in mind. One important way that NMMA assists with the latter is through its Boat & Yacht Certification Program. NMMA certifies to the Coast Guard requirements and then add a number of American Boat and Yacht Council (ABYC) standards. Every year new ABYC standards are reviewed for inclusion in the NMMA Certification Program.[2]

The NMMA Boat & Yacht Certification Program helps manufacturers ensure their boats are built to applicable standards set by the ABYC and informs the public of such compliance. The program requires boat manufacturers to submit applications for all models, and to undergo an annual physical inspection by an NMMA inspector. To achieve Certification, a manufacturer must demonstrate that all variances found during the inspection have been corrected. The manufacturer is responsible for ensuring that all production units are manufactured in compliance with the certified design. Program participants must certify all recreational models (except racing craft) marketed in the U.S.A. for non-commercial use.

NMMA Boat & Yacht Certification is a valuable addition to boating safety. However, it does not apply to all boats manufacturered and imported into the United States. This is why it is important for the Coast Guard to periodically review its regulations to determine if they have become outdated and if there are additional measures that have been field tested and are ripe

[2] *See* for example this list of the ABYC standards slated for inclusion in the 2012 Model Year -- http://nmma.net/assets/cabinets/Cabinet454/2012%20ABYC%20Handbook%20Index.pdf.

to consider for inclusion in the Coast Guard mandates. The Coast Guard has the power to drive this process by carefully analyzing its Boating Accident Reporting Data, sponsoring technical and human factors research, and using this information and its non-profit boating safety grant funds to support the development of new ABYC standards. Importantly, by relying on the standards development process to pursue new manufacturing requirements, the Coast Guard can comply with the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note), which directs agencies to use voluntary consensus standards in their regulatory activities unless inconsistent with applicable law or otherwise impractical. In addition, such an approach is supported by Strategy 7.4 of the Strategic Plan of the National Recreational Boating Safety Program (2012-2016) (Conduct and support research to identify new products, new designs or new safety standards that would reduce boating injuries or deaths).

III. The Coast Guard Must Determine if Accidents or Fatalities Would Improve if any Proposed New Measure is Adopted

Before moving forward on any specific new measure, such as mandating a longer reboarding ladder depth, requiring interlocks or other measures, the USCG must first do a detailed analysis of the Boat Accident Reporting Data to see how many accidents or deaths involve the *specific fact pattern* being targeted. Only then can the Coast Guard determine which accidents or fatalities may have been avoided had a particular measure been implemented. Once armed with that data, the Coast Guard can determine if a particular measure should be encouraged by supporting the study and development of voluntary consensus standards to address that measure, and then decide whether the number are sufficient to warrant a U.S. Coast Guard mandate that incorporates to the extent possible any voluntary consensus standards. The Coast Guard can be a catalyst toward improving safety by funding such work and then updating its regulations to incorporate, when appropriate, field-tested consensus-based standards.

IV. The Coast Guard in on the Right Track with the Reboarding Ladder Project by Focusing First on Supporting Critical Data Collection and Standards Development

One of the items under consideration by the USCG in this rulemaking is a possible requirement to use "longer boarding ladders"[3] on new recreational vessels. According to the Coast Guard --

[3] A more accurate description would be a "deeper reboarding ladder."

> "[a] longer boarding ladder than what is currently used on most recreational vessels would make it less likely that the person boarding the vessel would use the lower unit in order to reach the ladder. …[I]f the propeller is spinning while a person is attempting to use the lower unit as a step, the person may either step directly onto the spinning propeller or slip off the lower unit of the propulsion system and fall onto the spinning propeller resulting in severe injuries and possibly death." 76 Fed. Reg. at 53,368.

The Coast Guard has asked for comments on requiring the use of deeper reboarding ladders. The USCG cited the American Boat and Yacht Council (ABYC) proposed revision to *ABYC Standard H-41-Reboarding Means, Ladders, Handholds, Rails, and Lifelines*, that would address deeper ladders. This proposed revision is under consideration by ABYC because the Coast Guard funded a Non-Profit Boating Safety Grant to study whether increasing the ladder depth would result in a reduction of incidents where boaters' limbs are placed in the area of influence of the propeller and if it would improve the boating experience. The video found at: http://s289313426.onlinehome.us/ppgmarine.tv/laddertest/ provides an excellent summary of the testing and conclusion of that U.S. Coast Guard grant project. Importantly, NMMA does not consider the current H-41 standard to be unsafe for boaters. However, NMMA and its members are always seeking information on ways to continue to improve the boater experience with our products.

Currently, under ABYC H-41.9.3 when ladders are used as a reboarding means, it requires that the top surface of the lowest step of a reboarding ladder, if installed, be at least 12 inches below the waterline with the boat in the static floating position. ABYC is considering changing the reboarding ladder depth from 12 to 22 inches below the water line. However, although the ABYC Product Interface Project Technical Committee has recommended that a change be made, such a change to H-41 has not yet been through the full balloting process. NMMA does not recommend the Coast Guard moving forward with a project to adopt a 22-inch reboarding ladder depth rulemaking until this change has been fully vetted by ABYC and adopted as a change to H-41.

The Coast Guard also asked a number of questions in its notice including: What percentage of new recreational vessels are sold with a reboarding ladder installed? What percentage of existing recreational vessels currently have a reboarding ladder installed? What is the typical length of a reboarding ladder that recreational vessel manufacturers currently install? What are the costs for installation of a reboarding ladder? What data or information exists that could be used to estimate how many manufacturers would comply with the installation of longer reboarding ladders with or without a USCG mandate.

NMMA conducted a survey of its members to provide the USCG with some of this data. Sixty-eight percent (in 2010) and seventy percent (in 2011) of respondent's recreational boat

production had a reboarding ladder installed. Seventy-one percent of respondents installed a reboarding ladder that was between 12 inches and 21 inches below the waterline. Twenty-four percent of respondents installed a reboarding ladder that was 22 inches or more below the waterline. In terms of cost, respondents report that their current marginal (per unit) costs for installing a reboarding ladder are $235. Seventy-one percent of respondents report that their costs for the reboarding ladder would increase if there was a Coast Guard mandate for extending the length of boarding ladders to 22 inches below the waterline. The estimated cost increase (averaged among those responding) was forty-six percent.

When asked if they supported a Coast Guard mandate for reboarding ladders to be at least 22 inches below the waterline, forty-four percent of respondents indicated that they needed additional information before answering; thirty-two percent supported it; while twenty-four percent opposed such a mandate.

Based on the responses to this survey and the fact that the change of the depth of the reboarding ladder has not yet been finalized by ABYC, NMMA concludes that the Coast Guard should not immediately move forward with this rulemaking project until this change has been fully vetted by ABYC and adopted as a change to H-41.

V. The Coast Guard's Consideration of a Requirement for Boarding Ladder or Entrance Gate "Interlocks" on New Recreational Vessels is Premature – Additional Study Needed

The Coast Guard is also considering a possible requirement to use reboarding ladder or entrance gate "interlocks" on new recreational vessels. According to the USCG, ladder or entrance gate interlocks would prevent a recreational vessel engine from starting or running if the reboarding ladder was deployed or the entrance gate was not closed, thus preventing a person using a reboarding ladder or entrance gate from coming into contact with a spinning propeller.

The Coast Guard asked for comments on requiring the use of reboarding ladder or entrance gate "interlocks" on new recreational vessels. It asked if there are any consensus industry standards addressing interlocks or any such standards under consideration. Other questions it is seeking data on are: What are the costs for installation of a reboarding ladder entrance gate interlock system? What are the costs associated with maintenance of these systems? What data or information exists that could be used to estimate compliance rates with the installation of a reboarding ladder or entrance gate interlock system? How would that change if USCG made it a requirement? What is the risk of device failures or unintended activations of the reboarding ladder or entrance gate interlocks? What is the current estimate rate of unintended activations? Are there any fatalities associated with unintended activations?

While NMMA cannot answer all the questions posed by the USCG, NMMA did include questions regarding interlocks in its survey. Asked if interlocks were installed in their 2010 and 2011 recreational boat production, ninety-six percent of respondents replied that they did not install them. In addition, NMMA is unaware of any voluntary industry standard that addresses the installation of recreational boat interlocks.

In light of the lack of a standard and the lack of the installation of interlocks in new production vessels, NMMA encourages the Coast Guard to work with ABYC on devising a test or research plan that can develop the fundamental data that the Coast Guard has an interest in and that may shed light on the reasons why interlocks have not been more uniformly adopted. Clearly, interlock systems need to be consistently reliable under normal boating conditions in order to provide any safety benefit to boaters and to be adopted by the industry.

VI. Conclusion

NMMA welcomes the opportunity to work with the Coast Guard on this rulemaking project as it decides what measures merit additional investigation and what measures merit moving forward with a proposed rule.

By way of background, NMMA is the nation's leading recreational marine industry association, representing nearly 1,300 boat builders, engine manufacturers, and marine accessory manufacturers. NMMA members collectively produce more than 80 percent of all recreational marine products made in the United States. With nearly 13 million registered boats (and nearly 16.67 million boats in the field) and 75 million boaters 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 354,000 jobs nationwide. If you have any questions or need additional information, please do not hesitate to contact me at csquires@nmma.org; (202) 737-9766.

Respectfully submitted,

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