



## National Association of State Boating Law Administrators

Policy Position on Establishing Memorandums of Agreement (MOAs)/Memorandums of Understanding (MOUs) Between States and Federal/State/Local Agencies With Regard To Boating Accident Reporting To Meet the 30-Day United States Coast Guard (USCG) Reporting Requirement

**Date: September 10, 2007**

**Committee: Boating Accident Investigation, Research and Analysis Committee**

### Background

The United States Coast Guard requires that states report boating accidents as prescribed in 33 CFR Section 174.21:

*Within 30 days of the receipt of a casualty or accident report, each state that has an approved numbering system must forward a copy of that report to the Commandant (G-OPB)...*

Specifically, the Operator or Owner of a vessel involved in such an accident must report the incident as per 33 CFR 173.55. The reporting location for the boating accident report is described in 33 CFR 173.59:

*Where to submit report.*

*A report required by Sec. 173.55 must be submitted to:*

- (a) The reporting authority listed in Appendix A of this part where the vessel number was issued, or, if the vessel has no number, where the vessel is principally used;*
- or*
- (b) The reporting authority where the casualty or accident occurred, if it occurred outside the State where the vessel is numbered or principally used.*

The “reporting authority” listed in the previous section is defined in 33 CFR 173.3 (f) and Appendix A as follows:

*Reporting authority means a State that has a numbering system approved by the Coast Guard or the Coast Guard where a numbering system has not been approved. Reporting authorities are listed in Appendix A of this part.*

The public naturally assumes that when law enforcement or emergency medical services respond to an accident that it **“has been reported”**. Although the CFR Sections listed above

require Operators/Owners to provide accident information, other federal (including the United States Coast Guard), state, and/or local agencies who may respond to the scene of an accident and subsequently take a report. In many cases, they are unaware of the responsibility they incur in getting the information to the reporting authority or ensuring the operators know the requirement and follow through. The agency often completes a report of some form, but doesn't forward the information to the reporting authority. The appropriate state reporting authority often encounters significant difficulty in obtaining information from federal, state, or local agencies who respond to a particular boating accident, either through a delay in the receipt of reports from these agencies and/or an inadequacy in the information contained in these reports. Many times this is a training issue. This in turn puts the state reporting authority in a position where they cannot meet the 30-day reporting requirement.

In an ongoing effort to work more closely with other agencies to enhance the boating accident reporting system, a survey was conducted by the BAIRAC Committee in 2005 with regard to 30-day reporting requirement issues. This survey revealed that at least 26 of the states regularly collect reports from other federal, state, or local agencies for entry into the Boating Accident Report Database (BARD). This survey also provided evidence that at least 15 of those same states were not able to meet the 30-day reporting requirement due to the agency in question not providing timely reporting to the state reporting authority. In addition, many of the states reported that in cases where they do receive a timely report, those reports often lack critical information. This was likely the result of frequent turnover or inadequate training of the personnel completing those reports. It is also important to note that in many cases, the federal, state, or local agency in question failed to contact the state reporting authority directly with information regarding any given incident without being prompted to do so. The state reporting authority may only discover that an accident has occurred by seeing a local media item and contacting the agency directly, in order to garner further details. To assist with identifying such instances, the Coast Guard has initiated programs for notifying the state reporting authority through its "MISLE" program and "BAD" reports.

As noted, under current CFR there is no direct federal requirement that these federal/state/local agencies report these incidents to the states (as there is in CFR 173.55 for operators/owners). However, there has been progress in making improvements to the reporting requirements.

A successful example of such a change is included in 36 CFR Section 3.5 with regard to the National Park Service, which reads:

- (a) The operator of a vessel involved in an accident must report the accident to the superintendent as soon as practical, but in any event within 24 hours of the accident, if the accident involves:*
  - (1) Total property damage of \$2000 or more; or*
  - (2) Injury, or death or disappearance of a person*
- (b) If the operator is physically incapable of making the report, the owner or an occupant of the vessel must report the accident to the superintendent.*

*(c) Filing a report with the superintendent may satisfy applicable United States Coast Guard, State, and local accident reporting requirements. Superintendents will forward the accident report to the appropriate reporting authority in a timely manner that complies with the requirements of 33 CFR 173.55.*

Although the long-term solution to the problem could include a change to the current CFR, the BAIRAC Committee recognizes that another tool to address the situation could be useful in the interim: a Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU) with these federal/state/local agencies to address communication between both parties. This would provide for agency-level training to establish guidelines for proper reporting, and would also provide a set of timelines and guidelines to establish the responsibilities and authorities of both parties in handling boating accident response and reporting within the particular state.

MOU/MOA's should include information on the specific responsibilities of each party, and should include an educational component in order to make sure that all agencies are providing boating accident information using the same reporting standards.

The template will require adjustments for each state reporting authority, taking into account the myriad of agencies involved.

### **National Association of State Boating Law Administrators Policy**

The National Association of State Boating Law Administrators encourages state initiated Memorandums of Agreement (MOAs) or Memorandums of Understanding (MOUs) with federal, state, and/or local agencies who share responsibility for collecting boating accident information. This will better ensure that proper and timely data is being provided to the states for entry in the Boating Accident Report Database (BARD) system within the 30-day reporting window.

A template of such an instrument is included as attachment A to this document.

The National Association of State Boating Law Administrators also encourages states to seek rule and/or law changes (through the respective federal, state, or local agency) to further clarify the reporting requirements and chain of reporting for boating accidents.

All agencies that investigate boating accidents need to realize their obligation to thoroughly investigate those accidents to determine accurate contributing causes, as well as collect the necessary data and information as described in 33CFR 173.55. Those agencies also need to realize their obligation to pass that data and information on to the appropriate reporting authority in their state so that it can be entered into the BARD system.

### **Policy References**

NASBLA website ([www.nasbla.org](http://www.nasbla.org))

BAIRAC 2007 Charge #4

BAIRAC Committee minutes and notes

U.S.C.G. Accident Reporting 30-Day Reporting Requirements Survey (2005)

### **Policy Letters**

None associated with this issue

**MEMORANDUM OF AGREEMENT**  
**Between**  
**THE STATE OF \_\_\_\_\_**  
**And**  
**(FEDERAL/STATE/LOCAL AGENCY)**

**1. PARTIES**

The parties to this agreement are the State of \_\_\_\_\_ (Hereinafter referred to as "State") and the (*Federal/State/Local Agency*) (hereinafter referred to as "Agency").

**2. AUTHORITY**

This Agreement is authorized under the provisions of (*Applicable Code and Regulations*) authorizing the Agency to enter into cooperative agreements and other arrangements with the States for the reporting of boating accidents to the "reporting authority" as defined in 33 CFR § 173.3 Section (f) and Appendix A, 33 CFR § 173.55, 33 CFR § 173.57, 33 CFR § 173.59, and 33CFR 174.21.

**3. PURPOSE**

To define the relationship between the State and the Agency for the reporting of boating accidents on waters within the concurrent jurisdiction of the State and the Agency. The Agency and the state recognize mutual responsibility for recreational boating safety on waters with concurrent jurisdiction and see an increasing need for closer cooperation and joint endeavors in the application and administration of recreational boating safety programs.

**4. BASIC GUIDELINES**

- A. For the purpose of this agreement, the term "navigable waters of the United States" (hereinafter referred to as "navigable waters") includes those (inland) waters of the United States which are subject to the concurrent jurisdiction of the State, that have been either congressionally, judicially, or administratively determined to be navigable waters of the United States using the criteria set forth in 33 CFR §2.36, waters subject to the jurisdiction of the United States and on the high seas beyond the territorial seas for vessels owned in the United States that is used by the operator for recreational purposes or is required to be numbered, but does not apply to vessels subject to inspection under Title 46 U.S. Code Chapter 33.

- B. For the purposes of this agreement, a boating casualty or accident is an incident involving a vessel or its equipment where a person dies, a person disappears from the vessel indicating death or injury, a person is injured requiring medical treatment beyond first aid, a complete loss of any vessel, or damage to a vessel or other personal property totaling \$2000.00 or more as defined in 33CFR Part 173.55. An accident meeting State requirements is defined as above except that the property damage threshold is \$\_\_\_\_.00. *(Also include any specific state different requirements)*
- C. This agreement covers all navigable waters located within the State of \_\_\_\_\_, specifically \_\_\_\_\_.
- D. This agreement does not abrogate or limit the jurisdiction of the Agency, the State, or the United States.

**5. BOATING CASUALTY REPORTS AND INVESTIGATIVE REPORTS.**

A. The State agrees to investigate, or cause to be investigated, all recreational boating fatalities and multiple vessel or serious injury accidents. The Agency and the State will concurrently be responsible for boating accident reports meeting accident reporting requirements. The state and the agency will provide immediate reciprocal notification of boating fatalities through dispatch centers to each agency's designee. The Agency will provide to the State information on incidents that meet the definition of a state boating accident defined in section (4) (B) above, within 8 hours if a person dies, within 48 hours if a person is injured and requires medical treatment beyond first aid (even if refused) or disappears from a vessel or within 10 days of a property damage only casualty.

The Agency may, in cooperation with the State, investigate accidents involving fatalities on vessels used on waters of concurrent jurisdiction if the case warrants further investigation.

B. The Agency will forward Boating Accident Reports received or taken by Agency personnel to the Boating Law Administrator of the State pursuant to 33 CFR 173.57. The State will determine whether an accident is reportable and will be responsible for ensuring the entry of report data into the United States Coast Guard's Boating Accident Reporting Database (BARD).

C. The State and the Agency agree to share all information available concerning any boat accident. All information shall be provided in a timely manner so as not to impede or interfere with the fact gathering responsibilities of each party.

- D. When the United States Coast Guard does not have an available unit to respond to a non-recreational boat accident under Coast Guard jurisdiction, the State or designated authority may assist as a first responder to secure the accident scene, preserve perishable evidence, and provide for public safety and the safety of property.
- E. The United States Coast Guard will be responsible for completing any investigation on non-recreational boating accidents as appropriate.
- F. The State or designated authority and the United States Coast Guard will be mutually responsible for completion of boating accident reports on incidents involving recreational vessels AND non-recreational vessels.
- G. The designated office for reporting recreational boating accident reports on:  
  
*(List the contact information for the reporting jurisdiction for each body of water as applicable. Include State and Agency Points of Contact including name, title, address, phone, fax, and E-mail.)*
- H. The Reporting Authority shall review for accuracy and completeness all accident/casualty reports and shall determine the cause and circumstances surrounding each reportable accident, including whether or not alcohol or drugs were a factor. The State reporting authority shall abstract accident data from each boating accident report form and enter such data into the Boating Accident Report Database (BARD), which was developed in cooperation with the National Association of State Boating Law Administrators (NASBLA). The State agrees to ensure the quality of data entry is accurate and complete providing for a successful data transfer into the national BARD located at Coast Guard Headquarters.
- I. The Reporting Authority agrees to forward an electronic copy of each boat accident and investigative report to Coast Guard Headquarters within 30 days of receipt of the initial casualty or accident report.
- J. The State may provide annual training to all appropriate Agency personnel concerning boating accident reporting requirements and procedures.
- K. The Agency will ensure that all levels of the chain of command are informed of the boating accident reporting requirements involving recreational and non-recreational vessels.