

APPENDIX A - RE 33 CFR PARTS 173 AND 174

NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATORS

RESOLUTION 2016-1

In support of the advancement of the U.S. Coast Guard's recreational boating accident reporting system regulatory project

WHEREAS, the Federal Boat Safety Act of 1971 calls for “the States to assume the greater share of boating safety education, assistance, and enforcement activities;” and,

WHEREAS, according to 46 U.S. Code § 13109, the Secretary of the Department of Homeland Security is directed to “ensure the fullest cooperation between the State and United States Government authorities in promoting boating safety by making agreements and other arrangements with States when possible”; and,

WHEREAS, recreational boating accident reports are gathered, reviewed, and submitted by the states and territories to the U.S. Coast Guard for use in national recreational boating safety (RBS) analyses and inclusion in the annual, national Recreational Boating Statistics; and,

WHEREAS, the accident report data are fundamental not only for meeting the federal statistical mandates, but also for analyses that affect the understanding of national boating safety issues, shape national RBS program goals and policies, inform allocations of resources, and lead to consideration of vessel and equipment design and construction standards; and,

WHEREAS, many of the U.S. Coast Guard's National RBS Strategic Plan and recreational boating safety program goals and measures are directly linked to boating accident data gathered and submitted by the states and territories; and,

WHEREAS, a significant amount of effort has been expended over the last decade by the individual states and territories, the National Association of State Boating Law Administrators (NASBLA) on their behalf, and the National Boating Safety Advisory Council (NBSAC), among others, to make reasonable and appropriate recommendations to the U.S. Coast Guard toward improving the national recreational boating accident reporting system; and

WHEREAS, following years of discussion regarding significant concerns relative to the accident reporting system, regulations, policies and processes, and as a direct result of NBSAC Action Item 2008-81-01, the U.S. Coast Guard established an Accident Reporting Task Force to collect and categorize potential regulatory changes to the reporting system; and

WHEREAS, in 2009, the Task Force drafted 15 recommendations for regulatory and policy changes that were accepted by NBSAC and forwarded to the U.S. Coast Guard for consideration; and

WHEREAS, on Sept. 6, 2011, to further inform its decision process on the nature and scope of such revisions to the reporting system, the U.S. Coast Guard published the Recreational Vessel Accident Reporting Notice of Advisory Committee (NBSAC) Recommendations and Request for Comments to the Federal Register; and

WHEREAS, the solicitation resulted in comment submissions from over half of the states and territories, NASBLA, and other stakeholder groups, with the results described to the states' boating law administrators (BLAs) during a March 2012 session of the NASBLA BLA Workshop in Lexington, Ky.; and

WHEREAS, the results indicated general support for revisions to the national accident reporting system consistent with the NBSAC recommendations, sufficient to allow the U.S. Coast Guard to proceed with the initiation of rulemaking to revise the recreational boating accident requirements; and

WHEREAS, the states and other stakeholders were advised that the U.S. Coast Guard requested a rulemaking on June 26, 2012, and since then, have been awaiting the issuance of a Notice of Proposed Rulemaking to engage in public commenting on a concrete proposal that presents detail on the concepts outlined in the NBSAC recommendations; and

WHEREAS, in Resolution Number 2016-95-01, April 23, 2016, "Improved Boating Accident Reporting System," NBSAC reaffirmed its support for the 2009 recommendations and encouraged the U.S. Coast Guard "to both make diligent effort to address each of the Accident Reporting Task Force recommendations and to complete the accident reporting regulatory project as quickly as possible"; and

WHEREAS, NASBLA members had extensive involvement on the Task Force that forged the original NBSAC recommendations; and

WHEREAS, over the years, in the interest of uniformity, consistency, and clarity, NASBLA members have formally supported accident reporting tools and guidance developed by the association's policy committees and that are related in some measure to the implementation of several of the NBSAC recommendations; and

WHEREAS, the implementation of several of these efforts including, but not limited to, the Recreational Boating Accident and Casualty Reporting Decision Matrix endorsed by NASBLA members in 2006, and standardized terms and definitions for five major accident report categories developed through a consensus-based Accident

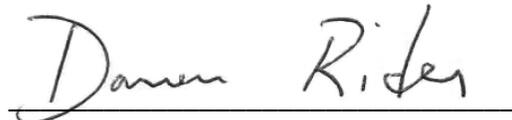
Reporting Terms & Definitions Project and accepted by members in 2012 and 2013, are integral to the consideration of regulatory revisions to the reporting system; and

WHEREAS, delays in the rulemaking process have affected not only the implementation of such products, but also the potential to address long-standing issues affecting the states and their partners in the accident reporting system and to codify their resolution.

NOW THEREFORE, BE IT RESOLVED, that the National Association of State Boating Law Administrators on July 27, 2016 does hereby support and strongly encourage the advancement of the accident reporting regulatory project that was initiated by the U.S. Coast Guard in June 2012.

BE IT FURTHER RESOLVED, that the association strongly encourages that the proposed rulemaking, at minimum, factor in the relevant recommendations put forward by NBSAC and the content of the significant work associated with accident reporting-related projects that have been conducted by NASBLA in close collaboration with the U.S. Coast Guard.

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to Admiral Paul F. Zukunft, Commandant, U.S. Coast Guard; Rear Admiral Paul F. Thomas, Assistant Commandant for Prevention Policy, U.S. Coast Guard; Captain Verne B. Gifford, Chief of Inspections and Compliance, U.S. Coast Guard; and Captain F. Thomas Boross, Chief, Auxiliary and Boating Safety, U.S. Coast Guard, for their consideration and appropriate action; and to Dr. L. Daniel Maxim, Chairman, National Boating Safety Advisory Council.

A handwritten signature in cursive script that reads "Darren Rider". The signature is written in black ink and is positioned above a horizontal line.

Darren Rider, President
July 27, 2016

NATIONAL BOATING SAFETY ADVISORY COUNCIL

**April 23, 2016
Arlington, VA**

Resolution Number 2016-95-01

IMPROVED BOATING ACCIDENT REPORTING SYSTEM

WHEREAS, safety programs require complete and accurate data to identify, develop and justify effective safety interventions; **AND**

WHEREAS, recreational boating accident report data are not always submitted to the State reporting authorities and, when reports are submitted, there are ongoing issues related to incomplete and/or inaccurate data; **AND**

WHEREAS, the National Boating Safety Advisory Council chartered an Accident Reporting Task Force in 2008 to review federal recreational boating accident reporting requirements found in 33 CFR 173 & 174 and recommended changes to those requirements in order to improve timeliness, completeness, and accuracy; **AND**

WHEREAS, the Accident Reporting Task Force developed fifteen recommendations that were accepted by the Council, adopted as individual strategies within the Strategic Plan of the National Boating Safety Program, and forwarded to the Coast Guard in 2009; **AND**

WHEREAS, the Office of Auxiliary & Boating Safety has been working on a regulatory project to update federal accident reporting requirements based, in part, on the recommendations of the Accident Reporting Task Force.

NOW, THEREFORE, BE IT RESOLVED that the National Boating Safety Advisory Council, meeting in regular session in Arlington, VA on April 23, 2016, affirms its support for the 2009 accident reporting recommendations and encourages the Coast Guard to both make diligent effort to address each of the Accident Reporting Task Force recommendations and to complete the accident reporting regulatory project as quickly as possible.



Dr. L. Daniel Maxim, Chairman
National Boating Safety Advisory Council

Accident Reporting Task Force

As a result of National Boating Safety Advisory Council (NBSAC) Action Item 2008-81-01, the U.S. Coast Guard established an Accident Reporting Task Force. The Task Force was charged with the following:

Within the framework of 46 U.S. Code § 6102, develop concepts for an improved accident reporting system that will improve accident under-reporting and data accuracy issues, while considering the following:

1. Close Gaps in Reporting Requirements
2. Standardization of terms and processes (references to consider include USCG MLEM and NASBLA accident investigation training)
3. Ensuring other federal agencies report on a timely basis
4. 2-Tiered Reporting System
5. Using the insurance industry to increase reporting
6. Use of statistical sampling
7. Standards for electronic reporting and process for approving state electronic reporting systems

The Task Force held two meetings, and also communicated via teleconference and email. At the second meeting, after having previously considered the issues related to under-reporting and non-reporting of accidents, the Task Force developed 15 recommendations to be presented to NBSAC for consideration. Those recommendations are as follows:

Recommendations

1. Develop a two-tiered notification/reporting system. The initial phase of the reporting system should consist of a requirement for “notification,” and the overall process should function something like this:

- The operator of a vessel involved in a boating accident resulting in death, injury beyond first aid, missing person, property damage in an apparent amount of at least \$2,000 or total loss of a vessel shall immediately, by the quickest means of communication, give notice of the accident to the state reporting authority or designee. In the event the operator is physically incapable of giving notice, the obligation to give notice or determine that the notice has been given falls upon the boat owner and each person onboard. In addition to traditional notifications such as via telephone or marine radio, it is recommended that a web-based system be created to assist in making notification. The person making notification must select the state in which the accident occurred, complete a limited number of mandatory data fields and then “submit” the notification. The appropriate state reporting authority shall follow up on electronic notifications received. For accidents meeting reportable criteria, the data contained in the notification and a count of qualifying deaths and injured persons will be electronically forwarded to the US Coast Guard Boating Safety Division.

Accident Reporting Task Force

It is further recommended that the US Coast Guard pursue some form of notification from insurance companies receiving a claim under a policy of insurance with respect to a boating casualty for which a report is required. The insurer should provide notice to the state reporting authority.

- The state reporting authority, or its designee, should be required to follow up on all notifications and determine whether or not each meets criteria for reporting. For all accidents determined to be reportable, the state reporting authority or its designee is required to gather the required data to satisfy the essential elements of information.
- The state reporting authority is required to transmit all required data for reportable boating accidents to the USCG through the BARD system within the first 30 days following the collection of that data. Electronic data transmission is preferred. ***Reporting timeframes for final complete report submitted to BARD need to be established.***

2. Clarify, both through policy and regulation, which vessels qualify for boating accident reporting, as follows:

- Exclude “water toys” by creation of a definition of “water toys” to be placed in CFR and include specific language excluding them from boating accident reporting requirements.
- Include language which requires accidents involving vessels participating in an authorized/permitted marine event (excluding sanctioned boat races) or commercial vessels such as whitewater rafts or drift boats to be relayed to the state reporting authority through the notification process.

3. Include exclusive state waters in accident reporting requirements. This recommendation suggests that CFR be amended to clearly identify that accidents occurring on state jurisdictional waters are also required to be reported.

See 46CFR 4.03-1(a)(2) below for how the USCG regulates commercial accidents.

Marine casualty or accident means—

(a) Any casualty or accident involving any vessel other than a public vessel that—

(1) Occurs upon the navigable waters of the United States, its territories or possessions;

(2) Involves any United States vessel **wherever such casualty or accident occurs.**

Accident Reporting Task Force

4. Medical treatment beyond first aid - clarify which boating-related injuries qualify for reporting. The recommendation is that OSHA standards for “medical treatment beyond first aid” be adopted as the standard for recreational boating injury reporting. (Such as listed in 29CFR 1904.7(b)(5) (below))

(5) *How do I record an injury or illness that involves medical treatment beyond first aid?*
If a work-related injury or illness results in medical treatment beyond first aid, you must record it on the OSHA 300 Log. If the injury or illness did not involve death, one or more days away from work, one or more days of restricted work, or one or more days of job transfer, you enter a check mark in the box for cases where the employee received medical treatment but remained at work and was not transferred or restricted.

(i) *What is the definition of medical treatment?* “Medical treatment” means the management and care of a patient to combat disease or disorder. For the purposes of Part 1904, medical treatment does not include:

(A) Visits to a physician or other licensed health care professional solely for observation or counseling;

(B) The conduct of diagnostic procedures, such as x-rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes (e.g., eye drops to dilate pupils); or

(C) “First aid” as defined in paragraph (b)(5)(ii) of this section.

(ii) *What is “first aid”?* For the purposes of Part 1904, “first aid” means the following:

(A) Using a non-prescription medication at nonprescription strength (for medications available in both prescription and non-prescription form, a recommendation by a physician or other licensed health care professional to use a non-prescription medication at prescription strength is considered medical treatment for recordkeeping purposes);

(B) Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment);

(C) Cleaning, flushing or soaking wounds on the surface of the skin;

(D) Using wound coverings such as bandages, Band-AidsTM, gauze pads, etc.; or using butterfly bandages or Steri-StripsTM (other wound closing devices such as sutures, staples, etc., are considered medical treatment);

(E) Using hot or cold therapy;

(F) Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes);

Accident Reporting Task Force

(G) Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, back boards, etc.).

(H) Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister;

(I) Using eye patches;

(J) Removing foreign bodies from the eye using only irrigation or a cotton swab;

(K) Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means;

(L) Using finger guards;

(M) Using massages (physical therapy or chiropractic treatment are considered medical treatment for recordkeeping purposes); or

(N) Drinking fluids for relief of heat stress.

(iii) *Are any other procedures included in first aid?* No, this is a complete list of all treatments considered first aid for Part 1904 purposes.

5. Boating-related swimming incidents. This recommendation suggests that incidents where the vessel was being used as a swimming platform and/or a person voluntarily leaves the vessel as the first event, whether the vessel was underway or not, should not be considered reportable boating accidents. Be sure to continue counting incidents involving CO poisoning, in-water electrical shock or other boat-related caused accidents.

6. Creation of a Decision Matrix to assist investigators. It is recommended that the USCG create a document similar to NASBLA's Recreational Boating Accident and Casualty Reporting Decision Matrix to simplify the decision-making process for state reporting authorities, their designees, boating accident investigators and the boating public.

Accident Reporting Task Force

7. Responsibility and accountability for submitting boating accident data. This recommendation suggests that:

- First responders from a city, county, state or federal police, fire or emergency medical agency which responds to a boating accident or casualty must either notify the state reporting authority of the accident or casualty or provide any data required to be reported pursuant to 33CFR173 related to a boating accident to the state reporting authority. The first responding agency which willfully disregards the requirements to make notification or provide accident data is liable to the United States Government a civil penalty of not more than \$25,000 for each occurrence.
- State reporting authorities must investigate or cause to be investigated any boating accident involving death, missing person or serious bodily injury (defined? – locate other references)
- State reporting authorities may investigate or cause to be investigated all other boating accidents.

8. Required Essential Elements of Information - Notification. It is recommended that CFR be amended to specify the elements of information required to be included in the initial notification of a boating accident, to include:

- Number, name or description of each vessel involved
- Name, address and phone number of each vessel operator
- Nearest city or town, the county, the state and body of water on which the accident or casualty occurred
- Time and date of accident or casualty
- Brief synopsis of accident or casualty
- Name of agency which was notified (if applicable)
- Name and phone number of person making notification
- Number of deaths, missing or injured persons
- Whether vessel was used for recreational or commercial purposes; and was the vessel participating in a permitted marine event

Accident Reporting Task Force

9. Required Essential Elements of Information – Report. It is recommended that CFR abstain from specific data elements and that the essential elements of information required to be included in a boating accident report be specified in a US Coast Guard policy document. The recommended elements include:

- Number, name or description of each vessel involved
- Name, address, telephone number, age or date of birth, gender, vessel operating experience and boating safety education level of each vessel operator
- Detailed geographic information such as nearest city or town, the county, the state, body of water on which the accident or casualty occurred and latitude and longitude coordinates where the accident took place (specify format)
- Time and date of accident or casualty
- Visibility, weather and water conditions
- Number of persons on board, their age and gender (to include persons being towed on aquaplaning devices)
- Name, address, gender and age or date of birth of each person injured, killed or missing
- Cause of each death
- Availability, type and use of life jackets/personal flotation devices
- Nature and extent of any personal injury beyond first aid
- A description of all property damage and vessel damage with an estimate of the cost of all repairs
- Description of each equipment or mechanical failure that caused or contributed to the cause of the accident or casualty
- Description/synopsis of the vessel accident or casualty
- Vessel operation at time of accident or casualty for each vessel
- Each vessel's make, model, model year, hull identification number, type, length, horsepower or engine displacement, propulsion (list options to include POD), fuel type, construction material, whether it was used for commercial or recreational purposes and the purpose of voyage (such as fishing, hunting, water sports, or cruising)
- Type of accident or casualty (list options)
- Cause of accident or casualty, including whether or not alcohol/drugs or a violation of safety equipment carriage and use requirements contributed (include drop down menu to include equipment such as life jackets, distress signals, and engine cut-off switch lanyard)
- Name and contact information of person making report
- Insurance provider for each vessel involved (if applicable)
- Whether each vessel involved was rented or borrowed

10. Replacement for old CG449, revision and distribution (include new decision matrix). Recommend that the US Coast Guard revise the former guidance document, CG-449, and make it available in a condensed version through electronic media.

Accident Reporting Task Force

11. Harmonize commercial and recreational boating accident data. Recommendation is that the US Coast Guard examine the feasibility of harmonizing accident cause data between commercial and recreational boating accidents. Consideration should be given to enhancing BARD input features to accompany the new reporting requirements, including such features as drop down menus pertaining to specific types of accidents to reduce the clerical burden of completing accident reports.

12. Continue to research methods for statistical adjustment of accident totals. This recommendation is to have the US Coast Guard conduct or sponsor periodic research related to statistical adjustment of reported accident totals to help extrapolate unreported accidents.

13. Errors and limits to interpretation of BARD data. We recommend that the US Coast Guard develop a discussion in Boating Statistics of possible errors and limits to interpretation of data extracted from BARD. This discussion should be revised as appropriate whenever changes in reporting procedures or other factors leads to noteworthy changes in the quality or limits to interpretation of the data.

14. We recommend that the US Coast Guard examine the suitability of additional models of accident causation (human factors) for use in describing fatal recreational boating accidents, to complement those routinely used in the investigation of commercial and US Coast Guard boating incidents.

15. Training and outreach effort. This recommendation emphasizes the need for the US Coast Guard to assist the states in conducting outreach and education related to boating accident notification and reporting regulatory and policy revisions to the boating public and accident investigators.



THE UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT

- A Summary -

The Uniform Certificate of Title for Vessels Act (UCOTVA) provides a consistent consumer protection measure for vessel owners across the United States and its territories. Currently, only two-thirds of states have a certificate of title law for boats and other vessels. A certificate of title is an official document issued by a state or municipality that identifies the owner of a vessel. This patchwork of laws across states leads to extensive fraud. For example, title for a vessel can be “washed” by moving the vessel to a jurisdiction that does not have a vessel titling statute or has a statute that does not cover the type of vessel stolen.

The Uniform Act

UCOTVA provides a uniform titling laws for all states and territories. The Act requires certain vessel owners to apply for a certificate of title within 20 days of becoming an owner or within 20 days of establishing principal use of the vessel on waters in the state.

Under the Act, certificates of title are required for vessels that are:

1. Principally used in the state;
2. At least 16 feet long; and
3. Propelled by an engine of at least 10 horsepower.

UCOTVA also includes a special branding requirement to offer transparency and protection for consumers. If the integrity of a vessel’s hull was compromised by a casualty event, the owner or insurer must, prior to selling the vessel, either note this on the certificate or apply for a new certificate that indicates that the vessel is “hull damaged.” Failure to comply with this rule renders the offender liable for a civil or administrative penalty.

In addition, UCOTVA establishes what information must be in an application for a certificate of title; how to deal with a transfer of ownership and title; the rights of a secured party; and the rights of a purchaser other than a secured party.

UCOTVA also addresses the following issues with existing titling laws for vessels:

1. *No Current Harmonization with Article 9 of the Uniform Commercial Code.* Many states have enacted the revised version of Article 9 of the UCC, but have not updated their titling law for vessels. Accordingly, it is often difficult to harmonize a state’s titling law with its laws governing sales of vessels and security interests in vessels. This leads to legal interpretation problems.
2. *No Current Approval by U.S. Coast Guard for Existing Laws.* The U.S. Coast Guard has not approved any of the existing laws. If it did give such approval, security interests

perfected under that law would be accorded the status of a preferred ship mortgage under federal law. That, in turn, would likely facilitate vessel financing.

3. *No Current Branding of the Title of Damaged/Salvaged Vessels.* Very few state title laws for vessels provide for the branding of the title of a damaged or salvaged vessel. This means buyers could unknowingly purchase a vessel that has hidden structural damage and is, therefore, unseaworthy and unsafe. This is a particular problem after a hurricane or other natural disaster in which many recreational boats are damaged. Owners and insurers often sell the damaged boats for salvage to buyers who make cosmetic repairs and then re-sell the boats without disclosure of the casualty.

WHY YOUR STATE SHOULD ADOPT THE UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT

- ***UCOTVA can promote new commercial activity in your state.*** UCOTVA facilitates vessel financing because security interests perfected pursuant to the Act should receive the status of a preferred ship mortgage under federal law. No current state certificate of title statute for vessels has the same effect.
- ***UCOTVA prevents unnecessary litigation.*** UCOTVA integrates seamlessly with the Uniform Commercial Code, particularly Articles 2 and 9. It provides clear rules on all matters relating to a security interest in a vessel, meaning fewer disputes will go to court.
- ***UCOTVA protects consumers from buying unsafe boats.*** UCOTVA aids consumers and facilitates boating safety by requiring the title of a vessel to be branded if the integrity of the vessel's hull has been compromised.
- ***UCOTVA prevents criminal activity.*** UCOTVA deters and impedes the theft of boats by providing both government officials and interested buyers with a simple means of identifying vessels. Uniform adoption of UCOTVA will help prevent "title-washing" by relocating stolen watercraft to another state.
- ***UCOTVA is administratively simple.*** UCOTVA imposes very few new burdens or costs on state filing offices.
- ***UCOTVA is popular with stakeholders.*** UCOTVA was drafted with extensive input from state boat law administrators, boat manufacturers, financiers, insurers, and the United States Coast Guard.

UCOTVA was drafted with extensive input from boat manufacturers, dealers, state boating law administrators, and the U.S. Coast Guard.

For further information about UCOTVA, please contact ULC Legislative Counsel Kaitlin Dohse at (312) 450-6615 or kdohse@uniformlaws.org.

NATIONAL BOATING SAFETY ADVISORY COUNCIL

**November 8, 2014
Arlington, VA**

Resolution Number 2014-92-01

Uniform Certificate of Title Act for Vessels (UCOTA-V)

WHERE AS the Uniform Certificate of Title Act for Vessels (UCOTA-V) was developed and unanimously enacted in July 2011 by the National Conference of Commissioners on Uniform State Laws, which provides non-partisan, well-conceived and well-drafted model legislation to bring clarity and stability to critical areas of State statutory law, AND

WHERE AS no state issuing authority has sought certification of their titling system due to current Coast Guard regulations regarding titling of vessels being outdated and no longer reflecting current business practices at the state level, AND

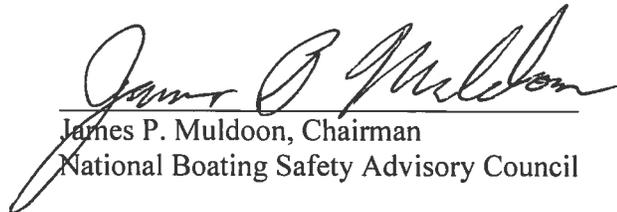
WHERE AS a state having a certified titling system would allow for the availability of conferring preferred mortgage status on a mortgage or security interest for a vessel, AND

WHERE AS current Coast Guard regulations regarding titling has no consumer protection provision allowing for the branding of a vessel title for severe damage to the hull thereby allowing owners and salvors to place damaged vessels back in the market with only cosmetic repairs without disclosure, AND

WHERE AS a state having a certified titling system will deter theft of vessels by making recovery of stolen vessels across State lines easier, AND

WHERE AS the benefits afforded by a regulatory change to include the provisions of the Uniform Certificate of Title Act for Vessels in Coast Guard regulations would encourage greater participation in the Vessel Identification System (VIS) as it would be a requirement of any state seeking a certified titling system;

NOW, THEREFORE, BE IT RESOLVED THAT the National Boating Safety Advisory Council meeting in regular session in Arlington, VA on November 8, 2014, recommends that the United States Coast Guard undertake a regulatory project to amend the regulations found in 33 CFR 187 Subpart D to incorporate the provisions of the Uniform Certificate of Title Act for Vessels.


James P. Muldoon, Chairman
National Boating Safety Advisory Council