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**Personal Flotation Devices in Recreational
Boating**

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SUBMITTED PAPER

Title: A Position Paper from the National Association of State Boating Law Administrators (NASBLA)

Affiliation: National Association of State Boating Law Administrators (NASBLA)

Submitted By: Fred Messman, NASBLA President
1100 Valley Road
Reno, NV 89512

John M. Johnson, NASBLA Deputy Director
1500 Leestown Road, Suite 300
Lexington, KY 40511

and

Ed Carter, Chief
Boating Division
Tennessee Wildlife Resources Agency
P.O. BOX 40747
Nashville, TN 37204

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ORGANIZATION DESCRIPTION

The National Association of State Boating Law Administrators' mission is to protect, promote and enhance safe and enjoyable boating on our nation's waters and to foster partnerships and cooperation among recreational boating safety interests. NASBLA accomplishes its mission by (a) advocating firm, fair and effective laws that provide uniformity and reciprocity among states in waterway safety and management; (b) establishing standards and partnering with others to educate the boating public in safe and responsible boating; (c) working diligently for fair and wise use of federal funds for boating safety programs; (d) leading the boating public in maintaining the tradition of ethical use and stewardship of our nation's waters; (e) fostering a national boating constituency that promotes safe and enjoyable boating; and (f) maintaining a vibrant, self-sufficient association of RBS professionals that provides professional development and training assistance to its members and others.

The association's governing members include each state and territory's designated boating law administrator - the official responsible for administering state boating laws. However, the association also includes as members hundreds of other specialized state personnel who provide national expertise and guidance on issues ranging from state numbering and titling programs to law enforcement, accident investigation and training, to education and public awareness as well as numerous other recreational boating safety areas. The governing board of the association consist of a president, vice president, secretary-treasurer, two members-at-large, the immediate past president, and the presidents of the three regional boating administrators associations.

In addition to the state officials that are NASBLA core members, the association maintains strong alliances with more than 75 additional associate members. These partners include not only the nation's foremost boating industry representatives, insurance companies, safety advocacy groups and non-profit boating organizations but also a wide range of other state associations, federal agencies and international organizations involved in boating safety and enforcement. Associate members play an integral role in NASBLA's committee work and assist in initiatives with the states, the Coast Guard and others in direct support of RBS objectives.

NASBLA continues to be recognized for its stewardship of recreational boating safety, where for more than 40 years it has worked closely with the U.S. Coast Guard, the National Transportation Safety Board, the states, associate members and others to promote uniformity, reciprocity and comity among the state RBS programs, while striving to ensure safe and enjoyable boating. This role is evidenced in the numerous resolutions, model acts, policy statements, research studies and demonstration projects produced and conducted by the association each year. Thanks to the support and cooperation of the U.S. Coast Guard through its continued partnership with the states, and the financial assistance provided to foster state involvement and multi-state initiatives through the 5% grant program of the Aquatic Resources (Wallop-Breaux) Trust Fund, NASBLA continues to advance the frontiers of boating safety by forging new partnerships and alliances to address the challenges of the present and the opportunities for the future.

POSITION BACKGROUND

At its 2003 annual conference, the National Association of State Boating Law Administrators began exploring public attitudes towards the use of personal floatation devices (PFDs) and the issue of mandatory measures to require boaters to wear PFDs. NASBLA was prompted to take the issue under consideration as the result of resolution 2003-5 emanating from the Western States Boating Administrators Association in its May 2003 conference. With as many as 80% of boating fatalities resulting from drowning, risk-based decision-makers understand that only with the consistent and persistent use of life jackets can the recreational boating community expect to see significant decreases in the number of boating fatalities each year. NASBLA's members serve the boating public and believe it is important to better understand the factors that contribute both to the public's perception of risk and their tolerance for life jacket requirements.

Presently there is no consensus among boating law administrators regarding universal mandatory PFD wear for recreational boaters. Although the association has no position regarding mandatory PFD wear for the general population of recreational boaters it does support and has encouraged state adoption of mandatory PFD wear laws for all recreational boaters under the age of 12. NASBLA supports mandatory PFD wear for marine officers in vessels underway and for all boaters engaged in certain waterborne activities including water-skiing or other tow-behind activities, riding personal watercraft (PWC) and when boating off-shore, in cold water environments and/or in swift moving streams. NASBLA also recommends and encourages voluntary PFD wear for boaters anytime the vessel is underway.

Despite the lack of consensus among boating law administrators and other boating professionals regarding the need for mandated PFD wear, NASBLA believes it is important to maintain an open dialogue on these policy measures and it applauds the National Transportation Safety Board's initiative to elevate this important policy discussion to a national forum. NASBLA's desire is for the NTSB to consider all testimony and comments and to make appropriate recommendations to the states that boating safety professionals can use to make sound safety decisions among the numerous and variable jurisdictions.

Based on the cumulative experience of the marine law enforcement and boating safety professionals within the ranks of the National Association of State Boating Law Administrators, presented below is a point/counter-point perspective on some of the more salient issues impacting the consideration of mandatory PFD wear legislation or regulation. In addition to providing responses on specific policy questions, each of the supporting and opposing arguments is also summarized in closing statements.

POLICY DISCUSSION: MANDATING PFD USE FOR RECREATIONAL BOATERS

Is there a demonstrated need for state and/or federal policy-makers to enact laws or promulgate regulations to require all recreational boaters to wear personal floatation devices (PFDs)?

SUPPORTS Mandatory PFD Wear: Yes. Over the last 30 years federal and state boating authorities have explored and exhausted a wide range of methods and interventions for increasing the voluntary wear of PFDs among the general boating population. Despite repeated state, regional and national awareness campaigns to educate boaters on the risk of boating without life jackets and the fact that as many as six out of ten boating fatalities could be

prevented by wearing a PFD, the observed wear rate for PFDs among adult boaters remains unchanged over the last decade with as few as 1 in 5 boaters donning a PFD when onboard.

OPPOSES Mandatory PFD Wear: No. The national RBS program provided through a partnership between the states, the Coast Guard and numerous volunteer organizations has made tremendous strides over the last 30 years in making recreational boating as safe as possible and the trend toward decreased annual fatalities continues downward. Campaigns for voluntary compliance in wearing PFDs have indeed been a success measured both in terms of overall decreases in deaths and in terms of the actual number of boaters wearing PFDs. Since the early 1970s, the number of annual boating fatalities has dropped from a high of around 1,750 deaths to around 700 or so per year. However, during the same period, the number of recreational boats and boaters on the water has more than tripled. If our safety campaigns were having no impact one would expect the relative number of fatalities (deaths per number of boats) to increase or at least remain constant. That has not been the case. Moreover, since the number of boaters has increased but the relative number of boaters voluntarily wearing PFDs has remained constant (about 22% or less over the last 6 years) then the actual number of boaters wearing life jacket must be increasing.

What would be the impact of federal and/or state legislation mandating wearing of PFDs on recreational boats regarding the number of lives saved?

SUPPORTS: The estimated number of lives saved resulting from federal and/or state legislation mandating PFD wear would be in the range of 400 avoided fatalities each year – as many as 2,000 lives saved over a five-year period. The projected number of lives saved is based on the fact that as many as 70% of fatal boating accident victims drowned and, of that number, 85% of victims were not wearing personal floatation devices (700 annual fatalities x 70% of victims that drowned x 85% of drowned victims not wearing PFDs = 417 potential lives saved.)

Some of the best evidence for the predicted success of mandatory PFD wear is seen in a comparison of fatality rates between accidents involving personal watercraft (PWC) and accidents among the general population (excluding personal watercraft). Although statistically PWCs are involved in a significantly higher number of accidents, particularly those resulting in more severe injuries, than the general population of recreational vessels, the fatality rate for PWC riders and others involved in those accidents is disproportionately lower than fatality rates among operators and passengers involved in accidents among other types of motorboats. Since observed wear rates for PWCs are somewhere in the range of 97% one may conclude that wearing life jackets explains most of the difference in fatality rates.

OPPOSES: The number of lives saved resulting from mandated PFD wear would increase slightly during the initial implementation period but decline significantly over time. The problem in estimating the potential for life saving is that most models automatically assume universal compliance with mandated wear. Law enforcement professionals recognize that there are many factors influencing an individual's willingness to comply with safety laws and regulations including the range and severity of penalties, the level of enforcement, the likelihood of being detected and stopped, and, perhaps most importantly, the perceived level of risk. Other factors including temperature and weather conditions, societal and family pressures, boat traffic and levels of congestion also weigh on the individual's decision. For example, even with

compulsory seat-belt laws in place vehicle occupants in rural areas are significantly less likely to wear seatbelts their urban and suburban counterparts. Also, despite heightened incidents of mortality among their age groups, younger drivers are more likely to disregard mandated seat-belt laws than are older drivers.

What is the anticipated compliance rate if PFD wear is mandated for recreational boaters?

SUPPORTS: Based on the passage of similar legislation for other groups of boaters, the anticipated compliance rate could be as high as 75% to 90%. The observed wear rate for the affected population in states with mandatory PFD wear for prescribed age groups (children) is over 80% in most areas. The observed PFD wear rate for PWC riders in states with mandatory PFD wear for personal watercraft operators is roughly 95%.

OPPOSES: It is difficult to project anticipated compliance rates for PFD wear under a mandatory PFD wear scenario since there is no empirical data regarding universally mandated wear. Due to factors identified above, the compliance rate would vary significantly across the country and would be dependent on precursors – geographical, societal, political, technological – well beyond the scope of law enforcement capabilities. Compliance rates would also be significantly impacted by the scope and complexity of the enacting legislation or regulation. For example, most proposed models for mandatory PFD wear link the requirement to wear a PFD to certain prescribed conditions such as the length of the vessel, the type of vessel, the occupant's placement or position within or upon the vessel, and whether or not the vessel is underway. Add to these variables consideration of the “appropriate PFD for the appropriate conditions” and there is a recipe for legitimate boater confusion and non-compliance. Mandated wear laws for kids and/or specialized boating activities are not analogous to universal PFD wear for all boaters.

Are there issues regarding the enforceability of mandated PFD wear laws that should be taken into consideration?

SUPPORTS: The enactment of mandatory PFD wear laws would actually make it easier to enforce PFD wear provisions than the current PFD carriage requirements. Since current PFD laws (at least for adults in open motorboats) only require the operator to have appropriate PFDs on board and easily accessible for each occupant of the vessel, the law enforcement officer must physically come alongside the target vessel to inspect for and confirm that carriage requirements are being satisfied. Complying with a mandated “wear” provision would obviously make it possible for an officer to determine from some distance, at least on a preliminary basis, if occupants are adhering to the tenets of the requirement. The ability to visually observe whether the occupant is meeting the criteria of the law would allow law enforcement officers to be more selective in identifying non-complying vessels for stopping and boarding and thus make more effective use of limited patrol time and manpower.

OPPOSES: Mandatory PFD wear laws for the general boater would only further complicate an already complex and uncertain interaction between the marine enforcement officer and the boating public. For example, current proposed models for mandatory PFD wear would link the wearing of PFDs to conditions like the length and type of the vessel and the occupant's position

onboard or within the vessel. While it would seem to be an easy violation to enforce, experienced marine enforcement officers would acknowledge that many boating violations already on the books are not so clear cut. Defining where and when a person has to wear a life jacket, for example, often varies with seemingly routine definitions such as “enclosed cabin” or being “underway.”

Enforceability is also linked to and is very much a function of the effective and consistent prosecution of violators through the court system. If the mandated wear provisions are to be meaningful and effective in changing people’s behavior then the offenses must carry sufficient minimum fines and other penalties to deter non-compliance. There are only a limited number of options in this area including warning citations, monetary fines, mandated “schools” in boater education, and, ultimately, jail time and/or suspension or revocation of boating (and maybe driver) privileges. The question then comes down to whether prosecutors are willing to seek and judges and juries willing to impose penalties for non-compliance of requirements relating solely to matters of personal or individual safety.

What are the costs to boaters and enforcement agencies for mandating universal PFD wear?

SUPPORTS: Given that current federal and state boating laws require that each vessel have available and accessible PFDs for each individual onboard, there are no added costs to the boater/consumer to implement mandatory PFD wear. The cost to state agencies for enforcement of mandated wear provisions is a function of several factors including changes in manpower and levels of boater compliance. High levels of compliance among the boating public could result in fewer agency/boater contacts and theoretically decrease enforcement demands. Conversely, low levels of compliance could result in increased on-the-water enforcement demands and added agency time in the court room prosecuting cases. Public education and stakeholder support regarding mandated measures would be instrumental in affecting the cost of implementation.

OPPOSES: The costs to boaters of proposed mandated PFD wear regulations are perhaps more intangible and best characterized in terms of losses of personal freedom and responsibility. But they are nonetheless real and significant to the boating public. Recreational boating by definition is a pastime pursuit and it is uniquely individual in that boaters intentionally fashion experiences on either end of a range of risk taking extremes. For example, boating is most frequently a warm weather activity that many outdoor recreationalists also associate with swimming, sunbathing, fishing, touring, wildlife viewing or just spending quiet time with family and friends. Statistically, these are very low-risk types of boating activities yet under an across-the-board mandatory PFD wear law these boaters would face the same PFD restrictions as activities such as riding personal watercraft and water-skiing. The over-regulation of this population of boaters imposes an unnecessary and collective cost to society that is not outweighed by a greater or more compelling state interest.

The cost of implementing the proposed PFD wear statutes would be significant to boating agencies if the measures are aggressively enforced and vigorously prosecuted. Non-compliance will be high among many groups of boaters and state and local enforcement agencies will be overwhelmed by added demand for a greater law enforcement presence on the water and officers will spend inordinate amounts of time in court as these cases are adjudicated. If new mandates for PFD wear are not aggressively enforced and supported by the courts they will not yield significant changes in personal behavior and PFD wear rates will remain unchanged.

What type or length of vessel, or type of operation, should be included in or exempted from mandatory wear rules?

SUPPORTS: Occupants of all vessels less than 16' in length should be required to wear approved PFDs anytime the vessel is underway. Occupants of all vessels less than 26' in length but greater than 16' should be required to wear approved PFDs anytime the vessel is underway unless the occupant is within an enclosed cabin.

OPPOSES: Oppose all mandatory universal PFD wear provisions except those for certain age groups (under 12) or under certain conditions (offshore) or engaged in specific activities (riding personal watercraft.)

How has new technology changed PFD wearability issues?

SUPPORTS: New and emerging PFD technologies make it even easier for the boating public to comply with mandated PFD rules. Lighter, stylish and more streamlined conventional (inherently buoyant) life jackets provide consumers with a much greater range of costs and appropriate use PFDs. The advent of inflatable PFDs, although somewhat more expensive, provide a whole new line of unobtrusive, flotation-on-demand options that can be packaged in a range of deployment types from belt-packs to vests to inflatable apparel. As new technologies become more commonplace the cost of these technologies to consumers will continue to fall. Mandating PFD wear provisions could even hasten the development of additional technologies and material types by stimulating the PFD market demands.

OPPOSES: Although new PFD technologies are a welcomed development in recreational boating safety they do not offer a panacea for boating safety nor do they support the arguments for mandatory PFD wear laws. Unfortunately, new inflatable PFD innovations may present a false sense of progress toward increased voluntary wear of life jackets. Cost barriers will continue to keep many infrequent boaters – those most at risk – from entering the inflatable PFD market anytime soon. Although boaters overall are frequently portrayed as affluent, the great majority of weekend boaters will find the costs of new technology PFDs too high to overcome.

Are there alternatives to mandatory wear rules? Summary statements.

SUPPORTS: There are alternatives to mandatory, across-the-board PFD wear laws. In fact, in a confidential survey of state boating law administrators conducted by NASBLA earlier this year, 20 of 34 respondents expressed their preference for a policy alternative other than mandating PFD wear for all persons on vessels less than 21 feet in length; 13 respondents supported the measure. When asked if other vessel lengths should be considered there were eight respondents with four supporting 16' or less and four supporting mandated PFD wear for persons on vessels up to 26' in length. However, when queried as to their support for mandatory PFD wear while boating under specified conditions, 33 respondents supported mandatory wear while water skiing and one opposed; 20 respondents supported mandatory wear in offshore environments with 14 opposed; and 27 supported mandatory wear in cold water environments and 23 supported mandatory wear on swift moving rivers. When asked whether

they supported federal mandates for PFD wear, 20 boating law administrators opposed and 14 supported the measure.

Among other policy alternatives that could result in safer recreational boating nationwide is increased enforcement of present carriage requirements with significantly stricter penalties for non-compliance. This approach imposes a higher cost to “voluntarily” educate the “unwilling.” However, as state-level policy-makers, a question has been posed to state boating law administrators, “If your Governor came to you and asked, regardless of cost or political ramifications, ‘*What is the single most important thing we can do to significantly reduce boating fatalities?*’, what would you say?”

Invariably, when personal opinions and political considerations are set aside the most common response is “requiring people to wear life jackets.” Mandating the universal wearing of PFDs in small open boats has the potential for positively impacting recreational boating safety like no other policy intervention we’ve tried. Although mandatory boater education is also a key to achieving safer boating, as a public policy measure, it will yield fruit only over the long-haul as new generations of boaters come under the umbrella. But mandatory PFD wear laws on the other hand can yield positive, measurable outcomes almost immediately. As little as two decades ago, mandatory seat-belt use would have been politically unacceptable, but today it’s commonplace and the observed levels of compliance have increased significantly and continue to grow. With effective and consistent law enforcement, there is no reason to believe that mandatory use of personal flotation devices cannot be just as successful.

OPPOSES: Reducing the number of recreational boating fatalities is a noble and worthwhile undertaking, but where do we draw the line between balanced government oversight and intervention and individual freedom and responsibility. Committed marine law enforcement professionals have been tireless in their pursuit of safer recreational boating and, when appropriate, stakeholders throughout the boating community have come together to advocate firm and fair public policy measures to achieve a common objective. Although it has taken time to achieve consensus on the need for some specific regulatory or statutory responses, the end results have proven effective in moving boating safety forward albeit sometimes in small, incremental steps. Despite our best wishes, unfortunately there are no silver bullets or quick fixes for the challenges of boating safety anymore than their for the other difficult challenges left to the public sector. We should proceed cautiously on untested policy solutions that might ultimately divert limited resources from the few proven alternatives we know are making a difference – more targeted law enforcement, more boater education and more emphasis on personal responsibility.

CONTACT INFORMATION

Fred Messmann, NASBLA President
1100 Valley Road
Reno NV 89512
775-688-1542, Fax 775-688-1551
fmessmann@ndow.org

John M. Johnson, NASBLA Deputy Director
1500 Leestown Road, Suite 330
Lexington KY 40511
859-225-9487, Fax 859-231-6403
john@nasbla.org

Ed Carter, Chief
Boating Division
Tennessee Wildlife Resources Agency
P.O. BOX 40747
Nashville, TN 37204
ed.carter@state.tn.us