

10/18/83

DEPARTMENT OF TRANSPORTATION  
U. S. COAST GUARD

STATEMENT OF

REAR ADMIRAL BOBBY F. HOLLINGSWORTH  
CHIEF, OFFICE OF MARINE ENVIRONMENT AND SYSTEMS

AND

REAR ADMIRAL JOSEPH A. MCDONOUGH, JR.  
CHIEF, OFFICE OF BOATING, PUBLIC AND CONSUMER AFFAIRS

BEFORE

THE HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

AND

SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

REGARDING

MARINE SANITATION DEVICES,

OPERATION OF BOATS WHEN INTOXICATED,

AND

STOLEN BOATS

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM REAR ADMIRAL BOBBY F. HOLLINGSWORTH, CHIEF OF THE OFFICE OF MARINE ENVIRONMENT AND SYSTEMS, UNITED STATES COAST GUARD HEADQUARTERS. I AM ACCOMPANIED BY REAR ADMIRAL JOSEPH A. McDONOUGH, JR., CHIEF OF THE OFFICE OF BOATING, PUBLIC AND CONSUMER AFFAIRS. WE ARE HERE TODAY TO TALK ABOUT THREE SEPARATE ISSUES: OUR MARINE SANITATION DEVICE (MSD) PROGRAM; OPERATING BOATS WHEN INTOXICATED; AND STOLEN BOATS. FIRST, MSDs.

AS YOU KNOW, SECTION 312 OF THE CLEAN WATER ACT IS THE LEGISLATIVE AUTHORITY FOR THE CURRENT FEDERAL MSD PROGRAM. THE ACT REQUIRES THE ENVIRONMENTAL PROTECTION AGENCY (EPA) TO ISSUE DISCHARGE STANDARDS FOR MSDs. THE EPA ISSUED THESE REGULATIONS IN 40 CFR 140 ON JANUARY 29, 1976. THE ACT ALSO REQUIRES THE COAST GUARD TO ISSUE REGULATIONS FOR MSDs BASED UPON THE EPA STANDARDS. THE COAST GUARD ISSUED ITS ORIGINAL MSD REGULATIONS IN 33 CFR 159 ON JANUARY 30, 1975 AND AMENDED THEM ON APRIL 12, 1976 TO CONFORM WITH THE EPA STANDARDS. THESE REGULATIONS APPLY TO ALL VESSELS WITH INSTALLED TOILETS WHILE OPERATING IN U. S. WATERS. SINCE JANUARY 30, 1980, ALL VESSELS WITH INSTALLED TOILETS ARE REQUIRED TO BE EQUIPPED WITH A COAST GUARD CERTIFIED AND OPERABLE TYPE I, II, OR III MSD. DIRECT DISCHARGE TOILETS ARE ILLEGAL UNLESS THE VESSEL IS OPERATING UNDER A WAIVER GRANTED BY THE COAST GUARD.

UNDER THE PRESIDENT'S TASK FORCE FOR REGULATORY RELIEF, THE DEPARTMENT OF TRANSPORTATION IDENTIFIED THE MSD REGULATIONS AS BEING COSTLY AND CONTROVERSIAL AND TASKED THE COAST GUARD ON FEBRUARY 27, 1981 WITH CONDUCTING A REGULATORY REVIEW. THE COAST GUARD AND EPA HAVE WORKED CLOSELY DURING THIS PROGRAM REVIEW BECAUSE OF THE INTERRELATIONSHIP OF BOTH AGENCIES' REGULATIONS. THE REPORT IS CURRENTLY BEING REVIEWED BY DOT.

WHILE THE COAST GUARD IS THE AGENCY CHARGED WITH ENFORCING THE FEDERAL MSD REGULATIONS, THERE ARE PRESENTLY SOME PROVISIONS WHICH PERMIT THE STATES THE OPPORTUNITY TO ASSIST IN THE ENFORCEMENT PROCESS. FIRST, STATES MAY APPLY TO THE EPA TO HAVE PARTICULAR WATER BODIES DESIGNATED AS "NO DISCHARGE" WATERS, WHICH THEN ALLOWS STATES TO TAKE ACTION TO PROVIDE FOR ENFORCEMENT. SECOND, STATE ENFORCEMENT OFFICERS MAY BOARD VESSELS AND, UNDER THE CIVIL PENALTY PROCEDURES IN 33 CFR 1.07, FORWARD REPORTS OF INVESTIGATIONS OF POSSIBLE MSD VIOLATIONS TO THE LOCAL COAST GUARD DISTRICT COMMANDER, WHO MAY TAKE CIVIL PENALTY ACTION. ADDITIONALLY, THE CLEAN WATER ACT AUTHORIZES THE COAST GUARD TO ENTER INTO AGREEMENTS WITH OTHER AGENCIES, INCLUDING STATES, FOR MSD ENFORCEMENT ASSISTANCE. WE ARE DRAFTING GUIDANCE FOR OUR DISTRICT COMMANDERS TO FORMALLY ENTER INTO THESE AGREEMENTS WITH INDIVIDUAL STATES.

COAST GUARD ENFORCEMENT OF THE MSD REGULATIONS IS DONE IN CONJUNCTION WITH OUR ROUTINE POLLUTION PREVENTION, SAFETY, AND LAW ENFORCEMENT BOARDINGS. FOR LARGER COMMERCIAL VESSELS, SUBJECT TO ROUTINE COAST GUARD INSPECTION, THIS APPROACH IS SUFFICIENT TO ENSURE COAST GUARD APPROVED DEVICES HAVE BEEN INSTALLED; HOWEVER, ONLY A SMALL PERCENTAGE OF THE MANY RECREATIONAL BOATS AND SMALL UNINSPECTED COMMERCIAL VESSELS WITH MSDS ARE INSPECTED EACH YEAR. OF THE 8.2 MILLION RECREATIONAL VESSELS REGISTERED IN THE UNITED STATES, APPROXIMATELY 750,000 HAVE INSTALLED TOILETS. FROM A PRACTICAL STANDPOINT THE COAST GUARD LACKS THE ABILITY TO EFFECTIVELY ENFORCE THE CURRENT PROGRAM FOR THIS LARGE NUMBER OF VESSELS. FOR ALL PRACTICAL PURPOSES, COAST GUARD ENFORCEMENT OF THE MSD REGULATIONS FOR THE RECREATIONAL VESSEL SEGMENT IS INSUFFICIENT TO ENSURE COMPLIANCE. WHILE APPROXIMATELY 90% OF THE COMMERCIAL VESSELS COMPLY, WE ESTIMATE ONLY 25% OF THE RECREATIONAL BOATS NATIONWIDE ARE IN COMPLIANCE.

THE MSD REGULATIONS WERE INITIALLY PROPOSED UNDER THE WATER QUALITY IMPROVEMENT ACT OF 1970 AND HAVE GENERALLY BEEN SUPPORTED BY MOST ENVIRONMENTAL GROUPS. HOWEVER, SOME GROUPS ARE CONCERNED ABOUT THE PROTECTION OF FRESHWATER IMPOUNDMENTS INCLUDING DRINKING WATER SUPPLIES, AND THE PREVENTION OF DISEASE FROM WATERBORNE ORGANISMS TRANSMITTED IN HUMAN SEWAGE. THOSE GROUPS THAT OPPOSE MSD REQUIREMENTS CONTEND THAT THERE IS A HIGH COST OF COMPLIANCE, AN INABILITY TO COMPLY IN MANY INSTANCES, AND THAT THE AMOUNT OF WASTES DISCHARGED FROM VESSELS MAY BE AN INSIGNIFICANT PART OF THE TOTAL POLLUTION PRESENT IN THE NAVIGABLE WATERS OF THE UNITED STATES.

SOME OF THE ALTERNATIVES THAT HAVE BEEN SUGGESTED WOULD ALLOW STATES TO ADOPT AND ENFORCE VESSEL SEWAGE DISCHARGE REQUIREMENTS BASED ON FEDERAL STANDARDS. FOR EXAMPLE, THE CLEAN WATER ACT COULD BE CHANGED TO ALLOW STATES TO REGULATE SEWAGE DISCHARGES FROM VESSELS 65 FEET IN LENGTH OR LESS, WITH THE COAST GUARD CONTINUING TO REGULATE ALL VESSELS GREATER THAN 65 FEET. ENFORCEMENT OF THE MSD PROGRAM WOULD BE SHARED BETWEEN THE STATES AND THE COAST GUARD. THIS WOULD ENSURE MORE LOCAL CONSIDERATION OF SEWAGE DISCHARGE PROBLEMS.

IN FEBRUARY OF THIS YEAR CONGRESSMAN YOUNG OF ALASKA INTRODUCED H.R. 1421, A BILL "TO ELIMINATE COAST GUARD RESPONSIBILITIES REGARDING MARINE SANITATION DEVICES ON SMALL VESSELS, AND FOR OTHER PURPOSES." THIS BILL, WOULD AMEND SECTION 312 OF THE CLEAN WATER ACT AND ELIMINATE THE FEDERAL REQUIREMENT THAT A VESSEL, WHICH IS 65 FEET IN LENGTH OR LESS, WITH AN INSTALLED TOILET HAVE ON BOARD A MARINE SANITATION DEVICE. IT WOULD REQUIRE THAT THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY (EPA) DETERMINE THAT PUMPOUT FACILITIES ARE "ACCESSIBLE" BEFORE A STATE COULD ESTABLISH A "NO DISCHARGE ZONE." IT WOULD ALSO ALLOW STATES TO PROHIBIT ANY DISCHARGE IN SOME OR ALL OF THEIR

WATERS FROM A VESSEL WHICH IS 65 FEET IN LENGTH OR LESS, THAT HAS AN INSTALLED TOILET AND IS NOT EQUIPPED WITH A MSD CERTIFIED UNDER SECTION 312 OF THE ACT. THE STATE COULD NOT APPLY THE PROHIBITION AGAINST A VESSEL REGISTERED IN ANOTHER STATE WHILE THE VESSEL IS ENGAGED IN INTERSTATE TRAVEL.

THE COAST GUARD WOULD LIKE TO OFFER A TECHNICAL COMMENT ON THE BILL. THE INTERSTATE TRAVEL PROVISION IN THE BILL IS OF SOME CONCERN AND MAY POSE ENFORCEMENT PROBLEMS. FOR EXAMPLE, THE TERM "INTERSTATE TRAVEL" IS UNDEFINED; ALSO THE TERM "REGISTERED" REFERRING TO VESSELS REGISTERED IN ANOTHER STATE CAUSES CONFUSION SINCE VESSELS ARE NUMBERED BY STATES OR DOCUMENTED BY THE COAST GUARD. BECAUSE THERE ARE SEVERAL STATES THAT ARE WITHOUT NUMBERING OR DOCUMENTATION OFFICES, THERE WILL BE MANY VESSELS LEGITIMATELY DOCUMENTED OUT OF THE STATE OF THE OWNER'S RESIDENCE OR THE VESSEL'S PRINCIPAL USE. GENERALLY, THE INTERSTATE TRAVEL PROVISION WOULD ALLOW A BOATER FROM ANOTHER STATE WITH AN APPROVED DEVICE TO OPERATE WITHOUT REGARD TO A HOST STATE'S MINIMUM REQUIREMENTS. WE WOULD RECOMMEND THE COMMITTEE CONSIDER INCLUDING THE REQUIREMENT FOR AN OUT-OF-STATE VESSEL TO SECURE ITS TOILET SYSTEM OR MEET THE MINIMUM REQUIREMENTS OF THE STATE IN WHOSE WATERS IT IS OPERATING AFTER SOME REASONABLE PERIOD OF TIME. WE WOULD DEFER TO THE EPA AND THE STATES FOR OTHER POSSIBLE ENVIRONMENTAL CONCERNS.

THIS CONCLUDES MY PREPARED STATEMENT ON MSDs; HOWEVER, THE COMMITTEE ALSO ASKED US TO ADDRESS THE ISSUE OF PEOPLE OPERATING THEIR SMALL BOATS WHEN UNDER THE INFLUENCE OF ALCOHOL.

THE OPERATION OF BOATS IS REGULATED BY THE U. S. COAST GUARD, ARMY CORPS OF ENGINEERS, THE NATIONAL PARK SERVICE, STATE AND LOCAL GOVERNMENTS. FEDERAL LAW, TITLE 46 UNITED STATES CODE SECTION 2302, PROVIDES FOR CIVIL PENALTIES OF

NOT MORE THAN \$1,000 AND CRIMINAL PENALTIES OF NOT MORE THAN \$5,000, IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH, FOR THE NEGLIGENT OPERATION OF A VESSEL. OPERATING A VESSEL UNDER THE INFLUENCE OF ALCOHOL WOULD CONSTITUTE NEGLIGENT OPERATION IF THE OPERATION ENDANGERED LIFE, LIMB OR PROPERTY.

MOST OF THE STATES HAVE LAWS CONCERNING NEGLIGENT OPERATION, AND MANY STATES HAVE SEPARATE LAWS CONCERNING OPERATING WHILE INTOXICATED. SOME OF THE STATE MOTOR VEHICLE LAWS CONCERNING OPERATION OF VEHICLES WHEN INTOXICATED INCLUDE BOATS WITHIN THE DEFINITION. OTHER STATES HAVE SEPARATE LAWS CONCERNING THE SPECIFIC OPERATION OF A BOAT.

NEARLY 90% OF ALL BOATS ARE LESS THAN 18 FEET IN LENGTH, AND THE MAJORITY OF THESE ARE LOCATED ON INLAND WATERS NOT SUBJECT TO FEDERAL JURISDICTION. THE COAST GUARD DOES NOT FEEL THAT FURTHER FEDERAL LEGISLATION IS NEEDED; RATHER, THAT STRONGER ENFORCEMENT BY STATE AND LOCAL JURISDICTIONS WILL HELP TO CURTAIL NEGLIGENT OPERATION. THE RECENTLY RENEWED FEDERAL FINANCIAL ASSISTANCE TO THE STATES THROUGH THE NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND, FUNDED BY FEDERAL MOTORBOAT FUEL TAXES, SHOULD ASSIST THE STATES IN DEVELOPING THESE STRONGER BOATING ENFORCEMENT PROGRAMS. CURRENTLY FIVE KEY ELEMENTS ARE NEEDED FOR A STATE TO RECEIVE FEDERAL FINANCIAL ASSISTANCE FOR ITS BOATING SAFETY PROGRAM. A STATE MUST HAVE AN APPROVED BOAT NUMBERING SYSTEM; A COOPERATIVE BOATING SAFETY ASSISTANCE PROGRAM WITH THE COAST GUARD; SUFFICIENT PATROL AND OTHER ACTIVITY TO ENSURE ADEQUATE ENFORCEMENT; AN ADEQUATE BOATING SAFETY EDUCATION PROGRAM; AND AN ACCIDENT REPORTING SYSTEM. THE PRESENT STATUTE PROVIDES FOR A WIDE LATITUDE IN STATE PROGRAMS. THE COAST GUARD DOES NOT FAVOR MORE RESTRICTIVE

LANGUAGE. THROUGH THE COOPERATIVE AGREEMENTS PROVISION, THE COAST GUARD IS ABLE TO TARGET AREAS FOR INCREASED EFFORT, SUCH AS OPERATION WHILE INTOXICATED.

WE ARE ENCOURAGING ALL STATES TO ADOPT A STRONGER POSTURE RELATING TO ALCOHOL AND BOATING. ENFORCEMENT IS NOT THE ONLY ANSWER AS YOU WELL KNOW. EDUCATION AND PUBLIC AWARENESS ARE JUST AS IMPORTANT WITH BOATS AS WITH AUTOMOBILES. THIS YEAR THE NATIONAL BOATING SAFETY COUNCIL WITH FULL COAST GUARD COOPERATION WILL STRESS ALCOHOL IN ITS PROGRAMS; AND THE THEME OF NATIONAL BOATING SAFETY WEEKS 1984 AND 1985 WILL BE THAT BOATING AND ALCOHOL DON'T MIX. THE COAST GUARD AND COAST GUARD AUXILIARY WILL CONTINUE TO ASSIST ALL EFFORTS TOWARDS REDUCING ALCOHOL RELATED ACCIDENTS AND INTOXICATED BOAT OPERATORS ON ALL OF OUR NATION'S WATERWAYS.

FINALLY THE COMMITTEE ASKED US TO COMMENT ON THE NEED FOR FEDERAL LEGISLATION TO COMPREHENSIVELY ADDRESS THE ISSUE OF STOLEN RECREATIONAL VESSELS.

THE COAST GUARD ESTIMATES THAT THERE ARE ALMOST 15 MILLION BOATS IN THE UNITED STATES. NEARLY 90% ARE LESS THAN 18 FEET IN LENGTH. THE VAST MAJORITY OF THESE BOATS ARE LOCATED ON INLAND WATERS OR STORED ON LAND WHERE THE FEDERAL GOVERNMENT DOES NOT HAVE JURISDICTION. WE DO NOT HAVE AN ESTIMATE OF THE NUMBER OF BOATS STOLEN EACH YEAR. HOWEVER, LAST YEAR APPROXIMATELY 1200 REPORTS OF STOLEN BOATS PER MONTH WERE ENTERED INTO THE FEDERAL BUREAU OF INVESTIGATION'S NATIONAL CRIME INFORMATION CENTER COMPUTER SYSTEM. CURRENTLY THERE ARE OVER 23,000 REPORTS OF STOLEN BOATS LISTED IN THE SYSTEM. THIS INFORMATION IS PROVIDED PRIMARILY BY STATE AND LOCAL POLICE DEPARTMENTS. THE COAST GUARD USES THIS SYSTEM ON A ROUTINE BASIS IN THE COASTAL AREAS WHEN IT IS SUSPECTED THAT A BOAT BEING BOARDED IS STOLEN OR THE OPERATOR LACKS IDENTIFYING BOAT PAPERS.

MANY BOATS ARE STOLEN FROM AREAS SUCH AS INLAND LAKES OR BOATOWNER'S BACK YARDS OR DRIVEWAYS. WHEN IT IS SUSPECTED THAT A STOLEN BOAT IS INVOLVED IN INTERSTATE TRANSPORTATION, THE FEDERAL BUREAU OF INVESTIGATION MAY HAVE JURISDICTION UNDER THE NATIONAL STOLEN PROPERTY ACT, 18 U.S.C. 2314. THE COAST GUARD ACCEPTS STOLEN BOAT REPORTS, ISSUES LOOKOUTS FOR REPORTED THEFTS, AND DISSEMINATES INFORMATION TO THE AGENCIES HAVING PRIMARY JURISDICTION OVER THE INCIDENT. THE COAST GUARD BECOMES DIRECTLY INVOLVED WHEN THE THEFT INVOLVES NAVIGABLE WATERS OR THE HIGH SEAS. THIS MAY INCLUDE STOPPING BOATS AND DETAINING THEM FOR FURTHER ACTION BY RESPONSIBLE STATE OR LOCAL AUTHORITIES OR PROSECUTION BY FEDERAL AUTHORITIES WHEN FEDERAL LAW HAS BEEN VIOLATED.

THE COAST GUARD HAS TAKEN A LEAD ROLE IN THE EFFORT TO DISCOURAGE BOAT THEFT. A FINAL REGULATION WAS PUBLISHED IN THE FEDERAL REGISTER ON SEPTEMBER 9, 1983 WHICH REQUIRES BOAT MANUFACTURERS TO PLACE A SECOND CONCEALED HULL IDENTIFICATION NUMBER IN BOATS, EFFECTIVE WITH MODELS BUILT AFTER AUGUST 1, 1984. THE MAJORITY OF MANUFACTURERS ALREADY ARE PLACING THIS SECOND NUMBER IN THEIR BOATS. THIS SECOND NUMBER SHOULD AID IN THE IDENTIFICATION AND RECOVERY OF STOLEN BOATS. THE COAST GUARD IS ALSO ENCOURAGING THE VARIOUS STATES TO ADOPT BOAT TITLING LAWS. FIFTEEN STATES NOW TITLE BOATS. FEDERAL FINANCIAL ASSISTANCE TO THE STATES THROUGH THE NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND, FUNDED BY FEDERAL MOTORBOAT FUEL TAXES MENTIONED EARLIER, SHOULD ASSIST THE STATES IN DEVELOPING STRONGER BOATING ENFORCEMENT PROGRAMS.

THE COAST GUARD DOES NOT FEEL THAT FURTHER FEDERAL LEGISLATION IS NEEDED IN REGARD TO STOLEN BOATS. THE PRIMARY EMPHASIS ON STOLEN BOATS AS WITH STOLEN PROPERTY IN GENERAL MUST REMAIN WITH STATE AND LOCAL POLICE JURISDICTIONS.

THE COAST GUARD WILL CONTINUE TO PLAY AN ACTIVE ROLE IN THIS IMPORTANT ENFORCEMENT EFFORT.

THIS CONCLUDES MY PREPARED STATEMENT ON THESE THREE ISSUES.

REAR ADMIRAL MCDONOUGH AND I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.