

Reference: Docket USCG-2007-0008

Coast Guard Boating Accident Report Form (CG-3865)

Comments prepared by:

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I will run through several items.

(1) I brought this item up maybe 5 years ago in the [NASBLA] BAIRAC meetings. Why couldn't we add a request for the "Engine Make" and the "Engine Serial Number(s)". Bruce Schmidt agreed to add those two items in the upper right corner of page two, right next to "Number of Engines" and "Total Horsepower", for the next three years. Then leading up to this most recent year Bruce told me he needed more space and would cut those two items out, which he did in the latest BAR. Except he didn't reduce the space, which leaves the same room as before. He also said that the CFR didn't ask for this information. However, that's true for many new things we have added over the past many years, such as "Estimated Speed At Time Of Accident" or "Operator Wearing A Safety Lanyard"? I think that Bruce somehow just developed a dislike for those two pieces of information. My arguments include, Why deprive the engine builders of having any access to information about their products with regards to recreational boating accidents? - - - Occasionally an engine builder will have an engine recall on a particular engine model. The engine builder would like to know if any of those engines were involved in an accident. - - - Some engine models of some builders in some recent years are equipped with the so-called "Black Box" enabling law enforcement and the engine company to, in some cases, play back the engine operation over the last few seconds prior to a crash. Now no one can tell from the BAR if a given engine was so equipped. - - - Last year US outboard sales included 70% 4-stroke engines and 30% 2-stroke. Year by year the percentage of 4-stroke engines in the field, and thus in accidents, will be steadily rising. 4-stroke engines are known to have some different characteristics than lighter 2-stroke engines. It would be nice to know if the heavier 4-stroke outboards were becoming disproportionately more involved in boat handling accidents or swampings or capsizings. As it is now, we'll never know. - - - Let's put those two items back into the BAR. The engine make couldn't be easier to discover and the serial number is on the clamp/transom bracket or sterndrive, very close to the HIN.

(2) Propeller Strike versus Propeller or Propulsion Unit Strike. A number of years ago the BAR lumped all such injuries under one category, "Struck By Boat Or Propeller". I was able to get the two, both separated, plus add "Propulsion Unit" to "Propeller", since the injuries are often such that the difference between the prop and the propulsion unit are

not clear. As it turns out, ever since the boat and prop were separated, on average, the two totals are about equal. This meant that for those who wished to paint props as "Evil" pieces of equipment, props were getting blamed for twice as many injuries as was the case. Through my years of experience in this injury field, I have seen that about 2/3 of the prop/propulsion unit accidents are truly prop related and the other 1/3 are not. Just this year I have been involved in three boating accident injury law suits where the prop was blamed and the engine company was being sued for not equipping its engine with a "prop guard". In all three of these suits (two Mercury and one Bombardier) I could clearly see that a spinning prop could not have caused these injuries. The same excellent lawyer in all three cases prepared an affidavit, technically from me, stating our findings. In all three cases, after reading the affidavits, the plaintiff's then dropped their lawsuit. - - - In the latest BAR Bruce has added two locations on page three where he no longer includes " - - or propulsion unit" after "struck by propeller". This will lead the person filling out the form to choose between "struck by vessel" and "struck by propeller", neither of which will be correct in many cases. And it can lead to unnecessary lawsuits. - - - As you probably know, at Jim Getz's request, I have taught this subject for the last three years at the NASBLA Advanced Course for Accident Investigation at the NTSB Academy. I can reach about 50 officers each year. Think of how many officers in this country will investigate such an accident and have no training in this subject. - - - I am asking that in the two places on page three where "struck by the propeller" is listed, the words "or propulsion unit" be added, as it appears on the right side, middle of page two.

(3) Around the middle of page one is now asked the new question, "Operator Wearing A Safety Lanyard (Engine Shut Off Device) At The Time Of The Accident." We now also have wireless devices to do the job. The question might better read: "Operator Using A Safety Lanyard or Wireless Emergency Engine Shut Off Device At The Time Of The Accident."

(4) On the same subject, we ought to know if the boat "was equipped" with an emergency engine shut off device, lanyard or wireless, since many if not most boats today are so equipped from the factory, and NASBLA has presented a well-written model act on the subject. This question might be located at the very bottom of page one where a similar question is asked regarding life jackets. "USCG Approved Life Jackets On Board The Vessel"?

(5) At the bottom of page two under "Contributing Factors" is an item, "Standing/Sitting On Gunwhale, Bow, Or Transom". "Seat Back" should be added to this list. Many states have made "sitting on a seat back" a boating violation. I have had many cases where an operator or passenger fell overboard due to sitting in this precarious position. So, the question could read, "Standing/Sitting On Gunwhale, Bow, Transom, Or Seat Back". By the way my dictionaries spell that "G" word "gunwale" or "gunnel", not "gunwhale".

(6) There is a question toward the bottom of the first page, "Depth From Transom (Stern) To Keel (Bottommost Point) Of Vessel". If one wanted to save some space, that is a nice useless question that could be eliminated. I don't know that I've ever seen that information show up. And of what use is it? Furthermore, where on the transom do you

measure from? Maybe the top of an outboard transom. But where on an inboard/sterndrive boat? Top of the engine cover? The least the question could say is: "Depth From Top Of Transom - - - " (if that is what is meant). Bruce said it had to stay in because it's in the CFR. But who would really care if it wasn't in the BAR? Are there CFR Police who continuously check to see that everything in the CFR is followed through with in the latest BAR regardless of how silly it might be? Do these police get upset if we add things not in the CFR?

That's all I have for the new official BAR. I think all my comments would apply to the more "user friendly" version known as APPENDIX B; RECOMMENDED BAR FORM (Draft). However, I have a couple of additional things I would suggest in this proposed form.

(1) On page 3 of 6, OPERATOR/PASSENGER ACTIVITIES I would list "Recreational" first or above "Commercial" since Recreational will most often be used. In fact I think that many of these lists ought to be made in the order of most frequently used first, etc.

(2) For example, still on 3 of 6, BOAT OPERATIONS, I would list "Cruising" first, "Changing Direction" second and "Changing Speed" third.

(3) Down that same page in ACCIDENT EVENTS I don't see "Person struck by own boat", only "Person struck by other boat".

(4) At the bottom of that page in CONTRIBUTING FACTORS it seems to me that "Hull failure" belongs at the top of the page in the MACHINERY/EQUIPMENT FAILURE where things that break are listed.

That's all I have for this "draft" document, along with all my comments for the current BAR.