



# U.S. COAST GUARD

November 2020

U.S. Coast Guard Headquarters

Office of Maritime and International Law



# States and USCG Partnerships in the Investigation of Casualties

- *Introduction – Captain Joseph Kramek, Office Chief, Office of Maritime & International Law*
- *Summary of Boating Statistics in 2020 – Lieutenant Charles Richardson, Office of Maritime & International Law*
- *Marine Casualty Investigations – Commander Nicholas Tabori, Division Chief, Prevention Law, Office of Maritime & International Law (With Todd Lochner, regarding practitioner perspectives)*

# Stats

- *From June to July 2020 wholesale shipments of new boats increased for the third consecutive month*
  - *Recreational boating has been an ideal summer social distancing activity*
  - *Manufacturers are ramping up production to meet demand, with production at 92% of where it was last year (as of July)*
- *New power boat retail sales are up 22% in July compared to the same month a year prior*
- *Wholesale shipments of PWCs were up an unprecedented 271% in July compared to June*
- *Boat sales are up 5-10% overall for the year*

# Stats Cont.

- *As boating usage has increased so have reported incidents and deaths*
- *Multiple possible contributing factors:*
  - *New boaters are often inexperienced and young*
    - *Are more prone to boating accidents*
  - *Social distancing requirements reduced number of boating safety checks, education courses, and CG Auxiliary outreach*

	Incs	Deaths
CY 2020 YTD (proj)	5,506	673
CY 2019 YTD	4,299	542
Percent Change	+28%	+24%

# Statutory Framework

- *46 USC 13102 (State Recreational Boating Safety Program) provides the State recreational boating safety (RBS) program requirement*
  - *Requires the Coast Guard to enter into contracts with States to put into effect an RBS program. The program, among other things requires the Coast Guard and States to take into consideration, “...State marine casualty and fatality statistics for recreational vessels.”*
  - *Note: Failure to maintain an effective RBS program may lead to suspension of the program and jeopardize yearly grant funds.*
- *46 USC 6102 (State Marine Casualty Reporting System)*
  - *Requires the Coast Guard to issue regulations, “...for a uniform State marine casualty reporting system for vessels. Regulations shall prescribe the casualties to be reported and the manner of reporting.”*

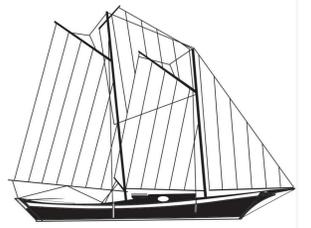
# Regulatory Framework

- *33 CFR part 173 & 174 Subpart C (Casualty and Accident Reporting)*
  - *By regulation the State system must require the operator and in some cases the owner of the vessel to report a marine casualty. The State system must provide a system to review reports, determine cause (including if there was use of drugs or alcohol), and determine if any problems exist regarding boating safety peculiar to the local area.*
  - *Specific events which trigger a report are:*
    - *Death or disappearance of a person*
    - *Injury that requires medical attention beyond first aid*
    - *Vessel or other property damage beyond 2k or total loss of the vessel*

# Coast Guard Policy

- *46 USC 13102 requires the Coast Guard to enter into a contract with the State to carryout the RBS program. This “contract” takes the form of a Memorandum of Agreement (MOA) and incorporates casualty reporting requirements under 33 CFR parts 173 and 174.*
- *COMDTINST 16750.8B spells out the specific RBS requirements for each MOA. Most MOAs will look exactly like COMDINST 16750.8B except where allowed to deviate by law or regulation.*
- *Under the Responsibilities subsection (e)(1) of the instruction,*
  - *“The State agrees to investigate all recreational boating deaths. The Coast Guard may investigate accidents involving deaths on vessels used on waters of joint or Federal jurisdiction, including the high seas if, in the sole discretion of the Coast Guard, the case warrants further investigation.”*

# Example – Maryland Statute



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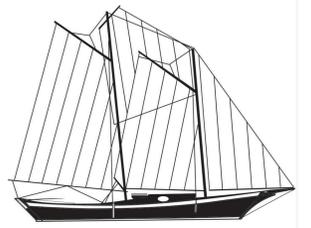
## **Md. Code Nat. Res. § 8-724 – Reporting of Boating Accidents**

If the operator is unable to file the report, the vessel owner shall file the report. If the accident caused the death or disappearance of any person or a person receives medical treatment beyond first aid, the report shall be made within **48 hours**. Any other accident resulting in personal injury or property damage shall be reported within **10 days**. This subsection does not apply to a vessel required to have a certificate of inspection under Chapter 1, Title 46, Code of Federal Regulations.

### **Accident report requirements**

(c) If any vessel numbered in the State is involved in an accident on waters outside of the State, and the accident results in the death, disappearance, or injury of any person or in property damage of \$2,000 or more, the operator or owner, within **30 days**, shall file a complete report with the Department including any information the Department requires by regulation.

# Example – Code of Maryland Regulations



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## COMAR 08.04.07.01 – Reporting of Boating Accidents

A. If a person dies or disappears from a vessel as a result of an occurrence that involves a vessel or its equipment on the waters of the State, the operator without delay, shall notify the Department by the quickest means available of the following facts:

- (1) The date, time, and exact location of the occurrence;
- (2) The name of each person who died or disappeared;
- (3) The number and name of the vessel; and
- (4) The names and addresses of the owner and operator.

C. The operator shall submit a written report if any one or more of the following occurs on board, or involving any vessel, except a vessel required to have a certificate of inspection under Chapter 1 of Title 46, Code of Federal Regulations.

- (1) The death of any person from whatever cause;
- (2) The disappearance of any person from on board under circumstances which suggest any possibility of his death or injury;
- (3) The injury of any person sufficient to require medical attention or if a person loses consciousness or is disabled for more than 24 hours; and
- (4) The loss or damage to property of any kind, including one or more vessels, in an amount of \$200 or more.



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# Practice Point

## Maryland Form for Reporting

Md. Code Regs. 08.04.07.01 (West 2020)

U.S. Dept. of Homeland Security U.S. Coast Guard CG-3865 (Rev. 03-08)	<b>Recreational Boating Accident Report</b>	OMB No: 1625-0003 Expires:
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NOTE: each boat operator/owner involved in an accident should submit a separate report.  
Estimated report form completion time: 30 min  
For each question below, please provide answers IF APPLICABLE AND IF KNOWN, otherwise leave blank.

### REPORT SUBMISSION

**Report required because** (select all that apply):

At least one person in this accident *died*:  
If so, how many?

At least one injured person in this accident *required or was in need of treatment beyond first aid*:  
If so, how many?

At least one person in this accident *disappeared* and has not yet been recovered:  
If so, how many?

All boat and other property *damage* (e.g., fishing/hunting gear) caused by this accident *totaled* (or likely totaled) \$2,000 or more:  
Approximate value of damage to *your* boat: \$   
Approximate value of damage to *your* other property: \$

Your or another *boat* in this accident was (or likely was) a *total loss*

**Report submitted by** (select all that apply):

Boat Operator (required if possible)

Boat Owner (if operator unable, or same as operator)

Other (describe):

First name:  Last name:

Phone:  -  -

**To be submitted within:**  
48 hours (if injury, disappearance or death)  
10 days (if boat/property *damage only*)

**To be submitted to:**  
(Local State Reporting Authority)

Town  
ST 12345  
Phone: 111-222-3333

You may submit any comments concerning the the accuracy of the burden estimate or any suggestions for reducing the burden to: Commandant (CG-5422), U.S. Coast Guard, Washington, DC 20593-0001 or Office of Management and Budget, Paperwork Reduction Project (1625-0003), Washington, DC 20503.

**For State Agency Use Only**

First name:

Last name:

Phone:

Primary cause of accident:

### ACCIDENT SUMMARY

**WHEN**

Date:    mm/dd/yy

Time:  :   am  pm (select one)

**WHERE**

Body of water name:

Location (on water) description:

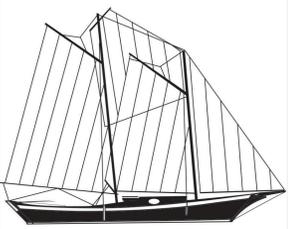
**ACCIDENT DESCRIPTION**

Briefly describe this accident (attach extra pages if necessary):

**DAMAGE TO YOUR BOAT**

Briefly summarize any damage to *your* boat:

# The Blue Line you shall not cross?



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I (Cpl. [REDACTED]) asked if there was any sign of alcohol on the owner of the motorboat?

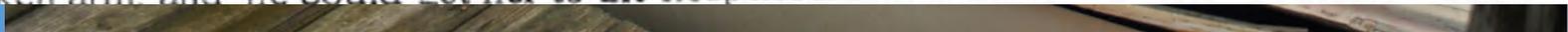
Ofc. [REDACTED] stated that he did not see any sign of alcohol on the boat or in the actions of the operator and he did not smell any.

I asked Cpl. [REDACTED] how close he had gotten to the operators to judge if they had been drinking?

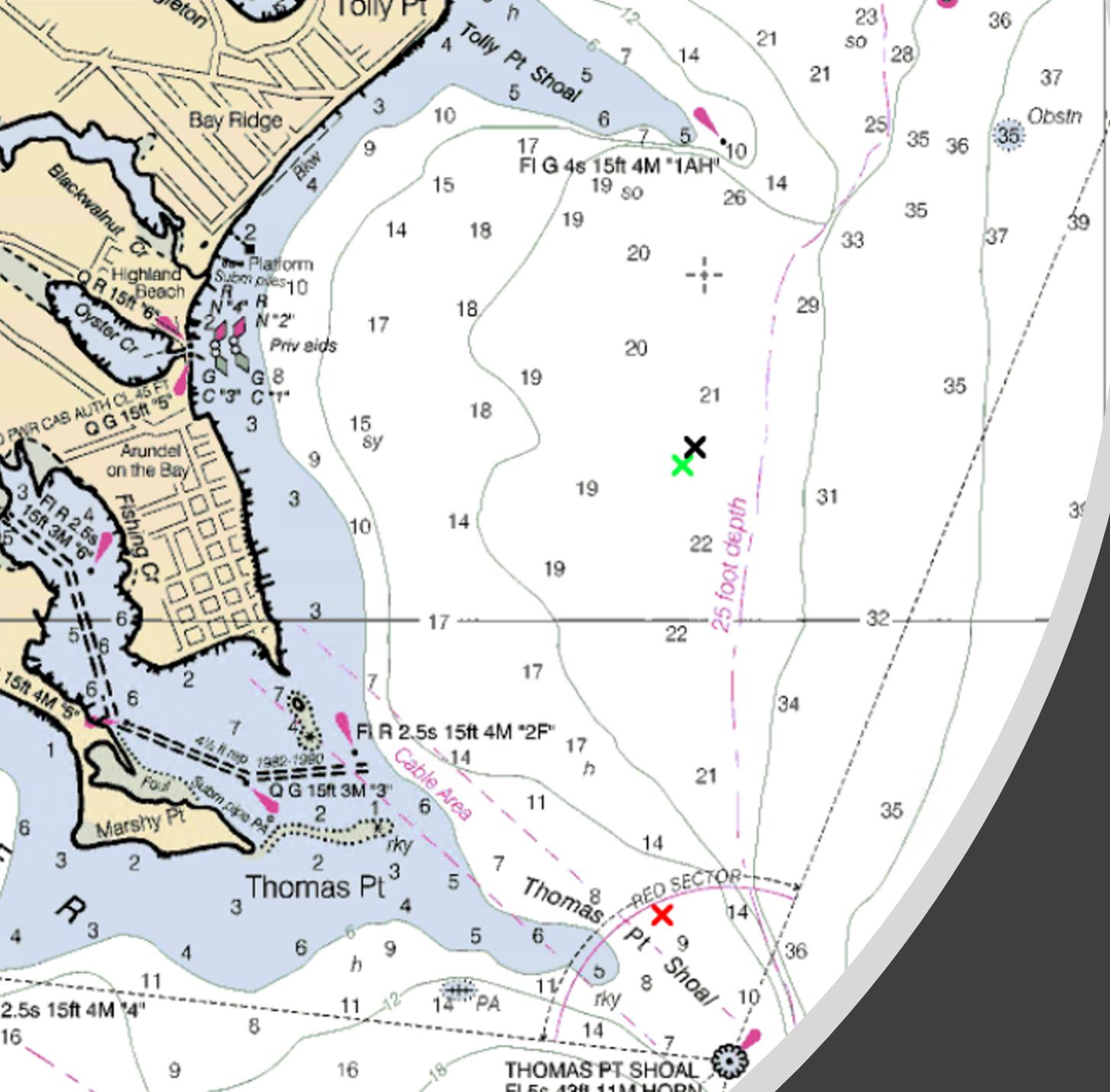
Cpl. [REDACTED] stated that he got very close to each operator, when questioning them and getting their personal information.

I asked Mr. [REDACTED] why he and Ms. [REDACTED] had refused medical treatment?

Mr. [REDACTED] stated that he did not think he was hurt very bad, and he was more worried about his boat. He stated that he was sure Ms. [REDACTED] had a broken arm, and he could get her to the hospital himself. He stated that he wanted to get his boat to Holiday



After Mr. [REDACTED] got his boat docked, he and Ms. [REDACTED] went to Anne Arundel Medical Center where she was diagnosed with a broken arm and he was diagnosed with a broken shoulder.



Undertrained  
and Over-  
Zealous  
Partners?



# Casualty Investigations under the MOA

- *Language of the MOA states that a State will “investigate all recreational boating fatalities.” However, the language is less prescriptive for other types of casualties and accidents that don’t raise to that level.*
- *Less serious injuries and property damage still need to be reported and the State is still required to review the reports for accuracy and completeness. The State must determine the cause and circumstances of each casualty and accident, including whether alcohol and/or drugs were a contributing factor.*

# Assistance Authority

- *The MOAs describe circumstances in which the State will support USCG investigations of commercial vessel casualties and when the USCG will provide support for State operations.*
- *The 3-mile question: Can a State investigate a casualty beyond 3-NM?*
  - *State jurisdiction ends at the 3-nautical mile line beyond the baseline.*
  - *Beyond the 3-nautical mile line is Federal jurisdiction, excluding certain jurisdictional grants such as the Coastal States of the Gulf of Mexico.*
  - *Generally speaking the Coast Guard can and will investigate casualties beyond 3-NM. However, under existing assistance authority the USCG could request assistance from the State to conduct an investigation.*
  - *It would be up to the State to determine if they could provide that assistance.*

# When should an accident should be reported?

- *COMDTINST 16750.8B defines a boating casualty or accident as “an occurrence involving any of the following: a death; or a disappearance under circumstances that indicate death or injury requiring medical treatment beyond first aid; or damage to a vessel and or property exceeding the Federal/State threshold level; or there is a complete loss of any vessel.”*
- *This can include death or injury to a swimmer because a vessel drifts away from the person and they cannot safely return to the vessel.*
- *A way to think about it is a “But For” causation analysis.*

# Hypo 1: Slip and Fall

- *If a passenger on a motor boat slips and falls, and dies from the injuries; is this death related to the vessel?*
- *What if a passenger on a motor boat slips and falls, and break their wrist?*
- *37 FR 21399 states that, “the proposed regulations [including 173.55] were developed to ensure that all injuries other than very minor injuries would be reported.”*

# Hypo 2: Voluntary Departure

- *If a passenger on a moving motor boat jumps off and is never seen again; is this death/disappearance related to the vessel?*
- *CFR Suggests a report ought to be made. “Disappears” can be interpreted to mean that the individual is no longer in sight or accounted for. If an individual was originally on board a vessel but does not return to the vessel due to circumstances which indicate they died or received an injury causing them to disappear, this would require a report under 173.55(a)(4).*

# Questions?

- *Thank you!*