



**SENATE STANDING COMMITTEE ON INVESTIGATIONS AND  
GOVERNMENT OPERATIONS**

**Public Hearing on Boating Safety on New York Waters  
Wednesday, August 8, 2012 11 am  
Town of Oyster Bay  
Town Board Hearing Room  
Town Hall East  
54 Audrey Avenue  
Oyster Bay, New York 11771**

**WITNESS LIST**

**Michael Della**, Testifying on behalf of Paul and Lisa Gaines  
Partner, Gruenberg, Kelly, Della

**Rose Harvey**, Commissioner  
New York State Office of Parks, Recreation and Historic Preservation

**Sergeant John T. Owen**, Deputy Commanding Officer  
Nassau County Police Department Marine Bureau

**District Commander Lawrence Postel**, SN  
US Power Squadrons, District 3- Long Island

**Larry Weiss**, New York State Legislative Liaison  
US Power Squadrons

**Chris Squeri**, Executive Director  
New York Marine Trades Association

**Jackie Martin**, Commodore  
Greater Huntington Council of Yacht & Boating Club

**Vincent Archdeacon**, Commodore  
Huntington Yacht Club

**Justin McCaffery**, Commissioner of Public Safety

Town of Oyster Bay

**Ed Carr**, Director of Maritime Services

Town of Huntington

**Harry Acker, Sr.** Harbor Master

Town of Huntington

**Mark Cuthbertson**, Councilman

Town of Huntington

interoffice  
MEMORANDUM

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**Subject:** Gaines, Victoria;

**Date:** July 31, 2012

On July 4, 2012, 7 year old Victoria Gaines was tragically killed when the boat she was in capsized on its way back from watching the Dolan Family fireworks display in Oyster Bay Harbor. Victoria would have celebrated her 8<sup>th</sup> birthday two days later.

She was a beautiful child with an amazing smile and an engaging spirit. She is survived by her father Paul, as well as her mother Lisa and brother Ryan, both of whom were onboard that boat when it capsized and sunk. The entire family is devastated by the loss of Victoria.

**In addition to Victoria, two other children died that evening.**

**This incident caught the attention of local and national news, and rightfully so. Not only because of the catastrophic loss of life of 3 beautiful children, but because this could have, and should have been prevented.**

**Numerous mistakes were made that night, and the Gaines family refuses to accept the fact that Victoria's death will be in vain. They are determined to see that changes are made in our laws so that such accidents never happen again and so that no other family will ever have to experience their pain.**

**The public outpouring has been overwhelming. I have received calls and emails from thousands of people thanking me and the Gaines family for trying to create change. Every one of these concerned citizens had a different story about the laws being so lax on the waterways and they wished our representatives would act to create laws that can better protect us on the water.**

**Quite frankly, the public is scared. I can't tell you how many people have come up to me and said, after the 4<sup>th</sup> of July tragedy, they would never go on a boat again. And that's a real shame, considering where we live.**

**If ever there was a time to act, it is now.**

**Encouraging is that these changes are limited and don't restrict boaters from enjoying themselves.**

**Will there be a little resistance from boaters, yes. But the added safety of our community far outweighs any inconvenience felt by boaters. If we can save one life, we have done our job.**

**Similar to the evolution of Vehicle and Traffic Laws, boating laws must change with the laws. When motor vehicle use became popular and more and more cars were on our roads, the government designed safer roadways and installed traffic lights, stop signs, yield signs, and implemented speed limits, and licensing requirements. Additionally, DWI laws were more strictly enforced and more policeman were employed to control the use of our roads.**

**Countless lives were saved because of those changes.**

**On the water, we need similar changes. The waterways are becoming more and more populated, and like the roadways, need to be safer for everyone and to be better policed.**

**Ronald Reagan said**

**"Government exists to protect us from each other."**

The most glaring issues that stand out from that fateful night were as follows:

1) Occupancy limits: While we are not going to rush to judgment as the investigation is ongoing, we are pushing for maximum occupancy limits and weight restrictions for every pleasure boat, not just one those under 20 feet.

Such limits and restrictions should be clearly and conspicuously posted on all boats so that anyone boarding would be aware of the same.

While this may seem like common sense to an experienced boater, beginners may have no idea of a boat's capacity. Not everyone is a boater, just like less of our citizens are pilots. Would anyone here know how many people or the amount of weight that could be on a certain plane?

Of course not.

This small restriction to boating is absolutely necessary and will cause boaters little to no inconvenience.

2) Safety courses. Right now, there are no safety training or licensing requirements for boaters. You need a license to operate personal water crafts such as a jet ski or a wave-runner, but not a boat. That simply does not make sense.

Certainly, if someone comes into money, they can buy a boat and rive it away that day, without knowing how to safely operate it. They are not required to know anything about buoys, how to dock a boat, how fast you can go, how close to other boats you can get, how to drop anchor, how many people they can safely allow on the boat.

Does anyone buy a car before passing a road test and obtaining a license?

The safety course should be on the actual water and a certain amount of hours with an experienced boater should be required.

As for people who have been boating all their lives, a test should be conducted and if passed, they can forego the safety course.

Again, this should not be heavily objected to from experienced boaters since they want safe waterways just as much as anybody, and the fact that they can take an exam in lieu of the course, does not prejudice them in any real way.

### 3) Boat traffic control:

When there is an event like a maritime fireworks display, or Hemstock in Hemlock Cove, which took place a few weeks ago in the Great South Bay, it is common knowledge that many boats and people will be attending.

There should be a requirement that proper security is in place to direct traffic and to enforce all other boating rules and regulations. Whether it should be the responsibility of the event planner, the town, county, or Coast Guard, someone must make sure that every boater can get into and out of the congested waterways where an event takes place.

Not only have I received calls from strangers, but I have read in the newspapers about people waiting an hour after an event to start up their engines, because for everyone to try and exit at the same time, is a recipe for disaster.

At Yankee Stadium, at a concert, we have ushers standing by the exits making sure people don't get trampled.

On the east end, at an Alec Baldwin's Hamptons party, there are police officers stationed at the end of his road directing traffic and not allowing people to enter unless they had an invite or live on the block.

Why? Because of their safety

I applaud Senator Fuschillo who has dealt with boating safety for years and has proposed more changes to make us safe. And I look forward to Senator Marcellino's input in the future and thank him for holding this hearing and bringing the attention this issue needs to light.

Victoria Gaines will not die in vain. This Gaines family is determined, but they need the help of our community and government.

Thank you.



## **New York State Office of Parks, Recreation and Historic Preservation**

The Governor Nelson A. Rockefeller Empire State Plaza • Agency Building 1, Albany, New York 12238  
www.nysparks.com

**Andrew M. Cuomo**  
Governor

**Rose Harvey**  
Commissioner

### **Testimony Before the Senate Committee on Investigations and Government Operations Hearing on Boating Safety**

**Office of Parks, Recreation and Historic Preservation  
Commissioner Rose Harvey  
August 8, 2012**

Senator Marcellino and other members of the Committee, thank you for inviting me to participate in today's hearing. I am Rose Harvey, Commissioner of the Office of Parks, Recreation and Historic Preservation (OPRHP).

Boating is a major recreational activity in New York State. New York currently ranks seventh in the nation for the number of watercraft with 468,000 registered boats, plus a large number of small craft such as canoes and kayaks that do not require registration. Millions of people participate in boating on waters across the state, providing enjoyable outdoor recreational activities and making a significant economic contribution to local communities.

OPRHP administers boating safety initiatives through our Bureau of Marine Services. The agency is also responsible for a number of regulatory functions upon those waters which the federal government has no authority. We inspect and license commercial passenger carrying vessels. We place and maintain navigational aids on several major inland lakes and waterways. We issue permits for regattas and floating objects. We administer the state's financial reimbursement program to counties enforcing state navigation law as well as the boater education program required of youths and personal water craft (PWC) operators. Let me provide a brief overview of the agency's major boating safety programs.

With respect to Safe Boating Education Programs, in 1959 New York State launched one of the earliest boating education programs in the country. In partnership with the United States Coast Guard Auxiliary and the United States Power Squadron, New York provides a nationally recognized course of boating safety instruction. Participants are required to complete an eight-hour course and pass a proctored written exam in order to receive a boating safety certificate, which is required of youths aged 10-18 to operate a motorboat and all operators of any age of personal watercraft. Our certified instructors teach nearly 20,000 boaters annually the fundamentals of safe boating. Over the past twelve years, more than 250,000 people have participated in safe boating courses in New York State and we rank sixth in the nation in the number of students taking a boating safety course each year.

In addition to the boating education program, OPRHP's Marine Services staff make presentations at boating events across the state, provide safety information on its website, and partner with organizations like the National Safe Boating Council and Brookfield Renewable Power to air public safety advertisements.

#### Navigation Law

Over the last two decades New York has taken a number of steps aimed at improving the State's Navigation Laws to make boating safer:

- Beginning in 1995, New York was one of the first states to require children under the age of 12 to wear life jackets.
- In 1998, New York became one of the first states to require that all personal watercraft operators take an approved course in boating safety.
- In 1998, a zero tolerance law prohibiting the consumption of alcohol by those less than 21 years of age on mechanically driven vessels was established.
- In 2009, New York became the first state in the nation to require wearing life jackets on any vessel less than 21 feet between the cold water months of November 1<sup>st</sup> and May 1<sup>st</sup>.



### Marine Law Enforcement

A number of state, county, town, and village agencies, including OPRHP, State Police, and DEC, provide marine law enforcement services. These marine patrols provide a valuable service to the boaters through education, and, compliance, and as first responders. OPRHP sponsors a number of training programs for marine law enforcement personnel. We administer a state-funded financial assistance program that reimburses up to 50% of eligible marine law enforcement expenses incurred by counties and municipal agencies for patrolling waters. Continued support of these agencies is critical to ensuring a safe boating environment.

### Boating Safety Results

New York's efforts in boating education, safety laws, and enforcement, combined with federal laws and requirements, have improved the safety of our waterways. Over the past thirty years, the number of reported recreational boating accidents has decreased, and the number of boating fatalities has dropped by half. Despite having the 7<sup>th</sup> largest number of registered vessels, last year New York accounted for 3.4% of boating-related fatalities in the United States.

OPRHP tracks detailed statistics on the types and causes of boating accidents in New York and reports that information in an annual Recreational Boating Report. The 2011 report is available online right now. OPRHP will continue to promote boating safety here in New York State by advancing our boater safety training programs, public education efforts, and law enforcement support to enhance the safety of New York's waterways. We appreciate the Committee's active role in convening this hearing, and look forward to hearing from our federal and local government partners as well as boating organizations on ideas for further promoting boating safety in New York State.

Again, thank you for inviting me to testify today, and I am happy to answer any questions you may have.



**Testimony Prepared For:  
New York State Senate Committee On Investigations  
and Government Operations**

\* \* \* \* \*

**Hearing Date:**  
Wednesday, August 8, 2012

**Hearing Location:**  
Town of Oyster Bay, Town Board Hearing Room, Town Hall  
East,  
54 Audrey Avenue, Oyster Bay, New York 11771

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**Testimony Given By:**  
Sergeant John T. Owen  
Administrative Supervisor  
Nassau County Police Department  
Marine and Aviation Bureau

## Testimony

\* \* \* \* \*

Good morning State Senator Marcellino, members of the Senate Standing Committee on Investigations and Government Operations, ladies and gentlemen.

I have been a member of the Nassau County Police Department since 1986, and have been assigned as a supervisor in the Department's Marine and Aviation Bureau since 2001. In addition to my normal patrol supervisory duties, I have taken part in the recovery efforts of TWA flight 800 during July of 1996, and I have taken part in the immediate response and recovery efforts at the World Trade Center on September 11, 2001 and during the weeks that followed.

Additionally, I have completed the Department's comprehensive, five week Marine Law Enforcement training programs which are all approved by the New York State Division of Criminal Justice Services. I am certified as a boating accident investigator by the National Association of Boating Law Administrators. My police colleagues and I have more than ample experience with regional marine law enforcement and the many issues regarding recreational boating safety.

The Nassau County Police Department continues to take a focused approach to marine law enforcement and recreational boating safety in New York State's marine district. During 2011, the Nassau County Police Department conducted more than thirty-thousand (30,000) hours of marine law enforcement.

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Since 2002, official statewide statistics indicate that there has been nearly a twelve percent (12%) decline in registered recreational vessels in New York. Never-the-less, regional marine law enforcement statistics provide us with important facts.

Official statewide statistics for 2011 indicate that nearly seven percent (7%) of the New York State's recreational vessels are registered in Nassau County, and Nassau County is but one of sixty-two (62) statistical counties in New York State. Nearly nine percent (9%) of all the boating safety enforcement cases prosecuted in New York State were conducted in Nassau County during 2011.

Official statewide statistics for 2011 further indicate that more than twelve percent (12%) of the reported boating accidents in New York State occurred in Nassau County, and ten percent (10%) of arrests for Boating While Intoxicated (B.W.I.) were made by the Nassau County Police Department.

Marine law enforcement and recreational boating safety continue to be very important policing issues in the Long Island region. Clearly, the Nassau County Police Department has 80 years of broad professional experience in the area of marine law enforcement and recreational boating safety.

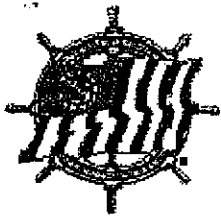
The marine patrol experience of this Department has generally indicated that educated operators are smarter and safer boat operators. Education appears to be the key component of safer boating.

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At the present time, operators of recreational vessels between the ages of ten and eighteen must attend an approved boater safety course and must be boater safety certified in New York. All operators of personal watercraft in New York must attend an approved boater safety course and must be boater safety certified in order to lawfully operate personal watercraft on New York waters. Official statewide statistics have indicated that reported personal watercraft accidents have declined by half over the last ten years. Again, education appears to be key components of safer boating. Safer boating equates to less injuries and less fatalities on New York States waterways. Needless to say, public safety is the number one concern of our Department.

I am grateful for the opportunity to address the Committee on behalf of the Nassau County Police Department, especially in relation to the important regional issue of recreational boating safety.

Respectfully submitted,  
Sergeant John T. Owen  
N.C.P.D.



District 3  
United States Power Squadrons®  
*Sail and Power Boating*

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8 August 2012

Dear Senator Marcellino,

Thank you for the opportunity to present at the Hearing on Boating Safety.  
Attached is a copy of my presentation as required.

The United States Power Squadrons stand ready to help New York State in any way we can to mandate education for the public.

Please do not hesitate to contact me at any future date.

Very truly yours,

D/C Lawrence W. Postel, SN

UNITED STATES POWER SQUADRON ADDRESS AT A  
PUBLIC HEARING ON NEW STATE LAWS AND REGULATIONS  
ON BOATING SAFETY

- I) Good morning
1. My name is Lawrence Postel and I am here to represent the United States Power Squadrons (USPS) not to be confused with the U.S. Postal Service also (USPS).
  2. Some personal background
    - a) Boating over 30 years
    - b) Life member of USPS which means 25 years of service and at least 25 merit marks. One merit mark is earned each year by providing significant service to the organization.
    - c) Carry the Grade of Senior Navigator, which means that I have taken every advanced grade course, including Celestial Navigation, and six elective courses offered by the organization. I equate this accomplishment to a Ph/ D in Boating Safety.
    - d) I have not pursued a Captains license because my boat and I are not for hire, but I do volunteer my time to teaching safe boating for the organization.
    - e) Currently I am the Commander of District 3 and responsible for overseeing the operations of the 18 Squadrons on Long Island covering the area from Brooklyn to Montauk Point.
- II) Who and What is the United States Power Squadrons? (Still The Best Kept Secret)
1. National Organization covering the entire United States including Puerto Rico and Hawaii.
  2. Made up of 33 Districts one being District 3.
  3. Our mission is to teach Safe Boating starting with the basic ABC Course and later followed by our Advanced Grade and Elective courses.
  4. Our ABC Course is both USCG and NASBLA approved.
  5. Having signed a MOU with New York State we are one of three Organizations qualified to issue a certificate of completion recognizing that a student has taken a safe boating course.
  6. Initially, we only offered our ABC Course to the public. You had to become a member to take any further advanced courses.

7. Recently, USPS changed its' philosophy, and opened some of our Advanced Grade and Elective courses to non members. This change was brought about to fulfill an identified need to further our public education offerings.
8. We have also developed an On the Water Training Class featuring, classroom sessions and a hands on environment aboard a vessel.
9. Any member of USPS who is teaching public courses must be certified by USPS. They must maintain that certification by attending a recertification class on a regular basis.

III) Why did USPS make these changes to offer more public courses?

1. It came to our attention that while the USPS ABC Course is a premier course, offering tremendous value to the student, it only offers the basics and you need much more than that to be a competent safe boater.
2. To support this concept I will compare piloting a boat to driving a car.
  - a) The traffic lanes are not marked with easily viewed white lines, but by a buoy system that can have significant distance between the successive buoys. I have tried to paint those white lane markers each time I go out, but they just constantly disappear.
  - b) There are no entrance or exit lanes to enter and leave a traffic lane.
  - c) There are no traffic lights to control the traffic, boaters depend on rules of the road, common sense and courtesy to prevail.
  - d) There are no shoulder lanes to pull off and wait out sudden storms or fog which may pop up at any moment, due to sudden weather changes.
  - e) There are no street lights to light the way for night boating. There are no headlights on boats. While there are search lights on boats they are not used to light the way. If someone uses a search light constantly you will blind other boaters. Boaters depend on moon light, ambient light and vessel marker lights to navigate the waters.
  - f) While we cover the basics of the above issues in our Basic Boating Course, we cannot get into detailed lectures on these topics.

IV) The United States Power Squadrons fully supports all efforts to mandate that every boater take, at the very least, a Basic Boating Class.

V) We further suggest that New York State consider some combination of at home computer learning augmented by classroom instruction as part of the 8 hour classroom requirement currently required. We would like to offer the CD we provide to each student with our ABC Course material, as an example of computer learning.

VI) We also recommend that implementation of any legislation receive careful consideration as to instructor and material availability. The last thing we would like to have, is legislation passed for services that cannot be provided.



- VII) Please do not create legislature that will allow individuals to fill their pockets with money and send people on the water with a false sense of security to satisfy a mandated requirement. This will not accomplish the intent of educating boaters to reduce needless accidents and deaths.
- IX) The United States Power Squadron stands ready to help design an implementation process that will be viable to meet the demand and meet the requirement of educating the public.
- X) Thank you to Senator Marcellino and the Senate Committee for this opportunity to voice our opinion on the topic of boater education and help in any way we can.

**Written Testimony of Larry Weiss  
New York State Legislative Liaison, United States Power Squadrons**

**Before the New York State Senate Standing Committee on Investigations and  
Government Operations**

**Public Hearing Examining New York State Laws and Regulations on Boating Safety  
Convened by Senator Carl Marcellino**

**Oyster Bay, New York**

**August 8, 2012**

Contact Information:

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I want to thank Senator Marcellino and the members of the Senate Standing Committee on Investigations and Government Operations for helping to bring issues of recreational boating safety to the forefront of public attention, and for exploring these issues to perhaps make our waters a little safer and more enjoyable.

On behalf of United States Power Squadrons, my family and myself, I wish to extend our most sincere condolences to anyone and everyone who has experienced a loss due to a boating tragedy, whether recently or in years past. While these accidents deeply touch all of us who enjoy the water, we can only imagine the pain and anguish one must feel upon suddenly losing a loved one who was simply engaged in the enjoyment of what is otherwise one of New York State's most delightful recreational experiences.

My name is Larry Weiss. My family and I reside in Plainview, New York. I am an avid recreational boater with decades of experience on waters throughout New York State. I am also an extremely active member of United States Power Squadrons (USPS), having served not only as a boating safety instructor, but also as an officer in numerous positions including two terms as Commander of Oyster Bay Sail and Power Squadron based right here in this community.

I currently serve as the United States Power Squadrons New York State Legislative Liaison, reporting to the national USPS Government and Partner Relations Committee (GPRCom). It is my responsibility to provide United States Power Squadrons resources, information and guidance to any state legislator who is exploring or involved with any legislation that might be related to recreational boating, to work closely with any legislator interested in boating safety and education, and to report any state legislative activities that may be related to recreational boating back to GPRCom. To this end, I would like the Senator and all the members of the Committee to know that I am at your

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disposal, and through me the resources of United States Power Squadrons. (More about USPS can be found at the end of this part of my testimony).

Along with many of my Power Squadron colleagues, I am certified to teach the United States Power Squadrons "America Boating Course" (which is the standard for basic safe boating courses). I have also been certified to teach The New York State Safe Boating Course by the New York State Office of Parks, Recreation and Historic Preservation.

Personally, I am an active, avid recreational boater as are my wife and daughter. I have been involved in recreational boating since I was old enough to pull an oar - as a young boy on North Lake in Haines Falls, NY. For many years I boated on the South Shore of Long Island, however for the past 22 years our homeport has been right here in Oyster Bay where we enjoy both power boating and kayaking. From our beautiful harbor we have cruised all of Long Island Sound, New York Harbor, the Hudson River, the New York State Canal System (Mohawk River/Erie Canal, and the Champlain Canal), and Lake Champlain. We have also boated and/or kayaked in several of the many, many beautiful lakes and waterways throughout New York State.

My testimony will be in two parts: the first as the United States Power Squadrons New York State Legislative Liaison; the second, additional thoughts from my personal perspective as a private recreational boater and experienced instructor of safe boating classes (both through USPS and the New York State office of Parks, Recreation and Historic Preservation).

**Part 1: My Testimony as the United States Power Squadrons New York State Legislative Liaison**

My colleague, USPS District 3 Commander Larry Postel will be presenting oral testimony at this hearing. My testimony reiterates Commander Postel's comments with particular emphasis on the following:

1. USPS members support state mandatory recreational boater education that, at the very least, meets NASBLA (National Association of State Boating Law Administrators) Standards and includes proctored examinations. We say "at the very least" because NASBLA approved courses barely scratch the surface of the education truly needed to operate a vessel in a safe and confident manner. USPS encourages every recreational boater to continue their education on an ongoing basis, gaining knowledge in, if not mastering, seamanship, piloting, navigation, handling, weather, electronics, engine maintenance and more. Boats and boat operations are complicated (far more so than automobiles). There are so many aspects to safe boating that simply cannot be covered in a basic eight-hour NASBLA approved course - all of them important for the safe operation of any recreational vessel.

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2. USPS members are concerned about the manner in which mandatory education is introduced to the public. If not carefully phased in over time, the sudden demand could very well overwhelm the current available resources of USPS, The Coast Guard Auxiliary and other teaching organization.
3. USPS members believe that any state licensing of recreational boat operators should be based on strong education requirements. USPS members are not in favor of recreational boat operator licensing as a revenue generator for the state.
4. USPS members will continue to provide educational support in all states.
5. Beyond agreeing that BUI is a very serious matter, USPS members do not take a position on the specific determination or penalty aspects of BUI, as these are state-by-state issues. However, as we teach in our basic courses, we would advise the Senator and members of the Committee to be aware that drugs and alcohol can affect boaters in more ways than they might affect others who are not on the water. Not only can alcohol and drugs affect judgment, clear thinking and reflexes, they can also affect ones ability to survive if he or she falls overboard or otherwise finds him or herself in the water. It can also make much worse a phenomenon known as 'boater fatigue', a drunk-like condition that research shows can result from an overexposure (generally four hours) to the noise, vibrations, sun, glare, wind and water motion that one would normally experience on the water.
6. USPS members believe wearing Personal Flotation Devices (PFD's or life jackets) should be mandatory for anyone age 12 and under. USPS members further support requiring the wearing of PFD's while underway, drifting or at anchor for everyone on board small, open boats, thus potentially increasing a person't chances of surviving small boat accidents due to death by drowning.
7. As mentioned earlier, as the New York State Legislative Liaison, I am available to the Senator, the members of this Committee and any state legislator as a conduit to the resources of United States Power Squadrons.

About United States Power Squadrons:

Organized in 1914, United States Power Squadrons (USPS) is a non-profit, educational organization dedicated to making boating safer and more enjoyable by teaching classes in seamanship, navigation and related subjects. Our members are boating families who contribute to their communities by promoting safe boating through education. We enjoy participating with our fellow members on the water and in the classroom. USPS has nearly 40,000 members organized into over 400 squadrons across the country and in

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some US territories. USPS is America's largest non-profit boating organization and has been honored by three US presidents for its civic contributions.

Each squadron's activities involve the three primary objectives of USPS: community service, continuing education, and enjoying the friendship and camaraderie of our fellow members

Local squadrons offer boating safety courses on a regular basis to boaters in our communities. These courses are open to the public and there is no age limit for participants. USPS squadrons have offered these courses for over half a century and have educated more than 3 million boaters to date. Successfully completing a USPS boating safety course meets the educational requirements for boat operation in all states.

In a cooperative program with the US Coast Guard Auxiliary, squadron members conduct courtesy Vessel Safety Checks of boats at the request of their owners.

Our members also help the National Ocean Service keep our nautical charts accurate by reporting chart corrections, and our local squadrons participate in many other community improvement projects.

Every squadron offers many carefully planned courses in subjects like Seamanship, Piloting, Plotting and Position Finding, Celestial Navigation, Cruise Planning, Engine Maintenance, Marine Electronics, Sailing, and much more. These courses are taught by experienced member instructors, and members who complete them are recognized.

This concludes my testimony as United States Power Squadrons New York State Legislative Liaison.

Written Testimony of Larry Weiss

Public Hearing Examining New York State Laws and Regulations on Boating Safety  
Oyster Bay, New York  
August 8, 2012

**Part 2: Testimony of Larry Weiss as private recreational boater and experienced instructor of boating safety classes.**

**Note: the following testimony is that of a private individual and does not necessarily reflect the opinions or policies of United States Power Squadrons or its members.**

As mentioned in my opening comments, I offer my remaining testimony as a private individual – not as a representative of any organization. I do, however, offer these bullet-pointed comments as an addendum to the USPS testimony above, with which I personally wholeheartedly agree.

As previously mentioned, I am an active, avid recreational boater with extensive experience in recreational power boating, rowing and kayaking throughout much of New York State, and especially in the waters of Oyster Bay and Long Island Sound. I am also an experienced instructor of boating safety classes, certified by United States Power Squadrons and also previously by The New York State Office of Parks, Recreation and Historic preservation (the latter certification may have lapsed, having not taught the New York State Safe Boating Course in a few years).

- **Boater education should be mandatory.**

Operating a recreational boat is far more complex and potentially more dangerous than driving a car.

Start by understanding that maneuvering a vessel on the water is essentially an attempt to control a never-ending skid. Add to that the various complex systems aboard a boat. Add to that the factors of wind and current, navigation and maneuvering challenges, machinery and hull integrity challenges and so much more - not to mention encountering other traffic, the safety and well being of those on board, and, of course, no brakes!

Then there is the responsibility to others. Recreational boaters are not alone on the water. Boaters have a responsibility to interact safely and courteously with one another in all sorts of situations. Yet there are no lines painted on the water. No traffic signals. No stop signs. How are accidents avoided? What are the rules? What are the guidelines?

To this add the boater's responsibility for the safety of the passengers and crew – and for their behavior. Responsibility for the safety of the vessel. Responsibility for the safety of other vessels. Responsibility for the environment.

There is tremendous responsibility in operating a recreational boat, not just to oneself, one's crew and one's vessel, but also to everyone else on the water.

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Fulfilling this responsibility requires knowledge, awareness and skill -- vastly more than required to drive a car.

How is it then that in New York State, in order to drive a car, one must attend classes, pass a written test, train and practice for weeks or months and then pass a road test; yet, in order to operate a recreational boat -- even a large or fast powerboat, all any person over 18 needs are the keys?

- **You can not legislate “The 3-C’s” - Caution, Courtesy and Common Sense.**

As a safe boating instructor, I try my best to communicate to all my students the concepts of Caution, Courtesy, and Common Sense. These three elements together are the foundation of safe and enjoyable recreational boating. To these, add boating knowledge and skill and you have an excellent, safe boater. However, possessing merely knowledge and skill alone, without also incorporating “The 3-C’s”, is a recipe for an accident.

For example, a boater who is careless with his or her wake or who speeds through an anchorage area lacks courtesy. A boater who is not aware of oncoming weather, or who has insufficient life jackets or flares lacks caution. A boater who has too many people on board, or who is guilty of BUI lacks common sense.

It is not difficult to see that nearly every boating accident in recent years has been a result of one or more of these three elements being neglected. Unfortunately, every weekend I see way too many boaters on the water neglecting one or more of these elements on a regular basis. Indeed, it seems to be getting worse every year.

We can teach these elements in class. However, in an era where, in day-to-day life, “The 3-C’s” generally go unheeded by far too many people, I do not believe we can instill them in anyone’s “way of being” without a large shift in societal attitude, sentiment and behavior. Indeed, if these “3-C’s” were part of the mindset of every recreational boater, all would take the time for both basic and continuing boater education -- and this hearing would be completely unnecessary.

- **Experienced boaters should not be exempt from a mandatory boating safety course.**

I know many experienced boaters who have not attended boating courses. Some I know personally to be extremely knowledgeable and highly skilled. However, there are also many “experienced” boaters who refuse to take a boating safety course because their many years on the water has them convinced that they already know it all. This frightening attitude can be one of the most dangerous aspects of boating. Indeed many recent fatal boating accidents reportedly have involved “experienced” boaters.

In my own life, like so many so-called “experienced” boaters, at one time I thought I knew all there was to know about boating, and I scoffed at the idea of taking a

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“basic boating course”. In the 1980’s, after running my boat aground (a common event off Long Island’s South Shore), I finally lamented and took the United States Power Squadrons course (through Oyster Bay Power Squadron). I was shocked at all the things I simply did not know (living right into the old saying, “you don’t know what you don’t know”). For example, I knew but had never given much thought or taken precautions around the fact that gasoline fumes are heavier than air – a major cause of explosions and fires on boats. I didn’t fully understand the system of Aids to Navigation (I thought I did, but that’s how I ran aground). I had never paid much attention to emergency situations or how I might handle one scenario or another. I realized I knew nothing about plotting a course or dead-reckoning (never even heard of it). I learned so much in this class that I decided to take it again the following year (this time with the Coast Guard Auxiliary). A few years later I took the course yet again. Then I joined Oyster Bay Power Squadron and eventually became an instructor.

Having now taught the basic course many times, I can tell you that each and every time I have taken or taught the course I have either learned something new or been reminded of something I forgot. (Of course I have also since taken many continuing education courses to hone my skills and keep boating safety, concepts and skills fresh.)

The point is – no matter what one’s experience, there is always something new to learn or something forgotten to be reminded of in any boating safety course. Plus, with most courses being taught off-season, courses give boaters an ongoing chance to associate with other boaters, discussing what boaters love most – boating! The classes are fun! There is simply no reason for an “experienced boater” not to take a safety class.

- **Boating Safety Courses cannot be taught in one 8-hour sitting.** NASBLA Approved boating safety courses, despite being extremely basic, cover a lot of important material. These 8-hour courses were originally designed to take place in four 2-hour sittings, with text study and homework in between each class, in order to facilitate the maximum absorption of the material. However, NASBLA does allow the teaching of these classes in one 8-hour sitting. Many of my colleagues and I frown upon this practice as it does not provide encouragement or incentive for the student to actually study and absorb the material.

I have observed that most students are extremely bored after the first couple of hours of these 8-hour marathons – as are many instructors who skim through material just to get through it. While perhaps better than nothing (which is the attitude of many boating educators), this is no way for students to absorb much vital information.



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Unfortunately, since education was mandated for operating Personal Watercraft in New York State, entrepreneurial ventures have sprung up to provide The New York Boating Safety Course in one-day sessions - offering people a fast track to an education certificate. Many boaters have been flocking to these one-day courses to get their mandated education requirement quickly over with, unfortunately without learning much, essentially defeating the purpose.

Mandatory education legislation should require that 8-hour classes be taught in four 2-hour sessions.

- **The New York State Boating Course**

As previously mentioned, I was (and may still be) certified as an instructor of the New York State Boating Course by The New York State Office of Parks, Recreation and Historical Preservation.

I have not taught the course in several years (thus my certification may have lapsed), nor have some of my colleagues. There are two reasons for this.

- (1) The New York State course pales in comparison to “Americas Boating Course” offered by United States Power Squadrons. The New York State course is so basic; the text is a mere booklet, compared to the 244 page “America’s Boating Course” text. It also does not cover the basics of piloting, navigation – extremely important information every boater must be familiar with. The course does have some benefits (teaching children for example, or a refresher for some safety techniques and practices). It is also far better than no education at all. However, while it may be NASBLA approved, there are many of us who simply prefer to teach the more extensive “America’s Boating Course”.
- (2) The New York State Office of Parks, Recreation and Historical Preservation has sanctioned entrepreneurial ventures to teach the New York State Boating Course. While there is nothing wrong with this in spirit, many of these ventures have been exploiting the demand for fast-track certificates to meet current education mandates for PWC operation by offering one-day classes. Those of us who volunteer and take boater education seriously have difficulty competing with these practices.

- **Continuing Boater Education**

As mentioned in the first part of my testimony, continuing education also plays a major role in safe recreational boating. Continuing education topics include

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piloting, navigation, seamanship, electronics, mechanics, weather and many more. It would be wise for New York State to provide incentives for boaters to continue their boating education.

One such incentive might be to make sure that, through the New York State Insurance Department, insurers offer discounts to those who have completed advanced boating education. (Many insurers already offer discounts to those completing basic boater education -- the state should mandate that policy as well.)

- **Tax and Funding Considerations**

It is my understanding, based on a report from the Boat Owners Association of The United States ([www.boatus.com/news/gastax.htm](http://www.boatus.com/news/gastax.htm)), that among the top ten boating states, all except New York State earmark for boating purposes taxes collected on the sale of boat fuel. Instead, as I understand it, fuel taxes paid by New York State boaters go toward a general fund that covers highway improvements, even though boats do not run on highways. This is unconscionable.

Moneys collected by New York State from taxes on boat fuel, and even sales taxes on boat purchase and marine supplies, should be specifically earmarked for boating purposes. Such monies could not only fund the administration of mandatory education, it could also provide grants to increase boating safety such as providing new boats and staffing for marine police, bay constables, fire departments and dive teams -- plus new pump-out facilities, launch ramps, dockage, classrooms, and more.

It is time to change this policy in New York State, and catch up with other major boating states. Let's please do this now.

This concludes my testimony. I greatly appreciate the opportunity to present it and I hope that my comments will be of some use to Senator Marcellino and all of the members of the Committee.

**New York Marine Trades Association Testimony**  
**Boating Safety on New York Waters**  
SENATE STANDING COMMITTEE ON INVESTIGATIONS  
AND GOVERNMENT OPERATIONS  
Oyster Bay, August 8, 2012

Good afternoon Chairman Marcellino and the members of the Senate Investigations Committee. I am Chris Squeri, the Executive Director of the New York Marine Trades Association. The NYMTA was founded in 1928 and is the oldest marine trade association in the country. We represent 150 marine businesses from Montauk to Staten Island to Westchester. We operate the LI Boat Show and Tobay Beach In-Water Boat Show. The NYMTA is also a member of the Empire State Marine Trades Association (ESMTA).

Our mission is to promote the general welfare of the marine industry and to advance the safe and proper use of boats, marine accessories, and facilities through any and all means consistent with the public interest and welfare.

At NYMTA shows, we provide free space to both the US Power Squadron and the US Coast Guard Auxiliary to promote safe boating and education. The NYMTA, along with the ESMTA, has worked with the legislature to improve boating safety, compel increased use of life jackets and flotation devices and to establish stiff penalties for BWI and leaving the scene of a boating accident. In this regard, we have supported several pieces of legislation in these areas, many of which have become law.

I appreciate the opportunity to testify today about the current laws and regulations on boating safety in New York State.

**New York Is a Safe Boating State**

As the hearing notice indicates, recreational boating has and continues to be an important part of New York State's recreational landscape. New York is among the states with the highest number of vessels; with about 470,000 registered boats and many other vessels like canoes, kayaks and row boats that do not require registration. (22% of the total registrations, or 104,687 vessels, are in Nassau, Suffolk and NYC). Registration fees and surcharges from motorized vessels generate about \$6 million in revenue to the state each year, with a portion of those collections going to localities for marine law enforcement. In 2011, more than \$2.1 million was provided to 45 counties, 6 municipalities and the Lake George Park Commission for marine law enforcement.

While some media reports indicate LI county marine enforcement bureaus' resources are stretched and may be understaffed, it is important to note that these agencies are not the only ones patrolling the waters. In addition to the county marine bureaus, there are also town bay constables, US Coast Guard and state DEC officers and, in some cases, NYS Park Police and/or local village police that also engage in marine enforcement.

U.S. Coast Guard and NY boating statistics demonstrate that recreational boating has an exemplary safety record and that over time boating accidents, injuries and fatalities have all steadily decreased even when the number of recreational vessels has increased. These statistics also show that New York ranks among the top states with the best boating safety records despite being among those states with

the highest boat registrations per capita. In the last four years that data is available (2004 through 2011) New York has averaged less than 12 boating related deaths per year.

While serious boat accident and fatality numbers continue to remain low, when you consider that about half of these fatalities involve non-registered vessels including rowboats, canoes, kayaks, pedal boats, etc., the safety record of motorized boating in New York is remarkable. In 2011 for example, 12 of the 26 fatalities were on these non-motorized watercrafts. In 2010, 11 fatalities out of 24 were on these types of vessels (3 other deaths were due to carbon monoxide poisoning on a non-operational houseboat). In 2009, 5 out of 21. In 2008, 10 out of 21.

While collisions between two or more vessels is still the most common type of boating accident and results in the most injuries, there were no deaths from boat-to-boat collisions in 2011. In fact, the majority of fatalities in 2011 (12) were due to capsizing. These are amazing statistics and state lawmakers are to be commended for enacting laws that have been so effective in protecting the public on the water. NYMTA believes that these current laws address the primary contributing factors of accidents, injuries, and deaths as identified by the Coast Guard and the Office of Parks, Recreation and Historic Preservation (OPRHP).

### **Boating Safety Certificates**

Currently, anyone between the ages of 10 and 18 wishing to operate a mechanically propelled vessel without adult supervision or anyone, who is 14 or older wishing to operate a personal water craft in New York State, must first obtain a boating safety certificate from OPRHP, The United States Power Squadron or the United States Coast Guard Auxiliary. While NYMTA and other marine industry organizations support mandatory education for youthful and most personal watercraft operators, NYMTA encourages all adult boaters to voluntarily take a safe boating course.

### **BWI Laws and Enforcement**

New York has some of the toughest BWI laws in the country, and the state legislature has regularly acted to enhance penalties so that they remain commensurate with DWI laws. NYMTA and ESMTA have supported these efforts.

State Parks also conducts an Impaired Boater Recognition Program for law enforcement, which is similar to the training received by highway patrols, for recognizing intoxicated operators. Participants are taught the standard sobriety tests for determining if a subject is intoxicated, as well as tests that were specifically designed for use on boats.

In 2011 there were 15 vessel accidents caused by alcohol, two of these accidents were fatal which resulted in 5 deaths. Four of these deaths were due to the boat hitting a fixed object.

### **NYMTA Supports Reasonable Legislation to Improve Boater Safety**

Education: Responsible marine industry organizations support legislation to improve boating safety that is well thought out and takes into consideration the instructive accident and fatality statistics that are compiled by OPRHP, the US Coast Guard and other such agencies. Voluntary education efforts sponsored by the US government, New York's departments and agencies, organizations like NYMTA and ESMTA, and private sector marinas and boat dealers is a strong ingredient to a safer boating environment. We in the industry will continue to work with you, our elected officials, to find ways to enhance education efforts without unduly burdening the boater or creating impediments to boat ownership or fishing, recreational and vacation rentals.

BWI: NYMTA and ESMTA support bills to enhance penalties for drinking while operating a boat. These include making certain convictions for operating a boat while under the influence predicates for other operating under the influence convictions and requiring anyone convicted of a watercraft-related alcohol-related offense to complete a boating safety course.

Other: NYMTA and ESMTA also support a bill to increase the penalties for persons leaving the scene of a boating accident.

### **Conclusion**

The marine industries, like most other businesses, are struggling to survive the recession. Many of our members are mom and pop, family businesses that continue to struggle from tight credit, reduced consumer demand, development pressures of waterfront properties that restrict boater access, increased environmental and other government regulations and higher energy, real estate taxes and other costs of doing business.

That is why we are so appreciative of the strong working relationship we have with you, Chairman Marcellino, and other state and local elected officials here on LI and throughout the state. It is through this cooperative approach that we have been able to make great strides in improving boater safety in New York while minimizing negative impacts on the marine industries that are responsible for providing jobs, recreational and tourism opportunities that benefit all New Yorkers.

Please continue to look to NYMTA as a resource as you seek ways to improve the safety of boating in New York.

Thank you for your time today.

**Greater Huntington Council of Yacht and Boating  
Clubs**

**Public Hearing  
Senate Standing Committee On Investigations  
And Government Operations**

**August 8, 2012**

**Town of Oyster Bay, New York  
Testimony of Jackie Martin – Commodore**

**Good morning, Senator Marcellino and members of the committee. Thank you for inviting me to testify before you today. My name is Jackie Martin and I am the Commodore of The Greater Huntington Council of Yacht and Boating Clubs**

***Introduction-***

The Greater Huntington Council of Yacht and Boating Clubs was founded 27 years ago to act as a liaison between organizations with a boating and waterfront interest and federal, state and local governments.

Our mission includes promoting and protecting the sport of recreational boating and advocating safe boating practices.

Our membership is limited to the areas of Cold Spring Harbor and the greater Huntington Bay Complex. We represent twenty-one member organizations including several yacht clubs, waterfront community organizations with boating members, recreational

fishing clubs, a rowing club, a light house preservation society and a sail and power squadron. At present we estimate our membership to be about 4,500. We meet ten times a year with each member organization represented to The Council by a club representative and an alternate. Our officers are elected on an annual basis. All officers, club representatives and committee members serve on a volunteer basis.

### ***Advocacy Efforts-***

The following are some of the accomplishments that have taken place through the efforts of The Council and its work with government agencies.

- Police patrols seven days a week
- The designation of Marine Emergency Pick up Stations
- Establishment of night enforcement patrols on the water
- Additional marine patrols in Cold Spring Harbor
- Imposition of 5MPH zone north of Huntington Light House
- Establishment and monitoring of Maritime "Incident Reports"
- Dredging of Centerport Harbor
- Establishing a channel to Gold Star Pump Out facility
- Implementation of two free pump out vessels
- Donation of AED equipment to both the Huntington harbormaster and the Coast Guard Auxiliary rescue boat
- Lobbied for the continued operation of the Eaton's Neck Coast Guard Station
- Lighted flashing entrance buoys for Northport, Centerport and Cold Spring Harbor

- Decal ID program for dinghies canoes and other small craft in cooperation with the Town of Huntington and the Coast Guard.
- Sponsored Boating Safety Program with presentations by Suffolk County Police, US Coast Guard, Coast Guard Auxiliary, Huntington Harbormasters Office, Centerport Fire Department and Neptune Sail and Power Squadron
- Broadened membership base by offering Affiliate membership status to boaters who are not members of participating clubs.

### ***Observations on Boating Safety-***

Many opinions have been expressed to The Council, both in a formal and informal way regarding the status of maritime safety in our area waters. Many of our members are experienced yachtsman with a lifetime on the waterways. Ideas have been shared with several of our flag officers, by fellow members, local legislators and town officials. It is difficult to get a true consensus at the present time, although all seem to approve of some sort of boater education for improved boating safety. Whether or not it should be mandatory for all is not an opinion that can be expressed by this organization as we have not had an opportunity to formally discuss this matter at length, nor have any proposals been made to our group as a whole by any elected official from the State or County. Initially the idea of implementing mandatory education for an entire population of boaters in just Suffolk County alone will need careful review and planning. The content of the classes given and number of hours of training will need to be reviewed as well.

There have been suggestions about the idea of phasing in those of a younger age and less experience into the boating safety program. Does that omit a first time boat owner of



more maturity with less experience? The idea of a certificate of course completion before an owner can register his boat may phase in boaters to the program but a demographic study would need to be conducted to determine the numbers of boaters who would become eligible for safety courses in any one year.

High Water Alarms have also been suggested as standard equipment on boats. But how does that relate to the recreational kayaker or the operator of a vessel without a bilge?

The use of mandatory life jackets at all times on board a vessel is another suggestion to make sure that boaters stay safe in case of an accident.

Increased presence of law enforcement in our harbors and waterways has also been mentioned. You can educate the boating public, but you can't change behavior. Unfortunately the increase in the boating population has brought with it the kinds of behavior seen behind the wheel of an automobile with vessel operators who have little regard for the "rules of the road" and common courtesy. Vessels operating at a higher speed should be responsible for their own wake and the damage it may cause.

The proliferation of kayaks, paddle boards, canoes and other small craft also raises the question of how much do their operators understand what their role is in navigable waters.

In conclusion I would like to say that personally, I think it would be an excellent idea to have boaters present a boating safety certificate when they register or renew their registration. It is an effective way to enforce the needed education and allows a phase in. I

think that it is a better alternative to licensing which can be cumbersome and expensive for the state, or mandating (all at once) that all boaters have a boating certificate. Our neighboring states NJ and CT already require Safe Boating Certificates as do other states. As for continued renewal perhaps once a course is completed, others should be recognized as further education thus allowing for an insurance reduction to the boat owner. These courses would be completed on a voluntary basis.

Since New York State provides all the agencies with Boating Safety course materials it should take the lead in passing legislation on the implementation of regulations regarding mandatory courses.

To reduce the impact, the implementation needs to be phased and planned. New York State would need to supply statistics about the number of boaters to be educated, when and where so that planning can begin. The educational organizations could then render an opinion on implementation. Unless the implementation is properly planned, there could be a shortfall in instructors and facilities.

Our organization would like to assist in any way possible in crafting any legislations or requirements and assisting in supplying information to our membership.

Thank you for your interest in boating safety. I will be happy to answer any question you may have.



Justin McCaffrey  
Commissioner

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**Testimony from Justin McCaffrey, Commissioner Town of Oyster Bay Department of Public Safety, August 8, 2012.**

Good morning, Senator Marcellino and other officials, thank you for the opportunity to testify before this committee. My name is Justin McCaffrey, and I am the Commissioner of Public Safety for the Town of Oyster Bay. Part of my responsibilities is the direct oversight of the Town's Marine Enforcement, Bay Constable Division. As you know the Town of Oyster Bay is only one of two Towns on Long Island that have a North and South Shore within its jurisdiction. Our Bay Constables patrol approximately 65.1 miles of waterways enforcing New York State, and Town of Oyster Bay laws and safety regulations.

The Town's 22 Bay Constables are all New York State Peace Officers, who have the authority to issue summonses and make arrests. The mission of the Town's Bay Constables is to work closely with our law enforcement partners from New York State, Nassau County and the US Coast Guard to provide a safe and responsible boating environment for our residents and visitors. Our goal is to minimize the loss of life, personal injury and property damage while maximizing the enjoyment of Oyster Bay waters. Town of Oyster Bay waters are used by many residents and visitors alike, with various activities including recreational boaters on jet skis, powerboats, sailboats, canoes and kayaks, as well as commercial fisherman and ocean going oil tankers.

Our strategy is twofold, to both educate the boating public and when necessary enforce NYS and TOB laws and regulations. Education is an essential component of our mission. We try to take the time to educate boaters about rules and regulations and safe boating practices, as well as the importance of avoiding overcrowding on a vessel. Bay Constables on a daily basis stress the importance of having the proper safety equipment, including life vests for every passenger on board the vessel. According to US Coast Guard Statistics in 2010, three-quarters of all fatal boating accidents victims drowned, and of those, 88% were not wearing a life jacket. In the last 3 years, the Town's Bay Constables have issued hundreds of warnings and numerous summonses for life preserver violations.

Bay Constables regularly inspect vessels for proper safety equipment such as emergency flares, sound devices, proper lighting and fire extinguishers. We work closely with the local power squadrons and coast guard auxiliary who regularly perform free courtesy safety inspections at Town launching sites. This free courtesy inspection is an examination for safety equipment that is required by the Coast Guard and local laws. These vessel examiners will identify any problems as well as take the opportunity to discuss boating safety related issues with the boaters.

According to the National Safe Boating Council, 50% of boating accidents that result in death can be traced to alcohol impairment. The Bay Constables, along with our law enforcement partners, have strictly enforced BWI laws.

Bay Constables also strictly monitor and enforce dangerous boating violations. Careless, reckless, or excessive speed has been determined to be a major factor in most boating accidents. In the last 3 years Bay Constables have issued over 200 summonses for unsafe boating violations, which include excessive speed, dangerous wakes and reckless operation. For those that don't know, reckless operation includes weaving boats through congested boating or swimming areas without regard for other boaters, persons, posted speed and wake restrictions, as well as operating at speeds that may cause danger, injury and unnecessarily crossing the path or wake of another vessel. Town Bay Constables have also terminated over a dozen voyages due to unsafe conditions.

As Commissioner of a department with ever changing demands, I know the importance of taking a fresh look and reevaluating any given scenario. When it comes to boat safety, in light of the recent tragedy, hearings like this one today play an important role in helping to establish a fresh perspective. While many recommendations have been handed forth today, it is important to caution against any conclusions being drawn on the best course to move forward until the investigations by various agencies have been completed.

Boating education is essential to a safe environment out on the water. Additionally, I feel that safe boating organizations, such as the Coast Guard Auxiliary and the Power Squadrons, play a vital role, and would benefit greatly from grants to help step up their efforts. These organizations are volunteer groups who have traditionally been well organized, but unfortunately underfunded when it comes to boater safety campaigns. Providing greater awareness through these organizations would go a long way towards helping, specifically through such programs as informational classes dealing with safe boating. An increase in advertising, along with public service announcements for classes hosted by these groups would be beneficial.

Additionally, informational signage regarding safe boating practices with tips and reminders could be placed at marinas and boat launching facilities. These, along with safe boating materials and instructional DVDs could also be provided at libraries, government buildings, or other easily accessible locations for boaters to take advantage of.

In the effort to make our waterways safer for boaters, enforcement is key. Recently, New York State Senator Charles Fuschillo, Jr. introduced two pieces of legislation to the Senate regarding boater safety. One of which would raise the penalties for BUI offenses, as well as link driving, boating and snowmobiling under-the-influence offenses, making it possible to charge violators as repeat offenders. According to the New York State Office of Parks, Recreation, and Historic Preservation, alcohol contributed to one in five fatal boating accidents in New York State in 2011. The other bill would require all boaters to complete a boating safety course, in order to operate a vessel unsupervised. Currently, 23 states require boat operators to have boating safety certificates before they can get out on the water.

Federal and State grant money for increased enforcement of safety and BWI violations is another avenue that could be explored, to help crackdown on unsafe boating practices. Currently, grant money is provided to Police Departments for overtime for HOV and speeding enforcement on major roadways. This program could possibly be expanded to include increased patrols in our waterways in the interest of boater safety.

Finally, providing additional equipment and training opportunities for marine enforcement officers would go a long way towards maximizing boater safety on our waterways. In fact, later this month, Town of Oyster Bay Constables will be hosting a five day Marine Patrol Officers Class sponsored by the NYS Naval Militia. 30 Police Officers, Coast Guardsmen, Bay Constables and members of the NYS Naval Militia will attend training on boarding procedures, BWI enforcement, navigation rules, marine theft investigations and water survival techniques. This training is provided through a NYS grant, and it is courses like this that I consider absolutely integral to upholding the high standards of safety and enforcement that our Bay Constables set out for themselves each and every day.

There is nothing that we hold in higher regard in the Town of Oyster Bay than the safety and well being of our Town residents. Boater safety is an important issue, that deserves to be brought to the forefront of the conversation, especially during this busy time of year, when more residents and visitors than ever will be planning to spend some of their time on the water. It is our belief that education and awareness is the key to providing the safest and most enjoyable environment for all.

Thank you Senator Marcellino. I am the Director of Maritime Services for the Town of Huntington, and a graduate of SUNY Maritime College. I want to give you a brief overview on the Town's personnel and vessel resources in order to highlight some of the challenges we face.

The Town has 60 miles of coastline that extends from Cold Spring Harbor to Fort Salonga excluding the waterfront that surrounds Lloyd Neck. It's interesting to note that the July 4<sup>th</sup> tragedy occurred off Lloyd Neck in the Town of Oyster Bay's jurisdiction, and not Huntington's despite the fact that the craft was much closer to Lloyd Neck. That's because the dividing line between the Towns runs along the high tide line around Lloyd Neck, and not between Cove Neck and Lloyd Neck as one would expect. This is because Lloyd Neck was once part of the Town of Oyster Bay, and although the land mass of Lloyd Neck was annexed to Huntington around 1900, all of the surrounding bay and sound bottom was retained by the Town of Oyster Bay.

The reason I point this oddity out is because south of Lloyd Neck, the dividing line is right through the middle of Cold Spring Harbor. So we have to patrol and enforce marine laws in an isolated area of Cold Spring Harbor that is not contiguous and about 6 miles away from the rest of Huntington waters. This speaks to our greatest challenge of enforcement, namely having a small staff that is responsible for such a large geographic area. We only have 4 full time bay constables. For most of the year which is off season, we have 2 full time constables on duty during daylight hours, and no one during the evening. During the summer season (Memorial Day to Labor Day) however, we have a part time constable and a full timer in a single patrol boat day and night. On summer weekends and holidays, we have a second boat deployed during the daytime.

In short, Bay Constables can't be everywhere at once, and therefore having a boating community that is educated and competent is paramount to risk mitigation. Councilman Cuthbertson highlighted the Town's efforts to educate the boating public, and statistics provided on the USCG website are that in 2011, 89% of deaths occurred on boats where the operator had received no boating safety instruction. So the thrust of my testimony is to encourage State lawmakers

to pass legislation that mandates some form of boater safety instruction for operators since the Townships and villages really don't have the enforcement resources given the enormous geographic area that needs to be covered.

I would now like to introduce Huntington's Senior Harbormaster, Harold Acker. Harry will speak to specific enforcement challenges, as well as lessons learned and best practices gleaned from his 38 years of experience on the Huntington waterfront.

Thank you Senator Marcellino.

I am Councilman Mark Cuthbertson, and on behalf of the Huntington Town Board, I want to express our deepest sympathy to the families who lost loved ones in the tragic boating July 4<sup>th</sup> boating accident in the waters of Oyster Bay.

Boating safety is something the Town of Huntington takes seriously. I want to provide you with a sense of the Town's efforts to promote boater safety and boater education.

Beginning in 2002, the Town has partnered with the Centerport Fire Department to sponsor an eight (8) hour New York State Boating Safety Course.

Over the past 10 years, we have had increasing numbers of attendees. The first year we gave the course about fifty (50) residents attended. This year we had more than one hundred twenty (120) participants.

Following the recent tragedies, the Town received enough inquiries from concerned residents that we scheduled a Boating Safety forum that was held last night at Town Hall. This was also well attended with over 100 residents.

That's the good news. The bad news is that there are over 5,000 boaters using the waters of Huntington-Northport Bay complex, which means it is likely that only a small percentage of residents who own boats are participating in the NYS Boating Safety program.

The State is right to consider legislation that would require basic Safe Boater training for all vessel owners, given the number of boats now on the water.

The cost to the Town of Huntington to run our New York State Boater Safety Course has been relatively small given the numbers of participants and our use of the Town's senior harbormaster and bay constables as instructors.

The challenge--should the State mandate that all boaters take this or so similar basic boating safety course--will be to evaluate the logistics and costs of scaling programs like Huntington's up by a factor of twenty, thirty or forty times.



Assuming the State may turn to Long Island's towns and villages who control the waterways to perform or participate in this instructional function, considerations like physical space, class size and the number classes required all become very important.

Course five or six times a year are likely to be necessary. Furthermore, the optimal time for classroom studies is the winter as Maritime Services personnel are generally too busy during the Summer months to devote time to teaching recreational boaters.

In addition, a stagger phase-in period that allowed boaters to earn a Boater Safety Card in "waves" over a period of a few years would be essential to prevent a crush of boaters from all having to enroll at once, which would likely lean to huge class sizes and diminish the effectiveness of the education experience.

Lastly, the Town of Huntington has printed and provided all boaters with Emergency Pick-Up Point Charts that are distributed through the Greater Huntington Council of Boaters. These charts are also available at all commercial marina's and supply stores throughout the Township.

Thank you again for the opportunity to speak at this hearing. I would like to now introduce Ed Carr who is our Director of Maritime Services. He will give you a quick overview of our enforcement resources on the waterfront.

Dear Committee Members,

I would like to thank you for the opportunity to testify before the committee. My name is Harold Acker I am the Sr. Harbor Master for the Town of Huntington. I have served 38 years in marine law enforcement and boating education. You have received copies of qualifications in advance.

The most critical themes I will present before you today are: boating education reform; legislation; and enforcement. First and foremost, I believe the main focal point of today is the need for boating education reform. Second, legislation would be a necessary step to decreasing the hazards of the waterways. The goal would be establish legislation to increase penalties and broaden the scope of violations, more specifically increasing legislation with regard to operating a boat while impaired or intoxicated and reckless operation and damage caused by excessive wakes. The third focus of today would be to discuss the authority of state, county and local law enforcement, including expanding authority to the United States coast guard to enforce state boating laws. I will expand on each of these issues.

### **BOATING EDUCATION**

New York State lags behind its neighboring states in requiring operators of powerboats to have successfully completed an approved boater education course. The current legislation requires completion of a safety course for those operating personal water craft (PWC). The current legislation only requires those between the age of 10 to 18 years old to have a safety certificate to operate without supervision. The current legislation has absolutely no requirements for any person over 18 to operate a boat. The present law is so vague that even 10

year old can operate a powerboat by themselves with a boating safety certificate. This includes boats that have the ability to exceed 100 mph, Ridiculous but legal! With the legislation right now, a two year old can operate a boat pulling a skier with an adult on board. Again, ridiculous but legal!

There is no quick fix but allow me to offer a comprehensive plan to effectively and efficiently address the hazards of the waterways.

Please be advised that it is important to understand that the majority of boating education courses are volunteer based or offered by boating organizations, such as the USCG Auxiliary and power squadron.

The first proposed step is to develop two courses. These two courses will be comprised of a young boaters safety course for those 10-16 years of age and a second more comprehensive course for those 16 and older. Any boater that currently holds an approved boater safety course certificate, state public vessel operator's license or a USCG merchant license, will be exempt from being required to take one of the newly implemented courses. Additionally, any young boater that obtains a certificate through the young boaters course, will be exempt from being required to take the adult boating safety course.

The second proposed course of action is to phase in a requirement that all operators of a power boat or a sailboat over 22' obtain a boating safety certificate over a four year period.

Example:

2014 18-28 years old

2015 28-38 years old

2016- 38-48 years old

2017 all

## **IDENTIFICATION**

As many adults will generally have a driver's license, an option for boating identification would be to include an endorsement code (B) on the State license. Any individual without or not of driving age will be provided with a Boating Safety ID. These options are already available through the State's resources.

Fees collected for the boating licenses should have a portion allocated to fund boating safety education and public boating safety announcements in *addition* to the current funding.

## **LEGISLATION**

Laws alone will not resolve the increasing safety hazards boaters are faced with. No matter how many laws you put on the books it is *not* going to stop boaters from violating them. We need not only to pass good legislation, but legislation that can reasonably be enforced.

The State should consider reclassifying the State driver's license to an operator's license. This would enable violations on land and sea to be admissible to show the courts of a possible pattern of unsafe behavior and allow for the appropriate fines to be assessed. Of course, this is a controversial component of this proposal.

### **Boating While Intoxicated/impaired:**

The only persons that can be charged with boating while intoxicated are those operating a powerboat. If you are sailing a 70' sailboat

intoxicated or impaired with 10 children on board, the operator *cannot* be charged with BWI. However, be charged with reckless operation. I proposed that the law be amended to include all vessels.

Currently, if an individual does not submit to a breathalyzer test or if is convicted of a BWI they may lose their privilege to operate a boat. However, without licensing you have little or no tracking. The proposed resolution for this issue is tied in with boating education being linked to a licensing system and enforced more regularly. For example, license revocation could be checked through boaters operators license, which could be restricted if there are active violations on a boaters record.

Another option would be to restrict the operation of vessels to outlaw the operation of a vessel by an individual with an open container of an alcoholic beverage.

Restrictions on operators 10-16 years of:

With the increased operation of speed of boats, I would recommend a restriction of the size and horsepower of boats operated alone by boaters between the ages of 10 years to 16 years. Sixteen years old is the age that a violator can be issued a summons.

Capacity plates:

Petition the Federal Government through a home rule message to require boat manufactures to supply and install capacity plates on all recreational vessels, regardless of size similar to vessels under 20' in length.

## **ENFORCEMENT**

CPL

Amend the criminal Procedure Law to give Harbor Masters and Bay Constables the same authority with regards to arrest on warrants as police officers.

Grant the US Coast Guard Boarding officers the status of peace officer while on duty in New York State waters and supply peace officer training to those who qualify. This will enable Coast Guard officers to enforce State law as well as federal law. The procedures to arrest for BWI is difficult under Federal law and their violation procedures are less effective than State procedures. There are a significant number of police and peace officers that serve in the reservist who reside in New York. These individuals tend to serve in the area for extended periods of time and would need no additional training.

In closing, it would be a tremendous mistake to close this hearing, make a few recommendations, pat ourselves on the back and walk away until the next tragedy happens. We would be best served to form advisory councils in Nassau, western Suffolk and eastern Suffolk counties, to serve in a capacity to make recommendation to the State officials on an annual basis.

Respectfully submitted,

Harold Acker

Sr Harbor Master

Town of Huntington