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DEPARTMENT OF TRANSPORTATION

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November 5, 1998

Waldemar (Wally) Barnes respectfully submits this response to the USCG request for comments as a citizen resident of Florida, a state very much impacted by regulations on recreational diving, an individual concern about government regulations and their impact on our welfare, and as an instructor certified under the sanctions of several recreational agencies to teach gases other than air.

ABSTRACT

This response to USCG Advance Notice of Proposed Rulemaking proposes a change in the definition of "Commercial Diving", as stated by OSHA, USCG and, the proponent of the changes, Association of Diving Contractors (ADC).

In this last decade, we have witnessed a significant shift in the recreational diving industry regarding the breathing gases. The increase in safety offered by the use of Nitrox and even Trimix (among the most popular) have taken the market by storm. The proper training of divers by instructors certified by recreational agencies becomes of paramount and critical importance to promote safe procedures in an otherwise adventure-oriented experience. Nevertheless, an instructor using any of the mentioned gases, doing any required decompression or even exceeding an arbitrarily depth limit makes him/her fall under the jurisdiction of OSHA by its definition of "Commercial Diving". This constraint set upon the instructor training recreational divers becomes an unbearable cost and a liability in terms of safety and practicality. Recreational diving using mixed gases promotes safety and education among the participants. Those individual instructors, exercising their purely-recreational occupation, should not be restricted to the use of air or to avoid decompression when they are teaching these procedures. The time has come to accept advances in technology that make the above type of diving and its instruction fall outside the definition of "Commercial Diving".

Respectfully Yours,

  
Wally Barnes

Attachment : Comments

cc: Hon. Senator Bob Graham  
Hon. Senator Connie Mack  
Hon. Congressman John Cosgrove

**Recreational** diving in the United States (and for that matter, the world) is a strictly voluntary activity that brings its followers in **contact** with an alien form of nature. A realm where humans cannot see, move or breathe without the aid of **life-supporting** equipment. It offers an adventure that many followers yearn to experience as part of their pursuit of happiness.

Late in the **80s** and early **90s**, the creation of several **recreational** diving **agencies** oriented towards the **use** of **gases** other than air made training in the use of Nitrox and Trimix available to the general diving **public**. After a slow starting period, accentuated by the **reluctancy** of the controlling powers to **accept** new technology into their domains, the Nitrox market exploded with followers **all over this country and the world**. Suddenly, the safety and extension of time offered by **Nitrox** were embraced by the diving community, while **concerns** about high **Oxygen pressure** were well **controlled** by the **rigorous training** standards demanded by involved agencies from their sanctioned instructors. A classic example of the sport self regulation.

Nowadays,. recreational divers are able to perform routine dives on mixed gases that would have been **labelled "extreme"** only a decade ago. This **technology** allow the divers to expand **their** domain of immersions into either deeper or for longer periods of time or both. **It** does not **come** by serendipity. Recreational training agencies have kept pace with standards and accident reviews to ensure the safety of its **instructors** and its adepts. Additional equipment and training is **mandatory, encouraged** and promoted by all those who **become involved** in this type of diving. Divers will be enjoying an expanded form of **their** sport with the turn of the millenium !!

One caveat **that** must be brought up in this **picture** is that the use of mixed **gases** in recreational diving instruction, because it is considered an **occupation**, falls within the **jurisdiction** Qf **OSHA.....**under the definition of **"Commercial Diving"**. **As such**, the imposition of extreme measures of safety, oriented towards other critical aspects of underwater **work**, would apply equally to an individual instructor offering training to a diver for recreational purposes only or to an underwater photographer who makes a **living** out of his / **her art**. A point in question **would** be the training of a **recreational** diver in **decompression** techniques, Nitrox gas, deep diving or rebreather use. While the diver can carry on with the curriculum **requirements**, the instructor is **restrioted** from doing any **decompression**, dive deeper than an arbitrary limit, even afforded the safety of khe use of the **Nitrox** gas **because** he / she would then have to follow commercial. diving regulations requiring decompression chambers within certain distances or other safety measures which **are** oriented towards an&her, completely different kind of diving.

While OSHA has clearly stated publicly and privately that it would not enforce commercial diving regulations on recreational dive training, this assertion stands too vague and ambiguous. Does it apply equally to Trimix, rebreathers, decompression training{ or other gas mixes ??

The fact that a variance for these requirements was submitted by a recreational training facility to OSHA and its most probable acceptance, indicate that the regulatory involvement of OSHA and / or the USCG is not out of the picture- There ought to be more forth-applioationa in the very near future.... . . . .only to overburden the system and its budget.

IT IS HEREBY SUGGESTED THAT THE USE OF MIXED GASES (OTHER THAN AIR), DEPTH LIMITS, INERT GAS UPLOAD (SATURATION) , OR USE OF MECHANICAL REEREATHERS IN PURELY (AND STRICTLY) RECREATIONAL DIVING INSTRUCTION HE CONSIDERED OUTSIDE THE COMMERCIAL DIVING DEFINITION.

The reasons behind such suggestion are derived from the extreme cost the implementation of commercial diving requirements to a recreationally-oriented enterprise. Secondly, the incongruity of an instructor teaching deaompression procedures without being able to accompany the student on the procedure he / she teaches or even be able to use Nitrox gas to extend the time underwater side by side with the student. Thirdly, the safety concerns of the impairment produced by the narcotic effects of high pressure Nitrogen fin air) compared to the reduced effects in the case of Trimix {other safety measures taken). Similar contentions could be extrapolated to justify the training in the use of rebreathers (which cannot be used with air, it must be Nitrox or trimix ) and confined-space recreational diving,

While many commercial enterprises fear and reject the possible encroachment of recreational divers into their well-controlled domain, three factors must be considered in the decision-making process under study by the USCG. First, there is no reason to suspect the so-called incursion of recreational divers into the commercial field; as the gap in knowledge, equipment and new technology spreads at a fantastic pace, making a recreationally trained diver virtually unable to compete or even bid on tasks which are commercial in nature. Second, more entities whether they are large or small businesses in the recreational field Or educational agencies involved in the certification of recreational divers are bound to apply for exemptions following the precedent of the successful request for a variance already established, This tide of requests will, not only overtax the established guidelines and staff, but becomes inevitable like the incoming tide- Third; as the advantages and safety of new technology becomes popular, established inadequate rules must change. This action taken by the USCG to gather data to make such change is laudable and is seen as a very positive step in setting new rules compatible with modern times.

The voluntary decision of a person to engage in a sport which entails a certain known risk is an unalienable right of every American citizen, The instructors dedicated to educate and teach proper safety procedures to these citizens in pursuit of their mental and physical. recreation should not be restricted by the same rules and regulations oriented toward more critical type of diving. Whether a new set of rules, specifically aimed at this trend in recreational diving, are needed or whether the recreational agencies establish self-regulating standards which decrease the risks of the participants are two of the many options to be considered in the decision-making process now in your hands.

I thank you for the opportunity to express my feelings and way of thinking in this regard and stay available for any further discussion on the matter.



Wally Barnes  
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