



# Association of Diving Contractors, Inc. .

COMMUNICATION . EDUCATION . SAFETY  
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DEPT. OF TRANSPORTATION  
DOCKET SECTION

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Docket Management Facility [USCG-1998-3786]-73  
U.S. Department of Transportation, Room PL-40 1  
400 Seventh Street SW  
Washington, D.C. 20590-000 1

### Electronic Submission with Hard Copy to Follow

Subject: Commercial Diving Operations - 46 CFR 197; supplemental comments

Reference: Advance Notice of Proposed Rulemaking; Docket USCG-1998-3786

Certain comments have been submitted to the Docket Management Facility to assert that ADC has failed to properly represent the individual commercial divers who will rightfully be those persons most affected by changes to 46 CFR 197. That assertion fails to pass a test of validity and is one that is not based on research or fact.

On two occasions ADC has submitted comments on Docket item 3786. Those comments have been developed as a direct result of communication and discussion with 309 company and 296 individual members of this Association.

The entire process related to recommending the initial change action with respect to 46 CFR 197 was begun in 1993 by action of the ADC National Safety, Medical and Education committee, with like activity being taken within the four regional Chapters of the Association. At all times the actions of ADC with respect to recommending certain changes to 46 CFR 197 were made known to the membership who were given every opportunity to comment on each draft. The Board of Directors, as the elected representatives of the members in general, then voted to approve the final form of the recommended changes now the subject of Docket item 3786.

The ADC National Safety, Medical and Education committee is comprised of a cross section of diving safety officers, all with resumes to show extensive diving experience and with most having worked in the industry for over 20 years. The ADC does not believe that any other organizations who have made submittals to the Coast Guard has such qualified input on the proposed changes. Resumes of the SME committee members can be provided upon request to any person desiring same. The motivation of committee members is clear, as is the mandate of ADC to provide safety, education and medical training to prevent and assist diving companies in safe and efficient operations in the commercial field and to simultaneously avoid competition on the basis of safety. ADC questions whether other interests who have submitted proposed changes and/or criticized ADC have such a wide ranging group of individuals, or whether their proposed changes have been prepared by simply hiring one or two particular individuals to suggest changes that are inconsistent with the best interest of the diving industry in the United States for unknown motive.

With respect to claims that ADC has failed to properly represent individual divers one must question such an assertion. Of the 309 company members of this Association, 174 are General members who conduct commercial diving and other underwater operations in the normal course of their business activity. Most of these are relatively small companies begun by divers; managed by divers and with many of the operations continuing to be manned by those same owners and managers. In fact, survey action tends to reveal that the membership of ADC is comprised of more than 3500 commercial divers; certainly a number that represents a significant portion of industry engaged in commercial diving activity under the jurisdiction of federal regulations.

Other claims have been made by comment that there have been five (5) deaths in the Gulf of Mexico in 1998. ADC does not have information that would substantiate such a claim. However;

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Ross Saxon, PhD.

it is known that a least one death occurred as the result of natural causes related to an unknown medical condition, It is also known that at least two other deaths occurred wherein the decedents were not members of ADC companies, and were not following federal regulations.

A footnote with respect to the statement referencing those five (5) fatalities states that it was extremely difficult to obtain the data. That is a correct statement and points to one of the major inadequacies of the federal regulatory system. Information on fatalities and serious injuries that occur in the workplace **must** be made available in a sanitized but accurate, and timely format in order that industry can learn from these unfortunate examples.

A study of the Center for Disease Control has been referenced to suggest that 49 fatalities occurred between 1989 and 1997, in a grouping consisting of an estimated number of 3000 full-time commercial divers. On close examination of the referenced study it is significant to note the cause, the mechanism that precipitated the event, and the fact that a majority of those involved were not, in fact, properly trained commercial diver personnel nor were they operating in regulatory compliance.

Comparisons are made to fatalities in the North Sea. Although the numbers would appear to be accurate it is suggested that the comparison is invalid. Only fatalities in the North Sea zone of operations are cited whereas the comparison is made to all commercial diving operations conducted in the continental United States and its' outlying states and territories. Additionally, the number of commercial divers employed and the number of bottom time hours is significantly larger in areas under the jurisdiction of U.S. federal regulations than in the North Sea. One must question how many actual diving fatalities have occurred in the countries surrounding the North Sea, and countries where the "North Sea diving regulations" are used in order to establish accurate comparative data.

Comments have been made with respect to the training standards; the number of hours necessary to train a commercial diver, and a mechanism to **certify** that diver. The Association of Diving Contractors stands by its' position that the diving schools should not be the "agency" to establish the minimum number of hours necessary but rather; that industry should assume that position. In addition, ADC stands by its' position that the diving schools should not certify graduates as commercial divers merely because they have completed a course of instruction. That is a task best left to industry as the employer of the graduate and, only after the graduate has been evaluated for his or her ability to perform at the work site. One must remember that the graduate remains an untested entity until he or she has received actual on-the-job training and experience above and in the water when assigned as a member of a dive team.

In reading of the various comments submitted it appears evident that some respondents fail to recognize the fact that ADC is not a regulatory body and has limited ability with respect to investigation. Investigation and enforcement are the responsibilities of the properly designated federal agencies. ADC has no right to dictate to its' member companies and individuals. To assume such a role would represent direct interference in the business activities of a member company and would place the Association into a position of significant legal liability and potential conflict of interest. It is interesting to note that the ADC Consensus Standard is used in many courts of law to judge the liability of a member and/or diving company to determine negligence in their operations. Thus, while the ADC does not independently investigate each and every incident, its' Consensus Standards are utilized by individuals on both sides of a case to **define** a standard of reasonable and adequate conduct. Again, the Standards are a compilation of input from a variety of different diving companies and divers in various specialties. The Standards are likewise based on existent federal regulation and do not deviate from same except wherein additional measures of safety are included as agreed and adhered to by Association members.

However, with the above said it is also true that the regulations established both in 29 and 46 CFR need to be better enforced. Under the provisions of 29 CFR only an employee can bring a

complaint that will result in near term investigative action. That then precludes corrective action when imminent-hazard is observed by third parties. Absent effective regulation by those empowered by law to assure same the ADC becomes that entity accused of failing to investigate and regulate its' members.

It seems that the attack on ADC by various parties is without justification. Those individuals who claim to form the NAOCD are without known credentials. Efforts to obtain those credentials have not met with success. Those individuals claim by comment that the ADC Consensus Standards were formed based on a "select group of vested interests," which is inaccurate in light of a substantial numbers of members and divers represented by the ADC. Such criticism is unwarranted particularly where there is no documentation readily available from the NAOCD as to its own credentials that can be located.

The NAOCD self-serving statement that the "influx of young organizations" shows that a significant portion of the diving community feel there is serious need for reform, again is without documentation. There has been no actual certification that the National Association of Commercial Divers is a true entity of any significant proportion, nor is there any indication as to whether NAOCD has any paying members or represent anyone other than a few individuals and an affiliate organization [CDSO] advocating a position of strict government regulation for a perceived problem that does not exist on an industry wide basis. The ADC has been involved in diving safety and education for almost thirty years and the record of the improvement among its' industry members stands unchallenged.

ADC encourages the Coast Guard to consider all comments based on their merits and to not be biased by unverified insinuations serving to demean the ADC, when it is clear that the reputation of ADC is widely known and respected as an organization that has stood for safety in the commercial diving industry and for the safety of the commercial divers as individuals for many years. . That reputation has been the goal and achievement of the ADC since its inception in 1968.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ross Saxon". The signature is fluid and cursive, with a large initial "R" and "S".

Ross Saxon, Ph.D.  
Executive Director