



# Legacy Offshore, LLC

*Corporate Office*

Phone: (281) 334-2266 ✦ Fax: (281) 334-2206  
2951 Marina Bay Drive  
Box # 130-531  
League City, Texas 77573

*Operations Office*

Phone: (985) 631-6805 ✦ Fax (985) 631-6807  
106 Bayou Beouf Rd. Morgan City, La 70830  
Mailing ✦ P.O. Box 174  
Amelia, La. 70340

April 10, 2013

**SENT VIA EMAIL TO ROBERT.L.SMITH@USCG.MIL**

Commander Robert Smith, Designated Federal Officer  
National Offshore Safety Advisory Committee  
Vessel and Facility Operating Standards Division (CG-OES-2)  
U.S. Coast Guard Headquarters (Room 1210)  
2100 Second Street, SW  
Washington, DC 20593

Re: Minimum Manning Requirements for Commercial Diving Operations

Dear Commander Smith,

For the last fifty years I have been working in the commercial diving industry. During that time I have expended an extraordinary amount of effort attempting to convince the USCG to expand and enforce the existing 46 CFR regulations, specifically 197.432(e) (5) and (6) and 197.434 (e) and (f). These are the sub parts which require a minimum five man dive team for all commercial diving operations under USCG regulatory authority occurring in water depths greater than 130 fsw. These CFR regulations clearly state that under these conditions, there must be a standby diver available whenever a diver is in the water (2 team members) and that each diver must be continuously tended by a separate member of the dive team (2 more team members). In addition, this 46 CFR clearly states that a separate member of the dive team (Dive Supervisor) must be in continuous communication with the diver in the water (team member #5). It is time for the USCG to recognize that all hazards faced by a diver are not strictly depth related. The majority of diver fatalities and injuries occur in less than 130 fsw. In many "shallow water" incidents, a suitably prepared Standby Diver that was competently tended would have prevented a fatality. It is time for the USCG to expand the requirements set forth in 46 CFR 197.432 to include ALL commercial diving operations, **regardless of depth of water.**

Most international organizations with an expressed interest in commercial diving safety require a five man dive team for all commercial diving operations. A list of these organizations would include International Marine Contractors Association (IMCA), the Oil and Gas Producers (OGP), The Canadian Standards Association (CSA / DCBC), the UK Health and Safety Executive (HSE), and I include The Divers Association International. It should also be noted that the US Navy requires a minimum 5 man dive team in all its activities resembling commercial diving operations. It is the US regulating bodies, primarily consisting of USCG, OSHA, and Army Corps of Engineers along with the ADCI, that allow working dive teams of less than five members. Unfortunately, these

are also the only organizations that set the standards within US territorial waters and are the bodies tasked with the enforcement of those regulations.

Almost thirty years ago the Association of Diving Contractors (ADC) submitted a request to the OSHA to allow three man and four man dive teams in certain situations. That request was 100% motivated by the desire for financial gain, totally disregarding the safety considerations that are obvious to anyone familiar with the hazards associated with commercial diving work. The USCG has followed suit by allowing three and four man dive teams to perform commercial diving operations in shallow (< 130 fsw) water under their jurisdiction. This practice continues as we speak despite the fact that it has been demonstrated time and again that these reduced manning levels have contributed to numerous fatalities among working commercial divers. The Association of Diving Contractors International (ADCI) has recently updated and published their consensus standards (Rev 6). Again this **non-binding** commercial standard, written exclusively by the Diving Contractors, continues to allow and promote the use of three or four man dive teams while conducting commercial diving operations.

Statistics tell us that a commercial diver is 40 times more likely to be killed or permanently injured on the job than any other occupational group in the United States. Almost every week I hear of another fatality of a working commercial diver somewhere in the world. A great many of these deaths can be directly attributed to ADCI endorsed policies of allowing inadequately manned dive teams to perform commercial diving work, which OSHA and USCG permit. I respectfully submit that these conditions exist with your knowledge. Whether you endorse them or not, gentlemen, these incidents are happening on your watch.

Here is the root cause and motivation of the Diving Contractors to continue this practice. Allowing three man or four man dive teams is a cost cutting initiative...pure and simple. A three man team costs considerably less than a five man team. A company willing to assume increased risk (risk born exclusively by the diver in the water) can bid for work much cheaper than a company who complies with the law and has a higher regard for the safety of their employees. This simply makes it extremely difficult, if not impossible, for legitimate safety minded diving companies to get work. Therefore, the unsafe companies get the work, whereas the safe companies cannot bid low enough to compete. However, if the USCG enforced their own regulations requiring a 5 man dive team, commercial diving operations would overnight become exponentially safer and all diving companies would compete financially on a level playing field.

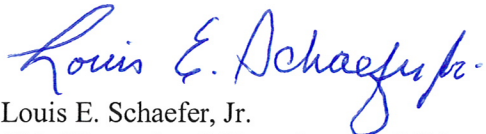
There is a second "enforcement" issue that I need to bring to your attention. This issue is contributing to a deficiency in the quality of accident reporting and the associated investigation of diving related accidents.

By statute, the USCG jurisdiction starts at a line approximately the 3 miles offshore. By statute, OSHA only has jurisdiction inland from 3 miles offshore. In practice, OSHA actively executes responsibility from the dock inland, regardless of what the statutes define. OSHA refuses to accept any responsibility for activities on board any commercial vessel regardless of its location. USCG has limited jurisdiction over any vessel that is not registered under the US flag state. This leaves the harbors, bays and rivers as an area that is effectively not regulated by anyone or at best poorly regulated. Drive across any causeway and you will see barge mounted cranes often performing work that is diver supported. These vessels are effectively unregulated. This "No Mans Land" is where a great many of commercial diving accidents occur. Because of the jurisdictional confusion, many incidents are going unreported to USCG and OSHA. Worse yet, there are many such incidents currently on record with an official years old status of "Pending Investigation". To a large extent this "jurisdictional confusion" is why statistics do not accurately reflect the true frequency of accidents and fatalities among working commercial divers.

My personal recommendation and the recommendation of the Divers Association International, is that the USCG effectively assume jurisdiction and responsibility in all navigable waters which would include river, bays and harbors. I live on Clear Lake Bay in Kemah, Texas and watch USCG boats patrol these waters every day. They are already present and it would not require any additional personnel or equipment to enforce the proposed expanded 46 CFR regulations. A concise check list to guide USCG inspectors if they stop and board a diving support vessel would insure that diving operations have the legally required personnel and equipment. If a contractor is on site and operating without the legally required personnel and equipment, a meaningful fine, say \$10,000, for the first incident and increasing by an additional \$10,000 for each subsequent violation, would certainly deter them from ignoring these regulations in the future.

I appreciate your time. On behalf of the Divers Association International and working divers across this country, I certainly hope that you will give these comments honest and due consideration. Many divers' lives will be lost in the future if the current regulations continue as is. Please keep in mind that OSHA, and USCG along with other governmental organizations like the Army Corps of Engineers are the only agencies that can make it mandatory and enforce a requirement for a minimum five man dive team. When all these agencies adopt and enforce this 5 man minimum dive team requirement then commercial interests like the ADCI will not be able to encourage less than a five man team in US waters. This will save many divers lives in the USA and encourage other diving regulatory authorities around the world to adopt these standards.

Sincerely,

A handwritten signature in blue ink that reads "Louis E. Schaefer, Jr." The signature is written in a cursive style with a prominent initial 'L'.

Louis E. Schaefer, Jr.  
Chief Executive Officer, Legacy Offshore