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31 October 2006

New York City Council
Committee on Waterfronts

Re: Hearing: Oversight - Rules of the Road, Boating Safety and Cooperation in New York City Waters.

Dear Council members:

I'd like to thank you for hold this hearing. It is a very important topic.

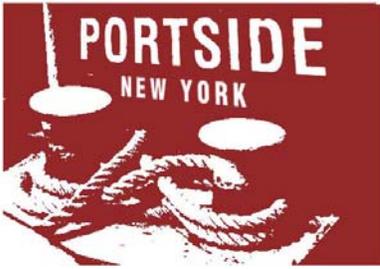
My testimony on behalf of PortSide NewYork will express enthusiasm for recreational boating but some serious concerns about how it is developing in New York City. It concludes with some suggestions.

I am now the director of a waterfront themed non-profit PortSide NewYork that I founded after years of participating in other waterfront programs, groups, committees, hearings and special events. I began my involvement with NYC's waterfront as a recreational boater in 1997, though I had extensive boating experience elsewhere. I currently am responsible for a rowboat, a 26' powerboat and a 172' tanker which will be PortSide's home base and a landing for other boats.

Since 1997, I have worked as a journalist specializing in the waterfront, I have advocated for greater public access to the water, and I completed a two and a half year project for National Geographic (late 1999 to early 2002) about tugs in New York Harbor. This project and my other reporting caused me to spend a lot of time on workboats and working waterfront facilities in this port. In 1999, I wrote a story for Offshore Magazine about the dangers recreational boats posed to commercial traffic (and therefore also themselves). I attach that Offshore story as part of my testimony.

Some observations about boating and the mix of traffic in this port:

Recreational boating is on the rise. It offers a great opportunity for exercise and sense of escape just minutes off the most crowded shore. For low income neighborhoods, a community boathouse offers a chance for "Fresh Air Fund" type experience right at home. These facilities offer a great way to learn about boats, the estuary, weather, and teamwork. Recreational boating also can establish a skill set that can lead to employment opportunities; currently there is a desperate need for skilled crew on local work boats.



Greater recreational use of the waterfront, however, presents some serious concerns.

Our waterways present varied conditions from ocean to polluted canals and can be dangerous for natural factors (currents, tides, winds, waves), but also because our waterways are major highways for the movement of cargo and people.

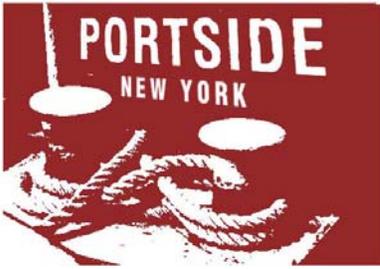
Containerships, cruise ships, tugs, barges and ferries use this waterway. This is also the largest petroleum throughport in the nation. Billions of gallons of fuel, mostly on barges, traverse this waterway. An accident with a recreational boat risks a fuel spill. Or, as pilots have told me, since they risk losing their license and therefore their profession in the event of a spill, they may run down an errant boater to prevent a spill rather than avoid the boater. Certainly, workboats of all sizes are more constrained as to where they can go on the water (they are restricted to channels and by water depth) than all recreational boaters. Disrupting commercial operations risks causing economic harm to many and potentially causing great environmental harm. Major commercial operations can be put at risk by much smaller craft engaged in personal pleasure. The position of the commercial operator must be favored for the greater good of all.

Save for a few select communities (Broad Channel, the Rockaways, parts of Staten Island, City Island come to mind) most waterfront communities have lost a waterfront culture and skills. The rediscovery of neighborhood waterfronts means many unskilled people are headed to the water's edge.

Many recreational boating advocates promote boating with a civil rights rhetoric ("people have the right to get to the waterfront or littoral edge") but boating is not a civil right; it is a skill-based activity.

However, in this state, recreational boaters are not required to have any sort of license that mandates a skill set. Not all boats even require registration! Only motor-driven boats operated on public waterways in New York State require registration. We'd never let people drive our roads without a license but that is exactly what is allowed on our water highways.

The fact that we DO have safety problems with the mix of recreational boats and commercial traffic in NYC is proof of how many recreational boaters are ignorant about boating. That should not be the case. There is an established body of rules, and law, governing boats as they have been around for millennia—ample time to work out some concepts. The US Coast Guard rules of the road are designed to prevent accidents between vessels. See http://www.navcen.uscg.gov/mwv/navrules/rotr_online.htm. They provide rules for lighting and labeling of boats, the ways they communicate (radios,



horns, bells, whistles, etc), and how and where they should move and interact on the water.

My personal impression from being on the water and from talking to professional mariners is that a great number of NYC recreational boaters have no idea about the rules of the road and also don't use a VHF radio, meaning professional boat operators cannot contact them in moments of crisis. I've seen Powerpoints from paddling groups praise their safety program, and then I've seen their paddlers on the water being clueless and operating in industrial marine areas without a VHF.

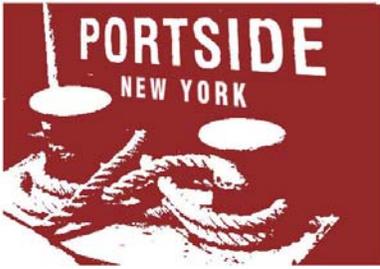
Unfortunately, Coast Guard penalties for violations are so low and so rarely enforced that they don't serve as much deterrent. Also, post 9/11, the Coast Guard security responsibilities in this port have increased exponentially. They do not have sufficient staff and boats to chase down all recreational boaters violating rules or causing safety risks to themselves and others.

Additionally, the Coast Guard rules for the lighting of small, hand-powered craft are not that strict and seem inadequate to the task of making these boats visible at night in a harbor ringed with NYC's high degree of light pollution.

As much as I see risks, I do not advocate zoning of the waterways nor prohibitions **at present**. Prohibition fails and inspires the human psyche to rebel, and folks who head towards the water are often free-spirits already inclined to rebel. The best solutions are education and communication.

Proposed solutions:

1. Make passing safety courses obligatory for use of a marina, docking facility or boathouse. We cannot change state law but we can set standards for use of our own local facilities. PortSide will make passing such a test a criterion for use of any boating facility we operate.
2. Establish a local body to finally resolve the issue of standardized lighting of kayaks. Various working groups have tackled this since about 1998 and it is my understanding that nothing was resolved. A sort of do-it-yourself ethos pervades kayak lighting.
3. Secure funding to enable the creation of a locally-specific recreational boating course, to enable this course to travel and be otherwise disseminated, and to support the creation of some special events dedicated to this issue that will bring together water users and raise the profile of the issue while disseminating information. PortSide is



certainly interested in being involved in creating such course material and event planning.

4. Design shoreline lighting to reduce spillage onto the waterway. This will make navigational aids and the lights from all vessels--particularly smaller craft--more visible. Many new waterfront developments are very insensitive to vessel operator concerns. As the shoreline comes alive with new developments, night time navigation is becoming more difficult and hazardous.
5. Speaking very close to home, Red Hook's Erie Basin is increasingly favored as a destination because the working waterfront there is interesting to see. This facility, however, is not a public waterway, it is a privately-owned facility. The owners of the Erie Basin bargeport are increasingly concerned about paddlers entering a terminal with heavy tug and barge traffic. I recommend that any groups considering tours to the Erie Basin contact the operators of the bargeport, Erie Basin Associates, to seek permission in advance of the event. There may be other areas representing similar risks and issues, and a similar courtesy would be prudent.

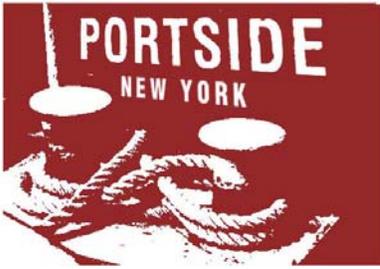
Again, thanks for holding this important hearing and please continue to focus on this issue.

Sincerely,

A handwritten signature in black ink that reads "Carolina Salguero". The signature is written in a cursive, flowing style.

Carolina Salguero
Director
PortSide New York

1999 Offshore boating safety article follows



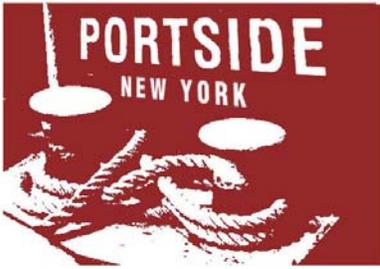
CAROLINA SALGUERO
carolinas@earthlink.net

- **Assignment for Offshore Magazine, as written. Published story was cut due to space reasons and ran in July, 1999 issue.**
- **all text © 1999 Carolina Salguero**

Maybe you aren't a boater who'd be caught tying up to navigational aids, jumping ferry wakes or zipping across the bow of a large ship into a pilot's blind spot. But there are some boaters who do. So many in fact, that last year representatives from the ferries, tugs, ships and Coast Guard who meet every six weeks at the Harbor Committee began discussing dramatic changes such as zoning of harbor waters, fines for violations and mandatory licensing for recreational operators. When a canoe was sliced in half by a powerboat in nearby waters, the Working Waterfront association decided to launch a new Harbor Safety Committee to get recreational boaters involved in the safety discussion. It was felt that recreational boaters were not involved enough in the Harbor Ops, though they were always welcome, and are still, at that forum. Commercial operators all agree that getting information to recreational people is both the best solution and the greatest challenge. Many say most problems could be avoided if recreational boaters would monitor VHF 13.

It could be that New Yorkers bring a jaywalking mindset to the water. "It all boils down to Rule 9 of the rules of the road," says Coast Guard Lieutenant Chip Lopez, "which doesn't seem to be understood by a lot of recreational boaters." This rule states in part, "a vessel of less than 20 meters in length or a sailing vessel shall not impede the passage of a vessel that can safely navigate only within a narrow channel or fairway," and that, "a vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway." Failure to follow these rules could result in fines up to \$5,000.

The Coast Guard advocates applying common sense to the rules of the road. "Granted, sailboats have the right of way in many situations," says the Coast Guard's Dan Croce, "but it's difficult for the Staten Island Ferry to change their route if a slow pleasure craft is in their way. It's a courtesy to have other smaller vessels recognize this and common sense." Christian Pschorr of Offshore Sailing School emphasizes the same idea to his students. "A big ship or a barge should never have to think there's a possibility of a collision," he says. "They can't do a hell of a lot when things get close." Though the recreational boaters may interpret "close" in yards, commercial pilots see "close" as a half mile to a mile. Their top complaint is fishing boats that clog Ambrose and the channels from Sandy Hook to Staten Island's Ward Point. Bob Pouch of the New York State Board of Pilots says "shoals of fishing vessels" obliterate the channel markers.



Commercial vessels have gone aground rather than hit a recreational vessel; but as one pilot put it, "I get in less trouble for running down a boat, even if it kills some people, as compared to my running aground and causing a spill. A lot of other pilots think the same way. And if the guy wasn't supposed to be in that channel, he's at fault anyway." Eklof Marine's Tom Sullivan hailed the ultimate enforcer. "The sea is selective," he says, "slow in recognition of effort and aptitude, but fast in sinking the unfit."

Side box:

Top offenses:

- Fishing boats clogging the channels.
- Fishing boats tying up to navigational aids.
- Jet skis tagging ship hulls, wake-jumping, coming so close they get sucked in.
- Cutting across the bow into the pilot's blind spot. (all types of recreational craft).
- Not knowing rules of the road (mostly powerboaters), not using common sense with rules of the road (sailboaters insisting on ROW where large vessels can't stop or turn.)
- "out for a wave" powerboats get too close to cruise ships, they hang around piers and don't recognize the warning whistles of a vessel pulling out.
- Slow boats hogging the center of a narrow or rough channel (Hell Gate/sailboats)
- Sailboat races: obscure navigational aids by using them as turning marks; clog the channel when the wind dies because they won't turn on engines during a race.
- Cutting astern off a tug towing on a long hawser (often submerged and invisible).

For more information:

Harbor Ops, meets every 6 weeks. To get on their mailing list, fax 212-635-9498.

The new Harbor Safety Committee meets monthly, visit www.workingwaterfront.org