

The Virgin Islands Consortium

D.P.N.R. Is Wrong: Registration Of Paddleboards And Kayaks Not Required By Law, Attorney Explains In Op-Ed

Opinion / **Published On June 02, 2019 10:50 AM /**

Staff **June 02, 2019**



I write an open letter to constructively criticize DPNR Commission-Designee Jean Pierre Oriol's interpretation of Title 25, Chapter 15 (Motorboats) that the law requires registration of paddleboards and kayaks. I respectfully submit DPNR's interpretation is wrong and should be corrected, and the public re-notified that registration of kayaks and paddleboard are **not** required. From a reading of the whole Chapter, DPNR's interpretation is contrary to the context and creates absurd results.

DPNR bases its inclusion of paddleboards and kayaks on two statute sections:

[1] Title 25, Chapter 15 (Motorboats), Section 291, (Definitions): stating “(1) ‘Vessel’ means every description of watercraft, other than a sea plane on the water, used or capable of being used as a means of transportation on water.”

[2] Title 25, Chapter 15 (Motorboats), Section 292, (Operation of unnumbered motorboats prohibited): (b) In addition to motorboats as required by this section, no person shall use or operate any vessel including sailboats, hobbiecats, dinghies, tenders, jet skis, or other similar contrivances on any of the waters of the Virgin Islands unless: (1) such vessel is registered...

Here are the problems with DPRN’s over-reaching interpretation. The directly controlling statute for registration is Section 292. The statute does not specifically state paddleboards or kayaks. First, motorboats are the primary target. Then large non-motor vessels are named, “sailboats” and “hobbiecats.” These are large ocean-going boats, which can travel long distances at a high rate of speed on a broad reach. Last mentioned, are what are traditionally motorized smaller boats: dinghies, tenders and jet skis. These boats also can travel at high rates of speed under motor-engine power, and are used as transportation back and forth to yachts, motorboats and sailboats. Essentially, dinghies and tenders generally do not exist on their own but are associated with a large ocean-navigating boat.



As a catch-all, the statute does state “other similar contrivances.” But to interpret this phrase, the whole Chapter must be looked at in context. Context, by a rule of law known as *Ejusdem Generis*, requires when specific enumerated items are listed in a statute, that a general catch-all like “other similar contrivances” will be of the same kinds, class, or nature. Paddleboards and kayaks logically are not of the same kind, class or nature as these navigable, open-ocean, mostly motorized larger and faster vessels and their associated motorized dinghies and tenders.

Second, there’s another rule of law, *Expressio Unius*, that if the Legislature uses a specific word in one area, but doesn’t use that word in another area of the statutes, we must consider that excluded word specifically not used for a reason. In Section 297, the Legislature says: “No person shall... manipulate any... **surfboard**, or similar device in a reckless or negligent manner.” Here, the Legislature was aware of surfboards in 1962 when this section was written. Thus, the Legislature could have used “surfboards” in Title 25, Section 292 – also written in 1962 – but did not. More importantly, the statutory history shows that the Legislature deleted the word “windsurfs” in 1983, which used to be after “sailboats.” Clearly then, it was the intent of the Legislature in 1962 not to include surfboards for registration, and by 1983, not to include windsurfs for registration. (Windsurfing was gaining popularity in the 1980s – think of the opening of the TV show Miami Vice with a windsurfing girl after the title credit. Paddleboards have been gaining popularity in the 2000s. A paddleboard is even less mobile than a windsurf.)

Thus, surfboards, paddleboards, windsurfs and kayaks logically fit in the “similar device” catch-all of Title 25, Section 297. These smaller recreational devices do not logically fit in the “other similar contrivances” of Section 292 describing large, long-distance, ocean navigating, high-rate of speed vessels like “sailboats, hobbiecats, dinghies, tenders and jet skis” designed for ocean transportation.



There is a third rule of law for reading statutes, the Rule of Absurdity, which is to avoid ridiculous, unjust or absurd results. For example, at Section 291 (Definitions) simply because a paddleboard could be “capable” of transportation, does not mean that anyone uses them for ocean transportation. Paddleboards are designed and manufactured to be recreational. (In fact, manufacturer warnings on paddleboard state they are not to be used for transportation.) Paddleboards are used for exercise and fun, whether that is surfing, paddling, balance/yoga or just the serenity and peace of being on the water. Paddleboards are like the skateboards of the water. Imagine if the BMV required registration of all devices capable of transportation. Besides cars and trucks, you would need to register roller-skates, skateboards, bicycles, unicycles, and perhaps those kids’ shoes with little wheels in the heel.

Normal people make jokes about lawyers, that lawyers can interpret words in bizarre ways. Many people still remember President (and Lawyer) Bill Clinton saying “It depends on what the definition of is is.” That’s why judges require words to be defined in their normal sense, in a way that does not lead to absurd results. The statutory word “capable” of transportation must be read with some common sense.

Using DPNR’s nearly endless interpretation of “capable of being used as a means of transportation on water,” then anything capable of floating should be registered. Thus, the DPNR notice should be amended and re-issued to say, besides paddleboards, also “floating mats, floating chairs, floating kiddie toys, inter-tubes, etc.” All of these are “capable of being used as a means of transportation on water.” All a person has to do is have the wind blow them, or paddle with their hands. Last, surfboards are conspicuously absent from DPNR’s notice, yet a person laying on a surfboard and paddling is “capable” of transporting herself or himself to another place, *i.e.*, transportation.



There is one more rule of law, Legislative Purpose. Reading the whole of Title 25, Chapter 15 (Motorboats) it is clear the purpose of registration is for sailing and motorboat safety. Section 294 requires “life-saving, fire-fighting and fire-prevention equipment, sound signaling devices... and lights.” This is important for large sailing and motorboats, whose purpose and design is for long-distance ocean transportation. These boats are essentially cars and trucks upon water, and it makes sense to make sure they are registered and have proper and working safety equipment. Further, Section 293 requires proof of ownership for registered vessels. This also makes sense in that sailboats and motorboats usually cost tens of thousands of dollars to millions. However, when applied to paddleboards and kayaks, having fire-fighting equipment on-board is absurd. Further, proving ownership for an inflatable paddleboard that grandma could have bought her grandchildren for Christmas for \$300 is absurd. Yet, unless your grandma is Melinda Gates, it’s unlikely that you will be receiving as a Christmas gift a \$300,000 sailboat. DPNR’s inclusion of kayaks and paddleboards in registration is contrary to the clear statutory language, the Chapter’s context, and Legislative intent – and because of that the interpretation creates absurd results.

In sum, DPNR should read Section 292 as excluding from registration devices like windsurfs, kayaks, paddleboards and surfboards. Second, DPNR should avoid construing “capable of being used as a means of transportation” so broadly as to be absurd. Instead, the interpretation should be that windsurfs, kayaks, paddleboards and surfboards are for recreation, not for ocean transportation.

If DPNR is unable to reach this commonsense interpretation, the Senate should amend the law. There is nothing worse for the Rule of Law than having a law that is so non-sensical as to be confusing to the public. No normal person – include the Legislature when these laws were drafted – ever envision these devices as needing to be

registered. Many tourists travel to the Virgin Islands with inflatable paddleboards, small surf boards, or floating beach toys, which the registration process would take longer than their vacation here.

I have proposed the amended language below:

1. 'Vessel' means every description of *motorized* watercraft, *and non-motorized watercraft exceeding 12 feet in length*, other than a sea plane on the water, *primarily* used or capable of being used as a means of transportation on water. *Sea planes are excluded from this definition.*

Hopefully, DPRN will take immediate corrective action. If not, hopefully the Senate will amend the law (thought it shouldn't be necessary). Unfortunately, if neither happens, I consider it my public duty as an attorney to help the people of Virgin Islands. I will represent any person – for free – who is ticketed by DPRN for failing to register a kayak, paddleboard, windsurf or surfboard. Yet, the public and all tax- payers are better served if DPRN reads the statutes with context and common-sense.

Submitted on Saturday by: Russell Pate, an attorney on St. Thomas. His office can be reached at 777-7283 or by www.SunLawVI.com