Chartering Recreational Boats in the United States: A Compilation and Analysis of Applicable Federal Maritime Law

Mary Nathalie Peter

University of Rhode Island

Follow this and additional works at: http://digitalcommons.uri.edu/ma_etds

Part of the Admiralty Commons, Analysis Commons, Natural Resources Management and Policy Commons, and the Oceanography and Atmospheric Sciences and Meteorology Commons

Recommended Citation
CHARTERING RECREATIONAL BOATS IN THE UNITED STATES: A COMPILATION AND ANALYSIS OF APPLICABLE FEDERAL MARITIME LAW

BY

MARY NATHALIE PETER

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS IN MARINE AFFAIRS

UNIVERSITY OF RHODE ISLAND

1984
MASTER OF ARTS THESIS
OF
MARY NATHALIE PETER

APPROVED:
Thesis Committee
Major Professor

DEAN OF THE GRADUATE SCHOOL

UNIVERSITY OF RHODE ISLAND
1984
ABSTRACT

No single primary source exists to provide current and would-be participants in recreational charter boat operations in the United States with a basic legal understanding of their rights and obligations. The relevant federal maritime standards, laws, regulations, and judicial interpretations are scattered in isolated codebooks, reporters, and bulletins. Moreover, the governing body of law for boat chartering is admiralty law, which has been shaped throughout the centuries primarily by the traditions and dictates of the commercial shipping and shipbuilding industries. As a result, the logic behind the admiralty framework tends to be obscure when viewed in the context of a recreational charter boat operation. Nonetheless, a basic tenet of the American legal system is that the individual undertakes to ascertain and abide by the legal authorities applicable to his situation.

This research compiles and synthesizes the significant legal requirements of the federal maritime law as they apply to boat chartering. Legal and historical background is provided where it is deemed essential to an understanding of the law. Examination of the legal relationships among the charter boat owner, the charterer,
ACKNOWLEDGEMENT

I am grateful to many people for their assistance and loyal support in turning this thesis into a reality. I would like to thank my mentor, Professor Dennis Nixon, for the guidance and enthusiasm he has provided, both in the hallowed halls of Washburn and around the marks aboard "Yare." I appreciate the contributions of the members of my committee, Professors Niels West and Blair Lord, who reviewed the thesis and offered their constructive comments. I am still amazed at the indefatigable "magic fingers" of Jean Gefrich, who typed this document with its endless footnotes.

I am thankful to each person I interviewed for giving his or her time and expertise. I would also like to express my appreciation for the invaluable assistance from various members of the United States Coast Guard who shared their experiences and understanding of the subject and provided many of the relevant documents.

I am most grateful to my family for their encouragement and their provision of creature comforts in the writing stages of the thesis. I give credit to Dale Cheek and his troubling experience with cabotage laws in Guadeloupe as the inspiration for the topic. He, Linda
Tuxen, and certain special M.A.M.A.s of 1984 and 1985 have offered the support that only true friends know how to give. My thanks to the gang at Baybery Road who provided a safe anchorage during my visits to Rhode Island. Finally, the abiding presence of the mighty Atlantic during long walks on Bonnet Shores beach also deserves special credit as a contributing force to the accomplishment of this research.
# TABLE OF CONTENTS

**ABSTRACT** .................................................. ii

**ACKNOWLEDGEMENT** ........................................ iv

**TABLE OF CONTENTS** ........................................ vi

**LIST OF ILLUSTRATIONS** ................................... viii

**INTRODUCTION** ............................................ 1

**CHAPTER I. RECREATIONAL CHARTER BOATS AND ADMIRALTY JURISDICTION** ........................................... 10

  - The Boating Industry (10)--Chartering a Boat (13)
  - Federal Maritime Law and Jurisdiction (16)

**CHAPTER II. CHARTER ARRANGEMENTS** ...................... 24

  - The Charter Party (24)--Time and Demise Charters (36)--Time Charters (38)--Bareboat (Demise) Charters (40)--Conclusion (57)

**CHAPTER III. COASTWISE TRADE LAW AS IT APPLIES TO RECREATIONAL CHARTER BOATS** .................................. 64

  - Introduction (64)--Scope of Cabotage Laws (68)--Eligibility for Coastwise Trade as a Consideration When Purchasing a Boat for Charter (79)--Foreign Ports (80)--Conclusion (86)

**CHAPTER IV. CHARTER BOAT DOCUMENTATION** .............. 92

  - Introduction (92)--Eligibility for Employment (97)
  - Qualifications and Requirements (99)--Procedures (106)--The Preferred Mortgage (108)--Enforcement/Penalties (109)--Conclusion (112)

**CHAPTER V. CHARTER BOAT SAFETY REQUIREMENTS, MANNING, AND LICENSING** ............................................. 118

  - Safety, Inspection, and Certification (118)--SOLAS (134)--Manning and Licensing (135)--Conclusion (141)
LIST OF ILLUSTRATIONS

1. Types of Registration and Documentation Which Qualify a Charter Boat to Make Various Passages .......................... 93
2. Qualifications for the Various Types of Documentation Endorsements ......................... 100
3. Requirements to Obtain a Certificate of Documentation with the Various Endorsements ... 101
4. Regulatory Categories of Safety and Inspection of Recreational Charter Boats ........ 119
INTRODUCTION

No single source exists to provide current and would-be participants in the United States recreational charter boat business with a basic legal understanding of their rights and obligations. The relevant federal standards, laws, regulations, and judicial interpretations are scattered in isolated codebooks and reporters. Nonetheless, a basic tenet of the American legal system is that the individual undertakes to understand and abide by the legal authorities applicable to his situation. The law plays a significant role in boat charters, as it does in most business operations. It is the responsibility of the owner, charterer, crew, and other participants in a charter boat business to ascertain the legal requirements applicable to the type of operation contemplated for the charter boat and to ensure that every requirement is fully complied with before and during operation. However, the recreational nature of chartering a pleasure boat has tended to downplay the applicable legal requirements and to conceal the fact that its legal basis is currently the same as that for major commercial shipping enterprises.

The obscurity of the relevant legal standards for boating is compounded by the fact that the prevailing body
of law governing boat chartering is admiralty law.

Gilmore and Black tentatively define admiralty law as "a corpus of rules, concepts, and legal practices governing certain centrally important concerns of the business of carrying goods and passengers by water." Much of the law is based on judicial decisions incorporating maritime traditions. Because admiralty law has historically been shaped by practicalities and interests of maritime commerce, it is procedurally and substantively different from shoreside common law. For example, limitation of liability, in rem proceedings, and the virtual absence of trial by jury are unique to maritime law. In recent years, principles of shoreside law have been absorbed gradually where they have a positive, practical value, as in the adoption of products liability law. However, admiralty remains a specialized area of law.

In the words of Martin Norris, boating law expert,

[it should be readily understood that the average landsman who is accustomed to a world of accepted norms by way of shoreside regulations and legal rights and responsibilities leaves much of this behind at the moment he steps into his boat . . . [He] must accept the rules and laws of the sea, most of which will appear strange and incomprehensible to him.]

With the development of coastal and offshore resources, new water-based uses and activities unrelated to commercial shipping have emerged within United States
maritime jurisdiction. In the interests of uniformity and consistency, admiralty law has been stretched to incorporate these activities. Boating is one of the areas to which admiralty jurisdiction has been extended, despite the problems in establishing a relationship between boating and traditional maritime activities. Situations arise in which the law of admiralty appears inappropriate and indeed burdensome. This can be observed in the context of small boat charters for recreational purposes. In addition to being ill-suited to the recreational charter boating, some laws have been rendered obsolete by recent technological advances in boat construction and associated boat equipment.

This study is an assemblage and analysis of the pertinent federal maritime laws, guidelines, court decisions, and regulations as they apply to recreational charter boats. It identifies the fundamental legal requirements of a pleasure boat seeking to engage in recreational charters and discusses the maritime rights and obligations of participants in a recreational charter. The compilation is intended to aid the various interests involved—charter boat owners, charterers, crew, charter brokers, marine insurance representatives, and the relevant government bodies—to better understand the legal framework in which they operate in order that they can be in conformity with the law if they so choose.

Analysis of this compilation has revealed some
unusual problems and suggested means of improvement. For example, it has indicated certain areas, such as the safety requirements for inspected charter boats, where the special characteristics of recreational charter boat operations would benefit from regulatory scrutiny distinct from the present legal regime—one more suitably tailored to the exigencies of the charter boat industry.

The chief issue revealed by the research is in regard to the "bareboat charter." Bareboat charters are a type of charter arrangement in which the incidences of ownership are transferred from the owner to the charterer for the term of the charter. Because a bareboat charter is not considered to involve carriage of passengers for hire, it is not subject to the stringent safety, documentation, and coastwise trade requirements of a "time charter," in which the owner retains control over the boat. However, it proves very difficult for a recreational charter operation to meet the qualifications of a legal bareboat charter. As a result, many charter boat owners conduct illegal operations because they can neither meet the set of requirements for a legal time charter nor those for a legal bareboat operation. There is an evident need to rethink these standards bearing in mind the practicalities of the industry, in order that boat owners can operate safe and profitable businesses in accordance with the law.
The primary legal relationships among participants in a recreational charter boat operation considered in this study are those between the charter boat owner, the charterer, and the crew. These relationships are fundamental to an understanding of the application of maritime law to a recreational charter boat. It is essential to understand how the rights and duties of these participants shift based on the existence of different types of charter arrangements.

The various intermediaries in a recreational charter boat operation, such as charter brokers, management/purchase and leaseback/purchase companies, and travel agents introduce the complex area of agency and brokerage law, requiring careful consideration in their own right. This is tangential to the main features of charter boat law and consequently, it is beyond the scope of this research. Once the fundamental legal requirements of a charter boat and the basic legal relationships of the owner, charterer, and crew are more fully understood, further research can clarify how these basics may be overlaid with other diverse legal relationships, many of which are based on financial and tax, rather than maritime, considerations.

The purpose of this research is to provide a general overview of the maritime requirements of a recreational charter boat operation. It must be kept in mind that each recreational charter boat operates in a manner peculiar to
its circumstances. For this reason, legal advice from an attorney competent in admiralty law should be sought for more specific questions of law and procedure. Moreover, for the most part, the financial, tax, and criminal law ramifications of the material presented have not been taken into account. Advice from competent authorities can provide this additional information.

The pronouns "he," "his," "him," and "himself" as used at various points in this thesis are not intended to convey the masculine gender alone; this usage is employed in a generic sense so as to avoid awkward grammatical situations which would likely occur due to the limitations of the English language.

Brief Introduction to the Following Chapters

The following chapter discusses the nature of the boating industry, the general procedure for chartering a boat, and provides an overview of admiralty law and jurisdiction as it is relevant to a charter boat operation. Chapters II-V address the basic maritime legal requirements which must be met in order for a boat to qualify to engage in recreational charters. Chapter II discusses the charter party—the agreement between the owner and charterer—and the most common charter arrangements—time and bareboat charters. Chapter III examines the nature of the U.S.
coastwise trade, or cabotage law, and its application to recreational charter boats. Chapter IV examines the application, requirements, and procedures of documentation, a type of national vessel registration, as it affects recreational charter boats. Chapter V reviews the U.S. Coast Guard safety requirements and those of the International Convention for Safety of Lives at Sea as they apply to a charter boat, including safety construction and equipment, safety standards of operation, manning requirements, and the licensing of crew.

Chapter VI examines the highlights of maritime liability which arise in the context of a recreational charter boat operation. It explores the rights and duties of the owner, charterer, and crew. Specifically it addresses the owner's liability to the charterer and to the crew; the bareboat charterer's liability to his guests and to the crew; liability for the boat and to other persons and property; seaworthiness as an implied warranty; assumption of risk; limitation of liability; and products liability.

Chapter VII discusses the nature and application of maritime liens to recreational charter boats. Chapter VIII addresses the subject of marine insurance. Although marine insurance is not required by law, it is a form of protection in the face of the legal exposures of admiralty law.

Chapter IX summarizes the chief problems identified in the previous chapters. Recommendations are made for
directions toward solutions. It is followed by a Conclusion, Appendices, and Bibliography.
FOOTNOTES


CHAPTER I

RECREATIONAL CHARTER BOATS
AND ADMIRALTY LAW

Before addressing the specific legal requirements of the federal maritime law for recreational charters, an introductory chapter discussing the boating industry and chartering is essential to set the scene. This discussion is followed by a basic explanation of how the federal maritime law serves as the legal framework for all maritime activities, including chartering.

I. The Boating Industry

Understanding the various legal facets of boating has become more important in recent years. National participation in boating as a leisure and recreational activity has steadily grown since World War II to become one of the nation's most popular sports. In 1983, industry estimates indicated that there were thirteen million recreational boats in the U.S. and sixty-two million persons who engaged in boating at least once or twice that year. The number of boat owners increased by approximately two million from 1977 to 1982.

Various trends in demography, economic development,
leisure, and technology have contributed to the surge in boating activity. First, there has been a significant rise in U.S. population and today more than one half of the people reside within 50 miles of the coastline. Census data suggests that people will continue to move into coastal areas as employment opportunities expand. Moreover, increased mobility as a result of highways, cars, mass transit, and facilities permit travel oriented vacationers from inland regions to join coastal residents in participation in marine recreation.

The constant dollar value of the gross national product has made large gains in the last decade, along with the median family income. Increases in real income provide greater disposable income which may in turn be spent on recreational activity. There was an estimated $9,375,000,000 retail expenditure on boating equipment and activities in 1983.

Boating popularity can also be accounted for by the increase in leisure time. In 1900, the average working week was 60 hours, while in 1950 it was estimated at 40 hours per week. An individual spent 27% of his time in leisure activity in 1900 and 34% in 1950; leisure time is projected at 40% in the year 2000. Moreover, the nature of leisure has evolved: leisure has gone from public ritual or celebration as prescribed by the community (weddings, festivals, church holidays) to a "new leisure of the working
class" which derives much of its character from the amusement industries. The emphasis of modern leisure is on individual freedom to choose rather than on community obligations. Boating appeals to this yearning for individual freedom.

Lastly, boating has soared as a result of the greater productivity provided by mass production and marketing. Technology which can efficiently produce well-designed boats and associated equipment at more modest costs has allowed those other than the very rich to participate in pleasure boating. 7

Increased boating activity as a result of these trends has put pressure on the coastline as a finite natural recreational resource. There may be sufficient water to cruise but the coastal areas necessary for access and storage are limited. Already demand is exceeding the capacity of coastal areas in New England and along the West Coast.

Along with its recreational needs, the nation's quest to satisfy expanding needs for energy, minerals, space, and food places further demands on the ocean and coastal regions. 8 In the context of increasing concern about the present and future quality of the natural environment and the best use of resources, one way to accommodate the increased boating demand is to encourage the
development of boat rentals and charter boat operations. From the charterer's viewpoint, spending discretionary income on a recreational charter during his spare time and saving on the costs of storage, maintenance, repair, fees, dockage, etc. involved in owning a boat can be a very attractive proposition. From the owner's viewpoint, the additional income derived from chartering when his boat might otherwise be idle can make chartering an advantageous business pursuit. In fact, a growing charter fleet has developed to accommodate the rising interest in boating.

The surge in the boating industry has activated a trend toward more stringent boating regulations and standards. Although enforcement remains sporadic at this time, more systematic enforcement in the future will require more uniform compliance. Members of the recreational boating community must not only recognize that boating carries with it certain important legal responsibilities; they must also obtain a more precise understanding of what these responsibilities are in order to avoid the legal pitfalls.

II. Chartering a Boat

To charter a boat is to hire or lease a boat for a certain period of time or, less commonly, for a particular voyage. The typical scenario runs something like this. A boat owner decides to offer his boat for charter. He must
then decide what type of charter--time or bareboat--suits his purposes. He must meet the legal requirements accordingly. The proper insurance should also be acquired. The owner may wish to employ a captain and/or crew or to operate the boat himself during charter.

The owner can either solicit customers, commonly known as charterers, on his own or engage the services of a charter broker. A broker is one whose full time or part-time vocation is to act as intermediary between the owner and charterer in arranging a charter. He may be independent or affiliated with a boatbuilding company, management/purchase or leaseback purchase company. The broker has informative and coordinating functions which normally include correspondence, advertising, matching the boat and crew with the charterer, drawing up the charter party (charter contract), making the arrangements and collecting the charter deposit and charter hire (payment). In exchange for these services, the broker receives a commission from the owner which is usually a percentage of the charter hire.

A charterer is the person who leases a pleasure boat, commonly for a period of a day, week, or month. Once he decides approximately where he wants to go, how much he wishes to spend, how long to stay, and how many persons are in his group, he can contact either the owner, the captain, or a reputable charter broker to make arrangements. The charterer selects the type of charter he prefers: e.g.,
time vs. bareboat, with or without crew. If the charterer chooses a bareboat charter, he is usually screened for sailing experience in the application and undergoes a checkout at the commencement of the charter. A charter party is signed between the owner and charterer. In exchange for a deposit and eventually the charter hire, the charterer is entitled to the use of the boat for the term of the charter.

There are a variety of charter operations available. The basic categories are time and bareboat charters. A bareboat charter is one in which the charterer takes full control and possession of the boat for the period of the charter. He can hire crew if necessary. A time charter is one in which the owner retains control of the boat and the charterers are considered passengers for hire. Charters can be further categorized. For example, there are "head boats," on which different parties of one or more charterers share the boat with one another. Many of the day fishing boats and whale watching schooners operate as head boats. In other cases, a group of friends constitutes the entire charter party. This is the arrangement on a charter fishing boat and most of the sailing charter boats. A "flotilla" is a further option. This is a fleet of often identical boats which cruise in company, accompanied by an escort or mothership which acts as host, tour guide, and repair shop.
Charter boats can serve a variety of functions. There are dive charter boats, charter fishing boats, whale watching charters, party boats, sailing charters, and charter tours to name just a few.

For the purposes of this research, the two categories of charter to be considered are time and bareboat charters. These are the arrangements upon which the legal duties and rights of the participants are determined. Variations on a basic time and bareboat charter must be scrutinized to determine into which category they fall.

III. Federal Maritime Law and Jurisdiction

All recreational charter boats, regardless of registry, are subject to U.S. maritime law, also known as admiralty law, when in the navigable waters of the U.S. Recreational charter boats registered or documented in the U.S. are also subject to U.S. maritime law on the high seas.

It was the Founding Fathers who gave the federal courts authority over "all Cases of admiralty and maritime Jurisdiction" in the U.S. Constitution. This was implemented by the Judiciary Act of 1789. Admiralty jurisdiction essentially applies to two types of civil actions. First, it applies to those actions sounding in tort (civil wrong) which arise in whole or in part on navigable waters and have some nexus with traditional maritime activities. Second, admiralty jurisdiction
obtains in contract disputes if the subject matter of the contract has a substantial maritime connection.\textsuperscript{15}

Admiralty jurisdiction applies to vessels on the navigable waters of the U.S. Practically any watercraft or "other artificial contrivance" capable of transporting persons or cargoes is considered a vessel for the purposes of admiralty jurisdiction.\textsuperscript{16} This includes pleasure boats. Navigable waters are currently interpreted to be waters capable of supporting navigation or commerce.\textsuperscript{17} A waterway need not presently function as a commercial artery or support interstate activities to qualify.\textsuperscript{18} Navigable waters exclude "sole State" waters.

There are two types of proceedings in admiralty, both of which may apply in a suit involving a recreational charter boat. Under certain circumstances, both actions can be brought at one time, if necessary. An \textit{in personam} action is a civil suit against an individual or corporate defendant alleging liability in a maritime activity. An \textit{in rem} action is brought against the boat itself. The boat is seized and taken into the custody of the court. It cannot be released unless a bond is posted equal to the amount of the claim. An effort is made to notify the owner; however, the case may be decided in his absence. If no bond is posted and the court decision favors the aggrieved party, the boat can be sold at auction to satisfy the claim. Thereafter, the court
returns the remaining cash, if any, to the owner if it is petitioned.

Congress gave to the federal courts exclusive original jurisdiction over civil cases of admiralty, saving to suitors "all other remedies to which they are entitled." 19 This "saving to suitors" clause allows a suitor with an in personam claim to seek a remedy in a state court, provided the state court follows substantive federal maritime law when it is applicable. Admiralty courts retain exclusive jurisdiction over in rem actions.

In the interests of uniformity worldwide, especially among the maritime nations of the Western world, much of the substantive American admiralty law more nearly resembles that of other maritime nations than it does shoreside law. The theory is that numerous vessels call at ports throughout the world; consequently, the protocol, standards, and requirements of each country should be in conformity to the maximum extent possible.

By contrast, the very same federal interest in preserving uniformity beyond the "water's edge" has tended to truncate any state efforts to enact measures for boats operating in navigable waters under their jurisdiction. This had engendered much controversy. There are those who argue that state and local responsibility would be more appropriate for pleasure boats, in the interests of local safety and federalism. 20
Essentially, state law supplements federal maritime law: where no federal law exists, state law can be applied unless it contravenes the principles implicit in admiralty law or "where its application would defeat an otherwise meritorious maritime cause of action." For instance, the state of Virginia's "interspousal immunity" law was held not to apply in an admiralty case in which a wife brought suit against her husband for injuries sustained on their pleasure boat as a result of his negligent upkeep.

Until 1972, the courts held that "every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters . . . [was] . . . of admiralty cognizance." Then, in the case *Executive Jet Aviation, Inc. v. City of Cleveland*, the Supreme Court introduced the "locality-plus" test of establishing whether a tort bears a significant relationship to the traditional maritime activity in order to be cognizable in admiralty. There was no requirement, however, that the maritime activity be commercial.

*Executive Jet* did not clarify whether torts involving pleasure boats would have sufficient connection to traditional maritime activity. Consequently, circuit courts thereafter split tacks on this jurisdictional issue until the Supreme Court granted certiorari in the case *Foremost Insurance Co. v. Richardson* in 1982. In this action
involving the wrongful death of a person aboard one of two pleasure boats which collided on a river in Louisiana, the Supreme Court affirmed the 5th Circuit decision that the negligent operation of a boat on navigable waters had sufficient connection to a traditional maritime activity to sustain admiralty jurisdiction.27

The Foremost decision assures admiralty jurisdiction for torts occurring on recreational charter boats. In fact, the transportation of passengers for hire aboard a time charter boat bears an even stronger connection with "traditional maritime activity" as a form of commercial activity than a pleasure boat out for a Sunday excursion.

Breach of contract actions fall under the ambit of admiralty jurisdiction if they are significantly connected with vessel operation. For the purposes of a recreational charter boat, this currently includes contracts for boat repair, maritime liens, charter parties, employment contracts with crew members, insurance policies, and preferred mortgages. It does not include purchase or sales agreements.

The rapid emergence and growth in coastal activities, including recreational charter activity, which are quite separate from the merchant fleet and the shipbuilding industry, the original beneficiaries of admiralty law, may eventually be considered persuasive grounds for the application of shorebased law in state and
U.S. territorial waters. However, for the present, recreational charter boats are under the admiralty umbrella. It is this maritime law which shall be addressed in this paper.
FOOTNOTES


13 Act of Sept. 24, 1789, 1 Stat. 73.


22 Ibid.

23 The Plymouth, 3 Wall. 20, 18 L.Ed. 125 (1866).


25 See Foremost, 457 U.S. 668, 674; Richardson, 641 F.2d 314, 316.

26 Foremost, 457 U.S. 668.

27 Ibid., p. 674.
CHAPTER II

CHARTER ARRANGEMENTS

I. The Charter Party

A recreational charter is a type of maritime contract. The "charter party" is the formal term for a written charter contract between the owner and the person or party hiring the boat. It sets forth the terms and conditions under which the charterer acquires the use of the charter boat for the charter period in exchange for an agreed sum, termed the "charter hire."

The term "charter party" is derived from the Latin, "carta partita," meaning divided paper.1 This was a legal instrument used in the Middle Ages. At that time, a contract was written in duplicate on a single sheet of paper and then torn in half from top to bottom so that the shipowner and charterer could each retain a portion of the original. The jagged edges of the two pieces virtually eliminated the possibility that another agreement might be substituted.2

In modern usage, the charter party for a recreational charter boat is no longer torn in two and is more commonly referred to as a charter agreement; the term
charter party in its common usage refers to the charterers or, in the case of the bareboat charter, the charterer and his guests. Nevertheless, for the purposes of this thesis, "charter party" will retain its more technical meaning of a charter agreement.

Although it is common and prudent to enter into a written agreement, oral agreements to charter are nonetheless acceptable and binding. There is no statute of frauds in admiralty preventing an oral contract. However, in practice it may be more difficult to determine what has been concluded in an oral agreement if a dispute arises. A written charter party can provide the necessary evidence as to terms and conditions.

A charter party is subject to the general rules and specifications of contract law. Admiralty jurisdiction obtains in determining the legal requirements of the signatories under the standards of maritime law.

Because case law rather than codified law prevails with respect to chartering, a standard charter party form is advantageous for the purposes of more uniform interpretation of the provisions. It can be modified and amended by riders and addenda in accordance with the individual agreements. In practice, because of the short term nature of most recreational charters, the standard contract normally goes unaltered. However, it is important that the
charter party reflect unambiguously the intentions of the signatories: in most disputes, the charter party will be decisive and the clauses interpreted as they are worded. Courts and arbitrators generally make their decisions based on the wording of the charter party, previous decisions, and charter customs. Ambiguities are interpreted against the owner. It is unusual for the court to reconstrue the details of a charter party to give it sensible meaning in accordance with the intentions and conduct of the signatories.

The following discussion runs through some of the more typical and significant provisions of a charter party for a recreational charter boat. (See Appendix A for a commonly used charter party and its revised form). These are clauses which are typical of both a time and bareboat charter. Significant provisions and their interpretations which are specific to either a time or bareboat charter are covered later in this chapter in the discussion of time and bareboat charters. Brief mention is made of those provisions which are more fully discussed in other chapters of this study.

1. Terms and Payment

Contracts normally commence with the name of the parties, a description of the boat, the dates of the charter, and the terms and amount of payment. Additional
costs and charges such as sales tax and damage deposits may also be spelled out. The "right to cancel" and any other consequences of the owner's failure to deliver the boat or the charterer's failure to provide the charter hire as contracted are normally explicit. These vary among the different charter operations.

Occasionally there are clauses which leave open the possibility of terminating the charter party if the other party turns out to be unacceptable owing to insolvency or a bad reputation. Further clauses should make it possible to force the other party to fulfill his obligations before, during, or after the charter period.\(^9\)

2. Delivery, Redelivery, and Maritime Liens

A typical charter party states the terms of delivery. The charter boat must be delivered in conformity with the terms of the charter party with respect to specifications and equipment. The owner normally warrants the "seaworthy" condition of the boat in the charter party. "Seaworthy" is a term of art in admiralty with special meaning. Even if this provision is unwritten, there exists an implied warranty of seaworthiness legally obligating the owner to deliver a seaworthy boat, unless it is otherwise clearly stated in the charter party.\(^{10}\) (For a full discussion see Chapter VI, "Liability," under the heading "Implied Warranty of Seaworthiness").
The charterer normally agrees to redeliver the boat either in as good condition as when it was delivered, normal wear and tear excepted, or to compensate the owner accordingly. In addition, there is usually a provision prohibiting maritime liens against the boat incurred by the charterer, his agents, or employees. If, upon the redelivery, there is an outstanding maritime lien, the charterer agrees to indemnify the owner for such unauthorized charges or losses, including reasonable attorney fees. (For a full discussion, see Chapter VII, "Maritime Liens").

3. Running Expenses

A charter party usually stipulates which running expenses shall be borne by the owner and which shall be borne by the charterer. This can include expenses such as food, fuel, crew wages, dockage, and port fees.

4. Liability, Indemnification, and Insurance

A well-written charter party will state which responsibilities are borne by the owner and charterer and may designate the type of insurance arrangement for the charter. To a certain extent, the charterer and owner are free to allocate control--and hence liability--as they wish under the charter party.11 The distribution of liability should be carefully and clearly worded. The courts tend to
be conservative in their interpretation of clauses which act to limit liability if they feel the result is inequitable. The allocation of liability can also affect the status of the charter as a time or bareboat charter. In a time charter arrangement, the owner commonly bears most of the liability for loss or damage and provides the insurance coverage. If he fails or elects not to insure, he often agrees to assume the same responsibility as if the boat were so insured.  

The distribution of liability and the consequent allocation of insurance coverage in a bareboat charter is currently in a state of confusion. This is reflected in the variations in provisions found in different charter parties. Presumably in a bareboat charter, the charterer assumes total control and liability as if the charterer were owner for the term of the charter. For this reason his insurance should include a protection and indemnity (P&I) and hull policies. In most charter parties, however, the charterer agrees to assume responsibility and indemnify the owner from any liabilities for loss or damage caused by the charterer for which the owner is not insured. (This may include coverage of the amount of the deductible). The owner may well have both hull and P&I policies which cover him for the negligence of the charterer. In any case, the charterer should read the charter party carefully and, if necessary,
ask for a copy of the owner's insurance policy to see whether he is responsible for his own P&I policy or any sort of hull damage. The additional coverage may be available to the charterer at a nominal cost. (For a full discussion of liability and insurance, see Chapter VI, "Liability," and Chapter VIII, "Marine Insurance").

There may be exception clauses in the charter party which exempt the owner and/or charterer from liability. For example, the owner may exempt himself from any loss or damage as a result of a latent defect in the boat or its equipment.16 (Insurance companies do not cover damages caused by latent defects in the boat or its equipment in standard yacht and commercial hull and P&I policies). In the event of an accident, the injured party would necessarily seek recovery from the appropriate manufacturer, distributor, or salesperson. (For a full discussion, see Chapter VI, "Liability," under the heading "Products Liability").

5. Crew

The charter party usually stipulates the crew arrangements, if any. In a time charter, the owner agrees to furnish competent crew and assumes liability for them. The authority of the crew over various matters such as navigation is stated in the charter party. The charter party usually grants the charterers the right to instruct
the crew as to the itinerary.

In a bareboat charter, the charterer is responsible for the employment of and liability for the crew. The charter party may require the bareboat charterer to certify the ability of the crew he hires. A separate contract of employment is usually drawn up between the bareboat charterer and crew, even if the crew is furnished by the owner. Any authority allocated to the crew by a bareboat charter party and any inclusion of the cost of employment, etc. of the crew in the charter hire is a matter of controversy in a bareboat determination (see infra).

6. Certification of the Charterer's Ability

In most bareboat charter parties, the charterer certifies his ability to handle the designated boat and the sufficiency of his practical knowledge of seamanship and navigation to undertake the charter. He may be required to warrant the validity of any sailing experience information provided in a resume or charter application, in which case misrepresentations would be a breach of contract. The owner may reserve the right to put a skipper on board for a short period at the charterer's expense if he determines the charterer may jeopardize the safety of the boat or passengers. Because the charterers do not assume control in a time charter arrangement, no such certification of ability is required.
7. Restriction Clauses

Typical charter parties list geographic areas to which the charterer's use of the boat is restricted. However, an updated version of the widely used Yacht Architects & Brokers Association, Inc. "Yacht Charter Party (Agreement)" drops the geographic restrictions, presumably because of the implications for bareboat charters (see infra). Operation outside stipulated geographic areas may not only be a breach of contract, but also may void any insurance coverage. Additionally, some bareboat charter parties permit operation only during daylight hours.

In another restriction clause the charterer agrees to use the boat for pleasure purposes only and not to engage in any other trade. The charterer agrees not to subcharter the boat. Moreover, a charter party typically prohibits unlawful use of the boat by the charterer. A drug restriction may be included whereby the use or possession of illegal drugs, including marijuana, on board the vessel shall result in immediate termination of the charter with forfeiture of all monies paid.

8. Off-Hire Clause

There are usually provisions which address the situation of a boat temporarily out of order as a result of a breakdown of machinery or other malfunction or as a result of damage by fire, collision, grounding, negligence of the
time charter crew, or other causes which are not attributable to the fault of the charterer. If such an occurrence prevents the charterer's use of the boat, usually for a period of more than 24 hours, an "off-hire" clause may stipulate that the owner agrees to compensate the charterer on a pro rata basis.\textsuperscript{25} The charterer may also have the right to terminate the charter for this reason, and the owner may bear any additional expenses that result. A charterer is not entitled to an extension of the charter period as a result of an off-hire period unless the charter party so stipulates.\textsuperscript{26} In some cases, arrangements may be made to provide a substitute charter boat. Risk of delay as a result of bad weather usually devolves upon the charterer.\textsuperscript{27}

9. Dispute Settlement

Most charter parties contain an article which provides for the settlement of any controversy or claim arising out of or relating to the charter party or the breach thereof. Charter parties normally provide that if a dispute cannot be settled informally, formal settlement is to be handled in accordance with the rules of the American Arbitration Association at a designated location.\textsuperscript{28} Arbitration procedures may also be stipulated. In some cases, the arbitration decision may be non-binding, in which case the judgment and award from the arbitration can then be
appealed to the court with appropriate jurisdiction.

An arbitration clause avoids discussions and disputes about what forum is appropriate for the charter party. Arbitration is often preferred as a result of the privacy and the savings in cost and time. Charter parties without an arbitration clause will be referred to court proceedings.

The charterer who signs the charter party is not the only one entitled to recover in the event that the owner breaches the contract; those who accompany the person(s) who signs the charter party can also recover. This is illustrated in the case Harris v. Waikane Corp., involving the failure to deliver the charter boat "Astor" to the charterers in accordance with the terms of the charter party. The court held that the charterers other than the person signing the charter party were entitled to recover damages for breach of contract and mental distress, even though the identities of all persons were indefinite at the time of the charter agreement. When it is intended in the charter party that a group of charterers in a time charter or a group of guests in a bareboat charter are to receive the benefits of the charter, this group acquires the rights of third party beneficiaries under modern contract law. Because Waikane Corp. expected eight persons to charter in the original charter arrangements, damages were awarded.
based on this number, even though eleven persons contributed to the charter deposit and flew from Colorado to Hawaii to participate. The damages were then divided among the eleven persons.\textsuperscript{34}

Some charter parties will set restrictions on the length of time in which a claim may be brought. These time limits normally cannot be less than a year without encountering difficulties with the federal law.\textsuperscript{35} It should be clear in the charter party from what day or what event the time shall be counted, such as the last day of the charter.

10. Additional Conditions

There is often a space at the end of a charter party in which additional conditions may be specified by either the owner or the charterer. This is where a charter party may be tailored to an individual's particular circumstances.

If the above provisions are not included in an existing charter party format, the owner and/or the charterer should consider their addition as the very minimum. Granted, the object of the charter is a period of simple pleasure and recreation. However, in an industry such as the charter boat business where organization and standards can be slack and legal requirements are poorly understood, the charter party is the place to start in assuring that all parties (1) know their rights,
obligations, and remedies explicitly and (2) fulfill them or are prepared to suffer the legal consequences.

In conclusion, the charter party is the contract between the owner and charterer in which the terms and conditions of the charter are set forth. A well written charter party establishes the various procedures and details of the charter and describes the rights and obligations of the parties involved. It is the basis for the distribution of control and risk in a charter. The following discussion of time and bareboat charter arrangements indicates the importance of this allocation of control.

II. Time and Demise Charters

There are two principle types of recreational charters available on the market today: a "time" charter and a "bareboat" (or "demise") charter. Both of these forms originated in the leasing arrangements involving cargo ships and commercial transportation.

A third type of charter is the "voyage" charter—the use of a vessel under the control of its owner for a particular voyage. Although the voyage charter is most frequently used in shipping, it is not common for recreational charters. As a rule, the legal relationship between the owner, charterer, and crew in a voyage charter is the same as in a time charter.

The time and bareboat charters differ with respect
to practical and legal considerations. The chief
distinction between them is the distribution of control. In
a time charter, the accepted maritime practice is that the
owner of a vessel retains full control over the navigation
and operation of the vessel. In a demise charter, there is
a complete transfer of management, control, and operation of
the boat from the owner to the charterer. A bareboat
charter offers the freedom of complete control but this is
accompanied by a heavy burden of legal responsibility.

Markow compares a time charter boat to a taxi and a
bareboat charter boat to a rental car. In the first case,
a person basically decides where he wants to go and leaves
the responsibility for the care and the driving to the
driver. In the second case, the person takes the
responsibilities for the car upon himself. For the duration
of the rental, he acts as an owner would in providing such
items as fuel and insurance, and assumes liability in cases
of personal injury, damage, or collision.

The following discussion examines the significant
elements of valid time and bareboat charters in an effort to
distinguish the two. The difference between the two
arrangements may appear clearcut at first glance. In
reality, the category of bareboat charters is one of the
most confusing, and, as a result, most controversial areas
of law governing the charter industry. For this reason,
particular attention has been devoted to this charter
arrangement. Most of the confusion can be attributed to the tougher legal requirements imposed upon boats engaged in time charters, such as the standards for manning, safety inspections, and documentation; in an effort to avoid some of these stringent requirements, a variety of bareboat charter arrangements have evolved which are more favorable to the owners. These are founded in part on ignorance of the law and in part on matters of interpretation.

III. Time Charters

The legal principles underlying a "time" (or "crewed") charter are fairly simple in theory and in practice. The charter party "is a contract for a special service to be rendered by the owner of the vessel." In exchange for the payment of charter hire, the charterer is entitled to the use of a recreational charter boat for the term of the hire. He does not acquire the legal responsibilities of ownership.

The owner never loses control or possession of the boat in the time charter situation. The captain and crew are employed and paid by the owner and act as his agents. The owner and his agents retain responsibility for the operation and maintenance of the boat. They have the responsibility for procuring and paying for items in connection with that duty, such as fuel, provisions, insurance, and other expenses of the boat and charter. The
boat must be maintained in a seaworthy condition fit for its intended use. The owner is required to "exercise a high degree of care in accordance with the skill necessary in the control and management..." 38

A charterer has certain perogatives during a time charter. He normally decides the itinerary: when to depart, the routes to be taken, and where to stop along the way. 39 He may often bear the expenses that vary with the manner in which he exercises these options, such as harbor charges and fees. 40 He can direct the crew in matters of the well-being of those persons he brings aboard. In meeting the requests of the charterer, the captain or master of the charter boat must also act in the best interests of the owner as his agent.

The charterer may be liable for damages to the boat other than wear and tear that he causes as a result of his negligence in connection with use. 41

Charterers are considered "passengers" in the context of a time charter because they contribute consideration for carriage aboard. 42 Consequently, they are accorded high standards of care by law. The boat must meet safety standards in accordance with its tonnage and the number of passengers; be manned by an appropriately licensed operator; and have the proper commercial documentation.

A distinction should be made between time charters
and "crewed" charters. A crewed charter describes a charter boat with one or more crew aboard. As it is commonly used, the term can refer to either a time charter or a bareboat charter with a hired crew.

IV. Bareboat (Demise) Charters

During a "bareboat" or "demise" charter, the charterer assumes control of the boat. "(T)he charter-party is a contract for the lease of the vessel."[^43]

It is designed to vest in one person most of the incidents of ownership in a capital asset of that business, a vessel, while another retains its general ownership and the right to reversion. 44

The charterer is considered the owner pro hac vice (for the occasion).

The question arises as to the legal status of those persons aboard other than the bareboat charterer who signs the charter party. Normally, all others aboard are considered as guests of this owner pro hac vice.

But the situation commonly arises where others aboard share in the expense of the charter. Consequently, they can be considered passengers for hire, in which case the boat is subject to the safety, documentation, and coastwise trade requirements discussed in subsequent chapters. Another typical charter situation is a "joint venture" of sorts, wherein all persons aboard are essentially joint adventurers or partners in the

undertaking. They share the expenses, management, control, and navigation of the boat for the term of the charter. By assuming the incidents of ownership, they are better classified as joint owners pro hac vice, even if they have not all signed the charter party. In 1970, "the Coast Guard has ruled that certain joint adventure arrangements do not result in the 'carrying of passengers' within the context of 46 U.S.C. 390." It is of interest whether this holds true in a modern day context.

A. Background

Bareboat charters have served a practical function in maritime history as a legitimate means for a charterer to exercise the rights of ownership over a commercial vessel for a period of time (usually measured in months and years). Most demise charters of a maritime nature have had the government as one of the parties. The federal government has arranged bareboat charters to acquire greater merchant tonnage in times of war and national emergency. In the same manner, after a war it has demised its excess tonnage into commercial trade. Bareboat charters have historically enabled commercial enterprises to expand their commercial trade temporarily by hiring extra ships without the capital costs of ownership. In such cases, the government or a private company, acting as the bareboat charterer, would provide its own crew and insurance and operate the vessel as
if it were its own.

The popularity of the bareboat charter for recreational boats evolved for a different set of reasons. Bareboat arrangements were atypical until the late 1950's. In response to a number of marine casualties involving the deaths of passengers for hire aboard uninspected small passenger vessels, federal investigations were conducted into the sinkings. These concluded that the sinkings were caused by unseaworthy vessels and unskilled operators. Congress sought to protect passengers from needless risks. Subsequently, it enacted the Small Passenger Vessel Inspection Act of May 10, 1956. The Act, and its implementing regulations promulgated by the U.S. Coast Guard, set new safety equipment, inspection, and licensing standards for small passenger vessels (vessels less than 100 tons carrying more than six passengers). These standards presented obstacles for the charter boat industry. The standards exceeded those which most, if not all, currently built boats were designed to meet.

At the time of the drafting of the Act of May 10, 1956, bareboat charters were seldom used by private firms, in favor of other more convenient and less risky charter agreements such as the time charter...Considering the motivating factors behind the act and the way in which bareboat charters were commonly used at the time of its drafting, it is doubtful that the Congress intended to create a specific exemption from inspection for private yachts being bareboat-chartered to carry large parties of passengers on pleasure cruises.
In the Federal Boat Safety Act of 1971, boats equipped with propulsion machinery were required to be manned by a licensed operator while carrying passengers. The manning of small passenger vessels has been law since the Small Passenger Vessel Act.

Since 1956, it has become far more commonplace to charter a recreational "bareboat." Legitimate bareboat charters have withstood most legal challenges, even though the risks and responsibilities assumed by a charterer are higher than those assumed on an inspected vessel.

B. Coastwise Trade Laws

Another reason that the bareboat charter has become more popular among pleasure boats is the restricted nature of coastwise trade. (For a full discussion, see Chapter III, "Coastwise Trade Law as It Applies to Recreational Charter Boats" and Chapter IV, "Charter Boat Documentation"). Basically, unless a boat meets certain requirements, including being U.S. owned, U.S. built, and commanded by a U.S. citizen, it cannot be documented for coastwise trade. The carriage of passengers is considered coastwise trade; consequently, time charters constitute a form of coastwise trade. Bona fide bareboat charters, however, are not coastwise trade: the bareboat charterer is considered the "owner" and the passengers his guests. Boats which cannot meet the requirements for coastwise trade can
still bareboat charter in the U.S. and avoid the consequences of violating the law of coastwise trade.

C. Owner's Reasons to Prefer a Bareboat Charter

In many cases, the boat owner enters the charter trade as an afterthought or for reasons subordinate to those governing the selection of his boat. Consequently, he does not consider inspection standards or the coastwise trade laws when he chooses a boat. Once a boat owner realizes the costs involved in owning a boat, he may decide to charter it to defray some of the expenses. Many owners are unaware of the existence of inspection standards for boats carrying more than six passengers and of the coastwise trade laws when they commence chartering. Those who do investigate the applicable statutes and regulations realize that their boat either cannot qualify or would require an extensive refit in order to receive a Certificate of Inspection. They perceive the bareboat charter as a more affordable and convenient alternative. The attractiveness of the bareboat arrangement is compounded by the ready market of charterers eager to hire a bareboat. Indeed, this is a legitimate alternative provided boat owners arrange bona fide bareboat charters rather than time charters camouflaged as bareboat charters.

In shipping circles, owners have utilized demise charters as a sham to relieve the owners of liability,
especially for personal injury.\textsuperscript{54} This does not appear to be as much of a motivating force for boat owners as is the popularity of bareboat chartering and the evasion of stringent inspection and documentation requirements.

D. The Role and Viewpoint of the U.S. Coast Guard

The U.S. Coast Guard is vested with the responsibility to promulgate, implement, and enforce the federal inspection, licensing, and documentation requirements. It is their task to insure that those who purport to conduct bareboat charters are operating in accordance with the relevant federal requirements.

The primary concern of the Coast Guard is safety. They perceive the avoidance of safety regulations as the basis for a large number of bareboat charters, especially crewed bareboat charters. In a letter to Representative E. Clay Shaw (R. FLA) dated 12 December 1982, LCDR Clay A. Fust described the Coast Guard position as follows:

...[W]e in the Coast Guard do not intend to harass innocent citizens or pursue intensive investigations of relatively minor violations. We realize that the majority of yacht owners who engage in bareboat charters want to comply with all legal requirements. We encourage them to become fully informed of all aspects of this type of operation, both to protect their own interests and to enhance the safety of their charterers. As it appears that much of the problem here is due to misunderstandings, we will work to maintain a dialogue at the local level with those who want to conduct legitimate bareboat charter operations.
E. Role and Viewpoint of the U.S. Customs Service

The U.S. Customs Service is responsible for regulating coastwise trade and enforcing the coastwise trade laws to insure that the vessels engaged in carrying passengers, a form of coastwise trade, are properly documented for that activity by the Coast Guard. Consequently, the Customs Service shares the concern of the Coast Guard as to the nature of a recreational charter, but for different reasons. The importance of whether a yacht is under a bareboat or time charter relates to the status of the charterers as passengers and the applicable coastwise trade laws. The Customs Service utilizes the same factor as the Coast Guard—the surrender of complete control and management by the owner to the charterer for the charter period—as the decisive criterion for distinguishing bareboat and time charters. This is determined based on the circumstances of each case, taking into account the agreement, the operation, and intention of the parties involved.

F. What Constitutes a Bareboat Charter

The problem arises when one seeks a precise definition of a legitimate bareboat charter. Once again, because the concept of a bareboat charter originated in a commercial maritime context, its application to the short
term recreational charter situation is somewhat distorted. Certain parameters of a recreational bareboat charter are clearcut; others are vague and function merely as guidelines. A single factor is not necessarily determinative; rather, the key word is "control."

1. Control: The Transfer of Authority

The most significant test of whether a charter is a legitimate bareboat charter is that of "control" over the boat. The management, control, and operation of the boat must be transferred to the charterer in all respects, including the manning, navigation, insurance, victualing, fueling, and liability in case of loss, damage, or personal injury. The owner simply retains the general ownership and the right to reversion (future possession). Some owners are reluctant to transfer this degree of control to anyone. However, if the control is not transferred, the charter becomes a time charter, subject to more rigorous statutory and regulatory controls.

The case law regarding the nature of demise charters has been consistent throughout U.S. maritime history. The following excerpts serve to illustrate the traditional position of courts sitting in admiralty.

All the cases agree that entire command and possession of the vessel, and consequent control over its navigation, must be surrendered to the charterer before he can be held as special owner for the voyage or
other service mentioned. The retention by the general owner of such command, possession, or control is incompatible with the existence at the same time of such special ownership in the charterer. 55

It is therefore tantamount to, though just short of, an outright transfer of ownership. However, anything short of such a complete transfer is a time or voyage charter or not a charter party at all. 56

Usually the courts strain to find that charters are not demise.57 They are "reluctant to find a demise when the dealings between the parties are consistent with any lesser relationship."58 The rationale behind this is to avoid placing the liabilities of an owner upon the unwitting charterer.59 The owner may find it efficacious to allege that the charterer was the owner pro hac vice and therefore rely on the usual presumption that any damage to the charter boat was occasioned by the negligence of the charterer.

The burden of proof of the existence of a bareboat charter is placed on the owner, recognizing that a demise charter often operates to relieve the only party who can shoulder its burden. This rule is somewhat different if a personal injury action is brought against the charterer as the owner pro hac vice.60

In most decisions, the courts have recognized that no single factor is necessarily conclusive in determining the existence of a true demise. They are quite uniform in placing greater emphasis on the question of control and navigational authority.61
2. The Agreement, Operation, and Intent

In determining whether a bareboat charter is legitimate, the charter party is thoroughly scrutinized by the Coast Guard and, in some cases, by the courts to ensure that its terms are those which customarily constitute a bareboat charter. However, the charter party is not conclusive in favor of a demise: the operation of the charter is also examined. It is often possible for the charter party and the actual operation to be different.

The requirements of a bareboat charter can also be contrary to the intentions of charterers. In some cases, a charterer is not interested in the worries of the preparation, management, and operation of the boat. He wishes to go for a week of carefree pleasure. The charterer is not planning on "controlling" the boat or assuming the liabilities and legal responsibilities of an owner pro hac vice. In some cases where there are crew aboard the charter boat, the charterer's intentions more readily resemble those of a passenger.

The courts have held that in deciding the question of control, particular regard must be paid to the intent of the parties and "the conduct of the parties in the execution of the agreement."62
3. Indications of the Transfer of Control

There are a number of factors upon which the status of a charter may be judged. Although considered alone, a single factor may not be controlling, it may contribute to the absence of authority transfer.

a. The Owner as Skipper

One of the essential indicia of the transfer of ownership is that the owner does not act as skipper during a bareboat charter. The courts have consistently held that this is contrary to the charterer having full control over the vessel.

In a Coast Guard ruling in 1965, the owner of a yacht was a corporation. The president of the corporation was endorsed as master on the yacht document and served as master on the day of the charter, along with another member of the corporation who assisted in the boat handling. The Chief Counsel of the Coast Guard held that the owner had not relinquished control.63

b. The Term "Bareboat" or "Demise" in the Charter Party

The Coast Guard has considered the absence of the term "bareboat" or "demise" in the title or body of the charter party, expressly delineating the type of charter, as evidence of a sham bareboat charter.64 This is based upon the fact that it is common practice for a charter party...
in a shipping context to contain an express stipulation as to the type of charter intended by the parties.\textsuperscript{65}

c. Manning

Another factor used to determine the nature of a charter is whether the owner or the charterer provides the captain and crew. Any agreement which restricts the choice of a captain and/or crew by the charterer may not be a true bareboat charter. Any power of veto over the employment of someone other than the regular crew may be subject to scrutiny. However, in the case Harris v. Waikane, involving a recreational bareboat charter,\textsuperscript{66} the fact that a captain was employed by the owner was not considered fatal to the creation of demise charter party, provided he was subject to the orders of the charterer.

What typically happens aboard crewed bareboats is that there are a regular captain and crew. They would be the logical choice of a bareboat charterer to run the boat while he is aboard for safety reasons, by virtue of their familiarity with the boat.

Regardless of who are selected as captain and crew, a separate contract of employment should be signed by the charterer. Compensation for their services should be addressed in the contract. The Coast Guard has repeatedly examined these factors in determining the legitimacy of a bareboat charter.
In a bareboat charter, the captain and crew are employees of the charterer. Clauses in the charter party giving them full control over such matters as navigation and customs clearances are also considered as potential restrictions on the charterer's authority.

d. Navigational Limits

Another factor considered by the Coast Guard is any restriction placed on the charterer as to where he can operate the boat. In theory, in a true bareboat charter, the charterer can take the boat anywhere. As a practical matter, the short term nature of a recreational boat charter has inherent restrictions on the distance traveled. Insurance policies also place restrictions on geographical regions.

e. Insurance

The Coast Guard has made it a practice to examine the insurance arrangements when investigating a bareboat charter situation. A separate policy for the charterer protecting his insurable interest would be more convincing evidence of his assumption of ownership pro hac vice than a rider or the addition of the charterer as a named insured to the boat owner's policy.

Usually the responsibility for insurance is allocated by the charter party.67 In a bareboat charter
arrangement, the owner should maintain hull insurance on and off charter in his own interest. A Protection & Indemnity policy should be maintained in case there is damage or injury as a result of a breach in the warranty of seaworthiness. At minimum, the charterer should acquire Protection and Indemnity coverage for his personal liability. He is well advised to cover his interest in the hull: his insurable interest would be the loss of the use of the boat and his liability for damage to or loss of the boat. (The problems which arise concerning a bareboat charter and marine insurance are discussed in Chapter VIII, "Marine Insurance").

f. Fuel, Victuals, Dockage, and Mooring Fees

As another guideline in determining the nature of a charter, the Coast Guard examines whether payment for such expenses as fuel, victuals, dockage, and mooring fees was directly or indirectly calculated into the total cost of the charter. 68

g. Allocation of Liability

Under a true bareboat charter, the charterer becomes the owner pro hac vice and assumes personal liability for the boat while under charter. As employer of the captain and crew, the charterer is responsible for their actions during the charter under the doctrine of respondeat.
superior, whereby the injured party can sue the master for a servant's negligence. He also warrants the seaworthiness of the boat to the crewmembers aboard. He possesses the absolute duty to provide a safe place to work and safe equipment with which to perform that work. He is the employer for the purposes of any maintenance and cure or negligence claims by the seamen.

Likewise, as an owner pro hac vice, the bareboat charterer has the right to limit his liability in marine casualties if he is without privity or knowledge in the fault. This is not the case with time charterers.

The charterer is liable for repairs for any damages to the boat resulting from his own negligence or the negligence of anyone to whom he entrusts the boat. It is the duty of the charterer to care for the boat during the term of the charter. (For a full discussion of bareboat charters and liability, see Chapter VI, "Liability").

h. Business Guests

The question of who qualifies as a passenger arises in the context of the entertainment of business guests. An inquiry was made as to whether the use of the corporately owned yacht "Happy Hooker" for public, supplier, and customer relations purposes constituted the carriage of "passengers" as defined in 46 USC 390(a). The Coast Guard responded that although the "corporate guests" may
come aboard for pleasure purposes, the purposes of the corporation would not be solely pleasure. "Public supplier and customer relations activities have an essentially, if not solely, business purpose, i.e., a commercial and ultimately revenue producing purpose." As a result the yacht would require inspection and certification under 46 USC 390(c).

F. Violations and Enforcement

It is the responsibility of the owner of a charter boat to ascertain and comply with the legal requirements applicable to the type of charter operation he plans for his boat.

In the event that a bareboat charter is in fact a time charter, the owner may discover he is operating in violation of the following: (1) carrying passengers without complying with the legal requirements of a licensed crew and a Certificate of Inspection; (2) engaging in a commercial activity, i.e., carrying passengers on a boat documented for pleasure only; or (3) operating in violation of the coastwise trade law.

Any owner, master, or person in charge of a small passenger vessel who violates the inspection requirements is liable for a penalty of up to $1,000. Violation of the pleasure only documentation renders a boat liable to seizure and forfeiture. Any captain or crewmember who holds a Coast Guard license and violates the above requirements is
subject to hearings where his license may be revoked. 79

The Coast Guard has never engaged in large scale random boardings of private yachts for the purposes of investigating their use as chartered vessels. 80 Typically, Coast Guard investigations and enforcement efforts commence as a result of information or complaints from persons concerned about the safety or compliance of a boat engaged in charter activities. 81 Some boats are undergoing routine Coast Guard boardings when it is discovered that they are carrying passengers without meeting the applicable legal requirements. In other cases, vessels which are reported as overdue turn out to be chartering illegally. Occasionally, charter boat owners who have met the Coast Guard inspection, manning, and documentation standards report illegal charter operations in the waters which they frequent because they are perceived as unfair competition. 82

The Coast Guard has described its position with regard to enforcement as follows:

The position of both the Coast Guard and the Federal courts with respect to interpretation and enforcement of the vessel documentation and inspection laws is well-developed and of long-standing public knowledge. Asserted bareboat charter parties are strictly and narrowly construed against the alleged chartered vessels' owners, while the documentation and inspection laws are interpreted broadly so as to favor finding their requirements applicable over the widest permissible range of cases and circumstances. This approach is proper and justified in order to effectuate the remedial, public-safety oriented purposes for which those laws were enacted by Congress. 83
V. Conclusion

In conclusion, the charter party is the contract between the owner and charterer in which the terms and conditions of the charter are set forth. A well written charter party establishes the various procedures and details of the charter and describes the rights and obligations of the parties involved. It is the basis for the distribution of control and risk in a charter. It is the wording of the charter party, the actual charter operation, and the intentions of the parties which are considered in determining the type of charter arrangement--time or bareboat--which exists.

The true bareboat type of charter arrangement is very narrow in scope, characterized by a transfer of control from the owner to the charterer. In the absence of the complete transfer of control, the charter arrangement generally becomes a time charter. If it is a time charter, the boat is subject to the applicable inspection, manning, documentation, and coastwise trade laws.

It is anticipated that many charter arrangements currently labeled bareboat charters would fall into the category of time charters were they to be examined with the foregoing criteria. Bearing in mind the additional requirements of a time charter, this issue strikes at the heart of the bareboat charter industry. Stepped-up enforcement efforts would have severe repercussions in the
multi-million dollar industry. This prospect and the sizeable growth in the bareboat charter industry in recent years suggest a critical need for rethinking the concept of a bareboat charter as it applies to recreational pleasure boats and the statutory and regulatory framework currently in existence. Examination of the coastwise trade, documentation, and safety requirements in the following chapters will reveal more of the problems for charter boats, and the necessary changes will then begin to take shape.
FOOTNOTES


7 Ibid., p. 96.

8 Ibid., p. 95.

9 Ibid., p. 98.


11 Gorton, Chartering Practice, p. 182.


Bihlmeyer, "Fine Print").


16 "TYC Charter Agreement."


18 Ibid., p. 149.

19 "TYC Charter Agreement."


22 "TYC Charter Agreement."


26 Gorton, Chartering Practice, p. 164.

27 Ibid., p. 172.


34Ibid., p. 379.
35Gorton, Chartering Practice, p. 117.
36Markow, Small Boat Law, p. 15-I.
38Bunge Corp. v. M/V Furness Bridge, 558 F.2d 790, 799 (5th Cir. 1977).
41Gorton, Chartering Practice, p. 44.
45U.S., Department of Transportation, Coast Guard, Law Bulletin, No. 393 (September, 1970), pp. 3-4.
46Gilmore, Admiralty, p. 240.
47Letter from LCDR Clay A. Fust, U.S. Coast Guard, to the Honorable E. Clay Shaw, Jr., 13 Dec. 1982, (hereafter cited as the "Fust letter").


53 Coast Guard, Safety Manual, sec. 10.B.4.c.

54 Gilmore, Admiralty, p. 241.


64 U.S., Dept. of Transportation, Coast Guard, U.S. Coast Guard v. License No. 145884 Issued to Jack Eichholz, Docket No. 03-0049-ASF-79, Case No. 16722/85194 (Mar. 10, 1980).

65 Gilmore, Admiralty, p. 241.


69 Atterbury v. Temple Stephens Company, 181 S.W.2d 659, 662, 353 Mo. 5 (Mo. 1944).


71 The Moran No. 10, 41 F.2d 255, 256 (D.C. N.Y. 1924).

72 Letter from C.R. Halberg, Chief Counsel (Acting), U.S. Coast Guard, to Driscoll, Harmsen, and Carpenter, 24 March 1975.


75 46 U.S.C. 3301(5); 3305; 3307(2); 3314; 3317 (1984).


80 Fust letter; Interview with LCDR Clay A. Fust, U.S. Coast Guard, Washington, D.C., 10 July 1984.

81 Fust letter.

82 Interview with CMDR Edward C. Cooke, Marine Safety Office, U.S. Coast Guard, Providence, Rhode Island, 26 June 1984.

83 U.S., Department of Transportation, Coast Guard, Commandant's Letter on Appeal from 3d District Decision Re: Aer Lingus Charter (undated).
CHAPTER III

COASTWISE TRADE LAW AS IT APPLIES TO RECREATIONAL CHARTER BOATS

I. Introduction
A. Background

The coastwise trade laws, often referred to as cabotage laws, reserve domestic coastwise trade for American vessels. Transportation of passengers from one U.S. port to another U.S. port on recreational charter boats is considered a form of coastwise trade and thus falls within the ambit of the cabotage laws. These laws and the corresponding regulations have a major impact on which boats can charter where. They can also dictate the length of an excursion ashore in certain cases. A working understanding of the cabotage or coastwise trade laws is an important step in selecting a boat for charter use and in knowing what types of itineraries and charter arrangements can be legally undertaken.

Historically, the coastwise trade laws were enacted to enhance and protect the U.S. merchant fleet and shipbuilders. Prior to the American Revolution, the British controlled American trade. In accordance with British law, importation into England and its colonies was reserved for
either British ships or carriers registered with the European country of exportation. After American independence, the British refused to register American-built vessels. This exclusion and the favorable economic circumstances surrounding American shipyards, especially the availability of lumber, provided the impetus for the development of an American merchant marine. Congress responded swiftly with legislation reserving domestic cargo trade for American carriers.

The "Act of June 19, 1886" placed passenger vessels—including charter boats—under the ambit of cabotage law. It prohibited foreign vessels from transporting passengers between U.S. ports and places, "either directly or via a foreign port, under a penalty of two dollars for each person so transported or landed." In 1898, two hundred dollars was substituted for the two dollars. 19 C.F.R Sec. 4.50(b) defines a passenger as "any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership or business."

The "Merchant Marine Act of 1920" (commonly known as the Jones Act) forms the basis for modern coastwise trade law. The eligibility requirements appear in Section 27: ships of U.S. documentation, built in the U.S., owned by U.S. citizens and manned by U.S. crew were permitted to operate in domestic trade. (For a full discussion of
documentation and the citizenship and construction requirements, see Chapter IV, "Charter Boat Documentation").

The coastwise trade law provides that certain vessels which do not qualify for documentation can still operate in the coastwise trade. For example, a vessel under five net tons cannot be documented. However, 19 C.F.R. 4.80(a)(2) provides that it may still engage in coastwise trade as long as it can meet all of the qualifications for documentation other than tonnage. This means that boats under five net tons, which are normally state or federally registered, can engage in commercial chartering provided that they fulfill all of the documentation criteria other than size.

Furthermore, 19 C.F.R. 4.80(a)(3) states that a vessel owned by a partnership or association in which at least 75% interest is owned by a U.S. citizen can engage in coastwise trade even though it is exempt from documentation because of its tonnage and/or the citizenship of its owner. This regulation allows state or federally registered boats owned by certain partnerships and associations to engage in charter activities.

The U.S. Customs Service is responsible for regulating the coastwise trade and enforcing the coastwise law to insure that vessels engaged in coastwise trade are properly documented for that activity by the U.S. Coast Guard. The U.S. Coast Guard role in issues relating to
coastwise trade is one of determining whether a vessel can be (1) documented and (2) endorsed for coastwise trade.

B. Bareboat and Time Charters

Whether a boat is on a demise (bareboat) or time charter has an effect on the application of the cabotage laws. A vessel not qualified for coastwise trade can still engage in a bareboat charter operation if it is used by the charterer for pleasure purposes only. The importance of the type of charter governs whether the charterers are passengers within the meaning of Section 289. As discussed in Chapter II, "Charter Arrangements," bona fide bareboat charterers are considered the owners pro hac Vice. Since owners are not considered passengers, bareboat charterers are not considered passengers for the purposes of Section 289. However, if the slightest degree of control or management is retained by the owner, the situation which exists is a time or voyage charter.

The Customs Service examined the provisions of a proposed arrangement in one of their rulings to determine the nature of the charter as it related to the cabotage laws. Four Frenchmen planned to charter a French flag yacht for use in the U.S. They planned to sail from North Carolina to Bermuda and then on to Rhode Island. The charter contract stated that the Frenchmen could choose to utilize the services of a captain or crew members. Whether
the captain or crew were supplied by the owner or the charterers, it was agreed that they would be the agents and employees of the charterer and not the owner. This, in itself, does not alter the charter from a bareboat to a time charter arrangement. However, a further condition in the agreement stated that if the owner provided the captain, the captain

shall handle clearance and the normal running of the yacht . . . shall be responsible for the safe navigation of the yacht, and the charterer shall abide by his judgment as to sailing, weather, anchorages, and other pertinent matters. 9

The Customs Service held that the owner would be maintaining a degree of management and control through the captain, in which case the charterers would be considered passengers. As passengers on the intended voyage, U.S. coastwise trade laws would be violated.

II. Scope of Cabotage Laws

U.S. coastwise trade generally embraces domestic trade to and from inland waters, coastal, noncontiguous, and intercoastal trade. With certain exceptions, this includes trade with Alaska, Hawaii, and U.S. districts, territories, and possessions.

The Virgin Islands10 and American Samoa11 have been exempted from cabotage restrictions by law and Canton Island was exempted by presidential proclamation in 1957.12 This
allows undocumented members of the time charter fleets based in these locations to travel from one of their local ports to another and to nearby foreign ports without violating coastwise law. However, the Virgin Islands would be considered a nearby foreign port for the purposes of a coastwise trade determination involving charters from the mainland or Puerto Rico. (See "Nearby Foreign Ports and Intermediate Stops," infra).

Charter boats must be qualified to engage in coastwise trade in order to travel from one U.S. port to another. Furthermore, transportation of passengers to and from the same coastwise point where the voyage remains solely within the territorial seas also constitutes coastwise trade. The territorial sea is defined as the zone three nautical miles wide adjacent to the U.S. coast and measured seaward from the baseline.

1. "Voyage to Nowhere" Rule

Transportation of passengers from a U.S. port to the high seas or foreign waters and back to the port of embarkation is not considered coastwise trade. In one case, a 40 foot sloop which was restricted from coastwise trade proposed to time charter the vessel to a motion picture company to make a film. The boat planned to depart from a port in Maine and to return to the same port without stopping over at any other port. The Customs
Service ruled that if the ship sailed out to the high seas, it would not be in violation of coastwise laws. However, if it remained in territorial seas it would be in violation of Section 289.

The exception to the "voyage to nowhere" rule applies to vessels carrying offshore fishing parties for hire. Even if the charter fishing boat proceeds beyond the territorial waters and returns to the point of embarkation, the voyage is considered predominantly coastwise in nature. Any vessel not qualified for coastwise trade would be in violation of the cabotage laws. However, if the fishing boat is chartered under a bona fide bareboat arrangement, with the guests neither paying nor contributing to the expense of the trip, the voyage would not be considered coastwise trade.15

The exception for charter fishing boats is based on a ruling by the predecessor to the Customs Service in the administration of the coastwise laws and other laws of navigation. In the Bureau of Navigation and Steamboat Inspection Circular Letter Number 103, June 3, 1936, it was held that "a vessel employed in the business of taking out fishing parties is not construed as engaged in the fisheries and should be licensed only for coasting trade ..." This position was maintained in Treasury Decision 55193(2) and has been followed since 1960, arbitrary as it may appear.16 In a recent "Advanced Notice of Proposed Rulemaking," the
Customs Service has recommended eliminating the charter fishing boat exception.\textsuperscript{17}

2. Chartering to Aliens

For those charter operations which cater to a foreign clientele, there is a little known restriction on chartering to an alien imposed by the Shipping Act of 1916.\textsuperscript{18} 46 U.S.C. 808 states:

\begin{quote}
...[I]t shall be unlawful without the approval of the Secretary of Transportation to sell, mortgage, lease, charter, deliver or in any manner transfer, or agree to sell...to any person not a citizen of the United States...any vessel or any interest therein owned in whole or in part by a citizen of the United States and documented under the laws of the United States, or the last documentation of which was under the laws of the United States.... \textsuperscript{19}
\end{quote}

In other words, the owner of a U.S. documented boat or a U.S. registered boat which was last documented in the United States must seek approval from the Maritime Administration (MarAd) for a charter to anyone other than a U.S. citizen. This includes any charter--bareboat or time--in which an "interest" in the boat is transferred to the foreign charterer. The term "interest" includes charters in which there is a U.S. skipper in command. A boat in violation of the law is subject to forfeiture and the owner shall be guilty of a misdemeanor and subject to a fine of up to $5000 and/or a prison term for up to five years.

It is the responsibility of the Customs Service to
insure that vessels chartered to noncitizens have acquired approval.\textsuperscript{20}

The history behind this statute is once again related to the U.S. merchant fleet. The Shipping Act of 1916 was enacted to promote the development of a naval auxiliary, a naval reserve, and the merchant fleet and to bolster U.S. commerce.\textsuperscript{21}

Along with Shipping Act stipulations, the U.S. documentation requirements also restrict charters to noncitizens unless there is a U.S. skipper at the helm.\textsuperscript{22} (For a complete discussion, see Chapter IV, "Charter Boat Documentation"). In enacting the documentation laws, Congress intended to have commercial vessels in the hands of loyal U.S. citizens who would be willing to turn the vessels over to the government in time of national emergency and war.\textsuperscript{23} In addition to meeting the Shipping Act requirements, MarAd approval of a charter to an alien satisfies the Coast Guard documentation requirements.\textsuperscript{24} Failure to obtain approval results in a separate set of violations and penalties of the documentation laws.

In accordance with the Shipping Act, the owner must file an application with MarAd for approval in advance of each charter to an alien (MA-29). (See Appendix B). Enclosed with the application must be a Certificate of Ownership issued by the Coast Guard not more than 30 days
prior to the date of application; written consent from the mortgagee if the charter is bareboat and the boat is covered by a preferred mortgage; a copy of the charter party; and $250. Approval can take up to two weeks. MarAd has the authority to impose conditions on the approval.

Clearly these requirements pose serious problems for the recreational charter boat operation. MarAd approval is an expensive and time consuming process for short term charters, many of which occur upon short notice. In the recreational context, the purposes of Congress as set forth in both the Shipping Act and the documentation laws are not accomplished in the manner originally intended.

Although foreign charterers account for a sizeable portion of the charter business, especially in the Caribbean, very few charter operations are either aware of or operating in compliance with the approval requirement. MarAd receives approximately 600 applications a year, 300-400 of which are for pleasure boats. None of the recreational charters have been turned down. But this number hardly accounts for the number of foreign charters. Those owners who fail to apply risk confiscation and various other penalties. While the charterers are not held responsible or penalized, they theoretically could lose the use of the boat if it were confiscated. This is no incentive for a foreigner to charter with a U.S. company.

If banks and insurance companies were aware of the approval
requirements, they too might be wary in financing charter boats.  

In practice, neither the Shipping Act nor the documentation restrictions on chartering to aliens have been actively enforced against charter boats. Moreover, there is a high forgiveness rate for violations.  

MarAd became aware of the approval problem for pleasure boats only in recent years. Since then, representatives of various boating interests, such as the British Virgin Islands Bareboat Association and the National Marine Manufacturers Association (NMMA) have actively sought changes. MarAd is currently considering changing the requirements for approval of recreational charters. "An amendment allowing one-time permits for charter companies is under review by officials at MarAd and the Office of Management and Budget." Although the exact details of the proposed changes are not yet available, it is anticipated that they would exempt from MarAd approval boats up to a certain length engaged in recreational charters within certain time limits which would cover the average vacation. A notice of proposed rulemaking should appear in the Federal Register in the near future.  

3. Jurisdictional Zones  

Changes in U.S. jurisdiction can alter the geographic delineation of coastwise trade which can affect
those subject to coastwise trade laws and those charged with their enforcement. In some places in the Great Lakes, for example, it is already impossible for many boats to reach the high seas or foreign waters in a day or half day charter in order to accomplish a "voyage to nowhere". The possible extension of the U.S. territorial seas from three to twelve nautical miles would alter the feasibility of travelling beyond the territorial seas during short term charters in other parts of the country.

There has been no legislation, rulemaking, or ruling which would alter the jurisdictional limits of the coastwise trade for charter boats as a result of President Reagan's announcement of a 200 mile Exclusive Economic Zone (EEZ). Presumably the EEZ is considered high seas for the purposes of cabotage.

4. Waivers

Individual waivers to the cabotage provisions can be granted by means of private bills passed by Congress. Each year a number of bills are introduced to authorize the admittance of yachts and passenger vessels. These waivers are generally granted only when enforcement of cabotage laws would cause inequity or when an important public service is served. For example, in 1978 and 1981, Congress permitted the S/S "Independence" and "Constitution" to enter the Hawaiian trade in order to revitalize the American passenger
fleet.

Congress has been reluctant to grant waivers for yachts. Many congressmen are concerned not with the competitive nature of allowing a yacht into the coastwise trade, but rather with the precedent of passing such a bill. Almost all of the boats seeking a waiver from Congress were originally U.S. built, but were owned by a foreigner or registered under a foreign flag for a period of time.

For example, in 1983 private bills were introduced to Congress to restore the coastwise trading privileges to three yachts which were U.S. owned and U.S. built. Each of the three had at one time been owned by a foreign national and hence, were restricted from the time charter trade. "Dad's Pad" and "La Jolie" were privately owned sportfisherman boats. The M/S "Endless Summer" was owned by the Commonwealth of Virginia as a result of a drug seizure and forfeiture. The State wished to auction the boat with a clear title in order to attract a higher price.

Action in the House for both "Endless Summer" and "La Jolie" stalled shortly after the bills were introduced, even though S.1689 and S.1015 succeeding in passing the Senate. Only the bills for "Dad's Pad" passed both houses. It was signed by the President as P.L. 98-11 on May 3, 1984.

The only other authority for waiving the cabotage laws is that provided by the Act of December 27, 1950 for
waivers necessary in the interest of national defense.\textsuperscript{38} This type of waiver is unlikely for most recreational charter boats.

5. Actions Outside the Ambit of the Cabotage Laws

There are certain activities aboard vessels which can be quite similar to chartering, but are not considered to be coastwise trade. For this reason, the occasional charter boat will seek to legitimately engage itself in these activities.

2. Sail Training

A sailing vessel used in connection with a \textit{bona fide} instructional course in sailing and navigation does not constitute coastwise trade. The logic behind this is that all the persons aboard are involved with the operation, navigation and business of the vessel, and are thus not considered passengers for hire. However, the vessel must be commercially documented or else it violates the documentation as a pleasure vessel and is subject to forfeiture.

Although sail training vessels are sanctioned by the Customs Service, the Coast Guard considers sail trainees to be passengers and thus subject to the laws administered for small passenger vessels and uninspected vessels.\textsuperscript{39} It is essential that they comply with the Coast Guard requirements
for safety and inspection. These requirements are also applied to those vessels engaged in foreign trade when they enter a U.S. port. Thus a charter boat operating a sail training program may avoid violation of coastwise trade laws, but it is still subject to the relevant documentation and safety requirements.

b. Condominium Association

An undocumented pleasure boat which is owned, operated between coastwise points, and maintained by a condominium association for exclusive use by its members and their guests is not considered to engage in coastwise trade. Nor would pleasure cruises or dockside parties aboard be prohibited by any Customs law or regulation. This is provided the boat is not used to carry passengers for hire and no fee for hire is charged the residents or guests. 40

c. Business Guests

The Customs Service has ruled that undocumented corporate pleasure vessels can engage in the entertainment of business guests for the purpose of promoting good will, or with the thought that those who are entertained will favor their hosts with new and increased business . . . not withstanding the fact that discussions or conferences may be held on a cruise directly affecting the business of the corporate owner. Nor is it affected by the fact that understandings or agreements are reached during the cruise. 41

This is not considered coastwise trade.
However, in a later ruling, the Customs Service held that

the transportation of persons for a good business performance or as an inducement for patronage ... is considered to be a use of the vessel by its owner in commerce. 42

Employee and dealer incentive programs are considered to be coastwise trade.

III. Eligibility for Coastwise Trade as a Consideration when Purchasing a Boat for Charter

The case Gillentine v. McKeand illustrates the importance of knowing the documentation and registration history of a boat which one plans to purchase for time chartering.43 Ms. Gillentine had purchased the yacht "Mooring" with the intention of time chartering it several months each year as a profitmaking venture. The bill of sale contained a warranty that the yacht was "free and clear of all liens, bills, mortgages, taxes, or encumbrances of any nature or kind."44

After the purchase, the buyer learned that the boat had been temporarily under Cuban registry and was ineligible to engage in coastwise chartering. The purchaser of the renationalized yacht sued the seller on the theory that the trade restriction on the use of the boat for time charter purposes was an "encumbrance" within the seller's warranty. The trial court jury found that the seller—a yacht broker—had committed a breach of warranty and returned a verdict of
$25,000 against him. On appeal, the First Circuit court upheld the trial court decision but ordered a new trial on the issue of damages. They advised that the court on remand investigate the mitigation of damages, suggesting that bareboat chartering might have substantially reduced the owner's loss of charter revenues.45

If a person is considering chartering when he purchases a boat, he is well-advised to discuss this intention with the seller. Ideally, he would ascertain whether the boat is eligible for commercial documentation with an endorsement for coastwise trade prior to, not after, signing the sales contract. If this is not possible, he should include an explicit provision which would void the contract if it were later ascertained that the boat is restricted from coastwise trade.

IV. Foreign Ports

1. Nearby Foreign Ports and Intermediate Stops

46 U.S.C. 289 provides that no foreign vessel shall transport passengers between coastwise points "either directly or by way of a foreign port." 19 C.F.R. Section 4.80a interprets Section 289 in providing that a violation occurs if "/t/the passenger severs his connection with the voyage at another coastwise port on a voyage which touches no foreign port other than a nearby foreign port." 19
C.F.R. 4.80a(c) defines a "nearby foreign port" as "any foreign port in North America, Central America, the West Indies (including the Bahama Islands), or the Bermuda Islands." A port in the U.S. Virgin Islands is also treated as a nearby foreign port for the purposes of Section 4.80a.

A ruling on the Queen Elizabeth II illustrates the concept of a nearby foreign port. The British ocean liner was considering offering cruises from the west coast to Hawaii. She planned to call at the island groups of Islas de Revilla Gigedo, Guadeloupe, or Roca Alijos off the Mexican coast en route to Hawaii. However, this cruise was determined to be a violation of Section 289 because it would not include an intermediate stop at a foreign port other than a nearby foreign port. The same would hold true for a charter boat.

A distinction is made between voyages between coastwise points and those embarking from and returning to the same port. If a charter boat plans a voyage on which each passenger (1) departs and returns to the same coastwise port, and (2) stops at a nearby foreign port or ports, it may also stop at coastwise ports, provided it does not stay at any of them longer than 24 hours. (Only the Customs Service can extend this period if it deems it necessary).

However, this must be taken one step further: C.F.R. 4.80a(a)(4) provides that a passenger cannot go ashore at any other port other than the one where he
embarked if coastwise transportation is the primary object of the voyage.

In interpreting this subparagraph, the Customs Service has taken the position that, in the absence of other evidence of the primary object of a voyage, if the total time spent in foreign ports is equal to or more than the time spent in coastwise ports, and the number of nearby foreign ports visited is equal to or more than the number of coastwise ports visited (apart from the passenger's port of original embarkation and ultimate disembarkation), the primary object of the passenger's voyage will not be deemed to be coastwise transportation. 48

For example, if a charter boat not documented for U.S. trade embarked from a U.S. port, called at four U.S. ports and three Canadian ports, then returned to the port of embarkation, it would have illegally engaged in coastwise trade because more U.S. ports than nearby foreign ports had been visited. If a charter boat went to three U.S. ports and three Canadian ports, but spent more time in the U.S. ports (bearing in mind that no intermediate stops at a U.S. port can exceed twenty-four hours), it would have illegally engaged in coastwise trade because more time was spent in U.S. ports than nearby foreign ports. However, a voyage including three U.S. ports and four Canadian ports would not violate the cabotage laws as long as the time spent in the foreign ports exceeded the time spent in U.S. ports. This rule must be considered when planning the itinerary of a charter.
2. Foreign Trade

Certain charter boats which do not qualify for coastwise trade may still engage in foreign trade. Foreign trade refers to trade between a U.S. port and a foreign port. It includes transporting passengers one way between a coastwise port and a nearby foreign port. It does not include trade between two coastwise points via a nearby foreign port.

Charter boats can be U.S. documented with a "registry" endorsement which entitles them to engage in foreign trade. Foreign flag charter yachts can also legitimately operate in the foreign trade. (For a full discussion, see Chapter IV, "Charter Boat Documentation").

As a practical matter, this type of charter is a rarity because of the distance involved. (The only exception is the one way passage between a coastwise port and a nearby foreign port). Because most charter boats do not have the range of a passenger liner, especially given the relatively short term period of the average charter, the laws and regulations concerning nearby foreign ports make it very difficult for them to include a foreign port not considered a "nearby foreign port." However, for those vessels which plan to undertake such a voyage, there are a number of regulations to be aware of, illuminating rulings, and conceivable policy changes, as follows.

In the absence of evidence that coastwise
transportation is the primary object, a foreign vessel can make a voyage in which the foreign port is the 1) port of embarkation, 2) port of debarkation, or 3) an intermediate stop.49 A passenger can embark or disembark at a coastwise point, as long as he has been to the foreign port. Other coastwise stops can be included as long as they are no more than 24 hours in duration.

A question arose concerning the use of a foreign-built, U.S. documented yacht on round-trip passenger cruises from the French West Indies to U.S. ports.50 If the passengers were to disembark at only one domestic port, they could spend an unlimited amount of time ashore. However, if they were to land at another such port, the yacht would be in violation of coastwise laws if it remained in that port or a subsequent port for more than twenty-four hours.51

A cruise liner which departed from Europe for a sight-seeing tour of east coast ports requested advice from the Customs Service about an excursion ashore.52 Passengers intended to leave the vessel in Norfolk and rejoin it in Baltimore. The Customs Service ruled that those passengers who had embarked and planned to disembark in Europe could take the excursion without violating cabotage laws. However, those passengers who had boarded in New York and planned to disembark in Europe could not make the excursion without violating Section 289. They would have to reboard
the vessel in Norfolk in less than twenty-four hours in order to be in compliance.

3. Current Policy Proposals

Recently, the Customs Service has proposed an amendment to the cabotage regulations concerning intermediate stops and the 24 hour rule.\textsuperscript{53} It would eliminate the 24 hour rule on foreign vessels making intermediate stops. This comes in response to certain American coastwise ports, such as those in Alaska, Florida, and Puerto Rico, which have complained that they are losing tourist business because passengers aboard foreign vessels are not allowed to stay longer. "The net result is to hurt the economy of these American ports by depriving them of revenue."\textsuperscript{54}

Under the new amendment, the Customs Service would only consider the port where a passenger embarks at the beginning of a specific charter and where he disembarks finally and permanently. Temporary shore leave at intermediate ports would not be considered. Charterers could therefore spend more time in domestic ports. The Customs Service believes this interpretation is in keeping with the intent of Congress and has invited public comment.\textsuperscript{55}
V. Conclusion

In conclusion, the charter boat owner must take the coastwise trade law into consideration when planning a charter boat operation, including plans to purchase a suitable charter boat. Because time charters are considered a form of coastwise trade, only U.S. documented charter boats can operate between U.S. ports, either directly or via a nearby foreign port. Valid bareboat charters are not considered to involve the transportation of passengers and, therefore, are not subject to the cabotage laws. Foreign trade is open to both time and bareboat operations.

Because the cabotage laws were formulated in a naval and commercial shipping context, there are certain aspects which defy any sense of logic on the part of a participant in the recreational charter trade. Most notable among these are the obscure requirements with respect to the (1) "voyage to nowhere," especially as it applies to the charter fishing boat; (2) chartering to aliens; and (3) the 24 hour rule and intermediate stops. It is expected that each of these anomalies will undergo reasoned regulatory changes in the near future which should eliminate some of the current disregard for the requirements as a result of their impracticalities.

As long as the laws and regulations reserving coastwise charters to U.S. documented boats are the same as those governing commercial shipping activity, it is very
unlikely that there will be any major policy changes allowing undocumented boats to enter and compete in this trade.
FOOTNOTES


2 Cabotage Act of 1817, 3 Stat. 351 (1817).


4 Act of February 17, 1898, 30 Stat. 248 (1898).


6 41 Stat. 999 (1920).


9 Ibid.


"Proposed Regulations").


30 Ibid., p. 28.

31 Ibid.

32 1982 McMorrow interview.


34 1982 McMorrow interview.


36 Interview with Paul Hegland, Carrier Rulings


43Gillentine v. McKeand, 426 F. 2d 717 (1st Cir. 1970).

44Ibid., p. 719.


4919 C.F.R. Sec. 4.80a(b) (1983); U.S. Customs Service, Unpublished Decision, File No. 106050 (18 March 1983).


5119 C.F.R. Sec. 4.80a (1983).


54 Ibid., p. 17770.
55 Ibid.
CHAPTER IV

CHARTER BOAT DOCUMENTATION

I. Introduction

Recreational charter boats are subject to documentation and/or registration provisions in the federal maritime law which allow the authorized use of vessels on U.S. waters. Documentation is a type of national registration which serves as evidence of a vessel's nationality and her eligibility to engage in certain employments. Registration is a numbering system required of all undocumented vessels equipped with propulsion machinery in the state in which the vessel is principally used. A boat owner who plans to charter his boat under a time charter arrangement must acquire a certificate of documentation with an endorsement for commercial trade. He who plans to charter under a bona fide bareboat arrangement can opt for either registration or documentation with a pleasure or commercial endorsement, provided the documentation qualifications can be met. (See Figure 1).

The registration or numbering system is federally administered or administered by a state which has a federally approved system for registration. It applies to
FIGURE 1. TYPES OF REGISTRATION AND DOCUMENTATION WHICH QUALIFY A CHARTER BOAT TO MAKE VARIOUS PASSAGES

<table>
<thead>
<tr>
<th>TYPES OF REGISTRATION AND DOCUMENTATION</th>
<th>PASSAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charter between Domestic Ports (Direct-</td>
<td>One Way</td>
</tr>
<tr>
<td>ly or Via a &quot;Nearby Foreign Port&quot;)</td>
<td>Charter to and from Foreign Port</td>
</tr>
</tbody>
</table>

I. TIME CHARTER BOATS

A. U.S. Documentation with Endorsement for

1. Coastwise Trade (Excluding Great Lakes) X

2. Great Lakes (Great Lakes Only) X

3. Pleasure

4. Registry X X X X

B. State or Federal Registration

Only those Boats which Would Meet All Documentation Requirements except Tonnage and Partnerships X X X

II. DEMISE CHARTER BOATS: Any Type of Registration, U.S. or Foreign Documentation X X X X
boats operating on waters subject to the jurisdiction of the United States and on the high seas for vessels owned in the United States. As a rule, it does not apply to a foreign vessel temporarily operating in U.S. waters. A boat owner who wishes to charter but either cannot qualify for documentation or chooses not to document his boat can learn more about boat registration from the issuing authority in the state where the boat is principally used. Because registration is a comparatively simple process with which most pleasure boat owners are acquainted, the process is not addressed in this chapter. However, opportunities and reasons to register a charter boat are discussed when it is relevant.

The Coast Guard is responsible for the issuance of certificates of documentation, the promulgation of the regulations and the implementation and enforcement of the documentation provisions. Documentation is more complex, more time consuming and in many cases more expensive than registration. There are certain strict qualifications which a vessel and the owner must meet in order to acquire a certificate of documentation. However, documentation also has its benefits. Documented vessels are considered "vessels of the United States."

The rights, privileges, and immunities of that nation and the international comity attendant with international law and diplomacy follow the vessel wherever it may be on the high seas or territorial seas.
Documented vessels are accorded preferential treatment by the U.S. Customs Service upon entry into and departure from U.S. waters. Documentation simplifies entry into foreign ports. It can also have its advantages when financing. It enables a boat owner to secure a preferred mortgage which is often required by many lending institutions.

A vessel which is documented is not required to be numbered under the Federal Boat Safety Act of 1971. However, in some states it may have to display a registration decal and pay certain fees. In sole state waters--bodies of water within state boundaries, such as lakes, under state jurisdiction--it may have to be state registered, as in the case of New Hampshire.

The following discussion provides an overview of the documentation provisions as they relate to recreational charter boats. It does not attempt to examine all of the special cases, extenuating circumstances, and various requirements which may arise regarding charter arrangements and documentation. Consequently, further information should be sought in individual cases.

A. Background

Federal documentation dates back to the early efforts of the first Congress to enact a national maritime policy to ensure the flow of maritime commerce and to
is to register the boat under a federally approved numbering system. A true bareboat has no legal requirement to be documented with a commercial endorsement or to be documented at all.

A pleasure license entitles a vessel to pleasure use only. In the implementing regulations, there is a note which reads:

A vessel operating under a pleasure license endorsement only may be bareboat chartered for pleasure use only. Guidance on the elements of a valid bareboat charter should be obtained through competent private legal counsel.

The remaining endorsements are forms of commercial documentation. A coastwise license endorsement entitles a vessel to employment in the coastwise trade. This includes carrying passengers for hire. Any boat owner who plans to operate under a time charter arrangement in the coastwise trade (other than in the Great Lakes region) must acquire this type of license.

A Great Lakes license endorsement entitles the charter boat to engage in coastwise trade on the Great Lakes and in trade with Canada. Time charter boats in this region must acquire this endorsement.

A registry endorsement is available to a charter boat to be employed in the foreign trade and in trade with Guam, American Samoa, Wake, Midway, and Kingman Reef. Foreign trade includes the carriage of passengers on routes
which are considered to be outside the coastwise trade, such as a one way passage from Antigua to the U.S. or a roundtrip passage from France to the U.S. (For a detailed discussion of foreign trade, see Chapter III, "Coastwise Trade Law as It Applies to Recreational Charter Boats"). Qualifications for a registry endorsement are far less stringent than for the other commercial licenses. For example, boats of foreign registry or foreign build can acquire this endorsement.

A boat can acquire one or more endorsements at any time, provided it meets the legal requirements. Documentation entitlements depend on eligibility and not on where a vessel operates. In other words, a vessel need not be operated on U.S. navigable waters to acquire a certificate of documentation. 26

III. Qualifications and Requirements

There are a number of legal requirements as to the qualifications of a charter boat for documentation. These vary with the type(s) of endorsement sought. At minimum, a boat must be at least five net tons, owned by a U.S. citizen and commanded by a U.S. citizen to qualify for any of the endorsements. (See Figures 2 and 3).

For purposes of these requirements, the U.S. is defined as the fifty states, Guam, the Northern Marianas, the U.S. Virgin Islands, Puerto Rico, and Washington, D.C.
FIGURE 2. QUALIFICATIONS FOR THE VARIOUS TYPES OF DOCUMENTATION ENDORSEMENTS

<table>
<thead>
<tr>
<th>QUALIFICATIONS</th>
<th>Coastwise Trade</th>
<th>Great Lakes</th>
<th>Registry</th>
<th>Pleasure</th>
</tr>
</thead>
<tbody>
<tr>
<td>At Least 5 Net Tons</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Owner a U.S. Citizen</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Continuous U.S. Ownership and Registry or Documentation</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S. Built</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commanded by a U.S. Citizen</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Proper Designation and Marking</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Fee</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>
FIGURE 3. REQUIREMENTS TO OBTAIN A CERTIFICATE OF DOCUMENTATION WITH THE VARIOUS ENDORSEMENTS

<table>
<thead>
<tr>
<th>REQUIREMENTS</th>
<th>ENDORSEMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application (CG-1258)</td>
<td>All Vessels Seeking Documentation</td>
</tr>
<tr>
<td>Evidence of U.S. Ownership</td>
<td>All Vessels Seeking Documentation</td>
</tr>
<tr>
<td>Title Evidence: (1) Complete Chain of Title and Citizenship of Each Entity: (2) Copy of Last Registration and Evidence of Title Since Then; (3) Builder's Certificate</td>
<td>3 1 3 1 3 2 3 1 or 2</td>
</tr>
<tr>
<td>Evidence of 5 Net Tons</td>
<td>All Vessels Seeking Documentation</td>
</tr>
<tr>
<td>Evidence of U.S. Build</td>
<td>X X X X X X</td>
</tr>
<tr>
<td>Evidence of Marking</td>
<td>All Vessels Seeking Documentation</td>
</tr>
<tr>
<td>Evidence of Removal from Foreign Registry (Applicable Only to Vessels Last Registered Abroad)</td>
<td>X X X X X X</td>
</tr>
<tr>
<td>Fee</td>
<td>X X</td>
</tr>
</tbody>
</table>
1. Citizenship

Only boats which are owned by U.S. citizens may be documented. The Shipping Act of 1916 independently imposes further requirements concerning the citizenship of owners of vessels engaged in coastwise trade. For the purposes of documentation, the following persons and entities are considered U.S. citizens.

An individual is a citizen if he is a native-born, naturalized, or derivative of the U.S. or otherwise qualifies as a U.S. citizen.

A partnership is a citizen for the purposes of obtaining a registry or pleasure license if all general partners are U.S. citizens and the controlling interest is U.S. For a coastwise or Great Lakes license, all general partners must be U.S. citizens and 75% of the interest in the partnership is U.S. owned. Rulemaking which would provide a basis for determining who has "control" in a partnership seeking to document a boat is forthcoming.

Each member of an association or a joint venture must be a citizen to qualify for documentation. A trust arrangement qualifies if each of the trustees and each beneficiary is a citizen.

A corporation is a citizen for a registry and pleasure license if (1) it is incorporated under the law of the U.S.; (2) its chief executive and chairman of the board of directors are U.S. citizens; and (3) the number of non-
citizen directors does not exceed the number necessary for a quorum. It qualifies for a coastwise and Great Lakes license if (1) it meets all of the above requirements; and (2) at least 75% is owned by U.S. citizens. There are further provisions for special citizenship and limited trading privileges.

A U.S. government entity is also considered a citizen as defined in the regulations.

The application for a certificate of documentation (form CG-1258) is considered prima facie evidence of compliance with the citizenship requirements.

2. Title Requirements

Title evidence is required in order to establish that the party applying to document a boat is the owner. It is essential for initial documentation, subsequent documentation into coastwise or Great Lakes trade, and in cases where certain changes in ownership and documentation status occur. A complete chain of title is required for vessels applying for a coastwise or Great Lakes license along with evidence establishing the citizenship of each entity in the chain. A registry endorsement requires a copy of the last registration of the vessel (state, federal, or foreign) and evidence establishing the chain of title from that registration to the present owner. A boat owner seeking a pleasure license endorsement can comply with
either of the above.\textsuperscript{40}

The only title evidence required from the original owner is a builder's certificate (form CG-1261), regardless of the endorsement sought.\textsuperscript{41} The applicant for any boat which was last registered in a foreign country must show evidence of removal from the foreign registry.\textsuperscript{42} Boats returning to documentation require evidence of the complete chain of title and citizenship evidence since the last documentation. Those returning from a foreign registry need not supply the citizenship evidence.\textsuperscript{43} There are special requirements for captured, forfeited, and wrecked vessels, and for special legislation vessels.

Evidence of title in most cases consists of a bill of sale in a recordable form and a declaration of citizenship.\textsuperscript{44} Under some circumstances, a waiver may be granted. A renationalized boat which has been placed under a foreign registry or owned by a noncitizen is prohibited from engaging in coastwise trade.\textsuperscript{45} Title evidence is designed in part to expose this "foreign taint."\textsuperscript{46} As a consequence, a boat which was once under foreign registry or owned by a foreigner can only acquire a pleasure license and registry endorsement if it wishes to be documented. It can only charter under a bareboat arrangement or operate in the foreign trade. It cannot operate on a time charter basis because it cannot acquire documentation with an endorsement
for coastwise trade or for Great Lakes trade. Occasionally a waiver may be granted through special legislation. (For a complete discussion, see Chapter III, "Coastwise Trade Law as It Applies to Recreational Charter Boats").

3. Build Requirements

With certain exceptions, any boat owner seeking a coastwise or Great Lakes license must present evidence that the boat was built in the U.S.47 This is not required for a pleasure license or registry. A boat is considered built in the U.S. if all major components are fabricated in the U.S. and it is assembled entirely in the U.S. For the purposes of this section, American Samoa is considered part of the U.S.48 Any other boat is considered foreign built.

As a consequence, boats built outside the U.S. in places such as Taiwan and Canada cannot legally charter under time charter arrangement. They can, however, receive an endorsement for pleasure and registry which qualifies them to engage in bareboat chartering and foreign trade.

The original intent of the build requirement was to protect the American shipbuilding industry; today it also has the effect of protecting the boatbuilding industry from overseas competition in the production of boats for the charter trade.

Evidence of build can be a builder's certificate (form CG-1261) or a comparable original document. Waivers
may be available in certain circumstances.

4. **Tonnage**

Boats must be at least five net tons (a measure of volume) in order to be documented. This is determined for the initial documentation and whenever there are changes in the gross and net tonnage.49 There is a formal physical admeasurement process performed by the Coast Guard or a simplified measurement method involving length, breadth, and depth. Generally, boats 27 feet or longer will qualify.50 All recreational and commercial vessels under 5 tons must be state numbered. Boats under 5 tons can bareboat charter and charter in the foreign trade without a problem. However, they can only charter in the coastwise trade and the Great Lakes trade if they can meet all of the qualifications of documentation except tonnage.51

5. **Masters of the Boat**

Any U.S. documented vessel shall be commanded by a U.S. citizen. A boat's certificate of documentation is invalidated when it is under the command of a non-citizen and must be surrendered.52

This requirement should be considered when hiring a captain for a charter boat. His nationality must be U.S. It also has grave implications for owners who wish to charter their boats to foreigners. To operate in compliance with the Vessel Documentation Act, an alien cannot charter a
boat without invalidating the certificate of documentation unless he either hires an American as master of the boat or obtains permission from the U.S. Maritime Administration. (For a detailed discussion of chartering to aliens, see Chapter III, "Coastwise Trade Law as It Applies to Recreational Charter Boats"). The Vessel Documentation Act imposes a penalty of $500 a day on the owner for each day his boat is in violation of the law.\textsuperscript{53}

6. Designation and Marking Requirements

The designation and marking requirements function as a means of recognizing a boat as a vessel of the U.S. The boat is assigned an official number by the Coast Guard upon application for initial documentation and it is marked accordingly.\textsuperscript{54} The boat owner selects a home port which is the port of documentation where the records are kept.\textsuperscript{55} The home port designation is linked to the ownership arrangement. The boat's name and hailing port must be designated and marked accordingly. The hailing port shall be either the home port or the place which the owner used to determine the home port, unless this place is outside the U.S., in which case the hailing port is Washington, D.C.

Evidence of the marking of the official number, name and hailing port on a boat (form CG-1322) shall be submitted for initial documentation and in the event of certain
IV. Procedures

To initiate the documentation process, an owner who wishes to charter his boat can contact the Marine Safety Office or a documentation officer at the local Coast Guard facility. They will determine the type of documentation needed and send the necessary forms. Applications are filed at the home port or the documentation office nearest where the boat is located. Professional documentation services are available which can expedite the process. Some financial institutions are now handling documentation for their clients.

In the documentation process, certain documents such as title evidence and mortgages must be recorded. There are small fees for recording.

A fee of $100 for the initial documentation with a pleasure endorsement is charged. A $50 fee is charged for (1) pleasure boats previously documented and (2) surrender/replacement of a pleasure boat license. No fees are charged in connection with commercial documentation.56

Certificates are valid for a period of one year. The boat owner is responsible for renewal. The person in command of the boat is responsible for assuring that the certificate of documentation is carried aboard the boat. It must be aboard unless (1) it is being submitted to the
documentation office for purposes of surrender, replacement, or the endorsement of a preferred mortgage or (2) the boat is in storage or out of the water.57 The boat owner also must notify the documentation office of certain changes such as changes in the name or tonnage; sale or transfer; and changes in the type of endorsement.

Documentation does not exempt the boat from any applicable state or federal taxes. Nor is the place of documentation necessarily determinative of liability for state and local taxes.58 This is the case in order to discourage the scam whereby boat owners document the boat in a location where the taxes are minimal.

V. The Preferred Mortgage

One of the advantages of documentation is availability to a boat owner of a preferred mortgage on his boat as part of the purchase arrangement. A preferred mortgage entitles the mortgagor to an internationally recognized maritime lien on the documented boat which cannot be superceded by most future liens placed on the boat.

The Shipping Act of 1920 (the "Act") authorizes a preferred mortgage.59 The Act was passed shortly after World War II in consideration of selling off the wartime fleet and rebuilding the merchant fleet. Thus it was intended "to make private investment in shipping attractive as well as to protect the U.S. which would obviously be the
principal source of credit." The Act reduces the overall risk involved in lending money and provides "substantial security to persons applying essential security to the shipping industry." Many private sector investment decisions are based on the existence of comparable government guarantees.

The statutory guarantee of the priority of a preferred mortgage lien makes financing a boat a favorable investment. Because it is the only mortgage of its type in the U.S. and is only applicable to documented vessels, many lending institutions now require documentations of boats owned by their clients.

Even if circumstances arise which render the certificate of documentation invalid and subject to surrender, a certificate issued to a boat subject to a preferred mortgage "remains valid for the sole purpose of preserving the preferred status of that mortgage." The boat's deletion from documentation can only be accomplished by a proceeding in rem. In the event of the owner's bankruptcy, the financier is granted full possession of the boat, which is exempt from inclusion among the owner's general assets.

VI. Enforcement/Penalties

The U.S. Coast Guard is responsible for the enforcement of the documentation laws and regulations.
Violation of the statutory and regulatory provisions renders the owner liable for a civil penalty, not to exceed $500 for each violation. Each day of a continuing violation is considered a separate violation.

Documentation becomes invalid 1. if a boat is placed under the command of a non-citizen; 2. the boat or boat owner no longer meets the prescribed legal requirements. Concealing or falsifying a material fact or making a false statement or representation in connection with documentation can result in seizure and forfeiture of a boat. A certificate of documentation used knowingly and fraudulently for any boat can result in seizure and forfeiture of that boat.

A boat cannot be employed in any trade other than those covered by its certificate of documentation. Furthermore, a licensed captain operating a boat in violation of its endorsements risks losing his license.

A boat documented with a pleasure license endorsement is subject to seizure and forfeiture if it is used for purposes other than pleasure. Consequently, a boat documented for pleasure which is found conducting bareboat charters that are in fact time charters risks seizure and forfeiture. Coast Guard enforcement actions on this point have been infrequent and judgements have been lenient. Scarcely any bareboats have been forfeited pursuant to this requirement. In those cases where
forfeiture has been the ascribed penalty, the violation of
documentation was accompanied by willful and fraudulent
abuse. Nonetheless, the risk of such stringent legal
consequences still exists.

VII. Conclusion

In conclusion, a charter boat owner who wishes to
charter his boat under a time charter arrangement must
document the boat with an endorsement for the appropriate
type of commercial trade. He can apply to the Coast Guard
for a certificate of documentation with a coastwise trade,
Great Lakes, and/or registry endorsement. Under a true
bareboat charter arrangement, the boat is not considered to
be engaged in commercial trade. Consequently, the boat
owner can opt for commercial documentation, pleasure
documentation, or state (or federal) registration.

If a boat owner chooses to document the boat with a
pleasure or registry endorsement, the requirements are that
the boat be at least five net tons, properly marked, and
owned and commanded by a U.S. citizen. To qualify for a
coastwise trade or Great Lakes endorsement, there are
additional requirements: the boat must be U.S. built;
ownership and registration or documentation must have always
been U.S.

Documentation is more complex, time consuming, and
in many cases more expensive than boat registration.
However, it is one of the federal requirements that must be met in order to conduct a legal time charter boat operation. Fortunately, documentation also confers certain privileges and rights, including the qualification for a preferred mortgage.

The rigors of documentation have the effect of limiting the number of charter boats which can legally operate on a time charter basis. To avoid documentation, more boats have to operate within the narrow confines of the bareboat standards in order to conduct legal operations. However, because many boat owners are either unable or unaware of how to operate in conformity with the bareboat standards, their charter operations fall in the middle of the two extreme sets of requirements. Sham bareboat operations are the result. But the dilemma does not end here. The safety requirements, including inspection, certification and manning by licensed personnel also limit the number of qualified charter operations. These are presented in the following chapter.
FOOTNOTES


7 Barbara Crockett, "Documentation Changes Coming," Yachting, January 1982, p. 222 (hereafter cited as Crockett, "Changes").


10 Act of Sept. 1, 1789, 1 Stat. 55.


12 Act of December 31, 1792, 1 Stat. 287.

13 Act of February 18, 1793, 1 Stat. 305.


16 U.S., Congress, House, Vessel Documentation Act, H. Rept. 96-248 to Accompany H.R. 1196, 96th Cong., 2d


29 46 C.F.R. 67.03-3 (1982).
30 Id. 67.03-5(a).


32 46 C.F.R. 67.03-5(b); 67.03-5(c) (1982).
33 Id. 67.03-7.
34 Id. 67.03-9(a).
36 46 C.F.R. 67.03-11; 67.01-1 (1982).
37 Id. 67.03-13.
38 Id. 67.05-1.
39 Id. 67.05-5.
40 Id. 67.05-7.
41 Id. 67.05-7(a).
42 Id. 67.05-3.
43 Id. 67.05-13.
44 Id. 67.07-3.


46 Drzal, "Documentation", p. 266.
50 Crockett, "Changes," p. 222.
55 Id. 67-13-3.
57 46 C.F.R. 67.45-7 (1982).

58 Interview with Tom Willis, Regulations and Rulings Branch, U.S. Coast Guard, Washington, D.C., 29 October 1984.
60 Grant Gilmore and Charles L. Black, Jr., The Law

Crockett, "Changes," p. 222.

46 C.F.R. 67.23-9(c) (1982).

Crockett, "Changes," p. 222.


Ibid.

There exist federal requirements of safety, manning, and licensing for certain vessels, based upon the tonnage of a vessel, the service in which she engages, the waters where she operates, and her means of propulsion. These provisions are concerned in relevant part with whether a vessel has the proper safety equipment and is structurally and mechanically sound and safe. They are promulgated, implemented, and enforced by the U.S. Coast Guard. They apply to boats operating on the navigable waters of the U.S. and to those owned in the U.S. while operating on the high seas.

I. Safety, Inspection, and Certification

Recreational charter boats primarily fall into three safety categories: "small passenger vessels," "uninspected vessels," and "recreational vessels" (See Figure 4). Small passenger vessels are vessels of less than 100 gross tons carrying more than six passengers for hire. A boat used for this purpose must be inspected and certified by the Coast Guard for a specific number of passengers in excess of six.
<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>DESCRIPTION OF VESSEL</th>
<th>NATURE OF REQUIREMENTS</th>
<th>TIME CHARTERS AND NUMBER OF PASSENGERS</th>
<th>APPLICATION TO BAREBOAT CHARTER BOATS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Passenger Vessels</td>
<td>Vessels under One Hundred Tons</td>
<td>Inspection and Certification</td>
<td>Time Charter Boats Carrying More Than 6 Passengers</td>
<td>Bareboat Charter Boats Excluded</td>
</tr>
<tr>
<td>Uninspected Vessels</td>
<td>Vessels Not Subject to Small Passenger Vessel Inspection</td>
<td>Safety Equipment</td>
<td>Time Charter Boats Carrying Not More Than 6 Passengers</td>
<td>Bareboat Charter Boats Included</td>
</tr>
<tr>
<td>1. Uninspected Passenger Vessels</td>
<td>Same As Above</td>
<td>Additional Operational Requirements</td>
<td>Same As Above</td>
<td>Bareboat Charter Boats Excluded</td>
</tr>
<tr>
<td>Recreational Vessels</td>
<td>1. Vessels Manufactured or Operated Primarily for Pleasure, or 2. Vessels Leased, Rented, or Chartered to Another for the Latter's Pleasure</td>
<td>Manufacturer's Construction and Performance Standards</td>
<td>All Time Charter Boats Included</td>
<td>Bareboat Charter Boats Included</td>
</tr>
</tbody>
</table>
Uninspected vessels must comply with certain minimum safety equipment and construction requirements but need not undergo inspection and certification. Charter boats carrying less than six passengers are considered "uninspected passenger vessels" and are subject to certain provisions in addition to those for uninspected vessels. Because bona fide bareboats are not considered to carry passengers for hire, they are only subject to the provisions for uninspected vessels and not to the special provisions for inspected and uninspected passenger vessels.

A recreational vessel is defined as a vessel either (1) manufactured or operated primarily for pleasure, or (2) leased, rented, or chartered to another for the latter's pleasure. This category overlaps the categories of small passenger vessels and uninspected vessels and includes bareboats and small pleasure vessels.

The following pages examine the federal inspection, equipment, and operational standards in the three categories as they apply to recreational charter boats. Most of the requirements are quite technical in nature, addressing engineering, construction, and equipment matters. This is beyond the scope of this research. For further information on these requirements, references are made throughout the text to appropriate legal authorities.
A. Uninspected Passenger Vessels

Time charter boats carrying six or less passengers for hire are sometimes referred to as "Subchapter C boats" because this is the chapter ("Uninspected Vessels") in the Code of Federal Regulations containing the relevant provisions. The provisions apply to both U.S. vessels and to foreign vessels when in U.S. waters (except sole state waters).

The federal authority to regulate uninspected vessels, and in particular recreational boats, originated with the Motorboat Act of 1910. Congress then enacted standards with respect to navigation lights, machinery requirements, and life preservers. Subsequently, the Motorboat Act of 1940, the Federal Boating Act of 1958, and the Federal Boat Safety Act of 1971 updated and added to the minimum equipment required and provided for other regulatory controls. This allowed the federal government to continue to exercise some control over recreational boats which were uninspected. The importance of this supervision was evidenced by the growing number of recreational boats and the increasing number of casualties as a result of explosions and fires.

Uninspected passenger vessels are not subject to inspection and certification requirements, but can receive courtesy inspections by contacting a local Coast Guard Boating Safety Division or the Coast Guard Auxiliary. Some
states have charter boat safety inspection laws. For example, in Michigan there are yearly in-the-water inspections and a drydock inspection every five years for all boats carrying six or less passengers for hire. It behooves the charter boat owner to check into state inspection regulations.

Among other things, the current regulations for uninspected vessels establish various equipment and operation requirements. Included in the equipment requirements are provisions for life preservers and lifesaving equipment, fire extinguishing, backfire flame control, and ventilation. Of specific interest to charter boats is the prohibition of liquefied and non-liquefied petroleum on vessels carrying passengers for hire (see infra). The operating requirements apply in pertinent part to time charter boats. They require a safety orientation of the passengers before getting underway, consisting of safety related public announcements and/or instruction placards. In addition, an "Emergency Check-off List" detailing the precautionary measures which may be necessary in the event of an emergency situation must be posted conspicuously.

B. Recreational Vessels

"Recreational vessels" are subject to certain manufacturing standards and requirements separate from those
for uninspected and inspected passenger vessels.

The provisions for recreational vessels originated with the enactment of the Federal Boat Safety Act of 1971. In recognition of the growth in recreational boating and its inherent safety problems, this Act inter alia authorized the establishment and implementation of national construction and performance standards for boats and associated equipment, including procedures for repair and defect notification.

All U.S. recreational charter boats fall into the category of recreational vessels. As a rule, foreign boats temporarily operating in U.S. waters are not subject to provisions for recreational vessels.

C. Small Passenger Vessels

The Small Passenger Vessel Safety Act of 1956 authorized the inspection and certification of small passenger vessels under 100 gross tons carrying more than six passengers. Congress enacted this safety legislation in response to several marine casualties aboard uninspected vessels carrying passengers for hire.

Three of the most tragic incidents were the sinkings of the motor vessels "Jack" and "Pelican" off Long Island, in separate incidents in 1951, and the loss of the sailing vessel "Levin J. Marvel" in Chesapeake Bay in 1955; these casualties resulted in the combined loss of 70 lives.
Congress sought to reduce the risk to individuals paying to be carried aboard small passenger vessels, in recognition that their safety depended on seaworthy vessels and skilled operators.

The curious cutoff of six passengers between uninspected passenger vessels and small passenger vessels reflects the economic and political constraints on inspecting all passenger vessels at the time of the passage of the Small Passenger Vessel Safety Act. Although Congress wished to have boats carrying even a single passenger inspected, the feasibility of this was out of the question. Rumor has it that the choice of the six passenger limit was a result of the input of Chris Craft, a large and influential boat manufacturer. At the time, Chris Craft was marketing a successful six passenger production boat. It agreed to support the safety legislation provided the inspection category were set above six passengers.

Small passenger vessels are often referred to as "T-boats" because Subchapter T is the relevant part of the Code of Federal Regulations detailing the inspection and certification requirements. Those boats carrying more than 150 passengers are subject to additional requirements in Subchapters F, H, J, and P which are not discussed here. There are other provisions for T-boats which carry freight for hire also not discussed in this paper.

The regulations are concerned with construction,
equipment, inspection, and certification. Inspection is to insure that the materials, workmanship, and condition of all parts of the vessel and its machinery and equipment are in all respects satisfactory for the service intended. 20

These are far more stringent than the requirements for uninspected passenger vessels. Among other things, they provide for specific types of building materials, watertight bulkheads, higher grades of wiring, specific types of piping, additional safety and lifesaving equipment, pollution prevention equipment, and stability tests.

Boats under 65 feet receive certificates of inspection valid for a period of three years with periodic reinspections; boats over 65 feet receive certificates valid for one year. The certificate remains valid for such a period unless renewed, revoked, suspended, or surrendered. 21 The certificate is to remain on board during operation and displayed in a conspicuous location. 22

Production boats as a rule do not meet the T-boat specifications unless they are specially ordered. Refits can be an expensive and time consuming process. As a result, many boat owners choose to charter their boats under a bareboat arrangement to avoid the rigorous safety and inspection requirements.
1. Public Awareness

The public is generally unaware of the safety requirements for recreational charter boats. The pamphlet, *Safety for Small Passenger Vessels* (CG-491) is available to alert the public as to inspection and licensing requirements on T-boats. As of October, 1978, a Certification Expiration Date Sticker must be displayed where passengers normally board a vessel indicating the validity of a certificate of inspection. This is removed by the marine inspector when a certificate of inspection is surrendered or revoked. This regulation came in the wake of the tragic sinking of the fishing vessel "Comet" (see infra).

2. National Transportation Safety Board

The National Transportation Safety Board (NTSB) has played a significant role in the development of inspection, equipment, and operation standards for recreational charter boats. It has recently investigated the sinkings of three Coast Guard inspected and certificated charter boats and published accident reports. In the case of the whale watching vessel, "San Mateo," large waves destroyed the pilothouse and capsized the boat. Of the 32 persons aboard no one was killed (as a result of successful Coast Guard Search and Rescue efforts), but injuries were sustained and the vessel lost. The "Joan La Rie III" was a charter
fishing vessel which was also struck by a large wave that flooded the cockpit and other parts of the boat through unsecured hatch covers until it sank. Of the 22 persons aboard, only 14 survived. The charter fishing boat "Pearl-C" flooded and sank while under tow over a sandbar. Of the ten aboard, only two were rescued.

At the conclusion of all these accident reports, recommendations were made to require or to improve the quality of the initial safety orientation of passengers, including the donning of life preservers, in order to increase passengers' ability to react correctly in emergency situations. Other recommendations included requiring passenger vessels operating offshore to carry an Emergency Position Indicating Radio Beacon (EPIRB); leaving a passenger and crew list ashore at a suitable location; and training in preventive maintenance and at-sea repair, including the publication of maintenance and repair guidelines based on the results of investigations into the causes of vessel equipment failures. Some of these recommendations have been incorporated into the federal inspection standards and others may be added in the future.

3. Control of Uninspected Vessels

The scenario arises where a charter boat not in possession of a valid certificate of inspection may be sold
to someone who wishes to carry more than six passengers and who is either unaware of or not interested in complying with the inspection and certificate provisions. The potential hazards to unwitting passengers has led to a Coast Guard notification procedure. The Coast Guard Marine Safety Manual in a draft revision advises that in the event of the voluntary surrender or withdrawal of a T-boat's certificate of inspection the Coast Guard notify the owner in writing that (1) his boat cannot carry more than six passengers for hire unless it is inspected and certified for passenger service; (2) in the event of a sale or transfer, the owner should inform the buyer of the certificate of inspection requirement and notify the Coast Guard within 48 hours; (3) that continued operation of the vessel in an unseaworthy condition may constitute "negligent use," subject to civil and criminal penalties. This notification, in the form of a letter, is placed in the boat's file and also mailed to the boat's port of documentation if she is documented. Local Coast Guard and Coast Guard Auxiliary should be advised of the names of such vessels. The Certification Expiration Date Stickers displayed on T-boats also aid in a monitoring program.

This notification process came on the heels of the federal case, Gercey v. U.S., which examined government liability for T-boat inspection in a tragic sinking. The
"Comet," a 30 year old, 49 foot wooden motor vessel failed her Coast Guard inspection for certification in 1971, principally because her hull was rotten. The "Comet" was then sold to an individual who proceeded to carry large groups of passengers on fishing trips without certification. On one such trip in 1973, the boat split in two and sank, killing the owner and 16 passengers.

The parents of one of the passengers sued the Coast Guard in a wrongful death action. They accused the Coast Guard of failing to take any "positive, feasible steps" to protect passengers for hire from embarking on the "Comet." On appeal, the Court held that the Coast Guard was not liable, because Congress had not mandated any such follow-up program. The Court questioned whether increased protection of passengers warranted an allocation of the Coast Guard's limited resources and their potential diversion from other regulatory responsibilities. It held that the Coast Guard is immune from liability, under the Suits in Admiralty Act, for its decision as a matter of policy not to perform this discretionary function.

4. **Excursion Vessels**

The legal term "excursion vessel" refers to a passenger vessel which engages in short cruises for special events or recreational purposes. An excursion party permit (CG-949) is a supplement to the certificate of inspection.
It is not issued to an uncertified charter boat. The excursion is normally a one time event such as a benefit and generally involves the carriage of deck passengers. If such an operation is not permitted under a boat's certificate of inspection, the boat may be granted a permit to carry additional passengers and/or to operate on a more extended route for a limited time, provided the excursion can be accomplished safely.35 Upon written application from the owner, operator or agent of the boat, the Officer in Charge, Marine Inspection, shall decide whether to issue a permit and whether additional equipment shall be necessary.

D. Enforcement/Penalties

The authority for the enforcement of the inspection and certification requirements rests with the U.S. Coast Guard. Failure to meet the requirements can result in suspension or revocation of a certificate of inspection. In addition, there are a myriad of violations and penalties for which individuals in charge of a boat can be liable. For example, there is a $1000 civil penalty for carrying too many passengers on an uninspected boat;36 there is a $100 civil penalty and liability in rem for an insufficient number of life preservers on a vessel.37 More severe penalties are incurred in cases of fraud or deceitful intent.38
E. Anticipated Changes

Although small changes and fine tuning have occurred in the minimum standards which recreational charter boats must meet, there have been no major changes in the requirements. However, the implementation of inspection, equipment, and operation standards is necessarily an evolving process: advances in technology and changes in the types and uses of vessels serve to alter the conditions to which safety standards apply. This requires a realistic appraisal of the operational needs of recreational charter boats and the marine industry as a whole, taking into account social, economic, political and safety considerations.

In the last five years, there has been interest in creating a special inspection category within Subchapter T for recreational charter boats carrying between 6 and 12 passengers for hire. An ad hoc committee composed of boatbuilders, engineers, charter boat operators, and the American Boat and Yacht Council (ABYC) submitted a proposal to this effect to the Coast Guard in 1982.39

In response to various economic considerations, the committee sought separate equipment and construction standards for recreational charter boats carrying up to 12 passengers.40 This would not affect the uninspected status of recreational charter boats carrying six or less passengers for hire. Currently the boats subject to
Subchapter T regulations are categorized by tonnage and subdivided by length. The committee's proposal would subdivide the inspection standards by the type of vessel operation.

There is precedent for regulatory categorization of vessels by type: a separate category of sailing school vessels has recently been authorized by the Sailing School Vessels Act of 1982.41

An advisory council of experienced owners and operators was instrumental in the drafting and passage of the sailing school vessel legislation.42 The act and the implementing regulations shall promulgate appropriate new inspection and safety requirements and remove sailing school instructors and students from the classification as seamen.

The Coast Guard has been engaged in an overall study of the Subchapter T inspection regulations in recent years.43 They have examined such things as the frequency and nature of T-boat accidents, the impact of changes in the law, the regulatory burden on the Coast Guard and the boating public, and information solicited from the Marine Inspection Offices in an effort to evaluate the need to change the inspection provisions. A work plan has now been submitted internally which could eventually lead to the requisite Marine Safety Councilauthorization of a Subchapter T regulatory project.
1. Liquefied and Non-Liquefied Gas

One policy change that is in the offing is in the federal regulations prohibiting the use of liquefied and non-liquefied gases, such as liquid petroleum gas (LPG) and compressed natural gas (CNG) on vessels carrying passengers for hire. Currently, these gases are prohibited from use on uninspected and inspected passenger vessels, but not on bareboats.

Although the prohibition dates back to 1937, recent advances in technology in addition to the availability, convenience and cleanliness now argue in favor of LPG and CNG. Many requests have been made to the Coast Guard that they reevaluate this prohibition. The same ad hoc committee which submitted the proposal for a separate regulatory category for recreational charter boats lobbied hard for an end to the prohibition. It contended that the permissible fuels, alcohol and kerosene, although less explosive, pose a greater risk of flare-up and fire. Many charter boats have LNG and CNG stoves and minimal enforcement efforts have not impeded its usage.

In reviewing its casualty statistics for recreational boats in 1979 and 1980, the Coast Guard found only one of 22 galley fires was attributable to propane. These statistics, in addition to the public outcry, were instrumental in the decision to provide regulatory relief.
In March 1984, proposed rules were published in the Federal Register which would allow the use of liquefied and non-liquefied gas for cooking purposes only, provided certain stringent A.B.Y.C. design, installation, and testing standards are met. Considerable controversy continues to envelop the cooking gas issue, however, including strong opposition to its usage. As a result, a supplemental notice restating the Coast Guard position and soliciting further comment should appear in the Federal Register shortly.

II. SOLAS

The International Convention for Safety of Life at Sea (SOLAS) is a treaty among maritime nations which recognize the international need to set minimum standards for passenger vessel construction, equipment and safety operations for vessels making international voyages. An international voyage is defined as one from a port in a country which is party to SOLAS to a port outside such country or vice versa. This includes voyages between a country and its territories. The treaty provides for reciprocity for foreign vessels from countries having inspection laws and standards similar to those of the United States. Among other things, it allows the United States to annually inspect the propulsion and lifesaving equipment of a foreign vessel with a valid certificate of inspection.

With certain exceptions, the provisions of SOLAS
apply to recreational charter boats in the category of small passenger vessels. If they embark on international voyages carrying more than twelve passengers, they are required to have a Passenger Ship Safety Certificate (or Exemption Certificate). The United States considers voyages between the continental United States and Hawaii or Alaska to be international voyages for Subchapter T purposes. It excludes certain voyages in the Great Lakes region. It provides for reciprocal recognition of the certificate of inspection in the possession of charter boats from countries party to the treaty. Charter boats from countries not members of SOLAS which meet the applicability requirements of Subchapter T are required to be inspected and certificated in the same manner as the T-boats.

III. Manning and Licensing

The federal law requires that all vessels carrying passengers for hire be manned by licensed individuals, regardless of the documentation or state registration status, tonnage, or length of the vessel. Recreational charter boats which are small passenger vessels or uninspected passenger vessels must be in the charge of individuals licensed for these types of vessels. Bareboats are not required to have a licensed operator because they are not considered to have passengers for hire aboard. (For a detailed discussion, see Chapter II,
"Charter Boat Arrangements").

A license presumably attests to the holder's proficiency for the route and class of vessel being operated. The Coast Guard is authorized to promulgate, implement, and enforce regulations which prescribe the manning and licensing provisions. Any owner, charterer, managing operator, agent, master, or individual in charge of a boat operating in violation of these requirements is liable for a civil penalty of $1000 and the boat is liable in rem for the penalty. A license can be suspended or revoked if the holder violates the marine safety laws and regulations or commits an act of incompetence, misconduct, or negligence.

With the enactment of the Motorboat Act of 1910, Congress established the first standards for the licensing of operators on motorized small vessels carrying passengers. The Small Passenger Safety Vessel Act and its implementing regulations mandated licensed operators for small passenger vessels. The Federal Boat Safety Act of 1971 required any uninspected boat equipped with propulsion machinery carrying passengers for hire to be operated by a person holding a license issued by the Coast Guard. Current licensing provisions relevant to charter boats have been recodified at Title 46, Chapters 71 and 89.
A. Current Licensing Requirements

The Motorboat Operators' License, the Ocean Operators' License, and the Inland Operators' License are the licenses which currently may be required of the person in charge of a recreational charter boat. The Motorboat Operators' License, commonly referred to as the "six-pack," qualifies a boat owner, captain, or person in charge to carry six or less passengers on a charter boat under 15 tons. Sailboats without propulsion machinery are not required to have a licensed operator while carrying six or less passengers. The license is restricted to a specific geographic area or stretch of coastline within inland and ocean waters. The operator must be at least 18 years of age at the time of application and have a minimum of twelve months of experience in the operation of vessels to qualify for an ocean waters endorsement. Less time is required for the inland waters endorsement. The experience is subject to further geographic and recency provisions.

The Ocean Operators' License, sometimes referred to as the "100 Ton License," is the least of the tonnage licenses, allowing its recipients to operate a boat up to 100 tons on ocean waters, including the Great Lakes region, within a specific Marine Inspection Zone. The Inland Operators' License is the equivalent license for inland waters. Both licenses allow an operator to carry more than six passengers on an inspected vessel. A minimum age of 19
is required at the time of application. A minimum of two years experience in the operation of boats is required for an Ocean Operators' License; less time is necessary for an Inland Operators' License. Experience is subject to geographic and recency requirements. There are also special requirements for auxiliary sailing vessel and sail propelled vessel endorsements.

The Motorboat Operators' and Ocean and Inland Operator's Licenses require a written application, a physical examination, experience, a written professional examination, and a character check and references. Documented evidence of U.S. citizenship must be submitted for Ocean Operator Licenses. This is not necessary for Inland Operator and Motorboat Operator licenses because operators need not be U.S. citizens for licensing purposes unless they are operating a documented vessel.

Operation of charter boats by licensed personnel on routes and in capacities lower than those described on the license held by them is permitted in many cases, depending upon the type of license.

B. Proposed Changes in Licensing Requirements

In August, 1983, the Coast Guard published proposed rules in the Federal Register which would reorganize and substantially alter the licensing requirements. These
changes implement the provisions of the Act of October 6, 1980 requiring licensed "officers" on all vessels which are subject to inspection. This includes small passenger vessel "operators" who currently do not have officer status. It seeks to bring the United States licensing structure into conformity with the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978. This has resulted in the creation of a category of licenses for masters and mates on vessels from 0-200 tons which would replace the 100 ton Ocean and Inland Operators' Licenses.

The newly created license for a mate would provide an interim experience level. The proposed rules require the presence of a licensed mate on a vessel more than 15 but less than 100 gross tons on "near coastal" and inland routes. ("Near coastal" waters are defined as waters within 200 miles offshore worldwide, including the Great Lakes.) The requirement for a mate would be relaxed, as it has been in the past, in situations where such a vessel operates for less than twelve hours in any 24 hour period.

The geographic restriction to a particular Marine Inspection Zone currently applicable to Ocean and Inland Operators' Licenses would be eliminated by the proposed rules. Instead, the licenses would be for either inland waters or near coastal waters. The licenses would be issued in 50 gross ton increments, commensurate with the
experience of the applicant. Different experience requirements are provided for mates and masters licensed in the near coastal waters. Basically, a mate's license requires a minimum of 18 months experience and a master's license requires a minimum of 24 months experience. Inland waters require less time. Time accumulated for a Motorboat Operators' and Mate's License would count toward the overall time required for a master's license. Under the proposed rules, an applicant for a license as a master for near coastal waters must be 20 years old at the time of application; an applicant for a master's or mate's license for inland waters or for a mate's license for near coastal waters must be 18 years old.

The proposed rules create a license for an "Operator of Uninspected Passenger Vessels" which is the equivalent to the Motorboat Operators' License subject to a number of modifications. The Uninspected Passenger Vessel license would enable an operator to carry six or less passengers on vessels of 100 gross tons or less. Specific geographic restrictions on the licenses would be replaced by either an inland or a coastal waters endorsement. This would allow, for example, a licensee to run a charter boat in New England and in Florida without acquiring separate endorsements for each location. First time applicants would be tested on their knowledge of more comprehensive information than that
which is tested in the current written examination. Licenses issued to persons not citizens of the United States would be limited to state or Coast Guard numbered boats.

A supplemental notice will be published in the Federal Register in December, 1984 which will revise the proposed rules and invite further comment. The final rules are anticipated in the summer of 1985.

IV. Conclusion

Legislative response to particularly tragic marine accidents and to casualty statistics has provided the chief impetus for the safety requirements which apply to vessels under 100 tons. A major problem with this forceful legislative and regulatory response is that it has classified the requirements based on such things as tonnage, length, and means of propulsion rather than on the purpose for which a vessel is intended. As a result, recreational charter boats are sorted into a number of categories. Boats carrying more than 6 passengers on a time charter are categorized as "small passenger vessels"; boats carrying less than 6 passengers on a time charter are categorized as "uninspected passenger vessels"; bareboats are not considered to carry passengers for hire and therefore fall into the category of "uninspected vessels," regardless of the number of charterers aboard the boat. Only the recently created category of "recreational vessels" groups all types...
of charter boats together, but it applies to the manufacturers.

There is tremendous variation in the stringency of each of these categories. Most boats must be built from the keel up or undergo a major refit to meet the small passenger vessel standards; periodically, they must undergo rigorous inspection procedures. Uninspected vessels merely meet certain equipment standards to be in conformity. Ironically, the safety risks on a bareboat charter boat and those on a time charter boat are often indistinguishable.

A cogent argument can be made for rethinking the safety requirements which apply to charter boats. By creating a regulatory category for recreational charter vessels, rulemakers could craft regulations suitable to the unique nature of recreational charter operations. Moreover, the uniformity of more appropriate standards for the entire charter industry would assist in reducing the number of boat owners who resort to sham bareboat operations in order to avoid various unreasonable safety requirements.
FOOTNOTES

12 Id. 25.45.
13 Id. 26.
17 Interview with LT John Astley, U.S. Coast Guard, Washington, D.C., 18 September 1984 (hereafter cited as Astley interview).
18 Interview with LCDR Clay E. Fust, U.S. Coast


20 Id. 176.05-5.

21 Id. 176.01-15.


24 46 C.F.R. 176.01-45 (1980).


28 Ibid.


31 Coast Guard, Safety Manual, Sec. 10.B.3.


35 46 C.F.R. 176.01-30.
40 Ibid., p. 13.
43 Astley interview.
46 Interview with LCDR Don Parsons, U.S. Coast Guard, Washington, D.C. (July 10, 1984).
47 U.S., Department of Transportation, Coast Guard, "Carriage and Use of Liquefied or Nonliquefied Flammable Gas as Cooking Rules on Vessels Carrying Passengers for Hire," Proposed Rules, Federal Register 49 (22 March 1984):10685.
48 Astley interview.
53 Coast Guard, Safety Manual, Sec. 10.B.2.d.
61 Interview with LTJG Robert Spears, U.S. Coast Guard, Washington, D.C., Sept. 20, 1984 (hereafter cited as Spears Interview).
64 NPRM, p. 35921.
65 Ibid., p. 35927.
66 Ibid.
67 Ibid.
68 Ibid., p. 35942.
69 Ibid.
70 Ibid., p. 35933.
71 Ibid., p. 35945.
72 Spears Interview.
73 NPRM, p. 35933.
74 Spears Interview.
CHAPTER VI

LIABILITY

I. Introduction

"Liability" is a comprehensive legal term including almost every hazard or responsibility, absolute, likely or contingent. It can be enforced by legal action. Today a significant number of maritime actions address or are governed by the principles of civil liability. Certain maritime losses or damages can also result in criminal liability.

This chapter is restricted to a discussion of civil liability in an admiralty context. The innumerable forms, facets, and ramifications of civil liability are far too vast to be covered exhaustively. Alternatively, the highlights are presented as they affect the rights and duties of recreational charter boat owners, charterers, and crewmembers. The assignment of liability is distinguished as it differs in a time and a bareboat charter arrangement. The chapter is divided into sections which cover the following topics: The Charter Boat Owner's Liability for the Safety of the Charterer; Liability for Damages to the Boat or to Other Persons and Property; Owner's Liability to the Crew; Seaworthiness as an Implied Warranty; Assumption
II. Charter Boat Owner's Liability for the Safety of the Charterer

Owners of vessels carrying passengers for hire under a time charter arrangement are not insurers of the lives or safety of passengers, but they are held to a high degree of care, prudence, and foresight for the safety of passengers. The recreational charter boat owner is responsible to protect his charge from injury. His duty is to exercise whatever constitutes reasonable care under the circumstances; the extent to which the circumstances surrounding maritime travel are different from those encountered in daily life and involve more danger to a passenger will determine how high a degree of care is reasonable in each case. The operator of the charter boat, whether he is the owner or the owner's captain, must act as an exceedingly competent and cautious person in light of the circumstances; otherwise, he is liable for injuries to passengers arising out of his neglect or failure to do so.

An owner who fails to conform to the standard to which he is held under the circumstances of a given situation is negligent. If this negligence is the proximate cause of the personal injury or death of a charterer, the
charterer or his survivors can seek recovery for damages. The charterer has the burden of proving (1) that the owner was negligent and (2) that the negligence was a proximate cause of injury or death. These are both questions of fact.

Only in cases where the facts of the accident warrant the inference of the owner's negligence can the charterer utilize the Res Ipsa Loquitur doctrine. Res Ipsa Loquitur means "the thing speaks for itself"; in other words, under the circumstances existing at the time, negligence can be inferred from the fact that the injury or wrongful death has occurred. That which causes the accident must be the responsibility of the owner in order for the doctrine to obtain. Accidents which would not occur in the absence of his negligence, such as the collapse of a bunk on top of a sleeping charterer, are candidates for Res Ipsa Loquitur. In such cases, the charterer must only prove the existence of the accident and the circumstances surrounding it.

Likewise, the passengers on a time charter are obligated to exercise reasonable care for their own safety. If a charterer is injured without negligence on the part of the owner or his crew members, he has no grounds for recovery.

The doctrine of "comparative negligence" or proportionate fault obtains in cases of negligence on a
recreational charter boat, as it does throughout general maritime law. Under this doctrine, for example, a charterer may be found contributorily negligent by allowing his conduct to fall below the standard to which he should conform for his own protection in the incident which causes his death or injury. He would still be allowed to recover for the negligence of the boat owner, but the damages would be apportioned by the court on the basis of relative fault. The person accused of negligence has the burden of proving contributory negligence.

For example, during the three hour evening charter of a 60 foot party boat in Florida, one of the passengers sitting on a rail fell overboard and drowned. The deceased was intoxicated and held to be negligent in his conduct. The boat operator was ruled to be negligent in not recognizing the risk of injury of the deceased to himself and in not having crewmembers enforce the boat's safety rule against sitting on the rail. As a matter of comparative negligence, the court held that the boat operator was negligent and the deceased was 75% contributorily negligent. The recovery by his survivors was proportionately reduced.

Under a time charter arrangement, the boat owner is responsible for the safety of the passengers throughout the charter period. He is liable when a charterer is injured as a result of the want of care or skill on the part
of the captain and crew.

Under a valid bareboat charter arrangement, the liability for the boat and the safety of all guests aboard typically devolves upon the charterer. The charterer owes his guests the duty of reasonable care. He becomes responsible for the negligence of any crewmembers aboard.

However, there are other sorts of recreational bareboat charters which must be examined more closely to determine the distribution of liability. If in fact the guests aboard a bareboat charter contribute any direct or indirect consideration to the charter, they may well be considered passengers for hire. In this case, the bareboat charterer would be held to a higher standard of care, equivalent to that of the owner in the time charter scenario. When the circumstances of the bareboat charter more nearly resemble a joint venture--that is the incidents of ownership pro hac vice are shared by all persons aboard, the distribution of liability should reflect this arrangement. Presumably, no one person should be liable for the well-being of others. But because this is seldom the arrangement in maritime bareboat charters, the case law is not well-developed on this issue.

If the boat owner fails to relinquish complete control of the boat to the charterer, the liability remains with the owner. (For a detailed discussion of the transfer of control, see Chapter II, "Charter Arrangements").
For example, in the case *Miami Valley Broadcasting Corp. v. Lang*, a guest aboard a charter boat brought a personal injury action against the charterer, a radio station, which was sponsoring a promotional boat race. The slip and fall injury was sustained as a result of the negligence of the boat operator. The court held that because the charter was not a demise charter, the boat owner, not the charterer, was at fault for the captain's negligence.

This case illustrates the importance of knowing whether a charter is a time or bareboat charter and accordingly, who is liable for the passengers' well-being. Lang might have won the case had she sued the correct person, thereby sparing herself and the radio station the costs of litigation. The case is indicative of the confusion which prevails regarding liability and true bareboat charters.

It is unlawful for the owner to insert any provision in the charter party which would relieve him of all liability or lessen the measure of damages in cases of personal injury to a passenger as a result of the owner's negligence. (This does not affect his legal right to limit liability as discussed *infra*).

When charterers come aboard, there is always a potential for an accident or injury resulting in the
liability of the owner. In light of this liability, the owner is well-advised to take certain precautionary measures. This should include keeping the boat and equipment in excellent condition, free from dangerous or defective conditions. A proper safety orientation and placards displaying emergency procedures can assist the charterers in conducting themselves in a safe manner, avoiding dangerous activities or areas on the boat. A good insurance policy can cover the owner's liability if he complies with the terms of this policy.

In the case of Washburn v. Ensley, a charterer on the sport fishing boat "Mardo" was injured when the boat encountered a "freak wave." The lessee/captain of the boat had sought to position the boat to reduce danger, but it hit in such a fashion as to throw the charterer into the stern rail. Washburn alleged, inter alia, that the captain failed to meet the wave head on and failed to warn him of its approach. The court ruled that the wave created a "sudden peril," resulting in an unavoidable accident. Because the captain had only about seven seconds to position the boat, his failure to warn the charterer was not held to be negligent.

Dangerous conditions such as these can arise on a boat for which the owner bears no responsibility for loss or injury. They can include perils of the sea, acts of God, war, public enemies, and saving lives at sea. In such
cases, the boat owner or captain may be found contributorily negligent; however, the standard to which he is held in an emergency not of his own making is adjusted to reflect the circumstances. He is not necessarily negligent for failing to act as prudently or competently as he might have upon reflection. In determining the owner's negligence as a question of fact, the court will consider the existence of a sudden emergency.

III. Liability for Damage to the Boat or to Other Persons and Property

Under a time charter arrangement, the recreational charter boat owner also bears responsibility for damages to the boat or to other persons and property, in addition to his responsibility to the charterer and crew. This is true (1) when the damage or loss is a result of his own negligence as well as that of the crewmembers; and (2) when it is a result of incidents beyond his or the charterer's control, such as colliding with a floating log or a sudden storm. The owner normally has little chance of obtaining compensation from the charterer for such damages, unless he can prove it was the charterer's breach of contract or negligence which caused the damage to or the loss of the boat.¹³

The captain in a time charter arrangement has a particularly difficult position since he may be required to
follow the instructions of both the charterer and the owner. In some charters, the captain receives instructions from the charterer as to itinerary. Concurrently, as an agent of the owner, he has the legal duty to provide for the safety of the crew, the passengers, and the boat. If in the judgment of the captain, the charterer’s sailing instructions could conceivably jeopardize their safety or that of other persons or property, the captain has the duty not to obey those instructions. He must try to handle the situation in such a way as to minimize the problem by accommodating the charterer, while at the same time protecting the owner’s liability. Frequently there is a clause in the charter party which expressly provides for the captain’s authority in such limited situations.

The case *Dufrene v. Ledoux* provides a good illustration of the distribution of repairs aboard the "Lady Carolyn" between the owner and the bareboat charterer. After a six month bareboat charter, the owner had certain repairs performed and filed suit to recover the cost of the repairs. The district court granted judgment for cost of repairing a bent propeller and other hull damage, plus two days rental accruing while the repairs were made; it ruled against claims for the cost of engine repair. On appeal, the trial court's decision disallowing any charge for engine repair was upheld. The cracked cylinder head was held to be
the ultimate result of normal wear and tear.

In the case of a bareboat charter, the legal liabilities ordinarily placed upon the owner in the management and operation of the boat are transferred to the charterer. As in the above case he becomes responsible for damage or loss as a result of his own negligence or the negligence of anyone to whom he entrusts the boat. Loss or damage due to sudden perils or unavoidable accidents also devolves upon the demise charterer. (This is true although the charter boat owner often retains insurance coverage for any of the above instances as a precautionary measure. The charter party may stipulate that the owner provides the insurance, in which case he is contractually liable). In the event of loss or damage, the only recourse a demise charterer has is to show that it was either a result of the fault of another, as in a collision, or a result of a preexisting condition for which the owner is liable, such as the implied warranty of seaworthiness.

The obligation of the demise charterer to return the ship in good order at the end of the lease is, of course, excused if disaster overtakes the vessel through some fault of the owner. If the fault of the charterer himself has brought about the loss, the liability rests on him. Merely as a demise charterer, however, he is not an insurer of the vessel's safety. The terms of most bareboat charters require that the boat be redelivered to the owner in the same good order and
condition in which he received it, barring normal wear and tear. This does not necessarily mean a charterer like Ledoux is prevented from returning a damaged charter boat before it has been repaired. If the charterer is liable for the damages, he may lose the damage deposit if any; or like Ledoux, the charterer may be held responsible for the cost of repairs and the cost of any operational delays which the repairs may create.19

Sometimes it is difficult to determine who is responsible for damage or injury occurring during a bareboat charter. One way to limit these disputes is to institute a procedure for inspection and operation of the equipment aboard the boat prior to and after each charter by the owner and charterer.

The owner has the burden to prove negligence on the part of the charterer.

[B]ut he makes out a prima facie case if he can go no further than to show that the boat was damaged during the charter period and then the burden of explanation, or, as it is sometimes said, of carrying on, lies upon the charterer. In the absence of exculpatory evidence, a presumption of negligence arises against him. 20

Repairs as a result of normal wear and tear are not the responsibility of the bareboat charterer. That some part of a boat such as a cylinder head wears out while in his possession does not in itself impose the cost of repair upon him. Most charter parties contain a provision
relieving the charterer of any responsibility for ordinary wear and tear.

IV. Owner's Liability to the Crew

The recreational charter boat owner has a number of legal duties which he owes to the crewmembers (including the captain) on his boat, as well as to others employed on board during operation. Failure to perform these duties may be a cause of action which can activate three remedies for these so-called "seamen": maintenance and cure; Jones Act negligence; and unseaworthiness.

1. Maintenance and Cure

Maintenance and cure is the legal obligation of the owner to maintain and cure a crewmember who is injured or taken ill while in the service of the boat. No causal connection need be shown with the seaman's duties, and the remedy is entirely unrelated to any fault or negligence on the part of the owner. If the crewmember cannot be cured aboard the boat, he is entitled to maintenance—food and shelter—and medical care ashore until he has recovered to the maximum extent practicable.

Compensation for maintenance and cure is available only to the extent to which expenses are incurred. For example, a crewmember who voluntarily receives treatment from a free clinic cannot be entitled to any compensation
for this care.

In awarding maintenance and cure, the courts have traditionally tended toward a liberal interpretation of (1) what constitutes the service of the vessel and (2) the extent to which maintenance and cure must be provided. Fault or contributory negligence on the part of the seaman does not affect his right to maintenance and cure, provided his injury or illness is not due to willful misbehavior. Other than willful misbehavior, the only way a crewmember can lose his right to maintenance and cure is his failure to disclose a known preexisting physical condition which subsequently becomes disabling while he is employed by the boat owner.

Most such incidents leading to maintenance and cure occur on board the boat. But maintenance and cure can apply to incidents occurring when a crewmember is in the dinghy or ashore on behalf of the boat. For example, a crewmember injured ashore while provisioning a boat would normally be entitled to a maintenance and cure remedy. Again, this is a question of fact to be decided by the court.

2. Jones Act Negligence

In recognition of the limitations of maintenance and cure, Congress enacted the Jones Act in 1920 for seamen. This wrongful death and negligence act provides a remedy to
a seaman or his estate if he has been injured or has died as a result of the boat owner's negligence in the course of his employment. The Jones Act entitles a seaman to a trial by jury where negligence is the charge in personam against the owner. The Jones Act right to a jury trial used in combination with an unseaworthiness claim provides a powerful basis for recovery.

For the purposes of the Jones Act, the owner is liable for the negligence of one crewmember leading to another crewmember's injury or death. The assumption of risk is not a defense available to the boat owner. Contributory negligence on the part of a crewmember does not bar his recovery, but may reduce his award in proportion with his degree of fault under the doctrine of comparative negligence.

Until the enactment of the Jones Act, there had been no relief available in either common law or general maritime law for wrongful death in the navigable waters of the United States. The Death on the High Seas Act was passed in the same year to ensure compensation to dependents for the wrongful death of a seaman on the high seas. Both statutes allow an action to be brought in an admiralty court. Previously, seamen and their families had to rely on state statutes. These federal statutes allow the surviving dependents of a crewmember on a recreational charter boat to recover in the unfortunate event of his
death from the wrongful act, neglect or default of a boat owner.

3. Seaworthiness

The concept of seaworthiness arises in personal injury cases. It is defined as the sufficiency of a vessel's structure, machinery, gear, appurtenances, tackle, appliances, and manning to be reasonably fit for its intended purpose.

The standard is not perfection, but reasonable fitness; not a ship that will weather every conceivable storm or withstand every imaginable peril of the sea, but a vessel reasonably suitable for her intended service. 27

The defective condition of a boat which would render it "unseaworthy" need not cause the entire boat to be unfit for the purpose for which she was intended. Rather, it must proximately cause the individual's injury.

The recreational charter boat owner has a nondelegable duty to correct equipment known to be defective. He needs to employ reasonable means, such as routine replacements and maintenance schedules, to be informed of conditions likely to produce or contribute to unseaworthiness and to correct these conditions. This must be done in order for him to be entitled to the benefits of the Limitation of Liability Act (see infra). 28

Seaworthiness is a relative concept depending upon
the circumstances of a boat. With respect to a recreational charter boat, the seaworthiness of the boat would vary for a boat performing day charters in Narragansett Bay and one making a passage to Bermuda. The safety regulations of the U.S. Coast Guard provide an important basis for an acceptable standard of care pertaining to the seaworthiness of a boat. This includes the regulations regarding proper manning and licensing of operators.

The seaworthiness of a boat is crucial in three respects in a recreational charter situation: (1) it is an absolute duty owed to a seaman; (2) it is an implied warranty by the owner to a bareboat and time charterer upon delivery of the boat which extends throughout the charter period in the case of a time charter; (3) it is an implied warranty by the owner to the insurance company that he will use due diligence to maintain his boat in a seaworthy condition. Seaworthiness as an implied warranty is discussed under the next heading. Discussion of seaworthiness as a duty to seamen follows.

The recreational charter boat owner has an absolute duty of providing a seaworthy boat which he owes to seamen he has employed. A seaman can bring suit against an owner for the breach of this duty. Presumably, the owner is not required to maintain an accident proof boat. Rather the injury to a crewmember must be caused by some fault or act
of neglect of the owner. However, the case law has tended to indicate the contrary: owners have been held responsible in virtually every instance where there has been no gross negligence on the part of the seaman.

In order to have a proper finding of unseaworthiness, an accident resulting in personal injury or death must occur to someone with the status of seaman; the boat must be in navigable waters at the time of the accident; the accident must have a causal connection with the boat; and the unseaworthiness condition must be the proximate cause of the injury or death.

Crewmembers of a recreational charter boat have the status of seamen. They are entitled to all the benefits and protective care which admiralty law affords seamen, including seaworthiness. The status of seaman can extend to others aboard the boat in an employee relationship with the owner (unless the boat is laid up), such as a carpenter, an entertainer, or an instructor. The employment need not be contractual: a crewmember picked up on the dock as an extra hand has the right to recovery for unseaworthiness. The status of an individual is a question of fact to be determined by the court.

An injury for which the remedy of unseaworthiness is available must occur while the boat is in navigable waters for admiralty jurisdiction to obtain. This could
extend to a boat in a boatyard for temporary repairs, so long as the boat is "in navigation," that is, in operation. Persons working aboard a boat in a yard for the winter are not considered seamen.33

Unseaworthiness must be the proximate cause of a personal injury or death. For example, the fact that there was the unseaworthy condition of oil on the foredeck at the same time a crewmember fell on the stern does not justify recovery. However, if the crewmember slipped on the oil on the foredeck and was injured, he might be entitled to recovery.

The reason that seamen are extended the protection of seaworthiness dates back to the beneficient efforts of the courts to protect seamen on commercial carriers. Seamen were regarded as improvident and incapable of protecting their rights from the hazards of the seafaring profession.34 Today there is no workmen's compensation law for seamen; however, the unseaworthiness doctrine provides much more.35 Case history has so liberally expanded the scope of unseaworthiness that it is now the principal grounds for personal injury recoveries for seamen.36 The owner's duty not only encompasses the state of the vessel and her equipment, but also includes operational negligence, the negligent behavior of fellow crewmembers, temporary conditions of unseaworthiness, and unseaworthy conditions unintended by or unknown to the owner. The owner can be
liable without fault on his part: his exercise of due diligence or of reasonable care is not sufficient in the case of a seaman. The seaman need only show that his injury was caused by the boat not being reasonably fit for its intended use. The seaman's "assumption of risk," whereby the risk of injury is considered part of the normal risk involved in the employment, is not a defense to a cause of action based on unseaworthiness.

The doctrine of comparative negligence obtains in cases of unseaworthiness, meaning that if the injured seaman's negligence has contributed to the cause of his injury, his recovery can be reduced proportionately. Comparative negligence does not totally bar recovery unless the seaman's negligence is the sole cause of the injury.

The burden of proof that an unseaworthy condition existed and proximately caused injury or death is on the seaman or his survivors making the claim. It must be demonstrated through the preponderance of evidence. The owner has the burden of showing contributory negligence on the part of the seaman in order to mitigate damages. These are questions of fact to be decided by the court.

In cases of bona fide bareboat charters, the duty to crewmembers to provide a seaworthy boat is transferred from the owner to the charterer. The owner must deliver the boat to the charterer in a seaworthy condition. It then becomes
the responsibility of the charterer as owner pro hac vice and employer of the seamen aboard to maintain the boat in a seaworthy condition.

Used in combination, the Jones Act negligence, Death on the High Seas Act, maintenance and cure, and unseaworthiness remedies provide powerful grounds for suit by the recreational charter boat crewmembers against the owner. It behooves the boat owner to insure himself and the boat against any such eventuality.

V. Seaworthiness as an Implied Warranty

1. Implied Warranty of Seaworthiness for the Charterer

Every charter arrangement--bareboat or time--has the implied or express warranty of seaworthiness under the tenets of general maritime law, unless otherwise stipulated in clear, unequivocal language. Contravention of this warranty due to lack of due diligence or reasonable care on the part of the owner is considered maritime negligence.

The standard is that the boat is "reasonably fit" for its intended use. Upon inspection, if the boat is unseaworthy to such an extent that a charter is untenable, the charterer can repudiate the charter party and refuse the boat. If he does accept the boat, however, he must pay the charter hire. The warranty of seaworthiness can be disclaimed where a defect is evident upon inspection and the
charterer has had the opportunity to inspect the boat. 43

"If repairs are necessary to maintain seaworthiness during
the charter, then the charterer should see to it that the
owner makes them." 44

The primary obligation of the owner under a bareboat
charter arrangement is to furnish the boat in a seaworthy
state when it is delivered to the charterer. The bareboat
charterer then takes over pro hac vice the responsibilities
and obligations of the owner, including the seaworthiness of
the boat. In the event of personal injury or death, the
question would arise as to whether it was a result of
unseaworthiness attributable to the charterer or to a
preexisting condition of unseaworthiness. Only a
preponderance of evidence one way or another could satisfy
the court. 45

Even in the absence of outright negligence, the
owner is liable for unseaworthiness when he supplies
defective equipment not reasonably fit for its purpose.
However, unseaworthiness does not "allow recovery for
injuries caused by contemporaneous negligent use of
seaworthy appliances." 46

In the case of Dunn v. Southern Charters, Inc., 47 a
wrongful death action arose out of the accidental burning of
the bareboat "Second Wind." A galley fire trapped Dunn
inside the boat and he was unable to open the forward hatch
to escape. Dunn's estate sued the owner (as well as the manufacturer and supplier), employing three theories of recovery, one of which was the breach of the implied warranty of seaworthiness. The plaintiffs alleged that the owner supplied the boat with a defective hose conducting the alcohol to the stove, the absence of fire-retardant materials around the stove, and an inoperative fire extinguisher and forward hatch.

The Court held that there was not a preponderance of evidence that the accident was a result of the conduct of the owner in supplying an unseaworthy boat rather than a result of human error in utilizing the boat's appliances. Because the causal relation could not be established, the owner could not be held liable for Dunn's death, however tragic. 48

In a time charter arrangement, the owner generally has the duty not only to deliver the boat in a seaworthy condition, but also to keep the boat seaworthy during the charter period. 49 This warranty may be expressly stated in the charter party. It is an implied warranty unless there is a provision to the contrary in the charter party, with which the owner may exempt himself to a certain extent. 50

2. Seaworthiness and the Boatowner's Insurance Policy

Because seaworthiness is (1) a doctrine applied to seamen, and (2) a factor in the determination of the owner's
negligence toward others aboard with his consent, insurance companies have an evident interest in having the boats they insure operate in a seaworthy condition. As a result, most insurance companies require that the owner act in good faith to maintain a seaworthy boat. Failure or neglect to do so can trigger a limitation or withdrawal of coverage in cases where unseaworthiness is the proximate cause of a loss or injury. The burden rests with the insurance company to prove the owner acted in bad faith or was negligent.51 Because of the potential liability and expense of hull or equipment damage to a boat engaged in chartering, it behooves the owner to pay careful attention to the boat's condition, lest his policy be jeopardized.

VI. Assumption of Risk

One affirmative defense available to an owner which may bar or mitigate recovery from charterers (not crew) in a personal injury or wrongful death case is the "assumption of risk." The assumption of risk defense can apply in situations where the risk of injury is considered part of the normal and ordinary hazards incidental to participation in a sport or activity such as boating. In order to assume risk, one must knowingly and voluntarily encounter a risk which could cause him or her harm. He must understand and appreciate the risk involved and accept the risk as well as the inherent possibility of danger from it.52
A charterer as a passenger aboard a recreational charter boat assumes a certain amount of risk in choosing to engage in that activity. For example, it is common knowledge that there may be unpredictable high winds or seas that cause sudden movements aboard a boat. This is true without regard to the amount of care exercised by the owner or crew. However, because a time charter is a commercial activity involving the carriage of passengers for hire, the owner will be held to a higher standard of care than he would if he were merely entertaining friends aboard his pleasure boat. Indeed, the standard of care for entertaining friends is already very high. It is in the public interest to have boats which provide safe and dependable transportation which can be relied upon by passengers.

As previously stated, in a bareboat charter arrangement, the bareboat charterer may assume the liability of the owner for the boat and its operation. In a suit brought by one of his guests, he can assert the assumption of risk defense.

In a wrongful death or personal injury case, the burden of proving assumption of risk rests with the owner in a time charter and the charterer in a bareboat arrangement.

In the case Lockhart v. Martin, Lockhart, a
passenger for hire aboard the fishing boat "Sport Fisher" sued for injuries when he slipped and fell on an anchovy as a result of the sudden movement of the boat. The court had to decide whether or not Lockhart had assumed the risk which led to the accident; whether the risk was obvious and foreseeable as incidental to the charter activity; and whether the owner or bareboat charterer took reasonable precautions to prevent such an accident from occurring. A ruling such as this will vary with the circumstances of the charter. Lockhart was an experienced fisherman and had fished aboard this boat many times. He was aware that bait was often dropped onto the deck and had dropped it himself on previous occasions; the court inferred that he dropped the anchovy on which he slipped. There was no evidence that the sudden jerk of the boat which caused Lockhart to injure his knee was due to the captain's negligence rather than to a wave hitting the boat. In the absence of evident negligence by the owner, Lockhart was unable to recover from him. The court held that he had assumed the risk of such movements in coming aboard the charter fishing boat.

A charterer on a time charter and a guest on a bareboat charter do not assume the risk of negligence on the part of a fellow participant, the boatowner, or a crewmember. Negligence is not a risk incidental to recreational charter activity and there can be no merit in such a defense. A passenger on a boat has the right to
place reliance upon the operator to meet the responsibilities of the operation of the boat. 58

In a negligence or seaworthiness action involving the personal injury or death of a crewmember, an owner or bareboat charterer cannot avoid liability on the grounds that the seaman assumed the risks of employment on a recreational charter boat. 59 The difference between the "ordinary risks of calling" for the seaman and the assumption of risk was described in Klimaszewski v. Pacific-Atlantic S.S. Co., Inc. as follows:

Of course a seaman working on a fit and seaworthy vessel assumes some risks. He may get very unpleasantly seasick and be laid up for days. He may lose his balance and be injured if the ship tosses in rough seas. In nearly every occupation there is some inherent and unavoidable risk which does not arise out of negligence or defective equipment . . . But seamen . . . do not assume the types of risks which caused injury to plaintiff in this case, namely, negligence of another or a vessel which is unseaworthy. 60

In conclusion, the assumption of risk defense for the owner may be useful in suits with charterers under certain circumstances; likewise, it may be useful to a bareboat charterer in a suit brought by his guests. It is not available to either, however, in suits involving crewmembers.
VII. Limitation of Liability

Another defensive action available to the owner of a recreational charter boat is the statutory right to limit his liability for certain damage, personal injury, or wrongful death claims arising during the operation of the boat. The Limitation of Liability Act, Sec. 183(a) provides that the owner of a vessel may file a petition with an admiralty court to limit his liability to the value of his interest in the vessel or $60 per gross ton if the damage or injury was not occasioned with his "privity or knowledge."

An exhaustive examination of the conditions and ramifications of the limitation of liability is well beyond the scope of this research. However, the fundamentals of this "privilege" are discussed in light of the recreational charter boat, especially in light of the implications of this limitation for personal injury and damage suits and the controversy it has engendered.

The limitation of the vessel owner's liability is a unique feature of maritime law. It was initiated in U.S. history to put the U.S. commercial fleet and shipbuilding industry on an equal footing with the leading maritime nations of Europe where the limitation of liability was a common practice. "The great object of the law was to encourage ship-building and to induce capitalists to invest money in this branch of industry." The theory was to confine the risk of loss to an owner, not personally at
fault, to his invested interest in a ship. With this purpose in mind, Congress enacted the Limitation of Liability Act in 1851. Subsequent amendments and court interpretations had the effect of availing the right to limit liability to any vessel, including pleasure vessels. A pleasure yacht, regardless of its intended use, purpose, size, or activity, is a vessel for the purpose of the Act.

In order for the right to limit liability to obtain, the incident involving an owner's liability must occur in navigable waters. Relief afforded by the statute must be administered by an admiralty court. The owner's petition for limitation of liability is to be filed with the appropriate district court within six months of receiving written notice of a claim. He need not admit liability prior to filing a petition. Rather, he can seek exoneration from liability at the same time he files for limitation of liability.

If only one claim is involved in an incident, such as an injury to one charterer, the claimant may file suit in a state court to recover for the owner's liability. A district court retains jurisdiction over the limitation proceeding pending the outcome of the claimant's action in the state court. If more than one claim is filed, all such claims and the limitation proceeding are to be resolved in one federal court and one proceeding.
The amount to which the owner shall limit his liability is the value of the boat after the incident or accident. The owner can surrender his boat to a federal court in connection with limitation proceedings. If he wishes to keep his boat, he can post a bond for the amount of the value of the boat. If the boat is a total loss, as in a fire or a sinking, the owner's liability is extinguished if he is allowed to limit it. He owes the value of the boat—in this case, nothing. Insurance on the vessel is not part of the owner's "interest" and need not be surrendered. If limitation of liability is granted, claimants share the fund on a pro rata basis.

The claimant seeking recovery from a recreational charter boat owner for his liability must first establish that the owner is guilty of some negligence or fault. In the event of fault or negligence, the owner has the burden to prove that the incident transpired without his privity or knowledge in order to limit liability. This is a question of fact to be examined on a case by case basis. In limitation of liability cases, "privity" is defined as "some personal participation of the owner in the fault or negligence which caused or contributed to the loss or injury." "Knowledge" is some personal cognizance or means of knowledge of the conditions which caused or contributed to the incident, unless proper means were adopted to avert it.
In the case Tittle v. Aldacosta, a passenger on a charter fishing boat slipped and fell when crossing from the transom of the boat to the dock. It was the practice on the boat to lay a damp towel on the transom before passengers disembarked. However on this occasion, the mate had failed to do so. The Fifth Circuit reversed a lower court decision and found the captain-owner and mate negligent. Addressing the issue of whether the owner might limit his liability the court stated:

The plight of the owner-present obviously calls for closer scrutiny. Unlike owners who are remote physically and operationally, he cannot rightfully claim that his investment in a seagoing enterprise is imperiled by actions of those over whom he can exercise no immediate control... Where the physical cause of the casualty is one as to which the owner on board has no real knowledge or means of knowledge, his presence does not deny him the right to limitation. But where the operational command of the whole enterprise is in the hands of the owner then present, he is charged with privity and knowledge on usual principles for the negligent acts of those under his effective command... On the circumstances of this case the owner cannot immunize himself from derivative liability since he was on board, conned the vessel, and had himself devised the plan which was carried into effect by one over whom he exercised direct command. 78

Generally, if the owner is aboard the charter boat during an incident such as this, he has far less chance of disclaiming privity or knowledge.79 What appears to distinguish pleasure boat cases where the owner has been aboard and has or has not been able to limit liability is the nature of the fault. In cases where the fault is
operational as it is in this case, the owner generally loses his statutory protection; in cases of equipment malfunction despite reasonable inspection, such as a defective winch, limitation of liability may obtain. 80

A true bareboat charterer, as owner pro hac vice, has the right to limit liability by law: 46 U.S.C. sec. 186 defines "owner" as including a charterer who "shall man, victual, and navigate such vessel at his own expense, or by his own procurement." 81

Many recreational charter boats are owned by corporations. Corporations, like private owners, can limit liability. The privity or knowledge of a managing officer or agent of the corporation who comprehends the corporation's business as it pertains to the charter boat is regarded as the privity or knowledge of the corporation for ownership purposes. 82

Normally, the privity or knowledge of an ordinary servant or employee who does not have a managerial function will not be ascribed to the corporation or individual owner. 83 By law, the privity or knowledge of the captain of a seagoing vessel which is a "pleasure yacht," in cases of personal injury or death, is not considered the privity or knowledge of the owner. 84 However, in a recent case involving the corporately owned charter fishing boat, "Dixie Lee II," the captain was considered
sufficiently high in the management and operation of the offshore business of the Harrison Boat House, Inc. that his negligent actions in failing to listen to the weather or heed the ominous approaching storm were chargeable to the knowledge of his principal, Harrison Boat House, Inc. 85

In this case, twelve passengers and the captain drowned in the Chesapeake Bay in the severe storm. Even though there were radios in the pier office and on board the boat broadcasting storm warnings, the president and officers of the corporation did not monitor the reports nor was there evidence that the captain had listened. The Court ruled that the corporate boat owner had privity and knowledge of the acts of negligence and limitation of liability was denied.

Unseaworthiness per se does not preclude limitation of liability unless the owner has privity or knowledge. 86 However, failure of the owner to exercise due diligence to make a vessel seaworthy can be considered the privity of the owner if a vessel's unseaworthy condition develops in the course of a voyage. 87

Although no court has denied limitation of liability for the reason that a vessel is a pleasure boat, decisions have been made with reluctance and the qualification of pleasure boats for limitation of liability has historically been a subject of controversy. Opponents refer to the legislative intent to foster the shipping industry, querying
the connection between shipbuilding, commerce, and trade with pleasure boats. The thriving pleasure boat industry is considered unlikely to lose buyers if the Act were no longer to apply to pleasure boats. Authorities have characterized its application to pleasure boats as a "charter of irresponsibility for a few wealthy individuals" and "a general license to kill and destroy." They deplore the injustice of a serious injury limited to the small value of an offending boat especially in light of the availability of insurance protection.

Proponents of the Act for pleasure boats argue for the uniformity which its application to all vessels preserves. Moreover, they point out that the pleasure boat industry is economically significant enough on its own to afford it the benefits of protection. A more persuasive argument is that boat owners are currently exposed to most of the same liabilities as commercial vessels. As discussed throughout the chapter, these include the extraordinary liabilities incurred in cases of negligence toward passengers, and more financially consequential still, of duties to seamen.

As a result of the corporate protection and the extensive marine insurance coverage currently available, limitation of liability may have become obsolete not only for pleasure boats, but also for all types of vessels. Gilmore and Black point out the fact that the Act was
legislated

in the era before the corporation had become the standard form of business organization and before present forms of insurance protection (such as Protection and Indemnity insurance) were available. 91

Court interpretations are predicted to construe the Limitation of Liability Act more narrowly in the future.92 Uniform elimination of the Act through legislative action may be a more sensible approach than to erode it with judicial interpretation which would slowly eliminate those classes of vessels where limitation of liability most strongly offends the general conviction in fairness.

VIII. Products Liability

No discussion of liability aboard recreational charter boats would be complete without reference to products liability law. In recent years, admiralty law has slowly but surely followed the modern trends in shoreside product liability law.93 Product liability suits in admiralty are currently filed on an ever escalating scale. It is now possible to bring a suit in admiralty for reasons of damage to property or injury to a person aboard a recreational charter boat caused by a poorly made or defective product.

The term "product liability" itself has no definite meaning in the law; rather, it is a phrase used to describe
three theories of recovery against a manufacturer, distributor, and retailer for injuries or damage caused by their products. 94

The public interest in human safety requires the maximum possible protection for the user of the product, and those best able to afford it are the suppliers of the chattel. By placing their goods upon the market, the suppliers represent to the public that they are suitable and safe for use; and by packaging, advertising, and otherwise they do everything they can to induce this belief. The middleman is no mere conduit, a mere mechanical device, through which the thing is to reach the ultimate user. The supplier has invited and solicited the use; and when it leads to disaster, he should not be permitted to avoid the responsibility by saying that he made no contract with the consumer, or that he used all reasonable care. 95

The three theories of product liability are (1) negligence; (2) breach of warranty; and (3) strict liability.

(1) Negligence occurs when the manufacturer, distributor, or retailer has failed to meet the appropriate standards of conduct and this failure or neglect proximately causes an injury or damage. The standard is that all persons conduct themselves in such a way as to avoid "reasonably foreseeable harm" to another, regardless of whether unusual circumstances arise. Persons with a special knowledge in a particular field, such as a manufacturer, must use their special knowledge to avoid harm to others. 96

(2) There are three types of warranty which may be breached in products liability law. First, the "express
doctrine of unseaworthiness, it is liability without
fault. 98

In the case of an injury to the charterer or to the
crew or damage to their property caused by a defective
product aboard a recreational charter boat, they may choose
to sue the owner for negligence. In this case, the owner
has the option to settle the claims against himself and then
seek indemnification from the seller or manufacturer.
However, the charterer, crewmember, owner, or anyone
lawfully aboard is entitled by law to file suit directly
against the manufacturers and sellers. 99

In order to recover from the manufacturer or seller,
the plaintiff must show the following:
(1) Based on circumstantial evidence, the product must have
been defective or harmful in some respect;
(2) The supplier is connected with the product in some
respect;
(3) The defect existed at the time when the supplier parted
with the product;
(4) Wrongful death, injury or property damage was
proximately caused by the product;
(5) The incident cannot be wholly attributed to causes
other than the defect. 100

If the product is used abnormally, liability may not
follow. 101

Professional services, such as those of naval
architects, have thus far been excluded from product liability, although this area of product liability law is beginning to change.

Product liability cases may appear before an admiralty court if the incident occurs in navigable waters and the subject matter relates to admiralty concerns. Depending on the theory of recovery utilized, the suit may be either a tort or breach of contract action, but current actions in admiralty are primarily tort actions. Laches -- the failure to do the required thing at the proper time -- or the statute of limitations apply respectively if the suit is brought long after the product was manufactured.

In any product liability action, the common law doctrines of the lack of privity or knowledge, contributory negligence, and assumption of risk cannot bar recovery, but comparative negligence can reduce recovery. A plaintiff's failure to discover or guard against a defect is not considered contributory negligence; only a person who uses a product knowing its dangerous state may be barred from recovery from the supplier. Contract defenses such as disclaimers are not available in tort actions.

The case of Dunn v. Southern Charters, Inc. provides a good illustration of a product liability action. As previously stated, this case involved the death of a charterer who was unable to escape from belowdecks when a
galley fire broke out during a recreational bareboat charter. Dunn et al. alleged that the charterer's death resulted from a number of defective conditions on the boat. Among other things, they sought to recover from the manufacturer and distributor on the theories of negligence and strict liability in tort. One of the conditions alleged was a defective rubber hose conducting alcohol to the stove—a hose allegedly not fit for its intended use. On the basis of evidence presented (including expert testimony), the Court held that it was not established whether the alcohol fire was caused by this defect in the stove or by human error. Nor was it clear whether the yacht or its appliances had been sold by the manufacturer and distributor in an unreasonably dangerous condition. Thus the suppliers could not be held for strict liability in tort. With regard to the negligence charge, the evidence did not establish that suppliers had breached the duty to exercise reasonable care. Consequently, the plaintiffs were unable to recover for product liability.\textsuperscript{106}

IX. CONCLUSION

Undoubtedly the distribution of liability and the sobering consequences will come as a surprise to those accustomed to a canvas painted with sun, seas, and either a sailboat stiffened with wind, a sumptuous spread of food and drink on the cockpit table, or a prize fish hoisted over the
There are some chief points about the liabilities which arise in a recreational charter boat operation which should be understood in order to avoid any legal shoals. As discussed, the owner, the charterer, and the crewmember have rights and duties in relation to one another, to the boat, and to other persons and property. The assignment of these rights and obligations varies with the type and circumstances of the charter operation. Liability may also vary with the circumstances that arise at the time of an accident. Generally the owner bears most of the responsibility for liability during a time charter and the charterer shoulders most of the liability in a bareboat charter. However, if damage, injury, or death results from equipment aboard which is not fit for its intended use, the manufacturer, distributor, or salesperson may be held accountable.

There are a number of remedies available to the owner, the charterer, and especially the crewmember if any one of them fails to act in accordance with the legal standards to which he is held. For example, the charterer can bring suit for the owner's breach of the warranty of seaworthiness and the crewmember can bring suit for maintenance and cure, Jones Act negligence, and unseaworthiness. Likewise, under certain circumstances there are defenses available to the owner, charterer, and
crewmember in the event of a liability suit. For instance, charterers and guests assume some of the normal hazards of chartering while they are aboard the boat. The owner or bareboat charterer can employ the "assumption of risk" defense against claims of negligence on his part. The owner can also limit his liability to the value of the boat if damage or injury is not occasioned with his privity or knowledge.

Because of the difficulty in distinguishing whether a charter is a time or bareboat charter, the assignment of some types of liability can be unclear. But because there are major differences in the allocation of liability in these two types of charters, it is important that each participant, especially the one who shoulders the greatest responsibility, be acquainted with his obligations in order to fulfill them and to protect himself with proper insurance coverage in the event of his failure to do so. Clarification on the bareboat issue would facilitate an understanding of these responsibilities.
FOOTNOTES


6 The Great Northern, 251 F.2d 826 (9th Cir. 1918).


8 Miami Valley Broadcasting Corp. v. Lang, 429 So.2d 1333 (Fla. App. 4 Dist. 1983).


13 Gorton, Chartering Practice, p. 183.

14 Ibid., p. 177.
15 Ibid., p. 178.


19 Gorton, Chartering Practice, p. 185.

20 The Moran No. 10, 41 F.2d 255, 266 (D.C.N.Y. 1924).


22 Norris, Your Boat, p. 147.

23 Ibid., p. 148.


30 Ibid., p. 75.

31 Norris, Your Boat, p. 155.


39. Ibid., p. 45.

40. Ibid., p. 46.

41. Norris, Your Boat, p. 300.

42. The Tent, 1950 A.M.C. 947 (2d Cir. 1950).

43. Norris, Your Boat, p. 300.


49. Gorton, Chartering Practice, p. 156.

50. Ibid., p. 43.

56 Ibid., p. 342.
63 Norwich Co. v. Wright, 80 U.S. (13 Wall) 104, 121 (1871).
64 Richardson v. Harmon, 222 U.S. 96, 104, 56 L.Ed. 110, 32 S.Ct. 27 (1911).
65 Feige v. Hurley, 89 F.2d 575 (6th Cir. 1937).
67 Norwich Co. v. Wright, 80 U.S. (13 Wall) 104 (1871).
69 Norris, Your Boat, p. 227.
70 Herman, "Pleasure Craft," p. 442.
71Norwich Co. v. Wright, 80 U.S. (13 Wall) 104 (1871).


73Norwich Co. v. Wright, 80 U.S. (13 Wall) 104 (1871).


76The Cleveco, 154 F.2d 605, 1946 A.M.C. 933 (6th Cir. 1946).


78Ibid., p. 756.


80Ibid., p. 438.


82The Cleveco, 154 F.2d 605, 1946 A.M.C. 933 (6th Cir. 1946).

83See, e.g., U.S. v. Eastern Transportation Co., 59 F.2d 984, 1932 A.M.C. 964 (2d Cir. 1932); The Marguerite, 140 F.2d 491, 1944 A.M.C. 367 (7th Cir. 1944).

8446 U.S.C. 183(e), (f) (1980).


88David W. Tiffany, "Limitation of Liability and Pleasure Boats: 65 Years of Judicial Misinterpretation of

89Gilmore, Admiralty, p. 882.

90Herman, "Pleasure Craft," p. 446.

91Gilmore, Admiralty, p. 822.

92Ibid.


97Ibid., p. 40.


102Ibid., p. 170.

103Ibid., p. 171.

104Ibid.


106Ibid., p. 671.
CHAPTER VII

MARITIME LIENS

In the course of operation, a recreational charter boat may incur debts arising out of maritime transactions, contracts, or torts. Creditors with certain types of maritime claims obtain the statutory right to a "maritime lien," a property right in the boat equal to the amount of the liability. The Federal Ship Mortgage Act of 1920,\(^1\) which is the controlling law, states:

Any person furnishing repairs, supplies, tonnage, use of dry dock or marine railway, or other necessaries, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.\(^2\)

The original purpose of a maritime lien was to enable vessels to purchase "necessaries" on credit in foreign ports. A maritime lien protects those who supply or service a vessel and incur expenses in the process by providing recourse against the vessel for recovery. It is a privileged claim in a vessel in respect to some service rendered to it in the nature to facilitate its use in navigation, or an injury caused by the vessel in navigable waters to be carried into effect by the legal process in the admiralty court.\(^3\)
The lien takes effect as soon as supplies or services have been furnished. For instance, the person who supplies a bag of groceries to a charter boat is then entitled to an interest in the boat. He can look to the boat for payment of the debt rather than to the personal liability of the owner. Payment of the lien is not dependent upon the owner's solvency or affected by his bankruptcy. Rather, the lien is applied to the boat as the property itself.

A lienor need not prove or allege that credit was extended to a boat. The presumption is in his favor until there is sufficient proof to the contrary. A maritime lien, other than a preferred ship's mortgage, which must be recorded at the vessel's port of documentation, may or may not be filed with the court in order to be effective. Those which are not recorded are called "secret liens." Nor must the boat be in the possession of the creditor or injured party. If the captain of a charter boat runs up bills in Morehead City, the boat does not escape a maritime lien by heading to St. Thomas. The only requirement is that the case be brought to the court with jurisdiction over the boat's present location.

A maritime lien will stay with the boat until one of four things happen: (1) the debt is paid; (2) the boat is destroyed; (3) the boat is sold by court order; (4)
"laches," an inexcusable delay in pressing the enforcement of a claim for payment, obtain.\(^7\)

Not even the sale of a boat extinguishes a lien: the good faith purchaser who buys a boat to charter is responsible for any maritime liens incurred by the boat under the previous owner. For this reason, a buyer should thoroughly investigate the finances of a boat before purchase to ferret out any secret liens. He should insert a clause in the purchase agreement which warrants the boat free from all liens.

Those authorized by statute to procure supplies and services which can be subject to a maritime lien include the owner, his agent or captain, or any person to whom the management of the boat has been entrusted at ports where supplies and services are furnished.\(^8\) In the charter boat world, this can include yacht management outfits. A person unlawfully in possession or charge of a boat cannot bind the boat for credit.\(^9\)

The modern trend is to broadly interpret what qualifies for a lien.\(^10\) Repairs, supplies, services, towing, dockage, port fees are a few examples of what can qualify. It is essential that the transaction be maritime in nature and subject to admiralty jurisdiction. Supplies and services should be "necessaries" for the boat's business in order for a maritime lien to attach. It is the nature of
a charter boat operation that this might include such items as liquor or a video cassette.

For example, in the suit Walker–Skageth Food Stores, Inc. v. Bavois, the grocer was entitled to a maritime lien for food and liquor he supplied to a charter boat captain. These were considered to be "reasonably needed" for the boat's business and the captain had the apparent authority to order them.

A distinction is made between the personal obligation of the owner and his transactions which are for the benefit of the boat. For example, attorney fees and unpaid insurance premiums are not subject to a maritime lien. A general agent of the owner cannot foreclose a lien for wages, since he is considered a personal representative of the owner. Claims such as these must be filed in a civil court. The Act of April 25, 1968 entitled the captain, despite his status as an agent of the owner, to attach a maritime lien for unpaid wages with the same priority as a crewmember's lien for unpaid wages; however, this statutory authority was repealed in the 1983 revision of Title 46.

Recovery for maritime torts, such as collisions or personal injuries, can be grounds for a maritime lien. Crewmembers can place a lien for maintenance and cure and seaworthiness but not for the Jones Act negligence.

Under a bareboat charter arrangement, the charterer
as owner pro hac vice is responsible for supplies, repairs, liabilities, crew wages, etc. Similarly, in some time charter arrangements, the charterer may be responsible for some expenses such as food and harbor dues. The charter party normally contains a "prohibition of liens" clause precluding the charterer, his agents, or employees from permitting or suffering the creation of any maritime liens against the boat. Charterers must agree to indemnify the owner for any charges or losses in connection with a maritime lien they incur, including reasonable attorney fees.

At one time, marine suppliers had the affirmative duty to inquire as to the existence of a prohibition of liens clause before they supplied a charterer on a boat, in order to guarantee their right to attach a lien if necessary. An amendment in 1971 to the Federal Ship Mortgage Act eliminated this duty of inquiry, allowing the assertion of a lien against a boat without regard to charter. The supplier can now presume the authority of a charterer in rendering assistance where he has no knowledge to the contrary.

Situations arise where there are several liens to be enforced against a boat. In the event that the boat is seized and sold in a marshal's sale, and the proceeds are insufficient to satisfy each and every lien, the priority of
the liens must be established. Thus far no legislation or court interpretation has set a clear order of priorities. Generally speaking, however, the order in which liens are satisfied is (1) crew wages; (2) salvage costs; (3) tort and collision damages; (4) Preferred Mortgages; 5. supplies, repairs, tonnage, dockage, and other necessaries. Maritime claims are satisfied before nonmaritime claims such as a plain mortgage. For liens of equal rank and class, the last to occur in time is the first to collect.

The maritime lien allows those who have regular dealings with charter boats to extend credit with greater confidence of recovery. This is significant when one considers that chartering often involves rapid turnarounds and the necessity to repair breakdowns in a hurry. When extra money wired from the owner is slow in arrival, the supplier has the maritime lien as a legal guarantee of eventual payment. If payment is not forthcoming after a reasonable period of time, the supplier or his attorney can have the marshal seize a boat to enforce the lien. Subsequent payment by the owner or the sale of the boat should satisfy the amount due.
FOOTNOTES


3 The Westmoor, 27 F.2d 886, 887 (D.OR. 1928).


5 Ibid., p. 303.


9 Ibid.


13 Ibid., p 308.


CHAPTER VIII

MARINE INSURANCE

I. Introduction

In the previous chapter, various liabilities, rights and duties involved in a recreational charter boat operation were discussed. Clearly, the charter boat owner and the charterer have a number of legal exposures for which they must seek protection. This chapter presents marine insurance as one of the means of protection available to them.

By maintaining proper marine insurance coverage, a charter boat owner and charterer can better protect their interests in a recreational charter boat scenario. Although there is no federal statute requiring insurance on vessels carrying passengers for hire, the legal exposures are such that the boat owner and, in certain cases, the charterer would be foolhardy not to do so.

The following discussion is not intended as a full discourse on the marine insurance policies and provisions available in a charter boat situation. Rather, it seeks to illuminate the provisions which have particular significance for a charter boat operation. It first examines the various
types of policies and provisions available on the market today and then suggests means in which these might be better tailored to the distribution of liabilities in a recreational time and bareboat charter arrangement.

A. Marine Insurance in General

Marine insurance varies from most other types of insurance in two respects. First, suits involving marine insurance contracts normally fall within the ambit of admiralty rather than civil jurisdiction. Secondly, the marine insurance industry is not regulated on either the federal or state level in the same fashion as other types of insurance. Once again, the consistent U.S. interest in international maritime uniformity accounts in part for the relative absence of regulation: most of the significant insurance companies overseas have historically gone virtually unregulated. In order to compete with these companies, the U.S. has sought to place its own marine insurance industry on an equal footing. Moreover, the risks incumbent upon a vessel at sea are more varied and potentially far greater than those incurred ashore. Marine insurers have retained control over their decisions regarding the acceptance and pricing of risks. As a result there is a considerable range in the coverages, exclusions, terms, formats, and premiums in the policies available to cover a recreational charter boat.
Traditionally, insurance companies have been less inclined to underwrite the additional exposures which a pleasure boat incurs in a charter situation, especially when it may be under the command of numerous charterers as in a bareboat operation. However, there are both foreign and domestic companies which do write charter boat insurance. Most insurance policies on boats chartering in the U.S. are written by domestic insurance companies. Foreign companies underwrite a relatively higher portion of U.S. boats chartering away from the U.S. mainland.

Like all other vessels, recreational charter boats can acquire two principle types of insurance coverage: hull insurance, and protection and indemnity (P&I) insurance. Essentially, hull insurance covers physical damage to the boat and damages for which the named insured is liable in cases of collision up to the value of the hull policy. P&I or liability insurance covers the costs of bodily injury, and property damages above and beyond the hull policy for which the named insured is legally responsible. Often these two types of insurance are combined in a package policy.

There are two general categories of policies utilized for recreational charter boats: (1) a yacht policy and (2) standard commercial hull and P&I policies. A yacht policy is a nonstandard policy originally drafted for pleasure boats, but endorsements for charter may be added. It combines the hull and P&I policies. Yacht policies are
most frequently utilized for bareboat charters and less typically written for time charters. Although primarily intended for merchant vessels, standard marine commercial policies are commonly used for recreational time charter boats, head boats, and charter fishing boats. The "Taylor" hull policy form is popular because of its broad coverage of hull and machinery, including coverage for the negligence of the crew. The "AHAB" form is used by some insurance companies for older boats because it excludes coverage for the negligence of the crew in connection with the machinery. The reasoning behind this is that insurance companies consider machinery on an older boat to be a greater risk in the event of crew negligence and are thus unwilling to provide such coverage. The American Institute Time Hulls (AITH) form is used on occasion, but is considered less suitable for a charter boat.

To date, a standard policy written solely for recreational charter boats is the exception. Marine Office of America Corp. (MOAC) does offer a standard charter fishing boat and head boat policy. This is a yacht policy with certain provisions borrowed from a commercial policy to tailor it to a commercial operation.

1. Insurance Rates and Deductions

Insurance rates are normally a percentage of the agreed value of the boat and sometimes subject to a minimum
amount. Rates are based on several aspects of the insurance policy. First, they are based on the charter operation: the size, age, and type of the boat, gas or diesel engine, safety devices aboard, loss history, season, navigational range, location, and availability of salvage equipment at that location.9 The further away from the U.S. mainland the boat operates, the more expensive the insurance (and the harder it is to acquire).10 Second—and often more important—is the integrity of the insured, his financial stability and background, the sailing experience of the person in command, and whether the owner is a preferred customer.11 Rates may also be affected by the way the risk is described, the purpose the charter is to serve (e.g., tax shelter, managed yacht, charter to the owner's friends only), and risks the insurance company has incurred across the board.12

The size of the deductible can affect the insurance rate for a charter boat. Often it is set at 1% of the agreed value, but may be raised or lowered with a corresponding decrease or increase in the premium. Deductions are employed to limit the nuisance claims involving minor repairs.13 The charter firm "La Vida Charters" has a $1,000 deductible which it covers by charging an $85 non-refundable fee for insurance coverage of its charterers. These fees go into a fund to be used for
repairs up to that amount. Special deductibles are often applied to unattached equipment such as a dinghy or outboard.

Insurance companies generally consider a boat in a bareboat fleet as a preferable insurance risk to one which is chartered out by an individual owner. Charters with professional crew are considered even less hazardous. Premiums reflect these perceived levels of exposure. It can be very difficult to find reasonable bareboat insurance for an individual bareboat, especially away from the continental U.S.

II. Provisions Commonly Found in Charter Boat Policies

As previously stated, there is tremendous variation in the exact formats and conditions of the policies written on recreational charter boats. However, the following types of provisions are common to most insurance policies—both yacht and standard commercial policies—except where indicated.

   a. Trust and Uberrimae Fidae

   All policies require the insured to act as if he had no insurance protecting the charter boat, its equipment, and the persons aboard. Furthermore, the policy contract must be negotiated uberrimae fidae, which means "of utmost good
faith." The insured is responsible for fully disclosing all material facts which may be relevant to the insurance company's appraisal of the risk; otherwise, the policy can be voided. Marine insurance is based on trust and a handshake. This relationship must exist between the underwriter, agent, boat owner, and charterer.

b. Named Insured

A "named insured" clause states who is insured under the policy. For the recreational charterer, it is necessary to examine the terms of the policy to determine whom this covers besides the owner. In most cases it is extended to the captain as the owner's agent, but this should not be assumed. If the captain is not a named insured and there is an accident, for example, the captain may have to pay the claim if he is found negligent.

Some companies cover the charterer as a named insured or he can pay extra to be included. However, many companies will not include the charterer as a named insured. The reasoning behind this is that if both the owner and the charterer are named insured, the insurance company would then be unable to subrogate a claim brought by the charterer against the owner in order to sue the charterer. Moreover, if the owner chooses to sue the charterer, or vice versa, the insurance company would not respond. He would have to sue the other party for assets other than the insurance
policy. To protect the right to bring suit, the policy may insure the charterer as a "charterer" rather than as a named insured. Even if this is done, however, in practice, if the charterer has a claim against the owner, the insurance company tends to pay it without any subsequent legal action. It is unclear whether this is out of ignorance or because it is perceived to be in their best interest.

c. Navigational Areas

Insurance policies customarily prescribe geographical limits for navigating a boat, some of which vary with the season. Operation beyond the limits can have the effect of suspending or voiding coverage. In the charter party, a provision is often added spelling out the navigational restrictions to the charterer, although this may bring into question the validity of a bareboat charter.

The case of Home Insurance Co. v. Thunderbird provides an illustration of a court interpretation of navigational limits for pleasure boats and the importance of explicit language in an insurance policy. Home endorsed a sports fishing vessel for a delivery from North Carolina to Miami, not to exceed 100 miles offshore. The boat struck a reef several miles from Chub Cay Bahamas which is located further than 100 miles from the U.S. Home withheld coverage on the grounds that the 100 mile limit referred to the continental U.S. The court held that the wording of
geographical limits in insurance policies should be strictly construed against the insurer, thereby allowing Thunderbird to collect.

d. Safety Equipment

Initially, insurance companies tended to write Coast Guard standards into the warranties of their policies covering charter boats. Thereafter, most companies lost interest in imposing the law itself and now leave it to the charter boat owner to meet applicable Coast Guard standards. Some companies continue to require a U.S. skipper. One insurance expert has found that most crewed charter boats tend to carry more than the required safety equipment, since safe operation has a direct bearing on the success of their livelihood.

If a charter boat owner warrants in an insurance policy that he will make a good faith effort to be in compliance with Coast Guard standards, he should seek to either operate a bona fide bareboat charter operation or meet the more rigorous standards of a time charter, lest the insurance company becomes more legally informed and voids the policy on the grounds that the owner breached this warranty.

e. Approval of the Charterer

In bareboat charter operations, the owner's insurance company has an interest in the qualifications of
the various charterers. Although it is impossible for the insurance company to screen each customer, the insurance company may wish to approve an owner's or broker's information application for a charterer. In cases where there is question as to the charterer's credentials, the company may ask to make the determination itself.

2. Hull Insurance

a. Explanation

Almost all hull policies for recreational charter boats are written on a "valued" basis. The boat owner and the insurance company reach an agreement on the value of the boat and its equipment. This is normally based on its current market value. The agreed value is the amount payable upon the total or constructive total loss of the boat. In the event of partial loss or damage, the owner is reimbursed for the replacement cost with no depreciation taken, except for designated items such as sails or outboards.

Hull policies generally cover the boat and its associated equipment, including the engine, sails, spars, rigging, stores, dinghy, and outboard. There may be some variation in policies for unattached equipment and accessories aboard if they are not necessary to the operation of the boat. Normally, the items covered are those agreed to by the insurer and the insured. There is
usually a limit in the order of $500 coverage for personal effects such as cameras and jewelry. It is possible to increase this amount with "Excess Personal Effects" coverage. But presumably the persons aboard will be fully covered for this under their homeowners insurance policy.

b. Survey

In most cases, the charter boat owner will be required to provide an initial condition and value survey with recommendations by a qualified and recognized independent marine surveyor. This procedure is important, especially since marine insurance is unregulated. Based upon the survey, the insurance company may only be willing to underwrite a boat for pleasure rather than for charter purposes. Prior to purchasing a boat for charter, especially an older boat, a survey conducted with the purchase of insurance in mind can indicate to the owner whether a boat shall be considered suitable for charter. Moreover, a good initial survey and periodic follow-up surveys (the latter normally at the expense of the insurance company) assist the owner in preserving his warranty of seaworthiness to the insurance company and charterer.

c. Perils

A hull policy insures the boat against certain causes of loss, generally referred to as "perils." Hull
coverage in a yacht policy is written on an "all-risk" basis, meaning the boat is covered for all risks except those expressly excluded. Typical exclusions are normal wear and tear, inherent vice, faulty manufacturing, and theft of equipment. 27

Hull coverage in standard commercial policies is written on a "named peril" basis, meaning damage to the boat is compensable only if the cause of damage is specifically mentioned in the policy. Perils commonly enumerated are peril of the sea such as storms,

... Fire, Lightning, Earthquake, Assailing Thieves, Jettisons, Barratry of the Master and Mariners and all other like Perils that shall come to the Hurt, Detriment or Damage of the Vessel. 28

The "Barratry of the Master and Mariners" phrase would indemnify a charter boat owner against damage caused by unlawful or fraudulent acts on the part of the captain or crew. 29

An "Additional Perils Clause" covers other sorts of risks. In connection with the recreational charter situation, the provisions of particular importance are those indemnifying the owner against damage as a result of the negligence of charterers and the negligence of the captain and crew, provided it has not resulted from want of due diligence by the owner.

An example of the value of the additional perils
clause appears in the case of Proprietors Insurance Company v. Siegel, in which the insurance company appealed summary judgment granted by the trial court. The case involved the boat owner who sought recovery of the insured value of the charter fishing boat "Carole" which had run aground during a charter, been beached for repairs by the charterer, and later had sunk while being towed back to Miami for repairs. Siegel was covered for "uses: Commercial including Charter Sport fishing." The negligence of charterers was an insured peril in her commercial hull policy. The exhibits introduced were evidence that the boat was seaworthy when transferred to the charterer. The charterer's "failure to return the 'Carole' gave rise to a presumption that he was negligent." Because Siegel sustained her burden of proving that the loss arose from an insured peril and there were no issues of genuine material fact, summary judgment was upheld.

This case illustrates the importance of carefully constructing a marine insurance policy which is suited to the needs of a charter operation. The inclusion of the "additional perils clause" provided grounds for Siegel to recover. Moreover, her good faith attempt to operate in accordance with the terms of the policy thwarted efforts on the part of the insurance company to withhold coverage on any other legal basis.
d. Infidelity Clause and Breach of Warranty Clause

A clause which can present problems is that which excludes loss resulting from the infidelity of persons to whom the vessel is entrusted. In the case of Mariner Charters, Inc. v. Foremost Insurance Co., Mariner Charters failed to recover from the insurance company for theft and loss of a lawfully chartered boat as a result of the "infidelity exclusion." The plaintiff maintained that it was covered for liability in those situations where the charter company was induced by false representations, trick, fraud, or the like to someone who has the previous intent to misappropriate the vessel.

But the intent of the charterer was not the governing factor in this case: the mere act of infidelity was excluded from coverage.

Such a case illustrates the importance of (1) properly screening a charterer; (2) eliminating the infidelity exclusion, if any, when chartering to strangers; and (3) acquiring theft coverage. A less common measure of protection in a yacht policy is to include a "Breach of Warranty" clause. In this context, the clause states that the coverage shall not be invalidated as a result of a breach of the charter agreement by the charterer occurring without the knowledge of the yacht owner, broker, or charter manager.
e. Free of Capture and Seizure Exclusion

The boat owner who plans to charter in other than extremely safe waters should be aware of the "Free of Capture and Seizure" clause which, in its modern version, includes "Strikes, Riots, and Civil Commotions." This clause excludes coverage for damage caused by wars, strikes, riots, civil commotion and arrest or seizure by a foreign government. A charter boat owner may wish to include rather than exclude this type of coverage by paying a higher premium, especially if he plans to charter in the Caribbean. One marine insurance expert has suggested including the following endorsement:

This policy will cover for loss or damage to an insured yacht including legal fees and/or expenses incurred in obtaining its release following confiscation, arrest, detainment, or impounding by a legally appointed authority as a result of an illegal act by the charterer without the consent and approval of the named insured.

3. Protection and Indemnity Policy

a. Explanation

The P&I policy is an indemnification agreement covering the owner of an insured boat for personal injury and damage caused by the boat not covered in the hull policy. This policy is essential with charterers aboard. In the event of personal injury or death, commercial policies provide coverage for such sums as the owner shall
be legally liable to pay, up to an agreed amount. By contrast, the P&I coverage in a yacht policy resembles automobile insurance in placing limits on compensation for loss of life or personal injury for any one person and any one accident.37

For pleasure boats the most frequently used figure is $300,000, but one million dollar coverage is recommended for the added exposure of chartering.38 If the owner is not incorporated, another approach to setting the limits of P&I coverage is to tally up and cover his assets.

As discussed, a charter boat owner may be able to limit his liability to the value of the boat for injuries or damage which occur without his privity or knowledge. Nonetheless, to protect his interests, the owner should not rely upon the limitation of liability in lieu of purchasing marine insurance beyond the value of the boat. For example, if the owner is aboard during a charter, the absence of privity or knowledge may be very hard to prove.

A charterer who wishes to raise the limits of P&I coverage can purchase "Excess P&I coverage." This is usually done through Lloyd's of London.39

Insurance companies will generally pay a claim promptly if there is no question as to the owner's liability. It is in their interest to do so in order to avoid litigation and prolonged expenses. Once they have paid the injured party, they may have him sign a release
Normally, P&I coverage is interpreted as extending to cover injuries or losses arising in connection with equipment covered by hull insurance. P&I policies do not cover exposures of the charterer while ashore and away from the boat. If there is any doubt about what is covered, it may be wise to spell out in the policy that coverage includes such activities as windsurfing, use of the dinghy, waterskiing, snorkeling and scuba diving or alternatively, to seek additional coverage for these activities.

b. Protection for the Crew

The P&I policy can be constructed to cover the owner's legal obligations to the crew such as maintenance and cure, Jones Act negligence, and the duty of seaworthiness. These obligations may or may not be specifically referred to in the policy. Because these obligations greatly increase the owner's potential liability, the insurance premium may be raised accordingly. Not all companies charge extra for this coverage, however. Some companies are more interested in the additional safety of having a professional crew aboard. Moreover, claims from crew aboard charter boats have been relatively infrequent.

c. Maritime Liens

The P&I policy can also be useful if a charter boat
is seized as a result of a maritime lien. If the incident responsible for the lien is a peril covered by the P&I policy, the policy can be posted as a bond with the court, thereby releasing the boat. This enables the charter boat to continue operation while the suit is being resolved.

4. Yacht Policy Features
a. Medical Payments

A valuable feature practically exclusive to yacht policies is "medical payments" coverage. This is a "no fault" payment of "reasonable and necessary" medical expenses for injuries to members of a charter. Customarily it is limited to $500, $1,000, or $5,000 per incident, but this can be raised with a higher premium. Injuries involving more money revert to coverage by liability insurance. Medical payments normally are not available for crewmembers. The owner may be included with an additional premium.

Medical payments coverage is useful in avoiding a liability suit. Rather than merely being a measure of goodwill, they allow the insurance company to pay small expenses without admitting the owner's liability. It also allows it to pay immediately with the hope that liability will not emerge on a grander scale at a later date.

Medical payments claims are unusual. More often, charterers will make use of their personal medical
b. Private Pleasure Only Warranty

Another feature unique to yacht policies is the warranty of private pleasure only clause. If at any time a boat is to be used for commercial purposes, including bareboat charters, the insurance company must be informed in order to endorse the charter and to provide the additional coverage. Otherwise, the private pleasure only warranty is violated and the insurance policy may be either cancelled entirely or voided for the term of the charter. In practice, if an insurance company discovers that a boat owner is chartering in violation of the pleasure only warranty, it will normally warn the owner first before voiding coverage.

Not all insurance companies are willing to extend the charter privilege. Some companies may extend the charter privilege on a per charter basis. The additional charge may be based on a percentage of the regular premium, the size of the boat, or some type of formula. Other companies may allow a certain short period of time, such as three weeks each season for charter and charge an additional percentage of the regular premium. In the latter cases, some companies require written consent from the insurance company for each charter, others merely wish to be informed, and still others require no prior approval.
When a boat owner decides to charter his boat on a regular basis, the pleasure only clause will be deleted and permission granted for chartering under the terms of the insurance company.\textsuperscript{51}

The privilege of the insurance company to decline coverage for loss or damage occurring during an unauthorized charter has been consistently upheld in court.\textsuperscript{52} For example in the case Riggs \textit{v.} Aetna Insurance Co.,\textsuperscript{53} the owner Riggs sued the insurer for a $25,000 recovery for the accidental sinking of the houseboat "Cinnabar" on the Potomac River. At the time of the sinking, the boat was under charter in violation of the pleasure only clause. Because Riggs had not acquired prior written consent, she was precluded from recovery.

If an insurance company is aware of an unauthorized charter and nonetheless approves repairs to a boat, it is unlikely to successfully void coverage thereafter. In the case Reliance Insurance Company \textit{v.} Yacht Escapade,\textsuperscript{54} Reliance sought to employ the defense of private pleasure only to avoid coverage of the stranding of the boat while under charter in the Bahamas. However, the underwriter authorized the owner to proceed with repairs despite the underwriter's knowledge at the time of the existence of a charter. Moreover, the insurance company did not deny liability until months later. The court estopped Reliance from the pleasure only defense, and the owner was covered
for the costs of repair.

If the underwriter had voided coverage for the breach of the pleasure only warranty when he first learned of the charter, it is almost certain that the court would have ruled in favor of the insurance company as it did in the Riggs case. By authorizing repairs, however, he in effect acknowledged the existence of coverage.

III. Common Claims/Litigation

The types of claims filed for charter boats are similar to those for pleasure boats. Engine fires, sinkings, groundings, submerged objects, theft, and vandalism are the most common types of claims against the hull policy.55 The slip and fall injury is a common type of claim against the P&I policy.56 There are very few claims against a P&I policy, however; people tend to go to their personal medical insurance and avoid the red tape of the P&I policy.57

The record on crewed charter claims is reported to be "relatively unblemished." This is attributed to owner/operators and captains paying special attention to maintenance, repair, and safe operation. These are important factors in a business which is often most successful as a result of word of mouth and repeat customers.58

Very little litigation arises out of recreational
charter boat claims. The greatest incidence occurs in cases of sinkings where large amounts of money are involved. Many suits involve warranties and exclusions, especially the pleasure only clause.

Insurance companies normally try to settle any claims. There is also a tendency on the part of an insurance company to pay a difficult claim and then withdraw the line of insurance or the particular provision. One insurance expert interviewed was unaware of any cases where there was subrogation of a claim between the owner and charterer.

IV. Interrelation of Charter Boat Policies and Legal Liability

There is an important interrelation between an insurance policy and the legal liability which it seeks to cover. As discussed in previous chapters, this legal liability changes with the type of arrangement--bareboat or time. To review, the owner retains control in a time charter, meaning he is legally obliged to provide a high standard of care toward the charterers, to meet certain duties toward the crew, and to be responsible for any damage incurred to or caused by the charter boat for which he is liable. The charterer assumes control and the duties of ownership in a bareboat arrangement, meaning he must provide reasonable care for his guests, meet the same duties as the
owner toward the crew, and be responsible for any damage incurred to or caused by the charter boat for which he is liable. In both time and bareboat arrangements, the owner must provide the boat in a seaworthy condition unless this is expressly waived by the charterer. Thereafter, the owner must maintain the seaworthy condition throughout a time charter and the charterer must do the same in a bareboat charter.

A problem with many of the current policies written on recreational charter boats is the confusion regarding the distribution of liability between the owner and the charterer under the various charter arrangements. For each of the above obligations, both the owner and the charterer have an insurable interest. A person's personal liability and not that of others represents his insurable interest. "Insurable interest" is any actual, lawful, and substantial economic interest in the safety and preservation of the subject of the insurance free from injury, loss, or damage. Insurance is enforceable only to the extent that it benefits one having an insurable interest at the time of the loss or injury. Although many charter boat owners carry hull and P&I policies which pay in the event of an incident attributable to the liability of either the owner or the charterer, the insurance company legally need only cover the owner's liability and, depending upon the wording of the policy, the charterer's liability in the event of his
default. Unless the owner agrees in the charter party to provide all of the insurance for the term of the charter, his insurance company can choose to cover the costs of damage or injury for which the charterer is liable, subrogate the claim, and then sue the charterer. It is therefore appropriate that the bareboat charterer carry his own insurance because he assumes liability separate from that of the owner in a bareboat situation. The charter party should be drafted to reflect whatever distribution of liability obtains and the attendant responsibility for insurance coverage.

But the fact of the matter is that, regardless of the charter arrangement, the owner most frequently provides all of the insurance. This is true in a bareboat arrangement even though most of the legal responsibilities devolve upon the charterer. Under the terms of most charter parties, both bareboat and time, the owner agrees to provide the insurance.65 As a result, he can thereby become contractually obliged in a bareboat charter party to cover both his own and the liabilities of the charterer.

As discussed in Chapter II, "Charter Arrangements," the Coast Guard examines which party provides the insurance as a factor in a determination as to whether a charter arrangement is bareboat or time. If the owner provides the insurance, it is an indication that control has not been
transferred and that the arrangement is a time charter; if the charterer provides insurance to cover his liabilities, it is an indication that the charter is bareboat. If the charter is adjudged to be a time charter, the boat must operate in conformity with the applicable federal documentation and safety requirements. Hence it is again in the interest of a charter boat owner whose boat cannot meet these requirements to have the charterer provide his own insurance.

To provide more convincing evidence to the Coast Guard that the charter arrangement is bareboat, it is recommended that there be separate insurance policies for the owner and charterer in a bareboat situation, each covering his respective obligations. This would avoid the vagueness of most current policies by differentiating between the owner's and the charterer's liabilities and coverage. The owner continues to have an insurable interest in the hull during the charter period, especially (1) in the event of a breach of warranty of seaworthiness to the charterer or (2) if the charterer were unable to collect from his insurance company for whatever reason. Thus the owner would necessarily maintain a hull policy on and off charter as an obvious safety precaution. He also should maintain a P&I policy in case there is damage or injury as a result of a breach in the warranty of seaworthiness. The bareboat charterer has reasons to maintain both hull and P&I
policies to cover his legal responsibilities.

The charter party could be altered to make it mandatory that the charterer purchase an available insurance policy or provide his own equivalent for the term of the charter. The arrangement could be much like the purchase of automobile insurance for a car rental; payment would be due along with the charter hire.

If both the owner's and the charterer's policies were placed with the same insurance company, fault in the event of damage or loss would not be too critical. If the policies were placed with separate companies, a basic survey when turning over the boat to the charterer and at the time of its return would be helpful in determining whether the owner or charterer were at fault for certain types of damage.

1. Protection of a Charterer's Interest

If the charterer does not provide his own insurance in a bareboat charter situation, he should be aware of what other coverage has been provided for him, if any. Otherwise, he may be liable for damage or injury which could lead to some expense.

For example, in the case O'Donnell v. Latham, O'Donnell brought claims of general negligence and unseaworthiness against the boat owner and his insurers for
injuries sustained while a member of the fishing party was maneuvering the boat at an offshore oil rig. The court determined the rental agreement was a bareboat charter. Coverage in the policy excluded "hazards arising from unfettered use by unknown third parties." Because the accident was caused by bareboat charterers who were neither listed as "named insured" nor approved by the owner's insurance company, the injury sustained came under the exclusion. Thus, the charterer was unable to recover from the insurance company. Had the charterers inquired about the owner's policy, they might have realized the need to provide their own P&I insurance. Presumably O'Donnell may have collected from his personal medical insurance policy if one existed.

If a bareboat charterer hires his own crew, he may require insurance for the additional legal exposure.

In a time charter, charterers normally do not provide any insurance. But it is nevertheless worthwhile to ascertain the adequacy of the insurance carried by the owner and whether the premium has been paid. Excess coverage is available to a charterer if he wishes to supplement the owner's policy as a precaution.

V. Conclusion

In addition to various legal defenses such as the limitation of liability, maritime liens, and the assumption
of risk, marine insurance is another means of covering legal exposures for the owner, the charterer, and the charter crew. Although marine insurance is not required by law, this voluntary action assists in guaranteeing the overall welfare and reputation of the charter boat industry, while protecting the assets of the insured. The evident value of marine insurance underscores the importance of a properly drafted policy covering the true insurable interest of an individual.
FOOTNOTES


2 Ibid.


5 Frank Ostrow, Ocean Marine Underwriters, Inc., East Greenwich, R.I., 14 August 1984 (hereafter cited as Ostrow interview).


7 Posey interview.

8 Spaulding interview.

9 See Silberman, "Charter Yacht," p. 127; Posey interview; Ronan interview.

10 Ronan interview; Ostrow interview.

11 Ronan interview.

12 Interview with Dennis W. Nixon, Acting Chairman, Marine Affairs Department, University of Rhode Island, Kingston, R.I., 23 July 1984.

Yachting, January 1980, p. 184 (hereafter cited as Bolton, "Yacht Insurance").


16 Spaulding interview.

17 Home Insurance Co. v. Thunderbird, 338 So.2d 391 (Miss. 1976).

18 Ronan interview.

19 Ibid.


21 Spaulding interview.

22 Ronan interview.


24 Ronan interview.


26 Spaulding interview.


30 Proprietors Insurance Company v. Siegel, 410 So.2d 993 (Fla.App.3d 1982).

31 Ibid., p. 996.

32 Mariner Charters, Inc. v. Foremost Insurance Co.,
316 So.2d 602 (Fla.D.Ct.App. 1975).

33Ibid., p. 603.


37Huebner, Insurance, p. 192.


39Posey interview.

40Spaulding interview.


42Spaulding interview.


44Posey interview.


47Spaulding interview.


49Ronan Interview.

50Ibid.


54Reliance Insurance Company v. Yacht Escapade, 280 F.2d 482, 86 A.L.R.2d 1236, 1961 A.M.C. 2410 (5th Cir.

231
1960).

55 Posey interview; Spaulding interview.
56 Posey interview.
57 Spaulding interview.
59 Ronan interview; Posey interview; Spaulding interview; Ostrow interview.
60 Posey interview.
61 Ronan interview.
62 Ostrow interview.
63 Spaulding interview.
66 O'Donnell v. Latham, 525 F.2d 650 (5th Cir. 1976).
67 Ibid., p. 653.
CHAPTER IX

PROBLEMS AND DIRECTIONS
TOWARD SOLUTIONS

I. Introduction

At this point, both the boat owner engaging in a recreational charter boat operation and the charterer planning his next vacation must realize that there is more to consider in the chartering of a boat than shoal waters or foul tides. A basic legal understanding of the federal maritime requirements is as essential as the practical knowledge of seamanship and navigation.

Each individual is responsible for ascertaining and abiding by the legal requirements applicable to his circumstances. Yet one of the greatest problems confronting participants in a recreational charter operation is the absence of a single primary source which explains, in layman's terms, the fundamental federal maritime obligations. Instead, the relevant legal authorities of maritime law are scattered among various codebooks, reporters, and bulletins. Consequently, "spar deck opinion" has often taken the place of a sound working knowledge of the law.

This study has gathered together the chief federal
maritime requirements applicable to recreational chartering in an effort to provide an overview of the current legal obligations faced by owners, charterers, and other participants in the trade. This treatment is believed valuable in providing the highlights of the applicable law, which, in turn, may suggest directions to take when seeking the legal solutions which fit the circumstances of a particular charter boat operation. The research is also believed useful in exposing some of the inconsistencies of the law which have led to misconceptions about proper compliance. It has revealed some of the legal obstacles which act to discourage genuine efforts in establishing a safe and profitable charter boat operation performing in conformity with the law.

It has been shown that participants in a charter operation have rights, duties, and remedies different from those found in shoreside law. Most of the maritime traditions at the foundation of admiralty law have been in existence for centuries and reflect the dictates of shipping and shipbuilding industries and international commerce. Few of the maritime laws were originally intended to apply to pleasure boats. As a result, the logic behind the admiralty framework tends to be obscure when viewed strictly from the context of a recreational charter boat operation.

Some of the more traditional legal maritime
requirements are inappropriate for recreational charter boats. They have not, however, been updated to meet the demands of an ever expanding charter boat industry, one which can no longer be regarded as a mere cottage industry. Some of the more recently legislated requirements have been drafted to include pleasure boats, but they fail to reflect the realities of the industry. Their stringency tends to hamper the industry. In many cases, sporadic enforcement of the law has enabled the industry to grow in directions outside the purview of the law. The combination of inappropriate laws, minimal enforcement, and legal misconceptions can only serve to encourage further disregard for the law unless it is effectively and realistically altered to maximize the overall standards of safety, pleasure, and social and economic benefit to all parties concerned.

In this study, several major problem areas have been identified:

- the absence of a single primary source which explains, in layman's terms, the fundamental federal maritime requirements;
- the prevailing confusion regarding bareboat charters;
- the stringency and unsuitability of certain safety requirements;
- the failure of the charter boat requirements to
keep pace with technological advancements;
- confusion as to the distribution of liability among the owner, charterer, and crew in various types of charter arrangements;
- confusion as to the appropriate allocation of responsibility for insurance coverage in a charter boat operation.

Likewise, it is possible to enumerate certain advantages of the system as it is currently structured. Some are beneficial in a general sense; others benefit specific parties:

- the benefits associated with the special status accorded a documented vessel;
- the uniformity of admiralty law and jurisdiction;
- the ability of the owner to limit his liability;
- the preferential treatment and remedies available to crewmembers;
- the availability of the maritime lien and its priority status.

The following discussion first focuses on these problem areas and advantages and concludes with suggested measures for resolution in the future.
II. Problem Areas

1. Bareboat Charters and Safety Requirements

One of the greatest problems in the charter boat industry revealed in this research is that of bareboat charter operations. There are gross misconceptions about the distribution of liability and control among the owner, the charterer, and crew in a bareboat situation. This is reflected in the variation in the provisions of a bareboat charter party and in the allocation of responsibility for insurance coverage. Rarely is there the requisite complete transfer of control, management, and operation of the boat from the owner to the charterer in both the charter party and the actual operation of a charter. Coast Guard investigations have revealed misconceptions as to the nature of a true bareboat charter as well as disparity in the intentions of both the owners and charterers. It is conjectured that a significant portion of the charter boat operations which claim to offer bareboat charters in actuality conduct time charters and are thereby subject to the stringent safety, documentation, and coastwise trade requirements. Flipping through the charter issues of popular sailing magazines, one comes across advertisements for fully provisioned and fully insured bareboats.¹ In commonly used charter parties, boat owners set navigational limits, provide the insurance, and give the captain
authority over matters which may be viewed as limitations on
the transfer of control to the charterer.\textsuperscript{2} Stepped-up
enforcement of the bareboat laws would therefore cause major
repercussions in the charter boat industry.

Ironically, in seeking to operate in conformity with
the criteria for a true bareboat charter, a bareboat may end
up operating in a manner less consistent with the underlying
intentions of the Coast Guard to promulgate safety. For
dexample, the charterer in a true crewed bareboat charter
situation should select and hire the captain and crew.\textsuperscript{3}
Employment of the owner's regular captain and crew may be
viewed by the Coast Guard with suspicion because it
indicates that the owner may still retain some control over
the boat. However, for safety reasons, it is most logical
to hire the persons to whom the owner has entrusted the
boat. Presumably they are trustworthy, familiar with the
boat and its operation, and are skilled in seamanship and
navigation. If anything, guidelines for the bareboat
charters for recreational charter boats should be written to
encourage hiring the owner's choice of crew unless other
circumstances prevail.

As another example, the inclusion of geographic
restrictions in a charter party may be perceived by the
Customs Service and Coast Guard as a limitation on the
transfer of control from the owner to the charterer.\textsuperscript{4} Once
again, however, such navigational limits are almost always
in the charterer’s best interest. In setting these restrictions, the owner usually takes into account the location of the charter operation and the hazards present in that region. That a charterer is restricted from areas with shoal waters or from travelling long distances from the charter base is for his safety and protection. Moreover, insurance coverage in the event of an accident may not extend beyond designated areas.

Bareboat chartering has its roots in commercial shipping as a means of acquiring excess tonnage. This is unrelated to the purpose it serves today for charter boats. The popularity of the recreational bareboat charter is a recent phenomenon. It has evolved in part as a reaction to the rigorous safety standards enacted under the Small Passenger Vessel Inspection Act of 1956. Standards authorized by this Act and subsequent legislation have presented major obstacles to the charter boat industry, primarily because the standards exceed those to which currently designed and built boats are constructed. As it now stands, boats carrying more than six passengers must meet the same construction standards as other small passenger vessels such as ferry boats. Boats carrying less than six passengers need not be inspected, but they are subject to other anomalies and anachronisms in the law, such as the restriction on the use of liquefied and nonliquefied
gases for cooking purposes.\textsuperscript{6}

The necessity to either construct a charter boat from the keel up or to incur the financial burden of a major refit are more than the charter boat industry can bear. This is not to say that safety considerations should be subordinated to the financial interests of the charter boat industry. Rather it is suggested that a more reasonable compromise can be accomplished by establishing safety standards specifically tailored to the charter operation for such things as the range of operation, the number of persons permitted aboard, the type of electrical wiring, cockpit drainage, and hand rails.

2. Cooking Fuel

Discussion of the current cooking fuel problem on charter boats illustrates the cumbersome regulatory process in updating safety requirements at the pace of technological advancement. In recent years technological improvements have greatly increased the safety of cooking with liquefied and nonliquefied gases on recreational charter boats. However, the use of these cooking fuels is illegal on any vessel carrying passengers for hire (this excludes bareboats).\textsuperscript{7} Nevertheless, LNG and CNG are now preferred cooking methods on many charter boats. Enforcement to prevent violations of this regulation is virtually nonexistent, thereby indirectly encouraging disregard for
the law. In the meantime, efforts to change the regulations to reflect the technological advancements are hamstrung by the bureaucratic process.

3. Documentation

The discussion of the strict qualifications of documentation reveals the impact these laws can have on recreational charter boats. A time charter is required to be documented with an endorsement for the appropriate trade. In order to be documented for certain trades, it must be at least five net tons, properly marked, and owned and manned by a U.S. citizen. Other trades have additional requirements: the boat must be U.S. built, and ownership and registration/documentation must have always been U.S. Such rigorous standards act to limit the number of vessels which can engage in time chartering. Many boats operate in the charter trade as bareboats because they cannot qualify for documentation.

It is unlikely that the documentation laws and regulations will undergo any significant changes in the near future which would relax the requirements of a time charter. The Vessel Documentation Act of 1980 and its implementing regulations represent the extent of major modern reviews and revision. Subsequent changes such as those made in the build requirements have limited impact on charter boats. As a result, many charter boats will continue to operate on a
bareboat charter basis for documentation reasons, even if the safety requirements are eased to the point where they can be more readily met by the majority of the charter fleet.

4. Coastwise Trade Laws

The impact of the coastwise trade (cabotage) laws which falls squarely on the charter boat fleet is embodied in the statute which prohibits foreign vessels from transporting passengers between U.S. ports either directly or via a nearby foreign port. Only those vessels documented in the U.S. or those which qualify for documentation except for the tonnage requirements can engage in coastwise trade. Consequently, many charter boats charter on a bareboat basis to avoid the coastwise trade laws.

5. Liability

The discussion of the potential liability involved in chartering a pleasure boat would no doubt astound most people who charter boats but are unfamiliar with admiralty law. It would be a particular surprise to those who have previously chartered a bareboat—with or without crew—to learn of the legal responsibilities they had assumed.

For example, the remedies of maintenance and cure, Jones Act negligence, and unseaworthiness available to crewmembers against the owner or bareboat charterer as owner
pro hac vice represent a potentially cumbersome burden: recent admiralty case law indicates that the generous awards for these claims can far exceed recovery under shoreside workmen's compensation.

The owner's responsibility for a high standard of care for the safety of the charterer and an implied warranty of seaworthiness is a major legal responsibility. Any failure to conform to these standards which is the proximate cause of personal injury or death of a charterer is grounds for recovery by the injured party. Under a valid bareboat charter arrangement, the liability for the boat and the safety of all the guests aboard devolves upon the charterer. He becomes responsible for damage or loss as a result of his own negligence or that of anyone to whom he entrusts the boat, including the crew. Loss or damage due to sudden perils or unavoidable accidents is also borne by the bareboat charterer, unless he can prove it was due to a preexisting condition for which the owner is liable. The question arises and remains unanswered as to the allocation of liability in a joint venture when, for example, one person signs the bareboat charter party, but all six persons aboard have made a financial contribution and/or share in the other incidents of ownership.

Particularly offensive to the sensibilities of the average individual is the statutory right of the owner or
bareboat charterer as owner pro hac vice to limit liability
to the value of the boat for certain damage, personal injury
or wrongful death claims arising during the operation of the
boat without his privity or knowledge. 10 This is a unique
feature of admiralty law which historically sought to place
the U.S. commercial fleet on an equal footing with the
leading maritime nations of Europe where limitation of
liability was a common practice. It subsequently became a
defense available to the pleasure boat owner or bareboat
charterer. The current propriety of limiting liability--
given the availability of marine insurance and
incorporation--is a source of great controversy for all
types of vessels, especially pleasure vessels where the
value of the boat can be virtually nothing in comparison
with the value of a life. It is unlikely that the thriving
charter boat industry would suffer significantly if it were
excluded from such protection. In fact, most owners and
bareboat charterers are no doubt unaware of this means of
protection.

6. Marine Insurance

One means of protection available against many of
the legal exposures incurred in a charter boat operation is
marine insurance coverage. Discussion of the various types
of policies currently on the market and the typical clauses
has indicated the importance of shaping the coverage to the
needs of the charter boat operation such that the policy will be adequate in the event of damage, loss, or injury.

There is an important interrelation between an insurance policy and the legal liability which it seeks to cover. This legal liability shifts with the type of arrangement—bareboat or time. An insurance company is only obligated to provide coverage for the "insurable interest" of the named insured. Given the confusion over the distribution of liability under the various types of charter arrangements, there exists the possibility of inadequate coverage in charter boat policies as they are currently worded.

III. Legal Advantages for Charter Boats

Along with the disadvantages of the federal maritime laws for recreational charter boats, there are a number of benefits which would not exist had the law not been shaped by the interests of the maritime industry. A number of these advantages are associated with the special status accorded a documented vessel. Documentation entitles a vessel to certain rights, privileges, and protection. Documented vessels can acquire a preferred mortgage which simplifies boat financing by making the vessel a favorable investment.

For the charter boat which travels from state to
state or from one country to another, there are clear advantages to the uniformity of admiralty law and jurisdiction. If a charter boat were subject to a separate set of maritime laws and regulations each time it crossed a boundary, the operation might be unduly complicated and subject to greater expense.

The owner may perceive the limitation of liability as an advantage in that it allows him to confine the risk of loss, not personally his fault, to his invested interest in the boat. As a matter of overall fairness, however, the disadvantages to the injured party outweigh the advantages to the owner, especially in the context of a recreational charter boat where, as previously stated, the value of the boat may not approach the expense of injury or loss.

From the crewmembers' perspective, the availability of the remedies of maintenance and cure, Jones Act negligence, and unseaworthiness are a special benefit of admiralty law disproportionate to the modern conditions under which most crewmembers are employed.

The availability of the maritime lien is an advantage for a charter boat operation. It enables those who provide services and supplies to extend credit with the additional confidence of a legal guarantee for recovery. This is significant when one considers that rapid turnarounds and the necessity to quickly repair breakdowns are typical of the charter industry. Crewmembers also have
the advantage of preferential treatment in the priority of their liens against the boat for such things as wages or injury.

IV. Directions Toward Solutions

Gathering and synthesizing the federal maritime material relevant to the charter boat industry and exposing some of the legal predicaments has suggested a number of directions toward solutions and means of accomplishment which are worthy of further study.

1. The Charter Party

Because a charter party is the contract which initially establishes the procedures and details of the charter and sets forth the rights and duties of the parties involved, it provides an ideal opportunity to clarify the rights and duties of each party. It can be the basis for the distribution of risk and control which determine the legal relationship between the owner and charterer. The drafting of carefully considered standard charter party forms tailored to a time or bareboat, crewed or uncrewed arrangement is a recommended point of departure for a legally sound charter operation. A well-written charter party form can serve as a model to which additional conditions may be added reflecting the conditions of the particular charter.
2. Recreational Charters and Safety Standards

The prospect of increased enforcement of the charter laws and the sizeable growth in the multimillion dollar recreational charter boat industry suggest a critical need for rethinking the concept of a charter operation and the statutory and regulatory framework currently in existence. There appear to be several reasons for noncompliance with time and bareboat standards. Chief among these are ignorance and misconceptions about the law. A publication describing the laws and standards, workshops and a continuing dialogue between the charter boat community and the Coast Guard could assist in correcting these problems.

Prior to a public awareness campaign, however, the validity of the current time and bareboat charter requirements should be thoroughly scrutinized. It is recommended that a committee of charter experts be formed, consisting of members of the Coast Guard, experienced charter boat owners and operators, marine surveyors, admiralty specialists, marine insurance specialists, boatbuilders and manufacturers, charter brokers, boat safety councils, and other relevant members of the charter boat community to examine the charter question and the current safety requirements. This committee should set forth as an objective the establishment of safety provisions within reach of the charter boat industry in order that time
charter operations need not camouflage themselves as bareboat charters in order to avoid compliance.

Careful consideration should be given to the recent proposal by an ad hoc committee of marine experts to form a separate regulatory category for "recreational charter vessels" carrying up to twelve passengers. This proposal tailors the "Subchapter T" safety regulations specifically to the characteristics of the industry. The Coast Guard is now examining an internal work plan to consider such an inspection category. A category of boats carrying up to twelve passengers would dovetail with the International Convention for Safety of Life at Sea (SOLAS), which sets safety standards for international voyages on passenger vessels carrying more than twelve passengers.

There is precedent for such an advisory committee and for the establishment of a regulatory category based on the type of vessel, rather than on tonnage or length. A separate category of sailing school vessels has recently been authorized by the Sailing School Vessels Act of 1982. An advisory council of experienced owners and operators was instrumental in the drafting and passage of the sailing school vessel legislation. The act and the implementing regulations promulgate appropriate new inspection and safety requirements and remove sailing school instructors and students from the classification as seamen.

Because charter boat construction and equipment is
sensitive to technological advances, such as those made in the use of cooking fuels, an effective regulatory mechanism for periodic review and update of the safety requirements in light of recent technological advances should be developed.

3. **Coastwise Trade Law**

Several changes in the coastwise trade laws will positively affect the charter fleet if they are implemented. Coastwise trade laws limit trade between U.S. ports, either directly or via a nearby foreign port, to vessels documented in the U.S. A proposal which would legalize the "voyage to nowhere" (sailing to and from the same port and outside territorial waters) for undocumented charter fishing boats provides regulatory relief for these vessels. This change would bring coastwise trade laws applicable to the charter fishing fleet into conformity with the laws for the rest of the recreational charter fleet.

The proposal to consider only the port of embarkation and debarkation in a coastwise trade determination and to eliminate the 24 hour rule on foreign vessels making intermediate stops in the U.S. would affect charter boats travelling to and from nearby foreign countries or those making long passages between distant foreign countries and the U.S. As a practical matter, this amendment has a negligible impact on most charter boat operations because of the short distances they normally
travel.

A most welcome change in the foreign transfer laws would be a modification of the requirement of the boat owner that he seek permission from the Maritime Administration (MarAd) and pay $250 each time he wishes to charter his boat to an alien. Currently an alien cannot take command of a U.S. documented vessel without obtaining the MarAd reprieve. Although many charter operations ignore this requirement and the enforcement and penalties have thus far been negligible, there still exists the penalty of forfeiture of the boat. Numerous boat owners continue to endure the red tape and expense in obtaining permission. Given the additional income from the large number of foreigners who charter U.S. boats and the inconsequential risk to national security involved in a short term recreational charter, this is an important opportunity for regulatory relief. Such a change is currently under consideration at MarAd.

4. Limitation of Liability

In the context of the corporate protection and extensive marine insurance coverage currently available and the offensiveness of limiting liability, the Limitation of Liability Act now appears obsolete not only for the charter boat, but also for other types of vessels. Rather than eroding its application through narrow judicial
interpretation, it is recommended that measures be taken (including an impact study, if necessary) to uniformly eliminate the statute through legislative action.

5. Liability

Further analysis and clarification of the distribution of risk and liability between the owner and charterers in time and bareboat charter arrangements is required in order that each person fulfill his respective responsibilities for the safety of the charter operation. The legal status of the persons who accompany the charterer who signs the charter party should be established as either guests, passengers, or joint venturers in order to ascertain their legal relationships. A better legal understanding of liability should elucidate the personal liability and insurable interests of the owner, charterer, and other participants, thereby enabling them to protect and insure themselves accordingly.

6. Marine Insurance

Currently there is great disparity in the types of marine insurance policies and the extent of the coverage available for recreational charter boats. It is recommended that a team of competent marine insurance specialists, experienced charter boat operators and owners, marine surveyors, admiralty specialists, and Coast Guard
representatives organize to examine existing policies in the context of federal maritime law. This group of experts could conceivably assemble and standardize several insurance policy formats tailored to bareboat and time, crewed and uncrewed charters in much the same fashion as the recommended standardization of time and bareboat charter parties. These standard policies could combine the best features of the currently available yacht policies and commercial hull and protection and indemnity policies and introduce new language where further clarity is required.

Separate insurance policies for the owner and charterer in a bareboat arrangement should be drafted not only to cover their respective insurable interests, but also to satisfy the Coast Guard as to the legitimacy of the bareboat arrangement.

Based on the determination of the insurable interests of the owner and charterer, a clause could be inserted in the charter party stipulating the appropriate insurance arrangement to reflect the distribution of liability.

Until such time as the appropriate distribution of insurance coverage is worked out for a bareboat charter, it behooves the owner and charterer to ascertain the adequacy of any existing insurance policies.
V. Conclusion

In view of the foregoing problems, a critical examination of the charter boat industry is probable within the next decade. Hopefully, the awareness and concern of the industry itself rather than a tragic accident can provide the impetus for such an evaluation. Once a group of charter experts is willing to undertake such a project, it is clear from the preceding discussion that there are a number of navigable approaches to achieve workable solutions.
FOOTNOTES


7 Ibid.


16 Ibid., p. 17769.

CONCLUSION

The growing popularity of boating and chartering as forms of leisure are evidence of the modern trend to engage in water-based activities. Chartering can offer a person leisure, sport, and entertainment unmatched by any shore-based activities. But on the water as well as on the land, there must be a balance between the interests of an individual and the interests of his society. This balance is often achieved on land by a system of rules governing the community. The federal maritime laws serve a comparable purpose by controlling the growing water-based society.

To achieve such a balance on the water, it is essential that the federal maritime law evolves as it expands to cover the growing diversity in marine activities. Its application to boat chartering is no exception. Where the legal standards for the shipping industry and the charter boat industry are incompatible, they should evolve separately. Inappropriate and anachronistic requirements resulting in travesties of the law in the recreational context should be altered, not disregarded. Fairness should not be maintained through selective enforcement but rather through a set of sound standards respected by both the enforcement officials and the participants in a charter
operation.

It is time that the charter industry join forces with the lawmakers to confront some of the legal issues which present obstacles to conducting legal charter operations. Policy changes achieved by efforts endogenous to the charter boat industry have a far better chance of establishing a workable legal framework of longstanding value.
APPENDIX A

COMMONLY USED CHARTER PARTY AND ITS REVISED VERSION
YACHT CHARTER PARTY (AGREEMENT)

AGREEMENT made this ______________________ day of ______________________, 19_____, by and between
_________________________________________________________, of ________________________, owner of the * ______________________ Yacht named " ______________________ " of an over all length of about ______________________ feet, Official No ______________________, hereinafter called the Owner, and ______________________ ______________________ of ______________________, hereinafter called the Charterer.

WITNESSETH:

1. In consideration of the covenants hereinafter contained, the Owner agrees to let and the Charterer agrees to hire the Yacht from ______________________ on the ______________________ day of ______________________, 19_____, to ______________________ on the ______________________ day of ______________________, 19_____, for the total sum of ______________________ Dollars of which amount ______________________ Dollars shall be paid on the signing of this Agreement and the balance thereof as follows:

2. The Owner agrees to deliver the yacht at ______________________ on the ______________________ day of ______________________, 19_____, in full commission and in proper working order, outfitted as a yacht of her size, type and accommodations, with full equipment, inclusive of that required by law, and fully furnished, including galley and dining utensils and blankets, Jenna, clean and in good condition throughout and ready for service; and agrees to allow demurrage pro rata to the Charterer for any delay in delivery.

3. The Owner represents that the yacht is insured against fire, marine and collision risks, and with protection and indemnity coverage for the term of this charter as follows, subject to such deductibles, if any, as are specified below, and the Charterer shall thereby be relieved of any and all liability for such loss or damage and in case of any accident or disaster the Charterer shall give the Owner or ______________________ prompt notice of same.

4. Said policies of insurance are to be held by Owner. But should the Owner fail to, or elect not to, carry such insurance he shall then assume the same responsibility as if the yacht were so insured.

5. Should the yacht after delivery sustain breakdown of machinery or be disabled or damaged by fire, grounding, collision or other cause so as to prevent the use of the yacht by the Charterer for a period of not less than **twenty-four consecutive hours at any time, the same not being brought about by any act or default of the Charterer, the Owner shall make a pro rata return of hire to the Charterer of such period in excess of the said **twenty-four hours the yacht shall be disabled or unfit for use.

6. Provided, however, that in case the yacht be lost or said damage be so extensive that the yacht cannot be or is not repaired within ______________________ days, the same not being brought about by any act or default of the Charterer, then the charter price shall be abated pro rata at ______________________ per day and charter money paid in advance shall be rebated pro rata from the time of such damage, and the Charterer shall have the right to terminate this charter.

7. The Charterer agrees to accept the yacht delivered as hereinbefore provided and to pay all running expenses during the term of charter.

8. The Charterer, his agents and employees have no right or power to permit or suffer the creation of any maritime liens against the yacht, except for crew’s wages and salvage. The Charterer agrees to indemnify the Owner for any charges or losses in connection therewith, including reasonable attorneys fees.

9. The Charterer agrees to remit the charter to the following waters, viz.:

**Type of Yacht. **Usually name **Usually 5 days for each month of charter term. **50 hours on charter per one month. **Usually a period equal to one-quarter of the charter term.
8. The Charterer agrees to indemnify, defend, and hold harmless the Owner against any liabilities, costs, or expenses arising from the operation of the vessel by the Owner or by the Charterer during the term of the Agreement, provided that such liabilities, costs, or expenses are caused by the actions or inactions of the Owner or of the Crew, and are not caused by the actions or inactions of the Charterer.

9. The Charterer agrees to indemnify and hold harmless the Owner from and against all claims, losses, damages, costs, and expenses, including but not limited to any claims, losses, damages, costs, and expenses arising from any violation of any law or regulation, or any tortious act or omission, committed by or on behalf of the Charterer, its agents, or its employees, during the term of the Agreement.

10. The Charterer agrees to indemnify and hold harmless the Owner from and against all claims, losses, damages, costs, and expenses, including but not limited to any claims, losses, damages, costs, and expenses arising from any violation of any law or regulation, or any tortious act or omission, committed by or on behalf of the Charterer, its agents, or its employees, during the term of the Agreement.

11. The Charterer agrees to indemnify and hold harmless the Owner from and against all claims, losses, damages, costs, and expenses, including but not limited to any claims, losses, damages, costs, and expenses arising from any violation of any law or regulation, or any tortious act or omission, committed by or on behalf of the Charterer, its agents, or its employees, during the term of the Agreement.

12. The Charterer agrees to indemnify and hold harmless the Owner from and against all claims, losses, damages, costs, and expenses, including but not limited to any claims, losses, damages, costs, and expenses arising from any violation of any law or regulation, or any tortious act or omission, committed by or on behalf of the Charterer, its agents, or its employees, during the term of the Agreement.

13. The Charterer agrees to indemnify and hold harmless the Owner from and against all claims, losses, damages, costs, and expenses, including but not limited to any claims, losses, damages, costs, and expenses arising from any violation of any law or regulation, or any tortious act or omission, committed by or on behalf of the Charterer, its agents, or its employees, during the term of the Agreement.

14. The Charterer agrees to indemnify and hold harmless the Owner from and against all claims, losses, damages, costs, and expenses, including but not limited to any claims, losses, damages, costs, and expenses arising from any violation of any law or regulation, or any tortious act or omission, committed by or on behalf of the Charterer, its agents, or its employees, during the term of the Agreement.

15. The Charterer agrees to indemnify and hold harmless the Owner from and against all claims, losses, damages, costs, and expenses, including but not limited to any claims, losses, damages, costs, and expenses arising from any violation of any law or regulation, or any tortious act or omission, committed by or on behalf of the Charterer, its agents, or its employees, during the term of the Agreement.

16. Any covenant or clause setting out of or relating to this Agreement, or the breach thereof, shall be governed by arbitration in accordance with the Rules of the American Arbitration Association, and shall be held in the Courts and State of the Owner's residence, unless another place is mutually agreed upon. The award shall be in any Court of said State having jurisdiction thereof.

To the true and faithful performance of the foregoing Agreement, the said parties hereto bind themselves, their heirs, successors, administrators and assigns, each to the other.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

WITNESS:

(Owner)

WITNESS:

(Charterer)

COPYRIGHT 2023
YACHT CHARTER PARTY (AGREEMENT)

AGREEMENT made this ______ day of __________, 19_____ by and between

Owner of the Yacht named __________, of an over all length of about __________ feet, Official No. __________, hereinafter called the Owner, and __________, of __________, hereafter called the Charterer.

TERMS AND CONDITIONS

1. In consideration of the covenants hereinbefore contained, the Owner agrees to let and the Charterer agrees to hire the Yacht from __________ on the __________ day of __________, 19_____, to __________ on the __________ day of __________, for the total sum of __________ dollars.

PREPAYMENT

Dollars shall be paid on the signing of this Agreement and the balance thereof as follows:

DELIVERY

2. The Owner agrees to deliver the Yacht at __________ on the day of __________, in full commission and in proper working order conditioned as a yacht of her age, type and accommodations, with full equipment, including charts and navigational instruments and charts, in fair and good condition throughout, and ready for service, and agrees to charge the Charterer for any delay in delivery.

3. Should it be impossible for the Owner to make delivery as specified above, the Owner and the Charterer shall make such arrangements as they see fit in order to return the Charterer's deposit. Should the Charterer be unable to accept delivery thereof than this Agreement may be cancelled by the Charterer and all charter money paid in advance shall be returned to him.

INSURANCE

4. The owner's insurance policy does not cover the Charterer's protection and indemnity during any portion of the term of this Agreement. Hence, this coverage for the Charterer can be obtained at a nominal cost to the Charterer.

ACCIDENTS

5. The Owner agrees that should the yacht for delivery sustain breakdown of machinery or be disabled or disabled by fire, grounding, collision or other cause, so as to prevent the use of the yacht by the Charterer for a period of more than twenty-four consecutive hours, at any time during the term of the Charter, the Owner shall make a pro-rata return of hire to the Charterer of such period in excess of the said twenty-four hours, the yacht shall be delivered or undelivered.

Provided, however, that in the event the yacht be lost or shall become disabled, it is an express condition that the yacht cannot be on any term of hire or otherwise engaged within __________ days, the same not being brought about by any act or default of the Charterer, that the charter price shall be reduced pro rata at ________ per day and charter money paid in advance shall be rebated pro rata from the sum of such damage, and the Charterer shall have the right to terminate this charter.

RUNNING EXPENSES

6. The Charterer agrees to accept the yacht delivered as hereinbefore provided and to pay all running expenses during the term of charter.

LINES

7. The Charterer agrees that his agents and employees have no right or power to permit or suffer the creation of any maritime lien against the yacht, except for crew's wages and salvage. The Charterer agrees to indemnify the Owner for any charges or losses in connection therewith, including reasonable attorneys' fees.

CARGO RESTRICTION

8. Use or possession of illegal drugs, including marijuana, on board the vessel shall result in immediate termination of the charter with forfeiture of all money paid.

*Age of Yacht *Lines to be __________ in accordance with the charter term. **Hours on charter per day means **calculated a period week's movement of the charter term.
8 The Charterer agrees to redeliver the yacht, her equipment, and furnishings, free and clear of any indebtedness incurred by the Charterer, at the expiration of this charter, to the Owner, in as good condition as when delivered, ordinary wear and tear and any loss or damage for which the Owner is covered by his own insurance and Charterer's insurance (if any), as set forth in Paragraph 3 of this Agreement, excepted.

But should it be impossible for the Charterer to make redelivery of the yacht as stipulated, he shall pay demurrage pro rata to the Owner for the time that redelivery is delayed, except in the event of total loss or serious damage to such yacht, in which case the rights of the parties shall be determined by Paragraphs 5 and 8 of this Agreement.

The Charterer agrees to indemnify and save the Owner harmless from any and all liabilities for loss or damage to third persons occasioned by the negligence of the Charterer, except to the extent that any such liability is covered by the Owner's insurance, as set forth in Paragraph 5 of this Agreement.

9 The Charterer agrees that the yacht shall be employed exclusively as a pleasure boat by the sole and proper use of himself, his family, guests and servants during the term of this charter and shall not transport merchandise or carry passengers for hire or engage in any trade or in any way violate the Revenue Laws of the United States, or of any other Government within the jurisdiction of which the yacht may be at any time, and that will comply with the law in all other respects.

10 The Charterer agrees not to assign this Agreement or sub-charter the yacht without the consent of the Owner or writing.

CHAPTER II

AUSPORTY

11 It is mutually agreed that full authority regarding the operation and management of the yacht is hereby transferred to the Charterer for the term thereof.

In the event, however, that the Charterer wishes to utilize the services of a Captain and/or crew members in connection with the operation and management of the yacht, whether or not said Captain and/or crew members are employed by the Owner or by the Charterer, it is agreed that said Captain and/or crew members are agents and employees of the Charterer and not of the Owner.

In the event, however, that the United States Coast Guard or other regulatory bodies may require the Owner, except when provided by law, to provide a Captain and/or crew of the Owner in addition to the Charterer as herein provided by the Charterer, it is agreed that said Captain and/or crew members are agents and employees of the Charterer and not of the Owner.

12 It is mutually agreed that should any installment of charter money be not paid on the date designated, the Owner shall have the right to renew possession of the yacht at any time, but the Charterer shall have the right to continue possession of the yacht in an emergency for the time, period of ten hours after such notice and any such notice shall be made in writing and delivered to Charterer at the time and place of delivery of notice.

13 The Owner and Charterer recognize that no liability in connection with this Agreement or the Owner-agreed performance thereunder can arise from the ownership of the Charterer, any and within the provisions hereof, and that in the event of any liability arising to the Charterer, the Charterer shall be held harmless by the Owner as aforesaid.

14 The Charterer agrees that he will operate the yacht himself or his agents and will have the right to employ such persons as he may designate to operate the yacht during the term of the charter.

15 It is further agreed by the Charterer that the yacht is to be operated by such persons or persons designated by him in the event that the Charterer is not able to operate the yacht himself during the term of the charter.

16 Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and arbitration shall be held in the City and State of the Owner's residence unless another place is mutually agreed upon judgment upon any award reached by the Arbitrators may be entered in any Court of said State having jurisdiction thereof.

To the true and faithful performances of the foregoing Agreement the said parties hereby bind themselves, their heirs, executors, administrators and assigns, each to the other.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this day and year first above written.

WITNESS

(Owner)

WITNESS

(Charterer)
APPENDIX B

REQUEST FOR TRANSFER OF
OWNERSHIP, REGISTRY, AND FLAG,
OR CHARTER, LEASE, OR MORTGAGE
OF U.S. CITIZEN-OWNED DOCUMENTED
VESSELS (MA-29)
REQUEST FOR TRANSFER OF OWNERSHIP, REGISTRY, AND FLAG, OR CHARTER, LEASE, OR MORTGAGE OF U.S. CITIZEN-OWNED DOCUMENTED VESSELS

Processing of the application requires approximately 30 days from the date received in Navy.

IMPORTANT - Submit the original only of MA-29 together with check and documents for which approval is requested to:

ATTN: Department of Transportation
Maritime Administration - MAR 761
400 Seventh St., S.W.
Washington, D.C. 20590

READ INSTRUCTIONS BEFORE COMPLETING FORM
(See Part VIII)

No approval for the sale, transfer, charter, lease, or mortgage of a U.S. privately-owned vessel to a non-citizen may be granted unless a completed application form has been received (46 U.S.C. 808 and 839).

THE UNDERSIGNED.

Name of owner or record of vessel

Address of owner (illegible)

(Citizenship of owner)

Attorney's name, address - number, street, city, and country

and represents the following information to be accurate and true. (Foreign)

PART I - VESSEL

(a) Name of vessel and official number

(b) Former names of vessel and official numbers

(c) Type of vessel, tonnage, etc.

(d) Propulsive power, tonnage

(e) Average speed loaded

(f) Length

(g) When and where built or last constructed

(h) DWT

(i) Gross

(j) When acquired

(k) From whom

(l) Present home port of vessel

(m) Total complement

(n) Officers

(o) Crew

(p) Will employment be available for these officers and crew if ship is sold or transferred? Yes No

(q) "Yes," if what above has vessel been generally operated during the last two years?

(r) Is vessel now in operation? Yes No

(s) "Yes," if what above sets forth a vessel been generally operated during the last two years?

(t) Is vessel laid-up? Yes No

(u) If "Yes," give location and state for how long.

265
## PART II - THE ALIEN INVOLVED

(a) Is a citizen of ____________________________

If alien is a corporation, also state:

(1) Place and date of incorporation.

(2) Names, addresses and nationality of directors, officers and stockholders, and percentage of stock owned by each.

(If more space is needed, attach an additional sheet.)

## PART III - SALE OR TRANSFER

(1) Has vessel been offered for sale to American citizen? Yes No

(2) Owner's reason for desiring to sell or transfer

(3) Is vessel to be replaced? Yes No

(4) If vessel is 1,150 gross tons or over, is not less than 12 years old, and has been owned by the applicant for three years prior to the date hereof, would applicant be interested in turning in said vessel to the Maritime Administration as credit towards the construction of a new vessel, pursuant to Sections 507 or 510 of the Merchant Marine Act 1936, as amended (46 U.S.C. 1157 or 1160)?

Yes No

(State the reasons for this decision.)

Form MA-29 (Rev. 10-81)
PART III - SALE OR TRANSFER (Continued)

(a) Give details as to proposed scrapping or as to proposed employment and trade in which the vessel will be operated under foreign registry, such as commodities to be carried, range of ports, etc. If fishing vessel, state for pleasure or commercial use and type such as tuna, purse seiner, shrimp, etc.

PART IV - CHARTER OR LEASE: Complete ONLY if approval is requested of charter or lease to alien

(a) Form of charter or lease

(b) Duration of charter or lease

(c) Area(s) of operation and commodities to be carried

(d) Date of commencement

PART V - MORTGAGE: Complete ONLY if approval is requested of mortgage to alien

(a) Amount of mortgage

(b) Terms

PART VI - ADDITIONAL REQUIREMENTS

(a) Attach Certificate of Ownership of the vessel (U.S. Coast Guard Form 1330) issued by the U.S. Coast Guard at Home Port of vessel not more than 30 days prior to date of application for sales, transfers, mortgages and bareboat charters.

(b) If vessel is covered by a preferred lien or is subject to a preferred lien, the written consent of the mortgagee or lienor to surrender of the marine document incident to the sale alien and/or transfer to foreign registry and flag, or to the bareboat charter, of the vessel must be attached. If the mortgagee or lienor is a business, the consent must be attested to by appropriate official or notarized. If the mortgagee or lienor is an individual, the consent must be notarized.

(c) Attach Power-of-attorney copy of sales, charter, mortgage, or lease agreement, as appropriate.

(d) Maritime Administration regulations (46 CFR 221) require the payment of a user charge on each application, in an amount as follows:

Sale or transfer to foreign ownership, registry and flag:
| Vessels 3,000 gross tons and over | $225.00 per vessel |
| Vessels less than 3,000 gross tons | $170.00 per vessel |

Charter, lease or mortgage to alien:
| 250.00 per vessel |

Modification of any approval granted — the same as for the original approval.

Payment shall be made by Cashier’s Check, certified check, or money order, payable to “Maritime Administration.”

PART VII - CONDITIONS OF APPROVAL

Under the provisions of Section 41 of the Shipping Act, 1916, as amended (46 U.S.C. 839), conditions may be imposed in connection with any approval that may be given pursuant to this application, the failure of performance of which entails the penalties of the law. The Maritime Administration’s approval of transfer of vessels of 300 gross tons and over to foreign ownership or registry, or both (whether for operation or scrapping), will be subject to the terms and conditions of its current Foreign Transfer Policy (46 CFR 221 Appendix), copies of which will be furnished upon request. In unusual circumstances, conditions may also be imposed on vessels under 300 gross tons approved for transfer foreign. A U.S. surety company bond or other surety satisfactory to the Maritime Administration will be required to guarantee performance of any agreement containing any such conditions imposed.
PART VIII – INSTRUCTIONS FOR EXECUTION

(a) If signed by an agent of the owner, proper evidence of the authority under which agent acts must be attached.

(b) If the owner is a corporation, name and title of executive official executing this application must be given, and Secretary thereof must attest it and affix corporate seal.

(c) The particular attention of the applicant is directed to the following provisions of Section 41 of the Shipping Act, 1916, as amended (46 U.S.C. 8539):

Whenever by this Act the approval of the board is required to render any act or transaction lawful, whoever knowingly makes any false statement of a material fact to the board (Maritime Administration), or to any member thereof, or to any officer, attorney, or agent thereof, for the purpose of securing such approval, shall be guilty of a misdemeanor and subject to a fine of not more than $5,000, or to imprisonment for not more than five years, or both.

PART IX – EXECUTION (Application not acceptable unless completed according to all requirements and instructions)

IN WITNESS WHEREOF this application has been duly executed at _______________________________,
this _______________ day of _______________________________ 19__

(3) Attest:

(1) _______________________________ (Present owner of vessel)

(Affix corporate seal)

(2) _______________________________ (Name and title of executive official)

(1) For use by individual owner(s) of vessel; if corporation, type in name.
(2) For use by executive official executing application.
(3) For use by attesting official of corporation if no seal so states.

(SUBMIT ORIGINAL ONLY)
APPENDIX C

SUMMARY LIST OF LEGAL TERMINOLOGY
SUMMARY LIST OF LEGAL TERMINOLOGY

**bona fide** - in or with good faith; honestly, openly, and sincerely; without deceit or fraud.

**certiorari** - the name of a writ issued by a superior court directing an inferior court to send up to the former some pending proceeding, or all the record and proceedings in a cause before verdict with its certificate to the correctness and completeness of the record, for review or trial.

**indemnify** - to save harmless; to secure against loss or damage; to give security for the reimbursement of a person in case of an anticipated loss falling upon him.

**in personam** - an act or proceeding in personam is one done or directed against or with reference to a specific person.

**in rem** - an act or proceeding in rem is done or directed against the property, often the vessel.

**inter alia** - among other things.

**laches** - omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to adverse party; a delay independent of a fixed statutory period.

**navigable waters** - waters capable of supporting navigation or commerce, excluding "sole state" waters.

**pro hac vice** - for this turn; for this one particular occasion.

**res ipsa loquitur** - the thing speaks for itself; rebuttable presumption that the defendant was negligent.

**sole state waters** - bodies of water within state boundaries, such as lakes, under state jurisdiction.
statute of limitations - a statute prescribing time limitations to the right of action on certain described causes of action.

tort - civil wrong, injury.
BIBLIOGRAPHY

Books


Case Law


Atterbury v. Temple Stephens Co., 181 S.W.2d 659, 353 Mo.5 (Mo. 1944).
Bunge Corp. v. M/V Furness Bridge, 558 F.2d 790 (5th Cir. 1977).
California Yacht Club of Los Angeles v. Johnson, 65 F.2d 245, 1933 A.M.C. 943 (9th Cir. 1933).
The Cleveco, 154 F.2d 605, 1946 A.M.C. 933 (6th Cir. 1946).
Complaint of Bankers Trust Co., 651 F.2d 160 (3rd Cir. 1981).
Complaint of Brown, 536 F.Supp. 750 (N.D.Oh. 1982).
Feige v. Hurley, 89 F.2d 575 (6th Cir. 1937).
Foremost Insurance Co. v. Richardson, 457 U.S. 668, 102
S.Ct. 2654, 70 L.Ed.2d 81 (1982).


Gillentine v. McKeand, 426 F.2d 717 (1st Cir. 1970).

The Great Northern, 251 F.2d 826 (9th Cir. 1918).

Gunnarson v. Jacob, 94 F.2d 170 (2d Cir. 1938), cert. den., 303 U.S. 660.


The Malcolm Baxter, Jr., 277 U.S. 323, 72 L.Ed. 901, 48
S.Ct. 516, 1928 A.M.C. 960 (1928).

The Marguerite, 140 F.2d 491, 1944 A.M.C. 367 (7th Cir. 1944).


Miami Valley Broadcasting Corp. v. Lang, 429 So.2d 1333 (Fla.App. 4 Dist. 1983).


The Moran No. 10, 41 F.2d 255 (D.C.NY. 1924).


Norwich Co. v. Wright, 80 U.S. (13 Wall) 104 (1871).


Proprietors Insurance Company v. Siegel, 410 So.2d 993 (Fla.App. 3d Dist. 1982).
The Plymouth, 3 Wall 20, 18 L.Ed. 125 (1866).

Rainey v. Paquet Cruises, Inc., 709 F.2d 169 (2d Cir. 1983).


Richardson v. Harmon, 222 U.S. 96, 56 L.Ed. 110, 32 S.Ct. 27 (1911).


Rojas v. Robin, 90 So.2d 58 (La. 1956).

Rooney v. Nuta, 267 F.2d 142, 1960 A.M.C. 1212 (5th Cir. 1959), cert. den. 361 U.S. 884, 4 L.Ed.2d 120, 80 S.Ct. 156.


The Tento, 1950 A.M.C. 947 (2d Cir. 1950).

Tittle v. Aldacosta, 544 F.2d 752 1978 A.M.C. 112 (5th Cir. 1977), reh. den. 546 F.2d 906, reh. den. 546 F.2d 907, reh. den. 582 F.2d 12 (2d Cir.).


U.S. Coast Guard. U.S. Coast Guard v. License No. 145884 Issued to Jack Eichholz, Docket No. 03-0049-ASF-79, Case No. 16/22/85194 (10 March 1980).


U.S. v. Eastern Transportation Co., 59 F.2d 984, 1932 A.M.C. 964 (2d Cir. 1932).


The Westmoor, 27 F.2d 886 (D.OR. 1928).


Journals, Bulletins, and Periodicals


278


Sterling, Joel J. "Yacht Insurance." Yachting, March 1983,


Public Documents


Letter from LCDR Clay A. Fust, U.S. Coast Guard, to the Honorable E. Clay Shaw, Jr. (13 December 1982).

Letter from C.R. Halberg, Chief Counsel (Acting), U.S. Coast Guard, to Driscoll, Harmsen, and Carpenter (24 March 1975).


U.S. Coast Guard. Law Bulletin 355 (September 1965).


U.S. Department of Transportation. Maritime Administration. "Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S. Citizen-Owned Documented Vessels," MA-29 (Rev. 10-


U.S. President. Proclamation 3215 (1957).


Forms, Charter Parties, Constitutions, Masters Paper

AHAB Hull Insurance Policy Form (Revised 1 July 1962).

America's Institute Hull Clauses Form, 2 June 1977.


Protection and Indemnity Clauses Form, 1955.


Virgin Islands Charyacht League. Constitution and By-Laws. (Nov. 1982).

Interviews


Stens, Don, LCDR. U.S. Coast Guard, Washington, D.C. Interview, 10 July 1984.

