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Homeland Security

Bransom Bean reports on post 9/11 marine and immigration regulations and their impact on the US superyacht industry.

The job of a superyacht captain, never simple, has become increasingly difficult in recent years as their commands increase in size and new regulations seem to pop up like lobster pots in Boothbay Harbor. And, for some who have been around a while, coping with the special challenge of US regulations is beginning to be a problem (not surprisingly, making those who can cope worth their weight in gold).

Private yachts are not just getting bigger; they're huge and fast as well, with the current biggest "boat" now topping out at over 500 feet (see our list of the World's 100 Largest Yachts on page 65), and others luxuriously slicing through the waves at over 60 knots. To put that in perspective, World War II destroyers were under 400 feet and designed for a maximum speed of 35 knots. Even the newest US Arleigh Burke Destroyers are only 506 feet long. In other words, superyacht are getting hard to ignore, and luxurious or not, you can get a lot of explosives in something that big, making them much harder for authorities to ignore.

A survey conducted by the newly formed US Superyacht Association (USSA) found that the biggest threat to the wellbeing of the US superyacht industry is the fact that yachts are avoiding US waters because of the perceived complexity of Homeland Security regulations. While hard numbers are difficult to come by, any yacht owner who's writing the checks knows that, with berthing at \$100.00 per

foot per day plus fuel and provisions – not to mention vehicle rental and fresh flowers – when a yacht goes to the Bahamas instead of Miami, the South Florida economy takes a real hit.

Five years ago, yachting seemed much simpler. The yacht captain's job was to be the consummate host and not scratch the hull. And the owners, once onboard, could come and go as they pleased, anchor where they liked, change plans, invite guests onboard at the last moment, and just go.

"In the old days, it used to be so easy," says one captain of a US-registered yacht. "We'd leave Newport with half a dozen people, all US citizens, and when we came back we didn't even check in with Customs." Another superyacht skipper, who's now come ashore to become a very successful broker, says that he's glad he's not at sea anymore because all the rules have "taken all of the fun out of it". On the other hand, Captain Chris Callahan of the Manx-registered *Lady Lauren*, cruised the East Coast this past summer with an international crew. Describing his yacht and crew as "guests in the country", he reports no problems at all.

Lieutenant Commander George Zeiter is the "Chief of Vessel Inspection" for the US Coast Guard (USCG) from Melbourne, Florida down south to the Keys. Miami, Fort Lauderdale and Palm Beach are his turf. He confirms that scrutiny post 9/11 is certainly higher, "In actual fact, most of the criteria are largely unchanged, but we have to be more vigilant." Janice Mosher, Manager of Customer Services for CBP says, "We want to make people who aren't a threat seamless – often it's the paperwork that is wrong, not the individual."

Superyachts tend to operate independently without the shore support of their purely commercial cousins, and irregular habits do tend to be the bane of any security-sensitive organization. Couple this with irregular schedules – or no schedules at all – and superyacht captains could be forgiven for feeling a bit lonesome, at times; a feeling that is being improved by being totally conversant with the rules. Ironically, although the majority of yacht owners are American, most yachts are flagged elsewhere. Flexibility of operation – if not of tax – is given with the rules if your private boat is US-flagged, however, you may also pay a substantial amount of US taxes. Patriotism aside, conventional wisdom is that no yacht owner in their right fiscally-structured mind would fly a US flag, and people rich enough to afford a yacht tend to watch their pennies. With the US flag also comes a need for all-US crew, and marine underwriters generally take a dim view of what their actuaries perceive as a litigious nature regardless of qualifications, experience and a service culture.

What 9/11 did to the lines at airport security (not that many superyacht owners fly commercial) the International Maritime Organization (IMO) did to ocean-going vessels – including superyachts, on July 1, 2004. The IMO regulations are intended to assist the world's ports in evaluating the risk presented by visiting vessels. It falls under the term "Port State Control" as opposed to "Flag State Control" which is associated with where the vessel is registered. In addition, the US has other inspection regulations, some



dating back to 1936, which add further complications. Problems in the US for superyachts – especially non-US-flagged (i.e. most of them) – seem to descend from two directions the USCG in the form of perceived hassles for vessels entering US ports and cruising in US waters, and that the DHS specifies the Customs and Border Protection (CBP) regarding visas for crew and manifests in the infamous Notice of Arrival (NOA).

The USCG has their hands full covering something like 360 ports and approximately 8,000 foreign vessels making over 50,000 arrivals in the US each year. There are an estimated 50,000 merchant ships on the high seas besides superyachts and fishing boats, not to mention the 9 million containers of goods that frequent US ports each year.



Owner Management

The role of a superyacht captain has always been multifaceted; a cross between deep sea mariner, business manager, concierge and family friend. Ship-handling was never much more than ten percent of the job because it is bigger than that – this being the reason why not every super-tanker captain who drives 300,000-ton ships around the world can do it.

The relationship between the captain of a superyacht and her owner, usually known affectionately as “The Boss”, is quite unique and in many respects more like a Man-of-War Captain’s interface with the Admiral of his ship. Most superyachts captains, and certainly all the good ones, see their mission as providing the ultimate in personal service. Keeping their vessel and the Boss out of regulatory problems is just the beginning. However, regardless of the service level, there are things the Boss should not ask the captain to do. “It’s funny,” one yacht captain says, “The guy who flies his jet around; the Boss would never ask him to fly it under the Verrazano Narrows Bridge, so why doesn’t he listen to me.”

“Professionally, I can’t use the word no,” says one superyacht captain who has an unrestricted deep sea ticket and logged many years at sea in merchant ships before commanding a very large superyacht, “if the Boss or one of the guests wants to do something unsafe, I can’t just point to the company regulations and say no; I must come up with a fun alternative.”

It is important to keep in mind that above all, is the law of the sea. The captain of a superyacht is still the captain, and at sea is where the buck stops, not with the owner regardless of the owner’s balance sheet.

That old adage, “Where there’s confusion there’s opportunity,” applies to truly professional superyacht captains. While in some marine circles, captains come in for quite a bit of ribbing: “Big white boat, never goes to sea, twelve passengers if they’re full, more bandwidth than New York City...”, with the new unforgiving regulation regimen and bigger vessels, it takes a very special individual to be a superyacht captain. If you’re the lucky owner who happens to employ a good one, and one who’s coping nicely, you might make very sure their situation is appreciated – they’re building an awful lot of new superyachts these days and they all need good captains.

As with many things, attitude can really make a difference with US Government officials who are doing their jobs and protecting their country (and of course, they also tend to carry a gun). Attitude also extends to making sure that if the USCG wants a tour of your yacht, permission is cheerfully granted and the most senior officer possible accompanies. If you send the new deckhand out with the USCG, don’t complain if you get welded to the pier.

Otherwise, for many superyachts, their owners and their money, for now the Bahamas is close enough, thank you very much.

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DANA JINKINS

A Brief Look at Chartering in US Waters

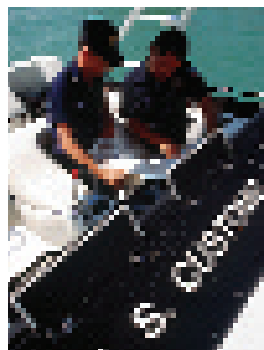
BY LISA KNAPP

Many yacht owners find the fees and intricacies of chartering in the United States as ballast that weighs them down. *Golden Boy II*, a 115ft Sovereign, charters to offset its operating costs. The yacht is flagged in the Marshall Islands and is based in California, where most of its charters originate. It also cruises the Caribbean and Florida. The cost of operating this yacht in the United States isn't chump change. "The previous owner paid the duty, but the different permits and attorney's fees to charter in the US run \$30 - \$40,000," says Matt Sawyer, *Golden Boy II*'s owner.

In general, chartering in US waters can be more expensive and difficult when compared to other charter destinations because of the waves of rules, odd laws, and fees for the charterer to navigate. Duties levied on imported yachts have an impact on the size of boats that frequent US waters. The boats in the US are smaller, too. "Chances are you won't find a vessel over 250 feet in US waters," says Diane Fraser, charter broker with Fraser Yachts Worldwide. "You may find a boat that size if the vessel paid the duty and was imported to the US, but chances are not."

A "charter party" is the maritime term for a written charter agreement. Charter parties recognized by international maritime law are demise, or bareboat charters, time charters, and voyage charters.

"Demise charters are common in the US, especially Florida," says Danielle Butler, a maritime attorney with



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"It's important to cross all the T's and dot the I's before your voyage. Make sure your paperwork for your crew is up to date...or you could get tied up."

Robert Allen Law. "The charterer assumes legal responsibility for the vessel, hires the crew, and pays for all operating expenses. The charterer takes full control of the vessel, its operation and navigation. The yacht owner relinquishes possession and command of the vessel, just short of an outright transfer of ownership." Liability for contracts and torts of the captain, crew and vessel fall upon the charterer and the vessel in rem. Maritime liens stay attached to the yacht and the owner's equity in the vessel remains at risk even though the contract relieves the owner of liability. The charterer must maintain the vessel and return it in the same condition as received, so it's a good idea to survey the vessel before and after charter.

A time charter is the opposite of a bareboat charter. The charterer merely rents space on the vessel and works with the charter broker to create a flexible itinerary, while the owner retains control, management and navigation of vessel. The owner is legally on the hook for any liability and negligence of the crew.

A voyage charter is just that – a single voyage between specific ports of call where the charterer rents space for a length of time. The owner retains control over management and navigation and is legally responsible and liable for the yacht and crew.

Industry Terms for Charter Agreements

FYBA, 80/20, MYBA, and AYCA are the ABCs of charter agreements. The Florida Yacht Brokers Association agreement (FYBA) and 80/20 are demise charters used with a yacht service agreement (YSA). FYBA and 80/20 may be used worldwide, by any vessel.

In an 80/20 split, the charter hire is split between the demise charter party and a YSA. Eighty percent of the demise charter is taxable and twenty percent found in the YSA is not taxable.

The Mediterranean Yacht Brokers Agreement (MYBA) is a time/voyage charter. "It's typically used to charter foreign-flagged, foreign-owned vessels in non-US waters," says Butler. "But MYBA can be used worldwide by any vessel needing a non-demise charter party."

The American Yacht Brokers Association agreement (AYCA) is also a time/voyage charter that can be used in US waters by any vessel needing a non-demise charter party. Typically, AYCA is used if the yacht is chartering in US waters and the vessel is flagged, built and owned in the US. A US-flagged, foreign-built yacht can use AYCA when chartering in US waters, but a MARAD (US Maritime Administration) waiver of the US build requirement of the coastwise trade laws must be issued. The waiver eliminates the need to charter the foreign-built vessel under a demise charter.

Announcement of Arrival (ANOVA)

"Foreign-flagged superyachts seeking to ply some of the most remote waters of the United States generally can't just show up, clear Customs, and cruise to another US port," says Eric J. Goldring, of Goldring & Goldring Law Firm. These vessels must notify the National Vessel Movement Center (NVMC) at least 96 hours prior to arrival in US waters. If the voyage will take less than 96 hours, i.e. Freeport to Miami, notification is required prior

to departure but no less than 24 hours prior to arrival.

“ANOA must be done online and include crew manifest and declarations,” Goldring says. “A notice of departure and separate ANOA may be required for each subsequent US port visited outside the then present local Coast Guard office’s jurisdiction.” The USCG’s local office may also require a security inspection and a pilot. The requirement for a pilot varies by port, so check local regulations in advance. Your charter broker can help easily facilitate these specifications.

MARAD Waivers

“MARAD requires an application with a non-refundable \$500 fee per waiver request and 30 days’ notice,” Butler says. “The waiver eliminates the need to charter the foreign-built vessel under a demise agreement.” Most waiver requests are approved. Once a waiver is obtained, it becomes part of the vessel’s documentation and stays with the vessel if it is sold. To be eligible for the waiver the yacht must: be at least three years old; be owned by a US citizen; and cannot carry more than 12 passengers when in service.

US Cruising Licenses

US cruising licenses are issued by US Customs and Border Protection. “Once obtained, a foreign-flagged, foreign-owned vessel can cruise US waters without clearing in and out of customs in each port,” Butler says. “The license is valid for one year and is renewable 15 days after expiration.” A nominal fee is charged and the following forms are required: an original certificate of registration; a completed customs application; and proof of clearance from a foreign port.

Clearing Customs and Crew and Passenger Visas

Customs and Border Protection must clear the yacht and crew upon arrival at the first port. Foreign nationals must obtain the appropriate visas, usually a B-1 visa for crew, with guests generally requiring a B-2 visa. Please refer to the sidebar below for detailed visa information.

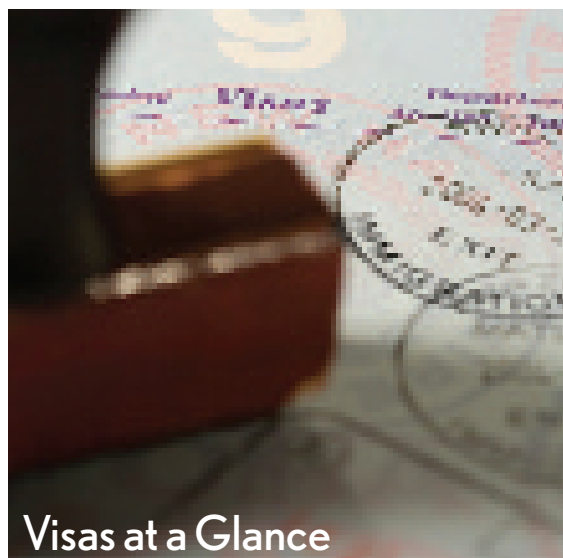
Foreign-Flagged Vessel Charters in Florida

Foreign-flagged vessels must charter with demise agreements to avoid paying Florida sales tax on the purchase price of the vessel. Yachts that were built and flagged in the US with a Florida tax ID number may charter in Florida waters. Only charter proceeds are taxable.

Once the US duty of 1.5% of the vessel’s value is paid to US Customs and Border Protection, a yacht leased on a bareboat/demise basis has sales tax applied to the gross proceeds due. The employment contract cost is not part of the gross proceeds and is not taxable. The lease is considered bareboat when no crew is provided, or if the provided crew is hired by the lessee under a separate employment contract.

Foreign-Flagged Vessel Charters in the US Virgin Islands

A formal entry granted by the US Coast Guard is required when coming from a foreign port. The USVI allows new boaters on US-flagged vessels with all US citizens onboard to apply for the no-fee new boater’s option at the most convenient customs office. This “option” allows the vessel to travel to the BVI and return to the USVI without going to customs. Announcement of arrival requirements (ANOA) must be adhered to.



CHRISTINE GLAUDE

Visas at a Glance

B-1/B-2 VISA – Temporary Visitor for Business or Pleasure

Required for foreign nationals visiting for business or pleasure who do not intend to stay in the US. Foreign nationals traveling for pleasure, as guests on a yacht, will need a B-2 visa. Crew will

need a B-1 visa, as they are entering under business purposes but not working in the US.

C-1 VISA – Alien in Transit

Required for non-immigrant crew passing through the US to join a vessel.

D VISA – Crew Member by Sea or Air

Required for crew working “in any capacity for the normal operation or service of the vessel.” This is a work visa for a single entry that’s valid for six months and is vessel specific.

C-1/D VISA – Combined Transit and Crew

Issued in lieu of separate, concurrent C-1 and D Visas. Required for dependents accompanying a crew member. Extensions of stay or changes in status are granted in the event of an emergency. The crew member’s visa shifts into D-2 status to depart with a different vessel at the discretion of the immigration officer.

E-1 VISA – Treaty Trader

Requires a treaty between two countries. “If a Dutch yacht-builder’s stock is majority owned

by citizens in The Netherlands and that company wants to open an office in the US, they can transfer a Dutch citizen here – as long as there is a treaty,” says Michael Benchetrit.

H-1B VISA – Alien in a Specialty Occupation or Profession

H-2B VISA – Temporary Worker Performing Other Services Unavailable in the United States

Some US companies will petition for highly educated professionals in the yachting industry to work in the US under the H-1 visa. An owner’s representative overseeing the build process or refit might have an H-1 visa to supervise work on the yacht in a US yard.

The H-2 visa is commonly used in industries that are seasonal and require either skilled or unskilled labor.

L-1 VISA – Intracompany Transferee with Specialized Knowledge Continuing Employment with an International Firm

Common in the shipping industry, is an intra-company transfer.

TN VISA – Trade NAFTA professional

Limited to educated Canadian and Mexican nationals entering the US to perform professional duties for no more than one-year increments.

GREEN CARD – Alien Registration Receipt Card

A Green Card holder can work in any job and even start a business in the US. Taxes must be paid on “worldwide” income.



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The Agencies

Prior to 9/11, one agency was responsible for immigrations: the Immigration and Naturalization Service (INS), which was within the US Department of Justice. INS agents were cross-trained for redundancy, inspecting cars at a border one day and adjudicating a US work permit the next.

In the post 9/11 world, INS divided into three separate bureaus that fall under the jurisdiction of the US Department of Homeland Security. The Bureau of Citizenship and Immigration Services (BCIS) adjudicates work permits and visa applications. The Bureau of Customs and Border Protection (CBP) has agents who work at all ports of entry and specialize in admissions issues. ICE is the Bureau of Immigration and Customs Enforcement, and this bureau follows up and/or polices foreign nationals visiting or working in the United States.

Visas and Immigration Laws

At the time of arrival on US soil, the captain, agent or owner must deliver a crew list or manifest to BCIS. The list should include all non-immigrant crew members, when and where engaged, and those to be discharged in the port of arrival. Dual manifests are required: an electronic list prior to arrival and a paper copy upon arrival, in addition to a departing crew list.



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Failure to furnish crew lists and reports are subject to administrative fines, as is the failure to detain and remove a crew member. The vessel may be denied clearance until the liability for the fine is determined and while the amount remains unpaid, unless a surety bond has been issued. There are numerous types of visas for foreign entry and it is important to have the visa that corresponds most closely with your reason for entering the United States.

Immigration Nation

With agents exercising their discretion from one visitor to another, it's best not to assume anything when it comes to US immigrations policies. "Just because you've cruised in and out of Florida for 30 years and know all the guys in Port Everglades, doesn't mean you won't have an immigrations problem next time," Michael Benchetrit, attorney with Robert Allen Law, says. "It's important to cross all the T's and dot the I's before your voyage," says Captain Oliver Dissman, a Canadian with a Green Card residing in Fort Lauderdale. "Make sure your paperwork for the crew is up to date before you leave the dock or country or you could get tied up."

More and more captains and owners avoid Fort Lauderdale with the problems encountered by crew that were never issues before 9/11. If given a choice between staying in Fort Lauderdale or Sint Maarten, many captains, like Steve Rodda, choose the West Indies, hands down. "I do like it here," says Rodda. "But I am always conscious that I need to keep my yacht and crew out of the US and not sit here for any length of time. That's what immigrations is all about."

Resources for immigration topics:

*Michael Benchetrit, Esquire, Robert Allen Law,
(305) 372-3300*

*Danielle Butler, Esquire, Robert Allen Law,
(305) 372-3300*

*Mark Fry, President, International Yacht Training,
(954) 779-7764
www.uscis.gov*

Resources for chartering in U.S. waters:

*Danielle Butler, Esquire, Robert Allen Law
(305)372-3300*

*Diane Fraser, Fraser Yachts WorldWide, (949) 675-6960
Eric J. Goldring, Attorney at Law, Goldring & Goldring
(732) 530-5400*

Matt Sawyer, (626) 443-8869

New Passport Regulations

As of January, 2007, the new western hemisphere travel initiative requires passports for border crossings by air, including Mexico, Canada, Bermuda, Bahamas and the Caribbean. Americans traveling to Canada or Caribbean ports of call need a passport to re-enter the United States; birth certificates with driver's licenses are no longer accepted. Passports will be required for all sea travel on yachts and cruise ships in January 2008.