

How to Make Money Chartering Your Yacht

Everything You Need to Know



Mike Vaughn

HOW TO MAKE MONEY CHARTERING YOUR YACHT

Have Fun, Make Money and Avoid Taxes

By

Michael E. Vaughn

This book covers only United States law, unless it specifically states otherwise.

Second Edition 2019

Copyright © 2003, 2019 Michael E Vaughn.

Copyright © 2019 Maritime Law Center.

All rights reserved.

www.maritimelawcenter.com

No part of this publication may be reproduced or transmitted by any means, electronic, mechanical, photocopying, recording, or otherwise without prior written permission.

Reproduction prohibitions do not apply to the Appendices contained in this book when reproduced for personal use.

HOW TO CHARTER YOUR BOAT

Table of Contents

HOW TO CHARTER YOUR YACHT.....	1
INTRODUCTION TO CHARTERING	1
Reasons to Charter Your Vessel	1
CHAPTER 1	1
BAREBOAT OR DEMISED CHARTERS	1
Foreign-Built Yacht.....	2
Bareboat vs. Passenger for Hire.....	2
Charter Agreement	2
Time or Voyage Charters	3
CHAPTER 2	4
THE BUSINESS OF BARE BOAT CHARTERS.....	4
Choice of Captain	4
When the Charterer is the Captain.....	4
Insurance.....	5
CHAPTER 3	6
HOW TO MANAGE A CHARTER BUSINESS.....	6
Limits of Operation	7
Preparing Your Vessel for Charter	7
The Charter Agreement	8
Determining Charter Rate.....	9
CHAPTER 4	10
6 PAX AND 12 PAX CHARTERS – UNINSPECTED PASSENGER VESSELS.....	10
CHAPTER 5	13
INSPECTED PASSENGER VESSELS	13
CHAPTER 6	14
COMPARISON OF CHARTER REQUIREMENTS	14

CHAPTER 7	14
TAX REASONS TO PURCHASE A YACHT REASONS	14
General Tax Deductibility.....	14
CHAPTER 8	16
STATE SALES TAX.....	16
California Sales & Use Tax.....	16
Complying with Tax Requirements	16
CHAPTER 9	17
SETTING UP A CHARTER BUSINESS	17
Corporation.....	17
Limited Liability Company (LLC).....	17
CHAPTER 10	18
OPERATING A CHARTER BUSINESS	18
Once Your Business is Set Up.....	18
CHAPTER 11	19
SMALL VESSEL WAIVER OF U.S. BUILD REQUIREMENT.....	19
CHAPTER 12	21
THE JONES ACT.....	21
RECOMMENDATIONS	24
APPENDIX 1	25
DEMISE CHARTER AGREEMENT	25
APPENDIX 2	32
ADDITIONAL CHARTER DEFINITIONS	32
ABOUT THE AUTHOR	34

HOW TO CHARTER YOUR YACHT

INTRODUCTION TO CHARTERING

The investment in a private yacht and the costs of maintenance, insurance, taxes and slip fees may be offset by chartering the vessel. This can be a profitable and rewarding experience if properly done.

The use of yachts and ships to carry passengers is very heavily regulated in the United States by the Passenger Vessel Act and the Jones Act. Unless you comply with all the rules and regulations, you may be charged with a violation of law and be subject to fines and seizure of your vessel. There are also tax advantages but you must consult with your tax advisor to ensure that they are available to you, based on your income and status.

Vessel charters are a very commonplace method of vessel management and operation. There are two basic types of charters: (1) Bareboat or Demised; and, (2) Voyage or time charters. A demised or bareboat charter the charterer takes command and control of the vessel. In a voyage or time charter, the captain and crew are provided. In the U.S. six passenger (6-pax) or twelve passenger charters (12-pax charters) are uninspected passenger vessels which may do voyage or time charters. In a 6-pax or 12-pax charter, the vessel is chartered with a captain and crew, but the charter is limited as to the number of passengers that may be on board.

Inspected Passenger Vessels are different. Inspected vessels are vessels that meet all the requirements of the federal statutes, regulations and which are inspected and issued a Certificate of Inspection by the United States Coast Guard. The number of passengers is limited by the stability letter issued to the vessel.

Reasons to Charter Your Vessel

1. You want a full-time business that gives you time on the ocean;
2. You want to acquire a yacht which may be more expensive than you would ordinarily afford;
3. You want to offset the costs of ownership;
4. You want to take advantage of income tax Section 179 deductions
5. You want to minimize or avoid state sales or use taxes.

CHAPTER 1

BAREBOAT OR DEMISED CHARTERS

A bareboat or demised charter is one in which the charterer (the person chartering the vessel) takes over full operation and management of the vessel for the period of the charter. In this book we will use the term “bareboat charter”. Under the terms of a typical “long-term” bareboat charter, the charterer must maintain the vessel, choose and pay crew, pay for all expenses of the ship including fuel, food and insurance. This type of charter usually involves a commercial vessel for a relatively long period of time. We will be discussing “short-term” bareboat charters which is the typical type of yacht charters for pleasure boats.

The determination of whether a charter is a legal bareboat charter or not is the answer to the question: “Did the owner relinquish possession, command, control and navigation of the vessel?” If the answer is “yes” then it is a bareboat charter.

Foreign-Built Yacht

A foreign-built yacht may be owned by a U.S. citizen and registered with the USCG and become a U.S. documented vessel. However, a U.S. documented, foreign-built yacht may not be used as a charter vessel in U.S. waters except as a bareboat charter. How to obtain a waiver for a foreign built yacht to operate as a 6 or 12 Pax charter vessel is discussed in Chapter 11. The Coast Guard considers true bareboat charters as non-commercial use. This means that a yacht, U.S. or foreign built may not carry passengers for hire or engage in coastwise trade. Be aware that the Coast Guard has even ruled that an organization that bareboat charters a vessel for its members and then charges its members individually for the trip are in fact engaged in a “passenger for hire” operation and are in violation of the statute.

Bareboat vs. Passenger for Hire

It is important to understand the difference between a “passenger for hire vessel” and a bareboat charter. A passenger for hire vessel charges per person for passage on the vessel. A bareboat charter is the “rental” of the entire vessel by one person (i.e. Charterer). In a bareboat charter, the Charterer may NOT charge or receive any consideration for allowing other persons to be aboard the vessel. Guests must truly be “Guests” that do not pay for their passage or right to be aboard the vessel.

**IMPORTANT: You may not bareboat charter a vessel
and then charge (consideration) your guests for being aboard.**

The legal term “consideration” means an economic benefit, inducement, right, or profit, including pecuniary payment accruing to an individual, person, or entity, but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.

If the owner is the captain of the yacht or selects the captain, it is not a true bareboat charter, rather it is a “passenger for hire” charter. Such a violation may subject the vessel to forfeiture and seizure.

The bareboat charter is a very common and practical way to lease a vessel so that it may be used by persons other than the owner.

Charter Agreement

A bareboat charter agreement must accomplish a number of important things. Even though there is no requirement that the agreement be in writing, good business practice requires it. Oral agreements are enforceable, however the legal problem that arises is the difficulty in proving exactly what the terms of the agreement are. A written document, whether drafted by an attorney or handwritten by the parties, is evidence of the terms that were agreed to by the parties to the charter.

A charter needs to cover basic points. There are standard agreements for bareboat and demise charters; problems arise when yachts do non-standard jobs.

The charter should identify the parties and the vessel. Usually, it is important to limit the area or navigable limits, the time for delivery and return location. The amount of the charter and how it is to be paid is very important.

Under the terms of a long-term bareboat charter, the charterer is responsible for the care and maintenance of the vessel, so it is very important to have the vessel surveyed prior to acceptance by the charterer and then to re-survey at the end of the charter. This will determine if the vessel has been maintained, less ordinary wear and tear according to the terms of the charter.

Typically, in a short-term yacht charter, the owner will do a walk through with the charterer and note any items of damage or repair prior to the charterer taking possession. This is very similar to a car rental when damage is noted on the car rental agreement. The charterer is responsible for any new damage not covered by insurance.

Ordinarily, the owner will want to control the standards and experience of crew and types of operation. There is no limit to the terms as long as the parties agree. As noted above the choice of captain must be the option of the charterer. This is very important because this is the basic element that the U.S. Coast Guard uses to determine whether you are operating a “true” bareboat charter. You may place limits by requiring a licensed captain and crew and their level of experience.

If the vessel is U.S. flagged, it is important to have a provision asserting that the charterer is a U.S. Citizen and that he will maintain his citizenship during the course of the charter. A U.S.-flagged yacht cannot be chartered by a non-citizen.

Time or Voyage Charters

Time or Voyage charters differ from bareboat charters in the sense that the use of the vessel is leased including captain and crew and not just the vessel itself. Chapter 4 goes into detail on 6-pax and 12-pax charters which are Uninspected Passenger Vessels (UPV). A good example of the difference between time and voyage charters is the difference between renting a car from Avis or Hertz which would be comparable to a bareboat charter and taking a taxi. A time charter is comparable to hiring a taxi for the day; and a voyage charter would be taking the taxi from one location to another.

Under either of these types of charters, the owner maintains control and responsibility for the vessel’s operation. Unless otherwise agreed, a time charterer has no responsibility for the vessel, no control over it or its crew, and is not liable for the negligence of the crew’s operation or the unseaworthiness of the vessel.

If a time charter or voyage charter extends beyond the time set forth in the charter contracts, the parties usually agree upon a daily rate for the vessel. This is called demurrage. This may become a very expensive part of the charter if problems arise that delay passengers’ arrival, cargo arrival, handling or discharge.

CHAPTER 2

THE BUSINESS OF BARE BOAT CHARTERS

Once you have decided to charter your vessel there are a number of things you must do to ensure that it is ready for charter:

Choice of Captain

This is one of the most important issues involved in a bareboat charter. As we discussed earlier, the choice of the captain must be completely the choice of the charterer. You may specify that the captain hold a USCG license and demonstrate experience in the type of yacht being chartered.

If you have listed your boat with a charter agency, that agency will maintain a list of qualified captains who meet all the requirements to safely operate your yacht. Typically, the list will include such things as their daily wage, availability, experience, licensing and recommendation by previous charterers.

If you are managing the charters yourself, you should also maintain such a list and make it available to the potential charterer. I recommend at the top of the list you print in large letters:

“CAPTAINS WHO ARE RECOMMENDED BUT NOT REQUIRED”.

Generally, the charterer will take your advice and choose from that list. You may **NOT** require as a condition of the charter that he chooses from your list.

When the Charterer is the Captain

It is not unusual, depending on the type and size of the vessel, location and other local conditions, for you to charter the vessel to an individual who captains the yacht himself.

The issues you must consider when the charterer will captain the vessel himself are:

- How many times he or she has chartered in the past, with which companies, on what size boats and when?
- If he or she owns a boat (or has owned one), what kind, what size, how long?
- How many times he or she has anchored and in what circumstances?
- Is he or she is comfortable grabbing a mooring and anchoring?
- Their mechanical abilities.
- His or her navigational skills. Is the experience in inland/lakes, coastal or offshore?
- It is also important to inquire as to the crew that will be working with the charterer, including their experience--4 or 5 inexperienced crewmembers may be more hinderance that help.
- It is a good practice, prior to the charter, to have the charterer take the boat out with you or your representative on board to demonstrate his ability. If he is confident in his skill, you will know it very quickly. You may not charge him for the checkout trip.
- He should know how things work on a yacht and be able to show his crew. This should include everything from operating the heads to the electrical breakers; starting the engine and raising the sails

- Navigation should include the ability to read a chart including identifying hazards and how to plot and set a course.
- He should be able to drive a dinghy and troubleshoot why your dinghy is not working.
- He should have some ability in handling emergencies.
- If the charterer is selecting a captain with whom you are not familiar, you should request his license and references.

Again, I emphasize that you may not require a particular captain, but for good reasons, you can refuse to allow the charterer to retain an unqualified captain. You may also require the captain to demonstrate his ability. Not all licensed captains are created equally.

You should have a detailed manual aboard showing the location of everything that may be needed and how things operate.

Insurance

Most, if not all, recreational Yacht Insurance Policies become void if you charter your vessel. You must obtain commercial insurance that protects you from damage or loss of the vessel and liability from suit.

The risks that you are exposed to range from the Charterer sinking or destroying the boat and causing injury to himself or his guests or other parties. Maritime Law has been very consistent that once a seaworthy vessel is under charter, the Charterer will be responsible for all damage and injury that he may cause. This means that the yacht must be seaworthy when you relinquish your yacht to the Charterer.

You may arrange with your insurance company to offer insurance to your charterers or automatically add them as additionally insured under your policies. Regardless of how it is arranged, the Charterer must be covered by insurance.

This does not mean that you will not be sued or that the vessel itself may not become subject to a lawsuit. Under Admiralty Law an "In Rem" action (meaning against the vessel itself) may be maintained to enforce payment of a claim. It is essential that you have sufficient insurance coverage that protects both you and the charterer against claims. Seaworthiness

Prior to the first charter the vessel should be inventoried and surveyed by a licensed surveyor. This survey report will set a base line for the condition of the vessel at the start of the charter season.

Always check with the local office of the U.S. Coast Guard and statutes to be sure the safety requirements have not changed. The vessel should be equipped with a minimum of the following safety equipment:

1. Personal Flotation Devices for each person on board
2. One throwable IV device
3. Whistle and bell
4. Fire Extinguishers
 - At least two approved B-I or at least one approved B-II type up to 12M
 - At least three approved B-I type or at least one approved B-I type plus one approved B-II type to 20M

5. Visual Distress Signals for both daytime and nighttime use - 3x for day & 3x for night
6. Proper ventilation for ventilating closed compartment containing gasoline engine.
7. Back-Fire flame arrestor for gasoline engine
8. Navigation Lights
9. Copy Navigation Rules
10. Pollution Discharge Placard
11. Marine Sanitation Devices Type I, II, or III.
12. VHF Radio
13. Radar (if the vessel is to be operated at night or in foggy conditions)
14. EPIRB
15. Adequate anchor and ground tackle
16. Current Charts of the voyaging area.

You and your surveyor should prepare and record a sea trial of the vessel, demonstrating the good working condition of all the equipment on the vessel.

CHAPTER 3 HOW TO MANAGE A CHARTER BUSINESS

There are two basic ways to charter your boat. First, you may contract with a local charter broker who will advertise your vessel and seek clients for you, or you may do all of it yourself.

A charter broker will inspect your boat and make recommendations as to things you may do to improve the value of it as a charter boat. The broker will also have certain guidelines as to experience and knowledge that he will require of the prospective charterer.

As a condition of the charter, you may require that the charterer retain a licensed captain to run the boat. This is highly recommended to be assured that the vessel is safely operated. You may require a captain be hired, but the captain must be of the charterer's choosing. If you require that he hire a captain that you recommend or approve, you no longer have a true bareboat charter and may be in violation of the law.

Ordinarily, a charter broker maintains a list of potential captains in whom he has confidence. He will recommend a list to the charterer and allow him to make an independent choice. The charterer can not be required to choose from a list you or the broker provide.

If you choose not to use a broker or charter service, you may advertise your vessel charter directly to the public. It is very important to scrutinize the charterer and determine if he has the ability and skill to operate your boat. You may review and scrutinize his choice of captain. You are not required to charter the vessel to an unqualified captain.

You should also decide, based on the size and value of the vessel, if a licensed captain is required or does the charterer just need basic boating knowledge and experience.

The charterer may provide his own insurance, or you may require that he obtain insurance from a company of which you approve. Either way, the policy must be in affect and you, as the owner,

should be named as an additionally insured party. Be certain that it is a vessel marine policy that protects the vessel from loss or damage and protects you and the vessel from liability.

Limits of Operation

You have a right and interest in limiting the scope of the charter. Legally, the charterer must have the right to operate the vessel, but as a contractual condition you want to limit the following issues:

1. **Navigational Limitation.** Generally, the vessel should only be operated in U.S. waters or near coastal waters not more than 20 miles offshore. However, you may set whatever reasonable limits you and the charterer may agree to.
2. **No Passengers for Hire.** Be explicit that the charterer may not charge other people to go on the vessel. This issue arises when a group or club charters a boat for use of the members and then charges the members individually. This becomes a “passenger for hire” operation and could result in fines and penalties to you.
3. **Speed Limitations.** If your vessel is a particularly powerful vessel, you may want to limit the speeds at which the vessel can be safely operated.
4. **Number of Persons on Board.** Be certain to set a limit of the number of people that can safely be aboard the vessel. Life jackets should be available at all times to every person on board. Only 12 persons maximum are permitted on a bareboat charter, not counting the principal charterer or captain and crew. You must set a limit for total persons on board based on the size, stability and sea conditions experienced. Regardless, the charterer may only carry on board 12 guests. This is a primary item that USCG will enforce if the vessel is boarded and inspected.
5. **Miscellaneous Issues:** Do not leave anything to question. If you have any restrictions that should reasonably apply, put it in writing before the charter starts.

Once the charterer takes possession of the vessel you will not be able to make any changes to your agreement. Do not leave anything to doubt. If you think no one is stupid enough to do something, discuss it with your charterer. He may be that one person.

Preparing Your Vessel for Charter

Prior to chartering your boat, make sure it is in good working order. Service the main engines if a power boat. Make sure the generators are fully operational and recently serviced. There is no greater headache on a trip than not having electricity or propulsion.

If it is a sailboat, inspect all sails and rigging to make sure they are ready to go.

Check and service all heads and holding tanks. Make sure all pumps are working for sewage disposal and fresh water. Explain that sewage must be properly disposed of at a pump out facilities.

Be certain there is an inventory of equipment, spare parts and toys on the boat indicating where they are located. Keep all service manuals and repair information in a file accessible to the captain or the charterer.

Check the radios and navigation equipment to insure they are in good working order.

Generally, the charterer will pay for all fuel used during the charter. You should fill all fuel tanks and demonstrate that they are full to the charterer. He will be charged to refill the tanks on return.

Fill freshwater tanks and service any water maker on board.

Be certain that the boat is clean, and decks clear of any tripping hazard. Also make sure any head-banging hazards are cushioned in some way and the charterer is warned.

Enter all maintenance in the ship log, along with an indication that the vessel is seaworthy and ready for charter. Do this before each charter. Keep a duplicate copy of the ship's log at your office.

Some charter company will also provision the boat for the charter. This will essentially make you a caterer which may be an income source or a tremendous headache.

The Charter Agreement

The charter agreement is the document that will control all of the rights, liabilities and duties between you as the vessel owner and the charterer. It is important that the document covers all aspects of the agreement. The example attached as Appendix No. 1 (Short Term Bareboat Charter Agreement) is a basic charter document.

There are many, many variables. Principally, are you chartering for one day, one weekend or one year? This issue alone may change how you adjust the expenses for maintenance and repairs and hours used on the engines.

After you have reviewed the information contained in this book you should discuss it with your attorney or accountant.

There are a number of legal terms which may appear in this book and other charter agreements that you should understand. Please see Appendix No.2 for a full list of definitions.

1. Charter – Means the lease, rental or use of a vessel.
2. Charterer – Is the person chartering the vessel.
3. Charter Party – Is a maritime term for the written charter agreement. I prefer the term “charter agreement”.
4. Charter Hire – Is another maritime term referring to the amount or rate paid to charter the vessel. I use the term charter payment or rental payment.
5. Demise Charter – This term is interchangeable with Bare Boat Charter. It means that the Charterer takes over full control of the vessel.

Regardless of which form you use the Charter Agreement must cover these issues:

1. The legal vessel owner and charterer must be fully identified. If either is a corporation, the person signing on behalf of the corporation must be authorized by the corporation to execute the document. If the charterer is a corporation, you should satisfy yourself that the corporation is either properly insured or has sufficient assets to protect you from any loss.

2. The vessel should be described by name, documentation or registration number, as well as length, draft and beam.
3. Navigation limits should be determined.
4. The date that the charter starts, and ends must be explicit. Also, you should determine at which port and dock it will start and end. Redelivery can be anywhere you agree.
5. Also, if you provide for renewal of the charter, you must set the time and place for renewal to be given.
6. Charter Rate must be explicit. The rate may be hourly, daily, weekly, monthly or yearly.

Determining Charter Rate

There is no hard and fast rule about the value of a vessel in charter. It will always be determined by the market in which the vessel operates.

To determine a fair charter rate, find out the rates charged by other vessels doing similar charters in the area. Adjust those rates if your vessel is newer or older, faster or slower, larger or smaller.

You should also consider what you paid for the boat and monthly slip, insurance and maintenance costs.

If you paid \$200,000 for your boat at 9% interest, your monthly payment will be about \$2,500.00 per month. Maintenance, insurance and slip fees will run about \$3,000.00 per month, which will place the daily bare costs of the boat at approximately \$200.00 per day.

If you take your annual costs of approximately \$60,000.00 and divide it by the number of charter days you expect, you will have a rough idea of what the rate should be. If you can charter the vessel for 40 days per year at \$1,500.00 per day, you will break even.

The alternative may be if you charter 2 days per week for 50 weeks a year, you need only charge \$600.00 per day to break even.

Make a realistic determination of how many charter days you can reasonably expect to sell. Decide if your rate and the work involved are worth the time. Also consider the seasons of the year that your yacht may charter. If you are in Florida, year-round charters are available. If you are in Alaska, you may be limited to three or four months a year.

In the charter agreement you will set a rate that will be binding on you and the charterer. Require a security deposit or credit card account will protect you from any failure of the charterer to pay his bill.

1. Type of Charter. You must be explicit in the charter that this is a demise, bare boat charter and that the charterer has full and exclusive use of the vessel.
2. Surveys. Depending on the type of charter, it is customary to have an "On hire and Off hire" survey. This ordinarily is not done on a short term daily or weekly charter or a captained charter.

3. Warranties. As an owner, you generally want to disclaim any warranty of seaworthiness and the charterer takes the vessel as is. Under maritime law this may not be effective.
4. Crew & Manning. Under the terms of a demise charter, the owner may not specify a particular captain or crew. You may place requirements on their qualifications and abilities.
5. Maintenance. On short-term charters, maintenance is not generally a problem. However, if the vessel is to be operated for many days or months, the owner may specify which maintenance he will have done and which the charterer must do.
6. Insurance. As discussed previously, insurance is very important. Specify exactly the type of insurance required for the charterer to maintain and be certain that you are named as an additionally insured on the policy. Often you will arrange insurance to which the charterer can subscribe for a fee.
7. Mechanical Breakdown. Generally, the owner will be expected to provide a fully operational vessel. Except in long term charters where the charterer is responsible for repairs and maintenance, you will have to repair mechanical equipment that fails during the charter. You should also determine what compensation is given to the charterer for the repair period when the vessel is out of use. If the vessel breaks down, you may responsible for refund of charter fees and out of pocket expenses.
8. Substitution. If you charter several boats, it is a good idea to provide for the right to substitute a comparable vessel in case of a mechanical failure.
9. Citizenship. Because a U.S. Documented vessel may not be chartered to a non-citizen, you want an affirmative statement from the charterer that he is in fact a citizen.
10. Miscellaneous. Additional provision should provide for the right of the owner to recover the vessel in case of default by the charterer or violation of the terms of the charter. It is also important to choose a jurisdiction to arbitrate any dispute and for payment of attorney fees for the prevailing party.

CHAPTER 4

6 PAX AND 12 PAX CHARTERS – UNINSPECTED PASSENGER VESSELS

A vessel that carries 6 or fewer passengers and is measured as 100 gross tons (GRT) or less does not need to be inspected and licensed by the U.S. Coast Guard. This type of vessel is referred to as an “uninspected” passenger vessel (UPV).

A vessel more than 100 gross tons (GRT) may carry 12 or fewer passengers and also does not need to be inspected and licensed by the U.S. Coast Guard. Please be aware that the gross tonnage is a measurement of volume, not weight. The tonnage will be marked on your Certificate of Documentation at the time it is first documented.

The term Uninspected Passenger Vessel (UPV) does not mean that it is not very regulated. The regulations are more fully set out in guidebooks provided by the U.S. Coast Guard (6 & 12 Pax USCG Requirements), but we will discuss the basics. For full information see:

6-pax

https://homeport.uscg.mil/Lists/Content/Attachments/1600/UPV_JobAid2011.pdf

12-pax

https://homeport.uscg.mil/Lists/Content/Attachments/1600/UPV_JobAid2011.pdf

Generally, a UPV will operate as a charter fishing boat, whale watching vessel, or general excursion vessel. It may carry up to the maximum number of passengers for hire on board as permitted by its tonnage, either 6 or 12.

As mentioned previously, the vessel must measure a minimum of 5 gross tons. This is the minimum tonnage that permits documentation with the U.S. Coast Guard. If the vessel is less than 5 tons, it may be registered with the state in which you operate but will still be regulated by the U.S. Coast Guard regulations. The name of the vessel must be marked on the port and starboard bow rather than just on the stern where recreational vessels are usually marked. This distinguishes the vessel as a commercial vessel.

The vessel must also have been built in the U.S. and be documented with a Coastwise Endorsement. You may obtain a waiver for a foreign-built vessel if it is more than three (3) years old. The process of how to obtain a waiver for a foreign-built vessel is discussed in Chapter 11.

The vessel operator, Captain, must have an Operator Uninspected Passenger Vessel (OUPV) (6-pax) or (12 pax) operator's license, issued by the United States Coast Guard. There is no requirement for any other crew member to hold a license.

The requirements for this license are as follows:

1. Age 18 or over
2. 360 days underway experience
3. 90 of those days in the last 3 years
4. Physical, drug test and eye exam
5. Valid CPR First Aid card
6. Completion of USCG Exam or USCG approved course.

The following rules apply:

1. An individual holding a Merchant Mariner Credential (MMC) or license as master or pilot of inspected, self-propelled vessels is authorized to serve as operator of an UPV within any restrictions other than gross tonnage limitations on the individual's license;
2. Licensed mates of inspected, self-propelled vessels on the Great Lakes, inland, or rivers **of not more than 200 GTs** are authorized to serve as an operator of an UPV and must operate in their respective waters only;
3. A licensed mate of oceans and coastwise inspected, self-propelled vessels is authorized to serve as an operator of an UPV, within any restrictions other than gross tonnage limitations on the individual's license.

The vessel must be equipped with the following:

1. Personal Flotation Devices for each person on board
2. One throwable IV device
3. Whistle and bell
4. Fire Extinguishers
 - At least two approved B-I or at least one approved B-II type up to 12M
 - At least three approved B-I type or at least one approved B-I type plus one approved B-II type to 20M
5. Visual Distress Signals for both daytime and nighttime use; 3x for day & 3x for night
6. Proper ventilation for ventilating closed compartment containing gasoline engine
7. Back-Fire flame arrestor for gasoline engine
8. Navigation Lights
9. Copy Navigation Rules
10. Pollution Discharge Placard
11. Marine Sanitation Devices Type I, II, or III
12. All undocumented vessels must be registered in the State of principal use.

A 12-pax vessel will be required to have additional equipment including AIS and other safety equipment.

The critical element in the 6-pax charter is that no more than 6 passengers are permitted aboard. Violation of that rule may result in substantial penalties. This is the most common violation detected by the U.S. Coast Guard. Often, the charterer will suddenly arrive with one extra person and urge you to squeeze him in. Do not be tempted. This may result in a substantial fine.

The vessel must also have a “Coastwise” Endorsement on the Certificate of Documentation. This indicates that the vessel is either U.S. built or if foreign built, has a “Small Vessel Waiver” from the Maritime Administration.

If you do not have a “Coastwise” Endorsement and your vessel meets the requirements, you may apply for the issuance of a new Certificate of Documentation with the endorsement. It is important to note that in a 6-pax charter, the captain and crew are in addition to the number of passengers. However, do not try to disguise a passenger by listing him as crew. A crew member, although not licensed, must have a recognizable job required for the vessel. A crew member must be engaged in the business of the vessel, has not contributed consideration for passage and who is paid for his on-board services.

On a 12-pax charter, the captain and crew are not counted as well as the principal charterer on board who also is not counted.

Drug testing is required for the crew. Each crewman aboard the vessel must have passed a chemical test for drugs prior to being employed. The captain is also subject to drug testing. This is a major concern of the U.S. Coast Guard.

A licensed captain may not be required to work more than 12 of 24 hours at sea, except in an emergency when life or property is endangered.

UPVs operating more than 12 hours should have a two-watch system, with a second licensed operator.

A licensed captain may voluntarily work more than 12 hours in a 24-hour period if he or she is able to maintain an adequate watch. When charter fishing and dive vessels operate more than 24 consecutive hours with only one licensed operator present there may be significant issues of negligence on the part of the UPV operator and owner for failure to provide an adequate watch. Between 12 and 24 hours of operation, there is a gray area in which the owner/operator of the UPV must judge the prudence of a decision to sail without a second licensed individual. The licensed captain may not leave an unlicensed crewmember in command of the vessel while he is asleep.

12-pax vessel have greater requirements than the 6-pax vessel including crew training.

The owner or captain must train the crew prior to the first voyage if the crew is new to the vessel. He must instruct the crew on their duties, emergencies and obligations. This should be entered into the log of the vessel. Training conducted on a sister vessel is equivalent to the initial and quarterly training requirements.

Crew training should be logged or otherwise documented and minimally include the date of the training, general description of the training topics and name of attendees. 75% of the crew must be able to understand orders given in English.

- (a) On vessels carrying passengers at night, a watchman must be in the vicinity of the cabins or staterooms and on each deck, to guard against and give alarm in case of fire or other danger.
- (b) The watchman may be substituted by the use of fire detectors, heat detectors, smoke detectors, and high-water alarms with audible- and visual-warning indicators, in addition to other required safety alarms, if specific requirements are met.

Below Deck Access. While not required by regulation, it is recommended that each space accessible to passengers or crew on a regular basis, should have at least two means of escape.

Do not let the term “Uninspected Passenger Vessel” lead you to believe that your yacht may easily quality. The two USCG Guidebooks at the websites noted above, consist of dozens of pages of requirements which you must meet. Your will at some point, while you are operating, be boarded by the US Coast Guard for a random inspection and you may find that you have a multitude of issues with your boat that you must address. If the Coast Guard officer inspecting your vessels finds that it does not comply with the requirements, he may deem your vessel to be unsafe and terminate your voyage much to the dismay of your passengers.

CHAPTER 5 INSPECTED PASSENGER VESSELS

All other vessels must undergo substantial Coast Guard inspection as to construction, manning and operation to obtain a Certificate of Inspection that permits the carrying of passengers up to a number specified by Coast Guard Certificate of Inspection.

In addition, the vessel must comply with the Jones Act requirement of being built in the United States, owned by a U.S. citizen and having never been owned or flagged by a foreign owner. Waivers of the foreign built requirement are not available except by a special act by Congress.

Inspected vessels are usually purpose built to meet the extensive safety regulations required to carry passengers. Trying to convert a vessel not built for that purpose is very difficult and will require a great deal of investment without any guaranty that upon completion of the conversion that it will meet the requirements.

Inspected vessels generally operate as “passenger for hire” vessels in which tickets are sold to passengers for the passage. However, an Inspected vessel may be chartered with captain and crew or as a demised or bareboat charter as long as it operates within its Certificate of Inspection.

The Certificate of Inspection regulates the number of passengers, the captain and crew requirements, and area of navigation.

CHAPTER 6 COMPARISON OF CHARTER REQUIREMENTS

Requirements	Bareboat (Demised) Charter	6 & 12 Pax	Inspected Vessel
Built in U.S or Small Vessel Waiver Obtained	Yes Waiver not required	Yes or Waiver required	Yes Waiver not permitted
Coastwise Endorsement	No	Yes	Yes
Selection of Captain	By Charterer	By Owner	By Owner
Captain License Required	No	Yes	Yes
USCG Certificate of Inspection	No	No	Yes
Number of Passengers	12 Max	6 or 12 based on tonnage	Set by COI and stability letter

CHAPTER 7 TAX REASONS TO PURCHASE A YACHT REASONS

General Tax Deductibility

Offsetting the cost of ownership is a sound strategy. However, there are many regulatory challenges to a yacht charter program, including complex tax laws, IRS regulations, active participation rules, profit motive, and other business considerations.

Your endeavor may be considered a “business” by the IRS if you can show ability to and legitimate effort to make a profit. Consult a tax professional to learn more about Section 179 tax deductions for yacht charter businesses. Section 179 allows you to deduct all expenses relating to the business of operating a yacht charter company. Losses shown in the early years of ownership can be used to offset

other income such as income from other trade or business, investment earnings, or wages from another job.

Before you start applying your charter losses against income, it is essential that you understand how the IRS might evaluate your “business.” The tax code is clear and there are several Tax Court cases on the issue of yacht chartering, so-called “hobby loss” and “active participation” rules. Recent tax decisions have provided support for allowing deductions related to operating chartered yachts as a bona fide business.

On the other hand, if the IRS determines that the activity is a “hobby,” the tax benefits are more limited or may be denied. The IRS regulations itemize nine factors that determine whether a particular activity is a business or a hobby.

Some of the things that the Courts (and the IRS) will consider:

- How you carry on the activity
- Your and your advisors’ expertise in the activity
- Elements of personal pleasure or recreation
- Your time and effort spent on the activity
- Prior success of other business or “activities”
- Profits earned, if any, over time
- The financial status of the taxpayer
- History of income or losses with respect to the activity
- Expectation that assets will appreciate in value

No single thing is conclusive, but a combination of factors can tip the scale in your favor or against you. However, you may have a bit of an uphill battle when an activity involves entertainment or recreation. Being the owner of a yacht and yacht charter activity are prime targets for the IRS because people either abuse it or fail to set the business up correctly from the start.

The IRS may give less leeway to these types of “businesses”, but there is good news. The Tax Court recently said that: “A business will not be deemed a hobby merely because the owner enjoys the activity”. You will be subject to a number of tax rules as a charter boat operator, so it is important that you plan and operate the business so that you meet all or most rules to make a successful business.

Here is a summary of the tax and income benefits available to the owners of new yachts purchased and placed in charter as of 2019:

1. Under Section 179 of the Internal Revenue Code, you can take a one-time expense deduction in the year of purchase equal to the purchase price of your yacht up to a maximum deduction of \$1,000,000. This benefit is reduced for yachts priced over \$3,500,000 (a subject beyond the scope of this article); plus
2. You can depreciate the adjusted cost basis of your yacht (the balance of the purchase price after deducting the Section 179 expense deduction and 50% bonus depreciation deduction) over 10 years; plus

3. You can deduct against your charter income and other employment income all ordinary and necessary charter related expenses including, for example, slip fees, insurance, repairs, loan interest, property tax, etc.; plus
4. You will receive income from the charter of your yacht, the amount of which varies depending on the size of your yacht and the charter company you use.

This is general information, consult with a tax professional for advice that meets your personal needs and goals. A good website to visit is: www.section179.Org for a detailed analysis of Section 179.

CHAPTER 8 STATE SALES TAX

If you are purchasing a yacht to put into charter, you must consider the sales tax consequences. Some states, but not all, impose a sales tax for the purchase of a new yacht and a use tax for the purchase of a used yacht. California applies the Sales/Use Tax along with a local or county sales/use tax. Generally, in California you will pay 7½% to 8¾% of the total purchase price. With the purchase of a \$500,000 yacht you may pay up to \$43,000.00 in taxes.

California Sales & Use Tax

In California this tax can be legally avoided by properly structuring your purchase as a purchase for charter use only. This exemption is available as a “business inventory exemption” under Section 129 of the California Revenue and Tax Code. Inventory includes any personal property (yacht) held and intended for sale or lease in accordance with the regular and usual practice and methods of the vendor.

The property must be displayed, advertised or otherwise brought to the attention of the potential purchasers or lessees by means normally employed by vendors or lessors of the product. A sales tax is then imposed on each charter and paid to the State in either monthly or quarterly payments.

The yacht must not be held for use by the owner/lessor and use personally by the owner may result in the exemption not being allowed.

Complying with Tax Requirements

The charter business you are creating must be “real” not a fiction just to avoid the tax. This means that you must have real and identifiable interest in operating the business for the purpose of making a profit.

This does not mean you must sit in the office 8 hours a day waiting for a charterer to appear. Rather, it means that *you must follow a course of conduct, that can be audited by the State showing a true business inventive and desire to be recognized as a business.* This is not as difficult as it may seem.

CHAPTER 9

SETTING UP A CHARTER BUSINESS

First, decide if you intend to purchase a new or used yacht. If the vessel is new, determine if it is U.S. or foreign built. Remember, foreign-built yachts may only be used for “bare-boat” charters. A foreign-built vessel may not be used as 6-pax or 12-pax charter unless it has received a waiver from the Maritime Administration. This applies to foreign-built yachts which are 3 years or older.

If you already own a yacht that you wish to put into charter and you have already paid the Sales/Use tax, you may transfer it into an LLC or corporation without incurring an additional tax. If there is no change in the equitable ownership and ownership of LLC or corporation the sales/use tax will not apply to transfer into an entity with the same previously equitable ownership. (i.e. the same owner owns the company as previously owned the title to the yacht.)

Corporation

There are two types of business entities that you may use either a Corporation or a Limited Liability Company (LLC). The difference between the two depends on your long-range perspective.

The protection provided to the member of the LLC or shareholder of a corporation is not absolute. If you participate in the active operation of the corporation or LLC or actively operate the yacht while in charter, you may still have some degree of liability. Of course, you should be insured against this type of liability as a matter of good business judgment.

A corporation is a legal entity that provides protection from liability for the shareholders. There is an annual tax or fee paid to the state in which the corporation is set up. The corporation must be set up in the state in which you intend to operate your charter business.

Limited Liability Company (LLC)

An LLC provides the same protection but is easier to setup and maintain. It is currently the most popular entity type for vessel ownership. It provides for less formality and still provides the owner/investor protections of a standard corporation’s shareholders. So, your first step is to set up the LLC using an attorney, CPA or on-line service. I recommend using a professional since this will be the fundamental basis for your tax advantages.

For the purpose of discussion, we will assume you are setting up an LLC. Choice of a name for the LLC is important. You want to demonstrate a legitimate business purpose so choose a maritime-related name. When setting up the LLC, make sure it is a “manager managed” LLC not a “member managed” LLC. This will affect the amount of information you must disclose to the U.S. National Vessel Documentation Center. Also, the LLC must be set up in the state in which you are doing business. If you set up in a less expensive jurisdiction such as Delaware, you will have to qualify your LLC to operate in your home state which will cost the same as setting it up in the home state to begin with. It is very important in your organizing documents to indicate that you are a vessel operating and chartering company.

Purchase the yacht in the name of the LLC and take title solely in the name of the LLC. You may choose any name and hailing port you wish for your yacht. Consider the advertising advantages of a “good” name rather than something personal i.e. “Tom’s Old Girl”.

CHAPTER 10 OPERATING A CHARTER BUSINESS

Once Your Business is Set Up

1. Once you are set up as an LLC or corporation and have acquired your yacht, you must obtain a state Seller’s permit and a local business license.
2. You must conduct your business in a manner consistent with other businesses in the same industry.
3. Set up a bank account in the name of the LLC.
4. Set up your business accounting records to reflect all expenses and income for the business. Keep all your receipts for the yacht for maintenance, dockage, repairs, outfitting etc., including setting up and maintaining the LLC or corporation.
5. Set up a ship’s log showing all operations of the yacht, including repairs, voyages, charters, maintenance, etc., and keep it up to date at all times.
6. Many yacht brokers maintain a charter service and you can place your yacht into their charter program. This will simplify the business for you. However, you should aggressively promote your charters yourself, by setting up a website and making the vessel available to the general public for charter.
7. Personal use of the yacht is not permitted. Since the yacht is owned by an LLC or corporation, any personal use should be treated as a charter and charter fees paid just like any other charterer. Prepare and sign a charter agreement. However, depending on treatment of LLC’s by taxing authorities as a “disregarded entity” could jeopardize the exemption. We recommend that if you intend to use or be aboard the yacht, charter it in the name of some other company or organization with whom you are associated. Be truthful but be careful.
8. Deposit all charter income into your bank account and use it for payment of expenses of the charter service.
9. In California you must file a COMBINED STATE AND LOCAL CONSUMER USE TAX RETURN (CUTS). In this return you will claim the Inventory Exemption. You will be required to completely document your operation, charters, expenses etc. to the Tax Board. The State of California has been taking about six to twelve months to respond. Of course, at the beginning, you will not have much documentation to support your claim. By the time the board requests more information you should have almost a year of charters to support your claim.

10. Depending on how you are organized, you will need to provide documentary proof of your entire operation. You should be able to demonstrate your advertising, websites, flyers or other documents. A detailed list of inquiries, actual charters and other documents showing your operation as a going business.
11. It is very important to talk to your marina manager and find out if they permit commercial activity. Many marinas do not allow commercial operations including bareboat charters and 6-pax charters to operate from their facilities. Once you obtain the approval of your marina manager, you must also check with the local harbor, county and city authorities to make sure that they permit the type of charter you intend to do. Some locations require that all commercial vessels operate from a designated area in the harbor.

CHAPTER 11

SMALL VESSEL WAIVER OF U.S. BUILD REQUIREMENT

THE MARAD SMALL VESSEL WAIVER PROGRAM (THIS IS A COPY OF THE GUIDANCE PROVIDED BY THE U.S. MARITIME ADMINISTRATION)

It is now possible for certain foreign-built vessels, or vessels with no documentation, to gain a waiver of the U.S.-build requirement in order to conduct limited commercial passenger operations in the United States. Some restrictions apply.

SUMMARY

In order to implement the law allowing for small passenger vessel waivers, a set of procedures have been established to expedite the waiver process. As part of the application procedure, MARAD requires:

1. A non-refundable \$500 application fee per waiver request.
2. A completed application (discussed below.)
3. A period of public notice, which will include the publication of your intended use of the vessel for a period of 30-days in the Federal Register.

After the public notice period MARAD will use all sources available to determine if the issuance of the waiver will cause an "undue adverse effect" on existing operators and shipbuilders. If they believe that providing a waiver would cause undue damage, they will not issue a waiver. There is a review procedure and a waiver revocation process if it has been determined that there was fraud at the time of application.

Once a waiver is obtained, it becomes part of the vessel's documentation and stays with the vessel if it is sold.

BASIC REQUIREMENTS

There are some basic requirements for a vessel to qualify for a waiver under this program:

- a) The vessel must be at least three years old.
- b) The vessel, when in service, cannot carry more than 12 passengers.

- c) The intended use must be to carry passengers only. Activities such as carriage of cargo, commercial fishing, towing, dredging and salvage do not qualify for this program. Sport fishing is permitted as long as the fish caught are not sold commercially.
- d) The vessel must be owned by a U.S.-Citizen or corporation/LLC.

This is not a waiver of any vessel documentation, vessel manning or vessel inspection requirement. Once a waiver is received, the applicant should file for a Coastwise Trade Endorsement as a passenger vessel with the U.S. Coast Guard (USCG) if the vessel is greater than 5 net tons.

HOW TO MAKE APPLICATION

While the application for this program can be sent by mail, it is recommended that you apply via the Internet and pay the \$500 application fee online to expedite your application.

The electronic application can be accessed from the MARAD Homepage at:
http://www.marad.dot.gov/ships_shipping_landing_page/domestic_shipping/small_vessel_waiver/Small_Vessel_Waiver.htm.

Once you complete the application electronically, the system will send you a thank you message and direct you to the Pay.Gov website where you can pay by credit card or ACH Bank Account Debt.

APPLICATION INSTRUCTIONS

A brief description of the required information fields on the application follows:

1. Name of the vessel: Please provide the name of the vessel as it is registered or documented.
2. Owner information: Complete owner information. Applications are only accepted by (or from organizations representing) the owner of the vessel.
3. Vessel official number (or HIN, or State No.): Provide the USCG documentation number for the requested vessel. If the vessel is not documented, provide some identification number such as a state registration number or hull identification number.
4. Date of vessel construction: Provide date of build. Vessels must be at least three (3) years old to be eligible for the waiver program.
5. Place of construction: State place of construction. If the vessel is of probable U.S.-build with no construction documentation, please state “no documentation” or “unknown, probable U.S.”
6. Size, Capacity and Tonnage of the Vessel: Enter size, passenger capacity, and net tonnage.
7. Intended commercial use of the vessel: Tell us how you plan on using the vessel commercially. Use for commercial purposes other than for carrying passengers for hire is not permitted. Please also refer to “BASIC ELIGIBILITY REQUIREMENTS.”
8. List U.S. States where operation and trade are anticipated: Please state your intended area of operation as MARAD will not grant a waiver for “all coasts” or “all States.” States where the vessel will operate must be listed in order for MARAD to determine if there will be any adverse

impact on current operators or shipyards in a given region. The waiver, if granted, limits the operation of the vessel to the geographic area MARAD specifies.

9. A statement on the impact this waiver will have on another commercial passenger vessel operators, including a statement describing the operations of existing operators. MARAD will not issue a waiver if it will cause an undue adverse effect on vessels built in the United States and already operating in a similar business. Please check to make sure your requested region is not already saturated with passenger vessels.
10. A statement on the impact this waiver will have on U.S. shipyards. Similar to the question 9 above, MARAD will not issue a waiver if it will cause an undue adverse effect on United States vessel builders.
11. Signature and date. Please indicate how you will be paying the \$500 application fee.
12. Mail to address. Applications saved as WORD documents can also be sent by email to smallvessels@dot.gov.

Be advised that MARAD now has the authority to revoke a waiver if there is fraud at the time of application.

PROCESS

Your waiver request will be published in the Federal Register as soon as practicable for a period of 30 days for public comment. It is MARAD's goal to make the waiver process as fast and efficient as possible. As a result, you should receive a decision from them on your waiver application within 30 days of the closing of the Federal Register announcement.

Please note that the waiver process takes approximately 2-3 months.

If you have questions concerning the application process, contact the MARAD Cargo and Commercial Sealift Staff at 202-366-4610.

CHAPTER 12 THE JONES ACT

The Jones Act is a common topic of discussion in the marine business. The following is a general discussion of the basics of the act.

The Jones Act, when used in the sense of maritime law, refers to federal statute 46 USC section 883. This is the act that controls coastwise trade within the United States and determines which ships may lawfully engage in that trade and the rules under which they must operate.

Generally, the Jones Act prohibits any foreign-built or foreign-flagged vessel from engaging in coastwise trade within the United States. A number of other statutes affect coastwise trade and should be consulted along with the Jones Act. These include the Passenger Services Act, 46 USC section 289 which restricts coastwise transportation of passengers and 46 USC section 12108 restricts the use of foreign vessels to commercially catch or transport fish in U.S. waters.

What constitutes "coastwise trade" is a major issue with the Act. The federal courts have given a very wide interpretation of the term. Essentially, the term applies to a voyage beginning at any point within the United States and delivering any type of commercial cargo to any other point within the United States.

Various cases have extended the definition of merchandise to include anything of a commercial value including dredged materials used for land fill. The federal district courts have ruled that the transportation of sewage sludge is not "merchandise" because it is a valueless commodity.

However, under the terms of 46 USC section 316 tow boats used to tow, even valueless commodities must be U.S. registered vessels and met all the terms and rules of the statute.

The Passenger Services Act (46 USC Section 55103) provides the legislation that controls the operation of passenger vessels in coastwise trade. A major issue has always been what constitutes a "passenger". The general definition has been any person other than the ship's master, a crew member or any person engaged in the ship's business. The "for hire" issue involves any consideration flowing from the passenger to the ship owner, charterer, agent or any person involved in the ship. The consideration has been construed to be using a company yacht for entertaining customers or clients to develop "business goodwill". Carried to its logical conclusion would require any vessel unless used solely for personal pleasure to be registered for coastwise trade and inspected.

It does not appear to be the Coast Guard's policy to go to this extreme. It is reasonable to assume that any vessel that transports passengers on a regular or irregular basis must be inspected and licensed for coastwise trade.

Please note that under new regulations, there are different categories of vessels subject to inspection, which include: "passenger vessels"; "small passenger vessels"; "offshore vessels"; and "uninspected passenger vessels".

Bareboat charters of foreign-built vessels are permitted under the fiction that a true "bare boat charter" is not a commercial application and the Jones Act applies only to commercial applications. Traditionally, the issue has involved the chartering of pleasure boats or yachts and whether the charter has violated the terms of the Passenger Services Act.

The term "passenger for hire" means any transportation aboard a vessel in which some consideration, i.e., benefit, flows from the passenger, his agent or representative to the owner, his agent or representative. Consequently, a business guest may be considered a "paying" passenger because of the flow of business goodwill to the owner. Consequently, where a group or organization charters a vessel and members contribute to the cost of the charter, the organization may be found to be carrying passengers for hire. The underlying purpose is to create a distinct line between commercial or business use and pleasure use. No matter how we describe the conduct of the parties there will always be a gray area of discretionary enforcement. Legally, if a guest aboard a vessel provides fuel, food or beverage for the voyage that is consumed by the owner, we have a passenger for hire situation. Realistically this will probably not be enforced unless other factors are involved.

The use of foreign-owned or foreign-built yachts in a commercial application is strictly prohibited. However, foreign built and owned yachts may operate in U.S. waters for pleasure and non-commercial purposes. These vessels may also be chartered in U.S. waters, as well, but only for non-commercial purposes.

The true bare boat charter must be non-commercial, and the owner must relinquish the custody and control of the vessel, entirely. If the owner skips the vessels or controls the choice of the skipper, then the charter is not a true bare boat charter and will be considered carrying passengers for hire.

Violations of the Passenger Services Act or the Jones Act may, but do not necessarily result in forfeiture of the vessel to the United States Government. In the event of forfeiture, the vessel is deemed to have become the property of the United States at the instant of violation and allows immediate seizure. There are provisions for remission of the vessel and payment of fine and penalties. Also, mortgagor holders and lien holders may petition the government for remission to protect their interests in the vessel.

The Jones Act also governs the relationship between the employer and crew aboard a United States vessel. Prior to the Jones Act, seamen were very limited in their ability to recover for injuries aboard ship. The Jones Act made the Federal Employers Liability Act applicable to seamen. Under admiralty law, seamen are entitled to somewhat more liberal interpretation of the concepts of negligence and the employer has a somewhat higher degree of care. Under the Jones Act, the employer is liable for "any injury" arising in whole or in part from the negligence of any of the officers, agents or employees of the employer, or by reason of any defect or insufficiency of equipment due to negligence of the employer. The employee must prove negligence. The negligent act is not required to be the sole proximate cause of the injury.

An interesting side point which is not uncommon in some areas, is that if the master and crew are in a joint venture, that is they share the control of the project and share the rewards, the employer-employee relationship does not exist and these provisions of the Jones Act will not apply. Also, it does not apply to volunteer, unpaid crew members on yachts. However, paid crew members on pleasure yacht still are covered.

Injuries that are covered are not only work related, but also if the injury occurred during his living aboard the vessel or in his coming or leaving the vessel. Interestingly, if the master has a policy of allowing drunken seamen to return to the ship in an inebriated condition, he will be held liable for any injury that may occur during their ingress and egress even in a drunken condition.

Negligence of the owner/master have been determined to be such things as failure to maintain safe equipment and appliances; care in selecting a competent master and fellow crewmen; assaults by fellow crewmen within scope of work; negligent orders; requiring overtime; failure to avoid heavy weather; failure to provide medical treatment; failure to rescue; and failure to supervise, among others.

Damages permitted under the Jones Act include: Medical expense, pain and suffering; loss of wages; loss of support to the seaman's widow or dependents; loss of value of household services, nurture etc.; funeral expenses; loss of fringe benefits; and mental anguishes. In survival or wrongful death actions pain and suffering occurring prior to death are recoverable; as well as medical expenses and wages. The act requires that a legal action be brought within three years of the date of the incident.

RECOMMENDATIONS

Before starting your charter business, talk to other people who have experience in chartering in your area. Charter a yacht for a vacation or short trip and see how the charter company operates and get a good assessment of how much time, effort and costs you may incur.

Good preparation and realistic expectations will make chartering a worthwhile experience.

Best of luck and happy chartering.

Mike Vaughn

APPENDIX 1

DEMISE CHARTER AGREEMENT Bare Boat Charter

This Charter Agreement entered into on this the ____ day of _____, 20____ between

Owner	Name: Address / City / ST: Phone/Email:
Charterer:	Name: Address / City / ST: Phone/Email:

Vessel Name:			
Official Number:		GRT/NRT:	
Charter Begins:		Charter Ends:	
Navigational Limits:		Number of Guests:	
Port where hired:		Port Returned:	
Insurance Limits:		Insurance Confirmed:	
Charter Rate:		Total Charter Costs:	
Deposit:		Balance Due:	

WITNESSETH:

Whereas the Owner is the registered owner of a vessel described as:

Signatures:

Owner: _____

Charterer: _____

TERMS & CONDITIONS

And Whereas the Charterer wishes to charter said vessel;

NOW, THEREFORE, in consideration of the premises and covenants herein contained, the parties hereto mutually agree as follows:

PAYMENTS: It is further understood that charter fees will be deposited in an Escrow Account and will be disbursed to the OWNER in the following manner: Not more than 35% of the charter fee plus delivery fees and other additional expenses as applicable not more than ten (10) days prior to the start date of the charter period. The balance of the charter fee will be dispersed no earlier than the start date of charter. It is further understood that the OWNER considers charter deposits non-refundable.

DEFAULTS IN PAYMENT: Should any installment of charter fees not be paid on the date designated; the CHARTERER will be advised in writing and will have 14 days to pay balances due. If the default continues thereafter, the OWNER shall be so advised by the BROKER, and the OWNER shall have the right to cancel this Agreement without prejudice to his rights in respect of any arrears of charter money, or of any breach by the CHARTERER of the conditions contained herein.

CANCELLATIONS: Should the CHARTERER cancel before the charter term begins, deposits will be refunded under the following conditions: If the yacht is rebooked for the same period or portion thereof, Deposits paid will be refunded pro rata, less a service-fee equal to the BROKER'S full commission. If rebooking is not possible, no refund will be made. If the OWNER cancels, the OWNER shall reimburse the CHARTERER, through the BROKER, for all deposits paid as of cancellation date, and pay BROKER'S full commission. Cancellations by OWNER or CHARTERER are to be in writing through the BROKER and acknowledged by both parties.

1. **DELIVERY:** The OWNER agrees to deliver the yacht at the Port of Boarding in full commission and in proper working order, having all licenses required for any jurisdiction within the area of charter, 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 utensils, blankets, linens, and towels; clean and good condition throughout and ready for service; and, further agrees to allow demurrage pro rata to the CHARTERER for any delay in delivery, unless caused by Force Majeure. Should it be impossible for the OWNER to make delivery within twenty-four hours after the start of the charter period (for any reason other than Force Majeure), the CHARTERER may cancel or reschedule this Agreement. Any charter deposits paid in advance (plus BROKER'S commission) shall be returned by the OWNER in full to the CHARTERER at the CHARTERER'S option without further liability to the OWNER.

2. This is a demised charter and Charterer reserves to operate said vessel lawfully and in a safe and seaworthy manner. Charterer shall conform to all laws and regulations. Charterer agrees to indemnify, protect, defend and hold harmless the Owner, the vessel, its registered owner, its master and crew, and their respective underwriters from and against the results of any breach by charterer of the obligations or any other obligations imposed by law upon the Charterer. Charterer shall maintain the vessel in good repair and maintain all classification, certificates or certificates of inspection in full force and effect during the entire course of the charter.
3. During the course of the charter, Charterer shall maintain in full force and effect insurance in the amount of _____ USD naming the Owner as a loss payee protecting the vessel for loss or damage for hull and machinery. In addition, Charterer shall maintain a policy or policies of insurance providing for pollution, liability, crew and employee injury. Each policy shall name the Owner as an additional insured.
4. Charterer shall provide and pay for the master and crew of the vessel. The Charterer shall select and direct said master and crew. The duties of the crew shall be directed and controlled solely by the Charterer. The master of the vessel shall serve at the discretion of the Charterer. Charterer shall review and evaluate each licensed officer as to his ability and skill in the position employed and assure Owner as to the qualifications of the chief engineering staff.
5. Neither the Owner, its officers, directors, employees, the vessel, her owner, operators, nor the underwriters of any of the foregoing shall have any responsibility or liability for any claim involving damage to or loss of any cargo or equipment carried by the vessel; or for any injury, illness, disease or death of employees of Charterer, its subcontractors, or their employees or agents; and Charterer shall defend, indemnify and hold harmless Owner, its officers, directors, employees, the vessel, its owner, operators, master, and crew and the underwriters of each of the foregoing from and against any such claim, whether groundless or not, and whether caused in whole or in part by the negligence or faults of indemnities or by unseaworthiness of the vessel or equipment of Owner, Owner's property and Owner's subcontractors' property.
6. Neither Owner nor Charterer shall be responsible hereunder for prospective profits or for special, indirect or consequential damages.
7. Neither the Owner nor the Charterer shall not create, incur, or permit any liens to be imposed upon any vessel chartered under this agreement.

8. Charterer may not assign this agreement without notice to the Owner and without his written agreement.
9. Charterer shall keep the Owner advised of the usual berth for the vessel or on voyage of the itinerary of the vessel. Failure to keep the Owner informed of the location of the vessel shall be considered a breach of Charterer's agreement.
10. This agreement shall be construed in accordance with the admiralty and maritime laws of the United States of America and the State of _____.

DEFAULT

11. The Charterer may be declared in default of this charter agreement if any one of the following events occurs:
 - a) Failure to make charter payments upon the date due.
 - b) Having failed to make time payment and upon notice by the Owner.
 - c) Failing to permit inspection of the vessel by Owner or Owner's representative and, upon written notice by Owner, allowing or permitting said failure to permit inspection to continue for more than five (5) days.
 - d) Failing to maintain continuous insurance coverage of the vessel in the amount agreed upon and naming Owner as loss payee.
 - e) Operating the vessel contrary to the criminal law of any nation or state in which the vessel operates.
 - f) Failing to maintain the vessel and its equipment in a seaworthy and seaman like condition. Said determination of maintenance shall be determined by annual survey. Charterer will have 30 days from the completion of the annual survey to make any repairs so designated by the surveyor.
 - g) Commission of any act of bankruptcy or approval by any court of a petition or request for reorganization, arrangement, extension or other relief under any bankruptcy law; or by appointment of a receiver.

12. Then in case of said default, Owner may:
 - a) Declare the charter terminated.
 - b) Recover judgment for and collect out of any property Charterer may own, any amount due and collect all earned charter hire and freight moneys relating to services performed by the vessel.
13. FORCE MAJEURE: Force Majeure is defined as any cause attributed to acts of GOD, accidents, natural disaster, weather or other occurrences beyond the reasonable control of the OWNER, and not caused by the OWNER'S negligence. No warranty is made as the suitability of weather with respect to this charter. If a Named Storm threatens or is forecast to threaten the expected location of the charter yacht, as determined by the Owner in his/her sole discretion, the Owner shall have the option of terminating or canceling the charter any time that he/she deems necessary. No refund is provided for cancellation due to weather.
14. AUTHORITY: The CHARTERER warrants that the Captain selected by him/her meets all requirements necessary to legally command the yacht in the area chartered and is licensed and experienced to command a vessel of the type, size and tonnage under charter. While it is agreed the CHARTERER may determine the general movements and destination of the yacht within the boundaries of this Agreement, it is understood that the Captain is in full command, and that the CHARTERER agrees to abide by his judgment as to clearance, sailing, weather conditions, anchorages and other pertinent matters.
15. RESTRICTED USE: The CHARTERER agrees that the yacht shall be employed exclusively as a pleasure vessel for 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 pay, or engage in any trade, nor in any way violate the Laws of any Government within the jurisdiction of which the yacht may be at any time, and shall comply with the law in all other respects.
16. NAVIGATION LIMITS: The CHARTERER agrees to restrict the cruising of the yacht to the area specified on the 1st page of this Agreement, Cruising Area.

17. **DRUGS OR OTHER ILLEGAL ACTIVITIES:** The use, transportation, or possession of illegal drugs or narcotics (INCLUDING MARIJUANA) or of any other contraband, or the participation in any other unlawful activity is strictly prohibited. The participation in any of these activities by CHARTERER, or by any guest of the party constitutes a breach of the charter and shall be cause for immediate termination of this Agreement without refund of any payments made by CHARTERER. CHARTERER will be held responsible for any loss or damage to the yacht due to any such violations and will be put ashore at the next port of call.
18. **REDELIVERY:** The CHARTERER agrees to redeliver the yacht, her equipment and furnishings, free and clear of any indebtedness incurred for/by the CHARTERER, at the expiration of charter. The CHARTERER also agrees to be responsible for and to replace or make good any injury to the yacht, her equipment and furnishings caused by himself or by any of his party, less ordinary wear and tear, except to the extent such claims are covered by insurance as provided above. This means that the CHARTERER shall be responsible for any costs up to the amount of any deductible. Should the CHARTERER hinder the yacht's redelivery to the place and time stipulated, for whatever cause, he shall pay the OWNER demurrage pro rata for additional charter time, plus any other losses the OWNER sustains related to the delayed redelivery. If the delay in redelivery is due to Force Majeure, the CHARTERER is not held responsible for any additional charter fees.
19. **DISPUTE RESOLUTIONS:** Should the OWNER and CHARTERER be unable to reconcile any differences that may arise with respect to the charter or this Agreement, such dispute shall be submitted first to mediation before a mediator mutually agreed upon by the CHARTERER and the OWNER, with the cost thereof divided equally between the parties. The mediation will be in accordance with such rules as the parties may designate agree upon, and in the event the dispute cannot be resolved by mediation, then either party may resort to an action as provided in paragraph 18.
20. **VENUE:** The venue of any action arising from this Agreement shall lie exclusively in the Courts of the City and State of the OWNER'S residence, unless another place is mutually agreed upon, and both parties shall submit to the jurisdiction of such court.
21. **EXECUTION OF AGREEMENT:** The OWNER and CHARTERER, whose signatures need not be affixed to the same copy of the YACHT CHARTER PARTY AGREEMENT, may transmit the Agreement by facsimile or other electronic means. The separately signed Agreement, and/or copies thereof, shall constitute a binding Agreement between the OWNER and the CHARTERER.
22. **TRIP CANCELLATION INSURANCE:** The CHARTERER acknowledges that trip cancellation insurance has been offered and that he/she has the choice of either accepting or declining

such coverage. If CHARTERER accepts cancellation insurance from BROKER or other source, it is the CHARTERER'S responsibility to understand the coverage's offered from the insurance company. The BROKER shall not be held liable for any claims related to the travel insurance.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representative, in duplicate originals, on the day and year first written above.

Dated: _____

Owner: _____

Dated: _____

Charter: _____

APPENDIX 2

ADDITIONAL CHARTER DEFINITIONS

Coastal Waters - The territorial Seas of the U.S. (3nm), U.S. waters of the Great Lakes, and those waters directly connected (i.e. bays, sounds, harbors, rivers, inlets, etc.) where any entrance exceeds 2nm.

Coastwise Voyage - Navigating the waters of any ocean or the Gulf of Mexico, 20nm or less offshore.

Consideration - An economic benefit, inducement, right, or profit including monetary payment going to an individual, person, or entity, but not including a voluntary sharing of the actual expenses of the voyage, by monetary compensation of fuel, food, beverage, or other supplies. *46 USC 2101 (5a)*

Crewmember - An individual who is on board a vessel acting under the authority of a license, certificate of registry, or merchant mariner's document issued under this subchapter, whether or not the individual is a member of the vessel's crew; or engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ, or be operated by an individual holding a license, certificate of registry, or merchant mariner's document issued under this subchapter. *46 CFR 16.105 (a) (b)*.

Demarcation Line - The regulations in this part established the lines of demarcation delineating those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) and those waters upon which mariners shall comply with the Inland navigation Rules. The waters inside the lines are Inland Rules waters. The waters outside the lines are COLREGS waters. *33 CFR 80.01 (a) (b)*

Great Lakes Voyage - Voyage from a U.S. port or place on the Great Lakes to another U.S. or Canadian port or place on the Great Lakes, or conversely.

Inland Waters - the waters shoreward of the territorial sea baseline. *33 CFR 2.26*

In rem - Unlike in personam (which is against a person and its property) in rem is a technical term meaning "against a thing or property". Any lawsuit or judgment made against the property or thing is an action "in rem". In this case, the location of the property is important as the court can hold the trial only in the jurisdiction under which the land falls. Unlike in personam, the judgment can be against the land and not its owner.

Merchant Mariner Credential - A MMC is the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

Ocean Voyage - Includes waters of any ocean, or the Gulf of Mexico more than 20nm offshore.

Oceangoing - Vessels operating seaward of the outermost boundary of the Territorial Sea (3nm) of the U.S. (i.e. beyond 3nm).

Passenger - Any person on a vessel, other than the owner or an individual representative of the owner or in the case of vessel under charter, an individual charterer or individual representative of the charterer, master and the members of the crew, or other any other person employed or engaged in any capacity on board a vessel in the business of that vessel. *46 USC 2101 (21) and 46 CFR 24.10-1.*

Note: All persons on board are crewmembers, passengers, or National Marine Fisheries Service official observers.

THERE ARE NO GUESTS OR “OTHER” OBSERVERS.

Passenger for Hire - Passenger for whom a consideration is contributed as a condition of carriage whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person interested in the vessel is a passenger for hire. *46 USC 2101 (21a)*

TWIC - Congress directed the federal government, through the Maritime Transportation Security Act (MTSA), to issue a biometric security credential to individuals who require unescorted access to secure areas of facilities and vessels and all mariners holding Coast Guard- issued credentials or qualification documents. A Transportation Worker Identification Credential (TWIC) is needed only for an initial license issuance or if your vessel has a Vessel Security Plan or if unescorted access to secure areas of regulated facilities is required. CG Policy letter 11-15.

UPV - A vessel not subject to inspection by the Coast Guard under *46 USC 3301*, less than 100 GTs:

- Carrying no more than six passengers, including at least one passenger for hire, or
- Chartered with the crew provided by the owner or owner’s representative and carrying six or fewer passengers. *46 USC 2101(42)(B)*

ABOUT THE AUTHOR

Mike Vaughn, Director of the Commercial Ship Information Center, is an attorney practicing law in Huntington Beach, California. He graduated from the University of North Carolina at Chapel Hill both for his undergraduate and law degrees.

He is licensed to practice law both in the states of California and North Carolina. He is admitted to practice before the U.S. District Court for the Southern, Central and Northern Districts of California and he is also a Proctor in Admiralty. He is admitted to practice before the 9th Circuit United States Court of Appeals.

Mr. Vaughn's Office is located at:

Vaughn Law Offices
17011 Beach Blvd, Suite 900
Huntington Beach, CA 92647
Tel: 562-592-9350 / Fax: 562-684-4459.

Email: mike@vaughnlawoffice.com.
www.maritimelawcenter.com