

SAMS[®] NEWSLETTER

Summer 2017



Summer Time

**Volume
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**Editor:
Stuart
J.
McLea,
AMS[®]**

Message
From
The
Editor
[Page 2](#)

Important
Member
Information
[Page 40](#)

**SAMS[®]
International Meeting &
Educational Conference
(IMEC)
Oct. 4th To Oct. 7th, 2017
Bonita Springs, FL**



President's
Message
[Page 4](#)

Members
Corner
[Page 41](#)



Stuart J. McLea, AMS®
SAMS® Editor/Past President

Good day to you all from Hot Canada

I would like to chat about a few topics, as this will be my last Editorial as Immediate Past President. This October, I will be leaving the Board and working again on my own business interests. I must say that it was quite a ride for this boy from Canada. I learned a lot, and made a whole bunch of new friends, and some lifelong ones I must say. I want to make it clear to the SAMS® membership that being on the Board **is not** a paid position, and quite frankly it cost the members of the Board money to be there. This is because of the loss of assignments, as sometimes SAMS® business must take priority. You say then, why do we do this? Well, I did it to pay back an organization that puts food on my table, and has done so for quite some time. I serve the Professional Marine Surveyors of SAMS® because I have seen over the years the “Trunk Slammers Surveyors” who are uneducated vagabonds with unethical values ripping off the boating public, and marine insurance companies and SAMS® has made a difference. SAMS® has had a hard few years, with our organization being sued by members who were found, after lengthy investigation to be unethical in their actions. I would like to thank Jeff Kibler, AMS® for his supporting words in an email (below) received at SAMS® H.Q. following a note that was emailed from SAMS® President regarding this subject.

“I just want to say that I greatly appreciate emails like this. As one of the young guys, it's comforting and motivating to know I'm a part of a professional organization that takes pride in doing the best work possible.

Not sure who this will reach, but a big thanks to Lloyd, the board and everyone at HQ for working so hard for all of us!”

It is nice to receive these sorts of emails as most of the time we do not. Thanks Jeff for taking the time.

E&O Insurance

We have had a number of inquiries regarding E&O, and I just want to say that the vote is very close. We will be sending by SAMS® Mail Chimp program, a copy of the E&O Policy, along with the questions that were asked by the membership previously, and have been answered by the E&O Insurance Company. I would ask that everyone open your mail from **SAMS® HQ AND READ IT.** You will receive a ballot with your IMEC Registration Packet which will be sent out in August. The E&O vote will be included on the Absentee Ballot for Accredited Marine Surveyors. Surveyors Associates will also receive a separate Absentee Ballot to complete and return to SAMS® International Office. **If you plan on attending IMEC, you do not need to return the ballot** as a

vote will be taken there. This will be the last chance for this Group Insurance, so read the material and vote. This is all we ask.

SAMS® Newsletter

I have enjoyed being the Editor over the last two years, and I hope that I have brought some knowledge to you through the Newsletter. We have a group of members with a diverse skill set who are willing and able to share with you all. I would like to thank everyone who took the time to contact me with their articles, as you all have been part of this success. I hope that my predecessor will keep the ball rolling.

Last Word:

I took delivery of my new truck a few weeks ago. The two decals say it all.....



If you are planning to write an article you should know the following:

1. Your article should be technical in content, and of interest to the profession of marine surveying.
2. The article should be in MS Word.
3. Please use Times New Roman font, size 12
4. Length of the article should be 500 to 1000 words.
5. Articles that have been published before, MUST have a letter of permission letting SAMS® re-publish this article.



Lloyd Kittredge, AMS® President

I was comparing my SAMS® membership to several other organizations that I belong to, and have come to the conclusion that SAMS® is a bargain. Yes, I know it's not always easy to pay the dues in January, but when I look at the return of investment, it's much easier to handle. The friends, and camaraderie is great, but by being a member it makes the phone ring, and that means business, which translates into dollars for my family. We certainly aren't perfect, but our "code of ethics" give us a big advantage in the marine industry. When you think of the thousands of surveys and reports that go out with SAMS® name and seal, and the few complaints that come in, we know that we must be doing something right.

Now, our IMEC (International Meeting and Educational Conference) in Bonita Springs, Florida is just around the corner, on October 4th thru the 7th. It will be very important for all of us to attend this year. If you will recall, last year the membership asked the Board to revisit the E&O insurance and that has been done, and will be discussed, and voted on again at the meeting, and by Absentee Ballots. If it is important to you, you must be there to express your views. The last time this was brought up, many rumors were circulating, maybe people just did not understand the facts, and it was not approved. A lot of work has gone into this, and I think we, as a membership, should look at this, and see if it is something that would benefit each one of us.

Another point I want to address is absentee voting. If you are NOT going to attend, want your voice heard, and your vote counted, please follow the instructions that will be coming to you in the Meeting packet. All you need to do is five (5) easy steps. **1.** Fill out the ballot. **2.** Sign and date the ballot at the bottom. **3.** Put the ballot in the small envelope provided. **4.** Seal the envelope, this means you get to either "taste it and paste it, or lick it and stick it". **5.** Sign your name across the sealed envelope. **5.** Return it to our Jacksonville office in the return envelope provided. Rhea will bring the ballot envelopes to the meeting to be counted. This year we hope to be able to speed up the counting of the absentee ballots, and floor count so everyone can handle their travel arrangements better. We also hope to have the improved and revised, Recommended Survey Report Content (RSRC) ready for you. As you can see, the business meeting held on Saturday morning will need to have your attention and input. The venue this year is outstanding, and I am sure you will enjoy yourself as well as learn a few things, and get those all important CE credits. Please, if you haven't already, make your plans and arrangements to attend this year's Conference in Bonita Springs in October.

Don't be left out, do it today!



Robert Horvath, AMS®
Executive Vice President

Surveyor Complaints

It was a pleasure at the June Board of Directors meeting to have reported that complaints against members was down by approximately 60%.

However, since returning, we have received complaints from two different insurance companies about the quality of two of our members' survey reports. After reviewing these, I was embarrassed that any of our members would submit such poor reports. Neither of these reports contained any of our Recommended Survey Report Content.

A great deal of time has been spent over the years developing what it takes to produce a professional survey report. The Recommended Survey Report Content is the absolute minimum required in a professional survey.

I would strongly suggest that everyone review their report content periodically to make sure it passes the smell test. We are viewed by the maritime industry as the premier marine surveyors group in the world. Let's not tarnish that image.

As insurance and finance standards are getting tighter, the industry expects the best from us. They do rely on us to be their eyes and ears so they can make intelligent decisions.

Enough said, I look forward to seeing everyone in Bonita Springs.





Gary Frankovich, AMS®
Membership Vice President

Well, it's July in N.E. Florida, temp's in the 90's, humidity about the same, and thunderstorms every afternoon, basically just another typical summer (but No More fires). Everyone I talk too seems to have as much, if not more business as they can handle. If you're not in that boat, perhaps it's time to re-examine your business plan and see what you can do to improve it. SAMS® membership is quite strong with a total of 970 members which includes 624 active AMS® members, 195 Surveyor Associates, 49 Affiliates, 27 Retired, 11 Life members, and 64 Suspended (of the 64 suspensions, 33 are for failure to pay their 2017 dues as of May 31, 2017). I'm having a bit of trouble understanding how a member, that runs their own business, and calls him or herself a professional marine surveyor, can be five (5) months late paying their dues. Everyone knows when their income tax is due, when their property tax is due, when their vehicle registration needs to be renewed etc., and when their SAMS® dues are due. Keep in mind, when you are "suspended" for whatever reason, you are prohibited from using SAMS® on you business cards, website, or any type of advertising, not to mention your contact information is removed from the roster/website, and you are not covered by our group liability policy. SAMS® dues are among the lowest of any professional organization out there. I know that business is slow in many areas in December, but if you can't put a bit of money away during the good months so you can pay your dues on time by check, you can pay with a credit card on SAMS® PayPal account, then you are in control of when you pay it off, while still enjoying all of the privileges that come with being a SAMS® member in good standing. On another note, Stu McLea, AMS® has worked extremely hard (AGAIN) to put together a group E&O policy for SAMS® membership, when you receive an email or letter from SAMS® HQ, please open it and deal with it immediately, this is REALLY important stuff!

Finally, Kenny Weinbrecht, AMS® has done another great job of putting together an incredible group of presenters for the IMEC this October in Bonita Springs, FL. (rumor has it, that it will be worth more CE's than ever before). This is a great venue and we want to make this the largest IMEC ever, so plan to attend and be sure to make your hotel reservations early (if it helps you to decide, the Florida Region voted to buy everyone a drink). I sincerely hope to see you all there.

Reminder!!

All Surveyor Associates who have not yet become an AMS® Candidate, must submit one survey per year within 30 days of the anniversary date of their membership. Please refer to the "Up or Out" Policy for further details.



**Kristoffer Diel, AMS®
Testing Vice President**

SAMS® 2017 SUMMER MEETING

Holiday Inn, Chicago, IL

Kristoffer A. Diel, AMS®, Vice President – Testing

29 JUNE 2017



KEY STATISTICS – AMS® CERTIFICATION EXAMINATIONS

2017					
Designation	Passing Grade	Attempts	Pass	Fail	% Passing
Cargo	80	0	0	0	%
Commercial Workboat	80	0	0	0	%
Engines	80	0	0	0	%
Fishing Vessel	80	0	0	0	%
Hull & Machinery	80	0	0	0	%
Tug & Barge	80	0	0	0	%
Yachts & Small Craft	80	11	10	1	90%

Ongoing EXAM revisions:

In mid-March, Mr. Eddy Assaf, AMS® requested a new French Y&SC exam; as he had 4 persons whom were soon eligible [and a couple had previously tested]. We therefore immediately undertook this project, and we completed a new exam by the end of April. **Of course, Mr. Assaf is guilty of doing most of the work!**

However, this has delayed the Commercial Workboat Exam for a few more months. I will endeavor to have it ready for the IMEC in Florida, later this year.

I want to again thank James Steffen, AMS® and Joseph Derie, AMS® for their ongoing assistance with the Commercial Workboat Exam.

Respectfully submitted,

Kristoffer A. Diel

Kristoffer A. Diel AMS®

SAMS® Vice President - Testing



FOR MORE INFORMATION CONTACT:

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Kenneth Weinbrecht, AMS®
Education Vice President

**An advanced look at the 2017 IMEC. You're seeing it before it gets mailed.
Don't hesitate to make reservations, they are starting to go fast!**

2017 IMEC

When You Stop Learning; You Start Dying - Albert Einstein.

Wednesday - Oct. 4th

1230 - 1330 ABYC - Standards Gone Wild
1330 - 1445 OSHA & The Marine Surveyor - John Malool - Surveyor Associate
1445 - 1515 Break
1515 - 1615 Global Diving - Working With Marine Salvors - Frank Immel
1615 - 1700 Revised RSRC - Randell Sharpe, AMS®
1830 Presidents Reception.

Thursday - Oct. 5th

0800 - 0830 President's Introduction of the Board of Directors.
0830 - 1000 "Recreational Marine Diesel Engine Failures – Common Failures" - Rolando Santos, AMS®
1000 - 1030 Break
1030 - 1130 Surveying High Performance Boats - Brad C. Shoenwald, Performance Boat School.
1130 - 1300 Lunch on your own.
1300 - 1400 Subchapter M - Bob Russo, Towing Vessel Inspection Bureau
1400 - 1430 Break
1430 - 1530 Forensic Photography - Todd Schwede, AMS®
1530 - 1700 Mega Yacht Surveying - John Walker, AMS®, Chief Surveyor, Braemar
1830 - ? Dinner

Friday - Oct. 6th

0800 - 0815 Housekeeping
0815 - 0930 Hybrid Engines - To be determined.
0930 - 1000 Break
1000 - 1130 Corrosion - David Rifkin, AMS®
1130 - 1300 Lunch on your own
1300 - 1400 Electrical Systems - Wards Marine
1400 - 1430 Break
1430 - 1600 Rigging - Dylan Bailey, AMS®



**Joseph Loble, AMS®
Meeting/Conventions VP**

I hope everyone is enjoying the summer months.

The final preparations for IMEC 2017 are underway. The October 4th thru October 7th meeting will be in Bonita Springs, Florida at the Hyatt Coconut Point which is a short drive from the Ft. Meyers Airport. We have a room rate of \$179.00 per night and get free parking. The facility is a beautiful resort with a lot of amenities, including a private beach island with water taxi. We already have close to 100 members that have made reservations. I increased the usual room block, since we predict high attendance. Please make your reservations as soon as you can. You will be receiving your Registration packet in early August.

IMEC 2018 will be in Portland, Oregon at the Hilton Downtown, with room rates at \$189.00. The dates are October 25th - 28th. Unfortunately, parking is at a premium, but there are many transportation options, as is with any city. This is a world class hotel in the heart of the city.

I traveled to Savannah, Georgia and toured three possible sites for IMEC 2019. I have signed a contract with the Hilton Desoto, which is in the Historic District of the city. The rooms will be \$176.00 per night, and the parking is fixed at \$18.00 per day. The city is beautiful, and we will be there over Halloween which should be interesting, based on the number of ghost tour offers.

I look forward to another successful meeting this fall.

Go To: <https://coconutpoint.regency.hyatt.com/en/hotel/home.html> Play Video





**John Lowe, AMS®
Public Relations VP**

Hurricane Preparation for Boats

With the Atlantic hurricane season, which runs from June 1st - November 30th well upon us, this may be a good time to review your hurricane prep plan.

It would be a good idea to review your insurance policy to be sure that you have proper coverage. Additionally you should review your marina storage/slip agreement, so there is no question as to your responsibility during, and after a storm. All registrations/documentation, insurance policy, and storage/slip agreements should be consolidated, along with phone numbers for any local authorities such as harbor master, U.S. Coast Guard, and insurance company. A quick inventory of vessel equipment, possibly along with a video should be made; as equipment added after initial survey or policy should be documented.

It is statistically safer to have a vessel hauled prior to a hurricane with the following precautions made:

1. Remove all gear such as canvass, and frame, outriggers, sails, dinghies, cushions, coolers (which can blow away and damage other vessels).
2. All wheels, tillers, booms, and other equipment (which can move during severe weather) should be lashed down.
3. Hatches should be sealed with duct tape to avoid possible weather entering the cabin.
4. Vessel should be blocked with all jack stands supported by plywood, and lashed or chained together.
5. Drain plugs should be removed, and all deck drains, and bilges should be cleared of debris, and any objects which can block these should be removed.
6. All efforts should be made to haul any boats with low freeboard, such as high performance boats or open boats as these do not handle heavy weather as well as vessels with higher freeboard.

If it is necessary for the boat to remain in water, the following precautions should be made:

1. All dock lines should be doubled, with chafe gear installed at all areas of contact, extra fenders and/or fender boards should be added, hatches should be sealed.
2. All equipment listed above should be removed, and all moveable equipment lashed down.
3. Clear bilges, and decks from debris.
4. Batteries should be fully charged with DC load reduced, and fuel added as it is sometimes difficult to obtain after a storm.

5. Finally, check your neighbor's boats to see if there are any obvious problems which could affect yours. Notify the yard and/or boat owner prior to the storm, and document your preparation possibly with a video. It is ill advised to ride out a hurricane on board as rescue may not be possible by the time it is determined that you need to get off. **If there is enough time to move the vessel out of a storms way, the following should be considered:**

1. Check your navigation limits, and haul out dates on your insurance policy to be sure you have coverage if moving the boat.
2. Be sure that there is a facility that can handle your boat at your destination; these may have a lot of their own clients, and transients to handle prior to a storm.
3. If you need to get past drawbridges make sure these will be operational as some state laws do not allow operation of these during evacuations or prior to a storm.

Trailerable boats should be located on high ground, trailers should be checked, and any repairs made well in advance of storm. Trailer should be blocked, and boat lashed to trailer, which should in turn be secured to anchors screwed into the ground, trees or any other secure structure, Remove all moveable items described above and lash all moveable equipment. Clear bilges and remove drain plug. Fully charge batteries and test bilge pumps.

After the storm, it is the owner's responsibility to mitigate any further damage by any means necessary. It may be necessary to have engines pickled if submerged. Broken windows should be covered to reduce further weather damage. If a contractor is used, retain all invoices to present to your insurance carrier if a claim is to be made.

A little effort can save you a lot of grief if a hurricane should occur, but keep in mind that your personal safety is infinitely more important than your boat, which is replaceable.

Be safe, and enjoy your boating season



T. Fred Wright, AMS®
Mid-Atlantic Regional Director



I lost some documents this week, and had to go into recovery mode, searching portable, and external hard drives, and backups for replacement copies of my templates created, oh so many eons ago. I found out that I have not upgraded my personal templates for C&V's and claims reports since 2012, 5 years of stagnation, simply filling in the same old blocks of information. How many changes have occurred in that time? I guess I've simply learned to plug in new headings and details to reflect the particular boat, cargo or whatever.

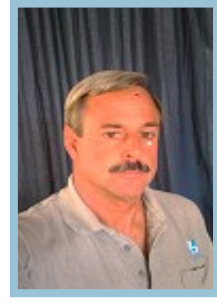
We are required to submit continuing education credits every year, but what portion of that is simply attending a meeting and listening to a speaker drone on about some subject, about which we may know more than the presenter. Not denigrating the speakers, I've yet to attend a meeting/educational opportunity and have a meaningful conversation with anyone in our community, where I did not learn something, but it got me thinking, how about we, every one of us, give serious import to our own education. If you are going to spend 12 hours a year in class, we should make sure it is truly relevant and important and **EDUCATIONAL**, and for goodness sake, upgrade your report format to reflect your knowledge of something else you should be looking at during your inspection. Consider having someone else review your reports for content, and readability. Just because you think it's understandable, and covers all the bases, does not mean it really does. Guess what I'm doing this weekend.

Finally, IMEC is just around the corner. Your Education VP has put together an educational program that should prove interesting.

Hope to see you in Bonita Springs



**Randell Sharpe, AMS®
Pacific Regional Director**



I trust you are all busy this time of year. I know I am, and people are clamoring for purchase surveys. With all the rain in the west this year, the damage claims are also arriving with striking, submerged debris floating down long dried out rivers. If you are not busy, get out there and make yourself known by introducing yourself to the local yacht brokers, boat yards, and marina managers. Also, make contact with your local insurance agents to introduce yourselves. Nothing works better than some face time with potential customers or folks to recommend you.

I have just returned from the SAMS® Board of Directors meeting in Chicago, where we had a productive meeting. Your board is working hard to make the society work for you. The upcoming IMEC meeting in Florida, is shaping up to be a great event with excellent educational sessions. The number of CE credits for the meeting has been increased to match the number of hours we spend in the conference sessions.

Those of you that attended the Pacific Regional Meeting in February will get an update on the Recommended Survey Report Content talk I gave there. The Board, along with a committee of the Regional Directors, has worked on updating the Recommended Survey Report Content, and I will be presenting the revised document during a talk on Wednesday. Be There! Your reports are the way you show off your work as a surveyor. If you have not reviewed the Recommended Survey Report Content recently, this is a good time to do it. Those of you using a computer generated report should review the canned language in the report software to ensure it is in compliance with the SAMS® Recommended Survey Report Content, that it reflects what you actually are doing during a survey, and it makes sense. You will be receiving additional emails from HQ regarding the possibility of having a group E&O policy. Read It! This is a great deal for those that wish to participate, and have a group rate for their E&O insurance policy. For the Surveyor Associates, please pay attention to the upgrade to AMS® Candidate date that you received when you joined SAMS®. It is also shown on the annual reviews that you turn in for review. It's your responsibility to apply for upgrade in a timely manner. That means 6 months prior to the upgrade date and no later than 2 months prior to the upgrade date. Applying at the last minute just doesn't work well, as the membership chairman and I have to review the application, and we are volunteers that are busy working for a living as well. As always, if you have any questions I am available via phone or email unless I'm under a boat or in the bilge somewhere.

Work Safe & Stay Safe.

Eddy J. Assaf, Jr., AMS[®]
Canada Regional Director



Hi All

I hope most of you are still real busy. It's been a bit of a weird season so far this year, here in Quebec. Lots of rain and winter runoff, making record high water levels on our part of the Ottawa River and St. Lawrence Seaway. For some of the marinas, their season started with the buildings underwater (over 12 feet in some areas). All this made for a beginning of the season constantly rescheduling over and over again. Some areas were in this state for over a month on average, most boats went into the water about 1 month later than usual, all this, and added debris from land runoff, made it a little hard to navigate, even from those who launched at an earlier date. Other rivers did not get it as bad as the Ottawa River, Seaway, and around, but debris was present everywhere.

We are now into the beginning of July, and things are just starting to get back to normal, still a little high, but safe to navigate. So, usually around this time it's starting to slow down, but for now it's still real busy. As most of you know, we were able to set up the insurance plan with BFL Canada. Numbers were a little lower than confirmed by members, about 40% lower and it wasn't easy making this fly with London, seeing we only fulfilled 60% of what it was supposed to be, but Marc managed to do so. For those who registered on time, welcome aboard, and for those who might be interested, contact me, we do have to wait until a certain amount of members get together before being able to add them on, it must be done in groups.

A few members retired last year bringing our Canadian membership numbers a little low, but we have received two new membership packets recently, so hopefully we can get those numbers back up again. I am planning a Canadian Regional meeting for sometime in November. I will be getting Marc of BFL Insurance to speak to you all, I am sure there will be a few questions that would need answering. I am working on this, and it's not easy to organize, but will keep you posted.

IMEC this year is in sunny Florida, Bonita Springs to be exact. The organizers have set up a great venue and it should be a great time for all. I hope to see as many members there as in Rhode Island. The Canadian presence there was awesome.

So until then guys and gals, have a great summer, and if you need anything, you know where to get a hold of me.

**R. Dylan Bailey, AMS®
Florida Regional Director**



Happy summer all!

I am hoping everyone has had a busy Spring. Here in Florida, there seems to be no shortage of work. Remember to stay hydrated.

I would like to thank all of the speakers who spoke at the 2017 Florida Regional Meeting. At the meeting, I asked our attendees to make suggestions on index cards for topics for the 2018 Regional Meeting. I was given some great suggestions. There were so many that next year we will have a two day meeting. Look for more information in an upcoming SAMS® Newsletter.

I would also like to thank the people that have recommended me to potential clients. I as well am doing a lot of referring to my fellow marine surveyors. I will not refer anyone that I have not met. I believe this is the same for a lot of us. The best way to meet your fellow marine surveyors is to attend SAMS® meetings. With the 2017 IMEC in Florida this year it should be easy for our Caribbean and Florida surveyors to attend. What a great way to earn CEs and network. The more you network the more you become known to your fellow surveyors. Your new contacts might be referring work to you in the near future.

See you there!

These Members Have

**Bill Trenkle, AMS®
Secretary/Treasurer**



**John McDonough, AMS®
North East Regional Director**



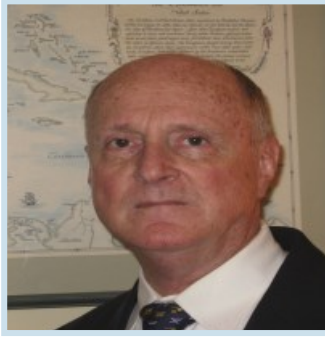
**Scott D. Schoeler, AMS®
Great Lakes Regional Director**



**Thor Jones, AMS®
Gulf Regional Director**



Will Return For The Next Issue



**Joseph A. Derie, AMS®
SAMS® Commercial Workboats Chair**

OSHA and the Inspection Requirements for Air Compressors and Related Components on Commercial Dive Boats

OSHA General

OSHA 29 CFR Subpart T *Commercial Diving Operations* specifies the requirements for these operations. 29 CFR 1910.401(a) (2) *Scope* states “This standard applies to diving and related support operations conducted in connection with all types of work, and employments, including general industry, construction, ship repairing, shipbuilding, shipbreaking, and longshoring.” It further lists a number of exceptions where the standard does not apply, including operations that are:

29 CFR 1910.401(a) (2) (i) Performed solely for instructional purposes, using open-circuit, compressed-air SCUBA, and conducted within the no-decompression limits;

29 CFR 1910.401(a) (2)(ii) Performed solely for search, rescue, or related public safety purposes by or under the control of a governmental agency; or

29 CFR 1910.401(a) (2)(iii) Governed by 45 CFR Part 46 (Protection of Human Subjects, U.S. Department of Health and Human Services) or equivalent rules or regulations established by another federal agency, which regulate research, development, or related purposes involving human subjects.

29 CFR 1910.401(a) (2)(iv) Defined as scientific diving and which is under the direction and control of a diving program...

The section of interest to a surveyor doing a pre-purchase or C&V survey of a commercial dive vessel is 29 CFR 1910.430 *Equipment* which includes sections:

29 CFR 1910.430 (a) *General*.

29 CFR 1910.430 (b) *Air compressor system*.

29 CFR 1910.430 (c) *Breathing gas supply hoses*.

29 CFR 1910.430 (d) *Buoyancy control*.

29 CFR 1910.430 (e) *Compressed gas cylinders.*

29 CFR 1910.430 (f) *Decompression chambers.*

29 CFR 1910.430 (g) *Gauges and timekeeping devices.*

29 CFR 1910.430 (h) *Masks and helmets.*

29 CFR 1910.430 (i) *Weights and harnesses.*

and 29 CFR 1910.440 *Recordkeeping requirements.*

Note this section of OSHA does not cover the electrical standards for any of the above. Surveyors should use NFPA 302 or ABYC Standards, whichever is more appropriate for the vessel they are surveying.

Scope

This article will only cover the above sections on scope, air compressor systems and compressed gas cylinders, since those areas should be within the capabilities of the surveyor qualified to survey uninspected commercial dive vessels. It is considered that most surveyors will not be qualified to survey the other areas listed above (breathing gas supply hoses, masks and helmets, etc.). It is recommended that those areas should be listed on the survey as “Not surveyed,” with a strong recommendation that a qualified inspector, one not affiliated with the dive boat being surveyed, inspect those areas.

With regards to decompression chambers however, it is recommended that obvious machinery type defects such as corrosion, dents, and broken welds, etc., be noted with the above strong recommendation that a qualified inspector, one not affiliated with the dive boat being surveyed, inspect the decompression chamber.

OSHA General

29 CFR 1910.430 (a) (2) states: “Each equipment modification, repair, test, calibration or maintenance service shall be recorded by means of a tagging or logging system, and include the date, and nature of work performed, and the name or initials of the person performing the work.”

Air Compressor System

29 CFR 1910.430 (b) *Air compressor system.* There are three areas in this section that should be noted:

1910.430(b)(1) Compressors used to supply air to the diver shall be equipped with a volume tank with a check valve on the inlet side, a pressure gauge, a relief valve, and a drain valve.

1910.430(b)(2) Air compressor intakes shall be located away from areas containing exhaust or other contaminants.

1910.430 (b)(4) The output of air compressor systems shall be tested for air purity every 6 months by means of samples taken at the connection to the distribution system, except that non-oil lubricated compressors need not be tested for oil mist.

Section 1910.430(b)(3) has sections on the quality of the air provided by the air compressor. This is understandable since the air supplied by the compressor is being used for breathing. It is unlikely that surveyors will be qualified to test the air but the results of tests under 29 CFR 1910.430 (b) (4) must be documented and that should be noted on the survey.

Compressed Gas Cylinders

29 CFR 1910.430 (e) *Compressed gas cylinders*. Compressed gas cylinders shall:

1910.430(e)(1) Be designed, constructed, and maintained in accordance with the applicable provisions of 29 CFR 1910.101 and 1910.169 through 1910.171.

1910.430(e)(2) Be stored in a ventilated area, and protected from excessive heat;

1910.430(e)(3) Be secured from falling; and

1910.430(e)(4) Have shut-off valves recessed into the cylinder or protected by a cap, except when in use or manifolded, or when used for SCUBA diving.

Recordkeeping

29 CFR 1910.440 *Recordkeeping requirements*.

1910.440(b)(3)(vi) Equipment inspections, and testing records (1910.430) - current entry or tag, or until equipment is withdrawn from service.

The records then of air quality testing for an air compressor, as required by 29 CFR 1810.430(b)(4), must be kept until the equipment is withdrawn from service, and should be available for the surveyor. The lack of these records would appear to be a serious OSHA deficiency.

Other inspection recommendations.

In my previous article “*OSHA and the Inspection Requirements for Air Compressors and Related Components on Uninspected Commercial Vessels*”

I included sections entitled “Template for Surveying Air Compressors Using OSHA Guidelines” and “Other Recommendations for Surveying Air Compressors.” Those sections also apply when surveying air compressors on commercial dive vessels, and should be used. I will be happy to provide a copy of that article to anyone who contacts me.

Conclusion

From the above it can be seen that the surveyor should do more than list the make, and model of any air compressor installed on a commercial dive vessel they are surveying. Due to the importance of air in diving operations it is imperative that the operator, and owner follow the OSHA requirements as listed above. In addition, the surveyor should look for obvious deficiencies (corrosion, broken welds, cracks, dents, leakage, etc.). Remember, compressed air system safety, and reliability on these vessels is a matter of life or death. Problems with or the loss of this system can seriously compromise diver safety.

As always I hope anyone who wants to discuss this column, or has questions about Commercial Workboats or, 46 CFR Subchapter M will contact me at 503-236-6818.

Hurricane Storage in the Caribbean

by
Bob Goodchild, AMS®



In September of 2004, a strong category 3 hurricane swept over the southern Caribbean Island of Grenada. Hurricane Ivan produced sustained winds of over 110 knots with much higher gusts. Grenada was then, and still is, my home. As the wind subsided, I emerged from the basement of my house to find the roof missing, trees and electricity poles down, roads blocked, sunk and damaged yachts ringing the anchorages, and generally an island with a shattered infrastructure.

The marine industry in Grenada had seen strong growth in the previous five years, with two new yards opening and able to store, between them, over 400 yachts. Apart from the yards, marinas and many anchorages were full with yachts for the hurricane season. Ironically, many yachts were in Grenada because, at 12 degrees north, many considered, including insurance underwriters, the location to be below the hurricane belt, and to be safe from just such a storm as this.

Certainly no hurricane had affected Grenada for fifty years, and it would be fair to say that a large degree of complacency had developed in regard to hurricane preparation and storage.

The standard for hurricane preparation was little different from storage at other times of the year; with conventional marine jack stands used in pairs on keel boats, chained together under the hull or keel. Some attention was given to above deck canvas removal, mast un-stepping was not considered and no provision was made to secure yachts or multihulls to the ground.

Some preparations were made before the arrival of the storm, but it is not unusual for there to be less than 36 hours notice between a hurricane warning and the first affects of the storm, this can translate to one working day. This was the case with Ivan, where until shortly before its arrival the forecast was that the storm would curve and pass over the islands further north. We had yachts sailing south to Grenada to avoid the storm! The time available was insufficient to prepare a yard full of boats, with the yard crew usually flat out hauling last minute arrivals, and clearly vessels should be prepared at the start of the hurricane season.

This is where the services of an individual or specialist yacht management company with a permanent presence in the vicinity of the boatyard can be very important. They will know the individual vessels that they manage, and have in place a plan for final preparation in the event of a storm, and have the additional personnel to undertake the work necessary. In fact, some insurance policies require an 'on island' representative who will take responsibility for checking the vessel on a regular basis, and for ensuring the vessel is prepared before a storm. The boatyards and several contractors in Grenada now offer this service.

It is worth briefly considering what conditions are likely to be in a hurricane, taking Ivan as an example. Although the sustained winds were impressive enough at over 110 knots, the wall of the hurricane's eye, which passed over the southern part of Grenada where all the marine facilities are based, produced far higher wind speeds. Within the eye wall there were small intense tornadoes (properly termed mesovortices), where wind speeds are higher, estimates vary but for short periods, were in excess of 160 knots. Often not fully considered are the floods and landslides caused by intense periods of rain, with 18 inches in a 24-hour period not unusual. Wave heights increase and 60 ft., peak to trough, sustained wave heights were reported in the vicinity of Grenada during the passage of Ivan, with some reports of much higher waves. This wave action can come from any direction, depending on the passage of the eye. In a region accustomed to trade winds producing wave action from one direction, this can be a particular problem, certainly the case in the Eastern Caribbean Islands where there are virtually no sea defenses on the leeward, westerly side of the islands. Damage and flooding caused by wave action is exacerbated by 'storm surge' where the sea level rises due to low barometric pressure associated with a revolving tropical storm. Often ignored in discussions of damage following a hurricane is the problem of looting. Grenada suffered a complete break down of law and order following Ivan. For three days, until troops arrived from Trinidad, looting steadily escalated. Looting was a major problem for yachts stranded ashore, particularly in urban areas, whereas boatyards were less affected due to the vigilance of the local management, and a few staff members.

Others factors include: the breakdown in the supply chain of all purchased commodities, loss of power, loss of fuel supplies for generators and vehicles, loss of grid supplied electricity, breakdown of all communication systems and roads blocked by debris and possibly damaged by landslides or heavy wave action.

During the passage of Ivan in Grenada, the majority of yachts were in marinas and anchorages, and the combination of elevated wind speeds, poorly prepared and moored vessels, wave action, and raised water levels created a devastating combination that resulted in very few yachts escaping damage, and several hundred being considered a constructive total loss. The preparation of yachts for in water storage during the hurricane season is a separate and interesting subject, but what I would like to focus on is yard preparation and storage of yachts in the hurricane season.

During Ivan, both yards that were storing yachts suffered damage. In one yard, there was substantial damage to over 90% of the yachts, the other yard suffered a smaller percentage of damaged yachts. Although storage methods were similar, differences were likely, due to very localised differences in the wind speeds associated with mesovortices mentioned above and the heroic efforts of staff who re-chocked vessels during the storm.

During the period following hurricane Ivan, I covered damage claims for several underwriters, and generally speaking coverage for damage during a 'named storm' related to the geographical location of the vessel at the time of the claim. Hence, a large grouping of yachts in Grenada that were south of 12deg 30m north, an arbitrary line that has been used as a northerly limit for hurricane cover.

Since Ivan, I have seen a change in emphasis among some, mostly European based, underwriters towards preparation and methods of storage, often linked to differing deductibles, rather than simply location.

The yards in Grenada have responded to the new requirements with additional equipment and requirements. I will summarise the requirements and types of storage available below which are broadly similar between the yards.

Headsails are to be removed (the risk of a headsail unfurling in a storm is very high). Mainsails can be left on the boom as long as the boom is lowered and the sail cover or stack pack is lashed to the boom or the mainsail has to be removed, depending on the requirement of the particular yard. Canvas to be removed or should be removed by the yard if there is a hurricane warning.

A lot of attention has been given to supporting the yachts. In hurricane Ivan the extreme winds caused vibration from the rigs into the hull, and the resulting movements caused the marine jack stands to 'walk' away from the yachts. Although chained in pairs under the hull or keel, this was not enough to stop them moving, chains broke, came loose or the stands moved towards a narrower beam. When monohull yachts fell they often landed on the jack stands and there were many yachts with parts of stands that had penetrated the hull. To minimize movement, jack stands are now additionally connected with steel bars that are welded to the stands, or connected with steel pipe and clamps, similar to scaffolding systems. All these improvements are designed to make an integrated support system that is clearly better achieved by the use of a one-piece engineered cradle.

Engineered cradles are offered at all of the yards at an additional cost. The cradles are either locally manufactured or purchased and all are of generally the same design concept. The purpose of the cradle is to construct a support system that is strong and stable enough to withstand the loads excerpted by the violent movements of the yacht it is supporting in a hurricane.

All vessels in the boatyards, whether in engineered cradles or supported by jack stands, are secured with four ratchet tensioned cargo straps to strong points in the ground. In two of the yards, posthole borers have been used to make a 6 ft. long 10 in. diameter hole and chains or cables are secured in place with concrete or with rings that are back-packed with earth. One yard is moving over to a system that involves driving into the ground, a steel post using a hydraulic hammer. The post has hinged 'barb' plates at the lower end and when the post is pulled back using a hydraulic jack arrangement the 'barbs' are forced out creating a very secure anchorage. The other yard uses blocks of concrete of about 1,000 kg., relying on weight alone for security.

A note of caution here, when enthusiastically tightened on a lightly constructed hull these straps can exert enough loading to cause distortion of the hull, particularly if poorly supported.

A critical factor in reducing movement of yachts stored ashore in a hurricane, is to reduce the windage and to this end, un-stepping the mast and storing it securely away from the yacht, is the single most effective measure to reduce windage and associated movement. It can be said that the gold standard of yacht hurricane storage for a yacht would

be with the mast un-stepped, with the yacht secured to the ground inside an engineered cradle in an area where all nearby vessels are similarly prepared. Additional costs are involved and an engineered cradle for a 45 ft. yacht would add around US\$1,250 to normal storage costs for a six-month period. Costs for the unstepping and stepping of the mast, with mast storage, for the hurricane season would add around US\$1,200 to US\$1,500.

I have covered the storage of monohull yachts above, but the percentage of catamarans in Caribbean hurricane storage increases each year. The damage I saw after Ivan, on catamarans stored ashore, was generally caused by the hulls falling from their supports with hull fractures around fixed keels, rudders and skegs. Also where supports, culvert rings and jack stands, had penetrated the hulls.

The storage system for catamarans has been improved with the addition of tie down straps, I have not seen any engineered cradles in use for catamarans. Undoubtedly, the use of tie downs improves the security of the catamarans but the support structure under the hulls needs to be as stable as possible and the hulls should be as low to the ground as possible.

The extremely heavy rain associated with the passing of a hurricane is a problem for several reasons, apart from the likelihood of flooding and landslide, the ground saturation can cause softening allowing the keel blocking and jack stands to sink or at least become less stable. Ideally, the yard surface would be concrete but this is unusual in the Caribbean where compacted earth and gravel are more common. In this case, it is particularly important that the yard surface should be cambered with extensive drainage.

The effect of so much rain in a short period can lead to downflooding in yachts that are otherwise undamaged. Cockpit drains can be partially blocked through the collection of wind blown debris and this can cause flooding in the cockpit. If there is no bridge deck between cockpit and companionway this will certainly cause flooding inside. If a fairly flat cover can be arranged over the cockpit that is secure and does not create windage, it will help alleviate this problem. An additional precaution, is to remove a hose on a seacock lower in the bilge, or remove the speed log so that any water entering will run out, rather than flooding the boat. This is a useful precaution whenever storing a yacht through the rainy season in the tropics. I see on average, two claims a year that are related to fresh water ingress.

The yard should be prepared by clearance of any equipment or debris that can be picked up by the wind, which would then become a missile. Offices and workshops should be constructed to withstand hurricane force winds as far as possible. My own boat would have been unscathed by the affects of Ivan, if a nearby warehouse had not disintegrated with the resulting metal roofing sheets impacting the rigging and scoring across the deck!

Following Ivan there was a failure of all communication systems, no phones or Internet, no public radio or television service. To give some idea of the total failure of communication, the first contact the government had with the outside world was when a Royal Navy helicopter transported the prime minister out to the frigate, that had arrived the day after the storm, so that he could use the ships communications systems.

The government here, now have both short wave radio and satellite phone emergency communication systems in, hopefully, hurricane proof facilities. It would be useful if boatyards had at least a satellite phone with data facility so that text emails can be sent and received. Fortunately, it is now common practice to back up databases with some kind of 'cloud' arrangement.

Food and fuel distribution failed in Ivan and there was no electricity for two months, some parts of the island waited six months for a full resumption of services. Personally, friends sailing between Grenada and Trinidad supplied us with food and fuel. Although we had laid in large supplies of food, having experienced hurricanes previously, these supplies were soon depleted, as we found ourselves feeding large groups who had no food supplies.

Boatyards should have back up generators and large reserves of fuel. They may find themselves feeding the workers that do make it into the yard, and would be wise to have emergency stocks of food.

Security is a difficult issue to address post hurricane, but staff present in a boatyard are likely to deter most looters, who are then going to move on to easier targets when abandoned and damaged yachts make an attractive target.

I spoke to several marine insurers in the process of writing this article regarding their approach to hurricane storage in the Caribbean. There is a common theme among the European companies who, judging by their comments and the questionnaires for clients storing their yachts ashore during the hurricane season, are generally aware of the risks and issues involved.

Methods for storage of yachts have improved enormously in Grenada and generally, but not everywhere, in the Caribbean. In addition, Grenada is still statistically far less likely to be hit by a hurricane than its northern neighbours, and has not had any significant named storms since these improvements were implemented.

As part of the research for this article I looked at other parts of the Caribbean and the southern USA that had implemented these improvements, and how they had fared in hurricane conditions. What became clear is that well supported yachts that are tied down are far less likely to suffer damage. Damage that occurred was due to tie downs that had failed, sandscrew anchors into soft ground that had pulled out, marine jack stands that had been welded together, and the welds had failed due to vibration caused when the high winds shook the rig and vessel, subsidence where the ground became saturated causing the supporting stands to fall away, flying debris and the ever present problem of fresh water ingress.

The way forward to continue improving yacht storage during the hurricane season will hinge on insurers insisting on better preparation for storage, which will in turn encourage their clients to request these facilities from the boatyards, who will then continue to make the investments required to provide improved facilities.

See Storage JPG's on [Page 26](#).

Many thanks to the following for assistance with information for this article: Grenada Marine, Spice Island Marine. Clarks Court Boatyard and Marina, Pantaenius UK, Admiral Insurance, Admiral Yacht Insurance, Fastnet Marine Insurance, and Wager and Associates.

Engineered cradle manufactured by Roodberg.



Locally produced cradle.



Marine jack stands connected with piping and clamps.



Typical catamaran storage, straps not yet attached.



Yacht strapped to the ground using cargo straps, cement blocks.



Hurricane damage.



LOOKING INTO THE REAR VIEW MIRROR

by **Bob Heekin - Retired**

SAMS® as a group typically looks to see what the future might hold. That is as it should be. But, for just a brief moment let's go back in time to reveal some personal things about this fraternity that I, as a member, have experienced. You see, as of the end of year 2015, I have elected to close my office. The Encore Ltd Inc. sign that formerly advertised OPEN FOR BUSINESS, instead daringly proclaims GONE FISHING.

The year was 1992, George H. W. Bush was the President of the US back in those days. Me, I was off to downtown San Diego, home of the official annual SAMS® conference, now technically referred to as the IMEC. My company at the time sponsored mine, and Randy Roden's, AMS® way so what did we care. I had passed my AMS® exam that same year, and I was excited to see what it might look like to be in the same room with other persons that chose this path as a way to put food on the table. I was much slimmer back then, so my budget for food was equally less.

Randy and I arrived at the designated hotel, and we were secretly on the lookout for our colleagues who we assumed might be wearing Sperry Topsiders. This part of the journey came true. Let's see I was 44 years old then, probably young to be a member in SAMS® even back then. My hair was probably darker, and my ability to consume alcohol was unequalled. That does not really matter here. But, it recently came to me, that if I were a new member back then, at #230, we were substantially less in numbers back in those days.

In 1992, the Chairman Emeritus of SAMS® was the incomparable James B. Robbins, who was just ending his unprecedented and never to be seen again 6th term. I guess when you have a leader like that, you simply keep him on the books. I could go on and on about Jimmy, but many members today may only know in cursory fashion about his good deeds. Jimmy as many of us know was a co founder of SAMS®, may he rest in peace. Chairman, and President back then were Mickey Strocchi, and our now advisor Downing Nightingale, AMS® respectively. Executive VP, and Secretary Treasurer were Don Patterson, and Charles Harden, also respectively. The other officers of that circa were Rush Andre, Mark Rhodes, Retired and William Robbins, AMS®. Needless to say, these were all good men who were pioneering this unruly group with the goal of making SAMS® a household word.

I have fond memories of the San Diego meeting but truth be known, I do not remember much. I can boast that I was fortunate enough to attend all subsequent annual events, excluding one in Norfolk and another in Puerto Rico because the Ft. Lauderdale airport closed due to the approach of Hurricane Wilma. I also remember Mary Stahler, who virtually single handedly kept us all in line. As it applies to the current staff of professionals headed by Rhea Shea, which I have the utmost respect. SAMS® has grown tremendously since then, as have the demands for more advanced administration.

I once pondered why our annual meetings ceased showcasing dinners aboard party vessels that specialized in over serving our many members. I still sorely miss these extravaganzas. The answer is quite evident.

We have grown to a point where we have to be conscious of the room size for our group floating or not. The days of gathering on a floating barge to quench our thirst have therefore ended, unless Royal Caribbean drastically comes down in price.

There are many contributors that should take a bow for their roles in bringing SAMS® to where it is today. I wish I could mention all of them. From the 50 charter members to the current Board of Directors headed by Lloyd Kittredge, AMS®, all have had a hand in guiding this organization forward. The concept of SAMS® is a good thing. We offer a unique alternative to NAMS and in my opinion we are a more contemporary organization. Most importantly, the thing that SAMS® and NAMS have accomplished is, in bringing about a more professional perception to the public, of the men and women loosely known for the rather Neanderthal act of striking hulls with hammers.

In closing, I hope that I will not be just remembered for jumping ship. I carefully looked at my calendar as of late, and simply found no more days to plug in as work days. One has to admit that this can be a dilemma. I will always be indebted to SAMS® for giving me credibility in my every day work. I hope that the current body of SAMS® perpetuates its growth as it has since my beginnings in 1992. Long live SAMS®.



“You can’t know where you’re going until you know where you’ve been”. *George Santayana*

Editorial Comment: *Bob is now permanently retired from surveying. He’s enjoying the good life, and spending relaxing days fishing in Southern Florida.*



Small Craft Advisory – New Environmental Regulations apply to your “ship” no matter what size, and surveyors can help their clients comply with US Laws and regulations.

By

David Condino, Master Mariner, AGT Oceans, AMS #132

The rules for discharging garbage into the sea apply to all types of vessels. In fact, a “ship” is defined in international regulations, and under US maritime regulations as “a vessel of any type whatsoever”, i.e. a canoe to a supertanker. Additionally, regulations require placards to be placed on certain ships to be sure that those on board know when it is legal to put anything in the water, and it is up to the captain or operator to ensure that the rules are followed. As of 2013 the rules have changed, including what the placards must indicate. Everyone who goes out on the water is affected.

Anyone who has owned a boat for more than a few years remembers when it was OK to put your garbage overboard as long as you were far enough from land and there wasn't any plastic in it. The sea was big, and the garbage would soon decompose and/or sink to the bottom. Glass bottles, paper, cardboard, tin soda/beer cans, packing materials, even ash from the transom grill, were all OK to put overboard along with the food scraps. A posted placard illustrated what and where (how far from land in nautical miles) seafarers could discharge their ship's garbage.

In 2013, the International Maritime Organization amended its Convention for the Prevention of Pollution from Ships, or MARPOL, to include no-discharge provisions for all ships, with very few exceptions. This means no-discharge of any of those things that we used to be able to send over the side. Plastics have always been prohibited, but now just about all other categories of garbage found aboard are prohibited. This includes, but is not limited to all types of plastic including fishing gear, domestic waste such as paper, non-plastic packaging, metal, glass, ash, cooking oil, wood products, and just about all other trash whether it floats or sinks. As signer to MARPOL, these new regulations apply to all ships operating in US waters (out to 200 nautical miles). The US Law that enacts MARPOL, and gives the US Coast Guard enforcement authority is called the “Act to Prevent Pollution from Ships”.

The one main exception to the new no-discharge regulations, is that it is still OK to discharge food waste, but only when the vessel is greater than 3 nautical miles from land, and then, only conditionally. Discharges of garbage are prohibited in all areas of the Great Lakes, and connecting navigable waters. Between 3 nautical miles, and 12 nautical miles from land, food waste must be ground or comminuted (grinding machine that produces waste that will go through a 1 inch screen). In a designated Special Area (this includes waters south of Jacksonville, FL, all of the Caribbean Islands, and the waters of the Gulf of Mexico) food waste can only be discharged beyond 12 nautical miles, and it must be ground or comminuted, and the vessel must be underway.

The required (new) placards must be displayed on every manned US ship (remember, this includes even yachts, and small craft) that is 26 feet or more in length (40 feet for a foreign vessel operating in US waters), and a surveyor should note this in the survey report, especially if it is a pre-2013 placard. The required placards must be displayed “in prominent locations”, i.e. galley, living spaces, gangway, etc., to be read by crew, and passengers. The 5 by 8 inch (min) placards should be of durable material, and must have the following statements printed on it:

The discharge of all garbage is prohibited into the navigable waters of the United States, and into all other waters except as specifically allowed;

The discharge of all forms of plastic into all waters is prohibited;

A person who violates the above requirements is liable for civil, and/or criminal penalties; and, Regional, state, and local restrictions on garbage discharges also may apply.

Additionally, the placard should state that discharge of garbage into the Great Lakes, and connecting waters is prohibited.

The placard should also include the 3, and 12 nautical mile distance from shore, and operating requirements, as discussed above. An internet search produced many examples of both outdated placards, and those with the new regulations.

Additionally, there are regulations requiring recordkeeping, but these are mostly for commercial, ocean going vessels but also apply to small passenger vessels carrying 15 persons or more, for discharges either at sea or ashore. Garbage management plans are required on all vessels operating in US waters (again that’s out to 200 nautical miles) of 40 feet or more in length, and engaged in commerce (e.g. 40 foot plus, 6-pack fishing charter boat) or equipped with a galley, and berthing (i.e. any 40 foot plus pleasure boat).

What this all comes down to is that the owner/operator of any boat must retain just about all garbage on board for the duration of their trip, and on a 26 foot plus boat ensure that the rules, and regulations are posted with appropriate placards for all to see, and ensure that food waste is managed, and discharged in accordance with all the regulations. This is the LAW, and fines, and penalties can be harsh. The penalties for illegal discharges of garbage can include up to a \$40,000.00 fine, and prosecution of a Class D felony.

There is one bright spot for boaters! Another MARPOL regulation (also a US law) requires all ports, and terminals (this includes fishing piers, small (10 boat) marinas, fuel docks, and boatyards) to provide adequate waste receptacles for garbage accumulated on board a ship that uses their facility. If the receptacles are not provided, boaters can call the local Coast Guard.

Look up the US MARPOL Regulations, Title 33, Parts 151 and 158, at: www.eCFR.gov

* * *



ADMIRALTY LAW

Expert Analysis

From Sea to Shining Sea: Admiralty Reigns

Maritime law is so old. How old? One federal judge in New York found that it predates the birth of Christianity by 900 years.¹ Notably, two of America's Founding Fathers were prominent admiralty lawyers. Alexander Hamilton, one of our most famous immigrants, was a maritime lawyer in New York, and John Adams practiced in Massachusetts.

As shipping was an important link between nations engaged in commerce and trade in the Mediterranean Sea, a uniform law was necessary to apply to vessel owners, charterers, shippers, passengers and crews. Centuries later, maritime law became well anchored in the United States. The term "maritime" is used interchangeably with "admiralty." Yet, there is a subtle

By
**James
Mercante**



distinction. "Maritime" law broadly refers to the entire body of laws, rules, legal concepts and processes that relate to the use of marine resources, ocean commerce, and navigation. Admiralty law, on the other hand, is narrower in the sense that it refers more restrictively to just navigation and shipping in inland and ocean waters.² Over time, the two terms became synonymous as evidenced in the Federal Rules of Civil Procedure. Federal Rule 9(h) identifies "admiralty or maritime claims" as admiralty cases and Rule 38(e) refers to admiralty and maritime claims as exceptions to the right to a jury trial. Similarly, the Supplemental Rules for "Admiralty or Maritime Claims" and Asset Forfeiture

Actions supplement the Federal Rules of Civil Procedure.

Finding Admiralty

Early explorers exported maritime law to Australia, America and other uncharted lands as ships set sail to discover the "New World." English settlers here established exclusive admiralty courts in each of the U.S. colonies, and utilized maritime law to both regulate and enforce England's trade laws. These courts functioned pursuant to the unique procedures of the admiralty courts of England. Most significantly, admiralty trials were conducted without juries in order to maintain some semblance of uniformity in decisions with far reaching impact. Many marine cases involved complex issues best suited for decision by a Judge with specialized knowledge of the law.³ Although there are exceptions, this remains a viable rule, and has been codified in Rule 38(e) of the Federal Rules of Civil Procedure.

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Back to Hamilton. Following the American Revolution, Hamilton explained in 1788 (a bit tortuously) in *The Federalist Papers* No. 80, the need for federal (as opposed to state) jurisdiction over maritime and admiralty affairs: "The most bigoted idolizers of State authority have not thus far shown a disposition to deny the national judiciary the cognizance of maritime causes. These so generally depend on the laws of nations, and so commonly affect the rights of foreigners, that they fall within the considerations which are relative to the public peace. The most important part of them are, by the present Confederation, submitted to federal jurisdiction." In July 1788, Hamilton's views wound their way into the U.S. Constitution, which provides "the judicial power shall extend ... to all cases of admiralty and maritime jurisdiction." Article III, §2, Clause 1. Indeed, other than patent law, it is the only specialized practice specifically referenced in the U.S. Constitution. Alexander Hamilton also went on to establish what would later become known as the U.S. Coast Guard.

Maritime parlance can also be found in some of the earliest U.S. legislation, including the Judiciary Act of 1789, which created lower federal courts with the power to hear maritime and admiralty matters. The

jurisdictional grant is codified as 28 U.S.C. §1333. Similarly, the 1851 Vessel Owner's Limitation of Liability (more commonly known as the Limitation Act), exists nearly unchanged today in 46 U.S.C. §30505.

In its infancy, U.S. admiralty jurisdiction was primarily to hear "prize" cases, which involved a government authorized seizure of a foreign enemy vessel by a civilian mariner. The federal admiralty court was tasked to determine the legitimacy of the civilian's capture before auctioning

Maritime law has come a long way from the wooden sailing ship days and has application in many marine casualties.

the vessel and its cargo to distribute the proceeds to the civilian as a "prize."⁴ In the mid-1800s, Congress ultimately outlawed these government-sanctioned seizures.

The importance of harmony and uniformity in maritime laws across the nation was referred to by the U.S. Supreme Court as early as 1874 in *The LOTTAWANNA*, 88 U.S. 558. The Maritime Law Association of the United States was subsequently formed in 1899 to participate as a constituent member of the International Maritime Committee. The purpose of the MLA (still going strong today) was "to promote uniformity

... and to act with other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices of different nations."⁵

Maritime Law Today

Maritime law has come a long way from the wooden sailing ship days and has application in many marine casualties. Indeed, some of the most notable maritime cases include the oil spills from EXXON VALDEZ and the BP DEEPWATER HORIZON⁶; sinkings of the luxury liner TITANIC and cargo ship EL FARO⁷; the Chicago flood of 1992⁸; 2013 fire and stranding of the Carnival Cruise Ship TRIUMPH⁹; the COSTA CONCORDIA grounding and sinking off Italy; the catastrophic Staten Island Ferry ANDREW J. BARBIERI crash; a jet ski collision and even the crash of TWA Flight 800.¹⁰

Traditionally, admiralty jurisdiction over tort actions extended only to those that occurred upon navigable waters. In 1948, however, Congress expanded this narrow rule when it enacted the Extension of Admiralty Jurisdiction Act, "which provides that the admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage, to person or property, caused by a vessel on navigable waters, even though the injury

or damage is done or consummated on land." 46 U.S.C. §30101(a).¹¹

The most recent sophisticated pronouncement of the test for maritime jurisdiction over torts is out of the Second Circuit, *In re Germain*, 824 F.3d 258 (2d Cir. 2016). In *Germain*, the Second Circuit held that an injury to a guest aboard an anchored pleasure craft who dove off the boat into navigable waters of a lake fell within the scope of admiralty jurisdiction. It involves a two-prong test. First, the tort must occur on navigable waters or have been caused by a vessel situated on navigable waters. Second, the tort must both (1) involve a potentially disruptive effect on maritime commerce and (2) bear a substantial relationship to traditional maritime activity. The test for maritime contracts was also clearly articulated by the Second Circuit in *Folksamerica Reinsurance Co. v. Clean Water of N.Y.*, 413 F.3d 307 (2d Cir. 2004). Contracts with a "genuinely salty flavor" primarily concerned with maritime objectives give rise to admiralty jurisdiction. Thus, the Comprehensive General Liability (CGL) insurance policy issued to a vessel tank cleaning service was governed by maritime law as per the *Folksamerica* decision.

Today, federal and state courts generally share concurrent

jurisdiction over in personam maritime cases (i.e., a negligence action directly against the owner of a vessel), while federal courts continue to retain jurisdiction over many marine matters, such as in rem actions, the arrest of a vessel, and a vessel owner's Limitation of Liability action. Regardless of the venue, substantive maritime law should apply, but only if an "entrenched" principal of maritime law exists on a particular issue in dispute.¹² Some federal judges have questioned certain applications of maritime law in a non-commercial marine setting. For example, in applying the vessel owner's Limitation of Liability Act in a jet ski and pleasure craft collision, one circuit court lamented: "While we might agree in this case with the district court that extension of the Limitation Act to pleasure craft such as jet skis is inconsistent with the historical purposes of the Act, restriction of its applicability requires congressional action." *Keys Jet Ski v. Kays*, 893 F.2d 1225 (11th Cir. 1990).

As demonstrated, admiralty law continues to productively evolve from its immigrant roots and every indication is that it is here to stay.

.....●.....

1. *In re city of New York*, 534 F. Supp. 2d 370 (E.D.N.Y. 2008) (Judge Edward R. Korman).

2. *Northeast Research v. One Shipwrecked Vessel*, 729 F.3d 197 (2d Cir. 2013) (internal citations omitted).

3. Gary T. Sacks and Neal W. Settergren, "The Use of Evidence in Admiralty Proceedings: Juries Should Not Be Trusted To Decide Admiralty Cases," 34 J. Mar. L. & Com. 163 (2003).

4. *Glass v. Sloop Betsey*, 1 L. Ed. 45 (1794).

5. <http://mlaus.org/about-the-mla/>.

6. *In re Exxon Valdez*, 767 F. Supp. 1509 (S.D. Alaska 1991); *In re Oil Spill*, 21 F. Supp. 3d 657 (E.D. La. 2010).

7. *The Titanic*, 209 F. 501 (S.D.N.Y. 1913); *In re Sea Star Line*, 2016 U.S. Dist. LEXIS 178293 (M.D. Fla. 2016).

8. *Grubart v. Great Lakes Dredge and Dock Co.*, 513 U.S. 527 (1995).

9. *Terry v. Carnival*, 3 F. Supp. 3d 1363 (S.D. Fla. 2014).

10. *In re city of New York*, 522 F.3d 279 (2d Cir. 2008); *In re Air Crash Off Long Island*, 209 F.3d 200 (2d Cir. 2000).

11. *In re Germain*, 824 F.3d 258 (2d Cir. 2016) (Chief Judge Robert A. Katzmann) (internal citations omitted) (the author represented the vessel owner in this case).

12. *Preston v. Frantz*, 11 F.3d 357 (2d Cir. 1993); *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310.

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SURVEYING FLOATING COMPROMISES

by Ron Grant, AMS®



--“If it’s hard to get to, there’s something wrong with it”-- *Anonymous Surveyor, AMS®*

A boat is a "floating compromise" of design, materials, function, cost, and value. A boat survey is an evaluation of this compromise in categories, and as an integrated whole. Marine surveyors inspect, and realize these compromises all the time, we are familiar, and have learned the truth about places hard to get to on board a vessel.

Sometimes that's a design issue like bulky V-drive engines installed in a tight space aft to liberate space forward for humans, and the accommodations they want. Okay, as figuring out how to get to hard places, and equipment defined "readily accessible" or accessible by use of Neanderthal tools, e.g., screw drivers, is part of our job, and Continuing Education learning upgrades alert us to what we may find. Basic stuff, right, to see how our compromise of the day has been designed, constructed, and equipped?

Not really, because of the wild cards in our hands - *people* - an umbrella term for owners, owners/sellers, and buyers. The problem owner who watches you unscrew the pin of his stainless steel shackle (with one hand) at bow anchor stock, an identifier of what else to expect. You go into Defective Columbo mode, and wonder about what other safety issues you will find. The problem representative/broker who refuses to let the motors run at *maxed RPM* for several minutes. The owner who deliberately packs heavy gear tightly into lazarette, so you won't see the badly rusted rudder housings aboard his Grand Banks 42.

The problem buyer, generally more informed about the yacht he is aboard due to Google technology, but having a mind paralyzed with a mix of ego, anxiety, indecision, and physical tiredness at the end of a long day of berth inspection, sea trial, and haul-out (scheduled that way by broker). I make sure in these frequent situations that I sit with the buyer (buyer's wife is usually helpful here) and tell them, "We have seen a lot today, and now it's time to step back, and *get objective*, consider the good things aboard, and the negatives. It's my job to provide you with the objectivity to make your decision. To do that, I need my office time to look at some *NFPA Code 302* requirements and industry standards (ABYC)...” – (buyer education often follows). I don't bring up the "floating compromise" idea with tired minds on board, and I don't mention the surveyors (whom I admire!) who print out a survey before they leave a vessel, an impressive mix of technology knowledge, and talent. I can't do that without losing my push for providing the best, comprehensive, and objective report I can - within 24 hours on demand most times.

Computer technology has also started a trend in yacht purchases from afar, based on those wonderful pictures, sometimes 15-20 per boat. I emailed a report to Malta in the Mediterranean and a *Fountain 42 Executioner* followed 6 weeks later, the buyer was most happy with it. I was called from Honolulu to survey a *Catalina 34* sailboat in Marina Del Rey that a buyer, sight unseen, wanted it sailed to Hawaii by a young man not licensed. The survey, sea trial, and rig survey went well, the only problem being the numerous "cold feet" phone calls to me on her captain's cell phone asking me to check this, and that as she thought about them.

My objective view was that *with Recommendations satisfied* the boat was a good physical risk to make the trip, given proper navigation, and good utilization of weather reports. The boat arrived 25 days after departure, so I guess my survey was a good one. If the vessel did not arrive in one piece, or at all, was it a bad survey, and report? Always wondered about that.

Another trend I'm seeing among buyers, is that a significant number are calling requesting an "insurance survey" when they are preparing to buy a boat. A friend or broker told them to ask for that to get a lower rate per foot. On the phone, or on the boat, I ask, "why they didn't ask for a purchase survey". Answer is, that they need the report to get insurance. During inspection on board, however, you quickly learn you're in the middle of a *purchase survey*, and buyer adrenalin, and indecision to deal with. I guess the solution is to charge the same rate for all surveys, in berth, vessel hauled, sea trial, any combination of the above, requested by owner or buyer. Although, that would mean lost business in Southern California among competing surveyors.

I welcome the quiet time alone inspecting a floating compromise, and should arrange to be alone aboard more often. Also I believe I need *Continuing Education* in vessel owner, buyer, and broker psychology, and mind sets.

The End



The Surveyor's Bag
By
Mike Wall - Editor, FLASHLIGHT



Some surveyors use a backpack, some a holdall, some a document case with wheels, I've even seen just a plastic bag, but they all have the same thing in common. They have to be like Doctor Who's proverbial Tardess, i.e., externally small, and compact but internally voluminous to take the plethora of equipment required to do the job.

First to be packed is the boiler suit or overalls, together with the working shoes or boots. The former can range from a sparkling white new boiler suit to a tatty, stained and torn shadow of its former self (The more experienced surveyor prefers the latter so as not to look like a beginner) The latter can range from a pair of trainers to steel capped leather boots. As some may not choose to launder their boiler suit on a regular basis with the boots rarely disinfected, it is advisable to stand well clear, with no naked lights when a surveyor is opening his bag on site.

After these two essentials comes the flashlight, some surveyors clearly trying to prove something with a phallic multiple cell torch, others being more modest with a smaller, but just as powerful, LED model. Whichever is used, it will need to have batteries that last forever, be watertight, intrinsically safe, and sturdy enough to survive being regularly dropped from great heights.

Then, we have the compulsory notebook, pen, and often a file containing case documents. The notebook is usually of A6 size, i.e., small enough to fit into the boiler suit breast pocket, but large enough to contain what pretends to be authoritative scribbling. Since this book may, on occasion, be a legal document, many surveyors have taken a leaf out of the lawyers' book, writing illegibly and in gobbledygook so that nobody can understand or interpret the hieroglyphics. In this way the surveyor avoids any legal consequences. The pen, of course, has to last forever without any refills and again has to be sturdy enough to suffer the same fate as the flashlight.

A camera is again obligatory with weight being saved by the use of digital cameras. However, the macho surveyor must have the largest camera possible with a super zoom lens, whilst the more modest members of our profession have learned to keep it small and compact to save space, and weight. The old comparison with the number of sparrows and "I'm not bragging but" comes to mind here.

Nowadays, many surveyors carry a laptop computer so that they can reduce downtime, and start the report on site. These again can range in size, complexity, and weight but these are now available in smaller and lighter sizes for those who travel often. Unfortunately, the digital camera, possible rechargeable flashlight, and computer need regular recharging, and thus many cables, and adapters must be carried. Some will carry spare batteries for battery operated equipment. The copper wire in the cables and batteries are in fact what add the majority of the weight to the bag. As batteries can be purchased anywhere, these could be omitted. A simple test of equipment before leaving base or the hotel room will reveal if replacements are needed.

Many surveyors like to carry emergency supplies around with them in the form of bandaids, aspirin, cough drops, imodium, etc., for the oft-time self inflicted pain. Some used to carry a Swiss army knife which came in handy on many occasions, sometimes, but rarely, for terminating the self inflicted pain! However, due to security concerns this, and many other useful tools, may not now be carried in hand baggage on flights.

Apart from the above standard items, the surveyor may be required to carry ultrasonic thickness testing equipment, ultrasound hatch cover testing equipment, specialised thermometers, moisture content meters, tape measures, rulers, paint thickness gauging equipment, gas, and oxygen detectors, together with a hard hat, although most of the aforementioned may not need to be carried simultaneously.

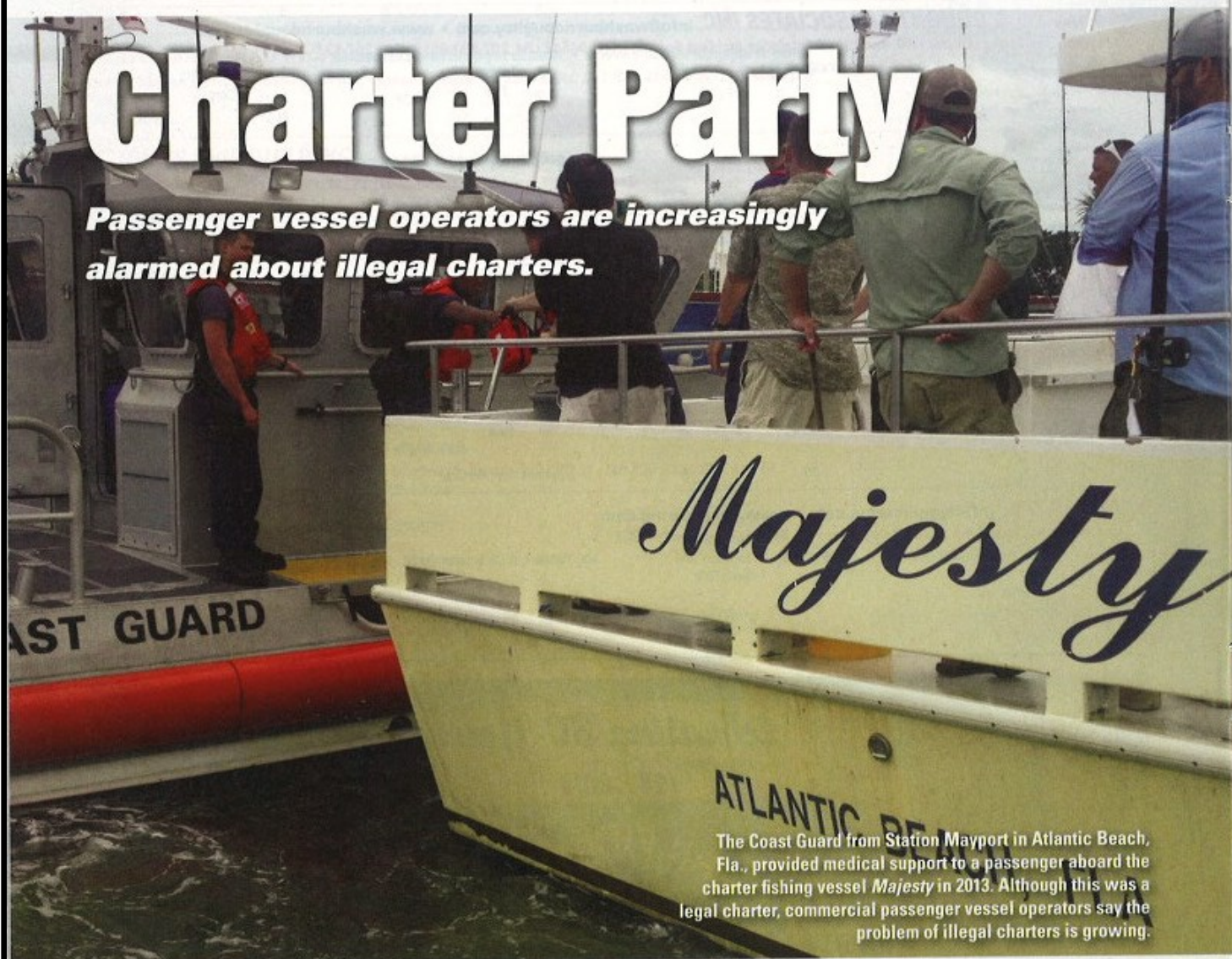
The bag should also have space for the traveller's wallet, containing passport, tickets, foreign currency, credit cards, loyalty program cards, etc. The bag should therefore have the ability to be locked for security purposes.

As a consequence of its weight the straps will need to look trendy, but be comprised of high tensile steel braiding. As it is likely to be heavy, wheels are an advantage to save the vertebrae in your spine!

Lastly, it should be small enough to be stowed in the hand baggage compartment above the aircraft seats to allow a rapid exit from the airport.

Charter Party

Passenger vessel operators are increasingly alarmed about illegal charters.



The Coast Guard from Station Mayport in Atlantic Beach, Fla., provided medical support to a passenger aboard the charter fishing vessel *Majesty* in 2013. Although this was a legal charter, commercial passenger vessel operators say the problem of illegal charters is growing.

By Dale K. DuPont, Correspondent

Illegal charters are becoming more of a menace, not just cutting into commercial passenger vessel operators' business but also raising the specter of accidents leading to higher insurance rates and more regulation. The boats also are a draw for licensed captains who may not know the risks.

The law requires a boat to be inspected if it carries more than six people with at least one paying passenger. Operators must be licensed to legally carry up to six paying riders. Commercial operators with six or more onboard — with at least one paying — must have a master's license and a Certificate of Inspection (COI). Bareboat charters may carry a maximum of 12 without a COI. The Coast Guard has several enforcement options including taking control of the vessel, civil penal-

ties up to \$37,500, violation notices and revoking a master's license.

"The Coast Guard has been made aware of more incidents of individuals operating illegally," said Coast Guard Lt. Cmdr. Tim Tilghman, who's based in Miami. "People who are good citizens and responsible marine operators" are feeling easier about reporting suspicious charters.

"There have always been instances of people taking vessels that are not Coast Guard inspected saying, 'I'll make a little bit of money.' It's a slow burn type problem in many areas," said Ed Welch, legislative director of the **Passenger Vessel Association (PVA)**.

The problem has grown in recent years, said Mike Borgström, president, **Wendella Sightseeing Co.**, a Chicago tour boat operator. "This type

USCG photo

of illegal activity that goes on constantly has been exploding in Chicago."

Borgström said people don't fully understand the laws that apply to bareboat charters. "The public is being misled into thinking it's safe. Many of these boats wouldn't stand up to Coast Guard inspection. People have gotten away with it without any repercussions. We need a couple of these guys to get busted big time."

Al Skalecke, owner of **Capt. Al's Charter Boat Fleet**, Chicago, said it's tough to compete against someone who doesn't play by the rules.

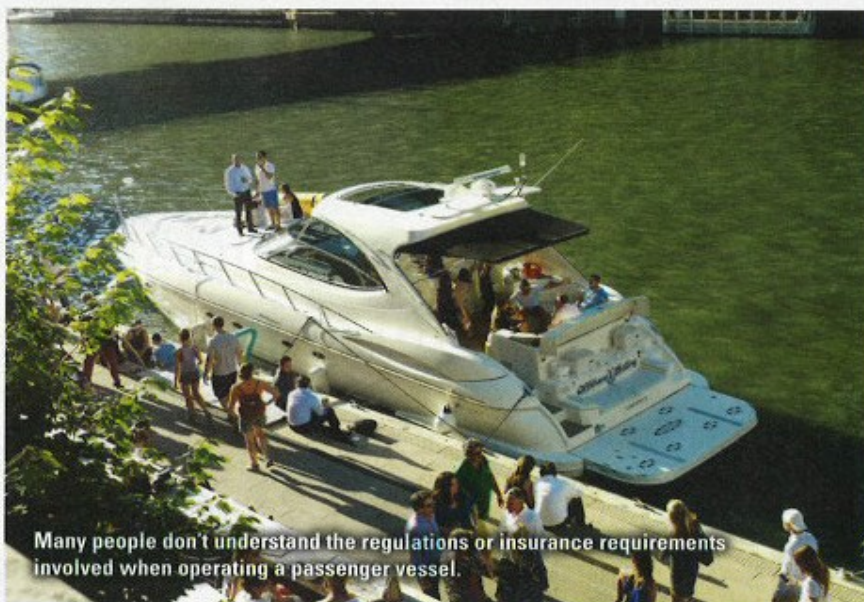
"It's running rampant. They're getting away with it. They're not paying the taxes. Nobody knows how much money's being exchanged," said Skalecke, who's been in business for nearly 40 years. His boats are licensed and inspected with all the required safety equipment such as life rafts and fire extinguishers.

"The public doesn't understand the safety of the water," he said.

The Coast Guard's biggest challenge is education. "The regulations are complex," Tilghman said. "We continually find individuals who do not truly understand the regulations – even on the master's side."

At the PVA's annual convention held in Seattle in January, Borgström led a session on illegal charters. "Why is this important to us as an industry as small passenger vessels?" he asked. "For starters, some of these boats are doing the same thing we're doing without the inspection criteria. That's putting people in jeopardy because the boats aren't inspected, the crew's not licensed."

Borgström showed a few slides of alleged illegal charters and what to look for. One slide showed a boat that operates in Chicago with a crew outfitted in matching shorts. "The boat is not inspected, has no registration numbers, and is registered in the Cayman Islands. They take anywhere from 10 to 30 people out on that boat in and out all day. This is one of those things that you see and something's not right there. But how do you prove it? That's up to the Coast Guard."



Borgström said the Coast Guard is now trained to look for suspicious examples and can take action.

Borgström said that it's important to note "a lot of this illegal activity is not necessarily being done intentionally. It's ignorance of the law, ignorance of insurance requirements. In most cases, I think all of us on the panel here feel that people that are breaking the law or operating illegally don't realize it."

BOAT-SHARING APPS

Now there's a new wrinkle with boat-sharing applications that connect recreational boat owners with people looking for fun on the water.

"On these boat-sharing apps, you get a mixture of people who are doing things perfectly legally, because they have inspected vessels. Then there are illegal charters," Welch said.

PVA and its members have been working with the Coast Guard to deal with the issue and discourage the practice, Welch said. They're also trying to come up with materials to give to licensed captains, who "might not realize insurance from their regular employer might not cover them, and they could lose their license."

The Coast Guard is looking into boat-sharing apps and "making them aware of Coast Guard requirements," Tilghman said. The apps operate as third-party negotiators. "That's why we really do want to advance our 'Ask the Captain' program," an initiative that

encourages passengers to be sure the vessel is operating legally.

"All of our boats have to comply with Coast Guard regulations and laws," said a spokesman for San Francisco-based **GetMyBoat**, which bills itself as the world's largest boat rental and charter marketplace.

Seattle-based **Boatbound**, another site, describes itself as "the largest and fastest growing pier-to-pier boat rental marketplace in the world." The company has over 15,000 boats listed in 2,100 cities. Its core features are marketing and insurance, and also offers payment processing and booking management tools.

Boatbound is one of the good ones.

"Let's be clear," Borgström said at PVA. "Illegal charters and Boatbound don't go together."

"The on-demand type platforms are the ones that give everyone a bad name," said Boatbound's Chris Fox, who was on the panel with Borgström at PVA. "These are the ones that are highly illegal and they don't care."

"We applaud what you're doing with your website," Borgström said, "but the concern we have is when these guys get kicked off of your website and can't rent the boat from you they're going to go to somebody else. So they're still out there. We just need to figure out who those bad players are."

— Editor in Chief David Krapf contributed to this report.

WB

LIABILITY OF CLASSIFICATION SOCIETIES

Legal News

Classification Societies play an important role in many respects of maritime business. For all intents and purposes, it is impossible for a vessel to operate and trade without being classed and certified by a classification society. Both port and flag states rely on classification, and in some respects, statutory certification has been delegated to these societies.

Many parties will therefore have an interest in knowing that the vessel is classed: apart from port and flag states this include insurers (both Hull and P&I), charterers etc.. To take SKULD as an example, the SKULD Rule 28.4.1 that requires an entered vessel to remain fully classed with a classification society approved by the club and 28.4.2 which require that the vessel's classification society is not changed without the club's prior consent.

According to the European Maritime Safety Agency (EMSA) there are at present, more than 50 organizations worldwide that offer marine classification but only 13 are approved by the EU. [EMSA carried out an assessment of the approved classification societies every second year.](#)

With a fairly large number of parties, both private and public, relying (in one way or another) on the work of these societies, it is also relevant to ask to what extent these societies are liable for their work if it is alleged that a mistake has been made, that negligence has been shown, and that this has caused a loss.

Much will depend on the jurisdiction where a classification society is held liable: the rules for damages in or out of contract can vary significantly, and in many jurisdictions there will also possibly be a difference between whether the party seeking damages is a public or private entity and, quite possibly, whether it is a vessel owner or a third party who is making a claim against class.

The position in English law will usually attract attention as English law is often the chosen law in maritime contracts (although a choice of law in e.g. a charter party will not in itself have an impact on where a dispute with the vessel's class will be heard). To contrast this, the courts in Italy have recently decided on the question of class liability as well.

The courts in England have dealt with this question a number of times but the prospect of a claimant against a vessel's class being successful is not promising.

One of the cases in England involved a claimant purchaser of a ship (The Morning Watch) which had been classed by the Lloyds Register. The vessel had a number of defects making it unseaworthy but nevertheless a class certificate had been issued. The claimant buyer of the vessel took the view that he had relied on the class certificate and, by doing so, had suffered a loss when this certificate turned out not to reflect the true state of the ship. The claimant argued that Lloyds register owed a so-called duty of care towards him, as class must have foreseen that a purchaser would rely of the class certificate.

The court's decision and its analysis of the law is sobering reading if one has to contemplate a claim against a vessel's class.

The decision includes a listing of the requirements for establishing a duty of care under English law:

- it must be reasonably foreseeable for the defendant that the plaintiff would rely upon his statement (here the class certificate)
- there must be “necessary proximity” between the pure economic loss and the role of the class society and
- finally it should be “fair, just and reasonable” in the circumstances to impose such a duty of care.

To some, it may be surprising to see that the court found that the claimant purchaser had not been able to prove a sufficient relationship of proximity in this case and stated that, “the primary purpose of the classification system is, as Lloyds rules make plain, to enhance the safety of life and property at sea, rather than to protect the economic interests of those involved ...in shipping”. Not all will be persuaded by this conclusion (perhaps certainly not parties from civil law countries) but the fact is that this is the position in English law.

Another case involved claimant cargo interests who brought claim against the vessel’s Japanese Class (NKK) who had certified temporary repairs, but where the vessel (The Nicolas H) nevertheless sank with all its cargo as the temporary repairs failed. The cargo interest (who therefore had to pursue a claim outside contract - in negligence) argued that the class had breached their duty of care, and made a point of arguing that their loss was physical damage to property rather than pure economic loss, and that consequently they only had to demonstrate reasonable foreseeability. The cargo interests no doubt hoped to avoid the problems facing the claimant in the Morning Watch case. They were not successful in this as the court maintained that all of the factors listed in the Morning Watch case were relevant regardless of the nature of the harm (i.e. the type of loss) to the claimant. It was still necessary to consider foreseeability, proximity and fairness, justice and reasonableness. The court’s approach was to examine what could be said against recognizing a duty of care by the class towards the cargo interests and the analysis may, again, surprise some. In the eyes of the court, the seaworthiness was the primary responsibility of the ship owner, with class having only a subsidiary responsibility. Even though the class surveyor may have been careless or negligent, this did not mean that direct physical damage had been inflicted. There was also no contract between the cargo and class - indeed there had been no contact and cargo had not even been aware that class had inspected the vessel - they found out after the event and took the view, that class should be held liable for the lack of seaworthiness. As a third and significant consideration, the court mentioned that if a duty of care were held to exist in this case the potential exposure to claims for class societies would be large, and such a large exposure would lead to higher costs for the class societies who, in turn, would pass these on to vessel owners. This was seen as likely to disturb the balance created by the Hague-Visby Rules. Perhaps most of all, policy considerations (risk of double insurance, costly and complex litigation and other factors) weighed in against holding that there should be a duty of care.

The Nicolas H therefore concluded, that a vessel’s class did not owe a duty of care toward cargo interests as this would not be just, fair and reasonable.

The reasoning in the Nicholas H case has been confirmed and followed in a later case from 1994 (Reeman v Department of Transport). Again the claimant was a purchaser of a vessel (just as in the Morning Watch) and a negligent surveyor made an error resulting in the vessel being unable to put to sea without costly modifications. This case involved a surveyor

from a public body (the Department of Transport) but with the Department of Transport performing functions similar to a classification society, the court applied the same reasoning.

It therefore seems very difficult for a claimant to be able to be successful in a claim against a vessel's class under English law at least, and this seems to be the case regardless of whether the claims is in or out of contract.

The situation can, of course, be different in other jurisdictions and this seems to be the case in Italy. It was recently reported that the court in Genoa had decided on a claim brought by time charterers against the vessel's class. Their case was that the vessel was fully classed, but nevertheless was withheld by port state control (in Germany) due to a number of deficiencies and was detained. The detention made it necessary for the charterers to unload the cargo and find alternative tonnage for the onward carriage. The charterers suffered a somewhat significant loss. This they now pursued against class as the vessel had been sold shortly after the incident, their claim was unsecured and likely to be unenforceable against the now previous owners. The class on their part argued that the time charterers should have pursued a claim against the owners instead, but also that there was no basis for a claim at all against the class. They argued that the deficiencies that caused the vessel to be detained were caused by negligence, not by class but by the vessel's master and crew and the vessel owners themselves who had failed to maintain seaworthiness.

The Italian court took the precaution of appointing two surveyors to assist with an expert opinion to say whether it was possible to say, on the basis of the inspection in Germany, what the condition of the vessel had been just over one year before when class had made its inspection and issued its certificate. On the basis of the evidence (including the court appointed surveyor's conclusions) before it, the Italian court held that the vessel had been in extremely poor condition when inspected by class. The behavior by the class surveyor, at the relevant time, had there been grossly negligent. This, in itself, perhaps marks a harsher attitude in some countries than would be the case in e.g. England. What is remarkable is that this decision from Italy is based on the consideration that classification societies play a significant role, and have such strong reputations that operators in the shipping industry rely strongly on their certifications when concluding contracts and making commercial decisions. The time charterers were entitled to rely on the class certificate, and charterers were therefore successful for the major part of their claim.

Each particular situation will therefore, depend very much on a number of factors, such as how "remote" the claimant is from the direct relationship between the vessel owners and the classification society, the nature and gravity of the alleged negligence by class, the nature or type of losses, in which jurisdiction the claim can be pursued etc. All of this will have to be considered carefully from case to case.

/ Mariola Shipping v Lloyds Register of Shipping (The Morning Watch) [1990] Lloyds Rep Vol 1. 547

/ Marc Rich & Co AG and others v Bishop Marine et.al (The Nicholas H) [1995] Lloyds Rep Vol 2. 299

/ Reeman and another v Department of Transport and Others [1997] Lloyds Rep Vol 2.648

/ Maurizio Dardani and Marco Manzone of Genoa Chambers have published an excellent summary of the Italian case on 2 March 2011 on the International Law Office web-site

By Per Zerman, Assistant Vice President, Lawyer, Skuld Copenhagen Published 14 July 2011



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