Mike Vaughn's

Commercial Ship Information Center

The Business of Yachting & Shipping

Volume II
Maritime Handbook Series

Michael E. Vaughn

The Business of Yachting & Shipping

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INTRODUCTION

The purpose of this book is to explain the basic laws, rules and practices involved in buying and selling commercial ships and yachts. Laws may vary from state to state and country to country. However, the basic concepts are applicable to most jurisdictions.

Throughout this book I will deal with both commercial and pleasure vessels. Commercial vessels differ from yachts in the same sense that the purchase of a business varies from the purchase of a private home. The goals, purposes and needs are different. However, the manner in which the transaction is carried forth and the structure that is required to assure you of a good purchase are constant.

Vessels may be registered in the state where they are operated or if they meet certain size and tonnage requirements with the U.S. Coast Guard.

Information published by the U.S. Coast Guard show a very interesting profile of vessels in the United States. For vessel with U.S. documentation the registrations show:

163,827 yachts are registered. Of these, 45,719 indicate sail as the main propulsion. Approximately 28% of the yachts in the United States are sailboats. The largest vessel documented as a recreational vessel or pleasure vessel is 495 feet in length.

Commercial ships are described by a variety of factors. Principally is the trade they are permitted to do. Coastwise trade indicates that the vessel is permitted by law to engage in commerce between U.S. ports. There are 58,037 vessels permitted to engage in this trade. Of these, the largest is a 1,067 foot long tanker with a GRT (gross registered tonnage) of 105,893 tons.

36,800 vessels are permitted to engage in U.S. fishing. Of these, the largest is a 635 foot long fish processor. There are 3,465 ships engaged in Great Lakes Trade, the largest of which is 1000 feet long and has a GRT of 32,930 tons.

Interestingly, in the U.S. fleet, there are 14,064 registered barges; 717 freight ships; 147 Mobile Offshore Drilling Units; 865 Offshore Supply Vessels; 9,277 vessels licensed to carry passengers; 3,641 tank barges; 217 tankers; 64 research ships; and 5,456 tug boats.

Of all vessels registered, 2% are built of aluminum; 9.7% of wood; 18.8% are steel and an overwhelming number, 68.6% are fiberglass.

Age is a critical factor in evaluating boats. 0.00023% or 57 registered boats were built before 1900 and are still in service. 0.01% or 3,804 were built before World War II and are still in service. 11,774 boats (4.7%) were built between 1940 and 1960.

The boat building boom started in the 1960's with the introduction of fiberglass and has continued. The decade of the 60's shows 22,149 boats still in service. The 1970's have 70,984 boats still in service. The 1980's shows an unprecedented up-surge of 103,480 boats still in service. Surprisingly, the 1990's through 1997 showed only 37,440 boats built in that period still in service.

Where are the boats? The major markets are Florida with 10% of the U.S. documented vessels with hailing ports located there. California has 7.5% and Louisiana has 5% of the documented vessels. The other states with significant numbers of documented vessels are New York, Washington, Alaska, Maryland, and Texas.

This book will help you to identify the proper boat for your purpose and show you how to evaluate and purchase it. The age, location, registration and licensing of a vessel are all factors to be considered in buying or selling a ship and they will be dealt with in depth.

Much of the data presented is made available by a computerized U.S. Coast Guard program developed and marketed by Infosource Software, Inc. I commend them for their good work and recommend that anyone seriously involved in the yacht & ship business obtain a copy.[1]

[1]Infosource Software, Inc., Suite 1115 – 555 Burrand St., Vancouver, BC, Canada V7X.

Chapter 1
YACHTS - BOATS - SHIPS

Anything that can float can be called a boat, from the reed raft of Thor Heyerdahl's *Kon Tiki*, to the newest 125,000-ton cruise ship.

Understanding the nature of ships is the first step in deciding what you will buy. A yacht is merely a place to have fun. A commercial ship is a way to earn a profit. Yachts by definition are pleasure or recreational vessels. Once a yacht starts earning its keep and is no longer strictly for the owner's private use, it becomes a commercial boat and is no longer a yacht. I am certain many of the charter boat owners in the Caribbean will dispute this definition, but it reflects the reality of commercial trade.

A yacht can be any size, as long as it is a privately-owned vessel. The term "yacht" comes from an older Dutch term and in modern use refers to any pleasure craft. Much has been made of the length of the vessel with 28 feet being the point at which a boat becomes a yacht. In reality, a boat becomes a yacht when the owner says that it is a yacht.

A boat becomes a commercial vessel when it obtains the necessary license and permits to operate in a commercial trade.

In the United States, commercial vessels are governed by the applicable provision of the United States Code. The *Jones Act* is collectively referred to as controlling commercial shipping activities in the waters of the United States. In fact there are a number of different laws that control all aspects of licensing and documenting U.S. commercial vessels. For brevity we will collectively refer to most of these laws as the *Jones Act*.

The *Jones Act* generally stands for the position that no vessel may undertake any type of commercial activity between U.S. ports unless it:

1. Was built in the United States;
2. Is owned by a U.S. citizen or corporation;
3. Is crewed by U.S. seamen;
4. Is not financed by or controlled by any person or corporation that is not a United States citizen; and,
5. It has never been removed from U.S. documentation and has never been owned, chartered or financed by a non-U.S. citizen.

Considering the thousands of pages of court decisions and explanations given, the act is a bit more complicated in its total application.

When in doubt, realize that this is a very protectionistic statute, the purpose of which is:

1. To protect U.S. shipyards from competition with cheaper foreign shipyards;
2. To protect U.S. seamen from competition with foreign seamen;
3. To protect U.S. commerce from cheaper foreign shipping rates.

When vessels are registered with the U.S. Coast Guard Documentation Office, they are categorized as:

1. Pleasure vessels
2. Fisheries
3. Coastwise
4. Registry

Pleasure refers to non-commercial use. Any U.S.-owned vessel may be documented under this designation, whether built in the United States or not. The owner must be a U.S. citizen.

Fisheries and Coastwise refer to permission to operate as fishing vessels or carry cargo and passengers between U.S. ports, if they are otherwise licensed and meet current operating requirements.

Registry refers to a particular type of documentation, which permits the vessel, if owned by a U.S. Citizen or corporation, to engage in international trade, but not coastwise trade.

The chartering of pleasure vessels will be discussed in greater detail later in Chapter 8.

Although there are many differences between commercial ships and yachts, the legal and business requirements are very similar.

Ships are large ocean-going vessels. A large ocean-going ship may be also called a boat. These are terms of convenience and not explicit characterizations of a particular set of standards in general modern usage.

All boats should be considered as platforms on which you will do something. Different platforms serve difference purposes. All boats have a design purpose when built. A tugboat is a platform for pulling or

pushing barges and ships. That is the design purpose. The first rule to learn in acquiring a vessel is to purchase a boat designed to do what you intend to do with it.

Conversion outside the design limits of the craft is an invitation for bankruptcy. Conversion within a design limit is a routine and anticipated event.

When described by an owner or broker, boats will indicate four factors:

1. Type of propulsion. Is it a motor vessel (MV), Steam Ship (SS), sailing vessel (SY) or barge?
2. Type of hull material. Is it steel, wood, fiberglass or aluminum?
3. Work it is intended to do. Is it a yacht, tugboat, container ship or cruise ship?
4. The overall length **(LOA)** of the vessel.
5. The tonnage of a cargo vessel in terms of dead weight **(DWT)**; gross tonnage **(GRT**) or net tonnage **(NRT)**.

There are an infinite number of characterizations of ships and yachts. We will confine ourselves to those in most general use.

Using the proper terminology will keep you focused upon the design purpose of the vessel.

Chapter 2
SAILING & POWER YACHTS

The basic and oldest means of propulsion is manually by oars or paddles. Canoes, dinghies, rafts are generally so propelled.

Among yachts, the division is quite distinct between sail and power.

SAILING YACHTS

Sailing yachts are generally described by the type of sailing rig used for their primary propulsion. Most sailing vessels will have an auxiliary diesel or gas engine for propulsion when not sailing.

A **Sloop** has a single mast stepped forward of mid-ship and carries a main sail aft and a jib or small free-footed sail forward. The sloop has been the most popular sailing design for many years due to its ease in handling and good driving capabilities.

Sloop

A **Ketch** adds an aft mast to the sail plan which allows a smaller main sail to be used and may either have a single jib forward or a cutter forward rig. Again the division of the sail plan allows great control of the amount of sail being flown at any given time. Traditionally the ketch has been the choice of long distance sailors.

Ketch

A **Cutter** is similar to the sloop except the mast is generally stepped further aft to permit the placement of a second jib or staysail between the mast and the forward jib. This divides the sail plan into three parts and allows more control of sailing characteristics of the boat.

A **Yawl**, which is a design that is not seen often today, is similar to the ketch except the aft mast is stepped aft of the rudder and is substantially smaller than the aft mast on a ketch.

Yawl

Schooners are rarely built today, but are still visible through the Caribbean and among many historical sailing societies. The schooner has the aft mast taller than the forward mast. This permits much more efficient downwind sailing for a vessel originally conceived to follow the tradewinds. There are a variety of combinations of sails flown on a schooner and all give a glimpse of a beautiful bygone era.

Schooner

POWER YACHTS

Power yachts tend to follow two basic theories:

1. Fast
1. Slow

Whereas there is a variety of sailing descriptions, power yachts are usually described as either a displacement type (Slow) or planing-type (Fast). Also, the vessel may be a hybrid, semi-displacement or semi-planing type (some are slow, some are fast).

A Displacement type describes the shape of the hull as displacing water as it moves. This is generally found in trawlers, houseboats, and most slower vessels. This type of vessel is restricted to a maximum speed of 1.25 to 1.40 times the square root of the waterline of the boat. However, they tend to provide very safe and kindly sea-keeping abilities and are the only choice for long, open ocean passages.

A trawler with a waterline of 36 feet would have a theoretical maximum speed of 7.5 mph to 8.4 mph.

The planing hull is designed, with the application of sufficient power, to push the hull up and onto the surface of the water. A good example is a ski boat. As it begins to move forward, it is in a displacement mode. As more power is added, the boat rises upon the surface of the water and greater speed is obtained. Depending upon the amount of power applied, incredibly high speeds are obtained.

The disadvantage is that the weight of the boat, fuel and water capacity, and the interior volume must be drastically sacrificed to allow the vessel to obtain high speed. Consequently, you must trade comfort and endurance for speed. Also, the cost of operating a boat at higher speed increases at a disproportionate rate. The amount of fuel consumed by a boat at displacement speed may be 25% of the fuel consumed at planing speed.

Generally, the description of a power yacht may also be by cabin configuration:

- Trawler
- Express cruiser
- Sedan cruiser
- Houseboat
- Sportfishing boats
- Tri-cabin cruiser

Trawler

The list can be endless. The best way to evaluate is by the accommodations provided, regardless of title given.

Consider:

1. Is the pilot house fully enclosed?
2. Are separate sleeping or staterooms provided?
3. Is there a full galley or just cooking area?
4. Is the salon separate from the galley and bridge?
5. Are heads (bathrooms) enclosed and showers provided?
6. Is the aft deck or cockpit for diving fishing or sunning?

Express Cruiser

Form should follow function. The first and paramount issue is whether the vessel is seaworthy and has a safe, well-designed operating system. If this issue is met, then look further at the boat.

Power yachts are propelled either by diesel or gas engines. Gas engines produce more power for the weight of the engine, while diesel engines are heavier but more economical and safer.

The principal disadvantage with gas engines in larger boats is the danger of an explosive fire. Diesel engines tend to be much less combustible and make below deck tank installations much safer.

The initial cost of a diesel engine is greater than a gas engine, but makes up for the cost in the life expectancy of the engine.

Part of the propulsion package is the transmission of the power to the drive of the vessel. The boat may have a traditional propeller or a jet drive. Each has its proponents and advantages. Generally, jet drives are found in high speed and performance vessels while slower boats use the traditional propeller drive.

A boat may have one or more engines. Twin engines provide greater maneuverability and safety. However, single engine boats are still routinely built. The primary reason that most people prefer two engines is the safety factor of having a backup in case one engine fails.

With the reliability of modern diesel engines this is less of a reason. In fact most large commercial boats, with certain exceptions, operate on a single main engine.

Among powerboats there are a variety of engine configurations. Some high-speed boats have two diesel engines for lower speed operation and a centerline gas turbine to produce very high thrust and speed.

Some boats use up to four engines that are mated to coupling gears that allow two engines to drive one propeller or jet drive.

Remember that the main engines are major expense items and the more engines and more horsepower produced will be represented in higher initial costs, higher operating costs and higher maintenance costs.

SELECTING THE RIGHT YACHT

Selecting the right yacht is a combination of compromises, resulting in a decision that may be difficult and expensive to reverse.

The right selection depends on your level of experience. If you are new to boating, start with a small, relatively inexpensive vessel. Buy or charter a small sailboat or small powerboat and gain valuable experience in what you really want to do.

All of us have visions of sailing away to the South Pacific in a glorious old schooner, with sails gently filled with the trade winds as our bikini-clad companion languishes lazily on the bow. In reality, these graceful old boats require a strong and knowledgeable crew and they generally provide wet rides and a minimum of comfort. The warm, cozy dream can become a nightmare. Good preparation will prevent that.

While all of us need the dream, anything worthwhile in life requires work and preparation. There is no preparation like "sea time". This is time on the water, whether it is a ski boat, a charter boat, a friend's boat or your own sailing dinghy. Time on the water teaches you what is important to you in a boat.

I have owned sailboats, powerboats, and commercial boats. I have re-built boats, inspected boats, repaired and saved boats, and I still am not totally certain as to what I exactly want, although, I think I have a very good idea.

SAILING GOALS

It is important to prioritize your goals:

1. Do you want a boat to take your family and friends out for a little fishing and water skiing?
2. Do you want to stay on board overnight?
3. Do your horizons stretch out to the deep ocean and foreign shores?
4. How many people will be on board?

Just a couple of guys may be able to rough it better than your daughter and her two girlfriends, who will need enough electrical power to run the hair dryer.

Generally, decide what your geographic goals are for this boat. Will you sail locally versus foreign sailing and deep-water trips? Also, how much time will you really be on board? What quality of life do you intend to have? Will a port-a-potty really work for your family or do you need a Jacuzzi tub in the aft stateroom? These become very important decisions. If you are married or have a long-term friend, how will your decision affect your companion's lifestyle?

Compile a list of where you want to go and the level of comfort you want to have while you do it. This should become the basis for your decision.

SAIL vs. POWER

The arguments between sail versus power boating could fill a complete book. It is more a personal philosophy of what you intend to do on the water. If getting to a destination with some speed and reliability is your goal, you should opt for power. If the romance of sailing stirs your blood then definitely sail is for you.

Foot for foot, a powerboat provides more interior living space than a sailboat. Powerboats provide more creature comforts and generally better electrical and power systems that allow the boat to operate with most of the comforts of home. Entertaining friends and business guests may be more reliable because you can schedule your arrivals and departures with some degree of certainty.

However, you need to be a little mechanical to keep all of the systems operating. Also, you must not be bothered by the constant hum of the engine and generator.

Sailboats provide the luxury of the quietness of a summer day. However, a level of skill is required to handle a sailboat in more dangerous weather. You must forego interior volume for a hull shape that is easily propelled through the water.

The costs of maintaining sails and rigging is comparable over the years to maintaining a diesel power plant.

Large sailing yachts in the 90-foot plus range provide the same level of comfort as a large power yacht. Generally a 65-foot sailing yacht will provide the same comfort as a much smaller 45-foot motor yacht.

Safety is primarily the duty of the captain. A properly designed and rigged sailboat should be able to withstand almost anything you will routinely encounter in the ocean.

A powerboat is much more affected by sea conditions and is generally encouraged to seek safe harbor when conditions become dangerous. However, a well-designed and equipped powerboat with a knowledgeable captain should also withstand the routine conditions found at sea.

Each type of boat must be properly equipped and you or your captain must have adequate experience and knowledge in the operation of that particular vessel.

The principal reason to acquire a sailboat is to make long, ocean passages. Most powerboats do not have the range or capability to make long, open ocean voyages. They are designed for coastal operations. If you desire to sail to the South Seas or cross the Atlantic, you will probably have to acquire a sailing vessel.

Long, open ocean voyages may be done in modern powerboats. However, the boat must be equipped with sufficient tankage for fuel and supplies to withstand long periods at sea. Most pleasure yachts are not designed for that purpose.

As a boat owner, I prefer powerboats. I enjoy having hot water showers, color television, all the water to drink and bathe that I need. Also, having become more indulgent, I also like taking a hot Jacuzzi on the upper deck as I sit in a quiet anchorage.

The size of the boat is important and a major factor. One of my old captains always said, "Everyone buys one boat, one size too big."

What he meant was, as size increases, the cost increases at a disproportionate rate. As boats increase in length, they also increase in beam and depth. For example, changing from a 40-foot boat to a 50-foot boat means that an increase of 10 feet in length may create a much larger volume change. Using a simplified formula to determine the volume of a boat, multiply the length times beam times depth, to give an idea of the real size of the vessel. The 40-foot boat is 40'x12'x4.5', that provides an interior volume of 2160 cubic feet. The 50-foot boat is 50'x16'x5.5' providing an interior volume of 4400 cubic feet. This in an increase of 25% in length, but the volume of the vessel is more than 100% larger.

This translates into larger equipment, bigger engines and generators, and larger dry docks for repairs. Using the simplified formula you may estimate that the cost of owning and operating the 50-foot boat may be up to double the cost of operating a 40-foot boat. This is a good tool for estimating rough costs

MIKE'S RULE NO. 1
Double any cost estimate you or anyone else makes concerning repairs to a vessel. Double any time estimate you, a shipyard, or repair person makes in determining the time it will take to complete any marine repair.

MAINTENANCE COSTS

It is important to realize that the purchase of a boat is merely an invitation to spend more money. Excluding upgrading a vessel, every boat requires on-going routine maintenance that cannot be postponed.

Monthly Maintenance

1. The bottom must be cleaned and inspected by a diver each month to remove growth from the hull. The cost ranges up to $1.00 per foot.
2. Exterior bright work (varnish) must be kept up.
3. The boat must be washed and cleaned weekly.
4. Decks must be inspected and kept in repair.
5. Diesel engines need to be run up to operating temperature at least weekly.
6. All mechanical systems must be inspected and lubricated as needed.

Annual Expenses

1. Diesel engines must be inspected; oil and lubricating oils changed on a routine basis.
2. Hull and superstructure must be inspected and repaired as necessary.
3. Sails and rigging must be inspected, tuned and repaired.
4. Winches, running gear, deck hardware and equipment must be inspected and repaired.

Bi-Annual Expenses

1. All boats must be dry-docked and have the hull inspected, through hulls inspected and propellers inspected at least every two years.
2. During haul out the bottom must be painted with anti-fouling paint and any underwater repairs must be made before the vessel is launched.

Other Costs

1. Slip fees are usually assessed by the length of the vessel. They may range as low as $2 or $3 per foot in some areas, and up to $15 per foot in some marinas in high demand areas.
2. Insurance for the hull, machinery and liability will be required by all marinas. This averages about 1-1/2% to 2% of the value of the boat.

3. Most counties and cities will impose a property tax of some description. The average is approximately 1% annually.
4. Many states will impose a sales tax upon the purchase of a new or used boat in varying amounts. In California the rates are up to 8-1/4% of the total purchase price of the boat.

You must take into your calculations all of the above factors in deciding what you really can afford.

Do not let the cost of boat ownership frighten you. Just be realistic in determining what you really can afford. If you do your own repairs and have the experience and ability, much of the cost can be reduced, but not eliminated.

EVALUATING A YACHT

There is a body of information on the market value of yachts. This is formalized in the BUC asking price printout, but more particularly for power boats in the *Power Boat Guide* by Ed McKnew & Mark Parker, published by American Marine Publishing, Inc. and may be ordered at (800) 832-0038. This is an annual publication that covers most currently available powerboats.

However, each yacht must be evaluated individually. The best source will be your surveyor. He can advise you as to the particular characteristic of the vessel being inspected and the overall condition of the boat.

MIKE'S RULE NO. 2.
No matter what anyone shows you, tells you, or leads you to believe, never, never buy any vessel without a dry-dock inspection and thorough survey by a surveyor you employ and in whom you have confidence.

The surveyor will save you money and problems.

In deciding what to offer a vessel, be aware that the seller pays the broker. It is to the broker's advantage for the price to be higher. However, most brokers try to arrive at a price acceptable to both parties and at a price that will result in a completed transaction.

Your initial offer is subject to re-negotiation based upon the result of the survey. If your surveyor determines that there are problems with the vessel, you may cancel the offer and receive your complete deposit back or re-negotiate the price of the vessel. Another alternative is to have the owner make the necessary repairs.

There are a number of items that must be considered in the evaluation a yacht:

1. **Age.** Age is probably the most important general attribute. All boats are "wasting" assets. That means that they have a theoretical life expectancy. As the vessel ages, its useful life is used up.
2. **Hours.** Each engine, whether main propulsion or generator, should have an hour meter. This meter tells how many hours that engine has operated since installation. The hours of operation should be consistent with good operating practices. That means that very low hours may mean that the vessel has not been used. This is not necessarily a good characteristic. Diesel and gas engines are made to operate at given temperatures on a regular basis. Engines that sit without operation in a salt-water environment tend to develop a wide variety of problems from lack of use and lubrication of the systems. If the vessel has very low hours, have your surveyor do an engine analysis or have a qualified engine manufacturer perform a thorough inspection of the engines.
3. **Sails & Rigging.** Just as engine hours are important on the mechanical equipment, years of sails sitting in the sun without being used and cleaned may also indicate limited remaining life.
4. **Maintenance Records.** It is important for there to be a written record of the maintenance performed on the vessel along with reports of each dry-docking of the vessel. Larger yachts that are built to a classification standard will have complete maintenance and repair records.
5. **Overall Appearance.** Cosmetically, many vessels need work. However, a dirty and poorly maintained outside appearance may be an indicator of how the owner cared for his vessel.
6. **Inventory.** The owner should have a written inventory of the equipment on board. This will include all electronics, tools, miscellaneous equipment and dinghy. The extent of the inventory will also give you an idea of how the vessel was used. It is important to note that most yachts have more than is required for a good working inventory of electronic equipment. Any yacht that will venture offshore should have the following minimum equipment:
   - Compass with correction card
   - Radar

- VHF radio
- Life jackets
- Life raft
- GPS
- Fire extinguishers
- EPIRB
- Distress flares

A critical issue in selecting and evaluating a yacht is the hull material. Up to about 150 feet in length, most yachts are constructed from fiberglass or composites. Above that the hull will be steel or aluminum.

Steel and aluminum are also used in small vessels as small as 30 feet in length. Wood is still used in boat construction but represents a very small portion of modern yachts.

There are proponents of each type of material. Generally, fiberglass provides strength and long life coupled with very low maintenance. Its weakness is that it will develop surface blisters, is subject to fracture if an object is hit hard enough, and it will burn.

Steel, due to its weight, is found mostly in slower boats. It has great strength and is resistant to damage. The weakness of steel is its willingness to corrode and rust. Modern application of new coatings can reduce that effect along with good galvanic corrosion protection using either zinc or and induced electrical current.

Aluminum is found where weight is an issue and speed is required. Aluminum, while resistant to fracture, will dent more easily than steel and will melt at a lower temperature. Although more expensive than steel, aluminum does have a very large following.

Almost all production yacht builders have abandoned wood. Some companies that specialize in wooden vessels continue to build with that material. However, wood requires much more attention and care than other materials and requires more frequent haul outs. It does have a characteristic that allows a knowledgeable owner to do much of his own repairing and, if maintained from the time it is built, will last as long as a steel or aluminum vessel.

However, in the yacht resale market, wooden boats have very low resale value. If you choose to purchase a wooden boat, you must do so realizing that the repair and care may be extensive and the vessel will probably not recapture the money invested if you choose to sell it at a later time.

Chapter 3
PURCHASING A USED YACHT

The process of finding the right boat takes time. You may use a broker, a friend, magazines, newspapers and the Internet. The broker is probably the fastest and best way to buy a yacht.

The broker will know the local market and have access to the multiple listing system. By telling him exactly what you want and assuming you know what you want, he will be able to provide a choice of vessels for you to inspect.

Assuming you have a choice of several boats, there are a few fundamental things you should do when you make your first inspection.

Take a good overall look at the exterior paint and trim. Make sure it has been maintained. Look at the waterline. If there is substantial growth, the boat probably has not been used recently.

Next, go to the engine room or compartment and look at the bilge. If there is oil in the bilge, the engine is suspect, as well as the maintenance. Inspect the bridge and ask to see the maintenance and operation log if one is available. Ask about recent repairs, haul outs and general maintenance. Learn as much as possible about how the boat has been used. Low engine hours and low usage may be a very bad thing. It is rare that a pleasure boat is ever worn out, usually they waste away from non-use.

If you are satisfied with the inspection and satisfied that this is the type of boat you wish to buy, ask the broker to show you some identical models if they are on the market or similar models by other manufacturers. Prices for the same vessel may vary by thousands of dollars, just by the level of desire of the owner to "get rid of it". The longer the boat has been on the market, the more likely you will be able to reduce the asking price.

Never be in a hurry. Boats do not usually sell quickly. If the boat sells to someone else before you can buy it, find another boat. Being rushed into an offer or purchase may result in long-term problems and disenchantment with your boat.

Assuming that you have determined to make an offer on the boat, do a few things first. Check every source of sale information and see overall what similar boats are either being offer for or actually being sold for. The broker should have some of this information. However, you must do your own homework.

Once you have decided what you wish to offer, the broker will provide a standard offer form. These are usually approved by the Brokers Association and contain similar terms and conditions.

Every offer should contain the following information:

1. The name of the seller.
2. The name of the buyer.
3. The name and documentation number of the vessel and a description of it.
4. The amount of the offer and, if dealing with foreign vessels, in which currency the amount is quoted.
5. A time limit in which the seller must respond or the offer will expire.
6. That the vessel will be sold with all equipment on board and that an inventory will be prepared.
7. That the offer is subject to a survey and dry dock inspection.
8. That the vessel will be delivered with all equipment contained in the inventory.
9. That, if an offshore delivery is anticipated, the owner will assist in the delivery.
10. That the title to the vessel is good and free of all claims and liens.
11. That the offer is made subject to financing if that is the case.

In Figure (1), pages 19 - 21, I have supplied a copy of a simplified offer. This covers most of the basic conditions.

When the offer is made, you will be required to post a “good faith” deposit usually in the amount of 10% of the offer. Some brokers do not require the deposit unless the offer is accepted.

Some states including California and Florida require that yacht brokers post a bond to secure any deposit that they hold. Unfortunately, these bonds are usually for nominal amounts of $10,000 to $25,000. If your deposit exceeds the bond amount, you have no security other than your faith in the broker that your deposit will be correctly applied. Always request from your broker the amount of his bond. If his bond will not secure your deposit, request that an independent escrow agent be used. Although most brokers are very scrupulous in their dealings, there are many occasions where you may find it difficult or impossible to recover your deposit.

OFFER TO PURCHASE

Figure 1

STATE OF _____
COUNTY OF_____

OFFER TO PURCHASE

This agreement, made this the _____day of _____, 20____, by and between _____, herein referred to as the Buyer, and _____hereinafter referred to as the Seller.

Subject to the terms and conditions contained herein, Buyer agrees to buy and the Seller agrees to sell all rights, title and interest in the vessel described as:

Name of vessel:
Documentation No.:
Register Port:
Flag:
Length over all:

1. The purchase price of the vessel is_____quoted in lawful currency of the United States of America.
2. The Buyer will deposit with a mutually agreed maritime escrow company, fully licensed and bonded, a deposit in the amount of ten per cent (10%) of the total purchase price to be held in escrow by him subject to the terms of this agreement.
3. This offer will be good until _____ at 12:00 noon local time, subject to the right of the parties to withdraw said offer in writing prior to that time.
4. Acceptance shall be in writing and evidenced by the Buyer's and Seller's signature upon this document.
5. Vessel is sold as is, where is, with all equipment, appurtenances, tools, and appliances now on board. All fuel is to be sold with the vessel as part and parcel of the purchase price and is not subject to pro-ration.
6. The Seller makes no representation or warranties as to the quality or condition of the vessel or for suitability of purpose intended by the buyer.

7A. The Buyer makes this offer subject to a marine survey and sea trial, both to the complete satisfaction of Buyer and to be conducted as soon as practical in no event later than _____.
   1. The owner will deliver said vessel to a mutually agreed upon shipyard for haul out and survey.
   2. Buyer assumes total and complete financial responsibility for haul out and survey and all costs related thereto.

7B. The Buyer makes this offer further contingent:

7C. Upon cancellation of this agreement under the terms and conditions contained in paragraph 7A & 7B, Buyers deposit shall be promptly returned to him.

OFFER TO PURCHASE
Figure 1 *(pg 2)*

8. Buyer acknowledges that the surveyor selected is employed solely by the buyer.
9. Rejection of the Vessel must be made within three (3) days of the completion of the survey and sea trial to the Seller or Seller's agent but in no event later than_____. Failure to so reject, shall be deemed an acceptance of the vessel.
10. The balance of the purchase price shall be paid to the Seller within 15 days of the completion of the sea trial and survey, but in no event later than _____. Said payment shall be made in cash or certified check, or electronic bank funds transfer.
11. The Buyer shall be responsible for all fees of documentation and/or title transfer. Transfer to foreign registration shall not delay transfer of purchase funds.
12. Upon full payment, the vessel shall be delivered to the Buyer at a time and place designated by the Buyer and at Buyer's expense if other than the vessel's current berth.
13. Vessel is being sold and purchased free and clear of all debts, claims, liens, and encumbrances of any kind whatsoever. Seller warrants and will defend that he has good and marketable title thereto and will deliver to Buyer or at Buyer's request, to Buyer's agent or other persons, all necessary documents for transfer of title to Buyer upon Buyer's final payment.
14. All taxes, duties, or other government imposed fees on this purchase are the responsibility of the Buyer. Buyer agrees to indemnify and hold harmless Seller and his agents from any liability for any such tax or duty.
15. Buyer and Seller agree that any dispute arising out this transaction shall be resolved by reference arbitration before any mutually agreeable arbitration association. Further, it is agreed that the choice of law to govern this transaction, shall be the law of the State of California.
16. Seller will pay all sales commissions owed to the broker under separate agreement and Buyer will have no obligation for said commissions.
18. This agreement constitutes the entire agreement between the parties.
19. This agreement is binding upon Seller and Buyer, their heirs, executors, personal representatives and assigns.
20. If any party to this agreement is a corporation, the undersigned verifies that they have been designated the proper party to execute this agreement and that the board of directors have approved a resolution in proper form authorization said representation and assents to the terms here of.
21. Other terms and conditions:

OFFER TO PURCHASE
Figure 1 *(pg 3)*

I have read and understand the terms and conditions concerning the sale and purchase of this vessel and hereby approve and accept the terms thereof.

Dated: Dated:

_____ _____
Buyer Seller

ACKNOWLEDGMENT OF RECEIPT OF DEPOSIT

The undersigned_____, acknowledges the receipt of the sum of _____ as a good faith deposit from _____. Said sums have been segregated and deposited in his Trust Account, subject to the terms and conditions of this agreement.

Dated:

_____

BROKER FEES AND COMMISSIONS

Generally, brokers are paid a commission by the Seller upon a successful sale of the vessel. This commission may range up to 10% of the total selling price of the vessel. It is not unusual for there to be two brokers involved, one representing the Seller and one representing the Buyer. In those occasions the brokers will split the commission on whatever the standard terms are for that particular area. Generally, the listing broker representing the Owner will receive less that the Buyer's broker.

What should you expect from your broker? First he must find the type of boat you are seeking and provide good, financial advice on the price to pay for the vessel. Brokers vary as to their ability, listings, experience, knowledge and ethics. Be certain that you are comfortable working with your broker.

Once you have made an offer, several things may occur. The owner may reject the offer without comment if the terms or price are not acceptable. In that case your broker should be able to tell you a price range that will be required to buy the boat or which conditions may have to be changed.

Never buy a boat without a complete survey, dry docking and sea trial. If an owner is not willing to allow these inspections, which are done at your expense, there is something wrong with the boat.

Once your offer is accepted in writing, you will have a set period of time to perform your inspections.

SELECTING A SURVEYOR

Your broker should be able to recommend a surveyor in whom he has confidence. The surveyor should provide evidence of his training and experience as well as the surveying societies with whom he is affiliated.

THE SEA TRIAL

A sea trial of the vessel is an opportunity to see how well the vessel operates as well as determining if you like the way the vessel rides in a seaway. It is important to have your surveyor accompany you on the sea trial. As the vessel is being operated, he will inspect the machinery, and other systems to see that they operate in an acceptable manner.

Usually during a sea trial, the boat will be operated by the owner or the owner's captain. It is important that the vessel operate at various speeds and in different courses to the sea to make sure that you get a good overall view of how the vessel reacts to different conditions.

During the sea trial, take a pad and note any questions you may have. Stand over the engine area and propeller area and feel the amount of vibration. Monitor the amount of fuel used and the amount and color of exhaust. The surveyor will use these things to help him get a good idea of how good or bad the boat really is.

The surveyor will probably charge a fee based upon the time required and the size of the boat. You should anticipate paying a minimum of $10.00 per foot of length of the boat. If the boat has usual construction or requires more time, the cost may go up. The surveyor will quote a price to you before he begins his survey.

If the sea trial is satisfactory, then the vessel will be taken to a dry dock for an out of the water inspection.

Prior to or after the sea trial, the surveyor generally will do an "in the water" survey at the dock. During this survey he will inspect the hull from waterline up, the rigging, decks and deck equipment. He will also inspect the machinery and engine room equipment, all systems, plumbing and electrical equipment and general condition of the cabins.

The standards that he will apply are set by the Yachting Council, U.S. Coast Guard or based upon his own experience in that particular type of boat.

If this survey results in a favorable report to you, then the vessel will be dry docked for a complete inspection of the underwater parts of the hull and running gear, including propellers and rudders.

The dry dock inspection will look for blisters in the fiberglass hull, rust or damage to metal hulls and seam inspection of wooden hulls. The surveyor will carefully examine all parts of the hull to determine if they are in good condition, seaworthy and well maintained. He will report orally to you of the condition of the hull.

If the vessel has a steel hull, it is important to do an audio-gauge of the hull thickness. This test will tell you how much of the steel has wasted away since the vessel was built. If the wastage is more than acceptable, it may be necessary to weld new steel plates to the hull. This can become a very expensive proposition.

Once the survey is completed, the surveyor will deliver a written report describing the vessel in detail, explaining the results of the examination and recommending that certain repairs be made prior to the purchase.

These recommendations become the basis of negotiations. You have the option of buying the vessel at the agreed price or requiring the owner to make the repairs prior to the purchase. If the owner does not agree to make the repairs, you have the option of requesting the return of your deposit, and declining to accept the vessel.

Another option for the owner is to reduce the price of the vessel rather than doing the repairs. If this is accepted by the buyer, he must pay for the repairs even if they become more extensive and expensive that was anticipated by the surveyor.

I generally recommend that the price reduction be negotiated, because it then gives the buyer control over how and when the repairs are made. The buyer then supervises the quality of the repair. If the owner is obligated to do the repair, he will obviously do it as cheaply as possible to minimize his loss.

When the vessel goes into the shipyard for the survey, you will be required to prepay the expenses of the shipyard. The costs will vary from yard to yard, but you can generally expect to pay $10.00 to $20.00 per foot to dry dock the boat, plus an additional amount for each day you remain in the shipyard.

Because of this it is important to take advantage of the time in the shipyard to do any other repairs and modifications you wish to do. This should only be done when you are satisfied with the sea trial and survey and all conditions, including price, have been agreed. This is usually referred to as “closing in the yard”. This means that once satisfied, you go ahead and conclude the transaction and take ownership of the vessel.

The usual work done while in the yard is to have the boat bottom repainted. This is routine work that is done every two years and, unless the bottom was painted within the preceding few months, it makes sense to go ahead and re-coat the bottom.

Prior to being launched by the shipyard, you will be required to pay all of the shipyard bills and expenses. If you are not familiar with the boat and its operation, either the broker or a captain should be retained to take the boat back to your slip.

CLOSING

Assuming that all conditions have been met and you are ready to close the transaction, there are a number of things that must be done.

TITLE

Vessel titles may be kept two different ways in the United States. It may be a state issued title or a U.S. Coast Guard issued title. When the title is issued by the Coast Guard, it is referred to as a documented vessel. When the title is issued by the state, it is a registered vessel.

State registered boats are usually transferred just like an automobile in most states. You endorse the title over to the buyer and he registers it with the Department of Motor Vehicles. Most vessels over 5 tons are documented vessels. Most small boats, such as small fishing and ski boats will not meet the 5-ton requirement.

U.S. DOCUMENTATION

Documentation of pleasure vessels is done in the Office of Vessel Documentation at the U.S. Coast Guard Headquarters in West Virginia. Chapter 7 contains an in-depth look at vessel documentation. For the purposes of this discussion remember that the owner must be a U.S. citizen. The vessel does not have to be built in the United States to be documented as a pleasure vessel. However, it may not engage in any commercial activity other than true bare boat charter. When properly documented the vessel will be assigned a permanent documentation number that is cut into the vessel's main beam.

Contact an attorney or documentation service to obtain and review the transcript of title to the vessel. They will request a copy of the transcript that will show all activity on the vessel since the time of registration. Using this, the review can determine who the correct and true owner of the vessel is and whether there are any liens or mortgages against the vessel.

A maritime lien is a claim that has been registered against the vessel and not paid. This may be for repairs, crew wages, supplies, equipment, injury to crewmen or other maritime related claims. These claims are defects against the title that must be corrected by the owner before you buy his vessel. If you buy the vessel, the claims go with it and a claim holder has the right to have the vessel sold at auction to satisfy his claim.

If there is a mortgage on the vessel, it too, must be satisfied prior to the closing. This may be done and is usually done by the documentation

service or closing attorney, who issues payment on behalf of the owner to the mortgage holder who then files a satisfaction of mortgage notice with the U.S. Coast Guard. It is very important that these things are done in proper order so as to assure you and if you finance your purchase, the bank that the bank has a superior lien on the vessel.

In maritime law, liens do not have to be filed with the Coast Guard to be effective. This gives rise to what is known as a "secret lien". Generally, we require that the owner or seller provide a list of all repairmen and suppliers used in the preceding twelve months, along with a notice to them of the sale of the vessel and request that they give notice to the buyer of any claim. This provides some security, but not complete security of the "good title" to the vessel.

Until 2002, the sale of the vessel was accomplished by using a Coast Guard Bill of Sale form. In 2002, the Certificate of Documentation was changed to provide an acceptable bill of sale on the reverse side, which when properly executed, notarized and filed with the Coast Guard, transfers title to the new owner. This simplifies the process.

However when you apply for your title, you will be required to file the following documents:

1. Request for Change of Title
2. Certificate of Title with executed Bill of Sale
3. Declaration of Citizenship
4. Notice of Mortgage, if you financed the vessel

TAKING TITLE

Documented titles may be taken by an individual, a partnership, a corporation, a trust or an association. Deciding how to take title is important because it may have financial and tax implication.

The simplest way is to take title in an individual name. You own the vessel and it is controlled in your name. This is well and good unless you sink the boat, pollute the ocean and kill ten doctors in the process. Now as owner of the vessel, you may be responsible to the extent of all of your assets for the damage you have done.

In a partnership, your partner may be the one to have caused all of the damage and you will still be responsible to the full extent of your assets for the loss.

However, if you incorporate and hold the vessel in a corporate name, the damage will probably be limited to the assets of the corporation and

your personal assets may be protected. Generally, the costs of setting up a Nevada or Delaware corporation is less than $500.00 and as little as $150.00 per year to maintain. However, you must operate the vessel corporation in a business-like manner to afford the protection.

These are all matters you may wish to discuss in detail with your accountant or attorney.

SALES TAX

Sales tax may become a major consideration in your decision to purchase a vessel. Generally, you will pay up to 8-½% of the purchase price in sales tax, even on a used boat. If you boat costs $300,000.00, you will pay an additional $25,500.00 in taxes.

At least in California and most states, if you purchased the vessel for use outside of the state and did not use it in the state for the first 90 days, you may not be required to pay the tax.

In California, the transfer of title is made outside the state waters, offshore, and the vessel is taken directly to Mexico for 90 days. After that period the vessel is returned to California without paying the tax. Again this is a matter to discuss with your broker, accountant and attorney. If you do not pay the tax and it is determined that it is owed, there may be a penalty of up to 50%.
If the vessel is owned by a corporation and the purchase was made by receiving the shares of stock in the corporation, there may be no taxable transaction under the sales tax.

INSURANCE

All financing institutions will require that the vessel be insured for the value of the mortgage at all times. Insurance generally costs about 1-½% of the value of the boat per year. This insurance will include liability for injury or damage to third parties, pollution coverage and salvage expenses, in addition to the value of the boat if lost.

Some insurance companies sell market value insurance. This means that if the boat is a total loss, they will pay the current market value of the boat. Since boats always decrease in value with time, this could result in your insurance not being sufficient to pay off the mortgage. A better type, is “agreed value” insurance. Under this policy you agree on the value of the boat and that is the amount paid, if the vessel is a total loss. Your insurance company will occasionally require that the boat be surveyed to determine if it is still as valuable as previously insured.

CERTIFICATE OF DOCUMENTATION

Once you receive your Certificate from the Coast Guard it must be displayed in the cabin or pilot house of the vessel. This is proof of ownership. If the vessel is corporately owned, it is a good practice to have a notarized letter on board authorizing the captain or operator to be in possession of the vessel.

ADDITIONAL INFORMATION

View Chapter 10 which concerns the purchase of commercial vessels. It contains additional information that will be useful to you.

Chapter 4
BUILDING A NEW YACHT

One of the most difficult and yet rewarding projects in yachting is to acquire a new boat. This can be done several ways, but generally we will deal with the four principal ways to do this.

My first warning is that I have never met anyone who built a new boat that was not totally frustrated by the process and ready to "throw in the towel" at some point in the process. The horror stories seem to go on and on, yet we still built and buy new boats.

MANUFACTURED BOATS

Obviously many boats are manufactured by a variety of shipyards and builders around the world. These boats are generally sold through dealers and agents. They may allow some degree of customization or options that the purchaser may choose.

In choosing a manufactured boat the buyer has the ability to see completed vessels and make himself aware of the track record of the builder. Generally dealers will have a display model available that can be inspected and evaluated. It is generally assumed that the delivered vessel will conform in all degrees with the model displayed. However, it is still important to have a surveyor inspect the vessel for compliance with the equipment and quality offered.

Manufactured boats generally range up to approximately 65 feet. The vast majority are probably less than 35 feet.

You are most likely to find manufactured boats at boat shows where the dealers have an opportunity to display their vessels and equipment. There are boat shows all over the country and they will be your best opportunity to compare boats in almost a side-by-side situation.

When you enter into the purchase of a new manufactured boat, you will sign a purchase contract that contains provisions for payment of a deposit that may or may not be refundable within a certain time period. The contract will provide for additional payments upon delivery.

When the vessel is delivered it should be inspected and surveyed. Generally, the dealer will work with you to assume that you are getting what you ordered. However, it is still your responsibility to assure yourself of the quality and condition of the vessel when you accept it.

The disadvantage of a new manufactured vessel over a slightly used boat is that there is a long list of items that will not come with the boat that are necessary for you to purchase.

These may include items ranging from dock lines to cleaning materials or sophisticated electronics. Used boats generally have all of the routine things necessary for operation of the boat.

The greatest advantage of a new boat is that you start fresh. You get to arrange things, buy things and make the boat really your boat.

CUSTOMIZED MANUFACTURED BOATS

One step beyond the manufactured boat is the customized manufactured boat. By this I mean that the builder is offering basic specifications, which may include the length of the hull, the shape of the house and general arrangement of the accommodations.

Other than the general items, you may specify everything from the type of engines and number of bilge pumps, to color of towels in the guest room.

At this stage it is very important to retain the services of a yacht designer and an interior designer to assist you in your choices. If you are very experienced in yachting you may make most of these decisions yourself. Many shipyards, employ “in-house” designers to assist you and will work with you on a day-by-day basis to assure that you get the yacht you want.

The size and price level of this type of service will range from approximately 45 feet up to 120 feet.

The shipyard generally retains a designer to prepare the overall style and look of the vessel and to provide good sea-keeping abilities. The designer will also be responsible for the many systems required in the operation of the vessel and will advise the shipyard on various alternative designs, such as lengthening a particular hull or make other changes that may affect the stability of the vessel.

Within these broad limitations, the shipyard will build the boat of your dreams. I refer to this type of boat as a customized boat. This means that although there will be other boats that may look like your boat, no two boats will probably be identical.

Because of this fact the costs of building will be substantially more and the length of time required to build will be longer. It does provide the opportunity for you to get deeply involved in your boat.

BUILDING A CUSTOM BOAT

A custom-built boat differs from a customized boat in the simple fact that you first obtain a yacht designer to design a unique boat for yourself.

The designer will charge a fee for his design and, depending upon your agreement with him and his firm, may supervise the entire construction of the vessel, including assisting you in the selection of a shipyard to do the construction.

Designers specialize to some degree in particular types of boats. If you know of a boat that impresses you as being well designed and attractive, find out who the designer is and call him. Many yacht brokers are also involved in custom building and can assist you in the selection of a designer and shipyard.

Shipyards usually have a list of designers with whom they have worked and have a good relationship. They may also be a source of referral.

The size range that you may anticipate a designer being involved may range from 25 footers to 250 footers. Generally I believe that a size range from 60 feet and up can financially justify this type of project. Again, it will depend upon what you are willing to pay. It is safe to say that the custom-built boat will be the most expensive way to obtain a vessel. However, when it is finished, it should be the boat that you envisioned when you started the project. There is probably no more satisfaction than seeing such a project to completion.

Dealing with a designer is a very personal relationship. You must explain to him exactly what you want to do with your vessel, your level of experience and ability, as well as the wants and needs of your family and others who will be aboard. It is essential that the plans, when submitted to the shipyard, are final. The most expensive part of building occurs if you make “change orders”. A change order is a variation from the plans to which the shipyard is building. This may require rebuilding parts of the vessels, making changes further down the line resulting from the “change order”, and is one of the largest profit centers for all shipyards. Many designers will build full size models of parts of the design to insure clearance, headroom and space requirements, just to avoid the need for a change order later during construction.

SPECULATION BOATS

Another way to obtain a new boat is the purchase of a “Spec Boat”. A “spec boat” refers to a boat built by a shipyard on speculation that the shipyard will be able to sell when it is completed.

Shipyards do this to keep their employees employed when things are slow. If they can obtain adequate financing or have cash reserves, they invest them in the construction of a boat that will have relatively wide appeal and that they can sell for a profit.

The reason people buy spec boats varies from buyer to buyer. However, from the time you start negotiating a contract with a shipyard to built a boat, until it is actually delivered, may range from two to three years on larger yachts. Therefore a buyer who is interested in a large yacht may come in during the building process and purchase the yacht under construction and modify it to meet his needs and reduce the waiting time for delivery by many months or, in some cases, several years.

Obviously, the buyer will have to like the boat and be satisfied with the work the shipyard has done, in order to make the deal work. This is a fairly routine process and most shipyards engage in it at some point. In some cases the yachts that are built are too ubiquitous to satisfy anyone. However, other shipyards tend to be very successful with this approach.

Similarly to the “spec boat” approach, many times a shipyard will have a project in progress in which the buyer has defaulted. This means that the yacht is partially finished and the buyer has failed to make progress payments or has defaulted on the whole project.

This is very bad for the shipyard, because they have committed time and material as well as space in the yard for the building. Having been partially paid, the shipyard will attempt to find a buyer to take over the project and complete the building. Many times, depending upon the actual reasons for the default, a real bargain make be acquired and modified to suit the needs of the new buyer.

SHIPYARDS

Shipyards are unique institutions. They represent an essential link in the marine environment without which neither the pleasure or commercial shipping community could survive.

Shipyards differ from ship repair facilities in that they have the ability to in some manner to remove the yacht or ship from the water and allow maintenance and repair on the underwater portions of the hull. This is generally referred to as a dry dock.

This may be done in a variety of ways. A marine railway is a system of rails that go from the shipyard down into the water sufficient to allow a boat or ship to position itself above the railway. Steel and wooden supports are then positioned under the vessel and the rail car then starts moving back up the railway until it is in contact with the hull of the vessel.

All vessels have a "blocking plan". This is a set of drawings or specifications indicating where there is sufficient strength in the hull to support itself when out of the water. This is more important for wooden vessels and large ships than for ordinary fiberglass yachts.

Once the vessel is in position, the blocks are pushed into place and the rail car moves up the railway carrying the boat with it. Once out of the water the railcar is maneuvered to a turntable where the vessel is then routed into the correct place in the shipyard for work to be done.

A Travel Lift is a brand name of a large overhead trolley system that drives out above the vessel at the shipyard dock, positions straps underneath the vessel, and then hoists the vessel out of the water. It then carries the vessel into position in the shipyard where it is placed on steel or wooden cradles to be worked on. The Travel Lift-type system is limited by the beam of the vessel, the height of the vessel, and the weight of the vessel. It is primarily used for vessels under 50 feet even though there are Travel Lifts that carry much larger vessels.

A "synchrolift" is a similar device that is positioned under a vessel of very large size and, operating in a synchronized fashion, moves the entire vessel into the shipyard. This type of lift can carry very large ships.

The most common device for large yachts and ships is a "floating dry dock". This is nothing more than a large barge with very high wing walls containing flotation chambers that may be filled with water allowing the dock to sink. A vessel is then moved above the sunken dock and positioned over steel supports and blocks. The water is pumped out of the dock, which when rises, carrying the yacht or ship with it. Floating dry docks are found all over the world and may lift ships weighting hundreds of thousands of tons. The disadvantage of a dry dock is that the shipyard ordinarily may only work on one ship at a time. The Travel Lift and marine railway allow the shipyard to move vessels around as needed and work on a variety of projects at one time.

For most large vessels, a floating dry dock is the only way to remove them from the water.

A “graving dock” is another shipyard device that consists of a chamber, built below sea level, with watertight gates that are closed. The sea water is pumped out leaving a dry area to construct a new ship or to repair a very large ship. Once the ship is repaired or has completed construction, the dock is flooded and the ship is floated out.

Shipyards will vary in size from very small ones using just a crane or travel lift to move smaller boats in and out to very large commercial yards repairing and building all types of cruise ships and tankers. Shipyards will also specialize in certain types of projects.

A variety of shipyards in Taiwan and Hong Kong only build yachts. The Dutch shipyards are famous for the quality of the Feadships they build. Many shipyards in Italy, France, Spain and Germany build both yachts and commercial vessels. Almost every country in the world will have some type of shipyard activity to handle just the domestic demand or for export.

One thing that all shipyards have in common is a very high investment in equipment and material. Although you may only need the shipyard crane or dry dock for a few days, the shipyard owner must purchase and maintain it for years. The costs of the boring machines, machine shop equipment, electrical equipment, carpentry, etc., is a cost that is consistently being carried by the yard. Therefore, they must amortize the costs of the operation overall of the customers.

The difficulty for the shipyard owner is that this is a very competitive business. It is not only competitive within the local geographic area, but now is increasingly competitive in the world market. Shipyards in China, Indonesia, India and Korea have a large supply of experience and skilled labor at very low costs compared to U.S. and European yards. Consequently, they compete very aggressively for large ship repair and construction contracts.

To combat this type of competition, the United States, under the terms of the Jones Act, requires that all U.S. Flag commercial shipping be built and repaired in U.S. yards. This effectively prevents U.S. commercial owners from taken advantage of the lower costs overseas. One effect of this is to raise the price and costs of goods transported in U.S. Flag vessels. It also prevents U.S. shipyards from going out of business and leaving the United States without sufficient shipyards to support and maintain the U.S. Navy in case of war of international disruption.

The end result is that U.S. pleasure vessels make be built overseas and repaired overseas. Consequently, the number of U.S. shipyards actually building boats has declined over the last thirty years. However, there are still a number of very fine U.S. shipyards turning out quality vessels.

SELECTING A SHIPYARD

In determining the proper shipyard to build your custom or customized boat, your designer will be a very good source of information. An alternative is to employ an "Owner's Representative or Agent".

An owner's agent is a person, generally with great experience in engineering contracts and ship construction, who becomes your agent in selecting and supervising the construction of your vessel in the shipyard.

His job is to put your proposal out for bids to all competent yards. The shipyards then submit a price based on the plans and specifications submitted. It is essential that these plans be complete to the last detail.

Once a successful bidder has been identified you must make a further investigation. The best bidder may not always be the lowest bidder. You must also consider the bidders history, experience and financial solvency. Many times there will be a second round of bidding among two or three of the original group. You must eventually decide on one yard to do the project.

One of the most important things to include in your bid package is a performance bond requirement. A performance bond is a guarantee by a third party insurance company that the shipyard will do everything required in your construction contract.

A construction contract will require that you make a substantial down payment and periodic payments as construction progresses. The performance bond assures you that your payments will not be lost in case of default or failure of the shipyard. Over the last ten years I can think of at least four occasions in which a shipyard went into bankruptcy in the middle of a construction project. Usually this happens immediately after a periodic payment. In those cases where there was no performance bond, the buyer lost his entire investment. In the other cases, the buyers were able to collect on their bonds, or in conjunction with the bonding company, were able to complete the project. If a shipyard can not be bonded, you should not make any pre-payments, but rather pay only on completion.

The other advantage of an owner's agent is that he will place a supervising engineer in the shipyard during all phases of construction. They will assure that everything is being done as required by the contract.

In the chapter on Classification Societies (Chapter 5) you will see that when a vessel, whether a yacht or a commercial ship is being built to class, the society will assure that all aspects of construction are being done in accordance with plans. The owner's agent works with the classification surveyor in that respect, but he also represents you in any dispute or difference of opinion with the shipyard. It is essential in any project where there is substantial investment to have an owner's agent present.

Generally in your contract with the shipyard, you will take title to the parts of the vessel as they are completed. When the hull is finished or cast, you will be giving incidents of title to the hull. Likewise, when machinery or equipment is installed, you will become the owner of those pieces. This is to prevent a situation in which the shipyard falls into financial difficulties and creditors come into the yard and attach or attempt to seize your vessel that is under construction.

In contracting with a shipyard, you must have a firm completion date set. In most cases this will be eighteen months to thirty-six months away. The shipyard will give the best estimate it can within some limitations. However, shipyards are notorious in being late on their contracts for delivery. Many times it will be the fault of the buyer, due to change orders or other situations of his creation, including being late on periodic payments.

The contract must require delivery on a certain date. Generally, the shipyard will require the variance of a month or two, depending upon the overall length of the building period. However, we require that once the "grace" period is over, that the shipyard pay a penalty per day of a certain percentage of the total contract to the buyer as liquidated damages for its failure to deliver the vessel on time. This gives added incentive for the shipyard to complete the contract as agreed and not to purposely underestimate the time required. If you do not include this in your contract, you are very likely to find yourself waiting extra months or, in some cases, years for the delivery of your vessel.

SALES TAX

Do not forget that sales tax may be applied where you live when you purchase a boat for use in your home state. If you do not comply with the sales tax laws, you may be assessed penalties as well as the tax.

In California, for instance, a newly built yacht in China, accepted in Hong Kong and placed on a ship for delivery into California more than 90 days after acceptance will still not qualify for an exclusion from the sales tax. Be very careful that you are not also assessed a tax in the country where the boat is being built.

In deciding to build a new boat decide these things:

1. Am I willing to wait for the time required?
2. Am I experienced enough to get into a very complicated project?
3. Is there a similar boat currently on the market that will meet most of my needs?
4. Do I have a very high tolerance for frustration?

Chapter 5
COMMERCIAL SHIP DESIGN AND EVALUATION

COMMERCIAL SHIP DESIGN

The choice of the ship design you will purchase is very important. Remembering that a ship is just a tool and not an end in itself is very important as you start the evaluation of different types of ships. Lane Kendall, in his very fine book, "The Business of Shipping,"[1] lists nine important considerations in building or buying a ship:

1. ***Trading pattern.*** Does the design meet the needs of the established pattern of operation, including the ability of the ship to serve all the ports on the route, to carry the quantity and variety of cargo offered, and to provide rapidity of transit satisfactory to the shippers?

2. ***Speed of the ship***. Does the ship have sufficient speed at least to equal or surpass the competition on the route?

3. ***Dimensions of the ship***. Is the proposed size correct for the ports the ship is to enter and the type and quantity of cargo she is to carry?

4. ***Hull form and displacement***. Does the design incorporate the best hydrodynamic qualities possible?

5. ***General arrangement of the ship***. Does the design result in maximum return from the interior layout of the ship, especially with reference to cargo loading and discharge?

6. ***Cubic measurements within the hull.*** Are the capacities of the cargo holds distributed appropriately, with due appreciation of the need to balance working times for each compartment?

7. ***Choice of machinery.*** Has the most effective and reliable mode of propulsion been selected?

8. ***Outfit of the ship***. Are the weight and cost of different types of cargo gear and supporting equipment proportionate to the capabilities of the ship?

9. ***Cargo capacity and ship's total deadweight tonnage***. What is the net revenue producing capability of the ship after fuel, water, and stores have been placed aboard?[2]

In very general terms these are the issues that must be resolved. In reality there is no "ideal" ship. Each ship will be a combination of compromises with the bottom line being "Does the ship fit the job?"

The greatest difficulty in purchasing a ship is determining exactly the type of ship needed. A ship is a tool. Do not choose a hammer if you need a drill. Ships have been evolving for several thousand years and they continually to evolve today. Such designs as SWATH or SES ships are on the cutting edge of design technology, but are now entering well-defined and accepted areas of operation.

Basically, ships are described in a number of ways:

Length, usually abbreviated ***L.O.A.*** which means length overall. This is the maximum length of the vessel.

Beam or breadth is used. This is the maximum width, usually at midship of the vessel.

Draft is the distance from the water line to the lowest part of the exterior of the hull. ***Depth*** is usually defined as the distance from the first or main deck to the lowest portion of the hull. Therefore, an indication of the size of the ship would be 180' x 40' x 9'. The ship is 180 feet long, 40 feet wide with a draft of 9 feet.

TONNAGE

All ships have a variety of terms used to describe what they are, how much they can carry and what they do. One of the most confusing set of terms for the casual ship broker or buyer is the tonnage.

There are three basics units of measurement:

- ***Long tons (LT)*** are 2,240 U.S. pounds
- ***Short tons or standard tons (T)*** are equal to 2,000 pounds
- ***Metric tons (MT)*** are equal to 2,205 pounds

[2]Lane Kendall, "The Business of Shipping", Cornell Maritime Press, 1986, pp 370-371.

The most important is ***Deadweight tonnage (DWT)*** which represents the total lifting capacity of a ship, expressed in long tons. ***Cargo deadweight*** refers to the revenue generating cargo capacity of a ship and is determined by deducting the weight of fuel, water, stores, dunnage, crew, passengers and other items necessary for voyage from the deadweight tonnage.

Ship displacement is the weight of a ship equivalent to the weight of water displaced by the ship as it floats. ***Light ship displacement*** is the weight of the ship excluding cargo, fuel, ballast, stores, passengers and crew.

Gross Tonnage (GRT) and ***Net Tonnage (NRT)*** are measurements of capacity. Gross Tonnage is the internal cubic capacity of a ship with certain spaces excluded, expressed in "tons" of 100 cubic feet. This is a measurement of volume rather than weight. The spaces excluded include peak tanks and other tanks used for water ballast and spaces above the uppermost continuous deck. Net Tonnage, also a measurement of volume, is used for calculation of tonnage taxes and the assessment of wharfage and other port dues. It is obtained by deducting from the gross tonnage the crew and navigational spaces, plus an allowance for the volume occupied by the propelling machinery.

Other particular ships have additional means to describe their capacity.

Container ships will be described in terms of a certain number of ***TEUs*** (Twenty-foot Equivalent Units, i.e. twenty-foot containers). ***FEUs*** are forty-foot container units. Tank ships will be described in terms of oil carrying capacity. ***Barrel (bbl)*** is the standard liquid cargo unit of measurement and one barrel consists of 42 gallons (5.515 cubic feet). One ton of fuel oil is equivalent to 6.63 barrels.

Dry bulk cargo ships may also be described in terms of ***Cubic Bales or Cubic Grain***. Cubic Bales is the space available for cargo measured in cubic feet within a ship cargo hold to the inside of the cargo battens, on the frames and to the underside of the deck beams. ***Grain cubic*** is the maximum space available for the cargo within a ship's hold in cubic feet, incorporating all volume inside the shell plating of the hull and to the underside of the upper deck plating. Grain cubic occupies a larger cargo volume than the ship's Bale Cubic rating.

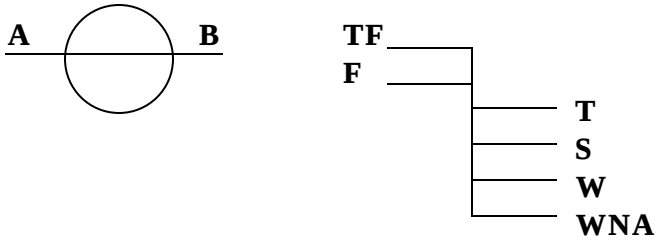
Passenger vessels are usually described by the total number of passengers certified to carry as either day passengers or overnight passengers. If the number is for overnight, it should be written as 750 passengers in 350 staterooms.

Work boats, particularly tug boats, are usually described by the total rated horsepower of its engines. Therefore a tug may be a 1,000 hp tug or a 10,000 hp tug. That describes its ability to do a particular job.

LOAD LINE

The phrase "Load Line" has a very precise meaning. Safe loading, weight and balance have always been very serious issues for seafarers. In England, Samuel Plimsoll became the moving force to establish safe loading as a rule of law. Through his efforts, safe loading standards were adopted and given the force of law. Now the same rules have been adopted by all seafaring nations. Consequently, the load line markings found on all commercial ships are called "Plimsoll Marks."

On an ocean-going vessel, the mark has a very distinctive meaning. The following is a sample Plimsoll Mark:



The circle or diamond is placed at the middle of the load line. Lines above and below the middle indicate safe loading levels for the different conditions indicated in the diagram. All lines are one inch (1") wide.

The letters on either side of the disc or diamond indicate the load line authority of the issuing country. In this diagram, the AB standards are for the American Bureau of Shipping.

TF, the highest line, is the limit for Tropical Freshwater; "F" for Freshwater; "T" for Tropical waters; "S" represents the Summer load line mark; "W" is the Winter mark; "WNA" is the Winter, North Atlantic mark; "SE" is the Summer Emergency mark; "I" is the Intermediate mark.

By using the mark as a gauge, the master of the vessel very easily determines his safe loading.

EVALUATING SHIPS

CLASSIFICATION SOCIETIES

Judging the quality of a ship depends upon an incredible number of things. Generally speaking, the problem has been solved by the creation of standards by a number of classification societies.
For an insurance company to issue insurance to a ship owner, the insurance company must have factual information for the insurance underwriter to base an opinion as to the safety and "risk" of the vessel. What has developed is a group of Classification Societies, each of whom has developed a set of engineering standards supervised by their surveyors. When a ship meets one of these classes and the proper certificates are issued, it is deemed to be "in class." This means it fully meets the standards of the issuing society. To an insurance company, all ships of that class, used in a particular way, are essentially the same risk.

MAJOR SOCIETIES

The following are a few of the major societies:

ABS Plaza
16855 Northchase Drive
Houston, TX 77060 USA
Tel: 1-281-877-5800 / Fax: 1-281-877-5803
Telex: a6737929 ABS HQ
Email: abs-worldhq@eagle.org / Website: www.eagle.org

Lloyds Register of Shipping
71 Frenchurch Street
London, England EC3M 4BS U.K.

Norske Veritas, Det
P.O. Box 300 N-1322
Houik, Norway

Bureau Veritas
17 bis Place des Reflets
La Defense 2, F-92400
Courbevoie, France

China Classification Society
3 Wai Guan Jie
An Ding Men Wai
Beijing, PRC

Hellenic Register Shipping
23 Akti Miaouli
185 35 Piraeus, Greece

Nippon Kaiji Kyokai (NKK)
4-7 Kioi-cho
Chiyoda-ku, Tokyo 102
Japan

Panama Shipping Register Inc.
Ave Samuel Lewis y Manuel Ma
Icaza Building, Comos
POB 6-6974
El Dorado, Rep of Panama

Registro Italiano Navale (RINA)
P.O. Box 1195
Genoa, Italy

LLOYDS

The oldest classification society is Lloyds. During the early development of commercial ship operation, one of the biggest problems was obtaining insurance for owners of ships and cargo. Lloyd's Insurance developed in the same coffeehouse as the Lloyd's Shipping Register, resulting in similar names but entirely different purposes.

AMERICAN BUREAU OF SHIPPING (ABS)

The American Bureau of Shipping was founded in 1862 as a not-for-profit institution having as its mission to promote the safety of life and property at sea through classification of ships and marine structures.

The American Bureau of Shipping (ABS) describes their role as: "A classification society that establishes and administers codes and standards for the design, construction and periodic survey of vessels and other marine structures. When a vessel conforms to these standards it may be classed, thus representing that it possessed the structural and mechanical integrity required for its intended service. ABS Rules are design and construction codes derived from principles of naval architecture, marine engineering and kindred disciplines. Real world experiences are included to blend theoretical and practical inputs to produce realistic requirements."

ABS is authorized by over 100 flag administrations to perform surveys, technical reviews and issue certificates of compliance with conventions concerning the Safety of Life at Sea (SOLAS), Marine Pollution (MARPOL), Load Line, Collision Regulations (COLREGS) and tonnage. ABS has a formal Memoranda of Understanding with the U.S. Coast Guard authorizing ABS to act on behalf of the Coast Guard in review of design plans for vessels which are both ABS classed and require USCG certification.

To a ship buyer, it means much the same. The ship meets or exceeds standards set forth by that society. Classification is one of the most important aspects in examining a ship.

SOCIETAL CODES

Most societies use a variety of codes to determine what is inspected.

The American Bureau of Shipping, as well as most major classification societies, provides a great deal of information concerning who they are and what they do. Each society has adopted its own notations to identify the classification status of a vessel. ABS Maltese Cross+ attached to any notation signifies that an ABS surveyor actually witnessed the construction or manufacture of the hull or machinery.

The following are common notations you will find with an ABS Classification:

+A1. The plans for the hull were reviewed for compliance with the rules, and surveys were performed during construction.

AMS. The plans for machinery and engineering systems were reviewed for compliance with the rules, and surveys were performed during fabrication and installation.

A1. Hull plans were reviewed for compliance with the rules, but surveys were not performed during construction. This commonly occurs when an owner wishes to class an existing vessel with ABS.

AMS. Machinery and engineering systems plans were reviewed for compliance with the rules. Surveys were carried out for installation of machinery and engineering systems, but the machinery was not inspected during construction at the manufacturers' plants. This is applied when an existing vessel is brought into ABS class or for new vessels when stock engines or equipment is used.

SURVEYORS

A surveyor is your most important aid in locating a proper ship. A surveyor's qualifications may vary greatly. You should look for a surveyor who is approved by the classification society that has approved the ship or is approved by one of the major societies. But even more importantly, find a surveyor who will work for you and no one else. ***The first rule is never hire a surveyor approved or recommended by the ship's owner***. You want one that is totally impartial and will give an absolutely accurate appraisal of the ship.

Also, if you are financing the purchase, the lending institution will require a survey by a surveyor approved by them. It may be to your advantage to hire your own surveyor in addition. Your needs may not correspond entirely with the needs of the bank. The bank is merely looking to see if the ship is worth as much as they intend to lend on the ship.

Marine consultants and marine surveyors do different jobs. The surveyor is looking at the particulars of a ship. The consultant will look at the overall operation—crewing and costs of operation, etc.—not just the quality of the ship.

There are two types of surveys—the ***hull*** and ***machinery*** surveys.

HULL SURVEY

First and foremost is determining the integrity of the hull. Most commercial boats are constructed of steel or aluminum. Small and light workboats may be fiberglass. There are still many wooden boats working the waterways of the world, but steel is the material of choice in most large ships. If weight is a factor, aluminum is used for superstructures. Aluminum hulls are generally reserved for situations where speed is required. Many crew boats and higher speed workboats are of all aluminum construction.

Wooden boats are still found in fishing fleets and among many small workboats. With the advent of modern materials and construction techniques, no one, as far as I know, is building commercial boats of wood.

The hull of a metal boat is tested by the use of an audio gauge. This device sends out a signal similar to sonar, and by the strength of the echo, the thickness of the metal can be determined. This can be done either in dry dock or in the water. A good audio gauge is essential to knowing the strength of the hull. Metals are affected by electrical

currents and reaction set up between metal hulls and salt water. This electrolysis will eventually, unless precautions are taken, completely destroy the hull. The use of zinc anodes on the exterior of the hull will prevent this and preserve the hull. In more sophisticated applications, an electrical current is induced into the hull to counteract the electrolysis. Either system will protect the hull.

MACHINERY SURVEY

The machinery survey may have to be conducted by a different surveyor. The machinery survey determines the present condition of the main power and generating units on the ship. Equally as important are pumping systems, fire systems, and other operating systems on the ship.

A surveyor will also look at the general maintenance and care of the superstructure and all main systems. The ship will be thoroughly examined for any defect that will affect the value or seaworthiness of the ship. The surveyor should be provided with or should make a thorough inventory of the equipment, spare parts and other appurtenances of the ship so that there will not be a dispute over what is sold with the ship.

The surveyor will also examine the engineering logs and records. If the ship is not in class, these records are essential to understanding how the ship has been maintained and operated.

The surveyor will make certain recommendations on his report relating to what needs to be done to the ship. This recommendation becomes ammunition in your negotiations with the owner. The ship should be sold with no recommendations outstanding. The issue is whether the buyer or seller should make these repairs.

If the ship is being sold as is, where is, the buyer must make the repairs. Otherwise, they are issues for negotiation.

MARINE CONSULTANTS

There has developed within the industry a variety of consultant groups. Generally, a maritime consultant provides advice and counsel concerning all matters relating to the maritime industry.

It is important to use consultants who are knowledgeable in the area of the industry in which you are working. I have worked with a variety of different consultants and have found them to be indispensable in major

projects. They provide years of experience and knowledge that allows you to avoid many of the problems that you would otherwise face.

Consultants such as the Maritime Group in Seattle have saved my clients from making bad decisions. One of the most important facts in dealing with consultants, with whom you have faith, is to take their advice. More likely than not, they will be correct.

It is important to give them all of the information that you have. Reputable firms will enter into a non-disclosure agreement with you and keep your information confidential. This gives you some assurance that your ideas will not be stolen.

Consultants may work for a flat fee on the project, an hourly rate or some combination of the two. When entering into a relationship with a consulting firm you may expect to pay a substantial retainer against which they will bill.

SAFETY OF LIFE AT SEA (SOLAS)

SOLAS is involved in every aspect of commercial shipping. The abbreviation stands for the International Convention for the Safety of Life at Sea.

Perhaps the only good result from the sinking of the White Star Liner *Titanic* is the fact that it motivated the maritime nations of the world to initiate very detailed safety requirements, at first for passenger vessels, but now for all commercial ships.

Prior to the loss of the *Titanic*, the British commercial fleet averaged 600 to 700 deaths per year. The loss of over 1300 in the *Titanic* convinced many in position of power that something had to be done.

In 1914 a maritime conference was held in London to consider ways to deal with the safety of life at sea. The conference was attended by more than 13 nations and the first convention was adopted in January 1914.

The first convention dealt with safety of navigation or all merchant ships and included such things as watertight and fire-resistant bulk-heads, life saving equipment and fire fighting appliances on passenger ships. For the first time radio equipment was required on vessels carrying more than 50 persons.

Subsequent conventions have been held to upgrade the requirements and incorporate new technology. In 1948 the United Nations set up the IMO (Inter-governmental Maritime Consultative Organization). Begin-

ning with the 1960 SOLAS convention, the IMO has been the responsible agency for change. The 1974 SOLAS convention and subsequent amendments deal with all aspects of commercial shipping.

A commercial ship on an international voyage must comply with all SOLAS requirements applicable to the ship. Valid certificates are issued by the classification societies and are proof to port authorities that the vessel is in compliance.

If a vessel is not in compliance, port officials may not allow the vessel to leave port.

The IMO also adopted the International Convention for the Prevention of Pollution from Ships (MARPOL) in 1978. This convention deals with tankers and shipping of liquids. Certificates are issued which demonstrate that the vessel complies with all current requirements.

The rules and requirements for these international conventions are extensive and usually require extensive knowledge of the rule to determine if the vessel is in compliance. However, a certificate properly issued by the classification society is usually sufficient proof that the vessel is in compliance.

It is important to note that the vessels undergo annual or semi-annual inspections and dry docking to assure that all requirements are met. Many changes in requirements allow existing vessels to continue to operate for a certain period of time without complying with the new rule if, in the opinion of the IMO that costs of meeting the new requirements are out weighed by the economic value of allowing the vessel to continue to operate.

In a practical sense this means that older vessels may not be economically viable when faced with making major changes to comply with the new rules. Therefore it is very important when evaluating a vessel for purchase to consult with experts in the field to determine not only that the vessel is in compliance, but if it will continue to be economically viable to continue in compliance for the future.

When a vessel has been out of service and has not maintained the scheduled inspections and classification certificates it may be a very expensive process to go through all inspections and certifications to return the vessel to service. Once a vessel has been “grandfathered” past a new rule and then allows its certificate to expire, it may be treated as having lost its grace period and will be required to meet the new requirements. This may or may not be economically viable and should be considered very carefully.

Generally, any vessel in international trade or voyage carrying more than 36 passengers or certain cargo ships of even less than 500 tons will be required to meet the SOLAS regulations. The regulations are based

not only on size but type of cargo, so you must be very careful in complying with these rules.

MARKET EVALUATION OF COMMERCIAL SHIPS

Commercial ships have to be evaluated on a variety of different levels to ascertain a real market value. Unlike automobiles with the "Kelly Blue Book" and to some extent, pleasure yachts, which use the "power boat Guide", commercial ships do not have a generally recognized common value reference source.

There are several terms used in reference to the value of a ship. The two most common are "replacement value" and "market value".

Replacement value refers to the costs of acquiring a new ship that performs and operates in the same style of the ship be evaluated.

In determining what a replacement ship would be, the surveyor must ascertain the cargo or other capacities of the vessel, the crew requirements, any new governmental or classification requirements for the type of vessel, and any changes in the portion of the industry in which the vessel will work. An easy example would be replacement cost of a major, single hull oil tanker. Under most new regulations, the replacement vessel would be required to be a double hull vessel, and consequently, substantially more expensive.

What would be the acquisition costs of a new vessel identical to the one being evaluated? This figure is always representative of current shipyard prices and current labor and material costs.

Usually a surveyor or the person determining the "replacement value" will contact a number of shipyards capable of building such a vessel and ask for a general quote. The replacement value may be affected by any number of events.

Market dynamics will affect a quote in the same manner as market forces affect all quotes. If we assume that a ship being evaluated is an Offshore Supply Vessel in the 220-foot range and the quote was requested at the height of the offshore boom of the mid-1990's, the quote would not only be very high, but would reflect a waiting period before a position in the shipyard could be secured. Therefore, replacement value would be very, very high.

However, now that the offshore boom has subsided, shipyards are not under the type of demand that was there a few years ago, and the quote

will reflect current market conditions in which a variety of shipyards would compete for the contract to build the ship. Therefore, the ultimate replacement price would be substantially less.

Replacement costs is one of the figures that may affect the "current market value" of a particular ship. If the cost of a new ship is so high to make the purchase economically unproductive, the owner may consider substantial refitting of an older ship to keep the ultimate costs down.

CURRENT MARKET VALUE

Many of us, who produce these evaluations from time to time, wish that we had a crystal ball that would give us some help. Unfortunately, we have to rely upon our own experience in the market; our review of current business trends; knowledge and past experience and a good understanding of the capacities of the vessel in question.

The current condition of the vessel is of ultimate importance. The primary issues that should be used in the evaluation of a ship are:

1. Age.
2. Classification status.
3. USCG Certificates or other governmental certificates that are current.
4. Condition of the hull.
5. Condition of the primary propulsion units.
6. Condition of the auxiliary generators and equipment.
7. Overall ability to perform the work required.
8. Repaired damage to hull or running gear.
9. Un-repaired damage to hull or running gear.
10. Overall exterior maintenance.
11. Special equipment or specially designed aspects of the ship.
12. Current shipping market conditions.
13. Current financial market conditions.
14. Other potential shipping markets.
15. Cost of replacement.

Age is usually the single most important aspect in value. All ships are built with an expected life of 20 to 25 years. After that point, their value declines substantially regardless of the condition of the vessel. Insurance rates generally begin to escalate and the level of maintenance and repair become more and more substantial with each passing year.

A vessel that is built to class and maintained in class by ABS or other recognized classification society will have greater value than a ship that has allowed the class certificates to expire. The loss or expiration of a load line will also decrease the value of the vessel.

Also, the fact that any certificate issued by the USCG, such as a passenger for hire or coastwise cargo certification, adds value if in full effect and decreases the value if expired.

The condition of the hull must be accurately ascertained by visual and audio gauged testing. Any wastage in the hull, above or below the waterline, signals the potential for great undiscovered damage. The fact that the class certificates indicate a hull in good condition is important. But in older ships, ordinarily, an audio gauge is the only way to determine the real condition. The audio gauge is a device that determines the thickness of the hull plate in a standard pattern over the entire hull. These measurements are then compared to the original thickness of the hull when built. A certain amount may be allowed for general wastage before it becomes necessary to re-plate. The amount of wastage is the important aspect to know.

A vessel with substantial hull wastage may have no value except as scrap.

The condition of the main engines and auxiliary are determined by examining and reviewing the maintenance records and logs. In many cases an oil sample will be sent for laboratory examination to determine the amount of wear inside the engine. In addition, engineers for the engine manufacturer can determine by inspection the amount of wear and potential for repair or continued use.

The next area we examine is whether the vessel is capable of performing the type of work required in the market where it is competing. If a vessel has been superseded by new designs and types of construction, its value will be diminished. Currently, there have been major changes in the offshore supply boat market, with a greater demand for larger vessels capable of very deepwater work. As the demand for that larger size vessel increases, the demand for the older, smaller boats will decrease and cause a loss of value in the older boats.

Also, in the cruise ship industry, a variety of new regulations concerning fire protection and security, cause older vessels to face substantial expense in meeting the new rules. Many times the cost of retrofitting an older cruise ship would exceed the cost of building a new vessel. So, in evaluating the ship, you must consider how competitive will the vessel be in the current market and how long can it expect to remain competitive.

All ships suffer damage of one type or another. All repairs must be reflected in the ship's log and all repairs must be to a surveyor's or classification surveyor's requirement. This assures the owner and any potential buyer that the repairs were made under severe scrutiny and resulted in the vessel being returned to its original condition.

When damage is noted in the log but not repaired, the value of the ship will suffer substantially. Generally, this will occur when the damage is superficial and does not affect the operation of the ship. This will generally be seen in such things as dented plates in the hull, scraps in the paint, bent or rusted railings, etc.

However, when the damage is more than superficial and is not repaired due to the expense or difficulty in repairing the damage, the value of the vessel may be greatly impaired. The two features that affect the value are buyer's wariness of the costs of repairs and the buyer's concern about how the vessel will perform over a period of years. The buyer must also ascertain how the un-repaired damage will affect any class certificates or USCG certifications.

Overall exterior maintenance is a good indicator of how the owner maintains his ships. Usually the two areas that give the best "quick" look at the overall condition of the ship is the exterior paint and the engine room bilge. However, beware of that quick coat of cheap white paint that just hides years of neglect.

If a ship is designed with special equipment such as a loading device for cement or other bulk products or if it is compartmentalized for special cargo, those factors must be taken into account when evaluating the ship. A ship designed to haul high explosives or LPG may have a certain value based merely on its ability to do a specific job.

The overall condition of the shipping market must be taken into consideration in determining the value of a ship. If the market is booming and every ship is working, then the ship will have great immediate value. However, if you are in a slow or depressed market, such as the oil industry at the moment, then the value will be substantially less.

The ability of a buyer or owner to obtain financing is important. If the financial markets are booming and very involved in that particular shipping market, then financing will be easy and the ship will have greater value. Conversely, if the financial institutions are not lending to anyone, which is the case many times in the marine industry, that factor will greatly affect the ship's value.

In evaluating current markets, both financial and shipping, you should also consider alternative markets. If a vessel can be relocated easily to a productive market and work competitively there, the value of the ship should reflect that fact.

Finally, the cost of replacement may become a major issue in determining the value of a vessel. Because of the Jones Act, all U.S. shipping must be built in U.S. shipyards. Consequently, a vessel, although older and needing repair, may still have substantial value when compared to the cost of building a new vessel in a major U.S. shipyard. Sometimes the cost of upgrading and repairing an older vessel makes it a very lucrative proposition.

During the boom times in the oil fields, many, many older supply boats were taken out of mothballs and refurbished. They immediately found full employment and paid substantial dividends to their owners. The owners realized the delay in new construction compared with quick refits and lower overall investment in the vessel. Of course when the boom ended, the older, refitted vessel had little or no residual value. All of the factors must be evaluated and considered. The ultimate opinion is merely one person or one company's opinion. There is no absolute value on any vessel.

Chapter 6
TYPES OF COMMERCIAL SHIPS

Commercial ships range from very small excursion vessels to massive ocean-going cargo ships. They may be divided into four major categories:

1. Cargo Ships.
2. Passenger Carrying Ships.
3. Work Boats.
4. Non-self-propelled vessels.

CARGO SHIPS

Cargo ships are generally one of the following types:

1. **Bulk Cargo** such as coal, wheat, cement, grain or any item moved in bulk quantities.
2. **Break Bulk Carg**o is cargo that may be affixed to a pallet. Palletized cargo is organized in such a way as to facilitate the loading into the ship.
3. **Containerized Cargo** is cargo enclosed into a standardized shipping container.
4. **Liquid Carg**o such as oil, molasses, and chemicals are carried in bulk in large tank ships.
5. **Roll On / Roll Off** specialized ships.

Cargo ships are described by the manner in which they manage their cargoes. Men have been using ships to transport all types of cargoes for thousands of years. Cargo ships originally had cranes or derricks built onto the ship to facilitate the on-loading and off-loading of cargo. Today, many ships are built without any ability to load or unload cargo and depend upon the port facility at which they dock. Such a ship is referred to as a “gearless ship”, whereas a ship with the capacity to handle its own cargo is referred to as a “geared” ship.

BULK CARRIERS

A bulk carrier is a ship with one or more large holes in which cargo in bulk is carried. Ordinarily, a “bulker" or “bulk carrier” will carry a certain type or types of cargo for most of its life. There are special designs for the various cargoes.

Bulk cargo ships that are "geared" may have very specialized equipment with which to off-load their cargo. A ship designed to carry cement in bulk may have a very highly specialized bore-type devise that allows the cargo to be conveyed from the cargo hole to a shore-side loading system where cement trucks are loaded directly from the ship.

Geared Bulk Carrier

Also, many ports maintain facilities that, by the use of conveyors and cranes, directly load scrap steel, wheat, grain or any bulk commodity directly into the ship.

BREAK BULK CARGO SHIPS

Break bulk refers to palletized cargo that may be loaded by crane or derrick. The ship may carry some bulk cargo, some break bulk and some containers. Smaller, inter-island ships generally carry a variety of cargo sizes, types and containers.

CONTAINER SHIPS

Within the last fifty years, a major change occurred that revolutionized the cargo industry. The "containerized" cargo unit was introduced in the mid-1950's when an enterprising trucking company owner seized upon the idea of loading the entire truck trailer unit (minus the wheels) onto ships to be off-loaded and placed back on the truck trailer at the port of destination.

Container Ship

Today, a vast portion of all cargo is transported in container ships. These are, ships designed with special deck hardware and cranes to load containers directly into the holes of the ship and to stack them on deck. Massive container ship companies operate around the world--Sea-Land; EverGreen and NKY, to name just a few.

Most ports around the world maintain container cranes at the dockside. The container ship berths adjacent to the crane area and the cranes load and unload the ship. A "gearless" container ship generally may carry more containers than a "geared" container ship.

Containers come in two basic sizes. A twenty-foot container, referred to as a TEU Twenty-Foot Equivalent Unit, is the basic measurement of a container ship. However, basic containers also come in a forty-foot size. This is called an FEU or Forty-Foot Equivalent Unit.

When referring to the size of a container ship, it will be described as "geared" or gearless" and by the number of TEU's that it can carry. Consequently, a "gearless, 500 TEU" container ship tells you everything you need to know about the size of the ship.

Some modern container ships will carry upwards of 4,000 TEU's. Usually, a container port is equipped with several container cranes, each of which costs millions of dollars, and will simultaneously unload a large container ship.

Tractor-trailer trucks will be marshaled in line and be loaded directly by the crane and sent off onto the highways. Container ships are easily, dollar for dollar, the most efficient way to move cargo.

The cargo ship is now just one component in the integrated transportation system of the modern world. For example, the container may be filled with products made by a factory in Japan or China. Then it is sealed, loaded onto the tractor-trailer truck and driven to port where it is directly loaded onto a ship for the voyage to the United States or Europe. The ship arrives at the port where the container is loaded directly to another tractor-trailer and driven to a railway, where it is loaded onto specially designed railway cars for a trip across the United States.

At the rail terminus, the container is loaded onto another truck and driven to its final destination where the product is sold or distributed.

This is all made possible by uniform sizes, shapes and weights of the TEU's and FEU's.

TANKERS

Tankers are exactly what the name implies. They are a series of tanks welded together to hold some liquid product. The most common is the oil tanker. However, oil comes in different grades and viscosity and the tanker must be able in some cases to heat the oil inside the tank in order to allow it to flow out.

Oil Tanker

Tankers are generally equipped with pumping systems that allow them to pump oil in and out of the tanks inside the ship. There may be any number of tanks inside the ship and they may contain different grades of product. The heaviest grade is "crude" unprocessed oil and the lightest is "aviation gas". There is great expertise required in handling the various products, and supervision by the U.S. Coast Guard and the classification society under which the ship is built go to great lengths to assure that an environmental disaster does not occur.

Tankers are the largest civilian ships afloat. They will range in size from less than 100 feet to over 1000 feet in length. These larger ships are generally referred to as "Super Tankers" and may displace over 564,000 tons.

Although we are most familiar with the oil tankers, these ships also serve other purposes in transporting, coconut oil, molasses, water, and other liquid products. The smaller tankers may work along coastal communities supplying gas and fuels, or in some islands, providing drinking water. "Lighters" or harbor tankers may re-fuel ships or move smaller amounts of products.

Currently, the United States has plans to require that all petroleum tankers have "double bottoms". This means that the ship must be constructed with a void space (empty area) between the bottom on the petroleum storage tank and the bottom of the ship. Theoretically, this will serve to reduce or eliminate the possibility of another oil spill, like the one that occurred in Alaska.

SPECIALIZED CARGO SHIPS

Ro/Ro

A Ro/Ro is a ship with loading ramps so that the cargo may roll on and roll off. Typically a car carrier, ferry or any vessel so equipped may be referred to as a Ro/Ro.

Refrigerator Ships

A refrigerator ship is equipped with compressors and generators designed to keep the cargo cold at a specific temperature for the time of the voyage. Many container ships will have what are called "reefer plugs" where refrigerated cargo inside of a refrigerated container may be plugged into the ship's generating system and kept in operation during the voyage.

Refrigerator ships are routinely used in the transportation of perishable cargo such as fish, fruits and vegetables. Refrigerator ships may be in bulk, break bulk, or containers.

PASSENGER SHIPS

Generally, we visualize a passenger ship, like the *Queen Elizabeth II* or *Sovereign of the Seas*, when we think of a ship that carries passengers. In fact, there are a large variety of vessels that serve to transport people for different reasons. The common factor among all of these types of ships is a license, either internationally or nationally, that permits them to carry "passengers for hire". This terms means that the ship can accept payment for passage. Without the correct license and permit, it is illegal for any vessel to accept payment.

In the United States passenger vessels are subject to the inspection by the United States Coast Guard to determine if they meet the safety requirements to be permitted to transport passengers. This is in addition to meeting the requirements for coastwise trade, i.e., built in the United States, owned and crewed by U.S. citizens.

International passenger ships must meet the requirements of their Classification Society (see chapter 6) and the provision of the Safety of Life at Sea Convention (SOLAS) which is an international agreement providing minimum requirements for passenger-carrying vessels. There is currently a movement to make the U.S. requirements consistent with the requirements of SOLAS.

CRUISE SHIPS

The history of cruise ships can be dated back to the French sailing ship, *Deux Freres*, which introduced regular passenger service between Le Havre, France and New York, in 1784.[3]

Cruise Ship

In the late 1880's there was an increased interest in cruising for the sake of cruising. The early 1900's saw the introduction of large ships like the ill-fated *Titanic*. As the century progressed, more and more elaborate ships went into service.

Generally, the North Atlantic liner service was the principal trade. In the 1950's and 1960's, destination cruising became the service of choice as the airlines replaced the cruise line service to Europe, Australia and Pacific Rim.

Today, cruise ships are looked upon as destinations in themselves, with little need for the passengers to disembark for more than a shore tour of

[3]Berlitz Complete Guide to Cruising and Cruise Ships by Douglas Ward, Berlitz Publishing Co., Inc., NY, NY,

the port. Companies have now in fact created their own destinations so that the passenger never leaves their hands. Most cruise ships today offer a wide variety of entertainment and activities packages catering to all types of passengers.

The 1990's have seen a tremendous increase in cruise ship passenger statistics with little end in sight.

A photographic history of the evolution of cruise ships may be found in several publications, Great Passenger Ships of the World Today (1992) by Arnold Kludas, Patrick Stephens Limited Publishing. Another excellent book is Great Cruise Ships and Ocean Liners (1988) by William H. Miller, Jr., Dover Publications, Inc., New York.

Cruise ships vary in size, condition, class, propulsion and accommodations. The principal dividing issue on every cruise ship, particularly older vessels, is whether they provide private *en suite* bathroom facilities. Many older European vessels provide some cabins with private facilities and some with only common facilities. Modern cruise ship passengers are now accustomed to the same level of comfort aboard ship as in a modern land based hotel.

SMALL PASSENGER VESSELS

Small Passenger Ferry

There are a very large number of vessels that carry passengers on overnight voyages that in many cases are as luxurious as a modern cruise ship, but accommodate only a small number of passengers. These boats serve in small ports and provide access to more remote and less traveled ocean pathways. Particularly the Galapagos Islands, Alaska and the South Pacific are home for these small ships that will carry from 12 to 100 passengers, many times in a style and condition that must be experienced to believe.

Some of the boats are typical cruise-type ships providing unusual vistas that can be seen only from a lighter draft vessel. Others provide diving capabilities and exploration of remote sites. There are more than 140 vessels that do only diving listed in the Hennesey Guide.[4]

In addition there are innumerable smaller dive boats working at every potential dive site in the United States and Caribbean. The particular difference is the ability to provide overnight accommodations. In dive

[4]Live Aboard Dive Boats Worldwide, 1997, The Hennesey Group

boat parlance, that may mean anything from berths stacked six high to a custom suite with Sat Phone and television.

EXCURSION BOATS

Excursion Boat

The term "excursion boats or vessel" refers to the fact that the vessel does not provide overnight accommodations and the passenger will only be on board for the day.

Dinner boats, sightseeing vessels and whale watching boats are boats of this nature. However, they will be subjected to similar safety requirements as the larger vessels. Of course, more simple operating systems require fewer safety rules. The basic safety requirements will be the same.

PASSENGER FERRY / AUTO FERRY

Passenger Ferry

A ferry is simply a vessel designed to transport people and/or vehicles from one point to another. They are also subject to SOLAS and U.S.C.G. regulations. In the United States they are generally operated by state highway systems as in North Carolina, Washington and Alaska, but in some areas they are strictly a profit-motivated business.

Ferries are rated by the total number of passengers and vehicles allowed on board. In Europe and Canada many ferries also provide some level of overnight accommodations due to the length of the run.

In recent years the need for speed has allowed the development of fast ferries. These are vessels that, due to design and power, may routinely operate in excess of 28 knots whereas traditional displacement-designed ferries operate in the 15 knot range. To gain speed, the number of passenger and weight of cargo must be reduced. Large catamarans now routinely operate in excess of 30 kts. In some parts of the world, large wave-piercing catamarans operate at higher speeds and also carry autos and trucks, as well as passengers.

GAMBLING VESSELS

The 1990's saw a unique change in the gaming laws in the United States. Until the early 1990's gaming, that is permitting passengers to participate in games of chance, was prohibited within the territorial waters of the United States.

Vessel operators in California in the 1950's attempted to circumvent the law by anchoring gambling vessels outside the state territorial limit and ferrying customers out to the ship in smaller boats.

This was eventually outlawed and vessel operators devised a new strategy. The term, "cruise to nowhere", indicates a particular loophole in the law. If permitted by the local jurisdiction, it permits a non-U.S.-flagged vessel to accept passengers at a U.S. port, proceed offshore outside the territorial limits of the United States and state, and operate games of chance. The vessel may then return to exactly the same dock and discharge the passengers. "Cruises to nowhere" have been a major activity in Florida.

Generally, a vessel, in order to allow gaming, must leave a U.S. port and properly arrive and dock in a foreign port before returning to the United States.

In the 1990's, the wave of legalized gaming in the United States permitted changes to the laws that permit some states to allow gaming on vessels cruising inland waters or floating on water that are part of an estuary that eventually reaches the ocean. The end result was a great rush of building of riverboats and other floating casinos. Legalized gaming is still being sorted out by state legislatures and local government. It is important to remember that these ships must also meet all U.S.C.G. requirements of passenger-for-hire vessels.

WORK BOATS

Work boats are tools to do a job. The type of job determines the type of tool needed. Just as carpenters and plumbers have developed specialized tools for their trade, so have those people required to work in the harsh and dangerous environment of the ocean have developed specialized ships and boats to assist them.

TUGBOATS

Originally, tugboats were small, steam-powered vessels used to assist large sailing ships into port and assist in docking. The sailing ships are gone, but the small assist tug is still evident in all the ports of the world.

Tug Boat w/Elevated House

The ship assist tug is designed to maneuver a larger ship into a berth or to assist it in leaving a berth and departing the port. In many cases, more than one tug will be

required to manage the larger ships. Modern docking or ship assist tugs are either twin engine with twin propellers to provide maneuverability or thruster type. The newest innovation in modern ship assist tugs is the Schottel thruster. The Schottel thruster looks like a large fan in the bottom of the hull that directs the thrust of the engines. The advantage of this type of application is that it allows the tug to exert full force in any direction. It is not uncommon to see such a tug steaming at full speed in full reverse. This type of tug is usually identifiable by the 360^{o} wheelhouse.

There are a variety of other types of tugboats. Generally found in the U.S. Gulf and most inland waterways are "Push Tugs". The Push Tug differs from other tugboats in the sense that it is designed to push rather than to pull. Push Tugs along the Mississippi River push enormous numbers of barges loaded with wheat and grain that are locked together. The Push Tug usually has a very high horsepower and a flat bow equipped with push knees that fit flat against the barge being pushed.

In some cases the barge will be made with a "notch". This is an area in the middle of the stern of the barge in which the tug will fit and then be locked into place by winches or other mechanical means. This "integrated" tug and barge then will function as one unit. Usually the tug and barge are specially designed to fit together so as to make a clean connection.

The characterization of tugs as harbor or ocean-going is somewhat arbitrary in the sense that many tugs perform both functions. The real issue becomes whether it can successfully and safely operate in both situations.

Generally, an "ocean-going tug" refers to a tug with sufficient size, horsepower and bollard pull to tow large ocean-class barges across open ocean. I usually consider an ocean-going tug to be more than 100-feet in length with sufficient horsepower and endurance to cross an ocean. Ocean-going tugs may have horsepower in the 20,000 horsepower range. Many of the larger tugs, in excess of 200-feet in length, may have multiple engines coupled to a single shaft.

Tugboats may also be equipped with a variety of winches or cranes to allow them to provide other services including anchor handling and fire fighting. Generally, what sets a tugboat apart is its horsepower and maneuverability.

OFFSHORE SUPPLY VESSELS

Offshore Supply Vessel

The offshore supply vessel, generally referred to as an "OSV", is the workhorse of the oil industry. These boats, which may range in size from 110-feet to 250-feet, are the pick-up trucks of the work boat industry.

They are designed to ferry supplies and support equipment to oil rigs and drilling platforms located in the open ocean. They must have the size and speed to carry substantial amounts of equipment, from food to drill pipe, maneuver alongside the oil rig and off load the equipment.

The newer OSVs are now firmly in the 200-foot plus category as the demand for more stability and endurance has been amplified by the movement into the deeper water in the search for oil. During the boom times of 1998, OSVs could command day rates in excess of $8,000.00 per day and supply could not keep up with demand.

These boats are very susceptible to the variations in the price of oil. As world oil prices go up and down, so do the day rates for the boats and their value on the resale market.

The OSV is characterized by a superstructure forward and a long, open aft deck. Below deck, tankage is provided for drill mud, fuel and water. Cargo is carried on the open aft deck and generally off loaded by equipment on the oil rig. While speed is important, cargo carrying is balanced against the need for speed.

UTILITY BOATS

"Utility boat" refers to a multi-purpose vessel that may be a cross between a tug, OSV and crew boat. Generally it has more cargo capacity than a crew boat and less speed, but not as much capacity as the OSV. Generally it is an open aft deck vessel with accommodations and wheelhouse forward.

There is no set definition of a utility boat. It mainly refers to its ability to perform a variety of tasks.

A common type of utility vessel is the "Landing Craft." A landing craft is any shallow draft vessel, usually with a bow-loading ramp, that is capable of being beached, off loading its cargo and then extricating itself from the beach back to the deeper water.

During WWII and Vietnam, the U.S. Navy built a large number of landing craft usually designated as LCM (Land Craft Men), LCU (Landing Craft Utility) and LST (Landing Craft Tank).

Each type has some variation in size the LCM being approximately 75 feet in length, the LCU 115 feet and the LST approximately 300 feet. Today, these ships, purchased as surplus, have been configured to perform a multitude of task in shallow water.

CREW BOATS

Crew boats are another oil field work boat that is designed for the express purpose of moving men out to the offshore platforms and rigs. The are generally aluminum, fast and wet. To enable them to carry passengers, they must be certified by the United States Coast Guard as a "passenger for hire" vessel. This requires inspection by the Coast Guard and the issuance of a certificate of inspection that limits the number of passengers, the area of operation, the distance offshore, the number of crew required and the safety equipment that must be on board.

These small and fast boats also serve as taxis for the ships that anchor in the harbors of the world.

PILOT BOATS

Pilot Boat

All large commercial ships, with some limited exceptions, are required to have a local harbor pilot on board when entering a harbor. Pilot boats are designed to carry the pilot from the harbor to a point offshore where they meet with the ship and safely allow the pilot to board the ship and navigate it into the harbor. Conversely, the pilot boat also follows the ship when it leaves the harbor and picks up the pilot and returns him to the dock.

The pilot boat is usually designed with substantial and strategically positioned rails to allow the vessel go alongside of a moving ship. Speed is also a factor in the design. Pilot boats are usually under 50 feet in length.

FIRE BOATS

Fire Boat

Boats designed to fight fires aboard ship and at docks have been a fixture of the harbors for many years. Most harbor fire departments have at least one such ship. It helps to think of the fireboat as one gigantic pump with many nozzles.

Fire boats are designed to fight fires on board ship by spraying water and foam onto the fire. They must also be very sturdy and maneuverable as the work into very dangerous areas. Fire boats range in size from 35 feet to 150 feet. Fortunately, theses work boats tend to lead long and memorable lives with many of them still in service after 50 years of hard work.

RESEARCH SHIPS

Research Ship

Many universities, oil companies, water resource boards and governments own and operate research ships. A research ship is a category that is specially designated by the U.S. Coast Guard documentation and has certain requirements that permit them to operate without the more strenuous rules of a passenger for hire vessel.

Small research ship may provide platforms for any type of oceanographic endeavor and the large research ships perform every type of task including locating the *Titanic*. Many nations involved in fishing operate fisheries vessels to sample and evaluate the fish population. Many local governments operate water-sampling vessels to determine if pollutants are being dumped into the local waters.

The consistent design factor of all of these ships is to provide a stable work platform to allow scientists a safe and adequate work environment.

In the re-use market, many research ships sell for a fraction of their replacement costs. Research ships have undergone a variety of conversions into private yachts, work boats and cruise ships.

FISHING BOATS

The fishing industry in the United States and worldwide is a primary industry that supports and employs thousands of citizens. The work is hard and dangerous and in the United States accounts for more employment related fatalities than any other line of work.

Regardless of the danger and difficulty men and women ply this trade with a dedication that defies logic. Today the fisherman and women face increased government control and supervision and a dwindling supply of fish. Whether for or against government and international management of the fishing resources, it is an every day fact of life and one that dictates the business of fishing.

It is impossible to separate a fishing boat from the gear it carries. The type of net or deck gear, the winches and accommodations are all part of the development of hundred of years of fishing experience. Whether it is a 30-foot longliner plying local waters or a 400-foot catcher processor steaming off the coast of Africa, the requirements are common.

The vessel must be “seaworthy”; must provide work deck area; must be equipped with the type of fishing gear designed to catch the intended species and it must be capable of preserving the catch until the boat reaches port to sell or off load the catch.

Trawlers / Seiners

A trawler is a net catcher, which drags a trawl type net behind the vessel to sweep the fish into catcher. Different trawler trawl at different depths, depending upon the type of fish pursued.

The common characteristic is the use of a trawl net, deck gear such as a trawl winch and boom to lift the net in and out of the water.

The purse seiner differs primarily in the type of net used. The purse seiner net is shaped like a large purse, which with the mouth of the net open, sweeps in the fish which are collected in the pocket of the net and brought onto the deck.

There are a variety of purse seiners that are used for tuna, anchovy and other schooling fish. The most common and most widely discussed are the tuna seiners.

The tuna seiners range from a 100-ton capacity up to 1500 tons. The tonnage refers to the cargo carrying capacity of the ship.

Modern large tuna seiners are extraordinarily complicated and complex vessels, equipped with helicopters and helicopter support equipment; processing and freezing areas and electronics sufficient to locate a nuclear submarine trying to hide. However, even with all of the modern tools, tuna fishing still relies upon the skill of the captain and crew.

A modern 1500-ton tuna seiner may costs more than twenty million dollars ($20,000,000.00 USD) to build, excluding nets, skiffs and helicopters. The vessel may be at sea for months, returning only when the vessel is full. The owners and captain earn very substantial profits from these trips with tuna prices ranging at more than $1,000.00 USD per ton, a large seiner may $1,500,000.00 in a month or less. Be aware that to do that, the captain must find and catch the tuna.

Longliners

Longliners are hook and bait type of boats. The hooks are attached to lines that range miles behind the vessel. The long lines are equipped with radio transmitters and lights. The boat makes a set then hauls the lines back in collecting the fish as they go. A good book with a thorough explanation of the process and dangers of fishing is *The Perfect Storm,* by Sebastian Junger (Harper Collins Publishers 1997).

This is an excellent book on the fishing process, the dangers of the business may be a little overplayed, but an excellent insight in to the business.

Longliners range in size from 30 or 40 feet to hundreds of feet. They also may preserve or process their catch on board.

Processors / Factory Ships

In the 1970's and 80's when fish stocks were higher, processor and factory ships were developed in order to allow the fishing fleets to stay at sea and continue to catch fish, rather than returning to port to off load.

The factory ships, which some times also catch fish, would off load the boats at sea and process and preserve the catch. When the process returned to port the product was essentially ready for market.

Current the demand for processors and factory ships has diminished with the changing patterns of catching. However, there are still many of these ships in service and they represent the upper end of the size for the fishing fleets, ranging up to 400 feet in length.

I have not attempted to describe all type of fishing boats. In evaluating commercial fishing boats, you must be aware of the age of the boat, its reputation for catching fish, and the fishing and deck gear on board. Specialized electronics are also important.

Probably the most important is the preserving capabilities. The type and condition of the freezing and chilling equipment and the temperature that can be maintained. A questionable or inadequate preserving system is a guarantee of failure of the boat.

NON-SELF-PROPELLED VESSELS

When we think of non-self-propelled vessels we usually think of barges. However, there are a variety of other crafts that, for one reason or another, do not contain or use propulsion units that are self-contained.

HOTEL SHIPS

A cruise ship or liner is merely a hotel with the ability to change locations--the Caribbean in the winter and Alaska in the summer. When a cruise ship nears the end of its useful life, it has the opportunity to become more or less permanently fixed in one position as a hotel ship.

There are a number of reasons that will occur. The international convention providing for safety aboard cruise ships (SOLAS) is a changing set of rules. Many older ships are not economically feasible to bring up to the newer fire and safety standards. Consequently, they have little or no value as a cruise ship.

Hotel Ship, Queen Mary

In many cases, these ships are still very elegant crafts with a history of international cruising behind then. Such ships, like the *Queen Mary*, now serving as a hotel and tourist attraction in Long Beach, California, go on to long and worthwhile careers. Others, without the history of the *Queen Mary*, find other occupations as restaurants and attractions and as accommodation platforms and temporary quarters.

Very often when special events require, an active cruise ship will be temporarily docked as several ships were so used in Barcelona during the Olympics.

In the United States, where the Jones Act requires that all passenger-carrying vessels be U.S.-built and flagged, a hotel ship can avoid this requirement by removing its propellers and propulsion equipment and become affixed to the shore.

It is important to realize that when this happens, the ships must then meet local and state building codes, as well as requirements for handicap access and use. Even with these requirements, a hotel ship can be on site and in service in a fraction of the time it takes to construct a major hotel.

FLOATING DRY DOCKS

A floating dry dock is an essential tool in the maintenance of commercial and private ships. All ships and boats must be periodically removed from the water and the hull must be inspected, repaired and painted.

Floating Drydock

For small pleasure craft and small working craft, a travel lift or marine railway may be sufficient to lift them out of the water.

However, large commercial ships that may weigh 100's of thousands of tons can only be lifted by a floating dry dock.

A floating dry dock, is merely a large tank with walls on each side, with massive pumps and compartmentalized floating chambers that can be filled and evacuated on demand. The floating dry dock will have a lifting capacity based upon the amount of displacement of water designed in the dry dock. The lifting capacity need only be greater than the weight of the ship being lifted.

A 10,000-ton dry dock should be able to lift a 10,000-ton ship. Of course, a margin of safety is always employed.

A "blocking plan" is devised for each ship when it is constructed. This plan shows the shipyard the stress points in the hull so that massive wooden or steel blocks can be strategically placed to support the weight of the ship without damaging it.

The dry dock is then submerged deeper than the draft of the ship by pumping ballast water into the chambers in the dry dock. The ship is then positioned very carefully into the dry dock by tugs to make certain that the ship will rest upon the blocks that are pre-positioned in the floor of the dry dock.

The pumps in the dry dock pump out the ballast water, and as the dry dock starts to rise, it lifts the ship completely out of the water.

DREDGES

Dredge

A dredge is one of those workhorses of the industry that no one talks about until one is needed. The dredge is a giant vacuum cleaner that is used to deepen and clear waterways.

Dredges come in all sizes, but all have the same basic characteristics. These include a cutter head that cuts or disturbs the ocean bottom and a ladder device that brings the mud or dredge spoil up to the surface for deposit in a barge or other vessel.

Dredges vary in size from 25 or 30 feet up to several hundred feet in size. The distinguishing factor is the depth of water in which it can work and the size of the dredge pipe that it uses to extract the dredge spoil.

BARGES

The barge is probably the oldest form of water transportation. Today they are used in every waterway of the world, every port and for every conceivable purpose.
They will range in size from small floats to giant ocean-going platforms that will rival some of the largest ships.

The common characteristics are the lack of self-propelling equipment and a generally rectangular shape.

There are a variety of barges. The following are some of the more common uses:

Bin Barge

Deck barges are used for transporting cargo stored on deck.

Tank barges are used for transporting cargo, generally liquid stored below deck.

Bin barges have high perimeter walls that allow bulk cargo to be carried on deck.

Accommodation barges have housing built on deck to provide living quarters for work.

Crane barges have large mechanical cranes on deck and are used in a variety of marine construction situations.

Crane Barge

Notch barges are barges that, instead of a flat or square stern, have a notch designed in the middle so that a tugboat can position the bow of the tug into the center of the barge and more effectively control the movement of the barge. You will see both tank and deck barges built this way.

Spud Barge is built so that it can be positioned in one place in relatively shallow water and not move. This is accomplished by the place of two or more long metal pipes or tubes called spuds, vertically on the side of the barge, that can be raised or lowered at will. When the barge is correctly in position, the captain sinks the spuds into the bottom, and the piling then holds the barge in position. This is very common for construction projects and is routinely found on crane barges.

Jack Up Barge is the next step up from the spud barge. It is very similarly constructed, except the spuds are more substantial and the mechanical equipment more complex. When the barge is correctly positioned, the legs are positioned on the bottom and the barge is elevated out of the water using the legs as vertical support.

Chapter 7
VESSEL REGULATION, REGISTRATION, DOCUMENTATION & CERTIFICATION

U.S.C.G. DOCUMENTATION

COMMERCIAL SHIP REGISTRATION

In the United States commercial ship registration is handled by the United States Coast Guard Documentation Office. The purpose of the documentation is to provide for effective identification of vessels, provide evidence of ownership, and license the vessels for trades.

You should be aware of the difference between documentation and license. ***Documentation*** refers to ownership of the vessel. ***Licensing*** refers to the work the vessel is permitted to engage.

Pleasure vessels "may" be documented if they are in excess of five net tons. Commercial ships "must" be documented if engaged in fisheries, Great Lakes trade, coastwise trade or foreign trade and must be registered or licensed for their particular trade.

Vessels may be registered for foreign trade and trade with U.S. Possessions.[5] Licenses are granted for fisheries, coastwise trade, Great Lakes trade and use as a recreational vessel.[6] There are special limitations on fishing vessels and their use and regulations.

Vessels carrying passengers for hire must be documented and licensed for coastwise trade or Great Lakes trade. The term "passenger for hire" is a term that has created much litigation and difficulty for people involved in shipping. The Coast Guard generally considers anyone, other than the master of the vessel, a crew member or other person involved in the operation of the vessel, for whose passage consideration has passed, to be a "passenger" whose presence requires that the vessel be so registered and licensed. If there is any consideration for the passengers' passage, you will run afoul of the rule.

CITIZENSHIP OF OWNER

U.S. law codes, 46 USC 12101,12252, require that a vessel must be wholly owned by a U.S. citizen to be documented. A special exception has been made for fishing off California in vessels owned by Vietnamese citizens lawfully admitted to the United States.

[6] 46 CFR Sec. 12105

The phrase "wholly owned" varies from trade to trade. Depending upon how ownership of the vessel is taken, i.e., corporation, partnership or joint venture, the rule will vary somewhat. All general partners in a partnership or joint venture must be U.S. citizens.[7] Corporations are treated differently. A corporation is treated as a U.S. citizen if it is incorporated within the United States and the president and chairman of the board of directors and a number of the members of the board of directors sufficient to constitute a quorum are citizens. This means that if your corporation is incorporated in one of the fifty states and the president and chairman of the board of directors are all citizens and you have ten members on the board of directors, then you must have a quorum of six U.S. citizens present. There can be no more than four members on the board of foreign citizenship. Further, a non-citizen may not have a controlling interest in the corporation.

It is important to remember that violation of these "anti-foreign ownership rules" may result in the vessel permanently losing its status as a United States vessel.

There are a number of limitations upon commercial ship documentation. A non-U.S. built ship may not be used in coastwise trade or fisheries. Some vessels may qualify if grandfathered under the Commercial Fishing Industry Anti-Reflagging Act of 1987 for fish processing and tendering, but not in coastwise trade.

Built in the U.S. means all major components of the hull and superstructure are fabricated in the United States; assembled entirely in the United States; and at least 50 percent of the cost of all machinery and components which are not integral of the hull or superstructure related to items procured in the United States. Any major conversion which affects the dimensions or cargo carrying capacity of the vessel, extends the life of the vessel or otherwise changes the vessel so that it is substantially a new vessel, must be done within the United States.[8]

Even a ship built in the U.S. can be disqualified for coastwise trade if at any time since its construction, it was owned by a non-U.S. citizen or has been documented at any point under a foreign flag.

On the other hand, a foreign built ship can become qualified to be documented for coastwise trade if it has been forfeited to the U.S. government and sold at a marshal's sale.[8] This is typically a Customs or drug enforcement forfeiture. Separate and distinct from this is a marshal's sale of a foreclosed ship's mortgage. Since the non-payment and repossession and sale by the lien holder is not a forfeiture under a U.S. Government forfeiture statute, the ship would not acquire U.S. status.

[7] 46 USC Sec. 12101

[8] 46 USC Sec. 12106(a), 12108

Foreign ships that have been wrecked and salvaged may be documented and registered for coastwise trade if the cost of repairing the vessel in a U.S. shipyard exceeds three times the salvage value.

THE CERTIFICATE OF DOCUMENTATION

Figure (2) on page 75 is a copy of a Certificate of Documentation. It is important to note some of the abbreviations you may find on the document. The form is self explanatory, but you should read the document carefully to determine several things.

Blocks 1 and 2 will indicate the name of the vessel and the official number. Always locate the official number, etched into the vessel, and match it with the number on the certificate.

Block 17 will list any restrictions on the vessel. This is commonly used when foreign built or pleasure craft are documented. If the vessel is restricted, you will find an indication of:

"No Great Lakes or Coastwise License;"
"No Fishing License;"
"No Registry."

This indicates that the vessel is not a commercial vessel, may not commercially fish in U.S. waters, and may not engage in trade between the U.S. and foreign ports.

Block 17 also indicates the trade for which the vessel is licensed. These are:

1. Coastwise Unrestricted — The vessel is licensed to engage in coastwise trade.

2. Great Lakes — The vessel is licensed to engage in trade in the Great Lakes.

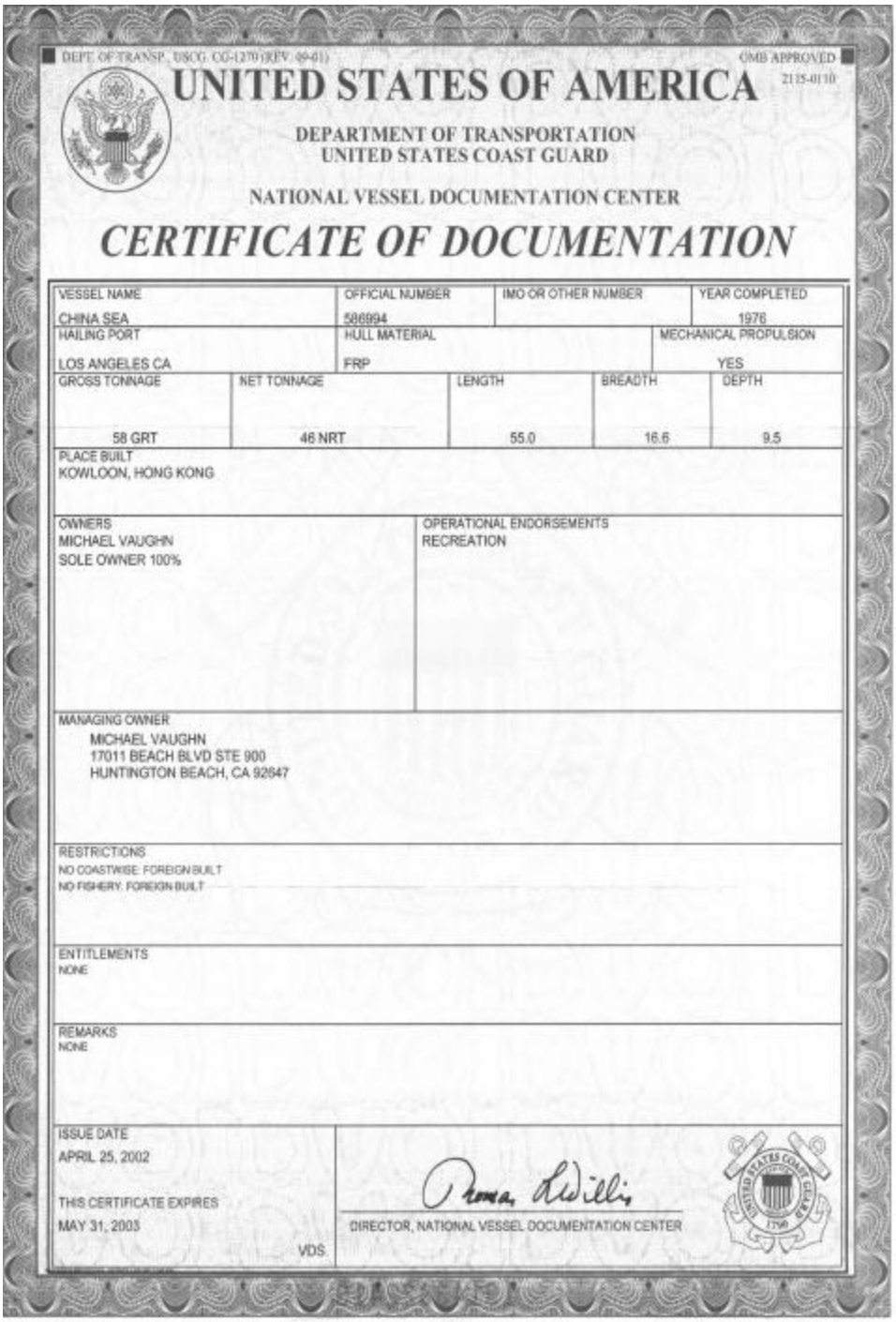
3. Fishing — The vessel is licensed to engage in the fisheries trade in the navigable waters of the U.S. and on the Exclusive Economic Zone.

4. Registry — The vessel is licensed to engage in trade between the U.S. and foreign ports.

5. Pleasure — The vessel is licensed to be used as a pleasure craft and may not engage in commerce.

CERTIFICATE OF DOCUMENTATION

Figure 2



DEPT. OF TRANSP., USCG, CG-1270 (REV. 09-01) OMB APPROVED 2135-0110

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

NATIONAL VESSEL DOCUMENTATION CENTER

CERTIFICATE OF DOCUMENTATION

VESSEL NAME	OFFICIAL NUMBER	IMO OR OTHER NUMBER	YEAR COMPLETED
CHINA SEA	586994		1976

HAILING PORT	HULL MATERIAL	MECHANICAL PROPULSION
LOS ANGELES CA	FRP	YES

GROSS TONNAGE	NET TONNAGE	LENGTH	BREADTH	DEPTH
58 GRT	46 NRT	55.0	16.6	9.5

PLACE BUILT
KOWLOON, HONG KONG

OWNERS
MICHAEL VAUGHN
SOLE OWNER 100%

OPERATIONAL ENDORSEMENTS
RECREATION

MANAGING OWNER
MICHAEL VAUGHN
17011 BEACH BLVD STE 900
HUNTINGTON BEACH, CA 92647

RESTRICTIONS
NO COASTWISE: FOREIGN BUILT
NO FISHERY: FOREIGN BUILT

ENTITLEMENTS
NONE

REMARKS
NONE

ISSUE DATE
APRIL 25, 2002

THIS CERTIFICATE EXPIRES
MAY 31, 2003
VDS

DIRECTOR, NATIONAL VESSEL DOCUMENTATION CENTER

The latter part of the document is reserved for registration of liens and mortgages.

As you may see on the document, the time and date of registration is provided because the priority of liens and mortgages will depend upon when it is registered.

There is also a space provided to indicate the discharge or release of the mortgage and lien. You should also be aware that it is the practice of the Coast Guard not to register liens unless there is a recorded First Preferred Ships Mortgage.

A transcript or abstract of the document may be obtained from the Coast Guard office of Vessel Documentation.

The Office of Vessel Documentation has been consolidated in a central processing center in West Virginia. You may obtain forms and information on a demand fax system at:

National Vessel Documentation Center
792 T.J. Jackson Drive
Falling Waters, WV 25419-9502.
Telephone: 304-271-2400
Fax: 304-271-2541

FOREIGN REGISTRATION

If you intend to operate your vessel under a foreign flag or if it already bears a non-U.S. flag, you must comply with the rules of the country under which you will flag the vessel.

There are a number of foreign registration services available. I have had good results with the following:

International Shipping Bureau
6600 Boulevard East, Suite 1-E
W. New York, NY 07093
U.S.A.
Tel: 201-869-1657; FAX: 201-869-6681
Miami Office: 305-638-4456; FAX: 305-638-4518

Different countries have different rules and regulations concerning the crewing, watch, and maintenance standards required of vessels operating under their flags. Some countries, like the United States, require that the crew and officers be citizens of the United States and that as such, U.S. labor laws apply. Further, the requirements imposed by U.S. law concerning maintenance and repair place the costs of operating a U.S. flag vessel higher than most other flagged ships.

By relaxing the regulations, ship owners may maximize profits and therefore flag their vessels under foreign flag. As we previously discussed, these ships may not operate between U.S. ports but may operate between one U.S. port and a foreign country.

The dangers of flagging a vessel and adhering to only minimum standards may result in higher premiums on insurance and greater risk to cargo, passengers and crew.

However, all maritime nations adhere to most of the international maritime agreements concerning safety of life at sea (SOLAS) as well as various other agreements.

The registration service can provide for such certificates as are required by various countries, the most important of which is the Load Line Certificate. However, some or all of the following certificates may be required, depending upon the flag and use of the vessel:

- International Load Line Certificate
- Cargo Ship Safety Equipment Certificates
- Cargo Ship Safety Construction Certificate
- Cargo Ship Radiotelephone/Radiotelegraphy Certificate
- International Oil Prevention Pollution Certificate
- Passenger Ship Safety Certificate
- Certificate of Fitness of Cargo Gear
- Crew Accommodation Certificate
- Annual General Examination for Pleasure Yachts
- Seaworthiness Certificate
- Mobile Offshore Drilling Unit Safety Certificate
- Certificate of Fitness for Carriage of Liquefied Gases in Bulk
- Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk
- International Tonnage Certificate
- Classification Certificates (Hull, Machinery, Refrigeration, Boiler, etc.)
- National Certificates for Vessels under 500 GRT
- Fishing Vessel Safety Certificate

Registration services also provide a variety of services to assist the owner of a foreign-flagged ship. These will include changing ownership, registration and de-registration of naval mortgages, payment of annual fees, radio licensing and accounting, crew manning and licensing, cargo and container inspections.

There are many nations that allow "open" registration. This means that you need not be a citizen of the country to flag your ship under their flag. Some countries require that you form a corporation under the law of the country whose flag you wish to use, some do not. Under U.S. law, the owner "must" be a U.S. citizen and if the ship is corporately owned, must also be controlled by U.S. citizens.

Neither citizenship nor a local corporation is required for ownership of the vessel in Honduras, Panama, Sri Lanka, or St. Kitts & Nevis, as well as many others.

Countries like Costa Rica, Antigua & Barbuda, Cyprus, Malta, Netherlands Antilles, and St. Vincent & the Grenadines simply require that you form a local corporation under their laws to own the vessel.

Some nations require that the crew be made up of some or all flag nationals. In many cases, such as Panama and Cyprus, this requirement may be waived. Honduras requires that the crew be 90% Honduran, unless waived.

Another issue that all flag countries look at is the age of the ship. Many nations will place a ten or twenty year limit upon the age of the vessel to be flagged. The purpose of this is to ensure that the general reputation of the registry is secure with insurers and owners. Older vessels have a great loss ratio.

Select a good registration service, employ an experienced marine consultant and heed their advice.

The owner should always be aware that once a ship is flagged, the ship and owner will be bound by the laws of that country. Discuss any potential problems with your consultant or registration service before flagging.

The costs of flagging range from a few thousand dollars up depending upon the size of the ship.

The charts on pages 79 and 80 (Figure 3) indicate some of the differences in the flags of the various countries. These were provided by International Shipping Bureau and are used with their permission.

INTERNATIONAL SHIPPING BUREAU - FOREIGN REGISTRY

Figure 3

Year of Establishment of Registry	Responsible Govt. Institution for Registry Matters	Institution's Location	Ownership Requirements	Age Limit	Bareboat Charter	Crew Nationality	Provisional Patent's Period of Duration	Comments
ANTIGUA BARBUDA								
1986	The Dept. of Marine Services & Merchant Shipping.	St. John, Antigua.	Antiguan citizen or Antiguan corporation, however, this is can be waived.	No age requirement.	Yes, acceptable.	No requirements.	Valid for 6 months, extension is available.	The Registration Department is very small, however, it has very skilled personnel running their technical department.
BELIZE								
1989	International Merchant Marine Registry of Belize (Immarbe).	Belize City, Belize.	Any national or foreigner.	No age limit.	Yes, acceptable.	No requirements.	Valid for 1 year, extension is available.	Within its first 9 months of operation, Belize registered over 90 vessels. The Belize government has opened their flag to all vessels engaged in lawful trade, and is very serious and protective of its image abroad.
COSTA RICA								
1950's	The Ministry of Transportation.	San Jose, Costa Rica.	Costa Rican Citizen or Costa Rican Corporation.	No age requirement.	Not acceptable.	No requirements.	Valid for 6 months, extension of 6 months is available.	The Costa Rican Government has shown interest "again" in promoting their registry to attract foreign owners.
CYPRUS								
1963. Amended in 1986 to permit Bareboat Charter.	Ministry of Communications & Works.	Limassol, Cyprus.	Cypriot citizen or Cypriot corporation with its registered office in Cyprus, foreign corporation with vested interest in Cyprus.	Any vessel under 17 years. Vessel from 18-20 years old is subject to certain conditions.	Yes, acceptable.	15% Cypriots. However, rarely observed due to the lack of Cypriot seamen.	Valid for 6 months, extension of 3 months is available.	Registry "The Flag of Progress". It has shown a new & improved registry with lots of owner confidence. The government will be implementing single registration fees to simplify cost.
HONDURAS								
1943	The Honduras Merchant Marine, which is a department within the Naval Force of Honduras.	Tegucipalpa, Honduras.	Any national or foreigner.	Any vessel under 25 years. Vessels over 25 years accepted if a valid Safety Construction, Seaworthiness, or Class Certificates have been issued by an authorized classification society.	Yes, acceptable.	90% Honduran, however, this can be waived.	Valid for months, extension of 4 months is available.	There is a developing movement on part of the civilian government in Honduras to take the administration over the naval forces in recognition of the de-militarization of Central America.
MALTA								
1973	The Registry of Shipping & Seaman.	Valletta, Malta.	Maltese Citizen or Maltese Corporation.	No age requirements.	Not acceptable.	No requirements.	Valid for 6 months.	The Registry is very careful in its standards for registrations, as they are trying to portray the best safety image.

INTERNATIONAL SHIPPING BUREAU - FOREIGN REGISTRY

Figure 3 *(pg. 2)*

Year of Establish-ment of Registry	Responsible Govt. Institution for Registry Matters	Institution's Location	Ownership Requirements	Age Limit	Bareboat Charter	Crew Nationality	Provisional Patent's Period of Duration	Comments
THE NETHERLANDS ANTILLES								
1954, new registry ordinance was intro-duced in 1987.	The Netherlands Antilles Shipping Inspectorate.	Curacao, Netherlands Antilles.	Dutch Citizen or Dutch Corpora-tion.	No age require-ments.	Not accept-able.	Master should be Dutch, however, this can be waived.	Valid for 3 months.	Efforts are being made to have new register and legisla-tions put in place. The new register is expected to attract Panama, Cyprus, and some other European countries, as well as permit bareboat charter.
PANAMA								
1925	Secnaves is in charge of administra-tion of registrations and Segumar is in charge of technical aspects. Both are under the Ministry of Finance and Trea-sury of Panama.	Panama, Republic of Panama.	Any national or foreigner.	Any vessels under 20 years. Vessels over 20 years old are subject to a special survey.	Yes, acceptable.	10% Panama-nian, how-ever, this can be waived.	Valid for 6 months, exten-sion of 3 months is available.	The Panamanian Registry has once again gained owner's confidence and is striving to increment govern-ment inspections.
SRI LANKA								
1971	The Department of Merchant Shipping.	Colombo, Sri Lanka.	Any national or foreigner.	Any vessel under 20 years.	Not accept-able.	50% Sri Lanka crew.	Valid for 6 months.	In 1981 reforms took place in the Maritime Law of this country with the purpose of offering employment opportu-nities for the Sri Lankan seafarers.
FEDERATION OF ST. KITTS AND NEVIS								
1985	Comptroller of Customs and Ex-cise.	Basseterre, St. Kitts, W.I.	Any national or foreigner.	No age limit.	No indica-tion.	No require-ments.	Valid for 6 months, exten-sion is available.	The Merchant Shipping Act has been established. St. Kitts is now putting together their marketing to introduce the registry worldwide.
ST. VINCENT AND THE GRENADINES								
1982	The Commissioner of Marine Affairs.	Geneva, Switzerland.	A St. Vincent citizen or a foreign corpora-tion registered in St. Vincent, or a foreign corpora-tion obtaining a resident client in St. Vincent.	Any vessel under 40 years.	Yes, acceptable.	No require-ments.	Valid for 6 months, exten-sion for 3 months is available.	St. Vincent is growing at a steady pace. Every year the registry has doubled. Today the flag has close to 5 million gross tons. Scrap registration is especially attractive for owners.

PERMISSION FOR SALE TO FOREIGN BUYER

No U.S.-flagged vessel may be sold to a foreign buyer without permission of the United States Maritime Administration.

This permission is divided into three areas:

1. Vessels whose gross tonnage is 1,000 tons or less are granted permission to be sold and exported without further action, by U.S. law code 46 C.F.R. Ch. 11, Section 221.15, which by law grants permission for export as long as there are no liens outstanding against the vessel.

2. Vessels of over 1,000 tons, but less than 3,000 tons, are evaluated upon the following conditions and permission must be received from the Maritime Administration:

   - The type, size, speed, general condition and age of the vessel.

   In absence of "unusual" circumstances, no conditions will be imposed upon the transfer.

3. For vessels over 3,000 tons, approval will be granted upon acceptance by the owners of the terms deemed acceptable by the Maritime Administration.

You should allow sufficient time to acquire written approval of vessels over 1,000 tons whether for trading or scrapping.

THE JONES ACT

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

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

The essential term that has given rise to various interpretations is what constitutes "coastwise trade". The federal courts have given a very wide interpretation of the term. Essentially, the term applies to a voyage that begins at any point within the United States and delivers a type of commercial cargo to any other point within the United States.

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

However, under the terms of 46 USC Section 316, tow boats used to tow, even valueless commodities, must be U.S. registered vessels and meet all the terms and rules of the statute. The Passenger Services Act provides the legislation that controls the operation of passenger vessels in coastwise trade. The difficult issue has always been what constitutes a "passenger". The general definition has been any person other than the ship's master, a crew member or any person engaged in the ship's business. The "for hire" issue involves any consideration flowing from the passenger to the ship owner, charterer, agent or any person involved in the ship. This consideration has been construed to be using a company yacht for entertaining customers or clients to develop "business goodwill". However, it is generally accepted that business entertaining does not constitute a “passenger-for-hire” situation. Carried to its logical conclusion would require any vessel unless used solely for personal pleasure to be registered for coastwise trade and inspected.

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

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

For a very detailed book on all aspects of maritime law, I highly recommend Maritime Law Deskbook by Charles M. Davis, published by Compass Publishing Co., Seattle, WA. Telephone 206-283-0784.

Bare-boat charters of foreign-built or foreign-owned vessels are permitted under the fiction that a true "bare-boat charter" is not a commercial application and the Jones Act applies only to commercial applications.

Traditionally, the issue has involved the chartering of pleasure boats or yachts and whether the charter has violated the terms of the Passenger Services Act.

The term ***passenger for hire*** means any transportation aboard a vessel in which some consideration, i.e., benefit, flows from the passenger, his agent or representative to the owner, his agent or representative. Consequently, where a group or organization charters a vessel and members contribute to the cost of the charter, the organization may be found to have passengers for hire. The underlying purpose is to create a distinct line between commercial or business use and pleasure use. No matter how we describe the conduct of the parties there will always be a gray area of discretionary enforcement.

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

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

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

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

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

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

Negligence of the owner/master have been determined to be such things as,

- failure to maintain safe equipment and appliances
- care in selecting a competent master and fellow crew-men
- assaults by fellow crewmen within the scope of work
- negligent orders
- requiring overtime
- failure to avoid heavy weather
- failure to provide medical treatment
- failure to rescue, and
- failure to supervise, among others

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

For a complete reading of the Jones Act, read 46 United States Code, Section 883.

SALES TAX & MISCELLANEOUS REGULATIONS

SALES TAX

Whether the vessel you are buying is a commercial or pleasure vessel you will have to deal with a few tax issues when evaluating your purchase options.

Sales tax will be an issue in most major boating areas. California, Washington and Florida will always be imposing such a tax.

A sales and/or use tax is a tax calculated on the total value or purchase price of the vessel. The percentage varies from state to state but may also include some local or county assessment as well. Generally, sales tax is approximately 8% of the value of the vessel. If the vessel has a price of $400,000.00, you will be assessed approximately $32,000.00 in sales tax.

In this section we will deal with the general rules of taxation. It is important to remember that these rules are changed and modified by the legislature from year to year and you must consult some one qualified to made a determination as to the actual imposition of the tax. However, these are the general rules of which you must be aware.

CALIFORNIA SALES TAX

The tax will be imposed upon vessel purchased in the state or imported into the state during the first 90 days of ownership with the intention of using the vessel in the state. The statute provides that out-of-state use in excess of 90 days from the date of purchase to the date of first entry into the state will be accepted as proof of an intent that the vessel was not purchased for use in California. Intent is the important issue and the tax authority may make a determination that other evidence outweighs the 90 days out-of-state use evidence.

There are some things the tax collector will look at to impose the tax even though the vessel was out of the state for 90 days:

1. While out of state did you use the vessel on a regular basis, rather than just leaving it in storage to meet the 90 rule?

2. Did you secure a slip or dock within the state at the time of purchase or before bringing the vessel back to California?

3. Is California your principal place of residence?

If the evidence displays that the overall intent was to use the vessel in California rather than elsewhere, you may be taxed.

There are a variety of exemptions from tax:

1. Purchase of a vessel from a parent, grandparent, grandchild, child or spouse.

2. Involuntary transfer of ownership by court order, lien or inheritance.

3. Dissolution of a corporation or partnership in which the vessel is an asset and is distributed to someone on the basis of his ownership interest.

4. A new California resident is exempt if he can demonstrate that the vessel was purchased for use outside the state and was brought into this state as a result of an offer for a job transfer **after** the purchase was made.

5. Military personnel are exempt if the purchase was made before the date of notice of transfer into California.

6. Vessels purchased from the U.S. Government by way of a U.S. Marshal Sale. However, government sales for liens, etc. is not exempt.

7. Corporations and partnerships do not pay sales or use tax when the vessel is received:
   - As a gift where no compensation of any kind is paid.
   - Where the vessel is contributed in exchange for the first issue of stock in a new corporation.
   - Where the vessel is transferred to a substantially similar corporation or partnership
   - Where the corporation received the vessel as an involuntary transfer by way of repossession or inheritance.

8. Vessels may be transferred into Revocable Living Trusts without paying tax.

9. Commercial Deep Sea Fishing Vessels are exempt where the principal use is deep-sea fishing outside the

territorial waters of California. To qualify, one must produce $20,000 in gross receipts over a one-year period.

10. The vessel will be exempt if it operates in interstate or foreign commerce.

Generally, the buyer is required to report and pay the sales and use tax to the California Franchise Tax Board. If the purchase is through a California vessel dealer, the dealer must report the sales tax.

California Yacht Brokers may collect and report the tax. However, if the broker collects an incorrect amount, you will be billed for the difference. If the broker collects the tax but fails to report it to the Board, you will be given credit for the amount paid to the Yacht Broker.

Sales and Use Taxes may become major items in a decision to purchase a vessel by adding more than 8% to the total price. This issue may legally be minimized if properly handled and legitimately addressed. Avoidance of the sales tax illegally may result in a 50% penalty. Seek good advice in deciding how best to resolve this issue.

POLLUTION

There are a variety of U.S. and international rules and regulations about which the ship operator must be aware.

The most obvious is the "Federal Water Pollution Prevention and Control Act and Oil Pollution Act of 1990."[9] This is the comprehensive regulation of marine oil pollution and the one that establishes the liability of marine operators for water pollution. The rule prohibits the discharge of any pollutant by any person into the navigable waters of the United States without a permit. Pollutants are defined by the statute as chemical waste, solid waste, garbage, biological materials, heat, equipment and industrial waste as well as petroleum products.

The penalties, which apply to owner, operator, or person in charge of the vessel, may not be more than $10,000.00 per violation and not more than $25,000.00 per day or up to $1,000.00 per barrel of oil discharged. Additional penalties are assessed for failure to remove the discharge or comply with the regulation.

The owners, operator, or person in charge may also be assessed the "actual" costs of removal and cleanup. This is not limited and the government may recover the total amount of the clean up coats. With

[9] 33 USC Sec. 1251 et seq.

the *"Exxon Valdez"* disaster, the expense ran into the hundreds of millions of dollars.

Liability is assessed under the rule of "Strict Liability". The broad interpretation of this is that liability is assessed regardless of the negligence or lack of negligence by the person who caused the discharge. The only defense is that the discharge was caused solely by an Act of God.

Because of the liability potential, any vessel over 300 gross tons (other than barges that are not self-propelled and do not carry oil or hazardous substances as cargo or fuel) must have in effect financial responsibility to cover the cost of pollution. This is customarily called pollution insurance.

The Ocean Dumping Act prohibits dumping of any material from a vessel of the United States without a permit. This includes solid waste, garbage, sewage, chemicals and other wastes. Sewage produced by the vessel itself is not prohibited from discharge once three miles offshore.

The International Convention for the Prevention of Pollution from Ships (MARPOL) is incorporated into U.S. law by the Act to Prevent Pollution from Ships. This controls dumping within the U.S. contiguous economic zone.

All states have their own anti-pollution statutes with which one must also comply.

LIABILITIES & WARRANTIES

The seller of a vessel is obligated by a number of warranties applied by the courts. A number of these arise out of a products liability theory in which the seller or manufacturer of a vessel may have liability for negligent design and construction of a vessel.

Warranties may be implied or expressed. An ***expressed warranty*** is a warranty contained in written form in the contract between the buyer and seller of a vessel or any affirmative statement relating to the sale that becomes part of the bargain. An ***implied warranty*** is a warranty that arises as a matter of law.

The Uniform Commercial Code (U.C.C.) has been adopted in every state except Louisiana. It conforms generally to the European Commercial Code concepts.

The U.C.C. makes every seller liable to the buyer for damages arising out of a transaction for the sale of individual parts of entire vessels.

Implied warranties include warranties of "merchantability" and "fitness for a particular purpose." Merchantability merely means that the goods are "fit for the ordinary purpose for which such goods are used."[9] This warranty applies only to people who deal regularly in the business of building, repairing, or selling ships. The warranty that the vessel is "fit for a particular purpose" applies only if the purpose is known to the seller or if the buyer is relying on the seller's knowledge, skill, or ability.

It is permissible for the seller, by expressed language to change, exclude and modify any warranty. To do this, the language must be clear and unambiguous. In most jurisdictions, any exclusion must be in writing.

The ordinarily used phrase "as is, where is" will not exclude the UCC warranties.

The laws involving product liability vary from state to state. Generally, the seller needs to make an inspection of his own vessel, point any defects to the buyer, and waive all warranties in his sales agreement.

SALVAGE CLAIMS

Salvage claims have been an integral part of maritime law for hundreds of years. The perils of commerce by sea cause hundreds of vessels to founder and be lost at sea each year.

To minimize loss, the maritime law of all nations recognizes the need to encourage and reward actions by seafarers to save vessels that are facing imminent dangers of loss or damage.

It is not unusual for a salvor, upon his first contact with the master of a vessel in peril, to agree upon terms of the salvage by merely asking: "Salvage under the Lloyds form." The Lloyds form for salvage is known as the Lloyds Open Form that provides for all of the terms of the salvage and the compensation.

Under the form the salvor agrees to use his best efforts which are presented under a "no cure, no pay" basis. Unless he is successful in his efforts, he will not be paid for his service. A recent 1990 amendment now provides that if the salvor's service minimizes or prevents pollution, threatened or actual, to the environment, by the ship's cargo or bunkers, the salvor will be compensated. The salvor's award is set by the Committee at Lloyds whose decision may be taken to arbitration in London under English law.

"Pure salvage" is salvage services performed without any contractual agreement and is purely voluntary on the part of the salvor. A salvor does not take title to the vessel or cargo saved. Rather, he obtains a lien against the vessel and cargo. Based upon a number of criterion, including, the labor expended; the skill and energy displayed; the value of the property saved; the risk incurred and the degree of danger to which the vessel was exposed, the admiralty court will make an award. There is no precise formula and the award is not limited only to the value of the service, but is more in the nature of a reward or bounty to the salvor.

Much litigation has arisen from treasure hunters claiming salvage of long lost treasure ships. Long abandoned antiquities have given rise to the "American Rule" of law, which has recognized an exception to the rule that the salvor merely holds the find for the true owner. Under the "American Rule" if the antiquity has been abandoned by its former owner without hope of returning or recovery, title may vest in the salvor who recovers it. However, this must be considered along with the Abandoned Shipwreck Act adopted in 1988 by the United States Congress. The Shipwreck Act provides that title to abandoned shipwrecks embedded in the submerged lands of any state is asserted by the United States and is transferred to the state in or on whose submerged lands the shipwreck is located. The law of salvage and the law of finds do not apply under this law. This allows each state to make its own law regarding the salvor's rights in these abandoned shipwrecks.

The result has been that many states will not allow salvage of historically significant wrecks and awards for the salvor may represent only a small portion of the true value of the wreck. The federal court will not hear salvage claims for such vessels and the salvor is entitled only to recover the amounts allowed by state law.

Chapter 8
VESSEL CHARTERS

Vessel charters are a very commonplace method of vessel management and operation. There are two basic types of charters:

1. Bareboat or Demised
2. Time and Voyage

BAREBOAT OR DEMISED CHARTERS

A bareboat or demised charter is one in which the charterer (the person chartering the vessel) takes over full operation and management of the vessel for the period of the charter. Under the terms of a typical bareboat charter, the charterer must maintain the vessel, choose and pay crew, pay for all expenses of the ship including fuel, food and insurance.

The deciding issue in the determination of whether a charter is bareboat or not is the question: Did the owner relinquish possession, command and navigation of the vessel?

The importance of the bareboat charter is essential to foreign-built yachts or non-licensed U.S. yachts. The Coast Guard considers true bareboat charters as non-commercial use. This means that a yacht or foreign vessel under a bareboat charter in U.S. waters can carry passengers for hire or engage in coastwise trade. Be aware that the Coast Guard has even ruled that an organization that bareboat charters a vessel for its members and then charges its members individually for the trip are in fact engaged in a "passenger for hire" operation and are in violation of the statute

If the owner skippers the ship or selects the skipper, it is not a true bareboat charter but a "passenger for hire" operation. Any violation may subject the vessel to forfeiture and seizure.

In the commercial operation, the bareboat charter is a very common and practical way to lease a vessel that is properly documented and licensed.

A bareboat charter agreement must accomplish a number of important things. Even though there is no requirement that the agreement be in writing, good business practice requires it. Although oral agreements are enforceable, the legal problem that arises is the difficulty in proving

exactly what the terms of the agreement were. A written document, whether drafted by an attorney or handwritten by the parties, is evidence of what was agreed to by the parties to the charter.

A charter needs to cover basic points. There are standard agreements for major shipping bareboat charters, the difficulty arises in smaller ships doing non-standard jobs.

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

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

Ordinarily, the owner will want to control the crewing and types of operation. There is no limit to the terms as long as the parties agree.

It is important to have a provision asserting that the charterer is a U.S. Citizen and that he will maintain his citizenship during the course of the charter. A U.S. flag cannot be chartered by a non-citizen.[10]

TIME OR VOYAGE CHARTER

Time or Voyage charters differ from bareboat charters in the sense that the use of the vessel is leased and not the vessel itself. A good example is the difference between renting a car from Avis or Hertz Auto Rentals which would be comparable to a bareboat charter and taking a taxi—a time charter would be if you hired a cab for the day; and a voyage charter would be if you took the taxi from one location to another.

Under either of these types of charters, the owners maintain control and responsibility for the vessel's operation. The charterer remains responsible for loading and discharging cargo. Unless otherwise agreed, a time charterer has no responsibility for the vessel, no control over it or its crew, and is not liable for the negligence of the crew's operation or the unseaworthiness of the vessel.

If a time charter or voyage charter extends beyond the time set forth in the charter contracts, the parties usually agree upon a daily rate for the

[10] 46 USC Sec.808

vessel. This is called demurrage. This may become a very expensive part of the charter if problems arise that delay cargo arrival, handling or discharge.

SALE CHARTER

A third type of charter which may be either bareboat/demised or time/voyage charter is a sale in which a charter is used as a financing or security interest. Ordinarily, in this type of charter, the charterer is entitled to ownership of the vessel at the end of the charter or has an option to purchase the vessel during the charter or at the conclusion for a set amount.

There are many advantages and disadvantages to this type of transaction. On its face it is nothing more than an owner financed transaction. The biggest advantage to the owner is that if the buyer/charterer defaults, he can immediately retake possession of the vessel under the terms of the charter default and not have to go through the expense of foreclosure of the ship's mortgage. This can be a great financial saving for the owner.

Consequently, the buyer is put at a disadvantage because he has no interest in the title of the ship and consequently would lose everything he had invested in the ship if the owner retakes possession.

When charters of this type are undertaken, it is wise to have them carefully reviewed by an attorney.

Chapter 9
MARINE FINANCING

The term "Marine financing" covers a variety of transactions involving the purchase or sale of maritime equipment.

CONVENTIONAL MARINE FINANCING

Conventional marine financing involves a security arrangement with a bank or other lending institution, by which money to purchase a vessel is received in exchange for a security interest in the vessel.

The security interest generally takes the form of a First Preferred Ship's Mortgage. The borrower executes a "promissory note" promising to pay back the loan, as well as, a First Preferred Ship's Mortgage which pledges the vessel as security for the loan. The note usually obligates the borrower personally so that if the vessel is foreclosed and sold by the lender, the borrower must pay any deficiency if the vessel does not sell for enough to pay the entire loan.

This mortgage pledges the ship as security for the loan and takes priority over most other claims with some specific exceptions.

TYPES OF LENDERS

Standard commercial financing depends upon your credit history, amount of down payment and the evaluation of the ship.

Many banks will make such loans if you are a "good" customer and have a credit history with them. This also assumes that they will do marine financing. Due to the crash in the oil field industry during the 1980's many lenders left the marine market and have not returned.

Marine lending is viewed as a high-risk market due to the nature of the business and the fact that the ship may leave U.S. ports and never return. This fear of seeing their security sail over the horizon inhibits many bankers.

To balance out the risk factors, the banks will look at several things, principally, your credit history and other suitable security such as real estate, cash or investments in addition to the ship.

If you have a long, good relationship with a bank, that should be your first approach. You will be more likely to receive a good interest rate and fair terms.

Please be aware that you will have to pay the difference between the loan amount and the purchase price of the ship. Your down payment generally will range from 10% to 40% depending upon the requirements of the particular bank.

Generally, the bank will not lend money for:

- Start up costs
- Repairs or refitting
- Fuel and lube oils
- Insurance and fees

Also, the bank will probably be expecting to lend between 60% and 80% of the purchase price of the ship. This means that on a $500,000 purchase, you will need to have between $100,000 and $200,000 in cash to pay for the purchase.

YACHT LENDERS

A large number of banks and financial institutions are involved in providing financing for yacht purchases. A list of these can be obtained from yacht brokers, yachting magazines and other publications. This type of consumer lending takes the form of general reliance on the borrower's credibility and is very easily obtained. This availability is the driving force in the private yacht market.

MANUFACTURER LENDERS

Several of the major engine companies have developed financing programs revolving around the purchase of their propulsion engines and generators. Detroit Diesel and Caterpillar in the United States have been the two major players in this market.

The loan program generally requires the purchaser to either build a new vessel with his equipment or to re-power an existing vessel. Again, the amount of the loan will depend upon a realistic evaluation of your credit status and the value of the vessel upon completion.

LENDERS OF LAST RESORT

We consider banks and equipment manufacturers as lenders of first resort because they offer the lowest rates and most competitive terms. They are also the most difficult from whom to obtain a marine loan.

Lenders of the last resort, are, for the most part, private lenders who specialize in "high-risk" loans with a very "high rate of return."

These individuals offer money when you need it, but at interest rates in the 17% to 25% range. Usually, these loans are for twelve months or less and require the borrower to provide personal guarantees for the loan.

The higher rates are justified by the high-risk nature of the loans. Generally, this type of loan can be completed in a few days or weeks and may, in some cases, save your interest in the ship.

Security for the loan is generally in the nature of a First Preferred Ship's Mortgage as well as other security such as real estate, bonds or stock shares.

VENTURE CAPITAL

Venture capital is money that is invested by private individual to provide start-up costs, vessel purchase funds and operating costs. The money is invested in a particular ship or project with the purpose of earning profits for the investor.

Generally, venture capital is secured only by the project. If the ship or shipping project fails, the investor loses his investment. There is no other obligation other than the equipment alone.

There may be any variety of combinations of investments in a Venture Capital program, but in the general sense, the investor becomes a limited partner in the ship and takes his chances along with the operator.

APPLYING FOR A MARITIME LOAN

As anyone who has tried to obtain a loan for a marine business has found that it is very difficult. Many times the fault is not just with the lender but also with the vessel buyer or owner.

Commercial lenders by nature are conservative with the old adage being: "they will only lend money if you do not need it." To some extent this is true.

Lenders must look at a variety of circumstances to determine if the loan is worthwhile. Among the things they will consider will be the following:

1. Credit history of the applicant.
2. Security for the loan.
3. The history of the business.
4. Opportunity for success.
5. Total risk to the lender.

An applicant must realize that it is up to him to educate the lender as to the nature and extent of his business. Most commercial banks and secondary lenders probably do not fully understand the nature of your business and possibility for success.

Historically, lenders have been very frugal with their loans to the offshore oil industry while the market is poor. When the companies are struggling to stay in business and sustain a good inventory of equipment money is difficult to find. However, when the market booms and the profit margin soar, the lenders rush in and loan to almost everyone in the business, forgetting about the boom and bust cycle of the oil industry.

This first happened in the late 70's and early 80's. In the early 80's the lenders where faced with monumental losses. By the mid-90's most of the veterans of the earlier bust cycle were gone and a new generation of lenders jumped into the market where owners where refurbishing and building new vessels at astonishing rates.

Of course the bust of 1997/98 came and the lenders were faced again with owners unable to make payments and a total lack of work for most of the boats. Consequently, the banks and lenders are again faced with a bleak market and a fear of the marine environment.

Today's borrower must keep in mind the history of the industry. When the borrower approaches a lender there are a number of things he can do to increase the chances of obtaining a loan:

1. Prepare a Business Plan

   There are a number of business plan programs that will assist you in producing a very professional looking business plan. Remember the business plan is only as good as the thought that goes into it.

   Research is very important. Educate the lender as to the broad view of your business. Tell him about the competition, the physical location and opportunities; the way the business can expand and the population to be served. This type of information is also very important to you in preparing the way you will do business.

False assumptions in a business plan are a guarantee of failure. If your ferry will carry 600 passengers, can you really expect to fill every seat on every trip for the first two years?

Reality may be that your company will run at a break even point or deficiency for one or two years. Do you have the financial resources to carry the company until it becomes solvent?

Most start up companies assume that they can run the business out of the cash flow. This is usually a false assumption. Most businesses will not generate a self sufficient cash flow for at least 6 months and in many cases it may take up to 2 years to generate a truly self sufficient company.

What are your plans for unforeseen adversities? What happens if you bend a shaft, drop a prop or blow up an engine? Will these relatively minor events cause your company to fail?

Your business plan should provide a realistic cash reserve for unforeseen events. I recommend that you take your worst case scenario and double it. It you can not survive this type of situation, back out of the deal.

2. Documentation

   You must provide the lender with physical documentation of your project. This may include surveys and inventories of your vessels as well as passenger lists, sales of tickets, taxes paid, etc.

   The documentation is proof of the validity of your application. Always be prepared to provide more documentation than the lender will require. If you cannot document in some manner each of your assumptions about your business, you will probably not get the loan.

3. Honesty and Forthrightness

   Tell only the truth to the lender. Do not exaggerate your business or its prospects. Lenders are very good at looking at the meat of the business. Invite the lender for a trip on your boat and to see the business in operation or to see

where it will operate. Do everything possible to allow the lender to see the opportunity the way you do.

4. Risk

Every business has risks. The lender will be looking to minimize his risk at your expense because you are using his money.

There are some things you can do to minimize the risk to the lender. This may include a formalized exit strategy.

This exit strategy is nothing more than formalized agreement which will set forth certain economic goals which you must meet to obtain complete funding. In one manner it may work as a drawing account from which the borrower obtains funds as his project progresses.

A certain amount of money is allocated for the purchase of equipment and operating expenses. As a certain number of trips are made or passengers carried, additional funding is released. This allows the lender to tailor his risk based upon your success.

Another exit agreement may provide that if certain economic goals are not met, then the borrower will release the secured property, boats, etc. for sale to repay the loan, without the lender having to go through foreclosure. This type of agreement puts a great deal of pressure on the borrower to succeed.

Remember that lenders are in the business of lending money, make yourself and your project the type of customer the lender really wants.

ALTERNATIVE TYPES OF FINANCING

There are several alternative types of financing. These include owner financing, charters with options to purchase, and leasing.

OWNER FINANCING

Owner financing, unfortunately, becomes the option of last resort after the owner has been unable to sell his vessel for many months or many years.

Faced with the frustration of operating a vessel that is not productive in its application and forced to continue paying insurance, maintenance and repairs, the seller finally agrees to finance the purchase for a convenient buyer just to dispose of it. Many times this occurs long after a number of "good", "credit-worthy" buyers have passed on the vessel due to lack of financing.

The seller does not usually do a background check or an adequate financial investigation and fails to assure himself of the buyer's ability to make the payments. Typically, the seller transfers title to the buyer and takes back a Ship's First Preferred Mortgage, not realizing the legal problems he may be creating for himself.

The buyer may all too often buy the vessel under what he thinks are excellent terms only to learn that it requires more maintenance than he can afford--the vessel cannot earn enough to make his payments or he has not adequately budgeted for mechanical repairs or routine maintenance. Soon the vessel may fall into disrepair, lose much, if not all of its value, and the buyer disappears. The seller is now faced with regaining title to the vessel and paying for liens that may have been placed against it, as well as attorney and marshal fees in seizing and storing it during the pending civil litigation.

Arrest, seizure and recovery of the vessel may take from a few months in the ideal case, to many years. When the seller does finally regain his vessel, he must make substantial investments in it to return it to operating condition. After that, he is still faced with reselling it in a very difficult financial market.

CHARTER WITH PURCHASE OPTION

A variation of the previous process is for the owner, after a period of being frustrated trying to sell his vessel, to offer it out to charter for a period of years with a balloon payment at the end of the charter period. Here again, most owners fail to do adequate background checks and financial investigations before entering into the charter.

Although this type of transaction is safer for the seller, it may be fraught with danger for the buyer and still involve the seller in long protracted litigation.

During the charter period, the buyer does not have title to the vessel. He is merely buying the right to use the vessel for as long as the payments are made. If he defaults in one payment, he may forfeit his entire right to purchase the vessel at any time.

The buyer's greatest danger may not be discovered until the end of the charter when he attempts to purchase the vessel.

During the charter period, the seller may purposely pledge the vessel as collateral on a loan and place a mortgage against the title. The seller may have experienced difficult business times and have judgments registered against him which could be executed against the ship. Liens, ranging from supplies to crew salaries could be placed against the title and as such be unknown to the buyer until he tries to obtain a clear title.

If the seller is an honorable person and has the financial ability to remove the liens, judgments and claims, no harm will come to the buyer. However, if he can or will not clear the title, the buyer has basically lost his entire investment.

LEASING

Until recently, leasing was not a major part of marine financing packages. However, with current market conditions, more leasing companies have found a very good market for this type of financing.

Leasing requires similar financial capabilities as conventional loans. The company or person must have sufficient credit and income to support the lease.

The difference between a lease and conventional financing is that the borrower is only charged for the time he is using the equipment and he does not gain ownership of the item. However, many leases will provide for a purchase of the equipment at the end of the lease period by payment of the residual value of the equipment.

In shipping, the danger is in determining the residual value of the vessel at the end of the lease period. Since shipping is a demand market, there can be great changes in values during any given period of time.

If oil prices rise or fall most ships will be affect to some extent. Particularly ships built for and used in the oil industry may find that they have little or no value during a period of low oil prices and great value when oil prices are high. The leasing company must gamble that at the end of the lease, the oil price will be high and that there will be a market for the vessel or other equipment.

Reality is that during the mid-1980's during the oil field glut, oil field boats were being tied up and taken out of service and left to rust at the dock. Literally, hundreds of these boats were essentially worthless unless they could be converted to other purposes. The leasing company must calculate this risk into the program.

Chapter 10
MECHANICS OF THE SALE

THE PURCHASE PROCESS

Assuming you have located a ship that you wish to purchase, the process begins with an offer. The negotiations are always based upon how much you wish to spend and how little the seller will accept. Finding this point is always very difficult.

You must rely upon your own knowledge of the marketplace and your experience in the maritime business. It is always wise to hire a marine consultant to assist you in making these decisions. Generally, a marine consultant should save you much more than his costs just in the price of the vessel.

It seems to be a general rule that everyone underestimates the costs of repairs upon a ship and the time required to do the work. If the ship or yacht you are purchasing requires substantial work, have a marine architect make detailed plans and get firm bids from a shipyard.

Every contract must have two parties. To be legally enforceable, there must be an offer made by the offeror in clear and precise terms and an acceptance by the offeree that is unequivocal. Legally, this is referred to as an offer and acceptance. There is no requirement that the offer and acceptance be in writing. It may be a verbal contract. However, it is very difficult to enforce any verbal agreement and "good" practice requires that the agreement be reduced to writing. You should always make your offer in writing so that there can be no mistake on the terms that you are offering to the other party.

I have created the "Purchase Agreement Form", page 103, which is a good basic form. However, it may not meet the needs of the parties on every occasion and therefore should be used with caution and reviewed thoroughly.

The "Norwegian Sales Form" generally referred to as the NSF agreement, is much more comprehensive. However, its use is generally reserved for larger, in class vessels that will go through a much more thorough examination during the sale process.

Looking at the Purchase Agreement, it is important to identify the parties and the vessel as fully as possible.

PURCHASE AGREEMENT

This agreement is made this, the _____day of _____, 1992, by and between _____, hereinafter referred to as the ***Buyer*** *and _____, hereinafter referred to as the* ***Seller****.*

Subject to the terms and conditions contained herein, Buyer agrees to buy and the Seller agrees to sell all rights, title and interest in the vessel described as:

Name: _____
Registration Number: _____
Registered Port & Flag: _____
Registered Length: _____

Paragraph 1 provides for the amount of the offer. I prefer to specify use of U.S. currency as the basis for the offer. Any currency acceptable to the parties, of course, can be used.

1. *The purchase price of the Vessel is _____ ($_____) quoted in lawful currency of the United States of America.*

There is a basic difference between the NSF form and my standard offer form. I prefer to have the buyer actually deposit ten percent (10%) of the offer in my trust account or in an Escrow Account. This gives some assurance to the seller that the buyer is ready and willing.

It is very common in the marine business for perspective buyers to try to tie up a vessel for a short period of time on a letter of intent. A letter of intent is nothing more than a mere statement that if a vessel is satisfactory to the buyer upon further inspection, that he will make an offer. This is generally used where the buyer must travel some distance and expend a certain amount of money to inspect the ship. A letter of intent assures him that the owner will not sell the vessel prior to his inspection and that he has an option to buy at a certain price.

Paragraph 3 provides a deadline for the owner to accept the offer. If it is not acceptable by the time limit, the offer expires and must be renewed by the buyer before it can be accepted. The purpose of this is to place the owner in a decision position rather than allowing him to shop the current offer to all other potential buyers to see if anyone will offer more. The buyer making the offer may withdraw his offer any time prior to acceptance by the seller. To do this, he must communicate it to the seller prior to his acceptance.

3. *This offer is good until _____, 20_____ at 12:00 noon, local time, subject to the right of the Buyer to withdraw his offer prior to the acceptance by the Seller.*

Paragraph 4 specifies the manner of acceptance, i.e., signing by the owner. More likely than not, there will be some changes required by the seller that will cause the agreement to be amended or re-drafted. Once all the terms are agreed, then signing by both parties will bind the contract and make it enforceable. The term "Legally enforceable" is used to describe a contract that a court of law will enforce.

Paragraph 5 is particularly important. It proposes that sale of the vessel with all equipment on board as part of the sale. In reality, many times certain equipment may belong to other persons, be leased or borrowed. This is to the advantage of the buyer. Ideally, the owner should prepare an inventory list covering all assets to be sold with the ship. In ordinary practice, the survey will prepare an inventory during the course of his survey. In the case of larger ships with extensive inventory, it may be necessary to contract the inventory process to an inventory service.

5. *Vessel is sold as is, where is, with all equipment, appurtenances, tools, and appliances now on board. All fuel is to be sold with vessel as part and parcel of the purchase price and is not subject to pro-ration.*

Fuel and lubricating oils are always subject to negotiation. Customarily, the ship should be sold "ex fuel". This means that the buyer will pay current price for the fuel on board at the current rate in the locale. This can become a substantial issue if the vessel is sitting with 100,000 gallons of fuel on board at $0.63 cents per gallon. This issue should always be resolved in the offer.

Paragraph 6 attempts to limit the seller's liability as to warranties. Generally, the seller will wish to sell the vessel as is, where is, without warranty. Many court decisions, both in the United States and Europe, limit this disclaimer. Generally, the owner must advise the buyer of any defect in the ship known to him but that would not generally be discovered by the buyer. He further may be obligated to advise the buyer that the vessel is not suitable for the use intended, if he knows the intended use is not reasonable. Representations made by the seller or his agents to the buyer for the purpose of selling the vessel will be very narrowly construed against the seller if a dispute arises. It is very important in making representations to base them upon facts, surveys, or knowledge about which the seller is certain.

The best rule is to make all information, good and bad, available to the buyer. Set a price that realistically represents the value of the ship. Make your own surveys available to the buyer, but insist that he retain and depend upon his own surveyor for a final opinion.

Paragraph 7 conditions the offer upon a marine survey and sea trial within a certain number of days. The time limit will depend upon the availability of a shipyard and the scheduling of the surveyor.

> *7. The Buyer makes this offer subject to a marine survey and sea trial, both to the complete satisfaction of Buyer and to be conducted as soon as practical but within _____days of the acceptance of this offer by the Seller. The Owner will deliver said vessel to a mutually agreed shipyard for haul out and survey. The Buyer assumes total and complete financial responsibility for haul out and survey and all costs related thereto. Buyer will deliver one copy of said survey to the Seller.*

The haul out and survey are two areas in which disputes may arise. The first issue that creates problems is the shipyard haul out. The buyer must assume the cost of the haul out and all expenses related thereto. However, in reality, defects and deficiencies found in the vessel become ammunition for the next round of negotiations between the buyer and seller.

This may take the form of who will make needed repairs or whether certain amounts will be deducted from the selling price to compensate the buyer for making the repairs himself. I always recommend reducing the price as opposed to repairing the vessel. This sets a firm limit on the reduction of price and prevents more disputes from arising.

When the ship goes into the yard, it is important for the owner to notify the yard in writing that the ship is in for inspection only and that no repairs are to be made without written authorization from him. The buyer has no right to repair, change or modify the vessel without permission from the owner. Also, we require that the buyer pre-pay the shipyard for the haul out and lay days. This prevents any dispute from arising if the sale is not consummated.

The NSF form differs substantially on this point. The NSF requires that the inspection be supervised by the classification society and that any defect in class be made good at the seller's expense. All other repairs are made at the buyer's expense.

The buyer and seller or their representative should be present for the inspection. Any agreement as to repairs, sharing of costs or otherwise while the ship is in the yard, should be written down and signed by the parties so that there will be no misunderstanding later.

Usually, while the vessel is in dry dock, it may be prudent to repaint the bottom or perform other routine maintenance items.

Both agreements provide for the seller to deliver the vessel to the shipyard and to return it to its own dock.

It is very important to check with the insurance underwriters to make sure that the vessel will be covered during the transit to the shipyard and during the haul out. Any damage, loss or liability during this period will be the responsibility of the seller. If the ship has only "Port Risk" or is uninsured, it may be necessary to obtain a special policy to cover the dry-docking and transit.

The sea trial will also be subject to negotiation depending upon the type of vessel. It would be unusual for a large cargo ship actively trading to be sea tried. However, smaller vessels are routinely sea tried to test all working components and equipment. In cruise ships and excursion vessels, it may be very important to actually feel the "ride" of the ship. If the vessel is actively trading, this may be done during service, or you may negotiate some other demonstration of the vessel. Do not hesitate to fully examine the vessel's operation. Some ships, due to design or construction, look great but perform very poorly.

The best assurance of the quality of the vessel is the classification society's records that will show the maintenance and building records of the ship. The quality of the classification society will, to a large extent, assure you as to the quality of the vessel.

Here again, be certain of the insurance coverage on the vessel during the sea trial inspection. One of the oldest laws of the sea is: "If something very bad happens, it will happen during a lapse in your insurance coverage."

Paragraph 9 provides a time limit for the buyer to reject the vessel. If the survey, haul out and sea trial have been completed, we ordinarily allow the buyer to reject the vessel within three days. It is very important for the buyer to communicate his rejection, in writing, to the seller as soon as possible. If he fails to do this, he has accepted the ship and may be compelled by law to complete the transaction.

Paragraph 10 sets the closing point for the sale. This time period depends upon the time needed by the buyer to complete his financing arrangements. Ordinarily, we try to close in ten days.

Paragraph 12 determines where the vessel will be delivered to the buyer. This may be at the dock, at anchor, at a sea buoy or foreign country. Remember, the costs of just moving a large ship may be very

substantial. This issue can become a major stumbling point of the project. For some tax reasons, the transaction may have to take place in a foreign jurisdiction, or at the embassy of the country in which the ship is registered.

Paragraph 13 contains the warranties of the seller to the buyer. A warranty, in law, is essentially a guarantee which is enforceable by the buyer. The seller warrants that he is the true owner and has the full right to sell the vessel. He further warrants that the ship is free and clear of all liens and encumbrances. It is necessary for the buyer to have a registration service, or in the case of a U.S. registered ship, obtain from the Coast Guard Documentation Office an abstract of title. This document will show all the liens and encumbrances ever filed against the ship and its current status.

> *13. Vessel is being sold and purchased free and clear of all debts, claims, liens, and encumbrances of any kind whatsoever. Seller warrants and will defend that he has good and marketable title thereto and will deliver to Buyer or at Buyer's request, to Buyer's agent or other persons, all necessary documents for transfer of title to Buyer upon Buyer's final payment.*

If there exists a lien, then it should be satisfied prior to the completion of the sale, or funds from the sale price should be escrowed and marked for payment of the lien. Once the lien has been satisfied, the lien holder will execute a satisfaction of lien which then should be filed with the Coast Guard. If the vessel is being financed, the lending institution will require that all liens be satisfied prior to the completion of the transaction.

Paragraph 14. There are a wide variety of taxes that may be imposed upon vessels. These include property tax and sales taxes. Most states exclude commercial ships from payment of sales taxes upon their sale if they are deep sea fishing vessels or are engaged in international trade.. The "Watercraft Exemption Certificate" is a sales tax exclusion certificate which is evidence of the purpose of the new buyer. You should check with your local tax offices to determine how your state treats the transaction. This paragraph puts the burden upon the buyer to pay all taxes if they are determined to apply at a later time.

Paragraph 15 provides for arbitration of any dispute arising between the buyer and seller. The rising costs of litigation, including attorney's fees and court costs make arbitration a low cost and quick way to resolve disputes. The American Arbitration Association has offices in most major cities and reference to them will resolve the problems.

Paragraph 16 merely acknowledges the broker's participation in the project and his commission.
The buyer should sign the form when he makes the offer. The buyer should sign only when all terms and conditions have been agreed upon and are satisfactory to him.

The last portion titled, "Receipt for Deposit", is a verification by the broker or attorney that he actually has funds on deposit. Ordinarily, at the closing, these funds will be used to pay broker's commissions, documentation and transfer costs.

NORWEGIAN SALES FORM

Often in a ship transaction, the issue will arise concerning the protocol and terms of an offer. In larger ships the phrase that is used is "Will the offer be on NSF?" The reference is to the Norwegian Shipbrokers' Association's Memorandum of Agreement for sale and purchase of ships, adopted by the Baltic and International Maritime Council (BIMCO) in 1956.

The Norwegian Sales Form (NSF) attempts to address all pertinent issues in a large ship transaction. There is no firm rule that any particular form be used. Rather, the form must be tailored to meet the needs of the parties. Never just "fill in the blanks" on any form. Read and understand the terms of the offer because it will become the basis of either a successful transaction or the beginning of a legal nightmare.

An offer to purchase must state all of the terms necessary. This will include a description of the vessel sufficient to identify it by name or document number. Also, the offer may be based upon conditions, i.e., inspection and survey or "as is, where is." The phrase ***"as is, where is"*** means that no inspection is necessary and the purchaser takes the vessel with no warranty from the owner and without dry-docking or survey. A seller may sell "as is, where is" subject to "buyer's inspection". This means that the buyer offers no warranty or assurance of the condition of the vessel and the buyer must make whatever inspection he deems necessary. This is not an uncommon way for the bill of sale and agreement to be drawn.

Ordinarily, the agreement will provide for place and time of delivery, inspections, dry docking, spare parts and the like. The NSF is very thorough as to these points. The agreement must also provide for the amount offered. Under the NSF, the deposit is made only if the offer is acceptable to the seller. The seller must sign and return the offer agreement. In many of our contracts, we specify that fax signatures are to be deemed as originals. This allows the parties to execute and respond to offers quickly and to move the process along without the delay of mail or express deliveries.

Under the Norwegian Sales Form, the deposit is ordinarily held in a joint account by the buyer and seller. In reality buyers and sellers are seldom in the same location. We prefer the appointment of an escrow agent to hold the deposit subject to the terms of the agreement and then provide

for the disbursement of funds. In the United States it is common for the deposit to be held by the broker for the buyer in a segregated trust account and for the broker to certify the deposit to the seller. We require, when this is done, that the broker provide to the seller the name and location of the bank, bank account number and verbal confirmation from the bank that the funds are on deposit. When my law firm holds the deposit, we place it in a segregated trust account subject to the terms of the agreement. When holding deposits in excess of $100,000.00, the funds should be separated into accounts of less than $100,000 each and labeled properly to ensure that the FDIC insurance provides coverage for your account.

The terms of the sale (NSF) provide that the ship will be "in class and free of recommendations." This means that the ship meets all the requirements of the classification society that has classed the ship (Chapter 5). This may be the American Bureau of Shipping (ABS), Lloyd's Registry of Shipping; Det Norske Veritas (Veritas) or any of the other classification societies. If the vessel is not in class, the offer will be made subject to survey satisfactory to the buyer. The buyer then selects and pays his own surveyor to inspect the vessel. Based upon that report, the buyer may either complete the sale, or change, or withdraw his offer. I have never seen a surveyor who did not save the buyer at least the cost of the survey. In most cases, if the surveyor discovers a defect in the worthiness of the vessel, the owner can be convinced to correct the defect at his expense prior to the sale, or to deduct the cost of the repair from the selling price.

The mechanics of the transfer of the selling price to the seller may be accomplished by simple certified check or electronic funds transfer (EFT). The EFT is the quickest and most effective. It guarantees very prompt completion of the transaction. Letters of Credit (LC's) are used in international transactions in the way that an escrow office is used in real estate transactions. Funds are transferred to a local bank by the foreign purchaser, based upon certain conditions. Those conditions may be inspection and approval or any other variety of terms. The bank must certify the LC to the owner and fully disclose all terms. Once the terms have been met, the bank transfers the actual cash into the seller's designated account. It is my practice in the United States for the LC to be paid prior to the vessel leaving U.S. waters. In other jurisdictions where there may be export problems, the LC may be contingent upon the vessel obtaining proper export license or to actually reaching international waters or a foreign port.

The most important thing to remember in formulating an offer is to be precise, clear and to fully understand the terms of your offer.

YACHT & SHIP BROKERS

In the United States only two states license yacht and ship brokers, California and Florida. The regulations are really designed to cover yacht brokers rather than ship brokers. Both states regulate people who sell vessels generally less than 300 tons in size. In reality very few ships will fall within those limits.

The regulations are designed to provide the general public with some confidence in the ability and reliability of the broker. For the most part the brokers only have to provide security bonds to protect consumers from misappropriation of funds placed in the hands of the broker as a security deposit.

Yacht brokers provide a very good service for the most part and can be of great assistance in finding and selecting a proper vessel. However, it is important to be aware that the broker has a conflicted loyalty. His responsibility is to sell the vessel. It is very wise for a buyer to deal with one broker and allow him to find the vessel. Your broker will deal with the listing broker and try to obtain the best deal possible.

Also the broker should have a very good knowledge of the overall local market and be able to find vessels that may not be on the open market.

Ship brokers for the most part are not regulated. Many brokers are very knowledgeable and may be of great assistance to you in finding and purchasing a suitable commercial vessel. However, many brokers are not well versed in the business end of the transaction and may not fully protect your interest. Due to the large sums involved in commercial ship transactions, it is always a very good decision to retain the services of a maritime attorney who specializes in ship transactions or a very good marine consultant.

What Should you Expect from Your Yacht Broker?

First he should have a great deal of experience in the type of yacht you are seeking. He should be familiar with the various manufacturers and builders and any problems or defects appearing in their products.

He should have good contacts in the local boating community and be able to provide you with references. If the jurisdiction requires that he be licensed, he should show you a copy of that license.

Your broker will be compensated by payment from the seller of a percentage of the sales price. Generally, a yacht broker will be paid from 5% to 10% of the total selling price. If more than one broker is involved in the sale, they will share the commission.

Your broker should be able to recommend surveyors, marinas and repair personnel.

When you make an offer, the broker should be able to provide forms and assistance in making an offer that is logical and within the general market price of the vessel.

If you are going to put a "good faith deposit" into his account, he should be able to demonstrate that the funds are secured by a bond that is in excess of the amount of your good faith deposit. If he cannot do that, the "good faith" deposit should be placed with a bonded escrow company.

Your broker should demonstrate that he has the ability to negotiate on your behalf and assist you in acquiring the vessel you desire.

It is very important to be very honest with your broker in how much you wish to spend, your current financial situation and bank references.

The broker can be the best tool you have in making a successful purchase.

SURVEYORS

A yacht surveyor is the most important person involved in the purchase of a yacht. He should be very knowledgeable and experienced in the type of vessel you are buying. He should provide references and demonstrate a good knowledge of his field.

His report should be exhaustive and report in writing the overall condition of the vessel with particular emphasis on:

1. Condition of the hull.
2. Condition of the operating machinery.
3. Auxiliary systems including generators, pumping and electrical systems.
4. He should provide an inventory of all major equipment.
5. Status of all safety equipment and life rafts.

Recommendations:

A surveyor will make recommendations as to repairs that need to be made prior to the purchase and any changes or additions to safety equipment and ways that the vessel has been operated.

Remember, the survey is only as good as the surveyor.

CLASSIFICATION SURVEYORS

In the chapter on ship class it was noted that all commercial ships are periodically surveyed to insure that they meet all classification requirements. The classification requirements are engineering requirements that will be evaluated by the class surveyor.

When the class surveyor renders his report, his recommendations are mandatory. For the vessel to continue in class, the repairs must be made.

Yachts are not so required unless they too are in class. Both Lloyds and ABS have yacht certificates require that they meet certain engineering requirements. For very large and expensive yachts this is a very good investment.

DOCUMENTATION SERVICE

Prior to the purchase you should have a documentation service obtain an abstract of vessel title from the United States Coast Guard Office of Vessel Documentation and render a title opinion as to the title of the vessel. Many lending institutions require that this be done by a maritime attorney.

The opinion will tell you if there are any liens or mortgages against the vessel. Also, it will tell you if the seller is the actual owner of the vessel.

MARITIME LIENS & SHIP MORTGAGES

The Federal Maritime Lien Act, 46 U.S.C. Section 971 provides that "any person furnishing repairs, supplies, towage, use of dry-dock or marine railway, or other necessaries, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel."

Necessaries is broadly defined as anything that will protect the vessel from harm and allow her to fulfill her purpose as a commercial vessel. The "First Preferred Ship's Mortgage Form" (Chapter 11) is a lien authorized by the Ship Mortgage Act originally enacted in 1920 to standardize the marine financing and provide better security to marine lenders.

Although there are substantial differences in liens, the purpose is of course to provide protection to those who provide goods and services, financing, repair or salvage to the commercial fleet. To this purpose the courts have established priorities for different types of liens. Priorities have been established by the courts based upon sound principles. Priority is only an issue when a vessel is encumbered for an amount greater than the worth of the vessel and the ability of the owner to pay. When this occurs the liens are paid in order of priority by order of the federal courts.

Generally, priority is as follows:

1. Legal expenses of the court (this may include wharfage, storage, crewing and repairs necessary to protect the ship).
2. Seamen's liens for wages, maintenance and cure.
3. Salvage and general average liens.
4. Tort Liens.
5. Liens for necessaries supplied prior to mortgage.
6. Preferred Ship's Mortgage (Preferred liens registered before the mortgage will have priority).
7. Post Mortgage Lien for Necessaries.
8. State Created Liens of a maritime nature.
9. Contract liens.

Admiralty recognizes a unique rule of priority within each class. This is called the "inverse order rule". This generally allows the more recently filed lien to have priority over an earlier filed lien under the theory that the more recent lien is of more benefit to the vessel. The theory justifying this is that a lien holder should not sit on his rights but should enforce and collect the lien against the ship.

As you may see, ship title status is of ultimate importance. Before you buy, have a qualified documentation service examine the title transcript. Liens go with the vessel. If you buy a vessel with liens on the title, the ship remains responsible.

Chapter 11
First Preferred Ship Mortgages

The First Preferred Ship's Mortgage is the primary financing device in marine business. This is a pledge of the vessel as security for the money loaned. In addition to the mortgage, the borrower will execute a promissory note and appropriate disclosure forms.

In Admiralty Law, a vessel is subject to claims for debts. This is referred to as an *In Rem* action. In this type of lawsuit the vessel itself is sued as a party and is subjected to the authority of the court to order it sold to satisfy debts or claims against the owners.

As indicated in Chapter 7, all yachts over 5 tons and all commercial vessels are documented through the United States Coast Guard Office of Vessel Documentation. This office maintains a transcript of all activity with the title to the vessel. When the vessel is first documented, a documentation number is issued that will stay with the vessel as long as it is currently flagged in the United States.

In addition all changes to the title whether by bill of sale or otherwise must also be recorded. Mortgages must also be recorded with this office and made a part of the transcript of title. Although it is not required that a maritime lien be filed with the Documentation Office to be effective, filing does provide notice to all purchasers of the claim and requires that notice be given to the claim holder if the vessel is subject to judicial sale. Additionally, it gives notice to purchasers or financing institutions that there is a claim against the vessel.

All financing institutions will require that all liens or claims be satisfied prior to the purchase of the vessel so that the new mortgage will have priority over the existing liens.

When you decide to purchase a vessel, it is important to request an abstract of title from the Office of Vessel Documentation. You may do this yourself or retain a documentation specialist or attorney to do it for you. The attorney or documentation specialist will render an opinion concerning:

1. The true legal owner;
2. Any lien or claim on file;
3. Any outstanding mortgage;
4. Current status of certificates of inspection, etc.

All financing institutions will require this prior to making a loan on a yacht or ship. A unique problem for the marine financing companies is the fact that maritime liens may be so called "secret liens". A secret lien merely means that the person who has the claim has not filed it with the office of vessel documentation and may assert the claim at any time by having the vessel arrested.

It is good practice to require the seller to disclose all companies and persons who have done work on the vessel in the preceding 24 months and to notify them prior to the sale that the vessel is being sold. This should cause them to disclose any lien they may have. Generally, the seller will be required by the purchase contract to warrant a free and clean title and to hold the buyer harmless from any lien that arose during the seller's ownership of the yacht or ship.

Generally, a financing institution will authorize release of the purchase funds upon satisfactory proof that the title to the vessel is free and clean and upon the filing of the institution's First Preferred Ship's Mortgage with the Office of Vessel Documentation.

Only the registered owner of a vessel may mortgage the title. A charterer, even with a charter with an option to purchase, does not have the legal ability to enter into a mortgage against the vessel.

The person or corporation that executes the mortgage must be the exact same person or corporation whose name appears on the Office of Vessel Documentation record.

There is a very bad practice that occurs with some frequency in which a buyer will not file his bill of sale with the Office of Vessel Documentation, but will merely hold it. Although this may be good between the buyer and seller, it does not prevent the seller from issuing a separate bill of sale to another party who may then register it and obtain title to the vessel.

Financial institutions usually require that the registered bill of sale to the purchaser and the mortgage properly executed by the purchaser be filed and returned for approval by the bank's attorney prior to the release of funds to the seller. Although cumbersome, this does provide good protection to the financing institution.

Usually the transaction goes forward with very few problems. As long as the new owner makes his payments the financing institution will have little involvement. However, some institutions, depending upon the amount of the funds involved, may require annual or semiannual inspections to assure themselves that the yacht or ship is being maintained and operated so as not to diminish the security value of the

vessel. Yachts and ships are diminishing assets whose value will decrease on a pre-determined scale. It is important for the mortgage holder to be adequately secured at all times.

FORECLOSURE OF A SHIP'S MORTGAGE

If a borrower fails to make the payments as required under the terms of the note and mortgage or if he violates any of the principal terms and conditions, the vessel may be subject to arrest and sale.

As you may notice in the First Preferred Ship's Mortgage form (page 120) the borrower may be required to not only make payments, but also do the following:

1. Remain a U.S. citizen.
2. Keep the vessel free from liens and claims.
3. Keep the vessel insured from loss.
4. Not use the vessel in any unlawful activity.
5. Not to mortgage the vessel to anyone else.
6. Keep a notice of the mortgage posted in the pilot house of the vessel.
7. Keep the vessel fully repaired.
8. Permit the mortgage holder to inspect the vessel.
9. Not declare bankruptcy.

Violation of any of these provisions could result in the mortgage holder declaring the owner in default and starting a foreclosure action.

Assuming the owner is in default of the payments or another major point, the mortgage holder has several courses of action open to him.

First, the mortgage holder may do nothing and wait for the owner to catch up his payments or correct the default.

More likely if there is little hope that the owner may cure the default, the mortgage holder will declare the principal of the note due and payable and the owner in default.

At this point, the mortgage holder may peacefully take possession of the yacht or ship and move it to a safe place. The owner has not right to the vessel unless he can cure the default by paying the amounts due in full.

Under most First Preferred Ship's Mortgages, if the mortgage holder can peacefully retake the vessel, he may do so and sell the yacht or ship to satisfy the debt owed on it. If he can successfully sell the vessel and

satisfy his debt, he can only transfer the title to the vessel subject to other claims that may be against it. Consequently, a buyer may pay of the mortgage holder only to take title to a yacht or ship that is encumbered with a variety of other liens and claims.

What generally will happen is that the mortgage holder will file a suit in the Federal District Court where the yacht or ship is located. This action is an *In Rem* against the vessel as a defendant and against the owner as an individual.

In this action, the mortgage holder will apply for and receive an *Ex Parte* order directing the United States Marshal to physically arrest the vessel and place it in his keeping pending the final determination by the court.

The mortgage holder must pre-pay the Marshal's fees and costs to arrest the vessel. Depending upon the jurisdiction and the type of vessel involved, this may range from a few thousand dollars up.

Also, depending upon the size of the vessel, the Marshal may physically move it into a secure compound or he may place an individual known as a "keeper" as a guard on the vessel. All of these costs must be paid by the mortgage holder and will be charged against the vessel when it is sold.

Once the vessel is arrested, the owner will not have access to it without permission of the Marshal and the Mortgage Holder. This effectively ties up the yacht or ship until the court releases it or the debt is paid in full.

The arrest is done without notice to the owner. This is done so that the owner will not try to hide the vessel or to damage or remove its equipment and content.

Once the vessel is arrested the costs of the arrest and storage receive first priority when the vessel is sold. It is not unusual for a vessel that is being litigated to remain in storage until the conclusion of the action, when it is sold. Unfortunately, many times the selling price of the yacht or ship is not sufficient to even pay the costs of the court and storage.

Once the vessel has been arrested the owner may post a bond to secure the amount of the claim and have the vessel released back to him. Generally, the bond will be one and one-half times the amount of the claim. If the owner can not provide security for the claim, the vessel will remain under arrest. In the Republic of Panama a special maritime court operates 24 hours a day. In this court it is customary for someone wishing to arrest a large ship to wait until it starts its transit of the canal

and then apply for arrest. Usually by the time the vessel has completed the transit of the Panama Canal, the owners have arranged for bonding or other security so that the litigation goes on in Panama while the ship completes its voyage.

To avoid the unfortunate situation in which a vessel remains in storage for many months or years, the court allow the vessel to be sold while the matter is being litigated. This is referred to as an *Interlocutory Sale.* This type of sale is usually allowed within 90 days of the arrest of the vessel if the court believes that remaining in storage or arrest will cause the vessel to deteriorate and lose value. This is a very common practice.

At the time of arrest, notice is given to everyone who has filed a claim with the Office of Documentation and who appears on the abstract of title. Also, notice is published in the located newspaper giving notice to anyone who may have a claim that they must now file the claim with the court.

Once the Marshal's sets a date for the sale, notice is published in the appropriate newspapers. On the date and time set, the Marshal holds an auction and sells the vessel to the highest bidder. Generally, the mortgage holder is permitted to bid in his mortgage and expenses as the opening bid. If no one bids higher, the mortgage holder takes title to the vessel.

The value of this type of sale is that it extinguishes any claim that was currently pending against the vessel. This includes all claims filed with the Office of Vessel Documentation and any unfilled or "secret liens". It also extinguishes any claim by the owner. After this process the mortgage holder is free to sell the vessel or any amount of money he chooses.

If the mortgage holder chooses not to bid at the auction and the vessel sells for less than the amount of money owed by the owner, the mortgage holder may sue the owner for the deficiency owed to him. This means that the vessel owner may lose the yacht or ship and still have to pay the balance of the mortgage.

If a bid is received at the auction that is greater than the claim of the mortgage holder, the expenses of the Marshal and arrest, then the funds will be distributed to the remaining claimants in the order of priority set by the court.

The ultimate result of the Marshal's sale is that the vessel goes back into the market with a clear title.

It is interesting to note that a foreign flag vessel is not transformed into a U.S. coastwise eligible vessel by a mortgage foreclosure and sale by Marshal's auction. However, if a foreign flag vessel is seized by a U.S. government agency, Customs, IRS, DEA, etc., then a sale by the government agency will result in the vessel being eligible for coastwise service just as if it had been built in the United States.

FIRST PREFERRED MORTGAGE

MORTGAGOR ADDRESS
MORTGAGEE ADDRESS
NAME OF THE VESSEL
OFFICIAL NO.
DATE OF THIS MORTGAGE
DATE OF MATURITY
AMOUNT OF MORTGAGE
FLAG & HAILING PORT OF VESSEL

This MORTGAGE is a mortgage as to all (100%) of the vessel described above and is entered into by mortgagor and mortgagee as follows:

WITNESSETH:

WHEREAS, the maker, Mortgagor herein, is the sole owner of the whole of the vessel (if more than one vessel is mortgaged hereunder, the term "vessel" means each such vessel) hereinafter named and described, and whereas _____is justly indebted to the Mortgagee, as evidenced by promissory note dated _____ day of _____, 200__, in the principal amount of $_____ payable to the order of Mortgagee as follows:

and whereas the Owner has agreed to give this Mortgage as security for said note, and has authorized and directed the execution and delivery here of.

NOW, THEREFORE, in consideration of the premises and for other good and valuable considerations, receipt of all of which is hereby acknowledged, and to secure payment of said indebtedness and interest and other sums that hereafter may become due pursuant hereto and the performance of all covenants hereof. Owner by these presents mortgages and conveys unto Mortgagee, its successors and assigns, the whole of the Vessel named below and further described in her (their) last marine document(s) issued and identified as follows:

Name	Official Number
Home Port	Gross Tons
	Net Tons

together with all masts, boilers, cables, engines, machinery, bowsprits, sails, rigging, boats, anchors, chains, tackle, apparel, furniture, fittings, tools, pumps, equipment and supplies, and all fishing and other appurtenances and accessories and additions, improvements and replacements now or hereafter belonging thereto, whether or not removed therefrom, all of which shall be deemed to be included in the term "vessel" herein, and said document(s) being deemed included herein by reference;

TO HAVE AND TO HOLD all and singular the above described vessel unto Mortgagee, its successors and assigns, forever;

PROVIDED, HOWEVER, that if Owner, his heirs, executors, administrators or its successors or assigns shall perform and observe all and singular the terms covenants and agreements herein, then this Mortgage shall cease, otherwise to remain in full force and effect.

Nothing herein shall be deemed or construed to subject to the lien hereof any property other than a vessel as the term is used in the Ship Mortgage Act, 1920.

Owner agrees to pay said indebtedness with interest thereon as herein and in said note provided, and to perform and observe the further terms, covenants and agreements herein, and to hold the vessel subject thereto.

ARTICLE 1. PARTICULAR COVENANTS OF OWNER

Owner covenants as follows:

1. Owner is and shall continue to be a citizen of the United States entitled to own and operate the vessel under her marine document, which Owner shall maintain in full force and effect; and all action necessary for the execution, delivery and validity hereof and of the good faith affidavit filed herewith and of said note has been duly taken. If a corporation, Owner is duly organized and is and shall continue in good standing under the laws of the State of _____ and authorized to do business and in good standing in any other State wherein Owner regularly does business.

2. Owner lawfully owns and possesses the vessel free from all liens and encumbrances whatsoever except as may here in below be specified and shall warrant and defend title to and possession of all and every part thereof for the benefit of Mortgagee against all persons whomsoever. Owner shall not set up against Mortgagee and/or any assignee of this Mortgage any claim of Owner against Mortgagee and/or assignee under any past or future transaction.

3. Owner shall keep the vessel fully and adequately insured under usual full marine insurance with policy valuation not exceeding the amount insured and, in the aggregate as to all vessels mortgaged herein, in at least the amount of the unpaid principal balance of this Mortgage, and shall maintain insurance to cover protection and indemnity risks, tower's liability risks if the vessel performs towage, employees' compensation and/or other risks and liabilities from time to time specified by Mortgagee. All insurance shall be taken out in the name of Owner and shall by its terms be payable to Mortgagee for account of Mortgagee and Owner as their respective interests may appear, and all policy forms, underwriters and amounts shall be subject to Mortgagee's approval. Owner shall notify, and shall request underwriters to agree reasonably in advance to notify, Mortgagee of any cancellation of or material change in any insurance coverage. All policies, binders and cover notes shall be delivered to Mortgagee with evidence satisfactory to it that all premiums and other charges therefor have been fully paid. Owner shall maintain all such insurance unimpaired by any act, breach or warranty or otherwise.

4. Owner shall comply with and not permit the vessel to be operated contrary to any provision of the laws, treaties, conventions, rules, regulations or orders of the United States, any State and/or any other jurisdiction wherein operated, and/or of any department or agency thereof, nor remove the vessel from the limits of the United States save on voyages with the intent of returning, nor abandon the vessel in any foreign port. Owner shall do everything necessary to establish and maintain this Mortgage as a First Preferred Mortgage on said vessel.

5. Neither the Owner, Agent nor Master of the vessel has or shall have any right, power or authority to create, incur or permit to be placed or imposed on the vessel or any part thereof any lien whatsoever other than to the Mortgagee or for crew's wages or salvage.

6. Owner shall place and keep prominently in the pilot house (if any), chart room or Master's cabin or elsewhere on the vessel as specified by Mortgagee notice of this

Mortgage required by Mortgagee, and shall keep a proper copy hereof with the ship's papers and exhibit the same to all persons having business with the vessel, and to Mortgagee on demand. Said notice shall read as follows:

THIS VESSEL IS COVERED BY A FIRST PREFERRED MORTGAGE TO _____ DATED THE _____ DAY OF _____, 200____ UNDER THE TERMS AND CONDITIONS OF SAID MORTGAGE NEITHER THE MORTGAGOR NOR THE MASTER OF THE VESSEL HAS ANY RIGHT, POWER OR AUTHORITY TO CREATE INCUR OR PERMIT TO BE IMPOSED UPON THIS VESSEL ANY LIENS WHATSOEVER OTHER THAN FOR CREW'S WAGES, WAGES OF STEVEDORES, OR SALVAGE.

7. Owner shall pay when due all taxes, assessments, government charges, fines and penalties lawfully imposed and promptly discharge any and all liens whatsoever upon the vessel. Owner shall at his (its) own expense at all times maintain the vessel in thorough repair and working order and shall make all proper renewals and replacements.

8. If the vessel shall be libeled, attached, detained, seized or levied upon or taken into custody under process or under color of any authority, Owner shall forthwith notify Mortgagee by telegram, confirmed by letter, and forthwith discharge or release the vessel therefrom, and in any event within fifteen (15) days after such libel, attachment, detention, seizure, levy or taking into custody.

9. Owner shall at all times afford Mortgagee complete opportunity to inspect the vessel and cargoes and papers thereof, and to examine Owner's related accounts and records; and shall certify quarterly and, if Mortgagee requests, monthly, that all wages and all other claims whatsoever which might have given rise to a lien upon the vessel have been paid.

10. Owner shall not, without the prior written consent of Mortgagee, sell or mortgage the vessel or any interest therein nor charter her except to persons and for uses lawful for American vessels and then only provided said insurance be unaffected thereby or adequately replaced; nor, if a corporation, merge or consolidate with any other person, firm or corporation, or dissolve.

11. From time to time Owner shall execute and deliver such other and further instruments and assurance as in the opinion of Mortgagee's counsel may be required to subject to vessel more effectively to the lien of the mortgage holder and to secure payment of said indebtedness and for operation of the vessel as herein provided, and to effectuate sales as provided in paragraph (C) of Section 1 of Article 2.

ARTICLE 2. DEFAULT

1. In any one or more of the following events, herein termed "events of default," viz:

a) Default in the punctual payment of the principal of the note secured hereby or any installment thereof, or in the due and punctual performance of any provision of Sections 3, 4, 5, 6, 8 and 10 of Article 1. hereof, or attempt to violate Sections 4 or 10 of Article 1. hereof, or default continuing for fifteen (15) days in the performance of any other covenant herein; or

b) Commission of any act of bankruptcy by Owner or approval by any court of a petition or answer asking for reorganization, arrangement, extension or other relief under any bankruptcy law; or appointment or a receiver for Owner or any of Owner's property or the taking by any court of any action comparable thereto; or rendition of a final judgment against Owner for the payment of money and failure of Owner to discharge the same within ninety (90) days or stay the execution thereof pending appeal; or Mortgagee's conclusion in good faith at any time that, through

actual or prospective impairment of Owner's net current asset position, net worth, asset-liability ratio, or earnings, or through prospective violation of any provision of this Mortgage, Mortgagee is in danger of losing said debt, or any part thereof, by delaying collecting thereof until the time above limited for the payment thereof.

then, and in every such case, Mortgagee may:

a) Declare the principal of said note and all accrued interest thereon to be and they shall then become and be due and payable forthwith, after which they shall bear interest at the rate of 10% per annum;

b) Recover judgment for, and collect out of any property of Owner, any amount thereby or otherwise due hereunder; and/or collect all earned charter hire and freight moneys relating to services performed by the vessel, Owner hereby assigning to Mortgagee such earned charier hire and freight moneys then owing; and/or

c) Retake the vessel without legal process at any time wherever the same may be, and, without being responsible for loss or damage, hold and in Mortgagee's or in Owner's name lease, charter, operate or otherwise use the vessel for such time and on such terms as Mortgagee may deem advisable, being accountable for net profits, if any, and with the right to dock the vessel free of charge at Owner's premises or elsewhere at Owner's expense; and/or sell the vessel, free from any claim by Owner of any nature whatsoever, in the manner provided by law; to the extent permitted by law, such sale may be public or private, without notice, without having the vessel present, and/or Mortgagee may become the purchaser.

For such purpose Mortgagee and its agents are hereby irrevocably appointed the true and lawful attorneys of Owner in his (its) name and stead to make all necessary transfers of the vessel thus sold.

2. In the event that the vessel shall be arrested or detained by any officer of any court or by any other authority, Owner hereby authorizes Mortgagee, its officers, representatives and appointees, in the name of Owner or of Mortgagee, to receive or to take possession thereof, and to defend any action and/or discharge any lien.

3. Each and every power or remedy herein given to Mortgagee shall be cumulative, and in addition to all powers or remedies now or hereafter existing in admiralty, in equity, at law or by statute, and may be exercised as often as may be deemed expedient by Mortgagee. No delay or omission by Mortgagee shall impair any right, power or remedy, and no waiver of any default shall waive any other default. In any suit Mortgagee shall be entitled to obtain appointment of a receiver of the vessel and the earnings thereof, who shall have full rights and powers to use and operate the vessel, and to obtain a decree ordering and directing the sale and disposition thereof.

4. The net proceeds of any judicial or other sale, and any charter, management, operation or other use of the vessel by Mortgagee, of any claim for damages, of any judgment, and any insurance received by Mortgagee (except to the extent paid to Owner or applied in payment of repairs or otherwise for Owner's benefit) shall be applied as follows:

FIRST: To the payment of all attorney's fees, court costs, and any other expenses, losses, charges, damages incurred or advances made by Mortgagee in the protection of its rights or caused by Owner's default hereunder or under the note secured hereby, with interest on all such amounts at the rate of 10% per annum; and to provide adequate indemnity against any liens for which priority over this Mortgage is claimed;

SECOND: To the payment of all interest, to date of payment, on the note and any or all other sums secured hereby, and as to any balance of such proceeds, to the payment next of any or all matured installments of principal and then of any or all un-matured installments of principal in the inverse order of their maturity.
Mortgagee shall be entitled to collect any deficiency from Owner. Owner shall be entitled to any surplus, subject to set-off in favor of Mortgagee of for any other indebtedness of Owner.

5. All advances and expenditures which Mortgagee in its discretion may make for repairs, insurance, payment of liens or other claims, defense of suits, or for any other purpose whatsoever related hereto or to said note and all damages sustained by Mortgagee because of defaults, shall be repaid by Owner on demand with interest at 10% per annum, and until so paid shall be a debt due from Owner to Mortgagee secured by the lien hereof. Mortgagee shall not be obligated to make any such advances or expenditures, nor shall the making thereof relieve Owner of any obligation or default with respect thereto.

ARTICLE 3. POSSESSION UNTIL DEFAULT

Until one or more of the events of default hereinbefore described, Owner shall be permitted to retain actual possession and use of the vessel.

ARTICLE 4. SUNDRY PROVISIONS

All covenants and agreements of Owner herein contained shall bind Owner, his heirs, executors, administrators and assigns, or its successors and assigns, and shall inure to the benefit of Mortgagee and its successors and assigns. Following any assignment hereof, any reference herein to "Mortgagee" shall be deemed to refer to the assignee. If more than one person is the Owner herein, "his" shall mean "their".

FUTURE ADVANCES. This mortgage is executed for the purpose of securing not only the payment of the above described note but also to secure all future advances made by the holder of said note to the mortgagor; and said mortgage shall remain in full force and effect to secure all future advances and all renewals or extensions of the above described note.

IN WITNESS WHEREOF, on the day and year first above written, Owner has executed this Mortgage, or, if a corporation, has caused this Mortgage to be executed in its name and its corporate seal to be affixed hereto by its proper officers thereunto duly authorized or as required by State law.

_____
Owner

Chapter 12
SELLER'S AND BUYER'S CHECKLISTS

CHECKLIST FOR SALE OF VESSEL

I. Preparation for Sale of Vessel
- ❑ Obtain copies of USCG Document or other Title information
- ❑ Obtain transcript of title from Coast Guard or Titling authority to examine for liens
- ❑ Obtain all documents from classification society
- ❑ Obtain all copies of USCG license or certificates
- ❑ Obtain general arrangement of vessel

II. Selection of Broker
- ❑ Listing Agreement
  - ___ Exclusive Listing Agreement
  - ___ Non-Exclusive Agreement
  - ___ Net to Owner Agreement

III. Investigation of Ship
- ❑ Obtain copies of any previous surveys
- ❑ Determine if all class recommendations have been completed
- ❑ Photograph all areas of ship
- ❑ Prepare videotape survey of ship
- ❑ Prepare/obtain inventory of items on vessel

IV. Brochure
- ❑ Prepare sales brochure containing all items in I & II
- ❑ Prepare instructions on how and when vessel is available for inspection

V. Negotiation Checklist
- ❑ Does offer provide for the following:
  - ___ Deposit
  - ___ Forfeiture of deposit if not closed on certain date
  - ___ Items included with ship
  - ___ Classification requirements to be met
  - ___ Place and time of delivery
  - ___ Commissions to be paid if broker involved
  - ___ Responsibility for payment of dry-docking and survey
  - ___ Insurance coverage for vessel during inspections
  - ___ Liability for vessel and persons on board during sea trials

___ Pro-rate payment of fuel and lube oil
___ Waiver of expenses if buyer performs work on vessel and fails to close
___ Manner of acceptance of vessel after inspections
___ Manner of payment of purchase price
___ Delivery of title and satisfaction of liens
___ Removal from dock or acceptance of wharfage fees
___ Waiver of warranties

VI. Documents to be Prepared

❑ Purchase documents
___ Offer to Purchase/Counter Offer
___ Letter of Intent
___ Option to Purchase
___ Escrow Instruction Letter

❑ Inspection and Survey Forms
___ Letter to Classification Society to release records
___ Letter to Purchaser limiting extent of non-destructive survey
___ Letter to Shipyard limiting work to be performed
___ Letter to Insurance Carrier advising of sea trials
___ Letter to Agent/Broker/Purchaser authorizing sea trials
___ Release of Liability of Owner during inspections and sea trial
___ Release of Liability for Boarding of Vessel
___ Authorization for Captain to conduct sea trials within limited areas

❑ Acceptance or Rejection of Vessel
___ Notice of Acceptance of Vessel
___ Notice to Owner that vessel is conditionally acceptable
___ Rejection of vessel and demand for refund of deposit
___ Request for extension of time to complete survey and inspection

❑ Completion of Sale
___ Receipt of Notice to Owner that vessel is acceptable to purchase
___ Letter of First Preferred Mortgage Holder for instructions for satisfaction of Mortgage
___ Preparation of Bill of Sale
___ Preparation of Bill of Sale
___ Preparation of Bill of Sale after Marshal Sale/Foreclosure

___ Preparation of Notice of Satisfaction of First Preferred Mortgage
___ Notice of Satisfaction Lien
___ Notice of Deletion of Vessel from U.S. Registry
___ Corporate Acceptance of Purchase of Vessel by corporate purchaser
___ Notice to Insurance Company of termination of coverage
___ Notice to Port or Wharfinger of termination of ownership
___ Notice to Captain and Crew of sale of vessel and termination of employment

❑ Documents Usually Required for Foreign Registration
___ Notarized Bill of Sale with Apostile
___ Record of Deletion of U.S. Registry
___ USCG Certification of Satisfaction of Liens and Mortgages
___ Classification Certificates
___ Certification of Tonnage
___ Export Permit/Release from Maritime Administration (Vessel over 1000 tons)

❑ U.S. Documentation
___ USCG Bill of Sale Forms
___ First Preferred Ship's Mortgage if financed
___ Filing Fees

❑ Documents Required of New Owner
___ Temporary Ships Document/Copy of Bill of Sale
___ Pollution Certificate of Insurance
___ Insurance for Hull, P&I and general liability

CHECKLIST FOR PURCHASE OF VESSEL

I. Sources for Ships
- ❑ Ship Brokers
- ❑ Publications
- ❑ Computer Services
- ❑ Yacht and Ship Brokers

II. Sources of Advice
- ❑ Maritime consultants
- ❑ Attorney
- ❑ Accountant
- ❑ Banker
- ❑ Surveyor
- ❑ Documentation services

III. Determination of Type and Size of Vessel
- ❑ Purpose of project
- ❑ Capacity needed per trip
- ❑ Limitations on navigation in area to be served
- ❑ Economic demand for service
- ❑ Preparation of business plan
- ❑ Survey of dock and dock service facilities in area to be served
- ❑ Crew size
- ❑ Funds available for project
- ❑ Cost of operations available
- ❑ Insurance cost estimates
- ❑ Governmental limitations on service proposed
- ❑ What type of flag must vessel have? (governmental limitation)
- ❑ Age limitation
- ❑ Can existing vessel be retrofitted for project?

IV. Purchasing the Vessel
- ❑ Letter of Intent
- ❑ Option to Purchase
- ❑ Offer to Purchase
  - ___ Based on satisfactory survey, sea trial and inspection
  - ___ Deposit fully refundable
  - ___ Escrow, joint account, trust account
  - ___ Letter of Credit
  - ___ Time limitations on closing of sale/acceptance
  - ___ Type of funds to be transferred
  - ___ Broker's commissions to be paid
  - ___ Responsibility for expenses of inspection and survey
- ❑ ___ Limitations on sea trial or survey

- ❑ Contract to Purchase
  - ___ Acceptance by all parties
  - ___ Time limitations

- ❑ Miscellaneous Requirements
  - ___ Letter to Surveyor detailing extent and purpose of survey
  - ___ Letter to Owner detailing extent and purpose of survey
  - ___ Letter to Financing Institution detailing vessel and requesting list of acceptable surveyors if different than Classification Surveyor
  - ___ Letter of Owner detailing extent of sea trial and insurance coverage required

V. Closing Instrument and Instructions
- ❑ Acceptance of Vessel
- ❑ Conditional Acceptance of Vessel
- ❑ Letter authorizing bank to release funds for purchase
- ❑ Letter authorizing filing of First Preferred Ships Mortgage
- ❑ Signing of Closing documents

VI. Registration of Vessel
- ❑ U.S. Documentation
  - ___ File Bill of Sale
  - ___ File First Preferred Ships Mortgage

- ❑ Foreign Registration
  - ___ Select registration service
  - ___ Contact embassy for instructions

VII. Sales and Use Tax
- ❑ Is Vessel Subject to Sales Tax?
  - ___ Used in interstate commercial service
  - ___ Used in offshore commercial fishing
  - ___ Used in offshore oil rig service
  - ___ Sold to foreign nationals for international use
  - ___ Transaction took place outside the territorial limits of the taxing jurisdiction
  - ___ Sales Tax Exemption certificate

VIII. Insurance
- ❑ General liability, hull and P&I, Jones Act
- ❑ Pollution certificate required

Chapter 13
GLOSSARY OF MARITIME TERMS

Bale Cubic. The space available for cargo, measured in cubic feet within a ship's cargo holds to the inside of the cargo battens, on the frames, and to the underside of the deck beams.

Barrel (bbl). The standard liquid cargo unit of measurements and one barrel consists of 42 gallons (5.515 cubic feet). One ton of fuel oil is equivalent to 6.63 barrels.

Breakbulk Cargo. Miscellaneous, non-uniform general cargo, such as pallet-sized lots, bales of cotton, bagged commodities, drummed liquids, and machinery.

Breakbulk Ship. A vessel designed to carry breakbulk cargo and capable of loading and unloading that cargo with its own equipment, without resort to shoreside cargo handling equipment.

Bulk Cargo. Cargoes shipped unpackaged, either dry, such as grains or ores, or liquid, such as petroleum products or chemicals. Bulk cargo service is generally not provided on a regularly scheduled basis, but rather as needed.

Container Vessel. A ship that is specially designed for the stowage of containers in vertical stacks or cells. Usually, the containers are stacked three or four high above deck and six to seven high below deck.

Containers. There are seven basic types of special purpose containers. These include: 1) refrigerated containers; 2) dry bulk containers for items such as dry chemicals and grains; 3) flat rack containers for the use of lumber, machinery, vehicles, etc.; 4) automotive containers; 5) livestock containers; 6) collapsible containers for stowing when not in use.

Container Equivalents. Usually forty-foot equivalents (FEU) and twenty-foot equivalents (TEU), internationally recognized standard conversion used to make the number of containers comparable from one lot to another.

Deck Load. Weight that can be tolerated per unit of area.

Deadweight Tonnage (DWT). The total lifting capacity of a ship, expressed in long tons of 2,240 pounds.

Displacement. The weight of a ship, expressed in either long tons or metric tons (2,205 lbs.), equivalent to the weight of water displaced by the ship as it floats. Light ship displacement is the weight of the ship excluding cargo, fuel, ballast, stores, passengers, and crew. Full load displacement is the weight of the ship at maximum, fully loaded.

FEU's. Forty-foot container units.

General Cargo. Any cargo of manufactured goods or raw materials in non-uniform packages.

Grain Cubic. The maximum space available for cargo within a ship's holds in cubic feet, incorporating all volume inside the shell plating of the hull and to the underside of the upper deck plating. Grain cubic occupies a larger cargo volume than the ship's Bale Cubic rating.

Gross Tonnage (GRT). The internal cubic capacity of a vessel, with certain spaces excluded, expressed in "top" of 100 cubic feet each, i.e. a measure of volume, rather than of weight. The spaces excluded include peak tanks and other tanks used for water ballast and spaces above the uppermost continuous deck.

Jones Act. The popular name for Section 27 of the Merchant Marine Act of 1920, which among other things, generally requires that all U.S. domestic waterborne trade be carried by U.S. flag, U.S. built, and U.S. crewed vessels.

L.O.A. (Length Overall). The measurement of the length of a ship from the point most forward to the point most aft. Total length of vessel.

L.O.W. (Length of Waterline). The measurement of the length of a ship at the point where the bow first enters the water to a point at the stern where the last portion of the ship enters the water, when the ship is at rest.

Net Registered Tonnage (NRT). The measurement of volume (in tons of 100 cubic feet) used for the calculation of tonnage taxes and the assessment of wharfage and other port dues. It is obtained by deducting from the gross tonnage the crew and navigational spaces, plus an allowance for the volume occupied by the propelling machinery.

Palletized Cargo. Single items of cargo that are loaded on a pallet.

Panamax Ship. The largest vessel capable of transiting the Panama Canal. The most significant limitation for ship design is that a Panamax vessel has a beam of less than 106 feet. For tankers, this means a maximum of 100,000 deadweight tons.

Push Tug. Towboat used in loading or discharging of mother vessel. It has a square shaped bow and push knees for this purpose.

Roll-on/Roll-off (RO/RO) Ship. General cargo ship designed to allow trucks or other vehicles to drive on and off with, or as, cargo via ramp systems.

Self-sustaining (Geared) Ship. Vessel capable of loading or unloading cargo using their own cargo handling systems.

Short Ton. A ton of 2,000 pounds, normally used as a measurement for military logistics planning.

TEUs. Twenty-foot container units.

Tramp. A merchant vessel operating without a fixed itinerary, or schedule, or charter contract.

Ultra-Large Crude Carrier (ULCC). A crude oil tanker with a capacity in excess of 400,000 deadweight tons.

Very Large Bulk Carrier (VLBC). Any bulk cargo vessel in excess of 100,000 deadweight tons.

Very Large Crude Carrier (VLCC). Generally defined as crude oil tankers in excess of 200,000.

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