

Is Chartering in the United States an Option to Consider?

Getting tired of the uncertainty surrounding chartering in the Mediterranean? Perhaps it's worth investigating whether your client can conduct charters in the United States. While the ability to charter in the United States (including the U.S. Coast Guard inspection requirements) depends on a variety of factors such as the citizenship of the owner(s), the flag of the vessel, the size of the vessel and the place of manufacture, you may find that with little or no effort and/or changes to the owner's current structure, your client could offer their vessel for charter in the United States.

At a minimum, any vessel can bareboat charter in the United States provided the applicable rules and regulations are adhered to, such as the vessel being imported (i.e. duty paid or an application for American Goods Returned has been filed with Customs, if applicable) into the United States, and assuming the vessel otherwise complies with the vessel's flag state rules and regulations and the laws of the state in which the vessel is chartering (please consult your legal counsel re particular requirements).

However, what about crewed charters? Due to the variety of factors that can affect the analysis, as noted above, we will limit our discussion to the set of facts set forth below.

THE ISSUE: Can the below vessel built outside of the United States qualify to obtain a United States Certificate of Documentation with a Coastwise Endorsement and thereafter conduct crewed charters in the U.S.?

THE FACTS: Your client is the owner of a vessel with following characteristics and the owner would like to offer the vessel for crewed charters in the United States:

Manufacturer: Azimut	Build Location: Italy
Length Overall: 110'	GRT: 196 ITC
Flag: United States	

THE LAW: In order to obtain a United States Certificate of Documentation and conduct crewed charters in the United States, the vessel, generally speaking, must be U.S. owned, U.S. flagged (with a Coastwise Endorsement) and U.S. built. (In the event the vessel has not always been under U.S. ownership, please note that further analysis needs to be undertaken.) However, assuming the vessel qualifies for the U.S. owned and U.S. flagged elements of the analysis, are you dead in the water because your client's yacht was built in Italy? Not necessarily.

UNITED STATES BUILD REQUIREMENT: The vessel may be eligible for a waiver of the U.S. build requirement. The Maritime Administration (otherwise known as "MARAD") is the agency responsible for administering the waiver program.

Pursuant to 46 CFR 388.2, an "Eligible Vessel means a vessel that – is either a small passenger vessel or an uninspected passenger vessel that – (1) Was not built in the United States and is at least 3 years of age; or (2) If rebuilt, was rebuilt outside the United States at least 3 years before the certificate of documentation with appropriate endorsement if granted, would become effective."

Additionally, pursuant to 46 CFR 388.1, any waiver, if granted following a determination by MARAD that the grant of the requested waiver would not unduly adversely affect other United States builders and operators, would be limited to a maximum of 12 passengers for hire.

THE DISCUSSION: Assuming the vessel qualifies for a MARAD waiver (limiting the number of passengers that can be carried to 12), your client also will need to ensure the vessel complies with the applicable USCG inspection requirements to obtain a Coastwise Endorsement for the carriage of passengers. The USCG uninspected passenger vessel rules allow for a vessel to carry up to 12 passengers, depending on the tonnage of the vessel, without having to go through the USCG inspection process. (Please consult your legal counsel regarding the small passenger vessel rules.) The number of passengers (not to exceed the maximum of 12) you are allowed to carry for hire can be determined in accordance with the below definition of an uninspected passenger vessel.

Pursuant to 46 USCS 2101, an "uninspected passenger vessel" means the following:

"(A) of at least 100 gross tons as measured under section 14502 of this title [46 USCS § 14502], or an alternate tonnage measured under section 14302 of this title [46 USCS § 14302] as prescribed by the Secretary under section 14104 of this title [46 USCS § 14104] – (i) carrying not more than 12 passengers, including at least one paying passenger for hire; or (ii) that is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 12 passengers; and

(B) of less than 100 gross tons as measured under section 14502 of this title [46 USCS § 14502], or an alternative tonnage measured under section 14302 of this title [46 USCS § 14302] as prescribed by the Secretary

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under section 14104 of this title [46 USCS § 14104] – (i) carrying not more than 6 passengers, including at least one paying passenger for hire; or (ii) that is chartered with the crew provided or specified by the owner or the owner’s representative and carrying not more than 6 passengers” and an “uninspected vessel” means a vessel not subject to inspection under section 3301 of this title [46 USCS § 3301] that is not a recreational vessel.

Therefore, vessels of less than 100 gross tons, as measured in accordance with the above uninspected passenger vessel definition, are limited to the carriage of 6 passengers and vessel of 100 gross tons or greater are able to carry up to 12 passengers.

THE ANSWER: Assuming the owner is able to obtain a MARAD waiver and otherwise complies with the U.S. owned and U.S. flag requirements, this client would be able to obtain a Certificate of Documentation and obtain a Coastwise Endorsement and the vessel would be able to undertake crewed charters carrying up to 12 passengers as an uninspected passenger vessel. With up and coming events in the U.S. such as the America’s Cup next year, it may be time to start considering your options.

**The information offered in this column is summary in nature and should not be considered a legal opinion.*

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