

**AMERICAN SUPERYACHT FORUM 2008**  
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**The Cruising Guide - Entering and Navigating U.S. Waters**

Alain Arseneault	Perspectives Maritimes, Inc
John Makolin	Homeland Security
Jim Perry	James H Perry
Eugene Sweeney	Republic of Marshall Islands
Lt Patricia Ferrell	U.S. Coastguard

**Chairman—Martin Redmayne**

Hello everyone. Let's settle down as quickly as we can and get on track. (*Sorry, I had to wait until Ted put his headphones on to do the microphone tap!*).

Allright. The afternoon session—an interesting session that has been raised in several different areas in the previous two days—entering U.S. waters. There's obviously various issues here for visiting yachts from around the world, but it does have a major impact on the U.S. economy in terms of the superyacht business and I think this session will answer some of those questions or allow you to interrogate—not the best word to use—*question* the panel on these key issues. We have a guest appearance from Lt Patricia Ferrell (I'm from England so I say "*Leftenant*" so my apologies for that) from the U.S. Coastguard. Thank you for joining us. I have also in uniform John Makolin from the Homeland Security and then we have some gentlemen in suits, respectively lawyers and flag administration, and Alain Arseneault who's come all the way from Canada, Montreal. Thank you Alain. Allright. Gene is going to start with a little presentation on the U.S. territories. Thank you Gene.

**Eugene Sweeney**    Republic of Marshall Islands

Thank you very much Martin. I'm going to not talk about yacht registration this morning, I'm going to talk about pilotage and the requirements of compulsory pilotage in the United States for both domestic and internally trading yachts. In order to understand pilotage, it's important to look at history. Pilotage has been around a long, long time. A long time before yachts came along. And it's interesting when you look at the derivation of the word pilot and yachts, they're both from the Dutch. And I believe a yacht was a fast boat in Dutch so there is a tie-in with all of this. History shows that there's been a lot of laws written about pilotage and here in the United States—and I'm going to try and keep my comments to the United States—we can go back to Boston in 1633 and New York in 1694 when pilotage laws were first on the books in those colonies. Constitution of the United States—September 17, 1789, the Constitution of the United States was adopted and put into effect. At that time all of the States already had pilotage laws on their books. After the Constitution was enacted, the government of the United States met for the first time and the first congress of the United States. But it's important to look at what the Constitution says. And it basically gives the power to regulate commerce with foreign nations and amongst the several States to the Federal Government. So we start from that premise, that the Federal Government has the right to regulate commerce i.e. pilotage. First congress met in 1789. It was a very important meeting because the

laws of the country were being formulated, and of the 26 laws that were enacted by the first congress, 6 of them dealt with the maritime part of it. And the most important Act coming out of that was the Lighthouse Act of 1789. And in 1789, Article 4 of the Lighthouse Act basically said, and I will read it to you: *All pilots in the bays, inlets, rivers, harbours and ports of the United States shall continue to be regulated in conformity with the existing laws of the States respectively* (and this is very important) *until further legislative provisions shall be made by Congress*. So basically what the government said is you, the States, can govern the pilotage in your State until there's a point where the Federal Government has to step in. The first time the Feds got back into this was in 1850, 1860, with the introduction of something called a steam boat. People didn't know what steamboats were, they were concerned about it so the Federal Government said look, we want to get involved in the regulation of steamboats. Going back in history, you'll remember the Spanish, the Portuguese explorers, a lot of them were referred to as pilots. Pilot to me is a navigator. And what I'm talking about this morning are the bar pilots, the branch pilots. But somehow, during some of the legislation on steamboats, the word pilot got in there and all of a sudden we had a reversal where the Feds now were running pilotage. Well, for about 20 years there was a lot of controversy back and forth as to what really was meant by the government. In February of 1871, all this was cleared up and it was a very clear statement as to how it was going to be set up. Basically, it created what we know as the State pilots, and the Federal pilots. And the Federal pilots were given the authority to control pilotage for any U.S. flag vessel under enrolment sailing domestically in U.S. water. The States were given the right to regulate pilotage for any—again American— flag sailing internationally under registry or international vessels sailing in the United States. So we established again the Federal pilot and the State pilot system. And that basically is in effect through to today. Compulsory state pilotage—and this is really what it's all about. I think that slide basically says it all. *Every foreign flag vessel or yacht, and every U.S. flag vessel or yacht engaged in international trade moving in the waters of a State is required by that State to take a pilot licensed by that State*. It's that simple. If you are trading in the waters then you have to have a pilot on board that is licensed by that State. Understand that pilots throughout the United States, with some exceptions out in California, are basically sole practitioners. They are licensed by the State to practise their trade, and they form into associations for business purposes but in effect you are dealing with a sole practitioner every time you're dealing with a State-licensed pilot in the United States. The administration of pilotage is in most cases through a pilot commission. I believe almost every State except California has a pilot commission made up of 6-12 people, and they are the shareholders, the stakeholders, in the commerce of that State and most organisations will have a fair representation of State pilots on that commission, they will have the end users, shipping companies, port authorities. They have a mix, but they try and be as broad-based as they can to regulate a very, very important business. The commission has the authority to appoint in most cases a deputy pilot and again I think a 2-3 year deputy programme is probably standard throughout most of the United States—I know the Sandy Hook pilots used to have a 7- or 8-year programme—but usually 2-3 years. They pass on the trainee advancing through the various stages of pilotage until at the end he passes an exam and is a full branch pilot. They oversee the performance of pilots, they issue disciplinary action, they look at some of the minor laws, and in a lot of cases they actually set the rates. The rates are by and large set by the State through the pilot commission, so it's basically non negotiable and I think that works to everyone's advantage. The pilotage system in the United States is two-fold—one, you have the Great Lakes and that is under the coastguard. And then we have the broad-based pilotage for the 24 coastal States. And what I'm going to do, hopefully quickly, is to go through the exemptions. I told you the bad news, that you're required to have a State pilot when you're trading in

the coastal States. Each of the States, well almost each of the States, grant exemptions, or minimums, as to when you are required to have a pilot. And unfortunately I started out as California with my first exemption. California basically has a 300 gross ton minimum. If you're below 300 tons then you're exempt. Now just to talk a little bit about California—they have State pilots in San Francisco, they have city employee pilots in Los Angeles and they have a private corporation in Long Beach. So everything I've said about pilots you can probably throw out the window when you're out in California. And San Diego, I believe they have a Federal pilotage system. So it's a really mixed bag out in California. Delaware—100 gross tons. I'm going to read some of this to you, because each State words it a little bit differently. Georgia, we have under 200 gross tons. Again, Delaware less than California below. Louisiana, over 100 gross tons, Maryland less than 100 gross tons in the C&D Canal. Massachusetts, 350 and over, Mississippi is an exception—you'll note they work on net tonnage and I believe that's the only State that has a net tonnage as opposed to a gross tonnage. New Hampshire, 150 gross tons, North Carolina 60, Oregon 250, Pennsylvania 100. Virginia is 300. I had a real hard time getting somebody to step up and tell me that—the State kind of waffles that there is no exemption when you talk to the various pilot associations—they look at the advantaged notice of arrival and basically what they say when they're advised by the Coast Guard that a vessel is coming in on a 300 ton threshold then they step up and take notice. Texas, 20 tons—that doesn't help anyone but that's what the law says. Draught—the exemptions I gave you before were based on tonnage, gross tonnage, with one exception for net tonnage. Three States—the compulsory pilotage requirements are based on draught. And I was a State commissioner in the State of Florida for a number of years and I was always taken aback by the fact that the law says 7 feet. So by State law, law 310, if you are drawing more than 7 feet in the State of Florida you are required to take compulsory pilotage. South Carolina is 8 feet, and Maine has 9 feet. So we're seeing tonnage, now we're getting into draught. We'll go to length. The State of New York and the State of New Jersey, for whatever reason, decided to base their compulsory pilotage on length. New Jersey 200, New York 100. Now, when you go up the Ambrose Channel, I'm not sure what State you're in, but that's another question. Exemptions based on service—and I'm going to read to you what both of these States said—"Hawaii. Compulsory pilotage requirement applies to every vessel engaged in trade or commerce. Private yachts not operating in a commercial venture are exempted from compulsory pilotage. Rhode Island—"*every foreign ship, boat, barge, vessel and water craft regardless of gross tonnage or draught shall take and employ a State pilot. However, the State Pilot Commission has granted a blanket exemption from compulsory pilotage for all yachts entering State waters. Exemptions based on specific application to the State.*" I think this is the fifth different category we have. State of Washington, Alaska, and I believe British Columbia is in the same group and I'll read to you what they say. Alaska. "Mandatory State pilotage is required for pleasure craft 65 feet or larger, and foreign registered. Exemptions. Good for one year, may be requested for foreign registered pleasure craft between 65 and 175 feet. U.S. registered vessels of less than 300 gross tons are exempted from compulsory pilotage." Washington State. "The Board of Pilot Commissioners has been authorised to grant yachts of foreign registry and use for either personal use or chartering not exceeding 500 gross tons or 200 feet in length and operating exclusively in the waters of Puget Sound, and British Columbia are exempt from compulsory pilotage for a term of 3 to 12 months with annual renewals." Lastly, the bad guys. No exemptions for yachts. If you're in Alabama or Connecticut, to the best of what I was able to come up with, there are no exemptions for yachts in those two States.

To kind of summarise the exemptions to the compulsory pilotage, you'll see there's 12 based on gross and net tonnage, 3 on draught, 2 on length, 2 on service, 2 on specific application to the State and the 2 bad guys who don't want to know us. Now having said all that, the question that I came up with is— what happens if you don't take a pilot? And I know that doesn't happen in this industry but just in case any of you are out there running around and not having a pilot on board, here's what happens. They're coming up the yacht to get you. That's really not true. In the real world, each of the States in their statutes do have penalties—they spell out what the penalty is for and I'll use their vernacular—piloting without a licence. That is the legal terminology you'll find in most State regulations. Piloting without a licence. The fines, the offences, range all over the ballpark. In most States, it is a misdemeanour to pilot without a licence. There's also civil penalties that can be put against the vessel. I'll read you the one of the State of Alaska because I thought it was very interesting since they do give you a lot of latitude to get an exemption, then they say in the State of Alaska for example the penalties are "guilty of a misdemeanour and upon conviction is punishable by a fine of not less than \$5,000 or more than \$15,000 for the first offence and not less than \$10,000 nor more than \$30,000 for the second offence." And going through most of the State laws, I found they were very similar in effect that they did have the misdemeanour and also had the civil penalty, the civil fine. In reality I think what you will find, and I'm again going to quote what I read. "The vessel and its owner shall be obligated to pay to the licensed State pilot at the port where the violation occurred the pilotage rate which would otherwise have been applicable." I think in the real world if you get caught without a pilot on board in most cases they will charge you the applicable fee. But they do have the right to go after you and impose civil penalties.

We'll talk a bit about fees. The fees that I put up here are one way fees. They're all over the ballpark—a lot of them are minimal fees, the minimum—I based this on a 120, 150 foot yacht, 300-500 tons, just to get a sampling of what it is across the country. You'll see in Port Everglades it's a very nominal fee for a lot of reasons, one is the transit from the sea buoy to the turning base and I think it's about a mile—you get to some of the other ports, New York harbour for example, you get to a pretty hefty fee. You also get caught up in a minimum. Some of the States, as you well may know, have the infamous box formula, which came as a result of the large container ships and the car carriers. So depending on what jurisdiction you're in, the fees are really all over the ballpark. Information on local pilotage regulations—well, the one I went to first was Google. You get on Google, you can find all kinds of stuff. You have to drill down but it's there. The two that I would recommend is the coast pilot. The coast pilot's been around for a long, long time. Published by the National Oceanographic and Atmospheric Administration. It has a lot of information in there, they have phone numbers, they have addresses, they have contacts. The other one that I would recommend are the Master Mates and Pilots' Union, by name there you have pilots. They've been around since the late 1800s, they've got representation in each and every State, they can be very helpful. There's also a group in Washington DC called the American Pilots' Association. Which is a lobbying group, probably the umbrella group for pilots around this country. I got some information from them about a year ago and I went back when I was putting this paper together to see if they could help me in updating it and unfortunately there was a containership that had had a massive spill out in San Francisco Bay and they just backed off, they said they were up to their eyeballs in litigation and everything else *so you're kind of on your own, Gene*. So what I've given you is my own personal research, I cannot warrant it being absolutely correct, but I have a very high level of confidence in the accuracy. To kind of wrap up, I would say that compulsory pilotage for foreign flag yachts in this

country is confusing, in some cases it's even illogical. But it is what it is. The States have the right to regulate pilotage within their water. So good luck guys. Thank you.

**Martin**

Gene, thank you very much.

**Tork**

Gene, can I just ask you a couple of clarifying questions. We're talking about harbour pilots, presumably? So delineated by a certain area once you enter a particular area entering a port, you're required to take a pilot? But within the waters of the State, if you're not entering a harbour, presumably you're free from pilotage?

**Eugene**

Well, that's again a kind of Catch 22. The law is the law. It basically states when you're in the territorial waters of that State you have to have a pilot. Now in practical application, I know in the State of Florida where I was a commissioner, there were 13 ports where we had pilots and we would service the industry. But certainly there's the back roads and going into Hillsboro inlet or going into someplace else there's no pilot sitting on a jetty up there. So again this is where you're caught between a rock and a hard place, where the law does say you're required to have a pilot but there's no pilot available and a pilot who's used to piloting a cruise ship in and out of Port Everglades or an L&G carrier, they're lost on a yacht. But that's the law. And we've talked about it in Florida—I think there was a general reluctance to what I would call open up to address 310, and have the legislature get in and actually change the law. So I think you're all in a very awkward situation, where you have the statues out there but the practical application is varied. I would give all of you my advice and that is to know what the law is, to talk to the people at the various pilotage associations, explain who and what you are and ask them what's going on today. Not what the law is, but what do you as the pilot association for say Jacksonville, Florida, going into Atlantic Marine, what do the pilots in say Jacksonville require for your 150 foot yacht going up the St Johns River.

**Martin**

OK Gene, thank you. Now what I'm going to do is just ask each member of the panel to introduce themselves and their background and position and then we'll throw open the conversation to an open forum. Alain, do you want to start?

**Alain Arseneault** Perspectives Maritimes Inc

Well, I come from the commercial side of things, even though I spent most of my youth sailing the St Lawrence River with my father's yacht. But I am a master mariner by trade, and also a river pilot, on the St Lawrence River and Montreal harbour pilot. So I know a bit about pilotage. Even though we're seen as the big bad wolf, as Peter Southgate would say to himself as a classification society. But you know, there is a good side of using pilots and bad side of using pilots, if you have to pay for it, obviously. That's who I am anyway, if you have any questions, I can help you out in that regard. Not only in that regard but any regulations with regard to Canadian waters, chartering or using yachts in Canadian waters. I have a consulting group which is formed of 6 marine professionals that can answer all your questions.

**Martin**

Does that make Peter Southgate a little pig?! Jim, please.

**Jim Perry**            James H Perry

Good morning. I had the opportunity and pleasure to speak before you yesterday, I'm actually an admiralty and maritime lawyer based in South Florida.

**Lt Patricia Ferrell**            Coastguard Sector South East

Good morning, I'm Lt Patricia Ferrell with Coastguard Sector South East to New England, out of Providence, Rhode Island. I'm the Chief of Enforcement for Rhode Island and South Eastern Massachusetts and I can answer any questions you have about security issues and also the Coastguard's notice of arrival requirements.

**John Makolin**            Homeland Security

Good morning. My name's John Makolin and I'm the Service Port Director for Providence. Our area of responsibility covers Bridgeport, Connecticut, right up to basically Boston. We handle the old well, current, Customs & Board of Protection functions under the old scheme of things before DHS were the customs, immigration and agriculture on the air and vessel arrivals here in Rhode Island.

**Martin**

Thank you John. Right. Questions from the floor, please? Bradford?

**Peter Ho**            Bradford Marine

Eugene, I'd just to expand on what Tork brought up. Surely, if I'm taking my owner out for a dinner cruise in one of these State waters, I do not have to take a pilot, do I?

**Eugene**

Are you asking me to interpret the law?

**Peter**

I'm asking you to stick your neck out so that we can say Eugene Sweeney said we did not need a pilot!

**Eugene**

That's from Marshall Island Yacht Registry. That's what I do for a living. And don't kill the messenger, as they say. Again, I think you have to work with your local officials. You have to ask them what to do. And I believe that 90% of the time they're going to look the other way. They don't care. They've got bigger fish to fry. They're not going to worry about you running around New York Harbour putting a pilot on a yacht running up to North River and out to Ellis Island or something. They couldn't care less about that. But it is the law. And that's really what I was trying to get across to everyone today. This is what the law of this land is. 24 coastal States, the Federal jurisdiction, just be aware of it. But on a practical application talk to your agent if you have one, talk to the locals there, and lastly, talk to the pilots. Ask them what's going to happen. Again, in a lot of cases, it's easier to get forgiveness than it is to get permission.

**Tork**

I mean pragmatically the problem is that it only takes one yacht and I think at the meeting the other night we heard anecdotally of a yacht in the Chesapeake Bay that was fined \$30,000 for not taking a pilot. It only takes one of those to cause irreparable damage to the shipyards and maritime suppliers of the United States.

**Eric Goldring**      Goldring & Goldring

You know, Gene gave a very good overview of everything. I deal a lot with New York Harbour, which is security heaven. They check everything. 6 ways to Sunday. But the pilots and the coastguard work with you really very nicely if you're nice. But if you come in with arrogance, you can forget it. But if you say I'm going from the dock, I want to navigate through this area and back to the dock, they say well we don't consider that a voyage. You're just sort of repositioning the yacht. And that's OK. But you have to work with them to get to that point. The other thing is that most pilotage in most secure areas, and I'm sure DHS can speak more to this, have defined areas. So coming in to New York for example, you have Ambrose lightship, this massive piece of metal that's been out there for ever after they got rid of the ship. And that's their defining area. Once you go past there, and you require to go past there, they don't care. You're outside of their area of interest and you can navigate up and down the coast.

**Tork**

But unless I'm wrong, what you just said is that in the law, you can't?

**Eric**

Well, what the law actually is, is what is applied. And when you get clearance to say when you get to Ambrose lightship you're fine—I'll give you an example. I had a yacht that came trans-Atlantic, came into New York Harbour, you're required by law to have a pilot at Ambrose Lightship. There was a terrible storm. There's no way they could board, it wasn't going to happen. So they said well you can come in, anchor off the Verrazzano, stay in this particular area, and we'll board you there. In fact, it's so late we'll do it in the morning. So if you work with them, you can get that. Now if you left Ambrose and you're going down to say Georgia, which—Georgia can be a bit difficult—you don't need to have a pilot for that entire run. But there's going to be a part, a point, in Georgia, wherever it is, going into the river where you're going to have to pick up another pilot. And it really doesn't need to be that difficult and it's really not that draconian. Unless you say I'm not going to do it. And then, all of a sudden, you can wind up in some jurisdictions where it gets to be fairly heavy handed and you get the 'This is the Law'.

**Alain**

Can I comment on that? You know, pilots have a very intensive local knowledge of a very specific area, and it takes time to learn it, and obviously no pilot can know all the waters of a specific State. So there is a jurisdiction where it starts, where they have the knowledge, where they had examination for, so as Eric was saying, New York is a good example, Ambrose Light is where it starts. If you are outside of Ambrose Light you don't need a pilot, even though by law probably it says that the State of New

York requires you to have a pilot in all of its waters. But in the reality of things, all pilots' jurisdictions are geographically—

### **Tork**

But that's what we're used to elsewhere. But it's not common to find in the pilot guide for a given country that you require pilotage in all of the waters of the country. It's utterly bizarre. I mean, presumably in Canada you have delineated port areas within which pilotage over above a certain gross ton etc etc.

### **Alain**

Exactly. In Eastern Canada we have 3 zones—if you're in Atlantic Canada, you are required to take a pilot if you're above 500 gross tons, if you enter Quebec waters, basically at Escoumins, which is the St Lawrence River, it goes by length, it's 35 metres and above—more than 35 metres you're required to take a pilot. And above Montreal it's 300 gross tons. So it's a bit confusing too, but you know that's how it is.

### **Martin**

Yes, Clive and AJ? A double act there. Sorry Lisa.

### **Clive**

Just a question of clarification for Gene, and maybe I misheard—did you say that in one of those States where there was a tonnage switch for the regulation, that the pilot association which you said is a private organisation gets copied on the notice of arrival? Did you say that?

### **Eugene**

What I said was during my research with the State of Virginia, trying to nail down what the requirement was, I was basically told by the local pilot association that they look at receiving advice through the coastguard's advance notice of arrival system, which is 300 tons. And once they're aware that a yacht is coming 300 tons and above then they will apply the pilotage. They basically, from what I was able to understand, look the other way for a yacht under 300 tons because they don't even know it's coming under the advance notice of arrival requirement. But again, you have to understand the law and how it's applied.

### **Clive**

I'm trying to understand the ISPS implications of the coastguard passing the information to a private organisation.

### **Eugene**

They work hand in hand. I think you have to realise that the pilots, the coastguards, Homeland Security, everyone is kind of in this together. I mean the pilots are the first people that have contact with a foreign flag ship coming in. And they're obligated, if there is an issue they see on the ship, to get these two folks next to me involved in it. It's all about security. Understand what parameters are—

### **Tork**

But I think what he's getting at is the other way around. Under ISPS, you should not be passing any vessel movement information on to anyone that isn't authorised and a private organisation is fairly dubiously unauthorised, I would have thought. Perhaps a comment from Homeland Security?

### **Alain**

I would say they are, because pilot corporations even though they are private, they have contract agreement with the Government, so they are basically under the Federal or State jurisdiction. So pilots are part of the loop.

### **Tork**

Did you have a comment?

### **Lt Ferrell**

I was just going to say that in this particular area, we do not share the advance notice of arrival information with the pilots. We operate separately. We do have access to their system, just to verify arrival times, but we do not pass that e-NOA to them and they do not have access to that system.

### **Clive**

A wonderfully consistent performance by the U.S. Government, thank you.

### **AJ Anderson**

I have a question for DHS but before I do, just to clarify on the pilotage. The reality is, Gene, and we've had this conversation, the law is what it is and cruising—there's a New England Bar Association, the pilots association up here in New England, and if you are 1,000 tonner, or 2,000 ton yacht, the first thing you do is say you're a yacht, not a vessel. But generally they'll just let you sail. They'll say thank you very much for letting us know, and we're fine. So from the Canadian border down to New York City, or to City Island in New York, no-one has an interest in piloting the large yachts, the very large yachts. As soon as you get down to City Island, of course, New York City, they do want to take you to your first berth. They'll never let you go in, at least the boats that we're sailing, 1,000 tons or more. But once you're at the first berth and you call them up and say hey listen, we want to go out on a cocktail cruise at 5 o'clock, they say we'll see about getting somebody down to you and then you call them 15 minutes before and they say well, you're OK, go ahead without us. And then on your departure, they might like to put somebody on board. But you're right, for the local sailing, once they have a sense—and if you can turn on a New York accent, it can be helpful. Going down the coast, Delaware, they are really the only folks on the East Coast that are insistent other than Jacksonville of course—Jacksonville has good reason to—that are really insistent on putting a pilot on, consistently. Matter of fact, if you're half way up Delaware Bay, they'll ask you to come back down and pick up a pilot, then go back up again. But otherwise—in Fort Lauderdale with the—is it 7 foot draught—of course all these yachts are drawing 12-14 feet and what we do is, we call in and tell them that we're coming in, they ask you what your draught is, and they say have a nice day and be careful, let us know where you are. So as Gene says, there is a practical side to the pilotage, I think. On the East Coast. Now up on the West Coast and particularly the North West, the currents and tides are so dramatic, if

you're a first time approach, it's a good idea to have a pilot on in any case. My question is for Officer Makolin—is that correct? On the e-NOAs, maybe it's for the Lieutenant as well, is, we file the notice of arrivals and we have all the information in those, and then we come into port—and incidentally entering this area, particularly Newport and Providence, it's always fantastic for us. I want to go on record as saying that! But really it is very good—often we come in after 6 o'clock, we end up speaking to somebody up in Maine in our call in. And it happens everywhere that I've entered in the U.S. The question is, we give a lot of information in the e-NOA as you know, and then, when we make the phone call, we are giving that information again. And I think maybe it's a good idea to ask a few things but is there a real transfer of information from the e-NOA to the person who's answering the phone?

### **John Makolin**

No! To understand—I mean it's very mired information—and electronically those databases kind of talk to each other on the backside. Unfortunately, though our requirement is if you're coming from foreign, 100 foot, 200 gross tons, 6 feet, rowboat, inner tube, water ski, we don't care, we need to see it. And we want to talk to you. Citizenship, we don't care. We want to see you, we want to talk to you. Your e-NOA has those limits, so yes, it's very mired. That has been an issue, it's been a topic, we've heard about it, there is discussion. I mean, we're looking at automation and communicating through systems that were never designed or made to communicate with each other. One of the things we do try to do, and you mentioned calling up to Maine. I mean, that has been established to have a 24-hour number 7 days a week instead of you saying OK, I'm coming in to Newport, who do I call in Newport? Do I call the port office in Newport, which is a seasonal office, do I call Providence, do I call Boston, St Albans, Portland? And it is good to hear that that works. So I mean that's the plus side. I think behind the scenes what isn't seen and does not relinquish the fact that you still have to make two notifications—I mean we do communicate back and forth within other DHS entities. Our biggest partner here is coastguard. So we pretty much know the same information. And I know that doesn't make you feel better, to have to make only one call, but—

### **AJ**

Oh, it wasn't a complaint, it was just a question, really. I want to go on record, I'm not complaining! I do have one more question as far as security goes, and ISPS. My assumption is that you're aware that all the large yachts that are coming into the country are coming in as private yachts, and when we do file our e-NOAs, wherever we can force the fields to accept it we're trying to let you all know that we are not a large containership, that we are a large yacht and so we're saying private N/A N/A and the ISM is blank, or N/Ad. And the ISPS as well. And I guess you accept that as reasonable.

### **Lt Farrell**

We do, and it is very clear to us when it's a yacht versus a commercial vessel. And we don't have a very high level of interaction with those yachts when they come in. We have a lot that have been coming in this month and we have not actually gone out and boarded any as of yet. We are aware of what you're doing and where you are, and we like to see you more as partners, anyway. That's one of the things that we like to talk to industry about a lot lately—the security issue. We see that you guys are a great asset, that if you see something going on, you're out there, you're familiar

with the area, and you can help us by letting us know. We're not out there to hinder you, we want to work together on this.

**Martin**

Ayuk, you have a question?

**Ayuk Ntuiabane**      Moore Stephens

Clive has in fact touched on my question already, the second question there. But I'd just like to get a further comment, if I may, from the panel. In Europe, from where I operate, there is the conventional wisdom that foreign flag vessels entering the U.S., if they are commercial yachts, are best advised to change their status to private. And so you get this almost ritual changing of status for yachts coming here. Is this a matter of law, or is it just practice? Or what?

**Jim**

I can address this—perhaps a different perspective than the Government's perspective. A lot of times, you will have a foreign flag vessel that will come back and forth and actually change commercial registry to recreational private pleasure because situations not having to do with the Government, but more of some tax situations, and ability to get cruising licences from Customs and things that may have tax implications or sales tax or use tax implications for the owner of the vessel. So there will be instances where again—I have a client who, when they go to the Med, we get the commercial registry so he gets all the benefits of the commercial registry in the Med but when he returns to the United States we flip around and get the recreational because that way it allows him to obtain a cruising permit, and there are many benefits to that. One in terms of just cruising and entry from the different travelling around the United States itself but again from tax and legal perspectives there's also issues dealing with it.

**Ayuk**

So purely a matter of convenience, then?

**Jim**

Well, a large tax bill's probably not a matter of convenience from the owner's perspective.

**Eric**

I think there's—and I'd like to hear from DHS sort of what they see this as—because my approach is substantially different from Jim's. Florida is a sort of special little case—you know, if it exists, tax the hell out of it. Because we don't have income tax. You do have that sort of difference. But practically speaking, cruising permits, anything like that, I think what DHS is saying, you don't care if the documents say commercial or pleasure, you care—are you chartering or not? If it's a private yacht that does something somewhere else, you're really not that interested in it. And I haven't really had the experience where I felt it made any economic sense to be switching documents to address potential tax issues. Last year, at the conference in San Diego, there was a whole issue with charging duty on entry into San Diego just because you existed and they didn't care what the documents said or what the

ownership was. So you've got two different philosophies here from two different attorneys that do this stuff all the time. What do you guys think?

**John**

I think you have to look at the regulatory issues when you're talking commercial and private. Our statutes and regulations are explicit when you look at their term. You know, private, and it pretty much is what it is. When you start saying charters and commercials and then you add foreign flag vessels, vessels that may have been made in the U.S., and exported, or foreign made vessels that are now being imported into the United States meaning you're into a business venture of types—you get into this whole money, duties, taxes, boats that have been sold, duties assessed because it comes back another time at a lesser rate versus a new rate, there is, for the industry, if you are not in fact commercial and charter, you should be what you are. Which would be private, pleasure, recreational—any one of those phrases. But technically yes, you open up that whole Pandora's box. Because my definition or CBPs type definition of commercial, and charter, is different. The fact that you're not doing it, you're licensed, that is maybe your business is foreign. OK, it has implications when you tie in foreign flag vessels, U.S. waters, Jones Act, it goes on and on.

**Eric**

In other words, you're focussing on the actual operation. If I've got a private yacht that I charter in the Med and I come in here as a private yacht—you don't care if it says commercial or pleasure, if you don't charter it then you're not in commercial operation? And then you're leaving, it's not that you're bringing it in to import into the U.S.

**John**

What you do foreign, basically, and I think that's a great example, that is your business. Say you're here in the States and I run a charter business and I'm out in the Islands somewhere and I'm doing that, but I'm in here. But that's not your business when you're here. You're here as a pleasure vessel.

**Tork**

Yes, but I believe there is an issue, is there not, if you're an over 500 gross tons and you're ISM and ISPS compliant, commercially capable let's say yacht, which operates in charter within the Mediterranean comes in as private use here, but because you carry certificates of compliance with ISM and ISPS, your activity is severely restricted. So that's why I believe the majority of vessels change to private. Because they suddenly go out of compliance and they can park anywhere.

**Eric**

I think you're making the assumption that you're severely restricted. That's what we're trying to debunk here.

**Lt Farrell**

From the coastguards, I have to admit I'm not an expert on any of the inspections or anything but if you are documented as a passenger vessel or a recreational vessel

that does have implications regarding inspections and certificate requirements, so there might be additional restrictions put on you as far as having an inspection team come on board to check things at certain intervals. That's the only thing I can think of from the coastguards. From the security standpoint, we look at it the same way. What's your operation, what size is your vessel, things like that. But inspection and regulatory-wise there might be some changes.

**Tork**

I think there's some comedy available here. Come on Clive?

**AJ**

I'll say it for him. This is from Clive. Our experience is, if a yacht does come in, if we do file the yacht as a commercial vessel—and we never do—well we did once, actually. The captain was so proud that he became ISPS compliant that he insisted that he would sail as a commercial yacht, ISPS. He sailed to Maine, they put him on the commercial pier in Portland, Maine—about a 9 or 12 foot tide—and twice a day the owner could get on and off the boat, he wasn't allowed to go to the other docks around there, he wasn't allowed to move his boat and anchor as Tork was suggesting. If he anchored off Portland or some other place in Maine, that would be fine but his tenders were not allowed to interface with non compliant facilities, so you really do not want to be a commercial yacht based on the ISPS compliance. Never mind the tax part, which is complicated, but being able to interface with the marinas is pretty important. Isn't that right, Clive?

**Clive**

I got myself into a lot of trouble last year for what I said about ISPS and I'm not going to do it again!

**Martin**

Ken, please?

**Ken** [From the floor]

One of the points that needs to be clarified is that under a commercial registration you cannot get a cruising permit. And without a cruising permit it now means you've got to make a formal Customs declaration in every port you enter. The cruising permit allows you to travel up and down the United States but once you're commercial you have got to make that formal clearance. Which is just a complication that nobody wants.

**Jim**

From a Florida perspective, that can be a real hassle because of the desire to go from Palm Beach to Fort Lauderdale to Miami to Key West. And having to go in at each office and obtain a permit to proceed or do a formal entry in each instance can really be cumbersome. So having the ability to obtain the cruising permit by being recreational certainly again does have its practical advantages.

**Ken**

Exactly, that's the point, yes.

**Martin**

Next show there'll be a microphone for Eric, OK?

**Eric**

Well, thank you, I'll just keep it on all the time.

Just another point of clarification. This is what happens and this I guess highlights the frustration of those of us that are involved with the movement of yachts throughout the United States. I know foreign flag commercial registered yacht charters elsewhere, comes into the U.S., all you have to do is talk to the right person and you do not need to have a cruising plan to go from Palm Beach to Fort Lauderdale. What they'll do is, they'll say we have a region. The region may be running from Daytona Beach to Miami, you're good. You don't need to report in each port stop.

**Jim**

Actually you're incorrect. They generally look at the captain of the port—and I meant that with no disrespect there—but actually to go from the different ports you do—the captain of the port is basically what the Customs office will tell you. If you go down to Port Everglades and you don't have, and you want to go down to Miami for the day or for the week, you have to clear out with the crew list at Customs in Fort Lauderdale and then, when you go down into Miami for the weekend, you have to go into the Customs office. Granted in different parts of the country, the geographic ranges may change, depending on the captain of the port. But in Florida, if you want to move your vessel, it really does require that you would clear out—

**Eric**

I mean, I'm just talking from personal experience. You don't have that. And that's the problem. Because what happens to you, I'm sure definitely happens to you. And what happens to me has happened to me. And that's I think the frustration here. And I don't know if these fine people with the badges can—

**Martin**

We have another opinion at the back there, actually, Eric, from another lawyer! A legal catfight—I love it.

**Erin Ackor** Moore & Co.

I'm one of the attorneys at Moore & Company and Michael and I were just listening to this discussion and thought we had made a little chart here, it's quite simple. In the Mediterranean, yachts make entry if they're a private yacht under what is called a temporary import procedure and you get an 18 month period to stay in the Mediterranean. If you're commercial, your time frame is unlimited. If you come into the United States as a private yacht, you have to get a cruising licence. And the cruising licence is valid for 12 months and hereafter you have to leave the United States and renew the licence. But if you're a commercial yacht, you can't obtain a cruising licence and you cannot trade coastwise, you cannot go port to port with passengers. It's prohibited. So I think we should just say that straight out and get that on the table.

**Tork**

I'd like to raise another potentially contentious subject and Ken has something to say about that as well, I believe. Which is the TWIC. We covered this recently for U.S. qualified mariners, however for foreign crew it can become an issue. Can you perhaps go over a little of what we went over the other day?

**Martin**

Can you just say what a TWIC is, Tork, please?

**Tork**

Well, I'm going to let the DHS or coastguard say that.

**Lt Ferrell**

As for a definition on that, that's a Transportation Worker Identification Credential that is starting to roll out. Again, I have to give you the caveat that I'm not the expert in this, I'm from the response department, that's a prevention issue and I do have limited knowledge and I believe that the TWIC is going to be enforced April 2009 and it's only going to be for licensed mariners and I have to be completely honest and say I don't have a lot of information on what the differentiation is between foreign mariners and U.S. mariners.

**Tork**

John, can you perhaps touch on this, because you spoke on this the other day?

**John**

We talked about it— basically I mean the idea behind the TWIC card, and how it ties in to some of the mariners, is basically your U.S. licensing and your captains' licences and stuff. As time rolls on, it will turn into that TWIC credential and will be part of that. The concept behind it is, it is a card that has privileges written to it, much like an ID swipe card, so it eliminates on the good end, when it gets rolled out completely is that you don't have to have your licensing and all your different documents, you can have one document. It's primarily though for commercial facilities, it's primarily for facilities that are required and regulated under MITSA that has security zones, escorted and unescorted areas. So the TWIC card will grant you certain privileges for those areas, much like airport IDs do now in the air environment. I don't see from our perspective as far as yachts coming in, that since you're not going in to those facilities, other than your licensing, which is a coastguard issue, those type of things. But as far as crew members—you're not going to be in a facility that's going to be regulated because as we said a little while ago, coming in as a charter commercial, you're not going to be chartering or commercial in anything so you're going to be coming in as a pleasure vessel, coming in as a yacht. So there is some confusion as to how that goes. It's going to replace some documents, but it's not a unified acceptance as far as admissibility, it will not grant you privileges for saying 'OK, I have a TWIC card, you're going to let me in the country'. No. We won't. Based on that card—I mean it does give you a degree of—it's got fingerprints and it's got pictures, it'll also have the capability some day when they build the thing to actually read the stuff that's on the card. It's not quite there yet. It is basically a

security feature. And I think the maritime stuff that it really goes into is the U.S. licensing, the captains' licensing.

**Tork**

Thank you, John. I think Ken Argent is going to give us some?

**Ken Argent** Waters Edge Consulting

No, just a couple of things. It's a TWIC, not a TWEAK, by the way.

**Martin**

The TWIC needs TWEAKING.

**Ken**

It certainly affects all U.S. mariners. I mean every U.S. mariner is going to have to have a TWIC card otherwise all your credentials are invalid. But for foreign crew, I think, some of the larger yachts do go into commercial ports to take on bunkers or for whatever reason. And they do sit there sometimes for several days. And I think there is an issue for foreign crew because they will be inside Port Everglades or somewhere like that and they will not be able to move freely around the port or get off the boat without an escort. And on Monday, it was brought up that the escort should be provided by the port. Well, that's not proven to be the case. The boat is having to pay for the escorts. And it's an issue that may need addressing. It's not easy for foreign crew to apply, make their application then have to come back several months later to pick it up. It's not always possible. So there will be some complications, I think, for non-American crew.

**Tork**

If I'm right, you did mention though there was some provision where if you have more than 18 crew, they will come to the vessel?

**Ken**

Yes, in Fort Lauderdale anyway, the Lockheed Martin guys that are administering the TWIC—they have made a statement that if there is a vessel with more than 18 crew on it, they will send a team out to take all the applications, the enrolments, for the whole crew in one shot.

**Tork**

But presumably you would still have to come back in some months to get the actual physical thing.

**Ken**

Exactly. And it does not mean they'd all be issued at the same time either. Because they will go through different background checks, possibly. So they may be issued over a period of months.

**Tork**

So I mean certainly something for incoming foreign flag vessels to be aware exists. And it can cause them issues in a commercial vessel.

**Ken**

Certainly after April of next year.

**Martin**

Lisa, do you have a question there?

**Karen Dudden-Blake**      Palladium Technologies

Also, I don't think a lot of people are aware of this but sub contractors going into these commercial ports also need the TWIC cards. We had a whole bunch of our technicians go down there and apply and they've all got their TWIC card. So it's not just the vessels, it's the people working on these vessels that need these TWIC cards as well.

**Martin**

Is that for commercial facilities, or any?

**Karen**

Commercial facilities, and they're telling us that eventually it will trickle down into some of the major ports that have some real security—for instance like Atlantic up in Jacksonville that is also doing military or commercial as well as the private. So, in order to get our guys into these ports, we need to take out the TWIC cards as well.

**Martin**

Sam, please?

**Sam Brown**      Knight Carver

I had a question for the Department of Homeland Security as to whether the—I believe they call it Trusted Traveller programme, or a programme like that—is getting any traction within your organisation? We were talking about that where they're looking at pre-screening? We have something like that in San Diego for entry into the U.S., the sentry programme where people can pre-clear and come in and out of Mexico, and we were talking about entry into the U.S. with some kind of programme like that, and I don't know where that's gone?

**John**

The existing programmes right now are primarily sentry on the southern border. You have Nexus, on the northern border you have Fass, which is commercial, and the programmes are generally tied to NAFTA, the North American Trade Act. There is a pilot programme in the air environment of this type. The closest thing that exists today is that some of those documents, if you're on a northern border, and you're a member of one of the—Nexus, for example, the card does have some degree of identification for border crossings. Right now in the water environment, other than the I 68 programme on the Lakes, between Canada and some of the northern border

sites, that's about the only thing going on right now with it. Our headquarters, we actually have a Trusted Traveller's programme—if that's something out there that they haven't told us, you would probably hear about it before we would in the field.

**Jim**

In South Florida, I don't know if you're talking about the recreational context or the commercial, but down in South Florida, given the travel between South Florida and the Bahamas, they actually have what they call the local boater option, which is you can sign up with Customs and you can go down for an interview process, and you can, as the captain or the mate, or your entire family or crew, you can actually apply for a local boater option and they issue you a card so that when you would call the 1800 number to call in, they will actually ask if you have a local boater option. And if you do—they have the right to call you down to the Customs office but 99% of the time you give them your local boater option card and—

**Tork**

But presumably that's only for U.S. citizens and U.S. flagged?

**Jim**

Correct.

**Tork**

One of the other issues, which we haven't actually touched on yet, and we don't have anyone from INS here, is that especially for the yards, you're going to have yachts in here for a long period of time, and crew are going to come and go, foreign crew. There are tremendous problems with (1) getting the visas and (2) actually getting in the country. One of the major problems actually seems to be the traditional fact that when you come through an airport and meet somebody at the desk who works for INS he has got, or she has got—they don't have to talk anyone else, they can deport you, they can stamp you deported, and they do, on a fairly frequent basis, with incoming foreign crew. I see this as a really major issue for U.S. shipyards and I know that they too see it as a major issue. How can it be addressed—is this a question of lobbying, is it a question of USSA? I mean obviously, it's a question of having to go past the people enforcing it, to the legislative issues. I'd welcome comments from anyone on that.

**Martin**

Gary, please?

**Gary Groenewold** Westrec Marinas

Just to, perhaps, shed a little light on this subject. And you're absolutely right about using the legislature branch to perhaps solve some of these problems. In March, I was at the American Boating Congress in Washington D.C., which is basically a congress of many marine industries, organisations, national marine manufacturers, national retailers' associations, the association of marine industries, of which I'm a Board member, as well as ABRA—the American Boat Builders & Repairers Association. And this was a topic that was a leading issue for us at that conference. Michael Chernov, who's the head of the Homeland Security, spoke at this conference

and I had an opportunity to speak with him afterwards specifically on this issue. And it's something they're aware of, that it is a problem, I'm not going to tell you that there's a solution for it right now but they are very much aware of this issue now. So much so that afterwards in April the South-East Small Vessels Security Summit was held in Orlando—I was asked to speak but unfortunately I was out of the country at the time. And it was hosted by the port security specialists, the Miami Coastguard. There were about 50 stakeholders, and different quasi Government agencies that were there as part of it. And this again was an issue that was addressed at that time. Afterwards, we held our own summit, shall we say, in Fort Lauderdale, which was hosted by the Trident, which is a crew magazine out of Fort Lauderdale. And at that time, we had a number of representatives of the coastguard and it appears that they're trying to produce a pilot programme in South-East Florida, similar to the programme that they use for crews on cruise ships as well as crews coming in as part of airlines, and although they're only staying for a smaller length of time, the plan is to utilise that programme as a template to produce something that will help solve the problem for crews on yachts that are going to stay for a longer period. I later received a letter from vice-admiral James Watson, from Washington, who wrote specifically to thank us for being interested stakeholders, shall we say. And just the fact that both Chernov and Admiral Watson are aware of this problem leads me to believe that, somehow, these issues are going to be solved and hopefully this pilot programme, if indeed it does get rolled out, if it is successful, will then be brought into other coastguard districts around the United States.

**Tork**

Thank you for that. But presumably that referred to entry by sea? Because that is an issue, but a greater issue is where a crew member has to come and go by plane, perhaps through an entry airport which is not even a port city.

**Gary**

Well, hopefully they'll be able to produce a document for the crew member so that they'll be able to use that when they come and go and have an extended period of stay. That's the whole idea of it now and that's what they're working towards.

**Tork**

Thank you very much.

**Martin**

Any comments from the panel?

**John**

I think one of the things in the summit you mentioned—we had, I guess, the New England version. There wasn't so much a topic here but we've had the incidence here and there may even be crew members or captains or owners that we've had—it's the visa issue. I mean, what visa should a foreign crew member have? You've got basically two types out there—you've got the C1D, which is a commercial, but they're very restrictive. So that requires you to send your crew members in and out. Ideally right now. And we do not issue visas. That is not something the Department of Homeland Security does, it's the State department. The B1, B2 visas, I think part of it is there are the people that go—the employees you're hiring to get

those visas need to explain to that council officer or whoever is taking their application, wherever they're doing it, what exactly it is they're doing. Sometimes it's tourist—I'm going to be on a boat, I'm spending the summer on a boat in Rhode Island—they're going to give him a B2 visa and when we encounter him as a crew member, we're going to have some issues that he's not here to be working. Is it his fault? No. Is it my fault? No. It's the State Department (they're not here!). But that aside, it puts the captains and the owners in bad positions, so if you're going to be hiring people I think you need to make sure that those people are briefed, you're sponsoring those people, if you're providing documentation or letters of intent for hire, whatever the process you individually want to use, it's important that they get that B1, B2 visa. It kind of addresses the concern here of a crew member who comes on, and let's say you're laid up for a month in maintenance or dry dock or whatever—

### **Tork**

The point is, John, it doesn't. There's actually a letter from INS saying that in their view a B1 B2 visa should be issued to superyacht crew under such and such circumstance. I've got a copy of it and it was actually circulated around, because it's useful to carry when you go through immigration. The problem is, that I mean I've spoken with crew members who have a letter from the boat, a work contract, for the yacht, with the shipyard, and all the i's dotted and i's crossed. And they're still deported. It really is—and furthermore, a B1 B2 visa is extremely difficult now to get. Even if you had one before, you have to go for a personal interview, you have to leave your passport for an indefinite time with the Embassy, until they get rid of their backlog and get it back to you. You've just called up and hired a crew member, you want him on a plane to be in the refit tomorrow. Well, you aren't going to get him tomorrow if he doesn't already have one. But to get one in the first place, he has to have the need for one. So there is a serious degree of Catch 22 there. Which is not per se your particular branch's problem, but it is a problem that is part of the overall need to make the U.S. a more attractive place to bring yachts for work and for cruising.

### **John**

But I think, you know, and I think most of the officers—and I would encourage you, if you talk to a port where you're coming into the areas, whether it be this area or anyplace else, I think you need to talk to those officers and Customs and Board of Protection right now handles all those aspects, and the Immigration and the Customs clearance stuff. And yes, I mean there's rules and exceptions, and exceptions—

### **Tork**

John will give you his telephone number !! And I'm not joking.

### **John**

Well, our office is there to help and there are vast authorities out there under immigration to address certain concerns, and mistakes are made. Legitimate mistakes are made. Things happen. The idea is not to penalise whether it be the industry or the individual who got a visa, who was given the wrong visa—it's to rectify it, and to keep control. I mean we have two issues that we fight constantly. Security and facilitation of legitimate trade and travel. Security wins, all the time. It will always win. Conceptually, what we are trying to do is, how do you make those as close a partner as possible? Where everyone sort of wins? Knowing that upfront, security will

always win. But you need to communicate that stuff, you need to contact that person. Again, someone made a comment earlier—open dialogue and communication versus screaming and yelling. I've got 50 some officers floating around out here and their days are probably as bad as most everyone else's days too. We want to eliminate that. Arguments, no. Call the office, I've got supervisors on staff, we can be reached 24 hours a day. So I mean we want to rectify it, make everything as enjoyable as possible, and once we see you, we want you guys to go and have a good time, we really don't necessarily want to see you again. So.

**Martin**

Lisa, you have a question?

**Lisa** [From the floor]

John, just wanted to ask you: I've had a C1D and I have a B1B2, the C1D is specifically for an alien crew member in U.S. waters, whereas your B1B2 is business visa so you can do the tours, but you can't get paid while you're in the States. So it's not really an ideal visa, are they, if you're in the water. They're actually going to get one that's ideally sort of for crew members on board so they can get paid via a U.S. company.

**John**

Oh yes.

**Martin**

Do you need a translation? That was a South African.

**John**

Someone brought it up the other day at one of the other sessions and it was kind of interesting and sort of the wink wink smirk is that well, they're technically not paid here, they're paid from a foreign company. I mean, and that is kind of the work around, for lack of a better term, on the B1. You can do business in the United States.

**Tork**

You can do business, we're all doing business here. Right now, although we're all on visa waivers. But on the B1 B2, we're allowed to come and do business in the United States while being paid by a foreign entity.

**John**

You don't want to go on visa waiver and open up a whole another Pandora's box, do you? I can't talk about visas.

**Martin**

Careful what you say, Tork!!

**Tork**

I flew in!! On a bonded carrier.

**Martin**

We're here on holiday!!

**John**

Good answer.

**Martin**

Any other questions before we break for lunch? OK. Panel, thank you very much indeed. Are you going to join us for lunch? Thank you.

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