

PROJECT USA 2007

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Security & Safety

Leticia Andujo	US Customs & Border Protection
William Snyder	US Customs & Border Protection
James Howard-Higgins	Drum Cussac
LCDR Jason Merriweather	US Coastguard

Martin Redmayne

[Recording only started 12.07]

....protecting our borders. As a single unified border agency CBP's mission is vitally important to the protection of America and the American people. CBP's priority mission is preventing terrorists and terrorist weapons from entering the United States whilst also facilitating the flow of legitimate trade and travel. CBP Port of San Diego encompasses a diverse area of responsibility to include all foreign arrival of passengers and cargo in both the air and sea environment. This includes foreign arrivals of private pleasure boats, fishing boats and megayachts. CBP works closely with the stakeholders in the boating community to improve upon facilitating the arrival of legitimate travellers within the boating community while meeting CBP's mission goals and objectives. CBP Port of San Diego supports and welcomes the boating community to San Diego and looks forward to continuing success. Now I'd like to introduce Miss Leticia Andujo. Miss Andujo has been a vessel entry specialist for CBP at the Port of San Diego for 9 years and has a wealth of experience. Miss Andujo will be giving a short presentation that I trust will be informative and help facilitate boaters when arriving in San Diego.

Leticia Andujo US Customs & Border Protection

Good afternoon. OK let's get started here. These are the topics I will be covering. There are five topics, one of them is vessel reporting, and these are the sites in the law if you would like to research them. We'll be discussing declarations, the different type of vessel documents that you need to come into the country; we'll discuss cruising licences, and navigation fees. These are some of the definitions of terms that we use. Arrival of a vessel means the time the vessel first comes to rest within the Customs territory. The Customs territory is three nautical miles from the baseline. The formal entry is when the master of a vessel comes into our office and files paperwork, which is a vessel entering clearance statement. It's a 1300 form, and he will come into our office and fill out this paperwork. These vessels are arriving from a foreign port, they could be arriving from coastwise or you could be arriving on a permit to proceed. Formal clearances are when the master has to come in, do the same paperwork to clear out of the country. Vessels that are on cruising licences are required to clear once they are leaving the United States. Vessel reporting: vessels are to report their arrival immediately, once they've arrived in the US they are to present themselves and their passengers for admission to the United States. Report of arrival will be made at the vessel's first port of call into the United States which

also includes the Coronado islands which is located in Mexican waters. Once the vessel has arrived, individuals are not allowed to embark or disembark; they should all remain on board until otherwise directed by a CBP officer. The penalty for failure to report is \$5,000. Failure to comply with the reporting requirements is a \$5,000 penalty for the first violation and \$10,000 for subsequent violations. Additional penalties do apply and can be issued in the care of the company's owner. We have two reporting locations. One of them is in Shelter Island at the harbour police dock and it holds vessels up to 235feet now. Upon your arrival at the harbour police dock you will call us at the telephone located at the top of the brow and you dial extension 82 to notify your arrival. For vessels that are over 130feet as of April 9, 2007, vessels cannot report to the Broadway pier any more. You will report to the harbour police dock on Shelter Island and this is the procedure for private yachts that are over 130 feet. You contact the harbour police dock at this telephone number, 8 hrs prior to your arrival. And upon your arrival at the harbour police dock once they've cleared you in, you will call us and let us know that you have arrived, by dialling *82 at the telephone that's located at the top of the brow and an officer will go out and clear you. There will be occasions when the harbour police will not be able to clear the dock. You will have to wait for the accommodations and just follow the harbour police instructions. The dock length is 235 feet and masters should be aware that the depth of this dock is 14feet at LW. There are no vertical restrictions at the harbour police dock. Another reporting location is the Dana Launch ramp and once you arrive there is a telephone number that you can call at the 6095575370 option which will connect you to what we call a yacht phone. It's directly connected for vessels that need to be cleared. And at this ramp vessels up to 50feet with a vertical clearance of 42 feet are allowed here. So it's pretty restricted, from the harbour police dock. The declarations: one is immigration, everyone seeking to come to the United States is presumed to be an alien therefore an inspection is used to determine your admissibility. Those persons who are subject to immigration laws, rules and regulations must satisfy the CBP officer that they are legally entitled to enter into the United States. You must declare all food items, particularly fruit and vegetables and meat products. Currency: if you have more than \$10,000 on board you are to declare the currency. Failure to do so can result in the seizure of the currency. Firearms are to be declared on ATF form no. 6 and you can get that from the ATF website. The documents for vessels: if you are a US flagged vessel you must have your original US Coastguard documentation on board. If you are a foreign flagged vessel you would have your certificate of foreign registry. And you will also be required to turn in your clearance from your last foreign port. For vessels that are over 300 gross tons, a certificate of financial responsibility should be on board the vessel and it should be outstanding. Cruising licences: these are issued to foreign flagged vessels that will be sailing to numerous ports in the United States. This vessel is eligible when it arrives at its first US port and it may be issued for up to a year. The master of the vessel will make formal entry at our Customs house; the licence exempts pleasure boats of certain countries from having to undergo formal entry and clearance procedures and these are the countries that extend reciprocal privileges to the United States. When you arrive on a cruising licence, and you haven't touched a foreign port or place or international waters you do not need to report to US Customs for inspection, if you are arriving from another US port. You can find the telephone numbers for all the US ports on our website. If you are arriving on a cruising licence from a foreign port you still have to report your arrival at the harbour police dock and call our officers to get cleared back into the country. If you arrive on an expired cruising licence, licences are not renewable unless more than 15 days have elapsed and the vessel is again arriving from a foreign port. If you are in the country and your licence expires, and the 15 days have elapsed, you can come into our office, turn in your vessel documents, and we'll give you a receipt, and when you're ready to clear foreign we will return your documents to you, you'll make a formal clearance then you can leave and can

go to your foreign port. You need to apply for a new cruising licence then you'll be eligible once the 15 days have elapsed. Successive cruising licences are issued only to vessels that have been built in the US or the vessel has been imported and duties have been paid. If you have a vessel that's been imported and duties have been paid you need to show proof of that and usually when the vessels are imported they give you forms to show that the vessel has been imported. This is an example of a cruising licence. It has a cruising licence number, the port that issued the licence, and for how long the licence is valid. It will have the vessel name and who the vessel belongs to. There is a warning on the cruising licence and that is that if it's owned by a resident of the United States or brought into the United States for sale or charter this vessel is dutiable. If it's brought into the United States by a non resident free of duty as part of personal effects and sold or chartered within one year of the date of entry, duties must be paid. Any offer to sell a vessel is considered evidence of the vessel brought into the United States for sale or charter. The vessel is no longer for personal use and the cruising licence then becomes invalid. If a yacht is sold without prior payment of duty the yacht and its value will be recovered and will be subject to forfeiture. Navigation fees: the fees for arrivals and departures for private yachts under 100 net ton is \$19, over 100 net ton is \$37. That's \$37 to come in and \$37 to clear out. We have a Customs user free decal. It's a decal for services provided and it's from one year; some vessels prefer to have it—if you don't have a cruising licence you must have a decal. If you have a cruising licence you don't need to have a decal. And it's sold to foreign flag vessels 30 feet and over. We have a website where you can purchase these decals, through the bank. And this is the website. The cruising licence is free, there is no charge for it. All you have to pay is the arrival fee. And all formal entries are done at our Customs house on Harbour Drive, and the master will physically report 24 hours after you have been cleared by CBP officer at the harbour police dock. These are our references that we've talked about throughout the presentation. If you have any questions or you would like to have a ruling on a situation, if you're not satisfied with how Customs has treated you at the time of your arrival with your vessel, you can write to the Commissioner of Customs & Border Protection, Office of Rulings and Regulations, and they also have a website and if you go into their legal manual it gives you a lot of good information and it has all these sites on there where any questions can be answered. And these are the topics that we covered.. That is the end.

Martin

Leticia, thank you very much indeed. Jason?

LCDR Jason Merriweather US Coastguard

First of all, good afternoon. On behalf of Admiral Jodie Brackenridge, our District Commander, Captain Chip Strangfell (Charles Strangfell), and Captain of the Port, and Commander Ryder Walker, the officer in charge of marine inspections, I bring you greetings from San Diego. I am Jason Merriweather, I am the chief of prevention here at the Coastguard Sector San Diego. I wear a number of different hats and I'll just give you a brief synopsis of that and then I'll move to some of the slides that we have here. The prevention department is a legacy of marine safety activities, that we used to cover solely as a distinct unit and in 2004 sectors were created, consolidating activities groups and marine safety officers into one seamless section that you can go to for any appeals that has all the authority for that coastguard unit and AOR. For Sector San Diego, our prevention department is made up of 3 departments, inspections which most of you may be familiar with, which covers domestic and foreign vessels inspections, investigations with regard to marine casualty, marine violation and suspension or revocation proceedings which most licensed mariners do

not want to hear. And then we have a waterways management division that's responsible for all aids to navigation, fireworks permits, waterfront facility inspections, marine transportation of security act, facility inspections as well. And then we're also responsible for all the aids to navigation and bridge administration for the area. The interesting part about San Diego—when I arrived in 2005 I thought well, there you are, it's the border to—you know, 70 miles up the coast and that's all you have. And I thought it was going to be a really simple job. Well one thing I learned very quickly is that I have a number of clients and stakeholders that are possibly 300-700 miles away from here, which includes the 700 miles of the Colorado river, from the US Mexican border up to Bullfrog, Utah. Everything in Lake Powell, Lake Mead, Lake Havasu, all the marine events that go on in those places, all the certificated passenger vessels that are in the lakes, we inspect them out of our office here in San Diego, and we also respond to marine casualties, groundings, collisions, and so forth. So in an attempt to make these three topics which had their own presentations that could take approximately 3 hours to present all three of these, I tried to find a way of making this interesting so I shortened it, so hopefully that'll keep your attention for a little bit.

First things first. The A&OA requirements have been slightly adjusted since 2001 to help maintain our maritime domain awareness. It's a simple system, some think—it has evolved since the initial issuance of the system if you will. It applies to vessels greater than 300 gross tons, all vessels, regardless of registry or flag. There used to be a system prior to September 1 that each local captain of a port would receive via fax, hopefully the ship had a fax on it, the arrival. The arrival would come in, some person would get it and vet it and so forth. Well here we have a national vessel movement centre, located back East, that receives all the arrivals, processes all the arrivals and then forwards it in a system to the local captain of the port, our foreign vessel branch here in San Diego, who in turn get that data, process it, try to look for names, cargo issues and we have things here in place in San Diego where we integrate and share information with the CBP often before their regulations kick in for notification so hopefully as your notice is provided they'll have something a little bit prior too. Not to get into excruciating detail, but the minimum deadline for submitting an A&OA is based on the port of departure, port of arrival, vessel transit time, which could be anywhere from 12 to 96 hours, depending on where you're coming from with regards to your vessel. And that includes yachts greater than 300 gross tons. If you travel to a foreign country, for example if you have a cruising permit, which was mentioned earlier by CBP Port of San Diego, and you have a domestic vessel, a US flagged yacht, and you file a local A&OA for consecutive ports of call, you come from Canada and you're going to Seattle, Portland, San Francisco, LA and San Diego, a US flagged vessel, and you don't go foreign, you can file those way in advance as long as you meet your deadlines. If you change your times, estimated arrivals no greater than 6 hours in arrival time, you don't have to worry about updating. But if you do change it, you need to resubmit and update so we are properly aware of your whereabouts there. But if you travel to a foreign country, that resets your clock. With a minimum of 12 hours. For example, if you decide you want to skip San Diego and go to Ensenada you have to refile an A&OA to come in to San Diego or whatever your next US port is. Again, more detail. These are some of the things I just talked about in terms of your time frame. The national vessel movements centre—we've had some problems on the web with the process and data being incomplete; arrivals still coming in, the master says they filed this thing, but fortunately if they keep a receipt of it electronically, they provide that to us as we board the boat, we can go and verify the information and we can work off a paper copy of what you'd have. But again it's the operator's responsibility to file these arrivals prior to arriving or embarking a pilot. Again, the use of the cruising licence, if you will, A&OA, two

different things work together, we have a consolidated operations centre here in Sector San Diego, which there was one mentioned in the safe port act, I'm not sure if any folks saw that regulation but San Diego is one of the test sites for having an integrated DHS operations centre where information sharing across the agency lines has hopefully eliminated or at least minimised, or that's the intent, to minimise those lines and stovepipes and kind of get the information to flow to help out the mariner, to help out the customer. One interesting thing here, which we then put on a slide, if any of these rules are violated, if a vessel does come into port without an A&OA the coastguard—there's an enforcement policy that's probably about 30 pages thick, about what the coastguard shall do. Not the local captain of port's discretion, but what the coastguard local unit will do in terms of expelling from a port, putting an onboarding team onboard, two vessels alongside with nice cruise sort of weapons to escort the boat out of port. We have had situations in the past where some of the regulations as they relate to yachts were a little bit different and you know we also evaluate the sea condition, whether or not, if it's 6-8s off shore and your 120 foot, you're going to have to stay out there for 24 hours, that's not the most comfortable or safest thing to do. Thereby we may escort you in, do a crew accountability, passenger accountability, at the pier, get CBP down there and you'll have all these uniformed people looking you in the face about why you didn't do something. In addition to that the civil penalty associated with violation is approximately \$32,500 which will go to a judge for adjudication. ISM is mostly related to commercial vessels much larger, applicability is on the next slide but it's just interesting definition here. Gives you an example of what this is all about. It refers to operational training, operation of a vessel, as it relates to the safety of life at sea, SOLAS requirements, for foreign flagged vessels. There are parallel US regulations that apply to these vessels, often the language is a little more stern for US vessels and folks coming to ports—SOLAS is kind of using the word *system* loosely to say you can have a binder, like a coastguard may say you need a binder to do this process. Transfer procedures for oil tanker. You need a binder, procedures, laminated page, ISM says as long as everyone understands their job and can find the documents and they're readily available it's OK. So it's a difference in terms of our inspectors and levels of awareness, in terms of what we ask you when we come on board your vessels. Again, here's the applicability—again, it's based on commercially registered vessels. If you have a certificate of registry or a certificate of documentation that says you are a recreational vessel, when you hire a licensed master to operate it and you carry more than 12 passengers which most yachts can, there's just some room in there for interpretation. And we have locally a number of requests to coastguard headquarters about a number of these things as it relates to yachts for clarification, interpretation. The larger yachts are coming here, they have the potential to carry a lot more folks, so how does safety and security relate to those. So as you prepare that question, just remember what I just said, we have to go up to headquarters so we can help out with the termination and implementation of policies. Also I understand that ISPS is also one of the items of interest, if you will, not necessarily here in the United States but with regard to entry into a foreign port that's trying to become signatory to SOLAS or trying to become a more favoured port, so they get more money and business. You see the goal before you, but this is an attempt to integrate the safety and security requirements for domestic and foreign flagged vessels in US and foreign ports. It gives a facility to vessels, opportunities to develop and train for security related events. We work very well with the port of San Diego, working with the security regulations and making sure the fences are where they're supposed to be, their guards are trained and their training records are readily available. And we also do the same thing for commercial vessels, large service freight, cruise ships and so forth. Often after going over 6 months probably to a foreign port or away from the United States a vessel may be subject to a boarding, an ISPS boarding. Boarding is termed

or deemed as law enforcement, not international convention US code, law enforcement being armed and posture of the boarding officers versus an examination, which are things that we do with Customs and so forth with port security control. Again here's the applicability and again we had an instance with a yacht that the country was signatory to SOLAS but because it was a yacht and it wasn't a commercial service yacht they weren't going to issue a document that SOLAS required them to issue, for their vessel. So this is where I'm talking about working in a community and trying to make the US regulations and level of enforcement gel, if you will, with the international world in terms of enforcement and applicability. Here's a little table we tried to make, so it would be a little bit—where it says regulatory at the top of the table there, it means gross regulatory tonnage, GRT, per the US code of federal regulations versus ITC, international tonnage certificate. One local item here for San Diego, for vessels that are less than 300 gross tons—all vessels greater than 100 gross tons ITC, GRT, what have you. They're required to submit a 30 minute notice via the channel 16 or via a landline or cellphone to the coastguard command centre with regards to their arrival or intentions. Because it is a regulatory navigation area to include the entire San Diego entrance channel, San Diego bay, and even south bay. So once your vessel arrives here and you intend to move around the bay without a pilot, not necessarily embark, you would need to let the coastguard know via channel 16, your whereabouts, movement within the harbour. That regulation was clarified in 2005. And that's for all vessels, if you will, in the port of San Diego, greater than 100 gross tons. And that concludes this part of the presentation. I will end on a kind of funny note here—everything that's on this picture with orange or white in it, I'm not responsible for. So the bridge, the lighthouse and that little building in the background kind of simulate the prevention side of things. All the folks that work on my 40 person team, all of our jobs, are found in regulations, US codes and actual conventions for enforcement. Some of the other items are in the actual conventions but we are here to help you, not hurt you, we're here to work with the mariner, under the mariner, as long as he follows the regulations we're good to go. And that concludes my presentation.

Martin

Jason, thank you very much indeed. OK. The idea now is to sort of throw this open for discussion. James is here to answer questions on security issues as I'm sure Jason is, any customs or border issues to the people on my right, to follow up with questions. Hands please.

Alan Gilbert Gilbert Yacht Design

You answered my question about whether your references are international US tonnage. I therefore conclude that a foreign flagged vessel must have a US tonnage certificate in order to clear?

Jason

No sir. The applicability in the regulations talks about gross tonnage, for A&OA. The regulations are based on gross tonnage, whatever certificate is on board the vessel, whether it's gross registered tonnage or ITC, that's what we go by. For example if a yacht were to come in and have a gross registered tonnage certificate of approx 299 but has an ITC certificate for 900, the greater of the two applies for notification of A&OA.

Alan

So in that scenario, it would be in my best interest only to have the 299 certificate.

Jason

I guess you said it first. In your best interests, probably yes. But if you have 2 certificates we take the higher of the two. And it doesn't matter whether it's GRT or ITC.

[From the floor] Lloyds Register

It seems like between vessel entry and Customs and US Coastguard, you guys have a form for everything. Do you actually have a form that you fill out for ballast water exchange before the vessel arrives in the port of San Diego?

Letitia

We don't. Customs & Border Protection doesn't.

[From the floor]

How do you actually verify that the vessels have cleaned out, or exchanged their ballast water, before they've come into the port? This kind of comes into the idea of bringing invasive species into San Diego.

Jason

I can address part of the question here. We do have a ballast waters programme management specials if you will, that's a part of our ports to control boarding team. The regulations—you're not supposed to exchange water or discharge ballast water within I think it is 60 miles, here in California on the Pacific side. So if we boarded your vessel and scheduled an exam for that vessel, and we're speaking general commercial service, none of which are applicable to yachts at this point, we would come on and check your records and ensure that you did not exchange—because it's supposed to be logged, and we would check those records and it's not supposed to be exchanged anywhere closer to the United States territorial seas 12 miles offshore. But we will check the records.

[From the floor]

It's not applicable to yachts at all?

Jason

Well at this point the regulation is required but again, we're trying to work out the bugs with the programme with yachts. With more and more being US built, foreign flag, with countries that are signatory to SOLAS that may not issue it for recreational service to the vessel. There's a whole list of things that we submitted up the chain to our district commander and to our staff and of course to headquarters regarding yachts. The ballast water management programme is definitely a programme that could get out of hand if it's not addressed quickly. The larger freight vessels, cruise ships and so forth, are in line, or at least aware, hopefully they're in line and enforcing the regulations there, but with the yachts it is definitely something different. But we would look to the master of that vessel, the owner of the vessel, to ensure that those programmes, according to US regulations, are met. But at this point I don't

think the Coastguard is truly engaged in developing an enforcement policy for this type of thing. But yachts are one of the emerging class of vessels that, there's a potential for it to get out of hand if it's not addressed. But the ballast water exchange is definitely not allowed within territorial seas, especially if it's come from a foreign port.

Martin

OK. John in the middle there please ?

John Aune Cayman Islands Shipping Registry

Just a quick comment on the tonnage certificates there. You were talking about having well, one or two different tonnage certificates. And if the vessel is over 24metres or 78feet and it goes in international voyages you will have to have an international tonnage certificate. And also all the international requirements, basically the SOLAS requirements, ISM, ISPS, it's international tonnage that is applicable, basically, that tells you whether or not you have to comply.

John Corrough Corrough Consulting Group

A local question. Those of us who over the years have used both the Broadway pier and the regular customs dock are noticing the absence of the Broadway pier and I have two questions. Without the Broadway pier where do vessels exceeding 235feet and let's say 12feet of draught in low water berth for clearance purposes, and then secondly, will there be additional berthing for clearance in the future with the restoration of the Broadway pier, or some substitute. Again, a very local question.

William Snyder

Well some of those questions may be better answered by the port authority. I don't know if they want to address any of those. But CBP have worked with the port authority, the harbour police and some of our local marinas and stakeholders in the community—the reason the Broadway pier is unavailable, it's going through some refitting and construction. Working with stakeholders in the community we determined that the harbour police or the Shelter Island harbour police dock was a viable place for these boats to come in. Now I know you're looking at boats that are larger than that, I would imagine that what we're going to have to do is we will work with the port authority to determine a location for those vessels to arrive, that works for everyone, the port authority, the CBP and the boater themselves and then park the vessel there within the area. But as far as designated, I know there's several different areas but I think the port authority themselves had better answer the question as to which ones are available for vessels over the 235 feet. I can't remember the second part of your question. Oh..... Absolutely.

Graeme Lord International Yacht Collection

I have two questions. The first is for the coastguard. What are your enforcement policies for non tanker vessel response plans at the moment.

Jason

Non tanker vessels. Are you talking specifically yachts?

Graeme

Correct.

Jason

That's the part of our programme that we're trying to develop and implement. The COFR, as Customs or CBP has mentioned, is required for 300 tons or greater. We also would check for a international safety equipment certificate. We would do the document checks, personnel, safety, and then go back and record the data at this point. Because if they do the check list and you don't meet any of their requirements for safety and so forth and it is recreational service for a yacht, we would record that data and just kind of talk to the company at this point. Because some of the requirements as they relate to yachts are in development. So I'm sorry to give you a half baked, or unbaked, response. But yachts are an emerging class of vessel that we're trying to make sure we can wrap our heads around before we go out and wrap our heads around the necks of the people who operate them. I would be out of turn in speaking exactly to say the way San Diego handled it versus San Francisco, and we're trying to make sure we get one answer, one enforcement pattern, and one policy for application to yachts.

Graeme

My second question was regarding US beneficial owners of foreign flagged yachts, probably more towards CBP, is that a few years ago there was a bit of a controversy about I think a few yachts were asked to pay duty on the value of the boat and San Diego was the only port in the US that was enforcing that. That seemed to have been resolved but I just wanted to see what the port of San Diego policy was going to be on that?

Leticia

Well, if the vessel—let's say I assume you're speaking about a vessel that was probably sold while on a cruising licence.

Graeme

No. Just entered into the port requesting a cruising licence and we saw this happen on 3 occasions, where there was a demand made to find out who the beneficial owner was and on three case where the beneficial owner was supplied, that beneficial owner was then charged duty on the value of the yacht.

Leticia

Well depending on the scenario, I would have to have the specifics to answer your question thoroughly. On occasion we have had vessels that are owned by US citizens and they reside in the United States and they have a foreign flagged vessel, and it's foreign built. The law states that vessels owned by United States citizen and resides in the United States that that vessel needs to be imported and duties paid, because the citizen lives in the United States and is bringing in a foreign product. Does that answer your question?

Graeme

Well, I think as with any law, it's the application of it. I can tell you that the prominent maritime yacht lawyers— I don't know what the recommendations are going to be this summer, but certainly recently, have been, bypass San Diego. It's just too risky on whether you're going to have to pay duty or not. We're talking on some of these yachts, a substantial amount of money to say well, you know, throw the dice and we'll see what happens. I think it's a very critical decision that the port of San Diego needs to make and make a public announcement on your enforcement, because we're talking a lot of money.

William

I'd like to make a comment on that. You're bringing up a reference to some cases that happened I think several years ago, I don't have the specifics here so to comment on those cases wouldn't be fair without having all that information here to comment on the case, even if I was able to. But I know since that time, let me put it to you, if you have a specific question on that topic, feel free to send it to us, we'll send it to Rulings and make sure it's sent out to you. Because our policy at San Diego will be the agency's policy and will be directed out of Rulings. I know we've worked very hard here in San Diego—when I first got here there were some drumbeats that I picked up on through the yachting community of things that had happened or things that had occurred and like I said, I don't have that information here to evaluate or comment on it, but I want to assure you that we will make every effort here in San Diego to welcome the boating community as long as it's safe and legitimate travel and follows the rules and regulations of the agency to accomplish that. So I don't know what a better answer to it is. If you have a question specifically on that I'd be glad to forward that up, but I'm not sure if referencing something that happened several years ago—I'm not sure if I understand the question totally.

Martin

Fred, you have a question ?

Fred Robinson Carney Badley Spellman

I've got two questions for our Customs representatives, both with respect to the cruising licences and the first is, on the cruising licence, if the foreign owner wants to be in the United States for one year what are the practical considerations that Customs evaluates in whether or not they will allow the cruising licence to run the one year term.

Leticia

The licence is issued for up to a year, that's the way the regulation is. We ask the owner how long do you want your cruising licence. Well, you can have it for than a year, or up to a year. There is no special requirements for why you want it for a year.

Fred

I see. So if the owner just says I want it for a year then Customs will issue it for a year. I see. The second question I have is, in terms of successive issuances of cruising licences, I know that the vessel has to, there has to be a 15 day expiration and the vessel has to leave US waters and then re-enter, but you listed some additional requirements there. I was always under the impression that a successive licence could be issued very easily. Is that not the case?

Leticia

Well, successive cruising licences are issued to vessels that were built in the United States or the vessel has been imported and duties have been paid. Otherwise the cruising licence will expire and 15 days have to have elapsed before you qualify for a new cruising licence.

Fred

OK, so maybe I'm missing a refinement on a successive licence. If the licence lapses for 15 days and you leave the United States and then re-enter you can get a second permit without having paid duties on the vessel.

Leticia

Yes.

Fred

Thank you.

Eric Goldring Goldring & Goldring

The comment about a US owner or individual having an offshore corporation and somehow that justified jumping over that legally recognised entity is something that isn't even contemplated anywhere else in the United States. If you have a corporation, the corporation exists as the entity. You don't get to jump over to the stockholders. On what basis does San Diego or this aspect of it, say we're going to ignore the corporation and go to the shareholders or the beneficial owner of the corporation to assess duty?

Jason

Well, once again, the only answer I have to that is, I know there was a case that involved a yacht when I first got here, actually prior to when I had arrived here and I don't have the information here to comment on it. We don't jump over anything; if we had something that we were unable to make a decision on, like I said, we send this up to have a determination made. I see that the same topic comes up and is referenced from a particular case. I mean has this happened recently, where you can tell me when this has come up in San Diego ?

Eric

Well, no. I was just listening to the comments saying that if the beneficial owner of this foreign corporation is a US citizen the vessel is dutiable. This is what I just heard. And I've never ever heard that in any other jurisdiction in the United States. There's got to be a basis for that if that's the position that's being espoused. And I'm just asking for that basis. Because it's not something you can do on a case by case basis because every single foreign flagged yacht has got some sort of different, customised offshore structure, if there's a US individual involved. So there's got to be a formula or a case law or regulatory basis to make the statement or, alternatively, you say, that's not our position. So it's safe to come in. It's a big risk to say well I'll come in and then you say we'll send it up and figure it out. Because this is the only jurisdiction I'm aware of where that's ever been said.

Leticia

Well, it's in the law.

Eric

I'm asking for the law. What's the law that says you can ignore the offshore corporation and go to the beneficial owners of that corporation? That's the question.

Leticia

Well I don't believe it says that you have to ignore it. It doesn't state it in that way. I don't have the cite with me now but I can surely get it to you if you give me your information. I can email with you. It is on the website, if you go into the CBP.gov it's in the legal website, if you just do a search it'll bring it up.

Eric

Is it possible maybe we can get that and I can clarify it tomorrow? If I give you my email address today?

Leticia

Sure. I'll do my best to get it to you.

Eric

Thank you.

Martin

Eric, is it possible that when a declaration was made someone said the actual individual name rather than the corporation? And that then brought out the imposition?

Eric

Well anything's possible. The worst thing you can do is to conjecture. But the concept was well, there's an offshore corporation with US nationals having an interest in that triggers duty. That's what being said, and there's case law or something on that, which—I've been doing this a while, I've never heard that. So that's why I'd like to get that, because if that is in fact the case, that would be—because this shuts down the state of California. And potentially all coastal waters. And I think we would all know about that case. So.

William

Well, Miss Andujo, like she said, she'll go and research that and pull it up and try to get it out to you. But as far as the comment of shutting down, I definitely don't want that as an ending comment, or a question, or whatever, coming out of here, because we're not in the business of shutting down legitimate travel. You have to understand that Customs & Border Protection with all its other duties is also here to protect the economy of the country also.

Martin

Eric, can I ask you one question. How many US owners are foreign corporation owners?

Eric

Thousands and thousands and thousands.

Martin

No I know that. I'm just saying it shouldn't be a problem.

Eric

Well, I've never heard of it being a problem until today. That's why I asked.

Martin

We'll find out for tomorrow.

Mike Hein MCA Marine M/Y Mea Culpa

I have a question on immigration. The foreign flag vessels typically have foreign crew on board them and they come into the United States on visas and my question is, what is the current procedure for a crew member entering on a C1D visa, which is a 29 day crew visa. What's the procedure for them to renew their visa?

Jason

To renew the visa would be the same as I guess if they had to go back to apply. The visa itself is issued through the state department.

Mike

I'm sorry, I didn't ask the question properly. If a yacht comes into the United States and the crew member has a C1D visa, and they're given 29 days to remain in the United States but the yacht is not leaving in 29 days, what does that crew member have to do; they can go to Mexico, and come back in on an airplane, or come back in on a walk through the border here in San Diego, is there a number of days they have to be outside the United States to renew their 29 day visa.

Jason

Once they depart, let me make something clear to you. You can't use the crew visa as an entry document over the border. Once they depart and they make a new application for admission, that restarts the clock.

Mike

So there's not a one day or a 24 hour or any kind of requirement to be out of the country.

Jason

Not that I'm aware of, no. Once they depart and make a new application for admission—what happens is your document—when they make application to a CBP officer for entry into the United States they have to be making the admission whatever the purpose of their stay is, has to fall under the classification of the document they were issued. Or the visa they were issued. And then the amount of time that it says they're allowed to stay is equivalent to whatever that visa has given. For example, the visa for 29 days, B1, B2s or a longer stay or a wider window of stay. So what happens is, we run into this in San Diego sometimes, we have vessels that'll come in to have work done and they'll have individuals on it who have D visas and the work's going to take longer than 29 days. So most of the crew visas are given out to more of your cruise lines and cargo vessels and things like that. The crew on a private yacht would benefit more with a B1 visa which has a longer window of stay.

Eric

If I could clarify that. You really don't want a B1 visa because a B visa is like you're here on vacation. You want a C1 visa. If you have a C1 visa you can stay for as long as the vessel's journey. You're on the boat. You don't want a D visa because that's got a time limit. So a C1 visa is really, if you have that, then you don't have a problem. You may find some crew can't get a C1 visa, then you have to deal with that before they get here, but once they have it then there's no issue.

Jason

Well C visa is a transit.

Eric

Correct. But the vessel is coming and going and it could be here for a year on a cruising licence and it's still in transit in a yard having work done or whatever. Correct?

Martin

Does that cover your point, Mike?

Martin

Right. Can I go to Graeme now, please Esther.

Jason

I'll make one quick comment here. Usually when we say there's a C1, the Ds are combined.

Graeme

I just wanted to comment on the visa question because the marine industry in South Florida has put a lot of effort into this. There's a group of us that meets about every two months both with the coastguard and with the head of Border Protection over there. The determination there, from all of these meetings that the B1 B2 visa is the most applicable visa for the yachting. The C1D does come under a lot of scrutiny for the 28 days and the transit side portion of it appears to be more for a cruise ship type of crew member who's transiting from, let's say he's flying into Houston then he's

transiting to Miami to meet the ship and that's when the transit part is more applicable, so the B1 B2 is the one that was succeeding with most of the marine industry of South Florida. We've compiled a letter that is available on their web site, it prints out on their letterheads, so when the crew member applies for the visa in his country it lines out what we're asking for, and what we're seeing as a result of the letter the crew that use it are getting B1 B2s and they're getting them valid for 10years at a time multiple entry. And it's working beautifully.

Jason

Hence the reason I'm right off the B1. In knowing that this may have come up I went on to some of the US Embassy websites in some of the foreign countries and I noticed that in speaking about the C1D they go down and talk about dry dock then they mention private yacht. And I'll just read out what it says. "if you will be working on a private yacht sailing out of a foreign port cruising in US waters for more than 29 days you require a B1 visa." That's off the department that issues it.

Martin

Thank you. John Aune first,

John Aune Cayman Islands Shipping Registry

Since part of the topic for this session was the impact and success of RSPM and ISPM I wanted to actually put a question to the management companies and the captains that are here today that have experience from this. If they can share some of the views and on the success of the implementation of ISPS and ISM on the vessels and also the benefits, if they've had any benefits.

Martin

Clive, do you want to answer that?

Clive McCartney Fraser Yachts

The quick answer, John, to that specific question is ISM is I think superb, demonstrable value, continued benefits, safety in operation and indeed secure operation. ISPS I'm personally not convinced at all. I think it's failing.

Martin

Why is it failing?

Clive

Every time anybody asks me about ISPS, whether it's an owner, a captain, another yacht manager, it's a bad thing. It's a pain in the neck, why do we have to go through this, I don't want to do it, all it is, is a paperwork exercise. It's crap. For yachting, and I'm sure that James, when he has a chance to stand up and give his piece, he'll back me up here. Yachting is inherently secure. The nature of what we're doing with these boats, for these clients, is secure. Because it's the nature of the clients that we're working for. So I think for yachting, ISPS has a receding appropriateness. If that's a word. And then OK. To move on to the reason I had my hand up, Martin. I have a suggestion for Lcdr Merriweather and Mr Snyder, following on from the work that Graeme and others have done in South Florida we heard yesterday that San Diego

wants to be the hub for yachting on the West Coast. Why don't you guys talk to sector Miami and see if you can develop some of those processes and procedures that seem to work in South Florida?

William

I didn't catch who you said to talk to?

Clive

To Miami.

William

Well when I'm in conversation with Miami I'm not sure what best practices are that you're referring to that they're using in Miami, but we'll be glad to continue looking at whatever it is. I don't see there's much rules, policies, or regulations that are any different for CBP here that they are for Miami.

Jason

I absolutely appreciate your remarks and we have been in contact with the prevention staff at coastguard sector Miami, inspectors and so forth. In Miami, it's even more restrictive in terms of entry into the port in terms of vessels graded as 100 gross tons foreign flag coming from an island following an NOA which is local, not necessarily in the national vessel movements centre. We've not necessarily adopted that because one of the things, as I mentioned in my presentation, that we're trying to get our heads around is the applicability of US regulations and SOLAS regulations to include some of the ISM and safety measure practices that are technically required according to ISM and SOLAS. That I can guarantee you are not being enforced to the letter in Miami or any other US port, and that yachting, like you said, is inherently safe, there's people that have put a lot of money—I talked to Mike about this earlier. The vessels that we see CBP and coastguard and so forth, they're coming out of port. This is not giving a black eye to large freight vessels and so forth, but I can tell you that you all owners and management companies of yachts, take great pride in your product and your service. You take great pride in the quality of your vessels. There's some boats that come in here that don't meet the intent of SOLAS, don't meet the intent of ISM and we have to go and do all the examinations and so forth. You all want to see it succeed, in terms of security, you have your own practices in terms of who you hire to do that. And what you can carry on your vessel when you come into a country. So those are the things that are already taken care of. And like I said, we've talked to Miami, and we are in constant engagement with Miami as we develop our arguments to make sure we don't send someone out, expel a boat from port for not having a certificate that's required by SOLAS that the flag state doesn't issue to a vessel of that class and we're whining well according to the US regulations you're supposed to either have it or get out. SOLAS says well, you know, it would be nice. The country says well, for yachts, we don't do that. For commercial vessels, we do. This is a yacht. So I mean, we're kind of caught in between and we're definitely in conversation and communication with Miami and absolutely yes, sir. Because we don't want to reinvent the wheel.

Martin

Jason, thank you. Lisa please.

Lisa Knapp Island Scribe Communications

I believe it was Mr Snyder who said that San Diego should have the same laws as Miami does as we're all part of the United States. One thing that I hope San Diego doesn't emulate from Miami and Fort Lauderdale is a big problem in interpretation from the individual agent as to how those laws are applied. Especially in immigration. It's a big touchy issue with foreign nationals crew that are coming in. As far as I believe the word is called the discretion that the agent has, and the wide latitude they have to make a decision that's very inconsistent from one foreign national to another. And especially harsh on those coming from South Africa or the Philippines.

Martin

James ? just to give you your hour of glory. Talking about ISPS. Has it worked? Because what is the threat that a yacht poses? When they're so well run?

James Howard-Higgins **Drum Cussac**

The threat today to the wider yachting community really exists in petty crime within ports. And most of the yacht owners, management companies and crew that I've met and worked with are grown up practical people who have a very sensible approach to security and safety under way and in ports. There are throughout the world as yachts are going wider and further afield there are obviously risk areas or greater areas of risk and in those passages and transits people take the necessary and appropriate advice from their management companies or respected advisors. I think from an ISPS standpoint a lot of people feel within this community that it was a knee jerk reaction driven largely by the US government pushed out through the UN IMO and the wider considerations for this industry weren't taken into account. And it was a piece of legislation, a management system, really addressing the merchant industry and shipping industry, and a lot of those particularly the cargo regulations within the code have no real application for the industry we work in today. So from my standpoint I think it has growing pains, now with 34 months into the working code, a lot of the developing countries round the world are having problems implementing the necessary regulatory requirements set out by the IMO and it is causing more problems than solving problems. So I agree largely with what Clive said, that at the moment the industry is not being subjected to threats from organised crime, there are local threats in difficult countries round the world but they are isolated instances and there are obviously areas, the horn of Africa, pockets of difficulties in Venezuela and Columbia where the threat is raised, but good working practices exist in this industry, and grown up sensible advice is often taken on board and I hope that continues.

Martin

Yes, one final comment and then I think we have to break for lunch. Right over the other side, please Janine.

[From the floor]

I just have a quick question. What, from the standpoint of a port facility security officer, under the ISPS code, what actually is the size of a facility that actually qualifies it as port, or gives it port status? Like my question I guess is, in reference to some of the repair yards that are in the port of San Diego, how big do they have to be for you to determine that they are actually a port facility requiring a security officer? Like who makes that decision?

Jason

Well, with regard to the—you're talking about US ports?

[From the floor]

Well less the port than the facility within the port. And what the requirements are to have a facility security officer.

Jason

OK. Those regulations are covered under 33CFR 105. For the facility. The facility if it's capable of handling a vessel that's otherwise classified under the 10 chapter, which is large passenger vessels, or other vessel subject to the implementation of the maritime transit and security act, not ISPS, because that's international, but within the port, you're talking about, for example, Knight & Carver? If they have a vessel like one they had, a very large passenger vessel subject to chapter 104 of the CFR, then they would have to have—the vessel has a security plan. That's required by the regulations. The facility would need to meet that equivalent level of safety. We're working with Hornblower Cruises right down here on the waterfront. Inspiration Hornblower, the biggest vessel they have, capacity 1000 passengers, needs to have a vessel security plan and then they work with the port of San Diego to assure that their shoreside patrols from Hornblower meet the intent of the regulations of the facility security plan.

[From the floor]

So how big a ship is, that calls that particular facility, determines their status, I guess?

Jason

Let's talk about it like this. A large passenger vessel, you're talking about, I'm trying to remember the gross tonnage. But I know a passenger vessel has to be greater than 300 passengers. But also the facility is receiving international trade, as we just discussed. For example, all the freight vessels, all the cruise ships, all the roll over roll off ships, those facilities which under the port of San Diego are required to have a facility security plan and the vessel's supposed to have a vessel security plan. So it's not just passenger vessels.

[From the floor]

I guess I'm more focusing on the smaller guys. The smaller facilities, the repair yards that are around here. The yacht community.

James

Are you specifically asking whether all facilities such as the IYCA in Antibes, for example, that has opted out of ISPS regulation, being a private marina, in effect.

[From the floor]

I don't know if they've opted out of it by choice or if they opted out—

James

They've opted out of it by choice, and this probably goes back to the mechanics of the industry in terms of having a full time port facility security officer and the workings of that terminal, they've decided not to recognise the ISPS code.

Martin

John Aune, a final comment please.

John Aune

Just a quick comment on that. I mean, most repair yards, shipyards, they're not subject to being approved in accordance with the ISPS code. And most vessels, if they go to a shipyard, if they go to a repair yard, if they're going to stay there for a substantial time, they will not be operating their security system on board normally. Maybe they'll restart the system when they leave the shipyard. They will not operate it during that period. If they're only there for a short period of time they would normally just expect them to fill out a declaration of security and the rest will basically look after the security of the vessel themselves. And it would not be the responsibility of the shipyard.

James

That's correct. I mean it's useful for someone like myself who's working in the yacht industry to get feedback on the value of ISPS and whether it is reducing just basic petty crime within the ports in terms of enhanced procedures that you put in place or whether you see this as really a difficult procedure, not workable within the environment you're working in and it's just another unnecessary piece of legislation. So what I wanted to get back today from all of you sitting here today, was, what improvements I can pass back to the IMO, what improvements need to be made to make it easier for you guys so you understand the working practices of the code, but also the value that it adds.

Martin

OK. We can probably do that over lunch. Alright panel, thank you very much indeed.

We're going to take a break for lunch, we're back here at 2.45 to allow the extra time for lunchtime. Thank you very much.
