

United States Coast Guards Role with respect to Demise Charters

The following information is directly out of the U.S.C.G. Marine Safety Manual and used as their guideline in determining the validity of Demise Charters. Feel free to read what regulations must be adhered to by the Coast Guard in order to have a valid Demise Charter.

USCG Marine Safety Manual, Vol. II: Materiel Inspection

SECTION B: DOMESTIC INSPECTION PROGRAMS

CHAPTER 4: INSPECTION PROCEDURES APPLICABLE TO VESSEL TYPES, CLASSES, AND CATEGORIES

Controlling

Authority:

G-MOC Releasing

Authority:

G-M Revision

Date: 21 May 00 Page B4 - 7

5. Charters of Small Passenger Vessels

Demise or "Bareboat" Charters

- a. The following guidance is intended to be helpful in determining whether a vessel under a purported demise, or "bareboat," charter is subject to inspection.

Background

- b. The law that requires the inspection and certification of small commercial passenger carrying vessels was enacted on May 10, 1956, by a Congress gravely concerned over several marine casualties involving loss of life on uninspected vessels that were carrying passengers for hire.

USCG Marine Safety Manual, Vol. II: Materiel Inspection

SECTION B: DOMESTIC INSPECTION PROGRAMS

CHAPTER 4: INSPECTION PROCEDURES APPLICABLE TO VESSEL TYPES, CLASSES, AND CATEGORIES

Controlling

Authority:

Demise Charter Concept

c. The concept of bareboat, or demise, chartering of vessels has developed in Admiralty law as a **legitimate means of transferring the rights of ownership of a Vessel to a charterer for a period of time.** At the time of the drafting of the Act of May 10, 1956, demise charters were seldom used by private firms, in favor of other more convenient and less risky charter agreements such as the time charter. Their use was most often made by the federal government as a device for acquiring necessary merchant vessel tonnage in times of war and emergency. During World War II, the government took over and operated, directly and through "general agency agreements," many privately owned ships. Rather than condemn and pay for such a ship, the government frequently used the device of taking it on demise from the private owner. **Virtually all bareboat charters were made for a period of time that exceeded a single voyage.** Considering the motivating factors behind the Act and the way in which bareboat charters were commonly used at the time of its drafting, it is doubtful that the Congress intended to create a specific exemption from inspection for private yachts being bareboat chartered to carry large parties of passengers on pleasure cruises. This practice has, however, become fairly common in recent years, and has withstood most legal challenges **when all** of the requirements of a valid bareboat charter are complied with. **Such a charter, although it may expose the charterer to considerably higher risk than the charterer would assume as a passenger aboard an inspected vessel, is a legitimate option the charterer has the freedom to choose.**

Enforcement

d. The Coast Guard's enforcement role in this specific area is then limited to ensuring that charters that purport to be bareboat, in fact are. Some vessel owners are unaware or have been misinformed of the requirements for a valid bareboat charter. Others attempt to create the appearance of a bareboat charter to avoid the perceived expenses and inconvenience of Coast Guard inspection.

Evaluations of Charters

e. The decision as to whether or not a valid bareboat charter exists **is not** a subjective one. The necessary conditions of bareboat charters have been fairly well standardized, with the most significant and difficult test being that of "control." The owner must give up his or her vessel "pro hac vice" (for the occasion) as a complete demise, turning over the incidents of ownership to the charterer: this includes complete management, control, and operation. Some yacht owners are reluctant to give charterers such complete control. Nevertheless, failure to do so creates an invalid bareboat charter. Likewise, any payment of consideration by the guests of the charterer, either to the charterer or the owner, would result in the guests being considered passengers for the purpose of the inspection statutes. To determine accurately if a bareboat charter is valid, it is necessary to evaluate not just the terms of the agreement between the parties, but also the operation itself. It is not uncommon for the two to be leagues apart. In other cases, the charter may be fully in accordance with the agreement, which is itself faulty. For this reason, the evaluation process sometimes requires boarding a vessel while underway so that investigating officers may obtain firsthand information.

Elements of Valid Bareboat Charters

f. The following provisions are indicative of **a valid bareboat charter**. Note that a valid bareboat charter does not necessarily require that all of these elements be present. Each arrangement must be evaluated on its own standing:

- (1) Although a master or crew may be furnished by the owner, **full possession and control must be vested in the charterer** (a provision requiring the charterer to be guided by the advice of the furnished master or crew, in regard to technical matters or navigation, is acceptable);
- (2) The master and crew are paid by the charterer;
- (3) **All food, fuel, and stores are provided by the charterer;**
- (4) All port charges and pilotage fees are paid by the charterer;
- (5) Insurance is obtained by the charterer, at least to the extent of covering liability not included in the owner's insurance. A greater indication of full control in the charterer is shown if all insurance is carried by the charterer (of course, the owner retains every right to protect his or her interest in the vessel);

NOTE: Any provision that tends to show retention of possession and control (including basic navigation) by the owner or the owner's representative should be carefully examined to see if it contradicts the claim to have created a bareboat charter.

- (6) The charterer may discharge, for cause, the master or any crewmember without referral to the owner.

(7) The vessel is to be surveyed upon its delivery and return.