

# Foreign-Flagged Yachts, Cruising Licenses, and Dutiability

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## 1. Cruising Licenses

A cruising license enables a foreign-flagged yacht to move between U.S. ports without undergoing formal entry and clearance procedures at each port.<sup>1</sup> A foreign-flagged yacht may obtain a cruising license only if U.S. Customs and Border Protection (“Customs”)<sup>2</sup> has determined that the yacht’s flag state recognizes similar privileges for U.S.-documented yachts cruising in that state’s waters. A list of these flag states appears in the regulation and includes most of the popular offshore flags, such as the Cayman Islands, the Marshall Islands, Jamaica, and the British Virgin Islands. Malta is a notable exception.<sup>3</sup>

Cruising licenses are issued for a period not to exceed one year. A foreign-flagged yacht generally may apply for a new cruising license only if more than fifteen days have passed since the yacht’s last cruising license expired or the yacht surrendered its cruising license, and the yacht returns to U.S. waters from a foreign port.<sup>4</sup> A foreign-flagged yacht in South Florida, for example, may depart for the Bahamas upon the expiration of its cruising license and apply for a new cruising license upon its return at least fifteen days later. However, a foreign-flagged yacht that is U.S.-built or duty-paid may obtain successive cruising licenses.

A foreign-flagged yacht does not need a cruising license to cruise in U.S. waters. Without a cruising license, a foreign-flagged yacht still may move between U.S. ports but must obtain a “permit to proceed” from Customs at each port. This procedure results in inconvenience, and a modest additional expense in the form of Customs fees, for the yacht’s owner.

Cruising licenses are available for foreign-flagged yachts “used only for pleasure” and subject to the condition that the yacht “shall not engage in trade or violate the laws of the United States in any respect.”<sup>5</sup> This pleasure-use restriction means that a foreign-flagged yacht with a cruising license may not be used for commercial purposes, such as transporting passengers and merchandise. Customs takes a broad view of who counts as a “passenger,” such that, for example, hosting business guests onboard a yacht may violate the yacht’s cruising license.<sup>6</sup> A foreign-flagged yacht under bareboat charter, however, is not considered to be engaged in trade, and may be issued a cruising license, provided the bareboat charterer’s use is recreational.<sup>7</sup>

## 2. Dutiability

Yachts brought into the United States for sale or charter to U.S. residents are generally subject to duty, according to the Harmonized Tariff Schedule of the United States, at the rate of

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<sup>1</sup> See 46 U.S.C. § 60504 (2012); Yacht Privileges and Obligations, 19 C.F.R. 4.94 (2017).

<sup>2</sup> Before 2003, the U.S. Customs Service.

<sup>3</sup> See 19 C.F.R. § 4.94(b).

<sup>4</sup> See Customs Directive 3130-006A (May 20, 1999); Customs Directive 3100-06 (Nov. 7, 1988).

<sup>5</sup> 46 U.S.C. § 60504; 19 C.F.R. § 4.94(c).

<sup>6</sup> See, e.g., HQ 114120 (Oct. 8, 1997) (owner allowed to host friends and employees but not business clients); H197255 (Jan. 23, 2012) (environmental organization allowed to host educational tours but no fundraising events).

<sup>7</sup> See, e.g., HQ 114198 (Dec. 19, 1997).

1.5% of the yacht's appraised value. Yachts brought into the United States for the owner's private, recreational use, on the other hand, are generally not subject to duty. An owner who brings a yacht into U.S. waters for his private, recreational use may not subsequently offer the yacht for sale or charter to U.S. residents without paying duty.

A "boat-show bond" enables an otherwise-dutiable yacht to be offered for sale to U.S. residents at U.S. boat shows without paying duty up-front. The bond is available for used yachts more than 79 feet long. The yacht may be shown at boat shows and outside of shows to prospective purchasers who viewed the yacht at a show. An owner may not make any personal use of a yacht entered under a boat-show bond.<sup>8</sup>

Industry groups are currently pushing a measure known as "deferred importation," which would enable owners of otherwise-dutiable yachts to offer their yachts for sale to U.S. residents in U.S. waters without paying duty. Instead, any duty would be payable upon the sale of the yacht.<sup>9</sup> The measure's supporters stress the economic impact of superyachts, while the measure's opponents cite enforcement concerns.

### 3. Recent Developments

Several Customs offices in Florida have recently taken the position that any offer to sell or charter a foreign-flagged yacht, even a yacht that is non-dutiable, renders the yacht ineligible for a cruising license. Thus, an owner whose yacht is listed for sale may not obtain a cruising license even if the yacht is duty-paid. These Customs offices apparently reason that any offer to sell a yacht, even an offer that does not trigger liability for duty, amounts to engaging in trade and that yachts engaged in trade are ineligible for a cruising license.

Consider the fact that a U.S.-documented vessel with a recreational endorsement, much like a foreign-flagged yacht with a cruising license, "may be operated only for pleasure."<sup>10</sup> This pleasure-use restriction means that a vessel with a recreational endorsement may not transport passengers or merchandise; however, it has never been interpreted to prohibit such a vessel from being sold, chartered under a bona fide bareboat charter, or offered for sale or charter, provided the end use is for pleasure. Under the vessel documentation statutes, a vessel is "engaged in trade" when it is used to transport passengers or merchandise, not when it is merely offered for sale or charter. It is difficult to see why a foreign-flagged yacht applying for a cruising license should be treated differently when the two statutes use almost exactly the same language to describe the pleasure-use restriction.<sup>11</sup>

Industry groups are currently working with Customs to reverse this interpretation and ensure that non-dutiable, foreign-flagged yachts can obtain cruising licenses regardless of any offers to sell or charter those yachts.

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<sup>8</sup> See 46 U.S.C. § 1484b; Large Yachts Imported for Sale, 19 C.F.R. § 4.94a (2017).

<sup>9</sup> H.R. 4065, 114th Cong. (2015) (to be reintroduced in 115th Cong.).

<sup>10</sup> 46 U.S.C. § 12114(b).

<sup>11</sup> Compare 46 U.S.C. § 12114(b) (vessels with recreational endorsement "may be operated only for pleasure"), with 46 U.S.C. § 60504 (cruising license available for vessels "used only for pleasure"). For a fuller discussion, including the relevant regulatory history, see David R. Maass, *Foreign-Flagged Yachts, Cruising Licenses, and Offers to Sell or Charter*, COMPASS, Aug.–Sept. 2016, at 6, available at <http://iyba.yachts/news/foreign-flagged-yachts-cruising-licenses-and-offers-to-sell-or-charter>.