So, You Want to Charter Illegally?

*Fine* (and Penalties)!

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1. USCG has increased enforcement of Vessel charter and inspection regulations.
2. Precipitated by sharing economy; and
3. Numerous accidents and deaths on illegally chartered vessels.
4. Resources:
   * 1. Facebook Page: Uninspected Passenger Vessel & Bareboat Charters-Miami; <https://www.facebook.com/upvmiami/>
     2. <http://www.professionalmariner.com/Web-Bulletin-2018/Coast-Guard-cracks-down-on-illegal-charters-along-Floridas-Gulf-Coast/>
     3. <https://coastguardnews.com/coast-guard-announces-civil-penalty-for-illegal-charter-operation-on-lake-michigan/2018/04/06/>
     4. <https://coastguardnews.com/coast-guard-halts-illegal-charter-operations-after-rescuing-2-near-fisher-island/2018/06/24/>
     5. <https://www.miamiherald.com/latest-news/article216051620.html>
     6. <https://coastguardnews.com/coast-guard-issues-chicago-mariner-80000-fine-for-operating-illegal-passenger-vessel/2019/03/01/>
     7. <https://www.pacificasailingcharters.com/pages/mobile_site_pages/Illegal-passenger-for-hire-operations-San-Diego.html>
5. What are Illegal Passenger Charters?
   1. “Bareboat” (Demised) Charters that:
      1. Are not “bona fide” or
      2. Exceed passenger limits
      3. Resources:
6. Yacht Charter Decision Tree (attached)
7. USCG Charter Brochure (attached)
   1. Time Charters conducted without appropriate Coastwise Endorsement.
8. Potential **Criminal** Fines or Imprisonment, e.g.,
   1. If the “life of any person is destroyed”: 18 USC 1115 (up to 10 years in prison and/or criminal fine;
   2. Failure to comply with a Captain of the Port Order not to engage in illegal charters in violation of 33 USC 1232(b)(1) and 33 CFR 160.105 (up to 6 years in prison and/or fine up to $500,000);
   3. Making false statements to the Coast Guard in violation of 18 USC 1001(a)(Violating 18 USC Sections 1505 and 2, by directing passengers to lie to Coast Guard investigators.
9. Potential **Civil** Penalties: See, Penalty Adjustment Table listing about 150 **Civil** Penalties administered by the Coast Guard, issued April 5, 2019:
   1. <https://www.federalregister.gov/documents/2019/04/05/2019-06745/civil-monetary-penalty-adjustments-for-inflation>;
   2. In .PDF format (attached): <https://www.govinfo.gov/content/pkg/FR-2019-04-05/pdf/2019-06745.pdf>
10. Examples of potentially relevant (2019) **Civil** Penalties relating to Illegal Charters:
    1. Employing a person or serving in a capacity not licensed on an inspected vessel or a vessel required to be inspected: 46 USC 8101(g) ($18,943.00 daily with each day constituting separate violation);
    2. Small passenger vessel not manned as required: 46 USC 8101(h) ($2,505.00 for small passenger vessel, individually and *in rem*) (46 CFR 15.605;
    3. Operation of small passenger vessel or uninspected passenger vessel without a properly licensed operator: 46 USC 8902, 8903, 8906 ($39,936.00, individually and *in rem*);
    4. Lack of proper Certificate of inspection: 46 USC 3318(a) ($12,007.00), 3318(j)(1) (less than 1600 Gross Tons ($4,803.00) (individually and *in rem)*; 46 C.F.R. 176.100A;
    5. Failure to comply with 46 USC 3311(b) (i.e., a Coast Guard order relating to lack of Certificate of Inspection: 46 USC 3318(k); ($24,017.00, individually and *in rem*);
    6. Lack of Stability letter: 46 USC 3318(a) 46 C.F.R. 170.120 ($12,007.00);
    7. Load Lines: Violation of
    8. Lack of mandatory drug and alcohol testing program: 46 USC 2115; 46 CFR 16.201 ($7,710.00 daily with each day constituting separate violation);
    9. Vessel documentation violations: 46 USC 12151(a)(1) ($16,398.00 daily with each day constituting separate violation);
    10. Vessel is employed in a trade without an appropriate endorsement: 46 USC 12151(b)(4) (seizure and forfeiture);
    11. Vessel with only a recreational endorsement is operated other than for pleasure: 46 USC 12151(b)(5)(seizure and forfeiture);
    12. Negligent operation of a Vessel so as to endanger life, limb, or property: 46 USC 2302(a) (Recreational Vessel $6,802.00; Other vessels ($34,013.00);
    13. Documented Vessel under command of non-U.S. citizen, other than recreational endorsement 46 USC 12151(b)(5) (seizure and forfeiture);
    14. Documented vessel crewed by non-citizens in enumerated capacities: 46 USC 8103(a) & (f) ($1,251);
    15. Miscellaneous, e.g., Watch standing, Carriage of required charts, Navigation lights and sound signals, Life-saving and firefighting equipment, Safety orientation and instruction, Pollution prevention, Casualty reporting.
    16. Note: Many of the above violations can be assessed individually against each of the following:
        1. Owner;
        2. Charterer;
        3. Managing Operator;
        4. Agent;
        5. Master;
        6. Individual in charge;
        7. The Vessel, *in rem*
11. Recommendations:
    1. Educate clients on Coastwise Endorsement;
    2. Limited Coastwise Endorsement (MARAD Waiver) for foreign-built vessels;
    3. Structure Bona Fide Bareboat Charter business plan.