

From the Bench:
**A Brief Look at How the Courts Interpret
Criteria for Bareboat Charters**

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What is a Charter?

NVIC 7-94:

- ▶ **An agreement where the charterer has the use of the vessel and may take on legal obligations to the vessel owner, the crew, passengers carried, and others**
- ▶ **Written charter agreement**
- ▶ **“Any provision that tends to show retention of possession or control of the vessel . . . during the charter of the vessel contradicts the claim that a valid bareboat charter exists.” (NVIC at 7)**

NVIC Criteria

Indicative, but not conclusive, of a valid bareboat charter arrangement

- ▶ **The charterer must have the option of selecting the crew**
- ▶ **The master and crew are paid by the charterer**
- ▶ **All food, fuel, and stores are provided by the charterer**
- ▶ **All port charges and pilotage fees, if any, are paid by the charterer**
- ▶ **Insurance is obtained by the charterer, at least to the extent of covering liability not included in the owner's insurance**
- ▶ **The charterer may discharge, for cause, the master or any crew member without referral to the owner**
- ▶ **The vessel is to be surveyed upon its delivery and return**

Guzman v. Pichirilo, 369 U.S. 698 (1962),

- ▶ **Often cited by USCG as the standard for relinquishment of control of a vessel by an owner.**
- ▶ **In order to create a bareboat or demise charter, the owner must “completely and exclusively relinquish possession, command, and navigation thereof to the demise.”**
- ▶ **A bareboat or demise charter is “tantamount to, though just short of, an outright transfer of ownership.”**
- ▶ **Courts should be reluctant to find a demise charter when the dealings between the parties are consistent with any lesser relationship**
- ▶ **Above, is nothing more than dictum???**

Although the criteria for a bareboat or demise charter are relatively easily understood in the abstract, the difficulty lies in its application to the varying circumstances of contract between vessel owners and charterers.

- ❖ **The question of whether a charter is a bareboat “...is a factual one, which depends upon all the circumstances of the case, including not only the terms of the contract, but also the conduct of the parties under the arrangement.”**
- ❖ **The validity of an alleged bareboat charter is a *question of law*, but that conclusion is based on subsidiary findings of fact**

Is it a Bareboat Charter?

- ▶ **The instrument is interpreted according to the intent of the parties as manifested by the whole instrument rather than by the literal meaning of any particular clause taken by itself.**
- ▶ **Individual provisions must not be read in isolation, divorced from context.**
- ▶ **Contrary to the NVIC, courts have held that a bareboat charter need *not* be in writing.**

*Examples of How the Court has
Ruled on the Criteria for
Bareboat Charters:*

Operator/Operations Restrictions Generally Permitted

- ▶ **Retention of the right at any time, on reasonable notice, to inspect the vessel and its logs, approve insurance obtained by charterer, approve insured repairs to the vessel, and be notified of the vessel's hire does not invalidate a bareboat charter.**
- ▶ **Restrictions prohibiting anyone to operate the yacht unless properly trained and experienced in coastwise piloting and deep-sea navigation of vessels similar in type and size to the yacht does not invalidate a bareboat charter.**

(continued)

- ▶ **Restrictions as to limits on weight and use of vessel in rough waters did not defeat a finding of bareboat status because such restrictions were not inconsistent with possession and control being in the hands of the charterer, not the owner.**
- ▶ **Safety directives to use a certain life vest, the ability to approve major repairs, participation in a hurricane preparedness plan, and the ability to request removal of problematic crew members from its property are facially reasonable in nature and neither violative of the charter nor materially determinative of ultimate vessel control.**

Insurance

- ▶ **Owner's payment of insurance did not invalidate bareboat charter; paying for insurance did not transfer control of the vessel back to owner in whole or in part.**
- ▶ **The agreement was a bareboat charter despite owner's payment of the vessel's insurance.**
- ▶ **But: Failure of a charterer to obtain insurance on the vessel is indicative of no bareboat charter (other factors also considered).**

Fuel

- ▶ **Payment of fuel and lube oil by the vessel owner failed to invalidate a bareboat charter; there is no legal authority to support a claim that such payments equate to operational control of a vessel at the level contemplated to nullify a bareboat charter arrangement.**
- ▶ **The fact that the vessel owner provided the fuel for a charter (at no cost to charterer) was “without countervailing significance” and thus did not invalidate the demise or bareboat charter.**
- ▶ **But: “In keeping with that broad transfer of control, the charterer also assumes full responsibility for the navigation, operation, supply, *fuel* and repair of the vessel and for all costs associated therewith.”**

Employment/Control of Captain

- ▶ **The fact that a captain is employed by the owner is not fatal to a bareboat charter where the captain is subject to orders of the charterer during the period of the charter.**
- ▶ **Provision allowing owner to remove the master or chief engineer if it has reason to be dissatisfied with his conduct, or if it considers his employment to be prejudicial to the owner's interests, did not impact finding that charter was a demise.**
- ▶ **Retaining the ability to ensure that a competent manager is appointed does not constitute retention of significant control or management to invalidate a bareboat charter.**

Geographic/Trade Limits

- ▶ **Charter provision limiting ship's operation to a specific trade route was irrelevant to consideration of whether charter was a demise.**
- ▶ **Bareboat charter was valid despite owner's restrictions including limiting operation of vessel to certain geographical areas, and prohibition on carrying certain types of cargo.**

Surveys

- ▶ **A lack of contractual provisions for vessel surveys and restrictions on liens or other customary provisions of a bareboat charter does not necessarily deprive a charter party of bareboat status.**