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***The Climate on Crewing Has Changed: The Maritime Labor
Convention 2006 Enters Into Force
Newport Charter Yacht Show
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Who am I?

- Board Certified in Admiralty and Maritime Law by The Florida Bar
- Lectures extensively on various admiralty and maritime matters
- Guest professor on issues related to admiralty and maritime law at the University of Miami School of Law and Florida International University School of Law
- Counsels clients regarding all aspects of admiralty and maritime law
- Former Chair of the Admiralty and Maritime Law Board Certification Committee of The Florida Bar, Seminar Chair for Admiralty Law Committee of The Florida Bar, Seminar Chair for the Federal Bar Association Admiralty Law Committee



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Plan for Today

- First Hour – MLC Overview
- Second Hour – Interactive Segment and Discussion
- Wrap Up



What is It?

A comprehensive international labour Convention adopted by the International Labour Organization in February 2006 in Geneva, Switzerland.

**It has been called the “Seafarer’s Bill of Rights”
aimed at achieving two goals:**

1. Ensure comprehensive worldwide protection of seafarers’ rights.
2. Establish a level playing field for countries and shipowners committed to providing decent working conditions.



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How Was It Created?

- Tripartite negotiations between employers, labor unions and governments
- Consolidates and updates over 68 international labor conventions and related Recommendations adopted since 1920.
- Became effective August 20, 2013 for first 30 ratifying countries; effective 12 months after ratification for all other ratifying countries; United States has not ratified.



How It Is Set Up?

Consists of 16 Articles - the substance of the Convention called the Code is set forth in Article VI.

The Code has five Titles identifying specific subject matter for mandatory Regulations and Standards:

- Title 1: Minimum requirements for seafarers to work on a ship
- Title 2: Conditions of employment
- Title 3: Accommodation, recreational facilities, food and catering
- Title 4: Health protection, medical care, welfare and social security protection
- Title 5: Compliance and enforcement

The Code also provides an advisory Guideline. Guidelines help facilitate the implementation of a Regulation according to the required Standards, but States are free to have different implementation measures.



Terms To Know

Seafarer

Any person employed or engaged or works in any capacity on a ship.

Ship-owner

Owner, other organization or other person assuming responsibility or taking over duties of ship-owner, regardless of acting on behalf of ship-owner.

Ship

Applies to all ships publicly or privately owned ordinarily engaged in commercial activities.

Exempts vessel construction pre-convention, domestic vessels subject to local regulations, fishing vessels and warships.



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Enforcement

1. All ships subject to inspection by Flag State and Port State in ratifying countries; USCG will not be inspecting until US ratification of MLC.
2. “No more favorable treatment” clause expands port state inspection/enforcement to vessels flagged in non-ratifying countries.



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Compliance

- Ships greater than 500 gt must obtain Maritime Labour Certificate certifying living and working conditions meet MLC requirements.
- Ships between 200 gt and 500 gt must meet MLC requirements in ports of ratifying nations but no compliance certificate necessary.



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Compliance Continued

- Ships under 200gt may be exempted from MLC requirements if not engaged in international voyages, a competent authority deems compliance impractical and subject matter dealt with by other legal means.
- USCG will issue Statement of Voluntary Compliance for vessels not subject to MLC but in compliance with MLC requirements.



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Operational Considerations





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The Inspection Process

Flag state inspectors will review documents, visually inspect vessel and conduct interviews.

Port state inspectors limited to review of Maritime Labour Certificate and Declaration of Maritime Labour Compliance unless circumstances warrant more detailed inspection.



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The Inspection Process Continued

Vessel Owners must document compliance with 14 subjects under review.

US not a signatory to MLC but ratified other Conventions on which MLC is based – those laws are still in effect.

MLC Regulations and Guidelines provide a baseline guide for inspections.



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Part II





Scenario I

M/Y SULTRY

Cayman Islands Flagged 80' Sunseeker

Is chartered two to three times a year

Advertised for charter by a trusted yacht broker on website

Charter hire is for more than the actual cost of the vessel or its operations

Cook/stew is UK citizen, 25 years old ("Stew"), with all necessary certifications

Found by crewing agent in Fort Lauderdale

Stew does not have employment contract with owner

Captain begins making regular inappropriate remarks to Stew

Culminates in argument where captain strikes Stew

Stew complains to owner, gets nowhere as captain has been with him for years

Yacht pulls into the Bahamas and Stew lodges complaint with the port



Scenario I--Questions

M/Y SULTRY

1. Is the yacht subject to MLC? Why?
2. Under what section of the MLC do you look for the answer?
3. Can the Stew complain to the Bahamian authorities?
4. Under what section of the MLC?
5. Do you think anything happens? What?
6. Who ultimately is responsible?
7. Does crewing agent “get off” scot free?
8. Does the yacht have to have a MLC/DMLC?
9. Who is responsible for the fact that the Stew does not have an employment contract under the MLC?
10. What happens if the blow to the Stew results in an injury which leaves the Stew unable to work?



Scenario II

M/Y CANDY

Bahamian Flagged 150' Trinity

Is used for private pleasure purposes and owned by U.S. interests

Is advertised for sale by a trusted yacht broker on website

Engineer is Serbian citizen, 51 years old ("Engineer"), but no medical certifications

Engineer is designated medical officer with necessary STCW training

Found by crewing agent in Italy

Engineer has employment contract with vessel manager, but does not define certain benefits regarding medical care; sickness benefit; unemployment benefit and employment injury benefit

Engineer suffers accident causing third degree burns over 40% of his body

Engineer forced to remain on yacht until substitute Engineer arrives

Yacht pulls into the Cayman Islands, where PSC find the Engineer still on board



Scenario II--Questions

M/Y CANDY

1. Is the yacht subject to MLC? Why or why not?
2. Where do you look?
3. What can Port State Control do? Is the answer in the MLC?
4. What are the liabilities of the yacht owner? The vessel manager?
5. Do you think anything happens? What?
6. Who ultimately is responsible?
7. Is the yacht compliant under STCW when the medical officer becomes incapacitated?
8. Any repercussions for the fact that the Engineer does not have an MLC compliant employment contract?
9. The Engineer is discovered post-accident to suffer from diabetes, which was a pre-existing illness and is a complication to the injury—does this change anything?



Take Aways

- Must be aware of whether vessel's flag state is a signatory to the MLC
- If yes, must evaluate whether the vessel meets the definition of a "ship"
- If yes, must get guidance on the flag state requirements
- If no, must still make sure that the flag state has not implemented portions of the MLC
- Also remember that if the vessel goes into an MLC country, there is no favorable treatment and they are entitled to check that the vessel meets the 14 key areas
- Implement the minimum requirements to be legal, but implement even better procedures if your vessel is operated in compliance with MLC in terms of resale, charter rate, insurance, compliance with local PSC requirements in meeting the 14 key areas of the MLC and may assist with regards to any Port State Control interventions



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Questions?

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