

The Americas Superyacht Report

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US and them

BY CHARLOTTE THOMAS

Heading into US waters implies a need to comply with various US Environmental Protection Agency regulations that, on the face of it, appear both onerous and complicated. However, the regulatory landscape changes depending on several factors, so what do yachts need to take into account to successfully navigate the entry process?

There has been much discussion in recent years about what appears to be the unilateral development of regulations and requirements by the US Environmental Protection Agency with regard to various aspects that affect yachts. The EPA's engine emissions requirements are a prime example; why, some have asked, have they chosen to confuse the issue by diverging from the IMO's own targets? Concerns have extended further, though – the decision to allow only US-certified ballast water systems before anyone had a chance even to come to terms with a newly ratified Ballast Water Management Convention sent ripples of mild panic through certain corners of the industry.

The reality, of course, is somewhat different. EPA emissions requirements are broadly in line with MARPOL Annex VI tiers, while other aspects – such as the ballast water regulations – can either be circumvented or do not apply to yachts at all. So what do yachts need to be aware of before approaching US waters? The answer depends on what the yacht's intentions are, whether it is merely visiting and wants to obtain a cruising permit in order to enjoy everything the US has to offer or is being formally imported for sale or charter to US citizens in US waters. This is something that at least one expert *The Superyacht Report* spoke to said is still a relative rarity in spite of recent moves to place a tax cap on transactions and to attract more vessels to consider US flagging.

For private, foreign-flagged vessels looking to cruise in US waters, the path-

way to EPA compliance is, in some respects, relatively straightforward, although there is no substitute for consulting the yacht-management team or seeking advice from reputable management firms with local knowledge and experience of dealing with the US entry processes.

The key documentation that must be arranged in advance, and which applies to any vessel over 400gt looking to enter US waters, is the Non-tank Vessel Response Plan (NTVRP). This essentially is an approved plan with salvage and marine fire-fighting companies (SMFF) and oil-spill response organisations (OSRO) in case of an oil or similar pollutant spill while in US waters. In addition, if the vessel carries in excess of 395,000 litres of fuel, a financial agreement needs to be put in place – effectively, an agreement to show that the cost of any recovery or response plan is fully covered.

“Most foreign flagged yachts can come into US waters unless they have a current issue with emissions. But it is essential that before they enter US waters they have an approved NTVRP in place,” begins Anthony Sands, co-founder and CEO of yacht-management specialists Edge Yachts. “It typically takes between four and six weeks to get a plan approved by the relevant authorities although it can take up to two months, so it is something you need to put in place well in advance of an intended visit.”

While the basic NTVRP is fairly standard – and while complicated for a self-managed yacht to navigate, it is

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something that yacht management companies deal with all the time – it is worth bearing in mind that certain states may well have variations to the Federal requirements that might directly impact yachts. In particular, both California and Alaska have more stringent oil-pollution prevention requirements. “In Californian state waters there are specific state requirements to be complied with over and above the Federal NTVRP,” advises Burgess’s yacht management team. An additional contingency plan (CA NTVCP) needs to be put in place and the California Shoreline Protection requires the same response team to be on standby when vessels transit in and out of most Californian ports. It can get quite expensive. There’s no way to keep it simple, and California also has state-specific ballast water and biofouling requirements.”

Alaska, says Burgess, presents a challenge due to its size and relative remoteness, which in turn can directly impact the response time in case of an oil or pollutant spill. “It depends on where in Alaska you intend to go as to which local variations and criteria are applied,” they advise. “As such it can be a bit of a variation to the standard Federal NTVRP requirements. However, the NTVRP plan provider can help with that and would do pretty much everything needed to get an approved plan in place, although it does require a bit of thought and planning in advance.”

The other major issue that yachts, and engineers in particular, need to keep on top of is the logging of fuel bunkering and making sure low-sulphur requirements are adhered to. While the US low-sulphur regulations and requirement for stringent record-keeping are consistent with wider MARPOL practices, there is always the chance that records will be inspected on arrival, and badly kept logs can lead to severe penalties.

“The bunker oil record book needs to be kept updated at all times,” advises Sands. “It is the chief engineer’s responsibility to keep accurate records of how much fuel was loaded, where it was loaded, and the specification of what was loaded. Having a good relationship with your bunkering provider is very helpful in this regard, because all fuel loaded will come with a sample certification that can easily be added to the vessel’s records and to our management system.

“We are often asked about this and, yes, there are spot checks by the US Coast Guard and Port State Control. Certain ports are particularly interested in yachts that come and go, and will want to know exactly what you have in your tanks.”

While visiting US waters as a foreign-flagged vessel can, therefore, be a moderately straightforward process, everything changes if you are looking to import a foreign-built private yacht for ownership by a US citizen or for sale in US waters. At this point, compliance with the Clean Air Act (CAA) is mandatory. Furthermore, reports suggest the EPA is stepping up enforcement of these aspects following a change in the filing system used by US Customs and Border Protection, which now automatically notifies additional agencies such as the EPA upon importation of a yacht.

CAA conformity is based on EPA-defined emissions requirements both for diesel and for spark-ignition engines used in non-road applications, and covers different categories defined by yacht displacement and/or horsepower. These specific regulations do not affect visiting yachts or non-US citizens unless the yacht is permanently imported into the US. Engine manufacturers and boatbuilders building to the European CE mark or higher echelons of code generally already comply with the emissions standards that cover nitrogen oxides, carbon monoxide and particulate matter, and which

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are broadly in line with equivalent MARPOL Annex VI tier levels.

However, it does mean care must be taken when looking to import an older or bespoke yacht or superyacht. With the various compliance requirements and Tiers that have been introduced at various stages since the EPA first put forward proposals in 1999, it can be something of a minefield to determine what level of compliance the yacht's various engines need to meet, also assuming they have not been modified from their original specification.

Acquiring the relevant certification for a given engine is essentially a case of looking up each unit's serial number and requesting the relevant Engine International Air Pollution Prevention certificate (EIAPP) and the engine's technical file, provided by the manufacturer, plus the Record Book of Engine Parameters in which any changes to NOx-influencing components and settings are recorded.

Trying to work out exactly what compliance is required involves considering not only the age of the vessel (its keel-laying date or the date the engines were installed), but also its intended use.

"EPA standards are getting more stringent over time, which is to be expected," says Sands. "It can be a complicated proposition, however. If an owner states he wants to offer the vessel up for charter, there will be guidelines that need to be met. The key questions

a yacht needs to ask are what do we have now, and what will we need to change or add to meet the specified requirements?"

Trey Reeder, yacht division director at import specialists Howard S. Reeder Inc, says, "US Customs and Border Protection do want to make sure that the boat is EPA-compliant if it needs to be. You won't be able to come here and import your yacht if it's not compliant and that depends on the year of build. Typically, with larger yachts, around 2006 or newer is when they want to start looking at it because that's [normally] the engine size range and age in which EPA compliance is needed."

Sands adds, "We treat this on a case-by-case basis for each yacht, and according to the owner's goals. It depends on what the yacht already has on board in terms of equipment and systems, and what meeting defined requirements is going to require us to change. Each yacht programme has different challenges to achieve the owner's objectives and stay within compliance, and we are here to help in that regard."

Even for yachts that are intended to be imported into the US, there are other criteria and certifications that do not apply. Chief among them is the Vessel General Permit (VGP) and the Small Vessel General Permit (sVGP). The VGP/sVGP relates to National Pollutant Discharge Elimination System (NPDES) permit coverage, which in

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turn covers aspects such as incidental discharge, grey water, deck run-off and, importantly, ballast water discharge. However, the VGP/sVGP applies only to commercial or non-recreational vessels, which means that yachts, in the vast majority of cases, are exempt. “When in US waters, unless [they were] built in the US, yachts can only go as private vessels and cannot be commercially registered,” advises the management team at Burgess. “It means there’s a whole raft of measures and certification that don’t apply.”

Sands adds that, in most cases, going commercial may just not be worth considering in US waters, even if the yacht meets, or can gain exemption to, the made-in-US requirement. “I would hazard that the provisions that go along with registering in the US and flying the Stars and Stripes may be more than many owners would be willing to shoulder,” he says,

Reeder adds that if the vessel is commercially registered, it can’t also obtain a cruising licence – an essential document if the owner wishes to use a foreign-flagged yacht in US waters.

Despite the intricacies and the additional requirements that may have to be met depending on the intended operational profile of a yacht, none of this should serve as a deterrent to entering and enjoying US waters. The key, as with everything, is to ensure all

paperwork, certificates and compliances are in order well in advance of arrival. It is also worth remembering that using a Free Trade Zone (FTZ) is not a solution to getting around compliance when importing a yacht into the US. “There are only two ways out of an FTZ,” says Reeder. “One is to make an import entry into the US, and the other is to make an export out of the zone and out of the US. But you certainly have to be EPA-compliant to make that FTZ entry, and if the yacht is not you won’t be able to come here and import it.”

For everyone else, the advice is simple. “If you know you’re coming to the US as a foreign-flagged vessel looking to cruise, embark on your preparations for your NTVRP and, if applicable, your certificate of financial responsibility well in advance,” says Sands. “Don’t wait, because you are just one of thousands of vessels going through the NTVRP process with the authorities. The fact of the matter is that you’re dealing with a government agency and as a result there is processing time, so don’t be in the Azores and headed to US waters before asking for one! Also make sure your paperwork and relevant logs are compiled, and kept up-to-date on an ongoing basis. As for emissions,” he concludes, “it is determined on a case-by-case basis depending on the vessel’s current equipment and the owner’s goals.” 