



Curtis Stokes' **Recommended Best Buy** **Newsletter** **Issue #5**

Presented by Curtis Stokes
Yacht Sales Agent

Welcome to my yacht and sportfish market Best Buy update. In each newsletter, I will present what I feel are the best buys and charters on the yachting market. I base this belief on a combination of price, condition, amenities, and possible charter potential for brokerage yachts, along with special rates, events, location and amenities for charter opportunities. If you see another yacht that you feel is a great buy or charter, or just have a question about the yacht, please contact me and I will research the yacht in a similar manner to my choices below.

I have added a new section at the end of this newsletter on yacht related articles I think will interest anyone in our industry. I hope you take the time to review these articles and enjoy learning from them. I welcome similar articles from anyone who has something worth sharing with others in our industry.

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Well, this issue heralds in Spring and the upcoming Summer cruising and fishing season. Yacht sales are brisk and charters are very popular this Summer in just about all cruising grounds. Let's hope this robust economy and state of our industry continues for some time to come!

Finally, I would like to thank everyone who made this past year of my yacht brokerage career such a success. It has truly been a pleasure to assist so many terrific people with their yachting needs, especially the numerous happy yacht buyers I have now assisted!

I wish you fair skies, calm seas and a lifetime of enjoyable yachting or fishing!

Curtis Stokes

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1. Lady Sheridan (\$16,900,000):



This 1988 5 stateroom 148' Feadship completed a major refit in 2004. She now has Zero Speed Stabilizers and was repainted. Her main engines and generators were overhauled also. Here's a great chance to own a classic Feadship in immaculate condition for a very fair price.

2. Via Kassablanca (\$4,400,000):



Not only is she the lowest priced 106' Westport on the market, she has 5 staterooms, a 5 ½' draft and top speed of 25 knots. Between 2002 and 2004, she had major upgrades completed, such as new hull paint, stabilizers, bowthruster, A/C system, teak decks, tender and her main

engines were rebuilt in 2004. **\$500,000 price reduction!** All trades and offers will be considered.

3. **Dauntless (\$2,550,000):**



This 1960 105' Kristiansands built vessel was converted to a yacht in 1998. She has 4 staterooms and CAT engines with over a 4,000 nm range. Her classic interior and rugged profile combined with a **recent \$250,000 price reduction**

make her a great cruise anywhere Best Buy!

4. **Pacific Harmony (\$4,950,000):**



Here's a 2003 87' Pachoud power catamaran with six staterooms and a 51/2' draft. She tops out at 25 knots with CAT engines and has a 3,000 nm range. She was built to comply with the MCA code and cruised from New Zealand to Florida on her own bottom. What a great Bahamas cruiser!



The Sacks Group

Yachting Professionals

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4. Bobbin (\$340,000):



Bobbin is a 1964 68' Burger that was completely rebuilt in 1991 and had an additional refit in 2004. She has been re-powered with MAN main engines for a 23 knot top speed. She has 3 staterooms, a country style galley, 4 ½' draft and stabilizers. With a recent **\$335,000 Price Reduction**, she is definitely a classic yacht Best Buy!

Best Sportfish Buy: Sledgehammer (\$1,995,000):



This 72' enclosed flybridge/full tower Rybovich has 4 staterooms, a 4'10" draft and a 39 knot top speed. Combine that with her stunning Birdseye Maple interior, towering 8 1/2' headroom in her main salon and a recent **\$755,000**

price reduction and she's the absolute sportfish Best Buy today!

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Best Yacht Charter Opportunities:

1. **On Seafari:** This 108' Broward cockpit motor yacht just returned to the charter market under new ownership. She has been spruced up and has completed her first successful charter this winter. 3 staterooms, country style galley and beautiful raised panel teak interior create a luxurious interior environment to go along with the active sports oriented deck areas. The awesome crew offers her for charter at \$25,000 per week, plus expenses or **\$32,000 all-inclusive!** She's currently in the Caribbean and will be available in the Bahamas this Spring and New England in late Summer.
2. **Golden Boy:** A recently purchased 4 stateroom 94' Hargrave cruising Florida and the Bahamas. Her normal rate will be \$29,000 per week plus expenses, but the owner is offering a "pre-refit" special of \$19,500 per week plus expenses. Take advantage of this reduced rate before Golden Boy enters the shipyard for her make over and subsequent higher charter rate.
3. **Nicole Marie:** This sleek 4 stateroom 95' PR Marine motor yacht is new to our charter fleet and plans to cruise the Pacific Northwest from May through October. Cruise Alaska this Summer for only \$30,000 per week plus expenses!
4. **Virginia Mia:** Here's a 95' Astondoa cruising the Mediterranean this Summer for \$45,000 per week plus expenses. With 3 staterooms, a full beam Master Stateroom and a Jacuzzi tub on the Flybridge, Virginia Mia will be very popular docked in Portofino or St. Tropez!

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Recent Best Buy Yachts Sold:

1. **Artful Dodger** (\$8,900,000): A stunning 145' Diaship-Heesen I featured previously sold recently for a rumored \$7,200,000!
2. **Souvenir** (US\$3,995,000): I featured this spectacular 87' Queenship previously and she sold recently for a rumored stunningly low \$3,000,000! This has to be one of the best buys ever!
3. **Lady Leaf** (\$1,395,000): This 70' Neptunus listed with us and featured in my last newsletter sold recently for \$1,100,000.
4. **Hideout** (\$995,000): I featured Hideout in my inaugural issue. This 1981 55' Merritt sold recently for a rumored \$895,000.
5. **Ce-Jessie** (\$199,000): I sold Ce Jessie, a 1995 42' Sealine, recently for \$180,000.

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Legal Perspectives:

The following articles are reprinted with permission from Hill Dickinson law firm's maritime division newsletter:

Yacht delivery and rejection: lessons for sellers and insurers

Readers may be familiar with the landmark 2003 decision in the Clegg v. Andersson case in which a yacht buyer was permitted to return a new yacht to its supplier, and insist on a refund of the full price, some six months after its actual delivery. The purchaser was found by the court not to have lost his right to reject the yacht. This was because he was held to have been unable to assess the extent of the yacht's non-conformity, both with the specification and the purchase contract, until after he had obtained further information from the supplier.

The rule had previously been that a consumer had a reasonable time in which to inspect or reject goods. In the case of a yacht purchase, this would generally expire after only a few weeks' usage. While the Clegg decision was heralded as a welcome clarification of the concept of "reasonable time" to reject, subsequent case law has made it clear that this concept is intrinsically bound up in the facts of each case; but the passage of any significant period of time after delivery will still make rejection difficult, unless the seller has at least been put on notice of a problem which is either material or whose severity is then unknown.

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The Clegg case predated the Sale and Supply of Goods to Consumers Regulations 2002 ("the Regulations") which came into force on 31 March 2003. The Regulations provide further protection to consumers, including a six month period in which a reverse burden of proof applies in respect of the presence of defects on delivery. Under the Regulations, where defects manifest themselves after the goods have been accepted, the consumer may still demand a repair or replacement. If either of these are impractical or disproportionate given the defect and the value of the boat, or cannot be done without significant inconvenience to the consumer, the Regulations contemplate alternative remedies. Those alternatives are either a partial refund of the purchase price or, in extreme cases, complete rescission even at this late stage. Unfortunately only limited guidance is provided in the Regulations (and their preceding Directive) as to how buyers, sellers and the courts are to determine which of these remedies will be appropriate in particular situations.

Had the Regulations been in force and applied at the time of Clegg, they would still not have been relevant because the purchaser was held never to have accepted the yacht. If he had already accepted it, the Regulations would likely have allowed him to require a repair but not a replacement. The keel repair cost was less than 1% of the purchase price. Replacement would almost certainly have been held to be a disproportionate remedy.

Given the significance of the date of actual delivery, whether in the context of the new Regulations or the common law, it is vital that this date can be identified and that the parties are left in no doubt as to who has ongoing responsibility for the new vessel, and all risks associated with ownership, at any particular time.

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It is not enough to look to the question of whether title has passed: it is quite customary for title to pass to the consumer at a relatively early stage, often well before completion of the build process, in order to provide the consumer with an additional degree of protection against the possible insolvency of the seller. Transfer of title to the consumer does not however imply “delivery” or “acceptance”, or indeed transfer of risk.

If, for example, damage is sustained in that grey zone at the end of the builder’s trials, but during owner’s trials when a builder’s representative is still onboard, it will be important to know whether delivery has in fact taken place.

The most effective way to achieve certainty in the delivery process is by the use of a Protocol of Delivery and Acceptance. This document should be signed by both parties, should refer to the place at which delivery occurs (which may have relevance for VAT as well as insurance purposes), be dated and include a schedule of any snagging items that, whilst not preventing delivery, must be attended to subsequently by the seller.

A protocol of Delivery will not prevent a yacht being rejected, but it will make rejection less of a possibility and it will act as prima facie evidence of when and in what state a yacht was delivered.

From an insurance perspective, a Protocol will provide good evidence for the parties and their respective insurers of the point at which risk passes. In the absence of agreement, the default position is that title passes on actual delivery. Indeed, when the purchaser is a consumer, the Regulations stipulate that risk cannot pass until actual delivery.

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By clarifying which insurer is on risk at any particular time, the prospect of disputes and unnecessary and confusing duplication of cover will be minimized. In contrast, where there is no written evidence of actual delivery, there is potential for a protracted period of uncertainty. Neither seller nor purchaser can be confident as to who is responsible for the yacht, or as to important questions such as who should be arranging insurance, whether warranty obligations have become operative and whether time is ticking on the remedy of rejection.

Without wishing to surround handover with an excessively legalistic procedure that has a decidedly negative effect on the seller's marketing efforts, there is scope to reduce the chance of disputes significantly, whilst at the same time creating a degree of contractual clarity and certainty. The aim will be to leave the new yacht owner in a good position to start enjoying the pleasures of his or her new acquisition, untrammelled by unnecessary legal or insurance concerns.

As lawyers, we are kept far too busy trying to extricate seller and purchaser from uncertain delivery arrangements, often in circumstances where a little low-cost drafting advice at an early stage would have helped set the scene for a relatively trouble-free handover process.

Tow or Salvage?

We continue to see a number of significant claims relating to yachts that have got into difficulty, originally requiring relatively straightforward towage assistance, but later becoming the subject of a salvage claim. Salvage claims are generally accompanied by a degree of uncertainty as to how compensation is to be calculated. Whilst a successful salvage service is generally to be applauded, the resultant costs will not always be welcomed by insurers.

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A skipper in difficulty may arrange for services to be provided to his yacht pursuant to a towage contract. Whilst this reduces the possibility of salvage later being argued, in certain circumstances a claim for salvage may still be validly brought, though the burden of proof on the service provider is a heavy one.

Services are properly categorized as towage and not salvage where there is no immediate danger to the yacht or her crew. An example would be where a motoryacht's engines have failed and she is drifting offshore in benign conditions, retaining the ability to anchor and able to carry out her own repairs or wait for alternative assistance. Add to that situation a lee shore and a failure of the anchors to hold fast, and a claim for salvage may well lie.

So when might a pre-existing towage contract cease to apply, and a claim for salvage arise in its place? In essence, salvage becomes a real possibility where a towing vessel has performed duties that were not envisaged by the towage contract, and in circumstances of unforeseen danger to the yacht, being changed circumstances for which the towing vessel is not responsible. It is not enough either for the towing vessel merely to undertake services outside the scope of the contract, or for the tow simply to face, for example, a new challenge, such as the parting of the tow line. A further danger must have developed that was beyond the bounds of reasonable foreseeability.

Contractual terms seeking to exclude any such further salvage liability are not generally effective. This is because salvage services are, by definition, rendered outside the contract of tow which is effectively superseded when circumstances become more extreme than those envisaged when the contract was made.

So, what factors are relevant when determining the level of any salvage award?

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For true salvage to have occurred at all, the efforts of the salvors must, in part at least, have been successful in terms of benefiting the owner: this reflects the “no cure, no pay” principle. The International Convention of Salvage 1989, seeking to encourage the provision of salvage operations, identifies specific factors for consideration in determining awards: the salved value of the vessel and other property (at the time and place of the termination of the salvage); the measure of success; the nature and degree of danger faced; the skill and efforts of the salvors; the salvors; the risk of liability and other risks run by the salvors or their equipment; the promptness of the services rendered; the availability and use of vessels or other equipment intended for salvage operations; the availability of alternative assistance; the state of readiness and efficiency of the salvor’s equipment; any fault or neglect on the part of the salvor; and the efforts in preventing or minimizing damage to the environment.

The salved value is the damaged (market) value of the yacht and property onboard. A high salved value (as a proportion of the vessel’s pre-casualty value) may suggest a high degree of success, but could equally reflect a minimal danger. The salved value must therefore be seen in the wider context of the entire salvage story. The importance placed on each factor by a court or arbitrator will depend on the facts of each case, and there are no hard and fast rules. Specifically, there is no rule that “the salved property belongs to the salvors”, nor even that a particular percentage is always awarded. A salvor who has saved a vessel of very low value from certain destruction might however be awarded the vessel itself, where any lesser claim would be so manifestly mean and unjust. There are also “rule of thumb” percentages that apply to higher value salvage incidents involving “average” danger and risk. But although these can be helpful guides, they should not be relied on when negotiating precise figures.



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Reflecting in part the operation of some of the factors listed above, there is a tendency for awards to professional salvors to be more generous than to the opportunistic salvor, particularly where the salvor can show significant investment in salvage vessels and equipment. This approach is in keeping with the public policy of encouraging the maintenance of a certain level of dedicated salvage services.

Returning then to the cases where a towed yacht becomes the subject of a salvage claim, these must be carefully scrutinized not only to determine whether salvage is available at all, but if so, to ensure that any award is kept within appropriate bounds.

Hill Dickinson, in London and Liverpool, has significant expertise in dealing with these and all other aspects of marine salvage claims, both in the context of recreational and commercial vessels, large and small. The firm has the benefit of an in-house Master Mariner (solicitor), as well as lawyers experienced in representing owner's and underwriter's interest across a wide spectrum of yacht, ship and cargo salvage claims.

The information and any commentary in these articles which relate to English law and practice are for general information purposes only and do not constitute legal or any other type of professional advice. Whilst every effort has been taken in preparing this information, neither we nor the authors accept any liability to any person for any loss which may arise from relying upon or otherwise using the information contained herein and any such liability is hereby excluded to the fullest extent permitted by law. You are accordingly advised to take legal advice on specific issues.

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The following article is reprinted with permission from Maritime Reporter & Engineering News March 2005 issue page 17.

Nontank Vessel Response Plans

The U.S. Coast Guard recently issued interim guidance for the development and review of oil spill response plans for nontank vessels. Since 1993, tank vessels have carried oil spill response plans. A recent legislative change will soon mandate similar response plans for most other ships. The problem is that the legislation requires nontank vessels to have the response plans sooner than the Coast Guard can promulgate regulations in accordance with standard procedures. Thus, the agency is unofficially advising stakeholders on how to comply with the legislation. Stakeholders will ignore the unofficial advice at their peril. The legislation has real teeth. Nontank vessels that have not prepared and submitted oil spill response plans prior to August 9, 2005 will not be allowed to operate on U.S. waters.

For this purpose, a nontank vessel is a self-propelled vessel of 400 gross tons or greater, other than a tank vessel, that carries oil of any kind as fuel for main propulsion and that is either a vessel of the United States or a foreign vessel that operates on the navigable waters of the United States (internal waters and the 3 nm wide territorial sea). Note that gross tonnage is measured in accordance with the International Tonnage Convention (ITC).

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In accordance with the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108-293), a nontank vessel of 400 gross tons or greater (as defined by the Act) must submit to the U.S. Coast Guard for approval a response plan that:

- 1. is consistent with requirements of the National Contingency Plan and applicable Area Contingency Plans;*
- 2. identifies the qualified individual (QI) having authority to implement removal actions and require immediate communications between the QI and appropriate federal officials and response personnel;*
- 3. identifies and ensures by contract or other approved means the availability of private personnel and equipment necessary to remove to the maximum extent practicable a worse case discharge (Vessels of the United States that do not operate in the U.S. navigable waters or EEZ are not required to identify and have available response resources to respond to spills);*
- 4. describes the training, equipment testing, periodic unannounced drills, and response actions by crewmembers;*
- 5. will be updated periodically; and*
- 6. will be resubmitted for approval of each significant change.*

The Coast Guard intends to issue a two-year authorization letter allowing the nontank vessel to operate without an approved response plan if the plan submitted meets the above detailed requirements and is accompanied by a certification by the owner or operator that the availability of response personnel and resources has been ensured by contract or other approved means. In the event that the Coast Guard lacks sufficient time to determine whether the submitted plan meets the above detailed requirements, the agency may issue a short term interim authorization letter for nontank vessels where the submitted plan appears to meet the requirements and is accompanied by the certification.

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This interim authorization letter will be valid until the review process has been completed.

As the Coast Guard expects that it will take at least one month to conduct an initial review of submitted plans just to determine whether the requirements appear to have been met, owners and operators are strongly encouraged to submit their nontank vessel response plans no later than July 9, 2005. The plans should be submitted to:

**Commandant (G-MOR-2)
U.S. Coast Guard
2100 Second Street, SW
Washington, DC 20593-0001
Attn: VRP Programs**

The nontank vessel oil spill response plans will closely resemble those required for tank vessels. There are some differences, though. For a small vessel (fuel capacity of less than 250 barrels), the plan need only address response to the vessel's average most probable discharge (one percent of the fuel capacity) and salvage resources. For a vessel with a fuel capacity of 250 barrels or more, the plan must also address response to the vessel's maximum most probable discharge (10% of the fuel capacity) and salvage and lightering resources. For a vessel with a fuel capacity of 2,500 barrels or more, the plan must address response up to the Tier I worst case discharge volume to the maximum extent practicable and salvage, firefighting, and lightering. Vessels carrying very heavy fuel oil (group V petroleum oil) as fuel will have additional planning requirements. A worse case discharge is a discharge in adverse weather conditions of a vessel's entire fuel capacity.

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The nontank vessel oil spill response plan, as well as the USCG approved letter, must be carried on the ship and made available to the Coast Guard upon request.

The Master and all crewmembers with responsibilities under the plan must be familiar with the plan. During Coast Guard boardings, crewmembers will be subject to questioning about their spill response duties.

Expenses related to this requirement are not addressed in guidance, but may be relatively substantial – particularly for small operators with minimal infrastructure. Arrangements will have to be made for the 24-hour availability of an individual or several individuals to serve as QI. Response contractors (generally referred to as oil spill removal organizations – OSROs) will have to be retained. Training and drills will have to be developed and implemented. Bear in mind, though, that following enactment of the Oil Pollution Act of 1990 (OPA 90), the volume of oil entering U.S. waters from tank vessels dropped dramatically. This informal guidance and the upcoming regulations are intended to achieve the same goal for nontank vessels.

It can be expected that spill management organizations will soon offer to provide QI service for owners and operators of nontank vessels, as well as provide generic oil spill response plans for these nontank vessels. OSROs, salvage companies, and others will soon offer to provide response, salvage, and lightering services for nontank vessels. Owners and operators should compare more than just price when considering which to retain. Check the company's experience and its relationship with the U.S. Coast Guard.

For instance, is the OSRO on the USCG list of certified OSROs and is it certified for the area in which your ship will be operating? How many oil spills and spill drills has the company attended? Does the generic plan offered really address your vessel and its situation?

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One disconnect between the statute and the NVIC is that the statute directs the Coast Guard to consider response plan requirements that are mandated by any of the various states. The NVIC is silent on this issue. Several states, including California and Alaska, require certain nontank vessels to have oil spill response plans.

For those nontank vessels already having response plans that are state mandated, compliance with the new federal requirement should be relatively simple.

Companies that own or operate both tank and nontank vessels should check with the Coast Guard to determine whether it may be possible to incorporate the nontank vessels into the existing response plan regime. This can eliminate the need for new QIs and OSROs.

The ship-specific annex of the master plan will still have to be developed, though.

Training requirements will have to be carefully considered. Crews of the nontank vessels will need training similar to that currently provided crews of tank vessels.

It can be assumed that contract QIs and OSROs will accept responsibility for their own training, but the owner or operator of the nontank vessel should inquire regarding that training program.

Owners and operators of nontank vessels must also establish exercise or drill programs for their ships. Most exercise or drill requirements will be met by the contract QI and OSRO, but shore-based management of the owner or operator must participate in certain excercises.

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The nontank vessel will also be subject to unannounced drills.

For those with long memories, the Oil Pollution Act of 1990 (OPA 90) included similar short deadlines for preparation and submittal of oil spill response plans for tank vessels. Then, as now, the regulatory process was insufficiently agile to allow for promulgation of the response plan regulations in a timely manner. Then, as now, the Coast Guard issued unofficial guidance on how to prepare and submit response plans.

Tank vessel response plans submitted in accordance with that unofficial guidance were deemed by the Coast Guard as meeting the regulatory requirements when those regulations were eventually issued. Owners and operators of nontank vessels should follow the lead of the owners and operators of tank vessels and prepare and submit oil response plans consistent with the guidance contained in Navigation and Vessel Inspection Circular (NVIC) 01-05. The NVIC may be accessed at:

<http://www.uscg.mil/hq/g-m/nvic%2001-05.doc.pdf>

The NVIC contains the expected legal disclaimers that it does not impose legally binding requirements and does not commit the Coast Guard in its development of the response plan regulations.

The Coast Guard said basically the same thing when it issued the tank vessel response plan NVIC in 1993. Response plans submitted under that NVIC were accepted by the Coast Guard as compliant with the regulations when those were eventually promulgated.

We should expect the same resolution here.

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What's in a HIN?

Boats manufactured on or after November 1, 1972 must bear a Hull Identification Number (HIN), whether manufactured in or imported into the United States or built by an individual for their own use, known as backyard boat builders". The HIN is a 12-character serial number that uniquely identifies each boat and is a Federal requirement.

A hull identification number is carved, burned, stamped, embossed or otherwise permanently affixed to the outboard side of the transom or hull. The number must be above the waterline of the vessel in such a way that any alteration, removal or replacement would be obvious and evident.

Hull numbers consist of numbers and letters of the English alphabet. A typical hull number for a Sea Ray is SERT4534J405. The first three or four characters are the MIC (Manufacturer Identification Code) assigned to the manufacturer by the Coast Guard. The next 4 or 5 digits reflect the production or serial number assigned by the manufacturer. The last four characters indicate the month and year of production and model year of the vessel.

When purchasing a boat, a hull tracing should be done. A hull tracing is obtained by placing a piece of paper over the hull number and scratching a lead pencil over it until the number pops up. A photograph is of equal value. When having a boat surveyed, it is advisable to request a hull tracing or photo to be sure the hull number matches all the prior paperwork. Once an incorrect hull number is submitted to the Coast Guard or state for registration purposes, the individual or agent handling the correction must go back to the manufacturer to get an official statement stating the correction along with a hull tracing or photo to submit to whatever agency will produce ownership documents.



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It is wise for a boat buyer to engage a professional documentation agency like Specialized Yacht Services, Inc. when purchasing a yacht. Their experienced staff is aware of the importance of getting these vital statistics correct before any errors are made and if there are any discrepancies, have the knowledge to get them rectified in the most expeditious manner. Feel free to call or email us with any questions. We are here to make your next boat purchase a pleasant one!

Finally, don't forget our exclusive "**Try Before You Buy**"[®] Program, where you can charter one of our charter fleet yachts that is also available for sale, and enjoy a special discounted final sales price.

Thanks for looking at my Best Buys Newsletter. If you would prefer not to receive this information, just email me and I will remove you from my mailing list. If you know of anyone who would like to receive this newsletter, please forward it to them or have them contact me and I will include them in future mailings.

And in today's world, I have to add that any yachts offered are subject to still being available and all information stated above is believed correct, but is not guaranteed. Now that the legal eagles are happy, **let's go yachting or fishing!**

Sincerely,

Curtis Stokes

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