

CITY OF SANTA BARBARA WATERFRONT DEPARTMENT

MEMORANDUM

Date: September 25, 2014
To: Harbor Commission
From: Scott Riedman, Waterfront Director
Subject: **Definition of "Vessel"**

RECOMMENDATION: That Harbor Commission:

- A. Receive a report on draft policy recommendations related to the definition of "Vessel"; and
- B. Conceptually approve proposed definition of "Vessel"; and
- C. Conceptually approve draft policy recommendations related to the definition of "Vessel."

BACKGROUND:

On November 21, 2013, staff addressed the Commission regarding a proposed definition of "Vessel," intended to prevent further slip assignments to floating homes and help ensure the Harbor remains a "Working Harbor" as described in the Local Coastal Plan and Harbor Master Plan, with priority uses for commercial fishing and recreational boating. That report is included as Attachment 1.

Based on a recent Supreme Court case related to this subject, staff proposed incorporating the intent of the Court's ruling into the Santa Barbara Municipal Code. The Court had said, "A floating residence is not a vessel unless a reasonable observer, looking to the home's physical characteristics and activities, would consider it to be designed to any practical degree for carrying people or things on water."

As a follow-up to the November, 2013 discussion, staff wrote an article for the December, 2013 issue of *Docklines* on this issue, explaining staff's intentions and the adoption process moving forward (Attachment 2).

DISCUSSION:

Since the November, 2013 Commission meeting, staff has refined the proposed definition of "Vessel" to: ***"A self-propelled, floating craft whose physical characteristics indicate that it was designed and constructed for the purpose of carrying people or goods over water"***.

Staff identified four floating homes currently occupying slips in Santa Barbara Harbor that would not meet the proposed definition of "Vessel". We met with the owners of the four floating homes that would be affected by the proposed definition of "Vessel", to discuss policy implications of this addition to the City of Santa Barbara's Municipal Code. Proposed policies were developed related to "grandfathering" these four floating homes.

RECOMMENDATION:

Policy drafted by staff and conceptually agreed to by all four slip permittees who currently own floating homes in Santa Barbara Harbor include:

1. No requirement to meet proposed definition of "Vessel";
2. The right to conduct a "straight transfer," by which another party buys the floating home and transfers into its slip;
3. The right to add slip partners (for a transfer fee);
4. The right to swap slips with a similarly sized vessel or grandfathered floating home in Santa Barbara Harbor, per specifications outlined in existing Waterfront policies;
5. Waiver of "Operability" requirements for the four grandfathered floating homes;
6. No length or beam modifications to grandfathered floating homes; and
7. Existing liveaboard policies remain unaffected.

CONCLUSION:

With conceptual approval of the proposed "Vessel" definition and associated policy elements, staff will work internally and with the City Attorney's Office on amendments to the Municipal Code and relevant City Council-adopted Resolutions to accurately reflect these changes. Staff will return to the Commission for discussion/approval of these proposed amendments in early 2015 before forwarding to City Council's Ordinance Committee, and, ultimately to City Council for final adoption.

Attachments: 1. November 21, 2013 Harbor Operations Report—Definition of Vessel
2. *Docklines* article, December, 2013—Definition of Vessel

Prepared by: Mick Kronman, Harbor Operations Manager

CITY OF SANTA BARBARA WATERFRONT

DEPARTMENT MEMORANDUM

Date: November 21, 2013
To: Harbor Commission
From: Scott Riedman, Waterfront Director
Subject: **Harbor Operations Report**

Annual Training Conference—CA Harbormasters and Port Captains Association

During the week of October 28th, Mick Kronman, Harbor Operations Manager, attended the 65th annual training conference of the California Harbormasters and Port Captains Association in Aptos, California. He participated in many informative sessions, including:

1. A legislative update from the Association's Sacramento advocate;
2. The latest news on copper-free anti-fouling hull paints;
3. Adapting to sea level rise; and
4. Rebuilding a marina after a tsunami (Santa Cruz)

The conference provided valuable information and contacts that staff can use for different issues and projects moving forward. At the awards ceremony, the Association honored a four-man team from Pillar Point Harbor/San Mateo Harbor District for a lifesaving rescue of a man trapped in a sea cave. The Association also honored the Port of San Francisco for its contribution the 2013 America's Cup race, characterized by a remarkable comeback by the Oracle Team U.S.A., which won the Cup by a 9-8 margin.

Finally, the coveted State Harbor Master of the Year award went to Brad Gross, Dana Point Harbor Director, who brought training opportunities from an internationally recognized marina management organization to the West Coast for the first time.

Definition of "Vessel"

Over time, Department staff has recognized a growing interest in the placement of floating homes in Santa Barbara Harbor. Currently, four such homes that never leave the dock are assigned slips in Santa Barbara Harbor. Their owners have found ways to comply with the Department's "operability" requirement that a vessel demonstrate its ability to maneuver safely under its own power from to the open waters of the Pacific and back to its point of origin.

This "workaround," however, has left open a loophole for persons who wish to berth floating homes in Santa Barbara Harbor, contrary to Coastal Act Section 30224Z: "*Increased recreational boating use of coastal waters shall be encouraged,*" and Section 30234: "*Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute*

space has been provided. Furthermore, the Harbor Master Plan states, “*The Harbor shall be a working harbor with priority given to ocean dependent uses, such as commercial fishing and recreational boating.*” Finally, using slips for floating homes that don’t go to sea does not serve the needs of the 33 persons on the Department’s Master Slip Waiting List, some of whom have been on the list since the mid 1970s.

Earlier this year, the Supreme Court took up the floating-home issue (from a lower-court case in Florida), ultimately ruling that every home that floats is not a vessel. The Court said, “*A floating residence is not a vessel, unless a reasonable observer, looking to the home’s physical characteristics and activities, would consider it to be designed to any practical degree for carrying people or things on water.*”

This case provides important guidance for the Waterfront Department, and staff has discussed its significance with two prominent maritime attorneys—one from Rhode Island and one from San Diego. Both said this finding could be utilized to help prevent the berthing of floating homes in municipal marinas. Working with the City Attorney’s Office, staff is drafting a definition of “Vessel” to be included in Title 17 of the City’s Municipal Code (MC 17) that reflects, in language tailored for a local Ordinance, the Supreme Court’s finding.

This issue will return to the Harbor Commission next spring, as part of an overall discussion of proposed amendments to MC 17 and the Department’s Rate and Fee Schedule. In addition, staff will draft an article about this subject in the winter issue of *Docklines*, alerting the boating community to the proposed change.

As of the date of this report, with the definition of “Vessel” under consideration, the Department does not intend to assign slips to floating homes that do not meet the Supreme Court standard. Per the pending Ordinance, floating homes already assigned Harbor slips would be “grandfathered in” and not required to meet the new standard.

Fisheries Report—Squid Fishery Reaches Quota Early

On October 18th, the California Department of Fish and Wildlife (CDFW) closed the state’s commercial squid fishery, which reached its 118,000-ton quota early for the fourth straight year (the season runs from April through March unless the quota is met). It was the earliest closure since 2005, when the fishery began operating under a quota.

The difference this year was twofold. First, nobody can remember a year when there was so much squid available at the Channel Islands and on the Southern California coast. Second, CDFW collaborated with the squid industry on day-to-day management, including the closure date. With assistance from squid fishermen and seafood processors, CDFW tracked daily catches in anticipation of reaching the harvest limit, which was established to ensure a sustainable fishery.

The harvest limit is one of many provisions governing the squid fishery, which has been managed under the state’s Market Squid Fishery Management Plan (MSFMP),

developed under provisions of California's Marine Life Management Act, (1999). The MLMA created state policies, goals and objectives to govern the conservation, sustainable use and restoration of several California fisheries.

Parade of Lights December 8th

On Sunday, December 8th, boats will decorate to the theme of Rockin', Rollin' Holidays during the 28th annual Parade of Lights. Activities begin at 3:00 p.m. with Santa's Village on the City Pier, where Santa Claus and his elves will treat kids to goody bags, a 10-ton snowfield and a visit with the bearded one. The parade begins at 5:30 p.m., followed by a five-minute fireworks show provided by Bay Fireworks and a lively awards party at the Maritime Museum. Slip permittees received sign-up forms in their November billing statements. Forms are also available at the Waterfront Office and Harbor Market. Best views of the Parade are from Stearns Wharf and the breakwater.

Prepared by: Mick Kronman, Harbor Operations Manager

NEWS

in brief

Floating Homes and the Definition of “Vessel”

Mick Kronman, Harbor Operations Manager

Santa Barbara Harbor has for many years offered liveaboard privileges to slip permittees. Of 113 available permits, 87 are currently utilized. The Department welcomes further liveaboard permit applications until it reaches the state-imposed limit of 113. This program affords a unique opportunity for persons wishing to reside aboard their boats and provides the Department with “eyes and ears” on the water for everything from medical emergencies to fires or criminal activity. A liveaboard permit costs \$140 per month, with no extra charge for additional occupants.

That said, Department staff has recognized a growing interest in the placement of floating homes in Santa Barbara Harbor that are designed just as they sound—as homes that don’t leave the dock. A few of these floating homes already occupy harbor slips. Their owners have found ways to comply with the Department’s “operability” requirement that a craft demonstrate its ability to maneuver safely under its own power to the open waters of the Pacific and back to its point of origin. Owners typically use outboard engines and jury-rigged steering stations to push their outsized craft out of the harbor and back.

This “workaround,” however, has left open a loophole for persons wishing to berth mere floating homes—not boats—in Santa Barbara Harbor, contrary to the Harbor Master Plan, which states, *“The Harbor shall be a working harbor with priority given to ocean dependent uses, such as commercial fishing and recreational boating.”*



Earlier this year, the Supreme Court took up the floating-home issue (from a lower-court case in Florida), ultimately ruling that every home that floats is not a vessel. The Court said, “A floating residence is not a vessel, unless a reasonable observer, looking to the home’s physical characteristics and activities, would consider it to be designed to any practical degree for carrying people or things on water.”

This case provides important guidance for the Department, and staff has discussed its significance with two prominent maritime attorneys—one from Rhode Island and one from San Diego. Both said this finding could be utilized to help prevent the berthing of floating homes in municipal marinas (remember, this has nothing to do with living aboard—it’s about the kind of structures that occupy slips). Working with the City Attorney’s Office, staff is drafting a definition of “Vessel” to be included in Title 17 of the City’s Municipal Code (MC 17), one that reflects, in language tailored for a local Ordinance, the Court’s finding. **Note:** As part of this process, staff intends to grandfather in all non-vessel floating homes that occupied harbor slips as of November 15, 2013.

Staff discussed this issue at the November 21st Harbor Commission meeting and will return the matter to the Commission next spring, as part of an overall discussion of proposed MC 17 amendments. In addition, staff will draft another article about this subject for *Docklines* if and when City Council adopts an Ordinance defining “vessel.”