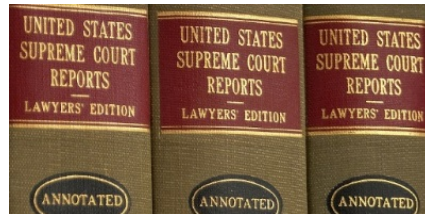




**SUFFOLK ACADEMY OF LAW**  
*The Educational Arm of the Suffolk County Bar Association*  
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## **GET ON BOARD! RECREATIONAL BOATING LAW YOU SHOULD KNOW**

### **FACULTY**

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**Program Coordinator: Marianne S. Rantala, Esq.**

**June 24, 2021**  
**Suffolk County Bar Association, New York**

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**Anthony M. Parlatore** is a firm serving East Setauket, NY in Real Estate, Wills, Trusts and Estates and Domestic Relations cases.

Mr. Parlatore is a current member of the Suffolk County Bar Association and served on the Maritime Law Committee, Grievance Committee, Judicial Screening Committee and is a Past Chair of the Criminal Law Committee. He is admitted to the Federal Bar, Eastern District of New York. Mr. Parlatore was also an Officer of the Academy of Law.

He received in BA at Lafayette College and JD at New York Law School. Mr. Parlatore is a USCG Auxiliary Flotilla Commander.

# RECREATIONAL BOATING LAW

SBYC

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“...there is nothing - absolutely nothing - half so much worth doing as simply messing around in boats.”

The Water Rat, in Kenneth Grahame's *The Wind in The Willows*





# MARITIME LAW

THE VERY BASICS

- Growth of seafaring commerce by the world's nations led to an established set of rules or conduct which evolved into **ADMIRALTY OR MARITIME LAW**
- World's oldest body of law
- Basis is to protect international seagoing commerce and encourage investment in exploration and international trade
- Ancient concepts such as ***personification of the ship, limitation of shipowner's liability, inverse order of liens (last in time is first in right)*** and many more for centuries have been nurtured and protected by special ***admiralty courts*** - all to protect the commercial needs of maritime nations
- Requirement of “***navigable highways of commerce***”...  
{wholly intrastate waterways (Lake Ronkonkoma) are not included} **AND**
- Act must have a “significant relationship to a traditional maritime activity”

# TOPICS TO DISCUSS

## (*Very* Generally)

- Salvage v. Towing
- Negligence
- Maritime liens
- Limitation of Liability
- Navigation Rules (United States Coast Guard)
- Insurance
- New York Requirements - registration, license, etc
- BWI

## COMMERCIAL V. RECREATIONAL VESSEL

(FOREMOST INS. V RICHARSON, 457 US 668, 192 S. CT. 2654, 1982)

- US CONSTITUTION ART. 3 confers Federal Jurisdiction over Maritime matters
- Prior to 1920's all cases involved Commercial Vessels because there were very few Recreational boats
- Growth of Recreational boats exploded after WW II and courts had to face question of whether commercial and recreational boats should be treated differently
- 1982 SCOTUS ruled pleasure craft should *not* be excluded from Federal Jurisdiction - maritime law henceforth would apply to all vessels on navigable waters

# SALVAGE vs TOWING



- Marine Salvage occurs when ***marine*** property is ***successfully*** saved by a ***volunteer*** from marine ***peril***.
- One of the most common forms of **salvage** is a **tow**.
- Factors that distinguish salvage from towage are marine ***peril*** and the lack of a ***contract for a set price***.



- If a recreational vessel receives a successful tow because it is in some difficulty, then **salvage - not towage** - is performed.
- The peril need not be an immediate danger or emergency. It is sufficient that some danger be reasonably anticipated
- Ultimately, whether a service is **salvage** or **towage** is a question of fact for the court.
- Difference is the amount of the award given - **Salvage** awards are determined by the value of the vessel while **towage** awards are determined by the value of the service rendered
- To avoid a salvage claim negotiate a price in advance of the service



- Police, Fire, Bay Constables, USCG, and similar agencies may not claim salvage or towage awards because they are performing their stated public service
- **TO BE SAFE AND AVOID A SALVAGE CLAIM HAVE A CLEAR UNDERSTANDING IN ADVANCE**

# NEGLIGENCE

- Maritime Torts are all based on the vessel's negligent operation by its owner or operator. (claims for ***unseaworthiness are not tonight's subject***). In addition to suing the owner/operator, ***the vessel herself can be sued!!!***
- In addition to ***collisions***, marine law recognizes ***allusions***, which are contact between a vessel and a fixed object (bridge, pier, dock, etc), and ***groundings or stranding***.
- Courts have uniformly ruled that ***when a vessel's wake collides with another vessel or damages property ashore***, Rule 2 and Rule 6 of the Navigation Rules apply and the vessel whose wake caused the problem will be held liable.
- Rule 6 obligates a vessel to proceed at a safe speed to avoid collision
- Rule 2 requires the ordinary practice of seamanship and due regard to all dangers of navigation

# FEDERAL or STATE

Where should action be commenced?

- If there is a *maritime nexus*, action can be brought in Federal or State Court
- If brought in State Court, *general maritime substantive law* governs, but State *procedural* law will be applied
- Both *in personam* and *in rem* jurisdiction (personification of the vessel)

# KAYAKER & NIKON

- Kayaker on Great South Bay was photographing birds. While so engaged, he noticed a boat approaching and began paddling out of the boat's path. Suddenly the boat veered to starboard and the kayaker noticed a waterskier outside the boat's wake heading toward him! The boat had "whipped" the skier in the kayaker's direction and the skier was unable to cut inside the wake and avoid the kayaker so she dropped the tow line but the boat's wake and the skier's wake capsized the kayak. The kayaker was uninjured but lost a \$2000.00 Nikon SLR.

# OTHER CASES

- Proceeding on a voyage aware of an unseaworthy condition of the hull
- Failure to use due care of “reasonably prudent mariner” by not checking on weather conditions before sailing
- Failing to warn passenger of intended maneuvers
- Overloading the vessel
- Permitting a guest to sit or ride in a dangerous position
- Owner liable for turning over the control of vessel to a guest not competent to operate the vessel
- Failure to comply with the NAV RULES





*"The ones just out of law school are especially frolicsome."*



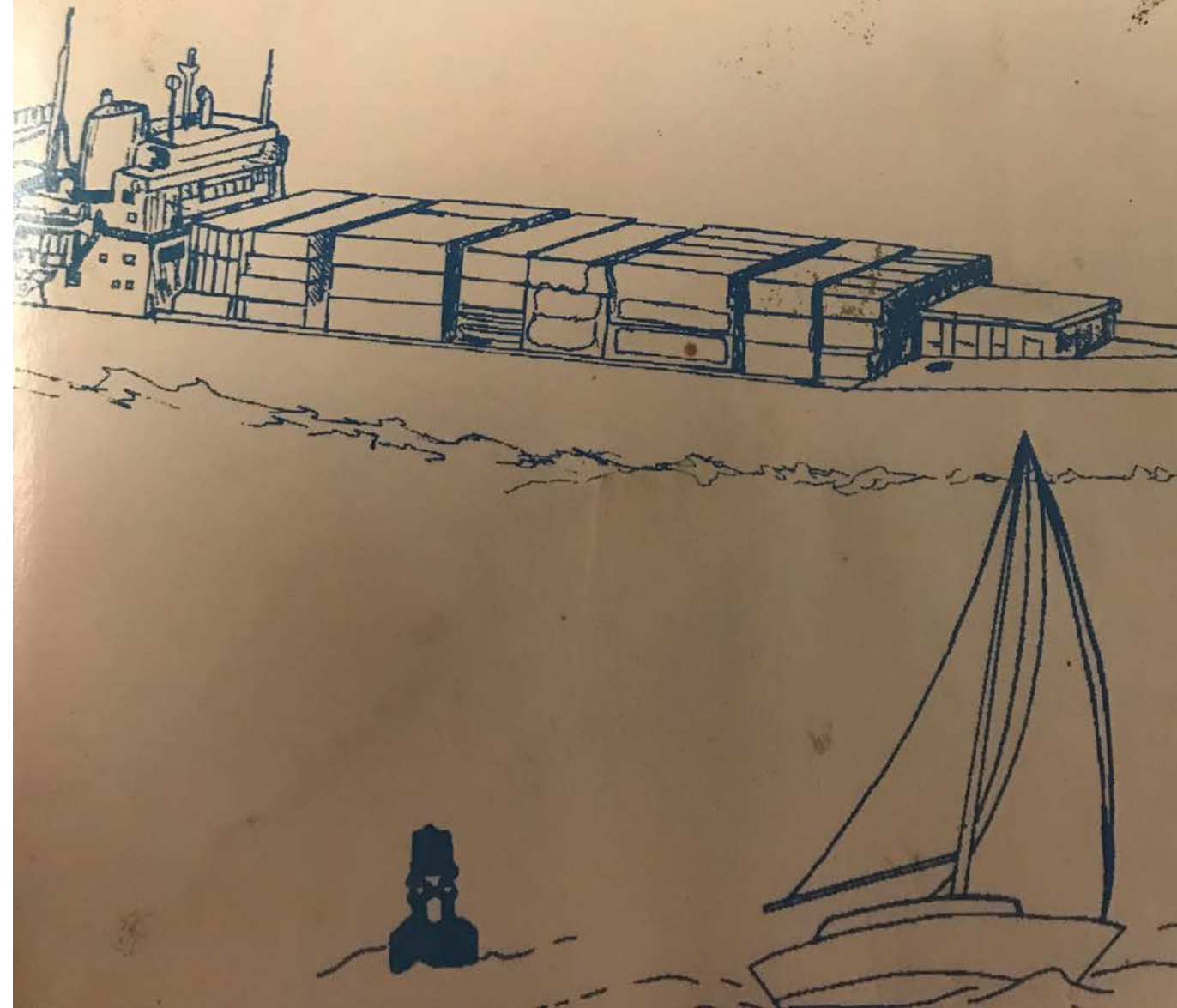
# UNITED STATES COAST GUARD NAV RULES

33 USC sec 2001-2073

U.S. Department  
of Transportation  
**United States  
Coast Guard**



## NAVIGATION RULES INTERNATIONAL—INLAND



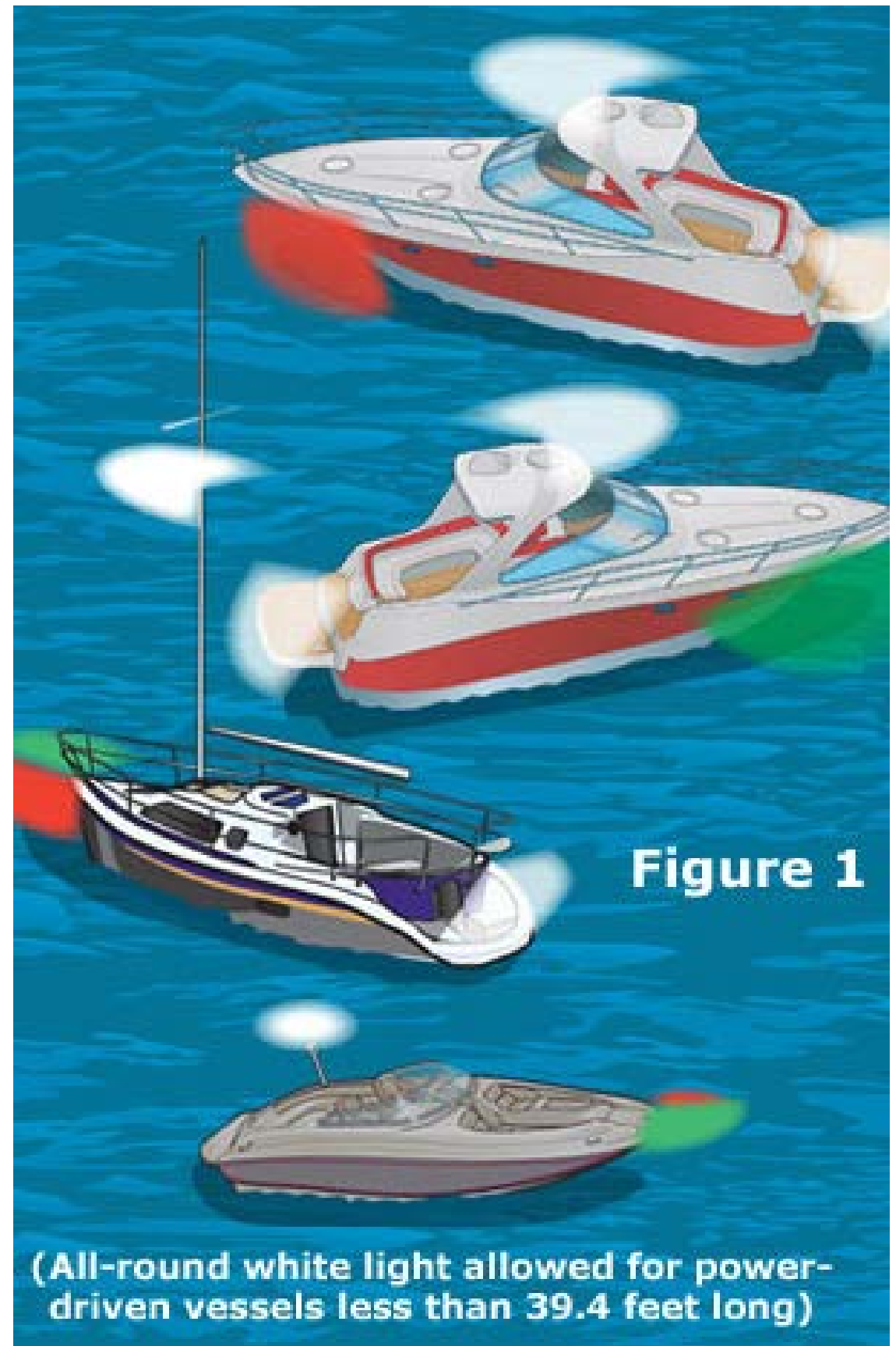
# NAVIGATION RULES cont.

- RULE 2 - Nothing in these Rules shall exonerate any vessel...from the consequences of any neglect to comply with these rules...which may be required by the ordinary practice of seamanship, or by the special circumstances of the case. Due regard shall be had to all dangers of navigation and collision which ***may make a departure from these Rules necessary to avoid immediate danger***
- ***“Last clear chance” doctrine....***
- The person in charge of a vessel ***is obligated by law to render assistance*** that can be safely provided to a mariner in danger at sea - failure to do so can subject you to **a fine and/or jail time**

STAND ON  
VESSEL=RIGHT OF  
WAY  
GIVE WAY  
VESSEL=GET OUT  
OF WAY!

If you see a **GREEN** light,  
you have the right of way

If you see a **RED** light,  
other boat has right of  
way



## NAV RULES, CONTINUED

RULE 5 - Every vessel shall at all times maintain a proper lookout by sight and hearing...by all means appropriate...so as to make a full appraisal of the situation and of the risk of collision.

RULE 8 - Any alteration of course or speed to avoid collision shall be large enough to be readily apparent to another vessel

RULE 9 - Vessel in a channel shall keep as far to the right as is practicable

# DUTY TO RENDER ASSISTANCE

- 46 U.S.C. 2304 imposes a duty to aid mariners in distress
- Defense if cannot do so without serious damage to your vessel or crew
- If convicted, fine up to \$1000.00; up to 2 yrs in jail
- 46 U.S.C. 2303(C) “Good Samaritan law - not liable for damages

# INSURANCE

- **HULL INSURANCE** - provides coverage for physical damage to vessel - 2 types: *“all risk”* and *“named peril”*
- *“ALL RISK”* - most common - can recover without proving cause of the loss
- *“NAMED PERIL”* - covered losses such as damage caused by rough seas, lightning, fire, pirates, theft - up to vessel owner to prove the cause of the loss
- Hull insurance can be either *“AGREED VALUE”* or *“ACTUAL CASH VALUE”*



# DOCUMENTATION

- One time process of registering boat with USCG not a state - includes its ***name, homeport, and tonnage***
- Only 2 requirements: 100% of vessel's ownership must be US citizens & vessel must be at least 5 net tons
- Tonnage is a volume measurement - most boats 25'+ qualify
- Documented vessels are easier to buy, sell, and finance because its entire history from the ship builder's specs through all its owners and its liens are officially registered with the USCG.
- Easier to finance because eligible for a ***PREFERRED SHIP MORTGAGE*** - a protected status for a lender

# DOCUMENTATION

- If vessel is 5 net tons or more and used commercially, it must be documented
- Documented vessels operated in NEW YORK are required by NYS to be ***registered*** as well



# MARITIME LIENS

- Foundation of Maritime Law is the ***personification*** of the vessel. The vessel herself is viewed as the wrongdoer, and as to contracts, the personal liability of the vessel's owner is ***not*** essential to the existence of a maritime lien because ***the vessel herself is considered responsible for her own debts!***
- ***Maritime Liens have no filing and are not recorded. They follow the vessel until paid.***

# CLAIMS WHICH BECOME LIENS

- Personal injuries and property damage claims (TORTS)
- Contracts for “***necessaries***” - a supplier of goods or services “necessary” for the operation of the vessel, her navigation, or for her voyage is afforded the protection of a Maritime Lien for the value of the goods or services tendered.
- Repairs, supplies, towage, use of a dry dock, berthing, fuel, radar, winter storage, food, crew’s uniforms, cigarettes and liquor on a pleasure yacht, watchman services, and fumigation of the vessel and the luggage aboard - these are all items in which courts have recognized Maritime Liens!

# ENFORCEMENT OF MARITIME LIENS

- Maritime Liens are enforced by the United State Marshall Service
- Remember! The vessel is “herself” responsible therefore the US Marshall can “arrest” the vessel (take her into his custody and auction her off to satisfy the Lien
- In actuality, the US Marshall will allow the vessel’s owner to post a Bond instead of physically seizing the vessel

# PREFERRED SHIP'S MORTGAGE

- Prior to 1920, a “mortgage” on a vessel was governed by state law, not Federal law since the underlying debt had nothing to do with a maritime function.
- Traditional Maritime Liens had preference over a “mortgage” used to finance the purchase of the vessel and therefore these “mortgages” could be rendered useless.
- In 1920 Congress passed ***THE SHIP MORTGAGE ACT*** which gave these “mortgages” preferential status over traditional Maritime Liens - encouraged the financing of our emerging merchant marine and by extension, the growth of the recreational boating industry.

# PFD's

All must wear from Nov  
1 - May 1

Under 12 yr - while on  
deck

Anyone water skiing or  
“boogie boarding”



- IF YOU MUST APPROACH WITHIN 100 YDS TO SAFELY NAVIGATE, ***YOU MUST CONTACT THE NAVY VESSEL ON VHF 16 TO GET PERMISSION***
- VIOLATIONS OF NAVY PROTECTION ZONE ARE ***FEDERAL FELONIES***
- ***PUNISHABLE BY UP TO 6 YRS IN  
FEDERAL PRISON AND/OR \$250,000 FINE***

BOATING WHILE INTOXICATED  
NYS NAVIGATION LAW sec 49a  
46 U.S.C.  
Sec2302 {c}



# NY NAVIGATION LAW, SEC 49

- “VESSEL” - Every description of watercraft or artificial contrivance propelled in whole or in part **BY MECHANICAL MEANS**. Must be underway and not at anchor or made fast to shore or ground.
- Charge can be a **violation**, **misdemeanor**, or a **felony** depending upon the level of impairment or intoxication, and also dependent upon prior record of alcohol or drug related arrests.
- “Impairment” or “intoxication” can be alleged to be caused by alcohol or drugs.
- Legal presumption of intoxication in New York is .08 BAL for non-commercial vessels and .04 for commercial vessels.
- People v Briggs, Nassau County (1990) 562 NYS2nd 8, 148 Misc 2nd 935
- **CAN ALSO BE CHARGED FEDERALLY BY USCG IN FEDERAL COURT!!!!**





**LIMITATION OF LIABILITY**

# LIMITATION

- SHIPOWNERS' LIMITATION OF LIABILITY ACT (1851) PERMITS THE OWNER OF A VESSEL (IN CERTAIN CIRCUMSTANCES) TO LIMIT HIS FINANCIAL LIABILITY TO THE VALUE OF THE VESSEL ***AFTER THE ACCIDENT!***
- Owner cannot be onboard or in command of the vessel
- Owner is liable for "...his own fault, neglect and contracts."
- Pollution damage and clean up expenses and claims of the United States are not subject to Limitation of Liability protection

# ANCHORING VS. MOORING



- Do we have the right to anchor in navigable waters?
- What are our rights to drop a mooring?
- Balancing the right of unimpeded freedom of travel, the rights of shoreline merchants who benefit by boaters, and local governments' exercise of their police powers

# US COAST GUARD BOARDING POLICY

- AUTHORIZED BY Title 14 of the UNITED STATES CODE
- USCG can “...*make inquiries, examinations, inspections, searches, seizures, and arrests.*”
- USCG conducts about 70,000 boardings per year
- Decision to board is based on vessel’s *activity, location, obvious violations (no running lights at night, no registration numbers visible, etc.)*
- Despite the Fourth Amendment, Federal and state law affords the government broader power to search a vessel than to search a land based structure.
- Key distinction is the “***expectation of privacy***”

# HIGH EXPECTATION OF PRIVACY

- Houseboats
- Crews' quarters, footlockers, duffel bags, etc
- **LOW EXPECTATION OF PRIVACY:** Cockpits of pleasure craft, open decks of fishing vessels, area surrounding vessels' identification number or documentation number, all common areas of vessel
- ***AFTER 9/11 VESSEL BOARDINGS AND SEARCHES ARE ROUTINELY GIVEN BROAD LATITUDE BY FEDERAL AND STATE COURTS !!!!***

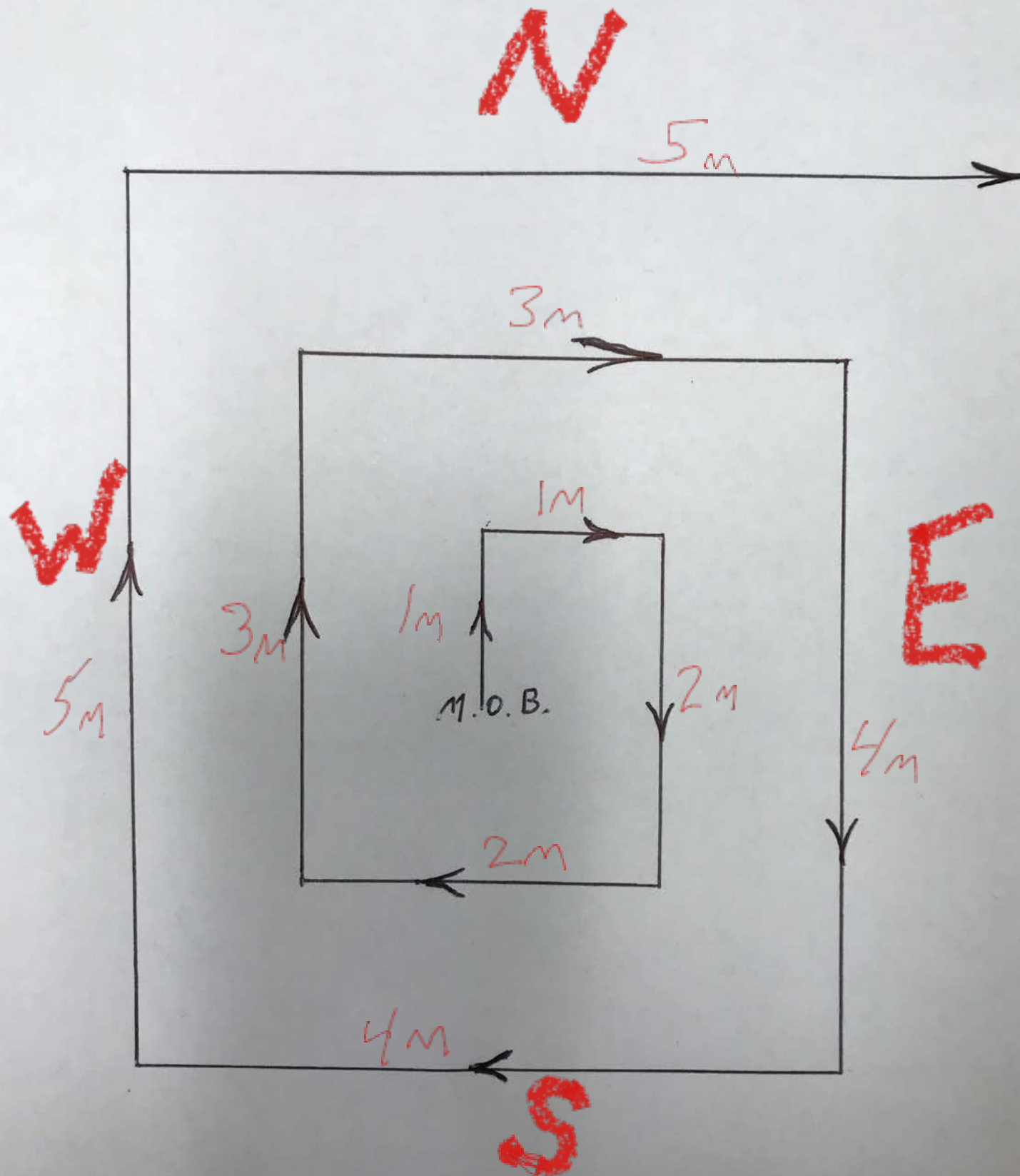
# FINAL THOUGHTS

- New Tax Law: 2nd Home deduction rules still apply - for vessel to qualify it must have ***sleeping berth, cooking facilities, and toilet*** - Federal Tax Deduction still allowed for state sales tax paid on recreational vessel  
(CHECK WITH YOUR TAX ADVISOR BEFORE MAKING ANY TAX RELATED DECISIONS CONCERNING YOUR BOAT)
- MAN OVERBOARD - ***IMMEDIATELY call 911 AND broadcast MAN OVERBOARD on VHF channel 16*** - press the MOB on GPS or Chartplotter or get from any other device available to fix the position....do the above while commencing your search
- EXPANDING SQUARE - North for 1 MINUTE, East for 1 MINUTE, South for 2 MINUTES, West for 2 MINUTES, North for 3 minutes, East for 3 minutes, South for 4 minutes, West for 4 minutes ... repeat N S E W progression adding 1 minute with each turn ***while looking for the MOB***



# NAVY PROTECTION ZONE

Do not approach within 100 yds!  
Must operate at minimum speed within 500 yds







● ?







## **SCBA Lawyers Helping Lawyers Committee**

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to speak with an attorney who will provide support and recommend  
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