

THE CYBA NEWS

December 2020 - March 2021

The California Yacht Brokers Association Newsletter

CYBA & Sail America Announce A New Agreement For Pacific Sail & Power Boat Show

Sail America and the California Yacht Brokers Association announce they have entered into a licensing agreement for the Pacific Sail & Power Boat Show. Under the agreement, CYBA assumes management of the show. Ownership of the show will also transfer to CYBA over the period of the agreement. Starting immediately, Sail America will begin the orderly transfer of duties and responsibilities for show management to CYBA.

"Our organizations' mutual interests are to ensure that the Pacific Sail & Power Boat Show is able to continue with the full support of the boating industry. This agreement transitions the management and delivery of the show to CYBA, which has a deep

understanding of the boating market in Northern California and a successful record of bringing

together the recreational boating industry in the region," said CYBA

(cont. on page 2)



2020 Pacific Sail & Power Boat Show.



Trade Tarriffs

Last week, the Biden administration and European Union (EU) agreed to a four month pause on tariffs related to the World Trade Organization (WTO) Aircraft disputes. The suspension will cover all tariffs

both on aircraft as well as on non-aircraft products; however, it does not address the U.S. Section 232 tariffs on steel and aluminum or the 25 percent retaliatory tariff on American boat exports to the EU.

(CYBA note): We must

reach out to our Congressional representatives asking for their support here. Need to know who to contact?

NMMA National Marine Manufacturers Association*



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from the PRESIDENT

**George Sikich, CPYB,
Kensington Yacht & Ship Brokers**

The first quarter of 2021 has turned out to be all we could hope for. Our business has virtually no resemblance to the economy as a whole. Businesses are failing left and right, they are forbidden to open their doors and the ensuing impact on the community is horrific. We are blessed to be among the chosen who are allowed to be essential and demand for our product is off the charts. Last year I wrote in one of the newsletters, when things were less prosperous, that the market would eventually turn around, it always has. Well, here we are.

Prosperity can be a devil in disguise. We are facing multiple fronts of adversaries coming after us. Our members are getting hammered with bogus, frivolous lawsuits. Bottom-feeding lawyers are suing our members for not having an ADA compliant website. They are claiming our websites aren't accessible for sight-impaired people. The ADA compliant requirements are extremely ambiguous

regarding websites. Boats Group has not offered any reassuring assistance, leaving us on our own.

The CYBA is taking proactive measures to head this off. We will offer some direction very shortly, hopefully before this goes to print.

Boats Group has raised its prices by 30%. This is unconscionable; we have a CYBA MLS that is considerably less for our members, and I encourage you to explore it (www.yachtsforsalewest.com). Additionally, with the new CYBA forms suite, offering electronic signatures and seamless integration for considerably less than yachtcloser, we are prepared to confront the current marketplace.

The CYBA is very actively looking into the year ahead and the products we offer our members. The Legal Seminar is on the radar for what we hope will be an in-person event. Like most of you, I am contemplating a Zoom free existence.

CYBA & Sail America... (cont. from page 1)



2020 Pacific Sail & Power Boat Show.

Executive Director Don Abbott. "Our management team and board are excited to re-imagine what the Pacific Sail & Power Boat Show can be and how we can deliver a truly memorable event for the industry and the consumer."

Under this agreement, Sail America members will continue to enjoy a member discount on in-water and upland exhibitor space and Sail America will be named as a sponsor. "Sail America is delighted to be working with the team at CYBA. It ensures that the show will continue, that the sailing industry

(cont. on page 28)

News Of San Francisco Bay Point Molate Development



The Bay Planning Coalition is meeting in March to host a presentation on the Point Molate mixed use development project. This project will include 1,450 new residential units, commercial businesses, and 70 percent of the site will remain as open space.

The 412-acre former Point Molate Naval Fuel Depot (NFD) contains about 276 acres of land above high tide elevation. Located on Richmond's shoreline about a mile north of the Richmond/San Rafael Bridge, this unique site contains:

- 1.5 miles of unoccupied shoreline
- A 400' high ridge line with sweeping views of two bays, a Victorian island lighthouse, Mount Tamalpais and Mount Saint Helena
- A 1400' long pier providing deep water access
- the 41-acre Winehaven Historic District
- A Rhineland-style castle that was part of the largest winery in the U.S. prior to Prohibition
- Extensive inter tidal eel grass beds and rare coastal prairie and coastal bluff native plant communities.

SHORT HISTORY – 1908 TO 2020

Once the largest winery in the United States, the 41-acre Winehaven Historic District is recognized under both Federal and State law.

Beginning in 1942, Point Molate served as a U.S. Navy fuel storage and transfer facility. It closed on September 30, 1995 under the U.S. Department of Defense Base Realignment and Closure Act of 1990. The Navy sold 218 acres of the property to the City of Richmond for one dollar in September 2003. Transfer of the remaining land was completed in March 2010 under an Early Transfer Cooperative Agreement under which the Navy provided the City with \$28.5 million for a cleanup approach agreed upon by the parties and

(cont. on page 4)



Inside This Issue:

CYBA & Sail America Announce A New Agreement For Pacific Sail & Power Boat Show.....	Page 1
Trade Tariffs	Page 1
From The President.....	Page 2
News Of San Francisco Bay Point Molate Development.....	Page 3
Forms Update	Page 4
36th America's Cup.....	Page 6
Know Your Regulators.....	Page 6
The 2021 California Boating Congress	Page 8
Bay Area's First Clean Marine Boatyard	Page 10
Merle B. Parke Award.....	Page 12
U.S. Coast Guard Bust.....	Page 14
Membership	Page 14
Web Accessibility Cases & California's Unruh Act.....	Page 16
Yatco Swecures Major Funding To Fast-Track Consumer Marketing.....	Page 21
Treasurer's Report.....	Page 21
Electronic Classrooms.....	Page 22
Panama Posse, A Cruising Opportunity For Your Clients.....	Page 22
CPYB Awards.....	Page 24
Don't Miss A Meeting!.....	Page 24
CYBA Board Of Director's Meeting.....	Page 25
Summer Sailstice 2021	Page 26
Opening Day On The Bay.....	Page 26
Calendar Of Events.....	Page 28



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the Regional Water Quality Control Board. The cleanup has been largely completed but monitoring for potential pollutants continues.

On November 24, 2004, the City of Richmond entered into a Land Disposition Agreement

with Upstream Point Molate LLC to sell former Naval Fuel Depot Point Molate for \$50 million. In 2011, the Richmond City Council and the Bureau of Indian Affairs rejected the tribal gambling casino proposed by Upstream and

the Guideville Band of Pomo Indians. The new plan includes a development scenario at Point Molate with residential units and preservation of at least 70 percent of the 275 acres at Point Molate as open space.

Forms Update

Nick Friedman

The new forms program is up and functioning well. If you are yet to migrate to the new forms suite, please contact Don Abbott at Don@cyba.info to get started. The new forms incorporate some new and helpful documents and are constantly being updated. The new RightSignature e-sign component is available also. As needed a tutorial on the use of RightSignature has been created by JR Means and is available from Don Abbott.

Most of the client and vessel

data bases have been moved to the new forms to help ease the transition. The old forms will be kept intact to reference archived contracts. These were not able to be migrated to the new form system due to incompatibility of the old software with the new. The old forms will no longer be updated, and while access is still available, they have technically expired as of the end of 2020.

The new forms include Amendments to both Purchase Agreements and Listing Agreements that conform to DBW

requirements, an optional minimum commission addition can be optionally included and appears in the compensation paragraph (paragraph 4) of the listing agreement. It is also no longer necessary to create a Purchase Agreement when responding to an offer from another brokerage. There are more numerous improvements.

As always, Nick Friedman: yachtbroker@pacbell.net – 310-748-5409 and Don Abbott Don@cyba.info – 775-745-6565 are available to assist.

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- Vessel Stock Purchase Agreements with or without post-closing merger restructuring to avoid future inefficient, expensive or illegal ownership structures.

Vessel New Build Contracts including assistance with Technical Team assembly. WLG has a worldwide web of project managers, naval architects and yacht designers. WLG will guide your buyer through the phases of conception, contract, milestone construction inspections and finally the launch phase which includes ownership structure, tax, VAT, registration and regulatory planning and compliance.

EU and other Country Vessel Acquisitions. WLG has a worldwide web of VAT, Attorney and Customs experts. Most international transactions utilize the WLG 3 Stakeholder Structure[®] for the safety and protection of the Buyer. WLG urges you not attempt to use a local US Vessel Purchase Agreement for an international transaction.

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WLG is the leader in representing yacht owners concerning obtaining exemption from, minimizing or reducing California Property Taxes. WLG has taught the maritime industry, including local governments, the true basis and methodology of California Property Taxation including its constitutional law underpinnings.

Custom Contracts. WLG is best known for its ability to draft custom maritime contracts for the most complex maritime transactions conceivable in the most efficient and understandable manner possible.

Proper Broker and Brokerage Operational Structures. WLG will consult with brokers and brokerages concerning the optimal operational structure from both an income tax, estate tax, and regulatory perspective.

Trust & Estate Planning. WLG will consult with brokers to ensure they personally have trust and/or estate plans in place to protect them and their families. WLG has drafted and administered thousands of trust and estate plans during its 36-year history.

The WLG Team – The Attorneys

WLG believes it is the most efficient maritime tax firm in the world with a full staff ready to serve your needs.

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36th America's Cup Challenger Luna Rossa Prada Pirelli Faces Defender Emirates Team New Zealand

By MaryLou Thiercof
March 8th, 2021

It's been on and off again due to increased incidents of Covid-19. Racing is set to start on Wednesday, March 10th under Covid-19 Level 2.

The highly anticipated Race 1 of the 36th America's Cup Match will start shortly after 4 pm (NZT) on Wednesday March 10th. The Government announced a reduction in alert levels March 5th.

Under COVID-19 Alert level 2 or 1, the race schedule will remain as planned with 2 races per day – Wednesday 10th, Friday 12th, Saturday 13th, Sunday 14th, Monday 15th and each day after that. The current schedule has racing every day until either the Defender Emirates Team New Zealand or the Challenger Luna Rossa reaches 7 wins.

Racing Under Level 2

Racing under Level 2 will be restricted to only be sailed on either Race Course A or E. If Auckland moves to Level 1, all courses will become options for the Regatta Director again.

Every race of the 36th America's Cup presented by Prada will be streamed online on YouTube, Facebook and americascup.com in almost every country in the world. Watch the America's Cup



match at [americascup.com](https://www.americascup.com) or on YouTube: https://www.youtube.com/channel/UCo15ZYO_XDRU9LI30OPtxAg

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Know Your Regulators

Division of Boating and Waterways (DBW) would like to welcome Jill Bennetts to the Yacht and Ship Licensing Unit. Jill is the new licensing administrator for Salesperson licenses. She comes to the DBW previously working for the State of California, Department of Motor Vehicles, with excellent skills in all aspects of Licensing and customer service.

Jill graduated from Chapman University, earning a Bachelors Degree in Social Sciences with the

majority of her units in Anthropological courses. She is an avid photographer and has a great admiration and respect for the outdoors. "I feel that it is a privilege to be able to live in such a beautiful state that offers such diverse resources and am very proud to be a part of California State Parks. I look forward to utilizing my skills and building excellent working relationships with the many brokers, salespeople and others within the boating industry." Please feel free

to contact Jill directly at (916) 327-1838 or by email at: jill.bennetts@parks.ca.gov





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The 2021 California Boating Congress (Online Presentation)

This event just completed and was a successful update and focus on the goals of the boating industry in California as viewed by the following guest speakers. It featured a lively Q & A following each presentation and was hosted by MRA's Mariann Timms and Alison Sparks.

2030 and Beyond – The Governor's Office of Business and Economic Development (GO-Biz) serves as the State of California's leader for job growth, economic development, and business assistance efforts. California leads the nation in zero-emission passenger and goods movement. Our system of incentives, regulations, workforce development, and active stakeholder engagement is designed to enable industry to deliver the technologies and scale we need to secure a prosperous, clean, and climate friendly future. GO-Biz has a team specifically dedicated to cultivating opportu-

nities to accelerate zero-emission vehicle market growth. We welcome companies and ideas of all types and remain dedicated to success both inside and outside of California.

Tyson Eckerle is lead staff for the ZEV team and discussed the Governor's executive order and the charge his Agency has been given to shepherd the State towards the goals outlined in the EO.

Tyson Eckerle, Deputy Director, Zero Emission Vehicle Market Development, California Governor's Office of Business & Economic Development

State of the Marine Industry and the Future of Recreational Boating – NMMA President, Frank Hugelmeyer, and NMMA SVP of Operations, Robert Newsome, discussed the current state of the boating industry, and how both current challenges and oppor-

tunities will shape the future of recreational boating in California and across the United States.

Frank Hugelmeyer, President, National Marine Manufacturers Association. Robert Newsome, Senior Vice President of Operations, National Marine Manufacturers Association.

Copper Paint Regulations Update: Charting a Course for the Marina Operator/Owner – Copper antifouling paint (AFP) controls are being prioritized in the Non-point Source Implementation Plan (NPS Plan) developed by the State Water Resources Control Board, the Los Angeles Regional Water Quality Control Board (RWQCB), and the Santa Ana RWQCB. MRA provided comments to the State and Regional Water Boards in 2020 and requested clarification on the type of management actions marina owners and marina

(cont. on next page)

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operators may anticipate. This presentation summarized the range of compliance requirements that may be expected, an update on ATF issues in Los Angeles, Orange, and San Diego counties. Dr. Anghera provided a unique understanding to the AFP issues and assisted MRA in the development of formal comments to the State Board related to proposed ATF controls.

Shelly Anghera, Ph.D., Coastal, Water, & Environmental Technical Director, Moffatt & Nichol

Division of Boating and Waterways Update on Programs – Ramona Fernandez, Acting Deputy Director, Division of Boating and Waterways

Legislative Summary – Beau Biller, Lobbyist, Platinum Advisors

Legislative Bill Report

- AB 335 (Boerner Horvath

D) California Consumer Privacy Act of 2018: vessel information. Sponsor: National Marine Manufacturers Association.

- AB 591 (Villapudua D) Vessels: arrests.

- AB 817 (Wood D) Sport fishing licenses: electronic display: 12-consecutive-month licenses. Sponsor: Coastal Conservation Association of California.

- AB 1066 (Bloom D) Fresh-water bathing sites: water quality monitoring.

- SB 557 (Wieckowski D) Hazardous waste: treated wood waste.

- AB 30 (Kalra D) Parks: access to nature-Intent bill.

- AB 564 (Gonzalez, Lorena D) Biodiversity Protection and Restoration Act. Sponsor: Social Compassion in Legislation and Center for Biological Diversity.

- AB 1500 (Garcia, Eduardo D) Safe Drinking Water, Wildfire Prevention, Drought Preparation,

Flood Protection, Extreme Heat Mitigation, and Workforce Development Bond Act of 2022.

- SB 54(Allen D), Plastic Pollution Producer Responsibility Act.

- SB 470 (Jones R) Fishing and hunting: annual combined hunting and fishing licenses. Sponsor: California Waterfowl Association.

CARB Workshop

The California Air Resources Board (CARB) plans an online public workshop to discuss the development of the California Recreational Marine Vessel emissions inventory (RMV2022), scheduled for March 30, 2021. The purpose of this workshop is to update stakeholders on the proposed methodology and data that will be used to develop the RMV2022 model. Staff will provide an overview of the on-going California recreational marine vessel survey and its latest status CARB is devel-

(cont. on page 11)



Our West Marine Pro California Sales team would like to thank the CYBA for allowing us to be a partner.

Here is a list of our California sales team that are here to serve you:

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Maritime Liens - Liens that arise by operation of law and give the lienholder a property right in vessels and the right to foreclose the lien in admiralty.

Representation of Yacht Brokers, Vendors, Lenders and Other Industry Professionals - Assistance with the contract or consumer disputes, buy-sell agreements, regulatory issues, etc.

Michael G. Wales, Esq.

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Bay Area's First Clean Marine Boatyard

**Pt Richmond, California,
January 11, 2021**

Keefe Kaplan Marine, Inc. (KKMI), a boatyard in Pt Richmond, California, was recently awarded a Clean Marine certification by the Clean Marine Program. This makes KKMI, Pt. Richmond, the first Bay Area boatyard to receive this prestigious award. The certification process involves evaluation of over 150 require-



ments regarding company practices related to Emergencies, Fire Safety, Solid and Liquid Wastes, Hazardous Waste, Engine Maintenance/Repair, Painting, Storm

Water Management, Landscaping for Storm Water, Used Petroleum Products, Used Antifreeze Waste, Soiled Rags, Battery Management,

(cont. on next page)

SHIP HAPPENS! REAL LIFE STORIES FROM THE BOATYARD!

KAPTAIN KKMI? HELP! I WAS SLEEPING ON MY BOAT AND WOKE UP TO WATER EVERYWHERE! I THINK I'M SINKING!

I'M ON MY WAY!

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WAIT... YOU'RE HAVING A COCKTAIL?

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*KKMI DOES NOT RECOMMEND CONSUMING BILGE-WATER COCKTAILS; ONE TINY TASTE IS ENOUGH!

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Bay Area's First... (cont. from page 10)

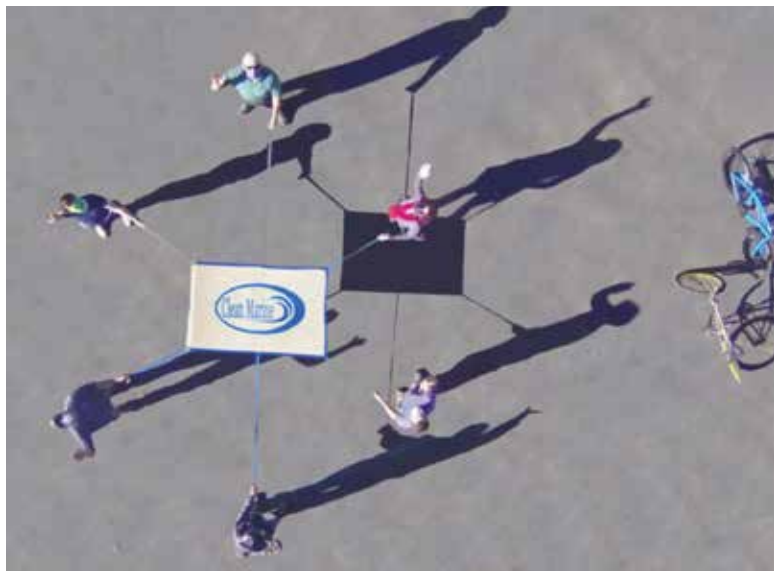
Refrigerants, Mercury Lamps/Bilge Switches, Boat Cleaning, Pressure Washing, Paint Removal, Sand Blasting, and Facility & Housekeeping. (Whew!)

The Clean Marine Program developed the certification program through an examination of many Best Management Practices (BMPs) in partnership with many stakeholders. This included groups such as California Environmental Protection Agency, California Department of Toxic Substances and their office of Pollution Prevention and Green Technology, California Coastal Commission, California Department of Boating and Waterways, California Department of Pesti-



cides, City of San Francisco Health Department and San Francisco Bay Keeper.

Congratulations to KKMI and crew!



CA Boating Congress... (cont. from page 9)

oping a new emission inventory for recreational marine vessels to reflect updated activity, emission factors, and population. The new RMV2022 model will inform various emission reduction strategies that CARB is exploring to reduce emissions from this sector.

New Members – Senate (why is this important? We need our members contacting these new members and asking them to support our issues. Get involved!)

Susan Talamantes Eggman

(D-Stockton)

Josh Becker (D-Menlo Park)

Dave Cortese (D-San Jose)

John Laird (D-Santa Cruz)

Monique Limón (D-Goleta)

Rosilicie Ochoa Bogh (R-Yucaipa)

Josh Newman (D-Fullerton)

Dave Min (D-Irvine)

New Members – Assembly

Carlos Villapudua (D-Stockton)

Alex Lee (D-San Jose)

"Smitty" Smith (R-Apple Valley)

Steve Bennett (D-Ventura)
Suzette Valladares (R-Santa Clarita)

Lisa Calderon (D-Whittier)

Kelly Seyarto (R-Murrieta)

Janet Nguyen (R-Huntington Beach)

Laurie Davies (R-Laguna Niguel)

Chris Ward (D-San Diego)

Jerry Desmond, Lobbyist, Desmond and Desmond

DBW HWRF Deficiency

(cont. on page 14)

Merle B. Parke Award

Every year the CYBA recognizes a person in our industry who has made generous contributions to the CYBA and to the yacht brokerage business in California with the Merle Beam Parke award. The "Merle" can go to a CYBA member or a CYBA Affiliate. This award has been presented annually since 1985 and is in honor of former CYBA president Merle Parke.

The winner is selected by a committee of the previous winner, the CYBA executive Director and the CYBA president.

This year's recipient is Tony Faso:

Tony has been the owner-operator of Delta Marine Sales and Services in Stockton, CA (a 5-acre boat yard and sales facility) for nearly 15 years. He continues to run the boat yard today, along with another sales facility at Tower Park Marina in the Delta. He has been able to bring his



experience as a boat yard owner to help others in the CYBA better understand that side of the transaction process, as it can often be a contentious portion of any deal.

Tony joined the CYBA in 2013 as a master member and now is proud to serve on the board.

Tony has worked with the legislative committee, diligently working with the various departments that comprise boating in Sacramento. He has been active in the CDC (California Boating Congress) and has always maintained a favorable relationship with our governing body (the DBW) on behalf of the CYBA. Tony has also been the editor of the CYBA newsletter for the past 3 years, probably the most time-consuming and demanding position the CYBA has.

The CYBA is an organization that is all volunteer and through its members strives to provide our membership with all issues related to our business to keep us up to date and relevant. Tony clearly is the epitome of what has made the CYBA an exceptional organization.

Congratulations Tony, you are most deserving of this year's Merle Parke Award!



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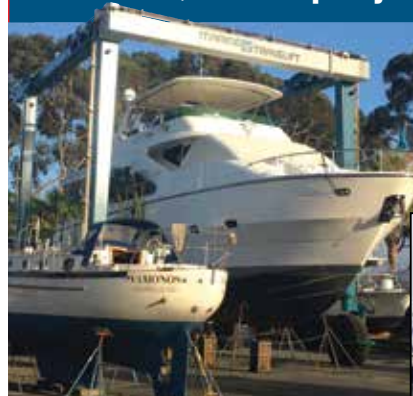
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Governor's proposed plan to address DBW HWRF Deficiency (FY 2021-2022)

State Budget – effective date July 1, 2021

Issues include: 250% vessel registration fee increase [\$20 to \$70 bi-annually].

\$107 million in annual boat fuel tax dollars, 14% go to HWRF.

Continued statutory authority for HWRF funds to be utilized for beach erosion control.

No equitable funding structure for the invasive species program that includes other beneficiaries with a proportional financial framework.

No statutory stakeholder pro-

cess to develop long-term funding approaches to the HWRF.

No Boating and Waterways Commission's statutory authority to approve loans and grants from the HWRF

Boating community coalition letter and advocacy efforts.

March 29 discussion with State Parks, DBW.

Mark Smith, Lobbyist, Smith Policy Group, Lobbyist for National Marine Manufacturers Association

- Protected area definitions that allow for well-managed and sustainable wildlife-dependent activities.

- Consideration of existing

protected areas in measuring progress toward stated goals.

- Targeted, science-based conservation measures developed through a stakeholder-driven process to address biodiversity threats.

- Lands and waters currently available for wildlife dependent recreation, including fishing and hunting, should remain open and available for participation in these activities unless reduced access is justified by science-based concerns for the conservation of species affected by the recreational activity.

- Clearly defined roles and authorities.

U.S. Coast Guard Bust

Coast Guard Seizes \$156 Million in Drugs Off California Coast.

9 suspected drug traffickers are in custody after Alameda-based Coast Guard units intercepted three separate vessels between Jan. 26 and Feb. 1. Coast Guard cutters *Munro* and *Bertholf* were responsible for the busts. In total, over 9,000 lbs. of cocaine was seized, estimated to be worth \$156M.

Cartels design low-profile vessels specifically to evade law enforcement and to ferry large quantities of illicit contraband while riding low in the water.



A USCG boarding team member stands atop an interdicted low-profile vessel in the Eastern Pacific Ocean, Feb. 1, 2021. Photo courtesy of the Coast Guard Cutter *Bertholf*.

Membership

Peter Zaleski

2021 CYBA Vice President and Membership Committee Chair

In the first two months of 2021 the CYBA experienced more growth than all of 2020. As we go to press in early March, we added an additional 14 members.

While I would like to think the explosion of new members was due to the new chairperson, the consensus is the new forms drove much of the membership.

Access to the forms was mentioned by several new members

on their application. The majority said that education and support of the association were the driving force behind their joining.

We are very excited to have the new members but know there are still quite a few working in our industry that have not yet joined. Our best salespeople are current members... and we ask that you help us by encouraging your friends and associates to join.

We get all of our income from sponsors and membership dues. As a nonprofit, volunteer-run or-

ganization we need your support to continue to offer the industry's best forms and signature package and lobbying our politicians in Sacramento and Washington. Also, working with the other broker groups worldwide, sponsoring the Legal Seminar, industry meet-ups and working with boat shows.

Everyone in our industry should be a member! Make it a goal to get others to join.

Please do not hesitate to let me know how I may help.

License #0E32738

Northern California Office



7 Marina Plaza • Antioch, CA 94509 • At The Antioch Marina
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The Marine Programs at the Orange Coast College School of Sailing and Seamanship is located at the Newport Beach Campus. OCC is one of the nation's largest nonprofit public boating education institutions with a fleet of power and sailboats comprised of donated vessels and those purchased from proceeds of other gifts.

If you, or a client, are interested in donating your boat, please contact Brad Avery the Director of Marine Programs. He can be reached at (949) 645-9412 or email him directly at bavery@occ.cccd.edu.

(photo: OCC's Training Vessel Nordic Star)



ORANGE COAST COLLEGE

Web Accessibility Cases & California's Unruh Act

Recently, a number of businesses, including several CYBA members and vendors, have been the recipients of demand letters and/or lawsuits alleging their websites are not accessible to persons with visual disabilities. Typically, most of the demands seek a settlement of \$5,500, which includes the minimum statutory penalty of \$4,000 plus attorneys fees of \$1,500. These claims are made for violations of California's Unruh Act, enacted in 1959 and named for its author, Jesse M. Unruh. The Unruh Civil Rights Act is codified as California Civil Code Section 51. Some pro-plaintiff ADA lawyers have made it their business model to use this Act to their financial advantage.

The Unruh Civil Rights Act provides that all persons are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind

whatsoever. In 1992, the Unruh Act was amended to provide that "[a] violation of the right of any individual under the Americans with Disabilities Act of 1990... shall also constitute a violation of this section. The Ninth Circuit has since held that violating the ADA is a per se violation of the Unruh Act.

The Ninth Circuit Court in *Robles v. Domino's Pizza, LLC* held that the ADA applies to websites and mobile apps that connect customers to the goods and services of restaurants and other places of public accommodations. The Court also found that Dominos had adequate notice of the law regarding website accessibility.

Under the Unruh Act, a plaintiff is entitled to recover damages in an amount up to three times the actual damages for each violation of the Unruh Act, "but in no case less than \$4,000..." for each and every offense and, any attorney's fees that may be determined by

the court in addition thereto.

A plaintiff does not have to prove the website owner acted with intent when the underlying violation of the Unruh Act is an ADA violation.

The crux of the problem is that when the ADA and California's Unruh Act were enacted in the early 1990s, neither Congress nor California's legislature adequately anticipated the crucial role that the internet would have in peoples' lives in the 21st Century, and instead focused on discrimination based on disability that occurred in person or through personal interactions.

Which Website Guidelines Apply?

As of this writing, the Website Content Accessibility Guidelines ("WCAG") 2.0 or the WCAG 2.1 level AA, do not apply as a matter of law and a failure to comply with WCAG is not a per se violation of

(cont. on page 18)

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423

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THE PAST 30 DAYS

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TOTAL \$USD
ON THE MARKET

73

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THE PAST 30 DAYS

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THE PAST 12 MONTHS

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~ STUDY SESSION AND TESTING ~

**Contact Jeff Merrill or Nick Friedman
for next study session & exam.**

The CYBA is conducting a study session, immediately followed by the examination, for all those interested in becoming Certified Professional Yacht Brokers. This will be our first available session in response to the great interest in this worthy program.

If you have a desire to take your business and personal accomplishment up to the next level, you owe it to yourself and your clients to earn the CPYB designation. Join a growing number of the best and brightest brokers nationwide in increasing your knowledge, professionalism, and ethical standards as they relate to your chosen profession.

For complete information, including study materials, applications, and required qualifications, please visit the National Yacht Broker Certification website at www.cpyb.net. There you will find all the forms you need in a downloadable format.

**If you have any questions, please contact one
of the CYBA's Members on the Certification
Advisory Council:**

SO-CAL
Jeff Merrill, CPYB
Jeff Merrill Yacht Sales, Inc.
949-355-4950
jeff@JMYS.com

Nick Friedman, CPYB
The Shoreline Yacht Group
310-748-5409
yachtbroker@pacbell.net

Morrie Kirk, CPYB
Bayport Yachts
714-612-1137
mpkirk7@gmail.com

You may also respond to cpyb@cyba.info or contact any CYBA Board Member. The National Yacht Broker Certification office needs time to process your application and to perform your background check.

Brokers wishing to attend the study session, but who are not testing, are welcome. However you must reserve a space! Seating is limited!

NOTE: This session is for CYBA Members only. If you are not yet a Member, and would like to join, contact the CYBA office immediately @ 800-875-2922.

Web Accessibility... (cont. from page 16)

the ADA. Trial courts, however, "can order compliance with WCAG 2.0 as an equitable remedy if, after discovery, the website and app fail to satisfy the ADA." *Thurston v. Midvale Corp. d/b/a Whisper Lounge*.

The Department of Justice is charged with rule-making to provide clear requirements for compliance of laws. However, the DOJ has abdicated its role - not only under the Trump administration - but going back to 2010. The DOJ took steps toward establishing these rules and was very close to adopting the Web Content Accessibility Guidelines (WCAG 2.0 A, AA), however the Trump administration suspended all rulemaking - despite the call from business groups and advocates alike. This gap has been left to the courts and state legislatures to fill. While it is uncertain, most expect the Biden administration to adopt rules based on the Web Content Accessibility Guideline.

The WCAG is an internationally recognized set of guidelines for digital accessibility. The WCAG is currently in version 2.1 and comes in 3 levels: A, AA, AAA. The de facto standard recognized most courts and advocates is the WCAG 2.0 AA. Version 2.1 emerged in 2018 and website owners are now being held to this standard. These are the requirements that virtually all demand letters, federal and state lawsuits have cited. Regardless of how firm this standard may technically be, in practice, if you wish to avoid litigation and wish to make your website accessible, the working standard for digital accessibility in 2021 is WCAG 2.1 AA.

Website accessibility standards break down to four basic principles: Perceivable, Operable, Understandable, Robust. The following overview includes limited examples.

1. Perceivable - Information and user interface components must be presentable to users in ways they can perceive. This means that users must be able to perceive the information being presented. Examples include:

- Provide text alternatives for non-text content.
- Provide captions and other alternatives for multimedia.
- Create content that can be presented in different ways, including by assistive technologies, without losing meaning.
- Make it easier for users to see and hear content.

2. Operable - User interface components and navigation must be operable.

- Make all functionality available from a keyboard.
- Give users enough time to read and use content.
- Do not use content that causes seizures.
- Help users navigate and find content.

3. Understandable - Users must be able to

(cont. on page 20)

Boating Memories

CPYB Brokers Make Boat Buying A Breeze

A Certified Professional Yacht Broker (CPYB) is recognized having achieved the highest level of industry accreditation through testing & continuing education. A CPYB will exceed industry standards to ensure your sale or purchase is a smooth & easy transaction. **Don't settle for inexperience!**

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understand the information as well as the operation of the user interface (the content or operation cannot be beyond their understanding).

- Make text readable and understandable.
- Make content appear and operate in predictable ways.
- Help users avoid and correct mistakes.

4. Robust - Content must be robust enough that it can be interpreted reliably by a wide variety of assistive technologies.

What About Third-Party Content On a Website?

In *Thurston v. Midvale Corp. d/b/a Whisper Lounge*, the Court ruled "appellant offers no legal support for the theory that it cannot be liable for ADA discrimination if it hires someone else to do the discrimination." Thus, a website that is refreshed with listings and photographs from a third-

party vendor such as YachtWorld cannot offer that as a defense.

What About Providing An Alternative Means of Access?

The *Thurston v. Midvale Corp. d/b/a Whisper Lounge* case also ruled that telephone access was not an accessibility alternative as the service was not available 24/7. No Court has yet ruled on whether 24/7 access can help a business avoid one of these lawsuits. At a minimum a business should include an accessibility statement, policy and procedure on its website, stating, in text available to a screen reader, how to contact the company if one has difficulty accessing the website.

What Defenses Are Available To Defend the Lawsuit?

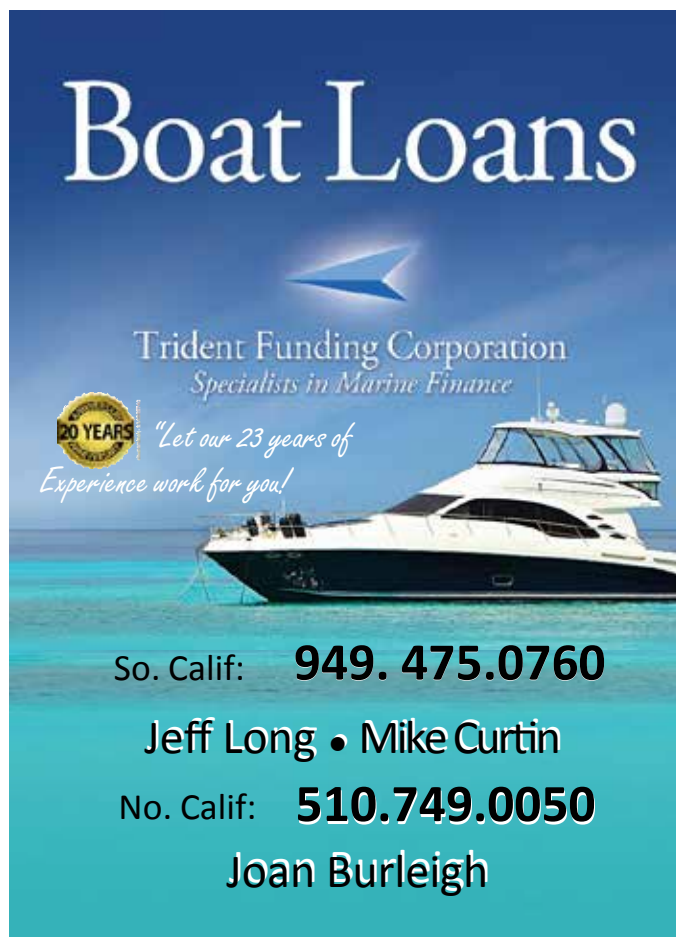
Unfortunately, the cost of hiring an attorney and fighting the lawsuit significantly outweighs the cost of settlement. Additionally,

the chances of a successful defense, no matter how aggressive is quite slim, and the risk of having to pay the plaintiffs' attorneys fee is high.

Some businesses have attempted a strategy of simply defaulting to avoid the expense of filing an answer and payment of attorneys' fees and settling shortly thereafter. This can be a dangerous tactic and could result in a recorded judgement against the business.

Some businesses have attempted to seek a stay from the Court to bring their site into compliance and then argue there is no longer an issue in controversy. Unfortunately, while this might work in a federal court case, the Unruh Act looks backward. The violation has already occurred and the minimum damages are \$4,000. Additionally, the doctrine of mootness only applies to injunctive

(cont. on next page)



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relief, i.e., where a plaintiff seeks compliance rather than damages.

Removal of the case to Federal Court is not an option absent diversity of citizenship and the amount in controversy is in excess of \$75,000.

Success against these lawsuits has been very rare and California Courts continue to issue pro-plaintiff decisions in website accessibility cases.

In *Davis v. BMI/BND Travelware Co.* summary judgement was upheld against the California retailer for violations of the Unruh Act.

In *Thurston v. Midvale Corp. d/b/a Whisper Lounge* the Appellate Court affirmed summary judgement against a restaurant on grounds that the website discriminated against the blind under the Unruh Act and ordered the restaurant to conform with WCAG 2.0 AA standards. The Court found that such standards are neither overbroad nor uncertain. The restaurant was also ordered to pay the \$4,000 minimum damages plus the plaintiff's attorney's fees.

In *Martinez v. Kydia*, the court held that a company's website is

a "public accommodation" within the meaning of the ADA, regardless of a connection to a physical location.

If Sued, Should I Tender The Claim to My Insurance Carrier?

If you have any form of general liability insurance, where commercial, marine, or otherwise, you should consider advising your carrier of the demand or lawsuit and ask that they defend and indemnify you. Many GL policies, however, exclude "Material Published Prior To Policy Period", including "Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period."

How Can I Avoid A Lawsuit?

Here are some tips that may help:

1. Retain an accessibility expert to bring your website up to compliance as soon as possible. Some developers may be able to add a plug-in for your website which adds alternative text to new photos and content automatically.
2. Set up a 24/7 accessibility

telephone line if possible. It may help avoid a lawsuit.

3. Include an accessibility, policy and procedures statement, advising the public to contact you if they have any difficulty accessing any portion of your website - which can be read with a screen reader.

4. Add closed-captioning to your videos using one of the many services available.

5. Check your website for compliance on a regular basis, using one of the many free website accessibility testing applications.

6. Document all of your efforts at compliance.

7. Regarding public media, whether on your website or on your YouTube channel, providing captions and transcripts is going to be a necessity. Start now.

Michael Wales is a Maritime Law Attorney and CYBA Affiliate Member in San Diego, California. Mike also co-owns AGL Yacht Sales, Inc. with his wife Leilani. For assistance with any maritime legal matter you may contact Mike at mwales@waleslaw.com or at 619.493.1700.

YATCO Secures Major Funding To Fast-Track Consumer Marketing

Fort Lauderdale, Florida, March 3, 2021 —YATCO, the Official MLS of Yachting™, has recently secured a major round of funding to help propel its path to consumer marketing and help interested yacht and boat buyers find the vessel that fits their needs. The

company has greatly augmented its focus in digital marketing, including SEO, SEM, social media marketing, and more.

YATCO also plans to cultivate its team of yachting professionals from 20 to 50 within this year, increasing its thought leadership

and global authority within the yachting industry. Maintaining its status as a privately held company, YATCO is keeping the best interests of its clientele and industry a top priority, upholding its fair costs to the end-user.

Treasurer's Report

The CYBA board has invested in a boat show! This venture will impact our savings somewhat... but it's the reason why we have been diligent in creating a fund to support our members. An event

like this will bring an opportunity to our membership to promote their businesses and products. With proper implementation, it will also create a new revenue stream for our association and

maybe we can invest in other like ventures. We are looking to our future and we are glad you are a part of it!

Electronic Classrooms

The new age has presented us with new approaches to the old problem of staying current in our industry. Our clients expect us to be well versed in the products, services and equipment that is featured or available for the boats that we sell. Fortunately, we have some high-tech and savvy manufacturers and representatives that

are offering some great online webinars and Zoom classes to keep us informed. Here's some samples:

Volvo-Penta - Join our webcast to learn more about the next generation of marine automation.

Starting in 2021, Assisted Docking will gradually be available with our complete IPS system range.

That's why we would like you to join our online webcast about this game-changing innovation for the marine industry. During this live event, which will be broadcast from our marine test facility, you will have the opportunity to listen to our experts, watch the technology in action and more.

Panama Posse, A Cruising Opportunity For Your Clients



The season of the big Pacific Highs and lows creating cold fronts, swells and intense winds in SoCal have made this 'super' tour very exciting. For those of you that may not know, there are 9 'pods' or sailing groups that are taking different routes down the West Coast of California, Baja & Central America, combined with other groups sailing the Caribbean and Gulf of Mexico. The loose knit pods have, through the organizers, secured reservation arrangements and discounts with many marinas, hotels, rental car companies and

suppliers. A great idea during the challenges of Covid and cruising. The groups are heading in different directions east-west, north-south, south-north, communicating and meeting up at prearranged locations. There are currently about 450 people out cruising in this "posse" right now and I'm sure more to come with the season approaching.

Based on seasonal gathering spots there are the "sub pods" that tend to stay in certain locations longer and help facilitate others with their learned local knowledge.

registration@panamaposse.com

<https://panamaposse.com/>





Take Control of Your Future with the Official CYBA MLS

The CYBA MLS is a new regional system owned by the California Yacht Brokers Association and powered by YATCO, the world's most trusted multiple listing system (MLS). Sign up today and give your listings more exposure through our new lead generating consumer sites.

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CYBA Members who sign up now for the CYBA MLS will receive the BOSS Enterprise solution for their business, which includes:

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- ✓ SouthernBoating.com Advertising
- ✓ \$100 Billion in Sold Boats Data
- ✓ Personalized Company Brochure
- ✓ Custom Dashboards & Reports
- ✓ Personal & Company Calendars
- ✓ Custom Website & Hosting
- ✓ CRM Sales & Lead Manager
- ✓ Email Marketing
- ✓ Company Listings API
- ✓ Unlimited Data Feeds
- ✓ Client & Lead Tracking
- ✓ File Manager
- ✓ Email Sync Outlook & Gmail

We are offering these BOSS services, valued at \$975, for FREE through 2020 to help you save money, improve your digital marketing, and secure your future!

SALES@YATCO.COM | www.CYBA.info

CPYB Awards

On January 13, 2021, the Certified Professional Yacht Brokers (CPYB) program held a virtual ceremony and presented the 2020 Vincent J. Petrella Chairman's Award to Alan Powell and the 2020 Dedicated Service Award to Leslie Quarrier. Congratulations!

A Certified Professional Yacht Broker (CPYB) is recognized as having achieved the highest level of industry accreditation, available only to fully qualified yacht sales professionals. The CPYB program is administered by Yacht Brokers Association of America in partnership with International Yacht Brokers Association, Northwest Yacht Brokers Association, California Yacht Brokers Association, Boat-



ing Ontario Association, British Columbia Yacht Brokers Association and Gulf Coast Yacht Brokers Association.

The California Yacht Brokers



Association has been a sponsoring association for many years and our membership includes many CPYB members.

CPYB presents a varied series of e-Seminars throughout the year, many FREE, providing valuable education and insights for participating Yacht Sales Professionals. Participation at each e-Seminar provides 1 CPYB Recertification Credits.

Register for Exam Prep sessions offered the morning of the CPYB Testing dates.
April 13, 2021 • July 13, 2021 • September 21, 2021 • December 14, 2021



Don't Miss A Meeting!

**Mik Maguire,
Editor Pro Tem**

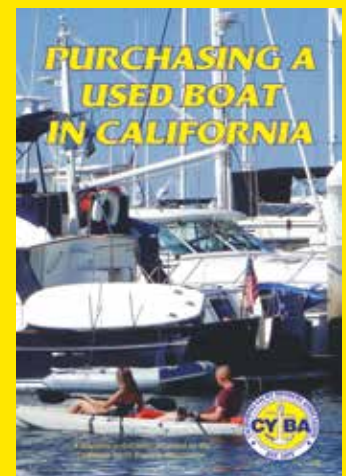
Actually, I was there. But before I knew it, our recent editor (and board member), Tony Faso, announced that he could no longer edit the CYBA newsletter because of growing commitments running his marine service and

sales operation. With no one stepping up immediately to take the helm, I became 'captain' by default. It's actually fun, interacting with different members for their newsy items, getting legislative actions first-hand and trying to find some whimsical stuff to keep it interesting. I, by no means, plan

this to be a long-term vocation (my cottage in the Gold Country beckons to me, so I'm looking for a protégé that is looking for adventure and reward. The folks at Recreation Publications are very helpful in the assembly and make it easy. Thanks to them... and to you for reading.

Your CYBA Board of Directors believe this is an excellent resource for used boat buyers.

**You can download the booklet in PDF format from the CYBA.info website or order the hard copies from Don Abbott.
don@cyba.info**



CYBA Board Of Director's Meeting

JANUARY 6, 2021 MEETING
INVOCATION OF NEW BOARD
MEMBERS RATIFICATION OF
NEW BOARD MEMBERS

New Board Members, Mark White and Leilani Wales were ratified, replacing Dean West and Mark Rentziperis

OFFICERS AND CHAIRS:
Incoming Board of Directors were announced as follows:
President: George Sikich
1st VP: Peter Zaleski
2nd VP: JR Means
Treasurer: Mik Maguire
Secretary: Leilani Wales
Director: Dennis Moran
Director: Tony Faso
Director: Nick Friedman
Director: Mark White
Executive Director: Don Abbott

Minutes On-Line

CALL TO ORDER: 9:08

DIRECTORS PRESENT: Executive Director Don Abbott, George Sikich, Mik Maguire, Dennis Moran, Nick Friedman, Dean West, JR Means, Tony Faso, Mark Rentziperis, Peter Zaleski

RECOGNIZED GUEST: Wayne Goldman, Atomic Tuna

APPROVE MINUTES: November 2020 Minutes approved on-line

FINANCIAL REPORT: Financial report was presented by treasurer Mik Maguire with P&L and Balance Sheets provided by ED Don Abbott. Membership Dues and Sponsorship Dues remain solid. Additional expenses occurred associated with forms.

CORRESPONDENCE: None

MEMBERSHIP: Mark Rentziperis reports strong membership activity, (Mark will be replaced

by Peter Zaleski)

FORMS: Nick Friedman reports that we had additional expenses for the completion of our new forms to GoDaddy and Citrix. We have 100 E-Signature licenses granted to us by Citrix. A motion was made to charge \$25.00 per office for E-Signature beginning June 1st 2021.

SPECIAL REPORTS: None

LEGISLATION: Mik, Tony and Dean have no new Legislative reports but were very complimentary of our lobbyist firm Platinum Partners keeping us updated on news from Sacramento and Washington via daily email briefings.

SPONSORSHIP: George reports that the retention rate was over 90% of our sponsors and gained 1 new one, Michael Wales of Michael Wales LLC.

SHOWS/EVENTS: Mark White and Peter Zaleski report the CYBA is exploring a CYBA sponsored boat show, details to come shortly.

LEGAL SEMINAR: Due to COVID no date has been set.

NEWSLETTER/WEBSITE: After 3 years of doing the newsletter Tony is stepping down, thank you Tony for your great service. Mik Maguire will step up as Tony's replacement. We expect the 1st newsletter of 2021 to go out around April 1st.

CYBA MLS: The CYBA MLS is up and running, please visit www.yachtsforsalewest.com to view. GEO: Chair Leilani has no report as she is unable to conduct the gatherings in the current environment.

ANNUAL DINNER: It was discussed that we put out

a survey to combine the Annual Dinner and Legal Seminar on consecutive days presumable to be held at the Bahia Corinthian Yacht Club in Corona Del Mar, to determine if members would be in favor. The possible dates were October 6th & 7th.

NEXT MEETING: MARCH 4TH 2021. (Online)

ADJOURNED: 11:35 a.m.

Membership Information

For complete list of CYBA Member Benefits, please see our separate Member Benefits page at CYBA.info. Be sure to read the CYBA's Code Of Ethics and By-Laws as well.

Membership Rates:

Master Member

(Owner - Broker of Record):

Initiation Fee	\$200
Yearly Dues	\$348
Total	\$548

Broker

(Working for a Master Member):

Initiation Fee	\$50
Yearly Dues	\$48
Total	\$98

Salesperson

(Working for a Master Member):

Initiation Fee	\$50
Yearly Dues	\$48
Total	\$98

Summer Sailstice 2021

Now is the Spring Equinox in the Northern Hemisphere. The length of day and night will become nearly equal all over the world. With Spring on the horizon, we begin to adjust our sails and prepare for Summer.

Is your boat ready and have you planned your Summer sailing adventures?

No matter where you sail, you can be a part of the Summer

Sailstice global sailing community.

Summer Sailstice brings sailors together all over the world to celebrate the one thing we all love, Sailing.

Whether aboard a Laser, Sunfish, or Hobie, cruising the tropics, racing on the bay, or enjoying any of the sailing options, just catch the wind and go.

Sailing really is for everyone, and at Summer Sailstice our mis-

sion is to demonstrate the fact by bringing together sailors of all levels of skill and aboard all manner of boats to celebrate the full spectrum that encompasses sailing.

For more information contact:

Latitude 38 Media LLC

Summer Sailstice,

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Opening Day On The Bay

BACK IN THE DAY ON THE BAY!

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PICYA cordially invites you to join in our Annual tradition of launching the boating season in style. Along the spectacular San Francisco City Waterfront plus the Blessing of The Fleet in Raccoon Strait.

SAVE THE DATE

Sunday, April 25, 2021

In addition - we are offering a virtual option. Stay Tuned!

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in that region is supported, and provides opportunity for Sail America to focus on other programs that best serve its members," said Josie Tucci, Sail America's newly named president. "Our goal has always been to deliver a successful, sail-focused show that attracts regional and national attention in Northern California. We believe our new relationship with CYBA will help us to achieve that goal."

Given the ongoing COVID restrictions in California, CYBA is not planning an April show this year. Shortly, CYBA will announce additional details on dates and location of the next show. Meanwhile, questions about the show can be directed to CYBA Executive Director, Don Abbott.



2020 Pacific Sail & Power Boat Show.

INDEX OF ADVERTISERS

Advertisers.....	Page
Bohonnon Law Firm	22
CPYB.....	19
Dana Point Shipyard, Inc.....	13
Dona Jenkins Maritime Document Service, Inc.....	13
Global Marine Insurance Agency.....	20
Hayden Insurance.....	4
KKMI.....	10
Marine Diesel Services, Inc.....	8
Mary Conlin Company, Inc.	12
Michael G. Wales, Esq.....	9
Newcoast Financial Services.....	13
Novamar Yacht Insurance	8
Orange Coast College.....	15
Oversea Yacht Insurance.....	16
Reliable Documentaion, Inc.....	7
Seacoast Marine Finance.....	16
Sterling Acceptance Corporation	4
Trident Funding Corporation.....	20
Twin Rivers Marine Insurance Agency, Inc.	15
Wenthur Law Group.....	5
West Marine Pro.....	9
YachtsForSale.com and YachtsForSaleWest.com	23
Yatco	17

Calendar Of Events

March 25-28	Palm Beach International Boat Show
April 9	Easter
April 25	Opening Day On The Bay
September	Pacific Sail And Power Boat Show Dates & Location TBD

