



Building the Platform: Challenges, Solutions and Decisions in Seasteading Law

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www.seasteading.org

Our Mission: To further the establishment and growth of permanent, autonomous ocean communities, enabling innovation with new political and social systems.

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I. Introduction

Whether on land or on the sea, people need predictable rules to live by. Good laws lower the costs of cooperation. Good laws help people live together peacefully. Without a common legal language, commercial activity is costly and in some cases impossible. Learning about and respecting legal regimes already in existence on the water will be necessary for seasteading entrepreneurship to thrive. And understanding the law will be a core competency; particularly for the first wave of seasteading entrepreneurs.

Most seasteaders will be looking to the sea to find more flexibility in the law and to take advantage of differential legal and regulatory climates, environments which can sometimes be too restrictive on land. But there will be icebergs to avoid. Success in navigating these legal waters could lead to the creation of a new body of law. Creating new law will take creativity, pragmatism and deference to the wisdom of ages.

This paper is part of a two-part legal series designed to arm seasteaders with information they will need to consider starting a seasteading business. Our success will therefore be determined by the extent to which people have the information necessary to get to the next step.

For an overview of seasteading and international law, our first paper “Charting the Course: Toward a Seasteading Legal Strategy”¹ is a good place to start. We offer a big-picture look at the worldwide legal ‘seascape,’ especially as it relates to questions about forming new societies and industries at sea. We share with readers the most salient multilateral doctrines – from those likely to complement seasteaders’ ambitions, to those that threaten to torpedo their efforts early. We express specific concerns about a top-down legal doctrine known as the Common Heritage of Mankind, which deals with critical questions, sovereignty, and common-pool resource management. We go on to discuss a practical alternative to central management of common-pool resources, one that uses a bottom-up approach. And throughout “Charting the Course,” we emphasize our commitment to the idea that seasteading is not a utopian project and will require an incremental approach.

Building on the concepts set out in the first paper, we offer this second paper as a more practical guide. Whereas in the first paper we took a big-picture perspective on international laws governing the world’s oceans, in this paper we want to discuss particular legal impediments to seasteading, ways to overcome those impediments and specific strategies for getting started on the sea. Along those lines, we divide the paper into three sections (plus an appendix):

1. **Challenges** – *Potential legal impediments to seasteading*
2. **Strategic Solutions** – *Overcoming challenges to seasteading*

¹ http://www.seasteading.org/files/research/governance/Charting_the_Course_-_Toward_a_Seasteading_Legal_Strategy.pdf

3. Critical Decisions – *Choices to help navigate the law*

Appendix: Medical Tourism and Seasteading – *A Business Case Study*

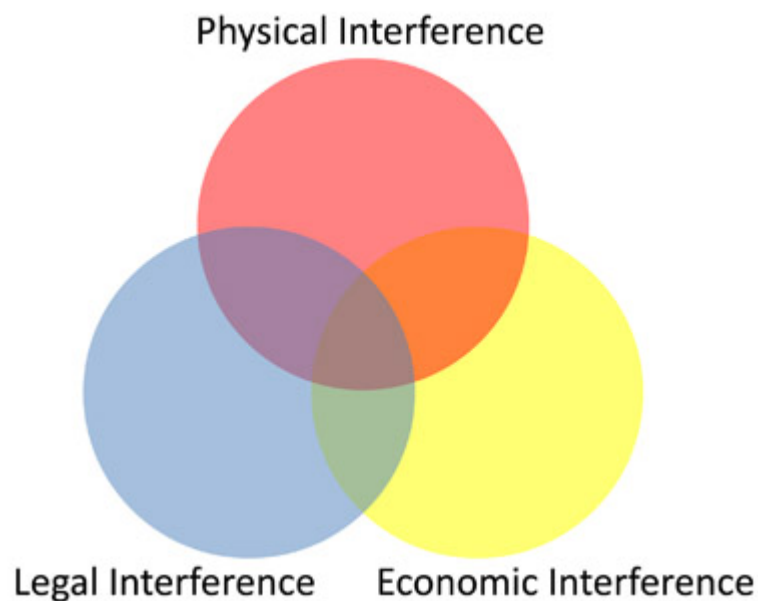
Again, this paper is designed as a guide. As we'll discuss later, nothing can replace having legal experts on one's team. Therefore, one should not take this as either free legal advice or a handy replacement for legal expertise. Rather, we like to think of it as a way to provide would-be entrepreneurs with an adequate basis for thinking about whether seasteading is the right kind of enterprise for them. Some who read this may conclude seasteading holds too much risk, while others may decide the sea is brimming with opportunity.

II. Challenges

Since seasteads will explore institutional differences between seasteads and territorial states, some may come to see seasteading as threatening. After all, successful seasteading businesses will compete with businesses on land. New ways of life on the sea could make officials on land uncomfortable. Whatever the perceived threat, it is likely that some governments around the world will hesitate to work with seasteaders. Especially early on, it seems likely that some governments will attempt to regulate, or even, frustrate seasteading efforts. Before considering strategies to mitigate some of these challenges, it's important to understand them.

Government Interference with Seasteading

In all probability, nation-states and international organizations will try to interfere with the activities of seasteaders. There are three primary and overlapping ways to interfere with seasteaders: *physical*, *legal* and *economic*.



Physical Interference

The most direct way for the governments and international organizations to challenge seasteaders is physical interference. Government officials can easily board platforms, seize cargo or even seize the platform itself. Agents on patrol boats can interfere with seasteaders' movements, disrupt supply chains and affect the interactions between seasteaders and their coastal trading partners. Physical interference may occur even if it is not justified by national or international law.

In the famous case of “pirate radio” stations in the UK during the 60s and 70s, the UK government interfered with ships transmitting music from international waters. The interference lacked legal

justification but was only physical at first. Government officials simply didn't like the fact that pirate radio stations played pop music the government-owned BBC didn't approve of nor provide. In short, the government wasn't happy about the competition. So, officials sent boats to harass people traveling to and from pirate radio ships floating in international waters.

Eventually, however, parliament passed a law² to frustrate pirate radio's efforts. To work around the fact that pirate radio boats were in international waters, legislators targeted British subjects who assisted pirate radio stations. Because the law only applied to Britons, the Marine Broadcasting and Offences Act became difficult to enforce as foreign operators stepped into to the breach. Clever domestic entrepreneurs used mobile transmitters and found other ways to circumvent the law on both land and sea. This of course led to an increase in government efforts. The UK government legitimated interference with the pirate radio stations by proscribing the activities of those within its jurisdiction.³ This transition from physical to legal interference that affected pirate radio brings us to our next category of interference.

Legal & Economic Interference

Legal interference is making use of either territorial or international law to obstruct the activities of foreign entities or seasteaders. While economic interference occurs when non-seasteaders or territorial governments obstruct commercial activity between a seastead and: another seastead; people in a territorial jurisdiction of coastal states; or companies from other parts of the world. Since legal interference often relies on a physical enforcement mechanism and often creates economic hardship that results in a triad of interference.

As we suggest above, once the law outlawing the activities of pirate radio stations was in place, the UK government then used other methods of interference to hinder the efforts of the pirate stations. The most powerful tool at the state's disposal was to outlaw pirate radio advertising by the land-based businesses. The effort to target pirate radio revenue streams represents a good example of both legal and economic interference. Even though most legal interference depends on physical or economic enforcement mechanisms there are purely legal ways to interfere with seasteaders.

We can imagine member nations of international bodies lobbying to keep seasteaders from joining some multilateral legal community.⁴ Government officials in territorial states may refuse seasteading legal documentation—e.g. a seasteader's identification. Of course, physical and economic interference can follow on from this failure of recognition, but we can distinguish between active enforcement and passive refusal. The latter amounts to a form of interference in the sense that seasteaders' actions will be limited and their activities restricted relative to what it might otherwise be possible if seasteading institutions are acknowledged.

² http://en.wikipedia.org/wiki/Marine_Broadcasting_Offences_Act

³ Today, unlicensed operators still face heavy fines and jail time.

⁴ Or, at some future stage, nations simply fail to recognize seasteading governments as sovereign state after seasteaders attempt to self-determine.

Existing domestic laws like that of the U. S. offer yet another example of legal-cum-economic interference. Consider the Passenger Vessel Services Act of 1866, which states:

No foreign vessels shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of \$300 for each passenger so transported and landed.

Similarly, the Merchant Marine Act of 1920 (and its article 27, known as the “Jones Act”) limits the transportation of goods between U.S. ports to U.S. ships. Critics claim these acts achieve little more than protectionism for U.S. transporters and raise the costs of shipping.

Hopefully it is clear by now that physical, legal and economic interference can be, and often is interconnected. More often than not, physical and economic interference will be predicated on domestic law as in the case of pirate radio and the Jones Act. Sometimes domestic law has a way of extending to international law, as well. Similarly, international law is enforced through domestic powers. That means sources of interference can come from many different angles and a given act of interference can fit within any or all of these categories at the same time.

There are particular asymmetries between seastealers and state actors when it comes to interference. State actors will have most of the power – physical, legal and economic. From a pragmatic perspective this is where seastealers should be aware of their weak position on all three dimensions; at least at the start. It’s also another reason why seastealers will do well to check their idealist tendencies when it comes to starting up on the sea.

We do not wish to put too fine a point on the above. Seastealers will have unprecedented mobility and choice, which will be their distinct advantage. First-wave seastealers will also have the benefit of being small enough not to register on the radar of powerful political actors. Bigger challenges will arise when seasteading grows large enough for officials to take notice, but may not yet be large enough to have gained significant influence.

Interference by flag states. Flagging is probably one of the most important subject areas with which seastealers will have to become familiar, because most early seastealers will have to fly a flag, and which flag states they choose could radically change the different patterns of interference on board their vessels.

Before we explore this area of law, let us take a moment to unpack the idea of flagging and flag states. International law requires every commercial ship to be registered with a nation. The nation with which a ship is registered is called its flag state. The flag state gives the ship the right to fly its civil ensign. The flag state then regulates vessels under its flag and is required to inspect them regularly, for example, to certify the vessels’ equipment, safety, crew and documentation associated

with regulatory compliance. The flag state's laws are invoked if the ship is involved in an admiralty⁵ case – for example, in the case of crime on the high seas. And again, it is important to bear in mind that a flag state will enforce its laws to varying degrees depending on the state.

In the case of a crime on a ship, the criminal laws of flag states are applicable on the high seas. The rules get more complex, however, the closer the ship is to the territory of a Coastal State. It is perhaps useful to use the U.S. government as an example of how the Coastal State (albeit the most powerful one) would deal with these issues. According to the official FBI website,⁶ the U.S. has a specific set of criteria for dealing with these issues:

When a crime does occur at sea, several factors determine whether the U.S. has legal jurisdiction. A complicated web of international law applies, but as a rule, the FBI leads investigations of the following scenarios:

- If the ship is U.S.-owned [US-citizen or firm], regardless of the nationality of the victim or perpetrator;
- If the crime occurs in U.S. territorial waters (within 12 miles of the coast);
- If the victim or perpetrator is a U.S. national on a ship that departed or is arriving at a U.S. port;
- If it's an act of terrorism against the U.S.

Some flag states simply do not have the needed infrastructure that would enable them to enforce their laws. Many flag states are small poorly equipped countries that are unable to venture far beyond their shores. So it is not uncommon to find that there is no enforcement whatsoever of flag state's laws on the vessels. In such situations ship owners have to make strategic legal decisions related to the activities that happen on these ships. Sometimes these business owners (cruise lines in particular) decide to implement even more stringent sets of regulations than would be necessitated by the flag state's regulations in order to appease the countries they do business with (the U.S. being the biggest "beneficiary" of those arrangements). These shades of grey make choosing a flag all the more difficult, yet all the more critical.

Whether a flag state's enforcement (or interference) is beneficial or detrimental will lie in the eye of the beholder. As Seasteading Institute researchers write in "[Seasteading Business: Context, Opportunity and Challenge](#)":

U.S. federal regulatory burdens and high corporate taxes (currently the world's second-highest behind Japan) make the U.S. a less than ideal jurisdiction for seasteaders. So seasteaders, still without their own rich tradition of case law, will want to look elsewhere to find solid, predictable

⁵ Admiralty law (or maritime law) is a distinct body of law that settles maritime legal questions and offenses on the sea. This body of law includes both domestic law governing maritime activities and private international law governing the relationships among private entities operating vessels on the ocean. Issues of commerce, navigation, shipping, sailors and the transportation of passengers or goods by sea all fall under admiralty law. We should make a stark distinction between Admiralty law and the Law of the Sea, which is a body of public international law dealing with navigational rights, resource use, jurisdiction over coastal waters and international law governing relationships among nations (which we discuss more fully in our first paper, "Charting the Course").

⁶ http://www2.fbi.gov/page2/may06/cruise_crime052206.htm

business law. In particular, seasteaders will likely fly so-called “open registry flags” to carry territorial laws with them onto the sea. In some cases, seasteader owners might fly the flags of states that simply leave them alone. For example, if one flew the flag of Liberia, one would not expect to enjoy any robust body of Liberian case law.⁷

The trade-offs between being left alone by the flag state and having access to stable and useful law will depend largely on the type of activity one hopes to perform on a seasteader. But flagging via a system of open registry⁸ is likely to be the norm during the first wave of seasteading. The open registries model is a great way to start. The next step is to modify it by having specific arrangements with the flag states where seasteaders and flag states could refine and specify the laws.

International Organizations. Non-state, multilateral actors may also interfere due to the fact that some activities in international waters are governed by international law. The International Seabed Authority (ISA), an organization affiliated with the United Nations, manages resources on the high seas. The ISA may attempt to interfere with the activities of seasteaders if they begin to harvest natural resources in international waters – especially fossil fuels. It is important to mention that international organizations rarely have an ability to enforce laws directly. They usually rely on the individual countries to enforce these laws.

Another international organization that might interfere is the International Maritime Organization (IMO). This specialized, self-governing agency of the United Nations is an autonomous authority, but is supported by UN member states. According to Article 1 of the original convention the IMO’s mission is to:

...provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of maritime pollution from ships.

As with other international organizations, IMO does not have the authority to enforce the regulations agreed upon and ratified by member states. Rather, it relies on the member states themselves to codify IMO’s protocols and integrate them into domestic laws (as is appropriate under each nation’s legal system). Since its creation in 1948, IMO has adopted more than forty conventions and protocols (some of which will be listed below).

⁷ By Max Marty and Max Borders:

http://seasteading.org/files/Seasteading_Business_Context_Opportunity_Challenge_Aug_2011.pdf

⁸ Flagging is possible due to a widely accepted international system of *open registry*. The organization which actually registers the ship is known as its registry. Registries may be state or private agencies. In some cases -- such as the U.S. Alternative Compliance Program -- the registry can assign a third party to administer inspections. Reasons for choosing an open register in a country other than one’s native land are various, but include: tax advantages, the ability to take advantage of more business-friendly regulatory environments, and the ability to hire international crews. (National or closed registries typically require a ship be owned and constructed by national interests--and at least partially crewed by that nation’s citizens.) Open registries usually also offer online registration with few questions asked. The use of open registries lowers registration and maintenance costs, which in turn reduces costs overall.

Most international conventions provide for some sort of regulation of activity on the sea. The following list of international conventions should be considered applicable in most cases when dealing with ships and other physical structures seasteaders are likely to use:

- 1. MARPOL is the International Convention for the Prevention of Pollution from Ships.** MARPOL is one of the most important international marine environmental conventions. It was designed to minimize ocean pollution, including dumping, oil and pollution from exhaust. Its stated object is to preserve the marine environment through *the complete elimination of pollution by oil and other harmful substances* and the minimization of accidental discharge of such substances. Technical installations such as oil and chemical installations, sewage, ballast and air-emissions should comply with the MARPOL requirements.
- 2. SOLAS is the International Convention for the Safety of Life at Sea.** As the name suggests, SOLAS is a set of international maritime safety standards. The SOLAS Convention in its successive forms is generally regarded as the most important of all international treaties concerning the safety of merchant ships. SOLAS covers areas such as fire detection and protection, use of combustible materials, sprinklers, safety management systems (ISM) and Security Management Systems (ISPS).
- 3. Shipowners' Liability (Sick and Injured Seamen) Convention, 1936** is part of an **International Labour Organization Convention**. As its name suggests, it is designed to regulate sailors' working environments.
- 4. WTO is the World Trade Organisation.** Depending on whether seasteaders take advantage of any open registry benefits – say, by exporting goods or services – they will do well to consider provisions of the global trade agreements like those of the WTO.
- 5. UNCLOS.** The United Nations Law of the Sea convention was adopted in 1982. Among the important features of the treaty are: navigation rights; territorial sea limits; economic jurisdictions; legal status of resources in the seabed; passage of ships through narrow straits; conservation and management of living marine resources; protection of the marine environment, a marine research regime; and – a rather distinctive feature – a binding procedure for resolving disputes between States.
- 6. SUA (Suppression of Unlawful Acts).** Among the unlawful acts covered by the SUA Convention in Article 3 are: the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship, which are likely to destroy or damage the vessel.
- 7. Industry Sponsored Organizations known as Classification Societies.** The purpose of a Classification Society is to provide classification (e.g. what type of ship is $x?$), statutory services and assistance to both the maritime industry and regulatory bodies on matters of safety and pollution prevention. Major objectives of ship classification include:
 - Verifying the structural strength and integrity of essential parts of the ship's hull and appendages,
 - Checking the reliability and function of the propulsion and steering systems,
 - Ensuring the function of power generation systems, auxiliary systems and other ship features designed to maintain essential services.

Classification Societies⁹ hope to achieve these objectives “through the development and application of their own rules, as well as “by verifying compliance with international and/or national statutory regulations on behalf of flag Administrations.” The vast majority of commercial ships are built to spec and surveyed for compliance based on standards laid down by Classification Societies. “These standards are issued by the Society as published Rules. A vessel that has been designed and built to the appropriate Rules of a Society may apply for a certificate of classification from that Society.”¹⁰

It is virtually impossible to clarify which, and to what extent, these conventions will be enforceable with respect to seasteaders of the future. Much will depend upon a confluence of factors such as a seastead’s choice of open registry, the offshore location of the seastead, as well as the relevant industry and related convention. Suffice it to say that legal personnel charged with untangling and weighing these considerations will be central to the success of most any seastead venture.

United States-Specific Regulations

Due to both its importance on the global stage, and to the fact that many early seasteaders will hail from the United States, it will be useful to spend some time discussing U.S. specific regulatory frameworks¹¹ likely to affect seasteaders.

The United States’ has global jurisdictional reach over its citizens. The U.S. claims the authority to prescribe and proscribe conduct of its citizens beyond its territorial boundaries.¹² U.S. citizens are also obligated to report their worldwide income to the U.S. Internal Revenue Service (IRS). The U.S. may also assert its jurisdiction in international waters when and “where the acts are intended to produce detrimental effects within the United States.” The exact meaning of “detrimental effects” is open to interpretation, so seasteaders should be aware of this legal gray area. Western European and other developed countries do not usually claim such a broad jurisdictional reach. A number of factors may go towards explaining these differences – history, geography, relative power and others – but the U.S., generally speaking, is one of the most vigorous international actors when it comes to its citizens.

The broadest legal justifications that the US government may use to justify its actions can be found in Section 403(2) of the following code:

⁹ Note: There are more than 50 marine classification organizations worldwide the largest of which are Det Norske Veritas, Lloyd's Register, Germanischer Lloyd, Nippon Kaiji Kyokai, RINA and the American Bureau of Shipping. <http://www.emsa.europa.eu/implementation-tasks/visits-and-inspections/assessment-of-classification-societies.html>

¹⁰ http://www.iasc.org.uk/document/public/explained/Class_WhatWhy&How.PDF

¹¹ See also this paper by O. Shane Balloun: <http://seasteading.org/files/research/law/Balloon%20-%20U.S.%20Law%20Enforcement%20Admiralty%20Jurisdiction%20Over%20Seasteads.pdf>

¹² *United States v. Black*, 291 F. Supp. 262, 265 (1968)

US RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 403(2)

- (a) the link of the activity to the territory of the regulating state, i.e., the extent to which the activity takes place within the territory, or has substantial, direct, and foreseeable effect upon or in the territory;
- (b) the connections ... between the regulating state and the person principally responsible for the activity to be regulated, or between that state and those whom the regulation is designed to protect;
- (c) the character of the activity to be regulated, the importance of regulation to the regulating state, the extent to which other states regulate such activities, and the degree to which the desirability of such regulation is generally accepted;
- (d) the existence of justified expectations that might be protected or hurt by the regulation;
- (e) the importance of the regulation to the international political, legal, or economic system;
- (f) the extent to which the regulation is consistent with the traditions of the international system;
- (g) the extent to which another state may have an interest in regulating the activity; and
- (h) the likelihood of conflict with regulation by another state.

Again, the U.S. is the most vigorous global actor with respect to its citizens abroad. Seasteaders will have to take this reality into account when attempting to capitalize on opportunities – especially those just off the U.S. coastline. It is not clear that other states will always remain less vigorous, either, given precedents set by the United States. Thus, seasteaders should not assume other states will not employ similar justifications for interference in the future, just because they have resisted doing so in the past.

Many readers may wonder why we are preoccupied with the U.S., its regulations and its behavior. First, as we have suggested elsewhere, the U.S. is a most vigorous global actor – more so, perhaps, than any other nation. Second, we believe that, because the center of the seasteading movement is currently in the U.S., many first-wave seasteaders will be Americans. Such is not to suggest that we want to be U.S. centric. Indeed, we hope to address the needs of would-be seasteaders around the world, but believe the U.S. offers interesting lessons for this sort of research.

Diverse Regulatory Environments

The regulatory environment of a seastead (ship/platform) will be composed of several, often overlapping, regulatory regimes:

1. The law governing the location of the vessel, e.g. the port state or the coastal state;
2. The law of the state where the vessel is registered, e.g. the flag state;

3. The law of states impacted by the vessel's operation, say, by provision of labor or importing goods produced on the vessel.
4. The concerned states' application of the internationally agreed conventions, as well as, the state's specific and often differing interpretation of the relevant international laws.
5. The rules and regulations of the entities inspecting and certifying such vessels – e.g. classification societies.

The interplay among these regulations, as well as their enforcement by the authorities, will vary depending on the interests of the concerned states. For vessels located in ports, the predominant authority regulating the vessels will be the port state. For operations on the deep seas the Flag State will take the predominant role. For ships, these roles are largely assumed by the Classification Societies, which ensure consistent application of international standards.

How the law applies ultimately depends on the type of vessel, the location of a vessel and the relative permanence of a vessel in one location or another. In the case of seasteams, most will be designed to stay afloat at sea at varying distances from a coastal state's shoreline.

Overall, the existing national and international regulations do not specifically deal with floating platforms that are used for commercial and industrial use.

Unstable or Unpredictable Legal Environments

Legal Environments for Businesses. Failure to provide a stable legal environment will surely hinder the formation of successful businesses at sea. One of the most challenging issues in this respect is the high degree of regulatory uncertainty that flows from the complex and poorly-defined regulatory regimes governing the world's oceans. Potential investors may not be willing to put resources into enterprises functioning in an uncertain legal regime.

More importantly, perhaps, investors will need to be convinced that a seasteam venture makes business sense – i.e. that a given seasteam-based business is likely to be profitable. Seasteamers would have to make a business case for each project, which means they must be able to demonstrate that the seasteam offers a better environment for a given business than one that might be found (or started up) on land. We have already discussed the likelihood that governments and other entities could interfere with seasteamers' activities. This likelihood will have an impact on the financial viability of a given enterprise. While these are serious challenges, the regulatory environments on the ocean offer serious opportunities for seasteaming arbitrageurs, as well. We'll discuss ways to provide a more hospitable legal environment for business in the next section.

III. Strategic Solutions

We have established that there are three main challenges to seasteading: that governments are likely to interfere with the activities of seasteaders; that seasteaders will have to learn how to deal with a number of different regulatory environments; and that unstable legal environments aboard seasteads could keep them from flourishing. In this section, we offer some strategic solutions that can help mitigate these problems.

Restricting On-Board Activities

Leaving aside moral considerations, a number of activities are likely to invite crippling political interference from state actors. Seasteads that participate in any of the activities, even without the intent or knowledge of their operators, will almost certainly be shut down. That is why there are a number of activities¹³ that should be prohibited – especially as commercial activities:

- *Drug production and trafficking*¹⁴
- *Weapons smuggling*
- *People smuggling*¹⁵
- *Harboring terrorists*
- *Child pornography or child prostitution*
- *Human trafficking*

From a purely pragmatic perspective, any seasteaders who wish to avoid existential threats from existing states should avoid certain types of activities said states are likely to find objectionable. Indeed, the owners of private businesses have responsibilities to the long-term feasibility of their endeavors. Successful seasteaders will not operate as if they were in a political vacuum, but rather act as cosmopolitan ambassadors with a high degree of cultural tuning and concerns about state actors ready to thwart their efforts.

By our lights, some activities skirt dangerously close to the line. We recommend avoiding these activities, as well, while admitting they are perhaps less obvious examples than the ones listed above.

¹³ We believe this is an area in need of further research, including: past precedents, events and details about the behavior of state actors.

¹⁴ Recall that the U.S. committed troops to an incursion into Panama to apprehend General Manuel Noriega who was the country's de facto leader at the time. Noriega was eventually charged with narco-trafficking, racketeering and money laundering and convicted on eight counts. Despite [protestations of the U.N.](#), which argued the U.S. incursion was in violation of international law, the U.S. is a vigorous actor when it comes to drugs.

¹⁵ Even questions surrounding what to do with refugees and asylum seekers should be considered very carefully. Seasteaders may want to consider formulating an action plan in the event that refugees find their way to a seastead. And seasteaders should not think of platforms as connectors for smuggling illegal immigrants -- a practice that will surely invite interference. (Under no circumstances should seasteading be seen as means to facilitate human trafficking.)

Consider:

- *Anonymous Banking* – The pragmatic grounds for suggesting seasteaders not engage in anonymous banking and similar activities are numerous. At the top of the list of these grounds is the fact that powerful financial interests have tremendous influence within existing states. Thus, Seasteading banks would stand very little chance of withstanding interference from state actors with the backing of major banking interests, particularly as these actors can use all manner of economic and legal means to interfere (even if physical interference were off the table). Consider Switzerland’s experiences.^{16 17} If a financial institution offering anonymous banking were to become entrenched in a seasteading ecosystem, interference could have serious spillover effects for the entire seasteading economy. Such risks are too great, especially at the nascent stages of seasteading development. Secondary considerations for prohibiting anonymous banking include inviting global business from shady characters such as drug traffickers and terrorists—which would invite inordinate scrutiny from state actors.
- *Leaking and Data Haven Services* – Seasteaders should resist the temptation to set up data havens like that hosted by Sealand up to 2008. Consider the HavenCo example: “[Sealand] claimed that it had no restrictions on copyright or intellectual property for data hosted on its servers, arguing that as Sealand was not a member of the World Trade Organization or WIPO, international intellectual property law did not apply.”¹⁸ If a seastead entrepreneur is set on starting a data haven, we recommend he or she at least consider the type of data on a case-by-case basis. Hosting Wikileaks-like services, which are in clear violation of substantive international laws, is not likely to make state actors sit still. Interestingly, in the wake of the 9/11 terrorist attacks, HavenCo announced the operation would block initiatives “contrary to international custom and practice.” Seasteaders would be advised – minimally – to do the same. Obviously the recent uproar by the U.S.-State Department related to the Wikileaks considerably weakened the viability of this type of activity. Visa and Master Card refused to wire Wikileaks-related donations not because they had to¹⁹ but because it was a good PR move that improved their standing in the eyes of relevant governmental entities.
- *Hedonisteads* – Early seasteaders may be tempted to start what we might term “hedonisteads.” These are areas where certain kinds of alternative behaviors (activities at the margins of social acceptability, like soft drug use, certain sexual activities, etc.) are tolerated and hosted commercially. The issue of these floating red-light districts is: do hedonisteads risk torpedoing the efforts of seasteads early on, or invite undue scrutiny by state actors?

¹⁶ <http://www.spiegel.de/international/business/0,1518,554284,00.html>
¹⁷

http://www.swissinfo.ch/eng/politics/swiss_abroad/Swiss_in_US_angered_by_bank_tactics_.html?cid=30572658

¹⁸ <http://en.wikipedia.org/wiki/HavenCo>

¹⁹ <http://techcrunch.com/2011/07/01/wikileaks-intends-to-sue-visa-and-mastercard-for-blocking-payment/>

Minimally, if early seasteaders decide to seek out such opportunities despite the risks, we suggest seasteaders at least introduce strong parameters and carry out due diligence—learning from the experiences of places like Las Vegas, Amsterdam, Canada, Portugal, certain Jamaican resorts and other areas where such activities are tolerated and tightly controlled.

When it comes to avoiding interference by state actors, having political power counts for a lot. Legal legitimacy is simply one means to maintain political power.

In the case of HavenCo, the inhabitants argued their activity was legitimate because they were outside the WTO and not subject to its rules. Interestingly, state actors left the company and the other Sealand inhabitants largely alone. HavenCo, the company, was simply poorly managed.²⁰ (HavenCo’s founder Sean Hastings sharing his own fascinating account of events.²¹) Despite any more recent precedents for interference, seasteaders may still wish to consider not just the question of legitimacy, but the question of political power. In other words, tread softly and carefully until both legitimacy and political power can be brought to bear.²²

At first, seasteads will be discrete, private entities. So owners will be able to choose the restrictions and level of risk, whether hard or soft, they are willing to tolerate to ensure the long-term viability of their businesses. While a certain level of idealism infuses the seasteading movement, most seasteaders will be pragmatic business owners first and idealists second. A modicum of respect for the cultures, practices and laws of nearby coastal states will go a long way. From a public relations standpoint, if you have seasteaders engaging in honest commerce, none of whom represent any threat to your nation, it becomes more and more difficult to find credible justifications for interfering with them.

Making Law a Core Competency

Earlier, we alluded to the idea of having law be a core competency of any seastead firm. Consider that almost every early seasteading venture – the anchor businesses, as it were – will launch based on what we refer to as “jurisdictional arbitrage.” That means most seasteaders will be looking for opportunities to profit by taking advantage of institutional differences – where the differences will be found between the laws of a seastead on the one hand and the laws of some territory on the other. Given these arbitrage opportunities, it will be critical for seastead business to have core team members who develop high levels of expertise in legal matters – on the seastead, on shore and in international waters. Researchers at The Seasteading Institute elaborate on this point in “Seasteading Business: Context, Opportunity and Challenge”:

²⁰ We cannot ensure the validity or verity of this source. But the author makes interesting claims. <http://www.defcon.org/images/defcon-11/dc-11-presentations/dc-11-Lackey/dc11-havenco.pdf>

²¹ <http://seasteading.org/blogs/main/2009/12/02/sean-hastings-experiences-with-havenco-and-sealand>

²² Because most seastead venture will primarily be entrepreneurial in nature, seasteaders may want to consider partnering with industry groups that have political influence.

[M]ost seasteading startups will take advantage of the global patchwork of rulesets. That is why we want to emphasize the critical importance of seasteaders integrating legal expertise into their organizational DNA. That means including at least one legal expert as part of one's founding team in almost all cases. As one of our colleagues put it: "a seasteading venture outsourcing its legal expertise would be like a private space company outsourcing its engineering talent." In other words, most seasteading companies are at their cores a *legal* play of one sort or another. Each will want to have an understanding of the law as one of its core competencies.²³

Having a legal expert as a member of one's founding team is quite a different thing from simply retaining legal counsel. We can't place stronger emphasis on this recommendation (at least in most cases), as one of the most interesting aspects of seasteading is an entrepreneur's role in creating new legal frameworks:

[F]or many seasteaders – specifically legal arbitrageurs..., the law will be a core competency. This may seem daunting. But most seasteaders will borrow from useful native laws and customs with relative ease—grabbing bits from successful foreign systems and, over time, weaving these together with rules and norms that arise through seastead-specific interactions. In short, many rules, regulations and laws evolve without prior design.

Of course, the evolution of seasteading law is no passive exercise. It will involve the work of many – working and living on the sea, searching for good law that will lower the costs of cooperation and exchange.

Borrow and Augment Good Law. So how do seasteaders go about fashioning new law while keeping costs down? The short answer is: borrow good law where possible and create the rest at the local level. This won't be easy. But we caution against attempting to fashion legal institutions from scratch. Time-tested law has precedent and experience packaged into it. Entirely new law does not benefit from the wisdom of ages, nor from real people having tried out rules that work over time. Not only would it be fairly costly to devise novel rulesets on the sea, it would also be a difficult and slow process—one not likely to be strong enough for the first wave.

That said, seasteading is a unique way of life – different in many respects from living and working on land. Seasteaders will be forced to devise new rules. For example, what sorts of rules exist for how far apart one seasteading platform ought to be from another to allow boats to cruise in between or for safety? No one yet knows. Or, what sort of safety precautions should be in place for an orderly move in the event of a typhoon? Might seasteaders borrow the basic charters and frameworks of home owners associations for seastead residential life? What about rules for conflict resolution? Some workable bodies of law may exist, but in other cases, seasteading will present new circumstances that will go toward crafting a new seastead-specific body of law. Whatever the case, we propose that seasteaders take law from wherever they find it and correct it at the margins. Like

²³ http://seasteading.org/files/Seasteading_Business_Context_Opportunity_Challenge_Aug_2011.pdf

open source code, the law may never be perfect. But it can be tinkered with and improved as seastealers establish new patterns of business and life on the sea.

IV. Critical Decisions

The first wave of seastealers will make critical decisions on a number of dimensions. What type of physical structure should I build my seastead on? Under which flag should I fly our corporation? What is the best corporate structure for our business? Fundamentally, all of these questions have a legal dimension. And for seastead entrepreneurs, they are virtually unavoidable. So, in this section, we will provide a broad overview of critical decisions seastealers will have to make in these initial stages.

Before we set sail into the murky legal waters of structure, flagging and incorporation, we should demonstrate that seasteading entrepreneurship – even at this early stage in its development – already lies at a critical juncture when it comes to any basic legal approach. The first approach is to take the legal environment basically as a given and sally forth as entrepreneurs – treading softly and operating with a view to the “adjacent possible”²⁴ (as we suggest in our first legal paper). Call this the “emergent” approach. We suggest taking this approach with the kinds of jurisdictional arbitrage ventures that mean competing locally—normally off the coast of developed countries. The second approach, which we believe warrants further research, is to find developing countries that stand to gain from having seasteads – like little Hong Kongs – thriving just off shore. With this legal approach, seastealers will be encouraged to forge agreements with these developing nations – agreements that will carve out much more legal space to undertake seasteading ventures of all kinds in a securer, more predetermined business environment. We call this the “free zone” approach. Let us linger on this second legal approach for a moment before returning to the emergent approach that characterizes most of the recommendations in this paper.

In our first legal paper, we discussed the different internationally recognized zones extending out from national shorelines (for example—Territorial Waters, Contiguous Zone, Exclusive Economic Zone and the High Seas), as well as how suitable each might be for seastead entrepreneurs. For example, some areas are better for seastealers due to the confluence of factors such as climate, legal environment, proximity to certain countries and/or sources of low-cost labor or goods. With these considerations operating in the background, consider the creation of a new type of legal entity.

Maritime Special Economic Zones

An SEZ is a geographic region whose rules, and usually economic policies, are more liberalized than its host country's national laws. The most successful SEZ in the world is Shenzhen, China, which

²⁴ From the first paper: “The Seasteading Institute is not in the business of crafting utopias. We believe that to succeed, seastealers will have to make trade-offs. That is not to say we will jettison our ideals. It means we have to temper them enough to work within the circumstances of the age. Some might call that conservatism. Others might call it pragmatism. We prefer a term offered by the great complexity scientist Stuart Kauffman: ‘the adjacent possible.’” [http://www.seasteading.org/files/research/governance/Charting_the_Course -
Toward a Seasteading Legal Strategy.pdf](http://www.seasteading.org/files/research/governance/Charting_the_Course_-_Toward_a_Seasteading_Legal_Strategy.pdf)

has developed in the past 20 years from a small village into a city with a population of more than 10 million residents. Prosperous Dubai grew from a desert village into a major business hub through the successful utilization of SEZs. And the bustling metropolises Hong Kong and Singapore are fantastically successful examples of SEZ implementation.

We'd like to propose "Maritime Special Economic Zones" (MSEZs) which would be modified SEZs that would be customized to suit the interests of the both seasteading entrepreneurs and Coastal States. With MSEZs, seasteaders – instead of relying on the already existing set of legal circumstances – could *create* desirable tax and regulatory frameworks by negotiating directly with Coastal States. In other words, to overcome some of the highly complex and ambiguity-laden rules found on the world's oceans, seasteading entrepreneurs and communities could structure agreements with coastal states to create MSEZs backed by the power of national sovereignty. Having such an agreement in place would lessen the degree of legal uncertainty that is one of the most formidable obstacles seasteaders are faced with.

Thus, an MSEZ would be a modified SEZ based in the territorial waters, contiguous zone or an exclusive economic zone of a coastal state. Just as Dubai, Hong Kong, and Singapore transformed empty space into cities, coastal state's waters could be transformed by hosting prosperous free cities in their current, often barren, waters.

As with land-based SEZs, an MSEZ would have several ways in which it could be formed. Here are a few possibilities based on existing SEZ structures around the globe:

- **Wide area:** Large zones with a resident population, such as the Chinese SEZs or new cities such as Shenzhen in China or Songdo in South Korea.
- **Small area:** Zones that are generally smaller than 1000 hectares. Investors must locate within the zone to receive benefits.
- **Industry specific:** Zones that are created to support the needs of a specific industry such as banking, jewelry, oil and gas, electronics, textiles and tourism. Companies invested in the zone may be based anywhere and still receive benefits. Examples include India's jewelry zones or offshore banking zones.
- **Performance specific:** Zones that admit only investors that meet certain performance criteria such as degree of exports, level of technology, size of investment, etc. Examples include India's export-oriented factories, Mexico's maquila program, or research parks.
- **Company/project specific zones:** Such would be zones that would be exclusive to one single company or to one specific project.

Ideally, seasteading-friendly MSEZs would also incorporate characteristics shared by the most successful SEZs around the world, including:

- **Extra-territoriality:** As defined in the Revised Kyoto Convention, SEZs should be treated as outside the domestic customs territory.
- **Flexibility:** Allowing for a range of commercial as well as manufacturing activities.
- **Private development suitability:** Private developers' benefits, obligations, and rights are clearly defined with regard to zone development.
- **Low-cost logistics hub:** In response to global integration, many zones – especially those that are privately run – are rapidly reconfiguring themselves into efficient distribution, production, and trade facilitation hubs to reduce logistics costs in order to meet the demand of international operations.

Maritime SEZs would be a place to test many new rules that would improve business operations and new infrastructure to streamline physical efficiency. Creating these zones from scratch allows better and more innovative systems to be built from the start – without being constrained by the bugs of an existing infrastructure or trapped by negative network effects.

Some unique features of maritime SEZs that are different from land-based SEZs include:

- **Increased revenue for host country:** The host country does not give up valuable land, only empty water. So revenue obtained from a maritime SEZ is a pure increase in state revenue, requiring minimal resources and minimal services.
- **Long-term commitments are not essential:** Some seasteads can be moved elsewhere if necessary, which allows for temporary experimentation. If a Coastal State is not satisfied with an arrangement, it can easily end the relationship and require the physical structure to relocate. Similarly, investors in the seastead would have the security of knowing they could move their facilities if they were not happy with the relationship. Thus long term leases (99 years) would be unnecessary: an initial lease could be as short as 3-5 years and then renewed periodically.
- **Economic Autonomy:** In the short-term, seasteaders would like to have greater economic autonomy and regulatory freedom compared to other SEZs. This corresponds to recent trends which suggest SEZs are becoming more competitive by offering broader tax and other regulatory incentives.
- **Political Autonomy:** Over time, as both parties become comfortable and develop trust, seasteaders will likely desire increased local autonomy over political and social matters, within reasonable parameters agreed to with the Coastal State. This autonomy would attract numerous highly skilled people and businesses from around the world to move into the Coastal State's maritime SEZ, providing trade for Coastal State and a new customer base for businesses. Of course, the SEZs' operators would have strong incentives to agree to prohibiting activities the Coastal State considered socially undesirable or threatening.

The Coastal State would benefit from a seasteading partnership through:

- **Revenue and expertise:** A seastead located near a Coastal State would provide an expanded source of customers, revenues, jobs, technical and other types of expertise.
- **Enhanced public relations:** The Coastal State would show itself to be on the cutting edge of free trade and open-market policies.
- **Attracting investment:** Seasteading is likely to become a large and important economic sector. By establishing itself as a leader and an ally to seasteaders, the Coastal State could attract a larger share of investment both in this valuable sector and on land.

Seasteads would benefit from this partnership through:

- **Increased legal certainty:** Lack of legal certainty is among the most serious challenges seasteaders currently face. A reliable and predictable MSEZ legal regime would encourage interested entrepreneurs to create more seasteading businesses.
- **State-sanctioned business climate:** Seasteaders engaged in jurisdictional arbitration within an MSEZ have the protection of the agreement. By contrast seasteaders with no agreement will have to justify their activities and existence in more ad hoc fashion according to the wider international frameworks (which may be difficult politically and diplomatically in the absence of a formal MSEZ agreement).

After pioneering a successful MSEZ in collaboration with the first coastal state, seasteaders would have a working example to point to when attempting to create other zones around the world. Such could lead to the exponential growth of new MSEZs.

In short, we believe MSEZs hold tremendous promise for the development of competitive institutions and the emergence of better business climates around the world.

Physical Structures and the Law

One of the most important decisions for seasteaders will be what type of physical structure to use. Associated with each of these physical types is a set of regulations with direct implications for the business. There are several possibilities, ranging from ships and rigs to artificial installations like floating platforms, and even artificial islands; but because this paper is designed to be of use to the first wave of seasteading entrepreneurs we will focus on ships primarily.

Most legal frameworks define a ship as a boat or any vessel used in navigation. That is, at least, the broadest definition. In most jurisdictions, however, particular statutes specify what is meant by a ship in various contexts or court decisions²⁵. The implications of this are that definitions differ

²⁵ Some jurisdictions or statutory applications of the term 'ship', omit oar propelled boats from the definition, whereas others specifically include oar propelled boats. As the Justice Blackburn wrote in *Ex parte Ferguson*[#], where the issue was whether or not the vessel in question was a ship and therefore obligated to assist in a nearby fatal sinking of another vessel: "Whether a ship is propelled by oars or not, it is still a ship, unless the words 'not

widely – even within the same country. Such can lead to strikingly different definitions within the same regulatory framework. For example, in the federally applicable United States Code, Title 47:

The term *ship* or *vessel* includes every description of watercraft or other artificial contrivance, except aircraft, used or capable of being used as a means of transportation on water, whether or not it is actually afloat.

But in Title 18 of the US Code:

Ship means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles or any other floating craft, but does not include a war ship, a ship owned or operated by a government when being used as a naval auxiliary or for customs or police purposes, or a ship which has been withdrawn from navigation or laid up."

In Canada, a floating crane was determined to be a ship in the Saint John Shipbuilding case, but in The Gulf of Aladdin case, a simple barge with no independent means of propulsion was held not to be a ship. In *Croswell v Dabal*, at issue was the Canada Shipping Act in a tort action involving two pleasure crafts or "speed-boats", both thirty feet long. Justice Logie of the Ontario Court concluded: "there can be no question that each of the motor-boats in question was a 'ship' under the Canada Shipping Act 1906." In another case, interpreting the North American Free-Trade Agreement, a judge determined that a ship was a "large sea-going vessel" (*Canada v McNally*).

Some legal usages refer to a ship as a vessel made to move either on the surface or under the water. (Note also that the ship is legally conceived as different from the cargo it carries under almost every definition. Depending on the efforts of the seasteading entrepreneur, this definition could be more or less important. Is the cargo knowledge? Containers full of toys? Perishable food?) It would be premature to speculate about how these definitions – surface or submerged, vessel or cargo – will impact seasteaders, but we know that legal decisions and interpretations often turn on such distinctions.

All this suggests there is no clear internationally accepted definition of what a ship (or vessel) is. Not only is the clear, universal definition elusive, there are often discrepancies in the legal definitions that are supposed to define a ship within domestic jurisdictions.

Why should seasteaders concern themselves with these legal nuances? The short answer is that knowing the way these physical structures are defined and regulated may make a difference between having legitimate potentially profitable ocean craft and illegal craft that are unlikely to draw serious investors.

propelled by oars' excludes all vessels which are ever propelled by oars. Most small vessels rig out something to propel them and it would be monstrous to say they are not ships."

It will be useful for seastealers to be able to differentiate between several available options. To be more precise: if a vessel such as a barge or semi-submersible is NOT considered a ship but rather some sort of an artificial installation, then the coastal State would be legally justified to monitor and regulate the activities on those structures in its Exclusive Economic Zone (EEZ). The importance of ocean craft design decisions cannot be overstated. The first wave of seasteading entrepreneurs will have to familiarize themselves with these issues before launching a venture. To complicate matters, we are here providing an overview of relevant domestic and international regulatory framework because a lot of seasteading activities – including seastead designs – will go toward the creation of clearer definitions. Thus, many rules will have to be addressed in “creating facts on the ground”. Some will view this as a chicken-or-egg problem of ship definitions. Others will relish the opportunity to create new law through the practice.

Let’s explore this complicated subject matter a little more. Consider, for example, that Article 56 of UNCLOS provides that the Coastal State has “jurisdiction as provided for in the relevant provisions of this Convention with regard to... the establishment and use of artificial islands, installations and structures”. Said “relevant provisions” are found in article 60, which gives the coastal state the following rights:

[T]he exclusive right to construct and to *authorise and regulate* (emphasis added) the construction, operation and use of:

- (a) artificial islands;
- (b) installations and structures for the purposes provided for in article 56 and other economic purposes;
- (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.

The Coastal State not only has exclusive jurisdiction over such artificial islands, installations and structures, it has the right to establish safety zones²⁶, which are not to exceed 500 meters in breadth (articles 60 (2), (4), (5)).

Bearing article 60 of UNCLOS in mind, note the distinction between the rights of the coastal State to construct “artificial islands” for any purpose and the right to construct “installations and structures” for more limited purposes seems rather tenuous in the absence of a more robust definition of an “artificial island.” An “installation” or a “structure” could be regarded as an “artificial island” under some interpretations. On the other hand because the UNCLOS makes a distinction between “artificial islands” and “installations and structures,” we can presume that the categories do not overlap. As in the case of a “vessel,” there is no internationally accepted definition of artificial island.

²⁶ Safety zones are areas immediately adjacent to these structures over which coastal states can assert exclusive jurisdiction.

Any firm, fast rules that could be divined from the UNCLOS and certain national legislation – the US in particular – are inconsistent and full of holes. These holes and inconsistencies could provide a great deal of latitude for experimentation on seasteaders’ part. One should be advised, however, that the Coastal States could also exploit these holes, themselves, and creatively interpret vaguer definitions to achieve their own objectives—some of which may include thwarting the aspirations of seasteaders.

The mixed conclusion, then, is that there is no clarity, safety or regularity that comes from the legal frameworks of the sea. Seasteading may ultimately be as much a political and diplomatic effort. Seasteaders can (and should) use legal arguments to strengthen their political positions, while moving forward with a high degree of diplomatic sensitivity.

Open Registry

An open registry is generally defined as a registry operated by a flag State which allows non-national or foreign vessels to register to fly its flag. The Flag State’s obligations and responsibilities to ships carrying its flag are contained in the UNCLOS, as follows.

UNCLOS and the Primary Responsibility of Flag States

The United Nations Convention on the Law of the Sea (UNCLOS) provides the overarching framework governing the activities of vessels engaged in all manner of activities including maritime transport, seabed mining, high seas fisheries and scientific research. UNCLOS asserts that the flag State is the principal authority responsible for ensuring that vessels flying its flag have implemented (and are in compliance) with international laws.

UNCLOS: Relevant Passages

Article 91 states:

‘Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship’ (91.1)

‘Ships shall sail under the flag of one State only and... shall be subject to its exclusive jurisdiction on the high seas.’ (91.2)

UNCLOS further elaborates upon the rights and duties of flag States through Article 94, in particular Article 94.1 and 94.2:

94.1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

94.2. In particular every State shall:

(a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and

(b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

Article 97 asserts:

No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State in relation to matters of collision or any other incident of navigation on the high seas.

In relation to the prevention of marine pollution, Article 217 establishes a number of obligations, including the requirement that:

Penalties provided for by the laws and regulations of States for vessels flying their flag shall be adequate in severity to discourage violations wherever they occur.’ (Article 217.8)

Although these provisions are fairly comprehensive with respect to technical, crewing and legal requirements—apart from noting that there “*must exist a genuine link between the State and the ship*” (Article 91)—the Law of the Sea Convention is silent on ownership requirements.

The genuine link concept has been used a number of times to connect the nationality of a ship to the state in which it is registered. While many have argued that the “genuine link” should restrict the ownership of vessels to nationals of the state in which the ship is registered—or to some other clearly established linkage—the *de-facto* interpretation of this provision has been considerably more liberal. The linkage requirement is widely accepted as being met when a commercial, fee-for-service relationship exists between the ship owner and the Flag State.

This loose interpretation has enabled the existence and rapid growth of “Open Registers” where the nationality of the owner has no relevance. From either an operational or commercial standpoint, this lack of a direct link to nationality is probably unimportant, as long as the Flag State exercises adequate oversight of the ship-owner and his vessel. This reality extends to corporate ownership of ships, as well, because the corporate entity’s country of registration is also not relevant.

All ship registers require some information about ownership to be provided upon application. So, as a general observation, most registers at least superficially attempt to establish the ownership of vessels on their register. At the very least, they require some ownership details to be provided, even if their ability to confirm those details unequivocally may be inadequate for a variety of reasons.

A number of open registries strike us as particularly well-suited to early seasteading. These flag states made the list because they have the most business-friendly packages.

- Antigua and Barbuda
- Bahamas
- Barbados

- Belize
- Bermuda (UK)
- Cayman Islands
- Cyprus
- Honduras
- Panama
- Liberia
- Malta
- Marshall Islands (USA)

Those that don't make our list lack robust business law, build in onerous regulations, or have bad reputations due to involvement in international criminal activities such as arms and drugs smuggling. Some are simply not institutionally well-equipped – as in the case of many African countries, North Korea, and Myanmar (Burma). We also exclude vigorous international actors like the U.S. for reasons discussed in Section II. Challenges.

While open registers would be the most obvious choice for most vessel owners, seastealers could use traditional registers as well – including those of the Organisation for Economic Co-operation and Development (OECD) countries. The additional complexity and risk of registering vessels in traditional registers might for some be worth the benefits of greater status and reduced scrutiny. Seastealers will want to consider registering in these jurisdictions due to their reputations, even if they are not as cost-effective as open registries. On the other hand, entangling one's company in traditional registries could reduce opportunities in jurisdictional arbitrage.

Cyprus - A Successful Flag State for Shipping

Cyprus has developed into a major shipping center. Consider that Cyprus ranks sixth in the world as a Maritime Country. Such rankings are derived from the extent businesses use a country's regulatory frameworks. This high rank suggests Cyprus is a top flag state for doing business on the sea. As a member of the International Maritime Organization (IMO), Cyprus also follows all of the relevant rules and regulations promulgated by the IMO.

Cyprus has also gone to great lengths to help ship companies under its registry to avoid double taxation (which is the imposition of additional taxes by one's resident nation or nation of citizenship on the same income.) By hammering out treaties with more than 40 countries to mitigate or eliminate the additional tax liability – not to mention numerous bilateral agreements that let tax benefits accrue to ship owners – Cyprus has quickly expanded its Shipping Registry (both in terms of number of vessels as well as in terms of gross tonnage). Moreover, the accession of Cyprus to the European Union is a further boost to vessel numbers in the Cyprus Registry.

There are three main ways in which the Cyprus registry is being used by the international shipping community:

1. A Cyprus shipping company owning/bareboat chartering Cyprus flag ships and benefiting from a zero taxation regime and a low-tonnage tax regime (i.e. cases in which vessels are taxed on a per ton basis), or;

2. A ship management company offering full management services to ship owners worldwide including chartering, crewing, ship broking and similar activities and benefiting from an option to be taxed EITHER on a 4.25 % tax on their net earnings OR a tax rate equal to one quarter of the tonnage tax rates which the vessels under management would pay if they were under Cyprus flag, or;

3. A Cyprus international business company, generating profits from shipping activities of ships under non-Cyprus flag, taxed at 10%.

In the box above, we use Cyprus as an example due to its membership in the E.U. as well as the island nation's respect in the international business community. Other E.U. examples, such as Malta, are also recommended.

Consider also Liberia, whose open registry-related operations are based in the U.S and are done by a private firm based in Virginia. Interestingly, Liberia has one of the deepest histories for open registry. One could even argue that the open registry model was developed there, to considerable extent. Allow us to quote liberally from the Liberian registry web site, because we think Liberia is a fine example of a flag state seastealers should consider in their strategic decision making.

LIBERIA- A Successful Flag State For Shipping

This is the excerpt from the official Liberian Registry Page:

"The following points provide a brief outline of the benefits of the Liberian Registry to the shipowners/shipmanagers when compared with either national or open registers.

Vessel Construction – The Liberian Registry does not require vessels to be constructed by a particular nation. The supplies for construction and outfitting are also free from similar restrictions. Without this type of protectionism, shipowners are allowed to search and solicit shipbuilders solely on commercial considerations, such as competence, experience, and price.

Vessel Manning – Manning requirements specified by the Liberian Registry are based exclusively on competence, international recognition and safe operation. Many national registries require manning by citizens of the country of registry. This promotes higher wages, inflated labor costs and overheads, excessive bureaucracy, and the potential for interference from organized labor.

Harmonized Audits – The Liberian Registry is the first and so far the only major open registry to have trained a worldwide network of lead auditors in both the International Safety Management (ISM) and International Ship and Port Security (ISPS) Codes. By harmonizing the overlapping requirements of these International Codes, the Liberian Registry seeks to provide shipowners convenient, efficient and cost-effective certification services. Shipowners can ensure compliance while reducing the burden on ship and shore staff, as well as reducing survey expenses by enrolling in Liberia's optional Harmonized Audit program.

Ship Financing – The mortgage-recording regime of the Liberian Register is internationally recognized and acceptable to banks from many jurisdictions, allowing the best opportunity to obtain the most favorable financing.

Ease of Registration – The pre-registration formalities are user friendly, designed to meet international

standards in relation to safety and documentation but not to delay operations. Registry staff is available to assist with the registration process and to explain our procedures. Bareboat registration in and out is permitted and no restraints are placed on a ship wishing to transfer out of the register.

Asset Protection/Ownership Flexibility – Unlike many national registers, the Liberian Registry recognizes the need and actively protects the opportunities for asset protection. The Corporate Register of Liberia allows the use of and maintains the integrity of single purpose corporate vehicles. Likewise, the Corporate Register must continue to offer flexible corporate vehicles to ensure that specific ownership options are available to meet the needs of the multitude of shipowning structures.

Tax Sensible Jurisdiction – Vessels in the Liberian Registry are taxed annually with a fixed fee based on the net tonnage of the vessel. Similarly, Liberian Corporations have a fixed annual tax. Taxes on operations and profit are not assessed.

Double Taxation Treaties – Double taxation is avoided in nearly all major shipping business areas due to tax recognition treaties established between Liberia and most countries.

Acceptable Flag for EU Tonnage Tax Schemes – The Liberian Flag is an acceptable choice for many of the new Tonnage Tax Schemes currently being offered in the EU, including the UK, German and Dutch tax systems.

Depreciation Principles – Ocean shipping requires the use of capital-intensive investments. Due to the varying market conditions and demand for ocean transportation services, many shipowners have difficult years without profit. With recognition of alternative jurisdictions, Liberia offers depreciation alternatives not available with most national registers. This in turn allows flexibility with respect to Profit & Loss reporting.

Vessel Surveys – The Liberian Registry recognizes the overlapping requirements inherent to classification rules and international standards. The classification societies have significant representation throughout the world and are a source of tremendous vessel structure and technical expertise. Liberia has authorized qualifying classification societies to conduct the full range of statutory surveys during attendance for routine classification surveys. Qualifying classification societies are not restricted to a particular national society. This provides cost savings, reduction of bureaucracy and operational/scheduling flexibility for shipowners.

Customer Service – The Liberian Registry is administered by a U.S. owned and operated company and managed by industry professionals who understand the business of shipping. While eliminating bureaucracy, the Registry has found the right mix of customer attention and policy enforcement. Likewise, significant investments in technology are being made to ensure superior service and convenience. In addition to the Registry's offices located in major shipping centers, there is also a network of over 220 nautical inspectors, who are available to attend vessels when needed.

Safety and Quality Reputation – Year in and year out, the independent statistics of underwriters, Port State Control Authorities, seafarer advocates and salvage institutions all recognize Liberia as having a quality reputation of standards. This is routinely demonstrated by Liberia's above average performance in the indicators of safety and accident prevention as well as in independent statistical reports.

Security – The post-9/11 world has brought new responsibilities for commercial shipping and maritime administrations. The Liberian Registry has been on the leading edge of the development and implementation of the IMO's ISPS Code. Liberia believes in a practical and low-cost approach to ensuring security conscious shipping. A network of approximately 100 security inspectors attends vessels when needed.

Adoption and Enforcement of International Regulations – Participation in the UN bodies of the International Maritime Organization and the International Labor Organization is another important factor for respectable ship registries. Liberia is known for its international involvement in ensuring the development of practical new

regulations when necessary. Likewise, Liberia ratifies important conventions, enacts domestic legislation in support of safety, pollution prevention and seafarers' welfare and ensures equitable enforcement of these scriptures.

Liberian Shipowners' Council (LSC) – Liberia is one of the few open registries with an independent shipowners' council. The LSC provides member shipowners with a venue to monitor and address problems facing the industry and to share and exchange information and ideas. The LSC is also a member of the International Chamber of Shipping, and the International Shipping Federation (the only maritime employer association who can represent shipowners at the International Labor Organization). As such, Liberian Shipowners are able to benefit from the valuable services of this leading industry institution.

Pricing – The Liberian Registry offers professional service at a competitive price. Savings realized by use of technology are passed back to clients of the Registry.²⁷

Incorporation Jurisdiction for Seastead Developers and Owners

Incorporating businesses at sea is a complex and well-established area of law. We should stress that the following is a 30,000-foot overview, designed to give readers broad outlines. We hope to set the tone for critical decisions such as one's choice of jurisdiction.

Seastead-based businesses, due to their inherent structure, will likely be considered international businesses that will use offshore incorporation—a legal strategy employed mostly by large multinational corporations (MNCs). Such incorporation strategies, when done in conjunction with open registries, could give rise to distinct advantages for seasteading entrepreneurs.

Establishing an Offshore Corporation

Offshore incorporation is the act of establishing a legal entity known as a company or corporation in a jurisdiction other than that in which the director resides. In many cases, such companies are established in jurisdictions that are well-known for their tax advantages and ease of operation. Some well-known examples of offshore company incorporation include:

- British Virgin Islands
- Bahamas
- Cayman Islands
- Panama

Incorporation in one of these offshore jurisdictions is relatively simple: It can be achieved by submitting the memorandum and articles of association to the registry which handles legal incorporation for the registry's jurisdiction. In most jurisdictions, companies can be formed from 24 to 48 hours, and original documents can be obtained in a day or so after incorporation. The costs vary but they are in the neighborhood of \$10,000 (sometimes considerably less).

²⁷ <http://www.liscr.com/liscr/AboutUs/AboutLiberianRegistry/PointstoCompare/tabid/214/Default.aspx>

Using Offshore Incorporation. An offshore company can be used in a number of ways. Many individuals and companies use their offshore corporation for investing, tax reduction, international trade, e-commerce, consulting, import/export companies and other businesses. Some use offshore corporations to protect their privacy and their personal finances. Asset protection is one of the most sought-after features of an offshore company—especially if the company is incorporated outside the jurisdiction in which one conducts business or resides.

Why Incorporate Offshore. Seastealers need to take advantage of existing legal strategies in order to reduce costs and improve the chances of their ventures being successful. This paper is designed to provide practical suggestions to first wave of seastealers and knowing certain general rules related to the incorporation strategies is of utmost importance. As we mentioned in our first legal paper in this series, operating with a view to the adjacent possible is the recommended strategy for seastealers, overall. Such involves incrementalism via use of existing law. Specifically, because these legal norms already exist, they can be used by seastealers and modified through practice. Offshore incorporation is one of the best methods for securing one's assets because it effectively places said assets under the stewardship of the organization—and removes them from the direct ownership of the individual. By doing so, the assets are shielded from unethical private actors, predatory states or intrusive government agencies. Indeed, by coupling an offshore incorporation with an offshore trust and bank account, one can protect her assets – fully and legally – from undue interference.

These incorporation and banking mechanisms are freely available in many jurisdictions. Note also that these mechanisms are perfectly legal and provide the basis for an international company capable of transacting business almost anywhere in the world (with the exception of the country of incorporation).

Corporate Mechanisms. Again, in eyes of the world, vessel owners are likely to be corporate entities. These entities will seek to employ various mechanisms to attract investment and conduct business globally. The most common mechanisms include:

- Bearer shares – This equity security is wholly owned by the person who holds the physical stock certificate. The issuing firm neither registers the owner of the stock, nor tracks any transfer of ownership. As the share is not registered to any authority, transferring the ownership of the security involves only delivering the physical document. Because ownership is never tracked, bearer shares avoid the regulation and control of common shares.
- Nominee shareholders – Owners can appoint shareholders (contractually) to ensure the security of personal information.
- Nominee Directors – Someone who lends his or her name to a corporate head for the purposes of documentation. The person's name is used instead of that of the head for the purposes of incorporation. According to the legal documents, the nominee is fully responsible for the entity. And if the nominee is also listed as the shareholder, then he has related ownership responsibilities, as well.

- Intermediaries – One who acts on an owners' behalf is called an intermediary. These designees can transact business and hammer out deals on behalf of the corporation or corporate owner.

Common Types of Offshore Companies. The most common institutional devices used to create corporations are Private Limited Companies, and International Business Corporations (IBCs). Other devices such as Trusts, Foundations and Partnerships are also common.

Open registers, which by definition do not have any nationality requirements, are the easiest jurisdictions in which to register vessels covered by complex legal and corporate arrangements. After all, these arrangements will almost certainly cover a number of international jurisdictions.

V. Conclusion

We have offered a significant number of concepts and tools for the first-wave seasteading entrepreneur. It is certainly a lot to take in and is by no means comprehensive. The sea's legal issues differ considerably from that of territorial systems. But hopefully, we have shown seasteading entrepreneurs a way forward.

Specifically, we touched on potential legal impediments to seasteading, such as interference from political actors and multilateral agencies, as well as incomplete, unstable or onerous regulatory environments. Then we discussed ways to overcome challenges to seasteading. Some of these ways include restricting onboard activities that could invite interference, as well as making legal strategy a core competency in any seasteading venture. Finally, we spent some time discussing the critical decisions that could offer seasteaders a distinct advantage as they work, live and do business on the sea. We discussed the possibility of negotiating maritime special economic zones, and more emergent approaches such as registration with a flag state and offshore incorporation.

Our aim was to demonstrate that the vision of seasteading is certainly within reach. There are legal tools ready to hand and seasteaders will be as much legal entrepreneurs as arbitrageurs with big ideas. There is an ocean full of opportunities out there. Which ones will you seize?

Addendum: Medical Tourism – A Seasteading Business Case Study

Any business activities that are related to the extraction or use of natural resources such as oil, gas and even solar energy are tightly regulated in the Exclusive Economic Zone (EEZ) and, to certain extent, on the High Seas. (The legal situation on the high seas is muddier, as you can see in our [first paper](#)). Therefore, it is not recommended that seasteaders start these types of businesses in the short-to-medium term – that is, unless, they already have considerable legal expertise in these industries. Given this legal reality, most of the promising ventures lie in the “knowledge economy,” as well as in services.

One promising area for start-up seasteaders is medical tourism. With this addendum, we'd like to provide examples of how medical seasteaders could benefit from what we refer to as "jurisdictional arbitrage." Consider three opportunities in medical tourism that arise from jurisdictional arbitrage: Out-of-Pocket Care; Pharmaceutical Research and Development; and Biotechnology.

Out-of-Pocket Care

With new legal and policy realities in the U.S. and Canada, arbitrageurs may notice a difference in price, quality and availability between these two countries when it comes to medical goods and services. In “Seasteading Business: Context, Opportunities and Challenges,” The Seasteading Institute researchers write:

Medical tourism currently offers customers a means to engage in their own form of jurisdictional arbitrage. From getting a dental implant in Costa Rica to getting heart surgery in India, people are planning interesting holidays along with their treatments. Medical tourism need not be in exotic locations, however. It can be simple and functional. A Canadian can get a CT scan across the U.S.-Canadian border and avoid Canadian wait times due to rationing. What could be simpler and more functional than fearful, wait-listed Vancouverites traveling to a seastead-platform replete with all manner of inexpensive diagnostics?²⁸

Exploring this idea further, consider that Canadians experience very long wait times. Many are willing to pay something to get a CT scan or MRI now as opposed to waiting six months for “free” diagnostics in the Canadian single payer system. Many are so willing, in fact, that they travel to the US for such scans. But the U.S. system is also flawed. The problem is, due to excessive reliance on third-party payer systems, the U.S. suffers from severe medical inflation in both medical goods and services. Therefore, Canadians traveling to the U.S. to get diagnostic services have to pay inflated prices.

Imagine, therefore, a seastead or medical “shipstead” that takes advantage of the differences between these two different systems by offering low cost, high-quality care with no wait. Typically, a CT scan in the U.S. costs about \$1,700 – a conservative estimate. What if coastal Canadians and Americans could travel to a seastead 24 miles off the coast of, say, Vancouver and Seattle, and get a scan for \$800—a price that might include ferry travel to the medical facility at sea?

From a legal standpoint, there is nothing in the EEZ regime that proscribes people seeking diagnostic care on the sea. As we suggested above, the UNCLOS deals more with resource extraction and pollution – neither of which would be a problem for medical diagnostics, even treatments. In this case, therefore, the legal experts might want to focus on Maritime Law, as well as the business laws of the flag state as they apply to such activities (or for example, laws that would apply in the event of a dispute which could be specified in international arbitration agreements, see below). Technology is moving at a much more rapid pace than regulatory frameworks governing the world’s oceans. Seasteaders will want to seize this opportunity and target areas that have not been addressed by the UNCLOS and other regulatory regimes.

²⁸ http://seasteading.org/files/Seasteading_Business_Context_Opportunity_Challenge_Aug_2011.pdf

Pharmaceutical Research and Development

Another promising area is pharmaceutical research and development:

American readers are familiar with the FDA – the U.S. Food and Drug Administration. Similar regulatory bodies exist in other countries. Most agree these agencies are put in place to ensure pharmaceuticals are safe and efficacious for consumers. But people also understand that the approval process for many drugs can take years and compliance is very expensive. Such a regulatory regime not only delays potentially life-saving therapies' time to market, but drives up the cost of the drug once it's available. What if a pharmaceutical company with a seastead could circumvent this process to some degree? What if a seastead could invite patients to buy therapies without the need for FDA approval? Currently, U.S. citizens have to travel to other countries to benefit from therapies which aren't (or aren't yet) FDA approved. If this took place right off the coast, it would be far more convenient for customers. Cost savings would result for both drug developers and their customers.²⁹

From the standpoint of legal strategy, it will be important early on to consider whether the regulatory approval apparatuses of any of various flag states are sufficient for these sorts of arbitrage opportunities. Also, it will be important for seasteaders undertaking such ventures to employ high standards of testing and to consider research and development opportunities that are not likely to damage the seastead venture's reputation.

Biotechnology

Finally, biotech is an industry rife with promise. From an entrepreneurial standpoint, much of the opportunities arise from jurisdictional arbitrage:

We believe a plethora of scientific and technological advancements will be developed on seasteads. In fact, we think these facilities will be among the first ventures to take to the sea. From embryonic stem-cell research to gene therapies and genetic customization, there are a number of promising research areas that are currently retarded by regulation.³⁰

But not only will global competition be fierce, seasteaders will have to approach this industry aware that global competitors may be backed by subsidy.

Despite this, there are also currently other countries, such as Singapore, which are actively trying to create a biotech sector via all manner of subsidies as well as a favorable regulatory environment. The question will be whether or not seasteads have something to offer *beyond* what countries like Singapore have to offer in this sector. Again, seastead firms should look to local rather than global advantages³¹.

In the US, there are also efforts further to regulate this industry—particularly in the direct-to-consumer sector.

Seastead innovations could also give rise to new markets in *direct-to-consumer* biotech, as well (and consumers do care about whether they have to fly to Singapore or only head 24 miles offshore to purchase a product or service). Such innovations in the areas of biotechnology and medicine always risk bans, moratoria or heavy regulation by territorial governments. This is especially true for direct-to-consumer biotech, which is controversial because it has the potential to bypass physicians and other licensed

²⁹ *ibid.*

³⁰ *ibid.*

³¹ *ibid.*

³² *ibid.*

professionals. Information technology and the short distances empower consumers to do business with these companies directly – in some cases despite lacking a complete understanding of the product or service. While we would not wish to wade in to related controversies here, it's a fact that regulatory agencies are busy regulating, particularly in the US and Europe – so much so that it may soon be cost-effective for many companies to do seasteading business.³²

Again, this sort of knowledge economy play has little to do with UNCLOS and other international law. It has rather more to do with the political savvy of seasteading entrepreneurs, especially with respect to causing political and corporate coalitions to triangulate against successful new offshore industries.

Summary of Legal Strategies

First, legal experts should clarify the legal frameworks that could affect the above-mentioned business opportunities with the government officials from the flag states (and such goes beyond medical tourism-related ventures). Secondly, legal experts may require highly-developed private dispute resolution methods such as international arbitration agreements (Again: see our paper "Charting the Course" for further explanation of these potentially useful and widely utilized legal frameworks). It is important to have robust legal frameworks to inspire confidence in investors. Only significant investment from major investors can accelerate the growth of the seasteading movement as a whole. Serious investors will see seasteading as viable when they feel confident that the rules of the game are well-established.