

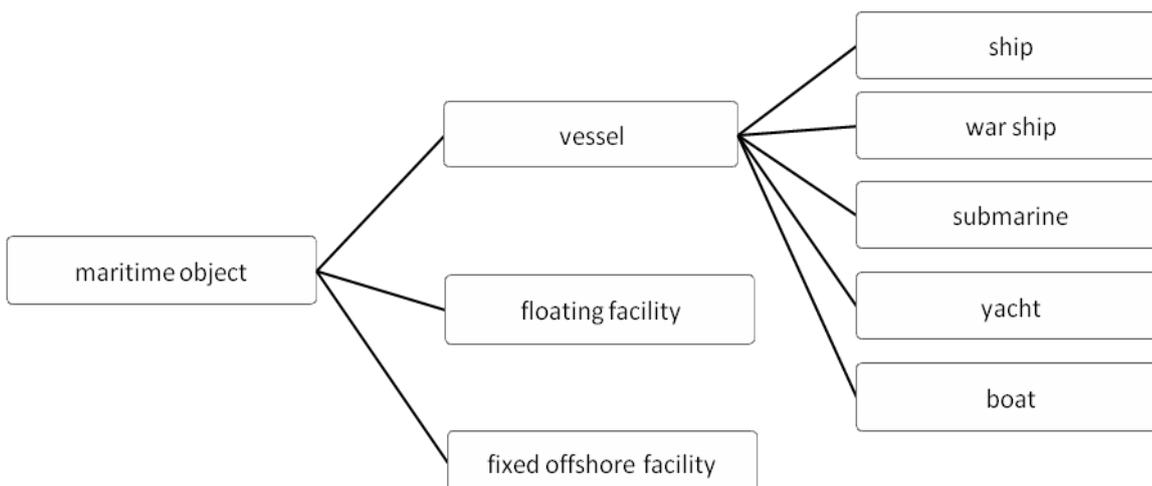


**THE CROATIAN MARITIME LAW ASSOCIATION RESPONSE
TO THE CMI QUESTIONNAIRE ON VESSEL NOMENCLATURE
(April 14, 2016)**

1. Is there a statutory, regulatory or other definition in your legal system which conveys a meaning similar to the above definition of either "Vessel" or "Ship"? If so, which is (are) the terms and their corresponding definitions? Please provide details of all qualifiers to such definitions, such as minimum length, tonnage, registry, design, intended trade or usage, etc.

The matter of maritime law is in Croatian legal system comprehensively regulated by the Maritime Code (MC or Code).¹ Definitions and/or meanings of the terms used in the Code are prescribed by the Art. 5 of the MC, unless otherwise stipulated by the very same Code for the purpose of provisions in its specified section. It is important to point out that provisions pertaining to ships shall also apply to yachts, unless otherwise prescribed. On contrary, the application of regulations provided for ships on other maritime objects is possible solely when explicitly stipulated by the Code (Art. 2 of the MC).

The widest term is the **maritime object**. The MC does not actually define the term, but only provides the list of maritime objects encompassed by this term. According to the Art. 5/1/2 of the MC maritime object (*cro. pomorski objekt*) is an object intended for navigation at sea (vessel) or an object permanently moored or anchored at sea (floating facility) or an object entirely or partially embedded into the seabed or positioned onto the seabed (fixed offshore facility).



¹ Maritime Code, Official Gazette of the Republic of Croatia, no. 181/2004, 76/2007, 146/2008, 61/2011, 56/2013 and 26/2015.

This basic classification is followed by the definition of the vessel and its further division. **Vessel** (*cro. plovni objekt*) is a maritime object intended for navigation at sea. A vessel may be a ship, warship, submarine, yacht or boat. (Art. 5/1/3 of the MC).

Second type of the maritime objects, floating facility, is defined in the Art. 5/1/13 of the MC. **Floating facility** (*cro. plutajući objekt*) is a maritime object permanently moored or anchored at sea, and not intended for navigation (e.g., floating dock, floating workshop, floating restaurant, floating powerhouse, pontoon bridge, pontoon marina and the like). The list of floating facility types is exemplary. Even though it is not intended for navigation it is clear that it may be towed.

Third type of the maritime objects is fixed offshore facility. According to the Art. 5/1/14 of the MC **fixed offshore facility** (*cro. nepomični odbalni objekt*) is a maritime object entirely or partially embedded into the seafloor or positioned on the seafloor and not intended for navigation (ex. a fixed offshore facility for the research and exploitation of the seabed, a submarine pipeline and the like) with the exception of a submarine cable and traffic infrastructure objects (ex. a submarine tunnel, a bridge supported by the seafloor, etc.)

Each of the named categories of the vessel, except submarine, is also defined by the MC. According to the Art. 5/1/4 of the MC **ship** (*cro. brod*), with the exception of warship, is any vessel intended for navigation at sea, exceeding 12 m in length and a gross tonnage of 15 tons, or one authorised to carry more than 12 passengers. Pursuant to the cited Article a ship may be a passenger ship, cargo ship, technical vessel, fishing vessel, public (government) ship or a scientific research ship. There are statutory definitions for all stated types of ship. Special attention should be devoted to the technical vessel.

Technical vessel (*cro. tehnički plovni objekt*) is, according to the Art. 5/1/12 of the MC, a ship with or without a mechanical propulsion intended to carry out technical operations (dredger, floating crane, floating dock, rigs for the research and exploitation of the seabed, and the like). By embracing the technical vessel under the term ship Croatian legislator has accepted expansive definition of ship. This contention goes into two directions. Firstly, the main purpose of the ship does not have to be navigation and transportation of people and cargo, nor it has to be designed and constructed in that sense. It is explicitly prescribed that the purpose of technical vessel is carrying out technical operations. However, it is to be noted that in fact technical vessel also has the transportation function by transporting equipment (and crew) over the water. Furthermore, under the statutory definition technical vessel is required to be capable of navigation, but regardless of the means by which is navigated. Namely, it may have its own (full or limited) self-propulsion, but it is expressly prescribed that the mechanical propulsion is not determinative of its status as a technical vessel. The navigation may be conducted by towage as well. The distinction between technical vessel and floating object is in the purpose of the maritime object.

MC distinguishes and defines Croatian warship and foreign warship. **Croatian warship** (*cro. hrvatski ratni brod*) is a vessel, including submarines, which is under the command of the armed forces of the Republic of Croatia, and the crew of which is military, i.e. under the authority of military discipline, which must furthermore display external recognition signs of Croatian national warships whenever it is necessary to identify this feature of the craft. (Art. 5/1/6 of the MC).

Yacht (*cro. jahta*) is a vessel for sports and recreation, regardless of whether it is used for personal needs or business, exceeding 12 m in length and intended for a longer stay at sea, which is furthermore authorised to carry no more than 12 passengers in addition to the crew (Art. 5/1/20 of the MC). Contrary to the ship's definition, the tonnage is not determinative of its status.

Boat (*cro. brodica*) is a vessel intended for navigation at sea, which is not a ship or a yacht, and the length of which is more than 2.5 metres or the total power of its propulsion engines is greater than 5 kW. The term boat does not encompass: - vessels belonging to another maritime craft for the purpose of collecting, salvaging or conducting work, - vessels intended exclusively for competitions, - canoes, kayaks, gondolas and pedal boats, - windsurfing boards and surfboards. (Art. 5/1/15 of the MC). The question of the status of vessels belonging to another maritime craft for the purpose of collecting, salvaging or conducting work could (and should) be raised.

Furthermore, MC differs existing ship, i.e. a ship that is not under construction from the ship under construction which encompasses shipbuilding from the moment of laying the keel or a similar activity in shipbuilding up to the time of its entering into the register of ships (Art. 5/1/29 and 30 of the MC).

It is to be emphasised that the ship's status is not inevitably permanent. Ship might lose its status as a ship, for example when is withdrawn from service and permanently moored in order to be used as a restaurant or a hotel, in which case it becomes floating facility. In case of withdrawal of a ship from navigation a ship should be deleted from the register of ships and in case of its repurposing it is to be registered in the register of floating facilities.

2. In your system, does the definition of "vessel" (or equivalent term) vary depending on the subject of a particular law? For example, does the definition differ for purposes of documentation, registry, flagging and mortgaging or when applied to seagoing labour, environmental, casualty, insurance or taxation law?

MC provides the default definition of 'ship' throughout the MC unless otherwise prescribed for the purpose of the specific part. The statutory definition of a ship is intended and expected to apply broadly, not only throughout the maritime law, but also for the purpose of other branches of law.

3. Does your legal system provide for a unique process of seizure, foreclosure, forced sale or ranking and priority of claims against vessels that is different from such processes for other types of property? If so, please explain.

Process of seizure, foreclosure, forced sale, ranking and priority claims against vessels is according to Croatian law different from such processes for other types of property. Regulations on distraintment and security on ships (and cargo) are provided by the Part IX of the MC, by the Art. 841-965. It is explicitly provided that those rules shall apply to all maritime objects except boats. Distraintment and security on boats is carried out in accordance with the Execution Act (Art. 841/3 of the MC). In connection with the stated difference are the jurisdictions provisions. In the subject matter of distraintment and security on all maritime objects except boats the competent courts to conduct are commercial courts competent for the settlement of maritime disputes. In relation to boats (as well as other types of property) jurisdiction have municipal courts and notaries public.

When MC applies provisions of the Execution Act shall apply accordingly regarding security proceedings as well as on distraintment proceedings and security measures on ship, unless postulated otherwise by the Code. The exception is provided as regards to security by the transfer of ownership or another right, in which case the application of the Execution Act is excluded. However it is to be stressed that the procedure is in the MC regulated very comprehensively.

The priority ranking of claims covered from the distribution money is proscribed by the Art. 912 of the MC. The expenses which arose in the course of the ship sale proceeding shall be settled before the distribution of the purchase money. First claims to be covered are those of Republic of Croatia for wreck removal, second ones are those of creditors whose claims are secured by maritime lien, third are claims of shipbuilder and ship repairer, whose claims are secured by the right of retention. Fourth in the priority ranking are creditors whose claims have been secured by a mortgage on the ship, and the last ones are claims of all the other creditors.

4. Has the 1993 Convention on Maritime Liens and Mortgages ("MLM-93") been adopted or followed in your jurisdiction?

"MLM-93" has not been adopted by the Republic of Croatia. However, its provisions have been used as a standard in respect of maritime liens.

Provisions on maritime liens prescribed for ships, shall apply to yachts and boats, as well as ships and yacht under construction when afloat (Art. 252 of the MC). Since the provisions of the MC are applicable to other maritime objects solely when explicitly stipulated by this Code, provisions on maritime liens cannot apply to floating facilities and fixed offshore facilities (Art. 2/2 of the MC). It is explicitly prescribed that provisions on maritime liens shall not apply to ships entered into the register of public ships (Art. 251 of the MC).

5. In your jurisdiction is the acceptance by a registrar or other governmental body of property as a "ship" or "vessel" or equivalent term dispositive of its status under your law?

Yes, the acceptance by registrar of property as a “ship” or “vessel” is dispositive of its status under Maritime Code. The certain property will be considered as a “ship” only if it meets the requirements prescribed by the Art. 5/1/4 (is intended for navigation at sea, exceeding 12m in length with gross tonnage of 15 tons, or one authorised to convey more than 12 passengers). When the property is considered as a ship it may be entered into the appropriate register of ships under conditions prescribed by the Art. 187 of the MC. Requirements for registry of yachts are prescribed by the Art. 188 of the MC.

It should be noted that the MC provides three kinds of ship’s registers – register of merchant ships, register of fishing ships and register of public (government) ships (Art. 196/1 of the MC), register of yachts, register of floating facilities and register of fixed offshore facilities. Separate registers are provided for each of those maritime objects when under construction. Boats may be registered in different types of boat ledgers (there are ledger of boats for personal use, ledger of boats for commercial purposes and ledger of public boats).²

6. If property is categorized as a "vessel" in another jurisdiction and is so registered and flagged, but would not be a vessel under the definition in your jurisdiction, would the courts or relevant authorities in your jurisdiction treat that property as a vessel for all purposes, including arrest and foreclosure? Or would the Courts in such a circumstance decline to enforce an asserted claim or mortgage if the subject is not a vessel under your jurisdiction?

The property considered as a “vessel” in another jurisdiction and so registered and flagged will be accepted as a “vessel” by Croatian courts and other relevant authorities and that categorization will be accepted for all purposes, including arrest and foreclosure.

7. Are there any reported decisions in your jurisdiction which address the legal classification of any of the following property:

- 1. non-self-propelled barges**
- 2. self-propelled barges**
- 3. accommodation barges**
- 4. mobile offshore drilling units**
- 5. wind turbine towers (floating or permanently fixed)**
- 6. jack up drill rigs**
- 7. construction barges**
- 8. submarines**
- 9. seaplanes**
- 10. hydroplanes (air cushion)**
- 11. vessels under construction**
- 12. unmanned vessels**
- 13. vessels devoted temporarily or permanently to storage of bulk commodities**
- 14. vessels in "cold layup"**
- 15. derelict vessels or "dead ships"**
- 16. vessels under conversion or renovation.**

² See: Pravilnik o brodicama i jahtama (Rule Book on Boats and Yachts), Official Gazzete, no. 27/2005, 57/2006, 80/2007, 3/2008, 18/2009, 56/2010, 97/2012, 137/2013, 18/2016.

There are not such decisions.

8. We attach a most excellent summary by Professor Bulent Sozer of Istanbul regarding the variations in definitions, usages and limitations on application of terms in many international conventions. Please identify any of the Convention usages and limitations which are at variance with equivalent terms in your national system and explain the variations.

Definitions and/or meanings of the terms used in the Code are prescribed by the Art. 5, unless otherwise stipulated by the very same Code for the purpose of provisions in its specified section. In all parts or sections of the MC where the Conventions rules apply the definition of the *ship* has the same meaning as in the relevant Convention regardless the meanings of the term used in the Code. For example definition of the *ship* in the MARPOL means a *vessel of any type whatsoever operating in the marine environment and includes fixed or floating platforms*. The fixed or floating platforms are not included in the definition of the ship prescribed by the Art. 5/1 of the MC. (see no.1.). However, for the purpose of the prevention of pollution Maritime Code uses the MARPOL definition of ship and applies MARPOL standards to all maritime objects.

Another example of different comprehension of the term 'ship' is within the chapter on non-contractual liability for pollution damage from ships (section regarding Liability for Pollution Damage Caused by Discharge of Oil Carried as Cargo). In Art. 813/1/1 of the MC the definition of ship has the same meaning as in Article I of the 1992 CLC - "**ship**" means any ship or vessel of any kind constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship is capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

The same meaning of ship as in the Bunker Convention may be found in Art.823.a/1, which states: For the purpose of this Chapter of the Maritime Code (Liability for Bunker Oil Pollution Damage) "**ship**" means any seagoing vessel of any type whatsoever.

Finally, the MC contains the same meaning as in the Salvage Convention in its Art. 761/I stating: The terms used in this Chapter of the Maritime Code (Salvage) shall have the following meanings: "**ship**" is any ship, boat, yacht or structure capable for navigation. The applicability of this section on warship is explicitly prescribed (Art. 762/1 of the MC).

9. Are there any instances involving your jurisdiction in which inconsistent or conflicting definitions of "vessels", "ships" or equivalent terms have impacted results in any legal proceeding of which you are aware? If so, please provide details.

We are not aware of any such legal proceeding.