

U.S. Department of
Homeland Security

United States
Coast Guard



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16713/5/2
June 29, 2022

Lawson E. Bronson, PE
Bronson Marine
29835 10th Avenue SW
Federal Way, WA 98023

Dear Mr. Bronson:

I am writing in response to the extensive course of dialogue and correspondence with you concerning the F/V KOORALE, official number 545564 (the "Vessel"), culminating in your report of March 8, 2022 (received as an attachment to an e-mail dated March 14, 2022). I also acknowledge receipt by the National Vessel Documentation Center ("NVDC") and take into account in this response your previous letters, including your initial letter to this office dated August 14, 2019, your subsequent letters/status reports, including those dated December 17, 2019, February 11, 2020, March 30, 2020, May 15, 2020, July 8, 2020, September 1, 2020 (to which I responded by e-mail on September 3, 2020), October 6, 2020, November 4, 2020, December 2, 2020, January 3, 2021 (received as an attachment to an e-mail dated January 4, 2021), March 2, 2021, April 5, 2021, and November 9, 2021, as well as your e-mail correspondence with the Coast Guard's Naval Architecture Division ("NAD") which I or others at this office have also received or been a party.

The purpose and focus of this correspondence has been to (i) clarify the rules related to the foreign rebuilding of vessels documented, in your case, with fishery endorsements, (ii) to provide information to our office and the NAD concerning work in progress, and finally (iii) by your most recent letter, to request a foreign rebuild determination with respect to work done to the Vessel in a foreign shipyard. The Vessel, in this case, is a steel-hulled tuna fishing vessel with dimensions of 203' LOA, 40' breadth and 15' depth. It was built in the United States at Tacoma, WA in 1973 and is documented with a fishery endorsement.

I think some background to put your present request into proper context is important here. I have derived this background information from your correspondence but also from certain internal Coast Guard correspondence including a Coast Guard Report of Marine Casualty. From those I have distilled the following facts:

On or about June 17, 2019, while on tuna fishing operations in the western Pacific Ocean, the Vessel was involved in a collision with another vessel, the F/V AMERICAN EAGLE, official number 1206090. The collision occurred approximately 1,200 nautical miles NNE of American Samoa. The initial report of this collision to the Coast Guard was made by the F/V AMERICAN EAGLE. It was estimated on behalf of your Vessel that the damage would exceed \$2M and the incident was determined to be a Major Marine Casualty. After an initial assessment of the damage and some temporary repairs, you have reported that the Vessel proceeded to American Samoa. Further repairs were accomplished at that port and the Vessel then travelled to Nelson, New Zealand, which was determined to be the closest shipyard with personnel and facilities capable of making the necessary permanent repairs.

Recognizing that repairs done in a foreign shipyard such as at Nelson, New Zealand, might impact the Vessel's entitlement to its fishery endorsement, your initial letter to this office dated August 14, 2019, citing your assessment of the cause of the collision and its occurrence in distant waters, asserted that the Vessel "should be allowed to make all repairs needed to return the ship to its condition before the collision" and that "(P)roviding that U.S. steel and aluminum are used there should be no change in the documentation of the KOORALE". However, you were advised by this office that neither statute nor the applicable regulation, 46 C.F.R. § 67.177, permitted any exception arising from a collision in distant waters, irrespective of cause or fault, and the fact that the repairs might be accomplished using U.S. domestically-produced steel or aluminum would not impact the calculation called for by that regulation. It was following that advice that we encouraged and facilitated your regular communication with this office and, perhaps more importantly, with the NAD that subsequently ensued in order to provide guidance during the completion of the repairs.

Although the Vessel arrived in New Zealand in July, 2019, and repairs were begun in December of that year, progress was significantly delayed by COVID-related disruptions at the shipyard. In fact, more than two and one-half years later it is my understanding that the Vessel is still dockside in New Zealand, pending completion of machinery repairs, reinstallation of ammonia refrigeration coils and insulation in the freezer holds, etc. However, it has been reported to me by the NAD that at this time the relevant structural repairs have been completed to the point where the weight of the remaining work can be conservatively estimated, and further, so that this foreign rebuild determination can be completed.

Before getting to my determination on the facts of this case I also believe it is important to emphasize what this determination does NOT address:

First, neither the cause of nor attribution of fault for the collision are relevant to this determination and no finding or even point of view on those issues is intended to be implied by this letter nor should it be inferred.

Second, my determination in this case is applicable to the Vessel at issue here and is so because of its fishery endorsement and the desire of its representatives to maintain its eligibility for that endorsement. In contrast, the F/V AMERICAN EAGLE was not built in the United States and, as such, is documented with a registry endorsement only and is not eligible for either a fishery or coastwise endorsement. Consequently, unlike the Vessel at issue here, the location where any repairs may have been done to the F/V AMERICAN EAGLE, if any were needed, is not relevant to its endorsement status.

Third, with respect to the Vessel's continued eligibility for documentation with a fishery endorsement, I have not taken into account any repairs done to the Vessel at American Samoa. In accordance with the definition of "*United States*" at 46 C.F.R. § 67.3, that work is deemed to have been done in the United States for the purpose of this Vessel's qualification for a fishery endorsement. However, the same would not be true as to its eligibility for a coastwise endorsement, should such an endorsement ever be applied for. By virtue of an exception within that same definition ("...except that for purposes of § 67.19(c)(3) trust territories are not considered to be part of the United States.") the work done in American Samoa would have to be subject to the same calculation done with respect to the work done in Nelson, New Zealand, and added to the total of the work done there, to determine eligibility for a coastwise endorsement --- if one should ever be applied for on behalf of this Vessel. Since the Vessel is currently documented with fishery and registry endorsements only, but not a coastwise endorsement, and documentation of the work done in American Samoa has not been presented as part of this application, that is not an issue at this time and I make no determination as to coastwise eligibility. However, any such future application would have to be accompanied by the necessary documentation.

The applicable regulation which governs foreign rebuild determinations is set forth at 46 C.F.R. § 67.177. It establishes a two-pronged test, both of which prongs of the test must be met. That two-pronged test in summary, provides as follows:

The first prong, the so-called "major component test" (46 C.F.R. § 67.177(a)), provides that a vessel will be deemed rebuilt foreign "when a major component of the hull or superstructure not built in the United States is added to the vessel." The term "major component" is not defined by statute or regulation but rather by practice and precedent. It refers to discrete, completely-constructed units, built separately from and added to the vessel that weigh more than 1.5 percent of the steelweight of the vessel prior to the work. See, Shipbuilders Council of America v. U.S. Coast Guard, 578 F. 3d 234 (4th Cir. 2009).

The second prong, the so-called "considerable part test" (46 C.F.R. § 67.177(b)), provides, *inter alia*, that a vessel (constructed of steel as in this case) "**is not considered** rebuilt when work performed on its hull or superstructure constitutes 7.5 percent or less of the vessel's steelweight prior to the work (also known as discounted lightship weight). It further provides that a vessel

may be considered rebuilt when work performed on its hull or superstructure constitutes more than 7.5 percent but not more than 10 percent of the vessel's steelweight prior to the work and that a vessel *is deemed* rebuilt when such work constitutes more than 10 percent of the vessel's steelweight prior to the work.

Relevant definitions of the terms "*hull*" and "*superstructure*", as used in 46 C.F.R. § 67.177, can be found at 46 C.F.R. § 67.3.

As is our custom and practice in making these determinations, and as certainly was anticipated given the history of this case, your recent letter requesting a foreign rebuild determination as well as its accompanying exhibits, was referred to the NAD for preliminary review and fact-finding. In fact, as already stated, you have been in regular contact with the NAD throughout the extended time period of the work done to the Vessel and the NAD has received and reviewed your status reports as produced and forwarded.

The starting point for my review and application of the limitations set forth at 46 C.F.R. § 67.177 is the determination of the discounted steel weight of the Vessel. Original builder documentation regarding the Vessel's structural steel weight was no longer available for this Vessel. The NAD reviewed the different methodologies you proposed (with results ranging from 429.6 to 536 Ltons) and determined that the SNAME parametric methodology was most appropriate, and, applying that methodology, found the discounted steel weight to be 529 Ltons. I accept that finding for the purposes of this determination.

The relevant structural repairs were, in summary, (i) total replacement of the pilothouse, (ii) replacement of buckled hull, deckhouse and internal bulkhead plating in the collision impact area, and (iii) re-welding of cracked weld joints (which required removal of all insulation and refrigeration coils in the freezer holds).

With respect to the pilothouse, which was damaged so extensively that it had to be replaced in its entirety, the NAD found its weight to be 11,637.61 lbs. or 5.20 Ltons.

With respect to the other structural repairs, the NAD found the total steel weight to be 39,634.85 lbs. or 17.69 Ltons. It was also noted that this included an estimated weight of 2,336.52 lbs. for plating which has not yet been completed (in way of the seine winch on the Raised Deck, frames 50 to 70).

With the discounted steel weight of the Vessel having been established to be 529 Ltons, the 7.5% aggregate lifetime limit on the weight of structural repairs or modifications in foreign shipyards is 39.68 Ltons. Further, the 1.5% weight limitation for the determination of what constitutes a major component is 7.94 Ltons.

The NAD, therefore, found the total weight of the structural steel and aluminum repairs in New Zealand to be 22.89 Ltons (including, as indicated, the estimated weight of the incomplete Raised Deck plating repairs), or 4.33%. Further, the weight of the single largest component

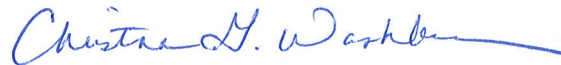
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added to the Vessel was found to be the pilothouse at 5.20 Ltons, or 0.98%. Both are within the allowable limits of 46 C.F.R. § 67.177.

I accept these findings.

In light of the foregoing, I conclude and confirm that the performance of the work to the Vessel as described in this case outside of the United States will not result in the Vessel being deemed to have been rebuilt foreign. Consequently, that work will not adversely affect the Vessel's eligibility for a fishery endorsement to its Certificate of Documentation. With regard to the estimated steel weight of the unfinished work in the vicinity of the Raised Deck, I direct you to confirm to this office in writing, following completion, the actual steel weight of that work.

Sincerely,



Christina G. Washburn
Director