

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Vessel Documentation Center

792 T J Jackson Drive
Falling Waters, WV 25419
Staff Symbol: NVDC
Phone: (304) 271-2506
Fax: (304) 271-2405
Email: Timothy.V.Skuby@uscg.mil

16713/5/2
February 27, 2014

Gary M. Haugen, Esq.
Bauer Moynihan & Johnson LLP
2101 Fourth Avenue, Suite 2400
Seattle, Washington 98121

Dear Mr. Haugen:

I am responding to your letter of January 23, 2014, with exhibits, which was addressed to Ms. Denise E. Harmon, Chief, Commercial Division, National Vessel Documentation Center ("NVDC") and written on behalf of Lynden, Inc. ("Lynden"). By that letter you have sought a determination that the proposed installation of container racks as described and depicted therein, which will be fabricated in China and installed aboard the NANA PROVIDER, official number 1197833 (the "Vessel"), a rail barge, in Victoria, Canada, would not result in the Vessel having been rebuilt foreign pursuant to 46 C.F.R. § 67.177 and, as a consequence, loss of that Vessel's coastwise trade privileges.

At the outset, I acknowledge your representation that the proposed project is "substantially similar" (with the exception that "the center container racks [for the proposed project] are specifically designed to provide additional flexibility to Lynden to meet customer demands") to a project undertaken in 2001 to install container racks fabricated in China aboard three vessels owned by a Lynden subsidiary --- the ANCHORAGE PROVIDER, official number 1104942, the FAIRBANKS PROVIDER, official number 1107635, and the WHITTIER PROVIDER, official number 1112117. By letter dated July 19, 2001, the NVDC concurred that the project proposed at that time would not result in a finding that the barges in that case had been rebuilt. That letter concluded as follows:

"'Container racks' are not considered major components of the hull or superstructure therefore their steel weight will not be considered in making this rebuilt determination. In addition, neither their foreign installation nor their foreign fabrication would result in the loss of coastwise trade privileges. The below deck strengthening needed to support the installation of the container racks on the ANCHORAGE PROVIDER, if accomplished in a foreign shipyard, is a consideration in this foreign rebuild determination."

You are also correct to note that there have been no changes in substantive law or NVDC precedent since that 2001 determination insofar as container racks are concerned. However, though the container racks themselves might be substantially similar, the possibility could not be ruled out that the required supports and reinforcements might differ for the Vessel at issue, built in 2007, from the vessels referenced in that 2001 determination. Also, and most importantly, it

16713/5/2
February 27, 2014

was not the practice of the NVDC at that time, but is the practice now, to refer applications for foreign rebuild determinations to the Coast Guard's Naval Architecture Division ("NAD") so that it might provide its analysis and conclusions prior to determinations made by the NVDC. For these reasons, and in order to properly carry out our obligation to review all such requests with appropriate due diligence, I concurred, by my letter of December 19, 2013, with your desire to proceed with an abundance of caution and, consequently, sought full particulars of the proposed project notwithstanding its similarities to an earlier project.

Your submissions certainly satisfied that requirement and have been reviewed by the NAD. I will rely upon and refer to the findings and conclusions of the NAD as appropriate herein. Moreover, in light of that earlier project and the discussion and analysis provided with your submission in this case, I will forego a recitation here of the applicable law and regulations.

Based upon the materials you have submitted and the review of those materials by the NAD, I concur that the modifications now proposed appear to be essentially the same as those proposed and done in 2001. Also, it remains the case, as in 2001, that container racks are not considered part of the hull or superstructure. Consequently, their weight does not implicate the thresholds relevant to foreign rebuild determinations under 46 C.F.R. § 67.177.

However, underdeck reinforcements are relevant to this determination. Taking into account all underdeck reinforcements, those from your Exhibit C10 as well as the reinforcing brackets from your Exhibits B1 and B2, the NAD has found that the total added structural weight would be 15.43 Ltons.

As to the discounted steelweight of the Vessel, the estimate of 3,657.54 Ltons from Exhibit F1 is accepted, with the exception that 80 Ltons will be deducted as the estimated weight of railroad tracks on the main deck which are used for cargo stowage. Consequently, the discounted steelweight of the Vessel is found to be 3,577.54 Ltons.

Therefore, the proposed work on hull or superstructure, which adds 15.43 Ltons of structural steel, amounts to only 0.4% of the Vessel's discounted steelweight. This is a small fraction of the threshold for permitted work.

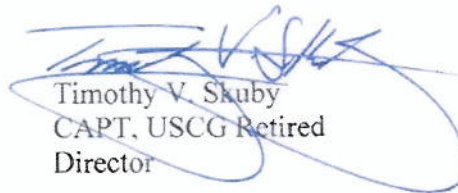
For the aforementioned reasons I conclude, and confirm, that performance of the work, as described, to the Vessel outside of the United States, including both the fabrication and installation of the container racks, will not result in the Vessel being deemed to have been rebuilt foreign and will, therefore, not jeopardize the Vessel's eligibility to engage in the coastwise trades of the United States.

I caution you that this is a preliminary determination which is premised on the descriptions you have provided of the proposed work and does not take into account any other structural repairs, such as replacement of hull plating for example, that might be undertaken at the same time.

16713/5/2
February 27, 2014

I ask that you confirm to this office in writing following completion of the work that the work actually done to the Vessel is as you have described it, or, if not, that you provide documentation of the work, as done, with supporting calculations.

Sincerely,



Timothy V. Skuby
CAPT, USCG Retired
Director

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Vessel Documentation Center

792 T J Jackson Drive
Falling Waters, WV 25419
Staff Symbol: NVDC
Phone: (304) 271-2506
Fax: (304) 271-2405
Email: Timothy.V.Skuby@uscg.mil

16713/5/3
January 29, 2015

Gary M. Haugen, Esq.
Bauer Moynihan & Johnson LLP
2101 Fourth Avenue, Suite 2400
Seattle, Washington 98121

Dear Mr. Haugen:

I acknowledge receipt of and am writing in response to your letter of January 16, 2015. By that letter you reported on the completion of work (principally the installation of container racks fabricated in China) to the vessel NANA PROVIDER, official number 1197833 (the "Vessel"). By letter dated January 23, 2014, you requested a preliminary foreign rebuild determination pursuant to 46 C.F.R. § 67.177 in order to assure that the work proposed would not result in the Vessel's loss of coastwise trade privileges. A favorable determination was issued by my letter of February 27, 2014.

That favorable determination concluded with the request that you confirm in writing following completion of the work that the work actually done to the Vessel was as you had described it. More specifically, I noted that the determination issued by this office "does not take into account any other structural repairs, such as replacement of hull plating for example, that might be undertaken at the same time." You have now provided that report on the work done, for which I thank you.

Your report does, indeed, indicate that certain shell plating repairs, and other work, was done at that time. The other work I refer to (your subparagraphs 2 (a), (b), (f) and (g)) clearly did not impact the hull or superstructure of the vessel and, as such, is not material to my earlier determination.

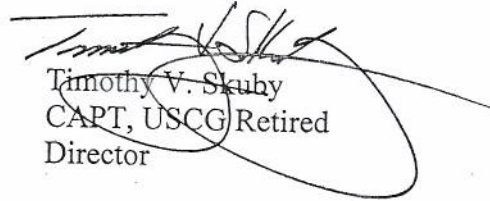
As you have correctly acknowledged, however, the work described by your subparagraphs 2(c), (d) and (e) --- repairs made to the Vessel's shell plating at the #1 and #2 port void tanks and at the #3 port ballast tank --- clearly constitutes work done to the Vessel's hull or superstructure. However, by your documented calculations, it amounted to only 6,719.6 pounds or approximately 3.0 Ltons.

My original determination found that the work then proposed would add only 15.43 Ltons of structural steel to the Vessel, amounting to only 0.4% of the Vessel's discounted steelweight which is a small fraction of the threshold for permitted work. I now find that the addition of another 3.0 Ltons to that 15.43 Ltons is *de minimis* and does not result in a material change to the applicable percentage, increasing it to only 0.515% where the regulatory threshold is 7.5%.

16713/5/3
January 29, 2015

Consequently, I confirm the conclusion of my preliminary determination that the work then proposed, and now concluded, does not result in the Vessel being deemed to have been rebuilt foreign and does not jeopardize the Vessel's eligibility to engage in the coastwise trade of the United States.

Sincerely,



Timothy V. Skuby
CAPT, USCG Retired
Director