U.S. Department of Homeland Security

United States Coast Guard

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167135/2
October 4, 2017

G. B. Mendenhall, Esq.
3278 Franklin Avenue, Suite 5
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Dear Mr. Mendenhall:

I refer to your letter of July 20, 2017, and it's supporting exhibits. You have requested a determination pursuant to 46 C.F.R. § 67.97 with respect to the construction by National Steel and Shipbuilding Company ("NASSCO") in San Diego, California, of two (2) Kanaloa-class combination container and roll-on/roll-off (or "ConRo") vessels, capable of carrying 3,235 twenty-foot equivalent units and 525 cars and 25 trailers in an aft garage (each a "Vessel" and collectively, the "Vessels"). As your letter indicates, the Vessels will be LNG ready and have identical overall dimensions of hull and superstructure. Upon delivery, it is intended that the Vessels will be documented under the U.S.-flag with coastwise endorsements and operated in the non-contiguous coastwise trade and the foreign trades of the United States.

As the Vessels are intended to be documented in the United States with coastwise endorsements, you have requested confirmation that NASSCO's proposed procurement and build details for the construction of these Vessels is consistent with applicable United States build requirements and that their construction in the manner described will not adversely affect their United States build determination and eligibility to operate in the coastwise trades of the United States.

You have indicated that NASSCO intends to employ the same design, material procurement and build processes for the construction of these Vessels as were employed by NASSCO for its PC-1 tankers and all subsequent commercial vessels constructed at its San Diego, California, shipyard. I acknowledge that those previous projects were the subject of favorable U.S. build determinations by this office.

As with those previous projects, NASSCO is under contract to purchase the Vessels' design, as well as much of the equipment and material necessary to construct each Vessel, with the exception of steel plate, weld rod and paint, from a Korean source, or that source's suppliers, all of which are outside the United States. The balance of your letter contains a description of the specific characteristics of the Vessels as well as analysis and discussion, with citations to past determination letters, of the foreign steel and fabricated components, equipment and outfitting items that will be used to construct and assemble the Vessel's in NASSCO's shipyard in San Diego, California.

In order for the Vessels to be documented in the United States with coastwise endorsements entitling them to be operated in the domestic trades of the United States, they must be deemed to have been built in the United States. In order for that to be the case, their construction must satisfy both of the requirements of 46 C.F.R. § 67.97; namely:

"To be considered built in the United States a vessel must meet both of the following criteria:

(a) All major components of its hull and superstructure are fabricated in the United States; and

(b) The vessel is assembled entirely in the United States."

In addition, the following definitions at 46 C.F.R. § 67.3 are pertinent to the application of those requirements:

"***Hull*** means the shell, or outer casing, and internal structure below the main deck which provide both the flotation envelope and structural integrity of the vessel in its normal operations…"

And

"***Superstructure*** means the main deck and any other structural part above the main deck."

Consistent with your understanding of these requirements your letter proceeds to raise and address, and request determinations as to certain specific aspects of the proposed construction of the Vessels. As an aid to our review of certain of those issues, and consistent with our established practice, we requested a review and analysis of the materials you submitted in support of your application by the Coast Guard's Naval Architecture Division ("NAD").

Specialty Steel Plate and Slabs and Asian Angles

You have reported that, due to unavailability from United States sources, NASSCO intends to obtain from foreign sources, certain specialty steel plate and structural flats or "slabs" identified in your exhibits. Also due to unavailability from United States sources, you have reported that NASSCO intends to obtain from foreign sources structural shapes consisting of angle types typically referred to as "Asian angles" or as "unequal angles and "inverted angles". These items are pictured in Exhibits B and C of your submission.

You have reported, and it is the understanding upon which I have based this determination, that all of the materials described above are to be imported and received at NASSCO's shipyard in San Diego as rolled raw stock from the supplier steel mills in standard mill shapes and sizes, as in the case of the earlier NASSCO construction projects already referred to. As you have confirmed, all processes that create unique parts such as marking, cutting, drilling, beveling, bending or otherwise preparing the steel for use in the Vessels will be performed at the shipyard in San Diego.

As you know, this practice is consistent with past Coast Guard determinations. There is no regulatory or statutory limit on the amount of foreign materials, such as steel, which may be used in the construction of a vessel deemed to have been built in the United States provided that the steel is not worked in any way and that it is imported in standard shapes and sizes as produced at the mill. The representations you have made in connection with this application are consistent with this principle.

Foreign Fabricated Components of the Hull and Superstructure

You have identified in your Exhibit D certain foreign fabricated components that NASSCO intends to incorporate into the hull and superstructure of the Vessels. At the outset of this discussion, however, I not the following finding by the NAD:

> "*Freeboard deck*; The freeboard deck is identified as the No.2 vehicle deck (in way of the garage) and Passageway deck (in way of the cargo holds). We note that the freeboard deck is completely enclosed by a full-length weathertight superstructure (No. 3 vehicle deck/Upper Deck). Weather-exposed openings (doors, hatches) on those decks, as well as on the Focs'l Deck, are subject to load line requirements and are therefore considered part of the flotation envelope of the hull. Weather-exposed openings above the No. 3 vehicle deck --- which include all accommodation house openings --- are above Position 2 and therefore are not subject to load line requirements or foreign steel weight limits."

This finding impacts portions of the discussion which follows below.

Among the foreign fabricated items that NASSCO intends to incorporate into the hull and superstructure of the Vessels are the following, which NASSCO's calculations included as part of the 1.5% aggregate allowance for foreign fabricated components but as to some of which you and NASSCO have requested advice as to whether or not they should correctly be considered as part of the hull structure of the Vessels. Also, the NAD's findings dictate certain adjustments as well, as discussed below:

(i) **Rudder trunk casting and headbox.** The rudder stock penetrates the hull through a through a casting and headbox built into the hull, which makes them part of the hull structure. Therefore, their weights are included in the limit on foreign fabricated components.

(ii) **Stern boss and stern tube castings, stem casting.** Because these are part of the structural integrity of the hull, their weights are included in the limit on foreign fabricated components. Also, you and NASSCO have stated that it is impossible to source the manufacture of a stern casting of that size in the United States and have asked whether, for that reason, the stern casting may be excluded from (or, conversely,

whether it must be included in) the 1.5% allowance foreign fabricated components. My response is that there is no statutory or regulatory authority for exclusion due to domestic unavailability. In fact, I believe it can be argued, first, that the purpose of the Jones Act was to incentivize a robust domestic shipbuilding capability and it would contravene that purpose to create a domestic unavailability exemption or exclusion and, second, that the current 1.5% allowance is intended, in part, to account for those circumstances.

(iii) **Stern quarter ramp and internal "movable" ramp.** The vehicle loading port is located on the No. 2 vehicle deck, which is the freeboard deck. Accordingly, it must have a weathertight closure. Closure is provided by the quarter ramp when raised to its stowed position. Therefore, its weight is included in the limit on foreign fabricated components. However, the "movable" ramp which leads down from No.2 vehicle deck to No. 1 deck below is within the protected (enclosed) garage space and so is not subject to load line requirements. Therefore, its weight is not subject to the limit on foreign fabricated components.

(iv) **Engine room side access hatch (starboard only).** This hull opening is required to have a weathertight closure and, therefore, is subject to the limit on foreign fabricated components.

(v) **Container cell guides and cargo hatch covers.** Container cell guides and container-bearing hatch covers are considered cargo stowage components and, therefore, not subject to the limit on foreign fabricated components.

(vi) **Other weathertight closures (doors, hatches).** As to these items, and the other foreign fabricated components as well, your Exhibit D has been annotated with the NAD findings and a copy has been attached as Exhibit A to this letter.

Based upon the analysis and findings of the NAD with respect to the items in your Exhibit D, and the conclusions reached above with respect to certain of those items, I conclude that the total weight of these itemized components is 155.0 Mtons (152.2 Ltons).

The NAD has also reviewed your calculation of the discounted steelweight of the Vessels and its findings concur with your own that the total steel weight is 14,516 Mtons (14,257 Ltons). Consequently, that is my conclusion as well.

In light of these conclusions, the steelweight of the foreign fabricated components represents 1.07% of the approximate steelweight of each Vessel. This percentage is well below the standard of 1.5% of a vessel's discounted steelweight for determination of the fabrication of "major components" under the regulatory and statutory requirement. For that reason, I find that your proposal for the foreign fabrication of the itemized components will not adversely implicate the status of the Vessels as built in the United States.

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October 4, 2017

Foreign Fabricated Equipment, Outfitting and Cargo Handling Equipment

As in the case of the previous vessel construction projects already referred to, you have indicated that NASSCO intends to use modules, sub-assemblies, equipment and outfitting --- all of which will be self-supporting and independent of the Vessels' structure. These units will all be free-standing units which include equipment, piping and local steel support or skid and can generally be grouped into the categories of (i) engine room modules, (ii) equipment modules, and (iii) tank top sub-assemblies, and (iv) outfitting and cargo handling equipment, all as further described in Exhibits G through J of your submission.

In accordance with past determinations, as well as with the decision in Philadelphia Metal Trades Council v. Allen, 2008 WL 4003380 (E.D. Pa., August 21, 2008), I do not find that the requirements of 46 C.F.R. § 67.97(b) will be adversely implicated by the use of the foreign-fabricated and assembled items described; provided that, as will be the case here, they are assembled into the Vessel's in the course of their construction in San Diego, California.

In light of all of the foregoing, and based upon all of the information you have provided, I confirm that NASSCO's proposed procurement and build details for the ConRo Vessels, as described in your letter of July 20, 2017, together with its supporting exhibits, will not adversely affect their status as having been built in the United States at NASSCO's shipyard in San Diego, California.

Sincerely,

Christina Washburn
Director

EXHIBIT A

NASSCO-Matson ConRO vessels

Exhibit D (USCG annotations)

FOIA notice: contains proprietary information

Foreign-source components included in foreign steel weight limit

List of fabricated items to be provided by DSEC Co. Ltd., Busan, Korea for NASSCO's construction of the ConRos

Item	Description	QTY	Weight (kg)	Total Weight (kg)	Comments
No. 1 Car Deck W/T door	[redacted]	[redacted]	[redacted]	[redacted]	[redacted] Interior doors, not subject to LL (excluded)
No.2 Car Deck W/T hatch	[redacted]	[redacted]	[redacted]	[redacted]	[redacted] Interior hatch, not subject to LL (excluded)
No.2 Car Deck W/T hatch	[redacted]	[redacted]	[redacted]	[redacted]	Interior hatches, not subject to LL (excluded)
No.2 Car Deck W/T hatch	[redacted]	[redacted]	[redacted]	[redacted]	Interior hatches, not subject to LL (excluded) [redacted]
No.3 Car Deck W/T hatch	[redacted]	[redacted]	[redacted]	[redacted]	Interior hatch, not subject to LL (excluded) [redacted]
STBD Side Shell E/R Hatch	[redacted]	[redacted]	[redacted]	[redacted]	[redacted] LL closure (included)
Cargo Hold Access	[redacted]	[redacted]	[redacted]	[redacted]	[redacted] Interior doors, not subject to LL (excluded)
Stern Casting	[redacted]	[redacted]	[redacted]	[redacted]	Hull structure (included)
Stem Casting	[redacted]	[redacted]	[redacted]	[redacted]	Hull structure (included)
Quarter-Stern Ramp Door			[redacted]	[redacted]	LL closure (included)
Internal Watertight Ramp			[redacted]	[redacted]	Interior ramp, not subject to LL (excluded)
Rudder Headbox	[redacted]	[redacted]	[redacted]	[redacted]	Hull structure (included)
Rudder Trunk Casting	[redacted]	[redacted]	[redacted]	[redacted]	Hull structure (included)
Weathertight/Gastight Hatch	[redacted]	[redacted]	[redacted]	[redacted]	Above Position 2, not subject to LL (excluded)
Exterior Weather Doors	[redacted]	[redacted]	[redacted]	[redacted]	Above Position 2, not subject to LL (excluded)
Weathertight door	[redacted]	[redacted]	[redacted]	[redacted]	[redacted] Above Position 2, not subject to LL (excluded)
	Not included in foreign weight estimate TOTAL			[redacted]	
These weather-exposed doors are in Position 2 (subject to LL):			Total Foreign Material	175821	

8 Weathertight doors--No. 3 Car Deck (airlock doors @ Fr 11 p/s; mooring stations @ Fr 20 p/s; bunkering stations @ Fr 39 p/s, exterior doors @ Fr 80 p/s)

2 " " --Companionways--Upper Deck (Fr 132 p/s)

2 " " --Storeroom doors--Focs'l bulkhead (Fr 141 p/s)

TOTAL : 12 WT doors at 290 kg = 3,480 kg