



16713/5-2
August 31, 2010

Jonathan K. Waldron, Esq.
Blank Rome LLP
Watergate
600 New Hampshire Avenue, NW
Washington, DC 20037

Dear Mr. Waldron:

This is in reference to the matter of M/T SEABULK TRADER (Official Number 638899) and M/T SEABULK CHALLENGE* (Official Number 642151) (the "Vessels"), owned, respectively, by Seabulk Energy Transport, Inc. and Seabulk Petroleum Transport, Inc. (collectively, and individually, "Seabulk").

On May 20, 2005, the Coast Guard's National Vessel Documentation Center (the "NVDC") issued a determination that it would not constitute a foreign "rebuilding" under the Jones Act and 46 C.F.R. § 67.177 for the Vessels to be retrofitted with double hulls with (as described in that determination) reconfiguration of their segregated ballast systems. That determination was challenged by plaintiffs Shipbuilders Council of America, Crowley Maritime Corporation and Overseas Ship holding Group, Inc. ("OSG"), in the United States District Court for the Eastern District of Virginia (the "EDVA" or the "Court").

On April 24, 2008 the EDVA issued a decision (Shipbuilders Council of America v. United States Department of Homeland Security, 551 F. Supp. 2d 447) in which it held (i) that, the NVDC had improperly applied the major component test as set forth in 46 C.F.R. § 67.177; and (ii) that, the NVDC's application of the substantial part test of the regulation, specifically that provision which allows for a discretionary determination as to whether a vessel would be deemed to have been rebuilt when the steel weight percentage calculation of the work done is greater than 7.5%, but less than 10%, of the vessel's lightship steel weight, offered insufficient reasons and was, therefore, arbitrary and capricious; and (iii) that, with respect to work done to the Vessels' segregated ballast systems, the NVDC's interpretation of 46 U.S.C. § 3704 was erroneous but that there was insufficient evidence in the record concerning the actual work done to the segregated ballast systems to allow for a determination as to whether the NVDC's issuance of a coastwise endorsement could be upheld. All three issues were remanded back to the Coast Guard for further proceedings.

*The court action described herein relates only to the SEABULK TRADER. However, a similar action involving the Coast Guard's determination for the SEABULK CHALLENGE (No. 1:08-cv-680 (E.D. Va.)) has been stayed pending the final disposition of the case involving the SEABULK TRADER. Thus, as Seabulk has acknowledged, the outcome of this proceeding will affect both vessels.

The Coast Guard appealed the first of the above issues to the United States Court of Appeals for the Fourth Circuit (the “Fourth Circuit”) which issued a decision on August 21, 2009 (*Shipbuilders Council of America v. United States Coast Guard*, 578 F. 3d 234). The Fourth Circuit, finding that the EDVA had not accorded the agency’s determination sufficient deference, upheld the NVDC’s interpretation of the major component test and reversed the EDVA’s judgment on that issue. The matter was then remanded back to the EDVA with instructions to remand to the agency for further proceedings consistent with the Fourth Circuit’s opinion.

On January 19, 2010, the EDVA ordered that:

“...the decision to grant a coastwi[s]e endorsement to the SEABULK TRADER be and is remanded to the Coast Guard for reconsideration of its conclusion as to the considerable part and segregated ballast tank issues, said consideration to be consistent with the opinion of the Fourth Circuit in *Shipbuilders Council of America, et al v. United States Coast Guard*, 578 F.3d 234 (4th Cir. 2009).”

Thus, the matter is now before the NVDC for reconsideration of the substantial part test issue and the segregated ballast tank issue, consistent with the decisions of the EDVA and the Fourth Circuit.

To aid it in its reconsideration, the NVDC received submissions from OSG dated May 7, 2010, June 30, 2010 and July 19, 2010, (together, the “OSG Submissions”) and from Seabulk dated June 14, 2010, July 14, 2010 and, in response to a request for additional technical information, August 6, 2010 (together, the “Seabulk Submissions”). Neither of the other two original plaintiffs, Shipbuilders Council of America and Crowley Maritime Corporation, chose to participate further at this stage in these proceedings.

I. CONSIDERABLE PART TEST

Having first established parameters based upon the steelweight percentage of work done to a vessel in a foreign shipyard, above which (10%) the vessel would be deemed to have been rebuilt and below which (7.5%) it would not, subparagraph (b)(2) provides (for vessels constructed of steel or aluminum) as follows:

“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.”

The origin of that provision may be found in a Notice of Proposed Rulemaking with regard to Vessel rebuilt Determinations dated April 5, 1995, and published at 60 FR 17290. At that time, the lower percentage limit was contemplated to be 5% and the only discussion of that provision was as follows:

“A vessel may or may not be deemed rebuilt if the relevant work performed constitutes more than 5 percent but not more than 10 percent of the vessel’s steelweight. In this case,

the vessel owner bears the burden to demonstrate that the nature of the work performed, its scope in relation to the vessel as a whole, its cost as compared to the cost of the vessel, *or such other factors*, justify a conclusion that the vessel has not been rebuilt.”

A Final Rule was published on April 22, 1996, at 61 FR 17814. Only one comment was received which addressed the numerical upper and lower parameters and the recommendation of that commenter was that they be adjusted to provide greater flexibility. In response to that comment the Coast Guard agreed to raise the minimum threshold to 7.5 percent “because that level reflects the Coast Guard’s past determinations of the percentage of steelweight that does not constitute a rebuilding”. No comments questioned the appropriateness of the band between 7.5% and 10% or the manner in which the Coast Guard might make determinations as to rebuildings falling within that band.

Thus, the text of the regulation itself is silent as to factors appropriately considered by the Coast Guard in making judgments within that band and its history, apart from general acceptance of the appropriateness of such a band by industry, reveals an open-ended list of potential factors to be taken into account, not a closed set of which one or more must be present.

In its review of the SEABULK TRADER determination the Court, while recognizing that “the Coast Guard has considerable discretion to determine on a case-by-case basis whether the work constitutes a rebuild”, nonetheless concluded that, having “failed to identify the relevant factors”, the Court could not “conclude that the agency has reached a rational, non-arbitrary conclusion. 551 F. Supp. 2d at 459.

Seabulk, on the other hand, urges us to interpret the regulation as providing unfettered discretion within the 7.5% to 10% range. It argues that, though the Court rejected the government’s argument that the entire rebuilding issue was committed to agency discretion by law, it did not address Seabulk’s narrower argument that the decision with respect to projects that fall within the 7.5% to 10% range is committed to agency discretion by law.

While we respect Seabulk’s argument on this issue, and don’t discount its possible merit, we also respect the concerns raised by the Court and, upon review of that issue in past determinations as well as in the SEABULK TRADER determination, have to acknowledge that the NVDC could have, and should, do better to explain the factors supporting its determinations.

Since the publication of that regulation, and until the SEABULK TRADER determination, there had only been three determinations in which the applicable steelweight fell within the 7.5% to 10% range. Those determinations, and the applicable steelweight percentages, were as follows:

(i) **DONA MARTITA, Official Number 651751, dated September 23, 1999**

The steelweight of work proposed to be done to this vessel constituted 9.41%.

The relevant passage of the determination provided as follows:

“Inclusion of the ice belt at 6.89 LT, however, raises the percentage of work to 9.41% of estimated steelweight of the Vessel. As the applicable regulations note, work between 7.5% and 10% of steelweight may rise to the level of a rebuilding. For that reason I have compared the proposed project with the projects which have been the subject of earlier rulings. Based on those rulings, I have concluded that although the contemplated work is very close to 10% of vessel steelweight it will not be a rebuilding for purposes of the Second Proviso. You are cautioned, however that the addition of as little as 1.8 LT of steel will result in a finding that the Vessel has been rebuilt.”

(ii) ISLA DEL SOL, Official Number 561029, dated June 30, 2003

The steelweight of work proposed to be done to this vessel (owned by Crowley Marine Services, an affiliate of one of the original plaintiffs in the SEABULK TRADER litigation) constituted 8.23%.

The relevant passage of the determination provided as follows:

“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. Because there were no additions or modifications to the vessel and the repair work performed on the vessel is under the 10 percent threshold we concur that the vessel has not been rebuilt as defined in 46 CFR 67.177.”

(iii) LURLINE, Official Number 549900, dated July 31, 2003

The steelweight of work proposed to be done to this vessel constituted 7.83%.

The relevant passage of the determination provided as follows:

“Although the work to be performed falls just outside of the regulatory threshold defining clearly permissible work, it falls within the lower range of the discretionary category. More than 10% of the steel work to be performed is in the nature of repairs and replacements in kind. In addition, the work contemplated involves both the hull and superstructure and is not concentrated solely in one area and is not deemed to rise to the level of a considerable part of the hull or superstructure.”

The texts of all of the above determinations were incorporated into the Administrative Record of the SEABULK TRADER litigation.

As an aside, we also note (as noted earlier) that two of the three original plaintiffs in that litigation have chosen not to participate further in these proceedings. Moreover, OSG, which is participating, has chosen not to address this issue. OSG Submission dated May 7, 2010, at footnote 11.

At the outset we believe that we should clarify the record as between, on the one hand, the projected steelweight percentages as set forth in Seabulk’s March 11, 2005, request for a

preliminary determination, and which formed the basis for the NVDC's preliminary rebuild determination dated May 20, 2005, and, on the other hand, the actual post-construction steelweight percentages as confirmed by Seabulk's May 8, 2007, letter supported by an attached copy of an American Bureau of Shipping report.

The projected percentages were either 7.97% or 8.57%, depending on which of two options for the work was ultimately chosen. The NVDC offered a preliminary determination in favor of both options and, thus, approved work totaling 8.57% of the steelweight of the Vessel under the considerable part test.

In fact, however, Seabulk subsequently confirmed that the actual steelweight percentage for the work contemplated by its proposal was 7.69% of the steelweight of the Vessel. However, an additional 39.7 LTs of steel was fitted to the Vessel to accomplish structural hull repairs, resulting in a total steelweight percentage of 8.15% of the steelweight of the Vessel.

Thus, while the NVDC did approve the project on the basis of a projected 8.57%, the steelweight percentage for the actual project was 7.69%, plus 0.46% for additional repair work, for a total of 8.15%.

The NVDC's only stated reason for its decision at that time was that the percentages associated with both of the options proposed were closer to the lower end of the 7.5% to 10% range than to the upper end and the Court rightly faulted this failure to better articulate the reasoning behind its decision. However, we believed then, and believe now, that there are factors which justify that determination, whether or not they were fully articulated on May 20, 2005, and that belief is only enhanced by Seabulk's confirmation of the actual percentage --- whether 7.69%, or 8.15% with included repairs.

Among the factors which favorably influenced that decision were, and are, the following (all as factually supported by the Seabulk Submission and not otherwise contested:

- (i) that, the cost of the project (approximately \$10 Million if all costs are taken into account but \$1.8 Million if only the costs of fabricating and installing the new hulls and structural components are considered --- with the difference, as indicated by the Seabulk Submission, represented by "transit costs (fuel and canal fees), the cost of owner-furnished equipment and of installing the equipment, the cost of separately contracted engineering services, and the cost of non-structural work done in China" -- - is a small percentage (less than the applicable steelweight percentage of a similar newly-constructed vessel);
- (ii) that, the dimensions of the Vessel were unchanged;
- (iii) that, the service of the Vessel was unchanged (other than the fact that it was able to meet its OPA 90 obligations at an earlier date than was required);

- (iv) that, rather than increasing the Vessel's cargo capacity, which might conceivably be considered as a factor weighing against the exercise of discretion on this issue, the modifications actually decreased its cargo capacity;
- (v) that, the modifications furthered the objectives of OPA 90 in that the Vessel was able to be retrofitted with a double hull earlier than would otherwise have been required, thus decreasing the period of its operation in the coastwise trade without the protections that a double hull provides;
- (vi) that, the steelweight percentage was not out of line with that of previous approvals and, as earlier stated, was closer to the lower than the higher end of the range; and
- (vii) that, if the steelweight related to repair and replacement of steel were to be excluded, the actual steelweight percentage of the retrofit project (7.69%) barely exceeds the lower end of the range.

We believe, therefore, that sufficient cause exists, and existed then whether or not expressly articulated, to determine that the Vessel was not, and should not be deemed, rebuilt under the considerable part test.

II. SEGREGATED BALLAST TASK

The interpretation previously given to 46 U.S.C. § 3704 by the NVDC, that its prohibition from coastwise trading applies to any vessel where the initial installation of required segregated ballast tanks occurred in foreign shipyards but does not apply to subsequent voluntary reconfigurations of those tanks, was overturned by the Court. The Court's reasoning is set forth extensively in its decision and we see no need to repeat it here. We accept that decision.

Thus, it is now settled law that 46 U.S.C. § 3704 applies to the "installation" of any "required" segregated ballast tank. The questions, then, are twofold: (i) which of the SEABULK TRADER's segregated ballast tanks are "required" in order for it to satisfy applicable segregated ballast capacity regulatory requirements; and (ii) of those segregated ballast tanks, which, if any, were "installed" in a foreign shipyard?

Turning to those questions, the Court then concluded that the record before it (and, therefore, before the NVDC as the basis for its determination) was inadequate. Specifically, it found as follows:

"First, the agency did not determine the amount of ballast capacity required by law for the SEABULK TRADER, thereby frustrating any identification of which of the vessel's ballast tanks were 'required'."

and

“Second, the record is silent as to the nature and quantity of work needed to convert the SEABULK TRADER’s cargo tanks into ballast service”.

and, finally,

“Accordingly, the Coast Guard’s determination that the SEABULK TRADER’s segregated ballast tanks had not been “installed” foreign lacked any evidentiary foundation and, therefore, violated the APA’s prohibition against arbitrary and capricious decision making.

Consequently, the matter was remanded to the NVDC for further proceedings and to establish that evidentiary foundation consistent with the Court’s opinion.

At the outset we note that, in its June 30, 2010, submission, OSG argued that, there being “no *de minimis* exception” in 46 U.S.C. § 3704 the issue before the NVDC is purely “one of statutory construction” and that, consequently, no factual findings are required. We disagree. We believe that the Court had a purpose in mind when it remanded this matter to the NVDC for the stated purpose of providing an evidentiary foundation which was, correctly, found lacking in its previous determination. Moreover, we believe that that evidentiary foundation was sought for an underlying purpose and not, as the counter-argument would suggest, simply as an academic exercise.

In order to provide the expertise necessary, first, to assess the adequacy of the information provided as the evidentiary foundation to make the required findings and, second, to offer review, analysis and factual findings from that information, the NVDC turned for assistance to the Coast Guard’s Naval Architecture Division (the “NAD”). The entirety of both the Seabulk Submissions and the OSG Submissions, including all of their attachments and exhibits, were provided to the NAD with the request that they review and analyze that information with the Court’s questions in mind and offer findings of fact. In addition, the NVDC offered to obtain and provide to the NAD any additional information that it might find useful or necessary in order to complete that task. The NAD made such a request on August 2, 2010 and the NVDC relayed that request to Seabulk on that same day. Seabulk responded on August 6, 2010, with the information that had been requested and that response was provided to the NAD.

Because it is central to this determination, the NAD report, dated August 23, 2010, is attached in its entirety as Exhibit A and incorporated herein by reference. With regard to the questions posed by the Court and the inadequacies identified to the NVDC’s May 20, 2005, determination the conclusions of that report are as follows:

(i) Ballast Capacity Required by Law

A complete analysis has been provided of the vessel’s ballast capacity and its ballast capacity required by law. That analysis led to the following conclusion:

“11. We confirm Seabulk’s contention that the tankers can meet the regulatory draft and trim requirements without using the new #2, #3, #4, and #5 wing SBTs.”

Thus, though those tanks were inarguably “installed” in a foreign shipyard, they are not “required” in order for the Vessel to satisfy applicable segregated ballast tank regulatory requirements.

(ii) Nature and Quantity of Work Needed to Convert Cargo Tanks to Ballast Service

With regard to the nature and quantity of work needed to convert the Nos. 1 and 6 wing tanks P/S (the “Nos. 1 and 6 Tanks”) from cargo service to segregated ballast service, the NAD report concluded as follows:

“10. As further explained in enclosure (c), converting cargo tanks #1 (P/S) and #6 (P/S) to SBT service entailed removal of the deep well cargo pumps, and installation of a new piping section and one control valve to connect each tank to the existing centerline SBT header. No tank vent or structural modifications were necessary.”

and,

“13. The reported scope of work with respect to converting the #1 and #6 cargo tanks to SBT service (including connection to the existing SBT piping systems) is in line with what we would expect. The reported conversion cost for these four tanks was \$4,330 per vessel; however, we cannot confirm this cost.”

Thus, the facts at issue here, which are either undisputed or have been established to our satisfaction after review by the NAD, appear to be as follows: (i) that, the Nos. 2, 3, 4 and 5 wing tanks created by the installation of new inner sides, and which are equipped and usable as segregated ballast tanks, were installed in a foreign shipyard but are not necessary to meet applicable ballast capacity regulatory requirements; and (ii) that, the Nos. 1 and 6 Tanks were originally installed to serve as cargo tanks in a U.S. shipyard; and (iii) that, the Nos. 1 and 6 Tanks now serve as segregated ballast tanks and, in that service, are necessary to meet applicable ballast capacity regulatory requirements; and (iv) that, it was not necessary to alter the Nos. 1 and 6 Tanks, as tanks, in shape, form, location or structure in order to change their service from cargo to segregated ballast; but (v) that, the work done in a foreign shipyard needed to change the Nos. 1 and 6 Tanks from cargo service to segregated ballast service consisted of the removal of deep well cargo pumps and, in terms of installation, the installation of a new piping section and one control valve to connect each Tank to a pre-existing centerline SBT header; and (vi) that, although it could not be confirmed, but has also not been contested, the cost of such conversion constituted a reported \$4,330, or 0.0043%, of the total cost of the retrofit project for the Vessel.

As the Nos. 2, 3, 4 and 5 wing tanks are not necessary to meet regulatory requirements, their installation in a foreign shipyard appears to fall outside of the proscriptions of 46 U.S.C. § 3704. We believe that the NAD’s analysis of this issue addresses the Court’s justified criticism that “the agency did not determine the amount of ballast capacity required by law for the SEABULK TRADER, thereby frustrating any identification of which of the vessel’s ballast tanks were ‘required’.” 551 F.Supp.2d 447 at 460.

However, the segregated ballast service provided by the Nos. 1 and 6 Tanks is necessary to meet regulatory requirements. But the only installation work done in a foreign shipyard with regard to those tanks and their service as segregated ballast tanks was as noted above and, as such, unrelated to the tanks themselves.

Thus, the question for decision appears to be limited to whether, on the one hand, the nature and quantity of the work done in connection with the Nos. 1 and 6 Tanks (viz, the installation of that piping) should be considered to be just that, the installation of piping, or whether, on the other hand, because the acknowledged purpose of that piping was to alter the service of the existing and otherwise undisturbed Nos. 1 and 6 Tanks from cargo to segregated ballast, its installation should be considered to be, or should be deemed to be the legal equivalent of, the installation of segregated ballast tanks in the vessel for the purpose of 46 U.S.C. § 3704.

Seabulk's approach, and OSG's approach, to this question are, not unsurprisingly, diametrically at odds and appear to be logically and semantically irreconcilable. And perhaps they are. However, we start by looking at the question from the perspective offered by the following hypothetical (which we acknowledge at the outset may be remote in its likelihood of occurrence, but is not implausible and is certainly not outside the realm of logical possibility):

Assume a vessel with segregated ballast tanks which were installed in a U.S. shipyard and are necessary to meet regulatory requirements. Further assume that, while in a foreign shipyard, it is discovered that the piping which serves one of its segregated ballast tanks is corroded and in need of replacement. The removal of that piping would leave behind a tank which, although prior to removal served a segregated ballast function, could not then serve that function and, thus, would be, at that point, just a tank not substantively or materially different from the Nos. 1 and 6 Tanks. If new piping is then installed, in that foreign shipyard, is that limited work the legal equivalent of the installation of segregated ballast tanks in a foreign shipyard for that vessel? Should it be deemed as such for the purpose of 46 U.S.C. § 3704? The logic of one side to this dispute appears to require, we believe, that it is (or should be). We cannot agree.

In the case assumed, we don't believe nor consider it logical to argue that, simply because that tank might have been previously installed and put in service as a segregated ballast tank, the installation, or re-installation, of piping would (or should) not constitute the installation of a segregated ballast tank while precisely the same work and the same installation of piping, in the case at hand, would (or should). In other words, we don't believe that the prohibitions of 46 U.S.C. § 3704 were intended or would have been anticipated to apply in the case assumed. And, if that is true, to nonetheless apply them to the facts presented in the case at hand would be, we believe, to favor semantics over substance. We believe that this is consistent with the rationale which led the Court to conclude that an evidentiary foundation was needed in order to determine whether, based on the nature and quantity of work performed, there had been an installation of a segregated ballast tank in a foreign shipyard.

It could be argued, of course, that, in one case, the work could be characterized as "maintenance" (or "repair") and, in the other case, it could be characterized as "conversion" --- and that it is this difference, or this type of difference, which the Court had in mind in its reference to the "nature"

of the work performed. However, in inquiring about the “nature” of the work performed, the Court was well aware that, in fact, a conversion had taken place. Thus, to find that its “nature” as a conversion was a critical distinguishing characteristic would be, we believe, tautological.

We also observe that 46 U.S.C. § 3704 limits its reference to “(A) segregated ballast tank”, rather than, as referenced by OSG, at its footnote 13, in discussion of USCG Navigation and Vessel Inspection Circular (“NVIC”) No. 1-81 (Feb. 18, 1981), the “segregated ballast system” which is recognized to encompass tanks, piping, pumps, etc. In contrast, we also observe that 46 U.S.C. § 3704 does refer to “a crude oil washing *system*” and “an inert gas *system*” (emphasis added).

We also discount any contention that it wouldn’t be feasible or practical to create a truly new tank in an existing vessel, an argument intended, we presume, to bolster the contention that the statute must apply, or should be interpreted to apply, to any and all existing tanks whose service may have been converted to segregated ballast use. As already noted, the Nos. 2, 3, 4 and 5 segregated ballast tanks between the outer hulls and inner sides of the Vessels in this case represent exactly that kind of newly-created tank. And their installation in a foreign shipyard would have resulted in the invocation of the proscriptions of 46 U.S.C. § 3704 in this case but for the fact, as found by the NAD, that those tanks are not necessary to meet regulatory ballast requirements.

Moreover, we refer to the legislative history discussed and quoted from in Seabulk’s Submission of June 14, 2010, and also cited by the Court, as follows:

“The committee believes that vessels which are accorded the privilege of engaging in the restricted U.S. coastwise trade should be required to have these new installations accomplished in U.S. shipyards, similar to the requirement for such vessels which are to be rebuilt. While, technically speaking, it can be argued that these changes may not constitute major conversions or rebuilding, they are *sufficiently similar* to justify the same requirement.” (emphasis added)

H.R. Rep. No. 95-1384(1) 22 (1978)

There really can be no argument that the installation of piping, as hypothesized above or as actually done in the case of the Nos. 1 and 6 Tanks, is “sufficiently similar” or, in fact, similar at all, to the nature or quantity of work addressed by 46 C.F.R. § 67.177. In fact, that piping would not even be counted toward the thresholds applicable to a rebuild as it would not constitute a structural component of either the “hull” or “superstructure” (as those terms are defined at 46 C.F.R. § 67.3). In contrast, work done for the installation or reconfiguration of the tanks almost certainly would constitute work done to the vessel’s hull and, thus, be “sufficiently similar” to a rebuild to be deemed as such, whether or not the specific steelweight parameters of 46 C.F.R. § 67.177 happened to have been met by that work. Thus, work done to segregated ballast tanks would be deemed to constitute a rebuild of the vessel whether or not work constituted the addition of a major component and whether or not the steelweight of the work involved, by itself or in conjunction with other work, exceeded the applicable steelweight parameter.

Similarly, major conversions are said to occur when the work: (i) substantially changes the dimensions or carrying capacity of the vessel; (ii) changes the type of the vessel; (iii) substantially prolongs the life of the vessel; or (iv) otherwise so changes the vessel that it is essentially a new vessel. (See 46 C.F.R. § 114.400) Although it could be said that installation of a segregated ballast tank (as 46 U.S.C. § 3704 employs that term) is “sufficiently similar” to one or more of those criteria, we believe it is a stretch to argue that all other elements of a segregated ballast system (such as the piping installed in this case) also rise to that level.

The OSG Submission dated May 7, 2010, cites an NVDC determination letter dated October 6, 1997, in support of the contention that a conversion of wing tanks, any conversion apparently, has been deemed in the past to constitute the installation of segregated ballast tanks. We believe that letter is read too broadly. First, the record in that case is silent as to the nature or quantity of work contemplated because the inquiry never progressed that far. Second, and more importantly, we believe that the response given in that letter is more correctly read as simply a general expression of a previous interpretation of 46 U.S.C. § 3704 held by the NVDC --- specifically, that it applies to the original installation of required segregated ballast tanks. That interpretation was offered again in the determination letter dated May 20, 2005, which was issued in this matter --- an interpretation which was, we acknowledge, rejected by the Court.


The Court correctly noted that “(W)hether or not a ballast tank has been ‘installed’ on a vessel requires the factfinder to collect specific information about the work performed on that tank to place it in a position for service.” *Id.* at 459. Because it had applied a now discredited interpretation to 46 U.S.C. § 3704, the NVDC had clearly not done that. As such, the Court directed the NVDC to further examine the record as to the “nature and quantity of work needed to convert the SEABULK TRADER’s cargo tanks into ballast service.” *Id.* at 460.

We have now done so and have sought expert guidance from the NAD to assist in the process by examining the submissions and opining as to its findings. On the basis of those findings, and the argument set forth above, we conclude that the nature and quantity of the work performed in this case justifies the conclusion that required segregated ballast tanks were not installed in a foreign shipyard in this case. In fact, as the tank itself was neither installed nor altered in any way in this case, we believe that it would be difficult to conceive of work, of any nature or quantity, which would be deemed to be outside the scope of 46 U.S.C. § 3704, if not that which was done in this case.

Consequently, for the reasons stated above, we conclude that the nature and quantity of work done in this case (specifically, the installation of piping in connection with the Nos. 1 and 6 Tanks, which Tanks had been installed in a U.S. shipyard and were not otherwise altered in a foreign shipyard in order to serve a segregated ballast function), did not constitute the installation of segregated ballast tanks within the meaning of 46 U.S.C. § 3704.

For all of the above reasons, we believe, and so determine, that the SEABULK TRADER (and SEABULK CHALLENGE) should remain entitled to Certificates of Documentation with endorsements for coastwise trade.

Sincerely,


PATRICIA J. WILLIAMS
Director

Enclosure: Exhibit A

cc: William N. Myhre, Esq.
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