

U.S. Department of
Homeland Security

United States
Coast Guard



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16713/5/3
November 27, 2017

Mr. Gregory B. Mendenhall
G B Mendenhall PLLC
3278 Franklin Avenue, Suite 5
P.O. Box 5
Millbrook, New York 12545

Dear Mr. Mendenhall:

I am writing in response to your letter of October 6, 2017, concerning TOTE Maritime Alaska, Inc. ("TOTE") and two U.S.-flag roll-on/roll-off vessels that it owns and operates: the MIDNIGHT SUN, official number 1128203, and the NORTH STAR, official number 1139532 (each a "Vessel" and together, the "Vessels"). You have reported that the Vessels were constructed by General Dynamics NASSCO in San Diego, CA, and that both were delivered in 2003 with hull numbers 490 and 491, respectively. Both Vessels are documented with a coastwise endorsement and operate in the domestic trade between the ports of Tacoma, WA and Anchorage, AK.

You have further reported that TOTE plans to make certain identical modifications to each Vessel in order to convert the engines to burn liquid natural gas ("LNG"). Specifically, fabrication of five modules for the LNG modification have been completed at the Keppel Tuas Singapore Shipyard and shipped to the Seaspan Shipyard in Victoria, BC Canada.

The LNG modifications on each vessel will be done at the Seaspan Shipyard where the LNG bunkering and storage system will be installed, a fuel gas system room will be installed and the shipyard will relocate the existing gymnasium and other auxiliary systems required for the safe operation of the Vessels with the additional LNG fuel. The Seaspan Shipyard will also modify three of the Keppel Shipyard modules for the new A-Deck to support the LNG tanks prior to the modules being added to each Vessel. The Seaspan Shipyard modification will combine three Keppel modules into two Seaspan modules to facilitate the installation of the A-Deck on each Vessel: a PORT side A-Deck unit and a STBD side A-Deck unit.

At a subsequent drydocking at the Seaspan Shipyard, two of the four existing diesel engines on each Vessel will be modified to dual fuel engines capable of burning LNG. The remaining two diesel engines on each Vessel will be modified with riding crews while the Vessels are underway. Since this second drydocking will address mechanical modifications to the diesel engines in order to burn LNG fuel with no structural alterations planned, it is of no consequence for the purposes of this determination.

You have requested a preliminary foreign rebuild determination, in accordance with 46 C.F.R. § 67.177(g), with respect to the work proposed to be done to these Vessels. Specifically, you have requested confirmation that the proposed modifications, if completed as proposed in a foreign shipyard, will not result in the Vessels being deemed to have been rebuilt foreign and consequently, that their coastwise eligibility will not be adversely affected by the proposed work.

You have correctly identified the two-pronged test that is established by 46 C.F.R. § 67.177 for such determinations which, in summary, provides as follows:

First, by the so-called “major component test” (46 C.F.R. § 67.177(a)), 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.” As you have correctly observed, the term “major component” is not defined by statute or regulation, but 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).

Second, 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.”

As is our current practice with all requests for foreign rebuilt determinations, we have referred your submission to the Coast Guard’s Naval Architecture Division (“NAD”) for their review of your proposal with particular regard to the weight calculations you have presented.

With regard to the discounted steel weight of the Vessels in this case, our conclusion supported by the findings of the NAD, is that the weight submitted, 19,014.50 Ltons, is incorrect for two reasons but, even taking both corrections into account, not by an amount in either case or in total which would alter the outcome of this determination.

The NASSCO shipyard weight report for these vessels (your Exhibit A) identifies the structural weight of these Vessels as 18,987 Ltons. However, it also listed structural modifications to correct a vibration problem (153 Ltons) and increased weight of the stern castings (59 Ltons). The total of these two items (212 Ltons) could permissibly have been added to the structural weight identified above. We will do so for the purposes of this determination, resulting in an as-delivered discounted steel weight of 19,199 Ltons.

On the other hand, based upon the guidance of our determination in the case of vessels of PASHA Hawaii Holdings dated May 25, 2017, we will decline to increase the as-delivered steel weight of the vessels by the weight added in the course of post-delivery modifications at a foreign shipyard (Seaspan Shipyard) in 2006 (16.34 Ltons) and 2008 (11.16 Ltons) --- by which your submission increased the 18,987 Ltons steel weight by a total of 27.50 Ltons to arrive at a discounted steel weight of each Vessel of 19,014.50 Ltons.

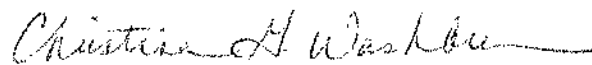
Thus, for the purposes of this determination, we will use a discounted steel weight (19,199 Ltons) which is slightly higher than the weight you had submitted.

Applying the so-called "major component test" based upon that discounted steel weight of the Vessels, the 1.5% major component threshold is 288.0 Ltons. As the largest component to be added to either Vessel in this case will be the PORT A-Deck module, at 254 Ltons, it is under the threshold of the "major component test" at 1.34%.

With regard to the so-called "considerable part test", based upon a discounted steel weight of 19,199 Ltons, the threshold for permitted foreign steel work (7.5%) would allow for 1,439.9 Ltons. However, we again take into account the guidance of the PASHA Hawaii Holdings determination which determined that, in order to accord the proper respect that is due to the general mandate and intent of the Jones Act, the cumulative effect should be taken into account where there have been multiple instances of foreign work. Thus, the 27.50 Ltons of foreign work done in 2006 and 2008 must be subtracted from that permitted threshold, yielding a threshold for permitted steel work in the case of these Vessels of 1,412.4 Ltons. However, since the currently proposed modifications would add only 472.7 Ltons, the threshold applicable in this case would still not be exceeded.

Based upon these findings, I conclude and confirm that performance of the proposed work to the Vessels outside of the United States would not under currently applicable law and practice adversely affect the eligibility of those Vessels to engage in the coastwise trades of the United States. However, as we customarily do, we require that you confirm to this office in writing following completion of the work to each Vessel that the work actually performed conformed to the proposal you have submitted in support of your application.

Sincerely,



Christina G. Washburn
Director