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) 271-2442
Email:
Christina.G.Washburn@uscg.mil

16713/5/3
May 25, 2017

Mr. Edward Washburn
Vice President Fleet Operations
Pasha Hawaii Holdings
4040 Civic Center Drive, Suite 400
San Rafael, CA 94903

Dear Mr. Washburn:

I am writing in response to your letter of March 28, 2017, concerning the vessels HORIZON ENTERPRISE, official number 623168, and HORIZON PACIFIC, official number 612085 (together, the "Vessels" and, individually, the "Vessel").

You have reported that certain modifications are proposed to be made in an as yet unidentified foreign shipyard to the Vessels. You have further reported that the Vessels are C8 class sister ships built in 1980 and 1979, respectively, and are each 28,219 gross tons with a steelweight of 9,049 metric tons. Finally, you have reported that identical modifications are proposed to be made to each Vessel.

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 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.

In summary, the work proposed would modify two of the existing 40-foot container cargo holds in each Vessel to accommodate the carriage of heavily loaded 45-foot containers below deck; thereby, lowering the center of gravity of each Vessel allowing for greater flexibility in loading containers on deck and creating other operational advantages.

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.

However, before proceeding to apply those tests to the facts presented by this application, the fact that the Vessels at issue here were the subject of a previous application resulting in a favorable determination, dated December 11, 2013, cannot be overlooked. In order to accord the proper respect that is due to the general mandate and intent of the Jones Act which requires that vessels must have been built in the United States to engage in the coastwise trades and be eligible for a coastwise endorsement, it is necessary and appropriate to construe the exception to that mandate created by the Second Proviso and embodied by 46 C.F.R. § 67.177 in such a way as to avoid circumstances in which the intended limitations of 46 C.F.R. § 67.177 could be expanded, potentially to a degree that would permit the exception to overtake the general mandate, by the cumulative effect of multiple instances of foreign rebuilding and the associated applications for determinations seeking approval of that work. This conservative approach is, I believe, consistent with the intent of the Jones Act mandate. It is also consistent with the approach taken in a previous determination even though that determination did not directly articulate the impact of the broader issue of cumulative work*. In that case, instances of foreign repair work which preceded a foreign conversion were nevertheless counted toward the steel work done in connection with that subsequent conversion for which the application for a determination was made. [* It is acknowledged that there has also been one prior instance of a vessel which received a favorable determination with respect to two separate applications (1998 and 2003) without taking into account the cumulative effect of the work (but which determinations did not specifically address that particular issue). However, it is my belief that the approach taken herein is more consistent with the intent of the general mandate of the Jones Act while still respecting the exception created by the Second Proviso as embodied by 46 C.F.R. § 67.177.]

For these reasons, I have determined that, where there have been multiple foreign rebuild determination applications for the same vessel, as in this case, the steelweight limits set forth in 46 C.F.R. § 67.177(b) should most appropriately be considered to be service life limitations based upon the vessel's original, or as delivered, discounted steelweight. It follows, then, that the allowable steelweight under the "considerable part test" should be reduced by the cumulative steelweight changes of previous foreign rebuilds. Similarly, the threshold for what constitutes a major component under the "major component test" should be based on that same original discounted steelweight but should otherwise remain constant for all rebuilds.

In the case of these Vessels, of course, even when using the original discounted steelweight of the Vessels (8,957.78 Ltons, or 9,120.6 Mtons), and taking the previous work into account, the tonnages and percentages are so low as to have no adverse impact on a favorable outcome for this second foreign rebuild determination application, as the findings of the NAD have confirmed.

With regard to the "major component test" it was found, in pertinent part, as follows:

> "The transverse coaming plate for Hatch 10is identified as the largest single component of the modifications. Its weight is given as 6,481 lbs (2.89 Ltons, or 2.94 Mtons."

And

> "The 1.5% "major component" threshold is 134 Ltons; the largest component will only be 2.89 Ltons (2.94 Mtons). Therefore, this is within the allowable limit"

With regard to the "considerable part test" it was found, in pertinent part, as follows:

> "Based on a discounted steelweight of 8,957.78 Ltons (9,120.6 Mtons), the…7.5% foreign rebuild weight threshold was 671.8 Ltons (684.0 Mtons). However, due to the previous 7.67 Ltons of foreign steel (work) in 2013, the rebuild weight margin was reduced to 664.13 Ltons (676.2 Mtons). The currently-proposed modifications add 73.4 Ltons (74.5 Mtons) of new foreign steel, which is within the adjusted allowable limit."

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

Christina G. Washburn
Director