



16713

27 August 1998

From: Commander, Eighth Coast Guard District

To: Distribution

Subj: REQUIREMENTS FOR BARGES TO CARRY CERTIFICATES OF
DOCUMENTATION (COD)

Ref: (a) 46 CFR 67.9

(b) Phonecon on 07 Aug 98 between Ms. Joan Woody of the National Vessel
Documentation Center (NVDC) and LT Dow D8(moc-1)

1. This letter is in response to requests from OCMI's who have asked for clarification of the appropriateness and legality of companies to drop the COD on barges operating on inland/internal waters. Additionally, OCMI's have expressed concern over whether barges with Lakes, Bays, and Sound routes operating between D8 coastal ports within the Gulf Intracoastal Waterway (GIWW) and Western Rivers ports were in violation of documentation regulations.

2. An evaluation of the Eighth District portion of the Gulf Intracoastal Waterway (GIWW) has revealed that the waters of the GIWW lie inside the territorial sea baseline and are consequently considered inland waters for the purpose of vessel documentation (see enclosure (1)). Therefore, barges may traverse these areas without a Certificate of Documentation in accordance with the provisions of reference (a). Enclosure (2), while cancelled when it was incorporated into reference (a), provides a good historical perspective of this issue and the appropriate manner for an owner to surrender a COD on vessels which only operate on inland waters.

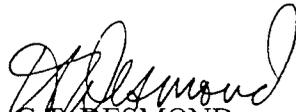
3. As per reference (b), the following options are available to companies that desire to cease maintaining a COD on vessels qualifying for the exemption in reference (a), (e.g. inland barges):

a. The company may place the COD on deposit with the NVDC. This will eliminate the need to renew the COD annually and receive the validation sticker which is affixed to the COD. Depositing the COD does not forfeit the company's ability to reactivate the COD should the company wish in the future to operate the vessel on voyages which go beyond the baseline of the territorial sea.

b. The company may surrender the COD and eliminate the need to maintain a COD either in the active or deposited status. This is only recommended for companies which never intend to operate the vessel on voyages beyond the territorial sea baseline.

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4. In either of the above options, the company must submit the original COD along with a letter of request to the NVDC, advising them of their desire to change the present status of their COD. Companies operating barges on inland waters that wish to maintain the CODs, though not required by regulation, may continue to do so.
5. While there are no direct cost savings to marine industry from implementing either of the above options (i.e. there is no user fee/cost to renew the COD decal) there is the potential for significant resource hours to be saved by both industry and the Coast Guard if companies take advantage of the options to drop the COD when operating on inland waters. Therefore, OCMI's are encouraged to make this policy determination available to affected companies.
6. Questions regarding this matter may be referred to LT Scott Dow at (504) 589-2455.



C.T. DESMOND

By direction

Encl: (1) COMDT G-LMI 16713 ltr of 24 Jun 98
(2) COMDT G-MVI Policy Letter 06-89

Dist: All Eighth District MSOs and MSU

Copy: NVDC

Post-it* Fax Note	7671	Date ^{6/1} 5/28	# of pages 4
To	LT SCOTT DOW	From	LT MARK SKOLNICKI
Co./Dept.		Co.	G-LMI
Phone #	504/589-2455	Phone #	202/267-0094
Fax #	504/589-4999	Fax #	202/267-4496

Memorandum

Subject: DEFINITION OF "INLAND WATERS" UNDER 46 U.S.C. 12110(b) AND "INTERNAL WATERS" UNDER 46 C.F.R. 67.9(c)(3)

Date: 24 June 1998
16713

From: Chief, Office of Maritime and International Law

Reply to G-LMI
Attn. of: LT SKOLNICKI
267-1527

To: Commanding Officer, CG Marine Safety Office, New Orleans

- Ref:
- Your letter 16713 to Director, National Vessel Documentation Center of April 14, 1998
 - NVDC letter 16713 to G-LMI of May 1, 1998
 - J. Broders (Jones, Walker) letter to NVDC of December 29, 1997
 - NVDC letter 16713/31-3 to G-LMI of January 13, 1998
 - G-LMI memo 16000 of December 31, 1986

- Background. In reference (a), you requested that the Director of the National Vessel Documentation Center (NVDC) define or interpret the term "internal waters . . . of any State" as used in 46 CFR 67.9(c)(3). Reference (b), forwarded reference (a) and requested Commandant (G-LMI) guidance in defining "internal waters" while noting that 46 CFR 67.9(c)(3) should probably be amended to be consistent with the statutory language found in 46 U.S.C. 12110(b) - "inland waters." Reference (c) asked NVDC whether the Coast Guard had a policy with regard to certain portions of the Intracoastal Waterway from Texas to Florida (such as the leg across the Mississippi Sound), because these waters do not seem to fit a strict reading of 46 CFR 67.9(c). Reference (d) forwarded reference (c) and requested our guidance on interpreting both 46 CFR 67.9 and 46 U.S.C. 12110(b). This memorandum will answer your request in reference (a). Enclosure (1) replies to reference (c).
- Statute and Regulation in Question. The current statutory language in question reads as follows: "A barge qualified to be employed in the coastwise trade may be employed, without being documented, in that trade on rivers, harbors, lakes (except the Great Lakes), canals, and inland waters." 46 U.S.C. 12110(b)(emphasis added). The Coast Guard also has a regulation which outlines which vessels are exempt from the requirement to be documented with a coastwise endorsement. 46 CFR 67.9(c) provides: "A non-self-propelled vessel, qualified to engage in the coastwise trade is exempt from the requirement to be documented with a coastwise endorsement when engaged in coastwise trade: (1) Within a harbor; (2) On the rivers or lakes (except the Great Lakes) of the United States; or (3) On the internal waters or canals of any State." The use of the term "internal waters" in 46 CFR 67.9(c), which is not a term used in the statute, 46 U.S.C. 12110(b), apparently stems from the fact that 46 CFR 67.9 parallels language in the predecessor statute, 46 U.S.C. 65m. Former section 65m of title 46, United States

Enclosure (1)

DEFINITION OF "INLAND WATERS" AND "INTERNAL WATERS"

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Code provided in pertinent part that: "A non-self propelled vessel which is qualified to be employed in the coastwise trade may, without being documented, be employed in that trade within a harbor or on the rivers or inland lakes of the United States, or on the internal waters or canals of any State. 46 U.S.C. 65m (repealed by Pub. L. 98-89, section 4(b))(emphasis added). 46 U.S.C. 65m was replaced by 46 U.S.C. 12110 in 1983, but the language was changed without any comment by Congress in the House Report (the only congressional report) to the law which recodified much of title 46 of the United States Code.

3. Definitions. Title 46 of the United States Code does not define "inland waters." Likewise, title 46 of the Code of Federal Regulations does not define "internal waters." A look elsewhere in regulations administered by the Coast Guard provides the answer. The purpose of the regulations in 33 CFR part 2 "is to inform the public of the definitions which the Coast Guard uses to examine waters to determine whether the Coast Guard has jurisdiction on those waters under particular U.S. laws." 33 CFR 2.01-1. 33 CFR 2.05-20 defines "internal waters" and "inland waters," by providing in pertinent part: "Internal waters and . . . inland waters mean . . . the waters shoreward of the territorial sea baseline." 33 CFR 2.05-20(a).¹ Each Coast Guard district maintains charts reflecting Coast Guard decisions as to the location of the territorial sea baseline for the purposes of Coast Guard jurisdiction. See 33 CFR 2.10-1.²
4. Relevant Past Opinion. Interpreting "internal waters" and "inland waters" as those waters shoreward of the territorial sea baseline is consistent with reference (e), which responded to a request by the Thirteenth District Legal Officer for a definition of harbor as used in 46 CFR 67.01-7(c), a predecessor regulation to 46 CFR 67.9(c). In that memo, G-LMI wrote:

[46 CFR 67.01-7(c)] lists 3 categories, basically, harbors, rivers and internal waters. This list is derived from former 46 U.S.C. 65m and, in modified form, is now in 46 U.S.C. 12210(b). I view this listing as an enumeration of areas within internal waters, the intent being to exempt inland barges. Accordingly, 46 CFR 67.01-79(c) exempts barges from having a coastwise license when on internal waters of the United States. Internal waters are those waters lying shoreward of the baseline from which the territorial sea is measured. See 33 CFR 2.05-20(a). As a practical matter, all harbors will be inside the baseline from which the territorial sea is measured.

¹ 33 CFR 2.05 does provide a different definition of the term "inland waters" when that term is being used in 33 U.S.C. 151 and 33 CFR Part 80 to delineate those waters upon which mariners shall comply with the Inland Navigational Rules. Waters inside of the lines set forth in 33 CFR Part 80 are "Inland Rules waters."

² "The decisions referred to in Section 2.10-1 of [33 CFR] are subject to change or modification. Inquiries concerning the status of specific waters, for the purposes of Coast Guard jurisdiction, should be directed to the District Commander of the district in which the waters are located." 33 CFR 2.10-10.

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G-LMI memo 16000 of December 31, 1986. (Emphasis added). This interpretation is also consistent with the customary international law definition of "internal waters," as well as the 1982 UN Convention on the Law of the Sea (UNCLOS) which the United States regards as reflective of customary international law. That Convention defines "internal waters" as "waters on the landward side of the baseline of the territorial sea." UNCLOS, Article 8.

5. Conclusion and Recommendations. The regulation in question, 46 CFR 67.9(c)(3) could be changed to be consistent with the term used in 46 U.S.C. 12110(b) – "inland waters." NVDC would be the appropriate Coast Guard program to initiate any change to the regulations. However, because 33 CFR 2.05-20(a) defines both "internal waters" and "inland waters" (for purposes other than Navigational Rules of the Road) the same way, the phrase used in 46 CFR 67.9(c)(3) ("internal waters or canals"), does not necessarily need to be amended. In short, for purposes of administering 46 U.S.C. 12110(b) and 46 CFR 67.9, "internal waters" and "inland waters" mean the waters shoreward of the territorial sea baseline.



DAVID J. KANTOR

Acting

Encl: (1) G-LMI ltr 16713 to J. Broders (Jones, Walker) of June 24, 1998

cc: NMC, NVDC, G-MOC, G-LRA, All District Legal Officers

Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: G-LMI
Phone: (202) 267-1527

16713
24 June, 1998

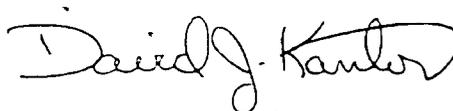
Mr. John J. Broders
Jones, Walker Waechter, Poitevent Carrere & Denegre, L.L.P.
201 Charles Avenue
New Orleans, LA 70170-5100

Dear Mr. Broders:

This responds to your letter of December 29, 1997, in which you asked the Coast Guard's National Vessel Documentation Center to provide you with a policy regarding the term "internal waters or canals of any State" in 46 C.F.R. 67.9(c). Specifically, you asked how the Coast Guard treated certain portions of the Intracoastal Waterway from Texas to Florida. Mr. Willis asked that I reply to you directly.

For purposes of administering 46 U.S.C. 12110(b) and 46 CFR 67.9, "internal waters" and "inland waters" mean the waters shoreward of the territorial sea baseline. *See* 33 C.F.R. 2.05-20(a). This interpretation is also consistent with the customary international law definition of "internal waters," as well as the 1982 UN Convention on the Law of the Sea which the United States regards as reflective of customary international law. I trust this reply is responsive to your inquiry.

Sincerely,



DAVID J. KANTOR
Acting

cc: NVDC, CCGD8(m)

US Department
of Transportation

United States
Coast Guard



Commandant
United States Coast Guard

Washington, D.C. 20593-0001
Staff Symbol G-MVI-6/13
Phone (202) 267-1492

16713/17/2

81 MAR 1989

MVI 06-89

From: Commandant
To : Distribution

Subj: DOCUMENTED BARGES, LICENSE RENEWALS

Ref: (a) Section 103, Public Law 100-710
(b) 46 CFR 67.23-1
(c) 46 CFR 67.01-7(c)
(d) 46 CFR 67.45-7(b)(1)

1. Reference (a) provides that a vessel is deemed to continue to be documented for any law identified by the Secretary by regulation, even if the Certificate of Documentation becomes invalid. It further provides that vessels are deemed documented until the Certificate is surrendered "with the approval of the Secretary." Reference (b) provides that a Certificate of Documentation becomes invalid after a period of one year unless renewed. In order to conform to the new statutes, the regulations will be rewritten to provide that the license endorsed upon the Certificate of Documentation becomes invalid after one year, but that the Certificate itself remains in effect until it is surrendered with the approval of the Secretary.

2. Reference (c) provides that non-self-propelled vessels are exempt from documentation when used in coastwise trade within a harbor, or in whole or in part on the rivers or inland lakes of the United States, or in whole or in part on the internal waters or canals of any states. Most vessels identified in reference (c) are documented solely for identification purposes or to secure a preferred ship mortgage.

3. In order to reduce the paperwork burden on the public and on the vessel documentation system, and to better meet the needs of the inland barge industry, owners of non-self-propelled vessels identified in reference (c) shall not be required to renew the licenses endorsed upon their Certificates of Documentation. After expiration of the license, such vessels will be deemed documented, but unlicensed. Because those vessels are not required to be documented for coastwise trade, a valid coastwise license is not required. Therefore, operation of such vessels after expiration of the license is not illegal. Consequently, penalty action for failure to renew the license is inappropriate and shall not be pursued.

4. Reference (d) provides that Certificates of Documentation do not need to be kept aboard non-self-propelled vessels not engaged in foreign trade. Therefore, owners of such vessels shall not be requested to produce their Certificates of Documentation. Information about the documentation of such vessels shall be obtained from MSIS.

Enclosure (2)

16713/17/2

Subj: DOCUMENTED BARGES, LICENSE RENEWALS

5. The policy set forth in this letter will be incorporated in changes to Part 67 of Title 46, CFR and Volume II of the Marine Safety Manual ("MSM"). Appropriate portions will be included in VOL IX of the MSM when published.



JAMES M. MAC DONALD
By direction

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