

U.S. Department of
Homeland Security

United States
Coast Guard



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National Vessel Documentation Center

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16713/5/2
October 28, 2011

H. Clayton Cook, Esq.
Seward & Kissel LLP
1200 G Street, N.W.
Washington, D.C. 20005

Dear Mr. Cook:

We are writing to you as counsel for Grand River Navigation Company, Inc. and Rand Logistics, Inc. and in response to your letter of August 4, 2011. In that letter you requested a preliminary determination pursuant to 46 C.F.R. § 67.177(g) with regard to certain work to be done to the barge MARY TURNER (ex- EROL BEKKER), Official Number 646730 (the "Vessel" or "Barge").

By your letter you have reported that the Vessel, originally built as Hull 728 by Bay Shipbuilding Co., of Sturgeon Bay, Wisconsin, is being purchased by Grand River Navigation Company, Inc. (the "Owner"), a member of the Rand Logistics, Inc. group of companies. The Owner proposes to have certain work done to the Vessel in Mexico (called the "Mexico Alterations") as well as what you have described as some related, but independent, alterations which will take place in the United States (called the "United States Alterations").

The United States Alterations are identified by your letter as items 7 and 8 (of 8 items) and are said to consist of the following:

"7. Removal of the existing unloading boom; and

8. Installation of a 250-foot boom with associated luffing and slewing equipment."

In response to our request for further clarification with regard to the new boom you responded by e-mail dated August 11, 2011, as follows:

"The boom is a salvaged boom from the JOSEPH H. FRANTZ which was scrapped in 2005. The word "new" is actually a misnomer; the boom was actually built in 1965 by the Christy Corporation in Sturgeon Bay, Wisconsin. This boom is only "new" to the Barge MARY TURNER, it is actually 36 years (or so) old."

You further indicated that "(T)he boom is existing, and is currently the property of the Rand Corporation, and is stored at one of their facilities."

Before addressing the Mexico Alterations and the implications of that work for the vessels continued entitlement to coastwise privileges, we first address certain issues that are or could be raised by the proposed installation of the boom in the United States and the bifurcated nature of this project between work proposed to be done in Mexico and work proposed to be done in the United States.

We note that the second proviso to the Jones Act (formerly codified at 46 U.S.C. App. § 883 and currently recodified at 46 U.S.C. §§12101(a) and 12132(b)) provides, at 46 U.S.C. § 12101(a), as follows:

“Rebuilt in the United States. – In this chapter, a vessel is deemed to have been rebuilt in the United States only if *the entire rebuilding*, including the construction of any major component of the hull or superstructure, was done in the United States.” (emphasis added)

But despite the apparent breadth of that provision and the emphasized phrase it has never been the case that all rebuilding work must be performed in the United States. American Hawaii Cruises v. Skinner, 713 F.Supp. 452 (D.D.C. 1989), appeal denied 893 F.2d 1400 (U.S. App. D.C. 1990). Nor must work done in a U.S. shipyard, even if related to an overall project which includes certain work done in a foreign shipyard, be included in applying the regulatory tests of 46 C.F.R § 67.177 to that foreign work when determining whether a vessel has or has not been rebuilt foreign. Shipbuilders Council of America v. United States Department of Homeland Security (M/V MOKIHANA), Memorandum Opinion of Judge T.S. Ellis, III dated December 3, 2009 (U.S.D.C, E.D.V.A. (Alexandria Division)).

In this instance we note the following as to the proposed United States Alterations:

First, to even be considered under either of the regulatory tests set forth in 46 C.F.R. § 67.177 (the “major component test” of subparagraph (a) and the “considerable part test” of subparagraph (b)) the boom in question would need to be found to possess the structural characteristics which are the precondition to be included within the definition of either “hull” or “superstructure”. However, neither the boom nor its associated electrical/mechanical systems would be so included, as confirmed by the report of the Coast Guard Naval Architects Division (“NAD”) referenced below.

Second, the “new” boom was actually built in the United States and, as such, would not fall within the category of a “major component...not built in the United States (which) is added to the vessel” (46 C.F.R. § 67.177(a)), even if it were deemed to be part of “hull” or “superstructure”.

And third, steel work done in the United States, whether by removal or addition, and whether or not considered to be related to the same overall “project” as work done overseas, has not and need not (the M/V MOKIHANA decision) be considered when applying the “considerable part test” of 46 C.F.R. § 67.177(b). Again, this would be the case even if the boom were deemed to be part of “hull” or “superstructure”.

For these reasons, we find no need to further consider any of the United States Alterations in the context of this determination.

We turn now to consideration of the Mexico Alterations. You have described those alterations as consisting of items 1 through 6 (of 8 items), as follows:

- “1. Installation of a new ballast system, ballast pump machinery rooms aft, ballast tank level and pumping automation;
2. Installation of a 1000-kilowatt bow thruster and controls;
3. Fabrication and installation of 4 cargo-hold screen bulkheads;
4. Modifications of electrical generator and switchboard;
5. Lowering of current 8-foot-high hatch coamings back down to original as-constructed 15-inch-high coamings; (and)
6. Dry-docking and 5-year survey.”

Your letter estimated the lightship steelweight of the Vessel by three different methods (yielding an average of 4,805.06 long tons) and reported calculations that “the Mexico Alterations...fall within the range of 5.69 percent to 5.73 percent of the existing steelweight of the Vessel.” In addition your letter, and its attachments, reported and documented that “no single component built separate from and added to the Vessel outside of the United States will amount to more than 1.5 percent of the existing steelweight of the Vessel”.

We referred your letter and its attachments to the NAD for review and analysis and will refer to their report, attached hereto as Exhibit A, in further discussions in this letter.

Following our request for clarification and your response of August 24, 2011, it was the conclusion of the NAD that the more accurate discounted lightship steelweight which should be used for the purpose of this determination is 4,796.53 long tons.

However, it was also concluded that:

- (i) Your estimate that the Mexican Alterations would constitute between 5.69% and 5.73% of the Vessel’s discounted lightship steelweight incorrectly included certain component weights that would not be considered part of the hull or superstructure and that the actual weight, and percentage, attributed to items that would be so considered was 21.4 long tons, or 0.45%. Moreover, as the total steel weight percentage of such items is, itself, well below the applicable 1.5% threshold for classification of an item as a “major component”, it is also the case that no single item or component of steel added would approach, let alone exceed, that threshold.

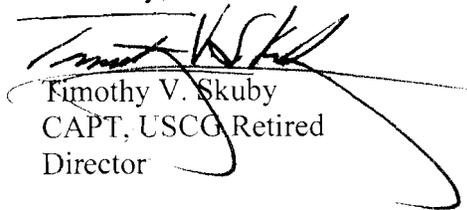
(ii) However, after further clarification in response to our request, the amount of removed steel from the hatch coamings presented a different picture than originally appeared to be the case. As those hatch coamings are subject to load line regulations they are considered to be part of the hull or superstructure, for purposes of this determination. Moreover, following review of the clarification requested, the total weight of the removed steel from those 14 hatch coamings was estimated to be 95.43 long tons, or 2.0%.

In applying the “considerable part” test of 46 C.F.R. § 67.177 it has been the well-established practice of the Coast Guard to count the greater of steel added or steel removed. In this case the steel removed, at 2.0%, constitutes the greater of the two and is well below the regulatory limit of 7.5%. In fact, in this case even the aggregation of steel removed and steel added would fall well below that limit.

Consequently, for all the reasons set forth herein, we conclude that neither the United States Alterations, nor the Mexico Alterations, nor even the two considered together, will result in the MARY TURNER being deemed to have been rebuilt foreign and such alterations will not jeopardize the Vessel’s eligibility for a coastwise endorsement under 46 U.S.C. § 12112.

We ask you to please confirm to this office in writing following completion of the work that the work done to the Vessel is as you have described it in your submissions in support of this determination.

Sincerely,



Timothy V. Skuby
CAPT, USCG Retired
Director

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant (CG-5212)
United States Coast Guard

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October 24, 2011

MEMORANDUM

From: *C. V. Kaur* For
Jaideep SIRKAR
Chief, Naval Architecture Division (CG-5212)

Reply to: CG-5212
Attn of: (202) 372-1366

To: National Vessel Documentation Center

Subj: **Hopper barge *Mary Turner* – Preliminary Foreign Re-Build Determination request**

Refs: (a) D. Cameron (NVDC) e-mail of 11 Aug 2011, to J. Sirkar (CG-5212)
(b) Seward & Kissel letter (with 5 Bay Engineering drawings) of 4 Aug 2011, to NVDC
(c) C. Cook (Seward & Kissel) e-mail (w/encl) of 24 Aug 2011, to D. Cameron (NVDC)
(d) T. Jordan (CG-5212) e-mail of 7 Sept 2011, to D. Cameron (NVDC)
(e) BEI drwg 833-01 (Rev G), "Weight Estimate & Distribution,"

1) Reference (a) forwarded reference (b) for our review and comment regarding certain planned modifications for the hopper barge *Mary Turner* (ex-*Erol Bekker*, O.N. 646730). The owner intends to accomplish some of the modifications in a Mexican shipyard and other work in an American yard, and is requesting a preliminary foreign re-build determination to ensure that the vessel will retain its coastwise endorsement.

Description of vessel and scope of work

2) The subject vessel is an existing U.S.-built 610 ft x 78 ft x 51 ft hopper barge. The major work planned for the Mexican shipyard is: installation of a ballast system (including pump room & access trunk, ballast tanks), installation of a bow thruster (including thruster tunnel & access trunk), installation of four bulkheads in the cargo hold, modifications to the 14 cargo hatch coamings, and modifications to the electrical generator and switchboard. The major work planned for a U.S. shipyard is removal of the existing unloading boom and machinery, and replacement with a loading boom and machinery from another vessel (the "Frantz" boom).

Basis of our review per 46 CFR 67.3

3) With respect to the definitions of "hull" and "superstructure" in 46 CFR 67.3, and consistent with our previous reviews of this nature:

- a) We consider any door or hatch cover to be an essential part of the "floatation envelope" of the hull if load line regulations require it to be weathertight or watertight. In general, this includes weather-exposed doors and hatches on the lower tiers of a superstructure or deckhouse (but excludes such doors and hatch covers on higher tiers, and interior doors);
- b) We consider "superstructure" to include deckhouses and pilothouses, but not breakwaters, crane or mast houses, or ventilation or exhaust trunks (these being "outfitting" components); and
- c) We consider any component to be part of the vessel's "structural integrity" if it is essential to the overall longitudinal/transverse strength of the hull, superstructure, or deckhouse. In general, this includes hull plating, exterior superstructure and deckhouse plating (and associated stiffeners), decks, and internal load-bearing bulkheads and columns (but excludes non-load-bearing bulkheads that essentially only serve to partition interior spaces). This also includes load-bearing foundations and reinforcements of hull, deck, or superstructure in way of cargo handling or stowage arrangements.

4) With respect to the subject vessel, there are some new arrangements that we have not encountered in previous reviews. Our determinations are:

- a) The cargo hatch coamings are subject to load line regulations, and therefore form part of the weathertight envelope of the vessel as discussed in paragraph 3(a). Accordingly, steel modifications to hatch coamings (additions or removals) are considered to be hull steel;
- b) The Main Deck companionway & access hatch to the new aft pump room stair trunk protect an opening in the freeboard deck, as does the new forward access hatch to the bow thruster stair trunk. Load line regulations require these to be weathertight; therefore, they form part of the weathertight envelope of the vessel as discussed in paragraph 3(a) and therefore their steel weights are considered to be hull steel.

However, the bulkheads forming the new interior stairway trunks are non-structural partitions and are therefore not considered to be hull steel;

- c) The bow thruster tunnel and ballast system seachests are part of the underwater hull floatation envelope, so they are considered to be hull steel; and
- d) The new ballast tanks will be created by inserting steel plates between web frames and keelsons to close off open areas, forming watertight boundaries. However, these are internal bulkheads and do not form part of the watertight envelope of the hull, nor do they contribute to its structural integrity. Thus, these closure plates are functionally equivalent to internal non-load-bearing partitions as discussed in paragraph 3(c), and therefore are not considered to be hull steel; and
- e) The current 480-foot-long cargo hold will be subdivided into shorter cargo holds by the installation of four bulkheads. These will be formed by closing off the open area of arch frames 23, 35, 47 and 59. However, these new bulkheads are not part of the floatation envelope of the hull, nor do they contribute to its structural integrity. Thus, despite their size, the bulkheads are functionally equivalent to internal non-load-bearing partitions as discussed in paragraph 3(c), and therefore are not considered to be hull steel.

Review and comments

5) *Discounted steel weight:* There is no builder's estimate of the original steel weight of the hull. Therefore, Bay Engineering initially developed three independent weight estimates, using different methodologies described in reference (b). Reference (c) submitted the final proposed weight estimate, derived by subtracting 533.13 Ltons of non-hull steel components (conveyor system, machinery & electrical equipment, anchor system, etc) from the vessel's light ship displacement of 5,329.66 Ltons, to arrive at a discounted hull steel weight of 4,796.53 Ltons. In the absence of a more-detailed weight record, we find this to be a reasonable approach.

6) *Hatch coaming modifications:* At some time in the vessel's past, the fourteen cargo hatch coamings (approx 46.7 ft wide by 29.7 ft long, of 3/8 inch plating) were extended from their original 15-inch height to 8 feet high. It is now planned that the coamings will be cut back down to their original height in the Mexican shipyard, a cut-down of 6.75 feet. Bay Engineering's weight estimate originally estimated the removed coaming weight to be 3.2 Ltons per hatchway, for a total of 45.3 Ltons. However, we could not confirm those numbers and believed that they substantially underestimated the coaming weight; therefore, we requested more information per reference (d). Reference (e) subsequently submitted a revised coaming estimate of 6.82 Ltons per hatch. We believe the revised estimate is now sufficiently close enough, and the overall weight changes are well below the 7.5% weight threshold, that further refinement is not necessary. The total estimated weight for the 14 hatch coamings is 95.43 Ltons; as discussed in paragraph 4(a), this removed weight is considered hull steel.

7) *Bow thruster:* A bow thruster system will be installed, comprising of a thruster, thruster tunnel, thruster compartment, access trunk & stairs, and an access hatch on the Main Deck. As discussed in

paragraphs 4(b) & (c), the access hatch (0.7 Ltons) and thruster tunnel (14.4 Ltons) are considered hull steel, but the bulkheads which form the access trunk are not.

8) *Ballast system*: A ballast system will be installed, comprising of a pump room, access trunk & stairs, Main Deck companionway & access hatch, seachests, bilge & ballast pumps, piping, motor controllers, power cables, etc. Ballast tanks (P/S) will be created by inserting closure plates to close off open areas between certain web frames and double bottom keelsons. As discussed in paragraphs 4(b) & (c), the companionway & access hatch (1.9 Ltons) and seachests (two at 2.2 Ltons ea) are considered hull steel, but the bulkheads which form the access trunk bulkheads and ballast tank closure plates are not.

9) *Cargo bulkheads*: Four new cargo hold bulkheads will be retrofitted to arch frames 23, 35, 47 and 59, closing them off completely. The weight estimate per bulkhead is 35.47 Ltons. However, these bulkheads only serve to divide the original cargo hold into five shorter holds, they do not contribute to the structural integrity of the arch frames or hull. Therefore, as discussed in paragraph 4(e), they are not considered hull steel weight.

10) *Loading boom*: All work associated with removing the existing loading boom, and installation of the replacement boom (the "Frantz" boom), will be accomplished in an American shipyard. The loading boom and associated electrical/mechanical systems are considered part of the cargo handling system, and therefore not considered hull steel weight.

11) *Other modifications*: All other work planned for the Mexican shipyard pertains to equipment installations and non-structural outfitting, and therefore is not included in hull steel weight.

12) *Other comments*: Paragraph (ii) of reference (a) directed our attention to the submitter's estimate that the Mexican work would constitute between 5.69% and 5.73% of the vessel's steel weight. Upon review, we find that their estimate includes component weights that are not part of the hull steel weight.¹ Consequently, they have overestimated the actual steel weight values.

Summary

13) *Discounted steel weight*: The pre-modification discounted steel weight is acceptable at 4,796.53 Ltons. Accordingly, the lower 7½% "rebuilt" weight threshold is 359.74 Ltons, and the 1½% "major component" weight threshold is 71.95 Ltons.

14) *Added hull steel weight*: The total weight of hull steel components to be added in Mexico is 21.4 Ltons (0.45% of discounted steel weight).

15) *Removed hull steel weight*: The total weight of hull steel components to be removed in Mexico is 95.4 Ltons (2.0% of discounted steel weight).

16) *Major hull component*: No single hull component exceeds the 1½% threshold of 71.95 Ltons.

17) If you have any questions, please contact me or Mr. Thomas JORDAN at the above.

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¹ Although those weights are necessary for determining the cumulative weight change for purposes of vessel stability, they are not applicable for purposes of hull steel weight and a foreign re-build determination.