



JAN 18 2012
16711

HMS Bounty Organization, LLC
Attn: Ms. Tracie Simonin
20 Cedar Lane
Setauket NY 11733

Dear Ms. Simonin:

I have received your appeal concerning the Vessel Inspection Requirements (CG-835) issued to the BOUNTY on July 15, 2011. Your appeal contests, "...the decision of USCG Activities Europe to consider the changes that were made in 2006 as a major alteration per NVIC 11-93, CH 3 and the action taken on December 13, 2011, in San Juan, Puerto Rico of stripping the vessel of her Certificate of Documentation and Tonnage Certificate." Your appeal is denied.

The alterations to the BOUNTY in 2006 were a substantial alteration from the vessel dimensions when previously admeasured in 1990 by the American Bureau of Shipping (ABS). This was confirmed by ABS in their tonnage survey conducted in Poland on July 6, 2011. As defined in Navigation and Vessel Inspection Circular 11-93, CH 3, which you reference, a vessel is considered to have been *substantially altered* if it undergoes alterations or modifications which result in an increase or decrease of more than 5% in the regulatory measurement system gross tonnage. The closing of the middle line opening above the shelter deck changed the vessel's gross regulatory tonnage (GRT) based on the examination and review by ABS. This means the volume of the shelter deck must now be included in GRT. Estimates of the inclusion of the shelter deck means the GRT of the vessel likely increased from 226 gross tons by as much as 146 tons, a change of 64%.

Your appeal also challenges the requirement that the vessel surrender the Certificate of Documentation and Tonnage Certificates. Following the determination by USCG and ABS that a substantial alteration had taken place, the onboard documentation particulars are invalid. Vessel certificates must accurately identify tonnage and dates of alteration for the proper application of law and international conventions to which the US is signatory. In this, we are enforcing the requirements of Title 46 CFR Part 69.19(c). Out of regard for the difficulties in complying with the requirements based on the revised tonnage, we withheld enforcement to allow the vessel to return to the United States and surrender the certificates on arrival.

You may appeal this decision to the Atlantic Area Commander, Chief of Marine Safety Division. Procedures are explained in full in 46 CFR 1.03. Please note the thirty day limit to file an appeal. You may contact my Chief of Vessel Inspections, LCDR Michael DeLury +31 (10) 442-4458 or Michael.E.Delury@uscg.mil if you have any questions or concerns.

Sincerely,

A black rectangular redaction box covering the signature of J. S. Kenyon.

J. S. KENYON
Officer in Charge of Marine Inspections



16700
24 Jan 2012

MEMORANDUM

From: M.E. DeLury
CG ACTEUR (CID)

To: CG LANTAREA (LANT-54)

Subj: APPEAL FILED BY M/V BOUNTY (ON 960956)

Ref: (a) MISLE Activity 4014706
(b) MISLE Activity 2650713
(c) NVIC 11-93, CH 3

1. I am forwarding our review and response to the appeal filed by HMS Bounty Organization, LLC, on 16 Dec 2011, recommending denial of the appeal.
2. The report of our examination, consultation and conclusions in originally requiring a tonnage confirmation survey, the results of the survey and subsequent re-measurement are documented in reference (a).
3. In 2006, the BOUNTY entered a major restoration and shipyard period where the contemplated goal was, "to renew all frames, planking, electrical, and engines", as was documented by the attending marine inspectors in reference (b). During this period, the operator modified the vessel arrangements and internal spaces including alterations that closed a tonnage opening over the shelter deck. There was no consultation with the tonnage authority regarding these changes as required by 46 CFR 69.19(a). The resulting alterations to the BOUNTY in 2006 are a *substantial alteration* from the vessel dimensions compared to when previously admeasured in 1990 by the American Bureau of Shipping (ABS). This was confirmed by ABS in their tonnage confirmation survey conducted in Poland on July 6th 2011. As defined in reference (c), a vessel is considered to have been *substantially altered* if it undergoes alterations or modifications which result in an increase or decrease of more than 5% of the gross tonnage measured under either the international or domestic regulatory measurement systems. The closing of the tonnage opening above the shelter deck changed the vessel's gross regulatory tonnage (GRT) based on the examination and review by ABS. Estimates of the inclusion of the shelter deck in tonnage meant the GRT of the vessel likely increased from 226 gross tons by as much as 146 tons—the amount previously excluded by means of the opening, and resulting in a change of 64%.
4. I further recommend denial of the re-instatement of 'grandfathering' to gross regulatory tonnage (once obtained) for application of international conventions when on a foreign voyage. The loss of 'grandfathering' will have little impact unless vessel embarks on a foreign voyage. This would require some additional equipment to comply with provisions of SOLAS with regard to communication and navigation safety equipment, as well as some MARPOL requirements under Annex I and VI (noting the engines appear to be compliant). I do not consider these minimal additions to be a serious hardship given the voluntary nature of the foreign voyages they would undertake. It is our understanding that these foreign voyages are made to appear in 'tall ship' events (for hire) and to operate as an attraction vessel while enroute these events.

5. For further consideration, I note in the appeal that the operator has referenced the phrase, "wooden sailing ship of primitive build". They mention this following consultation with other marine inspection offices with the intent to avoid the full impact of the international conventions. In the absence of prescriptive guidance concerning this exemption, my opinion is that this vessel, equipped with 2 modern marine propulsion engines powering 2 propeller shafts, 2 ship's service generators, and hotel services is not eligible for this exemption.

6. Our initial contact in 2011 with the vessel was initiated by United Kingdom Port State Control (PSC) authorities who correctly pointed out several shortfalls in compliance to international requirements. In the end, they accepted our intervention as the Flag Administration in lieu of exercising control. Failure to make the vessel compliant should she sail foreign, will present a PSC risk going forward. It is also worth noting that in 2008, and again in 2011, the operator of the BOUNTY advertised for the carriage of passengers for hire on international voyages on the companies website. Vessel does not have an assigned loadline or required certificate and has always maintained that her operations are not for hire.

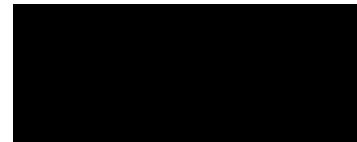
7. ACTEUR is ready to support any information requests related to this activity. If you need additional information, please contact LCDR Michael DeLury at +31 10 442 4458.

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Enclosures: (1) BOUNTY Appeal, dated 16 Dec 2011
(2) ACTEUR Letter, dated 16 Jan 2012



16717/P002131/pde
Serial C3-1201164
March 6, 2012



From: P. A. KEFFLER, CDR
Acting
CG MSC

To: CG-52

Subj: BOUNTY (ON 960956); APPEAL ON TONNAGE GRANDFATHERING

1. This memorandum provides the MSC's recommended action on the appeal of LANTAREA's decision to deny the reinstatement of tonnage grandfathering privileges for the subject vessel. This appeal was submitted to CG-52 by the HMS Bounty Organization's letter dated February 17, 2012. Although the MSC assisted both ACTEUR and LANTAREA staffs in addressing the tonnage violation on this vessel, the MSC was not involved in the LANTAREA denial decision.

2. The subject vessel was built in 1960, and was altered in 1990, with the modifications including installation of two tonnage reduction features called "middle line openings". The vessel was assigned a GRT of 266 and a GT ITC of 409 at that time. As such, the vessel qualified for tonnage grandfathering provisions under Article 3(2)(d) of the 1969 Tonnage Measurement Convention and associated IMO interim schemes. These allow certain SOLAS and MARPOL requirements to be applied using GRT tonnage, provided the vessel does not "undergo alterations or modifications which the Administration deems to be a substantial alteration in [the] existing gross tonnage". In 2006, the vessel underwent additional alterations, invalidating one of the openings by the fitting of a permanent companion and stairway. The alterations were not reported, and the violation was identified by ACTEUR last summer, precipitating the owner's request to allow grandfathering privileges to be reinstated following restoration to the vessel's 1990 configuration.

3. We recommend that the owner's request be approved, which will require separate MSC action to authorize appropriate tonnage certificate remarks reflecting this approval. The purpose of the Convention's grandfathering provisions was to avoid unnecessary regulatory burden on "existing" vessels resulting from the often-higher GT ITC tonnages. With this in mind, if an altered vessel is restored to its pre-alteration configuration, and the previous tonnages are effectively revalidated, it is unclear why different tonnage-based international requirements should be applied. Further, governing requirements (e.g., the Convention, the tonnage statute and regulations, and Coast Guard interpretive documents) do not explicitly address the reinstatement of grandfathering privileges following such a restoration. Accordingly, the MSC

Subj: BOUNTY (ON 960956); APPEAL ON TONNAGE GRANDFATHERING

considers that a country's Administration (in this case the Coast Guard) has the authority to reinstate tonnage grandfathering privileges in these circumstances, and has granted similar authorizations in response to four previous requests, with the first granted in 1997.

4. To assist you in responding to this appeal, we have prepared a draft reply that is consistent with our recommendation, and attached it as an enclosure to this memorandum.

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Encl: Draft CG-52 Reply to BOUNTY Appeal



16717
March 09, 2012

Tracie Simonin
HMS Bounty Organization LLC
20 Cedar Lane
Setauket, NY 11733

Dear Ms. Simonin:

This is in response to your letter dated February 17, 2012, appealing a decision by Coast Guard Atlantic Area (LANT-54) to deny your request to reinstate tonnage grandfathering privileges for the sailing vessel BOUNTY (ON 960956) after restoring the vessel to its 1990 configuration. Per the discussion that follows, your request is approved.

Built in 1960, the BOUNTY underwent alterations in 1990 that included the installation of two tonnage reduction features called "middle line openings." However, the vessel was additionally altered in 2006, rendering one of the middle line openings invalid. You state that you were unaware of the consequences of the 2006 alterations, identified by Coast Guard Activities Europe when the vessel engaged on international voyages last summer. You are seeking to have grandfathering privileges reinstated once the BOUNTY is restored to its 1990 configuration, when the BOUNTY qualified for these privileges.

The tonnage grandfathering provisions at issue stem from Article 3(2)(d) of the 1969 Tonnage Measurement (TM) Convention, and were developed to facilitate the transition from older national tonnage measurement systems to the system of the TM Convention. Their specific purpose is to avoid retroactive application of potentially burdensome new requirements to older vessels solely as a result of measurement under the TM Convention system, which in some cases yields higher tonnages. Under these grandfathering provisions, and those of associated International Maritime Organization interim schemes, relevant requirements of the SOLAS and MARPOL Conventions may be applied to qualifying older vessels that have not undergone alterations or modifications which the flag State deems to be a substantial variation in the vessel's existing gross tonnage. Neither the TM Convention, nor the U.S. tonnage measurement statute and regulations, explicitly address the question of reinstating tonnage grandfathering privileges following a return to a vessel's pre-altered configuration.

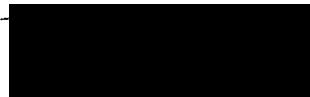
After reviewing your appeal, we consider that a reinstatement of tonnage grandfathering privileges is appropriate for the BOUNTY in accordance with your request. By copy of this letter, the Marine Safety Center is directed to provide the necessary tonnage recertification

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March 09 2012

authorization to the responsible measurement organization once the BOUNTY is restored to its 1990 configuration.

Should you have any questions regarding the tonnage recertification of the BOUNTY or any matters related to the application and interpretation of U.S. tonnage measurement requirements, please contact Mr. Brian Ellis of the Marine Safety Center's Tonnage Division (MSC-4) staff at 202 475-5636.

Sincerely,

A black rectangular redaction box covering the signature of J. G. Lantz.

J. G. Lantz
Director
Commercial Regulations and Standards
U.S. Coast Guard, COMDT (CG-52)

Copy: CG MSC
CG-543 ✓
CG LANT-54
CG ACTEUR