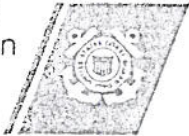


U.S. Department
of Transportation
United States
Coast Guard



Commandant
United States Coast Guard

Washington, D.C. 20593-0001
Staff Symbol: G-MVI-2
Phone: (202) 267-1181

JUN 20 1990

16710/Fish Processing
Vessels
G-MVI 14/90

From: Commandant
To : Distribution

Subj: FISH PROCESSING VESSELS: DEFINITION AND LOAD LINES

Ref: (a) Title 46 United States Code, Section 2101 (11b) [46 U.S.C. §2101(11b)]

1. PURPOSE. To help each Officer-in-Charge, Marine Inspection (OCMI) decide if a fishing vessel may also be a fish processing vessel which requires a load line. Within the fishing industry there is a question as to what is and is not a fish processing vessel. This letter contains discussion and guidance to clarify the definition of a fish processing vessel found in reference (a).
2. DISCUSSION. Certain fishing industry vessels are required to have a load line. In accordance with 46 U.S.C. §5102, fishing vessels ("commercially engaged in the catching, taking, or harvesting of fish") are not required to have load lines. A fish processing vessel is required to have a load line unless that vessel is:
 - a. 5000 gross tons or less, constructed prior to 16 August 1974, and not on a foreign voyage; or
 - b. 5000 gross tons or less, converted for use as a fish processing vessel prior to 1 January 1983, and not on a foreign voyage.
3. The definition of a fish processing vessel was established as a part of the Commercial Fishing Industry Vessel Act of 1984 and was codified in reference (a). A fish processing vessel was defined as "a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling."
4. A section-by-section analysis of the Commercial Fishing Industry Vessel Act of 1984 was printed in the Congressional Record [130 Cong. Rec. H7230 (daily ed. June 27, 1984)]. This analysis serves as a legal and administrative interpretation of the Act. An excerpt from the Congressional Record states:

These definitions have been carefully drafted so that "fish processing vessel" is meant to include only those vessels on which extensive processing work is done to prepare either fish or fish products for marketing and not vessels on which incidental or minimal processing takes place as a necessary part of the fishing activity to preserve the quality of the fish.

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5. The Coast Guard is concerned that there may be a significant lack of compliance with the load line requirements on fishing vessels that may also be fish processing vessels. Although the Coast Guard has already begun a number of enforcement actions, the loss of the ALEUTIAN ENTERPRISE heightened everyone's awareness of the potential problems. Owner/Operators of fishing vessels must realize that certain activities conducted aboard their vessels may make their vessels fish processing vessels within the legal definition found in reference (a).
6. The purpose of the Load Line Act is to ensure safe loading of vessels in terms of adequate strength, stability and reserve freeboard for the protection of the crew and property. This encompasses examination of a vessel's structure for carriage of the intended cargoes, evaluation of a vessel's stability while in each condition of loading and operation, and requiring adequate closures to maintain the watertight integrity of the vessel at sea. Factory workers who operate fish processing equipment on board factory trawlers should be afforded, as should the crew, the protection of a safely loaded vessel through application of the Load Line Act.
7. To mitigate the impact on the industry, the Load Line Act specifically provided a phase-in period for requiring load lines on fish processing vessels by exempting fish processing vessels constructed prior to 16 August 1974, or converted for use as fish processing vessels before 1 January 1983.
8. The exclusion of the itemized activities in the fish processing vessel definition was intended to insure that vessels on which minimal preparation takes place (as a necessary part of the fishing activity for the purpose of preserving the quality of the fish) would not be considered to be fish processing vessels. The legislative history of the Commercial Fishing Vessel Safety Act of 1984 makes it clear that in the fishing industry any activity beyond catching and preserving the catch short of freezing, is considered processing. However, fishing vessel owners were concerned that the definition of a fish processing vessel in 46 U.S.C. §2101(11b) would include their vessels that catch and process. Congress assuaged the concerns of fishing vessel owners by excluding certain specific preparations conducted aboard vessels that catch/harvest (i.e., fishing vessels).
9. This definition is rather specific as to what operation does or does not make a fishing vessel a fish processing vessel. The strict interpretation of the definition of a fish processing vessel found in 46 U.S.C. §2101(11b) should be applied. The Coast Guard has addressed three issues regarding fish preparation aboard fishing vessels.
 - a. One issue centered on whether a particular freezing process made the fishing vessel a fish processing vessel. Requested was "...an opinion as to whether a "fishing vessel" as defined in 46 U.S.C. §2101(11a) includes a vessel that catches, decapitates, eviscerates, and then washes fish and then places them in 20 kilo waxed cartons which are topped off with fresh water and frozen. The frozen fish are then sold for further processing. They are not sold retail in their frozen form." The Coast Guard Chief Counsel rendered an opinion on 9 MAY 1985. The Chief Counsel said the operation described DOES NOT make the vessel a fish processing vessel.

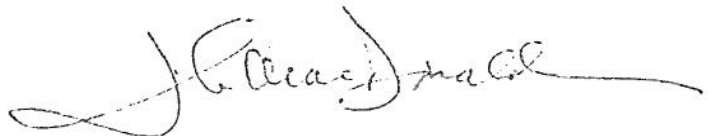
Subj: FISH PROCESSING VESSELS: DEFINITION AND LOAD LINES

b. The second issue was addressed in an answer to a specific question from Jensen Maritime Consultants Inc. of Seattle, WA. Jensen Marine described a process aboard a fishing vessel and asked if that vessel would require a load line. The operation consisted of skinning and filleting the fish, boxing and then freezing the fish fillets for transport ashore where the fillets are breaded and cut into fish sticks and repackaged. The G-MVI response letter stated that this operation DOES make the vessel a fish processing vessel.

c. Most recently a third issue was addressed in response to an appeal from the load line requirements. The owners of the vessel U.S. ENTERPRISE argued that a fishing vessel, even if it was also a fish processing vessel, was nevertheless exempt from 46 U.S.C. Chapter 51 as a fishing vessel. G-MVI denied the appeal on 11 January 1989. Extensive rather than incidental processing takes place on U.S. ENTERPRISE. Thus, notwithstanding that the vessel may also catch fish, the determination that U.S. ENTERPRISE IS a fish processing vessel rather than a fishing vessel is fully consistent with the Congressional intent in enacting the definitions, with the consequent application of the load line requirements in 46 U.S.C. Chapter 51. Additionally, the marine safety laws are intended to be interpreted broadly to best accomplish their purpose, safety (i.e., exemptions should be narrowly construed). See Western Pioneer, Inc. v. United States, 709 F. 2d 1331, 1338 (9th Cir. 1983); Pacific Shrimp Co. v. United States, 375 F. Supp. 1036 (W.D. WA 1974); United States v. Blue Water Marine Industries, Inc., 661 F. 2nd 793 (9th Cir. 1981). The owners of the U.S. ENTERPRISE were directed to apply for a load line for the vessel immediately if they wished to continue to operate the vessel as a fish processing vessel.

10. SUMMARY: The definition is very specific. Strict interpretations of the definition should be applied. Any fishing vessel that prepares its or another vessel's catch in a manner that exceeds gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling is considered a fish processing vessel. Any exceptions shall be evaluated and addressed by OCMIs on a case-by-case basis. An exception might include some minimal preparation, not listed in the law that is part of one of the preparation processes listed in 46 U.S.C. §2101(11b).

11. ACTION. OCMIs shall evaluate the operations of suspect vessels that do, not already have load lines. If it is determined that a fishing vessel is conducting the preparation of fish other than the excepted preparations listed in 46 U.S.C. §2101(11b) and is not exempt from the load line requirements because of its date of build or conversion, enforcement action shall be initiated.



JAMES M. MAC DONALD
By direction

Distribution:

All District (m) Offices
CG Marine Safety School
CG Marine Safety Center



Subject: ENFORCEMENT OF LOAD LINE REQUIREMENTS ON FISH
PROCESSING VESSELS

Date: 12 JUN 1990
16711/6

From: Chief, Merchant Vessel Inspection and
Documentation Division

Reply to G-MVI-1: 7-1464
Attn of LT SHARPE/LT FERRARO

To: Chief, Operational Law Enforcement Division

1. Following the loss of the fish processing vessel ALEUTIAN ENTERPRISE, problems associated with the enforcement of the load line requirements for fish processing vessels were discovered. In an effort to clarify the applicability of the load line requirements found in Title 46 United States Code (46 USC), Chapter 51, as they pertain to fish processing vessels, this memorandum is provided.
2. In accordance with 46 USC Section 5102, all fish processing vessels are required to have a load line unless the vessel in question is:
 - a. 5000 gross tons or less, constructed prior to 16 August 1974, and not on a foreign voyage; or
 - b. 5000 gross tons or less, converted for use as a fish processing vessel prior to 1 January 1983, and not on a foreign voyage.
3. A fish processing vessel, as defined by 46 USC, Section 2101, is "a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling". It should be noted that some fish processing vessels often engage in normal fishing operations (referred to as fisher/processors). This does not exempt them from the load line requirements. When a boarding party boards a vessel, the initial impression might be that the vessel is simply engaged in fishing, when in fact, the vessel might also be "processing" their catch in a manner not included in the definition above. If there is evidence of processing, i.e., processing equipment, fish that is filleted or otherwise "processed" outside the allowable limits, the vessel should be considered a fish processing vessel and load line requirements applied. A current Load Line Certificate and a proper load line mark on the hull are required.
4. These guidelines and the more detailed guidelines in enclosure (2) should assist the boarding teams that encounter fishing and fish processing vessels during normal fisheries law enforcement operations. If there are any questions regarding this matter, please contact me or my staff for assistance.

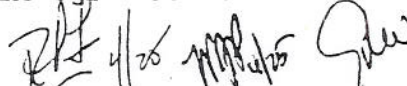

JAMES M. MACDONALD

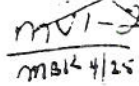
Encl: (1) Enforcement Flow Chart
(2) Commandant (G-MVI) Policy Letter 14-90 dated

Copy: CCGD13 (m)
CCGD17 (m)

FERRARO:rjf 90APR20 W3472v

MVI-1/4377


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