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DEPT. OF TRANSPORTATION

APR 13 11:51 AM '01

April 5, 2001

Docket of Management Facility
USCG-1998-3798
U.S. Department of Transportation, Room PL-401
400 Seventh Street, S.W.
Washington, D.C. 20590-0001

Re: The Notice of proposed rulemaking-numbering of undocumented barges
Federal Register volume 66, No. 8, Thursday January 11,2001
Docket Number USCG-1998-3798 - 16

DEPT. OF TRANSPORTATION
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To Whom It May Concern:

The intent of this letter is to make comment on the above captioned Notice of Proposed Rulemaking for the numbering of undocumented barges.

I completely support the desire of the people of the United States to clean up the nations waterways. I understand and agree that something must be done to identify abandoned barges and the people responsible for those vessels. I agree that some type of numbering system is a superb idea and would like to see one put in place as soon as possible. I have taken note of several issues, which will have to be resolved, or they will prevent the development of a system.

In the Notice of Proposed Rulemaking, the purpose of the numbering system is to "provide" an identification of the parties responsible and liable for the illegal abandonment of a barge. When you require a vessel to have an identifying number, you are also requiring that ownership be declared. It is vital to the issue that when you declare the ownership, the Merchant Marine Act of 1920 (Jones Act) requires you to prove ownership back to the building of the vessel, and further, the facts, (including nationality) of build. At this conjecture, you have declared the vessels eligibility for employment in a coastwise trade. If you are not able to demonstrate U.S. ownership and U.S. build, you cannot prove eligibility for coastwise trade. The vessel becomes, in effect, an "Orphan Barge of Unknown Parentage". Without coastwise eligibility, the orphan barge can only be sold foreign or for scrap.

Noted issues are:

#1 - How will the owner of an undocumented barge be allowed to demonstrate ownership? This will be necessary, because the Coast Guard will be establishing a legal form of identification of ownership. If proof of ownership is not required by the Coast Guard, it is possible that someone could go to the Coast Guard with a barge they do not own, claim that the vessel is theirs, obtain a Certificate Number from the Coast Guard, and then become the legal owner of record for that barge.

#2 - If a barge has been previously documented, the tonnage is a simple matter of looking at information contained in PSIX for that barges Official Number. In cases of barges, which have

never been documented, and therefore, have not been admeasured, how is the tonnage to be determined? Even a vessel, which will not be required to carry a number, will have to be admeasured in order to prove it does not meet the criteria of 100 gross tons. The cost of admeasurement through ABS is \$840.00 for a vessel under 1000 gross tons, and goes up from that point on. If the Coast Guard allows a form of simplified measurement, how will they certify that the dimensions and tonnage claimed accurately reflects the actual dimensions and tonnage of the barge? Knowing that many ports base docking fees on a vessels tonnage, it will benefit the owner to reduce their tonnage. Additionally, the owner who does not want to number their barge may be likely to understate their tonnage in order to avoid being compelled to do so.

#3 - In a situation where a barge has been previously documented, and the documentation has been dropped. Records of sale transactions do not exist, and the former owners are no longer available. What problems will be encountered when several changes of ownership have taken place since the documentation was dropped? How does the Coast Guard propose to handle a situation where a barge was previously owned by a company which went out of business and the operating personnel are now scattered all over the place or are deceased? How does the Coast Guard propose to handle a situation where a barge was built by a back yard operation and has never had a paper trail?

#4 - In the case of a barge, which has no record of ownership or records of being built, how would you prove coastwise eligibility? The following three citations in regulation are applicable to the issue:

19CFR~4.80 Vessels entitled to Engage in Coastwise Trade, states, (in part):

- (a) No vessel shall transport, either directly or by way of a foreign port, any passenger or merchandise between points in the United States embraced within the coastwise laws, including points within a harbor, or merchandise for any part of the transportation between such points, unless it is:
 - (a1) Owned by a citizen and is so documented under the laws of the United States as to permit it to engage in coastwise trade;
 - (a2) Owned by a citizen, is exempt from documentation, and is entitled to or, except for it's tonnage, would be entitled to be documented with a coastwise license or, where appropriate, a Great Lakes license endorsement.

46CFR~67.19 Coastwise or Great Lakes Endorsement, states, in part:

- (a) A coastwise endorsement entitles a vessel to employment in unrestricted coastwise trade, dredging, towing, and any other employment for which a registry, fishery, or Great Lakes endorsement is not required.
- (b) If eligible for documentation and not restricted from coastwise or Great Lakes trade by paragraph (d) or (e) of this section, the following vessels are eligible for a coastwise or Great Lakes endorsement or both:
- (c) (c1) **Vessels built in the United States (67.97)**
- (d) A vessel otherwise eligible for a coastwise or Great Lakes endorsement under paragraph © of this section permanently loses that eligibility if:

- (d1) It is thereafter sold in whole or part to an owner:
- (d)(1)(i) Not a citizen as defined in subpart C of this part.

46 CFR ~ 67.97, United States built, states,

To be considered built in the United States a vessel must meet both of the following criteria:

- (a) All major components of its hull and superstructure are fabricated in the United States; and
- (b) The vessel is assembled entirely in the United States.

What form of evidence would the Coast Guard accept to certify that a vessel is U.S. built and has been owned since it was built?

I foresee that marine construction contractors will be heavily affected by this system. We note the small "mom and pop" operations could be put out of business if they were not able to prove ownership and coastwise eligibility. It is my view that this numbering system will require a change to the Jones Act, and that change could have an undesirable impact on the U.S. Marine Industry, as a whole.

It appears that the options to the problem of orphan barges are:

- (a) Change the Jones Act to exempt barges operating in inland waters;
- (b) Allow a one time exemption from the requirements of the Jones Act for each barge;
- (c) Accept written affidavits as proof of ownership and build
- (d) Require new vessels to comply with the regulations while grandfathering existing barges;
- (e) Hold tight to the precedent set in 46 CFR 67 for proof of ownership and build.

There are problems with the above noted solution options. For options (a) through (c), any barge including foreign built ones, could be brought into coastwise trade in the United States. Though it would work in the long run, option (d) would eliminate the systems ability to identify barges in the immediate future. Option (e) would heavily impact owners unable to prove ownership or U.S. build.

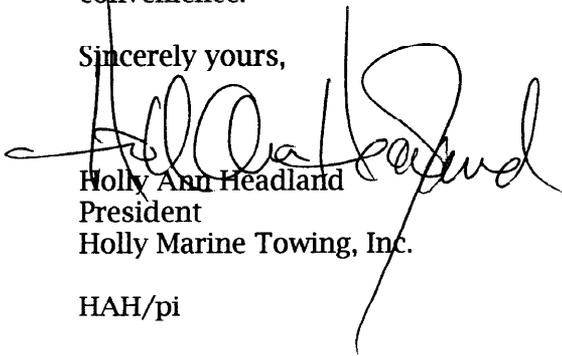
Even if a reasonable solution to this dilemma is found, barges which have already been abandoned along the nations waterways will remain abandoned. Only operators who both have a need for their barges, and can afford to maintain them, will be motivated to come forward and declare their ownership and responsibility for their barges. It is just as true that owners who have barges which are excess to their needs, and are too expensive to properly clean for the purpose of scrapping, will hurry to abandon those barges while they perceive that they may still get away with it.

As stated at the beginning of this letter, the numbering system is a good idea, one that can significantly help in protecting the environment. We do not believe that it will be as easy to

institute as it looks. We foresee that putting such a plan into effect (the number system) will be, in some cases, painful, and that it could be subject to abuse. We do, also, believe that it can be of great benefit, and strongly support such a system.

Should you have any questions, or if I can be of further assistance, please call at your convenience.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Holly Ann Headland". The signature is fluid and cursive, with a large loop at the end. It is positioned to the right of the typed name and title.

Holly Ann Headland
President
Holly Marine Towing, Inc.

HAH/pi