Tidewater

LEGAL DEPARTMENT

June 24, 2004

Docket Management Facility
U.S. Department of Transportation
400 Seventh Street S.W.
Washington, D.C. 20590-0001

Re: *Comments to Notice of Interpretation, U.S.C.G. Docket Number USCG-2004-17350*

Gentlemen:

Tidewater Inc., through its various subsidiaries, owns and operates the world's largest fleet of offshore oilfield support vessels, many of them U.S. flag vessels operated outside of the U.S.A. For the reasons set forth hereinbelow, Tidewater Inc. strenuously objects to the Coast Guard's proposed revision of the long-established definition of "international voyage" under the Safety of Life at sea ("SOLAS") Convention.

Back in the early 1980's an issue arose between industry and the U.S. Coast Guard as to whether U.S. flag oilfield crewboats (often referred to as "T" boats, because they are inspected by the Coast Guard under 46 CFR Subchpater "T") engaged on domestic voyages within a foreign country were subject to the SOLAS Convention. The Coast Guard initially took the position that such vessels were subject to SOLAS because they were considered to be on an "international voyage" from the time they left the USA until they returned. Industry took the position that, not only was the Coast Guard unreasonably stretching the plain meaning of what constitutes a voyage, but the Coast Guard was unjustifiably expanding the meaning of the term "international voyage" as defined in the SOLAS Convention. Then, as today, Chapter I, Regulation 2(d) of the SOLAS Convention provided that "International voyage means a voyage from a country to which the present Convention applies to a port outside such country, or conversely". Although the term voyage is not defined under the SOLAS Convention, its usual meaning is a trip by water from point A to point B.

As we explained to the Coast Guard in a series of letters and meetings in 1982, many of the Subchapter T vessels that Tidewater was operating in foreign countries clearly did not start their voyages in the USA because they were shipped from the U.S. as cargo aboard barges or other watercraft. Furthermore, such vessels were typically employed on domestic voyages within one or more foreign countries for years and years, sometimes for decades! Most of them

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never returned to the U.S. at all. Clearly, the idea that these vessels were on international voyages was a fiction in fact and in law.

Finally, after several letters and meetings between two sides, the Commandant's office issued a ruling dated 6 July 1982, wherein the Coast Guard agreed that the SOLAS Convention did not apply to "T" boats, unless such vessels were engaged in carrying more than twelve passengers on an international voyage as defined in Chapter I, Regulation 2 (d), of the SOLAS Convention. (Our emphasis.) A copy of that letter ruling is attached for your easy reference. Since the date of that letter, the practice in the industry has been (and Coast Guard has recognized) that "T" boats are not subject to the SOLAS Convention, unless carrying more than twelve passengers from a country to which the convention applies to a port outside such country, or conversely.

The Coast Guard's Proposed Interpretation would, without justification and without the proper rulemaking procedures, undermine the established rule and practice of the last 22 years. Because it would be technically and economically impossible to bring these vessels up to SOLAS standards (since they were not designed and built to such standards in the first place), Tidewater and its clients will suffer incalculable economic harm if these vessels, which cost many millions, each, to build, are shut down by the Coast Guard because of their failure to meet SOLAS requirements.

The proposed interpretation is draconian, hostile to industry, and unjustified in law and in fact. If allowed to stand as proposed, it will almost surely result in protracted litigation and will undoubtedly chase such vessels out of the U.S. flag to friendlier flag States. However, because of lender restrictions and other limiting factors, it may not always be possible for owners to transfer such vessels to flags of convenience.

We strenuously urge the Coast Guard to carefully reconsider what it has done, here, without advance notice of rulemaking and what it has done under its ill-conceived parallel "Notice of Policy" published at 69 Federal Register 34383 on 21 June 2004, docket number USCG-2004-017615. By making both the Notice of Interpretation and Notice of Policy immediately effective on the date of publication, the Coast Guard has bypassed its own proper rulemaking procedures, making a virtual mockery of the comment periods; and we hereby call for both the said Notice of Policy and the said Notice of Interpretation to be withdrawn or suspended, pending publication of a Notice of Proposed Rulemaking with a proper comment period.

Thank you for your kind, deliberate consideration of this very critical issue.

Very truly yours,
Tidewater Inc.

Marinus Quist
Assistant General Counsel

Enclosures

U.S. Department of Transportation
United States Coast Guard

Commandant
United States Coast Guard

Washington, DC 20593
Staff Symbol: G-MVI-1/24
Phone: 202-426-1474

6 JUL 1982

Mr. Marinus Quist
Senior Staff Attorney
Tidewater Marine Service, Inc.
1440 Canal Street, Suite 2100
New Orleans, LA 70112

Dear Mr. Marinus Quist:

This is in response to your letters of 12 February and 10 June 1982. I apologize for the delay in responding to your inquiry. You requested a ruling on your position that the SOLAS Convention does not apply to "T" boats, unless such vessels are engaged in carrying more than twelve passengers on an international voyage as defined in Chapter I, Regulation 2 (d), of the SOLAS Convention.

The Coast Guard concurs in your analysis. Unless a "T" boat is actually carrying more than twelve passengers (as defined in SOLAS) on an international voyage, a SOLAS Certificate is not required. As you recognized, since a "T" boat is, by definition, less than 100 gross tons, it is not a cargo ship under SOLAS.

You should also be aware that although the vessel may not be subject to SOLAS, nevertheless, it may be subject to either 46 U. S. C. 390 et seq. or 46 U.S.C. 404-1, depending on its area of operation and the type and number of persons carried on board. Also, recall that 46 CFR 176.01 provides that when a vessel certificated for carriage of more than six passengers under Subchapter T carries six or fewer passengers, the vessel is not subject to the conditions of its Certificate of Inspection. However, if the vessel is operating outside the territorial sea of another country and is carrying at least one passenger for hire, it is required to be under the control of a Coast Guard licensed operator per 46 U.S.C. 1453(a) and 1461(e).

Sincerely,

T.F. TUTWILER
Captain, U.S. Coast Guard
Chief, Merchant Vessel Inspection Division
By direction of the Commandant

U.S. Department of Transportation
United States Coast Guard

Commandant
United States Coast Guard

Washington, DC 20593
Staff Symbol: G-MM/24
Phone: (202) 426-2170

Re: Solas ½" T Boats

1) ~~Captain Newman~~
2) Rich Keig
3) File - M/V Lee Ann Tide I&D file

25 JUN 1982

Mr. Marinus Quist
Senior Staff Attorney
Tidewater Marine
1440 Canal Street
Suite 2100
New Orleans, Louisiana 70112

Dear Mr. Quist:

We have received your letter of 10 June 1982 concerning your earlier letter. We are in the process of responding to that and you will have a reply shortly. Quite frankly, this is one of our far weightier subjects as you so described, and has caused us to take a substantial relook at what we are doing.

Sincerely,

L N. HEIN
Captain, U. S. Coast Guard
Acting Chief, Office of Merchant Marine Safety

Lee Ann - I&D