

U.S. Department
of Transportation

United States
Coast Guard



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DEPARTMENT OF TRANSPORTATION

U.S. COAST GUARD

STATEMENT OF CAPTAIN JAMES M. MACDONALD, USCG

ON SECTION 27A OF THE MERCHANT MARINE ACT, 1920

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON MERCHANT MARINE

COMMITTEE ON MERCHANT MARINE AND FISHERIES

3 MAY 1989

BIOGRAPHICAL SKETCH

CAPTAIN JAMES M. MACDONALD

Captain James M. MacDonald has been Division Chief of the Coast Guard Merchant Vessel Inspection and Documentation Division at Coast Guard Headquarters since 12 August 1988.

Following his graduation from the Coast Guard Academy in 1968, Captain MacDonald's early assignments included duty aboard the Polar Ice Breaker EDISTO and as Coast Guard Liaison Officer and Instructor at the Naval Damage Control Training Center at Philadelphia.

Captain MacDonald has served as Executive Officer of MIO Kobe, Japan from 1981 to 1982; as Chief, Inspection Department and Executive Officer of MSO Honolulu, Hawaii from 1982 to 1985; as Chief Commercial Vessel Safety Branch Fourteenth Coast Guard District from 1985 to 1986 and as Commanding Officer of Coast Guard Section Marianas from 1986 to 1988.

Other assignments include Assistant Marine Environmental Protection Branch Chief in the Twelfth District and Marine Inspection at Marine Inspection Office, Los Angeles-Long Beach.

In addition to his Bachelor of Science Degree in Engineering from the Coast Guard Academy, Captain MacDonald holds a Master of Science Degree in Management from Rensselaer Polytechnic Institute, Troy, New York.

Captain MacDonald's decorations include the Meritorious Service Medal, two Coast Guard Commendation Medals, two Coast Guard Achievement Medals, the Navy Achievement Medal and two Coast Guard Meritorious Unit Commendations.

Captain MacDonald is married to the former Jean L. Kehoe of Shrewsbury, Massachusetts, a Connecticut College graduate. They have two sons, Jason and Greg.

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THANK YOU VERY MUCH AND GOOD MORNING, MR. CHAIRMAN.

MY NAME IS CAPTAIN JAMES MACDONALD. I AM CHIEF OF THE MERCHANT VESSEL INSPECTION AND DOCUMENTATION DIVISION OF THE U.S. COAST GUARD. I AM ACCOMPANIED THIS MORNING BY MR. THOMAS WILLIS, CHIEF OF THE VESSEL DOCUMENTATION BRANCH.

I APPRECIATE THE OPPORTUNITY TO ADDRESS THIS COMMITTEE ON THE ISSUE OF CORPORATE CITIZENSHIP AS DEFINED IN THE SO-CALLED BOWATERS AMENDMENT AND THE COAST GUARD'S RESPONSIBILITIES REGARDING COASTWISE TRADE.

IN ORDER TO FULLY ADDRESS THE COAST GUARD'S RESPONSIBILITIES UNDER THE THE SO-CALLED BOWATERS AMENDMENT WHICH IS FOUND IN SECTION 27A OF THE MERCHANT MARINE ACT, 1920, IT IS HELPFUL TO REVIEW THE HISTORY OF DOCUMENTATION OF VESSELS BY CORPORATIONS. FROM 1792 UNTIL 1825, CORPORATIONS COULD NOT DOCUMENT VESSELS UNDER U.S. REGISTRY LAWS. THE LEGISLATIVE HISTORY SHOWS THAT AN ADMINISTRATIVE DECISION WAS MADE IN 1825, PERMITTING CORPORATIONS TO DOCUMENT VESSELS IF U.S. CITIZENS OWNED 100 PERCENT OF THE STOCK. IN 1858, THE LAW WAS AMENDED TO PERMIT U.S. CORPORATIONS WITH ALIEN STOCKHOLDERS TO DOCUMENT

AND OPERATE VESSELS IN FOREIGN OR DOMESTIC TRADE.

THE PRESENT REQUIREMENTS FOR A CORPORATION TO QUALIFY AS A CITIZEN FOR PURPOSES OF OPERATING VESSELS IN THE COASTWISE TRADE ARE FOUND IN SECTION 2 OF THE SHIPPING ACT, 1916. SECTION 2 PROVIDES THAT A CORPORATION MAY NOT BE DEEMED A CITIZEN OF THE UNITED STATES FOR PURPOSES OF OPERATING A VESSEL IN THE COASTWISE TRADE UNLESS IT IS ORGANIZED UNDER THE LAWS OF THE UNITED STATES, A STATE, TERRITORY, DISTRICT OR POSSESSION OF THE UNITED STATES. IN ADDITION, ITS PRESIDENT OR OTHER CHIEF EXECUTIVE OFFICER AND CHAIRMAN OF ITS BOARD OF DIRECTORS MUST BE CITIZENS OF THE UNITED STATES; NO MORE THAN A MINORITY OF THE NUMBER OF DIRECTORS NECESSARY TO CONSTITUTE A QUORUM MAY BE NONCITIZENS OF THE UNITED STATES, AND AT LEAST 75 PERCENT OF THE INTEREST IN THE CORPORATION MUST BE OWNED BY CITIZENS OF THE UNITED STATES.

SECTION 27 OF THE MERCHANT MARINE ACT, 1920, POPULARLY KNOWN AS THE JONES ACT, RESTRICTED COASTWISE TRADE TO VESSELS WHICH ARE BUILT IN AND DOCUMENTED UNDER THE LAWS OF THE UNITED STATES, AND OWNED BY CITIZENS OF THE UNITED STATES. IN ADDITION, THE JONES ACT PROVIDES A NUMBER OF MEANS BY WHICH A VESSEL MAY PERMANENTLY LOSE ITS COASTWISE PRIVILEGES.

ALTHOUGH THE COAST GUARD DEFERS TO THE U.S. CUSTOMS SERVICE IN DEFINING COASTWISE TRADE, THE COAST GUARD, THROUGH THE VESSEL DOCUMENTATION PROGRAM IS RESPONSIBLE FOR DETERMINING WHETHER VESSELS ARE QUALIFIED FOR USE IN COASTWISE TRADE, AND WHETHER VESSEL OWNERS ARE CITIZENS QUALIFIED TO DOCUMENT VESSELS AND ENGAGE IN THE CERTAIN TRADES. THESE LATTER RESPONSIBILITIES, WHICH HAD BEEN CUSTOMS RESPONSIBILITIES, WERE

DELEGATED TO THE COAST GUARD AS PART OF THE VESSEL DOCUMENTATION PROGRAM IN 1967 BY TREASURY ORDER NO. 167-81. THE VESSEL DOCUMENTATION FUNCTIONS REMAINED WITH THE COAST GUARD WHEN IT BECAME PART OF THE NEW DEPARTMENT OF TRANSPORTATION.

IN 1958, THE BOWATERS SOUTHERN PAPER CORPORATION, WHICH WAS WHOLLY OWNED BY THE BOWATER CORPORATION OF NORTH AMERICA, LTD., A CANADIAN CORPORATION, WHICH WAS IN TURN OWNED BY ENGLISH INTERESTS, SOUGHT AN EXEMPTION TO THE CITIZENSHIP REQUIREMENTS OF THE JONES ACT. THE RESULTING LEGISLATION, KNOWN AS THE ACT OF SEPTEMBER 2, 1958, OR MORE POPULARLY AS THE BOWATERS AMENDMENT, CREATED THE SPECIAL CATEGORY OF CITIZENSHIP WITH WHICH WE ARE CONCERNED TODAY.

A BOWATERS CITIZEN IS NOT ENTITLED TO OPERATE VESSELS IN UNRESTRICTED COASTWISE TRADE. IT MAY, HOWEVER, OPERATE VESSELS WHICH CARRY PASSENGERS AND MERCHANDISE OF THE VESSEL OWNING CORPORATION IN COASTWISE TRADE, AND MAY OPERATE VESSELS CARRYING MERCHANDISE OR PASSENGERS FOR HIRE AS A SERVICE FOR A QUALIFIED PARENT OR SUBSIDIARY CORPORATION. THE VESSELS USED IN THAT SERVICE MAY BE DOCUMENTED OR, IF EXEMPT FROM THE REQUIREMENTS FOR DOCUMENTATION, UNDOCUMENTED. BOWATERS CITIZENS ARE RESTRICTED TO OPERATION OF NON-SELF-PROPELLED VESSELS, I.E., BARGES, AND SELF-PROPELLED VESSELS OF LESS THAN 500 GROSS TONS. AS I MENTIONED EARLIER, ALTHOUGH THE COAST GUARD IS RESPONSIBLE FOR DETERMINING THE ELIGIBILITY OF THE VESSEL AND VESSEL OWNER TO BE LICENSED FOR A PARTICULAR TRADE, IT IS THE CUSTOMS SERVICE WHICH DECIDES WHICH LICENSE, IF ANY, IS APPROPRIATE FOR THE ACTUAL USE OF THE VESSEL.

THE VESSELS OWNED BY BOWATERS CITIZENS MAY ALSO OPERATE UNDER BAREBOAT OR DEMISE CHARTERS AT PREVAILING RATES UNDER CERTAIN CIRCUMSTANCES. THE AUTHORITY TO DETERMINE THE PROPRIETY OF SUCH CHARTERS IS VESTED IN THE MARITIME ADMINISTRATION.

A CORPORATION INCORPORATED UNDER THE LAWS OF THE UNITED STATES OR ANY STATE, TERRITORY, DISTRICT, OR POSSESSION OF THE UNITED STATES MAY QUALIFY AS A "BOWATERS CITIZEN" IF IT FILES A CERTIFICATE STATING THAT:

(A) A MAJORITY OF THE OFFICERS AND DIRECTORS OF THE CORPORATION ARE CITIZENS OF THE UNITED STATES;

(B) NOT LESS THAN 90 PERCENT OF THE EMPLOYEES OF THE CORPORATION ARE RESIDENTS OF THE UNITED STATES;

(C) THE CORPORATION IS ENGAGED PRIMARILY IN A MANUFACTURING OR MINERAL INDUSTRY IN THE UNITED STATES OR ANY TERRITORY, DISTRICT, OR POSSESSION OF THE UNITED STATES;

(D) THE AGGREGATE BOOK VALUE OF THE VESSELS OWNED BY THE COMPANY MAY NOT EXCEED 10 PERCENT OF THE AGGREGATE BOOK VALUE OF THE ASSETS OF THE CORPORATION; AND

(E) THE CORPORATION PURCHASES OR PRODUCES IN THE UNITED STATES, ITS TERRITORIES OR POSSESSIONS NOT LESS THAN 75 PERCENT OF THE RAW MATERIALS USED OR SOLD IN ITS OPERATIONS.

IT IS IMPORTANT TO NOTE THAT UNDER THE SPECIFIC TERMS OF THE STATUTE, IT IS THE FILING OF THE CERTIFICATE BY THE CORPORATION, AND NOT ANY ACTION BY THE GOVERNMENT OF THE UNITED STATES, WHICH QUALIFIES THE CORPORATION AS A CITIZEN. THE ROLE OF THE COAST GUARD IN RESPONSE TO THE FILING IS PURELY MINISTERIAL, IN THAT IT ISSUES A "CERTIFICATE OF COMPLIANCE"

WHICH STATES THAT THE APPROPRIATE FILING HAS BEEN MADE. THE CERTIFICATE OF COMPLIANCE IS IN REALITY NOTHING MORE THAN A RECEIPT FOR OR AN ACKNOWLEDGMENT OF THE FILING.

THE COAST GUARD ALSO ACCEPTS CERTIFICATES FROM CORPORATIONS WHICH ARE PARENTS OR SUBSIDIARIES OF BOWATERS CORPORATIONS, AND ISSUES CERTIFICATES OF COMPLIANCE FOR THOSE PARENTS OR SUBSIDIARIES.

CORPORATIONS WHICH HAVE QUALIFIED AS BOWATERS CITIZENS ARE REQUIRED TO PRESENT A COPY OF THE CERTIFICATE OF COMPLIANCE WITH ANY APPLICATION WHICH IS MADE FOR DOCUMENTATION OF A VESSEL.

PRESENT PROCEDURES PROVIDE THAT NEW CORPORATE CERTIFICATES MUST BE FILED EVERY THREE YEARS.

THE COAST GUARD ACCEPTS THE ASSERTIONS MADE IN THE CORPORATE CERTIFICATE AT FACE VALUE. THIS DOES NOT MEAN THAT THE COAST GUARD DOES NOT TAKE ITS RESPONSIBILITIES UNDER THE BOWATERS AMENDMENT AND THE JONES ACT SERIOUSLY. WHERE WARRANTED, IT HAS CONDUCTED AN INVESTIGATION INTO THE ASSERTIONS MADE.

ALONG WITH ITS CERTIFICATE UNDER OATH, THE CORPORATION MUST FILE A LIST OF OFFICERS AND DIRECTORS AND INFORMATION ABOUT THEIR CITIZENSHIP. IF AN INVESTIGATION IS WARRANTED, THE COAST GUARD MAY REQUEST TO EXAMINE THE CORPORATE BOOKS AND RECORDS TO ESTABLISH WHETHER 90 PERCENT OF THE EMPLOYEES ARE RESIDENTS OF THE UNITED STATES AND THE AGGREGATE BOOK VALUE OF THE VESSELS EXCEEDS 10 PERCENT OF THE AGGREGATE BOOK VALUE OF AGGREGATE BOOK VALUE OF THE ASSETS OF THE CORPORATION.

ALTHOUGH QUESTIONS MAY ARISE AS TO THE DEFINITION OF RAW MATERIALS, THE CORPORATE BOOKS WILL EVIDENCE WHETHER THE CORPORATION PURCHASES OR PRODUCES IN THE UNITED STATES 75 PERCENT OF THE RAW MATERIALS USED OR SOLD IN CORPORATE OPERATIONS.

THE COAST GUARD DOES, FROM TIME TO TIME, RECEIVE QUESTIONS ABOUT THE QUALIFICATIONS FOR BOWATERS CITIZENSHIP. MOST OF THOSE QUESTIONS COME FROM CORPORATIONS PREPARING BOWATERS FILINGS, AND CONCERN INTERPRETATION OF CERTAIN SPECIFIC ASPECTS OF THE BOWATERS AMENDMENT.

AN EXAMPLE OF THE TYPE OF QUESTION RAISED IS WHETHER OR NOT THE REQUIREMENT THAT THE AGGREGATE BOOK VALUE OF THE VESSELS OWNED BY THE COMPANY IS LIMITED TO 10 PERCENT OF THE AGGREGATE ASSETS OF THE CORPORATION MAY BE READ TO MEAN DOCUMENTED VESSELS AND EXCLUDE THE VALUE OF UNDOCUMENTED VESSELS. THE COAST GUARD HAS OFFERED THE OPINION THAT THE STATUTE INTENDS TO INCLUDE ALL VESSELS, BOTH DOCUMENTED AND UNDOCUMENTED.

AS I AM SURE MOST MEMBERS OF THE COMMITTEE ARE AWARE, THE COAST GUARD IS PRESENTLY A PARTY TO LITIGATION OVER THE ISSUANCE OF CERTIFICATES OF COMPLIANCE TO SEVERAL CLOSELY RELATED CORPORATIONS. IT WOULD BE INAPPROPRIATE FOR ME TO COMMENT ON THAT SUIT OR THE QUESTIONS RAISED BY IT.

AT THE PRESENT TIME, THERE ARE 55 CORPORATIONS WHICH HAVE CURRENT CERTIFICATES OF COMPLIANCE. OF THOSE, 7 ARE PARENT OR SUBSIDIARY CORPORATIONS. DURING 1986, 6 CORPORATIONS ATTAINED BOWATER STATUS FOR THE FIRST TIME. THERE WERE 9 NEW FILINGS DURING 1987 AND 12 DURING 1988. IT SHOULD BE NOTED THAT OF THE

CORPORATIONS FILING IN 1988, 6 HAD STRONG TIES TO ANOTHER BOWATERS CORPORATION.

FROM TIME TO TIME, IT HAS BEEN SUGGESTED THAT THE COAST GUARD SHOULD INVESTIGATE THE TRUTH OF THE ASSERTIONS IN THE CERTIFICATES FILED BY BOWATERS CORPORATIONS. THE COAST GUARD DOES NOT BELIEVE THAT IT IS WITHIN ITS MANDATE TO REFUSE TO ACCEPT FILINGS, BUT BELIEVES THAT, IF CIRCUMSTANCES WARRANT, AN INVESTIGATION SHOULD BE INITIATED AFTER THE FILING HAS BEEN COMPLETED. THIS IS CONSISTENT WITH THE OVERALL ADMINISTRATION OF THE VESSEL DOCUMENTATION PROGRAM BY THE COAST GUARD AND ITS PREDECESSOR AGENCIES. OATHS, APPLICATIONS, AND OTHER REPRESENTATIONS ARE ACCEPTED AT FACE VALUE, AND INVESTIGATED ONLY IF CIRCUMSTANCES WARRANT. CONDUCTING INVESTIGATIONS BEFORE ISSUING CERTIFICATES OF COMPLIANCE AND CERTIFICATES OF DOCUMENTATION WOULD IMPEDE TRANSFER OF ASSETS AND DEPRIVE SOME PERSONS OF THE RIGHT TO DO BUSINESS.

IN 1958, THE TREASURY DEPARTMENT, IN ITS TESTIMONY ON THE PROPOSED BOWATERS AMENDMENT, STATED THAT INVESTIGATION OF THE QUALIFICATIONS OF CORPORATIONS WOULD BE EXTREMELY DIFFICULT TO APPLY AND REQUIRE INVESTIGATION BEYOND THE CAPACITY OF THE EMPLOYEES AVAILABLE FOR THE PURPOSE, AND THAT IF ENACTED, THE LEGISLATION SHOULD PROVIDE FOR A STATEMENT OR DECLARATION OF QUALIFICATIONS TO BE SUBMITTED WITH A PROVISION FOR SEVERE PENALTIES SHOULD IT BE FOUND THAT ANY STATEMENT HAD BEEN FALSIFIED. THE LAW ULTIMATELY FOLLOWED THE MODEL THAT THE TREASURY DEPARTMENT SUGGESTED.

IT IS NOTED IN THIS CONTEXT THAT THE LAW PROVIDES FOR FORFEITURE OF THE VESSEL AND ANY MERCHANDISE TRANSPORTED WHERE

A FALSE OATH HAS BEEN MADE. THIS PROVISION, WHICH HAS BEEN DESCRIBED ON NUMEROUS OCCASIONS AS "DRACONIAN", SERVES AS A STRONG DETERRENT TO THE FILING OF A FALSE OATH.

I HAVE APPENDED A LIST OF SO-CALLED BOWATERS CORPORATIONS TO THIS TESTIMONY FOR THE RECORD. IN CONSIDERATION OF THE TIME OF THIS COMMITTEE, WITH YOUR PERMISSION, I WILL NOT READ IT.

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED REMARKS. I SHALL BE HAPPY TO ANSWER ANY QUESTIONS YOU OR OTHER MEMBERS OF THE COMMITTEE MAY WISH TO ASK.