

Agenda Item 16
Dec. 1977

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON



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TELETYPE

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G. H. Patrick Bursley
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Washington, D.C. 20590

Dear Admiral Bursley:

This is in reference to your letter of July 15, 1977 (G-LH/81, 15214) concerning the interpretation and application of laws administered and enforced by the U.S. Customs Service with regard to foreign fish processing vessels. Your questions are set forth below and answered in the order asked:

1. What customs laws are applicable, and how are they or would they be applied, to foreign fish processing vessels receiving fish from U.S. fish catching vessels --

- (a) inside the Territorial Sea of the U.S.?
- (b) inside the Contiguous Zone of the U.S.?
- (c) outside the Contiguous Zone of the U.S.?

A foreign-flag processing vessel arriving in territorial waters of the United States would be required to report arrival as required by title 19, United States Code, section 1433, and to make entry as required by title 19, United States Code, section 1435. Such processing vessel would also be subject to the clearance provisions contained in title 45, United States Code, section 91.

A foreign-flag processing vessel would not be precluded from operating within the territorial waters of the United States if the vessel is not harvesting fish, nor transporting fish but is used solely to receive, process, and store fish harvested by properly documented United States fishing vessels. However, any transportation in the foreign-flag vessel of merchandise (fish or fish products) between points within the territorial waters or land bases of the port would be prohibited by title 40, United States Code, section 602. This section, which provides for forfeiture of the merchandise so

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transported, also prohibits coastwise transportation on a foreign-built vessel. Any transportation of the fish or fish products between points within the territorial waters must be on coastwise-qualified vessels.

Title 46, United States Code, section 191, in pertinent part prohibits a foreign-flag vessel from landing in the United States its catch of fish taken on the high seas or fish taken on board on the high seas from a vessel engaged in either fishing or fish processing. Interpretative language is contained in section 4.96 of the Customs Regulations (19 CFR 4.96). Under the cited statute and regulation, a foreign-flag fishing vessel could not transfer the above described fish to a processing vessel operating in the territorial waters.

When the fish are delivered by properly documented United States fishing vessels to a foreign processing vessel in territorial waters of the United States within the limits of a Customs port or station, the vessels and the fish will be subject to all the usual requirements which would be applicable if the fish were in fact being landed in the United States (see in particular section 10.78, Customs Regulations (19 CFR 10.78)).

Title 19, United States Code, section 1401, in pertinent part, defines "customs waters" as waters within four leagues (12 miles) of the United States coast. Title 19, United States Code, section 1581, in relevant part allows Customs officers, Officers of the Department of the Treasury and other persons authorized by such department to board vessels within the "customs waters" and to take certain other measures to enforce the Customs laws, the navigation laws and/or other laws of the United States. However, these statutes providing the basis for boarding vessels and enforcing applicable United States laws do not extend beyond the territorial waters of the United States those statutes applicable to foreign-flag fish processing vessels discussed in the preceding paragraphs. No law or regulation administered by the Customs Service, with the exception of title 19, United States Code, section 1581, would prohibit or restrict the use of a foreign-flag fish processing vessel operating outside the territorial waters of the United States.

2. How would the answer to question 1 differ if the fish were placed directly on board the processing vessel without ever having been on board the catching vessel.

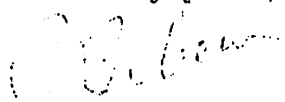
~~Assuming that any processing vessel operating within territorial waters is not harvesting fish, nor transporting fish but is used solely to receive, process and store fish brought on board by properly documented United States fishing vessels, the answers to question 1 would not differ.~~

3. What Customs laws apply, and how are they or would they be applied, to a foreign fish processing vessel tied up in a U.S. port for the purpose of receiving fish from a U.S. fish catching vessel?

The statutes discussed in the answer to your first question with respect to foreign-flag processing vessels operating within the United States territorial waters are applicable to such vessels when either moored to a wharf in a United States port or anchored offshore within the territorial waters. A foreign-flag vessel moored to a wharf in a United States port as a stationary processing facility could receive fish harvested by properly documented United States fishing vessels within or without territorial waters, process the fish and land the fish without violating section 46, United States Code, section 251.

As requested in your letter, we have assumed that all requirements of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1301-1832) concerning foreign vessels have been complied with, and the vessels possess the required permits to engage in fishing support activity in the U.S. fishery conservation zone. In attempting to answer your questions, we have limited our reply to the laws administered and enforced by the United States Customs Service.

Sincerely yours,


J. P. Tebeau
Director
Carriers, Drawback and Bonds Division