

ARE YOU RUNNING AFOUL OF THE INTERNATIONAL CONVENTION ON THE CONTROL OF HARMFUL ANTI-FOULING SYSTEMS ON SHIPS, 2001?

1. The Issue:

Is the vessel your client is considering purchasing required to be compliant with the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (hereinafter defined as the “AFS Convention”)?

2. The Facts:

You have a client interested in purchasing a used vessel that will be used on international voyages. You have shown your client three different vessels at the Palm Beach Yacht Show. Vessel 1 is 75 feet and 90 gross registered tons ITC; Vessel 2 is 100 feet and 200 gross registered tons ITC; and Vessel 3 is 160 feet and over 425 gross registered tons ITC. Vessel 3 is really out of your client’s budget at this time but the client is already thinking ahead a few years. Now it is time to do your research into each vessel, including a review of each vessel’s documentation. Should you be looking for documentation demonstrating compliance with the AFS Convention for the aforementioned vessels viewed by your client?

3. The Law in the United States:

The AFS Convention was implemented by the United States through the enactment of the legislation set forth in 33 U.S.C. 3801-3857 concerning Clean Hulls. The legislation is designed to prohibit the use of harmful substances in anti-fouling paints used on vessels. The legislation provides that all vessels to which the legislation applies

must demonstrate compliance with the AFS Convention while in United States waters. The United States Coast Guard is charged with enforcing this convention and may request documentation demonstrating compliance with the AFS Convention. If a vessel owner is unable to provide documentation demonstrating the vessel's compliance with the AFS Convention, the vessel could be detained.

So what vessels must comply? The AFS Convention is applicable to vessels of at least 24 meters. [*See 33 U.S.C. 3822*] However, vessels of at least 400 gross registered tons ITC must meet the heightened compliance requirements. [*See 33 U.S.C. 3821*] So what documentation is required to demonstrate compliance?

(a) Vessels at least 400 gross registered tons ITC:

Vessels that are at least 400 gross registered tons ITC and engage in at least one or more international voyages must carry an International Antifouling Systems Certificate and attached Record of Anti-Fouling Systems. [*Id.*] According to the United States Coast Guard (“USCG”), either the USCG or any Classification Society recognized by the USCG can verify the vessel's compliance with the AFS Convention and issue the required Certificate and attachment.

(b) Vessels at least 24 meters but under 400 gross registered tons ITC:

Vessels that are at least 24 meters in length and less than 400 gross registered tons ITC and engage in at least one international voyage must carry a Declaration of Compliance signed by the owner or the owner's authorized agent confirming the vessel's compliance with the AFS Convention accompanied by appropriate documentation such as a paint receipt or other documentation demonstrating the

paint applied to the vessel is compliant with the AFS Convention. [See 33. U.S.C. 3822]

4. The Answer:

Based on the law set forth in 33 U.S.C. 3801-3857, the following applies with respect to Vessels 1-3 noted in Paragraph 2 above:

Vessel 1: Vessel 1 is not required to comply with the AFS Convention as Vessel 1 is under 400 gross registered tons ITC and under 24 meters in length.

Vessel 2: Vessel 2 is required to carry a Declaration of Compliance signed by the owner or the owner's authorized agent confirming the vessel's compliance with the AFS Convention accompanied by appropriate documentation such as a paint receipt or other documentation demonstrating compliance with the AFS Convention as set forth in Paragraph 3 (b) above as Vessel 2 is under 400 gross registered tons ITC but over 24 meters in length.

Vessel 3: Vessel 3 is required to carry and International Antifouling Systems Certificate and attached Record of Anti-Fouling Systems as set forth in Paragraph 3 (a) above as Vessel 3 is over 400 gross registered tons ITC.

**The information offered in this column is summary in nature and should not be considered a legal opinion.*

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