

of the concern and work with the entity toward a satisfactory resolution, provided there is no verifiable evidence of fraud. Resolution of any control issues may result in a request by us for additional information to clarify the intent of the provision or to amend or delete the provision in question.

(e) Information that is specifically required to be submitted for our consideration is set out in §356.13. However, in determining whether an entity has control over a Fishing Industry Vessel, we may review any contract or agreement that may, by any means whatsoever, result in a transfer of control to a Non-Citizen.

[65 FR 44877, July 19, 2000, as amended at 68 FR 5579, Feb. 4, 2003]

Subpart C—Requirements for Vessel Owners

§356.13 Information required to be submitted by vessel owners.

(a) In order to be eligible to document a Fishing Industry Vessel with a fishery endorsement, the entity that owns the vessel must submit documentation to demonstrate that 75 percent (75%) of the interest in such entity is owned and controlled by Citizens of the United States. Unless otherwise exempted, the following documents must be submitted to the Citizenship Approval Officer in support of a request for a determination of U.S. Citizenship:

(1) An Affidavit of U.S. Citizenship. This affidavit, set out in §356.15, must contain all required facts, at all tiers of ownership, needed for determining the citizenship of the owner of the Fishing Industry Vessel.

(2) A certified copy of the Articles of Incorporation and Bylaws of the owner of the Fishing Industry Vessel, and any parent corporation, must be submitted. The certification must be by the Secretary of State in which the corporation is incorporated or by the Secretary of the corporation. For entities other than corporations, comparable certified documents must be submitted. For example, for a limited liability company, a copy of the Certificate of Formation filed with a State must be submitted, along with a certified copy of the Limited Liability Company Operating Agreement;

(3) An Affidavit of U.S. Citizenship for each charterer of a Fishing Industry Vessel, with the exception of time or voyage charterers of Fish Processing Vessels and Fish Tender Vessels permitted under §356.39(b)(2);

(4) A copy of any time charter or voyage charter to a Non-Citizen of a Fish Tender Vessel or Fish Processing Vessel;

(5) Any loan agreements or other financing documents applicable to a Fishing Industry Vessel where the lender has not been approved by MARAD to hold a Preferred Mortgage on Fishing Industry Vessels, excepting financing documents that are exempted from review pursuant to §356.19(d) and loan documents that have received general approval from the Citizenship Approval Officer pursuant to §356.21 for use with an approved Mortgage Trustee.

(6) A description of any operating and/or management agreements entered into between the owner or bareboat charterer of a Fishing Industry Vessel and an entity that has not been determined by MARAD to be a U.S. Citizen, accompanied by a representation and warranty that the agreement does not contain any provisions that convey control over the vessel or vessel-owning entity to a Non-Citizen;

(7) Copies of any sales or purchase agreements that relate to the sale or purchase of all or a significant portion of a vessel's catch where the agreement is with an entity that has not been determined by MARAD to be a U.S. Citizen and the agreement contains provisions that could convey control to a Non-Citizen other than those expressly authorized in §356.43. Agreements that only contain provisions expressly authorized in §356.43 do not have to be submitted; however, the agreements and the parties to the agreements must be identified;

(8) Any stockholder's agreement, voting trust agreements, or any other pooling agreements, including any proxy appointment, relating to the ownership of all classes of stock, whether voting or non-voting of the owner of the Fishing Industry Vessel, including any parent corporation or other stockholder whose stock is being

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relied upon to establish 75 percent U.S. Citizen ownership;

(9) Any agreements relating to an option to buy or sell stock or other comparable equity interest in the owner of the Fishing Industry Vessel, or Fish Tender Vessel, or any agreement that restricts the sale of such stock or equity interests in the owner of the Fishing Industry Vessel, including any parent corporation or other stockholder whose stock is being relied upon to establish 75 percent U.S. Citizen ownership;

(10) Any documents relating to a merger, consolidation, liquidation or dissolution of the owner of the Fishing Industry Vessel, including any parent corporation where all of the parties have not been determined by the Citizenship Approval Officer to be U.S. Citizens;

(11) Disclosure of any interlocking directors or other officials by and between the owner of a Fishing Industry Vessel (including any parent corporation) and any Non-Citizen minority stockholder of the owner and any parent corporation. This requirement is also applicable to any lender, purchaser of fish catch, or other entity that is a Non-Citizen;

(12) Any contract or agreement that purports to sell, lease or otherwise transfer to a Non-Citizen the fishing rights, a fishing quota, a processing quota or any other right allocated to a vessel owner, bareboat charterer, or a particular Fishing Industry Vessel; and

(13) A copy of the Large Vessel Certification required by § 356.47.

(b) In the event the owner or bareboat charterer of a Fishing Industry Vessel enters into any agreement reflected in any of the documents set forth in paragraph (a) of this section after the submission of the Affidavit of U.S. Citizenship, the owner or bareboat charterer must notify the Citizenship Approval Officer within 30 calendar days. Failure to notify the Citizenship Approval Officer of such agreements within the prescribed time may result in the vessel owner being deemed ineligible to document the vessel with a fishery endorsement.

[65 FR 44877, July 19, 2000, as amended at 68 FR 5579, Feb. 4, 2003]

§ 356.15 Filing of affidavit of U.S. Citizenship.

(a) New owners of Fishing Industry Vessel after October 1, 2001, must file the Affidavit of U.S. Citizenship and other required documentation with the Citizenship Approval Officer in order for the Citizenship Approval Officer to make a determination whether the owner is eligible to own a vessel with a fishery endorsement to the vessel's documentation. A vessel may not receive a fishery endorsement to its documentation or operate in the fisheries of the United States before this determination has been made.

(b) If the Citizenship Approval Officer believes that there is a defect in the Affidavit of U.S. Citizenship or the supporting documentation, the applicant will be notified and will be given an opportunity to work with the Citizenship Approval Officer to resolve the matter before a determination is made whether the applicant qualifies as a U.S. Citizen.

(c) A vessel owner that has a valid fishery endorsement prior to October 1, 2001, must obtain a citizenship determination from the Citizenship Approval Officer no later than October 1, 2001, which states that the owner is a U.S. Citizen eligible to own a vessel with a fishery endorsement. If the owner obtains the required determination from the Citizenship Approval Officer, the fishery endorsement will remain valid and will be subject to renewal at the time of its next regularly scheduled annual filing to document the vessel with the Coast Guard, at which point the owner will be required to obtain an annual ruling from the MARAD's Citizenship Approval Officer that it is still a U.S. Citizen. If a vessel owner that owns a vessel with a valid fishery endorsement prior to October 1, 2001, does not obtain the required determination from the Citizenship Approval Officer by October 1, 2001, the vessel's fishery endorsement may be deemed invalid. In order to obtain a new fishery endorsement, the vessel owner will be required to obtain a citizenship determination from the Citizenship Approval Officer and to apply to the U.S. Coast Guard for a new fishery endorsement.