

§ 356.53

(1) An Affidavit of United States Citizenship in accordance with §356.15 demonstrating that they comply with the Controlling Interest requirements of section 2(b) of the 1916 Act. The Affidavit must note that the owner is claiming an exemption from the requirements of this part 356 pursuant to paragraph (e) of this section; and

(2) A description of the current ownership structure, a list of any changes in the ownership structure that have occurred since the filing of the last Affidavit, and a chronology of all changes in the ownership structure that have occurred since October 21, 1998.

(e) The following Fishing Industry Vessels are exempt from the new ownership and control standards under the AFA and this part 356 for vessel owners and Mortgagees:

(1) Fishing Industry Vessels engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)); and

(2) Purse seine vessels when they are engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty.

(f) Fishing Industry Vessels that are claiming the exemption provided for in paragraph (e) of this section must certify to the Citizenship Approval Officer that the vessel is exempt from the ownership and control requirements of this part 356 pursuant to the exemption in paragraph (e) of this section. The vessel owner will be required to follow the U.S. Coast Guard's procedures for documenting a vessel with a fishery endorsement, as in effect prior to the passage of the AFA. The vessel owner must also notify the Coast Guard's National Vessel Documentation Center that it is claiming an exemption from the ownership and control requirements of this part 356 pursuant to paragraph (e) of this section.

[65 FR 44877, July 19, 2000, as amended at 68 FR 5583, Feb. 4, 2003]

46 CFR Ch. II (10-1-06 Edition)

Subpart H—International Agreements

§ 356.53 Conflicts with international agreements.

(a) If the owner or Mortgagee of a Fishing Industry Vessel believes that there is a conflict between the AFA or 46 CFR part 356 and any international treaty or agreement to which the United States is a party on July 24, 2001, and to which the United States is currently a party, the owner or Mortgagee may petition the Chief Counsel of the Maritime Administration at any time after July 19, 2000 to request a ruling that all or part of the requirements of this part 356 do not apply to that particular owner or particular Mortgagee with respect to a specific vessel; provided, the petitioner had an ownership interest in the Fishing Industry Vessel, or a mortgage on the vessel in the case of a Mortgagee, on July 24, 2001, and is covered by the international agreement.

(b) A petition for exemption from the requirements of this part 356 must include:

(1) Evidence of the ownership structure, or mortgage structure in the case of a Mortgagee, of the Fishing Industry Vessel as of July 24, 2001 (or on the date of the petition, for petitions filed prior to July 24, 2001), and any subsequent changes to the ownership structure, or mortgage structure in the case of a Mortgagee, of the vessel;

(2) A copy of the provisions of the international agreement or treaty which the owner or mortgagee believes are in conflict with the regulations in this part 356;

(3) A detailed description of how the provisions of the international agreement or treaty and the regulations in this part 356 are in conflict; and

(4) A certification in all petitions filed on or after July 24, 2001, that no interest in the vessel-owning entity has been transferred to a Non-Citizen after July 24, 2001.

(c) A separate petition must be filed for each Fishing Industry Vessel for which the vessel owner or a Mortgagee is requesting an exemption unless the Chief Counsel authorizes consolidated filing. Petitions should include two copies of all materials and should be

sent to the following address: Maritime Administration, Chief Counsel, Room 7228, 400 7th Street, SW., Washington, DC 20590.

(d) Upon receipt of a complete petition, the Chief Counsel may publish a notice in the FEDERAL REGISTER requesting public comment if the petition presents unique issues that have not been addressed in previous determinations. The FEDERAL REGISTER notice will include the petitioner's descriptions regarding how the AFA and this part 356 are in conflict with a particular investment treaty or agreement, but it will not include proprietary or confidential information about the petitioner. The Chief Counsel, in consultation with other departments and agencies within the Federal Government that have responsibility or expertise related to the interpretation or application of international investment agreements (e.g., the Department of State, United States Trade Representative, Department of Treasury, etc.), will review the petition and the public comments, if any, to determine whether the international agreement and the requirements of the AFA and this part 356 are in conflict and, absent any extenuating circumstances, will render a decision within 120 days of the receipt of a fully completed petition. If MARAD's Chief Counsel determines after the receipt of a fully completed petition that there are extenuating circumstances that will preclude a decision from being rendered on the petition within 120 days, the petitioner will be notified around the 90th day and provided with an estimated date on which a decision will be rendered.

(e) To the extent that it is determined that an international agreement covering the petitioner is in conflict with the requirements of this part 356, the AFA, 46 U.S.C. 31322(a), 46 U.S.C. 12102(c), and this part 356 will not be applied to the petitioner with respect to the specific vessel. If the petitioner is a vessel owner, it will be required to comply with the documentation requirements as in effect prior to passage of the AFA on October 21, 1998. If the petitioner is a Mortgagee, it will be subject to requirements of 46 U.S.C. 31322(a) as in effect prior to passage of the AFA with regard to the mortgage

on the particular vessel covered by the petition. Decisions of the Chief Counsel may be appealed to the Maritime Administrator within 15 business days of issuance.

(f) The owner of a Fishing Industry Vessel that is determined through the petition process to be exempt from all or part of the requirements of this part 356 must submit evidence of its ownership structure to the Chief Counsel on an annual basis. The owner must specifically set forth:

(1) The Vessel's current ownership structure;

(2) The identity of all Non-Citizen owners and the percentage owned;

(3) Any changes in the ownership structure that have occurred since the filing of the last Affidavit; and,

(4) A certification that no interest in the vessel was transferred to a Non-Citizen after July 24, 2001.

(g) The provisions of this part 356 shall apply:

(1) To all owners and Mortgagees of a Fishing Industry Vessel who acquired an interest in the vessel after July 24, 2001; and

(2) To the owner of a Fishing Industry Vessel on July 24, 2001, if any ownership interest in that owner is transferred to or otherwise acquired by a Non-Citizen or if the percentage of foreign ownership in the vessel is increased after such date.

(3) An ownership interest is deemed to be transferred under this paragraph (g) if:

(i) There is a transfer of direct ownership interest in the primary vessel owning entity. If the primary vessel owning entity is wholly owned by another entity, the parent entity will be considered the primary vessel owning entity; or

(ii) There is a transfer of indirect ownership at any tier.

(4) A transfer of interest in a vessel owner does not include:

(i) Transfers of disparately held shares of a vessel-owning entity if it is a publicly traded company and the total of the shares transferred in a particular transaction equals less than 5% of the shares in that class. An interest in a vessel owning entity that exceeds 5% of the shares in a class can not be sold to the same Non-Citizen through

multiple transactions involving less than 5% of the shares of that class of stock in order to maintain the exemption for the vessel owner; or

(ii) Transfers pursuant to a divorce or death.

[65 FR 44877, July 19, 2000, as amended at 68 FR 5583, Feb. 4, 2003]

Subpart I—Review of Harvesting and Processing Compliance

§ 356.55 Review of compliance with harvesting and processing quotas.

(a) Upon the request of either the North Pacific Fishery Management Council (“NPFMC”) or the Secretary of Commerce, the Chief Counsel will review any allegation that an individual or entity has exceeded the allowable percentage for harvesting or processing pollock as provided for in section 210(e)(1) or (2) of the AFA.

(b) Following a request for MARAD review under paragraph (a) of this section, the NPFMC and the Secretary of Commerce (through the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service) will transmit to MARAD any relevant information in their possession including, but not limited to:

(1) The identity of the parties alleged to have exceeded the excessive share caps;

(2) The relevant harvesting or processing data (the amount harvested or processed by particular parties);

(3) Any information that would be helpful in determining if the parties are related;

(4) Any information regarding the ownership structure of the parties, including:

- (i) Articles of incorporation;
- (ii) Bylaws;
- (iii) Identity of shareholders and the percentage owned;

(iv) Any contracts or agreements that would demonstrate ownership or control of one party by another allegedly related party; and

(v) Any other evidence that would demonstrate ownership or control of one party by another allegedly related party.

(c) If MARAD determines during the course of its review that additional information is required from the parties

alleged to have exceeded the excessive share cap, the Chief Counsel will advise the Secretary of Commerce and/or the NPFMC what information is required. The Secretary and/or the NPFMC will request that specific parties submit the required information to MARAD.

(d) The Chief Counsel will make a finding as soon as practicable and will submit it to the Secretary of Commerce and the NPFMC.

(e) For purposes of this section, if 10% or more of the interest in an entity is owned or controlled either directly or indirectly by another individual or entity, the two entities will be considered the same entity for purposes of applying the harvesting and processing caps.

(1) For purposes of this section, an entity will be deemed to have an ownership interest in a pollock harvesting or processing entity if it either owns a percentage of the pollock harvesting or processing entity directly or if ownership can be traced through intermediate entities to the pollock harvesting or processing entity. To determine the percentage of ownership interest that an entity has in a pollock harvesting or processing entity where the ownership interest passes through one or more intermediate entities, the entity’s percentage of direct interest in an intermediate entity is multiplied by the intermediate entity’s percentage of direct or indirect interest in the pollock harvesting or processing entity.

(2) For purposes of this section, an entity will be deemed to exercise 10% or greater control over a pollock harvesting or processing entity if:

(i) It has the right to direct the business of the pollock harvesting or processing entity;

(ii) It has the right to appoint members to the management team of the pollock harvesting or processing entity such as the directors of a corporation or is a general partner or joint venturer in a harvesting or processing entity;

(iii) It has the right to direct the business of an entity that directly or indirectly owns or controls 10% of a harvesting or processing entity; or

(iv) It owns 50% or more of an entity that owns or controls 10 percent of a