

§ 356.7

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

the United States; that such proportion of the voting power of (each) said Corporation is vested in Citizens of the United States; that through no contract or understanding is it so arranged that the majority of the voting power of (each) said Corporation may be exercised, directly or indirectly, in behalf of any person who is not a Citizen of the United States; and that by no means whatsoever, is control of (each) said Corporation conferred upon or permitted to be exercised by any person who is not a Citizen of the United States; and

6. That the affiant has submitted all of the necessary documentation required under 46 CFR §356.13 in connection with this Affidavit of U.S. Citizenship for the vessels herein identified.

Vessel Name	Official Number
1. ....	
2. ....	

[NOTE: Paragraph 6 should be included in the Affidavit of U.S. Citizenship submitted by an entity that owns a Fishing Industry Vessel.]

7. That affiant has carefully examined this affidavit and asserts that all of the statements and representations contained therein are true to the best of his knowledge, information, and belief.

\_\_\_\_\_  
(Name and title of affiant)

\_\_\_\_\_  
(Signature of affiant)

\_\_\_\_\_  
Date

Penalty for False Statement: A fine or imprisonment, or both, are provided for violation of the proscriptions contained in 18 U.S.C. §1001 (see also, 18 U.S.C. §§286, 287).

(e) The format for an Affidavit of United States Citizenship, modified appropriately for limited liability companies, partnerships, etc., will be available from the Citizenship Approval Officer and on MARAD's internet web site at <http://www.marad.dot.gov>.

(f) The same criteria should be observed in obtaining information to be furnished for stockholders named (direct ownership of required percentage of shares of stock of each class) in the Affidavit as those observed for the owner of the Fishing Industry Vessel. If, on the other hand, the "fair inference rule" is applied with respect to stock ownership as outlined in §356.7(c), the extent of U.S. Citizen ownership of stock should be ascertained in the requisite percentage

(65 % for state or federally chartered financial institutions and 95 % for Fishing Industry Vessel owners, bareboat charterers, trustees, as well as entities owning 5% or more of the stock of such entities). Any entity that must establish its U.S. citizenship has to submit proof of U.S. citizenship of any five percent stockholder of each class of stock in order that the veracity of the statutory statements made in the Affidavit (paragraph 5) may be relied upon by MARAD.

(g) It shall be incumbent upon the parties filing affidavits under this part to notify the Citizenship Approval Officer in writing within 30 calendar days of any changes in information last furnished with respect to the officers, directors, and stockholders, including 5 percent or more stockholders of the issued and outstanding stock of each class, together with information concerning their citizenship status. If other than a corporation, comparable information must be filed by other entities owning Fishing Industry Vessel, including any entity whose ownership interest is being relied upon to establish 75% ownership by Citizens of the United States.

(h) If additional material is determined to be essential to clarify or support the evidence of U.S. citizenship, such material shall be furnished by the owner of the Fishing Industry Vessel upon request by the Citizenship Approval Officer.

[65 FR 44877, July 19, 2000, as amended at 68 FR 5577, Feb. 4, 2003]

**§ 356.7 Methods of establishing ownership by United States Citizens.**

(a) An entity may demonstrate that the interest in the entity (75% for Citizens of the United States or 51% for entities meeting the Controlling Interest requirements) is owned by Citizens of the United States either by direct proof or through the fair inference method depending on the size of the entity.

(b) The "direct proof" method is used for closely held companies that have 30 or fewer stockholders. Under the direct proof method, the following information must be set forth in paragraph four of the Affidavit of U.S. Citizenship:

(1) The identity of the holders of stock or other equitable interests;

(2) The amount of stock or interest that each stockholder owns;

(3) A representation as to the citizenship of the stockholder; and

(4) If the stockholder is a corporation or other entity, the names and citizenship of officers, directors, stockholders, etc. must be set out in the Affidavit of U.S. Citizenship.

(c) The "fair inference method" is used by corporations whose stock is publicly traded (more than 30 stockholders). Use of the fair inference method requires that:

(1)(i) At least 95% of the stock (each class) of the corporation be held by Persons having a registered U.S. address in order to infer at least 75% ownership by U.S. Citizens, or

(ii) At least 65% of the stock (each class) of the corporation be held by Persons having a registered U.S. address in order to infer at least 51% ownership by U.S. Citizens; and

(2) Disclosure be made in the Affidavit of U.S. Citizenship of the names and citizenship of any stockholders who holds five percent or more of the corporation's stock (including all classes of stock, voting and non-voting), officers, and directors.

(d) If the owner of a Fishing Industry Vessel is consecutively owned by several "parent" corporations, the facts revealing the stock ownership of each entity must be set forth in the Affidavit of U.S. Citizenship.

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

#### § 356.9 Tiered ownership structures.

Non-Citizens may not own or control, either directly through the first tier of ownership or in the aggregate through an interest in other entities at various tiers, more than 25% of the interest in an entity which owns a Fishing Industry Vessel. The prohibition against Non-Citizens owning or controlling more than 25%, in the aggregate, of the interest in an entity that owns a Fishing Industry Vessel means, for example, that:

(a) Non-Citizens that own or control a 25% stake in the ownership entity of a Fishing Industry Vessel at the first tier may not have any interest whatsoever

in any entity that is being relied upon to establish the required 75% U.S. Citizen ownership; and

(b) Non-Citizens that own or control less than a 25% stake at the first tier may participate in the ownership and control of other entities that are being relied upon to establish the required 75% U.S. Citizen ownership and control at the first tier. However, the total ownership and control by Non-Citizens of the entity owning a Fishing Industry Vessel may not exceed 25% in the aggregate as computed by MARAD.

#### § 356.11 Impermissible control by a Non-Citizen.

(a) An impermissible transfer of control will be deemed to exist where a Non-Citizen, whether by agreement, contract, influence, or any other means whatsoever:

(1) Has the right to direct the business of the entity which owns the Fishing Industry Vessel. The right to "direct the business of the entity" does not include the right to simply participate in the direction of the business activities of an entity which owns a Fishing Industry Vessel;

(2) Has the right in the ordinary course of business to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of the entity which owns the Fishing Industry Vessel. Standard rights of minority shareholders to restrict the actions of the entity are permitted provided they are unrelated to day-to-day business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all of the assets, to enter into a different business, to contract with the majority investors or their affiliates or to guarantee the obligations of majority investors or their affiliates;

(3) Has the right to direct the transfer, operation, or manning of a Fishing Industry Vessel. The right to "direct the transfer, operation, or manning" of such vessels does not include the right to simply participate in the direction of the transfer, operation, and manning of such vessels;