12, 1989, 103 Stat. 1922, originally derived from section 65p of former Title 46, Shipping, related to vessels procured outside the United States, prior to the general amendment of this chapter by Pub. L. 109–304. See section 12115 of this title.

CERTAIN VESSELS ENGAGED IN ALASKA COASTWISE TRADE

Pub. L. 108–293, title VI, § 608(b), Aug. 9, 2004, 118 Stat. 1056, provided that:

''(1) IN GENERAL.—Notwithstanding any other provision of law, a person shall be treated as a citizen of the United States under section 12102(a) [now section 12103(a), (b)] of title 46, United States Code, section 2 of the Shipping Act, 1916 ([former] 46 U.S.C. App. 802) [see 46 U.S.C. 50501], and section 27 of the Merchant Marine Act, 1920 ([former] 46 U.S.C. App. 883) [see Disposition Table preceding section 101 of this title], for purposes of issuance of a coastwise endorsement under section 12106(e) of title 46, United States Code (as that section was in effect on the day before the date of enactment of this Act [Aug. 9, 2004]), for a vessel owned by the person on the date of enactment of this Act, or any replacement vessel of a similar size and function, if the person—

''(A) owned a vessel before January 1, 2001, that had a coastwise endorsement under [former] section 12106(e) of title 46, United States Code; and

''(B) as of the date of the enactment of this Act [Aug. 9, 2004], derives substantially all of its revenue from leasing vessels engaged in the transportation or distribution of petroleum products and other cargo in Alaska.

''(2) LIMITATION ON COASTWISE TRADE.—A vessel owned by a person described in paragraph (1) for which a coastwise endorsement is issued under [former] section 12106(e) of title 46, United States Code, may be employed in the coastwise trade only within Alaska and in the coastwise trade to and from Alaska.

''(3) TERMINATION.—The application of this subsection to a person described in paragraph (1) shall terminate if all of that person's vessels described in paragraph (1) are sold to a person eligible to document vessels under section 12106(a) [now section 12112(a)] of title 46, United States Code.''

## § 12113. Fishery endorsement

(a) REQUIREMENTS.—A fishery endorsement may be issued for a vessel that—

(1) satisfies the requirements of section 12103 of this title and, if owned by an entity, the entity satisfies the ownership requirements in subsection (c);

(2) was built in the United States;

(3) if rebuilt, was rebuilt in the United States;

(4) was not forfeited to the United States Government after July 1, 2001, for a breach of the laws of the United States; and

(5) otherwise qualifies under the laws of the United States to engage in the fisheries.

(b) AUTHORIZED ACTIVITY.—

(1) IN GENERAL.—Subject to the laws of the United States regulating the fisheries, a vessel for which a fishery endorsement is issued may engage in the fisheries.

(2) USE BY PROHIBITED PERSONS.—A fishery endorsement is invalid immediately if the vessel for which it is issued is used as a fishing vessel while it is chartered or leased to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement.

(c) OWNERSHIP REQUIREMENTS FOR ENTITIES.—

(1) IN GENERAL.—A vessel owned by an entity is eligible for a fishery endorsement only if at least 75 percent of the interest in the entity, at each tier of ownership and in the aggregate, is owned and controlled by citizens of the United States.

(2) DETERMINING 75 PERCENT INTEREST.—In determining whether at least 75 percent of the interest in the entity is owned and controlled by citizens of the United States under paragraph (1), the Secretary shall apply section 50501(d) of this title, except that for this purpose the terms ''control'' or ''controlled''—

(A) include the right to—

(i) direct the business of the entity;

(ii) 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; or

(iii) direct the transfer, operation, or manning of a vessel with a fishery endorsement; but

(B) do not include the right to simply participate in the activities under subparagraph (A), or the exercise of rights under loan or mortgage covenants by a mortgagee eligible to be a preferred mortgagee under section 31322(a) of this title, except that a mortgagee not eligible to own a vessel with a fishery endorsement may only operate such a vessel to the extent necessary for the immediate safety of the vessel or for repairs, drydocking, or berthing changes.

(3) EXCEPTIONS.—This subsection does not apply to a vessel when it is engaged in the 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)) or to a purse seine vessel when it is engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone or pursuant to the South Pacific Regional Fisheries Treaty, provided that the owner of the vessel continues to comply with the eligibility requirements for a fishery endorsement under the Federal law that was in effect on October 1, 1998. A fishery endorsement issued pursuant to this paragraph is valid for engaging only in the activities described in this paragraph.

(d) REQUIREMENTS BASED ON LENGTH, TONNAGE, OR HORSEPOWER.—

(1) APPLICATION.—This subsection applies to a vessel that—

(A) is greater than 165 feet in registered length;

(B) is more than 750 gross registered tons as measured under chapter 145 of this title or 1,900 gross registered tons as measured under chapter 143 of this title; or

(C) has an engine or engines capable of producing a total of more than 3,000 shaft horsepower.

(2) REQUIREMENTS.—A vessel subject to this subsection is not eligible for a fishery endorsement unless—

(A)(i) a certificate of documentation was issued for the vessel and endorsed with a

fishery endorsement that was effective on September 25, 1997; and

(ii) the vessel is not placed under foreign registry after October 21, 1998;

(B) the owner of the vessel demonstrates to the Secretary that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after October 21, 1998, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act (Public Law 105–277, div. C, title II) (16 U.S.C. 1851 note)[1] to allow the vessel to be used in fisheries under the council's authority;

(C) the vessel is either a rebuilt vessel or a replacement vessel under section 208(g) of the American Fisheries Act (title II of division C of Public Law 105–277; 112 Stat. 2681–627) and is eligible for a fishery endorsement under this section; or

(D) the vessel is a fish tender vessel that is not engaged in the harvesting or processing of fish.

(e) VESSELS MEASURING 100 FEET OR GREATER.—

(1) IN GENERAL.—The Administrator of the Maritime Administration shall administer subsections (c) and (d) with respect to vessels 100 feet or greater in registered length. The owner of each such vessel shall file a statement of citizenship setting forth all relevant facts regarding vessel ownership and control with the Administrator on an annual basis to demonstrate compliance with those provisions.

(2) REGULATIONS.—Regulations to implement this subsection shall conform to the extent practicable with the regulations establishing the form of citizenship affidavit set forth in part 355 of title 46, Code of Federal Regulations, as in effect on September 25, 1997, except that the form of the statement shall be written in a manner to allow the owner of the vessel to satisfy any annual renewal requirements for a certificate of documentation for the vessel and to comply with this subsection and subsections (c) and (d), and shall not be required to be notarized.

(3) TRANSFER OF OWNERSHIP.—Transfers of ownership and control of vessels subject to subsection (c) or (d), which are 100 feet or greater in registered length, shall be rigorously scrutinized for violations of those provisions, with particular attention given to—

(A) leases, charters, mortgages, financing, and similar arrangements;

(B) the control of persons not eligible to own a vessel with a fishery endorsement under subsection (c) or (d), over the management, sales, financing, or other operations of an entity; and

(C) contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

[1] See References in Text note below.

(f) VESSELS MEASURING LESS THAN 100 FEET.—The Secretary shall establish reasonable and necessary requirements to demonstrate compliance with subsections (c) and (d), with respect to vessels measuring less than 100 feet in registered length, and shall seek to minimize the administrative burden on individuals who own and operate those vessels.

(g) VESSELS PURCHASED THROUGH FISHING CAPACITY REDUCTION PROGRAM.—A vessel purchased by the Secretary of Commerce through a fishing capacity reduction program under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) or section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is not eligible for a fishery endorsement, and any fishery endorsement issued for that vessel is invalid.

(h) REVOCATION OF ENDORSEMENTS.—The Secretary shall revoke the fishery endorsement of any vessel subject to subsection (c) or (d) whose owner does not comply with those provisions.

(i) REGULATIONS.—Regulations to implement subsections (c) and (d) and sections 12151(c) and 31322(b) of this title shall prohibit impermissible transfers of ownership or control, specify any transactions that require prior approval of an implementing agency, identify transactions that do not require prior agency approval, and to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of that industry, and to the opportunity to form fishery cooperatives.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1495; Pub. L. 110–181, div. C, title XXXV, § 3529(a)(2), Jan. 28, 2008, 122 Stat. 603; Pub. L. 111–281, title VI, § 602(a), Oct. 15, 2010, 124 Stat. 2959.)

HISTORICAL AND REVISION NOTES

| *Revised Section* | *Source (U.S. Code)* | *Source (Statutes at Large)* |
|---|---|---|
| 12113(a) ..... | 46:12108(a). | |
| 12113(b)(1) .. | 46:12108(b). | |
| 12113(b)(2) .. | 46:12102(c)(3). | |
| 12113(c)(1) .. | 46:12102(c)(1). | |
| 12113(c)(2) .. | 46:12102(c)(2). | |
| 12113(c)(3) .. | 46:12102(c)(4). | |
| 12113(d) ..... | 46:12102(c)(5). | |
| 12113(e) ..... | 46:12102 note. | Pub. L. 105–277, div. C, title II, § 203(c), Oct. 21, 1998, 112 Stat. 2681–619. |
| 12113(f) ..... | 46:12102 note. | Pub. L. 105–277, div. C, title II, § 203(d), Oct. 21, 1998, 112 Stat. 2681–619. |
| 12113(g) ..... | 46:12108(d). | |
| 12113(h) ..... | 46:12102 note. | Pub. L. 105–277, div. C, title II, § 203(e), Oct. 21, 1998, 112 Stat. 2681–619. |
| 12113(i) ..... | 46:12102 note. | Pub. L. 105–277, div. C, title II, § 203(b), Oct. 21, 1998, 112 Stat. 2681–619. |

In subsection (b)(1), the word ''only'' is omitted because section 12102(a), as revised by the bill, contains a general requirement for appropriate documentation to engage in any trade.

In subsection (c)(1), the word ''entity'' is substituted for ''corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity'' to eliminate unnecessary words.

In subsection (e)(3), the words ''After October 1, 2001'' are omitted as obsolete.

In subsection (i), the first two sentences of section 203(b) of Public Law 105–277 are omitted as obsolete.

REFERENCES IN TEXT

The American Fisheries Act (Public Law 105–277, div. C, title II) (16 U.S.C. 1851 note), referred to in subsec.

(d)(2)(B), probably should be a reference to the Magnuson-Stevens Fishery Conservation and Management Act (see note below). Subsec. (d)(2)(B) of this section was derived from former section 12102(c)(5)(B) of this title in the general amendment of this chapter by Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1491. As part of that amendment, the reference to the American Fisheries Act was substituted for a reference to ''such Act'' which had been preceded by references to both of the above named Acts. See the Historical and Revision Notes above and section 2 of Pub. L. 109–304, set out as a Legislative Purpose and Construction note preceding section 101 of this title.

Section 208(g) of the American Fisheries Act, referred to in subsec. (d)(2)(C), is section 208(g) of title II of div. C of Pub. L. 105–277, Oct. 21, 1998, 112 Stat. 2681–627, which is set out in a note under section 1851 of Title 16, Conservation.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (g), is Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, which is classified principally to chapter 38 (§ 1801 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

PRIOR PROVISIONS

A prior section 12113, Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 588, originally derived from section 65a of former Title 46, Shipping, related to ports of documentation, prior to being repealed by Pub. L. 100–710, title I, §§ 106(b)(5), 107(a), Nov. 23, 1988, 102 Stat. 4752, effective Jan. 1, 1989.

AMENDMENTS

2010—Subsec. (d)(2)(A)(i). Pub. L. 111–281, § 602(a)(1), inserted ''and'' at the end.

Subsec. (d)(2)(A)(ii). Pub. L. 111–281, § 602(a)(2), struck out ''and'' at the end.

Subsec. (d)(2)(A)(iii). Pub. L. 111–281, § 602(a)(3), struck out cl. (iii) which read as follows: ''if the fishery endorsement is invalidated after October 21, 1998, application is made for a new fishery endorsement within 15 business days of the invalidation; or''.

Subsec. (d)(2)(C), (D). Pub. L. 111–281, § 602(a)(4), (5), added subpars. (C) and (D).

2008—Subsec. (g). Pub. L. 110–181 inserted ''and'' after ''Conservation''.

INAPPLICABILITY OF SUBSECTION (d) TO CERTAIN MENHADEN FISHERIES

Pub. L. 106–31, title III, § 3027(c), May 21, 1999, 113 Stat. 102, provided that: ''The limitation on registered length contained in section 12102(c)(6) [now section 12113(d)] of title 46, United States Code, shall not apply to a vessel used solely in any menhaden fishery which is located in the Gulf of Mexico or along the Atlantic coast south of the area under the authority of the New England Fishery Management Council for so long as such vessel is used in such fishery.''

EXCEPTION TO BUILD REQUIREMENT FOR PRIOR VESSELS

Pub. L. 100–239, § 4, Jan. 11, 1988, 101 Stat. 1779, as amended by Pub. L. 101–225, title III, § 310, Dec. 12, 1989, 103 Stat. 1926, provided that:

''(a) Notwithstanding the requirements of section 12108(a)(2) and (3) [now section 12113(a)(2) and (3)] of title 46, United States Code, a fishery license may be issued to a vessel that before July 28, 1987—

''(1)(A) was documented under chapter 121 of that title; and

''(B) was operated as a fish processing or fish tender vessel in the navigable waters of the United States or the exclusive economic zone;

''(2) was a fish tender or fish processing vessel contracted to be purchased by a citizen of the United States, if the purchase is shown by contract or similarly reliable evidence acceptable to the Secretary to have been made for the purpose of using the vessel as a fish tender or fish processing vessel in the fisheries;

''(3) was documented under chapter 121 of that title and—

''(A) was rebuilt in a foreign country; or

''(B) is subsequently rebuilt in the United States for use as a fish processing vessel; or

''(4) was built in the United States and—

''(A) is rebuilt in a foreign country under a contract entered into before 6 months after the date of enactment of this Act [Jan. 11, 1988], and was purchased or contracted to be purchased before July 28, 1987 with the intent that the vessel be used in the fisheries, if that intent is evidenced by—

''(i) the contract itself; or

''(ii) a ruling letter by the Coast Guard before July 29, 1987 under 46 C.F.R. § 67.21–1 or § 67.27–3 pursuant to a ruling request evidencing that intent; or

''(B) is purchased for use as a fish processing vessel under a contract entered into after July 27, 1987, if—

''(i) a contract to rebuild the vessel for use as a fish processing vessel was entered into before September 1, 1987; and

''(ii) that vessel is part of a specific business plan involving the conversion in foreign shipyards of a series of three vessels and rebuilding work on at least one of the vessels had begun before July 28, 1987.

''(b) A vessel rebuilt under subsection (a)(3)(B) or (4) of this section must be redelivered to the owner before July 28, 1990. However, the Secretary may, on proof of circumstances beyond the control of the owner of a vessel affected by this section, extend the period for rebuilding in a foreign country permitted by this section.

''(c)(1) Any fishery license or registry issued to a vessel built in a foreign country under this section shall be endorsed to restrict the vessel from catching, taking, or harvesting.

''(2) Before being issued a fishery license, any vessel described in subsection (a)(2) of this section must be documented under an application for documentation acceptable to the Secretary filed before July 28, 1987, except that an alternative vessel of no greater tonnage than the vessel in the application may be substituted, if that substitution is made by the original applicant.''

DEFINITIONS

Pub. L. 100–239, § 6(d), Jan. 11, 1988, 101 Stat. 1782, provided that: ''The terms in this Act [see Tables for classification] have the same meaning as in subtitle II [now also sections 114 and 115] of title 46, United States Code (as amended by this Act).''

## § 12114. Recreational endorsement

(a) REQUIREMENTS.—A recreational endorsement may be issued for a vessel that satisfies the requirements of section 12103 of this title.

(b) AUTHORIZED ACTIVITY.—A vessel operating under a recreational endorsement may be operated only for pleasure.

(c) APPLICATION OF CUSTOMS LAWS.—A vessel for which a recreational endorsement is issued may proceed between a port of the United States and a port of a foreign country without entering or clearing with the Secretary of Homeland Security. However, a recreational vessel is subject to the requirements for reporting arrivals under section 433 of the Tariff Act of 1930 (19 U.S.C. 1433), and individuals on the vessel are subject to applicable customs regulations.

(Pub. L. 109–304, § 5, Oct. 6, 2006, 120 Stat. 1498.)

HISTORICAL AND REVISION NOTES

| *Revised Section* | *Source (U.S. Code)* | *Source (Statutes at Large)* |
|---|---|---|
| 12114(a) ..... | 46:12109(a). | |