

§ 356.47

46 CFR Ch. II (10–1–11 Edition)

does not convey control over the vessel, the vessel owner or bareboat charterer in any manner whatsoever other than as provided for in §356.43; and,

(iv) No security interest in the vessel is conveyed as collateral for the advance of funds, unless a qualified Mortgage Trustee is used to hold the debt instrument for the benefit of the Non-Citizen.

(b) An owner or bareboat charterer may enter into an unsecured letter of credit or promissory note with a U.S. branch of a Non-Citizen Lender if:

(1) The Non-Citizen Lender is not affiliated with any party with whom the owner or bareboat charter has entered into a mortgage, long-term or exclusive sales or purchase agreement, or other similar contract;

(2) The Non-Citizen Lender is not granted any rights whatsoever to control the owner or the operation, management and harvesting activities of the Fishing Industry Vessel; and,

(3) The owner or bareboat charterer submits to the Citizenship Approval Officer within 30 days of execution a description of the arrangement and a certification and warranty that the agreement or contract with the Non-Citizen Lender does not convey control over the vessel, the vessel owner or bareboat charter in any manner whatsoever.

(c) The Citizenship Approval Officer may request a copy of any agreement for an advance of funds or letter of credit in order to determine if it contains an impermissible conveyance of control to a Non-Citizen.

[65 FR 44877, July 19, 2000, as amended at 68 FR 5582, Feb. 4, 2003]

Subpart G—Special Requirements for Certain Vessels

§ 356.47 Special requirements for large vessels.

(a) Unless exempted in paragraph (b), (c) or (d) of this section, a vessel is not eligible for a fishery endorsement under 46 U.S.C. 12108 if:

(1) It is greater than 165 feet in registered length;

(2) It is more than 750 gross registered tons (as measured pursuant to 46 U.S.C. Chapter 145) or 1900 gross reg-

istered tons (as measured pursuant to 46 U.S.C. Chapter 143); or

(3) It possesses a main propulsion engine or engines rated to produce a total of more than 3,000 shaft horsepower; such limitation shall not include auxiliary engines for hydraulic power, electrical generation, bow or stern thrusters, or similar purposes.

(b) A vessel that meets one or more of the conditions in paragraph (a) of this section may still be eligible for a fishery endorsement if:

(1) A certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;

(2) The vessel is not placed under foreign registry after October 21, 1998; and,

(3) In the event of the invalidation of the fishery endorsement after October 21, 1998, application is made for a new fishery endorsement within 15 business days of the receipt of written notification from MARAD or the Coast Guard identifying the reason for such invalidation. The fishery endorsement of a Fishing Industry Vessel that meets the criteria of paragraph (a) of this section is not deemed to be invalid for purposes of complying with this paragraph (a)(3), if the vessel is purchased pursuant to 46 U.S.C. 31329 by a Mortgagee that is not eligible to own a vessel with a fishery endorsement, provided that the Mortgagee is eligible to hold a preferred mortgage on such vessel at the time of the purchase;

(c) A vessel that is prohibited from receiving a fishery endorsement under paragraph (a) of this section will be eligible if the owner of such vessel demonstrates to MARAD 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 of 1998, Title II, Division C, Public Law 105–277, to allow such vessel to be used in fisheries under such council's authority.

(d) A vessel that meets one or more of the conditions in paragraph (a) of

this section may still be eligible for a fishery endorsement if the vessel is engaged exclusively in the menhaden fishery in the geographic region governed by the South Atlantic Fisheries Council or the Gulf of Mexico Fisheries Council.

(e) The owner of a vessel that meets any of the criteria in paragraph (a) of this section is required to submit a certification each year in conjunction with its Affidavit of U.S. Citizenship in order to document that the vessel is eligible for documentation with a fishery endorsement. The certification should indicate that the vessel meets the criteria of paragraph (a) of this section; however, it is eligible to be documented with a fishery endorsement because it complies with the requirements of either paragraph (b), (c), or (d) of this section. A sample form for the certification is available on the MARAD Web site at <http://www.marad.dot.gov/afa.html> or may be obtained by contacting the Citizenship Approval Officer.

[65 FR 44877, July 19, 2000, as amended at 68 FR 5582, Feb. 4, 2003]

§ 356.49 Penalties.

If the owner or the representative or agent of the owner has knowingly falsified or concealed a material fact or knowingly made a false statement or representation with respect to the eligibility of the vessel under 46 U.S.C. 12102(c), in applying for or applying to renew the vessel's fishery endorsement, the following penalties may apply:

(a) The vessel's fishery endorsement may be revoked;

(b) A fine of up to \$100,000 may be assessed against the vessel owner for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the exclusive economic zone of the United States; and

(c) The owner, representative or agent may be subject to additional fines, penalties or both for violation of the proscriptions of 18 U.S.C. 286, 287, and 1001.

§ 356.51 Exemptions for specific vessels.

(a) The following vessels are exempt from the requirements of 46 U.S.C. 12102(c) as amended by the AFA until such time after October 1, 2001, as 50% of the interest owned and controlled in the vessel changes; *provided*, the vessel maintains eligibility for a fishery endorsement under the federal law that was in effect prior to the enactment of the AFA:

(1) EXCELLENCE (United States official number 967502);

(2) GOLDEN ALASKA (United States official number 651041);

(3) OCEAN PHOENIX (United States official number 296779);

(4) NORTHERN TRAVELER (United States official number 635986); and

(5) NORTHERN VOYAGER (United States official number 637398) or a replacement for the NORTHERN VOYAGER that complies with paragraphs 2, 5, and 6 of section 208(g) of the AFA.

(b) The NORTHERN VOYAGER (United States official number 637398) and NORTHERN TRAVELER (United States official number 635986) will forfeit the exemption under paragraph (a) of this section if the vessel is used in a fishery under the authority of a regional fishery management council other than the New England Fishery Management Council or Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(A) and (B)).

(c) The EXCELLENCE (United States official number 967502), GOLDEN ALASKA (United States official number 651041), and OCEAN PHOENIX (United States official number 296779) will forfeit their exemption under paragraph (a) of this section if the vessel is used to Harvest fish.

(d) Owners of vessels that are exempt from the new ownership and control requirements of the AFA and this part 356 pursuant to paragraph (a) of this section must still comply with the requirements for a fishery endorsement under the federal law that was in effect on October 21, 1998. The owners must submit to the Citizenship Approval Officer on an annual basis: