

docket via the Internet at <http://dms.dot.gov> by using the search function and entering the docket number 11984.

FOR FURTHER INFORMATION CONTACT: John T. Marquez, Jr. of the Office of Chief Counsel at (202) 366-5320. You may send mail to John T. Marquez, Jr., Maritime Administration, Office of Chief Counsel, Room 7228, MAR-222, 400 Seventh St., SW., Washington, DC 20590-0001, or you may send e-mail to John.Marquez@marad.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The AFA imposed new citizenship requirements for both the owners of fishing industry vessels of 100 feet or greater in registered length as well as entities that hold a preferred mortgage on such vessels. The AFA raised the U.S. citizen ownership and control standard for U.S. flag fishing industry vessels operating in U.S. waters from a controlling interest standard (greater than 50%) to a 75 percent interest requirement as set forth in section 2(c) of the Shipping Act, 1916, as amended ("1916 Act"). In addition to the requirements of section 2(c) of the 1916 Act, the AFA specifically delineated certain criteria for purposes of determining whether "control" of the owner of a fishing industry vessel is vested in citizens of the United States.

Section 202(b) of the AFA also imposed new requirements to hold a preferred mortgage on fishing industry vessels of 100 feet or greater by amending the definition of "preferred mortgage" at 46 U.S.C. 31322(a)(4) with respect to such vessels. Section 31322(a)(4) of title 46, United States Code, as amended by the AFA on October 21, 1998, defined a preferred mortgage with respect to a fishing industry vessel of 100 feet or greater as one that is held by a mortgagee that: (1) Is a person that meets the 75% U.S. citizen ownership and control standard for fishing industry vessels under 46 U.S.C. 12102(c); (2) is a State or Federally chartered financial institution that satisfies the controlling interest criteria of section 2(b) of the Shipping Act, 1916, 46 U.S.C. 802(b); or (c) is a person that complies with the mortgage trustee provisions of 46 U.S.C. 12102(c)(4).

As the October 1, 2001, effective date of the AFA approached, it became apparent that many traditional lenders in the fishing industry were having difficulty either complying with or demonstrating that they complied with the new standards to hold a preferred mortgage. Therefore, Congress amended

the requirements to broaden the category of lenders that will qualify to hold a preferred mortgage on fishing industry vessels of 100 feet or greater and to limit the extent to which a demonstration of U.S. citizenship would be required.

Section 2202(b) of the Supplemental Appropriations Act, 2001, Pub. L. 107-20, amended the definition of "preferred mortgage" at 46 U.S.C. 31322(a)(4) with respect to fishing industry vessels of 100 feet or greater. As amended, 46 U.S.C. 31322(a)(4), defines a preferred mortgage with respect to such vessels as a mortgage that has as its mortgagee:

(1) A person eligible to own a vessel with a fishery endorsement under 46 U.S.C. 12102(c);

(2) A State or Federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;

(3) A farm credit lender established under title 12, chapter 23, of the United States Code (12 U.S.C. 2001 *et seq.*);

(4) A commercial fishing and agriculture bank established pursuant to State law;

(5) A commercial lender organized under the laws of the United States or of a State and eligible to own a vessel under 46 U.S.C. 12102(a) of this title; or

(6) A mortgage trustee that complies with the requirements of 46 U.S.C. 31322(f).

In addition, the amendments to the AFA defined the terms "commercial lender" and "lending syndicate" and relocated the mortgage trustee provisions from 46 U.S.C. 12102(c)(4) to 46 U.S.C. 31322(f).

In order to ensure that MARAD would have time to implement new regulations related to the eligibility of lenders to hold a preferred mortgage on fishing industry vessels, Congress delayed the effective date of 46 U.S.C. 31322(a), as amended by section 202(b) of the AFA and section 2202 of the Supplemental Appropriations Act, 2001, until April 1, 2003. MARAD was also directed not to consider the citizenship status of a lender, in its capacity as a lender, when determining whether a vessel's owner complies with the requirements of 46 U.S.C. 12102(c) prior to April 1, 2003. Accordingly, we suspended our review of loan transactions in determining whether a vessel owner qualifies as a U.S. citizen until April 1, 2003, when the new requirements become effective.

Finally, section 2202(e) of the Supplemental Appropriations Act, 2001, included changes to section 213(g) of the AFA. As originally enacted, section 213(g) of the AFA stated that if the requirements of 46 U.S.C. 12102(c) or 46 U.S.C. 31322(a), as amended by

the AFA, were determined to be inconsistent with the provisions of an international investment agreement to which the United States was a party with respect to the owner or mortgagee of a fishing industry vessel on October 1, 2001, the requirements of the AFA would not apply to the owner or mortgagee of that specific vessel to the extent of the inconsistency. Congress amended section 213(g) of the AFA to change the date upon which an ownership or mortgage interest was required to be in place in order for an owner or mortgagee to claim the protection of an international investment agreement. The date was changed from October 1, 2001, to July 24, 2001.

We issued a notice of proposed rulemaking on April 16, 2002, 67 FR 18547, that proposed amendments to our regulations at 46 CFR part 356 and requested comments from the public. Seven commenters responded to the NPRM.

Comments on the Proposed Rule

Subpart A—General Provisions

Section 356.3 Definitions

Section 356.3 has been amended by adding several new terms to the definitions, amending several existing definitions and renumbering the definitions accordingly. The three new terms that have been added to the definitions are "commercial lender," "fishing industry vessel," and "lender syndicate." The term "fishing industry vessel" is a new term that is being added to the regulation to refer to a fishing vessel, fish tender vessel or fish processing vessel as defined in § 356.3. In the NPRM, we proposed to replace the phrase "*fishing vessel, fish processing vessel, or fish tender vessel*" with the term "fishing industry vessel" in sections and paragraphs that we were amending. One commenter suggested that we make this change throughout part 356 in order to avoid confusion. We agree with the commenter that use of the term "fishing industry vessel" throughout part 356 would be preferred; therefore, we have amended part 356 to replace the phrases "fishing vessel, fish processing vessel, or fish tender vessel" and "fishing vessel, fish tender vessel, or fish processing vessel" in each place that either phrase appears with the term "fishing industry vessel".

The proposed definitions of "commercial lender" and "lender syndicate" mirrored the definitions provided by Congress in sections 2202(g) and (h), respectively, of the Supplemental Appropriations Act, 2001. Although the proposed definition