

meets all of the following requirements: (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 invalidation.

There are a number of events that can render a vessel's documentation and fishery endorsement immediately invalid under Coast Guard regulations. If one of these events occurs, such as the death of one of the owners in a tenancy by the entirety ownership arrangement, and the remaining owners do not apply for a new fishery endorsement within 15 business days, the vessel could potentially suffer a permanent loss of its eligibility to be documented with a fishery endorsement. Because of the harsh result that could occur if one of these events occurred and the vessel owner did not address the issue within the prescribed time period, MARAD's regulations state that the 15 day period will not begin to run until the vessel owner receives written notification from MARAD or the Coast Guard identifying the reason for such invalidation. In other words, the vessel's fishery endorsement will not be deemed invalid for purposes of complying with paragraph 356.47(b)(3) until notice is given. This requirement ensures that a vessel owner is aware of the consequences of failing to apply for a new fishery endorsement within the specified period of time in the event of an invalidation.

We believe that the sale in bankruptcy of a fishing industry vessel that meets the criteria of paragraph 356.47(a) can also lead to an unintended and harsh result if the vessel is purchased by a mortgagee that is not qualified to own a vessel with a fishery endorsement. A mortgagee is permitted under 46 U.S.C. 31329 to purchase a vessel on which it holds a preferred mortgage, even though the mortgagee may not be qualified to own a documented vessel. The Coast Guard's regulations at 46 CFR 67.161 provide that such a sale to a mortgagee is not deemed to be a foreign sale or to invalidate the vessel's documentation for purposes of complying with certain specified statutory provisions; however, the endorsement on the vessel is not deemed to remain valid. Therefore, as a practical matter, a mortgagee that is not qualified to own a fishing industry vessel is restricted from purchasing such a vessel on which it holds a mortgage and subsequently holding the

vessel for resale to a qualified buyer, as permitted by 46 U.S.C. 31329(b), because the vessel would lose its eligibility to be documented with a fishery endorsement if an application for a new fishery endorsement is not submitted within 15 business days by a qualified owner. Consequently, a mortgagee would be deprived of using a statutorily permitted means of protecting the value of its collateral by purchasing the vessel and subsequently selling the vessel to a qualified buyer. Furthermore, this could adversely impact the ability of vessel owners to obtain financing from entities that are eligible to hold a preferred mortgage on fishing industry vessels, but which are not eligible to own fishing industry vessels. Accordingly, we have amended paragraph 356.47(b)(3) to clarify that a fishing industry vessel's fishery endorsement will not be deemed invalid for purposes of complying with this paragraph, 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.

Following the publication of the NPRM, the AFA was amended by section 1103 of Public Law 107-206 by striking the phrase "of more than 750 gross registered tons" in each place it appears, and inserting in lieu thereof, "of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons (as measured under chapter 143 of that title)". This change was deemed to be necessary because newly constructed fishing industry vessels would not be eligible for documentation with a fishery endorsement if the vessel was over approximately 60 feet in registered length. Newly constructed fishing industry vessels are required to be measured pursuant to 46 U.S.C. chapter 143 for purposes of complying with the AFA. The tonnage measurement of a vessel measured under chapter 145 is much higher than that which would be obtained for a vessel of comparable length that was measured under chapter 143; therefore, newly constructed vessels that are much smaller than 165 feet would not be eligible for documentation with a fishery endorsement prior to the amendment to the AFA. The amendment allows vessels of up to 165 feet to be eligible for documentation if the vessel meets the corresponding tonnage threshold under the tonnage measurement system that applies to the particular vessel. We

have amended § 356.47 to incorporate this technical change.

We are also amending § 356.47 by adding a new paragraph (e) that will require the owners of vessels that are greater than 165 feet in registered length, 750 gross tons (as measured under 46 U.S.C. chapter 145) or 1,900 gross registered tons (as measured under the International Tonnage Convention, 46 U.S.C. chapter 143), or that have engines capable of producing in excess of 3,000 shaft horsepower to submit with their annual affidavit of U.S. citizenship a certification that the vessel is eligible to be documented with a fishery endorsement because it complies with § 356.47(b), (c) or (d) of these regulations. While this information can be obtained by researching Coast Guard files on specific vessels, we have determined that we would not be able to research the information in a timely manner for all of the vessels that are subject to these new restrictions. Therefore, the vessel owner will be required to certify that the vessel is eligible for documentation pursuant to one of the exceptions in § 356.47.

#### Section 356.51 Exemptions for Specific Vessels

Paragraph (a) states that certain vessels will be exempt from the requirements of 46 U.S.C. 12102(c) "until such time as 50% of the interest owned and controlled in the vessel changes." We added the phrase "after October 1, 2001," after "such time" in paragraph (a) in order to clarify that the ownership structure on October 1, 2001, is the baseline from which we will measure any change in ownership of a vessel that is exempt from the requirements of 46 U.S.C. 12102(c) pursuant to this section.

In addition, there were several technical amendments to § 356.51 to correct typographical errors in the regulation. The official number for the vessel EXCELLENCE was corrected in paragraphs 356.51(a)(1) and (c). Paragraph 356.51(e) was deleted and a reworded version of the paragraph was inserted as a new paragraph (d).

The current paragraph (d) relates to the exemption from the ownership and control requirements for fishing industry vessels engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council and for purse seine vessels that are engaged in tuna fishing in the Pacific Ocean outside of the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty. Such vessels are exempted, pursuant to 46 U.S.C. 12102(c)(4), as redesignated by