

COMMERCIAL FISHERY PERMIT ELIGIBILITY UNDER PACIFIC COUNCIL FISHERY MANAGEMENT PLANS

Introduction

In November 2016, the Council received correspondence from National Marine Fisheries Service (NMFS) about NMFS's denial of a request to issue a commercial highly migratory species (HMS) permit to an American Indian born in Canada ([Agenda Item C.6.a, Supplemental NMFS Report, November 2016](#)). In turn, NMFS West Coast Region (WCR) requested that the Council consider the request for a regulatory amendment to the HMS regulations (50 CFR part 660 subpart K) to address permit eligibility for American Indians born in Canada who are not U.S. citizens. The Council did not schedule this matter on a future meeting agenda, but requested more information before taking it up. A representative of the petitioner provided public comment to the Council at several subsequent meetings (see [Agenda Item C.4.b, Supplemental Public Comment](#), April 2017; [Agenda Item C.8.b, Public Comment](#), June 2017; [Agenda Item H.5.b, Supplemental Public Presentation 1](#), September 2017; and [Agenda Item C.7.b, Supplemental Public Comment 1](#), March 2018).

The petitioner in this case, Mr. Tom Hearty, makes an argument based on the unique status of American Indians born in Canada. American Indians born in Canada have the right under the 1795 Jay Treaty between the United States and Great Britain to move freely between the two countries, work in the United States, and receive public assistance like a United States citizen, but they are not automatically "citizens" or treated as citizens for purposes of all laws. The Council has heard presentations in public comment on the status of American Indians born in Canada who are working lawfully in the United States pursuant to their rights under the Jay Treaty, as referenced above.

At its April 2018 meeting, the Council asked for a broader consideration of eligibility requirements beyond just the commercial HMS permit. This report, drafted by Council staff with assistance from NMFS WCR Permits Branch staff and National Oceanic and Atmospheric Administration General Counsel, reviews eligibility requirements for Federal permits established under the Council's fishery management plans (FMPs). This will help the Council determine the scope of action if it wishes to address the request outlined above.

Findings

1. Federal Regulations at Title 50, Part 660 (Fisheries off West Coast States) describe five Federal permits: the groundfish limited entry permit, the groundfish quota share (QS) permit, the Coastal Pelagic Species (CPS) limited entry permit, the HMS general permit, and the Federal limited entry (LE) drift gillnet permit.
2. Regulations pertaining to four out of five of these permits contain language restricting permit ownership to persons eligible to own a documented vessel, cross-referencing sections of Title 46 Chapter 121 of the U.S. Code on the documentation of vessels.¹

¹ Relevant portions of Chapter 121 are appended to this report.

- Generally, only U.S. citizens are eligible to document a vessel. The Federal limited entry drift gillnet permit does not have an equivalent eligibility restriction. Sections of the
3. regulations for the three fisheries (groundfish, CPS, and HMS) further define “person” as an individual or entity eligible to own a documented vessel. 46 U.S.C. 12103(b) specifies that eligible owners of documented vessels (whether an individual owner or those controlling an entity) must be citizens of the United States.
 4. Amendment 6 to the Pacific Coast Groundfish Fishery Management Plan (FMP) established the groundfish limited entry permit system (final rule at 54 FR 54001, November 16, 1992). According to the amendment supplemental environmental impact statement, Council intent was “that anyone not eligible to purchase a U.S. fishing vessel (as per the Anti-reflagging Act) would not be allowed to acquire a groundfish LE permit and (2) instructed that, if a license limited entry system is adopted, the regulations developed to implement the system limit foreign ownership to the maximum extent allowable under the law.”
 5. With respect to groundfish QS ownership (and thus eligibility to obtain a QS permit) Council intent was to restrict individual eligibility to U.S. Citizens and permanent resident aliens. Qualifying entities could have no more than 25 percent non-citizen control. However, implementing regulations appear to be written such that *individual* permanent resident aliens are not eligible to obtain the permit.
 6. CPS and HMS regulations relating to permit eligibility are almost identically worded, stating that only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued the relevant permit. As noted above, the definition of “person” is identical in all three subparts of the regulations.
 7. Federal fishery permit regulations from other U.S. regions vary in terms of restricting eligibility to U.S. citizens. West coast states appear not to have a comparable citizenship requirement for state issued fishery permits.
 8. The petitioner Mr. Hearty does not claim that he is a U.S. citizen, or that a vessel owned by an American Indian born in Canada (non U.S. citizen) could be documented under Title 46, Chapter 121 of the United States Code.

The following sections detail these findings.

Definition of “Person”

As noted above, in the sections of Federal regulations for groundfish (Subpart C), CPS (Subpart I), and HMS (Subpart K) “person” is defined by cross-referencing 46 USC 12103, although the groundfish regulations cite paragraph (b) while the CPS and HMS regulations cite paragraph (a). Paragraph (a) describes vessels that may be documented while paragraph (b) describes eligible owners. Because paragraph (a)(1) states that, among other criteria, only vessels “wholly owned by one or more individuals or entities described in subsection (b)” may be documented, there is no practical difference in these cross-references with respect to identifying eligibility criteria. 46 U.S.C. 12103(b) specifies eligible owners as “An individual who is a citizen of the United States” or if an entity (variously described) that those controlling the entity are U.S. citizens. All these definitions describe a person as it applies to the relevant subpart as “any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel...”

West Coast Groundfish Fishery Permits

Groundfish FMP Limited Entry Permit

The Supplemental Environmental Impact Statement for Amendment 6 (Chapter 7, Economic and Social Analysis, page 7-116), which established the groundfish LE permit, describes Council intent to restrict eligibility for the LE permit:

Risk of Foreign Control. Concern has been expressed that transferable rights under a limited entry system might be subject to foreign purchase and control. Some foreign interests which were displaced from fisheries within 200 miles of the U.S. coast by the MFCMA [Magnuson-Stevens Fishery Conservation and Management Act, MSA] may be looking for other means to access U.S. fisheries.

In response to this concern, the Council has done two things: (1) expressed its intent that anyone not eligible to purchase a U.S. fishing vessel (as per the Anti-reflagging Act) would not be allowed to acquire a groundfish LE permit and (2) instructed that, if a license LE system is adopted, the regulations developed to implement the system limit foreign ownership to the maximum extent allowable under the law. It appears that restrictions on ownership of permits cannot go beyond the restrictions on foreign ownership of U.S. vessels specified in the Anti-reflagging Act.

Regulations describe eligibility: “Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12113(a) may be issued or may hold a limited entry permit.” (50 CFR 660.25(b)(1)(ii)). This cross-reference cites the eligibility to obtain a fishery endorsement, which indirectly expands eligibility compared to cross references to 46 U.S.C. 12103(b), limiting eligibility to U.S. citizens. Section 12113(a)(1) states that fishery endorsement may be issued for a vessel that “satisfies the requirements of section 12103 of this title and, if owned by an entity, the entity satisfies the ownership requirements in subsection (c).” Subsection (c), covering ownership requirements for entities, expands eligibility to entities when “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.” Thus non-citizens who own and control less than 25 percent of the entity would be indirectly eligible, recognizing that the permit is issued to the entity, not to its individual officers. But a non-citizen would not be eligible to individually obtain a permit.

To be clear, while all these cross-references refer to conditions applicable to *vessels*, the specific use in the context of the west coast fishery regulations is to establish eligibility for “*persons*” to obtain permits.

QS Permits

The Council’s trawl rationalization program was established under Amendment 20, which included distribution of quota shares to permittees in the shoreside groundfish trawl fishery; the Final Environmental Impact Statement (FEIS) for this action was published in June 2010. The final rule implementing the QS permit was published on October 1 of that year (75 FR 60897). The Council’s intent with respect to QS ownership (and thus eligibility to obtain a QS permit was “No person can acquire quota shares or quota pounds other than 1) a United States citizen,

2) a permanent resident alien, or 3) a corporation, partnership, or other entity established under the laws of the United States or any State, that is eligible to own and control a US fishing vessel with a fishery endorsement pursuant to 46 USC 12113” (Amendment 20 FEIS, Appendix A, Section 2.2.3.a, p. A-266). Council intent is further described: “In developing language to implement its intent, the Council checked the MSA provisions on who should be restricted from holding a limited access privilege (QS/QP) and the NMFS limited entry program website forms indicating who is eligible to own a limited entry permit in the current permit system. On the basis of this latter information, the Council included legal resident aliens in its specification of those eligible to hold QS/QP” (*ibid*). Among the reasons given for specifying eligibility was to limit foreign ownership to realize net national economic benefits.

The eligibility criteria for QS permits are described in regulations at 50 CFR 660.140 (d)(2)(i):

- (A) A United States citizen, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 U.S.C. 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities);
- (B) A permanent resident alien, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 U.S.C. 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities); or
- (C) A corporation, partnership, or other entity established under the laws of the United States or any State, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 U.S.C. 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities). However, there is an exception for any entity that owns a mothership that participated in the west coast groundfish fishery during the allocation period and is eligible to own or control that U.S. fishing vessel with a fishery endorsement pursuant to sections 203(g) and 213(g) of the AFA.

The Council intent as described in Appendix A to the Amendment 20 FEIS clearly extends eligibility to *individual* permanent resident aliens based on the last sentence from Amendment 20 quoted above.² (“On the basis of this latter information, the Council included legal resident aliens in its specification of those eligible to hold QS/QP.”) The regulations at paragraph (B) quoted above, by referencing 46 U.S.C. 12113 and further summarizing the eligibility criteria for entities, limits ownership by permanent resident aliens to a minority stake in an entity.³ This construction could have resulted from interpreting the last clause in the statement of Council intent —“... that is eligible to own and control a US fishing vessel with a fishery endorsement pursuant to 46 USC 12113”— as applying to all three classes enumerated in the statement.

CPS Limited Entry Permit

Amendment 8, which converted the Northern Anchovy FMP to the CPS FMP, authorized a limited entry program for the fishery. Amendment 8 was published in December 1998.

² “Permanent resident alien” is defined by the Immigration and Naturalization Service as “Any person not a citizen of the United States who is living in the U.S. under legally recognized and lawfully recorded permanent residence as an immigrant,” often referred to as a “Green Card holder.” It thus has the same meaning as the term “legal resident alien” used in Amendment 20.

³ Note further that 46 U.S.C. 12113(a) states that a vessel receiving the fishery endorsement must “satisfy the requirements of section 12103”, the section limiting eligibility to document a vessel to U.S. citizens.

Implementing regulations were published on December 15, 1999 (64 FR 69888); the limited entry program became effective January 1 2000. Appendix B to Amendment 8 contains a detailed analysis of the limited entry program. Section 3.5.2 discusses the option to establish limited entry and enumerates several “suboptions for implementing a limited entry program” including the statement that “Only a person eligible to own a documented vessel may be issued or may hold, by ownership or otherwise, a limited entry permit” (p. B-49). Although Appendix B exhaustively evaluates limited entry program features to achieve an overall goal of capacity limitation, there is no specific discussion of limiting eligibility to persons eligible to own a documented vessel. No comments on the FEIS or the proposed rule addressed the issue of permit eligibility. Thus, no rationale can be found for implementing this eligibility requirement. (But minutes of meetings where the Council discussed FMP development and related reports have not been reviewed.) Consistent with the suboption articulated in Amendment 8 Appendix B, regulations at 50 CFR 660.512(a)(3) state “Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) qualifies to be issued or may hold, by ownership or otherwise, a limited entry permit.”⁴

HMS

General Permit

The Council’s intent in establishing an HMS permit is expressed in the August 2003 combined HMS FMP/FEIS: “The permit is to be issued to a vessel owner for each specific vessel used in commercial HMS fishing” (p. 8-35). The rationale given was that this would allow for “tracking and controlling, by permits, commercial HMS fishing activities and the effects of regulations on those activities.” (*ibid.*) The general HMS permit is described in Federal regulations at 50 CFR 660.707(a). A commercial vessel (including recreational charter vessels) fishing for HMS “must be registered for use under a general HMS permit.” The regulations then essentially reproduce the language described above: “Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a general HMS permit.”⁵ That the vessel owner must hold the permit is only implied by this language, because it describes *eligibility*, not actual ownership.⁶ Furthermore, there is nothing in the HMS FMP to suggest that the Council intended to limit eligibility to U.S. citizens. (But minutes of meetings where the Council discussed FMP development and related reports have not been reviewed.) An argument might be made that the Council expressed a general intent when identifying this eligibility restriction for the groundfish and CPS limited entry permits, which could be extended to any future fishery permit established under one of the Council’s FMPs.

⁴ This cross reference is incorrect. Section 12102 describes vessels that may be documented. Section 12103 specifies vessels owners eligible to document a vessel.

⁵ This cross reference is incorrect. See previous footnote.

⁶ Permit owner is defined in this subpart but it sheds no light on the connection between the permit owner and the vessel owner: “Permit owner means a person who owns an HMS permit for a specific vessel fishing with specific authorized fishing gear.” This definition speaks to permit ownership but not vessel ownership.

More likely, when the regulations were drafted, this passage was simply borrowed from the CPS regulations, given the almost identical language.⁷

The general HMS permit is functionally different than the permits described above, because it does not confer a privilege through license limitation or, in the case of the QS permit, to own an asset. Instead, it was created as a mechanism to keep track of vessels participating in the HMS fishery and by extension obligate participants to comply with other regulatory requirements. This difference further weakens the rationale for limiting eligibility to U.S. citizens since no privilege is being conferred.

Limited Entry Drift Gillnet Permit

The Federal limited entry drift gillnet (DGN) permit was established through Amendment 5 to the HMS FMP and became effective on April 18, 2018, through Federal rulemaking ([83 FR 11146](#)).⁸ This permit differs in construction from the general HMS permit in that “Federal limited entry DGN permits are issued to an individual, and a vessel must be specified on the permit.” (50 CFR 660.707(f)(1)). Eligibility for this permit is conditioned on possession of a State of California limited entry DGN permit on the date of publication of the final rule and the permit owner does not have to be the vessel owner (although any vessel registered to this permit and used for fishing would have to be registered to the general HMS permit). For the Federal DGN permit there is no equivalent language specifying that only U.S. citizens are eligible and in fact some state permit holders, who would be eligible for the Federal permit, may not be U.S. citizens. However, it is unclear whether the definition of “person,” as discussed above, would in any way restrict eligibility or subsequent fishing under the permit. For example, commercial fishing is defined in Subpart K as “Fishing by a person...”

Federal Fishery Permits in Other Regions and West Coast State Fishery Permits

Fishery regulations for other parts of the U.S. were reviewed to determine if similar permit eligibility conditions are applied. In most cases these regulations do not describe requirements restricting eligibility based on citizenship.

Regulations for fisheries of the Caribbean, Gulf of Mexico, and South Atlantic are found at 50 CFR Part 622 and Atlantic HMS at Part 635. The application process for fishery permits described in these regulations is administered by the NMFS Southeast Regional Office (SERO). The general application form for vessels fishing in the exclusive economic zone lists 12 open access permits for commercial and charter/headboat vessels and 21 limited entry permits.⁹ The regulations do not specify citizenship eligibility requirement for these permits. The application form includes a check box asking if the individual is a United States Citizen or permanent resident alien but the instructions note that “this information will not affect eligibility to obtain a permit.” In the regulations only the Gulf aquaculture permit restricts eligibility relative to

⁷ Draft proposed regulations were included as Appendix I to the August 2003 FMP / FEIS. This was published after the Council had taken final action adopting the FMP. The record does not show that the Council subsequently reviewed (or “deemed”) the draft proposed regulations.

⁸ This rulemaking also qualified the existing HMS permit as the “general” permit to distinguish it from the DGN limited entry permit.

⁹ Additional permits for dealers, vessel operators, and aquaculture activities are described in regulations.

citizenship or residency: “Eligibility for a Gulf aquaculture permit is limited to U.S. citizens as defined in the Immigration and Nationality Act of 1952, as amended, and permanent resident aliens lawfully accorded the privilege of residing permanently in the U.S. in accordance with U.S. immigration laws” (50 CFR 622.101(a)(1)).

Regulations for fisheries of the Northeastern United States at 50 CFR Part 648 were reviewed and no language restricting fishery permit eligibility based on citizenship or residency was found. Thirteen permits are described in this section. A permit application form, like the one available from the NMFS SERO website, could not be obtained for review.

Federal permits for fisheries in the Western Pacific (50 CFR Part 665) are administered by the NMFS Pacific Islands Regional Office; six permits are listed for pelagic vessels, four permits for fishing in the Hawaiian Islands, three for American Samoa, five for Guam and the Northern Mariana Islands, four for Pacific Remote Island Areas, and one for Marine National Monuments. Most of these permits have no or just a few permit holders. Only two of these permits appear to restrict eligibility based on citizenship. Regulations for the Hawaii longline limited access permit state: “Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a Hawaii longline limited access permit” (50 CFR 665.801(n)). Initial qualification for the American Samoa longline limited access permit is limited to any “U.S. national or U.S. citizen or company, partnership, or corporation.”¹⁰ Similar eligibility requirements are not described for other permits in this Part.

Regulations for fisheries in the exclusive economic zone (EEZ) off Alaska (Part 679) list some 40 permits covering a variety of activities. A blanket eligibility requirement is described: “Only persons who are U.S. citizens are authorized to receive or hold permits ... with the exception that an IFQ hired master permit or a CDQ hired master permit need not be held by a U.S. citizen” (50 CFR 679.4(a)).

Pursuant to the High Seas Fishing Compliance Act a permit is required for any U.S. fishing vessel fishing outside the EEZ in international waters (50 CFR 300). Eligibility is not restricted based on citizenship or residency: “Any vessel owner or operator of a high seas fishing vessel is eligible to receive a permit” unless “the vessel undermined the effectiveness of international conservation and management measures” (50 CFR 300.33(a)).

Although not confirmed for all three west coast states, it appears that no comparable eligibility requirement applies to state fishery permits. The California Fish and Game Code (FGC) at Section 7851 states that the “application for a commercial fishing license shall contain ... a statement as to whether or not the applicant is a citizen of the United States.” Otherwise, the FGC does not appear to restrict permit eligibility. This requirement appears to be comparable to the SERO permit application form in that it asks about citizenship but does not require it. In

¹⁰According to the Internal Revenue Service, “For tax purposes the term ‘U.S. national’ refers to individuals who were born in American Samoa or were born in the Commonwealth of the Northern Mariana Islands who have chosen to be U.S. nationals instead of U.S. citizens.” Also note that permit eligibility is further limited to owners of vessels used to harvest western Pacific pelagic MUS with longline gear in the EEZ around American Samoa prior to March 21, 2002, and to land that fish in American Samoa. The status of a “company, partnership, or corporation” is ambiguous, but a plain reading would suggest that these entities do not need to be owned by a U.S. national or U.S. citizen.

Oregon, U.S. citizenship is not required for commercial fishing licenses, commercial boat licenses, vessel registration, or recreational fishing licenses (personal communication, Oregon Department of Fish and Wildlife and Oregon Marine Board); there are thus no comparable citizenship requirements in state statute or regulations.

Conclusion

Taking the broadest look at fishery permits nationally, citizenship-based eligibility restrictions are not uniform; there is no general policy in this regard. The MSA and other Federal law does not preclude NMFS from issuing fishing or vessel permits to non-citizens; neither could an MSA permit exempt persons from other applicable laws such as labor laws, immigration laws, or Coast Guard documentation requirements. Regulations for four of five permits under Council FMPs include language restricting eligibility to U.S. citizens. Council intent seems to vary, at least based on what can be gleaned from FMP documents. In the case of the first Federal permit developed by the Council, the 1992 groundfish limited entry permit, the Council clearly intended to limit foreign ownership. The Council may not have intended to prevent permanent resident aliens from obtaining the permit but the regulations appear to do so by citing 46 U.S.C. 12113(a), which limits non-citizen eligibility to a minority stake in an entity. Amendment 8, establishing the 2000 CPS limited entry permit, states that only a person eligible to own a documented vessel may receive a permit as part of a list of permit features but does not give any reason for this requirement. It appears that the Council intended that individual permanent resident aliens be eligible for the 2011 groundfish QS permit, but implementing regulations appear to limit eligibility of non-citizens to a minority stake in an entity, like the groundfish limited entry permit. The August 2003 HMS FMP FEIS nowhere mentions limiting eligibility for the HMS general permit. The Council intended that California State limited entry drift gillnet permit holders be eligible for the Federal permit without regard to citizenship, because the state permit has no such eligibility restriction.

This review suggests that the Council has not been consistent in setting eligibility requirements for different permits with respect to citizenship. The Council may wish to consider whether it has, or should now, articulate a blanket policy with regard to permit eligibility or focus narrowly on the petitioner's request with regard to the general HMS permit.

No matter the scope of Council action, a number of courses, other than status quo,¹¹ could be considered:

- Eliminate the citizenship-based eligibility requirement entirely.
- Expand eligibility to include lawful permanent resident aliens. This status includes American Indians born in Canada lawfully residing in the U.S. pursuant to the Jay Treaty.
- Address the specific circumstance of the petitioner by making American Indians born in Canada lawfully residing in the U.S. eligible. A narrowly tailored eligibility criterion based on a specific class of persons would face a high legal bar to meet Constitutional equal protection principles.

¹¹ But under status quo the erroneous cross references to 46 USC 12102 in the CPS and HMS regulations should be corrected.

It is important to bear in mind that any change to the eligibility requirements for MSA fishery permits would not affect eligibility to own a documented vessel specified at 46 U.S.C. § 12103. In cases where the permit is issued to a vessel owner, vessel documentation would still be required. Not all vessels must be documented, the most relevant exception being vessels less than 5 gross registered tons. As an illustration of providing documentation for any class of vessel, in many instances Federal regulations related to vessel permits require the applicant to provide a “copy of the vessel’s valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.” Thus the petitioner could own a vessel of less than 5 gross registered tons, or use a documented vessel owned by a U.S. citizen, and likely participate in a variety of fisheries where one of the four west coast Federal permits discussed above is not required.

PFMC
05/11/18

46 U.S.C. CHAPTER 121—DOCUMENTATION OF VESSELS

§12102. Vessels requiring documentation

- (a) In General.—Except as otherwise provided, a vessel may engage in a trade only if the vessel has been issued a certificate of documentation with an endorsement for that trade under this chapter.
- (b) Vessels Less Than 5 Net Tons.—A vessel of less than 5 net tons may engage in a trade without being documented if the vessel otherwise satisfies the requirements to engage in the particular trade.
- (c) Barges.—A barge qualified to engage in the coastwise trade may engage in the coastwise trade, without being documented, on rivers, harbors, lakes (except the Great Lakes), canals, and inland waters.
- (d) Aquaculture Waiver.—

(1) Permitting of nonqualified vessels to perform certain aquaculture support operations.— Notwithstanding section 12113 and any other law, the Secretary of Transportation may issue a waiver allowing a documented vessel with a registry endorsement or a foreign flag vessel to be used in operations that treat aquaculture fish for or protect aquaculture fish from disease, parasitic infestation, or other threats to their health if the Secretary finds, after publishing a notice in the Federal Register, that a suitable vessel of the United States is not available that could perform those services.

(2) Prohibition.—Vessels operating under a waiver issued under this subsection may not engage in any coastwise transportation.

§12103. General eligibility requirements

- (a) In General.—Except as otherwise provided, a certificate of documentation for a vessel may be issued under this chapter only if the vessel is—
 - (1) wholly owned by one or more individuals or entities described in subsection (b);
 - (2) at least 5 net tons as measured under part J of this subtitle; and
 - (3) not documented under the laws of a foreign country.
- (b) Eligible Owners.—For purposes of subsection (a)(1), the following are eligible owners:
 - (1) An individual who is a citizen of the United States.
 - (2) An association, trust, joint venture, or other entity if—
 - (A) each of its members is a citizen of the United States; and
 - (B) it is capable of holding title to a vessel under the laws of the United States or a State.
 - (3) A partnership if—
 - (A) each general partner is a citizen of the United States; and
 - (B) the controlling interest in the partnership is owned by citizens of the United States.
 - (4) A corporation if—
 - (A) it is incorporated under the laws of the United States or a State;
 - (B) its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States; and
 - (C) no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum.

- (5) The United States Government.
 - (6) The government of a State.
- (c) Temporary Certificates Prior to Measurement.—Notwithstanding subsection (a)(2), the Secretary may issue a temporary certificate of documentation for a vessel before it is measured.

...

§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—

- (i) 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; and
- (ii) in the case of a vessel listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (title II of division C of Public Law 105–277; 112 Stat. 2681–625 et seq.), the vessel is neither participating in nor eligible to participate in the non-AFA trawl catcher processor subsector (as that term is defined under section 219(a)(7) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 2887));

(C) the vessel—

- (i) is either a rebuilt vessel or 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);
- (ii) is eligible for a fishery endorsement under this section; and
- (iii) in the case of a vessel listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (title II of division C of Public Law 105–277; 112 Stat. 2681–625 et seq.), is neither participating in nor eligible to participate in the non-

AFA trawl catcher processor subsector (as that term is defined under section 219(a)(7) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 2887); ² 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.

(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.