

## APPENDIX A

### PUBLIC LAWS OF THE 107TH CONGRESS, FIRST SESSION, PROVIDING OR AMENDING CERTAIN MARITIME LAWS.

**AMERICAN FISHERY MATTERS.** Sections 2201 and 2202 of Public Law 107-20, approved July 24, 2001 (115 STAT. 155, 168)), the Supplemental Appropriations Act, 2001, made various amendments of interest to vessels operating under Public Law 105-277, approved October 21, 1998 (112 STAT. 2681-617), the American Fisheries Act.

These amendments are discussed in Appendix B, *infra* page 515..

**DEFENSE PRODUCTION ACT/EXTENSION.** Public Law 107-47, approved October 5, 2001 (115 STAT. 260), amended Sections 717(a) and 711(b) of the Defense Production Act, (50 U.S.C. App. 2166(a) & 2161(b)), to extend the termination date from September 30, 2001, to September 30, 2003.

**HUNTERS POINT NAVAL SHIPYARD.** Section 129 of Public Law 107-64, approved November 5, 2001 (115 STAT. 482), the Military Construction Appropriations Act, 2002, requires the Secretary of Defense, within 90 days after enactment, to submit to the Congressional defense committees a master plan for the environmental remediation of the former Hunters Point Naval Shipyard, California, and semiannual progress reports thereafter. The Conference Report (H. Rpt. 107-246), at page 20, indicates that this was a Senate provision.

**HARBOR AND SECURITY MATTERS.** Public Law 107-67, approved November 12, 2001 (115 STAT. 514, 520), the Treasury and General Government Appropriations Act, 2002, contains the following provisions of particular interest.

**Harbor Maintenance Fee.** (115 STAT. 520) \$3 million from the Harbor Maintenance Trust Fund is allocated for administrative expenses related to the collection of the Harbor Maintenance Fee pursuant to Public Law 103-182.

**Maritime Interdiction Programs.** (115 STAT. 520) \$177,860,000 is appropriated for the operation, maintenance and procurement under air and marine interdiction programs.

**International Food Assistance.** The Conference Report (H. Rpt. 107-253), provides at page 61: "The House bill contained a provision based upon concerns of the proper role for the Office of Management and Budget in the administration of international food assistance programs. In lieu of the House bill language, the conferees direct the

Office of Management and Budget to work closely with USDA and AID, as well as other appropriate Federal departments and agencies, with the expectations that agencies will work together to standardize eligibility standards and deadlines for aid; define program goals with measurable standards of performance; ensure that performance is appropriately measured and evaluated; and fully utilize all Federal expertise to ensure that the best possible assistance is being provided to the private voluntary organizations operating the programs. The Office of Management and Budget is also expected to keep the Committees on Appropriations fully apprised of on-going action with respect to this multi-agency effort."

#### **AVIATION AND TRANSPORTATION SECURITY ACT.**

Public Law 107-71, approved November 19, 2001 (115 STAT. 597), seeks to ensure the safety and security of the civil air transportation system. Although Public Law 107-71, primarily addresses civil air transportation, recognition is given to maritime matters. Section 101 creates a Transportation Security Administration to be headed by a Under Secretary of Transportation whose duties include in 49 U.S.C. 114(d)(2) "security responsibilities over other modes of transportation that are exercised by the Department of Transportation." Additionally, 49 U.S.C. 114(g) provides: "(g) National Emergency Responsibilities-(1) In General. Subject to the direction and control of the Secretary, the Under Secretary, during a national emergency, shall have the following responsibilities: (A) to coordinate domestic transportation, including aviation, rail, and other surface transportation, and maritime transportation (including port security); (B) To coordinate and oversee the transportation-related responsibilities of the departments and agencies of the Federal Government other than the Department of Defense and the military departments."

**AGRICULTURE APPROPRIATIONS ACT.** Public Law 107-76, approved November 28, 2001 (115 STAT. 704), the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002, contains the following provisions of particular interest:

**Ocean Freight Differential.** (115 STAT. 729) provides: "For ocean freight differential costs for the shipment of agricultural commodities under title I of the Agricultural Trade Development and Assistance Act of 1954 and under the Food for Progress Act of 1985, \$20,277,000, to remain available until expended: Provided, That funds made available for the cost of agreements under title I of the Agricultural Trade Development and Assistance Act of 1954 and for title I ocean freight differential may be used interchangeably between the two accounts with

prior notice to the Committees on Appropriations of both Houses of Congress."

**Section 416 Shipments/AIDS.** (115 STAT. 735). Section 727 provides: "Sec. 727. Of any shipments of commodities made pursuant to section 416(b) of the Agriculture Act of 1949 (7 U.S.C. 1431(b)), the Secretary of Agriculture shall, to the extent practicable, direct that tonnage equal in value to not more than \$25,000,000 shall be made available to foreign countries to assist in mitigating the effects of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome on communities, including the provisions of - (1) agricultural commodities to- (A) individual with Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome in the communities; and (B) household in the communities, particularly individuals caring for orphaned children; and (2) agricultural commodities monetized to provide other assistance (including assistance under microcredit and microenterprise programs) to create or restore sustainable livelihoods among individuals in the communities, particularly individuals caring for orphaned children."

**COMMERCE, JUSTICE, STATE, JUDICIARY AND RELATED AGENCIES APPROPRIATIONS ACT, FY 2002.** Public Law 107-77, approved November 28, 2001 (115 STAT. 748), contains the following provisions of particular interest:

**Passenger Manifests.** Section 115 of Public Law 107-77 (115 STAT. 768), amended Section 231 of the Immigration and Nationality Act (8 U.S.C. 1221), to make mandatory the provision of passenger manifests to the Attorney General from commercial aircraft and vessels entering and departing the United States.

**American Fisheries Act.** Section 211 of Public Law 107-77 (115 STAT. 779), amended Section 213(a) of Public Law 105-277, the American Fisheries Act, to delete a sunset provision and instead authorize an annual appropriation, making permanent the prohibition on direct pollock fishing by non-American Fisheries Act catcher/processor vessels.

**MARAD Appropriations.** Title V- Related Agencies (115 STAT. 791), provides:

#### **Maritime Administration**

##### **Maritime Security Program.**

For necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, \$98,700,000, to remain available until expended.

### **Operations and Training.**

For necessary expenses of operations and training activities authorized by law, \$89,054,000, of which \$13,000,000 shall remain available until expended for capital improvements at the United States Merchant Marine Academy.

### **Maritime Guarantee Loan (Title XI) Program Account.**

For the cost of guaranteed loans, as authorized by the Merchant Marine Act, 1936, \$33,000,000, to remain available until expended: Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended. In addition, for administrative expenses to carry out the guaranteed loan program, not to exceed \$3,978,000, which shall be transferred to and merged with the appropriation for Operations and Training.

### **Administrative Provisions - Maritime Administration.**

Notwithstanding any other provision of this Act, the Maritime Administration is authorized to furnish utilities and services and make necessary repairs in connection with any lease, contract, or occupancy involving Government property under control of the Maritime Administration, and payments received therefore shall be credited to the appropriation charged with the cost thereof: Provided, That rental payments under any such lease, contract, or occupancy for items other than such utilities, services, or repairs shall be covered into the Treasury as miscellaneous receipts. No obligations shall be incurred during the current fiscal year from the construction fund established by the Merchant Marine Act, 1936, or otherwise, in excess of the appropriations and limitations contained in this Act or in any prior Appropriations Act.

**Federal Maritime Commission Appropriations.** Public Law 107-77 (115 STAT. 794) appropriated \$16,458,000 for this purpose.

**NOAA/U.S. Shipyard Provisions.** Section 606 of Public Law 107-77 (115 STAT. 799) provides that fund may not be used for the construction, repair (other than emergency repair), overhaul, conversion, or modernization of vessels for NOAA in shipyards located outside the United States.

**Buy American Provisions** Section 607 of Public Law 107-77 (115 STAT. 799) provides that it is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds under this Act should be American-made.

**DEPARTMENT OF TRANSPORTATION APPROPRIATIONS ACT, FY 2002.** Public Law 107-87, approved December 18, 2001 (115 STAT. 833), contains the following provisions of particular interest:

**Transportation Security Administration.** Public Law 107-87 (115 STAT. 834) appropriated \$1.250 billion for this new multi-modal agency for civil aviation security services pursuant to the Aviation and Transportation Security Act (Public Law 107-71).

**U.S. Coast Guard.** Public Law 107-87 (115 STAT. 835-837), appropriate funds that are discussed in detail commencing at page 49 of the Conference Report (H. Rpt. 107-308).

**St. Lawrence Seaway Development Corporation.** For the operation and maintenance of those portions of the St. Lawrence Seaway under the authority of the Corporation, Public Law 107-87 (115 STAT. 852) appropriated \$13,345,000, to be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99-662. The Conference Report (H. Rpt. 107-308), provides at page 118 for a Ballast Water Management report.

**Surface Transportation Board.** Public Law 107-87 (115 STAT. 854) appropriated \$18,457,000, for the expenses of the STB. These funds are discussed at page 120 of the Conference Report (H. Rpt. 107-308).

**Vessel Traffic Safety Fairway.** Section 312 (115 STAT. 857), prohibits funds to establish a vessel traffic safety fairway less than five miles wide between the Santa Barbara and San Francisco traffic separation schemes.

**Alaska/Hawaii Ferries.** Section 320 (115 STAT. 858), allows funds made available for Alaska or Hawaii ferry boats or terminal facilities pursuant to 49 U.S.C. 5309(m)(2)(B), to be used to construct new vessels and facilities or to improve existing vessels and facilities, and for repair facilities. The Conference Report (H. Rpt. 107-308), page 123, indicates that the Senate added the provision that allows not more than \$3 million to initiate and operate a passenger ferry demonstration project in Hawaii.

**Buy American.** Section 326 (115 STAT. 859), provides a standard Buy American clause.

**Coast Guard Shipyards.** Section 331 (115 STAT. 860), a modified Senate provision, allows the Coast Guard Yard in Curtis Bay, MD, and other Coast Guard specialized facilities in FY 2002 to qualify as components of the Department of Defense, and allows the Yard and other specialized facilities to enter into joint public-private partnerships and other cooperative arrangements for the performance of work which includes allowing the Coast Guard to pay and receive funds, materials, services and the use of facilities from such public and private entities.

## APPENDIX B

### BRIEF EXPLANATION OF CERTAIN AMERICAN FISHERY AMENDMENTS MADE BY THE AMERICAN FISHERIES ACT, AND THE SUPPLEMENTAL APPROPRIATIONS ACT, 2001.

There follows a brief explanation and comparative text showing the changes occurring between 1998 and 2002 in the requirements to document a U.S. flag vessel with a fishery endorsement and to hold a preferred ship mortgage on a U.S. flag vessel of 100 feet or greater in registered length that is documented with a fishery endorsement. The American Fisheries Act of 1998, Public Law 105-277, Division C, Title II, Subtitle I, (112 STAT. 2681-616), amended the requirements at 46 U.S.C. 12012(c) to document a vessel with a fishery endorsement and amended the definition of "preferred mortgage" at 46 U.S.C. 31322(a) by limiting the entities that are eligible to hold a preferred mortgage on a vessel of 100 feet or greater that is documented with a fishery endorsement. The American Fisheries Act was enacted on October 21, 1998; however, the amendments to the documentation and preferred mortgage requirements did not become effective until October 1, 2001. The requirements to document a fishing industry vessel and to hold a preferred mortgage on a vessel of 100 feet or greater were further amended on July 24, 2001, in Section 2002 of the Supplemental Appropriations Act of 2001, Public Law 107-20 (115 STAT. 168).

The following sections provide the text of the documentation requirements for fishing industry vessels at 46 U.S.C. 12102(c), as well as a comparative text of the amendments to the documentation requirements that were enacted by the American Fisheries Act and the Supplemental Appropriations Act. The chronology of changes to the documentation laws is followed by similar sections showing the evolution of amendments to 46 U.S.C. 31322 and the changes in the requirements to hold a preferred mortgage on fishing industry vessels of 100 feet or greater in registered length. Where a comparative text is provided, deletions are shown in brackets, and new material is underlined.

### AMENDMENTS TO THE VESSEL DOCUMENTATION LAWS FOR FISHING INDUSTRY VESSELS

#### A. Documentation Requirements Prior to October 1, 2001.

Before October 1, 2001, 46 U.S.C. 12102(c) read as follows:

**46 U.S.C. 12102. Vessels eligible for documentation.**

\* \* \* \* \*

(c) (1) A vessel owned by a corporation is not eligible for a fishery endorsement under section 12108 of this title unless the controlling interest (as measured by a majority of voting shares in that corporation) is owned by individuals who are citizens of the United States. However, if the corporation is owned in whole or in part by other United States corporations, the controlling interest in those corporations, in the aggregate, must be owned by individuals who are citizens of the United States.

(2) The Secretary shall apply the restrictions on controlling interest in section 2(b) of the Shipping Act, 1916 (46 App. U.S.C. 802(b)) when applying this subsection.

## **B. Documentation Requirements in Effect on October 1, 2001.**

### **1. Explanation of amendments made by the American Fisheries Act, Public Law 105-277.**

Section 202(a) of the American Fisheries Act of 1998, amended 46 U.S.C. 12102(c), to:

(1) Raise, with some exceptions, the U.S. citizen ownership and control standards for U.S. flag fishing vessels fish processing vessels, and fish tender vessels (collectively referred to as "fishing industry vessels") operating in U.S. waters from a controlling interest to a 75 percent interest requirement as set forth in section 2(c) of the Shipping Act, 1916 (46 App. U.S.C. 802(c)).

(2) Set forth certain criteria for purposes of determining whether "control" of the owner of fishing industry vessels is vested in citizens of the United States.

(3) Prohibit certain foreign-built factory trawlers from participating in the fisheries of the United States, and

(4) Prohibit, with some exceptions, vessels above 165 feet or 750 gross tons or with engines of 3,000 horsepower or more from obtaining a fishery endorsement to the vessel's documentation.

### **2. Comparative Text showing the changes made by Section 202(a) of the American Fisheries Act, Public Law 105-277, to 46 U.S.C. 12102(c), effective October 1, 2001.**

#### **46 U.S.C. 12102. Vessels eligible for documentation**

\* \* \* \* \*

(c)

(1) A vessel owned by a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is not eligible for a fishery endorsement under section 12108 of this title unless [[ the controlling interest (as measured by a majority of voting shares in that corporation) is owned by citizens

of the United States. However, if the corporation is owned in whole or in part by other United States corporations, the controlling interest in those corporations, in the aggregate, must be owned by individuals who are citizens of the United States.] at least 75 per centum of the interest in such entity, at each tier of ownership of such entity and in the aggregate, is owned and controlled by citizens of the United States.

(2) The Secretary shall apply [[ the restrictions on controlling interest in section 2(b) of the Shipping Act, 1916 (46 App. U.S.C. 802(b)) when applying this subsection]] section 2(c) of the Shipping Act, 1916 (46 App. U.S.C. 802(c)) -in determining under this subsection whether at least 75 per centum of the interest in a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is owned and controlled by citizens of the United States. For the purposes of this subsection and of applying the restrictions on controlling interest in section 2(c) of such Act, the terms 'control' or "controlled"—

(A) shall include—

(i) the right to direct the business of the entity which owns the vessel;

(ii) the right to 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 which owns the vessel; or

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

(B) shall not include the right to simply participate in the activities under subparagraph (A), or the use by a mortgagee under paragraph (4) of loan covenants approved by the Secretary.

(3) A fishery endorsement for a vessel that 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 and used as a fishing vessel shall be invalid immediately upon such use.

(4)(A) An individual or entity that is otherwise eligible to own a vessel with a fishery endorsement shall be ineligible by reason of an instrument or evidence of indebtedness, secured by a mortgage of the vessel to a trustee eligible to own a vessel with a fishery endorsement that is issued, assigned, transferred or held in trust for a person not eligible to own a vessel with a fishery endorsement, unless the Secretary determines that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel and that the trustee—

(i) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(ii) is authorized under those laws to exercise corporate trust powers;  
(iii) is subject to supervision or examination by an official of the United States Government or a State;

(iv) has a combined capital and surplus (as stated in its most recent published report of condition) of at least \$ 3,000,000; and

(v) meets any other requirements prescribed by the Secretary.

(B) A vessel with a fishery endorsement may be operated by a trustee only with the approval of the Secretary.

(C) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under section 31322(a)(4) of this title only with the approval of the Secretary.

(D) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this paragraph is voidable by the Secretary.

(5) The requirements of this subsection shall not apply to a vessel when it is engaged in 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 of the United States 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 by the Secretary pursuant to this paragraph shall be valid for engaging only in fisheries in the exclusive economic zone under the authority of such Council, in such tuna fishing in the Pacific Ocean, or pursuant to such Treaty.

(6) A vessel greater than 165 feet in registered length, of more than 750 gross registered tons, or that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower is not eligible for a fishery endorsement under section 12108 of this title 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;

(ii) the vessel is not placed under foreign registry after the date of the enactment of the American Fisheries Act [enacted Oct. 21, 1998]; and

(iii) in the event of the invalidation of the fishery endorsement after the date of the enactment of the American Fisheries Act [enacted Oct. 21, 1998], application is made for a new fishery endorsement within fifteen (15) business days of such invalidation; or

(B) the owner of such 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 the date of the enactment of the American Fisheries Act, and the Secretary of Commerce has approved, conservation and management measures in accordance with such Act to allow such vessel to be used in fisheries under such council's authority.

**C. Public Law 107-20, the Supplemental Appropriations Act, 2001, further amended the Documentation Requirements in 46 U.S.C. 12102(c).**

**1. Explanation of amendments made by the Supplemental Appropriations Act of 2001.**

Section 2202(a) of Public Law 107-20, approved July 24, 2001 (115 STAT. 168), further amended 46 U.S.C. 12102(c) by moving the provisions defining a mortgage trustee from Chapter 121 of Title 46, United States Code, which provides for vessel documentation, to Chapter 313 of Title 46, United States Code, which provides for vessel mortgages. Section 2202(d) of the Supplemental Appropriations Act, 2001 also delayed the effective date of the new requirements to hold a preferred mortgage on a fishing industry vessel of 100 feet or greater until April 1, 2003. As a result, while the relocation of the mortgage trustee requirements to 46 U.S.C. 31322 became effective upon the enactment of the Supplemental Appropriations Act, 2001 on July 24, 2001, the substantive mortgage trustee requirements will not become effective until April 1, 2003. Furthermore, with respect to the requirements at 46 U.S.C. 12102(c) to document a fishing industry vessel of 100 feet or greater, section 2202(d) of the Supplemental Appropriations Act, 2001, directs the Maritime Administration, through the Secretary of Transportation, not to consider the citizenship status of a lender, in its capacity as a lender, in determining whether a vessel owner is eligible to document a vessel with a fishery endorsement. A more thorough discussion of the changes to the preferred mortgage requirements for fishing industry vessels is included below.

**2. Comparative Text showing the changes made by the Supplemental Appropriations Act, 2001, Public Law 107-20, to 46 U.S.C. 12102(c).**

**46 U.S.C. 12102. Vessels eligible for documentation.**

(c)

\* \* \* \* \*

(1) A vessel owned by a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partner-

ship, or any other entity is not eligible for a fishery endorsement under section 12108 of this title unless at least 75 per centum of the interest in such entity, at each tier of ownership of such entity and in the aggregate, is owned and controlled by citizens of the United States.

(2) The Secretary shall apply section 2(c) of the Shipping Act, 1916 (46 App. U.S.C. 802(c)) in determining under this subsection whether at least 75 per centum of the interest in a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is owned and controlled by citizens of the United States. For the purposes of this subsection and of applying the restrictions on controlling interest in section 2(c) of such Act, the terms 'control' or "controlled"—

(A) shall include—

- (i) the right to direct the business of the entity which owns the vessel;
- (ii) the right to 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 which owns the vessel; or
- (iii) the right to direct the transfer, operation or manning of a vessel with a fishery endorsement; and

(B) shall not include the right to simply participate in the activities under subparagraph (A), ~~[[or the use by a mortgagee under paragraph (4) of loan covenants approved by the Secretary.]]~~ 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, provided 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) A fishery endorsement for a vessel that 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 and used as a fishing vessel shall be invalid immediately upon such use.

[[ (4)

[[ (A) An individual or entity that is otherwise eligible to own a vessel with a fishery endorsement shall be ineligible by reason of an instrument or evidence of indebtedness, secured by a mortgage of the vessel to a trustee eligible to own a vessel with a fishery endorsement that is issued, assigned, transferred or held in trust for a person not eligible to own a vessel with a fishery endorsement, unless the Secretary determines that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel and that the trustee—

[[i) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

[[ii) is authorized under those laws to exercise corporate trust powers;

[[iii) is subject to supervision or examination by an official of the United States Government or a State;

[[iv) has a combined capital and surplus (as stated in its most recent published report of condition) of at least \$ 3,000,000; and

[[v) meets any other requirements prescribed by the Secretary.

(B) A vessel with a fishery endorsement may be operated by a trustee only with the approval of the Secretary.

[[C) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under section 31322(a)(4) of this title only with the approval of the Secretary.

[[D) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this paragraph is voidable by the Secretary.]

[[5)] (4) The requirements of this subsection shall not apply to a vessel when it is engaged in 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 of the United States 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 by the Secretary pursuant to this paragraph shall be valid for engaging only in fisheries in the exclusive economic zone under the authority of such Council, in such tuna fishing in the Pacific Ocean, or pursuant to such Treaty.

[[6)] (5) A vessel greater than 165 feet in registered length, of more than 750 gross registered tons, or that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower is not eligible for a fishery endorsement under section 12108 of this title 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;

(ii) the vessel is not placed under foreign registry after the date of the enactment of the American Fisheries Act [enacted Oct. 21, 1998]; and

(iii) in the event of the invalidation of the fishery endorsement after the date of the enactment of the American Fisheries Act [enacted

Oct. 21, 1998], application is made for a new fishery endorsement within fifteen (15) business days of such invalidation; or

(B) the owner of such 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 the date of the enactment of the American Fisheries Act, and the Secretary of Commerce has approved, conservation and management measures in accordance with such Act to allow such vessel to be used in fisheries under such council's authority.

\* \* \* \* \*

### **AMENDMENTS TO THE PREFERRED SHIP MORTGAGE LAWS FOR FISHING INDUSTRY VESSELS OF 100 FEET OR GREATER IN LENGTH**

The preferred ship mortgage laws, set forth in 46 U.S.C. 31322, were amended by both Public Law 105-277 and Public Law 107-20.

**A. Preferred Ship Mortgage Requirements Prior to October 1, 2001.** Prior to the enactment of the American Fisheries Act, 1998, the requirements of 46 U.S.C. 31322 to hold a preferred mortgage on a vessel did not include any special distinction for fishing industry vessels. As in effect prior to October 1, 2001, 46 U.S.C. 31322(a) sets forth the requirements of a preferred mortgage on a vessel as follows:

#### **46 U.S.C. 31322. Preferred mortgages**

(a) A preferred mortgage is a mortgage, whenever made, that--

(1) includes the whole of the vessel;

(2) is filed in substantial compliance with section 31321 of this title; and

(3) (A) covers a documented vessel; or

(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter.

\* \* \* \* \*

#### **B. Preferred Ship Mortgage Requirements as amended by the American Fisheries Act, 1998, Public Law 105-277.**

##### **1. Explanation of amendments made by the American Fisheries Act, 1998.**

Section 202(b) of Public Law 105-277, approved October 21, 1998 (112 STAT. 2681-617), the American Fisheries Act, 1998, amended the requirement to hold a preferred mortgage on fishing industry vessels of

100 feet or greater by adding a new subsection (4) to the definition of "preferred mortgage" at 46 U.S.C. 31322(a). The new subsection states that a preferred mortgage on a fishing industry vessel of 100 feet or greater may only be held by a mortgagee that is: (a) a U.S. Citizen that is eligible to own a fishing industry vessel; (b) a state or federally chartered financial institution that meets the controlling interest requirements of section 2(b) of the Shipping Act, 1916 (46 App. U.S.C. 802(b)); or (c) a mortgage trustee, as defined in 46 U.S.C. 12102(c)(4).

Section 202(a) of the American Fisheries Act also amended 46 U.S.C. 12102(c) by adding a new subsection (4) that incorporates requirements for the use of a mortgage trustee to hold a preferred mortgage for the benefit an entity that is not otherwise qualified to hold a preferred mortgage on a fishing industry vessel. While amendments to the preferred mortgage requirements for fishing industry vessels at 46 U.S.C. 31322(a)(4) were limited to vessels of 100 feet or greater in registered length, the mortgage trustee requirements incorporated in 46 U.S.C. 12102(c) applied to all fishing industry vessels. Pursuant to section 203(a) of the American Fisheries Act, the effective date of the new mortgage trustee requirements and the requirements to hold a preferred mortgage on fishing industry vessels of 100 feet or greater was October 1, 2001.

**2. Comparative Text showing the changes made by Section 202(b) of Public Law 105-277 (112 STAT. 2681-618), the American Fisheries Act , to 46 U.S.C. 31322(a), effective October 1, 2001.**

**46 U.S.C. 31322. Preferred mortgages**

(a) A preferred mortgage is a mortgage, whenever made, that--

(1) includes the whole of the vessel;

(2) is filed in substantial compliance with section 31321 of this title; ~~[[and]]~~

(3) (A) covers a documented vessel; or

(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter~~[[.]]~~ ; and

(4) with respect to a vessel with a fishery endorsement that is 100 feet or greater in registered length, has as the mortgagee--

(A) a person eligible to own a vessel with a fishery endorsement under section 12102(c) of this title;

(B) 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) a person that complies with the provisions of section 12102(c)(4) of this title.

\* \* \* \* \*

**C. Preferred Ship Mortgage Requirements as amended by Sections 2202(b) and (c) of Public Law 107-20, the Supplemental Appropriations Act, 2001.**

**1. Explanation of amendments made by Public Law 107-20, the Supplemental Appropriations Act, 2001.**

The American Fisheries Act of 1998 amended the preferred mortgage requirements at 46 U.S.C. 31322(a) by identifying a limited number of entities that would be eligible to hold a preferred mortgage on fishing industry vessels of 100 feet or greater in registered length. Before these new requirements became effective on October 1, 2001, section 2202 of Public Law 107-20, approved July 24, 2001 (115 STAT. 168), the Supplemental Appropriations Act of 2001, again amended the requirements at 46 U.S.C. 31322 with respect to preferred mortgages on fishing industry vessels of 100 feet or greater in registered length.

Section 2202 of Public Law 107-20 amended the preferred mortgage provisions of 46 U.S.C. 31322 by redefining the entities that are eligible to hold a preferred mortgage on a fishing industry vessel of 100 feet or greater in 46 U.S.C. 31322(a)(4). The citizenship requirement for state or federally chartered financial institutions at 46 U.S.C. 31322(a)(4)(B) was deleted and the reference to mortgage trustees at 46 U.S.C. 31322(a)(4)(C) was redesignated as subparagraph (F) and revised to reflect the transfer of the mortgage trustee provisions from 46 U.S.C. 12102(c) to 46 U.S.C. 31322(f). The amendments to 46 U.S.C. 31322(a)(4) expanded the class of entities that are eligible to hold a preferred mortgage on fishing industry vessels of 100 feet or greater in registered length. In addition to a U.S. Citizen that is eligible to own a fishing industry vessel and a qualified mortgage trustee, the class of eligible preferred mortgagees was expanded to include:

- (i) a state or federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;
- (ii) a farm credit lender established under title 12, chapter 23 of the United States Code;
- (iii) a commercial fishing and agriculture bank established pursuant to State law; and
- (iv) 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);

Section 2202(c) of Public Law 107-20 added subsections (f), (g) and (h) to 46 U.S.C. 31322. Subsection (f) incorporates the mortgage

trustee requirements in Chapter 313 of Title 46, United States Code, and provides that a mortgage trustee must be eligible to hold a preferred mortgage on a fishing industry vessel pursuant to 46 U.S.C.

31322(a)(4). Subsection (f) also requires the Secretary to determine whether a mortgage trustee arrangement results in an impermissible transfer of control over a fishing industry vessel of 100 feet or greater to a person not eligible to own such a vessel if the beneficiary in the trust arrangement is either: (1) an entity that is not eligible to hold a preferred mortgage on the vessel; (2) a "commercial lender," as defined in subsection (g); or (3) a "lender syndicate," as defined in subsection (h).

Section 2202(d) of Public Law 107-20 provides that the requirements to hold a preferred mortgage on fishing industry vessels of 100 feet or greater will not go into effect until April 1, 2003. The Secretary is also directed in section 2202(d) not to consider the citizenship of a lender, in its capacity as a lender, when determining whether a vessel owner is eligible to document a vessel with a fishery endorsement pursuant to 46 U.S.C. 12102(c) prior to April 1, 2003.

## **2. Comparative Text showing the changes made by Section 2202(b) and (c) of Public Law 107-20, the Supplemental Appropriations Act, 2001, to 46 U.S.C. 31322.**

### **46 U.S.C. 31322. Preferred mortgages**

- (a) A preferred mortgage is a mortgage, whenever made, that--
- (1) includes the whole of the vessel;
  - (2) is filed in substantial compliance with section 31321 of this title; and
  - (3) (A) covers a documented vessel; or  
(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter and
  - (4) with respect to a vessel with a fishery endorsement that is 100 feet or greater in registered length, has as the mortgagee--
    - (A) a person eligible to own a vessel with a fishery endorsement under section 12102(c) of this title;  
[[ (B) 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) a person that complies with the provisions of section 12102(c)(4) of this title.]]
    - (B) a state or federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;

(C) a farm credit lender established under title 12, chapter 23 of the United States Code;

(D) a commercial fishing and agriculture bank established pursuant to State law;

(E) a commercial lender organized under the laws of the United States or of a State and eligible to own a vessel under section 12102(a) of this title; or

(F) a mortgage trustee under subsection (f) of this section.

\* \* \* \* \*

(f)(1) A mortgage trustee may hold in trust, for an individual or entity, an instrument or evidence of indebtedness, secured by a mortgage of the vessel to the mortgage trustee, provided that the mortgage trustee-

(A) is eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)-(E) of this section;

(B) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(C) is authorized under those laws to exercise corporate trust powers;

(D) is subject to supervision or examination by an official of the United States Government or a State;

(E) has a combined capital and surplus (as stated in its most recent published report of condition) of at least \$3,000,000; and

(F) meets any other requirements prescribed by the Secretary.

(2) If the beneficiary under the trust arrangement is not a commercial lender, a lender syndicate or eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)-(E) of this section, the Secretary must determine that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel to a person not eligible to own a vessel with a fishery endorsement under section 12102(c) of this title.

(3) A vessel with a fishery endorsement may be operated by a mortgage trustee only with the approval of the Secretary.

(4) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under this section only with the approval of the Secretary.

(5) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this subsection is voidable by the Secretary.

(g) For purposes of this section a "commercial lender" means an entity primarily engaged in the business of lending and other financing transactions with a loan portfolio in excess of \$100,000,000, of which not more than 50 per centum in dollar amount consists of loans to borrowers in the commercial fishing industry, as certified to the Secretary by such lender.

(h) For purposes of this section a "lender syndicate" means an arrangement established for the combined extension of credit of not less than \$20,000,000 made up of four or more entities that each have a beneficial interest, held through an agent, under a trust arrangement established pursuant to subsection (f), no one of which may exercise powers thereunder without the concurrence of at least one other unaffiliated beneficiary.

## INTERNATIONAL AGREEMENTS

### A. Explanation.

Section 213(g) of Public Law 105-277, approved October 21, 1998 (112 STAT. 2681-636), the American Fisheries Act, 1998, states that any provision of 46 U.S.C. 12102(c) or 46 U.S.C. 31322 that is determined to be inconsistent with a foreign investment agreement to which the United States is a party, will not apply to the owner or mortgagee of a fishing industry vessel with respect to their ownership or mortgage interest in the specific vessel on October 1, 2001. However, if any ownership interest in the vessel owner is transferred to or otherwise acquired by a foreign individual after October 1, 2001, section 213(g) provides that both 46 U.S.C. 12102(c) and 46 U.S.C. 31322, as amended by the American Fisheries Act, would apply to the vessel owner and the mortgagee. Section 2202(e) of Public Law 107-20, approved July 24, 2001 (115 STAT. 168), the Supplemental Appropriations Act, 2001, amended section 213(g) of the American Fisheries Act by changing the date on which a vessel owner or mortgagee must have an interest in the vessel from October 1, 2001 to July 24, 2001, and further amended section 213(g) to clarify that 46 U.S.C. 12102(c) and 46 U.S.C. 31322 would apply to the owner or mortgagee, notwithstanding a conflict with a foreign investment agreement, if any ownership interest is transferred to a foreign entity after July 24, 2001, or if the percentage of foreign ownership interest in the vessel is increased after July 24, 2001.

### B. Comparative Text showing changes to Section 213(b) of Public Law 105-277, made by Section 2202(e) of Public Law 107-20.

"(g) International Agreements. In the event that any provision of section 12102(c) or section 31322(a) of title 46, United States Code, as amended by this Act, is determined to be inconsistent with an existing international agreement relating to foreign investment to which the United States is a party with respect to the owner or mortgagee on [[October 1, 2001]] of a vessel with a fishery endorsement, such provision shall not apply to that owner or mortgagee with respect to [[such vessel]] their ownership or mortgage interest in such vessel on that date

to the extent of any such inconsistency. The provisions of section 12102(c) and section 31322(a) of title 46, United States code, as amended by this Act, shall apply to all subsequent owners and mortgagees of such vessel, and shall apply, notwithstanding the preceding sentence, to the owner on [[October 1, 2001]] of such vessel if any ownership interest in that owner is transferred to or otherwise acquired by a foreign individual or entity after [[such date]] or if the percentage of foreign ownership in the vessel is increased after the effective date of this subsection."