

**SUPPORTING STATEMENT FOR
PAPERWORK REDUCTION ACT SUBMISSION UNDER 5 CFR PART 1320
INFORMATION COLLECTION: 2133-0530**

Introduction: This is to request the Office of Management and Budget's (OMB) renewed three-year approved clearance for the information collection entitled, Eligibility of U.S.-flag Vessels 100 feet or Greater in Registered Length to Obtain a Fishery Endorsement to the Vessel's Documentation, OMB Control No. 2133-0530, which is currently due to expire on May 31, 2009.

Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The American Fisheries Act of 1998 (AFA), Title II, Division C, Public Law 105-277, requires that fishing vessels, fish processing vessels, and fish tender vessels of 100 feet or greater in registered length (hereinafter "Fishing Industry Vessels") must be owned and controlled by citizens of the United States within the meaning of 46 U.S.C. § 50501 (formerly section 2 of the Shipping Act of 1916 (1916 Act), 46 App. U.S.C. §802), in order for the vessel to be eligible to be documented with a fishery endorsement to its documentation.

On October 6, 1998, the Congress enacted the AFA and raised the citizenship requirements for owners, charterers, mortgagees and trustees of vessels wishing to participate in the fisheries of the United States. Section 202 of the AFA raised the citizenship requirements for owners of vessels from a controlling interest standard to a requirement that 75 percent of the interest in the vessel owner be owned and controlled by citizens of the United States within the meaning of 46 U.S.C. § 50501 (formerly section 2 of the Shipping Act of 1916 (1916 Act), 46 App. U.S.C. § 802). Amendments to the AFA defined the terms "commercial lender" and "lending syndicate" and relocated the mortgage trustee provisions from 46 U.S.C. §§ 12102(c)(4) to 46 U.S.C. 31322(f).

Section 202(b) of the AFA imposed new requirements to hold a preferred mortgage on fishing industry vessels of 100 feet or greater by amending the definition of "preferred mortgage" at 46 U.S.C. § 31322(a)(4) with respect to such vessels. Section 31322(a)(4) of Title 46, United States Code, defines a preferred mortgage with respect to a fishing industry vessel of 100 feet or greater as one that is held by a mortgagee that: (1) is a person that meets the 75% U.S. citizen ownership and control standard for fishing industry vessels under 46 U.S.C. § 12113(c); (2) is a state or federally chartered financial institution that satisfies the controlling interest criteria of 46 U.S.C. § 50501(c) (formerly

section 2(b) of the Shipping Act of 1916 (1916 Act), 46 App. U.S.C. § 802); or (3) is a person that complies with the mortgage trustee provisions of 46 U.S.C. § 31322(f).

Mortgagees who plan to finance vessels of 100 feet or greater in registered length that have a fishery endorsement or for which a fishery endorsement to the vessel's documentation is sought must submit a certification to demonstrate that they meet the statutory definition of a "preferred mortgagee" at 46 U.S.C. § 31322(a)(4). If a Mortgagee does not comply with the definition of a "preferred mortgagee," it must use a mortgage trustee that qualifies as a citizen of the United States to hold the preferred mortgage for the benefit of the non-citizen lender. The mortgage trustee must file an application for approval as a mortgage trustee that includes evidence that it is eligible to hold a preferred mortgage and that it complies with the requirements of 46 U.S.C. § 31322. In addition to the Affidavit of United States Citizenship, corporations and other entities must submit documents which demonstrate that the entity is organized and existing under the laws of the United States, such as Articles of Incorporation and Bylaws, or other comparable documents.

The AFA specifically requires that MARAD consider, in applying the restrictions on controlling interest in section 50501(d), whether a non-citizen has the right:

- (1) to direct the business of the entity which owns the vessel;
- (2) 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
- (3) to direct the transfer, operation, or manning of a vessel with a fishery endorsement.

In addition, section 203 of the AFA requires that we "rigorously scrutinize" all transfers of ownership and control over fishing vessels of 100 feet or greater after October 1, 2001, in order to determine whether there has been a violation of 46 U.S.C. § 12113 and to pay particular attention to leases, charters, mortgages, financing, and similar arrangements that may convey control over the vessel to an entity not eligible to own a vessel with a fishery endorsement. Section 203 of the AFA also mandates that we scrutinize agreements related to the management, sales, financing, or other operations of a vessel-owning entity, and to contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

In order to comply with the requirements of the AFA, it will be necessary for MARAD to collect information related to the ownership, control, management, operation and financing of vessels of 100 feet or greater for which a fishery endorsement to the vessel's documentation is sought. Citizenship information will be collected through the use of an Affidavit of U.S. Citizenship for owners, preferred mortgagees, mortgage trustees, and charterers. In addition, supporting documentation related to charters, sales agreements,

management contracts, or other agreements that could convey control over the vessel or vessel owning entity will be collected to ensure that control has not been conveyed to a non-citizen.

Section 213(g) of the AFA states that a particular vessel or mortgagee may be exempted from the requirements of the AFA if the statute and the rules are in conflict with an international treaty or agreement to which the United States is a party. Accordingly, the proposed rule provides for the collection of information from vessel owners and mortgagees that claim to be exempt from the provisions of the rule so that MARAD can make a determination as to whether the provisions of the rule will apply to that specific party.

Finally, section 210(e)(3) of the AFA requires MARAD to determine, upon the request of the Secretary of Commerce or the North Pacific Fishery Council, whether a party has violated the harvesting or processing caps imposed under the sections 210(e)(1) and (2) of the AFA. MARAD may request relevant information from vessel owners, charterers, fish processors, or other related parties to determine whether such a violation has occurred.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The parties subject to this information collection include vessel owners, charterers, preferred mortgagees, mortgage trustees, vessel managers, and parties involved in long-term contracts for the sale of all or a significant portion of a vessel's catch. The information collected will be used by MARAD to determine that a vessel is owned and controlled by citizens of the United States in accordance with the requirements of the AFA and, therefore, is eligible to be documented with a fishery endorsement to its documentation. The information collected in the Affidavit of United States Citizenship and the supporting documentation may also be used by MARAD to determine whether the vessel owner, charterer, processor or other entity has violated harvesting and processing caps imposed under section 210(e)(1) and (2) of the AFA. In addition, the information may be used to determine whether there is a conflict with an international treaty or agreement that would result in an exemption from the requirements of the rule for a particular vessel owner or mortgagee.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Also describe any consideration of using information technology to reduce burden.

MARAD provides an electronic option for this collection. In addition, many of the corporations subject to the information collection requirements maintain a computerized

database on stockholders; *i.e.*, names and addresses, which is compiled for the annual stockholders' meeting. This information is also used for filing an Affidavit of U.S. Citizenship. There are also numerous depositories who hold the stock and this information is also computerized with printouts made available to the companies, which in turn are used for completion of the Affidavit of U.S. Citizenship.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in item 2 above.

The Maritime Administration has sole responsibility for determining whether the owners of vessels of 100 feet or greater in registered length qualify as citizens of the United States eligible to own a vessel with a fishery endorsement. The Coast Guard collects some similar information related to the identity of the owners of a vessel and the characteristics of a vessel in order to document a vessel and to issue endorsements to a vessel's documentation. The only duplication of information collected is expected to be information related to the identity of the vessel and the vessel owner. Detailed information related to the ownership of a vessel as well as information relating to control of the vessel or vessel owning entity will not be a duplication of information as this information is not collected by the Coast Guard during the documentation process.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Although the AFA grants broad authority to MARAD to regulate transactions related to the ownership and control of fishing vessels, fish processing vessels, and fish tender vessels, we have attempted to promulgate requirements that pose the least possible burden on the regulated public, while still providing us with the information necessary to implement our responsibilities under the AFA.

The requirements in the NPRM for an entity that owns, charters or finances a fishing vessel, fish processing vessel, or fish tender vessel to provide evidence of United States citizenship are modeled after our existing regulations in 46 CFR Part 355. The citizenship affidavit is designed to require a minimum amount of information from respondents regardless of their size.

We have also reviewed alternatives with respect to the approval and oversight of mortgages and mortgage trustees. While § 203(c) of the AFA requires us to rigorously scrutinize mortgages and financing agreements, we chose not to require transactional approval of each financing and mortgage transaction in order to minimize the burden to finance a vessel. We proposed to allow non-citizens, who are in the business of financing vessels, to obtain general approval of their standard loan agreement, provided that the standard loan covenants are acceptable to us. Section 356.21 of the regulation allows a non-citizen lender to get general approval for its standard loan documents if it

does not include covenants that would convey impermissible control to the non-citizen. Once a non-citizen lender has received approval for its standard loan agreements, it may enter into loans for fishing industry vessels without having to obtain the approval of the Citizenship Approval Officer for each standard loan agreement. The general approval should reduce the paperwork required for lenders and owners, provide certainty regarding the loan covenants that will be considered permissible, streamline the process for financing fishing industry vessels, and increase the range of financing options for vessel owners, including small business entities.

We have also streamlined the submission required for a preferred mortgagee so that they can merely submit a certification to demonstrate that they comply with the requirements of the AFA. This certification will provide the required information to MARAD to insure that the mortgagee complies with the requirements of the statute without imposing a heavy burden on mortgagees.

A lender that is not qualified to hold a preferred mortgage directly is required to use an approved mortgage trustee in order to hold a preferred mortgage on the vessel. As with the above general approval for non-citizen lenders, a mortgage trustee may obtain approval from the Citizenship Approval Officer on an annual basis to act as a mortgage trustee and will not be required to obtain transactional approval. The mortgage trustee will be required to simply provide an annual certification in the form of an Affidavit of United States Citizenship to demonstrate that it is still a citizen of the United States, a current copy of its Articles of Incorporation and Bylaws, a copy of its most recent published report of condition, and a list of the vessels and lenders for which it is acting as mortgage trustee. The freedom for mortgage trustees to enter into agreements without being required to get transactional approval will minimize the burden of using a mortgage trustee, will provide certainty for vessel owners and foreign lenders regarding qualified mortgage trustees, and will simplify the process for owners to obtain foreign-financing.

With regard to long-term or exclusive contracts for the sale of all or a significant portion of a vessel's catch, we again considered requiring that these agreements be approved on a transactional basis. However, because we do not wish to impose requirements on owners of fishing vessels that will interfere with their ability to enter into such agreements in a timely manner, we have elected to authorize such standard agreements, provided that they do not convey impermissible control to a non-citizen. We have determined that certain standard provisions do not convey impermissible control to non-citizens and may be included in these agreements. The final rule will thus permit owners and bareboat charterers of fishing vessels to enter into these agreements with non-citizens in a timely manner without imposing additional costs or time consuming regulatory requirements.

Finally, with respect to management agreements, rather than requiring approval of each agreement to determine whether there is an impermissible transfer of ownership or control over the vessel to a non-citizen, we opted to establish a set of criteria for such

agreements and to generally approve certain management agreements, provided that they are for technical and administrative services and are advisory in nature.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing the burden.

We would not be able to comply with the statutory requirements of the AFA if we did not collect the Affidavit of U.S. Citizenship and any supporting documentation on an annual basis from vessel owners, charterers, preferred mortgagees and mortgage trustees. Ownership of publicly-traded corporations is subject to frequent change; therefore, it is essential to require this information on an annual basis.

Information must also be collected on a case-by-case basis from vessel owners or mortgagees that are asserting a conflict between the rules and an international treaty or agreement pursuant to section 213(g) of the AFA. Any exemption granted pursuant to section 213(g) of the AFA only applies to the specific vessel and parties involved; therefore, the information must be collected on a case-by-case basis.

Information related to the violation of harvesting and processing caps must also be collected on a case-by-case basis, since we do not know what additional information will be required. To the extent possible, we will rely on information that is already in our possession or that has already been submitted to the Coast Guard, National Marine Fisheries Service or the National Oceanographic and Atmospheric Administration.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**

- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances that require the collection of information to be conducted in the manner set forth above.

8. **If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

- **Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record-keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**
- **Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

The prescribed format of the Affidavit is modeled after the Affidavit of U.S. Citizenship found in 46 CFR Part 355 and used by MARAD to determine whether, pursuant to statutory requirements, corporate entities are eligible for loan guarantees and other benefits involving millions of dollars. The format of the Affidavit and the agency's use in these other programs dates back to 1950. The agency is in frequent contact with corporate officials and their legal counsel concerning, among other things, availability of the requested information, disclosure, etc.

The data required are readily available, in that, the data are based on corporate stockbooks, records, documents, contracts, and agreements that are readily accessible. The regulation and Affidavit format are sufficiently detailed, and no major problems are

anticipated.

The Maritime Administration published a 60-day notice and request for comments on this information collection in the Federal Register on October 14, 2008, (73 F.R. 60752; copy attached) indicating comments should be submitted by December 15, 2008. No comments were received.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gift will be available to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Data are not released to the public unless through a Freedom of Information Act (FOIA) request. Under those circumstances, prior to release of such data, the submitting party is given an opportunity to claim an exemption from release pursuant to the FOIA. Prior to release, careful review of the reasons claimed for not releasing any requested data is done by the agency.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated burden and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**

- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in item 14.**

	Responses	Total
		Hours
		Total
		Avg.
Number of		Per
		Responses
		Per
		Hours
		Hourly
		Total
<u>Respondents</u>		<u>Respondent</u>
		<u>Annually</u>
		<u>Response</u>
		<u>Annually</u>

	<u>y</u>	<u>Wage</u>
		<u>Cost</u>
Vessel Owners/ Charterers (450)	x	
	1	
	=	
	450	
	x	
	6	
	=	
	2700	
		\$18.00
		\$48,600
Preferred Mortgagees/ Mortgage Trustees (50) x 1	=	
		<u>50</u>
	x	
	5	
	=	
		<u>250</u>
		\$18.00
		<u>\$ 4,500</u>
Total		
		500
		2950

The estimated hour burden of the collection of information is approximately five hours for the fifty preferred mortgagees and mortgage trustees and approximately six hours (\$18 per hour average cost) for the estimated four hundred owners and fifty charterers of vessels. Most of the work can be done by administrative personnel. As previously indicated the information required is readily available to corporate entities and businesses structured under other forms such as limited liability companies and partnerships.

The estimated annual cost per vessel owner or bareboat charterer is \$108.00. Therefore, for approximately 450 respondents, the estimated cost will be \$48,600.00. The estimated annual cost per preferred mortgagee/mortgage trustee is \$90.00 (\$18 per hour average cost). Therefore, for approximately 50 respondents, the estimated cost will be \$4,500.00. The total annual cost for all respondents will be approximately \$53,100.

- 13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in items 12 and 14).**
- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
 - **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
 - **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory com-**

pliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

The estimated annual cost burden to respondents per response is as follows:

(a) Total Capital and Start-Up Costs Estimate: There are no capital or start-up costs associated with this information collection.

(b) Total Operation and Maintenance and Purchase of Services Estimate: There are no operational and maintenance or purchase of service costs associated with this information collection.

- 14. Provide estimates of annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from items 12, 13, and 14 in a single table.**

The total annual cost to the Federal Government for processing the collection is estimated as follows:

One-time Costs: \$900,000 for the procurement of computer hardware, computer software and office equipment and development of specialized database software.

Annual Costs: Review of each affidavit, supporting documentation and attendant processing:

7 hrs. x average specialist hourly rate (\$37.92)	= \$265.44
8 hrs. x average paralegal hourly rate (\$18.63)	= \$149.04
	\$414.48
\$414.48 x 500 affidavits	= \$207,240

Maximum Total Annual Cost to Federal Government:

The maximum total annual cost to the Federal Government is \$207,240.

- 15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of OMB Form 83-I.**

Not applicable

- 16. For collections of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication.**

Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates and other actions.

The results of information submitted in affidavits will not be published.

- 17. If seeking approval not to display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

No such approval is being sought.

- 18. Explain each exception to the certification statement identified in Item 19, “Certification for Paperwork Reduction Act Submissions,” of OMB Form 83-I.**

None.