

ADMINISTRATIVE PROCESS FOR JONES ACT WAIVERS¹

SEC. 501. FINDINGS.

The Congress finds that—

- (1) current coastwise trade laws provide no administrative authority to waive the United-States-built requirement of those laws for the limited carriage of passengers for hire on vessels built or rebuilt outside the United States;
- (2) requests for such waivers require the enactment of legislation by the Congress;
- (3) each Congress routinely approves numerous such requests for waiver and rarely rejects any such request; and
- (4) the review and approval of such waiver requests is a ministerial function which properly should be executed by an administrative agency with appropriate expertise.

SEC. 502. ADMINISTRATIVE WAIVER OF THE COASTWISE TRADE LAWS.

Notwithstanding sections 12106 and 12108 of title 46, United States Code, section 8 of the Act of June 19, 1886 (46 U.S.C. App. 289), and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade as a small passenger vessel or an uninspected passenger vessel for an eligible vessel authorized to carry no more than 12 passengers for hire if the Secretary, after notice and an opportunity for public comment, determines that the employment of the vessel in the coastwise trade will not adversely affect-

- (1) United States vessel builders; or
- (2) the coastwise trade business of any person who employs vessels built in the United States in that business.

SEC. 503. REVOCATION.

The Secretary may revoke an endorsement issued under section 502, after notice and an opportunity for public comment, if the Secretary determines that the employment of the vessel in the coastwise trade has substantially changed since the issuance of the endorsement, and-

- (1) the vessel is employed other than as a small passenger vessel or an uninspected passenger vessel; or

¹ Enacted as Title V of Public Law 105 - 383, approved November 13, 1998 (112 STAT. 3411, 3445), the Coast Guard Authorization Act of 1998.

- (2) the employment of the vessel adversely affects-
 - (A) United States vessel builders; or
 - (B) the coastwise trade business of any person who employs vessels built in the United States.

SEC. 504. DEFINITIONS.

In this title:

- (1) **SECRETARY.**—The term “Secretary” means the Secretary of Transportation.
- (2) **ELIGIBLE VESSEL.**—The term “eligible vessel” means a vessel that-
 - (A) was not built in the United States and is at least 3 years of age; or
 - (B) if rebuilt, was rebuilt outside the United States at least 3 years before the certification required under section 502, if granted, would take effect.
- (3) **SMALL PASSENGER VESSEL; UNINSPECTED PASSENGER VESSEL; PASSENGER FOR HIRE.**—The terms “small passenger vessel”, “uninspected passenger vessel”, and “passenger for hire” have the meaning given such terms by section 2101 of title 46, United States Code.

SEC. 505. SUNSET.

- (a) **IN GENERAL.**—Subject to subsection (b), this title (other than this section) shall have no force or effect on or after September 30, 2002.
- (b) **ENDORSEMENTS CONTINUE.**—Any certificate or endorsement issued under section 502 before the date referred to in subsection (a) of this section shall continue in effect until otherwise invalidated or revoked under chapter 121 of title 46, United States Code.

DOCUMENTATION OF VESSELS

46 U.S.C. 12101 (2001). DEFINITION AND RELATED TERMS IN OTHER LAWS.

(a) In this chapter—

(1) “fisheries” includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or in the exclusive economic zone.

(2) “rebuilt” has the same meaning as in the second proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(b) When used in a law, regulation, document, ruling, or other official act referring to the documentation of a vessel—

(1) “certificate of registry”, “register”, and “registry” mean a registry endorsement as provided in section 12105 of this title.

(2) “license”, “enrollment and license”, “license for the coastwise (or coasting) trade”, and “enrollment and license for the coastwise (or coasting) trade” mean a coastwise endorsement as provided in section 12106 of this title.

(4) “yacht” means a recreational vessel even if not documented.

46 U.S.C. 12102 (2001). VESSELS ELIGIBLE FOR DOCUMENTATION.

(a) A vessel of at least 5 net tons that is not registered under the laws of a foreign country is eligible for documentation if the vessel is owned by—

(1) an individual who is a citizen of the United States;¹

(2) an association, trust, joint venture, or other entity—

(A) all of whose members are citizens of the United States; and

(B) that is capable of holding title to a vessel under the laws of the United States or of a State;

(3) a partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States;

¹ Note that 46 U.S.C. 12106(d)(2) provides: “(2) For purpose of ...section 12102(a) of this title, a vessel meeting the criteria of this subsection shall be considered to be owned exclusively by citizens of the United States.” See also 46 U.S.C. 12106(e)(4) providing: “(4) For purposes of section 12102(a) of this title, a vessel meeting the criteria of this subsection is deemed to be owned exclusively by citizens of the United States.”

(4) a corporation established under the laws of the United States or of a State, whose chief executive officer, by whatever title, and chairman of its board of directors are citizens of the United States and no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum;

(5) the United States Government; or

(6) the government of a State.

(b) A vessel is eligible for documentation only if it has been measured under part J of this subtitle. However, the Secretary of Transportation may issue a temporary certificate of documentation for a vessel before it is measured.

(c)(1)² 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 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

² Section 202(a) of Public Law 105-277, approved October 21, 1998 (112 STAT. 2681-617), the American Fisheries Act, made a prospective amendment to 46 U.S.C. 12102(c). Section 203(a) of Public Law 105-277, provides that the amendments made by Section 202 will be effective on October 1, 2001.

Section 2202(a) of Public Law 107-20, approved July 24, 2001 (115 STAT. 155, 168), further amended 46 U.S.C. 12102(c). The effective date would appear to be upon enactment. Although effective on July 24, 2001, it amended a provision of law that was enacted on October 21, 1998, but does not become effective until October 1, 2001. Section 2202(d) of Public Law 107-20, provides: "(d) Section 31322 of title 46 United States Code as amended in this section, and as amended by section 202(b) of the American Fisheries Act (Public Law 105-277, division C, title II) shall not take effect until April 1, 2003, nor shall the Secretary of Transportation, in determining whether a vessel owner complies with the requirements of section 12102(c) of title 46, United States Code, consider the citizenship status of a lender, in its capacity as a lender with respect to that vessel owner, until after April 1, 2003."

Appendix B provides a brief review of these amendments to 46 U.S.C. 12012(c). at page 515, *infra*,

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 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) 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.

(5)³ 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; and

(iii) in the event of the invalidation of the fishery endorsement after the date of the enactment of the American Fisheries Act, 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.⁴

(d)(1) For the issuance of a certificate of documentation with only a registry endorsement, subsection (a)(2)(A) of this section does not apply to a beneficiary of a trust that is qualified under paragraph (2) of this

³ Section 3027(c) of Public Law 106-31, approved May 21, 1999 (113 STAT. 57, 102), the 1999 Emergency Supplemental Appropriations Act, provides: "(c) The limitation on registered length contained in section 12102(c)(6) of title 46, United States Code, shall not apply to a vessel used solely in any menhaden fishery which is located in the Gulf of Mexico or along the Atlantic coast south of the area under the authority of the New England Fishery Management Council for so long as such vessel is used in such fishery."

⁴ Subsection (c) was amended by section 202(a) of Public Law 105-277, approved October 21, 1998 (112 STAT. 2681, 2681-617), the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. Section 203 of Public Law 105-277 provides: "The amendments made by section 202 shall take effect on October 1, 2001." Section 213(g) of Public Law 105-277, provides: "(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 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."

subsection if the vessel is subject to a charter to a citizen of the United States.

(2)(A) Subject to subparagraph (B) of this paragraph, a trust is qualified under this paragraph with respect to a vessel only if—

- (i) each of the trustees is a citizen of the United States; and
- (ii) the application for documentation of the vessel includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person that is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(B) If any person that is not a citizen of the United States has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust is not qualified under this paragraph unless the trust instrument provides that persons who are not citizens of the United States may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(3) Paragraph (2) of this subsection shall not be considered to prohibit a person who is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

(4) If a person chartering a vessel from a trust that is qualified under paragraph (2) of this subsection is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), then the vessel is deemed to be owned by a citizen of the United States for purposes of that section and related laws, except for subtitle B of title VI of the Merchant Marine Act, 1936.⁵

⁵ Section 1136(c) of Public Law 104-326, approved October 19, 1996 (110 STAT. 3987) provides: "(c) **Trust Charterers.**—Notwithstanding section 12102(d)(4) of title 46, United States Code, as amended by this section, for purposes of subtitle B of title VI of the Merchant Marine Act, 1936 a vessel is deemed to be owned and operated by a citizen of the United States (as that term is used in that subtitle) If—(1) the person chartering the vessel from a trust under section 12102(d)(2) of that title is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802); and (2)(A) the vessel—(i) is delivered by a shipbuilder, following completion of construction, on or after May 1, 1995 and before January 31, 1996; or (ii) is owned by a citizen of the United States under section 2 of the Shipping Act, 1916 on September 1, 1996, or is a replacement for such vessel; or (B) payments have been made with respect to the vessel under subtitle B of title VI of the Merchant Marine Act, 1936 for at least 1 year."

46 U.S.C. 12103 (2001). CERTIFICATES OF DOCUMENTATION.

(a) Except as provided in section 12123 of this title, on application by the owner of a vessel eligible for documentation, the Secretary of Transportation shall issue a certificate of documentation endorsed with one or more of the endorsements specified in sections 12105-12109 of this title.

(b)(1) The Secretary may prescribe the form of, the manner of filing, and the information to be contained in, applications for certificates of documentation.

(2) The Secretary shall require each person applying to document a vessel to provide—

(A) the person's social security number; or

(B) for a person other than an individual—

(i) the person's taxpayer identification number; or

(ii) if the person does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the person and who signs the application for documentation for the vessels.

(c) Each certificate of documentation shall—

(1) identify and describe the vessel;

(2) identify the owner of the vessel; and

(3) contain additional information prescribed by the Secretary.

(d) The Secretary shall prescribe procedures to ensure, the integrity of, and the accuracy of information contained in, certificates of documentation.

(e) The owner and master of a documented vessel shall make the vessel's certificate of documentation available for examination as the law or Secretary may require.

46 U.S.C. 12104 (2001). EFFECT OF DOCUMENTATION.

A certificate of documentation is—

(1) conclusive evidence of nationality for international purposes, but not in a proceeding conducted under the laws of the United States;

(2) except for a recreational endorsement, conclusive evidence of qualification to be employed in a specified trade; and

(3) not conclusive evidence of ownership in a proceeding in which ownership is in issue.

46 U.S.C. 12105 (2001). REGISTRY ENDORSEMENTS.

(a) A certificate of documentation may be endorsed with a registry endorsement.

(b) A vessel for which a registry endorsement is issued may be employed in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef.

46 U.S.C. 12106 (2001). COASTWISE ENDORSEMENTS.

(a) A certificate of documentation may be endorsed with a coastwise endorsement for a vessel that—

(1) is eligible for documentation;

(2)(A) was built in the United States; or

(B) if not built in the United States, was captured in war by citizens of the United States and lawfully condemned as prize, was adjudged to be forfeited for a breach of the laws of the United States, or qualified for documentation under section 4136 of the Revised Statutes (46 App. U.S.C. 14); and

(3) otherwise qualifies under laws of the United States to be employed in the coastwise trade.

(b) Subject to the laws of the United States regulating the coastwise trade, only a vessel for which a certificate of documentation with a coastwise endorsement is issued may be employed in the coastwise trade.

(c) A coastwise endorsement to engage in the coastwise trade of fisheries products between places in Guam, American Samoa, and the Northern Mariana Islands may be issued for a vessel that—

(1) is less than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title;

(2) was not built in the United States;

(3) is eligible for documentation; and

(4) otherwise qualifies under the laws of the United States to be employed in the coastwise trade.

(d)(1) A vessel may be issued a certificate of documentation with a coastwise endorsement if—

(A) the vessel is owned by a not-for-profit oil spill response cooperative or by members of such a cooperative who dedicate the vessel to use by the cooperative;

(B) the vessel is at least 50 percent owned by persons or entities described in section 12102(a) of this title;

(C) the vessel otherwise qualifies under section 12106 to be employed in the coastwise trade; and

(D) use of the vessel is restricted to—

(i) the deployment of equipment, supplies, and personnel to recover, contain, or transport oil discharged into the navigable waters of the United States, or within the Exclusive Economic Zone, or

(ii) for training exercises to prepare to respond to such a discharge.

(2) For purposes of the first proviso of section 27 of the Merchant Marine Act, 1920, section 2 of the Shipping Act of 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection shall be considered to be owned exclusively by citizens of the United States.

(e)(1) A certificate of documentation for a vessel may be endorsed with a coastwise endorsement if-

(A) the vessel is eligible for documentation;

(B) the person that owns the vessel, a parent entity of that person, or a subsidiary of a parent entity of that person, is primarily engaged in leasing or other financing transactions;

(C) the vessel is under a demise charter to a person that certifies to the Secretary that the person is a citizen of the United States for engaging in the coastwise trade under section 2 of the Shipping Act, 1916;

(D) the demise charter is for a period of at least 3 years or a shorter period as may be prescribed by the Secretary; and

(E) the vessel is otherwise eligible for documentation under this section.

(2) The demise charter and any amendments to that charter shall be filed with the certificate required by this subsection, or within 10 days following the filing of an amendment to the charter, and such charter and amendments shall be made available to the public.

(3) Upon termination by a demise charterer required under paragraph (1)(C), the coastwise endorsement of the vessel may, in the sole discretion of the Secretary, be continued after the termination for default of the demise charter for a period not to exceed 6 months on such terms and conditions as the Secretary may prescribe.

(4) For purposes of section 2 of the Shipping Act, 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection is deemed to be owned exclusively by citizens of the United States.

46 U.S.C. 12108 (2001). FISHERIES ENDORSEMENTS.

(a) A certificate of documentation may be endorsed with a fishery endorsement for a vessel that—

(1) is eligible for documentation;

(2)(A) was built in the United States; or

(B) if not built in the United States, was captured in war by citizens of the United States and lawfully condemned as prize, was adjudged

to be forfeited for a breach of the laws of the United States, or qualified for documentation under section 4136 of the Revised Statutes (46 App. U.S.C. 14);

(3) if rebuilt, was rebuilt in the United States; and

(4) otherwise qualifies under the laws of the United States to be employed in the fisheries.

(b) Subject to the laws of the United States regulating the fisheries, only a vessel for which a certificate of documentation with a fishery endorsement is issued may be employed in the fisheries.

(c) A fishery endorsement to engage in fishing in the territorial sea and fishery conservation zone adjacent to Guam, American Samoa, and the Northern Mariana Islands may be issued to a vessel that—

(1) is less than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title;

(2) was not built or rebuilt in the United States;

(3) is eligible for documentation; and

(4) otherwise qualifies under the laws of the United States to be employed in the fisheries.

(d) A vessel purchased by the Secretary of Commerce through a fishing capacity reduction program under the Magnuson Fishery Conservation Management Act (16 U.S.C. 1801 et seq.) or section 308 of the Interjurisdictional Fisheries Act (16 U.S.C. 4107) is not eligible for a fishery endorsement, and any fishery endorsement issued for that vessel is invalid.

46 U.S.C. 12109 (2001). RECREATIONAL ENDORSEMENTS.

(a) A certificate of documentation with a recreational endorsement may be issued for a vessel that is eligible for documentation.

(b) A documented vessel with a recreational endorsement may proceed between a port of the United States and a port of a foreign country without entering or clearing with the Customs Service. A recreational vessel must, however, comply with all customs requirements for reporting arrival under section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons on board that recreational vessel shall be subject to all applicable customs regulations.

(c) A documented vessel operating under a recreational endorsement may be operated only for pleasure.

46 U.S.C. 12110 (2001). LIMITATIONS ON OPERATIONS AUTHORIZED BY CERTIFICATES.

(a) A vessel may not be employed in a trade except a trade covered by the endorsement issued for that vessel.

(b) A barge qualified to be employed in the coastwise trade may be employed, without being documented, in that trade on rivers, harbors, lakes (except the Great Lakes), canals, and inland waters.

(c) A vessel with only a recreational endorsement may not be operated other than for pleasure.

(d) A documented vessel, other than a vessel with only a recreational endorsement, may be placed under the command only of a citizen of the United States.

46 U.S.C. 12111 (2001). SURRENDER AND INVALIDATION OF CERTIFICATES OF DOCUMENTATION.

(a) A certificate of documentation is invalid if the vessel for which it is issued—

(1) no longer meets the requirements of this chapter and regulations prescribed under this chapter applicable to that certificate of documentation; or

(2) is placed under the command of a person not a citizen of the United States in violation of section 12110(d) of this title.

(b) An invalid certificate of documentation must be surrendered as provided by regulations prescribed by the Secretary of Transportation.

(c)(1) Notwithstanding subsection (a) of this section, until the certificate of documentation is surrendered with the approval of the Secretary, a documented vessel is deemed to continue to be documented under this chapter for purposes of—

(A) chapter 313 of this title for an instrument filed or recorded before the date of invalidation and an assignment after that date;

(B) sections 9 and 37(b) of the Shipping Act, 1916 (46 App. U.S.C. 808, 835(b));

(C) section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

(D) any other law of the United States identified by the Secretary by regulation as a law to which the Secretary applies this subsection.

(2) This subsection does not apply when a vessel is forfeited or sold by order of a district court of the United States.

(3) The Secretary may approve the surrender of the certificate of documentation of a documented vessel covered by a mortgage filed or recorded under section 31321 of this title only if the mortgagee consents.

46 U.S.C. 12112 (2001). VESSELS PROCURED OUTSIDE THE UNITED STATES.

(a) The Secretary of Transportation and the Secretary of State, acting jointly, may provide for the issuance of a certificate of documentation

with an appropriate endorsement for a vessel procured outside the United States meeting the ownership requirements of section 12102 of this title.

(b) Subject to limitations the Secretary of Transportation may prescribe, a vessel for which a document is issued under this section may proceed to the United States and engage en route in the foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef. On the vessel's arrival in the United States, the document shall be surrendered as provided by regulations prescribed by the Secretary.

(c) A vessel for which a document is issued under this section is subject to the jurisdiction and laws of the United States. However, the Secretary of Transportation may suspend for a period of not more than 6 months, the application of a vessel inspection law carried out by the Secretary or regulations prescribed under that law if the Secretary considers the suspension to be in the public interest.

46 U.S.C. 12117 (2001). RECORDING OF UNITED STATES BUILT VESSELS. The Secretary of Transportation may provide for the recording and certifying of information about vessels built in the United States that the Secretary considers to be in the public interest.

46 U.S.C. 12119 (2001). LIST OF DOCUMENTED VESSELS. The Secretary of Transportation shall publish periodically a list of all documented vessels and information about those vessels that the Secretary considers pertinent or useful. The list shall contain a notation clearly indicating all vessels classed by the American Bureau of Shipping.

46 U.S.C. 12120 (2001). REPORTS. To ensure compliance with this chapter and laws governing the qualifications of vessels to engage in the coastwise trade and the fisheries, the Secretary of Transportation may require owners and masters of documented vessels to submit reports in any reasonable form and manner the Secretary may prescribe.

46 U.S.C. 12122 (2001). PENALTIES.

(a) A person that violates this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than \$10,000. Each day of continuing violation is a separate violation.

(b) A vessel and its equipment are liable to seizure by and forfeiture to the United States Government-

(1) when the owner of a vessel or the representative or agent of the owner knowingly falsifies or conceals a material fact, or knowingly makes a false statement or representation about the documentation or when applying for documentation of the vessel;

- (2) when a certificate of documentation is knowingly and fraudulently used for a vessel;
- (3) when a vessel is operated after its endorsement has been denied or revoked under section 12123 of this title;
- (4) when a vessel is employed in a trade without an appropriate trade endorsement;
- (5) when a documented vessel with only a recreational endorsement is operated other than for pleasure; or
- (6) when a documented vessel, other than a vessel with only a recreational endorsement, is placed under the command of a person not a citizen of the United States.

(c) In addition to penalties under subsections (a) and (b), the owner of a documented vessel for which a fishery endorsement has been issued is liable to the United States Government for a civil penalty of up to \$100,000 for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson–Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) within the exclusive economic zone of the United States, if the owner or the representative or agent of the owner knowingly falsified or concealed a material fact, or knowingly made a false statement or representation, with respect to the eligibility of the vessel under section 12102(c) of this title in applying for or applying to renew such fishery endorsement.

46 U.S.C. 12123 (2001). DENIAL AND REVOCATION OF ENDORSEMENTS. When the owner of a vessel fails to pay a civil penalty assessed by the Secretary, the Secretary may deny the issuance or renewal of an endorsement or revoke the endorsement on a certificate of documentation issued under this chapter.

46 U.S.C. 12124 (2001). SURRENDER OF TITLE AND NUMBER.

(a) A documented vessel shall not be titled by a State or required to display numbers under chapter 123, and any certificate of title issued by a State for a documented vessel shall be surrendered in accordance with regulations prescribed by the Secretary of Transportation.

(b) The Secretary may approve the surrender under subsection (a) of a certificate of title for a vessel covered by a preferred mortgage under section 31322(d) of this title only if the mortgagee consents.

CROSS BORDER FINANCING

Section 1136 of Public Law 104-324, approved October 19, 1996 (110 STAT. 3986), the Coast Guard Authorization Act of 1996, provides as follows:

SEC. 1136. CROSS-BOARDER FINANCING.

(a) **DOCUMENTATION OF VESSELS OWNED BY TRUSTS.**— Section 12102 of title 46, United States Code, is amended by adding at the end the following new subsection:

“(d) (1) For the issuance of a certificate of documentation with only a registry endorsement, subsection (a)(2)(A) of this section does not apply to a beneficiary of a trust that is qualified under paragraph (2) of this subsection if the vessel is subject to a charter to a citizen of the United States.

“(2)(A) Subject to subparagraph (B) of this paragraph, a trust is qualified under this paragraph with respect to a vessel only if—

“(i) each of the trustees is a citizen of the United States, and

“(ii) the application for documentation of the vessel includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person that is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

“(B) If any person that is not a citizen of the United States has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for trust without cause, either directly or indirectly through the control of another person, the trust is not qualified under this paragraph unless the trust instrument provides that persons who are not citizens of the United States may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

“(3) Paragraph (2) of this subsection shall not be considered to prohibit a person who is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

“(4) If a person chartering a vessel from a trust that is qualified under paragraph (2) of this subsection is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), then

the vessel is deemed to be owned by a citizen of the United States for purposes of that section and related laws, except for subtitle B of title VI of the Merchant Marine Act, 1936.”

(b) APPROVAL OF CERTAIN VESSEL TRANSACTIONS BEFORE DOCUMENTATION OF THE VESSEL.—Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808) is amended by adding at the end the following new subsection

“(e) To promote financing with respect to a vessel to be documented under chapter 121 of title 46, United States Code, the Secretary may grant approval under subsection (c) before the date the vessel is documented.”.

(c) TRUST CHARTERERS.—Notwithstanding section 12102(d)(4) of title 46, United States Code, as amended by this section, for purposes of subtitle B of title VI of the Merchant Marine Act, 1936 a vessel is deemed to be owned and operated by a citizen of the United States (as that term is used in that subtitle) if—

(1) the person chartering the vessel from a trust under section 12102(d)(2) of that title is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802); and

(2)(A) the vessel—

(i) is delivered by a shipbuilder, following completion of construction, on or after May 1, 1995 and before January 31, 1996; or

(ii) is owned by a citizen of the United States under section 2 of the Shipping Act, 1916 on September 1, 1996, or is a replacement for such a vessel; or

(B) payments have been made with respect to the vessel under subtitle B of title VI of the Merchant Marine Act, 1936 for at least 1 year.

(d) INDIRECT VESSEL OWNERS.—Notwithstanding any other provision of law, for purposes of subtitle B of title VI of the Merchant Marine Act, 1936 the following vessels are deemed to be owned and operated by a citizen of the United States (as that term is used in that subtitle) if the vessels are owned, directly or indirectly, by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802)

(1) Any vessel constructed under a shipbuilding contract signed on December 21, 1995, and having hull number 3077, 3078, 3079, or 3080.

(2) Any vessel delivered by a shipbuilder, following completion of construction, on or after May 1, 1995, and before January 31, 1996.

(3) Any vessel owned on September 1, 1996, by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916, or a replacement for such a vessel.

(4) Any vessel with respect to which payments have been made under subtitle B of title VI of the Merchant Marine Act, 1936 for at least 1 year.