

§ 67.21

46 CFR Ch. I (10–1–08 Edition)

under paragraph (c) of this section loses that eligibility, except as provided in paragraph (f) of this section, during any period in which it is:

(1) Owned by a corporation which does not meet the citizenship requirements of § 67.39(c);

(2) Owned by a partnership which does not meet the citizenship requirements of § 67.35(a); or

(3) Mortgaged to a person not identified in § 67.233(b).

(f) The restriction imposed by paragraph (e)(2) of this section does not apply to any vessel for which the Maritime Administration has given approval for unrestricted transfer pursuant to regulations set forth in 46 CFR part 221.

[CGD 89-007, CGD 89-007a, 58 FR 60266, Nov. 15, 1993; 58 FR 65131, Dec. 13, 1993, as amended by CGD 94-008, 59 FR 49846, Sept. 30, 1994; CGD 94-040, 61 FR 17815, Apr. 22, 1996; USCG-2002-13058, 67 FR 61278, Sept. 30, 2002]

§ 67.21 Fishery endorsement.

(a) A fishery endorsement entitles a vessel to employment in the fisheries as defined in § 67.3, subject to Federal and State laws regulating the fisheries, and in any other employment for which a registry, coastwise, or Great Lakes endorsement is not required. A fishery endorsement entitles a vessel to land its catch, wherever caught, in the United States.

(b) If eligible for documentation and not restricted from the fisheries by paragraph (c) of this section, the following vessels are eligible for a fishery endorsement:

(1) Vessels built in the United States (§ 67.97);

(2) Forfeited vessels (§ 67.131);

(3) Vessels granted fisheries privileges by special legislation (§ 67.132);

(4) Wrecked vessels (§ 67.133); and

(5) Captured vessels (§ 67.134).

(c) A vessel otherwise eligible for a fishery endorsement under paragraph (b) of this section permanently loses that eligibility if it undergoes rebuilding as defined in § 67.177 outside of the United States.

(d) A vessel otherwise eligible for a fishery endorsement under paragraph (b) of this section loses that eligibility during any period in which it is:

(1) Owned by a partnership which does not meet the requisite citizenship requirements of § 67.35(b);

(2) Owned by a corporation which does not meet the citizenship requirements of § 67.39(b); or

(3) 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, except that time charters, voyage charters and other charters that are not a demise of the vessel may be entered into with Non-Citizens for the charter of dedicated Fish Tender Vessels and Fish Processing Vessels that are not engaged in the harvesting of fish or fishery resources without the vessel losing its eligibility for a fishery endorsement.

(e) A vessel operating with a fishery endorsement on October 1, 1998, under the authority of the Western Pacific Fishery Management Council, or a purse seine vessel engaged in tuna fishing outside of the EEZ of the United States or pursuant to the South Pacific Regional Fisheries Treaty may continue to operate as set out in 46 U.S.C. 12102(c)(5), provided that the owner of the vessel continues to comply with the fishery endorsement requirements that were in effect on October 1, 1998.

(f) An individual or entity that is otherwise eligible to own a vessel with a fishery endorsement shall be ineligible if 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 is issued, assigned, transferred, or held in trust for a person not eligible to own a vessel with a fishery endorsement, unless the Commandant 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:

(1) Is organized as a corporation that meets § 67.39(b) of this part, and is doing business under the laws of the United States or of a State;

(2) Is authorized under those laws to exercise corporate trust powers which meet § 67.36(b) of this part;

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

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

(5) Meets any other requirements prescribed by the Commandant.

For vessels greater than or equal to 100 feet in length, approval of such an arrangement from the Maritime Administration will be accepted as evidence that the above conditions are met and will be approved by the Commandant. For vessels less than 100 feet, a standard loan and mortgage agreement that has received general approval under 46 CFR 356.21 will be accepted as evidence that the above conditions are met and will be approved by the Commandant.

[CGD 89-007, CGD 89-007A, 58 FR 60266, Nov. 15, 1993, as amended by CGD 94-040, 61 FR 17815, Apr. 22, 1996; USCG-1999-6095, 65 FR 76575, Dec. 7, 2000]

§ 67.23 Recreational endorsement.

(a) A recreational endorsement entitles a vessel to pleasure use only.

(b) Any vessel eligible for documentation under § 67.5 is eligible for a recreational endorsement.

NOTE: A vessel having a Certificate of Documentation endorsed only for recreation may be bareboat chartered only for recreational use. Guidance on the elements of a valid bareboat charter should be obtained through private legal counsel.

Subpart C—Citizenship Requirements for Vessel Documentation

§ 67.30 Requirement for citizen owner.

Certificates of Documentation may be issued under this part only to vessels which are wholly owned by United States citizens. Pursuant to extraordinary legislation at 46 U.S.C. app. 883-1 (Bowater Amendment) and 46 U.S.C. 12106(d) (Oil Pollution Act of 1990), Certificates of Documentation with limited endorsements may be issued in accordance with part 68 of this chapter to vessels owned by certain persons who are not citizens as defined in this part.

§ 67.31 Stock or equity interest requirements.

(a) The stock or equity interest requirements for citizenship under this

subpart encompass: Title to all classes of stock; title to voting stock; and ownership of equity. An otherwise qualifying corporation or partnership may fail to meet stock or equity interest requirements because: Stock is subject to trust or fiduciary obligations in favor of non-citizens; non-citizens exercise, directly or indirectly, voting power; or non-citizens, by any means, exercise control over the entity. The applicable stock or equity interest requirement is not met if the amount of stock subject to obligations in favor of non-citizens, non-citizen voting power, or non-citizen control exceeds the percentage of the non-citizen interest permitted.

(b) For the purpose of stock or equity interest requirements for citizenship under this subpart, control of non-fishing industry vessels includes an absolute right to: Direct corporate or partnership business; limit the actions of or replace the chief executive officer, a majority of the board of directors, or any general partner; direct the transfer or operations of any vessel owned by the corporation or partnership; or otherwise exercise authority over the business of the corporation or partnership. Control does not include the right to simply participate in these activities or the right to receive a financial return, e.g., interest or the equivalent of interest on a loan or other financing obligations.

(c) For the purpose of this section, control of a fishing industry vessel means having:

(1) The right to direct the business of the entity that owns the vessel;

(2) The right to limit the actions of or to replace the chief executive officer, the majority of the board of directors, any general partner, or any person serving in a management capacity of the entity that owns the vessel;

(3) The right to direct the transfer, the operation, or the manning of a vessel with a fishery endorsement.

(d) For purposes of meeting the stock or equity interest requirements for citizenship under this subpart where title to a vessel is held by an entity comprised, in whole or in part, of other entities which are not individuals, each