Approval Officer, except where non-
commercial operation is necessary for
the immediate safety of the vessel, or
for repairs, drydocking or berthing
changes; provided, that the vessel is
operated under the command of a Cit-
izen of the United States for a period of
no more than 15 calendar days.

[68 FR 5582, Feb. 4, 2003]

Subpart F—Charters, Management
Agreements and Exclusive or
Long-Term Contracts

§ 356.39 Charters.

(a) Charters to Citizens of the United
States:

(1) Bareboat charters may be entered
into with Citizens of the United States
subject to approval by the Citizenship
Approval Officer that the charterer is a
Citizen of the United States. The
bareboat charterer of Fishing Industry
Vessel must submit an Affidavit of U.S.
Citizenship to the Citizenship Approval
Officer for review and approval prior to
entering into such charter.

(2) Time charters, voyage charters
and other charter arrangements that
do not constitute a bareboat charter of
the Fishing Industry Vessel may be en-
tered into with Citizens of the United
States. The charterer must submit an
Affidavit of U.S. Citizenship to the
Citizenship Approval Officer within 30
calendar days of execution of the char-
ter.

(b) Charters to Non-Citizens:

(1) Bareboat or demise charters to
Non-Citizens of Fishing Industry Ves-
sel for use in the United States are pro-
hibited. Bareboat charters to Non-Citi-
zens of Fish Processing Vessels and
Fish Tender Vessels for use solely out-
side of the United States are per-
mitted.

(2) Time charters, voyage charters
and other charters that are not a de-
mise 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 en-
gaged in the Harvesting of fish or fish-
ery resources. A copy of the charter
must be submitted to the Citizenship
Approval Officer prior to being exe-
cuted in order for the Citizenship Ap-
proval officer to verify that the charter
is not in fact a demise of the vessel.

(3) Time charters, voyage charters
and other charters of Fishing Industry
Vessels to Non-Citizens are prohibited
if the Fishing Industry Vessel will be
used to Harvest fish or fishery re-
sources.

(c) We reserve the right to request a
copy of any time charter, voyage char-
ter, contract of affreightment or other
Charter of a Fishing Industry Vessel in
order to confirm that the Charter is
not a bareboat charter of the Fishing
Industry Vessel.

(d) Any violation of this section will
render the vessel’s fishery endorsement
immediately invalid upon notification
from the Citizenship Approval Officer.

§ 356.41 Management agreements.

(a) An owner or bareboat charterer of
a Fishing Industry Vessel may enter
into a management agreement with a
Non-Citizen in which the management
company provides marketing services,
consulting services or other services
that are ministerial in nature and do
not convey control of the vessel to the
Non-Citizen.

(b) An owner or bareboat charterer of
a Fishing Industry Vessel may not
enter into a management agreement
that allows the Non-Citizen to appoint,
discipline or replace the crew or the
master, direct the operations of the
vessel or to otherwise effectively gain
control over the management and op-
eration of the vessel or vessel-owning
entity.

(c) The owner or bareboat charterer
must file with the Citizenship Approval
Officer a description of any manage-
ment agreement entered into with a
Non-Citizen. The description must be
submitted within 30 days of the execu-
tion and must include:

(1) A description of the agreement
with a summary of the terms and con-
ditions, and,

(2) A representation and warranty
that the agreement does not contain
any provisions that convey control
over the vessel or vessel-owning entity
to a Non-Citizen.

(d) The Citizenship Approval Officer
may request a copy of any manage-
ment agreement to determine if it con-
tains provisions that convey control
§ 356.43 Long-term or exclusive sales contracts.

(a) An owner or bareboat charterer of a Fishing Industry Vessel may enter into an agreement or contract with a Non-Citizen for the sale of all or a significant portion of its catch where the contract or agreement is solely for the purpose of employment of certain vessels on an exclusive basis for a specified period of time. Such contracts or agreements will not require our prior approval; provided, that the contract or agreement does not convey control over the owner or bareboat charterer of the vessel or the vessel’s operation, management and harvesting activities.

(b) Provisions of a long-term or exclusive contract or agreement for the sale of all or a significant portion of a vessel’s catch entered into pursuant to paragraph (a) of this section that are not considered to convey impermissible control to a Non-Citizen and do not require our approval include provisions that:

(1) Specify that the owner or bareboat charterer agrees to sell and purchaser agrees to procure, on a preferential basis, a certain quantity of fish caught by a vessel owner or bareboat charterer on a specific vessel;

(2) Specify that the vessel owner or charterer is responsible for supplying a specific type of fish to off-loading points designated by the purchaser;

(3) Provide for the replacement by the vessel owner of vessels covered by the contract or agreement in the event of loss or damage;

(4) Specify refrigeration criteria;

(5) Provide that the owner or bareboat charterer has to comply with fishing schedules that specify the maximum age of fish to be delivered and a method to coordinate delivery to the purchaser;

(6) Provide for methods of calculating price per pound or other price schedules and a schedule for payment for delivered fish;

(7) Provide for an arbitration mechanism in the event of dispute; and

(8) Provide for the purchaser to furnish off-loading crew and/or processing or quality control technicians but no other vessel crew members.

(c) An owner or bareboat charterer of a Fishing Industry Vessel must obtain the approval of the Citizenship Approval Officer prior to entering into any agreement or contract with a Non-Citizen for the sale of all or a significant portion of a vessel’s catch if the agreement or contract contains provisions that in any way convey to the purchaser of the vessel’s catch control over the operation, management or harvesting activities of the vessel, vessel owner, or bareboat charterer other than as provided for in paragraph (b) of this section.

(d) An owner or bareboat charterer must submit, with its Affidavit of United States Citizenship and annually thereafter, a list of any long-term or exclusive sales agreements to which it is a party and the principal parties to those agreements. If requested, a copy of such agreements must be provided to the Citizenship Approval Officer.

§ 356.45 Advance of funds.

(a) A Non-Citizen may advance funds to the owner or bareboat charterer of a Fishing Industry Vessel:

(1) As provisional payment for products delivered for consignment sales, but not yet sold; or

(2) Where the basis of the advancement is an agreement between the Non-Citizen and the vessel owner or bareboat charterer to sell all or a portion of the vessel’s catch to the Non-Citizen and the agreement meets the following conditions:

(i) The amount of the advancement does not exceed the annual value of the sales contract, measured as the value of the product to be supplied to the processor;

(ii) The Non-Citizen is not granted any rights whatsoever to control the operation, management and harvesting activities of the Fishing Industry Vessel other than as provided for in §356.43;

(iii) The owner or bareboat charterer submits to the Citizenship Approval Officer within 30 days of execution a description of the arrangement and a certification and warranty that the agreement or contract with the Non-Citizen...