Approval Officer certifying that all loans and mortgages on Fishing Industry Vessel entered into under this general approval conform to the standard agreement approved by us and do not contain deviations from the standard agreement or covenants that were not reviewed and approved by the Citizenship Approval Officer. The certification must be submitted at least 30 calendar days prior to the annual anniversary date of the previous approval.

(d) If the lender wishes to use covenants that were not approved pursuant to this section, it must submit the new covenants to the Citizenship Approval Officer for approval.

(e) A lender that has received general approval for its lending program and that uses covenants in a loan or mortgage on a Fishing Industry Vessel that have not been approved by the Citizenship Approval Officer will review and approve all of the lender’s mortgage and loan covenants on a case-by-case basis. The Citizenship Approval Officer may also determine that the arrangement results in an impermissible transfer of control to a Non-Citizen and therefore does not meet the requirements to qualify as a Preferred Mortgage. If the lender knowingly files a false certification with the Citizenship Approval Officer or has used covenants in a loan or mortgage on a Fishing Industry Vessel that are materially different from the approved covenants, it may also be subject to civil and criminal penalties pursuant to 18 U.S.C. 1001.


(a) A Mortgagee that has demonstrated to MARAD that it qualifies as a Citizen of the United States and is eligible to own a vessel with a fishery endorsement may operate a Fishing Industry Vessel.

(b) A Mortgagee not eligible to own a Fishing Industry Vessel cannot operate or cause operation of, the vessel in the
fisheries of the United States. Except as provided in paragraph (c) of this section, the vessel may not be operated for any purpose without the prior written approval of the Citizenship Approval Officer.

(c) A Mortgagor not eligible to own a Fishing Industry Vessel may operate the vessel for a non-commercial purpose to the extent 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 Citizen of the United States and for no longer than 15 calendar days.

(d) A Mortgagee that is holding a Preferred Mortgage on a Fishing Industry Vessel but that is not eligible to own a Fishing Industry Vessel may take possession of the vessel in the event of default by the mortgagor other than by foreclosure pursuant to 46 U.S.C. 31329, if provided for in the mortgage or a related financing document. However, the vessel may not be operated, or caused to be operated in commerce, except as provided in paragraph (c) of this section or with the approval of the Citizenship Approval Officer.

(e) A Non-Citizen Lender that has brought a civil action in rem for enforcement of a Preferred Mortgage lien on a Citizen-owned Fishing Industry Vessel may petition the court pursuant to 46 U.S.C. 31325(e) for appointment of a receiver, and, if the receiver is a Person eligible to own a Fishing Industry Vessel, to authorize the receiver to operate the mortgaged vessel pursuant to terms and conditions consistent with this part 356. If the receiver is not a Citizen of the United States that meets the requirements of section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c), and 46 U.S.C. 12102(c), the vessel may not be operated in the fisheries of the United States.

Subpart E—Mortgage Trustees

§ 356.27 Mortgage Trustee requirements.

(a) A lender who is not qualified under §356.19(a)(1) through (5) to hold a Preferred Mortgage directly on a Fishing Industry Vessel may use a qualified Mortgage Trustee to hold, for the benefit of the lender, the Preferred Mortgage and the debt instrument for which the Preferred Mortgage is providing security.

(b) In order to qualify as an approved Mortgage Trustee, the Mortgage Trustee must:

(1) Be eligible to hold a Preferred Mortgage on a Fishing Industry Vessel under §356.19(a)(1) through (a)(5);

(2) Be organized as a corporation and doing business under the laws of the United States or of a State;

(3) Be authorized under the laws of the United States or of the State under which it is organized to exercise corporate trust powers;

(4) Be subject to supervision or examination by an official of the United States Government, or of a State;

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

(6) Meet any other requirements prescribed by the Citizenship Approval Officer.

(c) The Mortgage Trustee must submit to the Citizenship Approval Officer the following documentation in order to be an approved Mortgage Trustee:

(1) An application for approval as a Mortgage Trustee as set out in paragraph (g) of this section;

(2) The appropriate certification and documentation required under §356.19(b)(1) through (5) to demonstrate that it is qualified to hold a Preferred Mortgage on Fishing Industry Vessels;

(3) A copy of the most recent published report of condition of the Mortgage Trustee;

(4) A certification that the Mortgage Trustee is authorized under the laws of the United States or of a State to exercise corporate trust powers and is subject to supervision or examination by an official of the United States or of a State;

(5) A certification that the Mortgage Trustee is authorized under the laws of the United States or of a State to exercise corporate trust powers and is subject to supervision or examination by an official of the United States or of a State;

(d) Any right set forth in a mortgage on a Fishing Industry Vessel cannot be