

Prior to 2001, the Vessel was owned by F/V Defender Limited Partnership. The Partnership was owned 49% by Unisea, Inc. Unisea, Inc., a Washington corporation, is wholly owned by Nippon Suisan Kaisha, Ltd., a Japanese company, and therefore does not qualify as a U.S. Citizen under the AFA. In response to the passage of the AFA, Unisea sold its interest in F/V Limited Partnership to Ohai Enterprises, Inc., one of the members of the F/V Defender, LLC, the current vessel owner. To facilitate this sale, a refinancing of the Vessel that involved Unisea paying off the original preferred mortgage on the vessel was negotiated. Under the refinancing arrangement, Unisea now holds a preferred mortgage on the vessel as security for the loan that it provided to pay off the original mortgage on the Vessel.

Unisea no longer has any ownership interest in the Vessel. However, Unisea is a fish processing company which has had a history of purchasing substantially all of the Vessel's catch. The petition states that Unisea and F/V Defender, LLC have entered into a fishing agreement which would require F/V Defender, LLC to sell 90% of the vessel's catch to Unisea through the year 2009.

The Petition

This notice provides a summary of the issues presented in the petition. The portion of the petition in which the Petitioner describes the inconsistencies that it suggests exist between the AFA, MARAD's implementing rules and the Japan FCN can be viewed over the internet and is available for downloading through either the DOT Docket Management System by following the instructions in this notice under **ADDRESSES** or through MARAD's web site at <http://www.marad.gov/afa.html>.

In consideration of the financing provided by Unisea, the members of F/V Defender, LLC have committed the Vessel to continue to sell 90% of its catch to Unisea through 2009. Petitioners believe that the loan agreements and the fishing agreement do not convey impermissible control to a Non-Citizen; however, 46 U.S.C. 356.45 prohibits a fish processor from advancing funds to a vessel owner in return for a security interest in the vessel. The vessel owner submits in the petition, on behalf of Unisea, the mortgagee of the vessel, that such a restriction on holding a security interest in the vessel conflicts with Articles V and VII of the Japan FCN as it discriminates on the basis of alienage against a Japanese mortgagee's ability to

obtain adequate security for loans that it has made to the vessel owner.

Requested Action

The petition requests that the Chief Counsel make a determination that the exclusive fishing agreement entered into between F/V Defender, LLC and Unisea and the preferred mortgage issued in favor of Unisea may remain in force as any restriction on the fishing agreement or the preferred mortgage imposed by the AFA or 46 CFR Part 356 would be inconsistent with the protections provided to existing investments of Unisea as a mortgagee under the Japan FCN.

Dated: May 16, 2001.

By Order of the Maritime Administrator.

Joel Richard,

Secretary, Maritime Administration.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2001-9670]

Pacific Prince—Applicability of Ownership and Control Requirements for Fishery Endorsement

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a petition requesting MARAD to issue a determination that the ownership and control requirements of the American Fisheries Act of 1998 and 46 CFR Part 356 are in conflict with an international investment agreement.

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is soliciting public comments on a petition from the owners and mortgagees of the vessel *Pacific Prince*—Official Number 697280 (hereinafter the "Vessel"). The petition requests that MARAD issue a decision that the American Fisheries Act of 1998 ("AFA"), Division C, Title II, Subtitle I, Pub. L. 105-277, and our regulations at 46 CFR Part 356 (65 FR 44860 (July 19, 2000)) are in conflict with the U.S.-Japan Treaty and Protocol Regarding Friendship, Commerce and Navigation, 206 UNTS 143, TIAS 2863, 4 UST 2063 (1953) ("U.S.-Japan FCN" or "Treaty"). The petition is submitted pursuant to 46 CFR 356.53 and § 213(g) of AFA, which provide that the requirements of the AFA and the implementing regulations will not apply to the owners or mortgagees of a U.S.-flag vessel documented with a fishery endorsement to the extent that the provisions of the

AFA conflict with an existing international agreement relating to foreign investment to which the United States is a party. If MARAD determines that the AFA and MARAD's implementing regulations conflict with the U.S.-Japan FCN, the requirements of 46 CFR Part 356 and the AFA will not apply to the extent of the inconsistency. Accordingly, interested parties are invited to review the petition and to submit their views on this petition and whether there is a conflict between the U.S.-Japan FCN and the requirements of both the AFA and 46 CFR Part 356. In addition to receiving the views of interested parties, MARAD will consult with other Departments and Agencies within the Federal Government that have responsibility or expertise related to the interpretation of or application of international investment agreements.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than June 21, 2001.

ADDRESSES: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dms.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal Holidays. An electronic version of this document and all documents entered into this docket are available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: John T. Marquez, Jr. of the Office of Chief Counsel at (202) 366-5320. You may send mail to John T. Marquez, Jr., Maritime Administration, Office of Chief Counsel, Room 7228, MAR-222, 400 Seventh St., SW., Washington, DC 20590-0001 or you may send e-mail to John.Marquez@marad.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The AFA was enacted in 1998 to give U.S. interests a priority in the harvest of U.S.-fishery resources by increasing the requirements for U.S. Citizen ownership, control and financing of U.S.-flag vessels documented with a fishery endorsement. MARAD was charged with promulgating implementing regulations for fishing vessels of 100 feet or greater in registered length while the Coast Guard

retains responsibility for vessels under 100 feet.

Section 202 of the AFA, raises, with some exceptions, the U.S.-Citizen ownership and control standards for U.S.-flag vessels that are documented with a fishery endorsement and operating in U.S.-waters. The ownership and control standard was increased from the controlling interest standard (greater than 50%) of § 2(b) of Shipping Act, 1916 ("1916 Act"), as amended, 46 App. U.S.C. 802(b), to the standard contained in § 2(c) of the 1916 Act, 46 App. U.S.C. § 802(c), which requires that 75 percent of the ownership and control in a vessel owning entity be vested in U.S. Citizens. In addition, section 204 of the AFA repeals the ownership grandfather "savings provision" in the Anti-Reflagging Act of 1987, Pub. L. 100-239, § 7(b), 101 Stat 1778 (1988), which permits foreign control of companies owning certain fishing vessels.

Section 202 of the AFA also establishes new requirements to hold a preferred mortgage on a vessel with a fishery endorsement. State or federally chartered financial institutions must now comply with the controlling interest standard of § 2(b) of the 1916 Act in order to hold a preferred mortgage on a vessel with a fishery endorsement. Entities other than state or federally chartered financial institutions must either meet the 75% ownership and control requirements of § 2(c) of the 1916 Act or utilize an approved U.S.-Citizen Trustee that meets the 75% ownership and control requirements to hold the preferred mortgage for the benefit of the non-citizen lender.

Section 213(g) of the AFA provides that if the new ownership and control provisions or the mortgage provisions are determined to be inconsistent with an existing international agreement relating to foreign investment to which the United States is a party, such provisions of the AFA shall not apply to the owner or mortgagee on October 1, 2001, with respect to the particular vessel and to the extent of the inconsistency. MARAD's regulations at 46 CFR 356.53 set forth a process wherein owners or mortgagees may petition MARAD, with respect to a specific vessel, for a determination that the implementing regulations are in conflict with an international investment agreement. Petitions must be noticed in the **Federal Register** with a request for comments. The Chief Counsel of MARAD, in consultation with other Departments and Agencies within the Federal Government that have responsibility or expertise related

to the interpretation of or application of international investment agreements, will review the petitions and, absent extenuating circumstances, render a decision within 120 days of the receipt of a fully completed petition.

The Petitioners

Pacific Prince, LLC is a Washington limited liability company which owns, in its entirety the fishing vessel *Pacific Prince*. Pacific Prince, LLC is owned by two individual U.S. Citizens and meets the U.S. Citizen ownership requirements of the AFA. MARAD has not yet determined whether Pacific Prince, LLC also complies with the requirement that it be controlled by U.S. Citizens.

The Petition

The Petitioners have filed a consolidated petition for the vessels *Pacific Prince* and *Caitlin Ann*. The *Caitlin Ann* has a registered length of less than 100 feet and therefore is not directly addressed in this notice. However, because the loan agreements, loan guaranties, and fishing agreements on the vessels are related, there will be some discussion related to both vessels. This notice provides a summary of the issues in the petition. The portion of the petition in which the Petitioner describes the inconsistencies that it suggests exist between the AFA, MARAD's implementing rules and the Japan FCN can be viewed over the internet and is available for downloading through either the DOT Docket Management System by following the instructions in this notice under **ADDRESSES** or through MARAD's web site at <http://www.marad.gov/afa.html>.

The Vessel was purchased by Pacific Prince, LLC from Fishing Vessel Pacific Prince General Partnership in early 2000. In order to fund the purchase of the Vessel, the owners arranged financing through the U.S. Bank National Association ("U.S. Bank"). As part of the buy-out transaction, U.S. Bank required a partial guaranty of payment from a party with financial strength greater than could be offered by the individual U.S. Citizen owners of Pacific Prince, LLC and Caitlin Ann, LLC, the owner of the *Caitlin Ann*. A payment guaranty was obtained from Westward Seafoods, Inc. a Washington corporation ("Westward") which is a wholly owned subsidiary of the Maruha Corporation of Japan and not a citizen of the United States for the purposes of 46 U.S.C. 12102(c) and 46 CFR Part 356. Pursuant to the terms of the guaranty, Westward is obligated to make any of

the first nine quarterly payments on the *Pacific Prince* loan, if and to the extent that those payments are not made when due by Pacific Prince, LLC. In the event that Westward is required to make all or part of a payment to U.S. Bank on behalf of Pacific Prince, LLC, the payments will be deemed to be a loan by Westward to Pacific Prince, LLC, secured by a junior preferred mortgage on the Vessel and will be repaid out of excess earnings from the operation of the Vessel. Any amount advanced by Westward under the guaranty that is not repaid, in full, prior to the maturity of the U.S. Bank loan, will become due and payable at that time.

In consideration of the guaranty provided by Westward, the members of Pacific Prince, LLC, and Caitlan Ann, LLC have committed the *Pacific Prince* and *Caitlin Ann* to continue to sell their catch exclusively to Westward for the next four years, as they have in the past, so long as they continue to be paid a competitive market price for their fish.

Requested Action

The petition requests that the Chief Counsel make a determination that the exclusive fishing agreement and the guaranty agreement entered into between Pacific Prince, LLC, Caitlin Ann, LLC, and Westward may remain in force as any restriction on the guaranty or fishing agreement imposed by the AFA or 46 CFR part 356 would be inconsistent with the protections provided to existing investments of Westward and Maruha under the Japan-FCN. Because the rules prohibit a fish processor such as Westward from holding a preferred mortgage on a vessel, even through a mortgage trustee, the petition also seeks a determination that Westward's second preferred mortgage on the Vessels, provided as security for any payment made pursuant to the guaranty, does not convey impermissible control to a Non-Citizen and should be allowed to remain in place as any restrictions on the preferred mortgage would conflict with the protections afforded Westward and Maruha as Mortgagees under the Japan-FCN.

Dated: May 16, 2001.

By Order of the Maritime Administrator.

Joel Richard,

Secretary, Maritime Administration.

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