

U.S. Maritime Citizenship Laws Again at Issue

MAY 21, 2024

The United States restricts its domestic maritime trade, including its fisheries, to defined “United States citizens.” Although maritime citizenship law is rigorous, it permits certain foreign investment provided vessels remain under U.S. citizen control. The dividing line between permitted foreign investment and U.S. citizen control is a matter of interpretation. A recently [unsealed complaint](#) in the U.S. District Court for the Southern District of New York captioned *United States of America, ex. rel., W. Benson Chiles and Chris Manley v. Cooke, Inc.* illustrates the ambiguity.

Both the U.S. Coast Guard and the U.S. Maritime Administration have authority over U.S. maritime citizenship qualifications. The Coast Guard’s authority derives from its administration of the registration of U.S.-flag vessels and therefore the qualification of such vessels. MARAD oversees in general transfers of vessel ownership to foreign persons of U.S.-flag vessels.

MARAD has had additional responsibility over large fishing vessels since the enactment of the American Fisheries Act in 1998. The AFA was prompted by what the U.S. Congress believed was lax citizenship enforcement by the Coast Guard of such vessels. The AFA set forth an even stricter citizenship standard than that applicable generally to U.S.-flag vessels engaged in domestic trade and transferred oversight authority to MARAD.

Both the Coast Guard and MARAD will review transactions in advance if requested to determine if they comply with the law. In addition, the law provides for periodic affirmation under oath from the business entity claiming that it qualifies as a “United States citizen.”

The recently released complaint was originally filed as a *qui tam* action under seal in June 2021. The U.S. Government declined intervention in March 2024, which led to the unsealing of the complaint.

The private plaintiffs allege in their complaint that the defendants acquired a U.S. fishing company in 2017 utilizing what they term was a “figurehead scheme” where Canadian interests in fact obtained control of the U.S. fishing company. Specifically, plaintiffs allege that defendants appointed a U.S. citizen relative to act as the owner of a “supposedly independent domestic shell company to nominally own the vessels.” This occurred, plaintiffs allege, despite the fact that the transaction was reviewed and approved by MARAD, because they allege the defendants “concealed from MARAD multiple close connections” between the purchasing entities and the vessels’ “nominal owner.”

MARAD was asked to answer more directly for its citizenship decisions in the recently concluded case of *American Cruise Lines v. U.S.* relating to the vessel the *Viking Mississippi*. In that case, decided on March 15, 2024, the U.S. Court of Appeals for the Second Circuit affirmed MARAD’s approval of the foreign involvement as “reasonable” and concluded that MARAD “did not act in an arbitrary and capricious manner.” The court added that the arrangements such as the those reviewed and approved by MARAD were not necessarily legal.

MARAD’s actions may again be scrutinized, albeit indirectly, by the court in the *Cooke* case. The first pretrial conference is scheduled for August and then the case may proceed to discovery where what MARAD knew and did not know may be revealed.

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