telephone number 202–366–1901 or fax–202–366–6988. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title of Collection: ''Port Facility Conveyance Information''.

OMB Control Number: 2133–0524.

Type of Request: Extension of a currently approved information collection.

Affected Public: Eligible port entities.

Form(s): None.

Abstract: Public Law 103–160 authorizes the Department of Transportation to convey to public entities surplus Federal property needed for the development or operation of a port facility. The information collection will allow MARAD to approve the conveyance of property and administer the port facility conveyance program. The collection is necessary for MARAD to determine whether (1) the community is committed to the redevelopment/reuse plan; (2) the redevelopment/reuse plan is viable and is in the best interest of the public; and (3) the property is being used in accordance with the terms of the conveyance and applicable statutes and regulations.

Annual Estimated Burden Hours: 1,280 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention: MARAD Desk Officer.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

By Order of the Maritime Administrator.
Dated: December 18, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–32850 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–8544]

Application of Foreign Underwriters to Write Marine Hull Insurance

The Maritime Administration (MARAD) has received an application under 46 CFR Part 249 from Assicurazioni Generali SpA., an Italian based underwriter, to write marine hull insurance on subsidized and Title XI program vessels.

In accordance with 46 CFR 249.7(b), interested persons are hereby afforded an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which may exist in the applicant's country of domicile.

Comments regarding this information collection should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the internet at http://dmses.dot.gov/submit. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: December 18, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–32851 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No: MARAD–2000–8543]

Application of Foreign Underwriters to Write Marine Hull Insurance

The Maritime Administration (MARAD) has received an application under 46 CFR Part 249 from IF Property and Casualty Insurance LTD., a Swedish based underwriter, to write marine hull insurance on subsidized and Title XI program vessels.

In accordance with 46 CFR 249.7 (b), interested persons are hereby afforded an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which may exist in the applicant's country of domicile.

Comments regarding this information collection should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the internet at http://dmses.dot.gov/submit. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., Monday through Friday, expect Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: December 18, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–32852 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–8558]

ARCTIC STORM, SEA STORM, ARCTIC FJORD and NEAHKAHNIE—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 managers of the vessels ARCTIC STORM—Official Number 903511, SEA STORM—Official Number 628959, ARCTIC FJORD—Official Number 940866, and NEAHKAHNIE—Official Number 599534, (hereinafter the ''Vessels''). The petition requests that MARAD issue a decision that the American Fisheries Act of 1998 (''AFA''), Title II, Division C, Public Law 105–277, and our regulations at 46 CFR Part 356 are in conflict with the Treaty of Friendship Commerce and Navigation Between the United States and Korea. The petition is submitted pursuant to 46 CFR 356.53 and 213(g) of AFA, which provides 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. This notice sets forth the provisions of the international agreement that the Petitioner alleges are in conflict with the AFA and 46 CFR Part 356 and the arguments submitted by the Petitioner in support of its request. If MARAD determines that the AFA and MARAD's implementing regulations conflict with the bilateral investment treaty, the requirements of 46 CFR Part 356 will not apply to the extent of the inconsistency. Accordingly, interested parties are invited to submit their views on this petition and whether there is a conflict between the international agreement 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 January 25, 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., S.W., Washington, D.C. 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 is 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., S.W., Washington, D.C., 20590–0001 or you may send e-mail to John.Marquez@marad.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The AFA, Title II, Division C, Public Law 105–277, 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 section 2(b) of Shipping Act, 1916, as amended (1916 Act), to the standard contained in section 2(c) of the 1916 Act which requires that 75 percent of the ownership and control in a vessel owning entity be vested in U.S. Citizens. In addition, section 202 of the AFA 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 section 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 section 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 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

Arctic Storm, Inc.(''Arctic Storm, Inc.'') and Sea Storm Fisheries, Inc. (''Sea Storm, Inc.''), both Washington State corporations, Sea Storm LP (''Sea Storm LP''), a Washington State limited partnership, and Oyang Corporation (''Oyang''), a Korean corporation, (collectively referred to as ''Petitioner'' or ''Petitioners'') have filed a petition with MARAD pursuant to 46 CFR 356.53 for a determination that a conflict exists between the Treaty of Friendship, Commerce and Navigation Between the United States of America and the Republic of Korea, signed at Seoul, November 28, 1956 (the ''FCN Treaty'' or the ''Treaty''), 8 UST 2217; TIAS 3947 UST; 302 UNTS 28, and both the AFA and 46 CFR Part 356.

Petitioner states that Oyang, a company duly established and existing under the laws of the Republic of Korea, owns 50% of the joint venture company, Arctic Storm, Inc. The remaining 50% interest in Arctic Storm, Inc. is owned by Arctic Storm Partnership, a Washington State partnership owned entirely by citizens of the United States. Oyang is involved in the ownership or management of the four vessels identified in this petition in the following manner, mainly through Arctic Storm, Inc.:

(1) ARCTIC STORM is owned and managed by Arctic Storm, Inc.;

(2) SEA STORM is owned by Sea Storm, Inc., which is a wholly owned subsidiary of Arctic Storm, Inc. The fishing rights of the SEA STORM are owned by Sea Storm LP, a partnership in which Oyang owns a 49% interest and of which balance is owned by U.S. citizens. Oyang acquired its interest in Sea Storm, Inc. prior to April 1991;

(3) ARCTIC FJORD and NEAHKAHNIE are managed by Arctic Storm, Inc.

Requested Action

The Petitioners have requested a consolidated filing for the Vessels. MARAD's regulations require at 46 CFR 356.53(c) that a separate petition be filed for each vessel for which the owner or Mortgagee is requesting an exemption unless the Chief Counsel authorizes a consolidated filing. The Chief Counsel hereby authorizes the consolidated filing by Petitioners relating to the four Vessels.

The Petitioners seek a determination from MARAD that:

(1) Arctic Storm, Inc., Sea Storm Fisheries, Inc. and Sea Storm, LP are exempt from the requirements of 46 U.S.C. 12102(c) and may maintain their respective ownership agreements with Oyang with respect to the ARCTIC STORM and the SEA STORM; and

(2) the existing management contracts of Arctic Storm, Inc. for the ARCTIC FJORD and the NEAHKAHNIE are protected under the American Fisheries Act.

Petitioner's Description of the Conflict Between the FCN Treaty and Both 46 CFR Part 356 and the AFA

MARAD's regulations at 46 CFR 356.53(b)(3) require Petitioners to submit a detailed description of how the provisions of the international investment agreement or treaty and the implementing regulations are in conflict. The entire text of the FCN Treaty is available on MARAD's internet site at *http://www.marad.dot.gov.* The description submitted by the Petitioner of the conflict between the FCN Treaty and both the AFA and MARAD's implementing regulations forms the basis on which the Petitioners request that the Chief Counsel issue a ruling that 46 CFR Part 356 does not apply to Petitioners with respect to the Vessels. The description from the petition is as follows:

I. Summary of Argument

''The ownership and control provisions of the American Fisheries Act (''AFA'') are directly inconsistent with the Korea Treaty, an existing international agreement relating to foreign investments to which the United States is a party. The issue is relevant to the petitioners (namely, Arctic Storm, Inc., Sea Storm Fisheries, Inc., and Sea Storm LP) and Oyang, a Korean corporation, because the petitioners and Oyang have ownership interests in the entities that own two U.S. flag fishing vessels and their fishing rights, and that manage two other U.S. flag fishing vessels, all of which would be directly impaired by the AFA.

''Specifically, the AFA's unambiguous, retroactive discrimination against fishing companies with foreign ownership interests, for the benefit of those U.S. companies with a super-majority U.S. citizen ownership as required by the Act, is directly at odds with the Korea Treaty.

''The explicit purpose of the Korea Treaty is to encourage international investment between the United States and the Republic of Korea. The Treaty requires that rights legally acquired by Korean investors in U.S. enterprises cannot be impaired. The Korea Treaty also explicitly accords Korean investors national treatment, that is, treatment by the U.S. government as if such investors were U.S. nationals, with respect to their investments in the United States. Perhaps most plainly, the Korea Treaty explicitly forbids interference with Korean investors' rights to control and manage enterprises which they have established or acquired.

''Under Section 213(g) of the Act, the irreconcilable conflict between the investment protection provisions of the Korea Treaty and the AFA's retroactive impairment of Oyang's investment rights requires Marad to grant this petition to exempt the petitioners and Oyang with respect to their ownership and management interests in the ARCTIC STORM, the SEA STORM, the ARCTIC FJORD and the NEAHKAHNIE from application of the U.S. citizen ownership and control requirements of the AFA and the corresponding requirements of 46 CFR part 356.

II. The U.S. Treaties of Friendship, Commerce and Navigation Are a Class of International Agreements Protecting Bilateral Investment

''The Korea Treaty was one of a series of post-World War II treaties designed to create open-door investment between the U.S. and nearly twenty other countries. Unlike previous agreements, these Friendship, Commerce and Navigation treaties dealt explicitly with corporate investment between countries.

''The primary purpose of the FCN treaties in the post-war period was to provide a stable environment for private international investment.[1] The FCN treaties sought ''national treatment,'' [2] and were intended as an ''open door'' for foreign investment.[3] After the war, the United States ''took the lead in developing [a liberal] international investment regime, and began to negotiate a series of Friendship, Commerce and Navigation treaties, a major purpose of which was to protect U.S. investment abroad.'' [4]

''Federal courts have recognized that the FCN treaties are ''the medium through which the U.S. and other nations could provide for the rights of each country's citizens, their property and their interests, in the territories of the other.'' *Spiess* v. *C. Itoh and Co. (Am.) Inc.*, 643 F.2d 353, 361 (5th Cir. 1981), vacated on other grounds, 457 U.S. 1128 (1982), quoting Walker, *Treaties for the Encouragement and Protection of Foreign Investment: Present United States Practice*, 5 Am.J.Comp. L. 229 (1956). The purpose of the FCN treaties was ''to assure [non-U.S. nationals] the right to conduct business on an equal basis without suffering discrimination based on their alienage.'' *Sumitomo Shoji America* v. *Avagliano*, 457 U.S. 176, 187–88 (1982). The treaties were the means by which nationals of each country could ''manage their investment in the host country.'' *Lemnitzer* v. *Philippine Airlines*, 783 F. Supp. 1238 (N.D. Cal. 1991), quoting *Spiess, supra* at 361.

''These FCN treaties ''define the treatment each country owes the nationals of the other; their rights to engage in business and other activities within the boundaries of the former; and the respect due them, their property and their enterprises.[5] Foreign investment issues were a centerpiece of the Treaties' purpose:

[The FCN treaties] preoccupation with [national treatment issues] has been especially responsive to the contemporary need for a code of private foreign investment; and their adaptability for use as a vehicle in the forwarding of an investment aim follows

[1] Walker, *Modern Treaties of Friendship, Commerce and Navigation*, 42 Minn. L. Rev. 805 (1958). Herman Walker, Jr., the chief commentator on the Friendship, Commerce and Navigation (''FCN'') treaties, served, at the time of the drafting of the Treaty as Adviser on Commercial Treaties at the State Department and was responsible for formulation of the postwar form of the FCN Treaty, negotiating several of the treaties for the United States. See *Sumitomo Shoji America, Inc.* v *Avagliano et al.*, 457 U.S. 176, 182 (1982).

[2] Walker, *Modern Treaties of Friendship, Commerce and Navigation*, 42 Minn. L. Rev. 817 (1958).

[3] ''National Treatment'' is defined by Article XXII of the Korea Treaty as ''treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such parties.'' *National treatment is to be accorded automatically and without condition of reciprocity* (*Sullivan Report* at page 64; See, infra at p. 5 fn. 19.) Harold F. Linder, Deputy Assistant Secretary of State for Economic Affairs, testified before the Senate during hearings on ratification of the Korea Treaty (among others) and corrected U.S. Senator Sparkman at this hearing on his misapprehension that ''national treatment'' meant treatment of U.S. nationals in a foreign nation in the way foreign nationals were treated in the United States, clarifying that it meant, instead, treatment of foreign nationals in the U.S. exactly as U.S. citizens are treated. Hearing, Subcommittee on Commercial Treaties and Consular Conventions, at p. 7, 82''d Cong. (May 9, 1952).

[4] Vandevelde, *Sustainable Liberalism and the International Investments*, 19 Mich. J. Int'l L. 373 (1998).

[5] *Wickes* v. *Olympic Airways*, 745 F.2d 363 (6th Cir. 1984), quoting Walker, *Modern Treaties of Friendship, Commerce and Navigation*, 42 Minn. L. Rev. 805, 806 (1958).

from their historical concern with establishment matters.[6]

''The FCN treaties reached after World War II had:

''a new consideration * * * which lent special impetus to the program following World War ll, was the need for encouraging and protecting foreign investment, responsively to the increasing investment interests of American business abroad and to the position the United States has now reached as principal reservoir of investment capital in a world which has become acutely ''economic development'' conscious.'' [7]

''The FCN Treaties, including the Korea Treaty, are self executing treaties, that is, they are binding domestic law of their own accord, without the need for implementing legislation. See *e.g. Zenith Radio Corp.* v. *Matsushita Electric Industrial Co. Ltd.*, 494 F. Supp. 1263, 1266 (E.D. Pa. 1980). Such treaties are the supreme law of the land, and even federal statutes ''ought never to be construed to violate the law of nations if any other possible construction remains.'' *McCulloch* v. *Sociedad National de Marineros de Honduras*, 372 U.S. 10, 21 (1963). Only when Congress clearly intends to depart from the obligations of a treaty will inconsistent federal legislation govern. *Id. See also Sumitomo Shoji America, Inc.* v. *Avagliano et al., 457 U.S. 176 (1982).* Not only did Congress not intend to depart from the treaty obligations with enactment of the AFA, Section 213(g) is clear evidence that Congress expressly and unequivocally intended to recognize those obligations and to protect them, notwithstanding other provisions of AFA to the contrary.

III. The Korea Treaty Protects Korean Investment in U.S. Companies and the AFA is Clearly Inconsistent With the Korea Treaty

The Korea Treaty foresaw specifically the kind of investment and control restrictions that were included in the American Fisheries Act. The Treaty was intended to promote free investment between the United States and Korea and to restrict the kind of limitations contemplated by the AFA. Several provisions of the Treaty are precisely germane to the issue at hand and are inconsistent with the AFA.[8]

A. Proclamation: Desire for International Investment

''The first provision of the Korea Treaty, entitled ''A Proclamation,'' contains broad language relevant to an understanding of the subsequent Treaty Articles relating to bilateral investment. In particular, the Proclamation states:

''The United States of America and Korea, desirous of strengthening the bonds of peace and friendship traditionally existing between them and of encouraging closer economic and cultural relations between their peoples, and *being cognizant of the contributions which may be made toward these ends by arrangements encouraging* mutually *beneficial* investments, promoting mutually advantageous commercial *intercourse, and otherwise establishing mutual rights and privileges*, have resolved to conclude a Treaty of Friendship, Commerce and Navigation, based in general upon *the principles of national and of most-favored-nation treatment unconditionally accorded * * *''* (emphasis added).

''Emphasizing the importance of international investment, the Proclamation provides a useful context for interpreting the investment protection provisions of the Treaty.[9] In entering into the Treaty, the United States recognized, and accepted as consideration, the advantages provided by foreign investment in this country and protection of U.S. investments abroad. The national treatment benefits of the Korean Treaty are ''to be accorded automatically and without condition of reciprocity.''

B. Article VII: Protection for Controlling Companies

1. Paragraph 1: Ownership and Control of Enterprises

''Paragraph 1 of Article VII of the Korea Treaty states:

''Nationals and companies of either party shall be accorded national treatment with respect to engaging in all types of commercial, industrial, financial and other activities for gain (business activities) within the territories of [the United States] directly or by agent or through the medium of any form of lawful juridical entity. * * * Accordingly, such nationals and companies *shall be permitted* within such territories: * * * (b) to organize companies under the general company laws of such other Party, and *to acquire majority interests in companies of [such other Party]; and (c) to control and manage enterprises which they have established or acquired. Moreover, enterprises which the control, whether in the form of individual proprietorships, companies or otherwise, shall, in all that relates to the conduct of the activities thereof, be accorded treatment no less favorable than that accorded like enterprises controlled by nationals and companies of such other Party.*'' (emphasis added).

''The expressed purposes of the FCN treaties, and this provision in particular, evidence a central goal of encouraging capital investment between treaty signatories by protecting potential investors from the fear that government action would retroactively impair equity ownership rights in that investment. It is only in this context of mutually understood and guaranteed investment rights that an open invitation to foreign capital to develop the U.S. fishing fleet could be, and was, successful.

''This provision is at the heart of the conflict between the Korea Treaty and the AFA. Denying foreign investors the ability to own, control and manage their existing equity interest in U.S. companies is the most basic element of the AFA. There cannot possibly be any clearer statement of the preclusion of such activity as it relates to Korean investors than is set forth in this provision.[10]

''The clear conflict between Article VII of the Korea Treaty and the AFA's order of retroactive divestment could already be seen from the stated purpose of the legislation that was eventually enacted as the AFA:

''*To prevent foreign ownership and control of United States flag vessels* employed in the fisheries in the navigable waters and

---

[6] Walker, *Modern Treaties of Friendship, Commerce and Navigation*, 42 Minn. L. Rev. 805, 806 (1958).

[7] *Wickes* v. *Olympic Airways*, 745 F.2d 363 (6th Cir. 1984), quoting Walker, *The Post-War Commercial Treaty Program of the United States*, 73 Pol. Sci. Q. 57, 59 (1957); *See also*, Waldek, Note, Proposals for Limiting Foreign Investment Risk Under the Exon-Florio Amendment, 42 Hastings L.J. 1175, 1235 (1991).

[8] The conflict between the AFA and certain international treaties has been recognized by one of the principal draftsmen of the Act. In assessing the potential outcome of the interpretation of the AFA's ownership provisions, Senator Slade Gorton (R–WA), one of the chief sponsors of the final legislation, was quoted in the press shortly after the Act passed questioning the validity of the new ownership provisions in relation to these investment treaties: ''Another provision [of the American Fisheries Act] requires vessels operating in this fishery to have at least 75 percent U.S. ownership three years after the law goes into effect. But [Senator] Gorton said that this *Americanization feature ''may very well be found invalid'' under U.S. trade agreements if challenged by foreign ownership interests. Marine Digest and Transportation News* at p. 29 (November 1998) (emphasis added).

[9] One of the sources for the analysis contained in this memorandum is ''The Sullivan Report'' which is an Article-by-Article annotated discussion of the standard draft Treaty of Friendship, Commerce and Navigation, based on the record of negotiation, State Department messages providing instructions or reporting on negotiating sessions, and internal memoranda dealing with issues raised in the course of negotiations. The Sullivan Report was completed in November, 1973 (hereinafter cited as the ''*Sullivan Report*''). The *Sullivan Report* states that the standard FCN Treaty Preamble (designated ''Proclamation'' in the Korea Treaty'') ''has legal effect, for the courts to rely upon it at as guide to interpretation concerning the applicability of the operative articles.'' *Sullivan Report* at 62.

[10] Paragraph 3 of Article VII also permits signatory Parties to prescribe ''special formalities'' with respect to the establishment of alien controlled enterprises under Paragraph 1, ''but such formalities may not impair the substance of the rights set forth in said paragraph.''

exclusive economic zone of the United States * * *'' (emphasis added).[11]

Ownership and Control of Investments

''The AFA would force the Korean investor in Arctic Storm Inc.[12] to sell its interest and to relinquish control over its remaining investments in the enterprise.

''Forced divestiture of a legally acquired interest in a U.S. company is clearly inconsistent with the protections required by Article VII, above. Article VII conspicuously anticipates and precludes precisely this situation. Article VII also requires that enterprises controlled by Korean nationals shall be accorded ''national treatment.''[13] Such an obligation can hardly be met by requiring the transfer of ownership and control interests of a company from Korean investors to U.S. nationals.[14]

''Additionally, under the Act, if Korean nationals seek to retain control over a U.S. corporation owning a fishing vessel, the assets of that company (*i.e.* the fishery endorsements permitting vessels to fish) will be rendered valueless on October 1, 2001. Bankrupting corporations because of their Korean investors hardly constitutes ''national treatment.''

''Similarly, Article VII guarantees to Korean investors the ability to control their investments. Thus, the AFA's prohibition on any form of ''control'' of a business—defined by the AFA as the right to ''direct the business,'' limit the actions of or replace a manager in the business, or direct the operation or manning of a vessel—being held by a non-U.S. citizen are also plainly inconsistent with Article VII.[15]

''The U.S. State Department has repeatedly recognized these interpretations of Article VII in formulating its foreign policy positions.[16] Similarly, the history of the negotiations between the U.S. State Department and the Korean Foreign Ministry over the Korea Treaty provides ample support for the importance both signatory nations placed upon the provision guaranteeing ownership and control of majority shares in one another's companies. State Department negotiators insisted upon inclusion of this provision, over the Korean Foreign Ministry's opposition. The issue was discussed in depth over the course of two years, and in the end, the U.S. position prevailed.'' [17]

2. Paragraph 2: Prohibition on Retroactive Limitations

Paragraph 2 of Article V11 states:

''Each Party reserves the right to limit the extent to which aliens may establish, acquire interests in, or carry on enterprises engaged within its territories in * * * banking involving depository or fiduciary functions, or the exploitation of land or other natural resources. However, new limitations imposed by either Party upon the extent to which aliens are accorded national treatment, with respect to carrying on such activities within its territories, *shall not be applied as against enterprises which are engaged in such activities therein at the time such new limitations are adopted and which are owned or controlled by nationals and companies of the other Party.*'' (emphasis added).

''As if the provisions of Paragraph 1 were not sufficient, Paragraph 2 of Article VII requires that even where a signatory Party is permitted to impose investment related limitations in certain industries, including exploitation of natural resources [18] and ''fiduciary functions,'' *such limitations may not be imposed retroactively.* Once again, the Treaty anticipates the current situation and ensures that even more sensitive industries are protected against *post hoc* limitations. This difference was recognized contemporaneously with the Treaty.

''For while practical treaty negotiating objectives must concede the notion of selectivity and differential control on entry of investments, its historical protective role would be lost if it began admitting the legitimacy of discriminating against

[11] S. 1221, 105th Cong. (1997).

[12] As stated earlier, Arctic Storm Inc. owns the fishing vessel ARCTIC STORM and, through a wholly owned subsidiary, the fishing vessel SEA STORM. There is no question that Arctic Storm Inc. engages in commercial activities directly or through related entities: the sale of fish harvested by these fishing vessels, and the fish processing undertaken aboard the vessel ARCTIC STORM. Processing is described as covering all ''manipulation'' of a product short of manufacturing. *Sullivan Report* at 133. Finally, Arctic Storm, Inc. is directly engaged in financial activities: *e.g.*, the investment of funds in the U.S. fishing industry. See *Sullivan Report* at 133: The line of demarcation was never explicitly drawn between the terms ''commercial'' and ''financial.'' Finally, the word ''industrial'' was used so as to provide the *broadest possible coverage*, limited only by [explicit treaty reservations].

[13] In this context, it is important to note that the ''national treatment'' standard is considered ''first class treatment,'' and ''the hallmark of the [FCN] Treaty program is the advanced degree to which it espouses the rule of national treatment; that which the citizens of the country enjoy * * *'' Walker, *Modern Treaties of Friendship, Commerce and Navigation*, supra at 811. See also, *Exhibit C* to the petition: Statement of the Honorable Walter Dowling, Ambassador of the United States to the Republic of Korea on the Occasion of the Signing of the [Korea Treaty]: ''The Treaty contains 25 articles and a protocol which cover in some detail a wide range of subject matter. In brief, each of the two countries: agree to accord within its territories to citizens and corporations of the other, *treatment no less favorable than it accords to its own citizens and corporations with respect to carrying on commercial and industrial activities.*'' (emphasis added). See also Jones Study at 57 (''protection is afforded to any privilege granted * * * prior to a change in national treatment * * * at a minimum these foreign enterprises are guaranteed the maintenance of their existing operations'').

[14] See, Sullivan Study at 149: ''rights which have been extended in the past shall be respected and exempted from the application of new restrictions.''

[15] Article II of the Korea Treaty adds additional support to Article VII's requirement that Korean investors be permitted to hold control over enterprises in which they have invested. Article II states:

''Nationals of either Party shall be permitted to enter the territories of the other Party and to remain therein: * * * for the purpose of developing and *directing the operations of an enterprise in which they have invested*, or in which they are actively in the process of investing, *a substantial amount of capital* * * *'' (emphasis added).

[16] In 1971, the State Department opposed legislation in Guam requiring that 50% of the voting stock of corporations doing business in Guam be owned by U.S. citizens. The State Department took the position that such legislation was inconsistent with Article VII of the Korea FCN Treaty, which establishes a right to national treatment of non-U.S. companies and nationals engaged in business activity. The State Department's position on this and other FCN issues are reviewed in the ''Jones Study,'' prepared by Ronny E. Jones for the U.S. State Department, and is a compilation of post-World War II State Department positions on FCN Treaties through 1981 (hereinafter cited as the ''*Jones Study*''). See *e.g.* State Department position re: Letter to A. Papa (U.S. Attorney General's office) from F.R. Brown (Legislative Counsel of 11h Legislature of Guam), Sept. 27, 1971, *Jones Study* at 76. See also, State Department position concluding under the French FCN Treaty that control and national treatment provisions ''bar new discriminatory limitations from being applied to established or authorized operations and rights of a protected foreign company'' (differentiating from permissible prospective limitations on ownership), *Jones Study* at 54; State Department position opposing Korean government's restricting foreign majority ownership of companies in certain industries, October, 1972, *Jones Study* at 86; State Department position opposing Thai government's restrictions on majority ownership of companies in some industries, 1972, *Jones Study* at 104–106.

[17] Korea was concerned that the FCN Treaty with the United States would become a model for future treaties with other nations, including Japan and China. Korea argued that provisions permitting majority foreign ownership would allow domination of Korean industries by China and Japan. Nevertheless, in the end, the U.S. position prevailed. See e.g. *Exhibit A* to the petition: Explanation of Reasons for the Changes as Proposed by the Korean Draft for the U.S. Draft of the [Korea Treaty]; Telegram from American Embassy in Seoul to Department of State; January 8, 1955; Telegram from American Embassy in Seoul to Department of State; February 18, 1955; Department of State Instruction to American Embassy in Seoul, April 5, 1955; Telegram from American Embassy in Seoul to Department of State, June 3, 1955.

[18] It is important to note, however, that ''the exploitation of land or other natural resources'' does not include fish processing. The Department of State represented to the House Merchant Marine and Fisheries Committee that ''[n]either of the Article VII exceptions to national treatment relate to vessels engaged in the canning and packing of fish.'' Similarly, in 1966, during discussions over the identical language in the U.S. Japan FCN Treaty, the State Department cabled the U.S. Embassy in Tokyo that national treatment covered fish processing enterprises at sea. Korea Treaty Negotiating History, July 21, 1966 (p. 1).

investments legally present in the territory.'' [19]

Similarly, while:

''either Party may prohibit or limit alien entry into an excepted field of activity, but if nevertheless, entry has been in fact permitted, the enterprise in question is protected against later discrimination. (emphasis added).[20]

''Internal Commerce Department memoranda during the negotiations further substantiate the understanding by the United States and Korea that investments would be secure from discrimination ''once they are established.'' [21]

''The State Department's *Sullivan Report* sets forth the extent to which Paragraph 2 protects existing companies in a newly restricted industry. Such a company ''enjoy[s] what may be considered normal business growth in terms of acquiring new customers and increasing the dollar volume of its business, but cannot claim expanded privileges.'' [22] Thus, the Treaty makes crystal clear the intention of both the United States and Korea to protect their respective investors from retroactive divestiture of assets and loss of control over investments and mortgage property.

3. Paragraph 4: Most Favored Nation Status

Paragraph 4 of Article VII requires most-favored-nation treatment with respect to ''any of the matters in [Article VII].'' Most-favored-nation treatment is defined by Article XXII of the Korea Treaty as ''treatment accorded * * * upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of any third country. Thus, it is important to note that *if nationals of any other country are afforded protection under Section 213(g) of the Act, failure to provide the same protection to Korean nationals would also be inconsistent with Article VII.*

C. Article VI, Paragraph 3: Impairment of Interest in Supplied Capital Prohibited

''Paragraph 3 of Article VI of the Korea Treaty prohibits signatory Parties from taking:

*''unreasonable or discriminatory'' [23] measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other Party in the enterprises which they have established, in their capital, or in the skills, arts or technology which they have supplied * * *''* (emphasis added).

''This Article was included:

''to provide in general that expropriations and sequestrations, should they occur, shall be implemented in a non-discriminatory manner (so as, for example, to preclude an unequal selection of enterprises for nationalization). Moreover, to account for the possibility of injurious governmental harassments short of expropriation or sequestration, there is included a general injunction against ''unreasonable or discriminatory'' impairments of vested interests.'' [24]

''The *explicit* purpose and effect of the AFA is to discriminate against foreign nationals and companies. The Act's ownership provisions require Korean investors to sell their equity and turn over management and control of the remainder of their investments, (which were entered into in large measure because of the technical expertise they possess in the fishing industry), entirely to their U.S. partners. On their face, these provisions directly ''impair the legally acquired interests'' of Korean investors both ''in the enterprises which they have established,'' and ''in their capital * * * which they have supplied.''

''Terminating control over assets to a limited class of persons is *inherently* an unreasonable and discriminatory measure impairing the legally acquired rights of Korean investors in their enterprises and the *capital they have supplied.* Historically, limitations on the ability to participate in certain businesses has been a hallmark of discrimination against minority groups in times of intolerance.[25]

''The ownership provisions are particularly unreasonable and discriminatory when understood in the context of an explicit invitation by the U.S. Congress and the U.S. fishing industry to foreign, in this case Korean, investors, to invest in the U.S. flag fishing fleet.[26] In effect, the Act retroactively practices a ''bait and switch'' operation upon Korean investors: invite their participation, use their capital to build a U.S. fleet, and then take away their ability to control their own investments by statute.[27]

''The impact of such discriminatory treatment is self-evident. For example, the imposition of intrusive and discriminatory restrictions on transactions between U.S. fishing vessel owners and non-citizen lenders, fish processors and fish buyers places Korean-owned fish processors and other fish buyers at a significant competitive disadvantage. For one thing, their wholly U.S.-owned competitors remain free to obtain a reliable supply of fish by entering into exclusive sales contracts arrangements and the like with the owners of U.S. fishing vessels on terms which Korean-owned fish buyers would be prohibited from using.

''Thus, there is an irreconcilable conflict between the Treaty provision prohibiting measures impairing the legally acquired interests of Korean investors ''in [the] capital * * * which they have supplied'' and the provisions of the AFA prohibiting them from involvement in corporate affairs.[28]

---

[19] Walker, *Modern Treaties of Friendship, Commerce and Navigation*, supra at 820.

[20] Walker, *Treaties for the Encouragement and Protection of Foreign Investment: Present United States Practice*, 5 American Journal of Comparative Law 229 (1956).

[21] *See Exhibit B* to the petition: Commerce Department Memoranda re: Position Regarding the FCN Treaty Negotiation With Korea, Aug. 15, 1955. (referring specifically to Korea's acceptance of the U.S. position that U.S. investments in Korea must be secure from discrimination once established).

[22] *Sullivan Report* at p. 150.

[23] The term ''discriminatory'' as used in this context would comprehend denials of either national or most-favored-nation treatment, or both *''* * * the intent is to protect against retroactive impairment of vested rights if the acquisition of such rights was lawful * * *''* (emphasis added). *Sullivan Report* at 115.

[24] Walker, *Treaties for the Encouragement and Protection of Foreign Investment* Present United States Practice. 5 American Journal of Comparative Law 229 (1956).

[25] Rather than merely imposing, for example, a tax or levy on companies with Korean investment, the Act simply requires that Korean investors get out of the business altogether, preventing them from exercising any corporate oversight over the small investment they are permitted to retain.

[26] U.S.-Korea Agreement Concerning Fisheries Off the Coast of the United States, 34 UST 3617 (1982), (''Korean GIFA''), which expired in 1995, is relevant to this analysis. The Korean GIFA operative at the time Oyang invested in the ARCTIC STORM required Korea ''to cooperate with and assist the United States in the development of the United States fishing industry,'' and ''to enter into ''joint ventures and other arrangements * * *'' Thus, it is clear that the U.S. in fact sought to *encourage* Korean investment, rendering more inequitable the effort under the AFA to force relinquishment of that investment.

[27] See Appendix 5: *Why They Invested: U.S. Encouragement of Foreign Investment in the U.S. Fishing Fleet.*

[28] Article IX of the Korea Treaty explicitly applies the protections afforded by the rest of the Treaty, and in particular those protections secured by Articles V, VI and VII of the Treaty, to the purchase, ownership and *disposition* of property. Paragraph 2 *of* Article IX sets out the only conditions under which nationals and companies of either party may be required to dispose of property they have acquired. Article IX permits such limitations on ''movable property'' *so long as such the limitations conform to Article VII and all other provisions of the Korea Treaty.* As set forth above and below, the AFA's retroactive equity divestment requirements do not conform with Article VII and the other provisions of the Korea Treaty. Therefore, under Article IX of the Korea Treaty, it is clear that ownership of interest in movable property may not be subject to forced retroactive divestiture.

D. Article I: Equitable Treatment

''Article I of the Korea Treaty states:

''Each Party shall at all times accord equitable treatment to the persons, property, enterprises and other interests of nationals and companies of the other Party.'' (emphasis added).

''This Article was intended to provide a ''fail safe'' mechanism in the Treaty to ensure that fair and equitable treatment be afforded to nationals of both countries.[29] The forced divestiture of investments and/or sale of assets cannot be viewed as equitable treatment under any reasonable reading of Article 1.

E. Article XIX: Vessels Flying the U.S. Flag Are Deemed U.S. Vessels for Purposes of Access to U.S. Fisheries

''Paragraph 3 of Article XIX of the Korea Treaty states:

''* * * *each Party may reserve exclusive rights and privileges to its own vessels with respect to the coasting trade, inland navigation and national fisheries.''* (emphasis added).

''This provision allows the United States and Korea each to reserve exclusive rights and privileges to ''*its own vessels*'' operating in the fisheries of their respective countries. The national identity of a vessel is determined by the country in which the vessel is documented, *i.e.* by the flag that it flies. The national identity of a vessel is not determined by the nationality of the investors in the owning entity.[30] The U.S. took advantage of this permission in the 1976 Magnuson-Stevens Act when it provided priority access to the fisheries in the U.S. Exclusive Economic Zone to *vessels of the United States, i.e.*, vessels documented under the U.S. flag.[31]

''Both the ARCTIC STORM and the SEA STORM are vessels documented under the laws of the United States. Half of the ultimate ownership of both owning corporations is held by foreign investors. The purpose of this provision in the Treaty was to allow the United States and Korea the opportunity to restrict fisheries to vessels each country controlled through the flag of the vessel,[32] not to restrict the availability of investment capital in the owning entity.

''This issue is further clarified by Paragraph 2 of the very same Article, which states explicitly:

''Vessels under the flag of either Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that Party both on the high seas and within the ports, places and waters of the other Party.'' (emphasis added).

''Since the Treaty, the State Department has reaffirmed that the Article XIX exemption only applies to the activities of fishing vessels, not investment in those vessels. Specifically, the State Department has stated that Article XIX is limited to the ''catching or landing of fish.'' [33] The Sullivan Report confirms that Article XIX ''relates to the treatment of vessels and to the treatment of their cargo. It is not concerned with the treatment of the enterprises which own the vessels and the cargoes.'' (emphasis added) [34]

''Thus, Article XIX does not permit the United States to reserve rights or privileges over investment to Americans in U.S. flag vessels. On the contrary, it guarantees U.S. flag vessels having Korean investors who control their own investment equal access to U.S. fisheries.

F. Article VI: Taking of Property and Just Compensation

Paragraphs 4 and 5 of Article VI of the Korea Treaty state:

''Property of nationals and companies of either Party shall not be taken within the territories of the other Party except for a public purpose, *nor shall it be taken without the prompt payment of lost compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof* * * *

Nationals and companies of either party shall in no case be accorded, within the territories of the other Party, *less than national treatment* [35] and most favored nation treatment with respect to the matters set forth in [the above paragraph].'' (emphasis added).

''There is no practical difference between forcing a sale of property to the U.S. government and forcing such a sale to American nationals.[36] Thus, to the extent that a forced sale of property (1) diminishes the value of the asset for the company by virtue of the AFA's passage; or (2) results in a below-market sale of assets, the AFA violates Article Vl,[37] as it makes no provision for compensation of Korean investors.[38] [39]

(1) Ownership of Stock is a Property Interest

''It is settled law that ownership of stock constitutes a specific interest in

[29] This Article ''provides a basis for making representation against actions detrimental to [a signatory's] interests that may not be covered by any specific legal rule in the treaty, as, for example, a measure that is superficially nondiscriminatory but is so framed as to harm only some [signatory's] interest * * * the construction leading to a just or equitable result is to be preferred.'' *Sullivan Report* at 67. See also, Webster's New Universal Unabridged Dictionary, Barnes and Noble Books, 1996, ''Equitable: 1. Characterized by equity or fairness; just and right; fair; reasonable: equitable treatment of all citizens''; Black's Law Dictionary, 7th ed. West Publishing, 1999, ''Equitable: just; conformable to principles of justice and right.''

[30] In order to be documented under the U.S. flag, for example, a vessel must be owned by a U.S. citizen corporation, partnership or other entity. There is no limitation on the citizenship of the stockholders or other investors for the basic documentation of the vessel. Should the vessel be used in specific trades, such as coastwise or fisheries, there may be a limitation on the citizenship of the stockholders or investors. It is significant to note that *at the time the Korea Treaty was signed there was no such limitation on the citizenship of who could invest in entities owning U.S. flag fishing vessels. See* The Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, Pub. L. 100–239, 101 Stat 1778 (1988).

[31] To be eligible for U.S. vessel documentation, a vessel must be owned by a U.S. citizen entity. A corporation qualifies as a U.S. citizen if it is incorporated under the laws of the United States, and the Chief Executive Officer, the Chairman of the Board and the directors meet individual citizenship requirements. As with most U.S. companies, there is *no limitation* on the citizenship of the *stockholders* of the corporation. The citizenship of the stockholders of a corporation that owns a vessel becomes relevant only if the vessel seeks to qualify for operation in certain trades or participate in certain government programs. 46 U.S.C. Chapter 121; Merchant Marine Act, 1936, 46 App. U.S.C. 1101, et seq. In 1976 when the MagnusonStevens Act was first enacted, there was no citizenship limitation on the investors in an entity owning a vessel with a fishery endorsement.

[32] The fact that the vessel is documented under the laws of the United States gives the United States jurisdiction over the vessel in significant ways, including the manning of the vessel, payment of federal and other taxes, compliance with environmental laws, including those relating to the management of the fishery resources.

[33] See *Jones Study* at pp. 80–81.

[34] *Sullivan Report* at p. 284.

[35] ''National Treatment'' is defined by Article XXII of the Treaty as ''treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such parties.''

[36] ''The rule of just compensation covers partial takings. In such cases, the compensation should be a full approximation of the amount by which the taking impaired the value of the property.'' *Sullivan Report* at 117.

[37] At the very least, Paragraph 3 of Article VI requires application of a standard similar to that under the Fifth Amendment to the United States Constitution. Paragraph 5 of Article VI requires that Korean citizens ''shall in no case be accorded * * * less than national treatment * * * with respect to the matters set forth'' in paragraph 3. No federal court would permit the government to force a sale of assets by a U.S. citizen, thus denying that citizen any use of that property in the future, without requiring just compensation. The Korean Protocol 2 appended to the Korea Treaty requires that the provision of Article VI for payment of just compensation shall extend to interests held directly or indirectly by nationals and companies of either party.

[38] ''The intent of this requirement [that provision is made for the determination and payment of compensation] is to afford protection against *ex post facto* proceedings that could work to the disadvantage of the person whose property is taken.'' *Sullivan Report* at 119.

the corporation's property. 11 W. Fletcher, Cyclopedia of the Law of Private Corporations § 5100 (1971 ed.). As set forth above, the AFA requires that Korean nationals sell their property to Americans.

''Such a forced sale represents a taking of property requiring just compensation. In direct violation of the Treaty, the Act makes no provision whatsoever for the ''determination and payment'' * * * ''represent [ing] the full equivalent of the property taken.'' While requiring that Korean investors sell their property, the Act fails to give any form of guarantee that they will receive the ''full equivalent'' worth of the property taken.[40]

''This precise language of Article VI is present in a number of Friendship Commerce and Navigation Treaties or similar treaties to which the U.S. is a party. The language has been repeatedly held by U.S. courts to require payment of just compensation when property belonging to nationals of signatory nation has been negatively impacted by government action. See *e.g. Kalamazoo Spice Extraction Co.* v. *The Provisional Military Government of Socialist Ethiopia,* 729 F.2d 422 (6th Cir. 1984); *American International Group, Inc.* v. *Islamic Republic of Iran,* 493 F. Supp. 522 (D.D.C. 1980).

(2) ''Taking of Property'' Under the Treaty Should Be Defined More Broadly Than Under the U.S. Constitution

''It is important to note that unlike the Fifth Amendment to the United States Constitution which contains only limited and undefined language on just compensation [41] the Treaty states explicitly and in detail the form and timing of compensation for Korean investors whose property has been divested.[42] The precision with which the Treaty delineates these issues indicates the strength of the signatory nation's resolve to ensure just compensation in the case of legislation having an adverse and discriminatory impact on their nationals in the other country. In the context of the Treaty, therefore, it is likely that a court would apply a broader definition of the phrase 'taking of property,' than in interpretation of that term in cases relating to the Fifth Amendment.

''Secondly, the purposes and policies involved in a treaty negotiation between countries are different from those involved in the Fifth Amendment to the U.S. Constitution. It is well established that the Fifth Amendment ensures that Americans whose property was seized by the government be paid for it. Specifically, the purpose of the takings clause is to preclude the government from ''forcing some people alone to bear public burdens that, in all fairness and justice, should be borne by the public as a whole.[43]

''In the case of the Treaty, the Korean government was engaged in an arms length negotiation with the United States and gave up certain rights with respect to U.S. investors in Korea in return for gaining rights for its nationals investing in U.S. companies. The goal of the Treaty was to foster a stable business climate. Hence, in interpreting the meaning of a ''takings'' under Article VI of the Korea Treaty, a broader standard should be applied.

IV. Conclusion: The Inconsistencies Between the Korea Treaty and the AFA Entitle the Petitioners and Oyang to be Exempt From the Act's Ownership and Control Requirements With Respect to the Vessels Pursuant to the Terms of Section 213(g) of the Act

''The Korean Treaty clearly contemplates, and just as clearly prohibits, the kind of investment and related restrictions that are imposed on vessel owners under the AFA. Should the United States or the Republic of Korea have wished to exclude the fishing industry from the breadth of the investment protections granted by the Korean Treaty, they could easily have done so.[44] They did not.

''At no time, does the Korea Treaty permit the United States to force Korean companies operating in the national fisheries to give up ownership or control of existing assets. Article VII's prohibition on retroactive limitations—specifically in the context of ''exploitation of natural resources''—could not be more clear.

''The primary author of the FCN Treaty stated its purposes as follows:

The intergovernmental regulation of these rights, by the establishment of reciprocally binding rules of law, requires a certain community of ideals regarding the respect for private property, the dignity of the individual, and the degree to which the foreigner should be allowed to participate in the economic life of the country. It also requires mutual forbearance, and an interest in undertaking formal long term commitments towards the foreigner, binding as against internal legislative and administrative freedom. The outward limits of any treaty to which the United States subscribes are accordingly set by the extent of the rights it is willing to accord in face of its own state and federal legislation.[45]

''It is also important to note that Article XXIV, paragraph 1 of the Korea Treaty states: ''Each Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other Party may make with respect to any matter affecting the operation of the present Treaty.'' The Korean Government has indicated strong interest in this issue; consultation with the co-signatory of the Korea Treaty is implicitly mandated by the AFA in determining the appropriate interpretation of the Korea Treaty and its conflict with the AFA.

''Marad should therefore grant the accompanying petition pursuant to Section 213(g) of the American Fisheries Act and 46 CFR 356.53 promulgated thereunder, and rule that:

''(1) Arctic Storm, Inc., Sea Storm Fisheries, Inc. and Sea Storm, LP are exempt from the requirements of 46 U.S.C. 12102(c) and may maintain their respective ownership agreements with Oyang with respect to the ARCTIC STORM and the SEA STORM; and''

(2) The existing management contracts of Arctic Storm, Inc. for the ARCTIC FJORD and the NEAHKAHNIE are protected under the American Fisheries Act.[46]''

---

[40] ''This is an especially valuable right in a day when nationalizations, often entailing great loss to private owners, has tended to become not uncommon.'' Walker, Modern Treaties of Friendship, Commerce and Navigation, supra at 823.

[41] ''nor shall private property be taken for public use, without just compensation.'' U.S. Const. Amend. V.

[42] Nevertheless, it is important to note that the protections of the Fifth Amendment have been extended to ''alien friends'' whose property is taken by the U.S. government. *Russian Fleet* v. *United States*, 282 U.S. 481 (1931).

[43] *Armstrong* v. *United States,* 364 U.S. 40, 49 (1960).

[44] For example, Paragraph 6 of Article XIX likewise reserves exclusive rights and privileges to each signatory's own vessels with respect to national fisheries.

[45] Walker, *Modern Treaties of Friendship, Commerce and Navigation, supra* at 824.

[46] The National Marine Fisheries Service has issued an opinion permitting the vessels SEA STORM and the NEAHKAHNIE to lease their harvest quota shares under the co-op arrangement to the ARCTIC STORM and the ARCTIC FJORD. Both the SEA STORM and NEAHKAHNIE are explicitly named in the AFA as catcher vessels delivering to catcher/processors eligible to participate in a fishery cooperative. Section 208(b). The AFA also directs Marad to minimize disruptions ''to the commercial fishing industry * * * and to the opportunity to form fishery cooperatives.'' Section 203(b). Thus, it is clear that Congress intended that such existing contractual relationships—between named catcher vessels and catcher processors otherwise permitted in the fishery—should not be disrupted. An inconsistency finding under Section 213(g) with respect to Arctic Storm, Inc., Sea Storm Fisheries, Inc., Sea Storm, L.P, and Oyang, therefore permits the continuation of the existing contractual arrangements between the SEA STORM and the NEAHKHANIE and the catcher processors with which they contract.''

This concludes the analysis submitted by Petitioner for consideration.

By Order of the Maritime Administrator.

Dated: December 19, 2000.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 00–32853 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4957; Notice 25]

Notice of Extension of Existing Information Collection

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Request for public comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice announces that the Research and Special Programs Administration (RSPA) is publishing this notice seeking public comments on a proposed renewal of an information collection for *Incorporation by Reference of Industry Standard on Leak Detection.* This information collection requires that hazardous pipeline operators who have leak detection systems must maintain records of these systems.

DATES: Comments on this notice must be received February 26, 2001.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–98–4957, and be mailed to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW, Washington, DC 20590–0001. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard. The Dockets facility is open from 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. In addition, the public may also submit or review comments by accessing the Docket Management System's home page at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW Washington, DC 20590, (202) 366–6205 or by electronic mail at marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: *Title:* Incorporation by Reference of Industry Standard on Leak detection.

OMB Number: 2137–0598.

Type of Request: Extension of an existing information collection.

Abstract: Pipeline safety regulations do not require hazardous liquid pipeline operators to have computer-based leak detection systems. However, if these operators choose to voluntarily acquire such software-based leak detection systems they must adhere to the American Petroleum Institute API 1130 in operating, maintaining and testing their existing software-based leak detection systems. The testing information of these systems must be maintained by hazardous liquid pipeline operators.

Respondents: Hazardous liquid pipeline operators that use computational monitoring systems (CPM's) for leak detection.

Estimate of Burden: 2 hours per operator.

Estimated Number of Responses per Respondent: 1.

Estimated Total Burden: 100 hours.

Estimated Number of Respondents: 50.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 from 9:00 a.m. to 5:00 p.m., Monday through Friday except Federal holidays. They also can be viewed over the Internet at http://dms.dot.gov.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on December 19, 2000.

Richard D. Huriaux,

Manager, Regulations, Office of Pipeline Safety.

[FR Doc. 00–32855 Filed 12–22–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (2001–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the first quarter 2001 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter 2001 RCAF (Unadjusted) is 1.085. The first quarter 2001 RCAF (Adjusted) is 0.597. The first quarter 2001 RCAF–5 is 0.574.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. TDD for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DA● TO● DA OFFICE SOLUTIONS, Room 405, 1925 K Street, NW, Washington, DC 20423–0001, telephone (202) 466–5530. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: December 19, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–32837 Filed 12–22–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33974]

Tulsa-Sapulpa Union Railway Company, L.L.C.—Acquisition and Operation Exemption—Union Pacific Railroad Company

Tulsa-Sapulpa Union Railway Company, L.L.C., a limited liability company and Class III rail carrier, has filed a verified notice of exemption