Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications	)	WT Docket No. 00-48
	)	
Petition for Rule Making Filed by Globe Wireless, Inc.	)	RM-9499
	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: March 27, 2002 **Released: April 9, 2002**

Comment Date: [90 days after Federal Register Publication]
Reply Comment Date: [120 days after Federal Register Publication]

By the Commission: Commissioner Copps approving in part, concurring in part, and issuing a statement.

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I. INTRODUCTION AND EXECUTIVE SUMMARY

1. In this *Report and Order*, we adopt changes to Part 80 of the Commission's Rules that were either proposed in or suggested in response to the *Notice of Proposed Rule Making* in this proceeding.[1] The *Notice*, released on March 24, 2000, proposed rule changes that were intended to consolidate, revise and streamline our Rules governing maritime communications pursuant to requests from the National GMDSS Implementation Task Force (Task Force)[2] and Globe Wireless, Inc. (Globe). These changes were proposed to address new international maritime requirements, improve the operational ability of all users of marine radios and remove unnecessary or duplicative requirements from our Rules.

2. The significant actions taken in this *Report and Order* are as follows: (1) the extension of the fishing vessel exemption from Global Maritime Distress and Safety System (GMDSS) requirements until one year after the United States Coast Guard (USCG) establishes Sea Areas A1 and A2; (2) the establishment of a Restricted GMDSS Radio Operator's License; (3) the authorization of the USCG or its designee to issue a Proof of Passing Certificate (PPC) that would allow operators to obtain an FCC GMDSS Radio Operator's License; (4) the modification of certain sections of our Rules to implement international standards; (5) the imposition of a mandatory watch on Channel 70 for voluntary vessels; (6) the allowance of J2B and J2D transmissions on frequencies currently reserved for Morse Code transmissions; (7) the removal of certification for Class S emergency position indicating radiobeacons (EPIRBs); and (8) the elimination of Subpart Q and the streamlining of Subpart R of Part 80 of the Commission's Rules. In addition, we today decide not to extend the fishing vessel exemption to other vessels.

II. BACKGROUND

3. In 1974, the International Maritime Organization (IMO)[3] adopted the International Convention for the Safety of Life at Sea (SOLAS Convention).[4] The main objective of the SOLAS Convention is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. In 1988, the IMO amended SOLAS to provide for the worldwide implementation of the GMDSS, a ship-to-shore distress communications system with ship-to-ship capabilities.[5] The system utilizes automated (or semi-automated) communications via satellite, and

[1] Amendment of Parts 13 and 80 of the Commission's Rules Concerning Maritime Communications, *Notice of Proposed Rule Making and Memorandum Opinion and Order*, WT Docket No. 00-48, 15 FCC Rcd 5942 (2000) (*Notice* or *NPRM*).

[2] The GMDSS Task Force was chartered by the U.S. Coast Guard to supplement government functions in expediting the implementation of the Global Maritime Distress and Safety System. The Task Force membership includes nearly one thousand representatives of government agencies, commercial vessel owners and operators, recreational vessel interests, training institutions, service agents, manufacturers, trade associations and maritime labor organizations.

[3] The IMO is an agency of the United Nations that specifies regulations for the maritime service, such as equipment carriage requirements for certain classes of ship.

[4] Earlier versions of the SOLAS Convention were adopted in 1914, 1929, 1948 and 1960.

[5] Consolidated Text of the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1977: Articles, Annexes and Certificates, Incorporating All Amendments in Effect from 1 July 1997, International Maritime Organization, London, 1997.

advanced terrestrial systems using digital selective calling (DSC). Ships that are subject to the requirements of SOLAS, known as "compulsory ships," are required to carry certain GMDSS radio equipment for safety purposes. Compulsory ships include all passenger ships that carry more than twelve passengers and all cargo ships of 300 gross tons and over conducting international voyages. In contrast, "voluntary ships" are not required to carry GMDSS equipment.[6] The SOLAS amendments provided for the gradual worldwide implementation of GMDSS, from February 1, 1992 until February 1, 1999.

4. On January 16, 1992, the Commission adopted rules to implement the GMDSS in the United States, requiring the installation of GMDSS equipment by February 1, 1999.[7] Additionally, the Commission incorporated into its rules international performance standards of the IMO and the International Telecommunication Union (ITU), and publications of the International Electro-technical Commission (IEC) and the International Standards Organization (ISO). Since 1992, however, many of these international standards have been revised to clarify, improve and update new GMDSS requirements. Consequently, the Commission issued the *Notice* proposing to (a) revise our Rules to implement changes in international standards and regulations; (b) delete or modify rules affected by full implementation of the GMDSS; and (c) delete or modify any other regulations deemed unnecessary or in need of clarification.[8] The Commission also invited commenters to propose other necessary changes to Part 80.[9]

III. REPORT AND ORDER

A. *Notice* Proposals

1. Fishing Vessels and the GMDSS

5. *Background.* Pursuant to the GMDSS, cargo ships are required to carry varying amounts of communications equipment depending upon which of the four Sea Areas in which the vessel operates.[10] Traditionally, fishing vessels have been treated under our Rules as cargo vessels because the

[6] *See* 47 C.F.R. § 80.5(7). In practice, the term "voluntary ship" generally is understood to refer to a ship that is not compulsory, but nonetheless carries equipment. Unless otherwise indicated, our use of the term herein should be so construed.

[7] Amendment of Parts 13 and 80 of the Commission's Rules to Implement the Global Maritime Distress and Safety System (GMDSS) to Improve the Safety of Life at Sea, *Report and Order,* PR Docket No. 90-480, 7 FCC Rcd 951 (1992). For a fuller description of the GMDSS, see *NPRM,* 15 FCC Rcd at 5946-49 ¶¶ 5-13.

[8] *NPRM,* 15 FCC Rcd at 5944 ¶ 2.

[9] *Id.* at 5944 ¶ 2, 5951 ¶ 17. Leonard Robert Raish has suggested that the Commission convert this proceeding into a negotiated rulemaking in order to successfully complete the major rewrite involved in this proceeding. Leonard Robert Raish Comments at 1. Given the advanced stage of this proceeding, we disagree that such a conversion would result in a more rapid and efficient resolution.

[10] Sea Area A1 is an area within radiotelephone coverage of at least one VHF coast station in which continuous DSC alerting is available as defined by the IMO. Sea Area A2 is an area, excluding Area A1, within radiotelephone coverage of at least one MF coast station in which continuous DSC alerting is available as defined by the IMO. Sea Area A3 is an area, excluding Areas A1 and A2 within the coverage of an INMARSAT geostationary satellite in which continuous alerting is available. Sea Area A4 is an area outside Areas A1, A2 and A3. 47 C.F.R. § 80.1069(a).

Communications Act defines "cargo ship" as "any ship not a passenger ship."[11] Because representatives of the fishing industry asserted that fishing vessels were specifically exempted from GMDSS rules in the SOLAS Convention and should be similarly exempt from the Commission's GMDSS rules, the Commission granted a temporary waiver of the GMDSS rules for fishing vessels of 300 gross tons or more.[12] It noted that inasmuch as the requisite shore-based communications equipment for Sea Areas A1 and A2 have not yet been established along the U.S. coastline, fishing vessels would be required to carry the more expensive Sea Area A3 or A4 equipment in order to comply with the GMDSS rules in the absence of waiver relief.[13] The Commission therefore found it appropriate to grant this temporary waiver pending a rulemaking proceeding addressing whether such fishing vessels should be required to comply with our GMDSS rules.[14]

6. In the *Notice*, the Commission proposed to extend the fishing vessel waiver until the USCG establishes appropriate Sea Area A1 and Sea Area 2 coast stations, after which we would require all compulsory vessels, including fishing vessels of 300 gross tons or more, to comply with all the GMDSS requirements appropriate to their area of operation.[15] The Commission noted its concern that a separate safety system for fishing vessels would be expensive, difficult to administer, and would cause confusion during a distress incident.[16] Therefore, it tentatively concluded that the safety benefits of requiring fishing vessels to fit DSC equipment outweighed the cost.[17] The Commission sought comment on the proposed extension and on whether extending this exemption would place fishing vessels that are in distress at a greater safety risk.[18]

7. *Discussion.* Members of the Alaska Fishing Fleet commented that fishing vessels should be exempt from our GMDSS rules.[19] They argue that the SOLAS Convention exempts such vessels from GMDSS requirements, in recognition of the distinct needs of fishing vessels. They assert that virtually all

[11] 47 U.S.C. § 153(39)(C). In the *Notice*, the Commission affirmed its view that fishing vessels of 300 gross tons or more are considered "cargo ships" and, therefore, subject to the GMDSS requirements. *NPRM*, 15 FCC Rcd at 5959 ¶ 32.

[12] Waiver of Certain Global Maritime Distress and Safety System (GMDSS) Rules Applicable to Fishing Vessels and Small Passenger Vessels, *Order*, 14 FCC Rcd 528, 534 ¶ 11 (1998) (*Fishing Vessel Order*).

[13] *Id.* The need for vessels subject to the GMDSS rules to comply with the equipment requirements for Sea Area A3 until Sea Areas A1 and A2 are declared operational stems from Section 80.1069(a) of the Commission's Rules, 47 C.F.R. § 80.1069(a). Section 80.1069(a)(3) defines Sea Area A3 as an area, excluding Sea Areas A1 and A2, within the coverage of an INMARSAT geostationary satellite in which continuous alerting is available. Since INMARSAT coverage is already available, while the shore-based radiotelephone coverage that defines Sea Areas A1 and A2 does not yet exist domestically, Sea Area A3 currently extends to the shoreline, and a vessel subject to the GMDSS rules is deemed to be sailing in Sea Area A3 as soon as it leaves port.

[14] *Id.*

[15] *NPRM*, 15 FCC Rcd at 5959-5960 ¶¶ 32-33.

[16] *Id.*

[17] *Id.*

[18] *See id.* at 5960 ¶ 32.

[19] Alaska Fishing Fleet Comments at 1.

vessels operating in Alaskan waters are on the same communications system (monitoring of Channel 16 and 2182 kHz), and that it has been particularly effective. They believe that in that area, USCG assets and facilities are distant, and the first line of rescue comes primarily from other fishing vessels. Thus, they fear that breaking up that network by imposing GMDSS rules on a portion of the vessels involved in the network would reduce safety and impose an undue economic burden on the fleet.[20]

8. We disagree. First, we note that the SOLAS Convention exempted fishing vessels from GMDSS in anticipation of the adoption of a separate treaty designed to cover fishing vessels and not due to any special safety characteristics of the fishing vessel fleet.[21] Because it is not clear when or whether this treaty will come into force, we believe that reliance on the contemplated separate safety system for fishing vessels is unwarranted at this time.

9. Moreover, we agree with the USCG and the Task Force that full implementation of GMDSS in the fishing vessel industry will promote safety.[22] Contrary to the Alaska Fishing Fleet's assertions, it cannot be anticipated that a fishing vessel will always, particularly in an emergency, be in short range communications contact with other fishing vessels. Because foreign ships subject to SOLAS requirements have been permitted to and have discontinued their watch on 2182 kHz since February 1, 1999, a fishing vessel outside VHF radio range would be unable to contact such SOLAS-class vessels under almost any circumstance, thereby undermining its ability to seek assistance from such vessels in a distress situation. Furthermore, GMDSS provides other safety capabilities not available in older systems, such as provisions for receiving unscheduled urgent maritime safety information. Moreover, a DSC signal is more likely to be heard than a radiotelephony call under any circumstance, particularly in conditions prevalent at certain times of year in Alaskan waters. Therefore, we conclude that fishing vessels should be subject to our GMDSS rules. However, consistent with the Commission's actions in the *Fishing Vessel Order*, we will delay requirements for fishing vessels to fit GMDSS equipment, specifically VHF-DSC and MF-DSC radio equipment, on vessels which sail exclusively in Sea Areas A1 and A2, until one year after the USCG establishes Sea Areas A1 and/or A2.[23]

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[20] *Id.*

[21] *See* The 1993 Torremolinos Protocol (replacing The Torremolinos International Convention for the Safety of Fishing Vessels, 1977). The 1993 Torremolinos Protocol is to enter into force one year after 15 states with at least an aggregate of 14,000 vessels, equivalent to approximately 50% of the world fishing fleet of vessels at least 24 meters in length, have ratified the Protocol.

[22] *See* United States Coast Guard (USCG) Comments at 9-11; *see also* National GMDSS Implementation Task Force (Task Force) Comments at 4.

[23] The Alaska Fishing Fleet contends that we should delay resolution of this issue "until some time closer to the date of [Sea Area A1] implementation" because such a delay would allow more time to evaluate the effectiveness of GMDSS on a national basis; would permit consideration and incorporation into the Commission's decision of the most recent technological developments in communications equipment; and would allow the Commission to consider more contemporary market prices for state-of-the-art GMDSS technology, thus permitting a more informed costs-benefits analysis of requiring GMDSS implementation by fishing vessels. Alaska Fishing Fleet Comments at 3. We believe the existing record is sufficient to demonstrate that requiring fishing vessels to comply with GMDSS following expiration of the exemption will indeed promote marine safety and that those safety benefits outweigh the costs of outfitting fishing vessels with the requisite equipment. In addition, we believe postponing a decision could engender unnecessary regulatory uncertainty not only for fishing vessel owners and operators but also other maritime radio users. The public interest is served by providing clear notice that fishing vessels will have to comply with the GMDSS requirements following expiration of the exemption; this (continued....)

10. We note that the Commission has long required that fishing vessels comply with provisions of the Communications Act and of our Rules that are applicable to cargo ships.[24] For example, prior to the implementation of GMDSS, fishing vessels were required to carry the radiotelegraph and radiotelephone equipment required for cargo ships. Furthermore, during our gradual implementation of the GMDSS system, fishing vessels were previously subject to GMDSS requirements. Thus, since August 1, 1993, they were required to begin carrying certain GMDSS equipment, specifically NAVTEX receivers and satellite EPIRBs.[25] Consequently, full compliance with our GMDSS rules will only require the addition of one piece of equipment for fishing vessels sailing in Area A1 (a VHF-DSC), and two radios for vessels sailing in Area A2 (a VHF-DSC and MF-DSC).[26]

11. Finally, the *Fishing Vessel Order* stated that the exemption applies to "commercial vessels that catch and/or process fish and other marine life."[27] Trident Seafoods Corporation (Trident) requests that we include fish tender vessels in our decisions regarding GMDSS applicability to fishing vessels.[28] Fish tender vessels transport fish and materials to and from fishing vessels, fish processing vessels and shore on an almost continuous basis. Trident asserts that the communications between tender vessels, catcher boats and fish processors are essential to safe operations, and that all concerns outlined in the *Fishing Vessel Order* apply to tender vessels as well. It also points out that U.S. laws bring fish tender vessels within the definition of "commercial fishing industry vessel."[29] We agree with Trident that fish tender vessels are normally included in the category of fishing industry vessels. Thus, we hereby clarify that these vessels are included within the scope of the exemption for fishing vessels.

2. Commercial Operator Licenses

a. Restricted GMDSS Radio Operator's License

12. *Background.* Presently, we issue one type of commercial radio operator license for GMDSS operators, the GMDSS Radio Operator's License (GROL), which requires familiarity with all GMDSS equipment required for vessels sailing within all four sea areas. This license was essentially established for operators on ships sailing on extensive international ocean voyages, and the Commission tentatively concluded in the *Notice* that it appeared onerous to require such knowledge for operators on ships sailing only within Sea Areas A1 and A2.[30] Thus, consistent with ITU regulations permitting a

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will give responsible parties ample time to prepare for these requirements and will give the entire maritime community greater certainty as to what GMDSS covers and does not cover.

[24] *See NPRM*, 15 FCC Rcd at 5959 ¶ 31.

[25] *See* 47 C.F.R. § 80.1085(a)(4), (6).

[26] We emphasize that the existing exemption relieves the subject fishing vessels only of the requirements to carry VHF-DSC and MF-DSC equipment. It does not relieve the fishing vessels of any other applicable GMDSS requirements concerning, for example, reserve power, VHF handheld radios, MF/HF radiotelephone, INMARSAT-C equipment, and satellite or HF-DSC equipment.

[27] *Fishing Vessel Order*, 14 FCC Rcd at 528 n.2.

[28] Trident Seafoods Corporation (Trident) Comments at 1.

[29] *See* 46 U.S.C. § 45; 46 C.F.R. § 28.

[30] *NPRM*, 15 FCC Rcd at 5960 ¶ 34.

restricted operator's certificate for GMDSS operators on ships sailing exclusively within Sea Area A1, it proposed the introduction of a Restricted GMDSS Radio Operator's License (RGROL) for operators aboard compulsory vessels which are required only to carry the GMDSS equipment described for Sea Area A1.[31] The Commission sought comment on the establishment of a restricted GMDSS license, and also on whether to allow ships sailing solely within Sea Area A2 to have operators qualify for a similar restricted GMDSS certificate for operation of Sea Area A2 equipment.[32]

13. *Discussion.* Commenters were in favor of the establishment of the restricted license for operators sailing in Sea Area A1.[33] In contrast, commenters did not express a similar interest in a restricted license for operators sailing solely in Sea Area A2. We agree that it is unnecessary to require GMDSS operators who sail exclusively within Sea Area A1 to be familiar with the use of equipment which is not fitted and will not be used, such as HF and satellite communications, which are part of the requirements for Sea Areas A3 and A4. The restricted license will allow operators to qualify for a license commensurate to the equipment aboard the particular ship or commensurate to their radio duties aboard the vessel. Further, the provision of both USCG-approved and voluntary GMDSS courses for operators on compulsory vessels on restricted voyages and pleasure craft operators will be more affordable and easier to schedule. Thus, we will establish a restricted GMDSS license for operators sailing exclusively within Sea Area A1.[34] At this time, however, in light of the lack of interest expressed by the commenters, we will not establish a similar restricted license for operators on ships that sail exclusively within Sea Area A2.

b. Credit for Proof of Passing U.S. Coast Guard Training

14. *Background.* To qualify for a GROL, an applicant must successfully complete a written examination administered by a Commercial Operator License Examination (COLE) Manager. Beginning February 1, 2002, all masters and mates must hold the FCC GROL and must also qualify for a USCG GMDSS endorsement. The USCG's seventy-hour training courses for GMDSS endorsement are based on the same material and similar questions as the FCC GROL examination. Therefore, upon suggestion from the Task Force, the Commission proposed to authorize the USCG or its designee to issue a Proof of Passing Certificate (PPC)[35] to operators and maintainers of radio equipment who possess a certificate of competency from a USCG approved training course.[36] This PPC would qualify an applicant to obtain an FCC GROL.

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[31] *Id.* at 5961 ¶ 36.

[32] *Id.* The Commission also proposed to amend 47 C.F.R. § 80.1073(a)(1) to permit the GMDSS radio operator to be a qualified restricted radio operator on vessels that operate in Sea Area A1 exclusively, and 47 C.F.R. § 80.1073(a)(2) to permit a restricted GMDSS radio operator to serve as backup for distress and safety radiocommunications. *Id.* at 5989.

[33] Task Force Comments at 4; USCG Comments at 30.

[34] In addition, we will revise the amendment to Section 80.1073(a)(2) to clarify that it was not intended for vessels sailing outside Sea Areas A1 and A2 to be permitted to have the second GMDSS operator hold only a restricted rating. *See* SEA Comments at 4.

[35] The PPC is issued by a license examiner, and indicates that the holder has successfully completed a license examination. The holder forwards this certificate to the Commission with a license application. *NPRM*, 15 FCC Rcd at 5961 ¶ 37.

[36] *Id.* at 5962 ¶ 39.

15. *Discussion.* We agree with the Task Force that accepting a PPC from the USCG or its designee will relieve the burden that the duplication of examination puts on applicants and will avoid the unnecessary administration of examinations.[37] Therefore, we amend Section 13.201 of our Rules to provide that a PPC issued by the USCG or its designee representing a certificate of competency from a USCG approved training course will qualify an applicant for an FCC GROL or RGROL. However, inasmuch as the USCG does not certify maintainers,[38] we are unable to implement this rule for maintainer licenses at this time.

c. Other Matters

16. In the *Notice,* the Commission proposed to revise Section 80.165 to require a restricted operator's license for operators of a terrestrial DSC ship telephone.[39] SEA Inc. of Delaware (SEA) states that as written, this proposed rule would re-impose licensing on VHF operators,[40] since all new VHF radios will have DSC.[41] SEA does not believe that this result was intended. It suggests that the Commission's intention was to require this license for operators on compulsory ships only.[42] The USCG and Recreational Boating Association of Washington (RBAW) concur, with RBAW stating that the restricted operator's license was intended for compulsory ships operating in Sea Area A1.[43] We agree with the commenters that the Commission did not intend to re-impose a license requirement on all VHF operators. Therefore, we will amend Section 80.165 to require a restricted operator's license to operate a DSC ship telephone only for compulsory ships.

17. Section 13.13 of our Rules provides the application requirements for renewed and modified licenses. Former Section 13.13(d) permitted a ninety day temporary conditional operating authority for those holding a PPC whose license request has not been acted upon by the FCC,[44] but this provision was deleted inadvertently in the Commission's Universal Licensing System proceeding.[45] We now adopt the Commission's proposal in the *Notice* to restore this provision to the rule.[46] We caution

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[37] *See* Task Force Comments at 5.

[38] *See* USCG Comments at 12.

[39] *NPRM*, 15 FCC Rcd at 5974.

[40] *See* Amendment of Parts 80 and 87 of the Commission's Rules to Permit Operation of Certain Domestic Ship and Aircraft Radio Stations Without Individual Licenses, *Report and Order*, WT Docket No. 96-82, 11 FCC Rcd 14849 (1996) (eliminating station licensing requirement for most VHF ship radio stations); Requirements for Restricted Radiotelephone Operator Permits, *Report and Order*, PR Docket No. 84-760, FCC 85-42 (1985) (eliminating the requirement for the Restricted Radiotelephone Operator Permit in the aviation and maritime services except when it is required by statute or treaty).

[41] SEA Comments at 4.

[42] *Id.*

[43] USCG Comments Appendix at 65; Recreational Boating Association of Washington (RBAW) Comments at 1.

[44] *See* 47 C.F.R. § 13.13(d) (1998).

[45] *See* 63 Fed. Reg. 68904, 68942-43 (1998); *see also* 47 C.F.R. § 13.13 editorial note.

[46] *NPRM*, 15 FCC Rcd at 5968-69.

licensees, however, that this ninety day temporary conditional authority does not relieve the licensee of the obligation to comply with the certification requirements of the Standards of Training, Certification and Watchkeeping (STCW) Convention.[47]

3. Global Maritime Distress and Safety System

a. Distress Call Monitoring and Acknowledgment

18. *Background.* IMO and ITU recommendations and standards have been modified extensively since the Commission's GMDSS rules were adopted in 1992. These modifications clarify existing requirements and procedures and address new requirements. The Commission proposed in the *Notice* to implement these changes.[48] For example, Section 80.1111(d) of our Rules provides that a station receiving a DSC distress alert must cease any transmission that might interfere with distress traffic, and continue watch until the call has been acknowledged.[49] Because the ITU changed this procedure to require that a ship receiving a DSC distress call first monitor the associated distress voice traffic channel (*e.g.*, VHF Channel 16 or HF 2182 kHz) for five minutes and monitor the DSC distress and safety channel (*e.g.*, VHF Channel 70 or MF 2187.5 kHz) so that the ship can hear the transmission of any DSC acknowledgements, the Commission proposed modifying Section 80.1111(d) accordingly.[50]

19. *Discussion.* The Task Force concurs with incorporation of the latest IMO guidance.[51] However, Globe is opposed to the proposed monitoring requirement except for distress calls received on VHF or 2 MHz channels, and asserts that such a limitation would better ensure that distress calls from nearby vessels are received.[52] Globe believes, as a practical matter, that the large number of irrelevant calls motivates ship crews to disable their systems. Thus, it asserts that the interests of maritime safety are better served if ships hear and respond to distress calls in the vicinity than if they are expected to monitor calls from a wider area but in fact monitor none.

20. We agree with the USCG that our proposal should not be limited to distress calls received on VHF or 2 MHz channels. As the USCG points out, it cannot be anticipated that a ship in distress will always be within VHF or MF radio communications range of another vessel.[53] A prime intent of GMDSS is to alert shore authorities of an incident, which is best accomplished by disseminating the alert far and wide, providing the possibility of proper relay to a shore authority while relying on the

[47] The STCW Convention sets qualification standards for masters, officers, and watch personnel on seagoing merchant ships. The STCW requirements are independent of those of the Commission.

[48] *NPRM*, 15 FCC Rcd at 5950 ¶ 16. As pointed out by the USCG, the GMDSS Task Force and SEA, some international standards were updated after the *Notice* was released, so the standards the Commission proposed to adopt are no longer current. *See* USCG Comments at 12-17; Task Force Comments at 6; SEA Comments at 4. Accordingly, we will refer to the most recent standards when we revise the rules. *See* Appendix B, *infra*.

[49] 47 C.F.R. § 80.1111(d).

[50] *NPRM*, 15 FCC Rcd at 5950 ¶ 16. Likewise, the Commission proposed analogous modifications to 47 C.F.R. §§ 80.1113(d) and 80.1117(a).

[51] Task Force Comments at 2.

[52] Globe Wireless (Globe) Comments at 3.

[53] USCG Reply Comments at 2.

proper training and performance of receiving ships' personnel. A wider range watch will increase the chances of the proper referral of distress calls to authorities. Furthermore, it is in the interests of maritime safety if all ships actually hear and respond to distress calls. Such a change will clarify procedures to be applied by ships in accordance with recent IMO policy changes and promote international consistency. Globe's concern that ship crews may be tempted to disable their systems, resulting in less monitoring, is not compelling as any such actions by a ship's crew would be a violation of the Radio Regulations and our Rules. Thus, in accordance with updated ITU procedures, we will require a ship receiving a DSC distress call to monitor the associated distress voice channel for five minutes, and monitor the DSC channel until the call has been acknowledged.

b. GMDSS Exemption for All Ships Sailing Continuously Within VHF Radiotelephone Coverage

21. *Background.* In the *Notice*, the Commission proposed to amend Section 80.1071 of our Rules to add a general exemption from certain GMDSS requirements for all ships that sail continuously within VHF radiotelephone coverage (approximately 20 miles from shore).[54] As with the exemption with regard to fishing vessels, this proposal was the result of the lack of shore based VHF and MF DSC equipment needed to support the establishment of Sea Areas A1 and A2, and the concern that fitting DSC equipment in the absence of the shore based equipment would impose an unnecessary financial burden on such vessels. The Commission proposed that this exemption expire one year after the USCG establishes Sea Area A1.

22. *Discussion.* The Task Force was in favor of our proposal, and recommended that this exemption be conditioned upon a continuous Channel 16 watch by the vessel.[55] However, upon reconsideration of our proposal, we agree with the USCG that we should not grant a general exemption from our GMDSS rules beyond that which the Commission has already granted.[56] First, such an exemption is untimely inasmuch as all compulsory vessels, with the exception of vessels operating pursuant to the fishing vessel or other individual ship exemption, have been required to comply with our GMDSS rules since 1999. Thus, the only vessels that could benefit from such an exemption are either already operating pursuant to a waiver or are operating in violation of our Rules. Further, as the USCG points out, in addition to being a ship-to-shore system, DSC is a ship-to-ship system. Under these circumstances, there is no need to delay the benefits of the ship-to-ship communications feature of DSC. Therefore, we decline to amend Section 80.1071 to add a general exemption from GMDSS requirements for ships sailing continuously within VHF radiotelephone coverage.

c. Alternative Satellite Fittings

23. *Background.* Section 80.1091 contains the additional equipment requirements for ships that remain within Sea Areas A1, A2 or A3 at all times.[57] In the *Notice,* the Commission proposed to add a note thereto permitting alternative satellite system fittings for vessels sailing only in domestic waters.[58]

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[54] *NPRM*, 15 FCC Rcd at 5951 ¶ 17.

[55] Task Force Comments at 2.

[56] USCG Comments at 3.

[57] 47 C.F.R. § 80.1091. That is, Section 80.1091 sets forth the equipment that must be fitted by ships remaining within Sea Areas A1, A2, or A3, in addition to the equipment required for all GMDSS vessels.

24. *Discussion.* The Task Force notes that the proposed change would allow non-GMDSS satellite systems to be used as an alternative for U.S. GMDSS domestic vessels, and opines that such waivers should instead be considered on a case-by-case basis.[59] We disagree with the Task Force that permitting the use of alternative satellite systems would result in the use of non-GMDSS class equipment, given that the proposal included a provision that the satellite system must comply with all features of the INMARSAT system for its intended function. Furthermore, the proposed change would be especially beneficial to the marine community as it would permit domestic compulsory ships to choose additional systems as an alternative to INMARSAT, thereby promoting competition. This could result in substantial savings to the affected ships. As this proposal will have a positive effect on the marine community, we will permit the use of these alternative satellite systems for vessels sailing in domestic waters.

4. Safety Watch Requirements and Procedures

a. Watch Requirements on Channel 16

25. *Background.* Section 80.1123 requires compulsory ships at sea to maintain a continuous watch on VHF Channel 16 (156.800 MHz) until February 1, 1999.[60] As that date has passed, and the SOLAS Convention extended this requirement until February 1, 2005, the Commission proposed updating its rules to retain the watch requirement until the new SOLAS date.[61] It also proposed moving Section 80.1123(c) and (d) to Subpart G of Part 80, which contains the rules on "Safety Watch Requirements and Procedures."[62]

26. *Discussion.* Inasmuch as it is consistent with the IMO's transition plan to switch calling from voice on Channel 16 to using DSC on Channel 70, extending the Channel 16 watch requirement until 2005 will accomplish our objective of incorporating international requirements into our Rules. Furthermore, extending the Channel 16 watch will provide enormous safety benefits. Since the USCG has not established coast stations for Sea Area A1, many vessels operating within that Sea Area are not equipped with GMDSS equipment, and are still operating with VHF radios using the Channel 16 watch. Thus, extension of the Channel 16 watch date will result in GMDSS vessels maintaining the ability to intercept safety and distress calls from vessels operating under the older system, while allowing voluntary ships sufficient time to fit DSC radios.

27. The Task Force agrees that the date should be extended, but argues that because the USCG's shore network upgrade to VHF-DSC may not be completed by February 1, 2005, we should extend the watch date until one year after the USCG declares Sea Area A1 operational, or until February

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[58] *NPRM*, 15 FCC Rcd at 5991.

[59] Task Force Comments at 10.

[60] 47 C.F.R. § 80.1123(c). Likewise, Section 80.148 requires compulsory vessels to maintain a watch on Channel 16 whenever the vessel is underway and the station is not being used for exchanging communications. 47 C.F.R. § 80.148.

[61] *NPRM*, 15 FCC Rcd at 5954 ¶ 24.

[62] *Id.* at 5951 ¶ 17. In the Appendix to the *NPRM*, however, the proposed rules do not reflect any amendment that would move the requirements now set forth in Section 80.1123(c) and (d) to Subpart G. Rather, the extension of the Channel 16 watch requirement is reflected in Section 80.1123(c) (as well as Section 80.148) in the Appendix, and no change is made to Section 80.1123(d) in the Appendix.

1, 2005, whichever is later.[63] We disagree. As previously noted, GMDSS is a ship-to-ship system as well as a ship-to-shore system. We believe that it would be premature to presume that the IMO will extend the watch date beyond February 1, 2005. Therefore, extending the date beyond February 1, 2005 in our Part 80 rules would be inconsistent with international standards. Accordingly, we will follow the original proposal and extend the watch requirement until February 1, 2005.[64] In light of the Task Force's comments indicating that we should reflect an extension of the Channel 16 watch requirement both in Section 80.305(a)(3) and in Section 80.1123,[65] we will make the appropriate revisions to both of these rules. Thus, the Channel 16 watch requirement will appear in Subparts C (in Section 80.148), G and W.

b. Watch Requirements on 2182 kHz

28. *Background.* Sections 80.305(a)(2), (b)(1), and 80.1123(d) of our Rules govern watch requirements on 2182 kHz.[66] The ITU, however, recommends that vessels voluntarily maintain such a watch when a significant number of non-compulsory vessels are in the vicinity.[67] In the *Notice*, the Commission sought comment as to the practicality of a voluntary watch, what is considered a significant number of vessels, and whether a voluntary watch on 2182 kHz would provide meaningful benefits to compulsory and voluntary ships at sea.[68]

29. *Discussion.* SEA asserts that a voluntary watch on 2182 kHz is premature as many ships are not fitted with DSC and not all shore-based GMDSS facilities are in place.[69] Likewise, the Task Force does not consider voluntary watches an acceptable solution if there is a perceived need for such a watch. It asserts that if the administration feels there is a need for such a watch, it should be mandatory for all compulsory and voluntary vessels.[70] The Task Force further believes that once Sea Area A2 is established, and vessels have upgraded to MF-DSC, compulsory watches on 2182 kHz will be unnecessary. Therefore, it recommends that compulsory ship watches on 2182 kHz be required until the vessel upgrades to MF-DSC or until one year after the USCG declares Sea Area A2 operational. Globe is

[63] Task Force Comments at 6, 11.

[64] We will revisit this issue if the IMO extends the watch date.

[65] Task Force Comments at 6, 7, 11.

[66] 47 C.F.R. §§ 80.305(a)(2), (b)(1), 80.1123(d). In the *NPRM*, the Commission stated incorrectly that these rules provide that every compulsory ship at sea must maintain a continuous watch on 2182 kHz. *NPRM*, 15 FCC Rcd at 5954 ¶ 24. Section 80.305(a) applies only to ships which are equipped with a radiotelegraph station for compliance with Part II of Title III of the Communications Act or Chapter IV of the Safety Convention, while Section 80.305(b) applies only to cargo ships which are equipped with a radiotelephone station for compliance with Part II of Title III of the Communications Act or Chapter IV of the Safety Convention while being navigated outside of a harbor or port. In addition, current Section 80.1123(d) provides that the requirement that vessels maintain a continuous watch on 2182 kHz extends only until February 1, 1999. We find that this misstatement in the *NPRM* does not alter our conclusion, as set forth in the text, that a mandatory 2182 kHz watch requirement will better serve the public interest in marine safety than a voluntary watch.

[67] S31.17 and APS 13 § 21(3) of the ITU Radio Regulations.

[68] *NPRM*, 15 FCC Rcd at 5954 ¶ 24.

[69] SEA Comments at 2.

[70] Task Force Comments at 7.

opposed to the idea of a voluntary 2182 kHz watch because it doubts that such a watch would be routinely maintained in practice, and to provide for it in the rules could create a false sense of security.[71] The USCG does not consider a watch on 2182 kHz of much practical benefit as it has observed a continuing decline in its use.[72]

30. We agree with SEA and the Task Force that a voluntary watch is not an acceptable solution. The 2182 kHz watch remains an important component of maritime safety, and specifying in our Rules that such a watch is voluntary will provide a level of safety far below that which will be secured by a mandatory watch requirement. Inasmuch as 2182 kHz is still used by non-compulsory ships, and by small passenger and fishing vessels currently operating under exemptions from our GMDSS rules, we are concerned that according compulsory vessels the discretion to forego such a watch would result in the inability of non-compulsory and exempt vessels to contact compulsory vessels in distress situations. Such a result would be inconsistent with our goal of enhancing the collective safety of the marine community. Further, we agree with Globe that a voluntary watch is unlikely to be routinely maintained in practice, and to provide for it in the Rules could therefore generate a false sense of security. Accordingly, we will amend Section 80.1123(d) to provide for a mandatory 2182 kHz watch, without specifying a sunset date for the requirement at this time.[73]

c. Watch Requirements for Voluntary Vessels

31. *Background.* Section 80.310 sets forth the watch requirements for voluntary vessels.[74] In the *Notice*, the Commission proposed to revise this section to require voluntary vessels not fitted with DSC to maintain a watch on Channel 16 when the vessel is underway and the radio is not being used to communicate.[75] The Commission further proposed to require voluntary vessels equipped with DSC to maintain a watch on Channel 70 when the vessel is underway.[76] Finally, the Commission proposed to require vessels voluntarily fitting additional radio equipment to have such equipment turned on and set to the appropriate watch frequency whenever the vessel is underway and the equipment is not being used to communicate.[77]

32. *Discussion.* Regarding Channel 16, we believe that the safety advantages of imposing the Channel 16 watch outweigh any possible disadvantages.[78] Therefore, we will adopt the proposal. The

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[71] Globe Comments at 4.

[72] USCG Comments at 7.

[73] We reserve discretion to revisit this issue after the USCG declares Sea Area A2 operational.

[74] 47 C.F.R. § 80.310.

[75] *NPRM*, 15 FCC Rcd at 5977. Currently, such vessels are required to maintain the watch only when the radio is operating. 47 C.F.R. § 80.310.

[76] *NPRM*, 15 FCC Rcd at 5954 ¶ 24.

[77] *Id.* at 5977.

[78] We note that a "watch" is defined simply as the "act of listening on a designated frequency." 47 C.F.R. § 80.5. We believe the costs of maintaining a watch on Channel 16, if any, are not significant. Maintaining a watch does not require that a crew member be designated to monitor the frequency to the exclusion of all other duties. Rather, a watch at sea can be maintained even as the responsible crew member performs other duties unrelated to the watch, provided he or she remains close enough to hear emergency calls. When a vessel is "underway," (continued....)

USCG proposes that language regarding alternative watch keeping on Channel 9 be eliminated from this Section once the watchkeeping requirement on Channel 16 is eliminated.[79] We will not take any action on this suggestion at this time as the Channel 16 watch requirement remains intact. Regarding Channel 70, we agree with commenters that a mandatory watch on Channel 70 for voluntary vessels equipped with DSC will promote safety and effective communications between compulsory and voluntary ships.[80] It will also promote international comity inasmuch as this proposal is in alignment with ITU regulation S31.17. Furthermore, it will make a major contribution to the collective marine safety. Nonetheless, we want to ensure that our actions do not impinge upon mariners' normal use of their radios. Therefore, we will adopt the proposal with the clarification that any radio equipment installed voluntarily must be powered up and set to the appropriate watch frequency except when being used to communicate.

33. Finally, the Task Force notes that the proposed last sentence of the proposed rule is unclear. The Task Force states that if it applies to vessels voluntarily fitting radio systems capable of sending automatic distress alerts, it should be rephrased.[81] We will revise the language accordingly.

d. Safety Watch By Vessels Voluntarily Fitted on the MF/HF DSC Channels and INMARSAT A, B, and C Systems

34. *Background.* As previously mentioned herein, numerous ITU regulations have been modified and updated since we last updated our Rules. In the *Notice*, the Commission sought comment on which specific ITU regulations should be implemented.

35. *Discussion.* The Task Force recommends that we adopt the ITU regulation requiring a safety watch by all vessels voluntarily fitted with MF/HF-DSC and INMARSAT A, B, and C systems.[82] It notes that the INMARSAT watch is not to receive alerts from other ships but to enable contact by shore rescue authorities to resolve false alerts or arrange assistance for another vessel in distress.[83] The Task Force also recommends that we adopt Radio Regulation S32.5B, which specifies that any GMDSS shipboard equipment which is capable of transmitting position coordinates as part of a distress alert message and which does not have an integral electronic position-fixing system receiver must be interconnected to a separate navigation receiver, if one is installed, to provide that information automatically.[84] The Task Force considers this a necessary requirement for both compulsory and voluntary vessels because of the large number of alerts received without positions or with erroneous positions.

(Continued from previous page)
within the meaning of § 80.5, the individual piloting the vessel can simultaneously discharge the requirements of the watch.

[79] USCG Comments at 7.

[80] *See* Globe Comments at 4; Task Force Comments at 3, 7-8; USCG Comments at 7; RBAW Reply Comments at 1.

[81] Task Force Comments at 7-8.

[82] *Id.* at 3.

[83] *Id.*

[84] *Id.*

36. We agree with the Task Force that we should require a safety watch by all vessels voluntarily fitted with INMARSAT A, B, and C systems. We believe the adoption of this proposal will enhance ship safety as it will result in more ships conducting safety watches. Additionally, it will promote international consistency. We also agree that we should conform our Rules to Radio Regulation S32.5B. This will increase the likelihood that distress messages will be received with accurate position information and will cut down on the number of alerts received without position information. However, we will limit that requirement to compulsory vessels. We believe this requirement would be difficult to apply or enforce with respect to voluntary ships, as these ships are not licensed or inspected.

5. General Technical Standards (Subpart E)

37. *Background.* Subpart E of our Rules provides the general technical requirements for the use of maritime frequencies and equipment. In response to a suggestion by the Task Force, the Commission sought comment on whether any specific standards in Subpart E required modification, and whether IEC Test Standards should be incorporated by reference into our Rules.[85] It also sought comment on how to simplify the means for keeping these general technical standards updated in our Rules as new versions are promulgated by the standards organizations.[86]

38. *Discussion.* The USCG agrees that IEC standards should be incorporated into our Rules, and provides a list of the specific standards it recommends.[87] We conclude that adopting the IEC standards recommended by the USCG would promote international consistency and provide internationally recognized criteria and test procedures for certification of GMDSS equipment.[88] However, we also agree with SEA that we should implement some grandfathering provisions into our Rules.[89] Ship owners and manufacturers have made large investments installing and designing equipment compliant with current requirements. A sudden change in rule from current standards might impose a financial burden on such ship owners. Therefore, while we will no longer allow certification of equipment not meeting the revised standards after the new rules take effect, we will continue to permit the use of such equipment. In addition, to allow manufacturers adequate time to make any necessary changes to their equipment production lines and to deplete inventory,[90] we will permit the installation of

[85] *NPRM*, 15 FCC Rcd at 5955 ¶ 22. *See also* ¶ 4, *supra*. Founded in 1906, the IEC is a global organization that prepares and publishes international standards for all electrical, electronic and related technologies. Its membership consists of more than 60 participating countries, including all of the world's major trading nations and a growing number of industrializing countries. The IEC works closely with SOLAS organizations in developing standards for GMDSS equipment. *See, e.g.*, ITU-R Resolution 41, "Collaboration with the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC)" 1997. The IEC standards pertaining to GMDSS generally are encompassed by IEC Publication number 61097, and were adopted between 1992 and 1999.

[86] *NPRM*, 15 FCC Rcd at 5955 ¶ 22.

[87] USCG Comments at 5-6.

[88] IEC standards will be imposed only on GMDSS equipment, because the IEC has not developed test standards for non-GMDSS equipment in most cases.

[89] SEA Comments at 2.

[90] *See, e.g.*, Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Notice of Proposed Rulemaking and Order*, ET Docket No. 95-183, 11 FCC Rcd 4930, 4987 ¶ 119 (1995).

equipment meeting the old standards until February 1, 2003. After that time, only equipment meeting the new standards may be installed.

39. The USCG further recommends that the Commission amend its delegated authority rule, Section 0.331,[91] to allow Part 80 to reflect the most current edition of standards.[92] Section 0.331(d) already delegates authority to the Chief, Wireless Telecommunications Bureau, to adopt "orders conforming any of the applicable rules to formally adopted international conventions or agreements where novel questions of fact, law, or policy are not involved."[93] We do not think further expansion of the Wireless Telecommunications Bureau's delegated authority in this area is necessary or warranted. We have decided, moreover, to generally keep the rules up-to-date by Notices of Proposed Rule Making as part of the biennial review process.[94] These standards will not be controversial, so this method should work quickly.[95]

6. Compulsory Radiotelegraph Installations for Vessels 1600 Gross Tons (Subpart Q) & Compulsory Radiotelephone Installations for Vessels 300 Gross Tons (Subpart R)

40. *Background.* Subpart Q of Part 80 lists the requirements for compulsory radiotelegraph installations for vessels of 1600 tons.[96] Because Section 365 of the Communications Act[97] prohibits requiring a ship to install a radiotelegraphy station if it is operating in accordance with the GMDSS, and because all compulsory vessels must demonstrate compliance with the GMDSS, the Commission proposed, in the *Notice*, to eliminate the entire subpart except for Section 80.825, which provides the requirements and specifications for radar installations, and Section 80.807, regarding radiotelephone installations.[98] It also sought comment on whether any other portions of Subpart Q should be retained.[99]

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[91] 47 C.F.R. § 0.331.

[92] USCG Comments at 6.

[93] 47 C.F.R. § 0.331(d).

[94] *See* In the Matter of the 2000 Biennial Regulatory Review, CC Docket No. 00-175, *Report*, 16 FCC Rcd 1207 (2001). Although a biennial regulatory review of the Part 80 Rules is not statutorily required, the Commission has determined that it will conduct biennial regulatory reviews that go beyond the minimal statutory requirements of examining rules pertaining to telecommunications service providers or broadcast ownership that are no longer necessary as a result of meaningful economic competition. *Id.* at 1209 ¶ 6.

[95] In addition, we will consider, on a case-by-case waiver basis, requests by manufacturers for certification of equipment that meets an international standard adopted subsequent to the one incorporated by reference in the Part 80 rules.

[96] 47 C.F.R. §§ 80.801-80.836

[97] 47 U.S.C. § 363.

[98] *NPRM*, 15 FCC Rcd at 5953 ¶ 20, 5985.

[99] *Id.* at 5953 ¶ 20.

Finally, the Commission sought comment on the Task Force's proposal that we convert the requirements for radiotelegraphy set forth in Subpart Q to voluntary compliance.[100]

41. Subpart R of our Rules provides the radiotelephone requirements for cargo ships of 300 to 1600 gross tons.[101] As of February 1, 1999, these vessels were required to comply with the GMDSS requirements in Subpart W. Thus, the Commission tentatively concluded that the rules in Subpart R were redundant with the GMDSS rules in Subpart W, and proposed elimination of Subpart R with the exception of Section 80.879, which requires certain vessels to comply with the radar installation requirements in Section 80.825.[102] The Commission noted that the *Fishing Vessel Order* specifically stated that the GMDSS waiver granted to fishing vessels did not relieve the vessels from compliance with the radiotelephone requirements of Subpart R,[103] and sought comment regarding the continued need to specify radiotelephone requirements in Subpart R, or whether it should be deleted in its entirety.[104]

42. *Discussion.* Commenters were generally in agreement with the proposal to substantially eliminate Subparts Q and R. We will retain the substance of the rules addressing radar and radiotelephone installations, but, as suggested by the Task Force,[105] we will move them to other subparts.[106] We also will update these provisions to reflect new IMO and IEC standards, as recommended by the Task Force and the Radio Technical Commission for the Maritime Services (RTCM).[107] This will make our ship radar rules fully compatible with internationally agreed performance and certification testing standards required to meet international shipboard carriage requirements. In addition, we agree with the USCG[108] that because the radio direction finding apparatus described in Sections 80.818 through 80.823 is still required by the Communications Act,[109] with no provision for a waiver, these provisions cannot be eliminated unless Congress amends the Communications Act. We further note that as vessels operating pursuant to the fishing vessel exemption are not currently in compliance with GMDSS, they must be in compliance with certain other portions of Subparts Q and R. Therefore, we will create a rule for vessels operating pursuant to that exemption and incorporate the necessary standards into that section. The remainder of the rules in Subparts Q and R shall be eliminated.

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[100] *Id.*

[101] 47 C.F.R. §§ 80.851-80.879

[102] *NPRM* at ¶ 28.

[103] *Fishing Vessel Order,* 14 FCC Rcd at 534 ¶ 11.

[104] *NPRM,* 15 FCC Rcd at 5956 ¶ 28.

[105] Task Force Comments at 9.

[106] Specifically, Sections 80.807, 80.818-80.823, 80.825 and 80.879 will be consolidated into Subpart F. The remaining rules in Subpart Q will be deleted and Subpart Q will be designated as reserved. Subpart R will be retitled to reflect that it now covers technical and operational requirements for cargo vessels exempted from GMDSS requirements. In addition, Section 80.851, which describes the applicability of the Subpart R requirements, has been amended accordingly, and new Sections 80.880 and 80.881 have been added to Subpart R.

[107] Task Force Comments at 2; Radio Technical Commission for the Maritime Services (RTCM) Comments at 2.

[108] USCG Comments at 4.

[109] 47 U.S.C. § 351(a)(2).

7. Frequencies

43. *Background.* Sections 80.351 through 80.363 of our Rules describe the carrier frequencies and general uses of radiotelegraphy.[110] In the *Notice*, the Commission proposed to adopt Globe's proposal to, in accordance with revised ITU regulations, allow radio-teletypewriter, data, telemetry, and telecommand transmissions on 744 frequencies in the HF band that Section 80.357(a)(3) of our Rules[111] restricts to Morse Code transmissions.[112] Pursuant to a recommendation from the Task Force, the Commission also sought comment on the deletion of 500 and 8364 kHz as distress and safety frequencies, and on eliminating Morse Code radiotelegraph frequencies.[113] Finally, the Commission sought comment on whether the frequency tables in Subpart H should be updated in accordance with revised ITU Regulations, and which specific ITU regulations should be incorporated.[114]

44. *Discussion.* We agree with commenters that J2B and J2D emissions[115] represent a substantial efficiency advantage over Morse code. Thus, this amendment will promote the use of higher speed communication in scarce HF spectrum. Further, it will promote international comity as it will bring our Rules in alignment with revised ITU regulations. Moreover, it will increase the operational flexibility of MF and HF service providers and facilitate their ability to offer additional services. Additionally, better use of the spectrum is in the public interest. Therefore, we will modify Section 80.357(a)(3) to allow radio-teletypewriter, data, telemetry and telecommand transmissions on frequencies currently reserved for Morse Code. Specifically, we will allow J2B and J2D emission wherever A1A or F1B emission is permitted, on high seas frequencies. We emphasize that use of J2B and J2D emissions must be on a non-interference basis and must otherwise be in accord with ITU Radio Regulation S52.54.1.[116]

45. We agree with the Task Force and other commenters that 500 kHz and 8364 kHz should be deleted as distress and safety frequencies, as these frequencies are not currently in use.[117] Therefore, we will delete the references thereto throughout our Rules, including the references in Sections 80.101(c), 80.143, 80.146, 80.207, 80.223, and 80.302.[118] We will not, however, delete the Morse radiotelegraph frequencies, because despite the USCG's assertion that there are no commercial or government operated

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[110] 47 C.F.R. §§ 80.351-80.363.

[111] 47 C.F.R. § 80.357(a)(3).

[112] *NPRM*, 15 FCC Rcd at 5956 ¶ 26.

[113] *Id.*

[114] *Id.*

[115] Emissions are classified and symbolized by alphanumeric characters denoting (a) the type of modulation, (b) the nature of the signal modulating the main carrier, and (c) the type of information to be transmitted. *See* 47 C.F.R. § 2.201. Thus, a "J2B" emission is telegraphy for automatic transmission and "J2D" is data transmission, telemetry, and telecommand. *Id.*

[116] Note 1 to ITU Radio Regulation S52.54.1 specifies that "... use of class J2B and J2D emissions are permitted on a non-interference basis to A1A Morse operations. However, these emissions shall not be used on the HF safety and distress frequencies listed in Appendix S15."

[117] Task Force Comments at 3; USCG Comments at 31-32.

[118] 47 C.F.R. §§ 80.101(c), 80.143, 80.146, 80.207, 80.223, 80.302.

coast radio stations providing any Morse radiotelegraphy services in the U.S., we find that though the Morse radiotelegraph frequencies are rarely used, if at all, there is no concrete evidence that they are completely unused or that there is absolutely no interest in the use of these frequencies for Morse telegraphy. In these circumstances, we will take a conservative approach and retain these frequencies with the recognition that this provision may be ripe for review and elimination in conjunction with the next biennial regulatory review.[119]

8. Emergency Position Indicating Radiobeacons (EPIRBs)

46. *Background.* Sections 80.1053, 80.1055, 80.1057 and 80.1059 set forth the requirements for Classes A, B, C and S EPIRBs, respectively, all of which operate on 121.5/243 MHz.[120] The Commission noted in the *Notice* that COSPAS/SARSAT, the international program that operates the satellite processors for EPIRBs, has announced that because of the deficiencies in 121.5/243 MHz EPIRBs, it will stop equipping new satellites with 121.5/243 MHz processors, and plans to establish a date after which any remaining active processors will be turned off.[121] The Commission further stated its concern that the use of these EPIRBs had led to thousands of false alerts over the years, that lifesaving efforts on such EPIRB signals are often ineffective because there is no available registration information to aid detection, and the average alerting time on such EPIRBs is expected to reach the unacceptable level of ninety minutes.[122] Thus, the Commission proposed to remove certification for Classes A, B, C and S EPIRBs, and to remove rules pertaining to the obsolete Class C EPIRB. More specifically, the Commission proposed that (1) certification of new Class A, B, and S EPIRBs cease immediately; (2) the sale and manufacture of these units cease as of February 1, 2003; and (3) operation of these devices cease as of December 31, 2006.

47. *Discussion.* We agree with commenters and will delete all references in our Rules to Class C EPIRBs, which are no longer authorized,[123] including references identified by commenters but not set out in the Commission's proposed rule changes. Likewise, for the reasons specified in the *Notice,* we will follow the proposal to gradually phase out the use of Class A, B and S EPIRBs.[124] We believe

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[119] Before the next Part 80 biennial review proceeding commences, or in conjunction with that proceeding, we may conduct an audit of these HF frequencies, analogous to the current audit of Private Land Mobile Radio (PLMR) stations licensed on frequencies below 512 MHz, to determine the extent to which the HF frequencies are used for Morse telegraphy. *See* Wireless Telecommunications Bureau Announces Commencement of an Audit of the Construction and Operational Status of Private Land Mobile Radio Stations, *Public Notice*, 16 FCC Rcd 14624 (WTB 2001).

[120] 47 C.F.R. §§ 80.1053, 80.1055, 80.1057, 80.1059.

[121] *NPRM*, 15 FCC Rcd at 5957-58 ¶ 30.

[122] *Id.* at 5957 ¶ 30.

[123] *See* USCG Comments at 25.

[124] The Commission has on occasion granted waivers of § 80.1053 of the Rules to permit devices to be certified as Class B EPIRBs although they do not meet all of the technical requirements for Class B EPIRBs. *See, e.g.*, Briar Tek Incorporated, *Order*, DA 02-287 (WTB PSPWD rel. Feb. 7, 2002); David Marshall, *Letter*, 13 FCC Rcd 23688 (WTB 1998); Letter to Cal Havens, ACR Electronics, from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, dated August 4, 2000. We clarify that our decision herein to phase out the use of Class B EPIRBs is not intended to preclude the continued manufacture and use beyond the specified phase-out dates of equipment that is certified in accordance with such waivers. The (continued....)

that our adoption of this proposal will result in improved rescue efforts and facilitate a complete transition to 406 MHz satellite EPIRBs. We agree, however, with the Task Force that it will be necessary to retain certain portions of our Rules for the duration of the use of these devices.[125]

9. Station Logs

48. *Background.* Section 80.409(e) of our Rules provides the requirements for ship radiotelephone logs. Section 80.409(e)(1) requires that ships compulsorily equipped with radiotelephones maintain in their logs a summary of all distress, urgency and safety traffic.[126] In the *Notice*, the Commission proposed to amend this Section to require only a summary of distress communications heard and urgency communications affecting the station's own ship.[127] The Commission also proposed to amend Section 80.409(e)(5) to require a weekly entry in radiotelephone logs that (1) the proper functioning of DSC equipment has been verified by actual communications or a test call, (2) the batteries or other reserve power sources are functioning properly, (3) the portable survival craft radio gear and radar transponders have been tested, and (4) the EPIRBs have been inspected.[128]

49. *Discussion.* Owen Anderson (Anderson) suggests that logging all intercepted distress communications puts an unreasonable burden on the Bridge Officer, who is also responsible for keeping the GMDSS log.[129] Thus, he suggests that we amend this section to either require that such ships maintain a summary of distress and urgency communications affecting the station's own ship, or a summary of distress communications from vessels themselves in distress plus distress and urgency communications affecting the station's own ship.[130] We do not believe that the proposed amendment to Section 80.409(e)(1) will impose a burden on the Bridge Officer that is unreasonable in light of the benefits to be derived from the log keeping requirement. We note in this regard that there is no requirement that the Bridge Officer make log entries of intercepted distress communications in a book that is separate from the GMDSS log. As we fail to see how our proposal will unreasonably burden the log keeper, we will implement the proposed amendment to this section.

50. Further, both the Task Force and the USCG recommend that the phrase "Officer of the Deck" in proposed Section 80.409(e)(7) be replaced with "Officer of the Navigational Watch" to be consistent with IMO phraseology.[131] We agree with the USCG and the Task Force that we should align

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continued use of such devices does not pose the safety problems that lead us to phase out Class B EPIRBs generally. We also note, however, that the RTCM is working on 121.5 MHz EPIRB standards that may eventually be incorporated into our Rules, and we further clarify that nothing herein is intended either to enlarge the relief granted in those earlier waiver decisions or to preclude modification or termination of the waivers at some later time if such action is justified by changed circumstances, such as the RTCM's adoption of standards for 121.5 MHz EPIRBs.

[125] *See* Task Force Comments at 4.

[126] 47 C.F.R. § 80.409(e)(1).

[127] *NPRM*, 15 FCC Rcd at 5983.

[128] *Id.* at 5982.

[129] Owen Anderson (Anderson) Comments at 2-3.

[130] *Id.* at 3.

[131] Task Force Comments at 8-9; USCG Comments at 22.

our phraseology with the IMO, and will use the phrase "Officer of the Navigational Watch" as per their suggestion.

51. Section 80.1099(f)(2) requires that battery charge levels be checked at intervals not exceeding thirty days, and that portable equipment such as EPIRBs and SARTs be checked at the same intervals using methods recommended by the manufacturer. Anderson believes that the proposed amendment of Section 80.409(e)(5) conflicts with Section 80.1099(f)(2).[132] We disagree. First, these rules are distinguishable in that Section 80.1099(f)(2) is applicable to checks of battery charge levels, while Section 80.409(e)(5) requires a weekly check of safety equipment. Furthermore, to the extent that these rules are similar, the time frames are not in conflict because the weekly check required by Section 409(e)(5) falls squarely within the "thirty days or less" requirement in Section 80.1099(f)(2). Because we believe that a weekly inspection of safety equipment is a reasonable period and that this requirement does not conflict with the requirement to check battery charge levels at an interval not exceeding thirty days, we will implement both proposals.

10. Small Passenger Vessels

a. VHF Radios at Each Steering Station

52. Subpart S of our Rules contains the requirements for compulsory radiotelephone installations for small passenger vessels. Section 80.905(d) requires a VHF radio at each steering station.[133] The Commission proposed to modify this section to permit the installation of a portable VHF-DSC radio to meet this requirement if it is permanently mounted and has a suitable power provision and antenna feed.[134] The Task Force does not concur in accepting a single portable VHF-DSC as equivalent to an installed VHF-DSC system because it feels such units, when available, usually operate at reduced power which may be insufficient for distress alerting.[135] We disagree. The only change that the Commission proposed to this provision was to add a reference to DSC. We have no evidence of any problem of the type described by the Task Force arising in connection with portable non-DSC VHF radios. Therefore, we conclude that reduced power will not compromise any distress alerting, and we will implement the proposed change.

b. Exemption from GMDSS Rules

53. *Background.* Section 80.933 contains the small passenger vessel exemptions from certain radiotelephone and GMDSS requirements.[136] The Commission proposed to revise subsection (c) to extend the exemption for exempt small passenger vessels of less than 100 gross tons from GMDSS requirements until six months after the USCG notifies the FCC that coverage in Sea Areas A1 and A2 is established.[137]

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[132] Anderson Comments a 3.

[133] 47 C.F.R. § 80.905(d).

[134] *NPRM*, 15 FCC Rcd at 5985.

[135] Task Force Comments at 9.

[136] 47 C.F.R. § 80.933.

[137] *NPRM*, 15 FCC Rcd at 5987. The current rule allows the exemption until February 1, 1999. *See* 47 C.F.R. § 80.933(c).

54. *Discussion.* We agree with the Task Force's recommendation that the proposed exemption from certain GMDSS requirements for small passenger vessels should be extended to one year, rather than six months, after the USCG declares Sea Areas A1 and A2 operational, in order to be consistent with other exemptions.[138] In addition, SEA and the USCG argue that we should not wait until Area A1 is declared to end the exemption for vessels that operate in Sea Area A2.[139] Furthermore, the USCG urges us to restrict this exemption to domestic voyages.[140] We believe that SEA and the USCG's concern is misplaced here, because the vessels to which this exemption is applicable operate exclusively within Sea Area A1, even when sailing on international voyages.[141] We acknowledge, however, that the confusion may have arisen from the inadvertent reference to Sea Area A2 in the proposal. The Commission did not mean to imply that the exemption was being granted to vessels operating in Sea Area A2. Thus, we will extend the small passenger vessel exemption from GMDSS requirements in Section 80.933(c). Further, we hereby clarify that this exemption will continue until one year after the USCG has established Area A1.

B. Suggested Additional Rule Changes

55. In the *Notice*, the Commission asked for comments on any other rule changes that could be made to update, streamline, or clarify Part 80 of the Commission's Rules. What follows is our discussion of additional rule changes suggested by certain commenters.[142]

1. Subpart A-General Information

56. **§ 80.5.** Section 80.5 of our Rules contains the definitions of terms used throughout Part 80.[143] The Task Force and the USCG recommend that we make the following revisions to Section 80.5:[144]

- *Distress Signal*: align with S32.9 of the ITU Radio Regulations, to include a person, and to remove all references to radiotelegraphy.
- *Distress Traffic*: align with S32.40 and should include a person.
- *Inland Waters:* amend to cite 33 C.F.R. § 80.01.
- *Maritime mobile service identities*: amend to include the abbreviation MMSI.
- *Navigable Waters*: adjust to reflect the current wording of 33 C.F.R. § 2.05.
- *Pilot*: update to reflect the current Title 46 U.S. Code requirements.
- *Safety Signal* and *Urgency Signal*: amend to remove mention of radiotelegraphy.

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[138] Task Force Comments at 9.

[139] SEA Comments at 3; USCG Comments at 24.

[140] USCG Comments at 24.

[141] *See* 47 C.F.R. § 80.933(c)(3).

[142] Maritel, Inc. (Maritel) proposed numerous rule changes relating only to public coast stations. These proposals will be addressed in the Commission's public coast rulemaking proceeding. *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Further Notice of Proposed Rule Making*, PR Docket No. 92-57, 17 FCC Rcd 227 (2001).

[143] 47 C.F.R. § 80.5.

[144] Task Force Comments at 6; USCG Comments at 19-20.