

**Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Waiver of Certain Global Maritime Distress
and Safety System (GMDSS) Rules
Applicable to Fishing Vessels and Small
Passenger Vessels
.

ORDER

Adopted: November 6, 1998

Released: November 20, 1988

By the Commission:

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. By this *Order* we grant temporary, conditional waivers pursuant to Part II of Title III of the Communications Act of certain Commission rules implementing the provisions of the Safety of Life at Sea (SOLAS) Convention for small passenger vessels and fishing vessels.¹ The waivers affect fishing vessels² and small passenger vessels that make short voyages in certain narrowly-defined waters. Absent the action taken herein, fishing vessels and small passenger vessels would be required to fully implement the Global Maritime Distress and Safety System (GMDSS) on February 1, 1999.³ We are granting the waiver for small passenger vessels *inter alia* because the shore-based stations necessary for GMDSS short-range and medium-range digital selective calling (DSC) communications are not yet fully implemented in the United States. Consequently, were small passenger vessels required to fully conform to the GMDSS rules, those vessels would have to install the equipment necessary for long-range communication. The long-range equipment would be costly and unnecessary from a safety standpoint for small passenger vessels. In the case of fishing vessels, at the behest of representatives of the fishing industry, we are granting a temporary,

¹ In the late 1970's, the International Maritime Organization (IMO), an agency of the United Nations, began work toward revising the 1974 SOLAS Convention to improve maritime safety by replacing the old safety system (based on manual Morse code and traditional, terrestrial radio techniques) with one that takes advantage of advanced radio technologies. The new system was named the GMDSS. In 1987, the Final Acts of the World Administrative Radio Conference (WARC) for Mobile Services, Geneva, 1987, adopted changes, effective July 1, 1991, to incorporate the radio provisions of the GMDSS into the International Radio Regulations. In the fall of 1988, the IMO formally amended the 1974 SOLAS Convention to adopt the GMDSS. These amendments entered into force on February 1, 1992. See Chap. IV of the Consolidated Text of the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1978: Articles, Annexes and Certificates, Incorporating all Amendments in Effect from 1 July 1997, International Maritime Organization, London, 1997 (*SOLAS Convention*).

² "Fishing vessels" for the purposes of this *Order* are commercial vessels that catch and/or process fish and other marine life. *C.f.* *SOLAS Convention*, Part A, Regulation 2(i).

³ See 47 C.F.R. Subpart W.

conditional waiver from compliance with certain of the Commission's GMDSS rules pending completion of a rule making proceeding addressed to the issue of whether fishing vessels should be required to comply fully with the Commission's GMDSS rules. The waivers herein affect only rules that were to take effect on February 1, 1999. As a result, nothing herein should be construed as a waiver of GMDSS rules which already are in effect.

II. BACKGROUND

2. *Nature of the GMDSS.* Pursuant to the *SOLAS Convention*, the Commission released a *Report and Order* on February 7, 1992, commencing implementation of the GMDSS for United States vessels.⁴ The GMDSS communications system represents the most significant improvement in marine safety since adoption of the first maritime communication regulations in the early 1900's. As a result of the GMDSS, the technology of international distress communications is transitioning from manual Morse Code to automated, or semi-automated, communications using satellite and advanced terrestrial systems. This modernized system has been recognized by the IMO, the United States Congress, the United States Coast Guard (Coast Guard) and the Commission as a means to promote interoperable distress and general communications among vessels of all nations.⁵ The GMDSS is primarily a ship-to-shore system (though it has ship-to-ship capabilities) and consists of several distinct communications systems, some of which are new, but most of which have been in operation for several years. The underlying premises of the GMDSS are that every ocean-going vessel should: (a) be capable of initiating a distress alert via at least two independent means; and (b) carry equipment to aid rescuers in locating the vessel and communicating with survivors in the event of an emergency. Vessels may initiate a distress alert either via existing satellite systems⁶ or through new, advanced terrestrial communications, using DSC.⁷

3. *GMDSS Implementation.* In the *GMDSS R&O*, the Commission established a schedule, consistent with the one adopted internationally, under which the GMDSS would be phased-in for United

⁴ See Amendment of Parts 13 and 80 of the Commission's Rules to Implement the Global Maritime Distress and Safety System to Improve the Safety of Life at Sea, PR Docket No. 90-480, *Report and Order*, 7 FCC Rcd 951 (1992) (*GMDSS R&O*), *petition for reconsideration denied*, *Memorandum Opinion and Order*, FCC 97-180 (released August 10, 1998).

⁵ See, e.g. *SOLAS Convention*; 47 U.S.C. § 363. See generally, *GMDSS R&O*.

⁶ The COSPAS-SARSAT satellite system, which has been in operation since 1982, provides distress alerting by means of the 406 MHz emergency position indicating radio beacon (EPIRB). The International Mobile Satellite Organization's (INMARSAT) maritime mobile satellite system has also been in operation since 1982 and permits ship-to-shore alerting through a shipboard terminal.

⁷ DSC is a digital signalling system that allows ship and shore stations to call one another directly, similar to the use of a telephone, and establish contact. It is a significant improvement over the older system, still in use, which requires radio operators to listen continuously to a common calling channel to identify specific calls directed to the ship or land station. See Amendment of the Maritime Service Rules (Part 80) to Permit VHF Marine Channel 9 to be Used as a Second Calling Channel, PR Docket No. 91-167, *Report and Order*, 7 FCC Rcd 2618, n.2. Administrations worldwide currently have in place or are developing networks of coast stations equipped with new DSC radio equipment operating in the VHF (156-162 MHz), MF (2-3 MHz) and HF (3-27.5 MHz) bands, to permit the transmission and receipt of both distress messages and other communications originating from any location on the world's oceans.

States vessels.⁸ The current GMDSS rules require that all United States compulsory vessels⁹ must be equipped with a full GMDSS installation for alerting and communications purposes by February 1, 1999.¹⁰

4. The Commission's GMDSS rules require all compulsory vessels to carry a complement of basic GMDSS equipment which includes a VHF installation with DSC, a NAVTEX receiver,¹¹ a float-free satellite EPIRB,¹² one or more search and rescue radar transponders (SARTs),¹³ and two or more VHF portable radios.¹⁴ In addition, these vessels must carry certain other communications equipment depending on the "Sea Area" in which a vessel operates.¹⁵ There are four possible Sea Areas (designated Sea Areas A1-A4).¹⁶ Sea Areas A3 and A4 are currently established and in use world-wide and rely, for their operation, on ship borne DSC-equipped high frequency (HF) transceivers or INMARSAT satellite terminals. In the United States, Sea Areas A1 and A2 are not established because the requisite shore-based VHF and MF DSC equipment is not in place. Accordingly, compulsory ships in United States waters must be fitted with Sea Area A3 or A4 equipment in order to participate in the ship-to-shore and shore-to-ship portion of the GMDSS. The Sea Area A3 and A4 equipment, intended for long ocean-going voyages, is significantly more expensive than the Sea Area A1 and A2 equipment.

⁸ An implementation schedule to phase in the GMDSS between 1992 and February 1, 1999, was provided in the *GMDSS R&O*, 7 FCC Rcd at Appendix C.

⁹ Compulsory vessels are cargo ships of 300 gross tons or over travelling in the open sea, and all passenger ships, irrespective of size, that carry more than 12 passengers when travelling in the open sea. *See* 47 C.F.R. § 80.1065(b).

¹⁰ *See* 47 C.F.R. § 80.1065.

¹¹ NAVTEX is an automated system that distributes maritime navigation warnings, weather forecasts and warnings, search and rescue notices and other safety and urgent information to mariners.

¹² An EPIRB, when activated, transmits a distress call and ship identification signal to the COSPAS-SARSAT satellite system. *See n. Error! Bookmark not defined. supra.*

¹³ A SART is a small device used to help pinpoint survivors during search and rescue operations by acting as an "active reflector" of 9,200-9,500 MHz band radar signals.

¹⁴ The VHF portable radios are used by survivors to establish voice contact with nearby search and rescue personnel.

¹⁵ *See* 47 C.F.R. §§ 80.1089 - 80.1093.

¹⁶ Sea Areas are defined by individual administrations and notified to the IMO. In the United States, the Coast Guard is responsible for declaring Sea Areas A1 and A2 operational. The IMO publishes a GMDSS Master Plan, which delineates the geographic extent of the various Sea Areas worldwide. The GMDSS Sea Areas are defined as follows: *Sea Area A1* – an area within the radiotelephone coverage of at least one VHF coast station in which continuous DSC alerting is available (this would normally extend approximately 20-30 miles from shore); *Sea Area A2* – an area, excluding Sea Area A1, within the radiotelephone coverage of at least one MF coast station in which continuous DSC alerting is available (this would normally extend up to 75-150 miles from shore); *Sea Area A3* – an area, excluding Sea Areas A1 and A2, within the coverage of an INMARSAT geostationary satellite in which continuous alerting is available (the area between 70° North Latitude and 70° South Latitude, which is within the footprint of the INMARSAT system); *Sea Area A4* – an area outside Sea Areas A1, A2, and A3 (essentially the polar regions). *See* 47 C.F.R. § 80.1069.

III. DISCUSSION

5. Section 1.3 of the Commission's Rules¹⁷ provides that any rule may be waived or suspended by the Commission on its own motion. A waiver or suspension of a given rule pursuant to Section 1.3 is appropriate when "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."¹⁸ We find such circumstances present here. Permitting small passenger vessels to defer GMDSS compliance until Sea Areas A1 and A2 are established serves the public interest by avoiding the need for short-range vessels to unnecessarily purchase and install the equipment appropriate for long-range communication. The public interest is likewise served by not finalizing the GMDSS equipment requirements for fishing vessels until the Commission has had the opportunity to consider, in a rule making context, whether there are characteristics of fishing vessels that dictate making special provisions for fishing vessels in the GMDSS rules.

6. *General Exemption for Small Passenger Vessels.* Section 351(a)(1)(A) of the Communications Act¹⁹ requires certain passenger vessels to carry radiotelegraph equipment.²⁰ However, pursuant to Section 352(b)(1) of the Communications Act²¹ the Commission adopted a rule that exempts from the radiotelegraph requirement,²² passenger vessels that do not travel more than 20 nautical miles from land or more than 200 nautical miles between consecutive ports.²³ The general exemption rule, Section 80.933 of the Commission's Rules, provides that, prior to February 1, 1999, certain small passenger vessels are exempt from: (a) the radiotelegraph carriage requirements of the Communications Act; (b) the MF radiotelephone requirements of the Commission's Rules; and (c) Regulations 7 through 11 of Chapter IV of the *SOLAS Convention*.²⁴ This latter general exemption, Section 80.933(c),²⁵ is narrowly drawn in geographic terms²⁶ and applies only to United States small passenger vessels that operate not more than 20 nautical miles from land, or alternatively, 200 nautical miles between consecutive ports. The current exemption expires on January 31, 1999 because, effective February 1, 1999, the Commission's GMDSS rules, only portions of which are currently in effect, would be fully implemented for all compulsory vessels.²⁷

¹⁷ 47 C.F.R. § 1.3.

¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹⁹ GMDSS-equipped vessels are statutorily exempt from being required to carry radiotelegraph equipment. See 47 U.S.C. § 365.

²⁰ Absent an exemption, radiotelegraph equipment must be carried by all United States passenger vessels that are: (a) not fitted with appropriate GMDSS equipment; (b) navigated in the open sea; and (c) certified to carry more than 12 passengers. See 47 U.S.C. § 351(a)(1)(A).

²¹ 47 U.S.C. § 352(b)(3).

²² An exemption from the radiotelegraph carriage requirement is warranted when "the route or the conditions of the voyage or other circumstances are such as to render a [radiotelegraph] radio station unreasonable or unnecessary." 47 U.S.C. § 352(b).

²³ See 47 C.F.R. § 80.933. See also 47 U.S.C. § 351(b)(3) which permits the Commission to exempt from the

7. We note that the expiration date set for the small passenger vessel exemption in Section 80.933 of the Commission's Rules was premised on the shore-based terrestrial portions of the GMDSS being in place by February 1, 1999.²⁸ Accordingly, it was anticipated that on February 1, 1999, small passenger vessels would be fully in compliance with the GMDSS rules if they were fitted with VHF-DSC and/or MF-DSC equipment in addition to the GMDSS equipment already required. However, because Sea Areas A1 and A2 have not been established, small passenger vessels would require Sea Area A3 or A4 equipment to comply with the GMDSS rules unless the small passenger vessel exemption *supra* is extended pending establishment of Sea Areas A1 and A2 in the United States.

8. We do not believe it would further the public interest to require small passenger vessels to be fitted with costly equipment that would be of little or no utility once Sea Areas A1 and A2 are established. Given the route and conditions of the voyages routinely made by these small passenger vessels, we find that it is reasonable to grant these small passenger vessels a temporary, conditional waiver of certain of the Commission's GMDSS rules by extending the termination date of the general exemption *supra*. Thereby we exempt these small passenger vessels both from the carriage of radiotelegraph equipment and certain equipment specified in the Commission's GMDSS rules, provided that these vessels carry the equipment specified in the general exemption rule, Section 80.933. In so doing, we are substituting the equipment specified in Section 80.933 of the Commission's Rules for that specified in Regulations 7 through 11 of Chapter IV of the *SOLAS Convention*, pursuant to Regulation 5 of Chapter I of the *SOLAS Convention* which permits substitution of equivalent equipment when such equipment will be at least as effective as that specified in the *SOLAS Convention*.²⁹ The small passenger vessel waiver will be terminated by the Commission once the Coast Guard has notified the Commission that shore-based Sea Area A1 and A2

radiotelegraph requirement, passenger vessels of less than 100 gross tons not subject to the *Solas Convention*. Pursuant to that provision, the Commission adopted a general exemption from the radiotelegraph requirement for such vessels provided that they are equipped with the MF radiotelephone equipment specified in Subpart S of Part 80 of the Commission's Rules. *See* 47 C.F.R. § 80.933(b).

²⁴ Regulations 7 through 11 of Chapter IV of the *SOLAS Convention* define the basic radio equipment required for GMDSS-compliant ships and the additional equipment required for operation in Sea Areas A1-A4.

²⁵ 47 U.S.C. § 80.933(c).

²⁶ *See* 47 C.F.R. 80.933(c)(4)(i)-(iii), (d)(1)-(3).

²⁷ *See* 47 C.F.R. § 80.1065(b)(3),(4). Note, however, that in the instant *Order*, the provisions of certain GMDSS rules as they apply to fishing vessels also are waived. *See* para. 0 *infra*.

²⁸ 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, PR Docket No. 90-480, *Notice of Proposed Rule Making*, 5 FCC Rcd 6212, 6214 (1990).

²⁹ *See* Amendment of Part 80 of the Commission's Rules Concerning the General Exemption for Large Cargo Oceangoing Cargo Vessels and Small Passenger Vessels, WT Docket No. 93-133, *Report and Order*, FCC 95-447 (released Nov. 8, 1995) at ¶ 22.

coverage is established, at which time, small passenger vessels will be required to fully comply with the Commission's GMDSS rules.³⁰

9. By requiring small passenger vessels to continue to comply with the provisions of Section 80.933 of the Commission's Rules³¹, notwithstanding the February 1, 1999, expiration date contained therein, we will eliminate the need for vessel owners to file, and the Commission to process, individual exemption requests for small passenger vessels. The waiver therefore avoids imposition of an unnecessary regulatory burden on vessel owners and spares the Commission from the administrative burden of processing numerous individual exemption requests. The filing and processing of such requests would require administrative effort without any concomitant public interest benefit.

10. *Fishing Vessels.* Traditionally, fishing vessels have been treated as cargo vessels for the purposes of the Commission's Rules. They are considered cargo vessels because the Communications Act defines "cargo ship" as "any ship not a passenger ship."³² Accordingly, fishing vessels have been required to carry the radiotelegraph and radiotelephone equipment, including GMDSS equipment, specified for cargo ships in the Communications Act and in the Commission's Rules.³³ As a result, since August 1, 1993, fishing vessels of 300 gross tons or more have been required to carry a NAVTEX receiver for the reception of maritime safety information and a float-free satellite EPIRB,³⁴ and, since February 1, 1995, such ships have been required to carry specified survival craft radio equipment.³⁵ Thus, to date, fishing vessels of 300 gross tons or more have been subject to the Commission's GMDSS rules.³⁶

³⁰ The Commission intends to provide at least six months notice before terminating the waiver of certain of the GMDSS rules as they apply to small passenger vessels.

³¹ Section 80.933 of the Commission's Rules, 47 C.F.R. § 80.933, is the General Small Passenger Exemption which requires, *inter alia*, that small passenger vessels must carry a VHF radio and that, when such vessels navigate more than three nautical miles from land, they must carry a NAVTEX receiver, an EPIRB, two SARTs and three portable VHF survival radios.

³² 47 U.S.C. § 153(39)(C).

³³ See 47 U.S.C. §§ 351-363; 47 C.F.R. §§ 80.801-80.879, 80.951-80.1135.

³⁴ All compulsory ships were required to comply with 47 C.F.R. §§ 80.1085(a)(4) and 80.1085(a)(6) by August 1, 1993, and with 47 C.F.R. § 80.1095 by February 1, 1995. See 47 C.F.R. §§ 80.1065(b)(1), 80.1065(b)(2).

³⁵ See 47 C.F.R. §§ 80.1065(2), 80.1095.

³⁶ See 47 C.F.R. § 80.1065(b).

11. Representatives of the fishing industry³⁷ have claimed to the Commission³⁸ and to members of Congress³⁹ that requiring fishing vessels to comply with the DSC communications requirements of the GMDSS rules by February 1, 1999, would constitute an unnecessary financial burden.⁴⁰ In this connection, they argue that, because of the lack of shore coverage to support Sea Areas A1 and A2, fishing vessels would be required to carry more expensive Sea Area A3 or A4 equipment.⁴¹ Moreover, they urge that the Commission revisit its GMDSS rules, as they apply to fishing vessels, because the *SOLAS Convention* specifically exempts fishing vessels from the SOLAS GMDSS regulations.⁴² Further, they contend that, if the GMDSS is implemented on compulsory vessels – which then discontinue standing watch on the current distress channels (VHF Channel 16 and MF frequency 2182 kHz) – smaller vessels, lacking DSC capability, will have difficulty contacting the GMDSS-equipped vessels in the event of an emergency.⁴³ In order to more fully examine these issues, we believe it best to issue a temporary, conditional waiver of certain of the Commission's GMDSS rules applicable to fishing vessels until we conclude a rule making proceeding addressing the concerns of the fishing industry and such other parties who may elect to participate. Accordingly, by this *Order*, we grant a temporary, conditional waiver, until a date to be announced in the future, of the requirement that fishing vessels comply with certain provisions of Part 80, Subpart W of the Commission's Rules requiring installation and use of GMDSS equipment. The termination date of this waiver will be no less than six months after the Coast Guard has notified the Commission that Sea Area A1 and A2 coverage is established. This waiver is conditioned on the requirement that, during the duration of the waiver, fishing vessels of 300 gross tons or greater shall continue to comply with Commission GMDSS rules currently in effect, namely Sections 80.1085(a)(4) (NAVTEX receiver), 80.1085(a)(6) (EPIRB) and 80.1095 (survival craft equipment) of the Commission's Rules. Moreover, this waiver does not relieve fishing vessels from compliance with the provisions of Subparts Q and R of Part 80 of the Commission's Rules.

³⁷ See Letter dated September 1, 1998, from Fishing Industry Task Force on GMDSS/DSC (Messrs. Thorn Smith, et al.) to William E. Kennard, Chairman, Federal Communications Commission; Letter dated April 21, 1998, to the Hon. Ted Stevens from the Kodiak Vessel Owners' Association, Alaska Groundfish Data Bank, United Catcher Boats, Deep Sea Fishermen's Union, Aleutians East Borough, Alaska Longline Fish Association, Unisea, Inc., Tyson Seafood Group, Inc, NorQuest Seafoods, Inc. Petersburg Vessel Owners, Pacific Seafood Processing Association, United Fishermen's Marketing Association, Inc., Alaska Draggers Association, North Pacific Longline Association, Fishing Vessel Owners' Association, Alaska Crab Coalition, At-Sea Processors Association, and Groundfish Forum (*Stevens Letter*); Letter dated April 20, 1998, to the Hon. Slade Gorton from the North Pacific Fishing Vessel Owners' Association, Yardarm Knot, Inc. and Snopac Products, Inc. (*Gorton Letter*).

³⁸ See Letter dated July 15, 1998, from the Hon. Frank Murkowski to William E. Kennard, Chairman, Federal Communications Commission.

³⁹ *Id.* See also Amendment to the Department of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act of 1999, remarks of the Hon. Frank Murkowski, 144 Cong. Rec. S8854.

⁴⁰ See *Stevens Letter* at 1.

⁴¹ *Id.*

⁴² See *SOLAS Convention*, Chapter I, Regulation 3 (a)(vi).

⁴³ See *Gorton Letter* at 1, 2.

12. *Ship Radio Certificates.* Without the relief afforded in this *Order*, the ship radio certificates for small passenger ships on short voyages and fishing vessels would have expired on February 1, 1999, unless GMDSS systems had been installed on those vessels. However, with the relief afforded herein, those radio certificates will remain valid until the expiration dates contained thereon or the expiration of any renewal terms thereof; provided, however, that such ship radio certificates shall expire with respect to a vessel on the date the Commission terminates the waiver granted hereby with respect to such vessel. Moreover, Commission-authorized inspectors will renew ship radio certificates, or issue new ship radio certificates, to small passenger ships and fishing vessels that lack GMDSS installations, provided those vessels meet the conditions imposed herein and otherwise comply with the Commission's Rules.

IV. ORDERING CLAUSES

13. **IT IS ORDERED** that, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and 303(r), that Subpart W of Part 80 of the Commission's rules **IS TEMPORARILY WAIVED** as it applies to small passenger vessels on the short voyages defined in Section 80.933 of the Commission's Rules,⁴⁴ **PROVIDED THAT** such vessels comply with the provisions of Section 80.933 of the Commission's Rules, notwithstanding the expiration dates therein. **IT IS FURTHER ORDERED** that authority is delegated to the Chief of the Wireless Telecommunications Bureau to terminate said temporary, conditional waiver as it applies to small passenger vessels at such time as the Chief of the Wireless Telecommunications Bureau deems appropriate after the Coast Guard has notified the Commission that shore-based Sea Area A1 and A2 coverage is established but no sooner than six months following the establishment of shore-based coverage for Sea Areas A1 and A2.

IT IS FURTHER ORDERED that Subpart W of Part 80 of the Commission's Rules **IS TEMPORARILY AND PARTIALLY WAIVED** as it applies to fishing vessels, as discussed herein⁴⁵ **PROVIDED THAT** fishing vessels shall abide by the provisions of Sections 80.1085(a)(4), 80.1085(a)(6) and 80.1095 of the Commission's Rules.⁴⁶

⁴⁴ 47 C.F.R. § 80.933.

⁴⁵ See n. **Error! Bookmark not defined.** *supra*.

⁴⁶ 47 C.F.R. §§ 80.1085(a)(4), 80.1085(a)(6) and 80.1095.

14. For further information, contact Michael J. Wilhelm, Wireless Telecommunications Bureau, 2025 M Street N.W., Washington D.C. 20554, (202) 418-0680, mwilhelm@fcc.gov, or Jim Shaffer, Wireless Telecommunications Bureau, 2025 M Street N.W., Washington D.C. 20554, (202) 418-0680, jshaffer@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary