

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 46 CFR Parts 26 and 28

[Docket No. USCG–2003–16158]

RIN 1625–AA77

#### Commercial Fishing Industry Vessels

**AGENCY:** Coast Guard, DHS.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is developing a set of proposed amendments to its commercial fishing industry vessel regulations. The proposed changes would enhance maritime safety by adding new requirements for vessel stability and watertight integrity, stability training and assessments, vessel maintenance and self-examinations, immersion suits, crew preparedness, safety training, emergency preparation, safety and training personnel, safety equipment, and documentation. Miscellaneous conforming, clarifying, and other administrative changes are also contemplated.

**DATES:** Comments and related material must reach the Docket Management Facility on or before July 29, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2003–16158 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

(3) *Fax:* 202–493–2251.

(4) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call M.M. Rosecrans, Chief, Fishing Vessel Safety Division (CG–5433), U.S. Coast Guard, telephone 202–372–1245, or e-mail

[Michael.m.rosecrans@uscg.mil](mailto:Michael.m.rosecrans@uscg.mil). If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

## SUPPLEMENTARY INFORMATION:

### I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

We are interested in the potential impacts from this proposed rule on small businesses and we request public comment on these potential impacts. If you think that this proposed rule would have a significant economic impact on you, your business, or your organization, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why, how, and to what degree you think this rule would have an economic impact on you.

#### A. Submitting Comments

If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2003–16158), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time, click on "Search for Dockets," and enter the docket number for this rulemaking (USCG–2003–16158) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in room W12–140 on the Ground Floor of the West Building, 1200 New Jersey

Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### C. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

#### D. Public Meeting

The Coast Guard anticipates wide interest in this rulemaking and is considering how best to obtain early spoken comments from the public. If we determine a cost-effective way to receive spoken comments from all segments of the commercial fishing vessel industry and from the general public, we will announce it in a subsequent **Federal Register** notice.

## II. Acronym Table

Acronym	Text
CFIVSAC	Commercial Fishing Industry Vessel Safety Advisory Committee.
CFR .....	Code of Federal Regulations.
CPR .....	Cardiopulmonary Resuscitation.
DOT .....	Department of Transportation.
EPIRB ....	Emergency Position Indicating Radio Beacon.
F/V .....	Fishing Vessel.
FRP .....	Fiberglass-reinforced Plastic.
IMO .....	International Maritime Organization.
NPRM ....	Notice of Proposed Rulemaking.
SNPRM ..	Supplemental Notice of Proposed Rulemaking.
U.S.C. ....	United States Code.

## III. Note on the Regulatory Framework Affecting Commercial Fishing Industry Vessels

In the discussions that follow, we sometimes distinguish between documented and undocumented vessels. Under 46 U.S.C. chapter 121, a vessel of at least five net tons must meet the ownership tests and other criteria needed to obtain a certificate of documentation (Form CG–1270) with a fishery endorsement, before it can be employed in processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or its Exclusive Economic Zone. For Coast Guard regulations affecting the

documentation of fishing industry vessels, see 46 CFR part 67. Fishing industry vessels 100 feet or greater in length are also subject to Maritime Administration requirements found in 46 CFR part 356.

**IV. Background and Purpose**

Commercial fishing remains one of the most hazardous occupations in the United States. Congress addressed this problem by enacting the Commercial Fishing Industry Vessel Safety Act of 1988 (“the 1988 Act,” Pub. L. 100–424, as subsequently amended; see generally, 46 U.S.C. chapter 45, “Uninspected Commercial Fishing Industry Vessels”). The Act directed the Secretary of Transportation to provide safety requirements for fishing vessels, fish processing vessels, and fish tender vessels. It also established the Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) to advise the Secretary on matters relating to the safe operation of commercial fishing vessels.

Coast Guard regulations under the 1988 Act were first issued on August 14, 1991 (56 FR 40364), and were further addressed in the following documents:

- August 3, 1992, interim rule (57 FR 34188) that amended the 1991 immersion suit requirements in 46 CFR 28.110, but advised the public that immersion suits would be the subject of further rulemaking;
- October 27, 1992, SNPRM (57 FR 48670) that proposed the adoption of stability regulations for vessels less than 79 feet in length;
- May 20, 1993, NPRM (58 FR 29502) that proposed further changes to immersion suit requirements;
- October 24, 1995, final rule (60 FR 54441) that adopted regulations for Aleutian Trade Act vessels;
- November 5, 1996, interim rule (61 FR 57268) that adopted safety equipment and vessel operating procedure regulations and deferred further action on the 1992 SNPRM’s proposal to extend stability regulations to smaller vessels;
- September 4, 1997, final rule (62 FR 46672) that finalized the 1996 regulations with some changes; and
- July 15, 1998, notice (63 FR 38141) that announced the termination of the 1993 NPRM and the Coast Guard’s plans for a subsequent rulemaking to address immersion suits, vessel stability, and other commercial fishing industry vessel issues.

These documents, as well as other background documents, are available in the docket. Each document may be downloaded.

In addition to past **Federal Register** notices, two recent studies indicated the need for further regulatory action. The first was the report of the Fishing Vessel Casualty Task Force appointed by the Coast Guard in 1999, following the loss of 11 commercial fishermen’s lives in just three weeks. The Task Force report, “Living to Fish, Dying to Fish” (March 1999, see the docket), concluded that Coast Guard regulations issued under the 1988 Act had improved fishing vessel safety, but also identified several areas where further action is necessary. The Task Force recognized that some actions would be difficult to achieve; for instance, they concluded that an inspection program aimed at eliminating or reducing unsafe conditions would have the greatest beneficial impact on safety, but would be the most difficult measure to implement.

The second study was compiled by the Coast Guard and is titled “Analysis of Fishing Vessel Casualties—A Review of Lost Fishing Vessels and Crew Fatalities, 1994–2004” (“the 1994–2004 analysis”). This document is also available in the docket. Based upon the analysis, we concluded that flooding and capsizing are major causes of vessel loss and that casualties could be reduced by extending stability regulations to vessels less than 79 feet in length, improving crew preparedness, and by extending immersion suit requirements.

The tables that follow show data for vessel losses, fatalities, and cause of vessel losses from the 1994–2004 analysis. The data is included to clarify discussions elsewhere in this preamble. The numbers from these tables are used in the discussions that follow.

**TABLE 1.—VESSEL LOSSES**

Year	Number
1994 .....	153
1995 .....	117
1996 .....	166
1997 .....	138
1998 .....	125
1999 .....	123
2000 .....	85
2001 .....	133
2002 .....	127
2003 .....	114
2004 .....	117
Total .....	1398

**TABLE 2.—CAUSE OF VESSEL LOSS**

Cause	Number
Flooding .....	493
Fire .....	282

**TABLE 2.—CAUSE OF VESSEL LOSS—Continued**

Cause	Number
Grounding .....	236
Capsizing .....	142
Collision .....	55
Allision .....	52
Unknown .....	42
Structural failure .....	35
Loss of vessel control .....	25
Weather .....	18
Explosion .....	9
Loss of electrical power .....	5
Overloading .....	1
Other .....	3
Total .....	1398

**TABLE 3.—CAUSE OF FATALITIES**

Casualty type	Fatalities
Vessel flooding, sinking, capsizing .....	328
Fall into water .....	154
Pulled overboard by gear .....	29
Diving accident .....	27
Dangerous atmosphere .....	18
Caught in winch .....	16
Smoke inhalation—vessel fire ..	10
Unknown injury type .....	10
Crushed by gear .....	10
Struck by line .....	7
Struck by moving object .....	7
Drowned clearing propeller .....	4
Caught in lines .....	3
Vessel collision .....	3
Other .....	15
Total .....	641

The major cause of fatalities between 1994 and 2004 can be traced to vessel losses. In the period reviewed, 1,398 vessels were lost and there were 641 fatalities. Of the 641 fatalities, 328 can be attributed to vessel losses (*i.e.*, flooding, sinking, and capsizing).

**A. Past Recommendations**

In addition to the two aforementioned studies, the Coast Guard reviewed all recommendations previously made regarding commercial fishing industry vessel safety. We examined recommendations from the National Transportation Safety Board, Marine Boards of Investigation, the Task Force report, and formal and informal marine casualty investigations. We then collected similar recommendations and determined the appropriate action to take for each group and individual recommendation.

Many recommendations addressed seeking authority to inspect commercial fishing industry vessels and to license mariners on board commercial fishing industry vessels to improve the condition of vessels and the competency

of mariners. The 1988 Act required the CFIVSAC to submit recommendations to Congress on inspection of vessels and licensing of mariners in the commercial fishing industry. The CFIVSAC recommended that Congress mandate vessel inspections and licensing of mariners. The Coast Guard requested additional authority to reclassify commercial fishing industry vessels as inspected vessels. This authority could provide for design and construction standards, mandatory inspections, and licensing of mariners on commercial fishing industry vessels similar to current requirements for cargo, passenger, and tank vessels. Congress has not granted the requested authority.

Wherever regulatory development authority already exists, we have analyzed each recommendation to determine the appropriate action. Some

of the recommendations needed no action as regulations or policies already address the recommendation. Some recommendations form the basis of the potential regulatory changes discussed here. In certain cases, we would consider phasing in new requirements in order to reduce the economic burden on industry. Other safety recommendations are either inappropriate, overtaken by events, or otherwise untimely. The results of this review, entitled "Review of Commercial Fishing Industry Vessel Safety Recommendations", are available in the docket.

In the following pages, we discuss the principal changes we are considering. Many changes could include documentation requirements. Documentation gives owners and operating personnel a written record of

regulatory compliance, reinforces the importance of that compliance, and facilitates quick compliance verification by the Coast Guard and other regulators.

**V. Discussion of Regulatory Changes Under Consideration**

*A. Overview*

Table 4 shows an overview of the new requirements we are considering, by vessel length. The potential new requirements are explained in more detail later in this document.

New stability and watertight integrity requirements, except for training, would apply only to vessels 50 to 79 feet because of the findings of the 1994–2004 analysis, the recommendations of the CFIVSAC, and because existing regulations apply to most vessels over 79 feet in length.

**TABLE 4.—APPLICABILITY OF POTENTIAL NEW REQUIREMENTS BY VESSEL LENGTH**

New requirement under consideration	All lengths	30' > L <= 40'	40' > L <= 50'	50' > L <= 60'	60' > L <= 70'	70' > L <= 80'	L > 80'
Initial Stability Test .....				X	X	X	
Stability Review at Alteration .....				X	X	X	
Five-Year Periodic Stability Review .....				X	X	X	X
Shipbuilding Requirements .....				X	X	X	
Stability Training .....		X	X	X	X	X	X
Immersion Suits .....	X	X	X	X	X	X	X
Safety Training, Emergency Drills and Documentation .....		X	X	X	X	X	X
EPIRB .....		X	X	X	X	X	X
Survival Craft Stowage .....							X
Embarkation Station .....							X
High Water Alarms .....		X	X	X	X	X	X
Door Notice .....	X	X	X	X	X	X	X
Departure Reports .....				X	X	X	X

*B. Vessel Stability and Watertight Integrity*

The major new requirements we are considering for vessel stability and watertight integrity include:

- Stability requirements for vessels between 50 and 79 feet in length and certain loadlined vessels that are currently exempt from stability requirements;
- Stability training for masters and owners of vessels greater than 30 feet in length;
- Minimum criteria for stability training and training instructors;
- Repeating lightweight surveys (and in some circumstances, inclining tests) and updating stability instructions at least once every five years;
- Addition of new items to be addressed in stability instructions;
- Revision of certain stability calculations;
- Upgrading and highlighting of weathertight and watertight integrity requirements to prevent unintentional flooding;

- Emphasis on the owner's, as well as the master's, responsibility for vessel stability; and
- Notification to the Coast Guard prior to substantial vessel alteration or major conversion, recognizing that many stability and watertight integrity improvements can be made economically only during original construction or during a major modification.

**1. General Discussion**

Stability is the capacity of a vessel to return to an upright condition after being "heeled" or leaned over by external forces. Watertight integrity refers to a vessel's ability to withstand a static head of water without any leakage. Current Coast Guard regulations require stability calculations to be made, and stability instructions prepared, for newly constructed or substantially altered vessels of 79 feet or more in length. We are considering adding stability and watertight integrity requirements for fishing vessels between 50 and 79 feet in length. Stability and watertight integrity standards have been

designed with 50- to 79-foot vessels in mind. Vessels of less than 50 feet in length might also benefit from such standards, but because standards for those vessels have not yet been designed, we are considering only 50-to 79-foot vessels at this time.

The 1988 Act mandates regulations for the operating stability of certain vessels. We originally proposed applying stability regulations to vessels of any length, but comments on our 1991 rulemaking expressed concern that the proposed standards drew upon International Maritime Organization (IMO) stability standards developed for vessels of 79 feet or more in length ("Torremolinos International Convention for the Safety of Fishing Vessels", 1977) that would be inappropriate for smaller vessels. In light of those concerns, we set the 1991 rule's threshold at 79 feet, but we indicated our intention to revisit requirements for smaller vessels. In 1992, we proposed extending stability regulations to smaller vessels, but as previously noted that regulatory effort was deferred in 1996.

The 1999 Task Force report called for developing stability regulations for vessels greater than 50 feet in length (Recommendation 4.1). As previously mentioned, the 1994–2004 analysis identified flooding, sinking, and capsizing as the leading causes of vessel loss. Of the vessel losses, capsizing accounted for 142 vessel losses (10 percent of all vessel losses). Of the 328 fatalities, 115 can be attributed to capsizing and sudden sinkings where individuals had insufficient time to properly use survival equipment, including immersion suits. These statistics explain why the Coast Guard continues to be concerned with stability and watertight integrity issues within the commercial fishing industry.

In 1995, the CFIVSAC was asked to assist in developing stability standards for commercial fishing industry vessels less than 79 feet in length. In 1997, the CFIVSAC's stability subcommittee offered a set of recommended standards that would apply to commercial fishing industry vessels 50 feet or more in length. Those recommended standards are contained in the docket and form the basis of the stability requirements we are considering for vessels 50 to 79 feet in length.

The Task Force report called for changes in how stability is treated. Recommendations addressed developing instructions readily understood by masters (Recommendation 4.3) and programmatic enforcement of all requirements with a focus on dockside checks (Recommendation 3.2). In 1999, due to the high number of deaths in the Alaska/Bering Sea crab fisheries, the Coast Guard and the Alaska Department of Fish and Game began a program to analyze crab-vessel loading when stability instructions are provided on board the vessel prior to departure. Despite having stability information on board, overloading still occurred in some instances. Factors contributing to this, as confirmed in casualty investigations, are that the calculations often were not understood by operating personnel and stability information was often not updated after changes were made to the vessel, which invalidated the instructions provided.

## 2. Stability Training

Lack of situational awareness and understanding regarding stability principles and watertight integrity have been shown to contribute to or have been the primary reasons for a high percentage of vessel losses from sinking, flooding, and sudden capsizing. Analysis of recommendations made for improving commercial fishing industry

vessel safety from Coast Guard investigating officers, the Task Force report, and other sources offer a number of recommendations for improving the competency of vessel masters relating to stability. Training in these principles may help prevent the cause of vessel losses. Therefore, we are considering requiring stability training for vessels 30 feet or more in length. We believe the 30-foot threshold covers all those vessels that are likely to operate in conditions where such training can be a critical safety factor.

The CFIVSAC has previously recommended mandatory stability training for masters of vessels. In July 2005, the CFIVSAC was asked to provide specific recommendations on who must have stability training and the composition of that training. The CFIVSAC recommended that the Coast Guard require masters and owners to receive a three-tiered regimen of stability instruction:

1. General principles of stability;
2. Risk factors specific to the region or fishery in which engaged; and
3. Vessel-specific training.

The requirements we are considering would be consistent with these recommendations.

The Coast Guard is inclined to adopt the CFIVSAC recommendation to require owners to receive training, since they provide operational guidance to the master in many instances. It is also the owner's responsibility to ensure the master is prepared for a voyage, including, but not limited to, understanding: the stability and watertight integrity risk factors; the stability instructions; and loading constraints and restrictions for the vessel.

The 1983 Marine Board of Investigation for the capsizing of the F/V ALTAIR and F/V AMERICUS stated that:

There is convincing evidence that commercial fishermen in general lack an appreciation of principles of stability. This investigation demonstrated that there was a critical failure to utilize information (stability booklets) readily available for determining safe loading.

An example of lack of situational awareness regarding stability is the sinking of the F/V NORTHERN EDGE. The F/V NORTHERN EDGE blocked its freeing ports as a standard practice when dumping scallops on deck. In an instant, the vessel took water on deck that could not run off because of the blocked freeing ports. Water entered the vessel's interior through an open weathertight door that led to progressive flooding and sudden capsizing with the loss of five persons. Stability training

would be intended to raise the situational awareness of masters, including the hazards presented by blocking freeing ports and leaving doors that may permit downflooding to remain open when not used for transit.

## 3. Stability Reassessment

The basis of all stability calculations is an accurate weight and location of the center of gravity in the lightweight condition. Any time there is uncertainty regarding the lightweight values, a reassessment of stability and/or a determination of the revised lightweight values is necessary.

A vessel in service for a period of time will experience weight changes. Some changes are easily determined such as the addition or removal of large equipment. In addition to weight changes that can be accurately determined from manufacturer's information, unaccounted weight changes occur. Unless carefully managed, weight changes tend to degrade the stability of a vessel by increasing the vessel's lightweight thereby decreasing the reserve buoyancy and raising the center of gravity, which decreases overall stability.

Unfortunately, most vessels do not have a weight management system to account for the many large and small changes that occur; therefore, as a vessel ages, the margin of safety degenerates and a stability reassessment is needed. A stability review at least once every five years could be a reasonable interval for examining the vessel for the accumulated changes, both known and unknown.

We are considering requiring a lightweight survey to determine the amount of change to a vessel's lightweight. If changes can be accounted for accurately, the lightweight survey would be sufficient and the stability instructions could be updated based on that survey. Otherwise, an inclining test could be required to determine the lightweight and location of the center of gravity.

### C. Vessel Maintenance and Self-Examination

We are considering requiring the owners of vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish-tender vessels in the Aleutian trade to conduct monthly self-examinations of their vessels according to criteria that we would provide. Masters would document these self-examinations.

The 1994–2004 analysis revealed that the majority (69 percent) of vessel losses can be attributed to hull and machinery failures. Predominantly, the losses

occurred while the vessels were not engaged in fishing operations. The most prevalent operation directly preceding a vessel loss (616) was transiting during non-fishing activities. The next most prevalent operation contributing to vessel loss was sinking while the vessel was moored (163).

The vessels experiencing the highest numbers of losses were wooden-hull vessels (548), steel-hull vessels (277), and fiberglass-reinforced plastic (FRP) hull vessels (261). Of the wooden-hull vessels lost, 265 (48 percent) were between 20 and 40 years old. For steel-hull vessels lost, 185 (66 percent) were between 20 and 40 years old. For FRP-hull vessels lost, 197 (75 percent) were in this age range.

Hull and machinery failures leading to vessel loss accounted for 25 percent of the 328 fatalities attributed to vessel flooding, sinking, or capsizing. Maintenance is an issue of major concern in reducing the likelihood of vessel losses and consequent fatalities. Because vessel loss is a major contributor to fatalities, reductions in vessel losses should lead to fewer fatalities.

The 1988 Act authorized the Coast Guard to develop regulations for equipment, maintenance, and use of equipment to minimize the risk of serious injury on documented fishing industry vessels that operate beyond the boundary line, with more than 16 individuals on board, or that are fish-tender vessels in the Aleutian trade. The 1988 Act also requires regulations for operational stability, as mentioned elsewhere in this document. In addition, the Coast Guard has developed regulations for fire protection, fire extinguishing, firefighting equipment, dewatering and bilge systems, fuel systems, and electrical systems. Each of these areas has a critical maintenance component. For instance, a watertight hull envelope, which is necessary for operational stability, can be compromised by loose planking, corroded or eroded hull plating, or wasted-through hull fittings, all of which can lead to breaches of a vessel's watertight integrity and stability degradation.

As previously discussed, the Coast Guard lacks authority for mandatory inspections of most commercial fishing industry vessels. Nonetheless, periodic examinations of a vessel and its equipment by personnel on board the vessel or other employees selected by the owner may accomplish safety improvements by reducing the number of vessel losses from machinery and hull failures.

Self-examinations would be the responsibility of the owner and the master. The owner would determine: (a) The level of detail for the examination; (b) the testing required as part of the examination process; and (c) the acceptance criteria for each item examined, if none is otherwise specified by regulation. The master would be the individual that either performs the examinations or supervises the examination process and documents acceptable completion of the examination. The master would be required to maintain a record of examinations.

Most vessel owners and masters are familiar enough with their vessels that they are already effectively performing these periodic examinations. For those owners and masters, these requirements would have little impact. For owners and masters that do not follow good marine practice and do not routinely check their vessel's condition, these requirements would mean spending the time to systematically examine the vessel and its equipment and document the examinations. Given the high number of vessels lost to mechanical and hull failures, improvements within vessel maintenance areas should reduce vessel losses and fatalities. A more formal process and documentation of examinations may lead to better maintenance.

As vessels become larger and more complex, the ability of the master to personally perform all examinations becomes increasingly difficult. It is common for larger vessels to have licensed engineers and mates on board to share the burden and responsibility with the master for performing examinations or to have specialized vendors and subcontractors perform some maintenance and examinations. These persons would be able to continue those processes as before with the exception of documenting their examinations.

#### *D. Immersion Suits*

The immersion suit requirements in 46 CFR 28.110 were originally issued in 1991. We amended the requirements in 1992 in response to public objections.

Documented commercial fishing industry vessels currently must carry immersion suits whenever operating seaward of the boundary line and beyond 32 degrees north or 32 degrees south latitude. Prior to the 1992 amendment, we also applied this requirement to documented vessels on any of the Great Lakes.

We are considering requiring vessels to carry immersion suits for their crew members whenever they operate in

seasonally-cold waters. We would define "seasonally cold" much as we did in our 1993 NPRM.

All vessels, whether documented or not, must carry immersion suits while operating beyond-coastal cold waters; in Pacific coastal waters north of Point Reyes, CA; and on Lake Superior. Prior to the 1992 amendment, we also applied this requirement to all vessels operating in any cold-coastal waters or on any of the other Great Lakes. In issuing the 1992 amendment, we stated our intention to undertake further rulemaking under a recommendation of the CFIVSAC, which continued to support the 1991 scope of the requirement.

Our 1993 NPRM proposed extending immersion suit requirements to coastal and beyond-coastal waters that, regardless of latitude, are so cold at certain seasons that immersion suits can be important safety equipment. As previously noted, we terminated this proposal in 1998, with the intention of revisiting the immersion suit issue at a later time.

The 1994–2004 analysis of fishing vessel casualties identified water exposure as "by far the most significant factor in personnel loss" and pointed out that water exposure is involved in 80 percent of all fatalities. Two hundred and thirty-four (71 percent) fatalities from vessel losses occurred in west coast and northeastern waters that tend to be colder and more severe than elsewhere in the country. At the same time, Coast Guard data indicate "fishermen survive nearly twice as often when survival equipment is used." The survival rate is even higher in the case of immersion suits: 61 percent for West Coast and northeastern incident victims who used the suits, compared with 27 percent for those who did not. Based on data from cold waters, we expect that requiring vessels to carry immersion suits if they are operating in cold waters would likely reduce casualties.

#### *E. Crew Preparedness*

We are considering the following crew preparedness requirements for vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish-tender vessels in the Aleutian trade:

- Recurring crew safety and survival training;
- Recurring drill requirements;
- Designation of a vessel safety officer;
- Presence of an on board drill conductor;
- Minimum training requirements for safety instructors, drill conductors, and

other individuals who are required to have safety training; and

- Cardiopulmonary resuscitation (CPR) and First Aid retraining every three years.

#### 1. Training and Drills

The 1994–2004 analysis showed a marked increase in survivability for those familiar with lifesaving equipment, especially personal flotation devices. Of the 328 vessel-related fatalities due to sinking, flooding, and capsizing, only 48 (15 percent) had properly used personal flotation devices or immersion suits. Fatalities involving vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish-tender vessels in the Aleutian trade might be decreased by increasing the frequency with which realistic drills, involving all crew members, cover the proper use of lifesaving equipment.

The Marine Board of Investigation report into the 2001 sinking of the F/V ARCTIC ROSE, with the loss of 15 lives, recommended requiring recurring safety and survival training.

The need for this training is further demonstrated by the sinking of the F/V GULF KING 15. On December 11, 1997, the F/V GULF KING 15 burned and sank in the waters of the Gulf of Mexico, approximately 60 miles south of Freeport, Texas. The emergency position indicating radio beacon (EPIRB) failed to transmit a distress signal. All three crewmembers on board were able to abandon the vessel; however, they were unable to properly deploy the liferaft. They managed to cling to the uninflated liferaft for several hours. One of the crew drowned after letting go of the raft and the vessel master drowned while being rescued by another vessel. Had the EPIRB been operating properly, the crew would have had a better chance of surviving the casualty. Liferaft deployment and EPIRB operation are two of the topics that would be covered in the safety training we are considering.

A number of training organizations offer the type of training we have in mind, but it is not widespread enough for most of the commercial fishing industry. We think the initial investment for those desiring to provide this training is low and that the facilities needed for this training are generally available throughout the country.

We are considering requiring emergency drills after any personnel change involving persons to whom safety responsibilities are assigned. Most crews are small and rely heavily on teamwork and a shared understanding of responsibilities,

equipment, and methodologies in an emergency. Having only one individual with safety responsibilities within a crew of eight or less can significantly affect the functioning of the team, because team members are highly interdependent during an emergency.

#### 2. Vessel Safety Officer

We are considering requiring vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish-tender vessels in the Aleutian trade, to have a designated safety officer. The safety officer would report to the master, or if the master is the designated safety officer, to the owner. The safety officer would report on the condition or status of safety equipment, emergency instruction, emergency drills, and safety orientations, among other things. The purpose of having a designated safety officer is to reinforce the importance of safety on board fishing industry vessels. The larger the vessel, the more responsibility the master has. The master has primary responsibility for safety on board, but his or her many other responsibilities can detract from the master's focus on safety.

The designation of a safety officer would not relieve the master of responsibility for the safety of the vessel and crew. The safety officer could provide assistance to the master in safety responsibilities and be a constant reminder that safety should never be overlooked, forgotten, or subordinated to other vessel business.

#### 3. On Board Drill Conductors

For vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish-tender vessels in the Aleutian trade, we are considering requiring an on board fishing vessel drill conductor to conduct safety orientations. This requirement would conform to recommendations of the Task Force report and the casualty investigation on the sinking of the fish processing vessel GALAXY. Each orientation would include survival equipment location and use, and any potential hazards affecting the vessel such as deck machinery, hazardous materials, or confined or unventilated spaces. Addressing these potential hazards would increase the overall safety awareness of the crewmembers in their work environment. The lessons initially communicated through safety orientations would be reinforced through monthly emergency drills.

Current regulations permit safety instruction and emergency drills to be conducted by any qualified person. A common practice is to have a

professional trainer conduct the safety instruction and drills prior to the local fishing season; however, if a voyage lasts for an extended period of time or port calls are unpredictable, there may not be a professional trainer available for subsequent safety instruction and emergency drills. This potentially leaves the crew with nobody on board experienced in safety instruction and conducting emergency drills. Since on board instruction and drills are the primary means for the majority of those within the commercial fishing industry to become prepared for emergencies, this matter is too important to leave to chance.

In the past, the master was often qualified as a fishing vessel drill conductor, and this may remain the case. The master or a member of the crew who is trained as a fishing vessel drill conductor would be able to provide personal knowledge about the particulars, procedures, and equipment of that vessel. A second fishing vessel drill conductor would be required on board vessels with more than 16 individuals. This would alleviate the burden on the master and help ensure everyone gets trained in a timely manner. The Coast Guard does not believe more than two fishing vessel drill conductors are necessary on any particular vessel.

#### 4. Requirements for Safety Instructors, Drill Conductors, and Other Safety Personnel

For vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish-tender vessels in the Aleutian trade, we are considering requiring minimum standards for the safety instructors, drill conductors, and for other personnel with specific safety responsibilities.

Fishing vessel safety instructors would need a valid Coast Guard letter of acceptance, renewable after five years. The letter of acceptance would verify that an instructor possesses necessary maritime and instructional experience, and is able to offer an eight-hour curriculum in various safety topics, using either a nationally recognized curriculum or one that the instructor submits for Coast Guard review.

Drill conductors and other individuals with specific safety responsibilities would need certification from a safety instructor attesting that they have satisfactorily completed the training that the safety instructor's letter of acceptance authorizes the safety instructor to give. Like letters of acceptance, these certificates would be valid for five years and could be

renewed after additional training. Fishing vessel drill conductors would also need to show that they can effectively communicate with all members of the crew despite any language barriers, either through translation or hands-on demonstration.

#### 5. CPR and First Aid Training

We are considering expanding the existing requirements for CPR and First Aid training on vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish-tender vessels in the Aleutian trade. Currently, depending on the size of a vessel's crew, from one to four crew members must have certified training in CPR and First Aid. We are considering requiring refresher training every three years, per the recommendations and practice of the National Institute of Occupational Safety and Health, American National Red Cross, and American Heart Association. Training in first aid and CPR is readily available in most locations and is relatively inexpensive.

#### F. Safety Equipment

We are considering new measures, relating to the following safety equipment and affecting all commercial fishing industry vessels:

- Emergency position indicating radio beacons (EPIRBs);
- Survival craft;
- Embarkation stations;
- High water alarms; and
- Excess or outdated equipment.

##### 1. EPIRBs

Current regulations require all commercial fishing vessels operating on the high seas or beyond three miles from the coastline of the Great Lakes to be equipped with EPIRBs, which can alert the worldwide search and rescue system and provide the exact location of a vessel in distress or immersed in water. By existing regulation (47 CFR 80.1061(f)), EPIRBs are supposed to be registered with the National Oceanic and Atmospheric Administration but this requirement is frequently overlooked, resulting in unregistered EPIRB activations and risk to Coast Guard search and rescue personnel. We are considering requiring that registration to be documented so that we can enforce the existing registration requirement.

##### 2. Survival Craft

We are considering requiring all survival craft to be easily accessible, and launchable by just one crew member. This conforms to a recommendation of the GALAXY investigation. The means

used to comply with this requirement would be left up to the individual vessel, and, for smaller devices, could include manual launching.

##### 3. Embarkation Stations

We are considering new measures to upgrade the safety and usability of survival craft embarkation stations in the event the crew must abandon ship. Embarkation stations would need to be equipped with emergency lighting and boarding ladders, in conformity with a GALAXY investigation recommendation. After a phase-in period, this requirement would be extended to Aleutian Trade Act vessels.

##### 4. High-Water Alarms

In line with a recommendation from the ARCTIC ROSE investigation, we are considering requiring the use of high-water alarms in enclosed fish sorting or processing spaces. Sudden flooding in these spaces can threaten a vessel's stability. By installing alarms that would sound both in the affected space and in the vessel's operating station regardless of the vessel's heel or trim, the crew would have more time to restore watertight integrity or prepare for abandonment of the vessel.

##### 5. Excess or Outdated Equipment

Safety equipment exceeding regulatory minimums would need to be maintained and inspected like required equipment, or else clearly labeled and segregated for "training use" only. Outdated equipment, like expired distress flares, could be kept for training use, but also would need to be clearly labeled and segregated for that purpose.

#### G. Documentation

Compliance with most of the measures under consideration would be facilitated by new documentation requirements. Vessel owners or masters would need to document stability training and assessments, vessel self-examinations, safety and survival training, and the use and maintenance of immersion suits and other safety equipment. Before leaving on a fishing trip, a vessel's master would need to file a departure report with the owner, attesting to the vessel's stability condition. Operating personnel would have a written record of compliance with the requirements. Written documentation would provide owners not operating as the vessel master with one means of ensuring that safety is not overlooked, and it would give them a record of operating personnel's activities. Written documentation of safety activities also allows the Coast Guard and other regulatory enforcement

agencies to more quickly verify compliance with the safety requirements. This leads to more thorough examinations and less time spent verifying compliance with safety requirements. This is especially beneficial when compliance is checked while vessels are engaged in fishing activities.

#### Questions

Public response to the following questions will help the Coast Guard develop a more complete and carefully considered rulemaking. The questions are not all-inclusive, and any supplemental information is welcome. In responding to each question, please explain the reasons for each answer. We encourage you to let us know your specific concerns with respect to each/any of the requirements under consideration.

1. Given the statistics on vessel losses in Tables 2 and 3, what issues related to stability and watertight integrity should the Coast Guard consider addressing in regulations?

2. Table 2 shows that vessel flooding results in the most vessel losses, and Table 3 shows that flooding and sinking account for a significant portion of fatalities. What areas should be addressed to reduce vessel flooding losses and fatalities?

3. What routine measures are used to prevent unintentional flooding?

4. How often is your vessel examined by a marine surveyor and under what circumstances? Is documentation of the survey provided?

5. Table 3 shows that fire is a significant cause of vessel losses. What areas should the Coast Guard consider addressing to reduce the number of fire-related vessel losses (including, but not limited to: construction standards, detection and extinguishing equipment, fire fighting equipment, and firefighting training)?

6. What means are used to limit the danger of fires and the consequence of fires?

7. Table 2 shows that a significant number of vessel losses are related to allisions, collisions, and groundings; how should the Coast Guard address these causes of vessel losses?

8. What impact has safety training had in improving safety within the commercial fishing industry? Do you have recommendations concerning safety training?

9. What impact has crew drills had in improving safety within the commercial fishing industry? Do you have recommendations concerning crew drills?



10. If training were required would it be accomplished during off-season times?

11. How would additional training impact one's ability to fish?

12. If stability standards for vessels between 50 feet and 79 feet in length are considered, what standards should apply, and to which vessels should the standards apply?

13. How does a crew become experienced in safety procedures?

14. Should entry level crewmembers be expected to have a minimum level of familiarity with safety procedures?

15. How and when is stability guidance used? If stability guidance is available but not used, please explain why.

16. How are operating personnel made aware of stability and watertight integrity guidance?

17. How often should stability guidance be reviewed, updated, or validated?

18. How are modifications to a vessel or its gear accounted for relative to the vessel's maximum load, watertight integrity, and other stability considerations?

19. How adequate are current requirements for personal protection and survival equipment?

20. How do crew members become familiar with vessel safety and survival equipment?

21. How are safety risks aboard your vessel(s) identified and minimized?

22. If you are a small business, what economic impact on you, your business, or your organization would the rules we are considering have? In your comments please explain why, how, and to what degree such rules would have an economic impact.

23. Have you experienced—or are you aware of—any situations where any of the measures under consideration saved lives, or prevented/reduced harm/damage to vessels?

24. Are there areas not addressed that would benefit safety within the commercial fishing industry?

25. What are the costs of each requirement we are considering? Are there comparable alternative solutions to each requirement under consideration that may be more cost effective?

26. What are the direct and indirect costs of each requirement we are considering? For example, labor costs, training costs, and hourly wages of fishermen (or alternative measures of valuing their time if they are not salaried)? The costs of vessel losses, including equipment, lost catches, and any other opportunity costs?

27. Can any of the requirements we are considering be completed off-

season? If so, which ones? For those that cannot, how much time would be taken away from productive fishing time to complete the requirement? How would this affect revenue, i.e., fish catches?

28. What would be the impact on the domestic fishing industry, if any, of each requirement we are considering? Would there be a differential impact by size of vessel or region?

29. What would be the economic impact of each requirement we are considering on States, local, and tribal governments?

30. What other requirements, if any, should the Coast Guard be considering?

Dated: March 21, 2008.

**Brian M. Salerno,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Stewardship.*

[FR Doc. E8-6477 Filed 3-28-08; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 25 and 74

[WT Docket No. 02-55; ET Docket Nos. 00-258 and 95-18; FCC 08-73]

### Improving Public Safety Communications in the 800 MHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission proposes to eliminate, as of January 1, 2009, the requirement that Broadcast Auxiliary Service (BAS) licensees in the thirty largest markets and fixed BAS links in all markets be transitioned before the Mobile Satellite Service (MSS) operators can begin offering service. The Commission also seeks comment on how to mitigate interference between new MSS entrants and incumbent BAS licensees who have not completed relocation before the MSS entrants begin offering service. In addition, the Commission seeks comment on allowing MSS operators to begin providing service in those markets where BAS incumbents have been transitioned.

**DATES:** Comments must be filed on or before April 30, 2008, and reply comments must be filed on or before May 30, 2008.

**ADDRESSES:** You may submit comments, identified by [WT Docket No. 02-55, ET Docket No. 00-258 and ET Docket No. 95-18], by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *E-mail:* [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.

- *Mail:* [Optional: Include the mailing address for paper, disk or CD-ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Oros, Office of Engineering and Technology, (202) 418-0636, e-mail: [Nicholas.Oros@fcc.gov](mailto:Nicholas.Oros@fcc.gov), TTY (202) 418-2989.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Further Notice of Proposed Rule Making*, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket No. 95-18, FCC 08-73, adopted March 5, 2008, and released March 5, 2008. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by