



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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November 8, 2019

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Coast Guard and Maritime Transportation
FROM: Staff, Subcommittee on Coast Guard and Maritime Transportation
RE: Hearing on “Commercial and Passenger Vessel Safety: Challenges and Opportunities.”

PURPOSE

The Subcommittee on Coast Guard and Maritime Transportation will meet on Thursday, November 14, 2019, at 2:00 p.m. in 2167 Rayburn House Office Building to explore maritime vessel safety amid recent maritime casualties and to examine the effectiveness and implementation of safety legislation such as the Cruise Vessel Security and Safety Act as well as the Hamm Alert Maritime Safety Act. The Subcommittee will hear from the United States Coast Guard, Maritime Administration, National Transportation Safety Board, Cruise Lines International Association, American Bureau of Shipping, Offshore Marine Services Association, Passenger Vessel Association, and the Louisiana Association for Justice.

BACKGROUND

The International Maritime Organization (IMO) is a global standard-setting authority for the safety, security, and environmental performance of international shipping¹ housed under the United Nations. IMO’s role is to develop and maintain a comprehensive regulatory framework for worldwide shipping. Flag countries can subsequently set more stringent safety requirements for their flag vessels that operate in the domestic and/or international trade. Oversight of these vessels in the United States typically fall under the responsibility of the United States Coast Guard with the assistance of other U.S. agencies.²

¹ International Maritime Organization. Introduction to IMO.

² Depending upon the vessel and requirement, this can include the Environmental Protection Agency, and Customs and Border Protection

The International Convention for Safety of Life at Sea (SOLAS) sets international standards for vessel safety that are agreed upon by nations that are parties to the convention. The United States is a party to this convention. The main objective of SOLAS is to specify minimum standards for the safe construction, equipping, and operation of ships, compatible with their safety. IMO updates SOLAS standards periodically. SOLAS applies to vessels operating internationally and establishes requirements for vessel construction and stability, firefighting systems, safety equipment, radio communications, safe navigation procedures, vessel management, and carriage of cargo. SOLAS is regarded generally as the most important of all international maritime treaties concerning the safety of merchant ships. Chapter V of the SOLAS Convention deals with safety of navigation, identifies certain navigation safety services, and sets forth operational provisions generally applicable to all vessels at sea. First adopted in 1914 in response to the TITANIC disaster, the current version of the treaty was adopted in 1974 and went into force in 1980.³ SOLAS has been updated subsequently on several occasions through amendments which are adopted by its signatory nations after lengthy review and debate.

Marine safety management systems (SMSs) are programs designed to identify hazards and reduce risk in order to ensure safety at sea, prevent injury or loss of life, and avoid damage to the environment and vessels. An SMS provides procedures used aboard a vessel during normal operations or emergencies. Processes for conducting regular maintenance on the vessel and its equipment also are included. An SMS also includes an audit process to identify when the SMS is not followed and a system of corrective actions to address deficiencies.

For vessels sailing under the regulations of SOLAS, SMS requirements are delineated in the International Safety Management (ISM) Code.⁴ Per the ISM Code, a flag state issues a *Document of Compliance* to a company that complies with the requirements of the code and issues a *Safety Management Certificate* to each vessel after verifying that the company and its shipboard management operate in accordance with an approved SMS. The U.S. Coast Guard affirms compliance with all SOLAS requirements during port state control inspections that occur when vessels arrive at a U.S. port, and flag state inspections for U.S. flag vessels.

Passenger Vessels

Passenger vessels include ferries, dive boats, tour boats, overnight boats, dinner boats, among others, that operate on U.S. domestic voyages and are typically classified by weight and number of passengers carried. These factors also determine what Coast Guard regulations the vessel is subject to. Vessels classified under 100 gross tons that carry 150 or fewer passengers or that have overnight accommodations for 49 or fewer passengers fall under subchapter T of Title 46 Code of Federal Regulations (CFR) for safety regulations.⁵ Subchapter T vessels are considered small passenger vessels, are required by law to be inspected once they carry more than six passengers and must include at least one passenger for hire.⁶ Passenger vessels that do not require inspection, otherwise known as “uninspected passenger vessels” (UPVs) carry up to 6 passengers for hire, not

³ International Maritime Organization (IMO), *International Convention for the Safety of Life at Sea (SOLAS)*, 1974

⁴ Ibid.

⁵ 46 CFR Subchapter T

⁶ Coast Guard. COMDTPUB P16700.4 NIVC 7-94. *Navigation and Vessel Inspection Circular No. 7-94: Guidance on the Passenger Vessel Safety Act of 1993*. September 30, 1994.

including the Master and paid crew. These are also referred to as “six-packs.” These vessels include chartered, rented or leased vessels with crew provided by the owner that carry 6 passengers or less.

The Coast Guard also oversees the use of chartered vessels and considers them passenger vessels. Bareboat chartered vessels are passenger vessels that are chartered or rented from an owner but does not have as many requirements hence the “bareboat” name. Regarding bareboat charters, the owner generally does not provide the crew (i.e. licensed Master of appropriate route and tonnage) but must be inspected by the Coast Guard if carrying more than 12 passengers.⁷ Chartered vessels are required to be inspected when the owner provides crew for the vessel to the customer and when they carry more than 6 passengers.⁸ Since bareboat charters allow more passengers before being required to undergo inspection, they tend to have more requirements than the average chartered vessel. These stipulations that apply to bareboat charters include: the owner not stipulating or providing a master or crew; food, fuel and stores must be provided by the charterer; port charges and pilot fees paid by the charterer; and, charterer has complete command, control, and possession of the vessel.⁹

Illegal charters

Illegal charters are when one of the above stipulations for bareboat charters are not followed or the charter does not undergo an inspection as required. They are a growing small passenger vessel enforcement issue for the Coast Guard. Charter violations are increasingly common in areas such as Miami, Florida, due to its large maritime tourism industry and pose increasing safety risks to passengers and operators alike.¹⁰

Exemptions or “grandfathering” of certain passenger vessels from subchapter T requirements under title 46 CFR has occurred generally to allow older vessels to operate while gradually applying new regulations prospectively to newly built vessels. Passenger vessels with a keel laid date before March 10, 1996, are inspected under the “old T” requirements, not the “new T” requirements published after 1994. Allowing older passenger vessels to continue to operate can have serious consequences. For example, early in the morning on September 2, 2019, an overnight dive boat, the M/V CONCEPTION, caught fire off the coast of Santa Cruz, California, and sank resulting in the deaths of 33 passengers and one crew member and is the worst maritime disaster in 70 years.¹¹ The CONCEPTION was a 75-foot “grandfathered” passenger boat that fell under “old T” regulations.

Larger passenger vessels tend to fall under either subchapters K or H. Passenger vessels classified under 100 gross ton with more than 150 passengers and/or more than 49 overnight passengers fall under subchapter K regulations.¹² Passenger vessels over 100 gross tons fall under subchapter H regulations.¹³ These regulations do not apply to foreign flagged vessels whose country

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Gregory Wallace, Rene Marsh. CNN. NTSB preliminary report says Conception dive boat did not have crewmember on roving overnight watch as required. September 12, 2019.

¹² 46 CFR Subchapter K

¹³ 46 CFR Subchapter H

is a party to SOLAS. The Coast Guard sets these regulations and enforces them through regular inspections.

Cruise Ships

Worldwide, the cruise line industry carried over 28.5 million passengers in 2018 alone.¹⁴ In 2010, the North American Cruise line industry contributed an estimated \$37.8 billion to the U.S. economy.¹⁵ The U.S. Coast Guard regulates all commercial vessels, including cruise vessels, calling on U.S. ports, regardless of the vessel's flag state. The Coast Guard inspects each foreign-flagged cruise vessel calling on a U.S. port at least twice a year to ensure compliance with SOLAS and U.S. regulations governing safety, security, and environmental protections. The Cruise Vessel Security and Safety Act (CVSSA) of 2010 (P.L. 111-207) was enacted on July 27, 2010, and later amended by Congress in 2013. It requires the following of all cruise vessels calling on U.S. ports:

- Safety railings must be at least 42 inches above the deck.
- Cabin doors must have peepholes, latches, and time sensitive key cards.
- Vessels must maintain video surveillance and provide access for law enforcement agencies investigating as incident.
- Vessels must integrate technology that can capture images of passengers or detect passengers that fall overboard to the extent the technology is available.
- Passengers must have access to a safety guide informing them of security and medical personnel aboard, as well as variances in laws that will occur as the ship enters different jurisdictions.
- Victims of sexual assault must have access to trained medical personnel and rape kits, and national response hotlines.
- Vessels must record all complaints and claims in an official logbook.
- Vessel owners must report all crimes to the Federal Bureau of Investigation (FBI). Crimes must then be reported on the Department of Transportation's (DOT) website.
- DOT must maintain a website containing a compilation of statistics on crimes occurring on cruise vessels.

In 2013 the Government Accountability Office (GAO) conducted a study on the implementation of the CVSSA. Their study found that, at the time, most of the security and safety measures required under CVSSA had been implemented on cruise ships but auditors were concerned with the underreporting of crimes that occur in U.S. territorial seas, involve a U.S. national or take place on cruise vessels that visit a U.S. port.¹⁶ In the report, GAO highlights the limited usefulness and transparency of existing publicly reported data. For example, allegations for which investigations are not opened, are never published, and the data is not timely reported - due to the length of time of the investigations – which are published months or years later.

¹⁴ Cruise Lines International Association, Inc. 2019 Cruise Trends and Industry Outlook.

¹⁵ Bureau of Transportation Statistics. U.S. Department of Transportation. Maritime Trade and Transportation by the Numbers.

¹⁶ Government Accountability Office. Cruise Vessels: Most Required Security and Safety Measures Have Been Implemented, but Concerns Remain about Crime Reporting. December 2013.

Commercial Vessels

On October 1, 2015, the SS El Faro, a 790-foot U.S.-flagged cargo ship owned by TOTE Service's Inc., sank in the Atlantic Ocean during Hurricane Joaquin. The result was a loss of life of all 33 crew members aboard.¹⁷ Both the Coast Guard and the National Transportation Safety Board (NTSB) found that the sinking was a preventable accident. There were multiple contributing factors to the sinking of SS EL FARO including: the master's insufficient action to avoid Hurricane Joaquin and use the most current weather information, the late decision to muster the crew, as well as ineffective bridge resource management, inadequacy of owner in voyage oversight, flooding in the cargo hold from an undetected open watertight scuttle, loss of propulsion due to low oil pressure from a sustained list, lack of an approved damage control plan, and lack of appropriate survival craft.¹⁸ The Coast Guard Marine Board of Investigation made 31 safety and four administrative recommendations to address the causes of the SS EL FARO sinking.¹⁹ In December 2017, the Commandant of the Coast Guard issued a Final Action Memorandum on the Marine Board's recommendation and concurred with 29 of the 31 safety recommendations and three of the four administrative recommendations.²⁰ The NTSB issued 29 recommendations for the Coast Guard, two recommendations for the Federal Communications Commission, one recommendation for the National Oceanic and Atmospheric Administration, nine recommendations for the International Association of Classification Societies, one recommendation for the American Bureau of Shipping, one recommendation for Furuno Electric Company, and 10 recommendations for TOTE Services Inc.²¹

On October 11, 2018, the Save our Seas Act of 2018 (P.L. 115-265) was enacted that included the Hamm Alert Maritime Safety Act of 2018 in response to the sinking of the SS EL FARO in 2015. This Act used many of the final action memo actions and includes requirements such as:

- A website documenting domestic vessel compliance with subtitle II of Title 46 that includes flag state detention rates and identifying organizations that failed to recognize a major non-conformity.
- GAO audit of the Coast Guard's oversight and enforcement of safety management plans.
- Outfitting of ships with distress signaling and location technology.
- Maintaining records regarding vessel weight changes by the owners of the vessel.
- The Commandant of the Coast Guard will enter into agreements with IMO on free-floating standards for voyage data recorders on vessels.

¹⁷ Susan Miller. USA Today. Captain's mistakes led to El Faro sinking, Coast Guard report says. October 1, 2017.

¹⁸ National Transportation Safety Board. NTSB/MAR-17/01 PB2018-100342. Sinking of US Cargo Vessel El Faro Atlantic Ocean, Northeast of Acklins and Crooked Island, Bahamas, October 1, 2015. December 12, 2017

¹⁹ Coast Guard Marine Board of Investigation. Steam Ship El Faro (O.N. 561732) Sinking and Loss of the Vessel with 33 Persons Missing and Presumed Deceased Northeast of Acklins and Crooked Island, Bahamas on October 1, 2015 Marine Board's Report. September 24, 2017.

²⁰ U.S. Coast Guard. Steam Ship EL FARO (O.N. 561732) Sinking and Loss of the Vessel with 33 Persons Missing and Presumed Deceased Northeast of Acklins and Crooked Island, Bahamas on October 1, 2015 December 19, 2017

²¹ National Transportation Safety Board. NTSB/MAR-17/01 PB2018-100342. Sinking of US Cargo Vessel El Faro Atlantic Ocean, Northeast of Acklins and Crooked Island, Bahamas, October 1, 2015. December 12, 2017.

- Equipment that can attach a radio or Automated Identification System strobe or beacon to an object not immediately available to retrieve.
- Increase in personnel training regarding marine inspections.
- Flag-state guidance for all freight vessels to include comprehensive damage control information in safety management plans.
- Enhanced Coast Guard oversight of recognized organizations that conduct 3rd party inspections on behalf of the Coast Guard.
- Improvement of quality and timeliness of weather forecasts available to masters and mariners.
- Establishment of an anonymous safety alert pilot program.

Following this casualty and subsequent enactment of the Hamm Alert Maritime Safety Act, there has been increased focus on the use of “recognized organizations” conducting inspections on behalf of the Coast Guard and their oversight of these organizations. Flag states may delegate the issuance of Documents of Compliance and Safety Management Certificates to “recognized organizations,” which are generally classification societies. The American Bureau of Shipping (ABS) is a recognized organization authorized by the Coast Guard. As such, ABS issued ISM certificates and was required to inform the Coast Guard when either a Document of Compliance or a Safety Management Certificate was rescinded. The Coast Guard’s use of 3rd party inspectors raises conflict of interest concerns in light of the fact that these inspectors are being paid by the owners of the vessel that they are inspecting which could in turn result in a substandard inspection and unsafe vessel. Section 215 of the Hamm Alert Maritime Safety Act requires the Coast Guard to establish an office that conducts oversight of all recognized organizations not later than two years after the date of enactment.

While there are concerns regarding oversight of recognized organizations, there is also concern with the increasing strain placed on limited Coast Guard resources for prevention and inspection activities. In 2018, the Coast Guard began implementation of newly updated 46 CFR Subchapter M requirements for towing vessels. These regulations established an inspection requirement for towing vessels.²² These new regulations allow for the use of 3rd party inspectors. The success of the new subchapter M requirements rests on the Coast Guard’s ability to create and oversee important regulations that determine 3rd party inspectors. In addition, the Coast Guard and Maritime Transportation Act of 2010 (Public Law 111-282) required the Coast Guard to initiate a new examination program for all commercial fishing vessels. The Coast Guard has yet to fully implement this requirement, a failure attributed by the Service to lack of resources.

²² U.S. Coast Guard 9/5/2019: Updated Subchapter M FAQs Now Available. September 5, 2018.

WITNESS LIST

Panel I

Rear Admiral Richard V. Timme
Assistant Commandant for Prevention Policy
United States Coast Guard

The Honorable Richard Balzano
Deputy Administrator
United States Maritime Administration

Mr. Brian Curtis
Director, Office of Marine Safety
National Transportation Safety Board

Panel II

Vice Admiral Brian Salerno, USCG, Ret.
Senior Vice President, Maritime Policy
Cruise Lines International Association

Mr. Adam W. Moilanen
Vice President of Health, Safety, Quality & Environment
American Bureau of Shipping

Mr. Aaron Smith
President and Chief Executive Officer
Offshore Marine Service Association

Ms. Colleen Stephens
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