



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

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March 16, 2022

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 “A Review of Coast Guard Efforts to Improve Small Passenger Vessel Safety”

PURPOSE

The Subcommittee on Coast Guard and Maritime Transportation will meet on Monday, March 21, 2022, at 10:00 am PT at the City of Santa Barbara Council Chambers and virtually via Zoom to explore small passenger vessel safety in light of recent maritime casualties and to examine the effectiveness and implementation status of recent safety legislation. The Subcommittee will hear from the United States Coast Guard (Coast Guard) and the National Transportation Safety Board (NTSB).

BACKGROUND

The passenger vessel industry contributes substantially to the economy as millions of passengers embark on such vessels each year.¹ The safe carriage of passengers and operation of these vessels is critical to the maritime sector. Passenger vessels include ferries, dive boats, tour boats, overnight boats, and dinner boats, among others, that operate on domestic voyages and are typically classified by tonnage and number of passengers carried. These factors determine which Coast Guard regulations apply.² Vessels classified under 100 gross tons that carry 150 or fewer passengers or that have overnight accommodations for 49 or fewer passengers are subject to the safety regulations in subchapter T of Title 46 Code of Federal Regulations (CFR).³ Subchapter T vessels are small passenger vessels defined under section 2101(45) of title 46, United States Code. Such vessels are required by law to be inspected if they carry more than six passengers, at least one

¹ Bureau of Transportation Statistics. *Maritime Trade and Transportation by the Numbers*.

https://www.bts.gov/archive/publications/by_the_numbers/maritime_trade_and_transportation/index

² 46 CFR Chapter I.

³ 46 CFR Subchapter T.

of whom is a passenger for hire.⁴ Passenger vessels that do not require inspection are uninspected passenger vessels (UPVs) as defined in section 2101(51) of Title 46, United States Code. Such vessels carry less than 6 passengers for hire, not including the Master and paid crew. These are also referred to as “six-packs.” SPV and UPVs are chartered vessels.

The Coast Guard oversees the use of chartered vessels to ensure compliance with the appropriate passenger vessel regulations. Bareboat chartered vessels are passenger vessels that are chartered or rented to a person to oversee all aspects of the vessel’s operation. In this case, the owner typically does not provide the crew (i.e. a Master with an appropriate license) but these vessels must be inspected by the Coast Guard if carrying more than 12 passengers.⁵ 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.⁶ Since bareboat charters allow more passengers before being required to undergo inspection, they tend to have more requirements than other chartered vessels. To be classified as a bareboat charter the following conditions must be met: the owner shall not provide 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.⁷

Larger passenger vessels are typically subject to safety regulation under either subchapters K or H. Passenger vessels classified under 100 gross tons with more than 150 passengers and/or more than 49 overnight passengers fall under subchapter K regulations.⁸ Passenger vessels over 100 gross tons fall under subchapter H regulations.⁹ These regulations do not apply to foreign flagged vessels, like cruise vessels, whose country is a party to the Safety of Life At Sea (SOLAS) convention. Oversight of passenger vessels in the United States falls under the responsibility of the United States Coast Guard with the assistance of other U.S. agencies.¹⁰ The Coast Guard promulgates regulations and enforces them through regular inspections.

Marine Inspections

The Coast Guard’s marine inspection program is integral to ensuring safety of passengers and crew onboard all vessels, including small passenger vessels. For decades, the Coast Guard has faced challenges maintaining an adequate staff of experienced marine safety personnel. According to the Coast Guard’s staffing model, there was a shortage of over 400 marine inspectors in 2021.¹¹ In January 2022, the Government Accountability Office (GAO) reported on steps taken by the Coast Guard to address its marine inspection workforce needs and found that the Coast Guard has developed action plans and implemented initiatives addressing marine inspection workforce gaps in

⁴ 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. <https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/5ps/NVIC/1994/NVIC%207-94%20Full%20Version.pdf>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ 46 CFR Subchapter K.

⁹ 46 CFR Subchapter H.

¹⁰ Depending upon the vessel and requirement, this can include the Environmental Protection Agency, and Customs and Border Protection.

¹¹ GAO. *Coast Guard: Enhancements Needed to Strengthen Marine Inspection Workforce Planning Efforts*. January 12, 2022. GAO-22-104465. <https://www.gao.gov/products/gao-22-104465>.

four key areas—training and skills, technology, workforce staffing levels, and workforce structure.¹² However, GAO also found that some of these initiatives face implementation challenges and the tools to assess staffing levels and skills have limitations.¹³ As a result, GAO has recommended ways to better predict—and meet—the Coast Guard's marine inspector needs through the use of better data collection, development of performance measures with targets, and implementation and assessment of a workforce improvement plan.¹⁴

MV CONCEPTION

Early in the morning on September 2, 2019, an overnight dive boat, the MV Conception, caught fire off the coast of Santa Cruz Island, California, and sank, resulting in the deaths of 33 passengers and one crew member.¹⁵ The Conception was a small passenger vessel classified under subchapter T requirements but at the time was exempt from certain subchapter T requirements.

The regulations under this subchapter were significantly updated in 1996, and vessels constructed after 1996 are required to comply with all the current regulations. When referring to the post-1996 regulations, Coast Guard inspectors use the term “New Subchapter T” or, more simply, “New T” regulations, and when referring to the pre-1996 regulations, they use the term “Old Subchapter T” or “Old T.” 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 1994.¹⁶ Vessels constructed before 1996 are required to comply with portions of the current regulations, including those pertaining to inspections and certification, vessel control and other systems and equipment, and operations but exempt from other requirements of the updated subchapter T requirements.¹⁷ For regulations relating to construction and arrangement, lifesaving equipment, some fire protection equipment, machinery installation, and electrical installation, vessels that existed prior to 1996 are subject to those portions of Subchapter T regulations that were in force at the time the vessel was built, with certain exceptions.¹⁸ As a vessel built in 1981, the Conception was considered an existing vessel and therefore subject to portions of both the pre- and post-1996 regulations. At the time of the casualty, the Conception complied with Coast Guard requirements and had passed its recent inspection.¹⁹

The NTSB report found that smoke alarms on the vessel only sounded locally and were not interconnected throughout the vessel. As a result, the crew above deck were not alerted.²⁰ All 33 passengers and one crewmember died of smoke inhalation after they were trapped in the berthing

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 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. <https://www.cnn.com/2019/09/12/politics/ntsb-report-conception-dive-boat-overnight-watch/index.html>

¹⁶ 46 CFR Subchapter T § 175.118

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Information obtained directly from the U.S. Coast Guard.

²⁰ National Transportation Safety Board. *Fire Aboard Small Passenger Vessel Conception*. October 20, 2020. <https://www.nts.gov/investigations/Pages/DCA19MM047.aspx>

area while a fire raged on the deck above.²¹ Both exits from the berthing area led to the fire and smoke-filled enclosed area above.²² The NTSB also found the absence of a required roving patrol on the *Conception* likely delayed the initial detection of the fire, allowed for its growth, and precluded firefighting and evacuation efforts which directly led to the high number of fatalities in the accident.²³ As a result, the NTSB called on the Coast Guard to develop and implement an inspection program to verify that roving patrols are conducted—as required—for the safety of sleeping passengers and crew.²⁴ The Coast Guard Marine Board Investigation’s examination of the casualty is still underway and has been delayed due to the ongoing criminal investigation.²⁵

On January 1, 2021, Congress passed section 8441, Regulations for covered small passenger vessels, of the *Elijah E. Cummings Coast Guard Authorization Act of 2020*, P.L. 116-283, which included new requirements for covered small passenger vessels—vessels that have overnight accommodations or cross the U.S. boundary line.²⁶ These new requirements for covered passenger vessels include interconnected fire detection equipment and additional firefighting equipment, monitoring equipment to ensure wakefulness of the night watch, improved marine firefighting training programs, increased fire detection and suppression systems in unmanned areas, no less than two means of escape for all general areas available to passengers, consideration of the handling of flammable items such as rechargeable batteries, providing of egress plans and drills to passengers onboard, and integration of these requirements into safety management systems (SMS).²⁷

Marine SMSs are programs designed to identify hazards and reduce risk to ensure safety at sea, prevent injury or loss of life, and avoid damage to the environment and vessels. An SMS ensures that proper procedures are in place aboard a vessel during normal operations or in emergencies. Processes for conducting regular maintenance on the vessel and its equipment also are included. An SMS is also required to include an internal audit process, conducted by the vessel owner, to identify when the SMS is not followed and a system of corrective actions to address deficiencies.²⁸ Prior to enactment of the *Small Passenger Vessel Safety Act*, SMSs were not required for small passenger vessels. As a result of the new law, the Coast Guard issued an advanced notice of proposed rulemaking which would require SMSs for small passenger vessels.²⁹

In 2021, the NTSB released a “Most Wanted List” that identified recommended safety improvements across all modes of transportation. The “Most Wanted List” includes the below recommendations for small passenger vessels:

“Fires pose a catastrophic threat to passenger vessels, as we saw in the Conception dive boat accident off the coast of California in which 34 people died. Our investigations have revealed that crew training and safety regulations for these vessels vary, increasing the risk to passengers and crew. To prevent needless deaths and mitigate injuries,

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Information obtained from the U.S. Coast Guard.

²⁶ *William A. Thornberry National Defense Authorization Act of 2020*, P.L. 116-283, <https://www.congress.gov/116/plaws/publ283/PLAW-116publ283.pdf>

²⁷ *Id.* at page 1356.

²⁸ 86 FR 3899. <https://www.federalregister.gov/documents/2021/01/15/2021-01058/safety-management-systems-for-domestic-passenger-vessels>.

²⁹ *Id.*

passenger vessels should have safety management systems, use voyage data recorders, and provide adequate fire-detection and extinguishing systems and enhanced emergency egress options. Operators need to ensure their crews have enhanced training that includes fire drills and firefighting techniques. We also need to see more roving patrols on our waterways to ensure passengers are being transported safely.”³⁰

Many of these recommendations come as a result of prior NTSB investigations including the Conception investigation and closely align with the requirements under the Section 8441. On December 27, 2021, the Coast Guard issued an interim rule on the statutorily mandated requirements for fire safety on covered small passenger vessels.³¹ The Coast Guard has determined that the most appropriate way to meet the intent of the statute was to ensure that “covered small passenger vessels” were required to meet “New T” in the rulemaking.³² This interim rule is currently open to public comments until June 27, 2022.³³

Amphibious DUKW- Type Vessels

Amphibious DUKW- Type Vessels or “duck” boats are another type of passenger vessel of which the NTSB has identified safety recommendations as part of their “Most Wanted List.” On July 19, 2018, the Stretch Duck 7, a 33-foot-long, modified World War II-era duck boat passenger vessel, sank during a storm with heavy winds that moved rapidly on Table Rock Lake near Branson, Missouri. Of the 31 people aboard, 17 died.³⁴ The NTSB determined the continued operation of waterborne tours after a severe thunderstorm warning was issued for Table Rock Lake, exposed the vessel to a derecho, resulting in flooding through a non-weathertight air intake hatch on the bow. Contributing to the sinking was the failure to maintain sufficient reserve buoyancy, an issue with all amphibious vessels.³⁵ Contributing to the loss of life was the lack of emergency egress due to fixed canopies which impeded passenger escape.³⁶ The Coast Guard investigation into the casualty is still underway and delayed due to the ongoing criminal case. The Coast Guard is in the process of revising the Navigation and Vessel Inspection Circular (NVIC) NO. 1-01 which provides guidance for duck boat operators and was last updated in 2000. In 2020, the Coast Guard released voluntary recommendations that duck boat owners remove all canopies from the vessels.³⁷ No new mandatory requirements or rules for duck boats have been released by the Coast Guard since the NVIC 1-01 update in 2000.³⁸

³⁰ NTSB *Most Wanted List: Improve Passenger and Fishing Vessel Safety*. <https://www.nts.gov/Advocacy/mwl/Pages/mwl-21-22/mwl-ms-01.aspx>.

³¹ 86 FR 73160 <https://www.federalregister.gov/documents/2021/12/27/2021-27549/fire-safety-of-small-passenger-vessels>.

³² *Id.*

³³ *Id.*

³⁴ NTSB. *Sinking of Amphibious Passenger Vessel Stretch Duck*. <https://www.nts.gov/investigations/Pages/DCA18MM028.aspx>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Work Boat. *MSIB: Recommendation for DUKW Passenger Vessel Canopy Removal*. April 20, 2020. <https://www.workboat.com/passenger-vessels/coast-guard-recommends-duck-boats-remove-canopies>

³⁸ *Id.*

WITNESS LIST

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The Honorable Jennifer Homendy
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