

A REVIEW OF COAST GUARD EFFORTS TO IMPROVE SMALL PASSENGER VESSEL SAFETY

(117-44)

FIELD HEARING
BEFORE THE
SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTEENTH CONGRESS
SECOND SESSION

MARCH 21, 2022 (Santa Barbara, California)

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[†]Hon. Bob Gibbs did not submit a prepared statement.



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 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

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.

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>.

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 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

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>.

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>

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 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 defi-

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>

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.

ciencies.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, 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 fire 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-weather-tight 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

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

²⁹ *Id.*

³⁰ NTSB *Most Wanted List: Improve Passenger and Fishing Vessel Safety*. <https://www.ntsb.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.ntsb.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

- Rear Admiral John W. Mauer, Assistant Commandant for Prevention Policy, United States Coast Guard
- The Honorable Jennifer Homendy, Chair, National Transportation Safety Board

ATTACHMENT



Fire Safety SPV IR—2020 CGAA Crosswalk

2020 CGAA Section 8441(a)(n)(3)(A)	Implementation Timeline, Notes & Regulatory Cites (Covered Vessels—Subchapter T/K vessels on oceans/coastwise route, or overnight accommodations, ~1130 vessels)
i. Marine firefighting training programs.	<i>Within 90 days—03/28/2022</i> Adds required crew training in the use and location of firefighting equipment, general firefighting knowledge, and training aspects. “Monthly” and “new crew member” training requirements are added. (46 CFR 122.420(b) & 185.420(b)).
ii. Interconnected fire detection equipment and additional firefighting equipment.	<i>1 year—12/27/2022</i> Requires interconnected fire detection systems in all enclosed areas including accommodation spaces & machinery spaces. (46 CFR 118.400(d)) & 181.405(c)).
iii. Monitoring devices to ensure wakefulness of night watch (overnight accommodations).	<i>Submit plan to OCMI within 90 days—03/28/2022</i> Requires a monitoring device for the night watch that will ensure the wakefulness of crew, it must remain operable during the nighttime watch, and be arranged to ensure proper coverage of onboard spaces. (46 CFR 122.410(b) & 185.410(b)).
iv. Increased fire detection and suppression systems.	<i>1 year—12/27/2022</i> Required to be followed regardless of keel laid date. (46 CFR 118.500 & 181.500).
v. No less than two independent avenues of escape for all general areas accessible to passengers (overnight passenger accommodations).	<i>2 years—12/27/2023</i> Amends the requirement for vessels with overnight accommodations for passengers to meet two means of escape requirements, regardless of keel laid date. Adds requirements to ensure the two means of escape are unobstructed and the door, hatch, or scuttle is not located directly above, or dependent, on a berth. (46 CFR 116.115(c), 116.500(o), 177.115(c), 46 CFR 177.500(n)).
vi. Handling, storage, and operation of flammable items (lithium-ion batteries).	<i>Within 90 days—03/28/2022</i> Adds “flammable items not covered by the regulations of this subchapter, such as rechargeable batteries, including lithium ion batteries utilized for commercial purposes, must be handled, stored, and operated in a way that mitigates the risk of hazardous conditions.” (46 CFR 122.364 & 185.364).
vii. Requirements for passenger emergency egress drills (overnight accommodations).	<i>Within 90 days—03/38/2022</i> Requires the master to conduct passenger emergency egress drills prior to excursions; defines an excursion as anytime vessel gets underway or passengers remain overnight. Note: recordkeeping portions delayed pending review by OMB. (46 CFR 122.507 & 185.507).
viii. Provide all passengers a copy of emergency egress plan (overnight accommodations).	<i>Within 90 days—03/38/2022</i> Requires passenger safety bill if the vessel has overnight accommodations for passengers, regardless of size. Note: recordkeeping portions delayed pending review by OMB. (46 CFR 122.515 & 185.515).

[Editor’s note: This chart has been reformatted from its original version to fit this document. References to the date “03/38/2022” are as they appear in the original chart.]

A REVIEW OF COAST GUARD EFFORTS TO IMPROVE SMALL PASSENGER VESSEL SAFETY

MONDAY, MARCH 21, 2022

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COAST GUARD AND
MARITIME TRANSPORTATION,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 1:03 p.m., Santa Barbara City Hall, Council Chambers, 735 Anacapa St., Santa Barbara, California, and via Zoom, Hon. Salud O. Carbajal (Chair of the subcommittee) presiding.

Members present in person: Mr. Carbajal and Mrs. Napolitano.

Members present remotely: Mr. Larsen of Washington, Mr. Lowenthal, Mr. Gibbs, and Mr. Weber of Texas.

Mr. CARBAJAL. Welcome, everyone. The subcommittee will come to order.

I ask unanimous consent that the chair be authorized to declare a recess at any time during today's hearing.

Without objection, so ordered.

I also ask unanimous consent that Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

Without objection, so ordered.

As a reminder, please keep your microphones muted unless speaking. Should I hear any inadvertent background noise, I will request that the Member please mute their microphone.

And to insert a document into the record, please have your staff email it to DocumentsT&I@mail.house.gov.

Welcome, everyone. Good morning.

And welcome again to today's important hearing on small passenger vessel safety.

Before we get started, I want to take a minute to acknowledge the passing of my colleague, the Dean of the House and a member of this subcommittee, Congressman Don Young. He was a fierce advocate for the people of Alaska and over his 25 terms, that is 50 years, serving in Congress, was a former chair of the Transportation and Infrastructure Committee—that is the overall governing committee of the subcommittee that I am a part of and that this hearing is for—and pushed for investments in our Nation's infrastructure. My thoughts are with his family.

Moving on to today's hearing, it is taking place in my district, beautiful Santa Barbara, California. The location is also unfortunately significant for another reason. Twenty-seven miles south of

here on September 2, 2019, 34 individuals tragically lost their lives. On that date the dive boat *Conception* caught fire while all the passengers were asleep. Because there was no interconnected fire alarm system on the vessel, the passengers and crew were not alerted to the fire as smoke filled the lower levels. A roving night watch was required by law to be awake. And if they were, they might have been able to alert the passengers. Unfortunately, that did not happen.

I share my deepest condolences to the victims' families, some of whom have joined us here today. I cannot begin to understand the sorrow these families have gone through. Going forward, we must ensure that safety measures are adopted so that no other family must endure this pain.

I hope Admiral Mauger and Chair Homendy can take the time to visit with the families who are in attendance today to hear their thoughts and worries, and also so that progress to make our waters safer can be made together.

At this moment, I would like to ask for a moment of silence in honor of each of the 34 individuals who lost their lives.

[A moment of silence is observed.]

Mr. CARBAJAL. Today, I hope to hear how the Coast Guard has taken steps to address National Transportation Safety Board recommendations and implement regulations required in my bill, the Small Passenger Vessel Safety Act, which passed into law at the end of the 116th Congress as part of the Elijah E. Cummings Coast Guard Authorization Act of 2020.

We need to know that the Coast Guard-inspected vessels will be as safe as possible for passengers, as well as crewmembers. At the time of the tragedy, the *Conception* was exempt from certain requirements that apply to newer vessels and was in compliance with those that did apply. Updated laws and regulations must be immediately implemented when deficiencies are identified.

It is the responsibility of Congress to prioritize the lives and public safety of crews and passengers. This hearing is needed to evaluate the oversight of small passenger vessels and identify what is working and what needs improvement.

The United States has a history of taking a reactionary approach to safety, creating maritime safety laws after tragedies, rather than preemptively strengthening safety requirements for a more robust industry, one that is effectively regulated and inspected.

I share the NTSB's concerns that recent accidents on small passenger vessels demonstrate that poor preventative maintenance, lax fire prevention, and inadequate crew training all continue to be contributing factors leading to disasters. The Board also highlights the importance of safety management systems on all types of vessels to prepare crews for emergency scenarios. These important recommendations were policies that I included in my Small Passenger Vessel Safety Act, and recently the Coast Guard released new interim rules for overnight passenger vessels.

These are important steps towards full implementation of improved safety standards, but I share concerns in the Coast Guard's response. It took nearly 1 year for the interim rules to be released after passage of the act, even though the National Transportation

Safety Board provided these recommendations years before the *Conception's* tragedy.

It took congressional action to force the Coast Guard's hand. This is of great concern to me. I expect the final rule to come out promptly and to address every requirement in my legislation, including requirements to document and monitor the training certifications of all crewmembers.

Going forward, there is more work to be done, not just by the Coast Guard and NTSB, but by Congress as well.

Included in the upcoming House Coast Guard Reauthorization Act is my other legislation, the Small Passenger Vessel Liability Fairness Act, which will update antiquated liability laws so that the victims and their families receive just compensation in the wake of such tragedies. No amount of compensation can bring back a loved one or make the pain go away, but it is necessary to hold the responsible parties accountable.

We have also included a requirement that the Coast Guard respond to all NTSB recommendations, which I hope will help improve the working relationship and make the Coast Guard act quicker.

Oversight of safety measures is vital to protecting lives and property. It is incumbent on the industry in conjunction with the Coast Guard to provide a safe, reliable experience for passengers. It is also the job of this committee to conduct proper oversight so that everyone who steps onto a vessel reaches the end of their voyage safely.

[Mr. Carbajal's prepared statement follows:]

Prepared Statement of Hon. Salud O. Carbajal, a Representative in Congress from the State of California, and Chair, Subcommittee on Coast Guard and Maritime Transportation

Good morning, and welcome to today's important hearing on small passenger vessel safety. This hearing is taking place in my district, beautiful Santa Barbara, California. But the location is unfortunately significant for another reason. Twenty-seven miles south of here, on September 2, 2019, 34 individuals tragically lost their lives. On that date, the dive boat *Conception* caught fire while all the passengers were asleep. Because there was not an interconnected fire alarm system on the vessel, the passengers and crew were not alerted to the fire as smoke filled the lower levels. A roving night watch was required by law to be awake and if they were, they might have been able to alert the passengers. Unfortunately, that did not happen.

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We need to know that Coast Guard-inspected vessels will be as safe as possible for passengers as well as crew members. At the time of the tragedy, the *Conception* was exempt from certain requirements that apply to newer vessels and was in compliance with those that did apply. Updated laws and regulations must be immediately implemented when deficiencies are identified.

It is the responsibility of Congress to prioritize the lives and safety of crew and passengers. This hearing is needed to evaluate the oversight of small passenger vessels, and identify what is working, and what needs improvement.

The United States has a history of taking a reactionary approach to safety; creating maritime safety laws after tragedy rather than preemptively strengthening safety requirements for a more robust industry, one that is effectively regulated and inspected.

I share the National Transportation Safety Board's concerns: recent accidents on small passenger vessels demonstrate that poor preventative maintenance, lax fire prevention and inadequate crew training all continue to be contributing factors leading to disaster. The Board also highlights the importance of Safety Management Systems on all types of vessels to prepare crews for emergency scenarios. These important recommendations were policies that I included in my Small Passenger Vessel Safety Act, and recently the Coast Guard released new interim rules for overnight passenger vessels. These are important steps toward full implementation of improved safety standards. But I share concerns in the Coast Guard response. It took nearly a year for the interim rules to be released after passage of the Act even though the National Transportation Safety Board provided these recommendations years before the *Conception* tragedy. It took congressional action to force the Coast Guard's hand. This is of great concern to me. I expect the final rule to come out promptly, and to address every requirement in my legislation, including a requirement to document and monitor the training certifications of all crew members.

Going forward, there's more work to be done. Not just by the Coast Guard and NTSB, but by Congress as well. Included in the House Coast Guard Authorization Act is my legislation, the Small Passenger Vessel Liability Fairness Act, which will update antiquated liability laws so that victims and their families receive just compensation in the wake of tragedy. No amount of compensation can bring back a loved one or make the pain go away, but it is necessary to hold the responsible parties accountable. We've also included a requirement that the Coast Guard respond to all NTSB recommendations which I hope will help improve the working relationship and make Coast Guard act quicker.

Oversight of safety measures is vital to protecting lives and property. It is incumbent on the industry, in conjunction with the Coast Guard, to provide a safe and reliable experience for passengers. It is the job of this committee to conduct proper oversight so that everyone who steps on a vessel reaches the end of their voyage safely.

Mr. CARBAJAL. I now call on the ranking member of the subcommittee, Mr. Gibbs, for an opening statement.

Mr. GIBBS. Thank you, Chairman Carbajal, and thank you for holding this important hearing today.

Like you, I wish to express my condolences to Chairman Don Young's family, his passing Friday. Don was a very good friend. He was an icon on this committee. He was chairman of this committee years ago and also chairman of the Natural Resources Committee and the Dean of the House, the longest serving Member. So, we are really going to miss Don Young and all his humor and also his knowledge, historical knowledge. It is going to be greatly missed. So, my sympathies to his family and his wife.

I know that small passenger vessel safety is particularly important to you, given the tragic dive boat fire that occurred in your district in 2019. You responded quickly after the fire. And as a result of your efforts, Congress enacted section 8441 of the Elijah E. Cummings Coast Guard Authorization Act of 2020, regulations for covered small passenger vessels. I look forward to hearing today about the Coast Guard's plans to implement section 8441.

Today's hearing will also look at the regulation of vessels popularly known as duck boats. These vessels have been involved in several significant marine casualties including the 2018 accident in the Table Rock Lake in Missouri. I am pleased that H.R. 6865, the Coast Guard Authorization Act of 2022, includes a provision to

strengthen the regulation of these vessels. Chairman DeFazio sponsored H.R. 6865. Chairman Carbajal and I and the full committee ranking member, Sam Graves, are original cosponsors.

The provision related to the duck boats is based on legislation introduced by Congressman Carson and Senator Hawley. Both are from Missouri. I commend them for their important work on this issue.

As for small passenger vessels without overnight accommodations, I look forward to hearing what actions the Coast Guard is planning to improve duck boat safety.

Mr. Chairman, I am sorry that my schedule didn't allow me to join you today in your district. But I am glad that you are holding this hearing. I look forward to the witnesses' testimony.

And I yield back the balance of my time.

[Mr. Gibbs did not submit a prepared statement.]

Mr. CARBAJAL. Thank you, Mr. Gibbs.

And thank you for joining us virtually, nonetheless. You are missing out on visiting paradise, but we will discuss that later.

With that, let's move on to our witnesses.

I would like to welcome all our witnesses. Today we have Rear Admiral John Mauger, Assistant Commandant for Prevention Policy for the United States Coast Guard, and the Honorable Jennifer Homendy, Chair of the National Transportation Safety Board.

Thank you both for being here today, and I look forward to your testimony.

Without objection, our witnesses' full statements will be included in the record. Since your written testimony has been made part of the record, the subcommittee requests that you limit your oral testimony to 5 minutes.

With that, Admiral Mauger, you may proceed.

**TESTIMONY OF REAR ADMIRAL JOHN W. MAUGER, ASSISTANT
COMMANDANT FOR PREVENTION POLICY, U.S. COAST
GUARD; AND HON. JENNIFER HOMENDY, CHAIR, NATIONAL
TRANSPORTATION SAFETY BOARD**

Admiral MAUGER. Good morning, Chairman Carbajal, Ranking Member Gibbs, and distinguished members of the subcommittee.

Thank you for the opportunity to discuss passenger vessel safety and the Coast Guard's role in advancing a safe and secure U.S. maritime industry.

On behalf of the Coast Guard, I express our deepest sympathies to the families and loved ones of those who perished in the tragedies on board the dive boat *Conception* and the amphibious passenger vessel *Stretch Duck 7*. I see many family members of those who have lost loved ones on board *Conception* here today and recognize the work that Advocacy 34 has done to honor their lives and prevent future tragedies.

Passenger vessel safety is personal. The fleet of U.S. small passenger vessels carry our families and friends to work and school and provide once-in-a-lifetime adventures.

The victims of these two casualties and their families are at the forefront of our minds here in the Coast Guard as we work to strengthen safety standards, enhance oversight, and ensure compli-

ance so that loved ones are transported safely on small passenger vessels.

The Coast Guard's approach to small passenger vessel safety is guided by our prevention concept of operations which includes standards, compliance, and assessment.

The Coast Guard sets standards for the safe, secure, and sustainable operation of vessels, facilities, mariners, and the waterways. In the field, Coast Guard personnel verify compliance with those standards through plan review, inspection, and document verification. When accidents occur, Coast Guard marine casualty investigators conduct thorough investigations to learn from these casualties and improve our standards and compliance activities.

In addition to conducting our own assessments, the Coast Guard looks to other leading safety organizations including the National Transportation Safety Board for insights and continuous improvement. The Coast Guard works closely with NTSB and values our strong relationship and the expertise and safety recommendations that NTSB provides.

With tremendous support from Congress and the Elijah E. Cummings Coast Guard Authorization Act of 2020, the Coast Guard accelerated the development and publication of significant new safety regulations which address all of the contributing factors to the loss of life on board *Conception*.

On March 28, just 1 week from today, the interim rule for fire protection on small passenger vessels will implement key safety provisions to address new requirements in the law. This rule substantially increases the safety of small passenger vessels by requiring increased fire detection, increased fire suppression, improved means of escape, safer handling of flammable items, additional crew training, and monitoring of night watches on board vessels.

These changes, together with pending safety management system requirements, address all of the National Transportation Safety Board recommendations stemming from the fire on board *Conception*.

These new requirements also reinforce that vessel safety is a shared responsibility between the owner-operator, the captain and crew, and the Coast Guard.

The owner-operator sets the overall safety culture for the company and provides the captain and crew with resources to maintain, train, and equip the safe operation of their vessel.

The captain and crew require training and credentials to perform their duties and are ultimately responsible for the safe operation of their vessels.

The Coast Guard sets the standard, enforces compliance with those standards, and drives continuous improvement through assessments.

In the immediate aftermath of the *Conception* fire, the Coast Guard implemented a new tiered approach to allocate our most experienced inspectors to the highest priority small passenger vessel safety inspection. The Coast Guard gathered data from previous inspections, investigations, and subject matter expertise and employed machine learning to gain new insights and prioritize the risks.

Under this policy, every small passenger vessel is inspected annually, and the highest priority vessels are inspected more frequently by our most experienced inspectors. This change to our compliance policy has successfully identified and corrected deficiencies, thereby preventing serious consequences.

Mr. Chairman, with the strong support of Congress in fiscal year 2020 through 2022, the Coast Guard is increasing the readiness of our marine inspection workforce. One hundred twenty-six new marine safety boats were added to the Coast Guard over the past 3 years. Eighty-seven of those are in the field. With funding provided through the CARES Act and subsequent fiscal year appropriations, the Service is transforming our mobile solutions to make our inspectors and investigators more capable.

To better train the workforce, the Coast Guard is employing ready learning technology as part of the Marine Inspector Performance Support Architecture to ensure that marine inspectors have the knowledge and skills that are required to keep pace in this dynamically changing maritime industry.

Mr. Chairman, passenger vessel safety is a Service priority and it is personal to each of us. Again, thank you, Mr. Chairman, for your oversight and for your support of the Coast Guard.

I look forward to your questions.

[Admiral Mauger's prepared statement follows:]

**Prepared Statement of Rear Admiral John W. Mauger,
Assistant Commandant for Prevention Policy, U.S. Coast Guard**

INTRODUCTION

Good morning Chairman Carbajal, Ranking Member Gibbs, and distinguished members of the Subcommittee. Thank you for the opportunity to be here today to discuss the state of passenger vessel safety and the Coast Guard's role in regulating a safe, secure, and environmentally responsible U.S. maritime industry.

I would like to begin by expressing the Service's sincere condolences to the family and friends of the victims and all those affected by the tragic loss of the dive boat CONCEPTION and the amphibious passenger vessel STRETCH DUCK 7. The Coast Guard continues to keep these unfortunate events in the forefront of our minds as we take specific actions to address contributing factors to these casualties and improve Coast Guard readiness to execute our Marine Safety mission.

In my role as the Coast Guard's Assistant Commandant for Prevention Policy, I am responsible for setting standards for safety, security, and environmental stewardship for commercial vessels, facilities, and mariners; establishing programs to ensure compliance; and ensuring investigations are properly conducted when casualties occur. Today I will discuss the Coast Guard's role in regulating small passenger vessels and the critical safety enhancements we have made as we exercise our authorities to protect the public.

SMALL PASSENGER VESSELS ARE VITAL TO THE NATION'S MARINE TRANSPORTATION
SYSTEM

The transportation of cargo on water by the global maritime industry is the most economical, and efficient mode of transport. An estimated 90 percent of U.S. imports and exports move by ship through 361 commercial ports, along 95,000 miles of shoreline and 25,000 miles of navigable river and coastal waterways. The Marine Transportation System, or "MTS," supports \$5.4 trillion in annual economic activity and more than 30.8 million jobs. A key component of our MTS is the active U.S. commercial fleet, comprised of over 19,000 cargo, towing, offshore supply, research, nautical school, barges, and passenger vessels.

Small passenger vessels account for one-third of the U.S. commercial fleet and are essential to the MTS. Communities all across the nation depend on small passenger vessels to ferry employees to work, children to school, and support local economies.

Small passenger vessels are also a source of enjoyment for millions of people each year and provide the opportunity to experience and appreciate the marine environment. The owners and operators of these vessels provide essential services to the American people. Protecting the lives of passengers and crew aboard these vessels is among the Coast Guard's most vital missions.

The U.S. fleet of small passenger vessels also possesses the greatest diversity of vessel type, design, construction, age, and operation. In Camden, Maine, a two-masted schooner built in 1871 meets applicable requirements and holds a Coast Guard Certificate of Inspection. In Louisville, Kentucky a passenger vessel built in 1914 is propelled by steam. Meanwhile, in San Francisco, the Coast Guard is working with the maritime industry to inspect and certificate the first hydrogen fuel cell ferry—a promising technology to eliminate maritime pollution. The common regulations applicable to all small passenger vessels set a baseline standard for safe design, construction, and operation.

PASSENGER VESSEL SAFETY: THE PREVENTION CONCEPT OF OPERATIONS

As the lead federal maritime regulator, the Coast Guard ensures the safety, security and sustainability of the MTS through the execution of the Prevention Concept of Operations: Standards, Compliance, and Assessment. These three lines of effort guide all of our prevention activities, including passenger vessel safety. Our work begins by establishing clear expectations for the MTS. Regulations and standards provide minimum requirements for safety, security and sustainability and establish governance. The standards drive compliance activities, which systematically verify that the governance regime is working. Compliance inspections are critical to ensuring that the minimum standards are met, while also identifying and correcting potential issues before they can cause harm to passengers or mariners. Our assessment program includes both proactive and reactive activities to audit our work and investigate the root cause of casualties. Assessments provide feedback and drive continuous improvement to both compliance standards and compliance activities. Additionally, we also use external input from the National Transportation Safety Board (NTSB), Government Accountability Office and Congress to inform those efforts.

Passenger vessel safety is a shared responsibility which relies on vessel owners and trained operators executing their operations in accordance with Coast Guard regulations. A vessel's master and crew are on the front lines of passenger vessel safety and are expected to comprehend the standards, recognize problems, take early corrective actions, and provide feedback to improve the system. The Coast Guard licensed master on every small passenger vessel is responsible for ensuring the vessel's condition and operation complies with Coast Guard regulations, which includes the training of unlicensed crewmembers. Additionally, the vessel's owner has an obligation to support the master in carrying out their responsibility to maintain and operate the vessel safely. Through annual inspections and routine engagement, such as unit industry days and regional and national association events, the Coast Guard actively promotes passenger vessel safety, communicates lessons learned and solicits feedback from the industry.

When the existing safety framework fails to mitigate a casualty, the Coast Guard investigates the cause and assesses the need for new regulations or policy to prevent future occurrences. A vital component of this feedback loop is our collaboration with the NTSB. The Coast Guard and NTSB work side-by-side to investigate the most serious marine casualties. I appreciate the expertise, skill, and professionalism of the NTSB, and value the candor of their recommendations and perspective on ways to improve vessel safety.

SMALL PASSENGER VESSEL SAFETY IMPROVEMENTS FOLLOWING CONCEPTION FIRE

In the aftermath of the dive boat CONCEPTION fire, the Coast Guard continues to utilize preliminary findings from the ongoing Coast Guard Marine Board of Investigation and the recommendations from NTSB's investigation to improve small passenger vessel safety. Immediately following the incident, my predecessor chartered a Small Passenger Vessel Safety Task Force to establish and implement key program enhancements. In addition to coordinating a special concentrated inspection on every overnight passenger vessel in the U.S. fleet, the Task Force leveraged ten years of vessel data, Subject Matter Expert feedback, and machine-based learning to assist our field commanders in determining which vessel inspections should be conducted by their most experienced Marine Inspectors. This initiative, still active today, resulted in the identification and correction of more than 1,000 safety deficiencies. As we improve our IT systems, we will continue to leverage technology to improve data management and analysis to inform resource allocation.

We also appreciate the extensive Congressional support to expeditiously improve small passenger vessel safety. Last December, we issued an interim final rule to implement the requirements of the *Elijah E. Cummings Coast Guard Authorization Act of 2020*. Leveraging the authorities granted by Congress to exempt this regulation from specific provisions of the Administrative Procedures Act, the rule takes immediate actions to address critical safety gaps that the NTSB cited in their report of investigation as contributing factors to the fire and loss of life on CONCEPTION. The Act also adds additional safety requirements for small passenger vessels with overnight accommodations for passengers or operating on Oceans or Coastwise routes, excluding fishing vessels and ferries. Those requirements include passenger drills, additional crew training, improved fire detection and means of escape, and handling of flammable items. The Service will ensure these changes are fully implemented, continue to evaluate their impact and, if necessary, make additional changes in the eventual Final Rule to achieve the desired results.

PREVENTION READINESS INITIATIVE

The complexity and size of the MTS continues to grow as our nation seeks to increase capacity, while limiting environmental impact. Those drivers: more capacity, reduced environmental impact, and increased complexity are re-shaping the industry and placing greater demands on Coast Guard readiness.

With Congressional oversight through the Marine Safety Performance Plan and specific legislation, including the *Hamm Alert Maritime Safety Act of 2018*, the Service has embarked on transforming the training and continued development of our Prevention workforce. Our comprehensive training and competency effort, known as the Marine Inspector Performance Support Architecture (MIPSA), aligns Marine Inspector workforce and performance requirements, bolsters individual training factors, and builds a sustainable and highly proficient marine inspection workforce. The Fiscal Year 2022 President's Budget builds on those efforts by adding 32 billets positioned at Sectors, Training Centers, and Force Readiness Command to ensure that our marine inspection workforce will continue to receive needed training as the industry evolves.

In December 2020, the Coast Guard implemented the Prevention Program Readiness Initiative (PRI) to address challenges associated with changes in the maritime industry, and developed a detailed action plan to improve readiness over the next five years. The action plan, which focuses on improving proficiency, governance and technology while continuing to engage partners and execute a risk based approach to safety, security and sustainability, incorporates the external drivers along with internal and external stakeholder feedback, Congressional intent and oversight, and recommendations from Government Accountability Office reports. We also continue to refine training under MIPSA and leverage new technologies to augment or replace aging data systems.

With your ongoing support, the Coast Guard will continue to transform the way the Service supports our enduring Prevention Concept of Operations through a technology and innovation forward approach. This will require continued investment to revitalize our Prevention workforce, effectively manage risk, improve knowledge management, and strengthen partnerships while continuously advancing our goals for a safe, secure, and environmentally responsible U.S. maritime industry.

CONCLUSION

I appreciate the opportunity to testify before you today regarding small passenger vessel safety. This topic has the Service's utmost attention, and we will continue to make enhancements to our Prevention program to protect those on the water, keep pace with the maritime industry, and respond to new passenger vessel operations. I am confident in our ability to remain "Always Ready" to serve and protect the American people and our vital national interests in the MTS.

Mr. CARBAJAL. Thank you, Admiral Mauger.

Next, we will proceed to Chair Homendy. You may proceed.

Ms. HOMENDY. Thank you, Chairman Carbajal, Ranking Member Gibbs, and members of the subcommittee. It is an honor to appear here today.

Admiral Mauger, thank you for your commitment to safety. And on behalf of the NTSB, we greatly appreciate the Coast Guard's collaboration with us in our investigations which we carry out with

mutual respect and the goal of improving safety on our Nation's waterways.

I would also like to take a moment to once again offer my sincerest condolences to those who have lost loved ones in the tragedies that we will discuss today. I especially want to acknowledge the families of those who perished on the *Conception*, many of whom are here in this room or watching remotely today. I can't imagine all that you have been through since September 2019. I greatly admire your strength, your courage, and your commitment to ensuring no one else loses a loved one in another tragedy on our waterways.

The *Conception* investigation was my first marine investigation as a Board Member. The experience deepened my commitment to improve marine safety. In my first meeting with the victims' families, I gave them the only promise we at the NTSB have to give: that we would investigate and issue safety recommendations aimed at preventing similar suffering for other families. And then we would vigorously work, I would vigorously work to ensure those safety recommendations are implemented.

I want to thank you, Chairman Carbajal, your colleagues in the California delegation, and the members and staff of this subcommittee for your efforts to enact legislation that address our recommendations to improve marine safety, many of which stem from the *Conception* investigation.

Unfortunately, the *Conception* isn't the only deadly passenger vessel tragedy in recent history. Since 1999, we have investigated three accidents involving passenger ferries in New York, a deadly fire on the small passenger vessel *Island Lady* in Florida, and duck boat accidents in Arkansas, Pennsylvania, and Missouri.

Including the *Conception*, a total of 86 people died in these tragedies, 86 lives lost unnecessarily, 86 people who have left behind bereaved families and friends. That is a lot of lives impacted.

Following these investigations, we issued multiple recommendations to the U.S. Coast Guard and the maritime industry aimed at closing known safety gaps. And we included passenger vessel safety on our Most Wanted List of transportation safety improvements. There are currently 19 open NTSB recommendations regarding small passenger vessels.

One of those recommendations would require operators to implement a preventative maintenance program. We issued it 20 years ago. Another would require operators to implement a safety management system, which we also issued 20 years ago. We reiterated that in 2012, again in 2018, and again in 2020, following numerous tragedies. We are pleased the Coast Guard has issued a rule-making to move SMS forward.

For two decades, we have also recommended that the Coast Guard address significant safety issues with duck boats. Had those recommendations been acted upon following the sinking of *Miss Majestic* in 1999, the tragedy in Branson and the 17 lives lost likely would not have occurred.

Thank you for including provisions to address this in the Coast Guard authorization bill that the House is considering, and thank you to the Coast Guard for moving forward with our recommendations on fire safety and emergency egress in an interim final rule.

But it shouldn't take an act of Congress to address known safety issues with duck boats or any other vessel.

A few weeks ago, I spoke before the passenger vessel association. I was asked what keeps me up at night. It is the next mother, father, sister, brother, son, or daughter who loses their life in a tragedy we investigate. It is knowing that we have previously investigated a similar tragedy. And it is knowing that it was preventable, had our recommendations been implemented.

I want to close by thanking those who dedicate their lives and livelihoods to improving marine safety and who inspire me every day to do all I can to support them and their efforts, our Office of Marine Safety. With me today is the director of the office, Morgan Turrell, and Adam Tucker, who is the investigator in charge of the *Conception* investigation.

Thank you, Chairman Carbajal, thank you Ranking Member Gibbs, and thank you to the subcommittee members for your continued support of the NTSB and your continued work to improve marine safety, as well as safety in other modes of transportation.

[Ms. Homendy's prepared statement follows:]

**Prepared Statement of Hon. Jennifer Homendy, Chair,
National Transportation Safety Board**

Good morning, Chairman Carbajal, Ranking Member Gibbs, and members of the subcommittee. Thank you for inviting the National Transportation Safety Board (NTSB) to testify, discuss our marine accident investigations and the lessons we have learned from those investigations, and reiterate how critical it is for our federal agency partners, our partners in industry, and for the Congress to heed those lessons learned and take action to help avoid future accidents.

As you know, the NTSB is an independent federal agency charged by Congress with investigating every civil aviation accident in the United States and significant events in other modes of transportation—highway, rail, marine, pipeline, and commercial space. We determine the probable cause of the events we investigate, and issue safety recommendations aimed at preventing future occurrences. In addition, we conduct special transportation safety studies and special investigations, and coordinate the resources of the federal government and other organizations to assist victims and their family members who have been impacted by major transportation disasters. We also serve as the appellate authority for enforcement actions involving aviation and mariner certificates issued by the Federal Aviation Administration (FAA) and the United States Coast Guard, and we also adjudicate appeals of civil penalty actions taken by the FAA.

The NTSB does not have authority to promulgate operating standards, nor do we certificate organizations, individuals, or equipment. Instead, we advance safety through our safety recommendations. Those recommendations are issued to any entity that can improve safety, including the United States Coast Guard (USCG).¹ Our goal is to identify issues and advocate for safety improvements that, if implemented, would prevent tragedies and injuries, and save lives.

MARINE SAFETY AND REAUTHORIZATION

Before we get too far, I do want to thank the Coast Guard for collaborating with us to investigate marine casualties and improve marine safety. We conduct our marine safety investigations concurrent with the USCG's, and we often reach the same conclusions; on the occasions when we reach different conclusions, we regularly make recommendations to address identified issues in the USCG's regulations and

¹There are currently 93 open safety recommendations to the USCG, 32 of them with the status "Open—Unacceptable Response." Of the 93 recommendations, 24 are associated with our Most Wanted List of Transportation Safety Improvements item, "Improve Passenger and Fishing Vessel Safety," and 8 of those are currently classified "Open—Unacceptable Response." These recommendations are included in the appendix to this testimony.

processes. Either way, we approach these investigations with mutual respect and with the goal of improving safety on our nation's waterways.

We have a broad mandate when it comes to marine safety. The NTSB investigates "major marine casualties,"² which can be anywhere in the world if a US-flagged vessel is involved. Our work touches vessels owned by the US government as well as private vessels. We also investigate select catastrophic marine casualties involving foreign-flagged vessels in international waters, especially if US citizens are on board.

Our current authorization expires at the end of this fiscal year. We have transmitted to Congress a reauthorization proposal to provide more resources and flexibilities which will allow us to hire, invest in our workforce in terms of training and development, and purchase equipment. Even as we have seen tremendous growth and change in transportation over the last two decades, the agency is the same size as it was in 1998. In just the last ten years, the NTSB's Office of Marine Safety has dramatically increased its number of investigations. Before 2012, the office investigated and developed six reports annually on average. Subsequently, the office has been investigating all major marine casualties. Now, the caseload is over 40 per year, and at times over 50, while the cases have also grown more complex. However, our marine investigative staff has not grown with that increase, and we currently have 11 marine investigators. It is critical to have additional resources to respond to casualties without impacting timeliness, quality, and our independence. Our reauthorization proposal to Congress included a request for resources and hiring flexibilities to increase the number of investigators in our Office of Marine Safety, as well as in our other modes. These resources will allow us to hire professionals with the needed skills, purchase the equipment necessary for those skilled professionals to do their jobs, and invest in staff training and development. Our workforce is our greatest asset and is essential to our mission.

THE *CONCEPTION*: LESSONS LEARNED

I want to thank you, Chairman Carbajal, your colleagues in the California delegation, and the members of this committee for your commitment to marine safety and for enacting small passenger vessel safety provisions as part of the Elijah E. Cummings Coast Guard Authorization Act of 2020.³ This legislation addressed 11 NTSB recommendations to improve small passenger vessel safety. Of those, 7 were made to the USCG as a result of our investigation of the September 2, 2019, fire and resulting sinking of the *Conception* here, near Santa Cruz Island, California. The *Conception* was a 75-foot commercial diving vessel on its last night of a 3-day diving trip with 39 people on board. The vessel caught fire while anchored in Platts Harbor, and 33 passengers and one crewmember died, making this the largest loss of life in a US marine casualty in decades and the greatest maritime loss of life in California in more than 150 years.

We determined the probable cause of the accident was the failure of the operator, Truth Aquatics, Incorporated, to provide effective oversight of its vessel and crewmember operations. The lack of both oversight and adherence to certain safety requirements allowed a fire of unknown cause to grow, undetected. In addition, the lack of a USCG regulatory requirement for smoke detection in all accommodation spaces and inadequate emergency escape arrangements from the vessel's bunkroom contributed to the undetected growth of the fire and the high loss of life.

The *Conception* investigation was my first maritime investigation as an NTSB Board member, and the experience deepened my commitment to improving marine safety. During my time on scene, I met with the families of those on board the vessel and gave them the only promise we at the NTSB have to give: that we would find out what caused the fire aboard the *Conception*, to prevent similar suffering for other families.

Today, I will share some of the lessons learned from our investigation of the *Conception* accident and the roughly 50 marine accidents that we typically investigate annually. In particular, I will focus on the importance of safety management systems (SMSs); fire safety aboard small passenger vessels; safety issues unique to amphibious vessels, known as DUKW boats; and adequate options for emergency escapes in all cases. Additionally, although beyond the scope of this hearing, we have

² Defined in 49 *Code of Federal Regulations* 850.5 as a "casualty involving a vessel, other than a public vessel, that results in (1) The loss of six or more lives; (2) The loss of a mechanically propelled vessel of 100 or more gross tons; (3) Property damage initially estimated as \$500,000 or more; or (4) Serious threat, as determined by the Commandant and concurred in by the Chairman, to life, property, or the environment by hazardous materials."

³ Enacted as part of the National Defense Authorization Act for Fiscal Year 2021 (PL116-283, Division G, sec. 8441).

made equally important recommendations to the USCG to improve fishing vessel safety. These recommendations, which are included in the appendix, remain open because the USCG has taken unsatisfactory or no action to address them.

The NTSB has made multiple recommendations to the USCG and the maritime industry that must be implemented to close known safety gaps and to avoid another tragedy like the *Conception*. These recommendations specifically address:

- inadequate company oversight;
- voyage data recorders;
- insufficient regulations for means of emergency egress;
- lack of regulations requiring fire and smoke detection in machinery and all accommodation spaces of small passenger vessels;
- neglected nighttime roving patrols;
- insufficient reserve buoyancy; and
- insufficient watertight integrity of vessels.

SAFETY MANAGEMENT SYSTEMS

For two decades, the NTSB has advocated for all passenger vessel operators to implement an SMS: a comprehensive, documented system to enhance safety. This call to action was first on our Most Wanted List of Transportation Safety Improvements over 10 years ago, and is again on our current list under “Improve Passenger and Fishing Vessel Safety.”⁴ In fact, the NTSB has recommended SMSs in all modes of transportation—aviation, rail and transit, pipelines, marine, even manufacturers. In 2015, the Federal Aviation Administration (FAA) required commercial airliners to develop a comprehensive SMS to improve safety for the flying public, and this mandate has contributed to the remarkable record of safety in commercial passenger aviation. In fact, in 7 of the last 10 years, there have been no major commercial airline passenger fatalities. The number of accidents, the number of fatalities, and the fatality rate across the aviation industry have also decreased.

As an example, the FAA requires commercial airlines to develop and implement an SMS with four components:

- A safety policy that outlines the methods, processes, and organizational structure needed to support safe operations.
- A safety risk management process to constantly identify new hazards and control risk.
- Safety assurance methods, such as audits, to evaluate if the desired safety outcomes are being achieved.
- Safety promotion, also known as safety culture, which is a less tangible—but no less vital—aspect of a successful SMS.

For marine passenger vessels, regardless of a company’s size, an SMS ensures that each crewmember is given standard and clear procedures for routine and emergency operations. An SMS specifies crewmember duties and responsibilities, as well as delineates supervisory and subordinate chains of command, so that each crewmember understands what to do during critical vessel operations and emergency scenarios. Developing an SMS includes creating plans for crewmember responses to a range of possible emergency situations. SMSs also include procedures for performing and tracking preventive maintenance, as well as for crew training, emergency preparedness, documentation and oversight, and other actions that prioritize safe operations.

Since 2012, following the allision of the passenger ferry *Andrew J. Barberi* with a terminal at Staten Island, New York, the NTSB has recommended the USCG require all operators of US-flagged passenger vessels to implement an SMS, taking into account the characteristics, methods of operation, and nature of service of these vessels, and, with respect to ferries, the sizes of the ferry systems within which the vessels operate.⁵ This is consistent with requirements imposed by the International Maritime Organization (IMO). In 2010, Congress mandated that the USCG develop appropriate SMS regulations for all US-flagged passenger vessels. As a result of the *Conception* investigation, we reiterated this recommendation, and the USCG published an advance notice of proposed rulemaking (ANPRM), “Safety Management Systems for Domestic Passenger Vessels,” in January 2021.⁶ The Board submitted

⁴2021–2022 Most Wanted List of Transportation Safety Improvements. Improve Passenger and Fishing Vessel Safety. Washington, DC: NTSB.

⁵Safety Recommendation M–12–3.

⁶Safety Management Systems for Domestic Passenger Vessels. 89 *Federal Register (FR)* 3899.

comments to the ANPRM and subsequently updated the status of this safety recommendation to “Open—Acceptable Response.”⁷

The NTSB’s investigation of the *Andrew J. Barberi* was hampered by a lack of voyage data recorder (VDR) information. A VDR is a fire- and crash-protected recorder that captures critical vessel information as well as audio from the bridge environment. This information can be accessed by investigators following accidents and reviewed by vessel operators as part of their SMS programs to help prevent accidents. In 2014, we recommended that the USCG require installation of VDRs on new and existing ferry vessels, where technically feasible, and develop a standard for smaller ferry vessels.⁸ These recommendations are currently classified “Open—Unacceptable Response.”

Further, we have recommended that the USCG require that companies operating domestic passenger vessels develop and implement a preventive maintenance program for all systems affecting the safe operation of their vessels, including the hull and the mechanical and electrical systems.⁹ We generally expect recommended actions to be completed in 5 years, but this has languished for 20 years and, therefore, is in an unacceptable status. This is our oldest open marine safety recommendation. We have kept it open because the USCG has informed us since 2012 that it would include this action as a component of a broader requirement for SMS.

We continue to believe that an SMS is an essential tool for enhancing safety on board all US passenger vessels, and that the USCG is the appropriate authority to require such systems. We fully support the requirement mandated by Congress. We also believe that an SMS is not a substitute for important safety regulations that are issued by the USCG. Safety regulations need to be implemented and an SMS enhances the impact of those regulations.

FIRE SAFETY FOR SMALL PASSENGER VESSELS

As a result of the *Conception* disaster, we issued seven new safety recommendations specifically related to fire safety and egress. All seven were addressed by the Elijah E. Cummings Coast Guard Authorization Act of 2020 and are currently classified “Open—Acceptable Response.”

To ensure fire safety aboard small passenger vessels, redundancy is critical. First, we made several recommendations to the USCG to update its regulations regarding accommodation spaces in all passenger vessels, including those constructed prior to 1996. We recommended that they require all accommodation spaces, for new vessels and those currently in service, have smoke detectors.¹⁰ Second, we recommended that the USCG develop and implement an inspection procedure to ensure that operators are conducting “roving patrols” as required by regulations and which has been codified in US law since 1871.¹¹ The current statute states that “the owner, operator, or charterer of a vessel carrying passengers during the nighttime shall keep a suitable number of watchmen in the vicinity of cabins or staterooms and on each deck to guard against and give alarm in case of fire or other danger.”¹² This was not the practice on *Conception*, other vessels owned by Truth Aquatics, nor, according to interviews, other dive boats in Southern California.

Even if a fire breaks out, loss of life is still preventable with adequate options for and awareness of emergency egress. The *Conception* had two means of escape from the bunkroom: spiral stairs forward and an escape hatch aft, accessible from either port or starboard aisles by climbing into one of the top aftermost inboard bunks. However, both paths led to the salon, which was filled with heavy smoke and fire, and the salon compartment was the only escape path to exterior (weather) decks. Therefore, because there was fire in the salon, the passengers and one crewmember housed below were trapped and were not able to escape. If regulations had required the escape hatch to exit to a space other than the salon, optimally directly to the weather deck, the passengers and crewmember in the bunkroom would have likely been able to escape. For those reasons, we recommended that the USCG update its regulations for small passenger vessels with overnight accommodations, including those constructed prior to 1996, to require a secondary means of escape into a different space so a single fire will not affect both escape paths and to ensure there are no obstructions to egress.¹³ These recommendations are currently classified “Open—Acceptable Response,” because we understand that the Coast Guard

⁷NTSB Comments on USCG–2020–0123.

⁸Safety Recommendations M–14–3, –4, and –5.

⁹Safety Recommendation M–02–5.

¹⁰Safety Recommendations M–20–14, –15, and –16.

¹¹Safety Recommendation M–20–17.

¹²46 *United States Code (USC)* 8102.

¹³Safety Recommendations M–20–18, –19, and –20.

has initiated a rulemaking project to implement the recommendations for all small passenger vessels with overnight accommodations, including vessels constructed prior to 1996.

In addition to fire safety in vessels with accommodation spaces, prior to the *Conception* tragedy, we issued two recommendations to the USCG regarding unmanned spaces. We recommended that they require fire-detection systems in unoccupied spaces with machinery or other potential heat sources on board small passenger vessels, and for them to issue a marine safety information bulletin regarding the need to use only approved material and components in fuel tank level-indicator systems.¹⁴ The USCG has issued the bulletin and the recommendation has been closed successfully, but further action is needed to require additional fire detectors.

Again, we appreciate Congress addressing these safety issues in legislation, and for the cooperation and partnership of the USCG. We look forward to the USCG issuing a final rule to implement our recommendations and improve safety.¹⁵ Until that time, the recommendations will remain open. In the meantime, operators of vessels with overnight accommodations can act now to improve the safety of their passengers and crew. They can start with the following even before the USCG completes rulemaking:

- Install smoke detectors in sleeping quarters and ensure they are interconnected so when one detector goes off, they *all* do. The *Conception* crewmember who discovered the fire could not hear the fire alarm from the crew berthing on the upper deck.
- Ensure that the primary and secondary emergency escape paths do not lead to the same space, which can be blocked by a single hazard. The *Conception* had two means of escape from the lower deck bunkroom, but both led into the salon, which was filled with heavy smoke and fire. Tragically, the salon compartment was the only escape path to the weather deck. Because there was fire in the salon, the passengers were trapped.
- Keep the escape routes unobstructed at all times.
- Remind crewmembers to perform roving patrols and why they are so important. Our investigation found that the *Conception* fire was uncontrollable by the time it was discovered because the crewmember, who ultimately died, was asleep in the bunkroom.

AMPHIBIOUS PASSENGER VESSEL SAFETY: THE IMPORTANCE OF ACTION

Unfortunately, we know that the consequences of failing to address the lessons learned from our safety investigations can be further tragedies. Almost 20 years after the sinking of an amphibious passenger vessel that killed 13 people in Arkansas, we investigated the sinking of a DUKW amphibious passenger vessel, *Stretch Duck 7*, on Table Rock Lake near Branson, Missouri.¹⁶ We discovered that long-known safety issues caused the sinking and resulted in the loss of 17 lives. I want to thank you for addressing these safety issues in H.R. 6865, the Coast Guard Authorization Act of 2022.

DUKW amphibious vehicles were designed and built in the 1940s for military use during World War II; some were later converted for commercial service.¹⁷ They are unique vessels with special challenges that must be addressed to ensure passenger safety.

Five minutes into its voyage on July 19, 2018, the *Stretch Duck 7*, with 31 passengers aboard, encountered a severe storm known as a derecho. While trying to reach land, 7 minutes into the voyage, the vessel took on water and sank approximately 250 feet away from the exit ramp. Passengers were caught by the vessel's canopy as it sank. Only a few of the surviving passengers stated that they were able to float free without encountering any obstructions. Several hours prior to the accident, the National Weather Service had issued a severe thunderstorm watch for the area, followed by a severe thunderstorm warning a minute before the vessel departed.

NTSB investigators found that the accident vessel was originally constructed with a low freeboard, an open hull, and no subdivision or flotation, resulting in a design without adequate reserve buoyancy. We determined the probable cause of the sink-

¹⁴ Safety Recommendations M-18-13 and -14.

¹⁵ Fire Safety of Small Passenger Vessels. 86 *FR* 73160.

¹⁶ Sinking of Amphibious Passenger Vessel *Stretch Duck 7*, Table Rock Lake, near Branson, Missouri, July 19, 2018. (NTSB, MAR 20/01).

¹⁷ *DUKW* (pronounced "duck") is an acronym that signifies the characteristics of the WWII amphibious vessel: D = 1942 (the year of design); U = utility; K = front-wheel drive; and W = two rear-driving axles. *DUKW vessels* are also referred to as *vehicles* due to their dual function of being operated on land and in water.

ing was the operator's continued operation of waterborne tours after a severe thunderstorm warning was issued for Table Rock Lake, exposing the vessel to a derecho, which resulted in waves flooding through a non-weather-tight air intake hatch on the bow. Contributing to the sinking was the USCG's failure to require sufficient reserve buoyancy in amphibious passenger vessels. Contributing to the loss of life was the Coast Guard's ineffective action to address emergency egress on amphibious passenger vessels with fixed canopies, such as the *Stretch Duck 7*, which impeded passenger escape.

As noted, these safety issues were not new when the *Stretch Duck 7* sank. They were identified after the 1999 sinking of the *Miss Majestic*, another DUKW amphibious passenger vessel, on Lake Hamilton, near Hot Springs, Arkansas.¹⁸ As a result of that sinking, 13 passengers died. Survivors of the *Miss Majestic* accident confirmed that the vehicle sank less than a minute after the deck edge at the stern was submerged, leaving insufficient opportunity for passengers to escape. Vessel maintenance, reserve buoyancy, and survivability—specifically, impediments to passenger egress caused by the vessel's canopy—were among the major safety issues identified by our investigation of the *Miss Majestic* accident.

As a result of the *Miss Majestic* sinking, we recommended that the USCG require greater stability and reserve buoyancy in amphibious passenger vessels.¹⁹ Further, until the goals of that recommendation were achieved, we urged the USCG to require—among other measures—that canopies be removed from waterborne vessels, or that such vessels have installed a USCG-approved canopy that does not restrict horizontal or vertical escape by passengers in the event of sinking.²⁰ These recommendations were closed unacceptably in 2003 and 2007, respectively. Regrettably, had these recommendations been implemented, a future tragedy could have been avoided.

More than 15 years later, because of the *Stretch Duck 7*, we recommended again that amphibious passenger vessels have sufficient reserve buoyancy so they remain upright and afloat in the event of damage or flooding, and that for DUKW vessels without sufficient reserve buoyancy, that they require the removal of canopies, side curtains, and their associated framing during waterborne operations to improve emergency egress in the event of sinking.²¹ The USCG has not been able to identify a feasible solution to achieve the necessary level of reserve buoyancy, and contracted with the National Academy of Sciences (NAS) to conduct an independent review of potential modifications. The USCG has also issued a marine safety information bulletin recommending removal of canopies as an initial step.²² For these reasons, both recommendations remain classified “Open—Acceptable Response.”

In 2015, we investigated a highway crash of a DUKW in Seattle, Washington.²³ As a result, we recommended the USCG amend its Navigation and Vessel Inspection Circular (NVIC) 1—01, a guidance document that relies on voluntary compliance, to ensure passengers unbuckle before waterborne operations and the crew confirms that passengers have complied.²⁴ Following the *Stretch Duck 7* sinking, we recommended reviewing and revising the NVIC.²⁵ Although the USCG has communicated to us it will make the recommended revisions, the NVIC has not been updated; therefore, these recommendations remain classified “Open—Acceptable Response.”

Lastly, the benefits of these safety improvements are not realized if crews have insufficient awareness. Accordingly, we have recommended that the USCG review and revise training, especially as it relates to severe weather.²⁶ Each of these recommendations is on our 2021–2022 Most Wanted List. Again, thank you for addressing these issues in the pending Coast Guard authorization.

CONCLUSION

The loss of 34 lives on the *Conception*, less than 100 feet from shore, shook this community and the country. It reminds us that the potential for catastrophe is al-

¹⁸ Sinking of the Amphibious Passenger Vehicle *Miss Majestic*, Lake Hamilton, Near Hot Springs, Arkansas, May 1, 1999. (NTSB, MAR 02/01).

¹⁹ Safety Recommendation M–02–1.

²⁰ Safety Recommendation M–02–2.

²¹ Safety Recommendations M–19–15 and –16.

²² US Coast Guard Marine Safety Information Bulletin. Recommendation for DUKW Passenger Vessel Canopy Removal. Washington, DC: 2020. MSIB–15–20.

²³ Amphibious Passenger Vehicle DUCK 6 Lane Crossover Collision with Motorcoach on State Route 99, Aurora Bridge, Seattle, Washington, September 24, 2015. (NTSB, HAR–16/02)

²⁴ Safety Recommendation M–16–26.

²⁵ Safety Recommendation M–20–2.

²⁶ Safety Recommendation M–20–3.

ways present, including on small passenger vessels, and we must do what we can to prevent needless deaths and mitigate injuries. Passenger vessels should have SMSs and provide adequate fire detection and extinguishing systems and enhanced emergency egress options. Inaction can lead to further tragedy, as we saw with the *Stretch Duck 7* almost 20 years after the *Miss Majestic* sinking. We recognize the progress that has been made, yet, there remains room for improvement. The NTSB stands ready to work with you and this Committee to continue improving passenger vessel safety.

Thank you again for the opportunity to testify today. I am happy to answer your questions.

APPENDIX

Open Safety Recommendations issued to the U.S. Coast Guard (as of March 8th, 2022)

Rec. Number	Status	Most Wanted List (2021–22)	Recommendation Text
A-14-069	Open–Acceptable Response.		Work with the US Department of the Interior, Bureau of Safety and Environmental Enforcement to identify and develop comprehensive systems and procedures to mitigate the risk of ingestion of raw gas discharges, such as methane, by helicopters operating in the vicinity of offshore oil platforms.
A-14-070	Open–Acceptable Response.		After appropriate mitigations are developed as recommended in Safety Recommendation A-14-69, require mobile offshore oil platform operators to implement these systems and procedures.
M-02-005	Open–Unacceptable Response.	Yes	Require that companies operating domestic passenger vessels develop and implement a preventive maintenance program for all systems affecting the safe operation of their vessels, including the hull and the mechanical and electrical systems.
M-09-004	Open–Unacceptable Response.		Require mariners to report to the Coast Guard, in a timely manner, any substantive changes in their medical status or medication use that occur between required medical evaluations. (Supersedes M-05-005)
M-11-012	Open–Acceptable Response.		Establish a structured data monitoring program for your small boats that reviews all available data sources to identify deviation from established guidance and procedures.
M-11-013	Open–Unacceptable Response.		Conduct a ports and waterways safety assessment for the Sabine-Neches Waterway, determine from that whether the risk is unacceptable, and if so, develop risk mitigation strategies.
M-11-023	Open–Unacceptable Response.	Yes	Establish standards for new and existing commercial fishing industry vessels of 79 feet or less in length that (1) address intact stability, subdivision, and watertight integrity and (2) include periodic reassessment of the vessels' stability and watertight integrity.
M-11-024	Open–Unacceptable Response.	Yes	Require all owners, masters, and chief engineers of commercial fishing industry vessels to receive training and demonstrate competency in vessel stability, watertight integrity, subdivision, and use of vessel stability information regardless of plans for implementing the other training provisions of the 2010 Coast Guard Authorization Act.

Open Safety Recommendations issued to the U.S. Coast Guard (as of March 8th, 2022)—Continued

Rec. Number	Status	Most Wanted List (2021–22)	Recommendation Text
M–11–027	Open–Unacceptable Response.	Yes	Require all crewmembers to provide certification of completion of safety training before getting under way on commercial fishing industry vessels, such training to include both prevention of and proper response to emergency situations as well as actual use of emergency equipment.
M–12–003	Open–Acceptable Response.	Yes	Require all operators of U.S.flag passenger vessels to implement safety management systems, taking into account the characteristics, methods of operation, and nature of service of these vessels, and, with respect to ferries, the sizes of the ferry systems within which the vessels operate. (Supersedes Safety Recommendation M–05–006)
M–12–008	Open–Acceptable Response.		Align your standards for postaccident toxicological testing of Coast Guard military personnel with the requirements specified in 46 Code of Federal Regulations 4.06–3.
M–12–009	Open–Acceptable Response.		Align your standards for postaccident toxicological testing of Coast Guard civilian personnel, seeking appropriate legislative authority if necessary, with the requirements specified in 46 Code of Federal Regulations 4.06–3.
M–12–010	Open–Acceptable Response.		Disseminate guidance within the Coast Guard so that commanding officers have unambiguous instruction detailing the requirements for timely drug and alcohol testing of Coast Guard military and civilian personnel whose work performance may be linked to a serious marine incident.
M–13–002	Open–Acceptable Response.		Work with the US Department of State to develop a written agreement between the government of Mexico, the US Coast Guard, and the National Transportation Safety Board that will ensure mutuality with regard to: timely accident notification; expeditious access to accident sites; unimpeded ability to gather evidence, interview witnesses, and establish facts; logistical assistance on scene; and continuing liaison so that problems and differences are minimized and promptly resolved.
M–13–007	Open–Acceptable Response.		Develop procedures to identify bridges having chronic navigation lighting problems and work with the states that own those bridges to rectify underlying problems in a timely manner.
M–13–008	Open–Acceptable Response.		Review the process and means of delivering broadcast notices to mariners and identify and implement methods for providing timely and easily accessible navigation information to mariners.
M–14–001	Open–Acceptable Response.		Develop and implement human factors standards for the design of critical vessel controls for US-flag ships to include clearly identifiable and understandable audible alerts and displays indicating which mode is engaged.

Open Safety Recommendations issued to the U.S. Coast Guard (as of March 8th, 2022)—Continued

Rec. Number	Status	Most Wanted List (2021–22)	Recommendation Text
M–14–003	Open–Unacceptable Response.	Yes	Require installation of voyage data recorders that meet the International Maritime Organization's performance standard for voyage data recorders on new ferry vessels subject to 46 Code of Federal Regulations Subchapters H and K. (Supersedes Safety Recommendations M–10–005 and M–10–006)
M–14–004	Open–Unacceptable Response.	Yes	Require installation of voyage data recorders that meet the International Maritime Organization's performance standard for simplified voyage data recorders on existing ferry vessels subject to 46 Code of Federal Regulations Subchapters H and K. (Supersedes Safety Recommendations M–10–005 and M–10–006)
M–14–005	Open–Unacceptable Response.	Yes	Develop a US voyage data recorder standard for ferry vessels subject to 46 Code of Federal Regulations Subchapter T and require the installation of such equipment where technically feasible. (Supersedes Safety Recommendations M–10–005 and M–10–006)
M–15–008	Open–Acceptable Response.		Revise your existing guidance to define inspection requirements clearly, including the frequency of inspection, for each bridge in your jurisdiction.
M–15–009	Open–Acceptable Response.		Evaluate the activities and performance of each branch office in the bridge program to identify areas that need improvement; then take the actions necessary to ensure the effectiveness of existing policy, procedures, and regulations related to draw-bridge operations and the overall safety of navigation.
M–16–004	Open–Acceptable Response.		Address the risks associated with watch stander fatigue by implementing Commandant Instruction 3500.2, Crew Endurance Management, issued on March 30, 2006, in all operational units.
M–16–005	Open–Unacceptable Response.		Revise and align Title 33 Code of Federal Regulations Part 161, the Vessel Traffic Service [VTS] National Standard Operating Procedures Manual, VTS center internal operating procedure manuals, and training curricula, as necessary, to ensure that VTS authority is consistently applied across the US Coast Guard VTS system.
M–16–006	Open–Unacceptable Response.		Incorporate additional training that emphasizes realistic vessel traffic service (VTS) simulation exercises, including detecting and responding to unsafe traffic situations, in your initial training and proficiency requirements for all VTS watchstanders in the US Coast Guard VTS system.
M–16–007	Open–Unacceptable Response.		Require standard on-the-job training (OJT) mentor selection criteria, including appropriate vessel traffic service operator work experience levels and instructor training requirements, for all OJT mentors.

Open Safety Recommendations issued to the U.S. Coast Guard (as of March 8th, 2022)—Continued

Rec. Number	Status	Most Wanted List (2021–22)	Recommendation Text
M–16–008	Open–Unacceptable Response.		Require all vessel traffic service (VTS) watch supervisors to achieve a VTS operator qualification and complete a minimum work experience requirement as an operator before serving as a supervisor.
M–16–009	Open–Unacceptable Response.		Modify your Vessel Traffic Service [VTS] National Standard Operating Procedures Manual, VTS center internal operating procedure manuals, and training curricula, as necessary, to ensure that VTS watchstanders share a common understanding of how to identify and respond to situations requiring navigational assistance.
M–16–011	Open–Unacceptable Response.		Conduct or sponsor research, with input from appropriate subject matter experts, to develop more effective procedures or methods for monitoring vessel communications on the bridge-to-bridge radio frequency to identify and address developing unsafe situations in vessel traffic service areas.
M–16–012	Open–Unacceptable Response.		Once the research recommended in Safety Recommendation M–16–11 is completed, revise your Vessel Traffic Service [VTS] National Standard Operating Procedures Manual, VTS center internal operating procedure manuals, and training curricula, as necessary.
M–16–013	Open–Unacceptable Response.		Work with the American Pilots' Association and the American Waterways Operators to conduct or sponsor research to evaluate and determine the feasibility and benefits of professional mariner representation on the watchfloor at each of the US Coast Guard vessel traffic service (VTS) centers, and establish such representation at VTS centers, as appropriate, based on the findings of that research.
M–16–014	Open–Unacceptable Response.		Revise your Vessel Traffic Service [VTS] National Standard Operating Procedures Manual, VTS center internal operating procedure manuals, training curricula, and VTS user manuals, as necessary, to ensure that VTS watchstanders use standard VTS communication phrasing and message markers from the International Maritime Organization Standard Marine Communication Phrases during radio communications with mariners when appropriate.
M–16–015	Open–Unacceptable Response.		Work with the Radio Technical Commission for Maritime Services and the American Waterways Operators to modify regulations, procedures, and equipment standards, as necessary, to ensure that vessels engaged in towing operations broadcast accurate automatic identification system information regarding tow size and tow configuration as well as vessel size.
M–16–016	Open–Unacceptable Response.		Develop a continuous risk assessment program to evaluate and mitigate safety risks for each vessel traffic service (VTS) area in the US Coast Guard VTS system that includes input from port and waterway stakeholders.

Open Safety Recommendations issued to the U.S. Coast Guard (as of March 8th, 2022)—Continued

Rec. Number	Status	Most Wanted List (2021–22)	Recommendation Text
M–16–017	Open–Unacceptable Response.		Develop a program for conducting periodic risk assessments of the entire US Coast Guard vessel traffic service system that includes input from port and waterway stakeholders to evaluate and mitigate system-wide safety risks.
M–16–018	Open–Unacceptable Response.		Develop or revise, as necessary, your definitions of the activity and incident data collected by vessel traffic service (VTS) centers as necessary to ensure standardized and routine reporting across the entire US Coast Guard VTS system.
M–16–019	Open–Unacceptable Response.		Establish a program to periodically analyze the activity and incident data collected by vessel traffic service (VTS) centers to assess the safety performance of each VTS center and the entire US Coast Guard VTS system.
M–16–021	Open–Unacceptable Response.		Establish a program to periodically review each of the 12-vessel traffic service (VTS) areas and seek input from port and waterway stakeholders to identify areas of increased vessel conflicts or accidents that could benefit from the use of routing measures or VTS special areas, and establish such measures where appropriate.
M–16–026	Open–Acceptable Response.		Amend Navigation and Vessel Inspection Circular 1–01 to ensure that (1) amphibious passenger vehicle (APV) operators tell passengers that seat belts must not be worn while the vessel/vehicle is operated in the water and (2) before the APV enters the water or departs the dock, the master or other crew-member visually checks that each passenger has unbuckled his or her seat belt.
M–17–001	Open–Acceptable Response.		Establish a process whereby, at regular intervals, all harbor safety committees identify the safety risks posed by the interaction of commercial and recreational vessels in their respective geographic areas; where necessary, develop and implement practices to mitigate those risks; and share successful practices among all harbor safety committees.
M–17–002	Open–Acceptable Response.		Seek statutory authority that requires all recreational boat operators on waters subject to the jurisdiction of the United States to demonstrate completion of an instructional course or an equivalent that meets the National Association of State Boating Law Administrators standards.
M–17–003	Open–Acceptable Response.		Work with the National Association of State Boating Law Administrators and the National Water Safety Congress to review and update A Guide to Multiple Use Waterway Management at regular intervals.

Open Safety Recommendations issued to the U.S. Coast Guard (as of March 8th, 2022)—Continued

Rec. Number	Status	Most Wanted List (2021–22)	Recommendation Text
M–17–006	Open–Acceptable Response.		Ensure that, at all times, at least one crewmember on board each type of response boat is adequately trained in the types of medical emergencies expected in a marine environment and qualified in the use of all first-aid and/or trauma equipment carried on board.
M–17–007	Open–Acceptable Response.		Develop a standard for the contents of First-Aid and Trauma (FAT) kits for each type of Coast Guard response vessel.
M–17–017	Open–Acceptable Response.		In collaboration with the National Weather Service, provide timely broadcasts of the Tropical Cyclone Forecast/Advisories, Intermediate Public Advisories, and Tropical Cyclone Updates to mariners in all regions via medium-frequency navigational TELEX (NAVTEX), high-frequency voice broadcasts (HF VOBRA), and high-frequency simplex teletype over radio (HF SITOR), or appropriate radio alternatives (and appropriate future technology).
M–17–022	Open–Unacceptable Response.		Propose to the International Maritime Organization that design maximum operating angles of inclination for main propulsion and other critical machinery be included in damage control documents, stability instruments and booklets, and in the safety management systems for all applicable vessels.
M–17–023	Open–Unacceptable Response.		Propose to the International Maritime Organization that all watertight access doors and access hatch covers normally closed at sea be provided with open/close indicators both on the bridge and locally.
M–17–024	Open–Acceptable Response.		Propose to the International Maritime Organization that on new and existing vessels, seawater supply piping below the waterline in all cargo holds be protected from impact.
M–17–025	Open–Acceptable Response.		Propose to the International Maritime Organization to require that new cargo vessels be equipped with bilge high-level alarms in all cargo holds that send audible and visible indication to a manned location.
M–17–026	Open–Acceptable Response.		Propose to the International Maritime Organization to require that existing cargo vessels be retrofitted with bilge high-level alarms in all cargo holds that send audible and visible indication to a manned location.
M–17–027	Open–Acceptable Response.		Propose to the International Maritime Organization that any opening that must normally be kept open for the effective operation of the ship must also be considered a downflooding point, both in intact and damage stability regulations and in load line regulations under the International Convention on Load Lines.

Open Safety Recommendations issued to the U.S. Coast Guard (as of March 8th, 2022)—Continued

Rec. Number	Status	Most Wanted List (2021–22)	Recommendation Text
M–17–029	Open–Unacceptable Response.		Propose to the International Maritime Organization that existing cargo vessels operating under the International Convention for the Safety of Life at Sea be required to have damage control plans and booklets on board that meet current standards.
M–17–030	Open–Unacceptable Response.		Propose to the International Maritime Organization that damage control plans and booklets required by the International Convention for the Safety of Life at Sea be class-approved.
M–17–031	Open–Acceptable Response.		Publish policy guidance to approved maritime training schools offering bridge resource management courses to promote a cohesive team environment and improve the decision-making process, and specifically include navigational and storm-avoidance scenarios.
M–17–032	Open–Acceptable Response.		Require recurring bridge resource management training for all deck officers when renewing their credentials.
M–17–033	Open–Acceptable Alternate Response.		Require that all deck officers, at both operational and management levels, take a Coast Guard-approved advanced meteorology course to close the gap for mariners initially credentialed before 1998.
M–17–034	Open–Acceptable Response.		Publish policy guidance to approved maritime training schools offering management-level training in advanced meteorology, or in an appropriate course, to ensure that the curriculum includes the following topics: characteristics of weather systems including tropical revolving storms; advanced meteorological concepts; importance of sending weather observations; ship maneuvering using advanced simulators in heavy weather; heavy-weather preparations; use of technology to transmit and receive weather forecasts (such as navigational telex or weather-routing providers); ship-routing services (capabilities and limitations); and launching of lifeboats and liferafts in heavy weather.
M–17–035	Open–Acceptable Response.		Provide policy guidance to approved maritime training schools offering operational-level training in meteorology to ensure that the curriculum includes the following topics: characteristics of weather systems, weather charting and reporting, importance of sending weather observations, sources of weather information, and interpreting weather forecast products.
M–17–036	Open–Unacceptable Response.		Require that vessels in ocean service (500 gross tons or over) be equipped with properly operating meteorological instruments, including functioning barometers, barographs, and anemometers.

Open Safety Recommendations issued to the U.S. Coast Guard (as of March 8th, 2022)—Continued

Rec. Number	Status	Most Wanted List (2021–22)	Recommendation Text
M–17–037	Open–Acceptable Response.		Revise Title 46 Code of Federal Regulations 170.110 (stability booklet) to require (1) stability instructions, guidance, or data on wind velocity used to calculate weather criteria; (2) list of closures that must be made to prevent unintentional flooding; (3) list of closures that must be made for an opening not to be considered a downflooding point; and (4) righting arm curve (metacentric height) table to note the angle at which initial downflooding occurs; also, add a windheel table for vessel full load displacement or the condition of greatest vulnerability to windheel.
M–17–038	Open–Unacceptable Response.		Update the guidance in Navigation and Inspection Circular 4–77 (Shifting Weights or Counter Flooding During Emergency Situations), based on the circumstances of the El Faro accident, to include a warning that actions by ship personnel intended to correct a list can produce dangerous results if roll-on/roll-off cargo is already adrift and water has reduced the coefficients of friction for lashed cargo.
M–17–039	Open–Acceptable Response.		Conduct a complete review of the Alternate Compliance Program to assess the adequacy and effectiveness of the program.
M–17–040	Open–Acceptable Response.		Review and implement training of Coast Guard inspectors and accredited classification society surveyors to ensure that they are properly qualified and supported to perform effective, accurate, and transparent vessel inspections, meeting all statutory and regulatory requirements.
M–17–041	Open–Acceptable Alternate Response.		Review and implement training of Coast Guard inspectors and accredited classification society surveyors to ensure that they are properly qualified and supported to perform effective, accurate, and transparent vessel inspections, meeting all statutory and regulatory requirements.
M–17–043	Open–Await Response.		Require that open lifeboats on all US-inspected vessels be replaced with enclosed lifeboats that meet current regulatory standards and freefall lifeboats, where practicable.
M–17–044	Open–Acceptable Response.		To prevent future errors in converting position data such as occurred in the El Faro accident, work with manufacturers of Global Maritime Distress and Safety System equipment, communication providers, and land earth stations to remove ambiguity from the Inmarsat-C distress alert position reports.
M–17–045	Open–Unacceptable Response.	Yes	Require that all personnel employed on vessels in coastal, Great Lakes, and ocean service be provided with a personal locator beacon to enhance their chances of survival.

Open Safety Recommendations issued to the U.S. Coast Guard (as of March 8th, 2022)—Continued

Rec. Number	Status	Most Wanted List (2021–22)	Recommendation Text
M–17–046	Open–Unacceptable Response.		Modify guidance and training for marine inspectors to ensure that voyage data recorder annual performance tests include the replacement of locator beacons prior to expiration and that audio used to evaluate quality is recorded while a ship is under way using its main propulsion unit.
M–17–047	Open–Acceptable Response.		Propose to the International Maritime Organization to amend resolution MSC.333(90) to specify that “normal operations” are defined as when a ship is under way using its main propulsion unit and to assess voyage data recorder problems, including not capturing both sides of internal phone calls on the bridge electric telephone and unrecorded very-high-frequency communications, and identify steps to remedy them.
M–17–048	Open–Acceptable Alternate Response.		If the actions recommended to the National Oceanic and Atmospheric Administration in Safety Recommendation M–17–52 establish that the automatic identification system (AIS) is a viable means by which to relay (with acceptable time delay) meteorological and oceanographic data and metadata from vessels at sea for use by global meteorological authorities, propose to the International Maritime Organization that vessels required to use AIS also be equipped with meteorological and oceanographic sensors including, at a minimum, sensors for barometric pressure and sea-surface temperature that will automatically disseminate the data at high-temporal resolution via AIS.
M–17–049	Open–Acceptable Alternate Response.		Propose to the International Maritime Organization that vessels under regulations of the International Convention for the Safety of Life at Sea that are not already automatically disseminating meteorological and oceanographic data by other means be required to manually disseminate such data while at sea via the automatic identification system or the Voluntary Observing Ship program at the times of 0000 coordinated universal time (UTC), 0600 UTC, 1200 UTC, and 1800 UTC.
M–18–001	Open–Acceptable Alternate Response.		Require operators to perform full function tests of quick-closing valves during inspections and examinations, ensuring that the associated systems shut down as designed and intended.
M–18–002	Open–Acceptable Response.	Yes	Evaluate the feasibility of creating a passenger vessel safety specialist billet at each sector that has the potential for a search and rescue activity characterized by the need for immediate assistance to a large number of persons in distress, and staff sector-level billets, as appropriate, based on the findings of that evaluation.
M–18–013	Open–Acceptable Response.	Yes	Require fire detection systems in unmanned spaces with machinery or other potential heat sources on board small passenger vessels.

Open Safety Recommendations issued to the U.S. Coast Guard (as of March 8th, 2022)—Continued

Rec. Number	Status	Most Wanted List (2021–22)	Recommendation Text
M–19–006	Open–Acceptable Response.		In collaboration with the Corps of Engineers, develop a policy to ensure fleeting areas are maintained in compliance with permit requirements.
M–19–007	Open–Acceptable Response.		Develop a regulated navigation area for the Pittsburgh region that would ensure the integrity of fleeting areas and include detailed requirements for barge moorings during highwater and ice conditions.
M–19–015	Open–Acceptable Response.		Require DUKW amphibious passenger vessels (commonly referred to as original and/or “stretch” DUKWs) to have sufficient reserve buoyancy through passive means, so that they remain upright and afloat with a full complement of passengers and crewmembers in the event of damage or flooding.
M–19–016	Open–Acceptable Response.		For DUKW amphibious passenger vessels without sufficient reserve buoyancy (commonly referred to as original and/or “stretch” DUKWs), require the removal of canopies, side curtains, and their associated framing during waterborne operations to improve emergency egress in the event of sinking.
M–20–001	Open–Acceptable Response.	Yes	Require that amphibious passenger vessels equipped with forward hatches enable operators to securely close them during waterborne operations to prevent water ingress.
M–20–002	Open–Acceptable Response.	Yes	Review the circumstances of the Stretch Duck 7 sinking and other amphibious passenger vessel accidents, and revise Navigation and Vessel Inspection Circular (NVIC) 1–01 to address the issues found in these accidents, including operations during imminent severe weather and emergency egress during rapid sinking.
M–20–003	Open–Acceptable Alternate Response.	Yes	Examine existing training and knowledge requirements for understanding and applying fundamental weather principles to waterborne operations for Coast Guard-credentialed masters who operate small passenger vessels; and, if warranted, require additional training requirements for these ratings on recognition of critical weather situations in pre-departure planning and while under way.
M–20–014	Open–Acceptable Response.		Revise Title 46 Code of Federal Regulations Subchapter T to require that newly constructed vessels with overnight accommodations have smoke detectors in all accommodation spaces.
M–20–015	Open–Acceptable Response.		Revise Title 46 Code of Federal Regulations Subchapter T to require that all vessels with overnight accommodations currently in service, including those constructed prior to 1996, have smoke detectors in all accommodation spaces.

Open Safety Recommendations issued to the U.S. Coast Guard (as of March 8th, 2022)—Continued

Rec. Number	Status	Most Wanted List (2021–22)	Recommendation Text
M–20–016	Open–Acceptable Response.		Revise Title 46 Code of Federal Regulations Subchapter T and Subchapter K to require all vessels with overnight accommodations, including vessels constructed prior to 1996, have interconnected smoke detectors, such that when one detector alarms, the remaining detectors also alarm.
M–20–017	Open–Acceptable Response.		Develop and implement an inspection procedure to verify that small passenger vessel owners, operators, and charterers are conducting roving patrols as required by Title 46 Code of Federal Regulations Subchapter T.
M–20–018	Open–Acceptable Response.		Revise Title 46 Code of Federal Regulations Subchapter T to require newly constructed small passenger vessels with overnight accommodations to provide a secondary means of escape into a different space than the primary exit so that a single fire should not affect both escape paths.
M–20–019	Open–Acceptable Response.		Revise Title 46 Code of Federal Regulations Subchapter T to require all small passenger vessels with overnight accommodations, including those constructed prior to 1996, to provide a secondary means of escape into a different space than the primary exit so that a single fire should not affect both escape paths.
M–20–020	Open–Acceptable Response.		Review the suitability of Title 46 Code of Federal Regulations Subchapter T regulations regarding means of escape to ensure there are no obstructions to egress on small passenger vessels constructed prior to 1996 and modify regulations accordingly.
M–21–005	Open–Await Response.		Conduct a study to evaluate the effects of icing, including asymmetrical accumulation, on crab pots and crab pot stacks and disseminate findings of the study to industry, by means such as a safety alert.
M–21–006	Open–Await Response.		Based on the findings of the study recommended in Safety Recommendation M–21–05, revise regulatory stability calculations for fishing vessels to account for the effects of icing, including asymmetrical accumulation, on a crab pot or pot stack.
M–21–007	Open–Await Response.		Revise Title 46 Code of Federal Regulations 28.530 to require that stability instructions include the icing amounts used to calculate stability criteria.
M–21–008	Open–Await Response.		Develop an oversight program to review the stability instructions of commercial fishing vessels that are not required to possess a load line certificate for accuracy and compliance with regulations.
M–21–015	Open–Await Response.		Propose to the International Maritime Organization to eliminate International Maritime Dangerous Goods Code special provision 961 for used and damaged flammable-liquid-powered vehicles transported by roll-on/roll-off vehicle carriers.

Mr. CARBAJAL. Thank you, Ms. Homendy.

We will now move on to Member questions. Each Member will be recognized for 5 minutes, and I will start by recognizing myself.

Admiral Mauger, given that the investigations often result in similar recommendations, why has the NTSB been more expedient than the Coast Guard in investigating the *Conception* incident? I understand the Coast Guard's own investigation still hasn't come to a conclusion. I understand there is a number of reasons for that. But if you could comment on that, that would be great.

Admiral MAUGER. Mr. Chairman, the Coast Guard and NTSB work very closely together when there is a major marine casualty to make sure that we bring the expertise of both organizations to bear on determining the facts and the primary cause for that casualty. But then we have different responsibilities in terms of the investigations that we carry out.

One of the responsibilities that the Coast Guard has to determine through our investigations is whether or not there is any evidence of potential criminal activity as well. And when there is evidence of potential criminal activity, then we work very closely with the Department of Justice and the Federal law enforcement agencies to refer our investigation to those organizations for further consideration and prosecution.

In the case of *Conception* and *Stretch Duck 7*, our casualty investigation information was referred to the Department of Justice and is awaiting their results on the criminal prosecution of both of those cases.

But we are not waiting to make sure that the lessons that we learned from our investigation are applied. In the time following both the *Conception* casualty and the *Stretch Duck 7* casualty, we released policy statements, we changed our compliance procedures, and we set about developing new safety regulations that come into effect next week that make sure that we strengthen the safety standards, even though our casualty investigation hasn't yet been concluded.

Mr. CARBAJAL. Thank you.

Admiral Mauger, in its investigation of the *Conception* incident, the NTSB reiterated its recommendations to the Coast Guard that it require all operators of U.S.-flag passenger vessels to implement a safety management system. And last year, the Coast Guard issued a proposed rulemaking SMS requirement for all passenger vessels.

Since it has been 2½ years since the *Conception* tragedy, when can we expect implementation?

Admiral MAUGER. Mr. Chairman, safety management systems are a key portion of that safety responsibility. As I mentioned in my opening statement, safety is a shared responsibility between the owner, the operator of the vessel, the captain and crew on board, and the Coast Guard. And the owner-operator is responsible for setting that safety culture and providing those resources to the captain and crew to do their job. And that is what safety management systems are intended to provide.

Last January, we released an advance notice of proposed rulemaking, describing our intent to issue safety management system regulations for passenger vessels. Through the public comment pe-

riod for that rulemaking, we received over 134 comments. Some of the questions that we had asked were: What were the benefits that industry members had seen for that? What were benefits the public had seen from the implementation of those safety management systems? How were they implemented? How did they check compliance? What were the costs associated with all those?

And so, with the 134 responses, we have got a wide range of comments ranging from implementation in excess of half a million dollars to implementation that was only in the tens of thousands of dollars to implement.

And so, we are working through—and then the passenger vessel industry, as well, is a very diverse industry. We are working through very carefully to make sure that we take all of that input into effect and put that together in a policy statement that will come out as a notice of proposed rulemaking. We are working very diligently to get that out as quickly as possible.

Mr. CARBAJAL. Thank you.

Ms. Homendy, you spoke a lot about the importance of SMS on all vessels in your testimony.

Would you care to comment on the Coast Guard's response?

Ms. HOMENDY. Yes. On SMS, I do understand rulemaking can be difficult. But in the meantime, we continue to see tragedies which have taken lives. So, moving forward in an expeditious manner is important. But while the Coast Guard is moving forward, there is nothing preventing the passenger vessel industry from implementing SMS voluntarily. And they should.

And we have seen incredible benefits in other modes of transportation including aviation where they have implemented safety management systems successfully. In fact, in commercial aviation—and I am sure Mr. Larsen can echo this—we have had, over the past 7 of the past 10 years in commercial passenger aviation, zero deaths. And that is what we want to see. That is the goal in small passenger vessel operations as well.

Mr. CARBAJAL. Thank you.

Chair Homendy, in your testimony, you provided an appendix which included the status of Coast Guard responses to NTSB recommendations. This is extremely helpful to see. So, I thank you for that information.

Could you explain what the NTSB considers an “unacceptable response” from the Coast Guard?

Ms. HOMENDY. Yes. Thank you for the question, Mr. Chairman.

An “unacceptable response” would be one that does not address our recommendation or fails to address it completely. We have, right now, 19 small passenger vessel recommendations that are open. Four of those are “open—unacceptable.” Those are around voyage data recorders which, without voyage data recorders, if you use aviation as an example, it would be like conducting an investigation without a black box.

And that information is critical not just for NTSB's investigation, but it is critical for the operator to know what happened after an accident occurs. That information is key.

So, we have four. Those 4 are “open—unacceptable” right now, and the rest of those 19 are “open—acceptable.” Overall, we have

93 open recommendations to the Coast Guard. About 34 percent are “unacceptable” right now.

Mr. CARBAJAL. Thank you.

Chair Homendy, would you send your family out on an “old T” overnight passenger vessel similar to the *Conception*?

Ms. HOMENDY. I have a daughter who is 14 and a husband, and I would not. The *Conception* was designed so it had an emergency egress and then the main entrance to the bunk area that both ended up into the same area which was engulfed in flames. I would not.

Mr. CARBAJAL. Thank you for your candid response, and I think that speaks volumes. So, thank you for answering that question.

With that, I am now going to move on to Ranking Member Gibbs for his questions. And I just want to remind everyone that we will have a second round of questions that I will be leading after we finish this round.

So, with that, Representative Gibbs.

Mr. GIBBS. Thank you, Chairman.

Admiral Mauger, it is always preferable for the Coast Guard’s marine casualty reports on final action memos from the Commandant before we move any legislation to improve on marine safety.

We had the final action memo related to the *El Faro* accident before we moved on the legislation. That related to that accident. However, we still do not have a marine casualty investigation on the Commandant’s final action memo for either the 2018 duck boat accident in Missouri or the 2019 *Conception* dive boat fire which occurred in the chairman’s district.

When do you expect these investigations to be available for the subcommittee to review?

Admiral MAUGER. Thank you, Ranking Member.

Our investigations are right now coordinated with the Department of Justice, pending the results of their actions with regard to criminal matters associated with both *Stretch Duck 7* and *Conception*.

But in the meantime, we are not waiting to identify any of those safety lessons learned from either of those accidents and take action on those safety lessons learned.

And so, we have looked to the National Transportation Safety Board and to our own investigators to learn what we can from those casualties and then implement regulations or implement policies and regulations to address those particular issues.

All of the provisions that were included in the Elijah E. Cummings Coast Guard Authorization Act of 2020, for example, have been incorporated into our regulations for small passenger vessel fire safety which takes effect on Monday next week.

Mr. GIBBS. That’s good. It sounds like you have moved on the safety. Just waiting for DOJ for any liability or criminal activity. So, I appreciate that answer.

Also, Admiral, I think this is already addressed. You said it here, next Monday—March 28th, I think that is next week—new rules to be for the small passenger vessel. I am looking through here on this chart. I assume it is a typo. I just bring this up just so they can correct it.

So, on some of those requirements in the chart, they say 3/28/2022 but some say 3/38. So, you might want to correct that typo. I don't think there are 38 days in March. That was tongue in cheek there.

Anyway, also GAO, Admiral, issued a report January 12th of this year, "Enhancements Needed to Strengthen Marine Inspection Workforce Planning Efforts." GAO made five recommendations regarding marine inspection workforce planning. I understand these recommendations remain open.

When does the Coast Guard intend to respond to the GAO's recommendations?

Admiral MAUGER. Thank you, Ranking Member.

We appreciate the oversight from Congress and the support that has been provided to strengthen our marine inspection program. And so, the GAO report identified a number of areas where we can take further improvements by collecting additional data and reporting on additional data. And so, we continue to evaluate that and will look forward to responding to GAO as quickly as possible with a detailed plan for how we are going to address those recommendations.

We have incorporated many of the ideas identified in the GAO report already into our prevention readiness initiative. As you know, the Commandant has really been focused on the readiness of the Coast Guard workforce in general.

And so, with the Commandant's support, the Coast Guard has published a prevention readiness initiative which is really aimed at making sure that we have the people and the governance and the technology to enable our inspectors and investigators and marine safety personnel to be as capable as they can because their work is just so important.

Thank you.

Mr. GIBBS. I think, Mr. Chairman, I have got a couple more questions. But I will wait for the second round since my time is running low here.

I'll hold on for the second round, so I'll yield back at this time. Thank you.

Mr. CARBAJAL. Thank you, Representative Gibbs.

We will now move on to Representative Larsen.

Mr. LARSEN OF WASHINGTON. Thank you, Mr. Chair.

First off, I do want to express my condolences, as well, to the families of the victims of the *Conception*, as well as of the duck boat incident in Missouri. We had our own incident, duck boat incident, here in Washington State in Seattle. And my first question is for Chair Homendy on that issue.

Your testimony references the investigation of a duck boat crash in Seattle in 2015. That investigation led to the recommendation that the Coast Guard amend its Navigation and Vessel Inspection Circular 1-01 to ensure passengers unbuckle before waterborne operations, and the crew confirms passengers have complied.

Now, that recommendation has not yet been followed by the Coast Guard but you classify that as "open—acceptable response." So, I was wondering, Chair, is the failure to implement a recommendation an acceptable response? Can you explain how the NTSB approaches that? How should we read that?

Ms. HOMENDY. Yes. Thank you for the question, Chairman Larsen.

When we consider a recommendation status change, that does come to the Board. And the Board considers staff recommendations. When we look at all the factors, we look at: Is there an opportunity, or has the Coast Guard moved in the direction in any way of implementing that recommendation or signaled that they may implement that recommendation? We don't want to close it or close it "unacceptable" if there is a possibility that that could move forward.

One thing to keep in mind is our reporting to the committee, often you won't know when something is "closed—unacceptable" but you will continue to be notified when something remains "open—unacceptable" or "open—acceptable." So, we want to keep that open if there is any possibility of moving forward on a recommendation. Otherwise, it stops communication on that recommendation, especially with the Coast Guard. So, we try to keep it open to move things forward.

Mr. LARSEN OF WASHINGTON. All right. Your testimony also states NTSB has recommended that Coast Guard require all companies operating domestic passenger vehicles develop and implement a preventive maintenance program for all systems affecting the safe operation. That recommendation has been open for 20 years, I think is what it shows.

What has been the impediment in having that recommendation implemented?

Ms. HOMENDY. Great question. And the reason why we have kept that one open for 20 years is the Coast Guard has indicated that they may consider preventative maintenance as part of the SMS program or SMS rulemaking that they are moving forward. So, we are keeping that open.

The official response that we have heard from the Coast Guard is that they had not intended to move that forward, but we are keeping it open in hopes they do move that forward as part of the SMS.

Mr. LARSEN OF WASHINGTON. We will track that.

Ms. HOMENDY. As far as why they have not implemented it, possibly Admiral Mauger can discuss further.

Mr. LARSEN OF WASHINGTON. All right. Well, we will track that. I have a different question for the admiral right now if you don't mind.

Admiral, you mentioned the use of machine learning and artificial intelligence tools in order to improve the targeting, if you will, of what your inspectors look at. Can you tell us what Coast Guard is doing to do the quality assurance on those algorithms to ensure that the algorithms that you are using in your machine learning actually spit out the best areas for the Coast Guard to target for inspections?

Admiral MAUGER. Congressman Larsen, what we have been able to do is, first of all, we assembled a panel of experts, collected information both from our own investigations and from the NTSB investigations, and then the information that is recorded in our internal databases of every inspection investigation that have been conducted by the Coast Guard.

And then we used the machine learning to identify which of those parameters were really key in identifying those risk drivers.

And then to sort of validate that model, we sent folks out into the field. We used our field inspectors to follow up and conduct the inspections and look at those factors with specific guidance and then bring that information back into our database.

And so, through that targeting process that we have been able to do, we have been able to correct a number of deficiencies and have put our most experienced inspectors on the highest risk or highest priority vessels and have put them on there more frequently than we otherwise would have. And so, it seems—

Mr. LARSEN OF WASHINGTON [interrupting]. Thank you.

Admiral MAUGER [continuing]. From the information that we have collected, it is working.

Mr. LARSEN OF WASHINGTON. Thank you. I have run out of time.

But, Mr. Chair, I just don't want us to rely on the algorithms to produce the responses. We need to be sure we keep people in the loop on these, as well, and that was the purpose of my question, Mr. Chair.

Thank you. I yield back. Oh, I have no time to yield back.

So, Mr. Chairman, please. Thank you.

Mr. CARBAJAL. Thank you, Mr. Larsen.

Next, we will go to Representative Weber.

Mr. WEBER OF TEXAS. Mr. Chairman, go ahead and pass me by right now.

Mr. CARBAJAL. Thank you. We will now then move on to Representative Lowenthal.

Mr. LOWENTHAL. Thank you, Mr. Chairman. Thank you for holding this hearing. I, too, wish to send my condolences to the families of those that died in the tragic accident in Santa Barbara. And I also want to send my condolences to the family of the Dean of the House of Representatives, Don Young.

My first question is to Admiral Mauger. In 2014, Admiral, the NTSB recommended that the Coast Guard require installation of voyage data recorders, or VDRs, that meet the international IMO standard for voyage data recorders on new and existing ferry vessels. Chair Homendy just talked about and reiterated that recommendation.

Voyage data recorders aid in investigating and analyzing the causes of accidents and identify remedial actions to help prevent future occurrences. Thus, the overall benefit of the system is enhanced passenger safety resulting in more lives saved.

However, the Coast Guard's response to this recommendation is currently classified as "open—unacceptable response." Again, Chair Homendy talked about that. The Coast Guard has indicated that an economic analysis shows that the benefits do not outweigh the costs.

Admiral Mauger, can you elaborate on the reasoning behind the Coast Guard's nonconcurrency?

Admiral MAUGER. Congressman, as part of any rulemaking that the Coast Guard undertakes, unless it is specifically directed not to by Congress, the Coast Guard is required by Federal regulations to conduct an economic cost-benefit analysis for that rulemaking.

And so, in the case of voyage data recorders and the work that was done and the standard that was referenced there, we determined that for many of these small businesses, it would have a significant economic impact.

That said, as marine safety professionals, we want to have every available information to us to determine the cause and contributing factors to a casualty and want to make sure that we can do our best to learn from those and move forward.

And so, technology is changing very rapidly. Cell phones and small electronics have the ability to track speed and location and record information. And so, we are looking to see if there is another technological solution to voyage data recorders that might help to ensure safe operations, while also providing information post-casualty that we can rely on.

Mr. LOWENTHAL. Thank you, Admiral.

I have another question that is related. Can you explain why the Coast Guard supports the IMO's efforts for VDR requirements on vessels traveling on international voyages but does not support a VDR requirement domestically, specifically for passenger ferries which transport millions of passengers each year? Why do you support this on international voyages but not on domestic voyages?

Admiral MAUGER. Congressman Lowenthal, the rules that are in effect have been applied to international operating vessels, as you have identified. These vessels travel worldwide and can be far out of the reach of marine safety law enforcement agencies or marine safety agencies. And so, being able to see what happens no matter where they are operating is very important. There are also lots of lives and cargo at stake in those operations as well. And so, having the VDR for those international traveling vessels is something that has been a key part of the international regulations.

We will continue to look to see what can be done here domestically, albeit with a different standard, to make sure that we have the benefits of that information.

Mr. LOWENTHAL. Thank you, Admiral.

I will follow up on these questions in the second round.

And I yield back.

Mr. CARBAJAL. Thank you, Representative Lowenthal.

Next we will go to Represent Napolitano.

Mrs. NAPOLITANO. Thank you, Chairman Carbajal.

My condolences to my friend's family, especially his wife Anne, for the passing of Don Young.

And to the families, keep up your voices. We represent you. We need your input, definitely.

Thank you, Mr. Chairman, for holding this critical hearing and I'm grateful for your incredible leadership on this subcommittee and the great work you have done in the Coast Guard. We must ensure that boaters, families, and customers are protected in secure vessels that are operating safely.

Chairwoman Homendy, it is great to see you again. I recall you being in my district 15 years ago to discuss rail safety. And since we have implemented Positive Train Control, which has created a safety for railroad, since that time, no more hairline cracks in the rail. And that has proven to avoid accidents such as the one we had several years back.

We are here again in California due to tragic accidents in the maritime industry, but my concern is: Do you have enough inspectors to do the job? Is the budget there for you to do that job? And is there anything we can do, maybe provide more policy, to speed up the response from the Coast Guard on the length of time it takes to respond to some of the recommendations the NTSB has?

Ms. HOMENDY. Thank you for your questions.

And it has been an absolute pleasure working with you, Chair Napolitano, over the years on rail safety, grade crossing safety, and a number of safety issues.

With respect to the NTSB, we submitted a proposal for reauthorization. Our authorization expires at the end of this year. So, we are up for reauthorization.

The size of our agency, frankly, has not grown since 1998. Yet requirements have grown. Right now, in our agency, 30 percent of our workforce is retirement eligible—30 percent. In the next 5 years, that grows to 50 percent. That shows the commitment of our agency workforce to stay and work on safety issues, even if they take 50 years like PTC did. But they need additional resources. Our Office of Marine Safety has 11 investigators; our Railroad, Pipeline, and Hazardous Materials Investigations Office, also 11 investigators. Our Highway Safety Office is in the 20s for investigators. So, we need resources.

We have a number of challenges. Transportation is growing. New technologies are emerging. That creates complexities, and so, we would need additional resources from Congress to help make that happen.

We did submit a proposal to increase our authorization levels, about \$10 to \$15 million annually over the next 5 years, which would grow from about \$129 million to about \$170 million or \$175 million at the end of fiscal year 2027. So, we would greatly appreciate your support on that.

With respect to recommendations, when the Coast Guard was removed from DOT, there was no longer a requirement for the Coast Guard to respond to the NTSB within 90 days of issuance of a recommendation. Currently we have one recommendation where we received an initial response but haven't heard anything from them for 5 years. And so, creating more timely responses would be helpful. And I know that is actually in the Coast Guard reauthorization bill that is currently before the subcommittee and the committee, and we would greatly appreciate that.

One thing that is not in there, which we would appreciate you including, is the Secretary of Transportation is also required to report annually on the recommendations in our Most Wanted List that have not been implemented. That does not apply to the Coast Guard right now also because that occurred after they were removed from DOT. So, we would appreciate your consideration of that as well.

Mrs. NAPOLITANO. I am sure Mr. Carbajal will make sure that goes into the record.

I think I will yield. Thank you.

Mr. CARBAJAL. Thank you, Representative Napolitano.

I will now recognize each Member again for an additional 5 minutes of questions.

I will start by recognizing myself, and I will start with Chair Homendy.

Do you have concerns with the Coast Guard's current steps to implement requirements from section 8441 of the Elijah E. Cummings Coast Guard Authorization Act of 2020?

Ms. HOMENDY. Thank you for the question, sir. I had to track which one was the section, the section number. I apologize for that.

No. I appreciate the Coast Guard's efforts to move that forward. I appreciate your action to include that in the legislation, and I do appreciate they are moving that forward on a timely basis.

So, thank you.

Mr. CARBAJAL. Proceeding from the perspective of NTSB, does the Coast Guard have the resources it needs to enforce the compliance of small passenger vessel safety regulations? I know you touched on it from a global perspective, from the scope of all the responsibility you have, from aviation, rail, marine safety. But specifically for marine safety, since today we are focusing on that, if you could elaborate, I would appreciate it.

Ms. HOMENDY. For the Coast Guard resources?

Mr. CARBAJAL. Yes.

Ms. HOMENDY. Yes, I mean, the Coast Guard has been an incredible partner with NTSB. And, frankly, they need more resources as well. They have incredible personnel who are dedicated to safety, and their leadership has really worked well with the NTSB including Admiral Buschman, Admiral Mauger, and then Captain Neubauer who works with us on our safety recommendations and on our investigations. So, we appreciate the safety partnership.

Mr. CARBAJAL. Admiral Mauger, that was an opportunity for somebody to advocate for more resources for your department so you wouldn't have to do it.

Ms. HOMENDY [to Admiral Mauger]. You can advocate for my resources, though, next, if you would like.

[Laughter.]

Mr. CARBAJAL. Moving on, Chair Homendy, to what extent does the Coast Guard work with the NTSB to respond to the issues identified during accident investigations? Does the collaboration also include the development and training curriculum that covers accident investigations and the consequences of poor inspections or inspection practices?

Ms. HOMENDY. Yes, sir. When we conduct any investigation, we look at investigations from a very broad perspective. And that, of course, includes training and inspection as well.

Mr. CARBAJAL. Thank you.

Admiral Mauger, according to the 2022 GAO report on the Coast Guard's marine inspection program, the Coast Guard's own analysis indicated that it had about 24 percent fewer marine inspectors with the advanced qualifications than it needed to conduct its work.

How does the Coast Guard plan to complete its inspections, given the policy that these inspections be conducted by marine inspectors with advanced qualifications?

Admiral MAUGER. Mr. Chairman, we work very closely to make sure that we have prioritized and allocated our resources to the most pressing needs. And so, right after *Conception*, we released an

inspection policy, a revised inspection policy, that put our most experienced inspectors on those vessels that were presented the greatest risk. And we did so, making sure that they were on there more than just once a year.

As we go forward, it is a combination of making sure that we have the people. Over the course of the last 3 years, we have, with congressional support, we have added 126 people to the marine safety program. Eighty-seven of those are out in the field, and we have added about \$18 million as well.

But as we go forward, we will continue to build on those requests because the industry that we operate in just is getting increasingly more complex and more congested every day. So, it is important that we stay after that.

Mr. CARBAJAL. Thank you.

Admiral Mauger, the NTSB's investigation of the *Conception* incident found that the vessel and other vessels of the operating company were regularly operating in contravention of the regulations and the vessel certificate of inspection, which required a roving patrol at night and while passengers were in their bunks.

The NTSB recommended that the Coast Guard develop and implement a means to verify that small passenger vessel owners, operators, and charterers are conducting roving patrols as required by 46 CFR Subchapter T and my bill, the Small Passenger Vessel Safety Act, which required devices to ensure crews on the watch are awake. The Coast Guard previously indicated the requirements of the vessels will take effect on or around March 28.

Can you comment on where this stands and if we expect vessels to have the technology operational next week?

Admiral MAUGER. So, under the regulations, Mr. Chairman, they are required to submit their plans for how they will come into compliance with the roving watches and the recording of their watches. They are required to submit those plans next week. And so, we will work very closely with the different small passenger vessel operators to make sure that those plans meet both the intent of the regulation and the safety recommendations that have found.

In the interim, though, we have also deployed or conducted operations where we have gone out and checked throughout the summer, last summer, to make sure that vessels did have somebody awake and alert and were standing proper watches while they were underway, conducting their operations. And so, that was a change from previous practice in this area.

Mr. CARBAJAL. Thank you, Admiral.

We will now move on to Representative Gibbs.

Mr. GIBBS. Thank you, Chairman.

Admiral, there's a concern out there about the IT failing—IT infrastructure the Coast Guard has, and it has really placed particular constraints on the marine inspectors because they have been unable to implement those IT solutions. I guess a lot of the inspector's work is done largely away from the office and could benefit from more robust mobile computing capabilities.

What efforts are being undertaken as part of the Coast Guard's IT revolution to improve mobile IT resources for the marine inspectors?

Admiral MAUGER. Ranking Member, with support from this subcommittee and from Congress through appropriations under the CARES Act and through our fiscal year appropriations, Congress has appropriated funds to allow us to really transform our information technology backbone. And that's really important to our marine safety program because, as we talked about earlier in this hearing, we use the information that's collected during those inspections and investigations to conduct targeting and risk assessments and drive our policies and procedures forward to ensure their safety.

And so, with the money appropriated under the CARES Act, we have made investments in strengthening the overall IT architecture and then have rolled out new mobile technology as well, including the mobile inspect app, which allows our inspectors to enter the results of their inspection while they are out in the field. We look forward to continuing to build out that capability as well going forward.

Mr. GIBBS. Well, that is good to hear, Admiral. I guess, in future hearings, you can update us on the progress of that and how it's rolling out and how it's improved efficiencies and all that, so I appreciate that.

Also, Admiral, the committee has been requested from the industry to double the time between inspection of the LNG tankers due to problems with scheduling of those inspections. We are told that is due to the limited availability of the inspectors. Pursuant to those requirements, the National Defense Authorization Act, the Coast Guard has set aside 64 billets, including 24 new billets to investigate and prosecute sexual assault and sexual harassment in the Coast Guard.

How many new marine inspection billets does the Coast Guard intend to create?

Admiral MAUGER. So, the fiscal year 2022 appropriation included a number of new inspection billets. We have a new training program that allows folks that come into the Coast Guard as enlisted members to become warrant officers and become marine inspectors through that program. So, we have added about a dozen additional billets to train and develop those.

We have also added a number of billets to the field, about two dozen billets, to improve the training of our marine inspectors out there in the field. So, this is an issue we take very seriously. We have a prevention readiness initiative that was developed under the direction of Admiral Schultz to make sure that we continue to develop and grow the capacity and capability that we need to oversee the safety within this industry.

Mr. GIBBS. OK. Because I know, like I said, the industry is really concerned about inspection timing. So, I appreciate that and appreciate all the work you are doing and also Chair Homendy.

Mr. Chairman, I yield back. I don't have any more questions. Thank you.

Mr. CARBAJAL. Thank you, Ranking Member Gibbs.

Next, we will move on to the chairman of the Aviation Subcommittee, Mr. Rick Larsen.

Mr. LARSEN OF WASHINGTON. Thank you, Chair. I appreciate the opportunity to participate even remotely from just north of you in

Washington State. I am glad to be on today. I am glad you invited me, let me know about it.

I wanted to follow up with the admiral with regards to the question I had for Chair Homendy. I am just reading from my notes here about the one recommendation that has been open for 20 years.

The NTSB testimony recommended that the Coast Guard require all companies operating domestic passenger vessels develop and implement a preventive maintenance program for all systems affecting the safe operation of those vessels. That has been open for 20 years.

Can you walk through—you weren't doing this 20 years ago, but you are doing it now. Can you walk through a little bit how a recommendation can go for 20 years instead of closed and being successfully implemented? The admiral.

Admiral MAUGER. Congressman Larsen, safety on board is a responsibility of the owner-operator, the captain and crew and the Coast Guard. So, the owner-operator is really responsible for setting that safety culture, providing the resources and training that the captain and crew need to do their job, and following through with effective management and oversight of the vessel.

So, from that perspective, programs like preventative maintenance or safety management systems are really an important part of that overall network and framework of safety on board the vessels. We are also required, though, as I mentioned previously, when we issue regulations, we are required by Federal regulation or Federal mandates to take into account cost-benefit for implementation of those policies. And so, this is something that we have been working at and continuing to look for opportunities to understand, particularly as technology and policies adapt but as we learn more too, to implement this. So, we have wanted to keep this open and continue to continue to work at this and appreciate the NTSB's continued emphasis on this point.

Mr. LARSEN OF WASHINGTON. I think Representative Gibbs asked my questions about the—kind of how you develop your inspectors because you are targeting your most experienced inspectors on some things, but you need to ensure that you have a pipeline of folks to fill those roles as those inspectors either leave the Coast Guard or get their next job or so on.

Is there anything more you wanted to say to address that, the pipeline of inspectors and ensure a qualified inspector pipeline?

Admiral MAUGER. Congressman Larsen, we want to make sure that we have a strong inspection workforce to be able to carry out this really important safety mission. And so, we have worked very closely with Congress over the course of the past 10 years through the Marine Safety Performance Plan to report out on statistics and report out on the status of our inspection workforce. In the last 3 years, that has translated into additional people doing this work. So, we have added 126 billets over the last 3 years. Eighty-seven of those are out in the field, and they are doing the prevention work that needs to be done.

One of the important pieces that we have added into that as part of our overall readiness initiative is this program called the Enlisted Marine Inspector Training Program, where we transition

members from their enlisted career into an officer career through a focused mentorship and apprenticeship in marine inspections. This has gotten a lot of great support from the members within the Coast Guard who are excited to be able to carry out those opportunities. And we expect that it will have a real benefit for both us and the industry as we are bringing, creating the opportunity for more marine inspectors earlier in their career, which means that they should be able to stick around for longer in their career.

So, we really appreciate the support from Congress on both of those initiatives.

Mr. LARSEN OF WASHINGTON. Thank you.

Chair, if you will just indulge one question for Chair Homendy about aviation. There was a crash this morning—yesterday, in China, of a 737–800.

And if the Chair could just remind us what NTSB's role plays when a U.S.-made airplane crashes in a foreign country and what you are going to be doing in that regard.

Ms. HOMENDY. Yes. Thank you for the question.

We are currently speaking with the State Department and others as the situation develops. But under Annex 13, we would be technical advisors for the investigation. And so, with respect to that particular accident, we will have more information as the day goes on. So, if you are interested, I would be happy to have a further conversation with you to let you know what we intend to do.

Mr. LARSEN OF WASHINGTON. I appreciate that. Thank you.

Thank you, Mr. Chair.

Mr. CARBAJAL. Thank you.

Now, we will move on to the distinguished gentleman, Mr. Lowenthal. I just want to say that Mr. Lowenthal has been a great mentor. I am disappointed that he will be leaving us at the end of this term.

In addition to being on this subcommittee, Mr. Lowenthal sits on the Natural Resources Committee and is the chairman of the Energy and Mineral Resources Subcommittee. But again, you are going to be a big loss to our Congress, Mr. Lowenthal, and I really appreciate you taking the time and being in our hearing today.

You're next.

Mr. LOWENTHAL. Thank you, Representative Carbajal, Salud, really, for those kind, kind words. I am going to be around for a while, so we will have plenty of time to talk about the future.

In my last questions, I asked Admiral Mauger, could he explain the Coast Guard's "open—unacceptable response" to the fact that the Coast Guard supports the IMO's efforts for VDR requirements on vessels traveling on international voyages but does not support a VDR requirement domestically, specifically for passenger ferries, which transport millions of passengers each year. And I thank the Admiral for his response.

But I would like to ask Chair Homendy: In your opinion, Chair Homendy, is there any significant difference between international voyages and domestic voyages that would warrant this disparity in the Coast Guard's reasoning?

Ms. HOMENDY. There is not.

Mr. LOWENTHAL. Well, that's a really complete answer.

Ms. HOMENDY. There's no difference. And, Congressman, just to add to that, Admiral Mauger had mentioned additional information from cell phones and iPads. There is a big difference between a cell phone and an iPad and a voyage data recorder. This was a recommendation we issued a number of years ago.

And, like I said, it is like investigating a plane crash without a black box. This is critical information, not just to our safety investigation, but it is critical information to parties to the investigation. The parties to the investigation, which would include companies and others, and they would get access to that information early on so that they could take measures to improve safety early.

And so, that's why we think it's critical to have voyage data recorders. I think in order to move that forward, Congress is going to have to require it. We have not seen progress with the Coast Guard on this issue. And the response has focused on the cost-benefit analysis. From NTSB's standpoint, lives are priceless. And all lives—we should do everything we can to save lives and to prevent tragedy. So, we currently are working to continue to push VDRs and will continue to do that, and hope that Coast Guard takes action.

Mr. LOWENTHAL. Thank you for that very complete answer.

Admiral Mauger, when it comes specifically to passenger ferry vessels, what resources unique to vessel safety of this class of vessels is the Coast Guard most efficient in that would aid in its inspection of these vehicles?

Admiral MAUGER. Congressman Lowenthal, in terms of the passenger vessel ferry industry, as you mentioned in your remarks, these are vessels that carry really millions of passengers to work or school every day. And so, the inspection that's required for those vessels still complies with our regulations, but it really relies on that good field-level working cooperation between the Coast Guard and the ferry operations where they occur in the Nation.

In terms of how we roll that out at the national level, it's really about getting more inspectors that are properly trained and outfitted with the right capability to do their job. Our prevention readiness initiative is increasing the number of inspectors we have, is modernizing their training system so that they can be more effective at their job, and providing them with the technology that they need to be able to enter and conduct their exams on board those vessels.

Mr. LOWENTHAL. Thank you, Admiral.

With that, I am going to yield back to the distinguished chair, Chair Carbajal.

Mr. CARBAJAL. Thank you, Mr. Lowenthal.

With that, we will go to Representative Napolitano, who I failed to mention earlier. She is the chairwoman of the Committee on Transportation and Infrastructure's Water Resources and Environment Subcommittee. If you noticed, many of my colleagues that joined us today also happen to be in leading roles on other subcommittees, and I am very grateful for all of them taking the time to be part of our subcommittee hearing today, not just those that serve on my subcommittee, but that go above and beyond and have a relationship to our subcommittee.

Chairwoman Napolitano.

Mrs. NAPOLITANO. Thank you, Chairman Carbajal.

Admiral, the Coast Guard is underrecognized, as far as I am concerned, in Congress, many of the agencies. You are critical to a lot of our safety.

What about the funding that you are receiving? I know sometimes we ask, and we get some answers based on the administration side of it, but what do you really need to be able to do a job that you are required to do, especially in training the officers and making sure that we have enough personnel? Like you are saying, is there a difference between those that operate the vessels for work and school versus tourism? How do you differentiate? How are you able to prioritize any of these areas?

Admiral MAUGER. Congresswoman, thank you for those kind comments about the Coast Guard. The Coast Guard is committed to Safety of Life at Sea. We work very hard to make sure that we have the standards, the compliance activities, and learn from every accident to improve those standards and compliance activities.

In order to continue to move forward, this is an increasingly complex maritime system that we operate in. There are more vessels coming into the U.S., as you know, down in your district, bringing cargo. It's absolutely necessary for our economy and for our Nation, but it makes it a complex environment for us to work in. And that's why we have really focused on the readiness of our workforce.

And so, over the course of the past 10 years, we have been submitting a Marine Safety Performance Plan to the subcommittee to keep them apprised of our efforts in building that, but under this Commandant, really dialed in on the readiness of the people. And that's making sure that we have the right people and the right technology and the right governance to do that work.

So, that has resulted, in just the last 3 years, 126 billets coming in to do this work; 87 of those will be out in the field. And they're getting after all elements of it from improving our ability to conduct inspections, making sure that we are addressing things like cybersecurity, and then also the improvements of the training of our workforce, too. So, there are a number of improvements made. We will continue to keep the subcommittee apprised and continue to work on it.

Mrs. NAPOLITANO. But what about the budget, sir? Be honest.

Admiral MAUGER. Congresswoman, our readiness is wrapped up in the budget that the President submits to Congress each year. And so, we will continue to keep this subcommittee apprised of our progress towards that prevention readiness initiative and getting after that.

Mrs. NAPOLITANO. Great. Well, as far as implementing a recommendation from the NTSB, I understand the reticence of the marine vessels' compliance with the regs; they would be brought kicking and screaming just like they did with the railroads on the Positive Train Control. But it saved many lives, and it's worth it. And I hope the public recognizes that it is important for them to understand why the regs are there and that it is costing the vessels money, and thereby it increases the charge for operating on these recreation/tourism areas. But I don't think that we should be penny-pinching when it comes to safety.

Chairwoman Homendy, we are again, in California, due to tragic accidents, and this time, of course, is the maritime, as explained. What tools, infrastructure, and regulations are needed to address maritime safety in the way we have been successful with the railroad industry?

Ms. HOMENDY. Thank you for the question, Chair Napolitano. There are many chairs here today. That's why I keep referencing that. But thank you.

And it's implementing our recommendations. We have 93 open recommendations to the Coast Guard, and it's implementing our recommendations in moving forward.

One we that haven't discussed today is personal locator beacons. We have a recommendation that came out of *El Faro* and others to have personal locator beacons. And we are aware of marine accidents where crewmembers and others were—we were able to—or the Coast Guard was able to find them because they had personal locator beacons. These are \$300 GPS units that were provided or used by crewmembers. And we have recommended that that be mandated so that crewmembers are provided those personal locator beacons just in case there is an accident, and they can be located in waterways.

Mrs. NAPOLITANO. Is there a reason, Admiral, that this is not implemented?

Admiral MAUGER. Congresswoman, we are working very closely. This is another area where technology is emerging very quickly. You mentioned in your remarks about that comparison between cost and safety, and there shouldn't be a price on safety. Under those Federal regulations that we are required to comply with, we do have to make that economic analysis unless Congress directs us not to.

Under the leadership of this subcommittee, through the Elijah E. Cummings Coast Guard Authorization Act of 2020, Congress directed the implementation of these important fire safety regulations that are kind of coming into effect next Monday. And they did so in a way that allowed us to move as quickly as possible by bypassing the APA or provisions of the APA for the development and implementation of the interim final rule. So, that is one of the solutions and ways that Congress has been very helpful in helping us move forward on this important issue.

Mrs. NAPOLITANO. Well, I hope it doesn't take forever to implement some of these lifesaving techniques and infrastructure, because it depends on who is on that boat whose life you may save.

Thank you, Mr. Chair.

Mr. CARBAJAL. Thank you, Representative Napolitano.

This concludes our hearing. I want to thank the city of Santa Barbara for making this hearing room available to us.

I would like to thank the witnesses for your testimony and the answers to our questions.

Again, I want to recognize the families that are here who have gone through so much. Thank you for being here.

I ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing. I also ask unanimous consent that the record remain open for 15 days for

additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

The subcommittee stands adjourned.

[Whereupon, at 2:25 p.m., the subcommittee was adjourned.]

SUBMISSIONS FOR THE RECORD

Prepared Statement of Hon. Peter A. DeFazio, a Representative in Congress from the State of Oregon, and Chair, Committee on Transportation and Infrastructure

Although I'm not able to join you, I want to thank Mr. Carbajal for organizing today's gathering. There is no better way to ensure that government entities, who are tasked with protecting lives and promoting safety, are held accountable than to discuss such matters in a public space, particularly when active stakeholders are invited into the process. To the family members of the victims of the CONCEPTION tragedy that are listening today, I offer my condolences for your loss and commend your bravery and empathy in engaging in these issues for the benefit of others.

Today's witnesses are subject matter experts on small passenger vessel safety. Specifically, they have invested significant time investigating, reporting on, and learning from maritime disasters including, but unfortunately not limited to, the CONCEPTION fire. Admiral John Mauger, Assistant Commandant for Prevention Policy for the Coast Guard, is responsible for the development of national policy, standards, and programs promoting marine safety, security, and environmental stewardship. The Honorable Jennifer Homendy is Chair of the National Transportation Safety Board, an independent federal agency charged with investigating maritime, aviation, and rail incidents that resulted in loss of life. The Coast Guard and NTSB work together to review transportation disasters to produce and implement recommendations that save future lives. Today's hearing is a step in that process.

In addition to fire safety recommendations, I expect the subcommittee will discuss buoyancy requirements for DUKW-type boats—those vessels that travel on both land and water—as well as Coast Guard vessel inspector training needs, marine hazards communication, and vessel-specific emergency response planning requirements. As the Coast Guard develops its final rule on the new small passenger vessel safety requirements, and as Congress creates and considers the Don Young Coast Guard Authorization Act of 2022 and the National Defense Authorization Act of 2023, I see ample opportunity to write the recommendations we are discussing today into law so that improved safety standards can be enforced both at sea and, if necessary, in the courtroom.

I thank my colleagues, the witnesses, and the audience for their attention to this cause and their participation in this hearing.

APPENDIX

QUESTIONS FROM HON. SALUD O. CARBAJAL TO REAR ADMIRAL JOHN W. MAUGER,
ASSISTANT COMMANDANT FOR PREVENTION POLICY, U.S. COAST GUARD

Safety Regulation Violations

Question 1.a. In the case of the *Conception*, a previous captain testified in an interview that the owner regularly did not require an overnight watch. What should captain or crew do when faced with an owner or captain that violates safety regulations (no night watch/faulty fire detection & suppression systems)?

ANSWER. When a captain or crew is faced with an owner or captain that violates, or directs them to violate, safety regulations, they should notify the nearest Coast Guard Sector, Coast Guard Marine Safety Unit, or Coast Guard Marine Safety Detachment to report the violation. If the violation creates an emergency, requires immediate attention, or results in a marine casualty, the captain or crew should contact the Coast Guard via VHF Ch. 16 or via the local Coast Guard Sector Command Center 24-hr emergency number.

Furthermore, 46 U.S.C. § 3315, “requires an individual holding a license issued by the Coast Guard to assist inspection authorities and to make defects and imperfections known to those authorities. Anyone licensed also has a duty to report any marine casualty producing serious injury to the vessel, its equipment, or individuals on board the vessel. These licensed individuals who have this statutorily-imposed duty to disclose are also protected by prohibiting any government official from disclosing the identity or source of the information except as authorized by the Secretary.”

Question 1.b. Does the Coast Guard have a reporting system set up to take reports from captain or crew about deficient safety standards on a vessel they are expected to work on?

ANSWER. The contact information for every Coast Guard Sector is available online via USCG Homeport and useg.mil. Additionally, Coast Guard Sector Command Centers nationwide are staffed 24-hours a day and are available to take reports over the phone and via VHF radio channels 16/22A when vessels are underway. These reports will be provided to a Coast Guard Marine Inspector and/or Coast Guard Marine Casualty Investigator for review and action, as appropriate.

Inspection Enforcement

Question 2. Up until the *Conception*, night watch requirements had not been enforced. In the case of the *Conception*, the annual inspection was done by one inspector, against regulation that has mandated two inspectors for several years. What is the Coast Guard doing to address these failures, and in the case of the annual inspections, the specific chain of command failures that allowed this violation for 2–3 years?

ANSWER. The requirement for a fire patrolmen to guard against and give alarm in case of fire or other danger has been in place and enforced by the Coast Guard for decades. In response to the loss of the M/V CONCEPTION, the Assistant Commandant for Prevention Policy chartered the Small Passenger Vessel Safety Task Force to review applicable inspections policies and procedures. An outcome of this Task Force is the Small Passenger Vessel (SPV) Risk Based Inspections program, which requires more experienced marine inspectors to inspect higher consequence vessels (“Tier I”), and mandates notifications and reporting of results to the Officer in Charge, Marine Inspections (OCMI) following annual inspections. Steps were also taken to improve the verification of night watchman requirements. The Coast Guard does not have any regulation mandating two inspectors for a vessel inspection.

Question 3. When Coast Guard inspectors conduct annual, biannual, and five-year inspections and certifications of small vessels like the *Conception*, what is done to

ensure they follow the regulations, protocols, and safety checklists that the Coast Guard has in place?

ANSWER. Upon completion of each inspection, Marine Inspectors document their findings in the Marine Information for Safety and Law Enforcement (MISLE) database. Procedures established since the loss of the *CONCEPTION* now require that their work go through a two-tiered review process by their supervisors.

Question 4. Is there any documentation from the Coast Guard that the inspectors checked the wiring for the outlets to *Conception* to assure compliance with safety standards?

ANSWER. The MISLE database contains a series of system checks for which the Marine Inspector acknowledges were completed. These various systems are inspected per Coast Guard policy and guidance.

Tracking Deficiencies

Question 5.a. How does the Coast Guard track deficiencies of the inspection program such as a lack of night watch enforcement and no chain of command repercussions for one inspector inspecting a vessel?

ANSWER. The Coast Guard tracks identified deficiencies and reports of violations in a database records program called MISLE. Through the Coast Guard's Mission Management System (MMS), field units conduct internal review of MISLE activities to identify and correct any deficient actions, and Coast Guard Headquarters (CGHQ) conducts external MMS audits to identify non-conformities. The Coast Guard does not have any policy that requires two marine inspectors for a vessel inspection.

Question 5.b. These may not even be in databases, so how would they ever be able to be prioritized by algorithms?

ANSWER. Marine inspectors are required to document all found deficiencies in the MISLE database. All licensed mariners are required by law (46 USC 3315) to report known deficiencies to their local marine inspectors during an inspection.

Report Release

Question 6. Why does the Coast Guard need to wait to release their investigation report when other federal agencies have released or partially released their reports?

ANSWER. Pursuant to 46 C.F.R. § 4.23, the Coast Guard referred evidence of potential criminal liability to the U.S. Department of Justice (DOJ) very early on in the marine casualty investigation. In response to an inquiry from Coast Guard, DOJ preferred that potential witnesses did not testify at public hearings.

Question 7. The Coast Guard has been conducting their own investigation, but has still not released it. Was the U.S. Coast Guard allowed access to all the evidence before it was being discarded? Were they allowed to see the subpoenaed evidence from the Truth Aquatics office and remaining vessels? The recovered hull of the *Conception* before it was cleaned up and the recovered debris and recovered items were discarded?

ANSWER. Yes. Special Agents with the Coast Guard Investigative Service were allowed access to the physical evidence.

Rulemaking Timeline

Question 8. The Advance Notice of Proposed Rulemaking for Safety Management Systems for Domestic Passenger Vessels was issued on January 14, 2021, and the comment period ended on June 1, 2021. Only 113 comments were posted in the docket to this notice. During the hearing, Rear Admiral John Mauger, I asked when we can expect this regulation to be moved forward into a proposed rulemaking. Can you provide a clearer timeline on when we can expect this regulation to be moved forward?

ANSWER. As detailed in the Unified Agenda, the Coast Guard is actively working on the Notice of Proposed Rulemaking (NPRM) for the Safety Management Systems (SMS) for Domestic Passenger Vessels rulemaking. The NPRM will include our responses to the public comments on the Advance Notice of Proposed Rulemaking for Safety Management Systems for Domestic Passenger Vessels, published on January 15, 2021. We extended the comment period to June 1, 2021 at the request of a commenter. The Coast Guard anticipates publishing the NPRM next year.

Higher Qualified Inspectors

Question 9.a. Rear Admiral Mauger, you talked about Most Experienced or Higher Qualified Inspectors. What are the qualifications/experience of these Higher Qualified Inspectors?

ANSWER. The Coast Guard uses the Apprentice-Journeyman-Master (AJM) model for determining competency levels of Marine Inspectors (MI). Coast Guard "Master" Marine Inspectors are called Advanced Journeyman Marine Inspectors. Advanced Journeyman Marine Inspectors (AJMI) have obtained at least 5 MI qualifications and have at least 6 years of experience conducting inspections in the field.

Question 9.b. Were Higher Qualified Inspectors in use in this way during and before 2019 or is this a new designation? And if Higher Qualified Inspectors were in practice during and before 2019, in what years were Higher Qualified Inspectors present during inspections of passenger vessels owned and operated by Truth Aquatics?

ANSWER. The AJM model has been used since 2011. AJM includes a combination of qualifications and time-based experience. The standard for authorizing a marine inspector to complete an inspection on a particular vessel is based on documented qualification earned through a combination of on-the-job training, classroom work or online training, knowledge and performance checks by senior inspectors, and a final interview board. This was the model for all vessels, including the CONCEPTION, before 2019. However, prior to the CONCEPTION tragedy the Coast Guard did not require a heightened competency level to conduct inspections. In 2021, the Coast Guard implemented the SPV Risk Based Inspection program, which included requirements for AJMIs to complete certain inspections. This requirement ensures more experienced inspectors are assigned to these inspections.

Question 10. How long has the Coast Guard been without highly qualified inspectors? Please confirm the number of highly qualified inspectors the Coast Guard currently has and the number in the training program you referenced to become highly qualified inspectors.

ANSWER. The Coast Guard began designating individuals in 2011 as a result of the 2010 Marine Safety Enhancement Plan.

The Coast Guard has a total of 410 members with the AJMI competency designation and 137 of those individuals are assigned to operational units. The remaining 237 members are in senior leadership positions or in staff assignments and do not currently perform marine inspections on routine basis, but may be in a position to supervise these inspections. There are 241 Journeyman Marine Inspectors and 423 Apprentice Marine Inspectors who are working towards obtaining the required qualification or experience required before they are eligible for the AJMI competency.

Small Vessel Compliance

Question 11. How is the Coast Guard working to ensure that crews on small passenger vessels are complying with the requirements to maintain an overnight watch?

ANSWER. After the loss of the M/V CONCEPTION, the Coast Guard initiated a nationwide concentrated inspection direction to review each vessel that conducts overnight operations. Each OCMI selects experienced marine inspectors to re-inspect each vessel and review their Certificate of Inspection and vessel operations to ensure that a roving watch was implemented. Some Coast Guard Sectors tasked law enforcement vessels to conduct operations to perform at-sea night approaches or boardings to confirm compliance with roving watch requirements.

Implementation Date

Question 12. Regarding the implementation of a monitoring device to ensure a roving watch is on duty, you stated that plans from vessel owners were to be submitted by March 28, 2022, but gave no projected implementation date. Why the delay and when will this life saving requirement be implemented?

ANSWER. The delay allows operators the flexibility to choose an arrangement of devices that would meet the requirements set forth in 46 C.F.R. §§ 122.410(b) and 185.410(b), while allowing the Coast Guard the necessary time to evaluate technology capable of achieving the requirements. Within the interim final rule, we welcomed public comments on the types of systems that are preferable or already in use, if any. Upon conclusion of the comment period on June 27, 2022, the Coast Guard is considering all comments in regards to the monitoring device, and will determine a reasonable implementation timeline.

Civilian Inspectors

Question 13.a. Were/are civilian contracted inspectors being used by the U.S. Coast Guard? If so, how many in the past and currently?

ANSWER. The Coast Guard does not use contracted civilians to conduct statutory inspections. As required in 14 U.S.C. § 312(b), the Coast Guard utilizes officer, member, or civilian employees of the Coast Guard to conduct marine inspections.

There are currently 145 civilians in Apprentice, Journeyman, or Advanced Journeyman billets, of which 12 are Advanced Journeyman and 118 are Journeyman.

Question 13.b. Does the Coast Guard plan on expanding its workforce of civilian marine inspectors?

ANSWER. The proposal following the 2010 Marine Safety Enhancement Plan was to grow the Coast Guard's civilian inspector workforce to 30 percent of the total marine inspector workforce. To date, the Coast Guard civilian workforce constitutes approximately 28 percent of the marine inspections workforce. The Coast Guard routinely analyzes workforce capabilities based on workload. The requirement for a more experienced inspector to conduct high consequence SPVs has been added to the workforce analysis. Training, billet assignment, and resource proposals will be adjusted to meet the increased need.

Inspections

Question 14. Do Coast Guard Inspectors inspect the same vessel(s) multiple years in a row?

ANSWER. Each OCMI will assign marine inspectors per qualification and proficiency requirements, as necessary to accommodate staffing, workload, transfers and other constraints. OCMI's are encouraged to vary inspectors annually, or send multiple inspectors pending resource availability and training needs.

Board Investigation Review

Question 15. Will the Marine Board Investigation be available for review prior to the trial of Captain Jerry Boylan or only after the conclusion? If not until after, how long after the conclusion of the trial of Captain Boylan do you expect it will be before the Coast Guard will release the findings of the Marine Board Investigation?

ANSWER. The Marine Board of Investigation's (MBI) final report will not be available until the criminal proceedings have been adjudicated.

The MBI is unable to provide an estimated timeframe for completion. Once the criminal cases are adjudicated, the MBI will likely hold public hearings to gather additional evidence that was outside the scope of the criminal investigation.

Vision Inspection

Question 16. How was it possible for the *Vision*, sister ship to the *Conception* owned by Truth Aquatics, Inc. at that time, to pass inspection on April 4, 2019, with no deficiencies, but when re-inspected on September 6, 2019, after the *Conception* disaster, 26 deficiencies were found, many relating to major electrical hazards?

ANSWER. A team of four MIs conducted the inspection of the VISION on September 6, 2019 (versus one in April 2019), and were following CGHQ directed concentrated inspection guidance that focused on fire detection and firefighting equipment, means of escape, crew training (including roving patrol requirements), passenger safety orientation, and electrical installations.

Question 17. I reviewed the inspection of the *Conception* and the *Vision* from February 2019. This was their annual inspection. The *Conception* was also dry docked. They had the same inspector for the past 5 years and the same dry dock inspector for the past 4 years. The MV *Vision* was also inspected in April 2019 and she also had no deficiencies. She was re-inspected on September 6, 2019, two days after the *Conception* disaster. She had 26 deficiencies. I can only assume the MV *Conception* had the same quality inspection the previous spring time. How do you explain this?

ANSWER. The Coast Guard notes that a Captain of the Port (COTP) Order was issued to the M/V VISION on September 6, 2019, four days after the CONCEPTION tragedy. The COTP Order prohibited vessel operations until a satisfactory Coast Guard inspection was completed. This inspection was later conducted on October 2, 2019, as part of a Coast Guard concentrated inspection campaign. The April 2019 inspections of VISION and CONCEPTION were conducted by a single Coast Guard MI, which is a practice used at smaller Marine Safety Offices that are billeted with as few as a single qualified MI and consistent with Coast Guard regulations. A standard inspection starts with a review of documentation, testing of vessel machinery and crew knowledge. As the MI proceeds through the vessel, they will expand their inspection to look at any new or modified systems.

Examining Wreckage

Question 18. Is the Coast Guard examining the recovered battery husks and electronic equipment to determine what role they played in the fire?

ANSWER. The MBI does not have access to the physical evidence. However, the MBI is relying on the analysis of fire investigators from the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Lithium-ion Batteries

Question 19.a. Before the fire involving the *Conception*, were any inspectors aware that a fire occurred previously on the *Vision* in October 2018 involving a lithium ion battery powered flashlight that was charging in the salon?

ANSWER. The evidence collected by the MBI indicates that the M/V VISION incident was never reported to the Coast Guard, because the 2018 incident did not reach the threshold of a reportable marine casualty under 46 C.F.R. § 4.05, and so Truth Aquatics was not required to report it to the Coast Guard.

Question 19.b. What was done to investigate this as a potential cause after the *Conception* fire occurred?

ANSWER. The MBI is investigating the possibility that a lithium-ion battery may have been the source of the fire. The National Transportation Safety Board (NTSB) also conducted an independent investigation into the incident, and their final Marine Accident Report determined that the unattended charging of the lithium-ion batteries could have been the ignition source of the fire.

Question 20. Did the Coast Guard become aware of information from any federal agency involved in the investigation of the *Conception* suggesting that lithium ion batteries or lithium ion powered devices caused or contributed to the fire? If so, what information did you obtain and from whom?

ANSWER. Yes. The NTSB's Marine Accident Report for the CONCEPTION fire concluded that the unattended charging of lithium-ion batteries was one of several possible ignition sources of the fire.

Question 21. Lithium battery fires have proven to be dangerous and deadly. Has the Coast Guard come up with any requirements for vessel owners as far as fire suppression of these type of fires?

ANSWER. The Coast Guard has published CG-CVC Policy Letter 20-03 providing guidance to OCMI's and MI's on how to evaluate the use of lithium-ion batteries aboard SPVs in their ports, and to assess whether the storage, charging, or use of these batteries creates potentially hazardous conditions.

Question 22. Are there plans to require fire suppression training for the owners of small passenger vessels in regard to lithium battery fires? These fires seem to be unique in how they burn faster and hotter and pose challenges for those putting them out.

ANSWER. At this time, the Coast Guard has instructed OCMI's and MI's to assess the storage, charging, or use of lithium-ion batteries aboard SPVs in their ports. MI's have been directed to restrict the operations of any company failing to mitigate or properly manage severe unsafe electrical or fire hazards found aboard their vessels.

New Small Vessel Regulations

Question 23. It's my understanding that on March 28, 2022, the U.S. Coast Guard is issuing new small vessel regulations. I appreciate this and the Coast Guard's effort, but it appears that regulations are only a small portion of the problem. How can the victims' families be reassured that not only these new regulations and existing ones will be vigorously and completely enforced, like if someone's life depended on it?

ANSWER. The Coast Guard is responsible for setting the standards for safety, security, and environmental stewardship for commercial vessels and mariners, ensuring compliance with those standards, and conducting investigations of violations and accidents. We keep the family and friends of the 34 victims aboard the CONCEPTION in the forefront of our minds as we continue to make enhancements to our marine safety program, to help the maritime industry avoid future preventable tragedies. We have improved our targeting of SPVs for enhanced oversight, which has proven effective in identifying and remedying unsafe conditions on passenger vessels. We continue to seek regulatory enhancements to improve the material and operational safety of SPVs. We also continue to improve our marine inspector knowledge and proficiency through an expansive revision of our training program. Lastly, we will assess the implementation of any additional safety or oversight recommendations that result from the CONCEPTION casualty investigation.

Vessel App

Question 24. At approximately the one hour and four-minute mark of the meeting on the 21st of March, you stated that there is a mobile inspection app that your inspectors use. Have there been any thoughts or discussions regarding an app for small passenger vessel employees? For instance, you could have every owner fill out their vessel's information in an app. When they hire an employee (cook, deckhand,

etc) the owner is to add that person to his/her app page. That person is then emailed a link to set up their own private user/employee account linked to the owner/vessel. When the employee signs into their private account, they are first asked if they were provided with safety training, with boxes of easily clickable topics. They also fill out the date/time and with whom they received their safety training from. This information would then be sent to that person for confirmation. Upon completion of their safety training, they would be required while at sea to access the app. Daily they would be asked: "Who will be providing fire watch/roving patrol duties tonight?" A drop-down menu could appear, and an employee would be selected. Another question could be: "Have you seen anything regarding safety or other issues (i.e., sparks, smoke, unsafe practices) aboard the vessel?", with a follow up question regarding if the employee had reported it to the captain. The next day the employee could be asked if indeed that person they listed the day before provided fire watch. They are also required to certify every day that to the best of their knowledge that all their answers were truthful. If there were any "no" answers or concerns, it would alert the safety inspector. I took note that 4G networks now reach up to 60 miles off coast since 2020, I would imagine that a lot of small passenger vessels fall within these parameters. The cost benefit analysis I believe would be positive. It would also provide data to safety inspectors out in the field in real time, as to where their priorities should be focused. If the app is set up to be user friendly, it would take minimal effort and time for the employee to log in their answers daily. Has something like this ever been discussed?

ANSWER. The Coast Guard is not considering development or implementation of a mobile application for SPV employees as described. Commercial entities offer vessel and crew management software solutions.

Preventative Maintenance System

Question 25. Why would a preventative maintenance system NOT be considered part of a safety management system?

ANSWER. The Coast Guard is evaluating the inclusion of preventative maintenance requirements in its Safety Management Systems for Domestic Passenger Vessels rulemaking under the requirements detailed in 46 U.S.C. § 3203(a).

Potential Regulations

Question 26. What non-monetary considerations does the Coast Guard utilize to evaluate potential regulations? How are those non-monetary considerations weighed in the evaluation?

ANSWER. When reviewing and evaluating potential regulations on this subject, the Coast Guard would consider NTSB recommendations, Federal Advisory Committee recommendations and input, and any other public comment received. In addition, the Coast Guard's evaluation of potential regulations is guided by International Maritime Organization (IMO) agreements and direction provided by the Coast Guard's Marine Safety and Security Council. The Coast Guard evaluates all data, information and recommendations from other entities regardless of whether they are monetary or non-monetary.

Safety Requirement Costs

Question 27. What parameters are used to determine if safety measures are too burdensome to require? What mathematical formula/s are used to calculate Corporate/Owner financial cost? What considerations are used to determine these costs?

ANSWER. Executive Order (EO) 12866 and OMB Circular A-4 direct regulatory agencies such as the Coast Guard to maximize net benefits of potential regulations. EO 12866 states that "In choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach." The regulatory aim of the Coast Guard is to maximize net benefits, i.e., satisfying the safety objectives in the least burdensome way possible.

The Coast Guard maximizes net benefits by estimating and aggregating the individual financial costs and comparing those to the benefits estimated for each provision to determine the net benefits or costs of the rule as a whole. Reviewing several alternatives—with safety measures that include differing costs and benefits—also assist to maximize the net benefits.

Question 28. What demarcation renders a safety requirement beneficial or detrimental (rejected)?

ANSWER. The effectiveness of a proposed safety requirement is measured by assessing net benefits from the calculations of the estimated costs and benefits. However, the utilization of cost-benefit analysis (as outlined by EO 12866 and OMB Cir-

cular A-4) is only one tool used in assessing whether an agency should implement a new safety measure. To perform this analysis, we estimate the costs and benefits for each provision of a proposed or final rule and leverage Subject Matter Experts within the Coast Guard or industry to determine the effectiveness of any safety measure. No singular line or demarcation dictates whether a safety requirement would be implemented or would not be implemented (rejected).

Question 29.a. What is the numerical amount at which safety measures are rejected as requirements?

ANSWER. There is no specific number at which a safety measure is rejected as a requirement. Absent a Congressional mandate, the Coast Guard, like all federal regulatory agencies, evaluates and assesses all information, analyses, risks assessments, historical accidents and public comments in the development and implementation of safety measures.

Question 29.b. Which economic costs are considered?

ANSWER. Regulatory agencies are required to consider all economic costs as part of any regulation as guided by EO 12866 and OMB Circular A-4. Some examples of potential costs are equipment/material costs, installation costs, maintenance costs, cost of time for installation/maintenance of equipment, training costs, cost of time for training, additional staff costs, opportunity cost if business models change, and lost revenue from changes to activity.

Question 29.c. What formula/s are used to calculate economic costs?

ANSWER. There are no specific formulas used to calculate economic costs in a regulatory analysis for a rulemaking. Most of our regulatory analyses use basic arithmetic. We follow the principles and guidance of EO 12866 and Circular A-4. In addition, our regulatory analyses provide transparency so that a reader can replicate the math.

Question 30. Which entities provide data for the above calculations?

ANSWER. Regulatory agencies are required to use the best, most readily available information when considering regulations. EO 13563 states, "Each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Coast Guard gathers data from industry, subject matter experts, public databases, public comments, and any other source that is reputable and readily available.

Question 31. For instances yielding rejections of key safety measures due to cost, is there a process for developing alternative solutions that can be required?

ANSWER. Regulatory analyses are required to consider alternatives as part of the rulemaking process. The alternatives considered may be more or less stringent than the regulation. In the development of a rulemaking, the Coast Guard leverages the public comment period of a proposed rule to receive additional information and data that would assist the Coast Guard in assessing or implementing any alternative solutions.

Black Box Instrument

Question 32. How much does a "black box" type instrument cost the Owner/Operator? What source/s were used to provide that cost? What affordable measures could provide similar data and benefits?

ANSWER. There are currently two types of "black box" type instruments that are used by large commercial vessels that make international trips: the Voyage Data Recorder (VDR) and the simplified Voyage Data Recorder (SVDR). They are very similar in that they both have the same specifications, with the exception that the SVDR records less information. They differ in that the VDR records all items below, and SVDR only what is marked SVDR. In the Coast Guard's VDR Report to the House Committee on Transportation and Infrastructure ("Voyage Data Recorder: A Cost Benefit Analysis", Report to Congress April 28, 2022), we concentrated on VDRs as opposed to SVDRs due to fact that our in-scope vessels used these primarily.

VDR costs incorporate not just the device itself, but also installation, maintenance, and testing costs. Installation costs could be significant due to all the wiring required to connect the input devices (i.e., radar, wireless set, inputs from voice microphones, etc.). There are also maintenance and testing costs associated with VDRs, but these are small relative to the cost of the purchasing and installing the VDR. Our outreach to several industry groups (including manufacturers and installers) provided price ranges for VDRs. New VDR system for large commercial IMO vessels in 2019 ranged from \$22,562 (minimum), to \$45,781 (median), to \$69,000 (maximum). With an average VDR lifespan of 13 years, cost calculations factor in depreciation.

There are currently two alternatives to VDRs: The SVDR and the Rose Point Electronic Charting System, a proprietary system produced by the company Rose Point. The SVDR records less data than a VDR, implying a slightly lower cost black box due to the reduced costs associated with wiring the needed inputs (as the SVDR measures less data than the VDR). The Rose Point Electronic Charting System is a software application that provides a vessel with the ability to record a variety of data such as position, radar imagery, etc., similar to what VDRs and SVDRs are able to record. Unlike SVDR, a VDR is recoverable under the worst conditions (i.e. recovery from ocean depths, or survivability from extreme damage, even if the vessel is otherwise badly damaged, but does not sink).

Warning Systems

Question 33. What warning signage and/or systems for direct passenger communication, education, and knowledge has the Coast Guard actively put into place, will be putting into place, and considering putting into place?

ANSWER. 46 C.F.R. §§ 122.506 and 185.506 require all SPVs to conduct a passenger safety orientation detailing the location of emergency exits, stowage of life jackets and how to don a lifejacket, and the location of the vessel's emergency procedures and instructions. Furthermore, 46 C.F.R. Parts 122 and 185 have additional requirements for emergency instruction placards and emergency signage. The Coast Guard currently has no rulemaking projects on the Unified Agenda, nor policy documents for changes to these requirements.

NTSB Concerns

Question 34. What has the Coast Guard put into place to address the NTSB concern about escape area options and what are the Coast Guard plans to address this more fully in the future?

ANSWER. The NTSB made recommendations to review the suitability of Subchapter T regulations regarding the means of escape for vessels constructed prior to 1996. The December 2021 Interim Final Rule with request for public comment for Fire Safety of Small Passenger Vessels implemented new applicability provisions in 46 C.F.R. §§ 116.115(c) and 177.115(c), requiring vessels regulated by Subchapter T or K that have overnight accommodations for passengers, regardless of build date, to comply with the requirements for means of escape in §§ 116.500 and 177.500. Also included within the Interim Final Rule are provisions that prevent a door, hatch, or scuttle utilized as an avenue of escape to be located directly above or dependent on a berth, for vessels regulated by Subchapter T or K that have overnight accommodations for passengers, as outlined in revised §§ 116.500(o) and 177.500(n).

Kitchen and Dining Areas

Question 35. It is common knowledge kitchen and dining areas pose high danger threats. Clearly there needs to be an escape strategy circumventing that area. What has been done and what will be done to warn passengers of, and hopefully protect them from, such danger?

ANSWER. Current SPV regulations do not specifically require that a means of escape circumvent kitchen and dining areas. However, 46 C.F.R. §§ 116.500 and 177.500 require that each passenger-accessible space must have two means of escape. Due to the design of most vessels, one of those means of escape likely circumvents a kitchen and/or dining space. Furthermore, additional safety measures are in place for cooking equipment due to the recognized potential hazard.

Public Site

Question 36. Is there a site for the public to read about the Coast Guard steps being taken and their current status as related to these laws?

ANSWER. Yes. The most current Coast Guard safety regulations can be found at <https://www.govinfo.gov/app/collection/cfr/2021/>. The status of rulemaking projects being undertaken by the Coast Guard are listed on the Unified Agenda and can be viewed here: <https://www.reginfo.gov/public/do/eAgendaMain>.

Most Important Knowledge

Question 37. As an esteemed safety and protective entity specialized in this area, based on the 9/2/19 tragedy, what does the Coast Guard see as the most important safety tools and knowledge to provide passengers and the public their tragedies affect?

ANSWER. The Coast Guard provides updates to the public, including mariners, regarding safety best practices through Marine Safety Information Bulletins (MSIB). These can be found here: <https://www.dco.uscg.mil/Featured-Content/Mariners/Marine-Safety-Information-Bulletins-MSIB/>.

As an example, the Coast Guard released the following MSIB after the CONCEPTION marine casualty: https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/MSIB/2019/MSIB_008_19.pdf?ver=2019-09-10-115632-287.

The Coast Guard Maritime Commons website is also a great resource for passengers and mariners alike: <https://mariners.coastguard.blog>.

The public may view Coast Guard vessel compliance information and policy by visiting the Office of Commercial Vessel website at: <https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Commercial-Vessel-Compliance/>.

Finally, the public may find contact information for the local Captain of the Port/OCMI by visiting the Port Directory at <https://homeport.uscg.mil>.

QUESTIONS FROM HON. SALUD O. CARBAJAL TO HON. JENNIFER HOMENDY, CHAIR,
NATIONAL TRANSPORTATION SAFETY BOARD

Introduction to responses from Hon. Jennifer Homendy, Chair, National Transportation Safety Board: Thank you again for the opportunity to discuss our marine accident investigations and the lessons we have learned from those investigation. I am pleased to answer the additional questions posed by Representative Carbajal, below.

As I emphasized in my testimony, in just the last ten years, the NTSB's Office of Marine Safety has dramatically increased its number of investigations. Before 2012, the office investigated and developed six reports annually on average. Now, the caseload is over 40 per year, and at times over 50, while the cases have also grown more complex. However, our marine investigative staff has not grown with that increase, and we currently have 11 marine investigators. It is critical to have additional resources to respond to casualties without impacting timeliness, quality, and our independence. Our reauthorization proposal to Congress included a request for resources and hiring flexibilities to increase the number of investigators in our Office of Marine Safety, as well as in our other modes. These resources will allow us to hire professionals with the needed skills, purchase the equipment necessary for those skilled professionals to do their jobs, and invest in staff training and development. Our workforce is our greatest asset and is essential to our mission.

Question 1. Why was the NTSB stopped from completing their investigation that did not include crew interviews?

ANSWER. The NTSB was not stopped from completing any aspect of the safety investigation. NTSB investigators interviewed three of the five surviving crewmembers and received needed information regarding the vessel's history, operations, systems, and maintenance.

There are always unique challenges that come with concurrent safety and criminal investigations. Criminal investigations can impact the timeliness of the NTSB's reports and issuing timely and accurate reports improves safety. However, the NTSB is committed to working with our law enforcement partners, to ensure that both criminal and safety investigations are addressed.

In the case of the *Conception*, the NTSB was unable to speak with the captain of the vessel due to the ongoing criminal investigation. That interview could have provided additional information regarding the vessel's history, operations, systems, and maintenance.

Question 2. When the vessel and debris were salvaged and taken to Port Hueneme, the NTSB was prevented from entering and assisting for weeks. Why?

ANSWER. NTSB investigators were not prevented from entering and assisting at the examination site at Port Hueneme. NTSB investigators were present when the *Conception's* hull arrived at the site and was offloaded on September 13, 2019. Following the placement of the hull, NTSB investigators were informed that it would take multiple days to construct securing apparatus and scaffolding around the hull. Based on this information, NTSB investigators departed Santa Barbara and returned on September 25 and 26 after being informed the scaffolding and securing apparatus was in place.

Question 3. Without complete access to all the evidence from the salvaged vessel, salvaged and recovered debris, was the NTSB able to complete the investigation?

ANSWER. The NTSB evaluated all available evidence from the salvaged vessel, recovered debris, and testimony in completing its investigation.

Question 4. The NTSB speculated that they would be able to determine the cause of the fire through their investigation. This was even told to the victims' families. They also speculated that the fire was so fast, so hot and so furious that it most likely was a "lithium ion" battery. On February 13, 2020 the FBI provided the NTSB investigators a hard drive with scans of documents and photos taken from

the FBI Evidence Response Team. Did the NTSB ever get an opportunity to inspect the electronics, batteries, and chargers that were recovered? It seems that this part of the investigation would have been exhaustive and extensive. The NTSB report seems to be lacking in this coverage. How was the NTSB able to complete their investigation without this? It's my understanding that the investigation should have been complete, inclusive after all 34 people died and it's also a part of a criminal investigation / prosecution.

When the NTSB did return to the *Conception* hull the next time, they found that the salvaged hull of the *Conception* was pretty much all cleaned up for them. It appears someone decided all the remaining debris wasn't of any value and discarded. Is this true and how can we ensure the NTSB has the ability in the future to review, preserve the integrity of evidence, and investigate after other investigators (i.e. Department of Justice or the Coast Guard) have had a chance to review?

ANSWER. NTSB investigators had an opportunity to inspect the remains of all chargers, electronics, and batteries that were recovered and processed by the Federal Bureau of Investigation (FBI) Evidence Response Team.

During the investigation, NTSB investigators were in constant communication with the U.S. Coast Guard (USCG), FBI, and the Bureau of Alcohol, Tobacco, and Firearms (ATF) regarding the wreckage. Before the NTSB returned to the wreckage examination site, debris and materials from inside the hull were removed and processed by fire and evidence experts with the FBI and ATF. Their efforts allowed NTSB investigators to more efficiently review the wreckage. The NTSB maintains open communication with other investigative agencies and will continue to do so to ensure that the investigative needs of both the safety and criminal investigations are met.

Lithium-ion batteries were one of many possible sources of the fire that investigators analyzed. The area where the fire was reported to have been first observed was destroyed, leaving minimal evidence to be examined. Since the boat, particularly the salon and aft deck area, was so consumed by fire, we could not conclude based on the physical evidence that the batteries initiated the fire or whether the batteries were exposed to the fire.

Question 5. Chair Homendy: "The NTSB investigated the accident under the authority of Title 49 United States Code (USC) 1131(a)(1)(E). . . . and there was no request from either the Attorney General or any other federal agency to the NTSB to relinquish investigative priority under 49 USC 1131(a)(2)(B). Accordingly, the NTSB retained investigative priority for the *Conception* accident throughout." Chair Homendy, you were never allowed to visit and inspect the vessel when they were first brought into Port Hueneme; the vessel was, "At the examination site, NTSB investigators found that most loose items contained within the hull of the *Conception* had been removed, and items determined by law enforcement investigators to be non-relevant were placed into large plastic bags for disposal."

Furthermore: The owner of Truth Aquatics, who was permitted to inspect the wreckage at a later date with the insurance investigators, advised the NTSB during the technical review of the fire and explosions factual report that there were "many parts of the upper deck. . . . discovered during [Truth Aquatics'] site visit in piles and plastic bags off to the side." When the items were confiscated by the U.S. Attorney General and FBI from the Truth Aquatics office, you were not allowed to participate, the information seized was scanned and photographed and shared the following year. The electronics, lithium batteries, chargers, cell phone, computers, underwater video cameras, underwater cameras, strobes, dive computers, etc. Any electronic items, and especially those with rechargeable batteries, you were never allowed to examine, inspect, touch, or send off to your experts for an independent examination.

Does this occur often that you are not allowed to participate in the inspection of the vessel, involved in gathering evidence from the office or sister vessels, and not allowed to inspect the electronic evidence?

ANSWER. Every maritime safety investigation conducted by the NTSB is done concurrently with the USCG. Each agency cooperates during the fact-finding portion, and then does its own analysis and report. At the initial notification, one agency is designated as the lead. In this case, the NTSB was made the lead investigative agency for the safety investigation. When there is the possibility of a criminal prosecution, as in this case, the NTSB works alongside the FBI, ATF, and USCG. NTSB investigators were present when the wreckage and belongings were recovered.

There are always unique challenges that come with concurrent safety and criminal investigations. The NTSB continues to work closely with the DOJ to ensure that the needs of both investigations are met. The NTSB was not stopped from completing any aspect of this safety investigation.

Question 6. Why would a preventative maintenance system NOT be considered part of a safety management system?

ANSWER. A preventative maintenance system is typically an element of a safety management program and is required for safety management systems that are certified under the International Safety Management Code.

Since 2002, the NTSB has been urging the USCG to address preventive maintenance programs and safety management systems. We have issued two safety recommendations:

M-02-5: Require that companies operating domestic passenger vessels develop and implement a preventive maintenance program for all systems affecting the safe operation of their vessels, including the hull and the mechanical and electrical systems. (Open—Unacceptable Response)

M-12-3: Require all operators of U.S.-flag passenger vessels to implement safety management systems, taking into account the characteristics, methods of operation, and nature of service of these vessels, and, with respect to ferries, the sizes of the ferry systems within which the vessels operate. (Open—Acceptable Response)

For two decades, the NTSB has advocated for all passenger vessel operators to implement a safety management system, and it has been on our Most Wanted list for a decade. The NTSB has been waiting twelve years for the Coast Guard to issue regulations that would require passenger vessel operators to implement safety management systems, a comprehensive, documented system to enhance safety.

For marine passenger vessels, regardless of a company's size, an SMS ensures that each crewmember is given standard and clear procedures for routine and emergency operations. An SMS specifies crewmember duties and responsibilities, as well as delineates supervisory and subordinate chains of command, so that each crewmember understands what to do during critical vessel operations and emergency scenarios. Developing an SMS includes creating plans for crewmember responses to a range of possible emergency situations. SMSs also include procedures for performing and tracking preventive maintenance, as well as for crew training, emergency preparedness, documentation and oversight, and other actions that prioritize safe operations.