



## REASSESSMENT OF THE RESPONSES FROM TRANSPORT CANADA TO MARINE SAFETY RECOMMENDATION M96-04

### CONSTRUCTION STANDARDS AND TRANSPORT CANADA INSPECTIONS

#### Background

On 11 August 1993, the *Tan 1*, a five gross-ton open fibreglass boat, with 12 passengers on board for whale watching, grounded in fog. Later, on 12 September 1993, following a mechanical failure, the *Tan 1* capsized after waves broke over the stern; the passengers ended up in the water, but were all rescued.

The Board concluded its investigations and released reports M93L0003 and M93L0004 on 25 April 1996

#### Board Recommendation M96-04 (25 April 1996)

In the absence of mandatory requirements, TC surveyors do not have the necessary regulatory instruments to improve the safety of these boats. In view of the existence of unsafe operations and the lack of inspections, the Board recommended that:

The Department of Transport require all small boats that carry fare-paying passengers to undergo safety inspections to ensure their seaworthiness and operational safety.

M96-04

#### Response to M96-04 (15 July 1996)

The Minister of Transport notes the recommendation. As a result of a safety assessment conducted by Transport Canada, in response to an earlier TSB recommendation, it has been concluded that the overall standard of safety in the small passenger vessel industry is substantially better than that experienced in any other mode of marine activity and is indeed better than that experienced in any other mode of transport. Current amendments to the Canada Shipping Act which will raise the lower limit for inspections to 15 gross register tons (grt) for vessels carrying less than 12 passengers would therefore appear to be well justified. Transport Canada is nonetheless currently supporting an initiative by representatives of the small passenger vessel industry to develop standards for the design, construction and operation of such vessels which can be applied on a voluntary basis.

## **Board Assessment to the Response to M96-04 (13 September 1996)**

Following a previous TSB recommendation concerning safety in small charter vessels (M94-01), TC sponsored a study, "Safety Evaluation of West Coast Charter Boats and Small Passenger Vessel". The study, completed in 1996, made six recommendations; one of the six recommendations suggested that the industry move toward self-regulating of small passenger vessels and charter boats, including training and certification of operators, inspection of vessels and operators, accreditation by government, and some spot monitoring by the government. Based on this recommendation, TC is amending the *Canada Shipping Act* to eliminate the requirement for inspection for all vessels under 15 grt. Transport Canada also indicated that it is supporting an initiative by representatives of the small passenger industry to develop standards which will be applied on a voluntary basis.

The proposed action to eliminate regulatory inspection for all small vessels is contrary to the intent of the recommendation. If past experiences with voluntary compliance programs are an indication of what will be achieved through this type of initiative, TC apparently does not share the Board's perception that a deficiency exists with the seaworthiness and operational safety of small passenger carrying vessels. [In 1993, as a parallel measure to the by-then defunct voluntary Small Passenger Vessel Compliance program, the Quebec office of the CCG randomly inspected 18 small sight-seeing boats in the area of Tadoussac. None of these boats were found to be in compliance with the regulation as safety equipment was either defective or missing altogether.] Indeed, TC contends that the overall standard of safety in the small passenger vessel industry is better than that experienced in any other mode of transport [TC is apparently basing this generalization on its study "Safety Evaluation of West Coast Charter Boats and Small Passenger Vessel" which only compared annual fatality totals on the west coast for marine, surface, and aircraft modes of transportation. There was no comparison of activity rate, i.e. casualties per passenger mile, etc.]

The response is considered **Unsatisfactory**.

## **Board Reassessment of the Response to M96-04 (15 September 2004)**

The *Canada Shipping Act* was amended in 1998 and raised the mandatory annual inspection threshold from 5 tons to 15 tons. TC initiated the Small Vessel Monitoring & Inspection Program, which aims towards development of the inspection/audit regime for small commercial vessels. Vessels are required to have a first inspection prior to coming into service. TC considers this recommendation closed, but such vessels are still not subject to regular (annual) inspections by TC.

The response is considered **Satisfactory in Part**.

## **Board Reassessment of the Response to M96-04 (07 December 2005)**

The CSA was amended in 1998 and raised the exemption threshold for annual inspection from 5 tons to 15 tons. TC initiated the Small Vessel Monitoring & Inspection Program, which aims towards development of the inspection/audit regime for small commercial vessels less than 15 gross tons and carrying not more than 12 passengers. Vessels are required to have a first inspection prior to coming into service, but such vessels are still not subject to regular (annual) inspections by TC.

The regulatory compliance for small passenger vessels relies on self-inspection by owners who may not be fully conversant with all safety requirements. Given that TC estimates that there are approximately 10,000 small passenger vessels, the actions taken would not substantially reduce the safety deficiencies described in M96-04.

No substantial change to address the safety deficiency since the last reassessment.

## **Next TSB Action (07 December 2005)**

TSB staff will monitor the proposed actions.

## **Response to M96-04 (November 2006)**

TC's update, dated November 2006, indicated that it initiated the Small Vessel Monitoring & Inspection Program, which aims towards development of the inspection/audit regime for small commercial vessels less than 15 gross tons and carrying not more than 12 passengers. TC policy is to inspect all vessels more than 8 metres in length or carrying more than 6 passengers. Vessels below these thresholds are to be reviewed to evaluate the relative risk of the operation and may be subjected to inspection. All vessels are subject to monitoring on a random or a targeted basis.

As responsibility for regulatory compliance of small passenger vessels lies with the owner and master, TC is putting emphasis on providing tools that will promote and assist in verification of compliance through regular self-inspection. There are currently 820 for which inspection details vessels have been recorded in TC's Small Vessel Inspection System.

## **Board Reassessment of the Response to M96-04 (November 2006)**

The regulatory compliance for small passenger vessels relies on self-inspection by owners who may not be fully conversant with all safety requirements. Given that TC estimates that there are approximately 10,000 small passenger vessels, the actions taken would not substantially reduce the safety deficiencies described in M96-04.

Therefore, the assessment remains at **Satisfactory in Part**.

## **Next TSB Action (November 2006)**

TSB staff will continue to monitor TC's activities with respect to the risks associated with recommendation M96-04.

## **Response to M96-04 (June 2008)**

TC's update, dated June 2008, indicated that, as responsibility for regulatory compliance of a small passenger vessel lies with the owner and master, TC is placing emphasis on providing tools that will promote and assist in verification of compliance through regular self-inspection. There are currently 1440 vessels for which inspection details have been recorded in TC's Small Vessel Inspection System.

## **Board Reassessment of the Response to M96-04 (September 2008)**

The regulatory compliance for small passenger vessels relies on self-inspection by owners who may not be fully conversant with all safety requirements. Given that TC estimates that there are approximately 10,000 small passenger vessels, the actions taken would not substantially reduce or eliminate the safety deficiencies described in M96-04.

Therefore, the assessment of the response remains at **Satisfactory in Part**.

## **Next TSB Action (September 2008)**

TSB Marine Branch staff will continue to monitor TC's activities with respect to the risks associated with recommendation M96-04.

## **Response to M96-04 (November 2009)**

TC's update, dated November 2009, indicated that as responsibility for regulatory compliance of a small passenger vessel lies with the owner and master, TC is placing emphasis on providing tools that will promote and assist in verification of compliance through regular self-inspection, including a revised Small Commercial Vessel Safety Guide, updated to reflect the revised *Small Vessel Regulations*. The guide will be sent to each owner of a registered small non-commercial vessel. There are currently 1440 vessels for which inspection details have been recorded in TC's Small Vessel Inspection System.

## **Board Reassessment of the Response to M96-04 (28 July 2010)**

With the coming into force of the *Canada Shipping Act, 2001*, in 2007, the requirement that owners of commercial vessels submit their vessels for a first inspection prior to placing their vessel into service was removed. It was determined that the requirement was a practical impossibility given the large number of commercial vessels. However, the new Act requires all small commercial vessels to be registered. Therefore, TC is promoting that owners and operators of small commercial vessels carry out self inspections, which will allow TC to concentrate its inspection efforts on those vessels deemed to be high risk.

The *Small Vessel Regulations*, which were approved and published in the Canada Gazette, Part II, on 12 May 2010, also include a requirement that owners of a commercial vessel must inform TC before first placing it into service. In this way, TC will be made aware of the existence of such vessels.

TC now estimates there are about 93,000 commercial vessels with a length of 8 metres or less (the *TAN 1* was 7.62 m). Although the number of similar-sized small passenger vessels has yet to be determined by Transport Canada, for the purposes of estimating the direct costs of new safety equipment to be realized from the new requirements of the *Small Vessel Regulations*, the department assumed that 50 per cent of these vessels were passenger vessels. To further assist in identifying small commercial vessels that are already in operation, TC is working with the various authorities, including provincial and local police agencies, the Department of Fisheries and Oceans, conservation authorities, and municipalities.

The *Small Vessel Regulations* include requirements to enhance the protection of passengers, upgrade safety equipment, improve vessel maintenance, clarify the application of stability standards to the construction of various types of vessels, and to ensure crews are competent and proficient in the use of life saving equipment. Furthermore, the format of the new regulations is different from previous regulations. Many of the safety equipment requirements are in tabular form, which should make it more easily understood by vessel owners and operators.

While it will take some time to ensure that all operators of small passenger vessels are aware and comply with the new requirements, the measures taken by TC will substantially reduce the safety deficiencies associated with the lack of inspections to ensure seaworthiness and operational safety.

Therefore, the assessment of the response is **Fully Satisfactory**.