



ASSESSMENT OF THE RESPONSE FROM TRANSPORT CANADA TO MARINE SAFETY RECOMMENDATION M04-02

ADEQUACY OF THE REGULATORY FRAMEWORK FOR SMALL PASSENGER VESSELS

Background

The *Lady Duck* was an amphibious vehicle based on the conversion of a Ford F-350 truck chassis and arranged to carry up to 12 passengers on combined road and water-borne tours in the National Capital Region and on the Ottawa River. The vehicle was developed and built by the owner and entered commercial service at the start of the tourist season in June 2001.

The *Lady Duck* started the amphibious tour at about 1500 on 23 June 2002, with the driver, 10 passengers and a tour guide on board. When the vehicle entered the water at the Hull Marina, the main bilge pumps were switched on to clear the hull of any shipped water. Because no water was seen to be discharging from the outlets, the emergency bilge pumps were also switched on. Water was then seen to be discharging intermittently from outlets on both sides of the vehicle. The vehicle was driven to the Ottawa side of the river to various points of interest. The river was calm, with waves caused by wakes from boats and other watercraft in the tour area. On occasion, the vehicle encountered waves that washed over the hood and up to the windshield.

Toward the end of the tour, while returning to the Hull Marina, the driver noticed that the front end of the vehicle was floating lower than normal and that water was being continuously discharged from both sides of the vehicle. The driver then ordered the four foremost passengers and the tour guide to move to the back of the vehicle to try to decrease the forward trim.

The forward trim continued to increase and, realizing that the safety of passengers was at risk, the driver instructed the tour guide to tell passengers to don personal flotation devices. The driver then broadcast a MAYDAY on very high frequency (VHF) radio. The situation deteriorated rapidly as more floodwater accumulated in the forward end of the vehicle. The driver then called on the passengers to abandon the sinking vehicle. The driver, tour guide and six passengers managed to get free of the sinking vehicle. The remaining four passengers became trapped under the fabric awning and sank with the vehicle in 8 metres of water.



The current regulatory framework does not address all aspects of the operation of small passenger vessels with a gross tonnage of 15 or less carrying not more than 12 passengers and, as demonstrated in this occurrence, the *Canada Shipping Act (CSA)*, its regulations, standards, and guidelines are complex and their applicability by ship inspectors and owners/operators is not consistent.

Transport Canada acknowledged the complexity of its regulatory framework and noted that a number of initiatives are under way to bring the new *Canada Shipping Act, 2001* into force in 2006. In order to give full effect to the *Canada Shipping Act, 2001*, over 100 regulations must be reviewed and restructured.

Subsequent to the increase to the exemption threshold for annual inspection, there has been increased reliance by TC on self-inspection. In fact, regulatory compliance for small passenger vessels with a gross tonnage of 15 or less relies on self-inspection by owners/operators who may not be fully conversant with all safety requirements. Until such time as the regulatory framework can be easily understood, the implementation of a self-inspection regime will be problematic and risks to the travelling public will continue.

The application of the existing and future regulatory framework is dependent upon an up-to-date registry of vessels in operation. While TC estimates that approximately 10 000 small passenger vessels with a gross tonnage of 15 or less are required to be either licensed or registered, as of December 2003, TC reports that there were 736 licensed and 375 registered small passenger vessels. TC is taking steps to address this discrepancy through the establishment of a Small Vessel Register and expects to have all vessels identified by 2011.

Board Recommendation M04-02

The Board acknowledged the initiatives by TC to reform the current regulatory framework to make it more streamlined, applicable, and effective. However, given the planned timeframe of 2006 for completion of this reform, and the large number of small passenger vessels that have yet to be identified, the Board recommended that:

The Department of Transport expedite the development of a regulatory framework that is easily understood and applicable to all small passenger vessels and their operation.

M04-02

Response to M04-02

In its 26 August 2004 letter, Transport Canada provided the following comments:

- TC agrees with the intent of the recommendation and the department is committed to the regulatory reform process, which aims to develop modernized regulations that are more effective, applicable and easily understood. The new *Canada Shipping Act* and associated regulations are scheduled to come into effect in 2006.

- TC has taken steps to enhance the existing regulatory framework for small passenger vessels. These enhancements include proposed regulatory amendments that will prescribe minimum construction standards for small non-pleasure vessels; safety equipment carriage requirements for vessels between 5 and 15 tons gross tonnage; and intact stability requirements for new vessels.
- *Construction Standards for Small Vessels* (TP 1332) has been reformatted and largely rewritten in plain language to enhance ease of use and comprehension.
- TC will continue to take steps to facilitate the comprehension and application, by owners and operators, of small passenger vessel regulatory safety requirements. Recent examples of such steps include: developing and distributing the *Small Commercial Vessel Safety Guide*; revising and expanding the material contained on its Small Passenger Vessel Web site; providing checklists and guidelines for use in self-inspection; instructions for assessing the stability of vessels are scheduled to be issued by way of a Ship Safety Bulletin.

Board Assessment of Response to M04-02

The response indicates steps that TC has taken to further enhance the existing regulatory framework for small passenger vessels. However, the steps, which include proposed amendments pertaining to design, construction and safety equipment, as well as those steps to facilitate the comprehension and application by owners and operators of small passenger vessels, had already been taken into consideration and were acknowledged by the Board when the recommendation was issued.

The response also indicated that the new *Canada Shipping Act* and associated regulations are scheduled to come into effect in 2006. The 2006 timeline was re-affirmed by TC at a 27 August 2004 meeting with TSB staff. There is no indication in the response by TC that the development of a regulatory framework that is easily understood and applicable to all small passenger vessels and their operation will be expedited earlier than 2006.

In February 2005, amendments were made to the *Small Vessel Regulations* that affect all small vessels, other than fishing vessels or pleasure vessels, not over 15 tons and carrying not more than 12 passengers. The amendments incorporate the *Construction Standards for Small Vessels* (TP 1332) into regulations. Previously, there were no construction standards for non-pleasure vessels. The incorporation of these standards will provide a minimum standard for the construction of new small vessels. The standards will serve as a benchmark for the inspection of small vessels.

As part of the development of a regulatory framework that is easily understood and applicable to small passenger vessels, TC is currently in the process of approving a simplified intact stability assessment policy for existing small non-pleasure vessels over 6 metres but not more than 12 metres. TC has also proposed *Construction Standards for Small Vessels up to 24 metres*; responses from stakeholders indicated that more time was required to review and finalize the proposal.

Given the planned timeline of 2006 for completion of the reform of the small passenger vessel regulatory framework, recent initiatives regarding the broader application of construction standards, ongoing consultations of a simplified intact stability assessment, and the proposed construction standards for small vessels up to 24 metres, the response is considered to be **Satisfactory in Part**.

Next TSB Action: M04-02

Progress of the completion of the regulatory reform for small passenger vessels will be monitored and its impact in future investigations will be examined.