



Office of the Chairman

National Transportation Safety Board

Washington, DC 20594

April 1, 2021

Admiral Karl L. Schultz
Commandant
US Coast Guard Headquarters
2703 Martin Luther King Jr. Ave., SE
Washington, DC 20593

Attention: Docket No. USCG-2020-0123

HQS-DG-1st-ExecSec@uscg.mil
<https://www.regulations.gov>

Dear Admiral Schultz:

The National Transportation Safety Board (NTSB) has reviewed the US Coast Guard's advance notice of proposed rulemaking (ANPRM) titled "Safety Management Systems [SMS] for Domestic Passenger Vessels" published at 86 *Federal Register* 3899 on January 15, 2021. In its ANPRM, the US Coast Guard requests public comments on the feasibility, applicability, and nature of SMS to improve safety and reduce marine casualties on domestic US-flagged passenger vessels. The Coast Guard requested information in response to 22 specific questions.

When properly implemented, SMS is an effective tool for safety oversight. As stated in the ANPRM, "an SMS is a structured and documented set of procedures enabling company and vessel personnel to effectively implement safety and environmental protection policies that are specific to that company or vessel."

Following a series of serious marine casualties caused by human error or management failure, the International Maritime Organization (IMO) began developing international safety management standards. Adopted by the IMO in 1993, the International Safety Management (ISM) Code provides "an international standard for the safe management and operation of ships and for pollution prevention." In 1994, IMO members, including the United States, adopted the ISM Code as Chapter IX of the International Convention for the Safety of Life at Sea, thereby making SMS a requirement for vessels engaged in oceangoing international service. However, the ISM Code does not apply to vessels in US domestic service, and there is no SMS requirement for the domestic passenger vessel fleet.

The NTSB has long advocated for the implementation of SMS. On October 15, 2003, the ferry *Andrew J. Barberi* struck a maintenance pier at the Staten Island Ferry terminal in Staten Island, New York, resulting in 11 passenger fatalities and 70 injured. The NTSB determined that the probable cause of the accident was in part due to the failure of the New York City Department of Transportation to implement and oversee safe, effective operating procedures for its ferries. On March 18, 2005, the NTSB issued Safety Recommendation M-05-06 to the Coast Guard to “seek legislative authority to require all US-flag ferry operators to implement safety management systems, and once obtained, require all U.S.-flag ferry operators to do so.” The Coast Guard Authorization Act of 2010 (Public Law 111–281) satisfied the first part of this recommendation by authorizing the Coast Guard to require the implementation of SMS on domestic passenger vessels, including domestic ferries.

The NTSB investigated a second accident involving the *Andrew J. Barberi*. On May 8, 2010, the *Barberi* allided with a terminal structure at the St. George terminal, Staten Island, New York, resulting in 3 serious injuries, and 47 minor injuries. Between the 2003 and 2010 accidents, the New York City Department of Transportation Ferry Division implemented an SMS. Based on differences between crew actions in the 2010 and 2003 accidents, the NTSB concluded that the Ferry Division’s SMS provided specific emergency procedures, which the crew and shoreside personnel performed in a timely and effective manner, benefiting the passengers. On May 24, 2012, the NTSB superseded Safety Recommendation M-05-06 with Safety Recommendation M-12-03 to the Coast Guard to “require all operators of US-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.” After the Coast Guard initially responded that it was developing appropriate regulations for all US-flagged passenger vessels as part of Public Law 111–281, the NTSB classified Safety Recommendation M-12-03 “Open—Acceptable Response” on May 23, 2013. However, on April 29, 2014, following the investigation of the 2013 contact of the passenger vessel *Seastreak Wall Street* with a pier in Manhattan, New York, and more than 3 years after Congress authorized the Coast Guard to mandate SMS, the NTSB classified Safety Recommendation M-12-03 “Open—Unacceptable Response.”

The NTSB reiterated Safety Recommendation M-12-03 on December 11, 2018, following its investigation of the 2018 fire aboard the small passenger vessel *Island Lady*; the NTSB again reiterated M-12-03 on November 10, 2020, following its investigation of the September 2, 2019, fire aboard the small passenger vessel *Conception*, off the coast of Santa Cruz Island, California, in which all 33 passengers and 1 crewmember lost their lives. The accident was the deadliest maritime accident in California in over 150 years. The NTSB determined that the probable cause of the accident was the failure of the vessel’s operator to provide effective oversight of its vessel and crewmember operations, including requirements to ensure that a roving patrol was maintained.

The ANPRM asks for information regarding 22 specific questions. For some of these questions, the NTSB has not investigated the issue or issued recommendations on the subject. For the specific questions quoted below, the NTSB supplies information from our relevant accident investigation findings and recommendations.

1. *For which types of passenger vessels should the Coast Guard require an SMS? How should the Coast Guard consider factors such as vessel size (including but not limited to length, tonnage, or capacity), design, age, type of service, hull material, overnight accommodations, size of ferry system, or number of passengers?*

As discussed in Safety Recommendation M-12-03, the NTSB believes that all operators of passenger vessels should implement SMS. The NTSB issued and reiterated this recommendation based on accidents involving large ferries carrying hundreds of passengers, but without overnight accommodations (the *Andrew J. Barberi* and *Seastreak Wallstreet*), a small passenger vessel without overnight accommodations carrying 53 passengers (the *Island Lady*), and another small passenger vessel with overnight accommodations carrying 33 passengers (the *Conception*).

2. *What benefits would a scalable and structured SMS provide passenger vessel owners, managers, and operators? Should fleet size be a consideration? If you have any studies or data on whether SMSs improve safety or reduce costs, please provide it with your submission.*

A proper SMS can and should be crafted to fit each operation's risks, such as vessel routes, number of vessels operated, and number of passengers carried. As mentioned above, the NTSB has investigated accidents involving passenger vessels of various sizes, from large ferries to small passenger vessels. We believe that SMS for smaller vessels and operations can be structured with flexibility to contain typical passenger vessel procedures, document compliance with applicable regulations, identify nonconformities and a means for corrective actions, and provide for an audit system.

3. *Have you encountered situations in which information about safety risks or best practices was known to one vessel, or operational division of a vessel or business, but not shared with others that might use it to prevent incidents? To what extent would an SMS encourage sharing or prevent the isolation ("siloing") of information? If your answer changes depending on the nature or size of the business, please include that information.*

In our investigation of the fire on the *Conception*, we said that following the battery fire that had occurred on the *Vision* (a company vessel similar to the *Conception*) about a year prior to the accident, SMS postaccident evaluation procedures could have led the company to identify battery-charging as a potential risk and taken measures to prevent such fires.

8. *If a comprehensive SMS is not necessary or justified, what aspects of an SMS would be appropriate to include in this regulatory framework? Why would you recommend including these aspects in this regulatory framework and not others?*

The NTSB believes that a comprehensive SMS is justified by the safety benefits. A comprehensive SMS should include the functional requirements: a safety and environmental protection policy; instructions and procedures to ensure safe operation and protection of the environment; defined levels of authority and lines of communication between and amongst shore

and vessel personnel; procedures for reporting accidents and non-conformities, procedures to prepare for and respond to emergency situations, and procedures for audits and management reviews. However, as noted in our comment to Question 2, a comprehensive SMS does not have to be overly burdensome. An SMS is not a one-size-fits-all program; it should be scaled to take into account the size, characteristics, methods of operation, and nature of service of the specific vessel.

10. What guidance should the Coast Guard make available to the passenger vessel industry in order to help owners and operators implement an SMS? Would such guidance save costs or time implementing an SMS?

The NTSB believes that passenger vessel owners and operators would benefit from guidance for how to develop, implement, and maintain an SMS. Such guidance should illustrate the information required to fulfill the requirements of an effective and practical SMS. In February 2020, the Coast Guard issued Marine Safety Information Bulletin (MSIB) 03-20, titled “Resources for Voluntarily Establishing a Safety Management System.” This MSIB included a list of several resources for operators to review and consider when voluntarily developing an SMS. The NTSB believes that similar guidance would assist operators—particularly smaller operators—in developing a mandatory SMS to meet key safety and operational objectives.

15. Should the Coast Guard require a certification process, an audit process, or both? If so, why, and who should certify or audit the SMS, how often, and what should the inspection or audit entail? Should the certification or audit requirement be limited to certain vessels? If not, why not?

The NTSB believes that both a certification and an audit process should be required appropriate to the size of the operation. Certification standards allow the Coast Guard to review SMS and certify that a company’s SMS meets applicable regulatory requirements. Audits serve to ensure that operators are complying with their SMS standards and are aware of non-conforming aspects of their SMS, and that the procedures in the SMS are being used effectively.

It has been over 8 years since the NTSB recommended SMS for US-flagged passenger vessels and over 15 years since we recommended SMS for US-flagged ferry vessels. The NTSB continues to believe that an SMS is an essential tool for enhancing safety on board all US passenger vessels and that the Coast Guard is the appropriate authority to ensure implementation and compliance with the requirements of such a system. SMS requirements should be scaled appropriately to account for the various characteristics, methods of operation, and nature of service of domestic passenger vessels, and, with respect to ferries, the sizes of the ferry systems within which the vessels operate. An effective SMS can prevent or mitigate the effects of an accident similar to those listed above but depends greatly upon the commitment and motivation of all involved with the system to maintain its viability and effectiveness. The NTSB therefore welcomes and supports the Coast Guard’s efforts to develop and implement SMS regulations for domestic passenger vessels.

The NTSB appreciates the opportunity to comment on this important ANPRM.

Sincerely,

Robert L. Sumwalt, III
Chairman

cc: Rear Admiral Richard Timme, US Coast Guard
Assistant Commandant for Prevention Policy
US Coast Guard Headquarters (CG-5P)

Captain Jason Neubauer, US Coast Guard
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