



National Transportation Safety Board

Washington, D.C. 20594

Safety Recommendation

Date: October 9, 2009

In reply refer to: M-09-11

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The National Transportation Safety Board (NTSB) is an independent Federal agency charged by Congress with investigating transportation accidents, determining their probable cause, and making recommendations to prevent similar accidents from occurring. We are providing the following information to urge you to take action on the safety recommendation in this letter. The NTSB is vitally interested in the recommendation because it is designed to prevent accidents and save lives.

The recommendation addresses the following safety issue: the regulatory bar against replacing Amendment 80 vessels in the Bering Sea/Aleutian Island fisheries management area. The safety issue derives from the NTSB's investigation of the March 23, 2008, sinking of the U.S. fish processing vessel *Alaska Ranger* and is consistent with the evidence we found and the analysis we performed.¹ The NTSB determined that the probable cause of the sinking of the *Alaska Ranger* was uncontrolled, progressive flooding due to a lack of internal watertight integrity and to a breach of the hull's watertight envelope, likely caused by a physical rudder loss. Contributing to the loss of life was the vessel's movement astern, which likely accelerated the flooding and caused the liferafts to swing out of reach of many crewmembers.

The Sinking

The *Alaska Ranger* was a 35-year-old freezer-trawler owned and operated by Fishing Company of Alaska, Inc. Shortly after noon on March 22, 2008, the *Alaska Ranger* departed Dutch Harbor, Alaska, for Petrel Bank, a fishing ground 500 nautical miles to the west. Forty-seven people were on board, including two deck officers, three engineering officers, five

¹ For further information, see *Sinking of U.S. Fish Processing Vessel Alaska Ranger, Bering Sea, March 23, 2008*, Marine Accident Report NTSB/MAR-09/05 (Washington, DC: National Transportation Safety Board, 2009). The report will be available on the NTSB's website at <<<http://www.nts.gov/publictn/2009/MAR0905.htm>>>.

Japanese fishery specialists, and two observers from the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration.

At 0246 on March 23, the *Alaska Ranger* broadcast a Mayday call and reported to the U.S. Coast Guard that it was taking on water in the rudder room. About 0330, the *Alaska Ranger* lost electrical power and within minutes, according to the crew, began traveling astern. About 0430, the crew reported that the vessel was listing 45° and that the last seven crewmembers were preparing to abandon ship. The vessel sank shortly afterward.

It was difficult for crewmembers to reach the vessel's liferafts, which drifted out of reach because the vessel was moving astern. All 22 of those who reached the rafts survived. Crewmembers who could not reach the liferafts remained in the frigid water at least an hour, and some as long as 5 hours. Of the crewmembers in the water, 20 survived and 5 did not.

The 42 survivors were rescued in conditions of high seas, strong winds, below-freezing temperatures, and blowing snow by two Coast Guard helicopters, a Coast Guard cutter, and another Fishing Company of Alaska vessel. The wreck of the *Alaska Ranger* lies in about 6,000 feet of water at the bottom of the Bering Sea and was not examined.

Amendment 80 Vessels

In 1976, Congress passed the Fishery Conservation and Management Act, later renamed the Magnuson-Stevens Fishery Conservation and Management Act (16 *United States Code* 1801 et seq.), whose purpose was “to provide for the conservation and management of the fisheries.” The act gave the Federal government authority over fisheries in a fishery conservation zone (later designated an exclusive economic zone, or EEZ) extending 200 miles offshore. The Federal government manages all Alaska groundfish fisheries in the EEZ, with management authority vested in NMFS.

In September 2007, NMFS published a final rule implementing Amendment 80 to the groundfish fishery management plan for the Bering Sea and Aleutian Islands (50 *Code of Federal Regulations* [CFR] Part 679). One provision of the rule identified and limited the vessels that would be eligible for a license to fish for certain species of groundfish (Amendment 80 species²) in the fishery. Title 50 CFR Part 679 lists 28 Amendment 80 vessels, including the *Alaska Ranger*, that are permitted to fish in the EEZ.

The goal of Amendment 80 was to reduce the high rates of discard and waste associated with the groundfish fisheries by limiting access and encouraging the formation of fishing cooperatives, which offer benefits such as more efficient harvesting and lower operational costs. The Amendment 80 vessels were apportioned a quota share for each species, based on the vessels' historical catch. The quota share can be used only on an Amendment 80 vessel, and “cannot be divided or transferred separately from that Amendment 80 vessel.”³ Amendment 80 contains no provision for replacement of a vessel that sinks or is otherwise considered a total

² The Amendment 80 species for the Bering Sea and Aleutian Islands regulatory area are the Aleutian Islands Pacific ocean perch, Atka mackerel, flathead sole, Pacific cod, rock sole, and yellowfin sole.

³ *Federal Register*, vol. 72, no. 178 (September 14, 2007), p. 52672.

loss. However, a provision allows owners of lost vessels to use the catch history of those vessels to apply for participation in an Amendment 80 cooperative.

To date, two of the vessels on the Amendment 80 list have sunk. One is the *Alaska Ranger*. The other is the *Arctic Rose*, which in 2001 sank in the Bering Sea with the loss of all 15 crewmembers.⁴ After the sinking, the owner purchased another vessel and sued the Department of Commerce to allow it to replace the *Arctic Rose*. In May 2008, the U.S. District Court for the Western District of Washington issued a decision invalidating the regulatory provisions that limited the vessels used in the Amendment 80 program, describing the regulations as “arbitrary, capricious, and otherwise not in accordance with law.” The decision concluded: “The Amendment 80 regulations shall be vacated and remanded to NMFS to the extent they have been found unreasonable.”

In October 2008, NMFS determined to comply with the court’s ruling by permitting the replacement of an original Amendment 80 vessel that has suffered an “actual total loss, constructive total loss, or permanent ineligibility of that vessel to receive a fishery endorsement under 46 U.S.C. 12108.”⁵ According to that statement, not until a fishing vessel has broken down or sunk will NMFS allow the owner to replace it.

Although Amendment 80 has addressed the conservation and sustainability goals of the Magnuson-Stevens Fishery Conservation and Management Act, the amendment’s effect on fishing vessel safety has received little consideration. The Alaska fishing fleet consists of old vessels operating in some of the world’s harshest conditions. The average age of the 21 active Amendment 80 vessels is 30 years, yet the regulations contain no provisions for replacing vessels in the fleet. As the regulations are currently written, vessel operators must continue to run older, less-safe vessels until they either sink or are no longer eligible to fish (cannot obtain a fishery endorsement). If an existing fish processing vessel were replaced by one built or converted after July 27, 1990, the new vessel would be inherently safer because it would have to be inspected and certified by a classification society and be periodically reinspected.

NMFS’s decision to permit vessels to be replaced only if they are lost or deemed ineligible to fish runs contrary to the interests of safety. Replacing a vessel after it has sunk is too late. When the *Arctic Rose* went down, it took 15 lives. The *Alaska Ranger*’s sinking took 5 lives and would probably have taken more if not for the extraordinary rescue efforts of the Coast Guard and the crew of the *Alaska Warrior*. Fishing industry vessels should be replaced before a major problem arises, not after a catastrophic event that causes loss of life.

The NTSB concluded that by imposing a regulatory bar against replacing Amendment 80 vessels, the regulations that implement the fishery management plan for groundfish of the Bering Sea/Aleutian Island management area negatively affect safety by preventing vessel owners from replacing aging vessels that pose increased operating risks. The NTSB believes that it should be

⁴ The *Arctic Rose* was placed on the Amendment 80 list, although it had already sunk, so that the owner could retain the vessel’s quota share permit to fish for Amendment 80 species.

⁵ Reported in “Implementation and [sic] of Amendment 80 Vessel Replacement Provisions, *Arctic Sole Seafoods v. Gutierrez*, NMFS Alaska Region, Presented at the October NPFMC Meeting, 2008” <www.fakr.noaa.gov/sustainablefisheries/amds/80/vesselreplaceprovisions08.pdf> (accessed November 20, 2008).

possible to replace aging or unsafe Amendment 80 vessels for reasons other than vessel loss or ineligibility to fish. The NTSB therefore recommends that NMFS take the following action:

Amend the regulations at 50 *Code of Federal Regulations* Part 679, subpart H, to allow for replacement of an Amendment 80 vessel in situations other than vessel loss. (M-09-11)

As a result of its investigation of the *Alaska Ranger* accident, the NTSB also issued recommendations to the Coast Guard, the North Pacific Fishery Management Council, and Fishing Company of Alaska. The NTSB would appreciate a response from you within 90 days, addressing actions you have taken or intend to take to implement its recommendation. In your response, please refer to Safety Recommendation M-09-11. If you would like to submit your response electronically rather than in hard copy, you may send it to the following e-mail address: correspondence@ntsb.gov. If your response includes attachments that exceed 5 megabytes, please e-mail us asking for instructions on how to use our secure mailbox. To avoid confusion, please use only one method of submission (that is, do not submit both an electronic copy and a hard copy of the same response letter).

Chairman HERSMAN, Vice Chairman HART, and Member SUMWALT concurred in this recommendation.

[Original Signed]

By: Deborah A.P. Hersman
Chairman