



REASSESSMENT OF THE RESPONSE TO AVIATION SAFETY RECOMMENDATION A94-10

Seaplane compliance

Background

The TSB completed an analysis of Canadian seaplane accidents over the 15-year period from 1976 through 1990. During that period, there were 1,432 such accidents and 452 people died in 234 of them. In May 1994, the Board issued a report identifying safety deficiencies associated with survivability in seaplane accidents. The report contained six recommendations assessing issues of personal flotation devices; seaplane occupant restraint systems; seaplane operators' disregard for safety regulations; and seaplane passengers' safety awareness.

On 03 August 1994, the Minister responded to each of the Board's recommendations. Following is the staff's assessment of the extent to which the underlying safety deficiencies are being addressed.

The Board released the Aviation Safety Study SA9401 on 18 May 1994.

Board Recommendation A94-10 (May 1994)

The accident record seriously draws into question the attitude of some seaplane pilots towards basic safety measures. Even when shoulder harnesses were fitted in the aircraft, two-thirds of the accident pilots were not using them; some of them did not even secure the lap belt. Only half of the accident passengers who had shoulder harnesses available wore them – perhaps a reflection of the example set by their pilots. Similarly, despite the availability of life jackets on many of the accident aircraft, apparently few occupants wore them, or had a personal flotation device sufficiently close to use.

The Board recognizes that more stringent regulations alone will not alter current behaviour patterns which exacerbate the fatality rate. Furthermore, enforcement of regulations pertaining to seaplane operations in Canada presents a formidable challenge on a day-to-day basis. Nevertheless, in view of the continuing disregard of basic safety provisions by many pilots and operators in seaplane operations, the Board recommends that:

The Department of Transport investigate options for imposing strong sanctions on owners and operators who flagrantly disregard the basic tenets of safety in seaplane operations, and make public its findings within one year of the receipt of these recommendations.

TSB Recommendation A94-10

Transport Canada's response to Recommendation A94-10 (August 1994)

Transport Canada Aviation (TCA) concurs with the intent of this recommendation. It is TCA's current policy to take strong enforcement action against any operator who flagrantly violates the aviation safety rules. In addition, the Legislation and Compliance Branch publishes annual statistics on national compliance activities. Regional Compliance Offices pay particular attention to seaplane operations every year in their annual surveillance activities.

The authorities to impose strong sanctions for violations of the aviation safety rules are provided in the *Aeronautics Act* and the *Criminal Code*. These authorities must be exercised equitably and fairly in respect to all operators, regardless of the nature and location of their business.

To target any specific member of the aviation community for higher sanctions or penalties may be considered contrary to the intent and spirit of the *Canadian Charter of Rights and Freedoms*.

Board assessment of the response to Recommendation A94-10 (August 1994)

Transport Canada concurs with the intent of the recommendation. Transport Canada (TC) states that Regional Compliance Officers do pay particular attention to seaplane operations in their annual surveillance activities, but that targeting any specific member of the aviation community for higher sanctions or penalties may be considered contrary to the intent and spirit of the *Canadian Charter of Rights and Freedoms*.

Since the recommendation referred to sanctions for safety regulation violations, the Regulatory Compliance statistics were examined to assess whether TC emphasizes the detection of violations of safety rules. Out of the 10 most frequently cited violations, 81% are related to improper documentation (Certificate of Airworthiness not in force, licence expired, invalid operating certificate, ownership change not notified, failure to maintain logs, etc.). In these cases, the relationship to safety is usually remote. The remainder of the most frequently cited violations comprises: air transport operation in violation of operating certificate (8%); airspace infringement (4%); certification as airworthy without complying with airworthiness standards (4%); and violation of noise restrictions (3%).

The proportion of TC's enforcement activities dedicated to seaplane operations surveillance is unknown, and therefore TC's "particular attention to seaplane operations" cannot be determined. Still, the total annual number of violation investigated by TC officers has decreased by 9% from 1991-92 to 1992-93, and by 10% from 1992-93 to 1993-94. In the fiscal year 1993-94, 74% of the investigations concluded in a Letter of Counselling or No Further Action. Less than 3% of the investigations concluded in a prosecution.

TC's concern for equity and fairness in accordance with the *Canadian Charter of Rights and Freedoms* can be appreciated. However, TC's Regulatory Compliance Manual states:

Where a violation is admitted or an investigation confirms the occurrence of a violation, Transport Canada Aviation possesses an array of compliance sanctions. The effectiveness of these sanctions can be weakened, however, by

their inappropriate use. Selecting an appropriate deterrent action requires good judgement, an awareness of the facts and a sense of fairness on the part of all inspectors.

It is clear, therefore, that TC's enforcement officers have, within set parameters; a fair amount of latitude for assessing what sanction should be used. There is no indication that TC's own Regulatory Compliance Manual (last amended 29 April 1994) has been challenged under the provisions of the *Canadian Charter of Rights and Freedoms*. TC's enforcement officers do have the authority to "impose strong sanctions", as the Board recommended. Since TC provides no evidence that it will step up its enforcement activities or impose stronger sanctions to deter seaplane pilots from violating safety regulations, this response is considered **Unsatisfactory**.

Board reassessment of the response to Recommendation A94-10 (November 1996)

Transport Canada believes that its enforcement programs and its available sanctions are strong enough.

Therefore, the assessment remains **Unsatisfactory**.

Board reassessment of the response to Recommendation A94-10 (November 1997)

No change since the last reassessment.

Therefore the assessment remains **Unsatisfactory**.

Board reassessment of the response to Recommendation A94-10 (February 2004)

The underlying safety deficiency in Recommendation A94-10 remains. There is no indication Transport Canada was ever convinced that a safety deficiency existed; hence Transport Canada had no intention of specifically targeting the seaplane community with tougher penalties for safety infractions.

Therefore the assessment remains **Unsatisfactory**.

As such, "Further Action is Unwarranted" with respect to Recommendation A94-10 and the status is set to **Inactive**.

Board review of Recommendation A94-10 deficiency file status (April 2014)

The Board requested that Recommendation A94-10 be reviewed to determine if the Deficiency File Status was appropriate. After an initial evaluation, it was determined that the safety deficiency addressed by Recommendation A94-10 still needed to be reassessed.

A request for further information was sent to Transport Canada and a reassessment will be conducted upon receipt of Transport Canada's response.

Therefore, the assessment remains **Unsatisfactory**.

Consequently, the status of Recommendation A91-22 is changed to **Active**.

Transport Canada's response to Recommendation A94-10 (July 2015)

Transport Canada's Enforcement Policy and Procedures provide guidance for assessing appropriate deterrent action for violations of the *Aeronautics Act* and the *Canadian Aviation Regulations* (CARs). These procedures provide for increasing severity of penalty level based on a number of factors, including the record of the offender, mitigating factors and aggravating factors. This guidance applies to any violation committed by any Canadian Aviation Document (CAD) holder regardless of whether the offender is operating floatplane or other types.

More specifically, Staff instruction SUR 103-001 provides detailed guidance to the Enforcement staff in the selection of an appropriate penalty level based on the record of the offender; the penalty may be increased to the legal maximum specified in Schedule II to CARs subpart 103 on a third or subsequent contravention. The penalty level may also be increased in consideration of aggravating factors such as, the deliberateness, gravity of the offence, or other factor that indicates the contravention is worthy of a higher-than-recommended penalty.

Each case is assessed to its own merit in consideration of the above mentioned factors. Where circumstances surrounding an offence indicate a higher penalty is required, one would be assessed.

Transport Canada takes the appropriate action to encourage future compliance and to deter others from contravening aeronautics legislation.

Transport Canada believes the objectives of the recommendation have been met and suggests closing this item.

Board reassessment of the response to Recommendation A94-10 (March 2016)

Transport Canada's response provides a detailed review of its current Enforcement Policy and Procedures indicating that it is designed to properly identify and adequately penalize those floatplane operators that commit violations of the *Aeronautics Act* and the *Canadian Aviation Regulations* (CARs).

A review of TSB Class 2 and 3 occurrence reports for floatplane occurrences since 01 January 2005 reveals that only eight occurrence reports generated findings dealing with the safety deficiencies (i.e. use of shoulder harnesses, access to personal floatation devices, etc.) cited in the preamble to Recommendation A94-10.

Additionally, the floatplane accident statistics, used in the SA9401 report, have reduced dramatically in comparison to floatplane accident data since 01 Jan 2006.

	Accidents	Total Fatalities	Average Annual Fatalities
1976 through 1990	1432	452	30
2005 through 2015	484	139	13

Given the reduction in related findings in recent floatplane occurrence reports and the overall reduction in floatplane accident statistics, the reassessment is changed to **Fully Satisfactory**.

Next TSB action

As the safety deficiency associated with Recommendation A94-10 is considered rectified, no further action is necessary.

This deficiency file is **Closed**.