



DEPARTMENT OF THE NAVY
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From: Commander, Naval Safety Center
To: National Transportation Safety Board Office of Aviation
Safety, Attn: Mr. William English, NTSB AS-10 490
L'Enfant Plaza East, SW, Washington, DC 20594

Subj: NAVY RESPONSE TO NTSB OMEGA 707AR INVESTIGATION

Ref: (a) DCA11PA075 Long Narrative
(b) DCA11PA075 NTSB Factual Public Docket

1. This is an official Navy response to references (a) and (b) that was coordinated with Commander, Naval Air Systems Command issued to provide the Navy's analysis and conclusions to the National Transportation Safety Board (NTSB) Investigation report concerning the Omega 707 Mishap that occurred on May 18, 2011 while supporting a Navy Contract.

2. Representatives from the Navy participated in the NTSB investigation and the preparation of the Factual Reports. The Navy concurs that the investigation addresses the relevant causal factors associated with the mishap. The mishap was a direct result of the failure of a known material issue associated with Boeing 707 aircraft engine midspar support fittings. Boeing issued service bulletins and airworthiness directives from 1977 to 1993 calling for inspection and replacement of the fittings. Historical records from 1983 indicate that a previous owner/operator completed the airworthiness directive however the post event inspection indicated that the older style fittings were not actually replaced. Although not causal to the mishap, the investigation did note that the flight data recorder was inoperative at the time of the event. The Navy finds no fault in the actions of the current contractor/operator that contributed to this mishap.

3. While not causal in any way to this mishap, it is the Navy's position that there remain many unresolved issues associated with Public Aircraft Operations (PAO) that must be addressed to ensure adequate safety in and outside of the National Air Space. Additional policy must be established to guide both Government agencies and contractors in the conduct of PAO for compensation and hire. The Navy worked diligently with Federal Aviation Administration (FAA) headquarters on the issue of PAO for the

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last 10 years and was aware of the associated concerns highlighted during this investigation.

4. The wording contained in 49 U.S.C. §40102 (A)(41) regarding PAO is difficult to understand and was inconsistently interpreted by the FAA, Government agencies, and the aviation industry. While the FAA has taken significant steps to clarify their interpretation of the law through the release of Draft PAO Advisory Circular AC No: 00-1.1A, many aspects of PAO remain unclear and are not consistently interpreted. The remainder of this response will be devoted to articulating those issues.

a. While not causal, the law is silent on a requirement for government agencies contracting for public aircraft operations to issue a certificate of airworthiness. In the case of Omega, the Navy leveraged the FAA civil type certificate and supplemental type certificates issued by the FAA for the configuration of the aircraft, then supplemented this with engineering analysis of the governmentally unique systems and operations that the Navy was asking Omega to perform. The Navy monitored, through the contract with Omega, their daily maintenance and safety operations. The Department of Defense (DoD), through the Joint Aeronautical Commanders Group, is working to establish standardized processes for effective and efficient oversight of PAO when supporting DoD agencies. Outside of DoD, with smaller government agencies, such solutions may not be readily available and the Navy recommends that the FAA consider establishing a separate category of Special Certificated aircraft that could be used to support contracts for compensation and hire, including FAA oversight, to ensure consistent application and efficient use of taxpayer funding.

b. International Operations

(1) While not causal, among the outstanding issues yet to be resolved include the means to conduct operations in international waters. The concept of civil aircraft operating as refueling tankers is not new. Before World War II, the flying boats used civil refueling to cross the Atlantic or the Pacific. When the 1944 Chicago Convention was written, the practice had largely ceased and were not included in the convention.

(2) When Omega first decided to provide a civil Air-to-Air Refueling capability, they approached the Civil Aviation Authority (CAA) in the United Kingdom, the FAA in Washington,

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DC, and the International Civil Aviation Organization (ICAO) in Montreal, Canada to establish rules and procedures for the international operation of tanker aircraft. The procedures for international operations in place at the time of the mishap came from many meetings of the FAA legal counsel, ICAO legal counsel, and the U.S. Navy when Omega came under contract.

(3) ICAO only recognizes two types of aircraft, civil and state. The FAA maintains that "Although this accident occurred within the territorial boundary of the U.S., the flight was intending to travel beyond the 12 mile territorial limit, beyond which, according to the FAA, the provisions of the Public Aircraft Statute did not apply." It is the Navy's position that this does not mean that the aircraft was a State aircraft. Further, Omega was conducting PAO outside the U.S. in accordance with FAA policy order 8130.2G and Advisory Circular 20-132, which stated that all U.S. registered aircraft engaged in international PAO were required to have a valid certificate of airworthiness, and that the Experimental Certificate qualified for this purpose. When operating outside the U.S., Omega flights obtain the appropriate over-flight and/or landing permits from applicable countries as necessary.

(4) According to the Department of State (DoS), State Aircraft designations are only applicable and employed when aircraft require foreign over-flight and landing rights and are not applicable to contracted aircraft supporting Government operations in international waters. As a civil aircraft supporting a military tasking order, civil aircraft can be afforded the privileges associated with a military State aircraft and be deemed a State Aircraft under ICAO law, which is defined in the 1944 Chicago Convention under Article 3(b) as "aircraft used in military, customs and police services." Because PAO does not exist outside 12NM, that does not mean Omega is not a civil aircraft. When an Omega aircraft is conducting PAO transits outside 12NM, Omega must then follow ICAO rules which recognize aircraft operating under civil or state status. The DoD and the contractors supporting PAO are more than willing to comply with policy and direction, but believe the FAA needs to assist in developing policy and procedures to adequately address the requirement to operate internationally, without increasing cost to the taxpayer with no added value.

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c. PAO Advisory Circular AC No: 00-1.1A

(1) While not causal to the mishap, the PAO Advisory Circular in place at the time of the mishap contained numerous errors and contradictions. The Navy applauds the FAA's release of the new draft Circular. The draft goes a long way in providing improved guidance and understanding. In response to the release of the draft Circular, a Navy led team from DoD working with the Joint Aeronautical Commanders Group (JACG), provided recommendations to the FAA. Included in those recommendations, DoD has requested clarification on issues associated with compensation and hire and the use of experimental aircraft to ensure the FAA, industry and Government agencies, all share a common understanding and recognize their responsibilities. It is of vital importance that FAA Flight Standards District Offices (FSDO) understand this directive and provide consistent guidance.

5. In conclusion, a previous owner/operator failed to comply with an aircraft directive which led to material failure and the aircraft mishap. During the NTSB investigation of the Omega aircraft accident, many issues associated with PAO that were not causal to the accident were identified. The draft PAO Circular provides this statement, "Contracting government entities must be aware that PAOs performed by civil operators create a significant transfer of liability to the contracting government entity, and that most FAA oversight ceases." The Navy recognizes this and believes it is imperative that all confusion associated with PAO be rectified to facilitate safe and effective flight operations and to clearly delineate responsibilities of the involved contractors and government agencies.

6. Points of contact concerning this mishap are as follows:

For Naval Aviation Safety Policy
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