

Collision between frigate Helge Ingstad and tanker Sola TS, 8th Nov. 2018

Some legal aspect – civil liability – criminal liability

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Public sources of information

- **Reports** of the Norwegian Safety Investigation Authority
 - Part one (11.2019), sequence of events up until the time when the collision occurred
 - Part two (04.2021), events after collision (grounding, evacuation, sinking)
- Settlement for the civil claim (02.2022)
 - not public ☹️
- **Decicion** (05.2022) by the Director of Public Prosecution
- One court case set for jan. 2023



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NSIA has compiled this report for the sole purpose of improving safety at sea.

The object of a safety investigation is to clarify the sequence of events and root cause factors, study matters of significance for the prevention of maritime accidents and improvement of safety at sea, and to publish a report with eventually safety recommendations.

The Board shall not apportion any blame or liability. Use of this report for any other purpose than for improvements of the safety at sea shall be avoided.





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The different legal elements

- Civil claims of compensation based on liability/tort
 - Attorney of state/MOD against Twitt Navigation LTD
 - Attorney of state/MOD against Det Norske Veritas (DNV)
- Criminal investigation and liability
 - Officer of the watch (OOW) on Helge Ingstad (HING)
 - Ministry of defence/the Navy
 - Captain, Sola TS
 - VTS Operator
 - Norwegian Coastal Administration
 - (the Pilot)





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Consequences

- **NO loss of life, little damage to environment**
- Some injured crew on HING, but not serious
- Damage and loss, Sola TS totalling ?
 - Damages to anchor and hull due to collision
 - Loss of income
- Total loss of KNM Helge Ingstad (scrapmetal)
 - Cost of rescue operation: 765 million NOK
 - Cost of scrapping: 60 million NOK
 - Estimated value: 4,3 billion NOK
 - Cost to buy new frigate: 11-13 billion NOK
- Norwegian Government self-insured

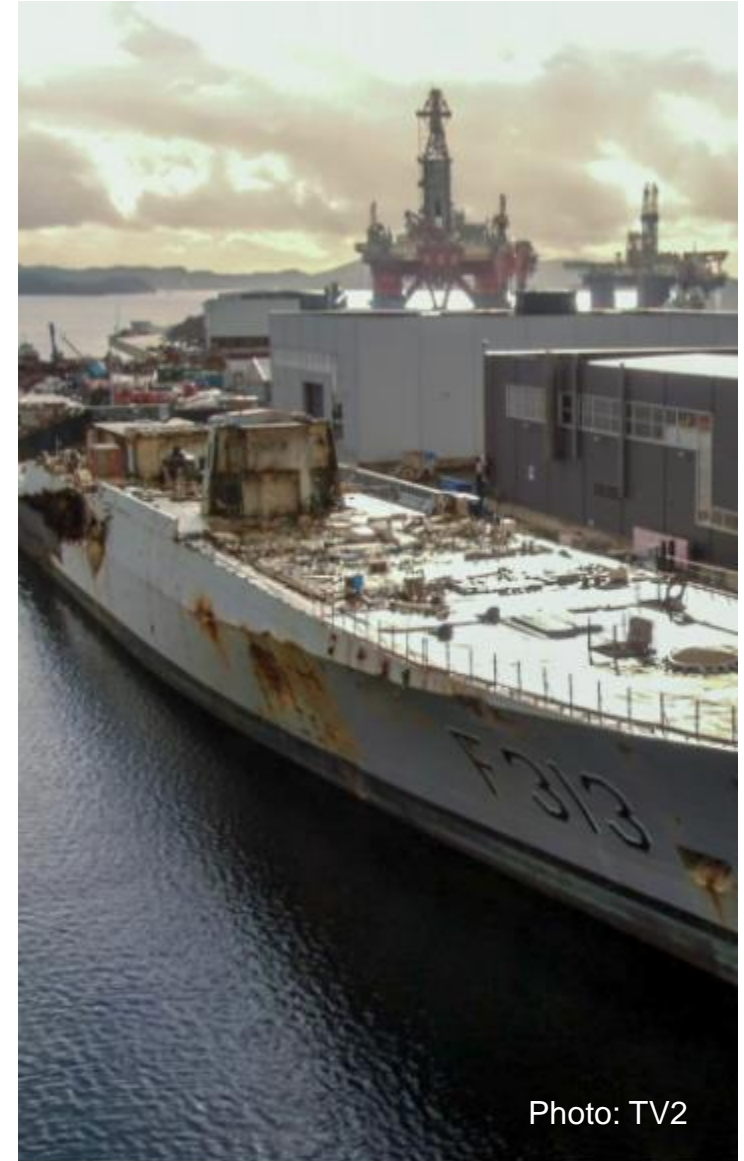


Photo: TV2

Civil liability and compensation

Attorney General for Civil Affairs, on behalf of the NO Government and the Ministry of Defence (MOD):

- Sued Twitt Navigation LTD holding the tanker liable for a claim of some NOK 13 billion for the loss of the frigate and an additional NOK 770 million for costs related to removing the wreck
- Sued the class (DNV) for 15 billion NOK for the loss of the frigate.



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Compensation claims against shipowner

- Claims total of 13 billion + 770 million NOK
- Sola TS ship owner Twitt Navigation LTD established limitation fund of 400 million NOK according to LLMC
- Court case on whether wreck removal was covered by limitation fund (District Court)
- Settlement between Government and Twitt where shipowner agrees to pay 235 million NOK
- Details of settlement not public
- Does it indicate 60/40 liability ?????? Probably not.

Limitation of Liability for Maritime Claims

2016 Edition



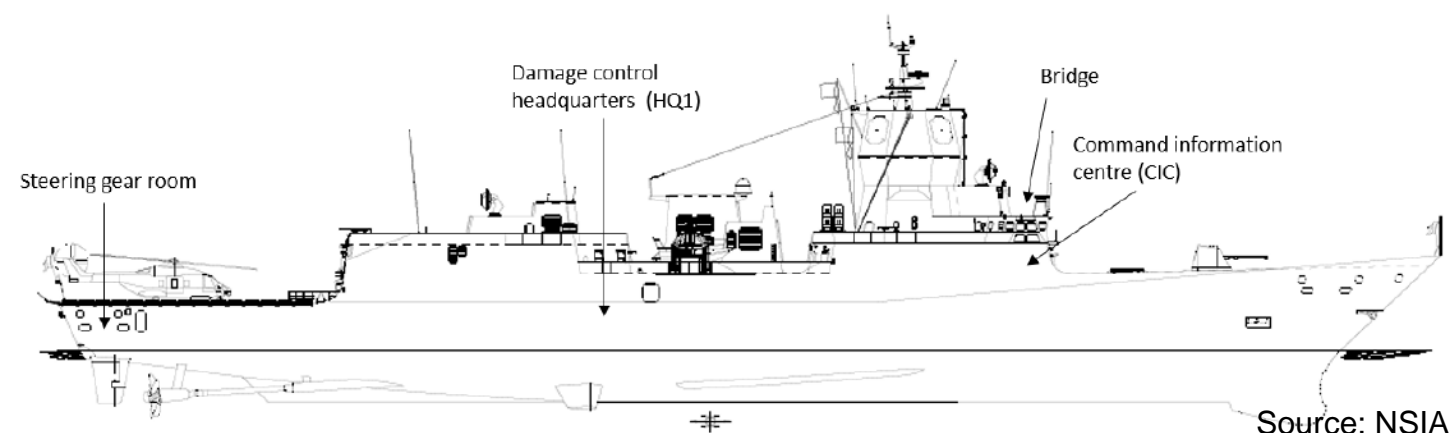


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Compensation claim against DNV – 13 billion NOK

- DNV was responsible under contract with the Marine to class the vessel Helge Ingstad
- Sued mainly in order to secure the claim within limitation period. Also speculations on error of construction since vessel sank very fast...
- Claim abandoned after second report by Norwegian Safety Investigation Authority

“Calculations carried out by the NSIA afterwards have nonetheless shown that the frigate **could have been prevented from sinking, had she been shut down before she was evacuated.** Stability calculations also show that the grounding was not a decisive factor in causing the frigate to sink, as the failure to shut down the frigate would have caused her to sink in any case. Further efforts to prevent the ship from sinking and prioritisation of the right measures could have helped to gain control of the ingress of water.”



Criminal investigation and liability

“The wheels of justice turn slowly, but grind exceedingly fine”
-Plutarch (Greek philosopher)-

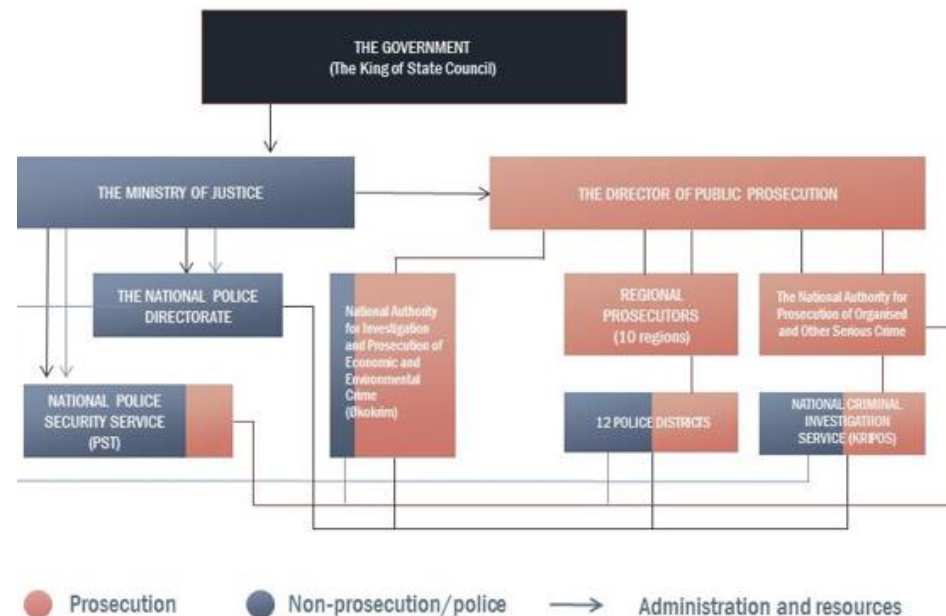
Immediately: Local police declare OOW HING, VTS operator, Captain Sola TS and pilot as being under investigation.

Sept. 2019 – District Police Prosecutor: Propose charges for OOW HING, MOD/Navy, Captain Sola TS, VTS operator and NCA for violation of Penal Code/Ship Safety Code.

March 2021 – Regional Prosecutor of Vestland county: As above, but: Captain Sola TS no longer charged or under investigation. Pilot no longer under investigation.

May 2022 – Director of Public Prosecution (State Prosecutor):

- OOW charged for violation of Penal Code
- MOD/Navy notified of fine for violation of Penal Code
- All others: no longer charged or under investigation



01,19

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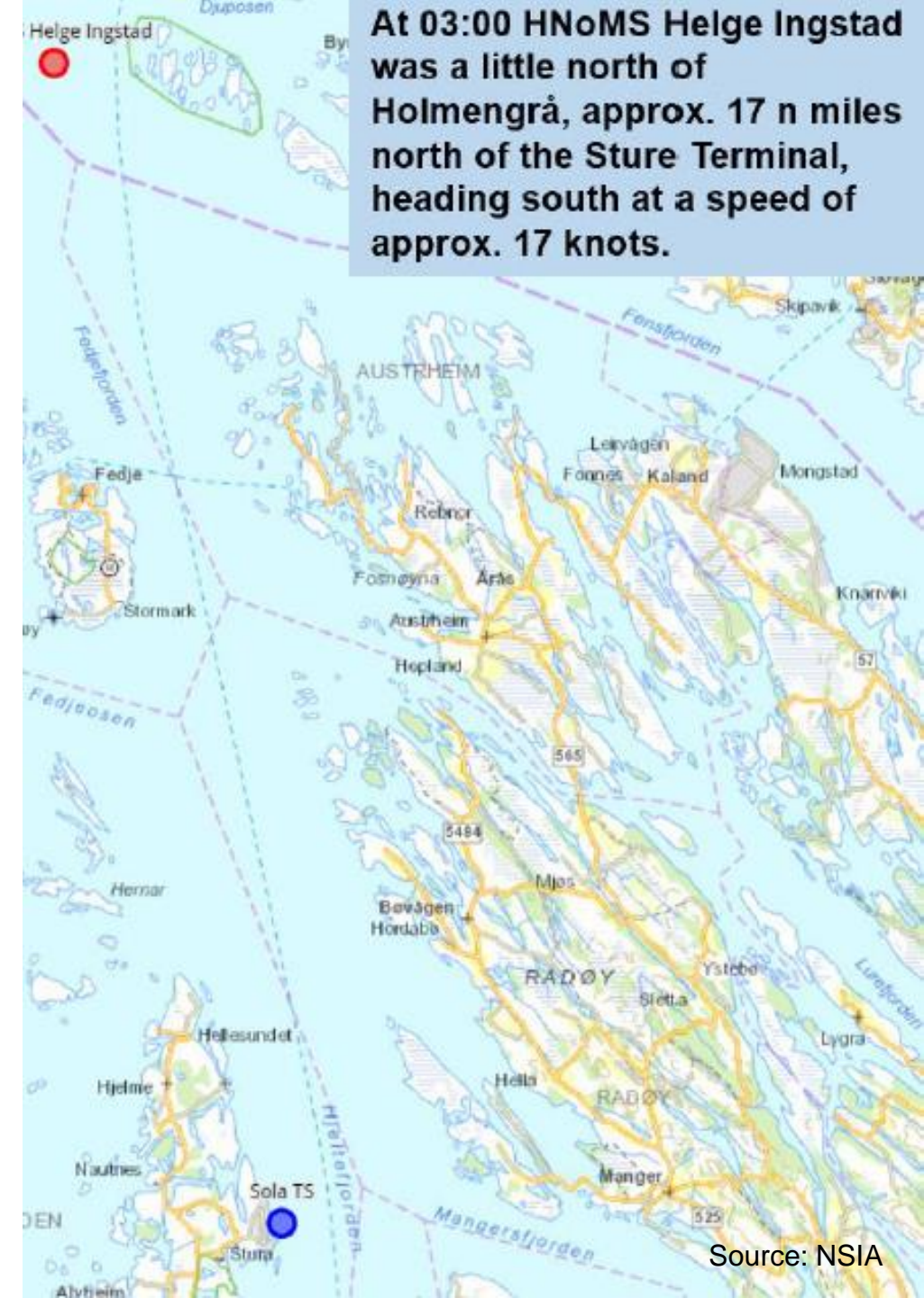
4. mai 2022

KOLLISJON MELLOM KNM HELGE INGSTAD OG SOLA TS – PÅTALEAVGJØRELSE

Sendes Hordaland, Sogn og Fjordane statsadvokatembeter.

Role of VTS during the accident

- 02:38 HING calls VTS on cellphone
- VTS confirms and logs the call. VTS operator sees radar echo on overview screen
- 02:50 HING enters VTS area.
- VTS operator normally plots vessels upon entry but not this time (HING does not transmit AIS)
- 03:13 pilot on board Sola TS calls VTS informing that they were preparing to depart
 - South station operator receives this message as north station operator is downstairs getting food



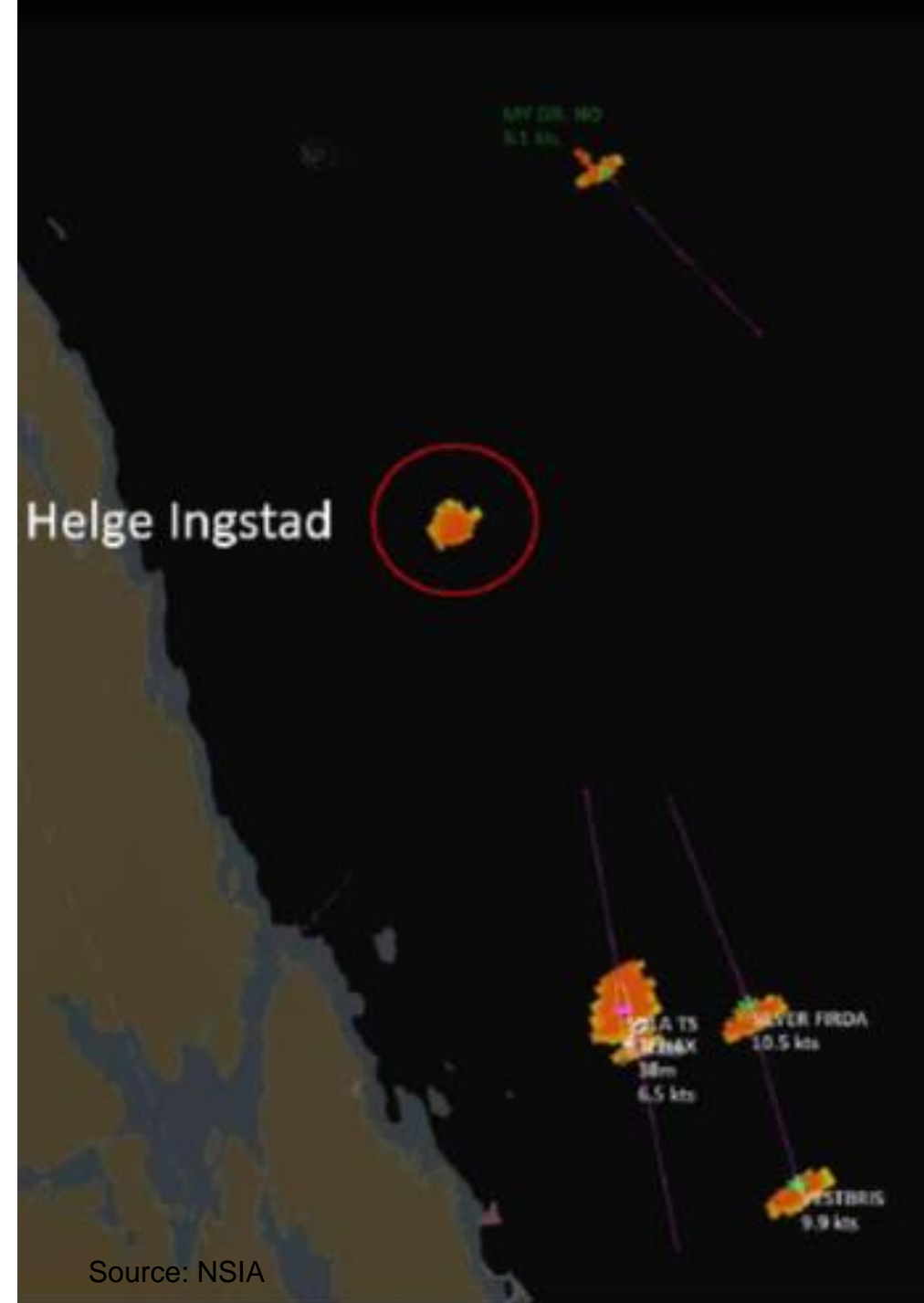
Role of VTS during the accident

- 03:45 pilot on Sola TS calls VTS informing that Sola TS is departing, heading west through Fedjeosen
- VTS operator zooms in the main work screen on northbound vessels south of Sola TS, leaving HING not visible on main work screen
- At 03:57 (distance app. 2,720 metres between Sola TS and HING) the pilot is aware of the radar echo and observes the vessel's navigation lights visually. He requested AIS data, but the master replies that the vessel is not transmitting.



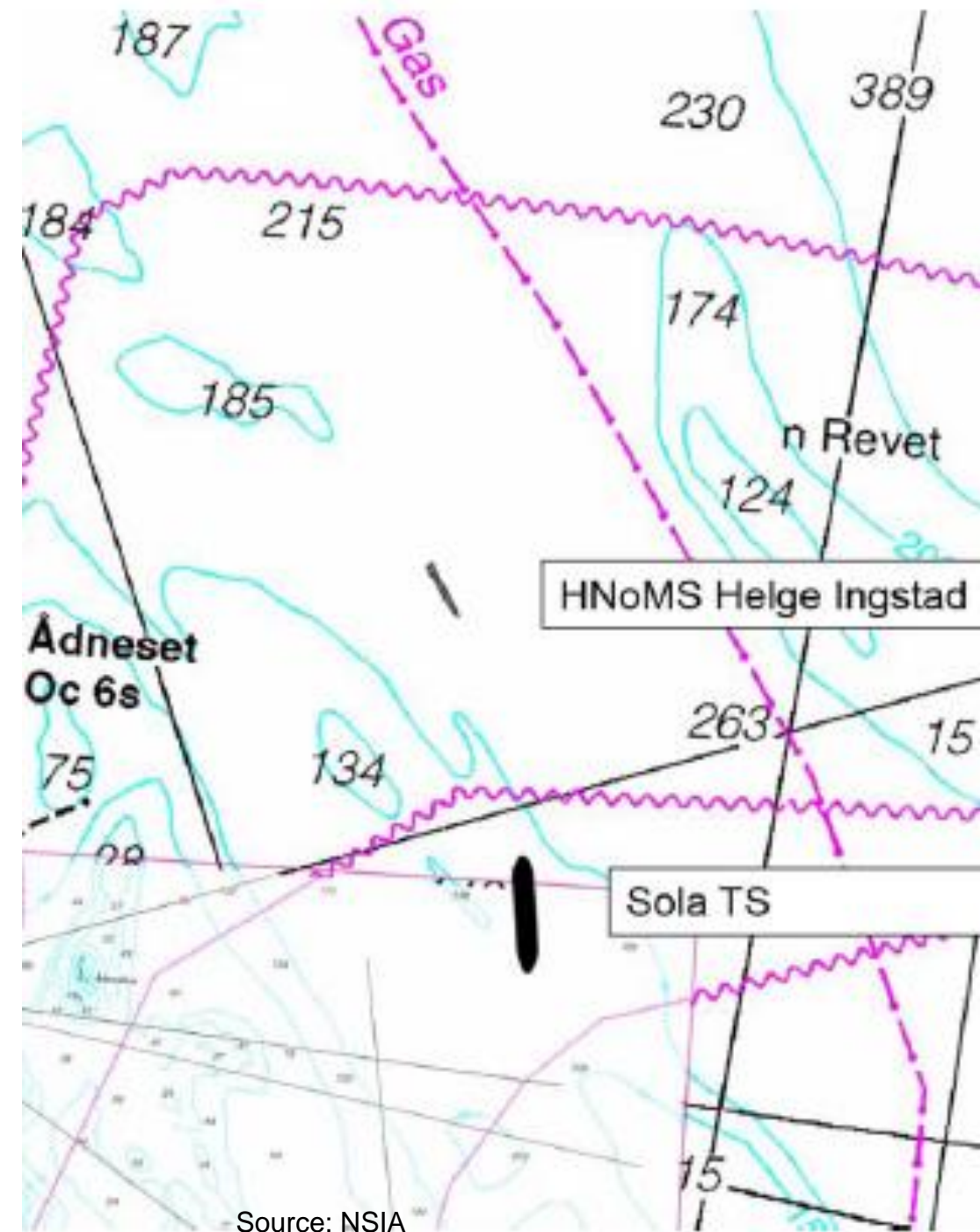
Role of VTS during the accident

- 03:58:03: the pilot calls the VTS on VHF and requests information about the vessel.
- 03:58:30: VTS operator replies: *'There is ... have not received any information about it. It has not been reported to me, I only have an echo on the screen here.'*
- At 03:58:54: VTS operator plots the echo on the radar without AIS. He saw that a vector appeared on the screen indicating that Sola TS and the other vessel were on course to collide. The VTS operator then remembers that HING had previously (at 02:38) notified of entering the VTS area.
- The VTS operator immediately called (03:59:40) the pilot on Sola TS on VHF who replied (03:59:46) to the call.
- 03:59:47 VTS to Sola TS: *'It is possibly Helge Ingstad; he entered from the north a while ago. It could be that he is the one approaching.'*



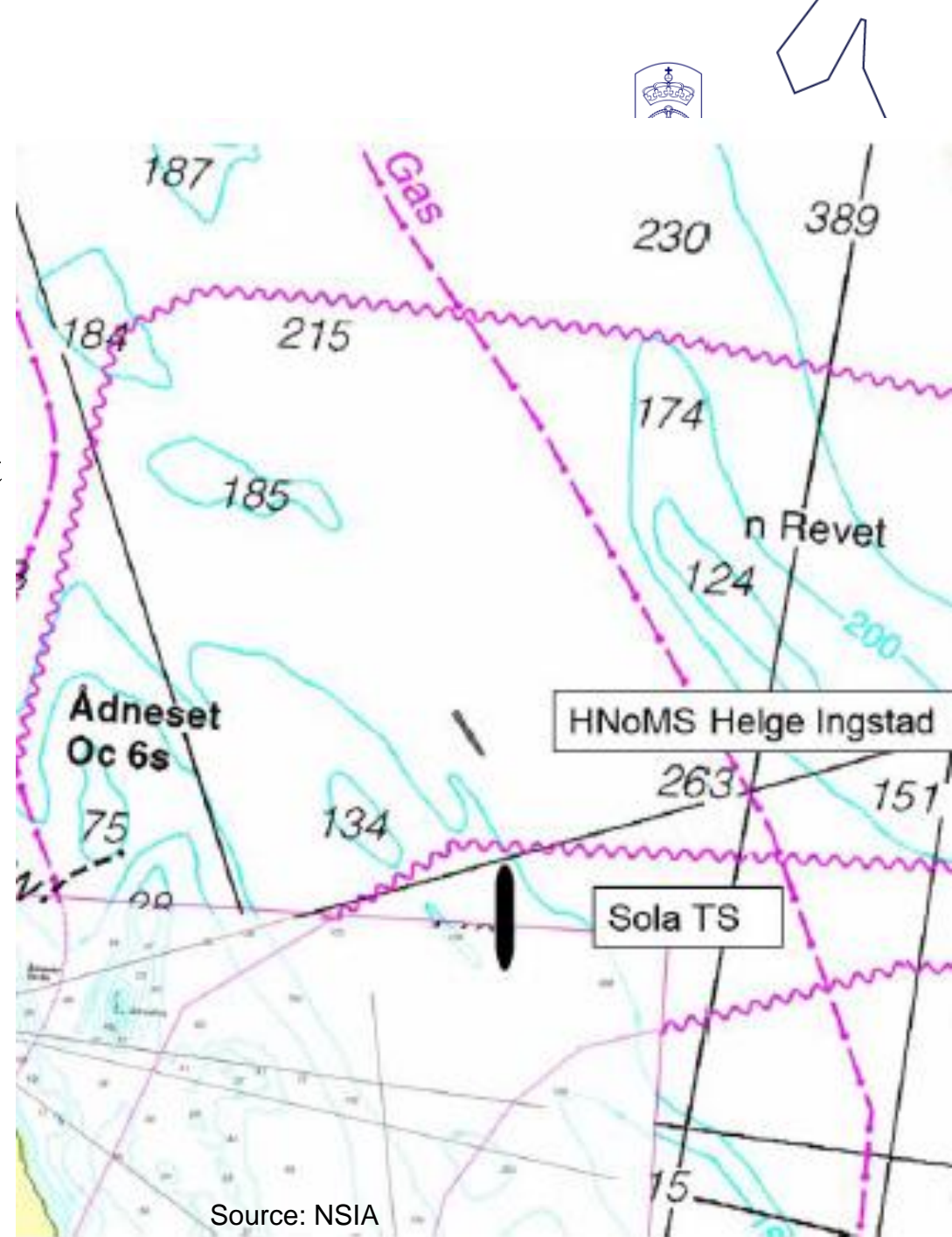
Role of VTS during the accident

- 03:59:56, pilot on Sola TS called immediately HING: *'Helge Ingstad, do you hear Sola TS?'*
- 04:00:02, OOW on HING: *'Helge Ingstad'*.
- 04:00:04: Pilot, on Sola TS: *'Is that you approaching?'*
- 04:00:06, the OOW on HING: *'Yes, it is'*.
- 04:00:08, the pilot on Sola TS: *'You must turn to starboard immediately'*.
- 04:00:11, the OOW on HING: *'No, then we will sail too close to eh... båkene'*.
- 04:00:15: pilot on Sola TS: *'Turn starboard if you are the one approaching.'*
- 04:00:27: OOW on HING: *'I ... a few degrees to starboard as soon as we have passed eh ..., passed eh ... the platform on our starboard side'*.



Role of VTS during the accident

- The VTS operator at Fedje VTS had registered that there was radio contact between Sola TS and HING and did not want to intervene.
- The operator has explained that the whole situation was incomprehensible. He did not understand why HING replied that they could not go further to starboard.
- However, in the end, the VTS operator did call HING
- 04:00:44: VTS Operator: *'Helge Ingstad, you must do something. You are getting very close.'*
- 04:00:47: distance of 50 metres between the two vessels
- 04:01:03: VTS operator: *'Helge Ingstad, there will be a collision.'*





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Role of VTS during the accident

- **04:01:15**
- The two vessels collided outside the Sture Terminal in the Hjeltefjord





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Charges against VTS operator

Penal Code § 172 conf. 171:

“grossly negligent breach of official duty” in the “exercises or assists with the exercise of public authority”, penalty of which is “a fine or imprisonment for a term not exceeding one year”

- District Police Prosecutor: **yes**
- Regional Prosecutor: **yes**
- State Prosecutor: **NO**



Photo: Kystverket



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Charges against VTS operator

Reasoning of the State Prosecutor:

- VTS is considered exercise of public authority, including non-intervention, since there is an obligation to intervene “*when considered necessary*” (according to guidelines)
- Even though not specified in procedures, still considered practice among the VTS operators to plot military vessels without AIS
- Operator should have plotted HING, and should have been more attentive towards the northern part of the VTS-area





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Charges against VTS operator

However, still not considered gross negligence:

- Very well equipped and presumably well trained military vessel, familiar with the area
- Up until 03.57/58 nothing special in the situation; not much traffic, good weather, good visibility, uncomplicated part of the fjord, all the actions/procedures of Sola TS were normal
- If HING had behaved predictably it would have been a normal port-port passage
- The operator was at his desk trying to do his job, but focussed his attention to the south of Sola TS





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Charges against VTS operator

- When situation is no longer considered normal (03.57/58) VTS operator acts by plotting the vessel, responding to the pilots call and informing the pilot that it is HING.
- He should maybe have issued a warning to HING after plotting, but in the hectic situation this is not considered gross negligence.
- After Sola TS established communication with HING it is understandable that operator leaves communication to the ships who also have visual contact.
- When he did make contact operator should have used message markers (warning). Considered neglect of duty, but not gross negligence.





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Charges against VTS operator

Conclusion of the State Prosecutor:

- *«(...) has committed errors but they are by themselves not considered punishable. It is furthermore the view of the State Prosecutor that the errors in sum also do not constitute grossly negligent breach of official duty»*



Charges against NCA – the competent authority

Penal Code § 27 conf. § 171/172

- *Enterprises can be held responsible for grossly breach of official duty, also for the sum of simple negligent breach by employees and accumulated anonymous errors.*

- District Police Prosecutor: **yes**
- Regional Prosecutor: **yes**
- State Prosecutor: **NO**

NCA not in agreement



Hordaland, Sogn og Fjordane statsadvokatembeter
v/statsadvokat Magne Kvamme Sytta
Postboks 263 Sentrum
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Deres ref.: Vår ref: Arkiv nr: Saksbehandler: Dato:
2021/1255-1 2021/1255-1 Jeanette Assev-Lindin, Trond Skil 19.01.2021

Kystverkets uttalelse til Vest politidistrikts siktelse av 16. september 2020

Innhold

1. Innledning.....	3
1.1 Sakens bakgrunn	3
1.2 Generelt om uttalelsens innhold.....	3
2. Generelt om Kystverkets virksomhet og organisering.....	3
2.1 Kystverkets oppgaver.....	3
2.2 Kystverkets organisering.....	4
3. Kravene til sjøtraffikksentraltjenesten	5
3.1 En internasjonal tjeneste.....	5
3.2 SOLAS' og IMO's retningslinjer for VTS	5
3.3 Rammeverket fra IALA.....	10
3.4 Nasjonalt regelverk	10
4. Tjenestene som tilbys av sjøtraffikksentralene i Norge.....	12
4.1 Generelt	12
4.2 Trafikkovervåking	12
4.3 Informasjonstjeneste	21
4.4 Navigasjonsassistanse og havne- og farvannsloven § 38	24
5. Forholdet til Sjøforsvaret.....	28
5.1 Innledning.....	28
5.2 Nærmere om AIS	28
5.3 Sjøforsvarets fartøy – forhold til regelverket for sjøfart.....	28

Penal Code § 27

Penalties for enterprises

- *When a penal provision is violated by **a person who has acted on behalf of an enterprise**, the enterprise is liable to punishment. This applies **even if no single person meets the culpability or the accountability requirement**, see section 20.*
- *«Enterprise» means a company, co-operative society, association or other organisation, sole proprietorship, foundation, estate or **public body**.*
- *The penalty is a fine. The enterprise may also be sentenced to lose the right to operate, or may be prohibited from operating in certain forms, see section 56, and be subject to confiscation, see chapter 13.*

Charges against NCA

Reasoning of the State Prosecutor:

- Even though an employee commits an error there is not a presumption that the establishment be punished
- Punishment should only be used when this is justifiable
- The errors committed were not due to systematic errors, by e.g lack of procedures, training, organisation or control, even though some areas for improvement have been identified
- Anonymous and cumulative errors have not been identified





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Charges against the Captain of Sola TS

Ship Safety Code § 60: «*wilfully or negligently severely breaches the duty to navigate the ship safely*»

Reasoning of the State Prosecutor

- Deck lights common practice, not negligent
- May have been more attentive to the north, but until 4-5 minutes before incident all was «normal»
- Actions last 4-5 minutes were adequate
- HING's wrongful perception of the situation and unpredictable maneuvering was clearly the dominating cause of the accident, while the captain is not particularly to blame





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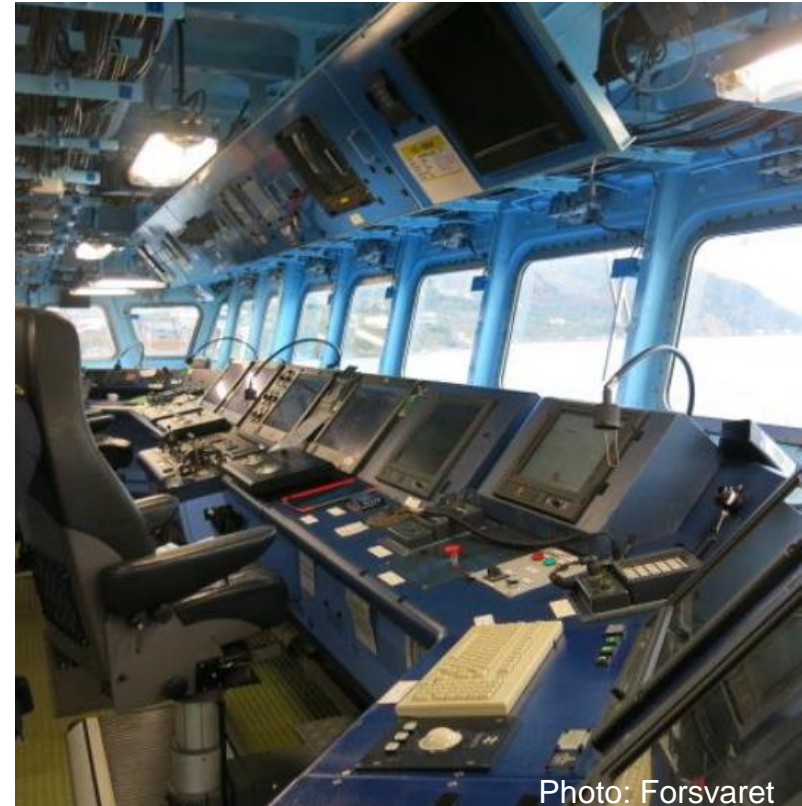
Charges against OOF on HING

Penal CodeSection 356 conf 355. *Causing danger to the public*

“any person who negligently causes danger to the public (including maritime damage) is punishable by a fine or imprisonment for a term not exceeding three years»

Reasoning of the State Prosecutor

- Did not exercise the necessary caution that safety of navigation required
- Did not examine the object (Sola TS) using radar/AIS
- Did not use resources of the crew
- Did not reduce speed
- Did not heed warnings



Charges against MOD/Navy

Penal Code § 27 conf. § 356 and 355

- MOD/Navy responsible for persons who acted on behalf of them in violation of a penal provision. Penalty is a fine.

Reasoning of the State Prosecutor:

- The dominating cause is the negligent navigation of the bridge crew on HING under the conduct of the OOF, for which the Navy/MOD is responsible

MOD/Navy has accepted a fine of 10 million NOK

