



National Transportation Safety Board

Washington, D.C. 20594

October 11, 2017

K. L. Peterson
Project Director
TOTE Maritime, Alaska
32001 32nd Ave S., Suite 200
Federal Way, WA 98001

Re: Tech review of the Nautical Operations Group Factual Report

Mr. Peterson:

The NTSB investigative team has reviewed all factual comments submitted by the parties as part of the technical review and has decided on a disposition for each one, as reflected below.

All editorial suggestions have been considered and will be incorporated as appropriate.

Best Regards,
Brian Young
Investigator in Charge
National Transportation Safety Board
490 L'Enfant Plaza, S.W.
Washington, DC 20594

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NTSB Draft Factual Report for Tech. Review

Page/Line	TOTE PARTY COMMENTS	NTSB – Disposition of Party Comments
P5 L7	The main and second decks sloped, or sheered, from the bow aft to the after end of the forward cargo ramps (Fr 128) and from the stern to the house. The decks have no sheer (are level with the bottom) between the fore and aft cargo ramps.	AGREE. Revised.
P6-L6	“TOTE” should be “Tote Services” - Note that in a number places throughout the report the companies’ respective identities and functions have been conflated or misidentified. The use of the term “TOTE” either needs to be changed, or TOTE needs to be defined up front. We have identified this being the case in at least the following locations: p.7, l.4; p.8, l.10; p.13, l.11.	AGREE. Revised.
P6-L7-8	It is not accurate to state that both TOTE Maritime Puerto Rico and TOTE Services are subsidiaries of Saltchuk Resources, Inc. More accurately, TOTE Maritime Puerto Rico and TOTE Services are direct and indirect subsidiaries of TOTE Inc.	AGREE, Revised.
P6 L10	The draft report properly states that the minimum manning required was 17 personnel, but then refers to the “regular crew of 26,” without explanation. We ask that the following sentence be added after the word “seamen” on line 10: “Tote Services manned the EL FARO in excess of these minimum manning requirements, typically carrying a regular crew of 26.”	AGREE, revised consistent with suggested wording.
P7 L6	<p>The draft report paraphrases the language in the OMV regarding the role and duties of the Master, and, in doing so, understates the Master’s very significant, solemn responsibility and authority. We think the OMV sums up the Master’s role best as follows, and ask, for the sake of accuracy, that the entirety of the following verbatim language from the OMV be included in this section of the draft report:</p> <p>“The Master is in supreme command of the vessel and therefore has the full authority and responsibility regarding all vessel operations at sea or in port. The Master’s authority extends to all officers, unlicensed personnel and others aboard. The vessel’s rules must be obeyed in spirit and letter. This includes, but is not limited to, all matters of ship handling, navigation, and operations, including</p>	AGREE in part, and will utilize language to include “The Master of the vessel has the overriding responsibility for the safe operation of the vessel and the authority and discretion to take whatever action he/she considers appropriate in the best interest of the crew, vessel and marine environment.”

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	<p>interpretation of laws, rules and regulations, risk management, safety, cost control, pollution abatement, personnel administration and labor relations matters.</p> <p>The Master of the vessel has the overriding responsibility for the safe operation of the vessel and the authority and discretion to take whatever action he/she considers appropriate in the best interest of the crew, vessel and marine environment.” See OMV 5.1.1.</p>	
<p>P8 L8</p>	<p>The description of the port engineer’s job, as drafted, does not appear to accurately reflect the witness’ testimony (Mr. Neeson). Mr. Neeson’s job entailed many duties, as outlines in his testimony and other evidence, but primarily focused on the technical management of the vessels. Mr. Neeson was asked about what his job was, specifically with respect to implementation of the safety management system. We ask the language be corrected, and the testimony placed in its proper context. To the extent the factual report discusses the job of the port engineer, we believe it is more appropriate to refer to the port engineer’s job description, and that any specific reference to testimony regarding that job description, if needed, be characterized in its proper context.</p> <p>With respect to the flowchart referred to at lines 8 and 9, the language as written is incomplete and inaccurate. The language implies that the flowchart shows that the Master directly reported to the DP, and the DP alone, on all issues. That is not accurate. The flowchart, in fact, shows three lines of authority and communication from the Master through to the President of TSI, not just one as described: (1) Labor Relations; (2) DP; and (3) Technical Management. This flowchart is entirely consistent with the testimony of Mr. Neeson (as well as other witnesses). We ask that this section of the report be replaced with the following, more accurate language:</p> <p>“The flowchart shows three functional lines of authority and communication between the Master and the President of TSI: 1) Labor Relations; (2) DP; and (3) Technical Management.</p>	<p>NOTED. Revised to include the (MBI question and the port engineer’s exact quote.</p> <p>AGREE. Revised to include lines to the V.P. of Labor Relations, the ISM DP, and the V.P. Government/V.P. Commercial.</p>

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	<p>The Port Engineer communicated directly with the Master on issues surrounding the technical management and operation of the vessel on a day-to-day basis. From an organizational and operational perspective, between the Port Engineer and the President of Tote Services was the Director of Ship Management and Vice President Commercial Marine Operations.</p> <p>If there was a matter involving the safety management system and/or a compliance issue, then the Master would communicate directly with the DP (or someone on his staff). From an Organizational perspective, the DP had direct communications and line of authority to the President of Tote Services. ”</p> <p>If there was a labor relation or human resources issue to resolve, the Master of the vessel typically communicated directly with the crewing manager and others in Labor Relations. From an organizational perspective, between the crewing manager and President of Tote Services was the Director of Labor Relations.</p> <p>In some cases, depending on the facts of a particular situation, the communications and line of authority for managing and resolving issues could involve the Master communicating with all three departments shown on the flowchart and as described above. From an organizational perspective, the President of Tote Services was not involved in routine, day-to-day issues that were normally resolved and addressed at a lower level, by some combination of the three departments described above. When there were unique issues, significant decisions effecting the vessel, or when all three departments could not collectively resolve an issue, the President of Tote Services would get personally involved to provide direction and leadership on behalf of the company.</p>	<p>NOTED.</p>
<p>P8 - footnote 3</p>	<p>The draft addendum refers to a deck log entry for “checking weathertight doors.” As explained further below, we have reviewed this portion of the OMV and believe that this should read “watertight doors” not “weathertight doors.”</p>	<p>NOTED See OMV section wording used for required deck log book entries.</p>
<p>P9 L11,12,</p>	<p>In the Chief Mate’s duties section, at lines 11-12 and footnote 7, the</p>	

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footnote 7.	draft language refers to the Chief Mate’s purported duty of calculating sheer forces and bending moments. Because a loading instrument (which is the tool used to calculate bending moments and sheer forces) was not required for the EL FARO, the calculation of bending moment and stresses was not required and, therefore, that was not a required duty of the Chief Mate on the EL FARO. See MBI Gruber, p. 2/9/2017, p. 695. We request that reference to the calculation of bending moment and sheer forces be removed from 6.2.1 of the draft report.	AGREE with a loading instrument not being required, per Mr. Gruber’s testimony; however, see OMV language relating to duties of C/M. Further, please see Mr. Torres’ MBI testimony and Mr. Thompson’s NTSB interview regarding calculating/checking bending moments.
P9 L 18	It was normal practice for the Chief Mate to oversee cargo operations while in port, with direct assistance of the second and third mates. This was not a deviation from the normal routine of port watches vs. sea watches. The term “deviated” implies this was not the normal routine. There is no evidence that the Chief Mate deviated from his normal in port or at-sea routine. We ask that this language be removed. The OMV accurately state’s the Chief Mate’s role in cargo operations. See OMV 13.6.	AGREE. Changed wording to “shifted”
P9-P11	For easier reading, consider consolidating in one location the discussion of log entries with respect to the third and second mates; as written it appears repetitive. Also, there is a discussion of the seconds mate’s duties with respect to log entries, but that discussion is contained within the discussion of duties of third and second mates. We recommend consolidation of this discussion of deck log entries in one location in the draft report.	NOTED.
P10 L8	The language as drafted states that the second mate performed other duties, as directed, while off watch at sea, and did so on “an overtime basis.” This suggests that all hours worked over and above at sea watches (8 hours a day) are considered overtime. That is not accurate. Under the AMO contract, officers are expected to work up to 12 hours a day before overtime accrues. We ask that the language “on an overtime basis” be removed.	AGREE. Revised.
P11 L5	This comment applies to the description of duties for both second mate and third mate.	
P9 L2, P11-L21, P12-	The term “nautical related equipment” is unfamiliar and appears somewhat awkward. We suggest using more commonly understood	AGREE. Revised.

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L4, P12-L10 P12-FN11 11, 12	language, “deck related equipment,” throughout.	
P11 L6-17	For clarity, at line 16, after the word “readings” we request that the words “in port” be added to make clear that the draft readings are taken while at the dock. We also ask that the term “offshore” be removed because the third and second mates might assist with taking all draft readings, not just the offshore midship draft readings. In addition, the word “offshore” could wrongly imply to the reading that the draft readings were taken “offshore” or at sea. One other possible alternative, if needed, could be to refer to offshore midship draft readings as “midship draft readings outboard of the berth”.	AGREE. Non-mariners will be reading this report and might get confused. Revised.
P12 L3-4	This is awkwardly phrased and somewhat unclear. For greater clarity, we recommend: “Two of the ABs were dayworkers whose usual work day was between 0800 and 1700, Monday through Friday. Outside these normal work hours, the ABs would be off duty resting or be working overtime on deck-related maintenance or operational duties.”	NOTED. Revised consistent with request.
P12-L8	The draft report properly states that when not on watch, the unlicensed deck personnel would rest as required by the STCW, or perform other duties. In order to be consistent and accurate, we ask that the description of the duties with respect to the deck officers similarly state that when off watch, deck officers would rest in accordance with the STCW rules or perform other duties. As currently written, the language could imply that STCW rest hour requirements applied to unlicensed crew, but not officers.	AGREE. Revised.
P12 L14	The language conflates the roles of Tote Services and Tote Maritime Puerto Rico. In line 14, we suggest that it be made clear that shoreside personnel worked for both companies, and each company had their own job descriptions for their personnel. We believe the following is more accurate: “The duties of shoreside personnel of Tote Services were outlined in job descriptions maintained by Tote Services. Similarly, the duties of shoreside personnel of Tote Maritime Puerto Rico were outlined in job descriptions maintained by Tote Maritime Puerto Rico.”	AGREE. Revised.

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<p>P13-L21</p>	<p>This inaccurately suggests the vessel’s position was not known or knowable to shoreside personnel. Please recall that departure, arrival, and noon reports are routinely submitted to various shoreside staff, and those reports provide the vessel’s position. Similarly, as the Director of Marine Safety & Services testified, and as is widely known, AIS positions of vessels, like the EL FARO, are available online. See MBI Peterson, 2/17/2016, pp. 13-14.</p> <p>To make this more accurately reflect the testimony and facts, we ask that the following sentence be added: “The vessel provided regularly scheduled reports on departure and arrival and at noon each day while at sea. These reports included the vessel’s position and were distributed broadly to Tote Services shoreside personnel via email. In addition, if needed, the vessel’s position could be obtained through AIS tracking that is available online.”</p>	
<p>P14 L8-13</p>	<p>The description of the Manager of Safety and Operations (DP/Captain Lawrence) is incomplete and misleading. The impression is left that Captain Lawrence has direct responsibility for vessel operations. While it was expected that Captain Lawrence “[a]ssists in the supervision and operation of both the active and deactivated fleet...”, the draft factual report leaves out the qualifying language that this assistance is “with specific attention to safety, performance, and adherence to the laws and regulations of the countries in which documented, as well as areas where vessels trade.”</p> <p>We request that the entire sentence of the job description be included in the draft factual report. We further request discrete parts of the job description not be read in isolation and taken out of context. To give a more complete and accurate description of Captain Lawrence’s position and the duties he actually performed, we ask that the following duties also be included in the factual report:</p> <ul style="list-style-type: none"> • Prepares policy changes/additions for management review. • Formulates general safety policies and procedures to be followed by company and vessel personnel in compliance with local, state, and 	<p>AGREE in part</p> <p>There are items in the job description which are subject to interpretation or opinion as to whether they are purely safety related; and the unequivocal title of the job is “Manager, Safety, & Operations” and not “Manager of Operational Safety.” Will not list all the items for sake of brevity and because they seem to conflate safety with operations.</p> <p>Will list complete job summary and will add testimony quote of Mr. Lawrence, as requested.</p>

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	<p>federal Occupational Safety and Health Administration (OSHA) rules and regulations, and in the implementation of preventive safety measures and the development of the TSI Safety Program.</p> <ul style="list-style-type: none"> • Implements and administers the shipboard Quality System program. Conducts shipboard ISM training and internal audits. Recommends revisions to Quality System documentation pertaining to shipboard operations, as appropriate. • Conducts shipboard security and safety assessments as necessary to meet SMS and regulatory obligations. Identifies risks to personnel, the environment and the ships and recommends corrective actions to sr. mgt. • Represents Company on various industry committees or safety groups and programs as required. <p>We also ask that Captain Lawrence’s own description of his position be reflected in the draft report:</p> <p>“...I oversee the safety management system. I support, I think is the key word I feel in my position is I support the operations groups and the entire company in fact as far as any safety issues or any safety advice.” MBI Lawrence, 2/20/2016, p. 7, lines 17-20.</p>	
<p>P14 L14-17, P15 L1-2</p>	<p>The draft report’s description of the OMV policy pertaining to excessive list is incomplete and inaccurate in several respects. We request that the following, more accurate description be provided.</p> <p>“According to the OMV, “[t]he Master is responsible for ensuring that the vessel is in all respects safe for sea before taking departure....[i]n situations where the ship will depart the berth with an excessive uncorrected list or trim (> than 2° list, >2’ trim by the head or >10’ by the stern) the Master must positively determine the source of the list/trim.” Once the Master determines the source of the excessive list/trim, if he/she then determines “that the uncorrectable list/trim does not present a danger for the intended passage, he/she must contact the Operations Dept. and/or TSI Manager of Safety & Operations to discuss the situation before”</p>	<p>AGREE in part, changed wording from “uncontrollable” to “excessive uncorrected.”</p>

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	<p>departing port. If this occurs, the Master must place an entry in the deck log recording the excessive list and trim and documenting the conference with shoreside staff. See OMV 10.13.7.3.’</p> <p>We also ask that the following undisputed fact be included in this section of the draft factual report:</p> <p>“When the <i>El Faro</i> departed Jacksonville on 29 September, she did not have a list. (Rodriguez, MBI 02/20/16, p.37); (Frudaker, MBI 05/16/16, p.42).”</p>	<p>AGREE. Revised.</p>
<p>P15 L7</p>	<p>We believe there is a typo; recommend deleting “a” in “audits were not a required by the safety management code”</p>	<p>AGREE. Revised.</p>
<p>P15 L5-7</p>	<p>The draft report states that Captain Lawrence testified “that no underway audit had been performed aboard any TOTE vessels during his 2 year tenure with the company...” There are three problems with the language in lines 5-7.</p> <p>First, the tone of the language implies that underway audits should have been done, but weren’t. In fact, it is the norm for audits to be performed while the vessel is at berth, not while underway. To imply otherwise is misleading. We ask that TOTE’s practice of predominantly performing ISM audits in port be noted as the normal practice in the industry (as is the practice of the USCG and ABS when they perform external ISM audits).</p> <p>Second, to be accurate, it should be noted that Captain Lawrence testified that one underway audit he was aware of was performed on a vessel managed by Tote Services.</p> <p>Third, the language states that Captain Lawrence testified that underway audits are not required by the safety management code. We have found no testimony from Captain Lawrence in this regard. However, we ask that an affirmative statement be made that, in fact, underway audits are not required by the ISM Code or any of the implementing regulations, nor was the subject addressed in the rulemaking process or the Coast</p>	<p>NOTED.</p> <p>AGREE. Revised.</p> <p>AGREE in part. Revised by adding footnote that underway audits are not required by the ISM Code.</p>

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	<p>Guard’s implementing policies. If there is a need to address underway audits in the factual report, then it is fair and accurate to note that underway audits are not required under the ISM Code, and that underway audits are not discussed or contemplated in any Coast Guard policy guidance.</p> <p>We request that the language in 5-7 be corrected to more fairly and accurately describe Tote’s audit practice.</p>	
P15 L7	<p>The language, as written, states that Captain Lawrence was “unsure” whether voyage passage plans were checked during any audits of the EL FARO. This is incomplete and misleading. Captain Lawrence did not conduct or participate in the 2014 El Faro audit. He conducted the 2015 internal audit only and was “unsure” if any previous audits, including the 2014 audit, had included voyage plans as part of the audit sampling. The audit that he conducted in 2015 did not include review of passage plans.</p>	<p>NOTED. Revised to language consistent with 2014 and 2015 audit sampling statements of Mr. Lawrence which pertain to voyage/passage plans.</p>
P15 L15-17	<p>We ask that the “manager of marine safety and certification” be changed to “manager, safety and operations.”</p>	<p>NOTED. Manager of Marine Safety and Certification is taken directly from the OMOV.</p>
P16 L4 P66 L15	<p>The discussion of the ISM code, and the role of the DP, is incomplete. When the U.S. Coast Guard implemented the ISM Code into the Code of Federal Regulations through a rulemaking process, the Coast Guard received comments about the role of the DP, and clarified the role of the DP. See attached Final Rule for 33 CFR Part 96, International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code, dated December 24, 1997. Through this rulemaking process, the Coast Guard made clear that the DP does not share responsibility for vessel operations.</p> <p>This comment also applies to page 66, line 15.</p> <p>We ask that the following undisputed fact be included in the draft factual report at line 4:</p> <p>“During the rulemaking and public comment process, in which the ISM Code was implemented in the United States, the Coast Guard</p>	<p>NOTED. The suggested text about the ISM code is outside the scope of this factual report.</p>

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	<p>rejected a proposal that the Master, and DP under the ISM Code, share responsibility for a vessel’s operations. In responding to this proposal the Coast Guard stated: “The Coast Guard disagrees...the designated person does not have a responsibility for operation of the vessel. The designated person’s responsibility is to monitor the safety management system of the company and the vessel(s), as directed by the responsible person. If problems arise with the policies and procedures for the safe operations of the vessel which the Master does not believe he or she has the right tools to manage, those problems should be communicated to the vessel’s owner. The Master can communicate through the safety management system, or directly to the vessel owner, or through the designated person to the vessel’s owner.” See Final Rule at 67502.”</p> <p>In addition, as a general matter, we ask that the DP’s role, with respect to oversight of vessel operations, be put into more accurate context. We ask that the following undisputed facts be added to this section of the draft report:</p> <p>“ISM Code states: The Company should establish in the SMS that the master has the overriding authority and the responsibility to make decisions with respect to safety and pollution prevention and to request the Company's assistance as may be necessary. ISM Code Sec. 5.2.”</p>	
<p>P16 -L16-19</p>	<p>This currently reads: “TOTE Services did not employ port captains (who generally oversee port operations and day-to-day ship operations) for its vessels. The El Faro port engineer described himself as “a combination of Port Engineer/Port Captain.”” This is an incomplete and unfair characterization of the evidence and testimony; it is not accurate. We request a change as follows: “TOTE Services did not employ individuals with the title of “port captain. Instead, the duties that position typically would entail were handled by a combination of shoreside personnel, including the port engineer (an employee of TOTE Services) and the Marine Operations Manager (an employee of TMPR).”</p>	<p>NOTED. You have not identified any factual inaccuracies in this statement so no changes will be made.</p>
<p>P16 FN14</p>	<p>The language is technically incorrect; it should read “sea-based x-band</p>	<p>AGREE. Revised.</p>

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	<p>radar (SBX) station.”</p>	
<p>P17 L1</p>	<p>The job description of Tote Maritime Puerto Rico, Manager of Marine Operations needs clarification.</p> <p>The job description states that the Manager of Marine Operations was responsible for overseeing the stowage, loading and discharging cargo, stability calculations, and a number of other subjects. In practice, and as supported by testimony of several witnesses, the Manager of Marine Operations was involved in these duties in support of the mates and Master, who were ultimately responsible - by law and under the EL FARO’s SMS - for performing these duties. The Manager of Marine Operations at the terminal must necessarily interface with and provide information and support to the vessel’s Master and mates, in advance of the vessel’s arrival. For example, the Manager of Marine Operations would assist in preparing the stowage plan and provided initial stability calculations to the mates (both to be reviewed, verified, modified, and approved by the Master/mates on the vessel). This type of collaborative communication and cooperation is necessary for the safe and efficient loading and unloading of the vessel. The SMS, applicable to the vessel’s operations, clearly places these responsibilities on the Master and other deck officers. See OMV 13.1-13.6.</p> <p>We ask that the language more accurately state that the Tote Services SMS governing the EL FARO’s operations (OMV) places responsibility for these activities with the Master and mates; and that the Manager of Marine Operations confirmed in testimony and that, in practice, he would oversee the shoreside aspects of these functions, provide support to the vessel, but ultimately responsibility for the stowage and lashing of cargo and stability of the vessel rested with the Master and mates.</p> <p>Similarly, the general job description of the Marine Operations Manager states that he would “cover for the Port Engineer as needed.” Please note, in practice, the Manager of Marine Operations does not and would not address matters pertaining to technical management responsibilities. The Manager of Marine Operations, in practice, might assist with</p>	<p>NOTED. The information in the factual report came directly from the job description provided by Tote..</p> <p>The job description of the Marine Operations manager actually states that he “Coordinates with the Port Captain and supervises ships’ staff regarding all vessel planning and operations. Insures that Ship’s senior staffs are commonly aligned with our vessel operations goals and objectives.”</p> <p>For master’s responsibilities, please see earlier section of this report.</p> <p>AGREE in part. Did not find “shoreside aspects” in Mr. Matthew’s testimony. Again, job description is clear. Will add a text to the effect that he interfaced regularly with shipboard personnel and addresses their concerns.</p>

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	<p>vendors obtaining access to the vessel, delivering mail, and other ministerial functions, in the absence of the Port Engineer. That is the intent of that language in the job description. This would be very rare, because the Port Engineers are on board the vessel virtually every week. Thus, it is irrelevant that Don Matthews was not “using” the Tote Services’ SMS.</p> <p>In addition, language as written suggests that Mr. Matthews should have been using the Tote Services SMS, and implies there was no safety program governing Mr. Matthews’ job functions. In this regard, the language is incomplete and misleading. As a general matter, we believe the language needs to be clarified by stating that Tote Services (who employs the port engineer) and Tote Maritime Puerto Rico (who employs the terminal manager and marine operations manager at the terminal) are separate companies, with separate missions, and with separate safety management programs. Tote Maritime Puerto Rico has an ISO safety management program applicable to the terminals’ operations and Tote Services has an ISM-approved safety management system applicable the vessels it manages. Because the Manager of Marine Operations for the terminal is a Tote Maritime Puerto Rico employee, and not a Tote Services employee, the safety aspects of terminal operations are governed under Tote Maritime Puerto Rico’s ISO approved safety program. It should be no surprise that he does not use the Tote Services SMS, just as outside vendors or other vessel operators do not use TSI’s SMS. The quote taken in isolation inaccurately portrays the relationship between the companies and their respective safety programs. We ask that the quote from Don Matthews, if it is to be used at all, be placed in its proper, accurate, and fair context.</p>	<p>NOTED. Revised to include his statement on SMS for Tmpr and statement of VP Operations for Tmpr.</p>
<p>P17 L5-7</p>	<p>Don Matthews had significant experience, formal training, and on the job training in loading cargo aboard vessels, since 1981. To be fair and accurate, his long term experience in vessel loading operations should be included in the draft report.</p> <p>In regard to the specific language, “but that after the sinking, he received CargoMax training for the company’s two new liquefied gas container</p>	<p>NOTED.</p>

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	<p>vessels” unfairly implies this training is a result of the sinking rather than initial training that would be customary for a new platform, such as the Marlins. We request that the wording more accurately reflect the record as follows:</p> <p>“The Marine Operations Manager at the Jacksonville terminal testified that he has worked in vessel cargo loading operations since 1981, first with the Army Transportation Corp, and then in the private sector since 1992. See MBI Matthews, 2/20/2016, pp. 170-171. He further testified that he received on-the-job practical training on the use of the version of the CargoMax program, used on the Ponce Class ships, for a few months when he started in the terminal operations manager job in 2008. The on the job training was given by his superiors at the time, who were considered very experienced in the use of CargoMax. See MBI Matthews, 2/20/2016, pp. 204-205. There was no formal training beyond the on the job training for the ponce class ships. However, the company did procure formal training from Herbert Engineering on the use of the new version of CargoMax that was to be used on the Marlin class vessels. The Marine Operations Manager received this training just as the Marlin class vessels were coming on line. See MBI Matthews, 2/20/2016, at 217.”</p>	<p>Noted.</p> <p>Revised to include his on the job training on CargoMax.</p>
<p>P17 L12.</p>	<p>There is a typo here: “mariner” should read “marine.”</p>	<p>AGREE. Revised.</p>
<p>P17 L14-16</p>	<p>The language, as written, indicates Mr. Rodriguez did not read the vessel’s drafts at departure on 29 September, but leaves out the fact that it was part of the Chief Mate’s normal duties to read and record the draft readings, and that in fact those drafts were recorded and sent ashore. In addition, the notion of “bad weather” lashing continues to be used inconsistently and inaccurately; the use of this term needs to be clarified to reflect that “bad weather lashing,” “heavy weather lashing,” or “hurricane lashing” all refer to the standard lashing profile used on the vessels by PORTUS and the Ponce class vessels since 2006. We ask that the language more accurately state:</p> <p>“He also said that the longshoremen lashed the Ro/Ro cargo using a</p>	<p>NOTED. The issue is what happened on the accident voyage and there is no testimony as to who read the drafts.</p> <p>AGREE in part as to different terms used for lashing; however, this is due to testimony of ship/shore personnel who use different terms. Discussion of heavy/bad weather lashing is in section 8.3.4.</p> <p>NOTED. Could not find this wording in his testimony.</p>

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	<p>“bad weather” lashing profile (as was routinely done since 2006), that the vessel personnel did not ask for additional lashings to be placed on the cargo on the day the vessel departed, and that he did not personally read the vessel’s drafts at departure. Reading and recording of the drafts marks was the responsibility of the Chief Mate. The draft marks were recorded and transmitted in the EL FARO’s departure report sent to Tote Services shoreside management after the vessel departed on September 29th.”</p>	
<p>P17 L18-19, P18-L1-3</p>	<p>This language is not an accurate and complete statement of the role that stevedores serve with respect to cargo loading, because it fails to mention that stevedores load the vessel at the direction of the Master and mates, who ultimately have the operational authority and responsibility for loading the cargo. The OMV 13.6 accurately describes this relationship:</p> <p>“The Chief Mate is responsible for proper lashing, bracing, and general securement of cargo. He shall coordinate with the stevedore to assure that the proper equipment for lashing and securing the cargo to be loaded is available in sufficient quantities. During cargo loading operations, the lashing arrangements shall be supervised by a deck officer. Cargo shall be properly secured and inspected by the Chief Mate prior to departure from port.” OMV 13.6.</p> <p>We ask that the sentence be replaced with the following:</p> <p>“Stevedore and longshore personnel were provided by Portus Stevedoring, LLC. Stevedoring personnel were responsible for discharging, loading, and securing of cargo, as directed by the Chief Mate and other deck officers on the vessel.”</p>	<p>AGREE. Revised.</p>
<p>P18-19</p>	<p>The draft factual report states that the EL FARO was required to have a cargo securing manual, but the draft fails to state that the regulations cited in the draft report did not come into effect until 2016, after the accident voyage. Thus, we request that the following undisputed fact be included in the draft report at line 4 on page 19:</p>	<p>NOTED. See NVIC 10-97, SOLAS, ACP.</p>

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	<p>“At the time of the loss of the EL FARO, these requirements in the Cargo Securing Code were, as a legal matter, voluntary guidelines under U.S. law. By contrast, on May 9, 2016, compliance with the SOLAS cargo securing manual standards became mandatory for self propelled vessels over 500 gross tons on international voyages that are subject to SOLAS. See 81 Fed. Reg. 27992, dated May 9, 2016, at 27994. (“The SOLAS CSM requirements are included as an annex to a Coast Guard guidance document issued in 1997 [NVIC 10-97] but a vessel owner or operator’s compliance with that guidance is only voluntary. This interim rule makes compliance with the SOLAS standards mandatory for self-propelled vessels over 500 gross tons on international voyages that are subject to SOLAS.”). The regulations at 33 CFR Part 97, cited above, did not become effective until June 8, 2016. See Fed. Reg. 27992, dated May 9, 2016, at 27993. Thus, as to the EL FARO, these guidelines were voluntary, advisory standards at the time of the loss.”</p> <p>For your convenience, we have attached the Interim Rule, cited above, which implements the cargo securing manual requirements.</p>	
P19 L11-12	The language as written implies that all refrigerated containers and trailers were equipped with WAMS. This is not accurate. To be accurate, we request that the language state: “...containers and trailers were often equipped...”	AGREE. Revised.
P19 L18	For accuracy, we suggest replacing the existing language with: “kept in six storage tanks in the two forward lower holds of the ship (each of which carried the equivalent of two (2) railroad tank cars).”	AGREE. Revised.
P20 L6	Replace “(refrigerators)” with “(refrigerated containers)”	AGREE. Revised.
P21-L2	The second deck is considered the bulkhead deck, and therefore is, by definition, considered watertight. To make this sentence accurate, we ask that the word “not” be removed from line 2.	Revised to add “the cargo stowed on” before “second deck”
P22-L14	For clarity, we ask that you insert the parenthetical after “manager” to read as follows: “a TOTE Maritime Puerto Rico manager (either the terminal manager or the marine operations manager)”	AGREE. Added.
P22 Footnote 38.	The draft language is conflating and confusing the terms “stability instrument” and “loading instrument.” The draft language as written is	

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	<p>inaccurate in many respects.</p> <p>First, a loading instrument is a computer program used to evaluate bending moment and stresses on the vessel as a result of cargo loading. It is not used to calculate the vessel's stability, as stated in footnote 38.</p> <p>Second, the EL FARO was not required to have a loading manual, and therefore a loading instrument was also not required. MBI Pisini/ Cronin, 5/20/2016, at 181 and 186. When no loading manual or loading instrument is required such as in the case of the EL FARO, often the loading conditions are fairly uniform throughout the structure and therefore ABS does not require or give any operational guidelines to address loading the vessel to stay within the vessel's structural limitations. MBI Pisini/ Cronin, 5/20/2016, at 181 and 186. In other words, there was no legal or class requirement for the EL FARO's personnel to calculate stresses or bending moments, either with a loading manual or loading instrument. Though not legally required to calculate those bending moments and stresses, the mates and Master onboard EL FARO did so, and used the best resources available (CargoMax).</p> <p>Third, a "stability instrument," such as CargoMax, is used to calculate the vessel's stability, as correctly stated in lines 15-16. However, the language in footnote 38 incorrectly suggest that even though a stability instrument was not legally required, if one would be used on the vessel, it "needed to be approved" by the Coast Guard or Classification Society. The stability instrument for the EL FARO was not legally required, but was nonetheless approved by ABS. Thus, Tote and ABS exceeded the applicable legal requirements. However, we are not aware of any regulation that <u>requires</u> the approval of a stability instrument for the EL FARO. Even though a stability instrument was not legally required to be onboard, the information available suggests that it was ABS' practice to review and approve stability instruments, based on "verbal guidance" ABS received from the Coast Guard Marine Safety Center "over the years." See MBI, Gruber 2/20/2016 at pp. 13-14. Mr. Gruber referenced Plan Review procedure number T1-2, but the Coast Guard</p>	<p>AGREE. Revised.</p> <p>AGREE with first part. The rest is irrelevant to the CargoMax treatment.</p> <p>NOTED. Language at footnote 38 was revised for clarity.</p>
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	<p>stated on the record at the MBI that this guidance was previously cancelled and taken off its website. We ask for clarification of this issue and request citation to the specific legal authority upon which the NTSB relies to assert that the EL FARO’s stability instrument required approval by ABS.</p>	
<p>P22-fn39</p>	<p>Without some further explanation, footnote 39 is misleading. As written, it leaves the erroneous implication that Tote wrongly or illegally used the CargoMax container buildout features. A more accurate explanation is required.</p> <p>First, as noted above, the regulations requiring a cargo securing manual, in the first instance, do not apply to the EL FARO.</p> <p>Second, even if those regulations did apply, IMO MSC Circular MSC.1/Circ.1353/Rev.1, Revised Guidelines for the Preparation of the Cargo Securing Manual, explicitly states that a computer program is an acceptable alternative to manually assessing the adequacy of lashings and other cargo securing, provided that computer program contains the same essential information as the Cargo Securing Manual. There is no evidence the cargo securing features in CargoMax were inaccurate or provided different information than that provided by the Cargo Securing Manual.</p> <p>Furthermore, there is no prohibition in the regulations in 33 CFR Part 97 on the use of computer programs (such as CargoMax) and there is no requirement for a computer program, if used, to be approved by the classification society or U.S. Coast Guard.</p> <p>Thus, we ask that the following undisputed fact be added to the language at footnote 39:</p> <p>“However, the container buildout feature of CargoMax is not legally required to be approved by the Coast Guard or the classification society. Testimony from an ABS witness indicated that while many versions of CargoMax have been approved by ABS, he was not aware</p>	<p>NOTED.</p> <p>NOTED. See NVIC 10-97, ACP, and SOLAS requirements.</p> <p>NOTED.</p> <p>AGREE to first part; Noted on second part.</p> <p>AGREE. Wording revised consistent with request.</p>

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	of ABS ever approving the cargo securing functions of CargoMax, at least in the last 10 years. See MBI Pisini/ Cronin, 5/20/2016, at 187.”	
P23-L1	<p>The MBI testimony indicates the Chief Mate loaded the CargoMax loadcase into his computer and verified every container box weight to ensure each matched the Lo-Lo stow plans and that the Ro-Ro plans matched for each Ro-Ro hold before they would sail. (Thompson, NTSB 12/06/15, p.26).</p> <p>In light of the testimony, we believe it is more accurate to state that “CargoMax stability calculations would be performed and verified by the Chief Mate just before sailing.” We ask that the phrase “performed and verified” replace the word “checked.”</p>	NOTED. Reviewed testimony of chief mates and believe wording fine.
P30 L18-19	<p>Figure 18 shows the auto chains being run through a D-ring, which does increase holding power of the chain. Therefore, to be more accurate, this sentence should read: “The long chain ran across the width of the ship, was passed through D-rings along its length (as reflected in Figure 18 below), and was secured to D-rings at either end.”</p> <p>The use of chain for lashing cars is not in the lashing manual, but is a common practice in the industry, which should be reflected in the report.</p>	NOTED, revised.
P34	<p>The language is incomplete and inaccurate. The language suggests, as written, that advanced calculations must be performed under annex 13 of the CSS Code for all non-standardized cargo. This is inaccurate. The language then goes on to state that no one from Tote had ever seen the calculations performed, implying that non-standardized cargo was not secured in accordance with the Cargo Securing Manual.</p> <p>However, for non-standardized cargo, there are two acceptable methods to secure non-standardized cargo set forth in the Cargo Securing Manual:</p> <p>(1) non-standardized cargo can be secured with lashing using the “Rule of Thumb Method.” Under this method, the total of the MSL values of the securing devices on each side of a unit of cargo (port as well as starboard) shall equal the weight of the unit; and</p>	AGREE. Revised to include Rule of Thumb method and testimony.

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	<p>(2) lashings may be assessed and shown to be adequate through the performance of advanced calculations under Annex 13 of the CSS Code.</p> <p>See Cargo Securing Manual, Procedure E-03-600, pages 3 and 4.</p> <p>We have consulted with relevant personnel, who confirm that the simplified Rule of Thumb method was typically employed for non-standardized Ro-Ro cargo, such as backhoes, bulldozers, and boat trailers. We ask that the language be corrected, to make clear the availability of the simplified “Rule of Thumb” option to determine the adequacy of cargo lashings. Should you require testimony to verify this statement, we can make personnel available for interview or provide the testimony in written form.</p> <p>Also, in the case of Ro/Ro cargo stowed on a Roloc box, off the button, the language does not include a discussion of how such cargo was lashed, or any determination of the adequacy of those procedures. Such cargo was stowed, as a matter of standard procedure, using the “EL Class Minimum Lashing Requirements” See MBI Exhibit 294, at 35-39.</p> <p>We suspect that Annex 13 calculations were performed, at one time, in developing these simple, standardized, and conservative lashing profiles contained in the EL Class lashing guidance for Ro/Ro cargo stowed off the button. The validity of this simplified lashing profile, and satisfaction of annex 13 of the CSS Code, was demonstrated in section IV of Tote’s response to the NCB report (MBI Exhibit 294).</p> <p>To be fair and accurate, we ask that the discussion of securing arrangements for off-button Ro/Ro cargo include all the evidence discussed above.</p>	<p>NOTED. No testimony at MBIs or Interviews.</p> <p>NOTED.</p> <p>NOTED. But no testimony found.</p> <p>NOTED.</p>
<p>P35 L13-14</p>	<p>The draft report states: “Two past masters of <i>El Faro</i> stated that they were unaware that <i>Ponce</i>-class vessels were lashed according to a storm or hurricane profile year-round.” This statement is misleading and incomplete. As written, it gives the false impression that there is legitimate conflicting evidence whether “heavy weather lashing” - as</p>	<p>Changed to four past masters with over 20 years’ experience on Ponce-class vessels.</p>

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	<p>embodied in the EL Class Minimum Lashing Requirements - was a standard, routine practice on the EL FARO.</p> <p>First, as an initial matter, there is no discussion in the report regarding the EL Class Minimum Lashing Guidance, which is the standard, simplified, conservative lashing profile in place at the time of the EL FARO's loss.</p> <p>Second, as a matter of fairness and completeness, the draft language fails to cite the testimony of two other Masters of the EL FARO who were, in fact, aware that a "heavy weather" lashing profile was routinely used on the EL FARO all year round. Based on their experience, these other Captains had knowledge of the history of the blanket application of "heavy weather lashing" and testified about it. For example:</p> <p style="padding-left: 40px;">To eliminate any confusion among lashing profiles, one "storm lashing" profile was adopted on the EL FARO. The standard "storm lashing" profile was, in Captain Stith's view "over lashed," and as a result, he would not typically apply additional lashings in heavy weather. (Stith, MBI 05/24/16, p.22).</p> <p style="padding-left: 40px;">According to Captain Thompson, "[t]hey used to, I believe, lash for heavy weather pretty much all the time anyway just in case. I think that was the way the port guys in Jacksonville were doing it. NTSB Thompson, 12/8/2015, at p. 54.</p> <p>To be fair and complete, we request that the above testimony be included and accurately characterized and cited. We ask that this testimony be properly cited.</p> <p>As noted below, the testimony of the two former masters, cited in the draft report, should be given its proper weight (little weight in our view), particular in light of the confusing nature of the questions, the failure to define what is being asked in terms of "heavy weather lashing" or "storm lashing" or "additional heavy weather lashing," and the failure to show the witness the EL Class Minimum Lashing Requirements which were</p>	<p>Agree in part. Mr. Thompson stated he believed they lashed for heavy weather year-round. Will revise. Mr. Stith did not actually testify to year-round heavy weather lashing.</p>
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	<p>used on the Ponce Class vessels on the Puerto Rico run.</p> <p>It is unclear to which former masters of the EL FARO the draft language is referring, because the citations are vague, undated, and lack dates of testimony and, in some cases, page citations.</p> <p>We surmise, however, that Captain Loftfield was one of those Captains, because he testified at Phase I of the MBI hearings and that is cited in the draft. In his testimony, he was asked a very cryptic question regarding lashings:</p> <p>“Okay. So at one time you had a certain cargo security scheme and then later on the cargo scheme, or securing of cargo was to put heavy weather lashings on at all times, is that correct?”</p> <p>Captain Loftfield replied “I’m not familiar with that.”</p> <p>There was no follow up question. The question was vague and awkwardly worded, and therefore Captain’s Loftfield’s response should not be surprising. It should also be noted that Captain Loftfield may have no familiarity with the policy which was put in place in 2006 by Portus and Tote. This is because Captain Loftfield had only been working on the Puerto Rico run since approximately 2009. He therefore would not have been privy to the distinction of selectively applying “heavy weather lashing” when needed, with the “new” procedure of always applying “heavy weather lashing.” In other words, as far as Captain Loftfield was concerned, his understanding of “heavy weather lashing” may well have been lashing over and above the lashing profile called for in the simplified EL Class Minimum Lashing Requirements (which was itself considered by others to be “heavy weather lashing”). Captain Loftfield was not shown the <u>EL Class Minimum Lashing Requirements</u>.</p> <p>We surmise that Captain Hearn was the other Master referred to in the draft factual report, who was purportedly “unaware” that the Ponce Class vessels were lashed to a storm lashing profile all year round. Captain</p>	<p>NOTED.</p> <p>NOTED. There were four masters who weren’t sure of or didn’t know of a heavy weather/hurricane profile or if it was used year-round. Revised.</p>
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	<p>Hearn did not enter the Puerto Rico trade until 2008. See NTSB Hearn, 3/30/2016, at page 249. Thus, Captain Hearn, like Captain Loftfield, would not necessarily have been privy to the historical distinction of selectively applying “heavy weather lashing” when needed, with the “new” procedure - of 2006 - of always applying “heavy weather lashing.” In addition, when one examines the questions he was asked, Captain Hearn actually confirmed that the Puerto Rico trade had one lashing profile, consistent with other witnesses. The following testimony is cited (but not included) in the draft factual report on page 57 of Captain Hearn’s NTSB transcript:</p> <p>“So back to you mentioned on the -- this is Mike Kucharski continuing, you mentioned on the Alaska Run there was a heavy weather profile? CAPT. HEARN: Yes. INVESTIGATOR KUCHARSKI: Heavy weather. Did that occur at any time of year? CAPT. HEARN: The heavy weather profile on the Alaska Run was usually September to May. INVESTIGATOR KUCHARSKI: Was there any comparable heavy weather profile on the Puerto Rican Run? CAPT. HEARN: No. INVESTIGATOR KUCHARSKI: So in your time from when you left the Puerto Rican Run in 2014? CAPT. HEARN: Yes. Well, I left the Puerto Rico Run in 2013. INVESTIGATOR KUCHARSKI: 2013. And that was on the El Morro that you were on 2013 -- CAPT. HEARN: Yes. INVESTIGATOR KUCHARSKI: -- that you left? There was no heavy weather profile or difference in profile from -- seasonal? 7 CAPT. HEARN: No seasonal profile.</p> <p>Thus, Captain Hearn’s testimony is consistent with other witnesses’ statements that there was only one standard lashing profile in the Puerto Rico run that did not vary with the season, but additional lashings could always be requested. However, Captain Hearn, did not have the historical perspective to know that the practice of selectively applying extra lashings during periods of heavy weather (as was the case in Alaska) had been rescinded for the Ponce class vessels operating in the Puerto Rico</p>	<p>NOTED.</p>
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	<p>run in 2006, before he arrived, in favor of applying lashings fit for heavy weather all year round. Also, additional confusion was introduced by using various undefined terminology throughout the questioning of witnesses, including Captain Hearn and Captain Loftfield: “seasonal hurricane lashing” “hurricane lashing” “storm lashing,” “heavy weather profile” “bad weather lashing” and, as others (e.g. Captain Davidson, see MBI Exhibit 4, at p. 41) have referred to lashings over and above the EL Class lashing guidance, “additional storm lashings.”</p> <p>The evidence overwhelmingly shows that the “heavy weather” lashing profile - reflected in the EL Class Minimum Lashing Requirements - was routinely applied when securing cargo onboard the EL FARO, and was so applied on the accident voyage. Accordingly, we ask that the summary of testimony of the “two past masters” be more accurately and fairly described in its proper context, and given its proper weight, in light of the facts and circumstances discussed above.</p>	<p>Noted. Revised to include testimony of Tmpr Manager of Marine Operations</p>
<p>P35 L16-17</p>	<p>The draft report quotes language from third mate Riehm and AB Jack Jackson that they “should have” asked the longshoremen for “storm lashes.” However, use of and reference to the term “storm lashes” has very little meaning, without first understanding its context and what was actually meant by their use of it. There are essentially two possibilities with respect to their intended meaning.</p> <p>a. <u>Were third mate Riehm and AB Jackson referring to “storm lashes” as a lashing profile over and above what is prescribed in the EL Class Minimum Lashing Requirements (the normal lashing profile for the vessel in all weather)?</u> If so, then they must have been unaware that the EL Class Minimum Lashing Requirements were already considered “storm lashes,” as that term was used in 2006 - and, thus, third mate Riehm and AB Jackson, were more precisely suggesting that they “should have” asked the longshoremen for additional storm lashes, beyond what is contained in the minimum EL Class lashing requirements.</p> <p>b. Were third mate Riehm and ABS Jackson referring to “storm</p>	<p>NOTED.</p>

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	<p><u>lashes</u>” as the <u>minimum lashing profile</u> prescribed by the <u>EL Class Minimum Lashing Requirements</u>? If so, then the statement by third mate Riehm that they “should have” asked for “storm lashes” indicates that the EL Class Lashing guidance was not applied for the accident voyage, but that it “should have” been. This interpretation, however would be in direct contradiction to all the other evidence in the case, including the testimony of the witnesses who actually performed or observed the lashing for the accident voyage; these witnesses testified that the EL FARO was lashed in accordance with normal procedures that had been in place since 2006 (i.e. “heavy weather lashing”).</p> <p>The logical and more likely interpretation of what was meant when third mate Riehm used the language “storm lashes,” and AB Jackson responded, is the first one suggested above. Accordingly, the most reasonable and fair interpretation of their comment was that they were, in fact, unaware¹ that the EL Class Minimum Lashing Requirements - the normal lashing profile - already constituted “storm lashes.” Had they known this, they would have more precisely stated that the “should have” asked the longshoremen for “additional storm lashes,” or “lashing over and above the EL Class Minimum Lashing Requirements” or “lashing over and above the normal lashing” or “extra lashes.” Alternatively, had they known that storm lashes were already applied on the EL FARO, they might not have made the comment in the first instance.</p> <p>Without true evidentiary meaning and context of what was precisely meant by the term “storm lashes,” use of the term in the factual report adds little to the facts of the case. We ask that reference to the term “storm lashes” by third mate Riehm and AB Jackson be put in proper context with the facts and evidence set forth above.</p>	<p>NOTED. Any interpretation is analysis and therefore not relevant for this report.</p>
P35 L18	The draft report states that “The deck department did not, as part of its	AGREE in part. Will revise to state “unlicensed deck

¹It should be noted that Third Mate Riehm began serving on the EL FARO, on the Puerto Rico run, as third mate in 2009, and AB Jack Jackson began his work on the Puerto Rico run in February 2015. Neither individual was working in the Puerto Rico trade in 2006, when the transition was made to year round “heavy weather lashing.” Given their somewhat limited involvement in securing cargo (neither served as Chief Mate) and their times of service, neither Third Mate Riehm or AB Jackson would have likely been aware of the distinction between selectively applying “heavy weather lashing” when needed (before 2006) and the “new” procedure as of 2006 of always applying “heavy weather lashing.”

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	<p>daily routine, check to see if cargo lashings were secure at sea.” This statement is not accurate. There was overwhelming evidence that lashings were checked by the deck department at sea. For example:</p> <p>While the <i>El Faro</i> was at sea, the crew performed rounds to check lashings, scuttles, and watertight doors. (Thompson, NTSB 12/06/15, p.61).</p> <p>The Chief Mate was in charge of checking lashings around deck. (Axelsson, NTSB 11/03/15, p.80); (Axelsson, MBI 05/16/16, p.130); (Vagts, NTSB 12/06/15, p.11); (Vagts, MBI 02/24/16, p.31). The Chief Mate made rounds of the holds every morning. (Axelsson, NTSB 11/03/15, p.82); (Stith, NTSB 10/07/15, pp.45-46); (Thompson, NTSB 12/06/15, p.61).</p> <p>Other Mates on watch also checked lashings during their rounds. (Berrios, NTSB 12/06/15, p.12); (Berrios, MBI 02/19/16, pp.18-19); (Baird, NTSB 12/06/15, pp.57-58); (Baird, MBI 02/18/16, pp.17,19); (Torres, NTSB 10/09/15, p.38); (Torres, MBI 02/25/16, pp.50-51,70-71); (Walker, NTSB 12/03/15, p.48); (Walker, MBI 02/23/16, p.16); (Stith, MBI, 05/24/16, pp.41-42).</p> <p>We ask that the inaccurate statement at lines 18 and 19 be removed. To be accurate and fair, we also request that the above facts and citations be included in the discussion in section 8.3.4.</p>	<p>deck department.”</p> <p>AGREE. But there is no mention of unlicensed crew in this testimony/these statements.</p> <p>AGREE. But conflating “in port” with “at sea” watches. At sea watches are bridge watches for mates.</p>
<p>P36 L7-8</p>	<p>The draft language regarding the number of lashing devices onboard identifies selective language in the VDR transcript, and then sets forth facts with respect to the lashing inventory that is incomplete. We ask that the following additional facts be included in the draft factual report.</p> <p>Captain Thompson testified that there were no problems with the lashings when he was on the EL FARO. They were greased and maintained on a regular basis. They “had plenty of lashing on the ship usually. We had extra lashing actually.” NTSB, Thompson, 12/8/2015, p. 57.</p>	<p>NOTED. This section is about SECURING FOR SEA not maintenance or quantity.</p>

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	<p>Mr. Matthews testified that, “based on the required amounts of lashing gear, the <i>El Faro</i> had in excessive [amount of lashing gear] of what was required for RORO, based on the last inventory...” MBI 2/17/17 at p. 1714.</p> <p>The inventory, dated April 24, 2015, suggests that the vessel was short various twistlocks, lashing rods, and turnbuckles. In regard to this inventory, in order to be accurate and fair, the draft factual report should make clear that these items listed in lines 5-8 (twistlocks, lashing rods and turnbuckles) are used for the lashing of lo-lo cargo only. Further, with respect to lo-lo cargo, once the vessel has completed loading, the lo-lo loading configuration is “locked” and there would not be any need to add or change certain of the lashing gear, such as twistlocks, once underway. Therefore, there is no significance to the number of “spares” available for such items.</p> <p>In addition, in the interest of fairness and accuracy, we request that the factual report make clear that, according to the inventory, the vessel had onboard far more Ro/Ro securing gear items than the minimums suggested by the cargo securing manual (inventories of individual items exceeded minimums by between 20% and 200%).</p> <p>The joint factual report should also note, in the factual report text, that there was additional lashing, to meet minimum inventory requirements, maintained shoreside in Jacksonville and, if needed, were always available.</p>	<p>AGREE. Last inventory received was April of 2015</p> <p>NOTED. Required onboard amounts with overages and shortages are included in report.</p> <p>AGREE. Overages were already included in factual report.</p> <p>NOTED. Figure 19 has this wording.</p>
<p>P39 L11-17</p>	<p>The language in the draft report pertaining to OMV section 10.13.7.3 appears to be conflating the discussion of a policy that applies while the vessel is in port to a situation (at sea) to which the policy clearly has no application. We request the following sentence be added after the word “port” in line 13.</p> <p>“This policy in the OMV applies to vessels managed by Tote Services, prior to departure while in port. The policy does not apply to vessels at sea. During the loading of the vessel in September 29,</p>	<p>NOTED. Will add again for emphasis.</p>

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	<p>2015, a list was observed that could possibly be considered “excessive list,” but the source of that list was identified and corrected, consistent with this policy; there was no need to contact shoreside management under the policy because the list was corrected before leaving port. When the <i>El Faro</i> departed Jacksonville on 29 September, she did not have a list. (Rodriguez, MBI 02/20/16, p.37); (Frudaker, MBI 05/16/16, p.42).”</p> <p>For clarity, we suggest that a new paragraph begin with the words “On the accident voyage...” In addition, we recommend the last sentence be reworded as follows: “Investigators reviewed company guidelines and found no guidance, similar to OMV section 10.13.7.3, relating to reporting an uncorrectable list while the vessel was at sea.”</p>	<p>AGREE.</p> <p>AGREE. Will include.</p>
<p>P40 L18 P41 L3</p>	<p>The language in this section is confusing and the citations on page 41, lines 1-3, are lacking. It is unclear what reference is being referred to here. We ask for clarification of what is intended.</p> <p>The EL FARO’s Trim and Stability Booklet, developed and approved after the conversion, clearly had the change in maximum draft incorporated into it. If it did not, the vessel would not have been issued a new load line and would therefore not be authorized to operate. We are not aware of any legal requirement for - nor do we frankly see any benefit to - the Trim and Stability Book containing extraneous historical information about changes in the vessel’s maximum allowable draft.</p>	<p>NOTED. Revised accordingly and changed wording from “draft marks” to load line.”</p>
<p>P41 L8</p>	<p>For clarity, suggest the word “addressed” in place of “treated.”</p>	<p>AGREE. Revised.</p>
<p>P44 L8-10</p>	<p>The draft language discusses the availability of a Damage Control Plan.</p> <p>Pursuant to SOLAS Chapter II, Regulation 23-1, the requirements pertaining to damage control plans apply to dry cargo vessels built constructed on or after 1 February 1992. Therefore, the regulation requiring a damage control plan does not apply to the EL FARO due to the vessel’s construction date.</p> <p>The EL FARO did, however, have a Fire Control and Safety Plan, which</p>	<p>CORRECT.</p> <p>NOTED. See MSC/Circ. 919 and USCG NVIC 10-18.</p> <p>NOTED as to its existence.</p>

Technical Review of Draft Factual Reports: TOTE Inc.

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	was posted on the bulkhead. It contains a significant amount of information pertaining to safety gear, fittings, and damage control. See MBI Exhibit 134.	
P45 L1-3	It should be noted that NVIC 4-77 - a two page document - is not a regulation and does not impose any legal requirement. It is merely guidance. Second, it applies to situations in which a “vessel experiences a permanent heel due to a cargo shift.” There has been no technical or other competent evidence to show that a list occurred “due to a cargo shift,” and thus the guidance document has limited relevance.	Noted.
P45 L12-13	The draft report indicates the NCB was not able to compute the failure point for lashings of the suspect cargoes, but NTSB will do so instead. In this regard, we request that Tote be given an opportunity to review and comment upon the NTSB’s preliminary calculations to assist in the investigation.	NOTED, but this is part of our analysis and therefore per NTSB procedures parties are not invited to participate.
P46 L4-10	This was provided by Tote. See MBI 301. We request that this language be removed or modified accordingly.	AGREE. Revised.
P46 L3	To be accurate, we ask that it be acknowledged that the last annual radio survey was completed in January 2015, and appropriate certifications were updated and issued. (See attached)	NOTED. See Section 11.2.
P46 L11, 13	We ask that it be acknowledge, perhaps in a footnote, that the EL FARO exceeded these requirements in several respects, most notably the vessel carried three radars and two gyros (in excess of the requirements of SOLAS Chapter V, Reg 20).	NOTED, but no changes will be made. Any comparison of equipment carried vs. requirements is analysis.
P47 L10-11	<p>The draft report states that “no records for maintenance or replacement of wind observations equipment were found.” This is not accurate.</p> <p>a. In September 2014, Tote Services initiated an effort to increase attention to the EL FARO and EL YUNQUE’s bridge electronics equipment operation and maintenance. The effort was designed to allow Imtech Marine to provide single source service for all maintenance and repair of the bridge electronics equipment on the Ponce class vessels. See attached email from J. Fisker-Andersen to the EL FARO and EL YUNQUE dated September 12, 2014.</p> <p>b. In this regard, Tote Services requested Imtech to perform a baseline</p>	NOTED: Service report includes no maintenance to anemometer; just swapping of wires to VDR.

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	<p>survey of the bridge electronics equipment. This was performed on September 16, 2014. Among the items checked and addressed was work performed on the anemometers. See attached Imtech Marine service report.</p> <p>c. In the period of 2014 and 2015, Tote Services contracted with Imtech on approximately 10 occasions to perform various maintenance and repairs to the EL FARO’s bridge electronics equipment. The bridge electronic maintenance log was kept onboard and lost with the vessel. Should the NTSB require further information, we can provide the supporting purchase order documentation.</p> <p>We ask that the above facts be incorporated into the draft factual report.</p>	<p>NOTED. But this section is about the anemometer only and could find no report or record that contained maintenance to the anemometer.</p>
<p>P48 L1-9</p>	<p>Tote agrees a wind anemometer is not and has never been required by SOLAS or any other regulation applicable to the EL FARO. Even if the EL FARO were built to today’s standards, it is not considered by the U.S. or the IMO to be required. We ask that this be made clear in the factual report.</p> <p>Under Tote’s SMS, the vessel’s operational personnel were required to conduct operations, performed in conjunction with helicopters, in accordance with the ICS Guide to Helicopter/Ship Operations. When conducting such operations, the Guide states that “vessels should be fitted with equipment that can measure and record all wind conditions.” The obvious intent of this requirement is to ensure a heightened level of awareness of wind speeds and directions in order to facilitate maneuvering and other mission accomplishment tasks in conjunction with a helicopter in close proximity to the vessel.</p> <p>Section 15.2 of the OMV - entitled HELICOPTER OPERATIONS - applies to vessel operations only to the extent those operations are being performed in conjunction with helicopters. We see no other reasonable reading of this provision. The EL FARO has no landing platform, and has not engaged in helicopter operations in any recent memory, at least</p>	<p>NOTED. Revised.</p>

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	<p>since operating in the Alaska trade before 2007. We respectfully submit that the ICS Guide to Helicopter/Ship Operations has no relevance to the casualty or the investigation, and we perceive the very tenuous connection made in the draft factual report to be an attempt to “bootstrap” a purported “violation” of Tote’s SMS. We find this disappointing and ask that this issue be addressed in a more balanced manner in the final factual report.</p> <p>To the extent it is necessary to discuss the ICS Guide, we suggest that a footnote, at line 1, referencing the Guide, and acknowledging its inapplicability to the vessel’s operations during the accident voyage.</p>	<p>NOTED. Removed.</p> <p>AGREED. Treated in footnote.</p>
P49-50	<p>For better accuracy, we request a picture of the EL FARO’s bridge be used in place of the picture of the EL YUNQUE’s bridge. See attached photo. This picture was previously produced as part of a PST production.</p>	<p>NOTED. Replaced.</p>
P50 L19	<p>At line 19, we suggest more accurate language would be “could be tracked” rather than “were tracked.”</p>	<p>AGREE. Revised.</p>
P52 L1-4	<p>The draft report states that “the telephones used a land line when the ship was alongside its berth in Jacksonville or San Juan.” This is not correct. We have confirmed with operational personnel that the vessel did not use a “hard” land line when alongside at either port. It continued to use the other communication methods that were available to it, without connecting to a land line. We request that the draft report be corrected to address this.</p>	<p>NOTED. Revised.</p>
P52 L5-7	<p>The draft report states that “one handset, located on the bridge, was available to make satellite voice phone calls using Fleet Broadband,” that “[t]hat was the only phone the crew could access,” and that “[p]ermission to use the phone was at the captain’s discretion.” These statements require further clarification as, standing alone, they are not accurate or complete. First, while it is correct to say that there was a satellite phone available on the bridge, it is not accurate to say that was the only phone the crew could access. During a large portion of each voyage, cell phone coverage was available, if needed. Also, as discussed elsewhere in the report, the crew also had the ability to use email to communicate, in addition to satellite phone, when the vessel was not within cell phone coverage. Second, it is not accurate to say that permission to use the</p>	<p>NOTED. See Thompson MBI testimony and Villacampa interview.</p>

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	<p>satellite phone was solely at the captain’s discretion. We are not aware of any written (or unwritten) policy or procedure that requires a crewmember (or officer) on the vessel to first obtain permission from the captain before using the satellite phone. Anyone on the bridge could pick up that phone and use it if necessary. This would apply to watchstanders on the bridge as well as any other crewmember (or officer) who went to the bridge to use the phone. We have confirmed with current operational personnel, including mariners, that they were, and are, not aware of any practice, policy, or “rule” on the EL FARO (or EL YUNQUE) that would have required someone to first obtain permission from the captain before using the satellite phone. We request that this statement be revised accordingly.</p>	
P52 L12-18	<p>The draft report contains references to the vessel’s email server being provided by Globe Wireless, LLC. This is technically not correct. The vessel had an email server system on board, but that was not a Globe Wireless server. The vessel used Globe Wireless equipment for its satellite data communications, which would include the satellite transceiver, antenna, etc. The Rydex software program provided the interface between the vessel’s server and the Globe Wireless system.</p> <p>In addition to the fixed schedule for the transfer of data to/from the Globe Wireless system, the captain (or the captain’s designee) could manually “push” or force such transfer or synchronization at any time.</p>	AGREE. Revised.
P53 L1-2	<p>The draft report states that “the captain was the only one who acted to send and receive emails outside regularly scheduled transmissions.” It is more accurate to state that the captain, or anyone else at the captain’s instruction, could manually trigger a transfer/synchronization/replication of email.</p>	NOTED. Revised
P53 L6-7	<p>The draft report states that “The captain had access to all incoming and outgoing emails sent or received via the Fleet Broadband service.” This is not completely accurate and requires the following clarification: the captain did not have unrestricted access to all incoming and outgoing email. While it might be possible for the captain to monitor an incoming or outgoing email, he would only be able to do so by actively monitoring them, as they would otherwise be sent/received pursuant to the regular</p>	AGREE. Will revise to reflect monitoring capability.

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	<p>transmission schedule or when manually synchronized. Once sent/received, such email to/from the crew would then only be accessible on the crew's terminal, and, in that situation, they would only reside on, and be accessible in, that terminal until they were deleted.</p>	
<p>P54 L1-14</p>	<p>In addition to the various listed means of internal communication, the vessel also had a watch call system -- it was a push button wake-up call system that could be used to wake the next watchstander as their watch was approaching. We request that this additional means of internal communication be listed.</p>	<p>AGREE. Revised.</p>
<p>P56 L15-16</p>	<p>The draft report indicates that no record of repairs to the fixed securing devices was provided, implying that no such records exists. This is not an accurate or a fair statement of the available evidence. Records of repair and maintenance of fixed lashing gear were routinely kept, as part of the monthly cargo gear inspection records. See MBI Exhibit 132. In addition, regular records of repair and maintenance of fixed lashing gear were in fact maintained as part of the deck work log, the most recent version of which was dated July 25, 2015.</p> <p>We request that the above facts be fairly included, and the language be revised accordingly. It is true the cargo securing manual suggests a particular form or format to maintain these records, and the vessel personnel used a different form/format to do so. The intent of this section of the cargo securing manual is for the condition of the cargo securing devices to be observed by appropriate vessel personnel, repaired or replaced when needed, and that records of this repair and maintenance be maintained. This aspect of the cargo securing manual was satisfied through the documentation and records described and referenced above.</p>	<p>NOTED – found two dates in deck work log which referenced repairs. Will revise to include these.</p> <p>NOTED.</p>

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P56 L19- P57 L2	The draft report refers to a past captain describing “that a test was made of all buttons on the vessel’s RO/RO decks.” We request that this be clarified to describe the specific “test” that he described, as it was merely a wear and tear test and a test to ensure the button was the correct size, but it was not a test for strength. This was made clear in his testimony during the NTSB interview on March 30, 2016 at pages 27-28 (“test that pin to make sure that there was no wear on the inside of the button and that the button was the correct size for that pin”) and during his MBI	Will include language similar to what is requested.
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	<p>testimony, May 17, 2016 draft transcript at page 109 (“There was a testing tool that we used to measure the clearances inside to make sure that there was no wear or tear or damage or obstructions inside the button so we knew they were in good operating condition.”). Specifically, we request that the following language be inserted after “RO/RO decks”: “This test involved the use of a fabricated tool that only tested for wear and tear and to confirm that the button was the correct size, and did not test for structural or restraining strength.</p>	
<p>P61 L3-5</p>	<p>The draft factual report lists a series of bridge equipment items, and then states that there are no maintenance records in AMOS, and the language then leaves the implication that no maintenance records exist and/or no maintenance was performed. The language is incomplete and misleading in several respects.</p> <p>As an initial matter, AMOS is a software platform that is generally used to manage and schedule maintenance items and to facilitate purchasing of parts and other similar acquisitions. Rather than duplicating a proven monitoring system on the AMOS platform, the vessel retained the established third party maintenance tracking program. We ask that this be made clear in the report.</p> <p>In addition, many of these items of bridge equipment have no regular maintenance that is required, beyond periodic testing. The language also fails to note that the SMS requires virtually all of this bridge equipment to be operated/tested prior to departure of the vessel from the dock, in accordance with OMV section 10.13.7, and checklist 16A. Continuous use and pre-departure testing of this equipment is instrumental to ensure the good operating quality and any need for repair/maintenance. We ask that the factual report be corrected and updated with this information accordingly.</p> <p>Second, the language as written fails to acknowledge that the EL FARO maintained, onboard the vessel, a Bridge Equipment Service Records binder and GMDSS records binder, similar to the record kept on the EL YUNQUE. We have provided a photograph of the binders in which these</p>	<p>NOTED. Except for the Sept 2014 IMTECH, no other third-party service report has been provided.</p> <p>NOTED:</p> <p>NOTED. Added.</p>

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	<p>records were maintained. These records maintained onboard and were obviously lost with the vessel. To be fair and accurate, we ask that these facts be incorporated into the factual report.</p> <p>Third, the language also discusses the “good/journal/log” to be maintained by the Radio Operator (if carried). Because the EL FARO was not required to have Radio Operator under its Coast Guard Certificate of Inspection, no Radio Operator was aboard the EL FARO and therefore such “good/journal log” was not required to be kept under the law and SMS. Virtually all bridge equipment service and repairs were performed by Imtech Marine, not a Radio Operator. The Bridge Equipment Service Records Binder served this purpose. As noted above in our comments to Page 47 lines 10-11, please let us know if the NTSB wishes to be provided the purchase documentation and any other shoreside records documenting the performance of Imtech Marine’s work.</p> <p>We ask that this section of the draft factual report accurately and fairly incorporate and address the facts and issues noted above.</p>	<p>NOTED.</p> <p>NOTED. Already mentioned in factual.</p>
<p>P62 L4-6</p>	<p>It is not clear what is meant by the “no records were found” regarding the “status” of “the equipment.” It is somewhat unclear what equipment this is referring to, what records the language is referring to, and what aspect of the equipment’s status is sought. If the assertion is that there were no maintenance and repair records of bridge equipment found, then that is not entirely accurate. Please refer to our comments above addressing page 61, lines 3-5 and page 47, lines 10-11.</p>	<p>Section 11.2.2 is entitled “Navigation, Weather, and Command Control Items” Will state that it is believed some were lost with the vessel.</p> <p>Please see above response to your comments.</p>
<p>P63 L2</p>	<p>The quoted language “correct the problem” was stated by the USCG, not Mr. Neeson. Request this be made clear.</p> <p>More importantly, the testimony quoted in the draft report leaves the false impression that the anemometer was not working for several months. This does not reflect the evidence in the record and we ask that it be corrected. We specifically request the following undisputed facts be added to this section of the draft factual report, after line 2:</p>	<p>AGREED. Quotes removed.</p> <p>NOTED. Third mate and chief mate testimony added.</p>

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	<p>a. A former chief mate of the EL FARO, who had served aboard the vessel for approximately one year, testified that when he was onboard there were two anemometers installed and at least one of them worked during his entire time onboard the vessel. This chief mate (who was by then serving as Master) last departed the EL FARO on August 11, 2015. See NTSB Interview, Thompson, 12/8/2015, pp. 71-73.</p> <p>b. The former third mate on the vessel testified that the anemometer worked when he was onboard, although the wind vane had a consistent offset to port of approximately 20 degrees. This third mate testified that the anemometer was working when he left the vessel on September 22, 2015. See MBI Berrios, 2/19/2016, pp. 111-112, 125-125.</p>	
P63 L9-11	<p>This bridge equipment is required to be to be operated/tested prior to departure of the vessel from the dock, in accordance with OMV section 10.13.7, and checklist 16A. Continuous use and pre-departure testing of this equipment is instrumental to ensure the good operating quality and any need for repair/maintenance. In addition, the Bridge Equipment Service Records, maintained onboard and discussed above, were lost with the vessel. We ask that the factual report properly qualify the comment regarding the lack of maintenance records. .</p>	<p>NOTED. This section is about <i>maintenance</i> of the items mentioned.</p> <p>AGREE. Added to the factual per the above comment for page 62, lines 4-6.</p>
P64 L1-5	<p>The draft factual report indicates that the regulations at 46 CFR 78.17-3 require watertight doors on the EL FARO to have been inspected once a week and that inspections are required to be logged in the official log book. This is incorrect. The regulations cited apply to large passenger vessels inspected under Subchapter H. This regulation does not apply to the EL FARO or any other cargo vessel. See 46 CFR 70.05-1 and table 46 CFR 2.01-7(a).</p> <p>Accordingly, we request that reference to these requirements be removed from the draft factual report.</p>	<p>AGREE. Removed.</p>
P64 L9	<p>January 10, 2017 should read January 10. 2014.</p>	<p>AGREE. Revised.</p>
P64 L6-12	<p>The language in the draft factual report states that, based on a review of deck work records, repairs and maintenance on deck scuttles and</p>	

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	<p>if necessary on the large watertight doors; the crew would also perform chalk tests to verify contact points of the watertight doors. See MBI Neeson 2/13/17, at p. 1081.</p> <p>c. An ABS surveyor testified that when he was onboard the EL FARO, he observed evidence that a chalk test had recently been performed - as recent as a day or so before his survey. The ABS surveyor questioned the crew about the chalk test, and was informed the chalk test results were normal. See MBI Hohenshelt, 5/24/2016, at p. 130-131.</p>	
<p>P66 L15</p>	<p>In light of the issues which have been raised with respect to oversight of the Master’s navigation of the vessel and involvement of the DP and other shoreside management, the language pertaining to the ISM Code, its framework, and implementation in the U.S. is, in our view, incomplete.</p> <p>We request that the following undisputed facts be included in this section of the factual report:</p> <p>a. The heavy weather monitoring procedures, contained in Tote’s SMS at the time of the accident voyage, were originally implemented in 1996, and modified and expanded over the years in 2002, 2008, and 2009. See MBI 198 at p. 193.</p> <p>b. Under these procedures, the Master is responsible for the monitoring and analysis of the weather along the vessel’s intended track, and to take whatever action is necessary to prevent excessive damage to the vessel from heavy weather. Additionally, under the SMS, the Master is required to <u>advise</u> shoreside management of speed reductions and/or course changes due to adverse weather. See MBI 198 at p.206 (emphasis added).</p> <p>c. TSI was issued a Document of Compliance by ABS on behalf of the USCG, pursuant to the SOLAS Convention, certifying that TSI’s SMS was audited and complies with the ISM Code. See attached Document of Compliance, dated August 21, 2014.</p>	<p>AGREE in part. See below.</p> <p>NOTED.</p> <p>This is included further along in this factual.</p> <p>AGREE. Will include under section 12.2</p>

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	<p>d. The EL FARO was issued a Safety Management Certificate, applicable to the vessel itself, by ABS on behalf of the USCG, pursuant to the SOLAS Convention. It certifies that that EL FARO’s SMS was audited and complies with the ISM Code. See attached Safety Management Certificate for the EL FARO, dated October 8, 2014.</p> <p>e. Chapter V, Regulation 34 of the SOLAS Convention, states the owner or operator of a vessel “shall not prevent or restrict the master of the ship from taking or executing any decision which, in the master's professional judgement, is necessary for safety of life at sea and protection of the marine environment.” SOLAS Chapter V, Regulation 34-1. See MBI 86. This provision was originally proposed to relevant bodies at the International Maritime Organization, by the United States, in 2000. See attached IMO Marine Safety Committee, MSC Circular 72/10/3, dated February 18, 2000, Proposed Revisions to SOLAS Chapter V, submitted by the United States.</p> <p>f. The ISM Code does not mention weather monitoring or weather at all in its text. See ISM Code. In 1997, when the Coast Guard implemented the ISM Code into U.S. law through a rulemaking and public comment process, the subject of weather monitoring, or any subject involving weather, was not mentioned or discussed in either the Noticed of Proposed Rulemaking, the public comments, or in the Final Rule itself. See attached Notice of Proposed Rulemaking and Final Rule for 33 CFR Part 96, International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code).</p> <p>g. During the rulemaking and public comment process, the U.S Coast Guard rejected a proposal that the Master, and DPA under the ISM Code, share responsibility for a vessel’s operations. In</p>	<p>AGREE. Will include in section 12.2.</p> <p>NOTED.</p> <p>NOTED.</p> <p>NOTED.</p>
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	<p>responding to this proposal the Coast Guard stated: “The Coast Guard disagrees . . . the designated person does not have a responsibility for operation of the vessel. The designated person’s responsibility is to monitor the safety management system of the company and the vessel(s), as directed by the responsible person. If problems arise with the policies and procedures for the safe operations of the vessel which the Master does not believe he or she has the right tools to manage, those problems should be communicated to the vessel’s owner. The Master can communicate through the safety management system, or directly to the vessel owner, or through the designated person to the vessel’s owner.” See Final Rule at 67502. Regarding the master’s overriding authority, and the autonomy that he/she needs to provide effective leadership at sea, the Coast Guard further stated: “the Master is the responsible person’s representative on the vessel and all authorities that can be expected of the Master should be supported by the safety management system. The Master has overriding responsibility and authority to ensure that the vessel is operated safely, and consistently with all applicable laws. <u>When the Master is not specified, it is impossible to expect the individual employed as the Master to provide proper leadership or decision making clarity.</u> Where the Master follows international, national, coastal, or local regulations or directions, regarding management of a vessel, he/ she is making decisions on how to use these factors in the efficient and safe operation of the vessel taking into account the policies provided by the safety management system.” See Final Rule at 67497 (emphasis added).</p> <p>h. The Coast Guard Headquarters Office of Operating and Environmental Standards (G-MSO-2) published a “Safety Management System Manual,” which was designed to serve as a template for vessel operators to use in developing their own safety management systems. See attached. That document contains a section entitled “Assessment of Weather Conditions”.</p>	<p>AGREE with no mention in template, but inclusion is out of the scope of this factual section. Further, see VSI results.</p>
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	<p>It states that “[i]t is the ultimate responsibility of the master to constantly monitor and assess the weather conditions...” Nowhere in that section, or anywhere else in the document, does the Coast Guard suggest that shoreside management should be involved in monitoring the vessel’s track in relation to the weather or advising the Master about the weather or what course to take.</p>	
P67 L10-11	<p>The language regarding the Safety Management Certificate and Document of compliance is potentially misleading. Vessel Operators are issued a Document of Compliance. The vessel itself, rather than the operator, is issue issued a Safety Management Certificate. The language as written implies both are issued to the operator. We suggest clarifying this.</p>	<p>AGREE. Revised.</p>
P69 L11	<p>In addition to an electronic version, each was provided two hard copies - one copy for the Master and deck department and one for the Chief Engineer and engineering department. These were controlled copies.</p>	<p>AGREE in part. Could not find testimony/statement of such but OMV document control says one hard copy to master. Revised to reflect.</p>
P69 L16	<p>The draft language states that Captain Lawrence testified that he had “never used” the risk assessment model. Captain Lawrence later clarified his testimony that the risk assessment model in place at the time of the loss of the EL FARO was very subjective, and further indicated he was not involved in development of that particular risk assessment model; it was in place when he began working with the company. The discussion of the risk assessment model in the company’s EPMV affirms that this is considered to be a “highly subjective” analysis. See EPMV 4.2/</p> <p>As a practical matter, the risk assessment model in place at the time of the loss of the EL FARO was an analytical framework for shipboard personnel to assess and manage risk, rather than a step by step quantitative procedure or calculation. See EPMV 4.2 (Risk=Frequency X consequence). Because this risk assessment model was designed to assist shipboard personnel conceptually assess, analyze and manage risk during vessel operations, Captain Lawrence would not have personal experience applying the model himself. We ask that this issue be more fully explained and placed into context, in the final report, rather than tersely stating that Captain Lawrence said “he never used it.”</p>	<p>NOTED. Section 4.2 of EPMV says “highly subjective terms.” (Emphasis added.) Revised consistent with EPMV Language.</p> <p>NOTED.</p>

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P71 L1-2	The voyage plan from the last voyage is on the vessel. As a matter of procedure in the SMS, they are not sent ashore. There is no other copy to provide.	AGREE & no problem mentioning this in factual. Revised.
P73-74	We provide a general comment here. The tone and manner of selective quotation of testimony in the discussion of weather and weather monitoring from shore, implies that Tote’s shoreside practice of not continuously monitoring the weather, in relation to its vessels’ track is somehow illegal, improper, or outside the norm. Tote’s SMS with respect to weather monitoring is, in fact, in complete agreement with the ISM Code, other applicable international and domestic regulations, and norms in the industry.	NOTED.
P74-4	The language in the draft report states that Port Engineer did not discuss Joaquin with the captain when they ate together. This is incorrect, the Port Engineer testified that they discussed the weather when they had dinner: “I think we discussed a tropical storm that was brewing, but at that time that was all it was a tropical storm, so there was no concern about major weather.” MBI Neeson 2/26/2016, at p.143.	AGREE. Revised.
P75 L9	<p>The draft report states that “the chief mate delegated the duty of securing the vessel to sea to the bosun.” We do not believe the word “delegated” is accurate or supported by the language of the OMV. More accurately, and consistent with the language of the OMV, we recommend the sentence be re-worded as follows: “As specified in the OMV, the chief mate may assign the bosun various duties related to deck operations, such as assisting with making the vessel secure for sea.”</p> <p>We believe the intent of this section of the OMV to section of the OMV</p>	<p>Agree in part. The exact language of OMV § 5.1.6 states: “The duties of securing the vessel for sea, proper stowage of lines and securing equipment shall also be assigned to the Bosun through the Chief Mate.” (Emphasis added.) The factual will be revised to include this exact language.</p>
P74-75	<p>The section pertaining to “preparing the vessel for sea” contains a discussion of various policies, but does not set forth the testimony and other evidence regarding how these policies were implemented on board the EL FARO. Accordingly, we ask that the following facts be included in this section of the report:</p> <p>The practice aboard the <i>El Faro</i> was to secure watertight doors when cargo was completed. (Berrios, NTSB 12/06/15, pp.12-13); (Axelsson, NTSB 11/03/15, p.83); (Axelsson, MBI</p>	AGREE. Revised to include.

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	<p>05/16/16, pp.87-88); (Torres, NTSB 10/09/15, pp.47-50); (Stith,NTSB 10/07/15, p.45); (Thompson, NTSB 12/06/15, p.58); (Hearn, MBI 05/17/16, p.70).</p> <p>To get ready for sea, scuttles on the second deck were also closed by either the Chief Mate or the bosun. (Berrios, NTSB 12/06/15, pp.14-15); (Berrios, MBI 02/19/16, p.41); (Baird, NTSB 12/06/15, pp.53-54,72); (Walker, NTSB 12/03/15, p.10); (Walker, MBI 02/23/16, pp.10,13-14); (Thompson, NTSB 12/06/15, p.59).</p> <p>Scuttles remained closed while the vessel was underway unless they were being used by crew. (Berrios, NTSB 12/06/15, pp.58-59); (Vagts, NTSB 12/06/15, pp.63-64).</p>	<p>NOTED, but Berrios did not say bosun or chief mate. NOTED, but Baird did not say bosun or chief mate. NOTED, but stated bosun. Will revise consistent with statements.</p> <p>NOTED. Section is “preparing vessel for sea.” Not underway.</p>
<p>P76 L1-3</p>	<p>The draft language notes that there are regular entries in the deck work log stating “secure for sea” up until around August 5, 2015, and thereafter no such entries are found. The implication, as written, is that the crew’s vigilance with respect to securing for sea may have diminished after August 5, 2017. However, such an implication is not supported by the evidence.</p> <p>We inquired with relevant vessel staff, and it appears that the chief mate at the time advised staff to cease making this entry into the deck log because it was not required, and, he felt there was no reason to clutter the deck log with routine operational functions, particularly when the “secure for sea” entry was already being placed into the deck log.. We ask the factual statement be amended accordingly, to include this explanation for why these entries no longer were made after August 5, 2015. TOTE can provide a written statement from qualified personnel to this effect, if desired.</p> <p>In addition, and perhaps most importantly, a review of the available deck logs after August 5, 2015 reveals that the crew, in fact, logged that the vessel was “secure for sea” prior to departing at each port. We ask that these deck log entries also be discussed and summarized in the factual report.</p>	<p>Modified text to include info found in deck logs.</p> <p>AGREE with log entry. Deck log pages state: “W/T Doors & Hatches secured for sea.” Revised to reflect exact wording.</p>

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<p>P76-L6</p>	<p>The language states that the deck department work log was filled out by the chief mate “based on information reported to him by the bosun”. This implies that the chief mate had no independent knowledge of the entries, which is not accurate. To be more accurate, we request that the sentence modified as follows: “...based on his own observations and information reported to him by the bosun and others in the deck department...”</p>	<p>NOTED.</p>
<p>P83 L1-3</p>	<p>The draft report states: “On El Faro’s accident voyage, the captain asked, and received permission from, the TOTE Services director of ship management to divert for Hurricane Joaquin on the return trip from San Juan by using the Old Bahama Channel.” This apparently is based on an email contained in MBI Exhibit 4, at page 101. This is not an accurate description of the purpose for this email exchange and we request that this be clarified. There is no policy or procedure that requires the master to request and obtain permission to divert for heavy weather. To the contrary, the OMV specifically states in 10.8.2 that the Master is to “<u>advise</u>” shoreside management of speed or course changes due to adverse weather, not that the master has to request and obtain permission to do so. See, e.g., MBI Exhibit 198, OMV, section 10.8.2 ADVERSE WEATHER (“...The Master shall take whatever action is necessary to prevent excessive damage to the vessel from heavy weather. The Master shall advise the HQ Office of speed reductions and/or course changes due to adverse weather.”). This was confirmed by numerous witnesses during the MBI testimony. See, e.g., February 16, 2016 MBI final transcript at p.51 (“Do they need to ask permission to take those routes? WIT: No.”), p.62-63 (“Well he does not need permission to ask to, he only has to advise us if he’s making a change of course. It’s more or less a one way conversation. He’s the Master in charge of the vessel with determining the voyage plan. He’s advising us of his intentions. There’s no need for him to ask permission. ...”), p.114 (“I do know that the manual is quite clear that he does – it’s not required that he gets our permission, so.”); February 19, 2016 MBI final transcript at p. 77 (“Have you ever seen any time where Tote has given speed or course changes, permission for speed or course changes? WIT: Never.”).</p> <p>The email response, itself, indicates that the email from Captain Davidson</p>	<p>NOTED. Added language used in email.</p>

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	<p>had been treated as a “heads up” as opposed to a required request. See MBI Exhibit 4, p.101 (“Thank you for the heads up.”). Indeed, Captain Davidson himself knew that he did not need to ask for permission. The VDR transcript from September 30 confirms, in the range of 14:05:33.9 to 14:06:34.2, that Captain Davidson sent the email because he was “extending a professional courtesy” and not because it was required that he ask permission. Similarly, in that range of the VDR, the Second Mate notes that they hadn’t had to ask permission but instead “it used to be just we’re doin’ it.” Further, the notification regarding the return trip was way in advance, as the northbound leg would not start until the San Juan port call had concluded. We therefore request that this be revised to read: “On El Faro’s accident voyage, the captain informed the TOTE Services director of ship management that he planned to divert for Hurricane Joaquin on the return trip from San Juan by using the Old Bahama Channel. A reply email was sent to the captain acknowledging that plan and thanking him for the heads up.”</p> <p>We request that the draft factual report include the above facts and/or amend its contention that “the captain asked, and received permission from, the TOTE Services director of ship management.”</p>	
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