

THE  
AMERICAN  
CLUB



EVIDENCE

# COLLECTION OF PERISHABLE EVIDENCE

# Introduction

Once all immediate safety, cargo, and environmental concerns following an incident likely to result in a claim are addressed, the preservation of evidence becomes very important.

Properly collected, preserved, and documented evidence provides information that enables us to:

- (1) learn from the incident;
- (2) verify compliance with regulations, procedures, and policies; and
- (3) properly establish the incident's liabilities.

Evidence can come in many different forms.

**Documentary evidence** includes records available on the vessel and from shoreside management, such as logbooks and training records.



**Physical evidence** includes items such as sections of a mooring line that parted, drug testing samples, a sling that failed, etc.



**Electronic evidence** includes data from the voyage data recorder (VDR), electronic logbooks, maintenance records, alarm records, photography, video, etc.



Furthermore, potential witnesses should also be identified to present evidence as may be necessary.



## Logbooks

Documentary evidence in the form of logbooks that are still in use deserves special care. All appropriate entries related to an incident should be made as soon as possible and signed and dated. If the incident happens over a period of time, multiple entries should be made to document the ongoing incident and all actions taken. If an entry cannot be made in a timely way and is added later, it should be marked as a "late entry" with the date and time noted, an explanation why it is late, and include the date and time the underlying occurrence took place.



## Chain of Custody

Evidence must be collected and stored with the chain of custody established. All relevant evidence should be stored in a secure location where it is not accessible to others, including the crew, so it cannot be tampered with or accidentally damaged. Chain of custody is most easily established using a written record that accompanies each piece of evidence. If the evidence is transferred to someone else later, that chain of custody document is used to indicate the transfer to a new custodian. For logbooks that are still in use, relevant log pages can be photographed using date and time stamps on the photo.



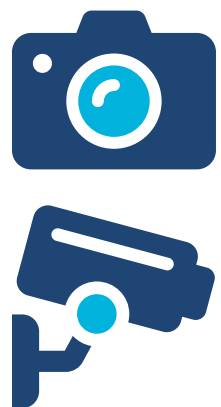
## Written Statements

The Master should seek advice from the owners and P&I club, including lawyers appointed on their behalf, consistent with the safety management system requirements before witness statements are prepared. The importance of obtaining written statements as soon as possible, immediately after an incident, is imperative, as memory of the details of an incident can “degrade” or change over time. Witnesses can forget or unintentionally omit or blur details in statements made days or weeks after an incident. The best way of asserting legal privilege over witness evidence is by having the witness make a formal written statement to a lawyer appointed by the Owners and/or the P&I club. The statement should address basic **“who, what, where, and when”** questions. Witness statements also provide insight from the mariners who know the vessel and know the vessel’s operations and systems the best. Delays in getting witness statements also increase opportunities for witnesses to collaborate or discuss with others what they saw and heard. This is undesirable as witnesses may blend their respective accounts out of a sense of mutual support or confirmation of what they witnessed. Witness statements should be dated and signed by the witness.



## Photographic and Video Evidence

Pictures and videos are invaluable following an incident. They provide visual evidence of the damage, the scene, the weather conditions, etc. As such, there should not be a limit on the number of pictures or the number of videos taken. Pictures should include views from a distance as well as close-up views to give the best overall perspective. Pictures can also be important to document the conditions of the dock, the vessel, and the cargo beforehand, should an incident later occur or be alleged. For example, photos of the condition of the dock and fender system that are taken as the ship is approaching, and later after departing, can be important should the facility later claim the vessel damaged the dock and fender system. Similarly, photos of how the cargo is lashed and secured can be important should that cargo later be damaged.



# Perishable Evidence

Collecting evidence is crucial to all incident investigations. However, capturing the “perishable” evidence is the most time critical and should be a primary objective as soon after the incident as practicable.

Some data is perishable. This means that if it is not captured, the evidence cannot be recreated or recovered. An important example of perishable evidence is VDR data. If the data is not “saved” in the immediate aftermath of an incident, it will likely be overwritten and lost, sometimes within 24 hours.

Many communication exchanges take place over messaging apps (e.g., WhatsApp and WeChat). Such correspondences relevant to incidents must be identified, backed up, and preserved.

Drug and alcohol testing may also be required depending upon the nature of the incident, the company’s safety management system, flag State, or local regulatory requirements. If required, efforts should be made to ensure the testing is performed timely and correctly as per drug kit manufacturer’s requirements and the samples are properly secured onboard.

To assist in preserving potentially perishable evidence, the American Club has developed a series of “Do’s and Don’ts” for collecting perishable evidence, and a series of practical checklists for use onboard a vessel to identify the types of evidence that should be collected based on the type of incident. These checklists for evidence collection include “perishable” evidence that should be collected and preserved as soon after the incident as practicable. Nonperishable evidence must also be collected and preserved timely to ensure that it will not degrade, be lost or be overwritten.

Specific information and guidance related to bunkering and bunker disputes, including perishable evidence collection, can be found in the American Club publication, [Bunkering – A Compendium](#).



# Do's and Don'ts

## For Collecting Perishable Evidence

### Voyage Data and CCTV Recordings for Collision, Grounding, Allision, or Damage to Third Party Property



- DO** press the VDR or CCTV “save” button immediately after the incident.
- DO** press the VDR or CCTV “save” button again after every 12 hours if the incident is ongoing.
- DO** conduct training on the VDR or CCTV and their proper use.
- DO NOT** assume that someone else pressed the “save” button on the VDR or CCTV.
- DO NOT** assume that VDR or CCTV data will be automatically saved.

### Taking Witness Statements



- DO** seek advice from the Owner and P&I Club, including lawyers appointed on their behalf, concerning witness statements for incidents that might involve third-party claims.
- DO** take statements, in accordance with legal advice and in the presence of lawyers representing the Owner and/or the P&I Club, from all officers and crew members involved in the incident, or who may have witnessed the incident while the incident and their memory is still fresh.
- DO** ensure that any statements address the activity leading to the incident as well as actions taken after the incident.
- DO** include details of any steps taken to mitigate or prevent any further damage.
- DO NOT** wait for days to take statements, unless otherwise advised by counsel appointed on the Owner's behalf.
- DO NOT** collaborate with others either prior to or while making or preparing statements.

# Do's and Don'ts

## For Collecting Perishable Evidence (cont'd)

### Taking Witness Statements (cont'd)



#### **DO NOT**

limit statements to only those people directly involved. Statements should be provided by everyone involved, everyone who should have been involved, everyone who may have witnessed the incident, and supervisors, whether or not they were at the location where the incident happened.

### Preservation of Electronic Chart Data and Paper Charts



#### **DO**

save versions of the electronic charts that were in use at the time of the grounding.

#### **DO**

save paper charts, if used, and retain them without any chart updates.

#### **DO**

save a copy of the passage plan (or voyage plan).

#### **DO NOT**

let the electronic chart system automatically update before the data is saved.

#### **DO NOT**

erase information on paper charts.

### Taking Photographic & Video Evidence



#### **DO**

take photos of the incident and all damage from multiple angles.

#### **DO**

take a video of the incident and damage but refrain from commenting during the filming of the video.

#### **DO NOT**

limit the number of photos.

#### **DO NOT**

just take close-ups of damage that lack perspective.

#### **DO NOT**

just take long-distance pictures that lack detail.

# Do's and Don'ts

## For Collecting Perishable Evidence (cont'd)

### Collection and Preservation of Physical Evidence



- DO** save physical evidence such as PPE and other safety gear that was used, tools and equipment that were in use, cargo securing gear that was in use, mooring lines that parted, machinery components that failed, etc.
- DO NOT** throw away physical evidence with the garbage just because it may no longer be usable.
- DO** store all evidence collected in a safe, secure location.
- DO** store evidence to establish a chain of custody.
- DO NOT** keep evidence that has been collected in a common, accessible area where it can be tampered with or accidentally damaged.
- DO** use a checklist post-incident to help ensure that all perishable evidence is collected and accounted for.
- DO** *coordinate the collection and storage of evidence with the surveyors and counsel who have been appointed on the Owner's behalf.*
- DO NOT** assume that you will think of everything in the hectic aftermath of an incident.

# Perishable Evidence by Incident Type

## INCIDENT: Collision, Grounding, Allision, or Damage to Third Party Property

	VDR data
	Any available CCTV footage
	Paper charts (if in use)
	ECDIS records and updates relevant to the incident
	Record of weather conditions and currents, including copies of weather forecasts leading up to the incident as applicable
	Visibility and light conditions at the time of the incident
	Engine order telegraph printouts or bell log book
	Vessel's draughts prior to and at the time of the incident
	Sounding (and liquid's ROB) in all tanks & cargo holds at the time of the incident, and logged while in development of the incident/salvage efforts
	Photos, videos and CCTV of damage to vessel(s) from numerous angles and vantage points
	List of crew members on watch during the incident (and contact details)
	When required, and pursuant to the advice of counsel and in the presence of counsel, statements from all watch standers (bridge and engine room) and witness statements from each eyewitness

### If a Breakaway led to the incident, the following evidence should also be collected:

	Description and schematic of the actual mooring configuration used
	Description of mooring lines used and their condition as well as their certification and when delivered onboard
	Instructions received from the terminal regarding the mooring arrangement (if any)
	Physical evidence - mooring lines used, including any that parted (retain actual mooring lines or parts of them)
	Any records documenting the tending of mooring lines
	Photos of bollards used
	Settings and conditions of winches used, including brake settings and auto-tension settings, and recent inspection records
	Statements from other crew who used or recently used the mooring equipment
	List of involved vessels, marine traffic in the area, including passing vessels creating wake, or vehicles, or machinery, or other third-party objects that could be associated with the damage and contact details of those parties or their representatives

# Perishable Evidence by Incident Type (cont'd)

## INCIDENT: Injury

	Description of the injury(ies)
	Photos, videos and CCTV of the injury scene from numerous angles
	List of everyone involved, including all crew doing the work, supervisors, witnesses (including shoreside), and people who assigned the work, even if they were not present at the time of the injury (and contact details)
	Description of the specific activity by person(s) injured and description of the location on the vessel
	When required, and pursuant to the advice of counsel and in the presence of counsel, statements from all involved and eyewitnesses, including: <ul style="list-style-type: none"> <li>▸ a description of the incident and events leading to it in a chronological ordered timeline as practically possible; and</li> <li>▸ the contact information of the person writing the statement</li> </ul>
	Description of the lighting of the area where the injury occurred
	Description of clothing and PPE worn by the person injured
	Description of the lock out-tag out or stop work measures in place (if applicable)
	Preserve safety equipment and protective clothing worn by the person injured (actual equipment and protective clothing, not just a description)
	Identify and preserve physical evidence of all equipment being used by the injured person
	Records of the risk assessment and the work permit issued for the work done where injury occurred, including records of crew working hours
	Photos and videos and records of parameters of machinery or readings from gauges/measuring or controlling equipment at the time of the incident (e.g., pressure/temperature gauges, gas meters, RPM data, electric data such as voltages, amps, ohms, etc.)
	Description of weather at the time of the injury
	Condition of the structures/fixtures on the vessel that were related to the activity or injury together with maintenance records (if applicable)
	Evidence that medications were being taken as prescribed

# Perishable Evidence by Incident Type (cont'd)

## INCIDENT: Cargo Damage and Heavy Weather Damage

	Date and time cargo and/or heavy weather damage was discovered
	Description of the damage
	Specific location of damaged cargo on vessel, including exact position and orientation of the cargo and surrounding structures, tanks, bulkheads, lashing points, their condition, and the condition of adjacent cargo
	Description of any damage to the vessel caused when cargo was damaged, including changes in the vessel's stability condition
	Photos, videos and CCTV of cargo being loaded from numerous angles
	Photos, videos and CCTV of cargo damage and vessel damage from numerous angles
	Photos, videos and CCTV of cargo theft or pilferage
	Name of the person who first identified the cargo damage (and contact details)
	Weather at the time of cargo loading and weather reports prior to the damage
	Electronic chart data and ECDIS records relevant to the incident
	Paper charts (if in use)
	Record of weather conditions at the time damage was first identified
	Record of weather from the start of the current voyage to the present time
	Record of weather forecasts from the start of the voyage
	External weather routing service information, and description of route changes based on that information and evidence of compliance with external weather routing service/recommendations
	Vessel's draughts prior to and at the time of the incident
	Initial impression of the cause of cargo damage
	Initial incident report of the cargo damage
	List of who was on watch when the damage was first identified (and contact details)
	When required, and pursuant to the advice of counsel and in the presence of counsel, written statement from all crew members involved in loading the cargo and in discovering/documenting the damage
	Description, photos, video and CCTV of initial steps to mitigate damage and prevent further damage
	Description of any safety concerns that precluded or hindered crew efforts to mitigate or prevent further damage
	Records, reports including LOPs (if issued) at the loading port
	Stability calculations per the approved stability booklet and/or the approved software

# Perishable Evidence by Incident Type (cont'd)

## INCIDENT: Cargo Damage and Heavy Weather Damage (cont'd)

	If there is any allegation of Member's responsibility for lashing/securing cargo, preserve relevant documentation detailing instructions from charterer/operator regarding how cargo was to be loaded, lashed and secured
	If damage is or may have been caused by water ingress, carry out inspection of all adjacent tanks, all sounding tubes, vent-pipes that pass through the cargo hold(s) and records of testing for salt water with silver nitrate
	If reefer containers -or- refrigerated cargo are involved: <ul style="list-style-type: none"><li>(a) preserve records of any power failure or indication (evidence) of it;</li><li>(b) preserve records of temperature checks; and</li><li>(c) preserve temperature recording device(s) and their records</li></ul>

# Perishable Evidence by Incident Type (cont'd)

## INCIDENT: Structural, Equipment, or Machinery Failure leading to Damage to Hull

	Vessel location at the time of the incident or discovery of the damage
	Date and time of the structural, equipment, machinery failure, or other damage was discovered
	Description of the damage to vessel's hull, machinery or equipment
	Collect photos, videos and CCTV of the damage from numerous angles
	Specific location on the vessel of the failure on the vessel
	Description of activities/operations on the vessel when the structure, equipment, or machinery failed
	Photos and videos and records of parameters of machinery or readings from gauges / measuring or controlling equipment at the time of the incident (e.g., pressure/temperature gauges, gas meters, RPM data, electric data such as voltages, amps, ohms, etc.)
	List of involved vessels, or vehicles, or machinery, or other third-party objects that could be associated with the damage and contact details of those parties or their representatives
	Engine room alarm system records (printout, or photos) relevant to the incident
	Preserve, label, photograph/videotape and secure any physical evidence related to equipment and components that failed
	Date, time, and description of cargo operations if applicable
	Vessel loading conditions and particulars at the time damage was first identified
	Weather conditions at the time the failure/damage was first identified
	Weather in the days preceding the identification of structural failure
	Latest maintenance and performance records and reports of the equipment failed including certification (if applicable)
	Name of the person who first identified the failure (and contact details)
	List of persons on watch or otherwise involved in the structure, equipment, or machinery failure (and contact details)
	When required, and pursuant to the advice of counsel and in the presence of counsel, statements from all watch standers (bridge and engine room) and witness statements from each eyewitness
	Alarm printouts of the equipment failed (if applicable)
	Preliminary indication of the cause of the failure
	Physical evidence related to equipment and components that failed software

# Perishable Evidence by Incident Type (cont'd)

## INCIDENT: Fire and Explosion

	Description of the fire or explosion
	The date and time that the fire or explosion was first identified, and how it was first identified
	Description of the damage
	Photos and videos of damage to the vessel and/or cargo from numerous angles
	Description of activity/operation on the vessel prior to the fire or explosion
	Engine room alarm system records (printout, or photos) relevant to the incident
	Description of the weather at the time of the fire or explosion
	List of who was on watch when the damage was first identified (and contact details)
	When required, and pursuant to the advice of counsel and in the presence of counsel, statements from all watch standers (bridge and engine room) and witness statements from each eyewitness
	Photos and videos and records of parameters of machinery or readings from gauges/measuring or controlling equipment at the time of the incident (e.g., pressure/temperature gauges, gas meters, RPM data, electric data such as voltages, amps, ohms, etc.)
	Status of fire alarm systems prior to the start of the fire or explosion, including records of testing, inspection, and servicing
	Status of fire suppression systems prior to the start of the fire and description of fire suppression systems used
	Log of actions and activation of fire suppression systems by crew or other parties, including shore fire brigade(s), including time, details, names, etc.
	Logs/description of any observed pollution resulted as consequence of the incident, including time, details, quantity, a substance, and include the nature of the pollutant, location on the vessel, whether the pollutant got outside of the vessel's boundaries, and quantity of pollution on deck and overboard
	Preserve physical evidence potentially related to the origin of the fire or explosion
	Initial incident report of the cargo damage
	Assessment of structural damage (if any) – plan of action to mitigate consequence, evidence of compliance with the plan/relevant SMS

# Perishable Evidence by Incident Type (cont'd)

## INCIDENT: Pollution

	Description of the pollution, including the nature of the pollutant, location on the vessel, whether the pollutant got outside of the vessel's boundaries, and quantity of pollution on deck and overboard
	The date and time the pollution was first identified, how it was identified, and who identified it (and contact details). Log of any developing pollution, including time, details, quantity, a substance, etc.
	Photos, videos and CCTV of pollution and any damage from numerous anglesequipment, or machinery failed
	Photos and videos and records of parameters of machinery or readings from gauges/measuring or controlling equipment at the time of the incident (e.g., pressure/temperature gauges, gas meters, RPM data, electric data such as voltages, amps, ohms, etc.)
	Description of activities/operations being conducted on the vessel at the time of the pollution, or prior to when the pollution was first identified
	List of persons in the area or using any involved equipment or systems prior to the pollution (and contact details)
	When required, and pursuant to the advice of counsel and in the presence of counsel, statements from all watch standers (bridge and engine room) and witness statements from each eyewitness
	Description of the weather at the time of the pollution
	Description of scupper plugs, drip trays, and containment in place at the time of the spill
	Physical evidence related to all possible causes of the pollution, such as pumps, hoses, gauges, level sensors, and sounding devices
	Record of actions taken to contain the spill and initial actions to clean up the spill. Log time, names (and contact details)of whoever was involved, details, quantity, a substance, etc.
	Physical evidence related to equipment and components that failed software

# Perishable Evidence by Incident Type (cont'd)

## INCIDENT: Stowaways

	Description of the stowaways and where they were found, and any other places where they hid, including the date, time, and vessel position when they were found
	Photos and videos of the scene
	List of who found them (and contact details) and the activity they were performing when they found them
	When required, and pursuant to the advice of counsel and in the presence of counsel, statements from all watch standers (bridge and engine room) and witness statements from each eyewitness.
	Physical evidence of all belongings, documents and contraband in the possession of the stowaways
	Initial assessment of where and how stowaways got onboard, footage of CCTV videos of the potential entry points and movements onboard at the time of embarkation and later - until the stowaway was discovered
	Records of how the stowaways are treated onboard once discovered



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