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Sunderland  
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# Southern Star

**Inside:**

Safety Guides & Our  
Latest Updates

2022 EDITION

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Celebrating

**140**

1882-2022

years in fishing

# Sunderland Marine

Fixed Premium  
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## Welcome to Southern Star!

Hello and welcome to our 2022 edition of Southern Star

When we went to print with the last issue of Southern Star, we were at the height of the pandemic. Many positive developments have taken place since, and some segments of the industry have largely returned to normal. Yet, we are acutely aware some of our long-standing insureds are not immune to ongoing difficulties. Uncertainty created by staffing shortages, supply chains issues, complex export conditions and changes in government strategy are all topics that still feature in our conversations well into 2022. We hope the near future brings relief to those who are still facing tough operating environments.

Our team has undergone some changes this year with Chris Kennedy who had been managing the Australian branch for the past 10 years, returning to the Sunderland Marine office in New Zealand. The good news is that Chris is still very much part of the Aussie team, as he continues to oversee the Aquaculture portfolio for both countries. With Chris' move back to NZ I joined the company in late January. I've been in the marine industry for over 20 years and I am delighted with the vast technical expertise and passion for the customer in the team. It has been Sunderland Marine's core business for 140 years now, and it's a privilege to work with such dedicated colleagues every day.

In this issue of Southern Star, we have rounded up a few articles written by our in-house and network experts that we hope you will enjoy reading and find useful. We would also like to hear your thoughts on this edition and your ideas for future content so please don't hesitate to get in touch. Our email is: [australia@sunderlandmarine.com](mailto:australia@sunderlandmarine.com)

Best wishes,

*Mia Bredenberg*

Mia Bredenberg  
Australia Manager



*Mia joined Sunderland Marine in January 2022 and is based in Melbourne, Australia.*

*Mia is responsible for general management of the Australian Branch and has over 20 years experience in Marine and management experience in Operations, Risk & Compliance and Finance.*

*Mia is a Certified Compliance & Risk Professional and a member of the Governance, Risk & Compliance Institute.*



# Our News



Pictured L-R: Shane Parsons with Nicki Peacey and Chris Barrett of the New Zealand Office

Shane Parsons, Manager of our Brisbane office recently visited the NZFCF conference in Napier and had the opportunity to meet with our New Zealand office team as well as clients, brokers and industry experts.

## Talking: A vital work planning tool



Everyone is probably aware of the old adages when it comes to planning.

The favourites are usually the five P's ('Proper Planning Prevents Poor Performance' – feel free to slip in the extra 'P' before 'Poor!') and a variation of US ex-President Benjamin Franklin's "If you fail to plan, you are planning to fail".

Clearly, preparing for what is ahead so that everyone knows what to expect and what they are supposed to do makes common sense. If people are prepared and know their roles, then it can go a long way towards preventing incidents that lead to injuries, and ultimately claims.

'Work planning' can conjure up images of meetings and charts. But planning doesn't always have to be a lengthy or complicated process. One of the most simple and quickest methods can be one of the most effective; and it is probably the most overlooked – the 'toolbox talk'.

### It's good to talk

A Toolbox Talk is an open and informal discussion just before starting a job. It helps make sure everyone involved knows what is going to happen and what they have to do.

Before everyone switches off, it's important to know what a Toolbox Talk isn't. It is not a training session, a lecture or another paperwork exercise. A good and effective Toolbox Talk will be quick (no more than a few minutes), to-the-point and interactive.

Here are some tips to make your Toolbox Talk effective:

- Discuss the job – how it is going to be done and what is everyone's role.
- Consider the impact of any other work being carried out on board or ashore.
- The person in charge can lead but don't let it become a lecture. Get everyone involved as they can share their experience.
- No waffling or straying off-topic: Keep to the point, as toolbox talks work best when they are relevant and concise
- Talk about the risks and explain how they will be managed.
- If there is a written procedure or risk assessment relevant to the task in hand, run through them and check that they are correct, up-to-date and workable.

- If there are new crew on board, it is even more important to make sure they understand what is going on.
- Remember, things change - it is a dynamic working environment so discuss what to do if something isn't right or circumstances change.

If your Toolbox Talk highlights a problem with a procedure or risk assessment, don't ignore it. Investigate it and put it right.

At the end of the talk, everyone should know and understand what is to be done, how they are going to do it and what their role is. If everyone understands the risks and the reasons for the instructions, they are more likely to follow them.

For more details see our quick-reference guide on toolbox talks.



Search "Toolbox Talk" on our website to find out more and access a free printable guide.



# Learning from incidents onboard



**Alvin Forster, Loss Prevention Executive at Sunderland Marine, explores what can be learned in the aftermath of an incident when the time is taken to look beyond the initial causes.**

Things can and do go wrong. Regardless of best intentions to achieve a zero-target when it comes to accidents, equipment fails, people make mistakes and the unforeseen happens. But throughout our lives, when things go wrong we learn from the experiences so that they don't happen again. The same should apply to our work - in this case, safety at sea. When incidents occur, we should grasp the opportunity to learn, and this means investigating how they happened.

## The purpose of investigating incidents

Why do we carry out an investigation? Well, it depends on its purpose and who it is for.

If it concerns a potential prosecution, then establishing responsibilities and dispensing justice could be the priority. Similarly, when a high profile or tragic accident occurs, and public interest is aroused - there is often an insatiable demand from mainstream and social media to find someone to blame. An insurer or a legal claimant may take another view on the purpose of an investigation. Their priorities are likely to be around liability which, while related to blame, is not interchangeable with it.

Finding someone to blame might seem a neat and tidy solution. But focussing on this aspect can rob us of the opportunity to learn and to improve. Instead of focussing on the "who", we should be looking more at the "how".

## Finding the cause

At Sunderland Marine, we get to see a lot of owners' incident investigation reports. In most cases, an attempt is made to establish the 'root cause'. Invariably, this is concluded to be:

- The person made a mistake - human error
- The person failed to follow procedures

The owner's investigation then stops at this point, and corrective actions are issued based on these 'findings'. These typically include: the requirement for those involved to receive more training; the addition of more procedures; or adding another layer of oversight.

Will these corrective actions achieve anything and prevent the same thing from happening again? There is a strong likelihood that they won't because the real reasons why the incident occurred have not been uncovered. 'Human error' and 'failed to follow procedures' are not root causes. They only scratch the surface and should be the starting point for further investigation. Otherwise, we cannot properly learn from the incident.

Let's look at these two factors in turn.

## Human error

When an outsider comes along and looks at (or is told about) the apparent circumstances of an incident, their initial response is to question the competence of those involved or conclude that they "lacked common sense".

This approach of judging the actions of others based on what another individual thinks he/she would have done in the same situation is unhelpful. Those involved didn't have the benefit of hindsight, for example. When things go wrong, often it has nothing to do with competence or ability. Mistakes happen because of a decision(s) that was made by those involved - and it's vital to remember that those decisions made sense to them at the time

A person makes 35,000 decisions a day! Our brains are constantly busy making decisions, and as such, the person carrying out the investigation must focus on how those involved came to make their decisions. What influenced them? Time pressure, overloaded, stress, fatigue, lack of resources or tools?

Put yourself in their shoes. Context is everything.

## Failure to follow procedures

Safety management systems - when implemented correctly - are massively beneficial. But it's important to remember that policies, procedures and checklists won't stop things going wrong. Humans are not robots and won't follow procedures blindly.

So, what are the possible reasons that someone might not follow the procedures? There are many, and it's rarely because of a reckless disregard of system. More likely, it is down to the fact that the set procedures are difficult (or in some cases impossible) to comply with, or that they are badly written and easily misunderstood. Maybe the individuals involved didn't know where to find the right information?

There are other reasons why people 'break the rules', such as to save time or to maximise profits, sometimes under the misguided impression that they are helping the owner - rather than for their own benefit.

## Digging deeper

Once a better understanding of what influenced the decisions of those involved is established - and why they deviated from the set procedures - there is an opportunity to learn much more about how the incident really happened and to identify effective measures to prevent similar incidents from happening in the future.

When a cause is listed as "failed to follow procedures", is the appropriate action to discipline the person involved and add more detailed procedures in the hope it will help future compliance? Or does it present an opportunity to find out if those procedures are really fit for purpose and reflect the realities of working on board?

## Find out more

See our briefing on Incident Investigation, by searching '[Safe Home](#)' on our website to see our briefing on incident investigation and other useful briefings.





# No time to chill out when it comes to hot work

**Fire on board any type of vessel can be catastrophic. Whether it occurs at sea or in port, extinguishing a fire is highly challenging and the risk of loss of life or loss of the vessel is very real. Preparing your emergency response to a fire situation is of course vitally important. But it makes sense that we focus efforts on preventing fires occurring in the first instance. There are many reasons why a fire on board could start, such as fuel or lubricant leaks that contact a hot surface, careless smoking, or faulty electrics. But we at Sunderland Marine have seen too many avoidable fires and explosions that occur during hot work.**

## Hot work

Hot work typically includes electric-arc welding, plasma cutting, oxy-acetylene burning and grinding. Obviously, this type of work has risks. If it isn't properly planned and controlled, the chance of a fire or an explosion is high. The consequences can be devastating for your crew, their families and your business.

## Repair periods and the 'five-minute job'

The risk of fire and explosion exists during all hot work tasks. However, most incidents we see tend to occur either during major repairs or when a 'five-minute job' is taking place. When a vessel is at a repair yard or berth, there is likely to be a lot of hot work activity. The scale of some of the work will be significant, such as steel renewals. In addition, the repairer's staff and the vessel's crew might be carrying out various hot work jobs at the same time and with limited co-ordination.

Common factors in incidents include the failure to remove combustible material from the work area and not keeping a vigilant fire watch. There have been instances of fires that ignited in the space adjacent to where the hot work was carried out. In those cases, the crew didn't identify the risks arising from heat transfer through the bulkhead. Hot work in refrigerated holds can present further hazards as the insulation may be flammable. To make matters worse, insulation fires can be difficult to extinguish due to lack of access.

The 'five-minute jobs' often occur at sea and when the crew are under pressure. This might involve an urgent repair, such as freeing up jammed equipment, where a crew member hurriedly prepares the oxy-acetylene equipment. The urgency of the situation, or perhaps the thinking that it is low risk ("it's only a small job") can lead to an absence or lack of care and planning.

Acetylene leaks have led to serious,

sometimes fatal, explosions. These could have been prevented if the hose connections were checked to make sure flashback arrestors were in place. Every hot work job needs to have basic safety controls in place – even if it is only a 'five minute job'.

## Controlling hot work

A simple and easy-to-follow system to manage hot work can help prevent these types of incidents. The system should prevent any hot work being carried out without properly identifying and controlling the risks and ensure that a competent person takes responsibility.

This should apply whether the task involves major welding or is just a quick burning job. The system should be in place at all times - whether the vessel is at sea, in port or in a repair yard; the risks are high regardless of location.

A hot work permit-to-work system can be devised following a risk assessment. Risk assessments are a subject that can invoke a reaction. For some reason or other, the concept of risk has been overly complicated. But it is actually a natural and simple process. Everyone carries out risk assessments all the time without even knowing it. Crossing the road? You assess the risk and then you decide how, where and when it is safe to cross

## Consider a risk assessment for a hot work task

- What could go wrong and how likely is it? Fire and gas explosion are two obvious potential outcomes.
- What could cause these to happen? These could include welding next to flammable material or using defective equipment.
- How much harm can be done? Results could include losing the vessel and more importantly loss of life.
- What can we do by way of prevention? Look back at the causes identified earlier and think how they can be prevented. This could include making sure the space and adjacent areas are clear and clean and that hot work equipment is inspected before every use.
- If something does go wrong, how do we limit the effect? Mitigating actions include having an effective fire watch, availability of fire extinguishers nearby and a well-drilled crew ready to respond.
- Think again – is it now safe to do the job? If not, go through the process again.

Any actions that either reduce the chance of something going wrong or make it less

harmful if it does go wrong form the basis of the permit-to-work. The technical term for this is 'control measures', but really it's just good practical common sense applied to a potentially dangerous job.



SCAN ME

We have advice on controlling hot work which includes an example of a hot work permit-to-work and can be downloaded here

## Hot work incidents – responsibility during repairs

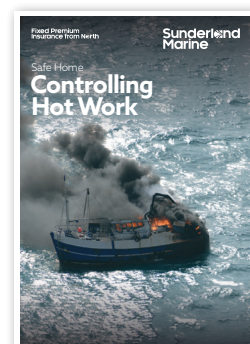
Where hot work is carried out by those other than the vessel's crew, it's important to think about who will be responsible if things go wrong.

When signing contracts with repair yards or contractor repair squads, vessel owners should pay attention to the limits on the shipyard's/repairer's negligence insurance policy. In the unfortunate event of an incident where it is found that the repairer is liable, low limits could lead to potentially inadequate levels of cover.

This might be quite straightforward when agreeing terms with a repair yard. However, should an owner appoint contractors directly themselves to carry out work whilst in the yard, the repair yard will not be responsible for the contractors' work and they will not be covered by the yard's insurance. Check the insurance arrangements of any contractor you appoint directly. Make sure they have adequate cover in place.

Sunderland Marine encourages their policyholders to submit these contracts to the underwriters for review of the terms. They can advise on any potential issues and provide suggestions on how to address them.

**Search "Hot Work" on our website to find out more and access a free printable guide.**



# Celebrating 140 years in fishing 1882 – 2022

This year, we celebrate our 140th anniversary. When Sunderland Marine was established in 1882, Queen Victoria was on the throne and fishing vessels were powered by steam.

Since then, we have experienced two world wars and tremendous change across the fishing industry as a whole. In these years, the company has grown from insuring just a few vessels in the North East of England to providing cover for over 8,000 vessels all over the globe.

1882

## SUNDERLAND MARINE ORIGINS

'Total Loss Mutual Steamship Insurance Company' was formed in Sunderland and by 1884 they insure 64 vessels. Queen Victoria is on the throne and Sunderland is one of the UK's major ports.

1914  
1918

## WORLD WAR I

All steam trawlers, drifters and their crews are instructed to return to their home ports. During the war they are used as mine-sweepers and patrol boats.

1939  
1945

## WORLD WAR II

Again, fishermen are called upon to play their part in the British Naval Forces but with the fleet now ageing and in poor shape.

1982

## 100 YEARS OF SUNDERLAND MARINE

It insures nearly 3,000 fishing vessels, representing over 50% of the entire inshore fishing fleets in the UK & Ireland.

1974

## A MERGER TAKES PLACE

Sunderland Marine merges with the marine underwriting firm Salvus, Bain & Arnott Ltd, also based in Sunderland. They had a combined total of 1,600 insured vessels.

1962

## THE COMPANY IS RENAMED

'Sunderland Marine' was born. Queen Elizabeth has been on the throne for a decade and the era of steam-powered vessels is well and truly over, with steam replaced by diesel-power.

2014

## THE NORTH GROUP IS FOUNDED

Sunderland Marine merges with North P&I, giving increased financial security and global reach.

2022

## 140 YEARS OF SUNDERLAND MARINE

In our 140th year we are proud to insure over 8,000 vessels and have over 3,000 Clients globally.

Celebrating  
**140**  
years in fishing

## THANK YOU

Sunderland Marine would not be here to celebrate this anniversary without the support of our Clients and we would like to say a huge thank you to you all.

# Application of QLD's WorkCover Scheme to Fisherman & Crew Members

## Guest article from Matthew Hockaday of Thynne + Macartney

There seems to be a common assumption that all 'share fisherman' in Queensland are excluded from the operation of Queensland's workers' compensation scheme provided by WorkCover Qld. Whether a person is excluded from the scheme however depends on the precise basis on which the person is engaged and paid and whether they are a 'worker'.

Queensland's workers' compensation scheme is governed by the *Workers' Compensation & Rehabilitation Act 2003* (WCRA) and is administered by WorkCover Qld. A party who employs or contracts a 'worker' in Queensland is required to have workers' compensation insurance with WorkCover Qld to cover any injuries sustained by the worker arising out of their employment.

A 'worker' is entitled to workers' compensation from WorkCover Qld for work-related injuries even if the injury is not caused by any fault on behalf of the employing party. If the employing party fails to have insurance with WorkCover Qld for a worker, the party will be uninsured for any injury claim made by the worker and WorkCover Qld will have the right to recover from the party any claim payments it has to make to the worker (including for medical treatment costs, wage benefits, damages and costs), unpaid premiums and also a fine. Claim payments for injuries can be significant especially if the worker suffers serious or permanent injuries (which we have seen occur on fishing boats).

### Who is a worker?

It is not always straightforward to determine whether a person is a 'worker' under the WCRA, which defines a worker to mean a person who:

- a. works under a contract; and
- b. in relation to the work, is an employee for the purpose of assessment for PAYG withholding under the *Taxation Administration Act 1953* (Cwlth), schedule 1, part 2-5

Whether a person is considered an 'employee' for part (b) above depends on various indicators and multi-factor tests which the courts have considered over time to determine whether a person is an employee or an independent contractor having regard to the practical work arrangement.

The Australian Tax Office provides a useful

'decision tool' on its website to determine whether a person is an employee or contractor for tax and super purposes.

We also highlight there is often a misconception that if a person works under an ABN or calls themselves a contractor the person is not an employee or worker, however, there are many factors involved to determine whether a person is an employee or a contractor and the whole work arrangement needs to be considered.

If the work arrangement is such that the person is determined to be an employee or 'worker' for the purposes of the WCRA, you cannot contract out of the person's entitlement to receive workers' compensation.

### Share fisherman – are they workers?

The WCRA expressly provides that a member of the crew of a fishing ship is not a worker if:

- a. the person's entitlement to remuneration is contingent upon the working of the vessel producing gross earnings or profits; and
- b. the remuneration is wholly or mainly a share of the gross earnings or profits.

This exclusion is usually interpreted by WorkCover Qld to mean the person must receive a percentage share of the overall earnings of the vessel, that is, of the total catch of the vessel. We are aware that on some vessels crew members receive a percentage share of their individual catch, however such persons are unlikely to satisfy the test for exclusion from the WCRA as the person's earnings are not wholly or mainly a share of the gross earnings or profits of a vessel but rather are a share of their own individual catch or effort.

By way of illustration, WorkCover Qld has published the following examples on its website to highlight scenarios where working arrangements would result in the crew member being considered a "worker" under the WCRA:

- A crew member who receives a wage as their main remuneration (for example, an hourly or daily rate).
- A crew member who is paid based on the number of fish or product they catch. This crew member is considered a worker as they are receiving 'piecemeal' rates (for example, fisherman who are paid a

set amount per fish or per kilogram of fish regardless of how much the owner of the boat receives for the whole catch).

- A crew member who is taken out on the vessel for a trial in return for food (a 'tucker trip'). The benefit (food) received for performing trial work would mean the crew member is essentially remunerated for the trial work they are undertaking. If you only need to maintain workers' compensation insurance for such an arrangement, a minimum premium policy with WorkCover Qld should at least be in place to cover these workers.

### Insurance requirements

It is possible that different insurance arrangements might apply to different crew members working on a vessel. For instance, a skipper who is paid a share of the overall catch of the vessel should not be a worker under the WCRA, whereas a crew member who is paid an hourly or daily rate or who is paid based on the number of fish they catch is likely to be a worker (and therefore WorkCover insurance would be required). The precise payment arrangement for each crew member is therefore critical to determining whether an employing party or vessel operator needs to have insurance with WorkCover Qld for the crew or fisherman working on a vessel.

If employing parties or vessel operators are in any doubt as to whether WorkCover insurance is required for a crew member, they should seek advice from WorkCover Qld based on the specific employment arrangement with the crew member. They should also keep a record of their dealings with WorkCover Qld in case there is an injury claim or any dispute about whether WorkCover insurance is required.

### About Thynne + Macartney

With a history of more than 128 years, Thynne + Macartney is a proudly independent, commercially focused, Queensland-based law firm with strong boutique practices in Agribusiness, Maritime & Transport, Property and Insurance.

**Thynne  
Macartney**

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