

# Focus on FFO matters: sub-sea cables



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- Club cover responds to a variety of damage to property claims, subject to any applicable coverage by hull insurers.
- When anchoring in Chinese waters, masters are urged to only drop anchor in prescribed anchorages, or seek approval from the local MSA/Port Authority before doing so.
- Under Chinese law, damage to sub-sea cables may result in civil and criminal sanctions.

## Ship blamed for damage to unmarked sub-sea cable in Chinese waters

The club handles a variety of cases every year for damage to property other than another ship. This is often referred to as damage to fixed and floating objects (FFO) and cover is generally provided by P&I clubs. The purpose of this article is to highlight the difficulties in circumstances where there has been damage to a sub-sea cable, following a recent incident in China.

### Club perspective

Club cover is provided under Rule 3.9 as set out below:

Liabilities for loss of or damage to, or interference with rights in relation to, any property not being any ship or any cargo or other property therein or the cargo or other property intended to be or being or having been carried in the ship.

Typically, cover under this rule responds to damage to berths, docks, jetties, locks or other port facilities. The damage need not be fixed or floating and there does not have to be contact. Claims usually fall into two categories: physical damage and consequential losses. The local law applicable where the incident took place invariably governs liability for damage to property.

In some jurisdictions, notably in Scandinavia, Holland and Germany, hull insurers in those markets may cover part or all of the liability. It is always best to check the terms of entry and apportionment, if applicable, of risk.

### Case study

A recent incident took place in China in which a member's ship dropped anchor outside of, but close to, a designated outer anchorage for a Chinese port, due to busy marine traffic and prevailing weather conditions. Unfortunately, the ship damaged a sub-sea cable on dropping anchor. No warnings relating to sub-sea cables were noted on any of the usual charts. There was also no requirement for the ship to advise the local Vessel Traffic Information System (VTIS) managed by the China Maritime Safety Administration (China MSA). It was later discovered that the cable was a military communications cable and state security prevented it from being shown on any charts.

As a result of the contact with the sub-sea cable, the member faced significant delays to its liner service and an expensive claim from the owners of the sub-sea cable. The club engaged the assistance of local lawyers and experts with suitable knowledge and experience of similar matters. Following extensive negotiations, an amicable resolution was found, with minimal delay to the ship.

### Chinese law

- The Chinese Oceanic Authorities publish details of commercial sub-sea cables on an annual basis. However, military equivalent equipment will remain unmarked.
- Under Chinese law, damage to sub-sea cables may result in civil and criminal sanctions.

Under Articles 5 and 6 of Provisions on the Protection of Submarine Cables and Pipelines, owners of sub-sea cables should register their routes and locations with the Oceanic Administration Authorities (OAA) within 90 days of cable laying. Once the cable is marked on nautical charts, ships shall not anchor or conduct similar actions within the protected area of the cable, around 500 metres from the cable on both sides in open water, 100 metres in narrow water, or 50 metres in a port. Failure to adhere to these requirements will result in a fine and liability for compensation for the loss and damage suffered by the cable.

Meanwhile, in relation to military equivalent sub-sea cables, article 15 of *Measures of Chinese People's Liberation Army for the Implementation of the Administrative Provisions Governing the Laying of Submarine Cables and Pipelines* is applicable. This sets out that for certain categories of sub-sea cables, including border and security defences, the cables cannot be marked on charts. When a military sub-sea cable is marked on charts, then the protection area will be two nautical miles from the cable on either side, or 100 metres when in the port.

### Civil liability

According to Chinese tort law, in a sub-sea cable damage case, a ship will usually be found liable for loss and damage. If neither the owner of the cable nor the ship has fault, the court may apportion liability according to the principle of fairness, for example, each party will bear 50% liability.

Further, the owner of the cable (whether commercial or military) is entitled to claim for:

- a) direct economic loss caused by the block of communication channels;
- b) expenses for repairing the damaged submarine cables; and
- c) expenses for investigating the damage caused by the accident and other expenses therefrom.

### Criminal responsibility

According to Article 369 of Chinese Criminal Law, any person who damages military installations or military telecommunications and causes serious consequences due to negligence shall be sentenced to fixed-term imprisonment of no more than three years or criminal detention; if the consequences are extremely serious, he shall be sentenced to fixed-term imprisonment of between three and seven years.

### Conclusion

Members trading in China who may drop anchor off port limits in Chinese waters should be aware of the potential dangers highlighted in this article. Masters are urged to only drop anchor in prescribed anchorages, or seek approval from the local MSA/ Port Authority before doing so.

Should members face any difficulties, they can always contact their usual claims contact for more information and guidance.