P&I cover for decommissioning

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- P&I cover is designed for marine liabilities.
- The obligation to leave a clean sea bed is a field operator's risk and is not to be deferred as a liability under a sub-contract.
- Market placement of Decommissioning All Risk (DAR) cover is designed to give access to cover that is excluded under P&I.

It is essential to preserve the distinction between the field operator's obligation to leave a clean field and the insurance cover available for the liabilities arising out of the decommissioning activities themselves. The former obligation ought not to be transferable by contract or otherwise as a P&I liability

John Croucher, underwriting director and Sian Dinnadge, deputy underwriter in the Offshore Syndicate, look at the scope of P&I cover available to members involved in decommissioning projects.

There are four broad categories of parties involved in a decommissioning project: owners and operators of field property to be removed, principal decommissioning contractors, as well as transportation and supply/support subcontractors. For each project, the scope of work being performed and the type of marine assets required are likely to be bespoke, so tailored P&I cover is key. Early dialogue with the Club is therefore essential.

Notification: contract review

Our first priority, upon being notified of a pending decommissioning project, will be to understand the scope of work to be carried out by the member, the marine assets involved and the contractual terms.

Following receipt of the relevant information, a detailed review will be undertaken which will focus on the scope of the member's cover alongside the Pooling Agreement and relevant exclusions. We will then make our recommendations and draw attention to any extensions to poolable cover that might be required. In this regard, the club can provide a tailored insurance product to meet a member's needs thus minimising gaps in coverage.

P&I cover: obligations to decommission entered units

In the context of P&I cover, it is likely that our members will only have an obligation to decommission an FPSO or other Floating Production Unit, as fixed structures fall outside the scope of cover.

We can provide fixed cover up to $1bn for P&I liabilities arising out of the unit being decommissioned throughout the process of disconnecting the risers, flowlines and umbilicals, towage or heavy-lift carriage to shore and entry into the yard for scrapping or modification.

Consideration should be given to on-going liabilities in respect of property remaining on the field that remains the property of the member or remains in its care, custody or control. For example, there may be residual liabilities from disconnected risers and umbilicals that previously fell within the definition of the FPSO when she was on the field and that can no longer be considered to be covered as part of the unit. In these circumstances, the member should ensure that there is a Market DAR policy that will respond or otherwise should discuss these exposures with the club.

P&I cover: plugging and abandonment
The use of a drilling unit for plugging and abandonment of a well is excluded in its entirety from poolable cover and can only be covered by the club under its Standard Offshore Rules, with limits up to a maximum limit of $500m. Cover, however, excludes pollution from the well and any damage to or loss of formation.

P&I cover: specialist operations
Poolable P&I provides very high limits of cover with a sublimit in respect of liabilities for passenger and crew of $3bn and a further sublimit in respect of liabilities for oil pollution of $1bn. P&I covers liabilities arising out of the management and operation of the entered ship. Basic poolable cover will therefore apply when a member's ships are navigating. However, when members are engaged in specialist operations, the scope of poolable cover is reduced and only covers:

a. injury, illness or death of any person on board the ship;
b. wreck removal of the ship;
c. oil pollution emanating from the ship or the threat thereof.

Specialist operations are defined by the nature of the work being performed and not by the type of ship that is performing the work. When considering specialist operations, it is important to underline that there is no direct reference to decommissioning, dismantling or removal in the Pooling Agreement. The scope of the specialist operation exclusion is non-exhaustive.

Rule 5.11(1) provides as follows:
"There shall be no recovery in respect of liabilities incurred during the course of performing specialist operations including but not limited to.....well stimulation, cable or pipe laying, construction, installation or maintenance work....."

Given the nature of decommissioning projects, work undertaken at the site by an entered ship is likely to fall within the scope of this exclusion for the purposes of poolable cover.

In the context of decommissioning, specialist operations will normally commence when the entered ship moves into the 500 metre zone around the property being decommissioned or, in the context of removal of subsea pipeline, etc., when preparatory work begins prior to the commencement of cutting, lifting, deployment of divers or operation of an ROV.

In such circumstances, depending upon the scope of work being undertaken, a member will need offshore extension covers up to an agreed limit in order to buy back excluded P&I liabilities to cover the time spent performing specialist operations. Whilst such an extension reinstates cover excluded by rule 5.11(1), it does not give a blanket cover and, to be paid, claims must still fall within the P&I rules.

Specialist operations cover is not an all-risks extension, and cover specifically excludes loss or damage to, and wreck removal of, the property being removed, and any additional expense arising from a failure to properly perform or execute the work.

We would expect the field operator to purchase a DAR policy that would respond to any loss of residual value of the decommissioned property and also to cover any wreck removal liabilities if the property was dropped or otherwise lost during the operation. Any additional expense incurred in performing the work, such as the requirement to deploy additional marine spread, would be considered to be an operational expense for the member and would not be covered under P&I cover or traditional market placements.

Contracting

When we give a specialist operations extension to reinstate the exclusions in rule 5.11(1), it is usually subject to the member contractually excluding all liability in respect of existing property and the property being removed under the contract regardless of negligence. It may not be sufficient to rely on an indemnity in respect of the contracting party's property and personnel, since the contractor might not own the property in question and the personnel might not be within its company group. Ideally, the oil company/ultimate client of the decommissioning project should be defined as part of the company group so as to ensure that the oil company's property and personnel, and those of their other contractors and subcontractors, are covered by the indemnities given to the member by its contractual partner.

P&I cover: transportation

The specialist operation exclusion does not apply during the transportation phase of a decommissioning project once the ship has moved out of the 500 metre zone, i.e. where the member is just moving the ship and property to its next destination.

Cover under P&I rules is based on the member either contracting at law or, in certain circumstances, contracting on terms no less favourable than approved contracts. In respect of property carried on a semi-submersible heavy-lift ship or any other ship designed exclusively for the carriage of heavy-lift cargo, the required standard for poolable cover is that of Heavycon 2007.

If transportation is being undertaken by barge or other ships that are not exclusively designed for heavy-lift carriage, there would be some element of poolable cargo cover available in respect of the decommissioned property. Poolable cargo cover is, however, predicated on the basis that a member would be issuing bills of lading incorporating Hague/Hague-Visby Rules and therefore the extent to which poolable cover would be available is limited. Any cargo exposures would therefore be heavily reliant on the club providing a non-poolable contractual extension, and we would consider the best home for the risk to be under the DAR cover, which is specifically designed to cover these exposures.

Conclusion

It is essential to preserve the distinction between the field operator's obligation to leave a clean field and insurance covering decommissioning activity. The former obligation ought not to be transferable by contract or otherwise, as a P&I liability. The DAR policy, or equivalent, is available to cover physical damage to, pollution from and wreck removal of the decommissioned property, and a marine contractor should ensure that it has access to this cover. When reviewing a member's contract, we will be looking to ensure, as a minimum, that knock-for-knock provisions are upheld with the right to limit at law maintained and, where possible, that where a member is undertaking specialist operations, they have access to the market-placed DAR cover or equivalent, where liabilities are excluded under P&I.